

**MAUI PLANNING COMMISSION
REGULAR MEETING
MARCH 8, 2011**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 9:03 a.m., Tuesday, March 8, 2011, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Agency was present (see Record of Attendance.)

Mr. Jonathan Starr: Welcome. This is March 8, 2011. Welcome to the regular meeting of the Maui Planning Commission. I thank everyone for joining us today. We have with us, so far, Commissioner Jack Freitas; Commissioner Orlando Tagorda; James Giroux, Corporation Counsel, our lawyer. I'm Jonathan Starr. I'm the Chair. We have Will Spence, our Director of Planning; Commissioner Donna Domingo; Commissioner Warren Shibuya; Commissioner Lori Sablas; Commissioner Penny Wakida. Carolyn Takayama-Corden is Secretary to the Commission. Rowena Dagdag-Andaya is Deputy Director of Public Works. Clayton Yoshida, of Current Division, administrates our meetings and keeps us on track. Ann Cua is planner extraordinaire, and does a great job. We have, I saw – who else do we have with us today in terms of planners? Is Gina still here? Oh yeah, Gina Flammer and Kenny Hultquist keeping us in the public eye. And Commissioner Kent Hiranaga as well.

We will proceed with our agenda. Our first step is always to accept public testimony on any agenda item. People who wish to testify can testify either now, before we begin with our agenda items, or during the discussion on that agenda item but before decision making we allow testimony. So you can take your pick. We ask, in general, that testimony be kept as short as possible, and we ask people to try to keep it under three minutes. Now we have a sign up sheet. We have the indomitable Stephanie Ohigashi is going to testify first. Welcome Ms. Ohigashi. Thank you for joining us.

The following individuals testified at the beginning of the meeting:

Stephanie Ohigashi - Item C-1, Maui Lani Shopping Center, PH2

Her testimony can be found under the item she testified on.

Mr. Starr: Would anyone else like to testify at this time? Yes, Mr. Takayesu. Welcome. Please introduce yourself to the record.

Mr. James Takayesu: James Takayesu. I'd like to testify on item-H when it's present or do we have an option?

Mr. Starr: Yeah. Yeah, we'll have item-H – yeah, before we do any decision making we'll certainly be allowing public testimony. It will be later today.

Mr. Takayesu: Thank you.

Mr. Starr: And Ms. Apana, would you like to testify now?

Ms. Clare Apana: . . . (inaudible) . . .

Mr. Starr: Yeah, before any decision making. And we did receive your request to have a little bit of extra time, so thank you.

Ms. Apana: . . . (inaudible) . . .

Mr. Starr: Yeah. Certainly. We do allow testify when the items come forth. Is there anyone else in the public wishing to offer testimony at this time? Seeing none, the initial public testimony portion of the meeting is now closed. Director, why don't you introduce our first item.

B. DIRECTOR'S REPORT

- 1. EA/EIS Report**
- 2. SMA Minor Permit Report**
- 3. SMA Exemptions Report**

Mr. William Spence: Mr. Chairman, members, we're on to item-B of your agenda, the Director's Report. Before you, you have SMA Minor Permit Report and SMA Exemptions Report. I note that staff has passed around some information that I assume was previously requested. Are there any questions about any of the permits issued?

Mr. Starr: I know I had requested some information. I didn't see the -. Oh. . . (inaudible) . . . yes. Unless anyone has anything at this time, we'll be able to look at it throughout the day, yeah. Commissioner Wakida?

Ms. Penny Wakida: Yes, and I want to thank the planner for this. I requested some information from Erin Wade, I guess. And I just want a little additional information if it's possible. If not, it doesn't have to be given - it can be given to me at another time. In the information that she gave me, she said there would be improvements to the area. This is a demolition that's listed on the front of our packet. And I was interested in what improvements, if any, were going to be done? So that's all.

Mr. Starr: Yeah, can we get a little more detail on that before the end of the meeting Mr. Yoshida?

Mr. Clayton Yoshida: Yes Mr. Chair.

Mr. Starr: Okay. So we'll have a little more detail on that. Anything else said members? Not seeing any, we'll move along and we'll examine these when we have a bit of a chance later. Director?

C. UNFINISHED BUSINESS

- 1. MR. LLOYD T. SUEDA of SUEDA & ASSOCIATES on behalf of HRT LTD.**

requesting a Phase II Project District Approval for the Maui Lani Shopping Center consisting of a major food market, retail and service shops, food court, gas facility, and other related uses on 12.926 acres within the Maui Lani Project District at the corner of the Maui Lani Parkway and Kaahumanu Avenue at TMK: 3-8-007: 121, Wailuku, Island of Maui. (PH2 2005/0007) (A. Cua) (Final Environmental Assessment accepted at the August 10, 2010 Maui Planning Commission meeting. Commissioners: Please bring your copy of the Final Environmental Assessment with you.)

Mr. Spence: Mr. Chairman, we're on to item-C on your agenda today. Unfinished business. Mr. Lloyd Sueda of Sueda & Associates on behalf of HRT Ltd. requesting a Phase II Project District Approval. Our staff planner is Ann Cua for this project, and she'll make the presentation to the Commission.

Mr. Starr: Okay, thank you. Ms. Cua.

Ms. Ann Cua: Good morning Mr. Chair, members of the Commission. Before I turn it over to the applicant to discuss the project, I did want to take you through some background information, talk a little bit about process because this application didn't take a typical process. And for all of you that probably read through the information, you might have a bit confused and so I want to speak to that a little bit.

First of all, the application before you is a Project District Phase II application. And as you remember from your training the Project District process is a three step process whereby the first phase is the creation of an ordinance that includes permitted uses and standards. And that comes to the Planning Commission in the form of public hearing, but it is ultimately approved by the County Council. And then the Phase II Project District application process which is where we're at with this one right now. And what it is is it's approval of a preliminary site plan. And it is somewhat similar to the kind of plans you get for an SMA permit, where you get a site plan. You get vertical construction. You get landscaping, lighting, and so on and so forth. You conduct a public hearing, and you are the authority on this permit. And then the last phase of the Project District process is the Phase III application. And that is when the applicant comes in with the construction drawings, and they're at the building permit level. And that approval is an administrative approval by the Planning Department. And a Phase II application that you typically review can result in either one Phase III Project District application or a number of Phase III applications because a lot of Phase II applications you review is for a big project. I mean, look at Maui Lani. It's a huge project. And we've been reviewing Phase III Project District applications for years. So again that's – that's process.

Now with regard to specifics on this application. Let me move that board. Okay so we take you all the way back to 2005 as Stephanie had mentioned, and the applicant had submitted a Phase II Project District application with the Planning Department. And in July of 2007 the Planning Commission held a public hearing regarding this application, and you deferred action because the project was required to go through the environmental assessment process. And I want to explain that a little bit. When the application first came in, it made a number of improvements – it proposed a number of improvements. And when it initially came in, there wasn't an official trigger for the Chapter 343 process. And you remember in your training there's like nine triggers. But you remember also that whole Kainani Street discussion and how there were many iterations of what

could work at Kainani Street. The applicant was trying to work with the community in all those community meetings. They were trying to get approval from Department of Transportation. They were kind of going back and forth. And so when the project came to you in 2007, and with the iteration that was before you at that time for Kainani Street and the other improvements that were now on the table, it was realized that there was a trigger. And so the Department had recommended that we go forward with the public hearing, but that we defer action on the application. And so that's exactly what happened. And at that time, the applicant is going to cover this, but I just want to point out the scope of the project at that time was a 128,000 square foot commercial center. It did include access to and from Kainani Street. It included gas pumps and that has all been modified amongst other things. But that was the scope at that time. So you conducted your public hearing, you deferred action on the Phase II application, and the applicant began the environmental assessment process. On April 23, 2010, the draft EA was published in OEQC Environmental Notice. And on May 11, 2010, you held a meeting regarding the review of the draft EA. On August 10th is when you reviewed the final EA, and you accepted it and found Finding of No Significant Impact, so you issued a FONSI on that day. On September 8th, the Final EA and FONSI determination was published in the OEQC Environmental Notice. And then on October 11, 2010, a complaint for Declaration Relief was filed by Clare Apana against the Maui County Planning Commission, the Planning Department, and the Planning Director. And to very, very briefly summarize that – basically what the complaint does is it's challenging the adequacy and acceptance of the final environmental assessment by these entities. And then on December 22, 2010, the County answered the applicant's complaint. And so one thing we do want to note that this complaint is pending. We have consulted with our Office of Corporation Counsel, and they have advised us that the Commission is able to proceed with the processing and action on this Phase II application. The complaint will be dealt separately through the Courts.

One last thing I'd like to cover before I turn it over to the applicant. You have quite a number of reports. The Planning Department's report, the addendum report, is quite small. However, the attachments are huge, and that's partly because of the way the process happened. Normally you get the EA first, and then we take the public hearing for the Phase II Project District application and you have action. This time we had the public hearing on the Phase II application, then you had the EA, and now you have this report. So when I was preparing this report, I couldn't really just prepare it based on only on the EA. I had to prepare it based on the last report I gave you which was when the project was 128,000 square feet. That's why you needed all the exhibits. That's why we gave you the report from 2007 as Exhibit-1 so you can see, okay, this was the project, these were the agency comments that we had, and then it went into this separate process. You have that environmental assessment. But this report basically kind of brings it all together from where you were. And you note that on page-5 of our report, the application obviously got sent out again because the project got modified. So you have much more updated comments which are in your EA packet, and which are in your exhibits. And you also have all the older comments but I wouldn't really pay much attention to those older comments anymore because they have been updated. So with that, I would like to call the applicant to take you through their presentation which should be – it is a lot of information – so it should be about maybe 15, maybe 20 minutes at the very most.

Mr. Starr: Okay, before we begin, I just want to ask Mr. Giroux to clarify the question about why, you know, why we can proceed even though there's been a legal filing on this?

Mr. James Giroux: Thank you Chairman. As far as the administrative law goes that the – what your

review is is that you have come to a place where you have an application before you and that, you know, all of the work has been done to compile that. A separate process in the Judicial system to challenge any part of that process is not going to stop you from reviewing your portion of the work that you're assigned to according to the County Code. The only thing that would stop you is if the Courts were to file some type of injunction or a State order, which you haven't received. So that you can process and continue with your decision making.

Mr. Starr: Thank you. Members, any questions on that? Thank you. Ms. Cua?

Ms. Cua: One more quick point. When you accepted the final environmental assessment, you had offered some comments, individually, from some of the members to the applicant saying, you know, when you come back for us to look at the – to act on the phase II information, can you check on a couple of things? So I go into that in my report. The applicant's response letter is not in my report, but it was separately distributed to you. So they're going to be going over that. Okay.

Mr. Starr: Okay. Thank you. Who's going to present for the applicant?

Ms. Erin Mukai: Hi. Good morning Chair Starr and members of the Commission. My name is Erin Mukai. I'm with Munekiyo & Hiraga. And I'm here today on behalf of HRT Ltd. to review their application for a Project District Phase II. Here today are several members from the project team who are available for questions after the meeting, and won't go through the whole list, but they are here and available.

As Ann had said we are here today to review the Project District Phase II application that was filed back in 2005 for the project. Some of the basic project information includes the project site which is approximately 12.9 acres. Project components include a food market as a major tenant, sub-major tenant, retail and service shops, office space and restaurants, bring the total retail area to 105,098 square feet. Currently, Safeway is proposed as the major tenant occupying 56,680 square feet.

The project site is located in Wailuku at the corner of Maui Lani Parkway and Kaahumanu Avenue, directly across the street from Baldwin High School. Adjacent to the project site, to the west, is the historic Sandhills neighborhood. And adjacent to the south is the newer Sandhills Estates lots. Currently, the project site is vacant as shown in the next couple of site photos here. You can make out the Sandhills, the historic Sandhills, on the right hand side, and the newer Sandhills Estates located in the background there. Another angle of the project site. You can see the green roofs of the Kaiser Permanente Maui Lani Clinic and the St. Francis Dialysis Center.

As Ann had mentioned there has been several community meetings for this project. A total of seven. Four of those meetings were held during the EA process. You know, as a result of these meetings, there's been several iterations of the site plan. And I'd like to turn the presentation over to Jeff Benner at this time, the project architect, who will start with the site plan that was submitted with the Project District Phase II application in 2005.

Mr. Jeff Benner: Commissioner Starr and other commissioners, my name is Jeff Benner. I am the architect who has worked with Lloyd Sueda and HRT for the past six plus years on this project. What I'd like to do initially is just lightly explain where we first started with this project. And as you can see, and as Erin had mentioned, the site was about 128,000-plus square feet. We had two

majors, one being the Safeway. The second, to the left of the Safeway, being a smaller what we call a mid-major. And of course, a number of shops, out parcels which would consist of restaurants et cetera. And we did have a 12-pump fuel center, which you see along the Maui Lani Parkway. Also, you'll see that at that time we had proposed to use Kainani as a major access for both ingress and egress to the site, as well as a full right in, right out on the highway leading into the center part of the site. And of course the two given Maui Lani Parkway entrances there that you see at that time not being signalized.

We met a number of times with local neighborhood groups, community leaders, and there were significant concerns about the density, the parking, the access, the location of the buildings to, you know, your adjacent residential properties. And over the past few years, I think we've come up with a very good solution that works not only for the developer but as well with the local residential properties. I'm going to have Mike move on to the next slide.

This is the current configuration and as you can see it is much reduced in scale. We're down to, I believe, about 28,000 square feet less in GLA. As you will see adjacent to the Sandhills Estates we no longer have that Kainani Street access. We have a significant buffer zone between residential properties and the adjacent parking area. We -. Okay. So you'll see this is the Sandhills Estates. Here's the proposed buffer zone. This parking that you see here is more for overflow type parking, employee parking or parking during peak periods which may occur somewhat during late afternoon shopping or of course on certain holidays. We've also increased the distance between the Sandhills Estates properties and the Safeway store by approximately 120 feet. So we've really moved the structure away. We've moved a lot of the activity away, which, of course, was a concern. And if you recall in the past slide all of our loading in the previous scheme actually faced the Sandhills Estates properties. So we've mitigated significantly this area of concern with distance, buffering and our loading facilities for the Safeway store.

What we have here is a series of buildings. There's seven total. We have, of course, the Safeway store, a smaller mid-major, and then we have a series of smaller structures that are adjacent to both Maui Lani Parkway and the highway. You'll see that in these areas there's darker toned tenant spaces. Those are our proposed food type services, our restaurant type services. And of course, the remainder would be normal shops which could be, you know, a number of different opportunities. We have on this particular site plan here we've reduced our overall parking significantly. I think we're about 100 car spaces less than in the previous site plan. We have, as I mentioned earlier, no access off to the highway on to Kainani Street here. We have a right in only into the site. We propose a signalized intersection which is directly across from the existing Kaiser medical facility. And of course, we have our right in, right out, which would be for both vehicular use as well as our truck and loading access.

There's been a lot of effort over the past few years with respect to highway improvements, and Kainani Street improvements. And what we have shown here now is an improved Kainani Street intersection where we have thru and left turn movements. We also now have a true dedicated right turn movement heading to the east on Kaahumanu Avenue highway. We've also for protection, security safety reasons, have created a bulb out which allows for a calming measure to mitigate some of the concerns that people did have with respect to the amount of traffic that does in fact come out of the neighborhood, the Sandhills Estates neighborhood, and on to the highway. We've added an axillary lane which is - well, I guess you can say it's the fourth lane out of the highway. And of course we have our dedicated right turn lane into the project here. All of these are

measures which the traffic engineer and the Maui County DOT have worked jointly on for the past, probably, a good two years now to resolve and mitigate some of these traffic concerns. In the future, right now the Maui Lani Parkway will exist as it does today. But in the future as development occurs to the south, and future connections are made, there will be – there will be a second left turn lane from Maui Lani Parkway, headed west down Kaahumanu Avenue. And we've allowed for future dedication along here for the additional lane that we would have to construct which would be that second south bound lane on Maui Lani Parkway. And of course, as I mentioned earlier, we will be signaling the intersection adjacent or directly across from the Kaiser facility.

The site plan itself as I've mentioned is substantially reduced in GLA. We've taken into account a number of concerns that neighbors have had with respect to loading. And what we have done here, and as you see, is we still have our truck access coming along and parallel with this Maui Lani subdivision to the south. And what we have done is we've taken the entire loading facility here, focused it away from the residential so it points to the north. And as we'll go into a little more detail when we talk about the elevations, we've also screened it. We've essentially enclosed it. So it's an enclosed loading dock. It has a roof structure. So essentially our loading area is now three sided and the sound issues which was really one of the concerns is now really mitigated with sound traveling to the north. We have the Safeway here. Originally when we came before you, we were at about an elevation 162. That was a concern by the neighbors. We've dropped it 10 feet so we've managed to kind of mitigate some of the concerns of building mass and building height with the lower elevation. And virtually all of these properties right in here will actually look out and over the store with the exception of the two entrance towers that you see here. So from a view standpoint, sight visual standpoint, we've really mitigated well the concern of the kind of the height and the massing of the structures.

As we move towards the parkway, the buildings actually step down. So this building being smaller in scale, I believe, is another five feet down in elevation. This building here which is two-stories is really, you know, another, I think I believe it's another four feet – four or five feet down in elevation. So we tend to follow the existing grades as we approach the parkway here.

We propose on this site a number outdoor gathering areas. Safeway themselves they have a lot of interior deli departments, food departments. They typically provide a number of outdoor tables, umbrellas, chairs, et cetera which will be more focused in between the two entrances. We will have a gathering area here, although small in scale, but it will serve for outdoor gathering use for the two end cap potential food tenants. And then up in this corner here we have food tenants proposed here. We also have a restaurant. And what we've done is we've created this outdoor larger gathering area of tables, chairs, umbrellas, et cetera. We've looking at incorporating some outdoor trellis type structures. So this will be a true focal point for the project at the entry or at the intersection of the highway and Maui Lani Parkway. And it will serve both as that focal point into the center as well as for the outdoor gathering uses. This was something that I spoke with Ann about probably a good two years ago, and she actually liked and suggested the idea of opening it up and giving this a true feature outdoor feeling section.

This is the landscape plan that was prepared by Russel Gushi. I kind of likened it to Piilani Village which both Russel and I worked on together years ago. We have the burial preservation area up in here. We have significant landscaping buffering the residential properties in the Sandhills Estates to the site itself. We have significant large and smaller shade trees. Large and smaller

flowering trees. In strategic areas we've got a number of palm trees. We do have some . . . (inaudible) . . . type tree which are more located along the southern edge because this the edge where we are the tightest with respect to the residential properties and the buildings located in here. And of course ground covers, flowering shrubs, et cetera, et cetera. So I take a look at this and I think Russel has done a great job with respect to providing a significant landscaping which will really add a huge amenity to the project as a whole. And you'll see of course up here, once again this is our large entrance feature, our large gathering area, with significant landscaping.

This was a rendering that we did a few months ago. This is the burial site area, of course, which is – as you see on the site plan, up in this area. There is quite a grade change, so therefore what we've done is we've created a stone wall look. This being the highway out here, and this being the smaller shops coming over here. And of course the landscape measures which we worked with our archaeological consultant to come up with a good comprehensive landscape approach to what we propose here. This will also be maintained, you know, as necessary, as required by the developer and/or their property management group.

Elevations – excuse me. The elevations. When we first came before you a few years ago there were comments made that the structures were too bold, a little out of scale with respect to the shoppers, the local residents, et cetera. So what we did is we redesigned, we recreated this elevation at the top. Here's the Safeway store and it extends from left to right. We have two larger entry features. We have a significant amount of glass which is something that Safeway is becoming more and more, kind of to and to providing now with their stores. They've got colors which will be compatible with what we kind of refer to as the Safeway palette of colors. They have a standard that they like to see, you know, on all their stores that they develop. It's kind of a marketing, kind of signage approach. We have a number of metal awnings. We have horizontal awnings. In this particular area, this being the gathering area for the outdoor seating. We have trellis elements. We have significant roof forms. This being more the territorial roof design, the Dickie roof design et cetera. And you'll see that it really encompasses a good majority of the structure both front, side, and rear. And in this particular area right here, and that's what I was pointing out earlier, this is the loading area. It's totally enclosed. It will not have doors on the north facing. That's where the trucks actually back in and out. And you can see from an architectural standpoint. From a visual standpoint, especially with respect to Sandhills Estates, it is enclosed. They will be able to look at the structure and not see the trucks in the loading docks itself.

We have significant articulation both vertical and horizontal. Significant color changes. We have a lot of features that we propose which will, you know, add variety, character to both the site facing Sandhills, and the rear facing the Maui Lani Parkway Estates. We've attempted to bring the scale down, keep it a little more in character and in tune with the scale of what we see adjacent to this particular development. Height wise – now this is our maximum height up here at the towers. It's 50-feet. But generally speaking the buildings will be in that 26, 28, 30 foot, 32 foot height range with the exception of an occasional tower feature.

These are the elevations of the buildings over here along Maui Lani Parkway. And as I had mentioned earlier, these are typical shop types of buildings. The one at the corner down here – right there – is actually two stories. It faces Maui Lani Parkway. So whether it be retail, whether it be office or a combination of both, we'll see – that was our only two story element on the site as a whole. Significant glass once again. Color changes. The horizontal and vertical articulation.

Tower elements. What we've also done too is we've created along the Maui Lani Parkway a design that provides a lot of exterior glass opportunities. So as you drive the parkway you will not simply be looking at the back of a building. It really disappears if it's a front elevation.

These are the smaller buildings up against the highway. Once again, the same character of colors articulation. Lots of glass along the highway. You actually see significant glass. Once again, not the backs of the building structures.

This here is the section to the site. And I know it's a little tough to read, but what we have done, and as I've mentioned earlier, we've actually put depressed the site further into the ground which allows the visual views over the top of the project, you know, into the Kahului and the ocean area. We have very little, in terms of visual obstruction, and once again that being these two tower elements – Safeway entries. And you'll see also on this particular one, had we stayed with the existing grades that exists today, or existed prior to the grading, this upper dash line would have been the code allowed for building heights. So as you can see, even though we had the opportunity to go up further, we respected the community's input, the neighborhood's input, and we pushed it downwards, thus, kind of eliminating that visual impact, you know, on the residences.

These are some simple sections. This mostly affects the residents along the rear of the site, the Maui Lani subdivision. But as you can see, once again, with the depressing the Safeway store and the other structures down, we've managed to mitigate some of the traffic issues with respect to the trucks, the loading, et cetera. Section-A for example, this particular property here, this is their home, we're proposing the six foot high screen wall which would be on their side. Of course, our side would be a little higher simply because the grading. But you can see the impacts now of deliveries has been hugely mitigated by being able to lower the grades. All three of these sections here basically kind of deal with our rear access to the trucks out – truck loading area.

As Erin mentioned previously, 120,000 previously, 105,000 today. Parking has been reduced by a 100. No fuel center. The Kainani Street access is no longer. And we've been able to increase our buffer zones significantly from the Sandhills to the nearest structure which is the Safeway store.

These are a series of comments which we've worked with the neighborhood groups as well as yourselves, and I'm going to come back to the top one, the top piece, in a second. We have asked and are going to limit the Safeway store from loading and unloading – or for loading and unloading during the hours of seven to ten. Trash pickup will cease at five. We have – and I'll get into this in a moment – the light poles which will be similar in character and type of lights as what exists across the street at the Kaiser facility. We have a night time security management plan that will be in effect that will take care of the loitering, the nuisances, the safety issues, et cetera. And I'll get to the bottom two in a second. But the loading zone, as I'd mentioned, is totally enclosed at the Safeway store. If we can go to – Mike, drop back to the site plan. Okay, we have – we have an area up here on the roof which typically has a lot of roof top mechanical equipment. And what we're doing in this particular store is all of the condensers, the units, the chillers, the emergency generators et cetera will be located underneath the roof structure. So we've taken what typically would be considered the noisier equipment issues and mitigated it by putting it inside. We will have an occasional fan unit which has a low decibel rating, and those will be typically located more towards the front of the store. We also have some other roof top units smaller in scale, but we're actually going to locate those underneath or inside these . . . (inaudible) . . . here. So for the most

part, people looking over the Safeway store will have very little roof top mechanical equipment to see, and of course, the noise issue has been significantly mitigated.

We have other areas that have been brought up as concerns – the loading here for these two structures. We're proposing all around screen walls. 16 feet in height. They will be masonry. And that will help deflect the noise away from the adjacent Maui Lani properties here.

This is the site plan that reflects another issue that we've worked with the local neighborhood groups on, and that has to do with lighting and security and the noise of traffic or patrons parking their cars at night time. What we propose in this area here is from midnight to five a.m. in the morning there will be no parking. These areas will be corded off, and not only as a function of the neighbors, but also out of respect for the two or three burial sites that we have located in here. We're also treating it similarly up here by the burial preservation area. This will be a no parking zone during those same hours. And we've also gone the extra distance by also treating the lighting on the site in these areas. They will not be on from the hours of 12 midnight to five a.m. in the morning. We have throughout the site, the site lighting poles that are shown in green, those will be on. They'll be, as I'd mentioned, the same as the type of fixture, the pole, et cetera as what's used over at the Kaiser facility. These poles out in here will be 25 feet in height. I believe we're going to be able to achieve a lower light pole here along the southern edge which is adjacent, once again, for residences to being to kind of mitigate some of that light concerns. All lighting will be shielded when we know that we have an issue with glare or with respect to visibility to adjacent properties.

Mr. Starr: Excuse me? You're going about a half an hour. How much longer do you foresee?

Mr. Benner: Almost done. Just probably a few minutes. This is a simple slide. This is where we propose the two mass transit bus shelters. A simple slide here reflecting the water usage – 2005, the proposed water usage today. Slight increase mostly due to landscaping, and of course the sewer demand has decreased. We've already discussed the State DOT and the traffic concerns on the highway as well as Kainani. We just discussed the 12 midnight to five a.m. no parking areas. No delivery during those same hours. We have a series of energy conservation measures which we did submit and which I believe are part of your packet. And what I could do is when we get to that point where there might be some questions I can respond to those. And at this point, I'm going to have to turn it back to Erin.

Ms. Mukai: Just a couple of more slides. So one of the comments that we received from the Commission at the last meeting was, you know, a request to follow up with Baldwin High School in the form of the commitments made. So there was a follow up discussion with Baldwin High School. The applicant's representative, Lloyd Sueda, wrote a letter to the Department of Education noting HRT's commitment to work with the school and to set aside up \$50,000 to fund certain traffic circulation issues at the school during the time of the project's construction. Next please.

Another comment received from the Commission was regarding SHPD and Burial Council matters. Commissioners had requested more information on the burial treatment plan. The burial treatment plan was submitted to SHPD and was reviewed by the Burial Council at two meetings. One on July 28th, and the second on August 25th of 2010 to review that plan. An approval letter was issued for the plan, and that's also included in the pack out – packet, sorry – that Ann had mentioned.

Next please.

The last comment that we received was with regards to cultural matters. Commissioners had requested the need to better clarify cultural impacts related to the project. The cultural impact assessment was done in 2007 and included in the EA. Five interviews were conducted as part of the CIA. After August, Hana Pono conducted an additional five interviews, and they compiled a new report called Ho'i Hou which should be in your packet. That report summarized some of the archaeological, historical and cultural concerns with regards to the project and the area, the surrounding area, in general. The report summarized a few mitigation measures. One of which included the preservation areas that were outlined in the burial preservation plan. The second would be educational signage. The sign would be installed within the shopping center site, having public visibility. And this would speak to some of the findings that were reported in the additional five interviews. The last recommended mitigation measure was having a cultural monitor on duty during earth disturbance activities. So that brings us to the end of our presentation. Thank you and we're available for questions.

Mr. Starr: Thank you very much. Members, questions for the applicant? Commissioner Wakida?

Ms. Wakida: I have a numbers of questions, but I'll just start with one. Mr. Munekiyo, thank you. In our information it said there is an – interested in energy conservation. There is that consideration of using energy saving devices. I'm – I'm surprised that the project is not more proactive in implementing things. I mean, a Safeway is a huge energy hog, and I'm surprised that they're not more aggressive in their energy conservation methods. Can you comment on that?

Mr. Michael Munekiyo: And I think as Jeff had indicated there are a number of measures which has been listed. But there are also, I think, a balancing of what might be reasonable now and what might be reasonable in the future. And if I may ask Jeff to speak to some of the energy measures specifically I think that might help clarify the question Commissioner.

Ms. Wakida: Thank you.

Ms. Cua: While he's going through that it is listed as Exhibit-54 in your report if you wanted –.

Ms. Wakida: Right.

Mr. Starr: Yeah, please tell us how this is going to be inefficient or not.

Mr. Benner: There's a number of items that we did present to you, the Planning Department. You know, some of them are very standard. Safeway has in fact become more energy efficient in their internal systems, both mechanically as well as lighting. We're taking a look at providing additional insulation, reduce cooling those loses, considering the use of solar with respect to water heating, and of course we're looking at providing locations on the site for battery powered recharging, refueling type conditions. One thing that we are looking at very hard, and I've been working with HEA Solar Hawaii is the use of solar panels for photo voltaic power. We haven't yet come to a conclusion with the developer and Safeway the tenant. It seems like a reasonable opportunity. Whether in fact it's cost effective today in the eyes of the developer as well as the tenant, you know, that's really kind of out of my court. But one thing that we will be doing is we will be providing the

structural upgrades necessary to accommodate it when it in fact could happen. As well as having other provisions around the structure . . . (inaudible) . . . so it's not a messy reconstruction to accommodate future solar. That's probably the biggest one right there, the PV, but it's not something that I can commit to. It would have come from others. So from – you know, I think that pretty well kind of, you know, qualifies our approach at least at this point.

Ms. Wakida: So you're saying that – thank you – so you're saying that the commitment to something like photo voltaic is up to the tenant and it's not up to the developer?

Mr. Benner: Well, it's up to the developer, but I think it's also in conjunction with the tenant because the energy use will in fact be for them. The structural upgrades, for example, the interior space needs, for example, you know, that's for Safeway the tenant, you know, has to kind of give a little. So I would say the answer is probably primarily with the developer, secondary with the Safeway.

Mr. Starr: I'd like to take that a step further. I was recently a key note speaker at a conference on Lanai for the Western Ice Association. People from all over the western half of the U.S. who do show – you know, to supply ice and refrigeration and so on. And virtually the entire conference was about energy efficiency and renewable, but mostly about efficiency. And, you know, it seemed like they were acting as though they have an industry that's imperilled because of inefficiency and that the whole game for the refrigeration industry is in reducing energy consumption and that's through design both of the structures and of the refrigeration equipment and of all that. It just seemed a little surprising that it's not being looked at kind of as a prerequisite by Safeway and the other restaurant tenants that are going to in there. But you're building more generic instead of building more green and efficient in terms of the envelope.

Mr. Benner: Yeah. And Safeway has began to develop their green approach to building structures, equipments, et cetera. You know, they've taken a more proactive position on the LEED certification. It's kind of an ongoing process. They have become more efficient and more effective. And as time moves forward, they certainly would become even more so. . . (inaudible) . . .

Mr. Starr: But from the developer's point of view you're not really intending to do any of it.

Mr. Benner: No. We are with the exception – there's still the question about the PV, photo voltaic approach with the solar. That was kind of something that I can't commit to right now.

Mr. Starr: But you're putting in the air-conditioning plans?

Mr. Benner: Correct.

Mr. Starr: And how are you rating that?

Mr. Benner: Rating it in terms of?

Mr. Starr: Energy efficiency.

Mr. Benner: I don't have any specific answer to that. I just know that as time has moved on, these systems have become more and more efficient. I would need to have a mechanical engineer

explain that more.

Mr. Starr: Commissioner Wakida, and then Commissioner Shibuya.

Ms. Wakida: I'll save my questions.

Mr. Starr: Commissioner Shibuya?

Mr. Warren Shibuya: Just a comment. And I just applaud your efforts in terms of energy conserving efforts, you know, in the solar water heating type of collecting elements, as well as getting more efficiency energy star type of appliances and equipments in. However, I just want to make a comment that the Hawaii Clean Energy Initiative does require a – in 2030 that all of the utilities would have – it's a goal – of 70%. Of which probably 30% would be for conservation, and the remaining 40% would have to be from generate power. And so I would encourage us to try and develop at least 50% or more of renewable power, and not only look at Safeway, but look at other structures too. So, that would be something that I would like to encourage. Plus the tax incentives there do provide businesses with greater incentives to place these items on.

Mr. Benner: Yes. And I'm really fully aware of that. I've spoken with . . . (inaudible) . . . a number of times. I think they have good system, a good concept. It doesn't work well for the smaller type building structures. It's kind of little – it's a bit unknown in that respect, but I think we can move forward. And as time allows we're going to eventually get to that point with the PV approach.

Mr. Shibuya: True. As a smaller structure you say might not be feasible or at least cost beneficial. Well I'm a homeowner, and actually produce enough for three families, three homes.

Mr. Benner: For the PV as well?

Mr. Shibuya: That's right. My house plus two more. And right now it's already paid off, and I started in 2004.

Mr. Benner: Okay.

Mr. Shibuya: So I give you some idea, and I did not have business types of write offs. Okay.

Mr. Starr: Commissioner Wakida?

Ms. Wakida: Just a final comment. I think my concern is that in Exhibit-54 you talk about consideration. I'm just very concerned that the lack commitment by the developer on this. Consideration to me is very vague language and can go any way. And I think in this day and age there should be firmer commitments on energy efficiency.

Mr. Benner: Yeah, I agree.

Mr. Starr: Members, questions on this? Commissioner Wakida?

Ms. Wakida: I might – you might have told us and I missed it, but I'm one of those slides, where are

the dumpsters located?

Mr. Benner: Okay, of course we the trash for the Safeway is in the enclosed loading area. We have one located right here which will be concealed by 16-foot high screen walls. Likewise, here's one, 16-foot high screen walls. And then we have one out in this particular area here. And one that, at one time, we had it over here to service this building. But with the neighborhood involvement, we relocated it up here. So, either they're screened or they're quite a distance away.

Ms. Wakida: Thank you.

Mr. Starr: I have question. I know this is quite far down the road, and I'm not suggesting that it be altered. But just philosophically the trend is more in a design standpoint towards putting the stores and the buildings up towards the road, and putting the parking behind it. And, you know, I know you've kind of done that along Maui Lani Parkway. And you know, as I've said, I'm not suggesting you change it around now, but is there is a reason why you've maintained the parking so, you know, that basically when people drive by they see a sea of parking instead of, you know, a beautiful store?

Mr. Benner: Yeah. We did a number of iterations, site plan iterations, that, you know, could be viewed by developers as well as the tenants. And there were some options, and it did kind of force the issue of under building parking. For example, if the store was out here, it has to do a lot significant grade changes which occur on the site. We also looked at, instead of – we have a number of concerns from the residences in terms of vehicular noise, from loitering from shoppers, you know, shopping cart noises. So what we did was we came back to this scheme here which keeps all of our parking on the north side of the structure, and it begins to shield some of that noise, the headlights at night time, and some of that shop activities. I think it was a more comforting solution, as I mentioned, with Sandhills and Maui Lani residences across. But, yes, to answer the question. In the other direction, we have done it, where we've had larger stores located adjacent . . . (inaudible) . . . It's between more of a sensitivity issue.

Mr. Starr: Members, further questions? Commissioner Hiranaga first, then Commissioner Sablas.

Mr. Kent Hiranaga: The bulb-outs at – what street is that? – Kainani. I guess, DOT is not budging on it more. I just wanted confirmation, there is a dedicated right turn lane coming out of Kainani Street onto Kaahumanu Avenue?

Mr. Benner: Yes there is. Right now it's kind of a lane and a half. But we'll have a whole thru left, and we'll have a dedicated right turn lane onto the avenue.

Mr. Hiranaga: I made the comment that hopefully you might do it as a temporary structure so that in case it doesn't work. It takes forever to pull it out. I come out of that street maybe four times a week, and I noticed your traffic study is dated 2008 April. And right now, what happens is, you know, there's a grade, a down hill grade, and so people coming out of Wailuku town especially around 4:30, when they see the light at the Maui Lani Parkway turn red, you start slowing down, it makes it very difficult to merge into that thru traffic. So when you add that fourth lane, it's going to be pretty interesting to see how the traffic flows. You're going to extend the acceleration/deceleration lane make that a total of three lane. You're going to add a fourth lane

which is a decel and it will be a right turn only. That will be a very busy, busy area around 4:30 in the afternoon on a weekday.

Mr. Ward Mardfin: Are there any other commissioners who want to ask questions? Commissioners Sablas.

Ms. Lori Sablas: On the site plan, I just had maybe a thought or concern – if thought was given to the location of the outdoor restaurants. It seems like that's the build up for left turn, and you would get a lot of fumes coming in especially the large buses turning left on the acceleration lane. Has thoughts been given to that where you'd be eating outdoors, and you would have to contend with all the fumes from the traffic accelerating into the highway? As I see it, it's on the corner, and it's going to be open. Is there any mitigation?

Mr. Benner: Well, that's a very good question. There is no mitigation that we've thought of. I mean, with the way the breezes are – I simply haven't looked in terms of that concern. I don't suspect it would be an issue. I mean, we've had other projects where we've provided similar types of features with similar, you know, traffic counts.

Ms. Sablas: And where would that be?

Mr. Benner: These would be mostly on the west coast.

Ms. Sablas: In Hawaii, where would that be, as an example?

Mr. Benner: In Hawaii, Piilani Village, at Roy's out at the corner. So a very similar condition there from the highway as you head into the center.

Ms. Sablas: I'm familiar with that, but the restaurant is indoors. I'm looking at an outdoor facility.

Mr. Benner: I'm sorry. This is the proposed restaurant right here. That's enclosed. These, these food type shops would be like your Starbucks, the Jumba Juice, the Subway sandwiches where it's not a true dining event. It's more of a frequent kind of a quick trip in, quick trip out. So this isn't – outdoor dining would not occur in this particular area.

Mr. Starr: Commissioner Wakida?

Ms. Wakida: The planner, I believe, said that – I'm talking about Baldwin High School and the traffic problems and student traffic – said that \$50,000 was being set aside for mitigation during construction, or for mitigation after construction?

Mr. Munekiyo: It would be during construction, Commissioner, and the approach would be – there a number of mitigative measures that could be implemented. Of course, we'll need to work with the high school as we progress through design. These could include a new sidewalk, internal re-striping to improve flow within the parking lot. But the idea is that we would have the contractor available in this project to do the work across the street at that time and just get it done as quickly as possible. Again, the overall, from a comprehensive standpoint the solution for traffic circulation at Baldwin High School might be a little more complex. But we think we can deal with a number

of the limitations right now just through doing the work during our construction phase and having that work occur simultaneously.

Ms. Wakida: But there doesn't seem to be a plan, a final plan, does there for the concerns after construction.

Mr. Munekiyo: You're referring to –

Ms. Wakida: Baldwin.

Mr. Munekiyo: – crossing the street by students. . . (inaudible) . . ?

Ms. Wakida: And pedestrian traffic and school traffic, yes.

Mr. Munekiyo: Not post-construction. We hope that – we're hoping that the improvements that we can implement as part of the \$50,000 package would allow for some of that. And to include, of course, alignment of sidewalks towards the proper crosswalks, that type of thing. So we don't have a specific set of improvements identified. We have general concepts that we've identified with the school, but I think there is further work that needs to be done with the school to make sure that we have agreement that these are the things that can be done during the construction period, and within that \$50,000 threshold.

Ms. Wakida: Yeah, \$50,000 is not very much money for highway improvements or that sort of thing, so I have a concern there about the safety of the school personnel and students.

Mr. Starr: Commissioner Tagorda?

Mr. Orlando Tagorda: Thank you Mr. Chair. Sir, can you go back to that site plan where you had the view plain? That's the one right there. Go back. Yeah, right there. Okay, I heard that in consideration of the Sandhills neighborhood there was a reduction in grade. Can you explain more to me how that will happen? Is there more disturbance on the ground or cutting the height of the building?

Mr. Munekiyo: I wonder if I could have Jeff respond to that?

Mr. Benner: Yes, essentially, it's more cutting of the existing site conditions. We're cutting further into the ground, number one. Number two, the heights of the buildings really haven't changed. Those are consistent with what you saw a few years ago.

Mr. Tagorda: So how deep are you going down from the natural – from the natural grade?

Mr. Benner: We're going down any where –. So it will vary, but the average is about 20 feet.

Mr. Tagorda: 20 feet.

Mr. Benner: From the existing.

Mr. Tagorda: So . . . (inaudible) . . . 20 feet?

Mr. Benner: Well, at 20 feet.

Mr. Tagorda: 20 feet. Okay so in that area where you're going to be downgrading the ground, are those burial sites being physically determined where they are?

Mr. Benner: Can we go back to the one slide, the site plan slide? Right now we have burial sites that we're preserving here, here, and of course, up in here. There's one here. There's one there. There were a few in this particular area that have been essentially relocated up into our burial facility. I'm not aware of anything in this particular zone. And that is the area where you'll see more significant cuts occurring. And that's to bring everything down in terms of the scale for visibility from adjacent properties.

Mr. Tagorda: Okay, I'm a little bit concerned about that disturbance that's going to happen in that Safeway area. Like I said 20 feet is very deep.

Mr. Benner: We've already graded –.

Mr. Munekiyo: Commissioner, one of the things that the applicant has committed to – I think in it's communication with the Burial Council was that it would conduct additional pretesting under the building footprint. So it would controlled grading, pretesting. And again the purpose of that is more of a monitoring measure. I guess, a more careful monitoring measure under the footprint that we ensure that if there are finds then those are properly addressed. But again that is something that, I think, this Commission as well as the Burial Council has raised and we're trying to identify ways to do that, and that is the measure by pretesting our protocol.

Mr. Tagorda: One more question. It seems to be talking about way outside, there are sites off the Kainani corner. What is that they are let behind? Is this what the community wants to do?

Mr. Munekiyo: I think that is certainly one of the reasons, but I think our archaeologist in assessing the potential for further burials or finding burials in this location felt that a preservation area probably be the best measure to ensure that integrity of that area is maintained.

Mr. Tagorda: Thank you.

Mr. Starr: Commissioner Wakida?

Ms. Wakida: As long as we're on burials. What – now this may have been an EA, but I need to be refreshed. What sort of signage is being provided for these burial sites and other interpretative information for the site?

Mr. Munekiyo: I wonder if –. May I ask our archaeologist to respond, Lisa Rotunno Hazuka?

Ms. Lisa Rotunno Hazuka: Good morning Commissioners. We have a fairly standard –

Mr. Starr: Introduce yourself –

Ms. Rotunno Hazuka: Lisa Rotunno Hazuka, archaeologist for HRT. We have a standard plaque that we normally put on to the platforms, and it say "Native Hawaiian Burial Site." It says the State site number, and "to please respect this area."

Ms. Wakida: Okay, I encourage also the use of more interpretative plaques both to respect the area and also to become information for people, and to remind them of historic Hawaiian values. So, other than just naming a burial site, but if there can be any move towards interpretative plaques in the area.

Ms. Rotunna Hazuka: Okay.

Ms. Wakida: Thank you.

Ms. Rotunna Hazuka: Thank you.

Mr. Munekiyo: Mr. Chair, if I might add, that is something that our supplemental cultural study did recommend that maybe a greater effort put towards educational programs with respect to cultural resources, cultural value of the area, and that the provision of interpretative plaques should be something that we include as part of that program.

Mr. Starr: Thank you. Members? Commissioner Shibuya.

Mr. Shibuya: Mr. Munekiyo, this maybe dealing with highway and traffic again, but the State DOT apparently just responded to the bulb outs, and they did not mention or at least there's no mention of increasing the number of cars that would be held in, I guess, the left turn lane. This is facing Kaahumanu, going east bound, and there is a left turn lane, and if you increase the signaling, the length of the signaling, then you also allow for a greater number of cars. But they don't have the capacity to hold the cars in that left lane. And that was mentioned earlier, and I don't see any mention to that. Also, Fred Cajjgal mentioned that the right turn lane going west bound on Kaahumanu, and the right turn would go into Baldwin High School, that right turn lane would be increased also, and I don't see any mention of that here too. I was wondering also the location of that street crosswalk. If you have a problem in terms of doing left turn lane, and you have the crosswalk in the same location, it could be problematic. But anyway, you can take a look at that.

Mr. Munekiyo: And if I may respond to Commissioner Shibuya's question? First of all, I think, Commissioner, the first comment you raised relates to the Kainani Street left turn movement here, whether there might be sufficient storage space at that location?

Mr. Shibuya: No, not Kainani. It's going into east bound Kaahumanu, going into Baldwin High School.

Mr. Munekiyo: Okay. Yeah, that's correct. The issue which Commissioner raises is the adequacy of this left turn movement here, and separately, I think the right turn movement coming west bound.

Mr. Shibuya: That's correct.

Mr. Munekiyo: Those are two movements where Commissioner is asking if we had further

discussions or whether there might be anything that could be done in those locations. At this point, Commissioners, we have not identified any specific mitigation for those areas, even the lengthening of the left turn movement. However, what we are seeking to do is to see if we can perhaps provide greater internal circulation within the school property itself so that we can get more . . . (inaudible) . . . and those are the things that the \$50,000 allocation would address. Again, it's not a comprehensive solution, however, we feel that there are things that can be done that would help to move traffic through those turning movements along Kaahumanu.

Mr. Starr: I have a – I'm still a little bit confused about the bulb out and what the response was because it seemed like there was two different responses.

Mr. Munekiyo: The bulb out, Commissioner, was a requirement, as you remember, as part of the DOT. And the last meeting when we did have a FONSI determination by this Commission, we were asked to go back to DOT. We did go back. We presented alternatives to them. And after going through that process of deliberation, the DOT determined that the bulb outs was required. And so, again, it's something that we did discuss with them, and again, from a safety operation standpoint, it's something that they feel is required at this point.

Mr. Starr: So we're going to take a 10 minute recess. When we come back we'll have public testimony.

(The Maui Planning Commission recessed at approximately 10:25 a.m., and reconvened at approximately 10:37 a.m.)

Mr. Starr: Okay, the continuation of the Maui Planning Commission meeting of March 8, 2011. We're proceeding with our item C-1 related to HRT Ltd and the Maui Lani Shopping Center. When we took a recess we were about to start on public testimony, and Commissioners will have another opportunity for questions after testimony. I'd like to ask who is ready to come up and offer some testimony on this. Yes, please Kanaumu. Welcome. Aloha. Introduce yourself.

Mr. Kaniloa Kanaumu: Aloha. My name is Kaniloa Kanaumu from the area of Waihee Valley. I guess this is more like a blanket statement. I haven't changed my views as far as the developments or concerns that are continuously going on, especially with the question of the iwi. You know, we have to question, I guess for myself, you know, you are Commissioners in charge of all these developments that are coming up, and that they're coming forward to you for approval. I have – like they say when you go to court – not knowing the facts, not knowing what the laws are is not an excuse. There are laws that are predicated already that dictate actions as you take them. The problem is is that whether or not you make yourself aware of such laws, such as we're talking about conveyance of lands. We had this discussion with the County Council. So we look at the laws of HRS 172, which it talks about land patents. And basically if you look at that law, in parenthesis on the bottom, it refers back to 1870's which is a Kingdom law. And basically it was key note that's in there that speaks about the word Enea. Enea has a meaning of going back to the original owner. The only one that can actually take action on the property was the original owner, and which was the original awardee with the land patents or the Royal patents, and land commission awards. Once they have . . . (inaudible) . . . once they've passed away, those contracts are final. So when you look at conveyance, or conveyance of land, even the heirs and consigns to the property are limited to what they can do. Basically we have interest in the property.

You don't have the power of conveyance. The power of conveyance was already bestowed upon the original awardee, and that is simply in the law, HRS 172.

So we look also 1898, Congressional debate, when they tried to naturalize the native Hawaiians. It basically came down that they couldn't do it. They weren't in a jurisdiction to do that. In 1993, the apology bill which became the public law 103-150, reiterates the same statement, that whereas the natives never directly gave up their sovereignty. Which brings us forward to the Akaka Bill. And if you read it and you go through it, it distinctly says:

"The political relationship between native Hawaiians and the State of Hawaii and the Federal government."

So we put these things together, we still establish that native Hawaiians are such as native Hawaiians. The laws that are dedicated to them are still enforced. So what I guess saying to you that ignorance of the law, even on your behalf, is not an excuse. So you need to understand what our laws actually are on the property that you convey with and the actions that are taken. You looking at the iwi. Iwi if anything are native Hawaiian, are sovereign to that land. So where does the authority from? From the conveyance. If I as an assignee or heir to . . . (inaudible) . . . – what gives the County, or the State or the Federal government which claims that public lands . . . (inaudible) . . . public lands if you noticed – not public lands, excuse me, private lands. Mahalo.

Mr. Starr: Any questions? Mahalo. Who would like to go next? Who would like to be the next testifier please come forward. Introduce yourself. Aloha.

Ms. Kanaohe Kaleikini: Aloha ka kou. My name is Kanaohe Kaleikini. I am a cultural decent to iwi kupuna, ancestral burials on the land of this project. I have a question for the architect. You said the building, the height of the building would be 32 foot high, I would like to know how deep they have – or how deep they will go down for the footings? And, yeah, if you can answer that real quick.

Mr. Starr: Wait. We don't take questions from testifier.

Ms. Kaleikini: You don't. Okay.

Mr. Starr. That's something that was discussed, and we'll get you a clarification after.

Ms. Kaleikini: Also, the Burial Council letter dated September 2, 2010, was addressing additional testing be done in the footprint of the building. And there was a very weak response, and it noted controlled grading. I'd like more information on that on how they intend to control the grading and exactly what that is. I didn't see any response from the Council to this person making the response, but I'm sure there is more interest. And that is something to explore, and, you know, how they intend to control this grading especially since it's sand. And for the archaeologist I would like to know how far down they will be testing and looking for iwi. And I would also like to know how many testing spots they have done thus far? I would like to see the map showing this as we may require more especially in the footprint of the Safeway building. And there was a letter dated August 31, 2010 from OHA who stated that they recommended more exploration into this project because OHA is well aware of sand dunes and the amount of iwi kupuna that could be found there.

So they did require more exploration into this project by way of the archaeologist doing more testing. And they haven't received any response yet as to how much more testing will take place. So I think they should be – they should get a letter from this project manager, and how they're going to proceed with exploring this project area for more iwi kupuna that could be impacted.

Earlier Ann came up and I think she spoke about a special – some kind of process that this project went through to push it through. It wasn't a normal process I think. I'd like to know why they were afforded such a process, and why it didn't follow a normal process. That's always very scary when they side step a normal process.

And – it's very important – the questions from me that I raised. The concerns that I raised are very important to me before anything – before they move ahead on this project especially since it will impact a lot burials. They're not just burials. They're very ancient burials. They are native Hawaiians that were here even before the Royal patents were created by the sovereign, by the Alii. And they were sovereign. They were warriors. They were here first, and they should not have to be moved because Safeway wants to put up a store. And so, in closing, I would like this Commission to hold up on approval of this permit until further –. Send them back to the drawing board. I'm just not happy with their report. I sounded very shotty and incomplete. I would like for them to take a better look at the whole project, even if it means going back to the drawing board, and starting from block one.

Mr. Starr: Okay, please finish up.

Ms. Kaleikini: Okay. So I would like this Commission, again, to hold up on approval of this permit. Mahalo. Aloha.

Mr. Starr: Okay. Aloha. And there was some valid questions. I'm going ask Ms. Cua help us make sure we have discussion on those later. And Johanna Kanaumu. Welcome and aloha.

Ms. Johanna Kanaumu: Aloha. I'm Johanna Kanaumu. I'm from Waihee. And I also have iwi kupuna in the . . . (inaudible) . . . and lao. I was invited to a meeting last week that has sort of changed my perspective on what's happening with this project. And in that meeting, I became more aware of my responsibilities to my kupuna. The first thing I want to say to you is who do you think you are? Have you seen that show? I'm not being facetious or anything. There's that show, Who do you think you are? Okay, and of course, when I first heard them and I thinking who's asking me this question? But in reality, the show is helping people discover who they are. Because Clare has taken the time to pursue this, her persistence has to be – you have to question why she's so persistent? And I believe her persistence is because she's being influenced by the kupuna who are gone. This was a topic that came up in our meeting last week that I felt hesitant to discuss with people who are not familiar with the culture or who are not from the families of this area. But I realized after the meeting that everyone has similar experiences. And the fact that the kupuna have been speaking to us – Clare seem to be one of the few have been hearing them and has been responding to them.

And last I'd like to share with you is that my grandmother is from this area, from Waiehu. And she found herself in Oahu, raising a family. She lost two children in childhood, early childhood, and the third one seemed to be following that line, that path. Now at that point she decided to send this

child back to Lao Valley, to the family there, and more or less said to them if she lives or if she dies it's okay. She just assumed that this child would probably die as well. Thankfully my mother survived. And this place has been . . . (inaudible) . . . for all these years. I know who I am from this area. Unfortunately there's a lot more of us that don't know we are. But as time has gone by, five years ago I stood here, or maybe even three years ago, I heard a cultural consultant say I never heard of the battle of Kakaneloa. There's no such thing. And yet now all these materials, historical documents are coming up proving that there was this battle of Kakaneloa. And the ingenuity of the strategy that was used in this warfare and why it was so significant. You know, all of these things are starting to come up now, and I just don't see how anything that this project is doing can account for all the lives that have been here or have existed on this land. I don't see that. I know they're trying to. In their way they're trying to. But it's like coming to a monument, a burial grave soul, and saying come and have your picture taken with this ancient warrior, and I'll only charge you \$10 for that picture. It's the same feeling. And thank goodness Clare has been persistent because it reminded me of my responsibility here – my kuleana – you cannot change that.

So, it also reminded me of previous testimonies with the County Council and Water Use Development Plan, and how we are able to amend that plan to recognize the kuleana, and their – well, to recognize them, so that they no longer come in at the end or the later part of application process for water, but they come in at the beginning. Not to approve, but to at least – what is the word they used – consultant and get recommendation for. So now the kuleana representatives have a seat at this table of discussion as to where they go. And I believe that we need to do this here. The other thing they base that change on, that amendment on, was the fact that like land patents in western law, Royal patents, have the same characteristics in that they are superior authority as to the certification requirements being met the original title. And cases have been adjudicated in the Supreme Courts and in the different States as to the validity of a Mexican patent over California Constitutional Law, or a French patent over Louisiana or US law. There's all these cases that have already been tried that show the superiority of that particular law. Now if a Royal patent secures and certifies title to the owners of the land commission of worth of which this property has, there's different laws that apply here. Some of the laws have been carried forward in the Hawaii Revised Statutes. One of the laws, even in the Revised Statutes, is almost word for word. The only thing that changed is that they no longer recognize Royal. It just says land patents. But it says that the title, enures to the benefit – enures to the original title holder – forever. I'm not going to go into all the other laws on that. There's a lot. But it supports the idea that there's certain things you have to look at here before you go that route. I don't know why, but evidently the kupuna feel is really important for us to speak up against that. So I would ask that you defer this action.

The other thing is I was very impressed with our meeting last week at Munekiyo & Hiraga's office that allowed for the idea – allowed for a resolution that we, as descendants of that area might have an opportunity to determine what it is the kupuna who have gone want. How we can respond to them in a more fitting way? And we were more or less of the consensus that this might be a model that could be replicated on other projects because if we find some type of resolution for us and for the kupuna – or more for the kupuna – we might be better able to work together in this planning arena.

Mr. Starr: I have to ask you –.

Ms. Kanaumu: Thank you.

Mr. Starr: Mahalo Johanna. Here's a question for you. Commissioner Mardfin.

Mr. Mardfin: I have a couple questions. You refer to the Royal patent. Are there living descendants of the people that have the Royal patent of this land?

Ms. Kanaumu: The land commission awards 7713. . .(inaudible). . . 23 is to Kamamalu. So it those who are descendants of Kamamalu. And I believe the way the descendant law works that if there are no descendants below, then it goes up and out and down. If I can say, it you go back to a previous generation, and whatever relationships are there, blood wise, then it can come down. So—

Mr. Mardfin: And do you know how the current owners acquired title to this land?

Ms. Kanauma: No I don't.

Mr. Mardfin: So we don't know whether it was at the time of the overthrow of land, if ownership changed place, or if prior to the overthrow of maybe the owner of the royal —

Mr. Starr: Commissioner Mardfin, I'd ask you to ask that to the applicant.

Mr. Mardfin: Okay, I will do that. Let me ask one other thing. This past week we got our documentation from the Planning Department, and in it there was a document called "Ho'i Hou Copulation of Archaeological Cultural Historical Information." Have you seen this at all?

Ms. Kanaumu: Is that the ones with the interviews?

Mr. Mardfin: Yes. The additional interviews.

Ms. Kanauma: Yes.

Mr. Mardfin: Okay because I was just wondering if you'd looked at page 10 of this where they show, I believe, it's in red, all the burial bones that they found.

Ms. Kanauma: Yes. And I just saw this last week at this meeting. However, I didn't know where all the burials were. I didn't know where all of them were.

Mr. Mardfin: Okay. Thank you very much.

Mr. Starr: Mahalo. Next testifier, please. Ms. Apana, welcome. I'd like to mention that a correspondence was received this morning from Ms. Clare Apana requesting some extra time because of a disability that she has that she feels requires her to take a little more time in expressing herself. And I'm tending to feel that I would be willing to allow some more time if the Commission does not object. So I'll ask the time keeper to let us know after six minutes. Ms. Apana, please, welcome, and please introduce yourself.

Ms. Apana: Good morning Commissioners. My name is Clare Apana, and I stand before you again today. Your discussion about why this project — why this meeting can continue, the consideration, although a legal action has been filed — I will tell you that I have gone through a lot of consideration

about filing that next step. And I just couldn't do that at that time because I needed to come back here and give you a chance to do the right thing. And I would like to read from your last commission meeting in which Mr. Starr, on page 46, says – this is on August 10, 2010:

“In other words if the Burial Council has a comment or demand related to the site, then that will be – those will definitely be implemented in phase II, correct?”

And to which Ms. Cua answers – answers that question. And Mr. Hiranaga says:

“So I will be voting against the motion to defer. I feel there is ample opportunity for the parties to meet before this will be brought back to us. This is a process where we should follow the process and we still have another stage to go before they come before us. And whether we're going to grant approval or not on phase II – so I don't see a need for deferring the issue at this time.”

On this day, three commissioners voted because they thought that more needed to be done with the cultural impact assessment. So I have been given this time to talk with the developer. I've been given the opportunity to make my case, to ask the developers to come talk to me. Please talk to me. You've put me in the place of begging these developers to come and talk to me again. Nothing happened. They said they were in consultation and were going to interview me and five other people. Nothing happened until I filed a lawsuit, and then I got a call for the interviews. I've been doing this for six years. Should I have to keep going through hoops? Mr. Hedani says that if I cannot get to the point of talking with them, and working these things out that the deferral will come in this phase II. And I'm trusting that this Commission will stand by it's word because I have gone through so many things to try to follow the wishes of my iwi kupuna and to protect them in their final resting places, as well as my neighborhood from the serious and dilatory effects that will be if we do not proceed with this project in a way that is respectful and prudent for the burials. You have conditions here, cultural condition – a plaque – 350 full sets of iwi throughout the Maui Lani Project District. We're not talking about the scatters they found in the wake of the sand when they were doing controlled slope grading which is also provided as a mitigation. We are talking about things here that should be done that are required. They were required to leave those iwi found in that pu'u in place. SHPD required that. It wasn't like we're so great we're giving you this preservation. You were required to do that. And even as they asked to grade down and re-inter them lower, they were refused, and so they will stay where they belong, in the ground, in that pu'u. Is that a mitigation? I don't think so. I think you're following what you got to do. Is it a mitigation to have a monitor? In the whole project district, you always have to have a monitor when you're doing ground altering activities.

So in answer to Mr. Hiranaga's suggestion that I can speak and get my questions done. They are not done. I have had one meeting, one hour, which I asked for last Friday when I realized that they were not going to recognize me. I asked for the meeting. They did not come to talk to me. Because when you look in this Ho'i Hou, they pared down my interview, but say that I have a practice and I will be impacted. Did anyone come to ask me when you put that little garden areas there, and you're right next to the very first original burial found in the EIS? Would that be okay with you Ms. Apana? Do you think that the kupuna would feel that's okay to do that? Is this respectful enough? I was not asked. As you can see there are many things that are not yet finished. I have done, as you probably know, my utmost to get them done, and to get to talk to the developer. And

as a matter of fact, we did make some progress in that meeting. But the developer was not there. When we asked the developer, my request was not given, was not granted. What was granted to me was, we would like to proceed on and we would like to keep talking to you. I don't really need to talk to any developer or even to this Commission to know what is my kuleana. I come here because my kupuna asked me to come here, and try to work this out peacefully, to try to protect this neighborhood. There's a heiau right above this. It is in the archaeology report. The person that you have interviewed - that has been interviewed in the CIA is a known practitioner who knows of that place, but it is not reported to you.

My neighborhood stands in danger because we cannot proceed in a way that will respect. And I have many ideas of how to do this. I have been given, even as you've - they filed through all of these burials, and all of the iwi, the kupuna still comes to give me an answer for peace. But, is anyone listening? Has anyone given me the chance to speak to this developer who seems to hold all the strings? Which is usually the problem because everyone who is working on the project is paid. I would like to form a group of people who have connection to the iwi, people who have connection to this area, people who have knowledge of ancient practices, and people who are not paid by any developer.

Mr. Starr: I'm going to have to ask you to finish up soon.

Ms. Apana: Thank you. I ask you for deferral. I ask you to make good your word because sufficient discussion has not been given to me to finish these things. You have a document. There are very many good things in here which are not in the CIA. In an ironic way it shows how deficient their CIA is. I suggest that we back up and amend the CIA with new and very pertinent information. But today I ask you to make good your word, and defer this until the appropriate discussions and actions can be done to proceed. Thank you.

Mr. Starr: Thank you Ms. Apana. And I want to thank you for that care and concern you put to this. I believe Commissioner Mardfin has a question for you.

Mr. Mardfin: I do.

Ms. Apana: Thank you.

Mr. Mardfin: This is more philosophical question than anything else. Can you envision a way to do honor to the iwi and still have a project somewhat like this? Or is there no way to get a project like this going and still be true to the iwi?

Ms. Apana: In my understanding of my cultural, my culture, if there is to be such a center, such a shopping center, there will be space for it. You will not find concentrations of iwi under your footprint. There will be space for it if it is to be.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Freitas?

Mr. Jack Freitas: You know with all respect I know of a Hawaiian gentleman that owns a piece of

property in Kaupo. There's only two left where it goes from the mountain to the ocean. And he once was on this Planning Commission, I believe, and he basically told me that the – what do you call – land is for the living, not the dead. He said his dad once told him that when they were trying to do the road going to Kaupo. He said move the – intern the remains with respect. How would you address that?

Ms. Apana: Very simply. The families of the iwi should be given first consideration. They should be asked if that would be something that they could do. And it should be the families who would be asked. Second, I do not believe that the iwi kupuna here are saying, a'ole, a'ole, a'ole – no, get out of here. They are not saying that. They have really actually given a plan which no one wants to talk about that would suffice in a very great way taking care of the living, and allowing you – because that is our way too is to be with our kupuna.

Mr. Starr: Thank you.

Ms. Apana: Thank you very much. And I would really like to apologize if in the past I have seem very strange. I thank you for the time. That was really key for me.

Mr. Starr: It's good when people care, and you're passionate is appreciated. Who else among the public would like to give testimony on this item? Is there anyone else here? Please Ms. de Naie. Welcome and good to see you. Could someone help her hold that up?

Ms. Lucienne de Naie: Aloha Commissioners, Lucienne de Naie, testifying today. I brought a map. I wish I would have made a small one for you, but I just kind of want to show you in the 1880's the lay of the land here because it has been changed over the years. This yellow here is what we kind of know today as Kaahumanu Avenue Main Street. And this is roughly what's Waialae Road. And the project area is probably roughly in this general area. And the old Sandhills neighborhood and Lower Main, you know, all the sand hills above Lower Main. I just wanted to give a sense of how the sand hills run. They run from the ocean, inland towards Waialae pond. And when you're looking at a site like this and you see that the was a concentration of iwi kupuna right here kind of near the road way – 16 – that's that burial preservation area you were shown on the map. And you would go – there we other iwi found along this way, and there's others found over here. I think you just have to ask yourself, and I know a number of the commissioners have gone there, what happens when you dig down 20 feet? Basically you're likely to sort of find more of the same that you already found along that same line because that's how sort of things happened. They follow the terrain. Now the terrain has been so altered that it's hard for you to know that from these nice pictures. So I thought this map might be good for your consideration.

Now I think we learned something from this process. This project has changed a lot, and it's changed a lot because people have come out and said it needed to change. In other words, it was given the time to have those discussions. And I'm sure every person on this Commission is happy to see that most of those changes were made because those of you who have served for a while have heard this discussion for several years. The point is, have all the needed changes been made? The point is, is there a cultural impact in building a shopping center in a burial ground? This is not a place of a couple of isolated burials. You already have one concentration, and possibly more to be found. You are in the - sand hills are a burial ground. Yes, we need to look out for the living, but you know, tell, why do we less buildings? Why do we invite people into our

schools to clear spirits that disturb people? The living and the dead are interacting. We may not understand why, you know? My family's catholic. They feel very strongly about, you know, saying prayers for the deceased. Buddhist feel the same way. Many cultures feel the same way. But there needs to be the sense of what would bring peace. Do we know enough to bring peace to this area with what has been done to date? We were told that there were no cultural impacts, but we find out that maybe there are now. You're not really being told about the Alii burial that is an isolated burial, the first one that was found. It's not explained to you. You're not told why Governor Kuihelani claimed this land, and Princess Kamamalu. Why did they claim these two particular land commission awards? Did they have family here that they wanted to protect? This is not being explained.

You need, I feel, to defer to allow this process to work it self out. I appears that some conversation has started on this, just like these other community conversations that reduced in noise – resulted in noise impacts, resulted in other impacts being more clearly dealt with. There are still cultural impacts that are not dealt with. I was honored to be interviewed in that Ho'i Hou report, but most of what I had to offer was not included in the summation. So, do you have what you need to make a decision? Did you have what you need last August? I didn't believe you did. You went forward. I believe you should defer and give yourself the time to have the information you need to make a good decision. There are impacts to traffic. There are impacts to cultural resources that are still not completely resolved. Give that process time. Thank you.

Mr. Starr: Thank you Ms. de Naie.

Ms. Stephanie Ohigashi: Thank you very much. Thank you. Good morning everyone. I just this final docket in my hand and I'm shocked to see that we started these community meetings in 2005, so it's been six years and I've gotten six years older. But I hope that the interest in the Safeway that started in 2005 is more exciting and more positive than six years ago. If you don't know who I am, I'm listed on page 18 of your report as number four. And they describe me as a life long residence of Sandhills which I sort of am. I moved there in the 1950's when my grandfather Tatsu Horimoto built the house from his earnings at Miyako Sushi. He's the originator of that sushi. So if you eat it that's my grandfather's place.

Anyway, a long story short, when the project was being discussed at all of the community meetings – and I do thank HRT for having community meetings to give input – lots and lots of revisions have been made over the years. The most significant one is the amendment to an ordinance that prevents Safeway or any vendor or trucking company from using Kainani Street. Kainani Street is a small substandard connector road from Sandhills to Kaahumanu. So it went through the Council process. It was passed. It's an ordinance made into law that just the residents and ordinary trucks can use it. No trucks over 10,000 pounds can also enter on to Kainani Street. So our little neighborhood is protected from forever for that kind of traffic. And then we really thank the Planning Commission for supporting us and agreeing with us and helping us to convince the County Council to make it into law.

Now I didn't read any of the green conditions, but I do agree that the applicant has gone over and beyond the call of duty to make sure that this project has been reduced in density. The footprints are smaller. It's a much more elegant shopping center sandwiched in between the old vintage neighborhood of Sandhills and the new medical center of Maui Lani. I think it fits. There are no

perfect developments. There are some people that are still unhappy with certain things like the 24-hour noise, rubbish, whatever you have it. But I do believe that we will have the applicant mitigate whatever problems come about and we still want to work with them in the future during build out. So I thank you for it. I support the project and best wishes to everyone. Mahalo.

Mr. Starr: Okay, thank you. Any questions for the testifier? Thank you Ms. Ohigashi.

Mr. Starr: Any other members of the public wishing to give testimony on this? Now is the time. Last call for anyone wishing to give testimony on this. Public testimony is now closed. Ms. Cua?

Ms. Cua: Chair and members, I believe you wanted me to try and address a couple of things. I didn't really keep copious notes, but I can explain a couple of things.

Mr. Starr: I know there were a few questions about the depth of the excavation and what the controlled grading and what other protocols are going to be put in place.

Ms. Cua: On that, I know that the applicant had indicated that, in terms of how far down the grading would go would be approximately, maybe, an average of around 20 feet. And I think maybe with regards to testings, I would suggest maybe you get the archaeologist back up here for that reason, and also for another reason. I do want to address a couple of things. One, I think there was a statement made, questioning the process. I did explain the process that it wasn't the normal process, but I do need to make very clear that there wasn't any special consideration given to this applicant to have a follow up process that nobody followed. That is very, very important point to make. I did explain, I thought quite clearly, why the process didn't happen the way it normally does, and it was because when the Project District Phase II application originally came before you in 2007 and based on – somebody has a pointer I can use? I had talked about the whole Kainani Street concerns and how when it came in 2007, the applicant had been meeting with the Sandhills community and trying to come up with a number of iterations on how to make this work. You know, one point I didn't mentioned that when the application first came in, in 2005, the applicant tried, had proposed, some kind of access from Kaahumanu Avenue, and DOT basically refused. And, I think, going back, if they had agreed to something like this, we might not have had as much of a concern with what – where we trying to go here to accommodate for the project to be safe, to just have some kind of access here, and access here. So, this wasn't a normal project because there were a lot of issues. But again it followed a very, very transparent process – a number of community meetings. I think you might want to ask – I know Clare had made some statements about the amount of contact between the applicant on her issues. I cannot speak specific to that. I can speak to my involvement with Clare from the beginning. I've had a lot of encounters with Clare where I've tried from the beginning to provide her as much information that I could as I would get it – make copies for her. I have seen in the record a number of e-mail correspondence from the applicant to her. I know that she was interviewed. So, I don't know if you need to question the applicant to see their side in terms of how much contact.

Also, there was a comment about OHA – a letter from OHA. And when I kind of reviewed that letter, they were recommending – because of the sensitivity of the area that all ground – they said they concurred with the project's archaeological inventory survey that recommended that all ground altering activities be monitored by a professional archaeologist, so they concurred with that. They said, in their letter, that if a cultural impact assessment had not already been done, they wanted it

done. That's been done. They also said that if the project goes forward, and if any iwi or native Hawaiian cultural or traditional deposits were found during ground disturbance work should cease, and that is a condition. So, I just wanted to let you know about that. And then maybe at this point on those questions about the actual trenching or additional grading you could ask the archaeologist.

Mr. Starr: Yeah. Could we have the archaeologist? I believe I'll ask Lisa to come up and talk about the protocols. Who was going to be the person that is there responsible and what their duties will be?

Ms. Rotunno Hazuka: Lisa Rotunno Hazuka, archaeologist for HRT. When we do controlled grading, controlled grading is where we go very slowly. We put a flat edge plate on the back hoe. If anybody knows about mechanical equipment, the back hoe usually has teeth. And when we're working in the sand dune area, we put a flat edge plate on the back hoe and we do very controlled six inch grading to try to find burial pits first before we find the burials. So that's what controlled grading means. It doesn't mean we're going to control the areas that we grade in. It means grading proceeds very slowly. And what we will do is we would just overlay. We would get our elevations are now for the footprint, and then we would see where the footings, how deep the footings need to go in those areas. And then we will pretest controlled grade those areas. So that's basically how it works.

Mr. Starr: Who is responsible for watching out or –?

Ms. Rotunno Hazuka: The archaeologist. So you would have a back hoe operator, and then you have the archaeologist that stands right there as they grade.

Mr. Starr: So that's you or your employees, in this case?

Ms. Rotunno Hazuka: Yes.

Mr. Starr: Members, any additional questions on this? Okay, thank you. Commissioner Mardfin, did you have a question about title before? If you want –

Mr. Mardfin: I did. I don't know who to ask it of.

Mr. Starr: Ask it of the applicant.

Mr. Mardfin: Okay, for the applicant then. At some point there was a Royal patent it sounds like. It currently is under private ownership by your client. Does anybody know at what point the initial Royal patent was alienated to some successor owner?

Mr. Munekiyo: Sorry Mr. Mardfin, we don't have an answer for that question. The owner has had this property for a number of years, and that ownership has been insured of course. So, as far as the historical passage of the property over time, that information is not available to us.

Mr. Mardfin: But you say for a number of years. Are you talking about since 1893?

Mr. Munekiyo: Early 90's, Commissioner.

Mr. Mardfin: 1990's?

Mr. Munekiyo: Yes.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Shibuya?

Mr. Shibuya: I'm just curious. When we buy a property we normally go through what is called title search. In this particular case, was a title search conducted?

Mr. Munekiyo: I'm sure all the procedures that were ordinarily required in title transfer were done properly. And of course, again, the property is properly insured from the title standpoint. I guess with respect to lengthier, back history of the property, that information we don't have available right now.

Mr. Shibuya: Okay. Thank you.

Mr. Starr: Is there any knowledge of whether this had gone through the land court system, or whether this had been quiet titled or how the process had been done?

Mr. Munekiyo: I can have our civil speak to that a bit Mr. Chair.

Mr. Darren Unemori: I'm Darren Unemori from Warren Unemori Engineer, the project civil engineer. As far as your question, this particular parcel is not under the land court. It is with the State's regular system. I don't know whether there was any quiet title action on the property at any time. The prior owner prior to HRT was Maui Lani Partnership, and prior to that it was Alexander & Baldwin. So, the title has not changed hands many times, but it has changed hands over the years.

Mr. Starr: But Alexander & Baldwin had it for a long time, and it's possible that they may have quiet titled, but no one knows.

Mr. Unemori: I don't know whether there was quiet title on it.

Mr. Starr: Thank you. Members, any other -? Yes, Mr. Munekiyo.

Mr. Munekiyo: I'm just ready to answer questions Mr. Chair.

Mr. Starr: Okay. Members, any additional questions on this? Yes, Commissioner Mardfin?

Mr. Mardfin: Yeah, it was suggested by Ann actually that what context has there been between the developer and Clare Apana? She told us what her perception was. Do you folks have a different perception or is what she said is taken fully accurate?

Mr. Munekiyo: We've had a number of conversations with Ms. Apana. And I think, if I heard her correctly, her concern was the amount of interaction that has occurred since the decision by this Commission to issue the findings of no significant impacts. So from, I believe, the summer of last

year. I think at that point, we agreed – the applicant that is – agreed that they would pursue a supplemental cultural report. And through that process we interviewed Ms. Apana. I think – the information that has not been included in the whole report are the word for word verbatim transcripts. I think these are the kind of things that Ms. de Naie and Ms. Apana had referred to. Those transcripts are, however, available and have been provided to Ms. Apana. So with respect to continuing communication, you know, there's been that dialogue. We've attempted to continue that dialogue, and Ms. Apana is correct. She asked for another meeting last week, which we did have a meeting with her. But ahead of that, there's been always an ongoing communication between her and our consultant Hana Pono. It's been an ongoing process. At this point, at the last meeting we had, we discussed the possibility of discontinuing dialogue. She asked if we would be willing to defer action on this matter. We did discuss this with the applicant, HRT, and their position was to continue with the processing of the phase II application. But that does preclude continuing dialogue with Ms. Apana or anybody else with respect to cultural resource matters. So this is kind of a rambling response Mister.

Mr. Mardfin: I understand the rambling response. It sounds like to me there is no meeting of the minds between Ms. Apana and the developers to how to deal with the iwi.

Mr. Munekiyo: At this point, I think that's a correct statement.

Mr. Mardfin: Thank you.

Mr. Munekiyo: And if I might add however, again, as I've noted, there is certainly a willingness on the part of the applicant.

Mr. Starr: Okay. Thank you. Commissioner Hiranaga?

Mr. Hiranaga: Not necessarily a question for the applicant but more for staff. So just to understand the process, the applicant is before us for phase II approval, and then it goes to phase III and if you could just explain the process.

Ms. Cua: So phase II, if you grant approval, it will be approval of this preliminary site plan and, you know, elevations. And I'm not sure if they plan to come in with one Phase III Project District application to develop the entire site. I think that's what they're intending. Or they could do what a lot of other developments do is they come in for different portions of the project, and submits several Phase III Project District applications. But as I mentioned earlier, the Phase III Project District process is an administrative process. And what we need to do – the Planning Department – before we're able to grant approval, is first we have to see does the construction drawings comport with the, most importantly, the preliminary site plan that you approve if you so do that. And then we're going to look at design. I mean, is the design pretty much in keeping with the representations that was made to this body? You know, they're going to have to submit us a compliance report of how the project – a preliminary compliance report before we approve the Project District Phase III application. They're going to have to submit to us a compliance report of how they have complied with the conditions that they could comply with at that time, and how they intend to comply with it. And then prior to them receiving a certificate of occupancy for the project, we would need to receive and approve a final compliance report to show how they have complied with all conditions. They can't say they intend to comply. They have to say how they have

complied. That's the process.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Regarding the occupancy certificate – prior to the issuance of that, the improvements along Kaahumanu Avenue which is a State highway, would have to be approved and constructed and accepted by the State?

Ms. Cua: That's correct.

Mr. Hiranaga: And the improvements proposed on Maui Lani Parkway which includes the signalization of the main entry would have to be approved by Public Works – constructed and then accepted by Public Works?

Ms. Cua: That is correct. And I just do want to note that on the traffic signal, it's important to point out that, the traffic report had initially – the traffic report does indicate that at some point in time in the future, when warranted, the traffic signal should be in, the applicant, though, is representing that they'll put it in at this time. So we are recommending that condition in accordance with their commitment to do that.

Mr. Hiranaga: Last question. You don't have to answer this if you don't want to, but could you estimate when you believe they will start breaking ground on this project if they're moving forward?

Ms. Cua: I'm sorry. I don't know if they have already filed building permits. There are a number of times where an applicant, just to try and expedite a project, would submit, take the chance, and submit building permits while they're going through the commission. I don't believe they've done that. That's not a question I can answer. I know they want to move forward as expeditiously as possible because they submitted in 2005 this application.

Mr. Hiranaga: Can we ask the applicant that question?

Mr. Starr: Yeah. Let's have a brief answer. We've got to move along one way or another.

Mr. Munekiyo: Mr. Chair, the building plans, construction documents for building permit processing has not been completed and filed at this point.

Mr. Starr: Thank you very much.

Mr. Hiranaga: Best case scenario when do you anticipate breaking ground?

Mr. Munekiyo: If I can just give a real quick time line. Probably if we were to go through construction plans review development, followed by review and allow for, say 15-18 months for that process, then we're probably looking at, I would say, second half of next year – at least be ready to break ground.

Mr. Starr: Okay, thank you very much. Okay, members –

Mr. Mardfin: This is a technical question. If we approve this today, it doesn't come back to us, right? It just goes to the Planning Department?

Mr. Starr: Yes, that's correct.

Mr. Mardfin: Thank you.

Mr. Starr: Okay. Commissioner Sablas?

Ms. Sablas: This question is more for Corporation Counsel. We've heard testimony about, I guess, the legality of the land and development, would you, from the Hawaiian perspective, would you like to address that?

Mr. Giroux: I guess there's two issues. You're asking the issue of title, and then the other issue is the iwi. Is that--? As far as the land title, I mean, the Circuit Court is really the venue for whether or not there's encumbrances on the property or if there needs to be, you know, quieting of title or anything like that. If, you know -- if anything comes up -- if anything is filed in Circuit Court, whether your approvals here and now, or whether or not the project is in compliance with the district zoning -- not whether or not they've gotten, you know, clear title or all of that, interest are in order. There does come a time . . . *(Inaudible. Changed tapes)* . . . You know where the land has been encumbered or sold or how it was came to be that they have "clear title." And that issue in of itself is very complicated, very, you know, open to litigation at any time. It's one of the risks of owning land in Hawaii.

The other issue on the iwi is that there is a process of the Burial Council, and any inadvertent finds has to go through that. The Council ensures that the first step that they try to do is to make sure that the lineal descendants are involved in that type of decision making, and then the Council makes that recommendation then to the State. So those two processes are really outside of your venue. What you're looking at is does this project comport to the zoning? Those other issues, although very important, are really not under your decision making process. I think that you can take them under consideration if there's things that, you know, can be modified such as looking at the proposal, you know, if there were known grave sites already there, and looking at whether or not you could influence, you know, movement, massing, that type of thing. But without that information, or without that, you know --. I think right now we're talking -- and you can correct me if I'm wrong but from what I'm hearing is that we're talking about inadvertent finds. We're not talking about known finds. Because there were, I think it was mentioned, over 300 known finds, and those have already been taken cared of by the Burial Council.

Mr. Starr: Okay. Commissioner Shibuya?

Mr. Shibuya: Just a quick question. I just want somebody to point out where the bus station or bus stop is being located. I'm curious because if the students do stop over there, they will probably walk straight across thru the crosswalk.

Mr. Munekiyo: The bus shelters that will be provided by the applicant -- one would be located in this vicinity along the west side of the Maui Lani Parkway. The other, right across the street, bordering the Kaiser, headed in the other direction.

Mr. Shibuya: Thank you.

Mr. Starr: Okay. Commissioner Tagorda you're next, but I just want to say we have a lot of items. We have an item.

Mr. Tagorda: Yes . . . (inaudible) . . .

Mr. Starr: So if we are going to have extensive, additional questioning, we might want to consider defer.

Mr. Tagorda: I just want to – a question for the applicant.

Mr. Starr: Commissioner Tagorda?

Mr. Tagorda: There are so many concerns about highway improvements at Kainani, at Baldwin intersection and at Maui Lani access road. Can the applicant do those highway improvements first before breaking ground so we know if that this highway improvements that people are talking about are going to work? Because I heard sometimes that they said there's also that second left turn that will be constructed in the future at Maui Lani Parkway. So I want to see that this highway improvements are concurrently built or can be built ahead of the structures inside that region, inside that area.

Mr. Munekiyo: I think, Commissioner, the basic initial improvements that we spoke of, including the thru lane along Kaahumanu Avenue, the traffic signals, those will be done concurrently with the project. There are, you referenced, as you mentioned, there are other projects which would occur in the future, and that would be based on monitoring of traffic counts, such as the additional left turn from Maui Lani heading west on Kaahumanu, as well as another left turn lane on Kaahumanu, turning left onto Maui Lani. So those are future improvements, but the applicant will be doing those as the need arises. Primarily, according to the traffic engineer, the traffic volumes will warrant those improvements, those future improvements, when the Maui Lani Parkway connection is made all the way thru. Right now, as you might recall it's truncated at Waienu Street. And so once Maui Lani becomes a true road connected all the way down to Kuihelani Highway, then at that point we'll see traffic volumes increase and at that point those additional lanes would need to be provided. So there's that connection of relationship.

Mr. Starr: Okay, members, we ready for a recommendation? Okay, please Ms. Cua.

Ms. Cua: In terms of our conclusions of law, the applicant has submitted a preliminary site plan, as well as other necessary submittals for a Project District Phase II application as outlined in Chapter 19.45.050. The proposed project complies with the buildable standards of the Project District in the development of the shopping center. The Planning Department is therefore recommending approval of the Project District Phase II application, subject to a number of conditions.

Conditions number one thru 12 are standard conditions. Condition-13 – these next set of conditions is going to deal with archaeological resources. I've group them, so we can discuss them in terms of that particular issue. 13, that the in the event historic remains are inadvertently encountered during construction, all work shall cease in the immediate vicinity of the find, and the find protected

from further damage. The contractor shall immediately notify SHPD and the Maui/Lanai Islands Burial Council will assess the significance of the find and recommend mitigative conditions. I do want to make clear to the Commission that if an inadvertent find is uncovered, SHPD does have the jurisdiction on that.

Number-14, that archaeological monitoring shall be conducted for the proposed project in accordance with the approved monitoring plan. I would like to add a condition-15 at this point here. That upon issuance of the grading and building permits, and prior to major construction related activities, controlled grading pre-testing of the building, building footprints shall be performed as part of the archaeological monitoring program. And that came from that 2010 letter from the Burial Council, an acknowledgment letter from the applicant that that's what they're intending to do so we're just memorializing that. So that would be condition –

Mr. Starr: 15.

Ms. Cua: 15. So now condition-15 would be condition-16, the former condition-15. That there shall be one archaeological monitor per piece of equipment, and monitoring shall be conducted of all ground disturbing excavation and trenching. 17, that initial ground excavation shall proceed slowly and a flat blade machine shall be utilized to scrape the surfacing layers. I'd like to add a condition-18 under this section – that the applicant shall implement an educational program which may include interpretative story boards or plaques to be placed at locations visible to the public. I'd like to also add a condition-19 under the same section – that the applicant shall be responsible for the perpetual maintenance of the solitary building features and the larger preservation areas. So now condition-17 becomes 20 – that water conservation measures shall be incorporated –

Mr. Starr: I don't think we need to read through all of them unless someone has a question or you're going to add anymore.

Ms. Cua: Okay. No, that's the only ones I added under that section.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: There were two page 23's on my document.

Ms. Cua: Yeah, I'm sorry. I saw that. You can disregard the last page.

Mr. Mardfin: Thank you.

Ms. Cua: So we actually are proposing 36. Now we'll have a total of 36 conditions with the three that I added.

Mr. Starr: Okay, are all Commissioners clear on the recommendation? Commissioner Shibuya?

Mr. Shibuya: I'd like to – I don't know whether I should include it now or when somebody makes a motion. But on number-11 I would like to make a condition that they include renewable energy generation. We're talking here conservation, but we include a statement saying that we encourage the developer to implement renewable energy generating systems to comply with Hawaii Clean

Energy Initiatives Law.

Mr. Starr: Is the department happy to have that as part of the recommending condition?

Mr. Spence: Mr. Chairman, I had - I also thought something along the lines of – because the question of say photo voltaic came up – I would suggest an amendment to number-11, and it would no longer be a standard condition. It would be, you know, it would fall under the project specific. And just adding to the end, to the end of the number-11 that the applicant will include an analysis as why or why not photo voltaic is feasible. And the reason being is, you know, you have different sunshine ratings throughout the islands. It clouds up in Wailuku. It may not be feasible at all to include PV here.

Mr. Starr: Okay, Commissioner Shibuya, is that okay?

Mr. Shibuya: That's acceptable. Thank you.

Mr. Starr: Ann, do you have that?

Ms. Cua: Will, could you just one more time, please?

Mr. Spence: Applicant will include an analysis as to why or why not photo voltaic is feasible.

Ms. Cua: Thank you.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: I'm not sure if that language properly reflects what Commissioner Shibuya had first proposed. Because I think Commissioner Shibuya is encouraging the use of photo voltaic, whereas an analysis, good or bad, doesn't really –

Mr. Starr: I actually preferred Commissioner Shibuya's language, but I don't want to put the words in the department's mouth.

Mr. Hiranaga: We could do it as an amendment to the motion.

Mr. Starr: Would you be willing – Will, would you be willing to accept? Yeah, if the director will accept that why don't we go with that.

Mr. Spence: That's fine with me.

Mr. Starr: Okay.

Ms. Cua: I'm sorry. I would need that language.

Mr. Starr: So the language goes back to Commissioner Shibuya's language to encourage the utilization of photo voltaic.

Mr. Mardfin: Mr. Chairman?

Mr. Starr: Yes?

Mr. Mardfin: Two things. One, it seems to me that we ought to have a main motion before we do this because it seems like an amendment. Secondly, Director Spence did mention that rather than modify 11 which is a general condition, it ought to be a specific condition.

Mr. Starr: Okay. I mean, we're taking their recommended conditions, and I'm trying to get it done expeditiously. Is that okay?

Mr. Mardfin: I'm happy with Commissioner Shibuya's condition, but it ought to be a project specific condition rather than a standard condition.

Mr. Starr: Yeah, that's what we had agreed on.

Ms. Cua: So, should that –

Mr. Starr: So the wording of 11 which becomes a project specific condition adds the wording that –

Mr. Spence: We could just say applicant shall address energy generation for the project.

Mr. Starr: It's getting changed again.

Ms. Cua: I think the applicant might have a suggestion. And if we're thinking of a new condition, not to amend that standard condition, then we could do a condition-37.

Mr. Starr: Mr. Munekiyo, could you please give us some wording that the department might consider including? We've got to get this done one way or another please.

Mr. Munekiyo: Just listening to conversations Mr. Chair, I'm wondering if we could make 11 a project specific condition which would read that appropriate energy conservation and renewable energy measures shall be incorporated into the project where feasible which may include but not be limited to energy conservation, building materials, solar water heaters, state of the art air-conditioning systems, photo voltaic systems, et cetera.

Mr. Shibuya: I'd like to add a little word saying consistent with the intent of the Hawaii Clean Energy Initiatives Goals.

Mr. Starr: Initiatives goals.

Mr. Munekiyo: If I may Mr. Chair just to clarify. And if I could read this just so that the commissioners understand that we're all talking about the same thing. Where appropriate, that that appropriate energy conservation and renewable energy measures shall be incorporated into the project where feasible which may include – and the specific measures listed – such measures shall be consistent with the Hawaii Clean Energy Initiatives Goals.

Mr. Shibuya: Good.

Mr. Starr: Okay. Is everyone happy with that?

Mr. Shibuya: I'm happy with it.

Mr. Starr: So that becomes a project specific condition. And then is everyone clear on the conditions that are part of this as it comes to us? Okay, is there a desire to make a motion at this point? Commissioner Shibuya?

Mr. Shibuya: I make a motion that we accept – this body accepts a recommendation of the Maui Planning Commission to adopt the Planning Department's report and recommendation memorandum prepared for the March 8, 2011 meeting as it's Findings of Fact, Conclusions of Law and Decision and Order, and authorize the Director of Planning to transmit said Findings and Fact, Conclusions of Law, and Decision and Order on behalf of the Planning Commission.

Mr. Starr: Okay, is there a second?

Mr. Spence: Do we need to say as amended?

Mr. Shibuya: Yeah, as amended.

Mr. Starr: Commissioner Hiranaga, I think, just seconded it. So we have a motion by Commissioner Shibuya, seconded by Commissioner Hiranaga. Could we have the short version, Director?

Mr. Spence: To adopt the Planning Department's recommendation as amended.

Mr. Starr: Thank you. Okay, we ready to vote? Any amendments? Commissioner Mardfin?

Mr. Mardfin: No amendments. I'm just stating that I'm going to vote against this motion. I believe we started out a process to get the iwi dealt with. I don't think that process has gone far enough. Clare read Commissioner Hiranaga's statement that at the EA level that was not the time to defer. I think this is the time to defer. I think we need to go further, so I'm going to vote no at this point.

Mr. Starr: Okay. Thank you. Commissioner Sablas?

Ms. Sablas: I too will be voting no for pretty the same reasons.

Mr. Starr: Commissioner Wakida?

Ms. Wakida: Yes, I think that there needs to be more dialogue and mitigation.

Mr. Starr: Okay. We have a motion on the floor. All in favor, please raise your hand.

Mr. Spence: We have five ayes.

Mr. Starr: All opposed?

Mr. Spence: We have three nays. Motion passes.

Mr. Starr: Okay. Thank you. I'd like to comment that we hope that a dialogue can continue and that it can try to create some closure on this. Thank you.

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

**VOTED: To Accept the Recommendation of Approval of the Phase II Project District Approval by the Department, as Amended.
(Assenting - W. Shibuya, K. Hiranaga, J. Freitas, O. Tagorda,
D. Domingo)
(Dissenting - W. Mardfin, L. Sablas, P. Wakida)**

Mr. Starr: Please take your conversations outside. Thank you. Members, before we break we have – the next item on our agenda is a public hearing which we do want to take care of today. Certainly, there is an item further down that we scheduled for 1:00 p.m. because there are a number of State employees who were coming specifically for that at 1:00 p.m., and they'd come to a previous meeting and have been deferred. So I'd like to request that before we break away we have a motion that the next item on our agenda be item G-1, and that be followed by the public hearing which would be D-1. Commissioner Mardfin?

Mr. Mardfin: I move when we come back we deal with item G-1 to be followed by the public hearing.

Mr. Tagorda: I second.

Mr. Starr: Moved by Commissioner Mardfin, seconded by Commissioner Tagorda.

Mr. Spence: The motion is to take item – take up item G-1 immediately after the break at one.

Mr. Starr: Okay. All in favor, please raise your hand. All opposed?

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

**VOTED: To take up item G-1, followed by item D-1, the public hearing,
immediately after the break.**

Mr. Starr: Thank you. And I apologize for that. I didn't think this would take so long. Thank you. We'll be back at one o'clock.

(The Maui Planning Commission recessed at approximately 11:57 a.m., and reconvened at approximately 1:03 p.m.)

G. NEW BUSINESS

1. **MR. DOUGLAS POSELEY requesting an Environmental Assessment determination on the Final Environmental Assessment (EA) prepared in support of the Community Plan Amendment from Park to Agriculture for property situated near Milepost 15 Honoapiilani Highway at TMK: 4-8-003: 047, Olowalu, Island of Maui (EA 2010/0004) (G. Flammer) (Final EAs previously circulated at the November 9, 2010 Maui Planning Commission meeting.) (Commissioners: Please bring your copy with you.) (Previously scheduled for the February 8, 2011 meeting. To begin at 1:00 p.m. or soon thereafter.)**

The accepting authority for the Environmental Assessment is the Maui Planning Commission.

The EA trigger is the Community Plan Amendment.

The project needs a Community Plan Amendment (CPA) and a Change in Zoning (CIZ). The public hearing on the CPA and CIZ applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.

Mr. Starr: Good afternoon. This is the Maui Planning Commission meeting, March 8, 2011. We're back in session in the afternoon. I'm going to call on our Director to introduce the next item.

Mr. Spence: Thank you Mr. Chairman. Commissioners, just before the break, we vote – you voted to take item G-1 for Mr. Douglas Poseley requesting an environmental assessment determination on a final EA in support of a community plan amendment. Gina Flammer is the planner, and the applicant's representative is here.

Mr. Starr: Okay, I'll turn it over to our excellent planner, Gina Flammer. Gina, thank you, and I know you put a lot of hard work into this, so take it away.

Ms. Gina Flammer: Okay. Thank you. Good afternoon Commissioner Starr and other Commissioners. The final environmental assessment for this project was prepared by land use planner Rory Frampton, on behalf of the applicant, Douglas Poseley. The draft EA was reviewed by this body on August 24, 2010. The changes made to the final EA included additional information requested by this Commission as well as information added based upon discussions with the department and also from the site visit. There are applications for a community plan amendment as well the change in zoning. They're being held in abeyance pending the completion of this Chapter 343 process. The applications, the CPA and the change in zoning, will be reviewed by the Commission. There is a Conservation District Use application for landscape improvements in the State conservation district – that's noted as easement-G if you're looking at any of the site plans. Now that is approved by the DLNR Board of Land and Natural Resources.

So for today as a Commission you may either accept the final EA and issue a Findings of No Significant Impact (FONSI). You could defer the final EA. Or you could require the applicant to prepare and EIS. Please note that an issuance of the FONSI determination does not preclude the

Commission from requiring additional information or adding mitigative conditions during the review of the CPA and the CIP applications. For today our purpose is to review the document against the 12 significant criteria set forth in Hawaii Administrative Rules. You can find those on page 50 thru 53 of the final EA which should be in front of you. The department has reviewed this final EA against those 12 criteria and concluded that the environmental document does meet the significance criteria for acceptance of an EA. The department recommends that the Commission accepts the final EA and issue a FONSI determination. What I'm going to do now is have Rory Frampton come up and give a presentation on the project for you.

Mr. Starr: Okay. Mr. Frampton, how long is your presentation?

Mr. Rory Frampton: Hopefully no more than 10 or 15 minutes.

Mr. Starr: Okay, 15 minutes is fine.

Mr. Frampton: Good morning or good afternoon Mr. Chairman and members of the Commission. I'm Rory Frampton acting on behalf of Douglas Poseley, the applicant. Doug is here with his wife Anna. And I'll just briefly review where we are right now in the process. And thank you Gina for providing a real concise summary of where we're at. And I'll basically present a little bit of the background, what the proposed request is about, some of our concept plans and the major mitigation measures, as well as what we've added to the final EA. And we've done a lot of amendments so I'm going to try to hit what I think are the significant ones. But of course, we'll be open for any kind of any questions and answers.

The project location is in Olowalu. It's near the shoreline between Olowalu wharf and Hekili point. The parcel is identified as parcel 47 on TMK: 4-8-003 is the plat. It's one of three parcels that are adjacent to each other. All original land commission awards which were created back as part of the Mahele in 1850 – 1848 thru 1850. It's surrounded by a much larger parcel that was part of the sugar plantation. And then significantly along the shoreline there's about a 100 foot wide government beach reserve that actually is separated from the project by a portion of this larger lot, 84A, and that's the area that we refer to as easement-G. So you have parcel-47, then easement-G, and then the State beach reserve along the shoreline.

This is an aerial photo showing the parcel and the Olowalu wharf and Hekili point. And the vicinity is what is now referred as Camp Olowalu. Formerly it was Camp Pecusa and you can see the Olowalu Store in the back. This is the community plan designation and it's at tail, at the western end of a park designated area that was included in the community plan in 1996. I'll get into that a little bit later. So we're asking for that park designation at the end to be change to ag. That existing area is about 10 ½ acres right now. So the proposed land use amendments that we're asking for is to change the community plan from park to agriculture. The change in zoning would be from A2 Apartment. It has a permit zoning that was established in 1959 in the area. It's actually originally A3 Apartment, but now it's considered as A2 Apartment, so we'd be asking that to be agricultural. And then the State land use district will remain and it's a split zone property with the mauka portion being agriculture and the makai area conservation. That split designation will remain.

The justification of land use map request really is based on the fact that the previous administrations and various Planning Directors and staff have all indicated that there's no desire

to acquire this ½ acre parcel for a park. The parcel is not included in the County's Pali to Puamana Parkway Plan. It was specifically considered, and excluded from that. It also is not included – it's not designated as park in the Draft Maui Island Plan. Again, it was specifically considered by this Planning Commission, and excluded and it's not – the department is not recommending that it be including as park as well.

So, you know, Mr. Poseley, before he begun this process, had spoken with the Planning Department as well as the Planning Directors. And it was Planning Director Foley, back then, who indicated a strong position that the County would not go and try to buy these smaller parcels. And instead, if they were looking for park development areas, that they would to get from a larger parcel mainly because of the cost. The cost per acre, for a ½ acre piece, is going to be a lot more expensive than the cost per acre for a larger piece. And because of the fact that is surrounded by the larger piece, Mr. Foley indicated that he would not – they would not be interested in that designation. And the other – before we started this recent community plan amendment process we checked with – we had discussions with Planning Director Hunt and he indicated that it was their, Planning Department's, preference to have the agricultural designation. Even though the parcel is only a ½ acre, the ½ acre would actually be more closely fit with the rural designation. But the Planning Director, rather than having basically what they considered a spot designation of rural, requested that the request be made to change it ag so that it's consistent with the map in the area. And so that's basically how we got to this point now where –. And they also told Mr. Poseley that he could wait until there was an update of the Community Plan, which is a number of years of away, or he could initiate the application himself. So he decided – he made the decision to initiate the application for community plan amendment, take it out of the park designation, and then put it into agriculture.

So Gina highlighted this. We did prepare an Environmental Assessment, which this was reviewed by the Planning Commission in August. In October, we submitted the draft – Final Environmental Assessment to the Planning Department, and it was going to be considered in November, but there was a request for a site visit, so it was deferred until after the site visit. The site visit happened in February. And now here we are in March, and the EA and the FONSI determination is to be decided upon. After that we'll come back – if the Commission decides that the Environmental Assessment is adequate, then we'll come back to this Commission for the community plan amendment and the change in zoning recommendations. We're anticipating if all goes well that might be in April or May. After this body has considered the community plan amendment, they'll make a recommendation to the County Council. The County Council, if all goes well, the decision could occur as early as this summer. So that would be for the proposed map amendments. So the point is that we're coming back to this body, as Gina mentioned. After we complete the environmental process, we'll be back to you for a recommendation, and that recommendation will go onto the County Council.

Of course, much of the environmental assessment involves looking at the proposed use of the property. The development would involve a single family dwelling. That would have to go through the SMA approval process – the conservation district use permit process for the activities in the conservation area. We're asking to do some work on State lands fronting the property. That would require a right of entry from the Department of Land & Natural Resources, and of course, the building permit would also be required. So the parcel itself is this area here. It's just over a ½ acre in size. This line running through the makai portion of it is the conservation line, so a portion of the

parcel itself is in conservation. And then here's that easement-G which is a part of the larger lot-84, but when they purchased this property they got an exclusive easement to use easement-G, which is again privately owned land. Then makai of that is the government beach reserve. So the proposed house plans would occur in the agricultural designated area of the parcel. This is a conceptual illustration of the footprint of the house. And the conservation line running through here, so the —. And the other thing I wanted to point out is the flood zone. There is a flood zone designation in the area, running along the shoreline, which indicates a potential for coastal flooding and I'll talk about that a little bit later. But again what's been proposed as part of the feature of the landscape plan is that there would be a retention basin in the front of the property, and that would be sized to accommodate all of the runoff from the parcel, not just the net increase. And then there would be landscape planting within the easement. And we're asking — and I'll talk a little bit more about this later — to do some selective clearing of debris and vegetation within the government beach reserve.

So the significant mitigation measures — and this is just a summary — as I mentioned for the drainage, we'll have an onsite basin to accommodate all of the runoff which was calculated to be about 250,000 cubic feet, and the retention has been sized to accommodate more than 3,000 cubic feet. In terms of waste water disposal, rather than just a regular septic tank with leach field, there will be an aerobic treatment facility incorporated within the waste water disposal system in order to have a higher level of — or a higher quality of effluent. The project will incorporate photo voltaic energy.

In terms of the flood zone requirements — as I mentioned the — in front of the property there's an area that's designated as a coastal flooding zone. It's referred to as an AE-zone. An AE is an area that could — where you could have coastal flooding but it wouldn't be with the velocity or the force of a tsunami. And the base flood elevation on the current maps is determined to be five feet above sea level. That is, on the current maps, they would expect that a tsunami could flood up to five feet above sea level. When the — about two years ago, the FEMA sponsored a study to revise these maps. And I sat in a presentation where you guys were briefly told about that a few weeks ago. And what they did is they looked at all the southern shores of the Hawaiian islands, and they did a very detailed assessment of the potential for coastal flooding mainly due to hurricane waves and storm surge. And so what they've — based on that real detailed study, they've come up with a proposed revision to the map in this area — still proposed — but they propose to increase the base flood elevation to eight feet above sea level. So, what we've done, although we're not in the flood zone, we're next to it, we're not required to comply with the FEMA requirements. But to be conservative, we've basically matched the elevation that would be required if we were designated. And that elevation would be one foot above — it's policy now to be one foot above the base flood elevation. It used to be that you could be above the base elevation. So back in August we actually had this at 8.5 feet, but my understanding in talking to Francis is that their new policy, in the AE zone, is to add another foot for safety. So we've designed the house to accommodate the standard as if we were in the flood zone, but again we're not. So we're just next to it. It's just to be safe and conservative. So the house finish floor elevation is at nine feet above sea level.

And coastal access we're proposing to assist the DLNR to enhance pedestrian access within the government beach reserve fronting the property, and that's what I want to get into a little bit more since it did receive a lot of attention both at the previous meeting, as well as at the site visit. And one of the requests by the Commission at the last time was to have an aerial photo showing the beach

reserve in relation to the subject parcel and Camp Pecusa. So this shows the subject parcel here, the government beach reserve runs along the shoreline in this area, and here's Camp Pecusa. And there's been some talk about this former agricultural road – or I guess it's still an agricultural road – and we were asked to look into the history of trails and roads in the area. This is a photo showing in 1997 what that road looked like when it was part of the active plantation, when they were doing sugar in that area. We went back and pull up the original land commission award to the property. This is a description, or this is a map of the property, and this was what awarded back in 1848 and they don't describe any kind of trails running – certainly it wasn't running through their property. It was being used as a house site. But it did indicate that there was a road, the main road, north or inland from the parcel. So that shows that.

This 1865 map. There was a coast line map from Lyons. Again, here's the rough parcel location and it shows the old boundary of the stream. The stream use to come down on this side of the peninsula as opposed to where it is now which is over here. But, again, there's a roadway shown inland here. And it's interesting because it appears as though the roadway would have followed the coastline until it got to this point, and then proceeded inland, much in the way it's aligned right now. No indication of any other kind of trails along the shoreline. We looked at an 1881 Olowalu sugar plantation map. And it's a little hard to read here, but here's the subject parcel, along with the other kuleanas. Again, this 1881, and basically this area had been, at that time, started to become incorporated into the sugar plantation. And these various polygons are showing different fields that were starting to be used in plantation. It shows the road, inland, and there doesn't show a trail fronting the property, but it shows it as all open, and that's an important point. When the – this is a 1939 map from Pioneer Mill. Pioneer Mill took over the plantation in the early 30's and it basically shows the field orientation as it's laid out right now. But you see the substantial setback from the coastline. And basically what happened was when the plantation owners purchased this land from the government, the government set aside a 100 foot wide beach reserve along the shoreline. And that was in 1910, so there was certainly, at least back in 1910, the idea in government – that the government had was to create this beach reserve, and to allow that to be the access for the public.

This shows the plantation road again as in 1997. And it's not currently in the same alignment. And what happened after this was taken out of sugar production, there was an archaeological inventory survey of the entire area, and they actually found some bone fragments along this portion of the road. And it was basically – the road had been laid out over a series of burials. And in subsequent, additional excavation of the area, or exploration, they found some additional burials, so that area has now been set aside as a burial preservation area. And this photo which was a more recent photo shows how that road was sort of realigned so it wouldn't cross right over the burial location. And this former ag road – if you go out there today, this former ag road in this portion, in this vicinity of the burial site, is no longer being used. It's all overgrown. And instead what's happening is people kind of walk thru the camp or along the shoreline, and when they get to this point right around Hekili point, the vegetation is so overgrown that there's been basically kind of a make shift trail that comes along here, and then it jumps on the old road and then it comes back down to the coastline later on. So this area of the State beach reserve is very overgrown and it's difficult for the public to access the shoreline through that area.

One of the request from the Commission was an aerial photo showing the – and some photos showing the beach reserve in it's current state of access or ease of access. And this photo in 1997

shows how at that time it was a little more difficult based on, because of vegetation and trees and some other structures, to move along the shoreline. But since that time, there's been some changes made, and you guys – some of the members went out to this area on their site visit. This is a recently installed Olowalu State beach reserve, public access sign. Again, here's the Poseley property. But this sign is located along the highway. And you can see from the photos that's the sign right there. And from this little parking area, there's now really open access to the beach reserve. And the beach is actually looks to be in really good shape along here, and I think we can thank Daniel Ornellas for a lot the, these improvements, and he can explain what they did in a little more detail. This is walking down the beach showing the status of the beach reserve. This is fronting Camp Olowalu. As you get down past Camp Olowalu it starts becoming sort of a meandering trail through the heavy growth. It meanders for a little ways, and then, eventually, like I said before, it kind of jumps out of the beach reserve and onto private property through here in order to avoid this vegetation.

And then my next photo is from here looking down the trail, so that's down the trail. This is looking from the Poseley property, inland, showing a lot of the invasive species and plants that have overgrown the area. And this is the character of the vegetation along the shoreline. There's a lot of trees that have fallen. Various exotics or invasive trees – some small, some big. These are just several shots showing kind of the make up of the area, and it is quite cluttered with debris and old trees.

This is just a photo of beach reserve fronting the Camp. Camp Olowalu over here, and this is the nature of the beach reserve in that area, and it's — this is actually a pretty heavily used area. But I just wanted to show this photo, as well as this photo – they kind of show that, you know, it has a nice natural character, and a lot of the mature trees have remained. But what the applicant is hoping to do is to work with the State to enhance some access along the beach reserve by thinning out a lot of the vegetation, but keeping, of course, some of the larger, even if they're kiawe trees – maybe keeping some of the larger kiawe trees, so that we could have a nice access along the entire beach reserve where the public access is legally established right now. So, there's a lot of information in the Environmental Assessment. I'm not going into everything that we added. These are the various subject matters that we have added. I did – I think a transmittal was handed out. It was dated March 7th from Gina. Or, it was from me to Gina, and I believe it was passed out to you, and it includes the two figures that I showed earlier. They're just illustrative plans of what was already in the Final Environmental Assessment. I wanted to make it a little bit cleaner to read. And we've also added some portions to the text of the Environmental Assessment to make – again, to make clear some of the points that I raised earlier, and some of the points that were in the – all of our letters. So it's not new information, it's just actually clarifying sections to make it more accurate.

So, in sum, what we'll be asking for today is for this Commission to make a Finding of No Significant Impact, which mean that we can proceed through the review process. Essentially what the Commission will be determining is whether or not this project will suffice with an Environmental Assessment or if it needs a full on Environmental Impact Statement. Typically single family homes are exempt from preparing even an Environmental Assessment. But because of the proximity to the shoreline and the work within the conservation area – we didn't ask for that exemption, we went ahead and went from the exemption up to the draft EA/Final EA process, and we're hoping that the Commission will agree with our decision that the Environmental Assessment is acceptable with the proposed modifications that were made, that we've suggested. And that concludes my

presentation, and I'm available for any questions.

Mr. Starr: Yeah, thank you Mr. Frampton. I see we have Mr. Daniel Ornellas with us today. Thank you for joining us. I'd like to ask you to step up and we'd like to probably ask you some questions. But first maybe you can give some comments about the beach reserve and access to it.

Mr. Daniel Ornellas: Good afternoon. Daniel Ornellas, District Land Agent, State Department of Land and Natural Resources. About three years ago, actually a gentleman from Lahaina came to my office complaining about the fact that he couldn't walk along the shoreline in Olowalu. And I was familiar with the area, and we just kind of committed to each other that I could bring some resources to the table, and he worked hard in getting the community to help come volunteer for get that place cleaned up. So this was one area that we started doing beach access improvements, and it's kind of a pet project between myself and my assistant Larry Pacheco, in going around the island looking for encroachments and either working with adjacent landowners to mitigate encroachments or if it's all on State land, then look for the resources to remove them as needed.

In this area we had two large kiawe trees that fallen down, adjacent to an old rock revetment that was dysfunctional. It was not serving any purpose. We contracted with private contractors and had it removed. And we did two different projects over a three year time span and we worked with coastal geologist from the Office of Conservation and Coastal Lands, and he was explaining how the litoral movement of sand is actually going help build now that the area is cleared out. We're able to see more sand moving from north, or from south to north. And I believe the beach has been growing. I've been talking story with some of the ladies at Camp Olowalu and they have been saying that the beach has been actually expanding over time. Not significantly, but it's noticeable. So if we could work with the community to keep going. You know this is a very popular beach now. I see a lot of the unauthorized commercial activities around there, but you still get a lot of public appreciating the improvements as well.

Mr. Starr: Mr. Ornellas, I have a question for you. I've been snorkeling there for about 35 years, since the mid-70's, and I used to stay at Camp Pecusa a lot. I haven't really spent time there the last two years, but up till then – and we always accessed that area by the trail which, you know, seemed to be a very old road and it was an easy way to get in. Because walking down the beach, even if you got it cleared, when the tide is high, it's almost impossible and it's really stressful to try to do that, you know. But a lot of the public is used to walking along that old road and walking in there and then crossing over and using the beach and walking out. Here we've got a land owner that wants to basically privatize that old road so that they can –. It seems to me they're trying to take the State beach reserve land and make that into their front yard and keep the public from being able to get to it. And I'm somewhat disturbed by this and feel that that trail should be kept there and that that's the real access. I'm wondering what comments you might have relating to real access along that shoreline and your memories of that trail.

Mr. Ornellas: As far as the old plantation road, if that's what you refer to as the trail, it is on private property. It would be a County issue on whether or not that would be established as a public access way. As far as what's happening on the State's beach reserve, Rory and Mr. Poseley did come to my office, with the request, to remove the vegetation fronting his lot so that he can improve his views of the ocean. And I agree that you can't be having private use of public space, so I explained to Rory and Mr. Poseley that there needs to be some kind of material public benefit to

him improving the State beach reserve. And how I see that happening is opening up more of the beach reserve to allow for access by the general public. And we talked about, you know, a 10 to 12 foot wide walking path through the beach reserve either along the property boundary separating private from public lands. From a management perspective, I prefer that approach because it gives me a clear definitive line on where public and private is. Rory has suggested maybe keeping that 10 to 12 corridor along the shoreline. Either way you go, it's going to be a significant amount of work, and before we would allow for any removal of trees fronting the private property, we would want that trail to be established. So I think it's an opportunity for a little give and take. The removal and the remediation would be at the cost of the applicant, and it would require review and consent by the Department of Land and Natural Resources. So if it's approved, what we plan to do is go out there and work with community members that live in the area and kind of stake out an approach to that area. And once we get a consensus, work towards establishing that 10 to 12 foot corridor. And I noticed there's a lot of handicap guys there at the camp, so want to make sure that those guys can wheel around. You know, they've kind of got some modified wheelchairs, but they're there, you know, so I want to make sure that it's not hopping over logs and stuffs – that we actually have a nice trail to work with.

Mr. Starr: You know, just a comment, I think that's a good vision to have that 10 to 12 foot wide trail going through there, and I for one would be very happy to see that and feel that then things are right there, you know, and then people would know that is land in the public trust. It's not just someone's front yard that they can't feel comfortable going on. But I don't quite know how to achieve that. I feel like if we kind of let it go here, it's gone and that will never really happen.

Mr. Ornellas: Well, we can assure you that at least the clearing of the conservation district will not take place until we have that condition set, yeah, that the trail be established and maintained of course.

Mr. Starr: Commissioner Wakida?

Ms. Wakida: In my recent walk thru, I walked thru that whole area from Camp Pecusa down to the old landing, and contrary to the photographs, it was very beautiful. I mean, there was thickets and so on, but it was really beautiful. And the vegetation in there and the overgrowth seems to be doing a very successful job in protecting the coastline there, and preventing – I don't know if it actually prevents possible erosion, but it seems to be a very successful sort of sub-tropical forest in there. But actually I have a question and that is the beach reserve, does it continues straight down to the landing? Because on some of the maps it looks like there's one piece of property that comes across and just stops.

Mr. Ornellas: Right. There is a private – a former kuleana that stretches all the way to high tide mark. But there is, I noticed, a little walking path and I don't think the land owner tries to prevent people from walking fronting his private property. And there's –. Okay, I'm being told that there legal easement over the private property as well. So there's an encumbrance that allows for public access.

Ms. Wakida: Because that piece of property is landscaped all the way to the rocks, so in walking along there, I thought I was walking on private property. So, I mean, whatever the easement is, the current vegetation growth or whatever, you know, it looks like that you're not welcomed to walk

along there.

Mr. Ornellas: Right. And that's a perennial problem island wide. We deal with that all the time. I really look towards the County to be more proactive in establishing these corridors and putting signage, appropriate signage. A lot of times when these easements are established that is a requirement of the private property owner to maintain proper signage to identify it as a public access trail. So we just got to take a better effort at making sure we get that kind of stuff done.

Mr. Wakida: And speaking of signage, I noticed there's an old faded beach access sign down there by the road that goes sort of adjacent to the landing inside. Do you know anything about that sign? Or who put it up or how, you know?

Mr. Ornellas: Yeah, I'm not familiar who installed the sign, but the reason why we even have access to the landing is the fact that the original grant from the territory to the private land owner sets aside a 50 foot wide right of way. It doesn't designate it. It's unidentified. But it has a 50 foot wide right of way in favor of the State of Hawaii for access from mauka to makai.

Ms. Wakida: But I'm not talking about going straight down to the landing. I'm talking about off to the side where the old – there's some old structures, some old ruins there.

Mr. Ornellas: Right. It's the old mill.

Ms. Wakida: Yes.

Mr. Ornellas: And then there's the beach access, and then there's a locked gate where you can park and then you walk down to the mill and you can enjoy the area.

Ms. Wakida: Yes.

Mr. Ornellas: That's the right of way that I was talking about.

Ms. Wakida: Okay. And so the locked gate now, how does that become a –? I guess my question is too, is that a beach access? Is that an official beach access?

Mr. Ornellas: Yes.

Ms. Wakida: And if it's a locked gate, how does it become an access?

Mr. Ornellas: People have told me that somebody is putting a lock on some gate, but I'm not clear on who's doing it and what the terms are. Right, people have –. The purpose of the locked gate was there were a lot of problems at night. But that's the easy solution is lock it up. We do that all around the island, yeah, but it doesn't support the public access need as well, yeah. I don't have an answer to what do we do this and solve the delinquency kind problems at night.

Ms. Wakida: But whose gate is it?

Mr. Ornellas: I don't know.

Mr. Starr: Commissioner Hiranaga, then Commissioner Mardfin.

Mr. Hiranaga: I believe Peter Martin came before us and testified that he monitors that access, and he puts the gate there to prevent vehicular access to the beach. I've actually been there recently and I think it's a good thing to prevent cars from driving up to the beach. You have to walk a 100 yards to get to the ocean. It's not a big deal. Yeah, I mean, you know, before, it was great to be able to drive on sand dunes with your four wheel drive, but I don't think it's accepted anymore. So you got to pack your picnic lunch a little bit in, and you know, it's protecting the beach and it's keeping it a lot cleaner. So I have no problem with that gate being locked. It doesn't prevent pedestrian access to the ocean.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: Mr. Ornellas, is it your understanding that this improved – improved public access would be done prior to building of the home?

Mr. Ornellas: I haven't considered phasing. What would trigger me to issue a right of entry would be a request. So I don't have any conditions on when that request is applied for.

Mr. Mardfin: Thank you very much.

Mr. Starr: Commissioner Wakida?

Ms. Wakida: I know that you're very familiar with the area, but in my – within the last month when I was in there, there has been some clearing already. I don't know about clearing. There's been cutting being done. I don't know whether people are just harvesting some kiawe for imu or what, but there's been some cutting in there.

Mr. Ornellas: Yeah, we received a complaint. Our enforcement division did respond to the call. We did identify the cuttings within the conservation district. Any time you cut a tree, no matter what kind of tree it is, in excess of four inches, that's a violation without a permit. So we're able to find the responsible party. We worked with the guy to mitigate what we needed to mitigate. Like he left some, you know, tree limbs hanging in the bushes and that kind of stuff. So future activity in the conservation district requires a permit.

Mr. Starr: Mr. Ornellas, if the, you know, the project were to go along and to eliminate the access of the trail, the old existing trail, but no other type of access be created, I mean, would you consider that a potential environmental impact? You know, if the access to the shoreline –?

Mr. Ornellas: Any time public access is limited, it is adversely affecting people that normally use that type of access. So I would highly recommend that Commission somehow insure, as part of one of the conditions, that this easement be established for public purposes.

Mr. Starr: And that kind of access. I mean, that's a protected type of access right, under State Law?

Mr. Ornellas: On State land, yes.

Mr. Starr: Well, to State land if it exists.

Mr. Ornellas: Over private property?

Mr. Starr: If there was an existing trail?

Mr. Ornellas: If there was an existing trail that can be proven and justified, yeah. That would be something – you probably guys know about the Bridle Trail. That's an example of a public access over private property. You know, any time you can, according to the 1892 highways act, any time you can prove that a trail existed prior to that date, it is State property. So the Bridle Trail is an example.

Mr. Starr: Commissioner Wakida?

Ms. Wakida: In that area I don't know if it's on the – I don't think it's on any of the property that Mr. Poseley's application is referring to, but nearby I noticed there's a couple of historic markers. Do you know anything – can you tell us anything about those?

Mr. Ornellas: I know a few of them exists and I'm not sure what they identify. And I know they're registered as historic properties, but that's it as far as what I know it is.

Ms. Wakida: I think one of them was referencing an ancient wall, but I was just wondering about access to those historic markers because they're sort of buried in the –

Mr. Ornellas: Correct. They are buried.

Ms. Wakida: – in the brush.

Mr. Ornellas: Yeah, you know what, if they are things that are warranted to be exposed and observed and enjoyed by the public, then so be it. You know, sometimes we have historic places where it's better not to – it's better to just keep it quiet yeah? Because I don't know what these places are, I'm reluctant to make recommendations on how to deal with it. You know, if they're burial, sometimes people recommend that we kind of just leave it alone, yeah?

Ms. Wakida: No, I think they're both walls of some, some ancient walls, yeah.

Mr. Ornellas: So, yeah, again, you know, if they provide some kind of aesthetic quality, I don't see why we couldn't open it up, bring it out into the public corridor, yeah. Maybe plan the trail along side of it with an interpretation sign. That would be great.

Mr. Starr: Okay. Members, any other questions for Mr. Ornellas at the moment? I'm not seeing any. If you could hang in for a few minutes – it looks like we have a few other questions. Members, other questions for Mr. Frampton at this time?

Mr. Spence: Mr. Chairman?

Mr. Starr: Yeah, let me take . . . (inaudible) . . . Commissioner Mardfin?

Mr. Mardfin: Yeah, Rory, I've read what you've written here. Can you elaborate a little bit more on the aerobic treatment of effluent and what happens when, not if, there's sea level rise?

Mr. Frampton: Yes I can, and I would just, before I discuss that, note that Mr. Hinano Rodrigues is also here today, and he was request, I think by the Commission too.

Mr. Starr: Just answer the question.

Mr. Frampton: Okay. So right now, and actually with the additional height, what happens is the effluent will be treated. It will flow out of the house. It will go into a tank where it will go through the aerobic treatment. And after it's treated, it will flow out of the tank into a leech field. And then the leech field is designed right now to be able to have at least a four feet space between the bottom of the leech field and the ground water field. So there would be four feet for the effluent to percolate through what's called the vadose zone. And there's actually additional treatment that happens as it goes through there. It would hit the ground water, and eventually make it's way out into the ocean. So your question about sea level rise, there's at least four feet of separation right now between the ground water and the bottom of the effluent. If at some point in the future you had four feet or greater of sea level rise, the options would be to, if there is future development in the area that would install a waste water treatment system, the option is the house could actually hook into a waste water collection system, or it could be pumped out into a different location for disposal.

Mr. Mardfin: And there were words in there about the buoyancy of the –

Mr. Frampton: Yeah, of the tank. I think, the bottom of the tank actually would be pretty close to the water table as it exists right now. So what you want to do is anchor it, and there's construction techniques where you can anchor it so that if the tides rise or if there's any kind of raising of the ground water table, you don't want it to dislodge or affect the tank itself because of buoyancy. So that's the tank, not the effluent disposal.

Mr. Mardfin: And when the effluent does work it's way done and eventually gets flushed out to sea, you said there would be an aerobic treatment of it, but what would be the impact on the reef system out there as it works it's way through?

Mr. Frampton: The aerobic treatment removes – and I included the numbers in my letter to Commission – but it can provide from 70 to 90% of the biological oxygen demand elimination and suspended solids reductions. So what comes out is a very low, or a very high quality effluent. In fact, the Department of Health would allow you to use it for irrigation. The EPA actually allows – if you go through aerobic treatment – will actually allow you to do surface discharge into streams or into lakes. So it is considered to be a quality of effluent that's much greater because you have four feet of percolation and the greater than 200 feet of movement for it get to the shoreline. I spoke with Tom Nance who's doing a very detailed ground water assessment analysis for Olowalu right now, and he said there's millions of gallons of water that enter the ocean environment every day, and there's significant nutrient loading from that water and that this additional effluent would have – he said it wouldn't even be measurable, in his opinion, because of the background flow of nutrients from the ground water that's finding it's way into the ocean naturally.

Mr. Mardfin: Thank you.

Mr. Starr: Members? Director, do you have some issues to discuss?

Mr. Spence: Hi Rory. Can I ask when you're going to file for the SMA for the residence and I assume . . . (inaudible) . . . for the -? And the thing I'm trying to clarify for the Commission is at what point can conditions be put on, you know, that there be provisions for public access and improvements for those along the shoreline?

Mr. Frampton: I think the Commission could certainly make those when we come forward for the recommendation of the community plan amendment. I'm not sure if those conditions would be appropriate for the community plan amendment. And certainly the Commission could go on record for future Commissions or the Planning Department in terms of recommending what type of conditions they feel are important. But we will be coming to the department after - knock on wood - successful completion of the community plan amendment process. And at that time is when we come forward with both the SMA request as well as the conservation district use request. And typically the SMA request would be decided upon by the Planning Department for a single family home. So I think the Commission, you know, has an opportunity to go on the record at the next time that we're here. And certainly the department is going to have mitigation measures. We have, in this Environmental Assessment, and with the additional supplemental information that we've included in here, we've made our representations quite clear in terms on what we're doing. So I don't think it's going to be any problem for the department to reflect back on the Environmental Assessment and see what kind of conditions should be established. And I would also add that we've provided a letter to Daniel Ornellas, just for the record, indicating our intent to work with him as part of the conservation district use request. So, as he mentioned, and it's certainly the applicant's understanding that he wouldn't be allowed to do anything in front of his house until this other provision for access would be established.

Mr. Spence: Thank you. And that was my concern is if, you know, there is going to be some kind of continuing chain and dialogue.

Mr. Frampton: Absolutely.

Mr. Spence: To resolve.

Mr. Frampton: Yes, it just doesn't stop. Once you accept this final Environmental Assessment, there's many more steps involved. And it doesn't run on it's own.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I ask Mr. Ornellas if he would he know, but I can ask you and maybe you know. What is the phasing plan on this? Will the shoreline access be done first and then the house built?

Mr. Frampton: It would probably be done concurrently. And when I say that - because you want to do those activities at the same time. It just makes sense to do some of the land clearing at the same time, all at the same time. So ideally it would take place - the activities and the conservation area and the area fronting the parcel would occur at the time of the construction of the project is occurring. So which means that we need to have all of our approvals in place prior to starting construction. So the idea of the phasing is that it would all happen about the same time, and the

request would be made in advance, of course, so that we have everything lined up and approved. And as Daniel mentioned, he's not going to let things happen in front of the house until he knows that he has access to that area.

Mr. Mardfin: Thank you.

Mr. Starr: Commission Wakida?

Ms. Wakida: Well, just to follow up on your last statement. On an adjoining property it does appear that things have happened without his approval because it appears that there has been almost complete clearing all the way down to the water's edge. I mean, this is a grave concern. So –

Mr. Frampton: Just for the record. I'm sorry, that land area and the adjacent area, that you're talking about is – it's privately owned. It's not part of the beach reserve, but there's an easement over it that allows for lateral access. So, as Daniel mentioned, the areas – when the beach reserve was created, there were strips of lands that, in front of the kuleanas, three of the kuleanas in this area, that remained in private ownership. But through recent activities of the land owners, they've actually executed easements so that the public has a right to walk along that shoreline. So that there's continuous lateral access along the entire coastal end of Olowalu. The activities that you referenced again were not on the beach reserve, but were on private land.

In terms of what I was referring to on this map here, this is the parcel near the wharf where there's a house that you mentioned you walked along on the trail. There's also these other two kuleanas. Actually, the area fronting this area, it's still privately owned, but there's an easement that establishes the public right to access along the front of that.

Ms. Wakida: But isn't that conservation land along there?

Mr. Frampton: Yes, it is conservation.

Ms. Wakida: So conservation land, though, has other – they can't just clear the land. . . (inaudible)
. . .

Mr. Frampton: Right, and my understanding was someone went in there, trying to cut some fence posts and he was told he could go to a certain area, and he ended up in the wrong place. And I believe –. And it wasn't a direct employee or anyone associated with West Maui Land or the land owner. And he went into the wrong area and cut it, and I believe he was tracked down. And according to Daniel, some amends were made.

Ms. Wakida: But it hasn't been replanted.

Mr. Frampton: No it hasn't. Because my understanding is they were cutting down kiawe trees.

Mr. Starr: Mr. Frampton, Mr. Ornellas said that there seemed to be a discussion ongoing about creating a 10 to 12 foot wide pedestrian path that is not right on the beach, you know, below the high tide line, which seems to be what you're talking about. Are you dedicated to working in the creation of an access path that would allow access to this property?

Mr. Frampton: Yeah, I'm sorry, you said that you thought I heard I was going to be below the high tide line?

Mr. Starr: Well, it seems like the access you're describing is talking about that people have to just walk along the shoreline below the high tide line.

Mr. Frampton: I don't remember referencing that at all.

Mr. Starr: That's the only way you can get to it now.

Mr. Frampton: Right now that's the only --. What we've talked about, what we've put in writing and what I described earlier was working with Mr. Ornellas to provide for a pathway through the government beach reserve which is where Mr. Ornellas feels that the public access should be. It's where the government established it over 100 years ago. It where the people from the area feel that the access should be which would be close to the shoreline. But I'm not talking about below the high tide line. We're talking about clearing a pathway, through the trees, on the government beach reserve, as Mr. Ornellas described. We don't know the exact alignment. If you took the -- there's the option of actually moving it back along the property line. There's two concerns there. One, you still have significant vegetation between that pathway and the shoreline so it would be hard to actually -- still be hard to get to the shoreline. And number two, there's an archaeological site that straddles the property line, and you'd have to certainly avoid that archaeological site. So the residents that we spoke to that have ancestral ties to the area indicated a preference to be as close as possible to the shoreline without being too close. You know, without having negative impacts from the trails being too close. But they want to have proximity to the shoreline. But it would be in the beach reserve, and certainly I didn't make any representations that it would be below the high water mark.

Mr. Starr: Why isn't that discussion in this document? To me, that makes this document incomplete.

Mr. Frampton: It's in the letters that we responded to you, and it's also in the amendments that I passed out to Gina yesterday that I had prepared for the last meeting in February.

Mr. Starr: But it's not in the document.

Mr. Frampton: We're asking that it be included in the document. And it is in the document. It's in the letter, which is part of the document.

Mr. Starr: Members, any further questions? Commissioner Wakida?

Ms. Wakida: On a little different subject. The water for this project is provided by the Olowalu Water Company?

Mr. Frampton: Yes.

Ms. Wakida: And where does the Olowalu Water Company gets it's water?

Mr. Frampton: There's two sources. There's a well and it provides the source for the drinking water, the potable water. And there's also the non-potable water is the old irrigation system, which is from the stream diversion.

Ms. Wakida: And where is the well?

Mr. Frampton: The well is located inland, mauka. As I understand it, the well is inland up around in this vicinity over here.

Mr. Starr: Members, we'll take public testimony. Is that okay?

Ms. Flammer: Did you want to hear from Hinano at this point?

Mr. Starr: If anyone has a question they're welcome to ask. We will take public testimony though. Any members of the public wishing to offer testimony on this please make yourself known. Ms. de Naie, please introduce yourself.

Ms. de Naie: Thank you. I have some handouts. Perhaps Ms. Flammer can assist me. Two more Gina. I'd like to wait until you've had a chance to have the handout map in front of you if I may. .
. (*handouts passed out*) . . .

Mr. Starr: Thank you Gina.

Ms. de Naie: Thank you very much. My name is Lucienne de Naie. I just come to ask your consideration as you consider the final EA. First of all it's good to know that this project may have some SMA and conservation district use permit review so that appropriate conditions could be put on it. If folks do have questions about the historical markers, I'd be happy to provide some information. Ed Lindsay and I sued back about 10 years ago to try to get some appropriate access and so forth in the area, so we spend a lot of time reviewing the cultural plan and the preservation plan. And I think it was brought to your attention by Mr. Regan that aspects of that maybe have not been, you know, completely fulfilled and this maybe what Commissioner Wakida is seeing. At any rate, I would hope that the supplemental information you've been provided, which I have not been at liberty to see, would clarify that there were a number of the land commission awards given along the shoreline. The map that you have with the yellow on it, this shows – those were given before the days of the plantation. And I just think that an EA which is an informational document should include some discussion – how do these folks ever get to their lands? There should be, at a very minimum, native and foreign testimony included in the EA so that we can know more about the characteristics of the area. This is our one chance to get that kind of information. An EA is suppose to be informational document. It should address if there was traditional access referred to in any of this native or foreign testimonies. Perhaps this has been done, but in my reading of the EA I saw no reference to it. In fact, the opposite, it was sort of implied that the land commission awards were mostly on the mauka side of the highway, so, you know, access really wasn't anything that needed to be discussed.

Also, I think comparative maps of the plantation roads and their various permutations and where these LCA boundaries are would be helpful. It may be that there was not access, but it would be nice just to have the facts so that a body like yourself could make their own informed interpretation.

Also, the EA should clearly explain that parcel-47 was not a separate TMK. It was not singled out of all the TMK's to be put in the park designation and the community plan. It was part of a larger parcel, and it was only became a separate TMK under the consolidation and the re-subdivision. I handed you a little piece of paper that was from that original application back in 2000. As you were informed earlier that's a gray area – what happens during the consolidation and re-subdivision.

So the folks who were doing the community plan, and my friend Dave Chenoworth worked very hard – and he's no longer with us, so I'm here to speak for him – to make sure that that area was included. Also, the community plan had very clear language that if the area around Olowalu was not going to be agricultural and it was going to be urbanized that a park area of not 10 acres, but 30 acres should be designated. This language was truncated in the EA. That portion of the community plan language was not described. It should be included to have a complete EA. Otherwise, you're kind of like interpreting our lawful documents. The last few things – the project's archaeological studies are already over a decade old. A burial site is nearby. Are there additional finds here? Is there going to be any other archaeological work required, or will the one study, which didn't concentrate a lot on the coastal lands because they weren't impacts at the time for them, is that going to be it? And I also passed out your flooding and hazard maps. It appears that a portion of this property is in a flood and hazard zone. It is mentioned. The map is from the Poseley EA. What are the implications of that with additional sea level rise? Hopefully Mr. Frampton's letter have addressed that for you. But if not, the EA should include this information and you should ask for a complete EA. Thank you.

Mr. Starr: Members, questions? Thank you very much Ms. de Naie. Are there any other members of the public wishing to offer testimony on this item? Yeah, Mr. Rodrigues, please. Welcome and come on up.

Mr. Hinano Rodrigues: Thank you Mr. Chair and members of the Commission. My name is Hinano Rodrigues and I'm a lineal descendant of Olowalu. My experience and my knowledge of Olowalu comes not only from being a lineal descendent but that our relation to the land is actually in our family's names. My mom's name is Kamaileolihao, which means the maile of mount Lihao located in Olowalu. My sister's name is Kapualehuaolihaoulakalaiohekili and that means when the red lehua blossoms up at mount Lihao it's redness is reflected down at Hekili. I think you guys want some information on the access to the area. When we were young, and that was many years ago, we weren't treated very fairly by the plantation. We were told to stay off their roads, and when we wanted to walk to Olowalu store, they would tell us, hey, go walk on the main highway. This is our plantation road. When we wanted to go down to the beach, they told us the same thing. So we would actually, of course, kids not going to pay attention, we'd walk on the plantation road, but you would watch from afar and when you see a dust coming up, that means the plantation truck is coming, run and hide in the cane field.

Now with respect to this area, my grandmother was a widow at age 52, and in those days social security didn't pay much. So we would get our food from – maybe if Rory would switch the slides to the one that has the Olowalu reserve sign. There, between the third and the fourth house, there is a cove, and that is where we would get our food. Every morning – and I remember that because I was only about six years old, my job was to carry the bucket. The aluminum bucket with all the pu'u's because it's all beat up, and the bucket would actually float under water. Well, between the

third house and between that almost perfect rectangle and then that fourth house which is Michael Moore's house – you see that cove? That is where we would get our food. We would get vana and lobster and he'e. My grandmother was the choice woman of West Maui to catch the he'e. And, you know, talking about kiawe trees, whenever she would see a hee, she would say "e e keiki hele uka ki'i no i ka lau kiawe." In Hawaiian that would mean, kid go up there and go break a kiawe stick. And I would break the stick, bring it down into the water, and she would actually stick it into the he'e hole, and the he'e would grab a hold of it and pull it up. Now that all sounds fine and dandy, but that was our only food. That was our only food. If we couldn't get anything, we would have to eat the loli – the sea cucumber. So I'm very familiar with getting to that area.

Now relating to that to how we were treated by the plantation. Because we were told to stay off of the road, we would come Kapaiki, cross the highway where that culvert is, follow the road to Camp Pecusa, and then when you get to the last cabin, we would directly, we'd go makai. Because we would try to get off of private property as soon as possible, and then we would follow all the way down to the cove by Michael Moore's house.

As time went on the kiawe trees grew into the ocean so we couldn't walk along side the seashore. So we would actually walk on the plantation road that I think you were referencing. There was a chain. There was a lock. And, you know, we'd have the sneak beyond that part. So that was what I remembered about access to this area. Thank you.

Mr. Starr: Questions? I have one. We had mentioned before that, from Mr. Ornellas, I believe, if there was a road previous to a certain – or a trail – previous to a certain time that that becomes locked into public access. And it seems to me that we don't know at this point whether that old road –. I mean, we do know from the pictures that it was previous to 1937, I think, but we don't know how much further back it goes. But it seems to be kind of a gray area whether it goes back far enough to be a public access. I'm wondering what your mana'o is on that. I mean, my own feeling is if you're going air, you should air on the side of letting the public get in especially with the shoreline and the people who might want to get down there and may need to harvest from the ocean to survive the way you did.

Mr. Rodrigues: Again, it's a gray area. I'm too sure if there was a road. I know there was road when I was around. I'm not too sure if there was a road when my grandma was around. She was born 1908, and then she got knowledge from here tutu who was born 1887. Her rule to us was – because of what I said about the plantation and how they mistreated us – her rule was nobody owns the ocean, and nobody owns the river. So if you want to go upland, you walk in the river, nobody can kick you out. And then if you want to go to the beach, nobody can kick you out. We didn't know at that time that there was a State beach reserve that permitted us to walk on that beach. However, it would be nice if there would be some kind of condition that would give us access. Because you remember what I said before you could walk on the beach, then the kiawe trees grew and you couldn't.

One last point about kiawe trees, yeah. You guys look at it, ah, kiawe trees, ah rubbish. You know what, that's where you catch the a'ama. And I'm sorry for saying this on tv because now we going have choke people going down there, but that's where you catch the a'ama.

Mr. Starr: Okay. Members, any questions? Commissioner Mardfin?

Mr. Mardfin: Mr. Rodrigues, you've heard the testimony from Mr. Ornellas and Mr. Frampton, and this whole concept of opening it up so that there is access. What's your reaction to those plans?

Mr. Rodrigues: I think it's excellent. And the reason why I say that – when that beautiful home at Olowalu was built, what they did was they bulldozed all their rubbish along side that drainage outlet so we couldn't go to the beach. And through Mr. Ornellas and the State, that area was cleaned up. Now we have beach access, but it's only to a certain point because now you have the kiawe trees blocking the State reserve.

Mr. Mardfin: So you'd be happy to have it extended the way it's been proposed.

Mr. Rodrigues: We'd be extremely happy.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Yes, Mr. Rodrigues, what's your thoughts regarding pedestrian lateral access versus vehicular lateral access?

Mr. Rodrigues: I listened to what you said about, well, you know what, you got to carry your lunch in. You know, you got to carry the cooler in. That's true. What is so difficult about living in Hawaii is that you have to balance the Hawaiian culture is which access and private land ownership. And I'm the last one to tell a private land owner what to do with his property. But if there's an opportunity to grant, let's say, vehicular access, that would be great. I think we need to be very careful that we don't put this burden on the applicant because he is simply a one parcel landowner. And the things that we might ask for have nothing to do with, but have to do with the larger landowner around him.

Mr. Starr: Okay. Members? Thank you very much and thanks for coming down today. Any other members of the public wishing to give testimony please make yourself known. Anyone else? Not seeing any, public testimony is closed. Members, we have a document here before us. We can take action as we wish. We can accept it. We can ask for more information. We can ask for an EIS which would create a greater level of scrutiny. Commissioner Hiranaga?

Mr. Hiranaga: Yeah, I just wanted a clarification from the applicant because one of the testifier stated that this is a newly created lot via a consolidation re-subdivision. And I was under the impression it was a LCA, a land court award, land commission award. Can you just clarify for me how this parcel was created?

Mr. Frampton: In my letter to you dated October 25th which is in the appendix of the EA, I described the history of the parcel. And it was originated as a land commission award as you noted in – actually it was awarded in 1849. It was subsequently purchased by the sugar company, ended up being purchased by Pioneer Mill, and then it was purchased by the Olowalu Ula Associates in 1998 – and I'm abbreviating what's in the letter – and was subsequently sold to the applicant in 2004. The parcel always existed. The parcel always existed. It never went away. The tax map key records sometimes what they'll do for tax map collection purposes, and this is on page-2 of my

letter when I talk about the tax history. Since the parcel was part of contiguous group of parcels that were owned by the same entity, and it was in the same type of use, what they did was they only assigned one tax map key parcel. That doesn't affect the legal status of the parcel itself. So there was one tax map key assigned to a number of parcels in the area. The parcel always existed. When the land – before the land was sold to Olowalu Ula, the separate tax map keys were reassigned, or separate tax map keys were reassigned to each parcels. The consolidation and re-subdivision, all it simply did was change the lot lines. They were actually to get the lot lines on the adjacent two kuleanas to more closely follow the land use boundaries. And this parcel was reduced in size on 5.88 acres to 5.44 acres. So there was a slight reduction in the size of this parcel. It was really things that were occurring with the surrounding parcels that led to that boundary amendment. And so, again, this parcel was minimally affected by the consolidation and re-subdivision. And it was a parcel that always existed legally from the time of 1849 until today. And it's just that there was a period of time when the tax people at the County sent one property tax bill to Pioneer Mill because the land was all owned by that one company and the similar use. I hope that explains it. It's a little complicated.

Mr. Hiranaga: I understand.

Mr. Starr: Okay. Members, any other questions? Okay, what's the desire of the body here? Commissioner Wakida?

Ms. Wakida: Actually, I do have one question for, on process, for Mr. Spence. If we approve this document, does that mean that we approve or we are okaying, for example, their findings and conclusions? So if – I'm looking at number-12, it says that they will remove kiawe trees and so on. Does that mean we're approving that?

Mr. Spence: What you're doing by approving the EA is you are saying that you're going to make a finding that with all these things in mind that there is no significant impact, or there is an impact or whatever the case may be. I'm not sure that answers the question you're specifically asking. And like I was previously –. You're not approving this as a project. You're just saying that all these things have been disclosed to you. There's going to be other applications that come before this body in which, you know, conditions can be attached to them. Does that – and you will be a commissioner at that time too.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I'd like to do a follow up question. I can imagine Commissioner Wakida reading that paragraph and saying there will be a significant impact if you remove the kiawe trees. And so I think she was maybe thinking about having that paragraph removed so that it wouldn't have a significant impact. I don't know if I'm reading it right or not, but –

Mr. Starr: Mr. Giroux?

Mr. Giroux: Yeah, the EA document is an informational document. And basically your job as the Commissioners to review it for it's sufficiency. Does it have enough information for you to make a reasonable decision in the future regarding a proposed project? So what you're looking at is all possible – all possible activity that could possibly go on and what would be those impacts? And

if they address it sufficiently, then you would say, oh, I'm okay with the information. Not I'm okay with your activity, but I'm okay with the information because you've told me what you're going to do, you've told me all the possible options, and you've told me what the possible impacts are because of those options. So in the future when you do see a proposed, you know, like a permit or, you know, a change in community plan, when that comes before you, you can pick up your EA, flip through it and say are all of these things going to happen, you know, because of this, because of this change in your zoning, or change in your community plan? And then you can make, in your zoning, you can start making conditions to say, yes, do this, or don't do that as part of that project. So what you're looking for today is what are all of the possibilities that could happen because of a change in community plan or a change in zoning? And what are the impacts associated with that? Because what you're trying to do is you're also trying to have a document that would justify any conditions that you might possibly put in the future on a project. Does that answer the question?

Mr. Starr: Yeah.

Ms. Flammer: It might be helpful –. There were – in the State law there are 12 criteria that are established that you're suppose to weigh. Well, first of all, you have to make sure there's enough information in here that you're comfortable with. Then you have to take that information and if you turn to page-50 in the document it will list out what the law states you need to be evaluating that information against. So, –

Ms. Wakida: Which document?

Ms. Flammer: In the final EA. And this is what we, as the department, had to do in formulating our recommendation. So if you go through those 12 after you've decided you have enough information, that's a separate thing you're looking at, you need to weigh that information against these and that's where you decide, you know, is there impacts that are fit into one of these 12 areas?

Mr. Starr: Okay, thank you. Commissioner Tagorda?

Mr. Tagorda: Can I just make a comment about this request by the applicant? I think there's not much said about West Maui Community Plan. In the first Maui – the current West Maui Community Plan have some objectives and policies that is very inconsistent with this project. The West Maui Community Plan calls for open space, more facilities for boating, recreation and all that. And this region of Olowalu, I think is the very . . . (inaudible) . . . place for that . . . (inaudible) . . . and because I heard that the applicant said they went beyond making an EA – although they don't need one. But I think you need one because this is a change in zoning of request, isn't it?

Ms. Flammer: I think there's nine triggers for an EA, and the trigger for this one is there's two. There's, one, it's a community plan amendment. I mean, if you read the technical details, it says if you're doing something besides agriculture or conservation. But because the TMK itself does have conservation district, that is another trigger – anything, project that's involved with those lands does need to have an EA.

Mr. Tagorda: And I learned over this past few months that Olowalu, especially the mauka side, will be developed, and that region is going to need parks. So the closet area that's going to be designated for park is this makai side of Olowalu. And I think that we're not being discussed with

us very well in that EA.

Ms. Flammer: I'm going to make two comments because I think you brought up some really good points.

Mr. Tagorda: Yeah, thank you.

Ms. Flammer: This one is when the application for the community plan amendment is required to be reviewed against the community plan policies and objectives. So it will be at that period of time when it will be evaluated against that. The EA doesn't – I mean, it just requires that it be consistent with the State's Long Term Environmental Policies. So, it's a little different process doing the EA. So when they come in for the community plan amendment, we are required to then evaluate their proposal against what those policies and objectives are. The second point is I believe the Olowalu town has a proposed site plan that does include a 30-some acre park in it as well.

Mr. Starr: Before we take action, I just have a comment. You know, I'm looking at page-16 and I see under 12-B, given the proposed – the location of the proposed dwelling from the government beach reserve, the dwelling is not anticipated to directly affect public access along the shoreline. And I know I kind of have great concern about approving a document that states that, and approving an assessment, because it seems that once that is done then basically we've accepted that this is not going to affect that access. However, I really think that a lot of the intent of this is to cut the access along the existing road, and to keep, to try to privatize that piece of the government beach reserve by not allowing people to get into it easily. So I really think that there maybe a, you know, conundrum here. Once this is accepted then we've gone on record believing that this is not going to affect access. And yes, maybe there will be a trail created on the beach reserve. Maybe. Maybe not. Probably not. I don't think they want access.

Ms. Flammer: The department – you're good to pick up on that – the department did ask for more clarification on that. And I'm sorry it got to you so late. The handout from today, Rory did expand on that. I don't if it addresses your concerns.

Mr. Starr: But it's vague and it's possible that maybe some day. Yeah, it's a definite possibility that . . . (inaudible) . . . Members, it's time to take action either by accepting this with a finding of no significant impact, deferring it, asking for more information, or feeling that a deeper amount of disclosure is necessary in which case it would be an EIS. Commissioner Freitas?

Mr. Freitas: Yes, I move to accept this with no significant affect. And it's an EA, it's going to come back before us, and we can address it at that time.

Mr. Starr: Okay, is there a second? Moved by Commissioner Freitas, second by Commissioner Hiranaga. The motion is –

Mr. Spence: The motion is to accept the EA – to make a finding of no significant impact.

Mr. Starr: Okay, all in favor, please raise their hand.

Mr. Starr: All opposed?

It was moved by Mr. Freitas, seconded by Mr. Hiranaga, and

The Motion to Accept the Findings of No Significant Impact – FAILED.

(Assenting: J. Freitas, K. Hiranaga, D. Domingo, O. Tagorda)

(Dissenting: W. Mardfin, W. Shibuya, L. Sablas, P. Wakida, J. Starr)

Mr. Spence: Four ayes. five nays. Motion fails.

Mr. Starr: Motion fails. There are two other possible motions. One is to defer. The other is to demand an EIS which would certainly provide a lot more information. Commissioner Hiranaga?

Mr. Hiranaga: I'm just wondering if the director can explain the process again for me because I quite don't understand it. But if the EA is approved, then the Planning Commission makes a recommendation on the community plan amendment, the change in zoning to the Council. But the Council takes action.

Mr. Spence: That's correct. The – all this before the Commission today is accepting the EA, or not, or however the Commission chooses. You're just make a finding that there's no significant impacts. This process potentially ends today. The applicant is going to come back to this body with the community plan amendment and the change in zoning. And so there's going to be another hold, another public hearing, and then another round of review. And then it's going to be going up to the County Council for action. Then after that is done, then they're going to be filing for SMA. I mean, there's like lots of review after this particular step.

Mr. Starr: Okay, thank you. Commissioner Hiranaga? Let's finish up with this. Commissioner Hiranaga, if you have another comment or question or motion, please go ahead.

Mr. Hiranaga: Thank you. So if we were to find a finding of no significant impact, are we bound by this document in our decision making in the community plan amendment application and change in zoning application?

Mr. Spence: No, you are not bound by what you find today.

Mr. Hiranaga: This is an informational document?

Mr. Spence: This is an informational document only.

Mr. Hiranaga: And it's circulated to all the agencies that comment on the application for change in – the community plan amendment and change in zoning?

Mr. Spence: That's correct.

Mr. Hiranaga: It's just an informational document?

Mr. Spence: That's correct.

Mr. Hiranaga: It doesn't bind them from putting conditions or comments?

Mr. Spence: No, there can be recommended conditions on the change in zoning, on SMA. You know, there's going to be a lot other review coming down the line, and before this body.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I'd just like to say, mine was a very close vote, and it was primarily on the fact of the kiawe trees and it strikes –. You said we couldn't adjust the document to reflect the concerns. And so the kiawe trees could mean there's a significant impact. If there were an ability to modify the document, I might have voted the other way. As I say, I was very close on that.

Mr. Starr: Is anyone wish to make another motion? You're out of order Mr. Frampton.

Mr. Freitas: I'd like to move to defer.

Mr. Starr: Is there a second?

Mr. Mardfin: I'll second.

Mr. Starr: Moved by Commissioner Freitas, seconded by Commissioner Mardfin. The motion is –

Mr. Spence: To defer this item to a later meeting.

Mr. Starr: Okay, all in favor please their hand.

Mr. Freitas: I'd like to make a statement. I believe in my previous motion people didn't understand that it was just an informational document. It wasn't a binding document. This is just an informational document. That's why I'm supporting it. That's why I made the motion.

Mr. Starr: Okay. Thank you. This is the document on which later decisions are made. Commissioner Mardfin?

Mr. Mardfin: That was my point. If we're saying something in it, by accepting it with no significant impact, we're saying what is in there is correct and fully and complete, and it could be used against us down the road. So that's why I would prefer not to have that . . . (inaudible) . . . in there.

Mr. Starr: Okay, all in favor of the motion, please raise their hand. The motion – what's the motion?

Mr. Spence: The motion is to defer this item to another meeting.

Mr. Starr: All in favor, please raise their hand. All opposed?

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

The Motion to Defer the Matter to a Later Date. – FAILED.

**(Assenting: J. Freitas, W. Mardfin, K. Hiranaga, D. Domingo
Dissenting: P. Wakida, L. Sablas, W. Shibuya, J. Starr, O. Tagorda)**

Mr. Spence: Five nays.

(Mr. Orlando Tagorda excused at 2:35 p.m. from the commission meeting.)

Mr. Starr: Okay, is there any other motion?

Mr. Hiranaga: Mr. Chair, just from a point of order, I noticed the chair is voting when it's not necessary for our deciding vote, so I'm just wondering why you're voting.

Mr. Starr: I only voted when I felt it was necessary.

Mr. Hiranaga: We did not have four or five ayes, so there was not action that was going to be taken on the motion. So I'm just curious why you're voting.

Mr. Starr: I voted if my vote makes a fifth that's all. Commissioner Mardfin?

Mr. Mardfin: I'd like to ask the planner, Gina, I think you understand what our conundrum is at this point. Do you have any recommendations to us?

Ms. Flammer: Yeah, maybe our director could talk a little about – one of your options would be accept with modifications, today, if you wanted to go ahead and think about that. He has the – the planner has offered up many modifications and the letter to you, but if there were other areas that you thought were important, you could do that today. You could ask for additional information to be incorporated and have them come back.

Mr. Mardfin: I would, personally, I would defer to Commissioner Wakida if she has a suggestion for modification.

Mr. Starr: We do have a very full agenda, including public hearings that need to be done, and people who are returning back to us. You know, unless there's a way to deal with this quickly, I would suggest perhaps we defer it and then have it come back.

Ms. Wakida: If it comes back, does it come back with any modifications?

Mr. Starr: Well –

Ms. Wakida: What's the process?

Mr. Starr: Gina?

Mr. Flammer: I would ask what would you like to see?

Ms. Wakida: Okay.

Mr. Starr: I think that's reasonable. So I will accept a motion to defer, you know, with comments to be added, if there's a desire to make that.

Mr. Freitas: So move.

Mr. Starr: Is there a second please?

Ms. Donna Domingo: Second.

Mr. Starr: Moved by Commissioner Freitas, seconded by Commissioner Domingo. The motion is –

Mr. Spence: To defer this item to a later date, and I assume there's going to be –

Mr. Starr: Add comments.

Mr. Spence: Comments.

Mr. Starr: Okay, comments? So we have a motion –

Mr. Spence: To defer this item with comments. I'm assuming that it's going to come as amendments to the motion.

Mr. Starr: I think we –. I think if the –. Well –. Okay.

Mr. Giroux: Chair, during discussion of the motion, maybe they can formulate comments that they want addressed and just come to a consensus amongst the members that those are the comments that they want to address.

Mr. Starr: Okay. Please, who's got a comment?

Ms. Wakida: Well, one of my big concerns is the conservation area, and there's a lot of aggressive language all over this document about removing kiawe and so on. It seems pretty, as I've said, pretty aggressive. I'd like that removed or toned down because I think that's a significant environmental impact – the clearing.

And one more. And I'd like a little bit more information on the – there wasn't much about the historic sites, and I'm not clear if it's on the border of the property or the conservation property in question. But if there could be a little more information about those, and access or not from the DLNR.

Ms. Flammer: So you're asking for more clarification on the vegetative removal? Or more than that?

Ms. Wakida: I guess, yeah.

Ms. Flammer: Okay.

Ms. Wakida: There's more vegetation removal suggested in this document than I'm comfortable with.

Mr. Starr: I'd like clarification on a plan to create definitive lateral access along the shoreline. And in addition, I would like more historical data on the existing road, and that the date it was created. Any others? Commissioner Sablas?

Ms. Sablas: I would also like to see the preservation of open space addressed as it relates to the West Maui Community Plan which is really important for that area.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I'd just like to make sure I understand what's going on. It seems to me that we're saying the final EA was insufficient in terms of information so we're merely asking for more information in it. And to deal with that we're just deferring that, so that we can get that additional information. It's not a negative at this point. It's just we're saying we need more information.

Mr. Starr: Correct.

Ms. Flammer: That's your second option that's listed in your letter that was to you with the document.

Mr. Mardfin: Thank you.

Mr. Starr: Do you have any other request for additional info? Okay, let's vote on it. All in favor please raise a hand.

Mr. Spence: There's seven ayes.

Mr. Starr: All opposed? Okay, that passes. The item is deferred. We're going to take a 10 minute recess. We're going to come back for Maui Electric, followed by Nellies on the Beach.

It was moved by Mr. Freitas, seconded by Ms. Domingo, then

VOTED: To Defer the Matter to a Later Date in Order to Receive Additional Information Requested.
(Assenting - J. Freitas, D. Domingo, K. Hiranaga, W. Mardfin, W. Shibuya, L. Sablas, P. Wakida)
(Excused - O. Tagorda)

(The Maui Planning Commission recessed at approximately 2:40 p.m., and reconvened at approximately 2:50 p.m.)

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

1. **MR. ED REINHARDT, President of MAUI ELECTRIC COMPANY, LTD. requesting a County Special Use Permit for the Kuihelani Substation Project to meet increased anticipated demand for future electrical needs of Maui County to include the installation of improvements related to the electrical substation such as switchgear, circuit breakers, transformers, generators, a control building, poles, concrete pads for equipment and steel structures to support equipment in the County Agricultural District on property located directly east of the Kuihelani Highway/Maui Lani Parkway intersection at TMK: 3-8-006: portion of 003, Kahului, Island of Maui. A nine(9)-foot high fence will surround the site. New overhead transmission and distribution lines will be brought to the substation from existing lines in the area. (CUP 2010/0006) (P. Fasi)**

Mr. Starr: Hear ye, hear ye. Maui Planning Commission meeting, March 8, 2011, is back in order. Return to our wise Director Will Spence for an update.

Mr. Spence: Thank you Mr. Chairman. Item D-1, Public hearings. This is for Mr. Ed Heinhardt, of Maui Electric, requesting a County Special Use Permit for Kuihelani Substation Project. Our staff planner is Paul Fasi who'll present the project.

Mr. Starr: Take it away Mr. Fasi.

Mr. Paul Fasi: Thank you Mr. Chair. Good afternoon committee members. This matter arises from an application for a County special use permit filed on May 26, 2010. The applicant is requesting a County special use permit to construct a new electric substation on approximately one acre of land. And I'm just going to be very brief on the department's presentation, and the applicant does have a five minute presentation. I'm not going to get into the specifics of the project. I'm going to give, however, related to State and County land use code.

The land use designations for State community plan and County zoning are all ag. It's not located in the special management area. As far as State land use regulatory review, the proposed action is an approved and permitted use in the State ag district, and so therefore does not require a State land use commission special use permit. The County land use regulatory review so calls triggers for a County special use permit. It is in the County ag district and it is listed as a special use as a major utility facility in the County ag district. So it is a permitted use with an approved County special use permit. In regards to the Wailuku-Kahului Community Plan, as long as the proposed use is in concert with Chapter 205 of the Hawaii Revised Statutes, the community plan finds it acceptable.

In summary, the proposed use is a permitted use in the State Ag district and is consistent with Chapter 205. It is a permitted use in the County ag district with an approval of a special use permit which we are reviewing today. And it is consistent with the Wailuku-Kahului Community Plan. So as far as land use regulatory review, it's pretty straight forward. I'm going to turn it over to the applicant. They have a five minute presentation and they will fill you in on the details of the project itself.

Mr. Starr: Okay, take it away Ms. Skogg.

Ms. Kim Skogg: Hello. Good afternoon commissioners. And like Paul said, I'll try and keep our presentation short. But my name is Kim Skogg, and I'm with Munekiyo & Hiraga, and we're representing Maui Electric for the County special use permit application for the Kuihelani substation. And real quickly our project team we have from Maui Electric the project engineer, Fred Oshiro, and we have our civil engineer, Stacy Otomo from Otomo Engineering, and Mike Munekiyo and myself are representing Munekiyo & Hiraga.

So just to give you a quick overview of the project. This is an electrical distribution substation which means this substation takes 69 kilovolt power and steps it down to 12 kilovolt distribution voltage to actually power your household and businesses. And this substation will be a part of the Maui Electric central Maui service area which includes Kihei – I mean not Kihei – Kahului, Wailuku, Waienu, Kanaha. And the purpose of this substation is to alleviate overloads on three existing substations in Kahului. So that's the Dairy Road substation by K-Mart, the Kahului substation that's near by Maui Waena Elementary School or Intermediate School, and Waienu substation which is just down the road over here. So MECO did a distribution planning study last year which found that those three substations are at or near capacity. So this Kuihelani substation would alleviate the load on that and help to power the Maui Lani area, Maui Business Park in the Waialae Road area. And importantly, this substation will also provide backup capacity to reduce the risk of power outages in the central Maui area. And notably in the future this substation could play a part in Maui Electric's implementation of the Hawaii Clean Energy Initiative which if you aren't familiar with that, that's a partnership between the utilities and the State to achieve 70% renewable energy by 2030. So future additions to this substation could include a photo voltaic array, battery energy storage systems and distributed generators.

So the location of the project – this Kuikahi Drive right here and Maui Lani Parkway. This is the Dunes Golf Course and Kuihelani Highway, so the substation is right across from the end of Maui Lani Parkway. If you go driving there you'll see a fallow patch of land, but we'll show you a picture in a few minutes, or a couple of minutes. But I'll note – sorry – that is not the original site for the substation that Maui Electric looked at. There was actually another site they were looking at within the Kahului residential area, but they had a public meeting with the community and there were some concerns with the substation being so close to residences. So Maui Electric looked for another site, and they chose this site here because it's removed from the residential areas, but it's close to existing transmission infrastructure. Yeah, so it's a strategic location.

But like Paul said, the underlying designations are all ag. And this is a permitted use in the State ag district, but we need a special use permit due to the substation being in the County agricultural district.

I don't know how well you can see this, but this picture is taken from the end of Maui Lani Parkway, and we're looking east towards Haleakala. And this is the stop light right here. There's a paved cane haul road which will provide access to the substation. And this fallow piece of land is where the substation will actually go. And the substation, the height of the substation components will be pretty much similar to the height of the stop lights. And also the substation will be fenced in and it will be set back 35 feet from the edge of the highway, so it will actually be a little bit in to this grassy area.

And this photo is taken a little to the north or the left of the last photo. And you'll see this is a transmission line that's running through the cane field, and that is the transmission line that will be feed to this substation.

So this is the site plan which I believe you all have a copy of. Kuihelani Highway is at the top. Maalaea would be to the left. The stop light is right around here with the paved cane haul road that will provide access to the substation. There's going to be a paved road that provides access to the substation components, and the rest of the land inside of the substation will be graveled to prevent dust and weeds from popping up. This is the 35 foot no build zone which will provide a buffer between the edge of the highway and the start of the substation. And Maui Electric is going to put a hedge, a landscape hedge in here with native plants to kind of buffer the fence from the roadway. The substation components includes like transformers, switch gears, circuit breakers, things like that. And this the future area for the photo voltaic array, the distributed generators, and the battery energy storage systems.

Real quickly, the drainage plan for the project. Because this is a former cane field, there's no really drainage system in place. There's a concrete swell that goes along Kuihelani Highway that collects sheet runoff, but MECO is going to put a detention basin in this corner so that will catch all the runoff that will result from development. And actually there will be less runoff going onto Kuihelani Highway than does now after the substation is built.

So to summerize, the substation will alleviate overloads in the central Maui system, and reduce the risk of power outages. It will provide distribution power for new and existing land uses in the central Maui area. In the future this could play a part, or it's designed to play a part in Maui Electric's implementation of the Hawaii Clean Energy Initiative. We're here for the special use permit because we're in the County ag district. This location is removed from residential areas, but it's close to existing infrastructure which benefits pretty much everyone. And because we're in an old patch of cane field there's no, you know, native plants to be worried about. There's no archaeological features or anything. And we're actually going to have less runoff onto the highway than we do now. So, that concludes my presentation. If you have any questions.

Mr. Starr: Members, questions? I have. Oh, Commissioner Mardfin?

Mr. Mardfin: I have a couple, or ask a couple. I think you kind of answered one of my question which was what's the purpose? You're bring – as I understand it you're bringing high voltage power in and then sending lower, high but lower, voltage out, is that correct?

Ms. Skogg: Yeah, transmission voltage which basically comes from the power plant, and that's kind of high capacity. They're 69 kilovolt lines. That's what runs through the cane field, and it comes to this substation, and there's transformers that's stepped on the voltage to 12 kilovolt voltages which actually what gets fed into your houses.

Mr. Mardfin: Will this lower cost because there's less – the word is not friction – less resistance?

Mr. Starr: Line loss.

Mr. Mardfin: Line loss? Thank you.

Ms. Skogg: I'm not sure if this would reduce cost, but it's kind of stability in the system. This is just another –

Mr. Mardfin: So if one goes out, you've got a couple more . . . (inaudible) . . . ?

Ms. Skogg: Right, it's redundancy. Yeah.

Mr. Mardfin: My second question was we got this report, 10th annual status report, developing power generating needs for the island of Maui, July 2009 to June 2010. This wasn't mentioned. Is that because it didn't exist at that point?

Ms. Skogg: When –

Mr. Mardfin: This talks about the Waienu generating station, Maalaea generating station, Kahului generating.

Ms. Skogg: Yeah, that's future plans. That's beyond this substation project.

Mr. Mardfin: No, these are past. Oh, this current one is future, so it wasn't listed?

Mr. Starr: Please don't speak from back there. If you wish to, come up to the mic and introduce yourself.

Ms. Skogg: Okay, we'll have Fred Oshiro. He's the engineer.

Mr. Starr: Okay, come on up and introduce yourself because we tape the meeting.

Mr. Fred Oshiro: Hello, my name is Fred Oshiro, I'm a staff engineer, engineering department now. I guess when we developed the layout of the substation, you know, there was a lot of empty spaces, so what we wanted to do is instead of just using it as storage, you know, maybe we can use it for, you know, putting in equipment that can support that HCEI.

Mr. Mardfin: You know, that wasn't my question, but I think in talking, these are generating stations, and you're talking about a transmission substation. Because this report dealt with your generating station. Maybe that's what the distinction is.

Mr. Oshiro: Yes. It's a substation. It has generating capability with the future, you know, proposed equipment. But as a substation is just to, you know, convert the higher voltage to the lower voltage.

Mr. Mardfin: Okay. I get it. Now I understand why it wasn't on here. On example one, in exhibit-1, there's a thing called the fire extinguisher for electrical fires, and there was a reply, but I didn't exactly understand it. It's a reply to exhibit-1. It's a letter from, to Jeffrey Eng, from Kimberly Sang. MECO standard practices to install and maintain a properly sized portable fire extinguisher specifically rated for electrical fires. How does that work?

Mr. Oshiro: We have, in some of the older substations, we have like a portable roll away types fire extinguishers.

Mr. Mardfin: Okay. But that's not what you're going to put in. It is what you're going to put in?

Mr. Oshiro: Whatever is appropriate.

Mr. Mardfin: Does this have chemicals in it?

Mr. Oshiro: Normally, yeah. I think it has to be filled with chemicals that can go on electrical fires.

Mr. Mardfin: So clearly not water.

Mr. Oshiro: Yeah, not water.

Mr. Mardfin: Okay. So, I'm just wondering if there's potential leakage from this that could be hazardous.

Mr. Oshiro: I'm not sure.

Mr. Mardfin: Okay. That's enough for now.

Mr. Starr: Okay. Commissioner Sablas?

Ms. Sablas: I'm just concerned about the location as far as egress for our access from the main highway into the area because I travel North Kihei Road, and a lot of times those big trucks have to make a left turn, and you know, at the blind area, are provisions made to have – because that's a really busy highway – a dedicated, you know, left lane turn? I'm not sure if that was explained as far as safety access to and from the project site.

Ms. Skogg: For south bound travel, there is a left turn lane on the highway already, so yeah.

Mr. Starr: Okay, Commissioner Wakida.

Ms. Wakida: Is this station going to be lite up at night?

Ms. Skogg: Yeah, there will be lighting for security purposes.

Ms. Wakida: Can you talk a little about what kind of lighting? Is it bright lights? Is it –. Because you're on a nice dark stretch of highway here.

Ms. Skogg: Well, there's street lights in this part, right around where the intersection is.

Ms. Wakida: Uh-huh.

Ms. Skogg: Yeah. Actually fronting the intersection – I mean, fronting the substation site already. But the lights will be just enough to light it so there's no one that would be hanging around the substation.

Ms. Wakida: I don't know if I remember reading anything about it, but there would be –

Mr. Starr: Cut off?

Ms. Wakida: Yeah.

Ms. Skogg: Downward shield, and yeah.

Ms. Wakida: Okay. Thank you.

Mr. Starr: You've got to talk into the mic.

Ms. Skogg: It would be the same kind of lighting that's at MECO's power plant which is downward shielded.

Ms. Wakida: Okay.

Mr. Starr: Commissioner Shibuya?

Mr. Shibuya: I just wanted to address the need question I think was brought up by one of the commissioners. In the Wailuku-Kahului community plan, in the section called project districts, there are four districts, and I'll just use this opportunity to quickly go over it. Project District One is Maui Lani, and it's the build out of approximately 3,300 units. Project Two is in Piihana, and that has a build out of about 390 units. And the Project District Three has a build out of 2,000 units. Project Four District is Waihee, and that is not defined at this time. When you start looking at this kind of build out, MECO is doing a proactive look ahead and trying to provide adequate switching power to these various new developments, and I applaud them for doing such a thing. In terms of complying with some of these community plan issues here, one that really strikes me, and it hit me when I started looking up Kaahumanu Avenue and I see these tall metal poles. And instead of seeing the beautiful Iao Valley, you see all of these ugly metal, electrical poles. I would like to have an opportunity here, if it is possible to consider undergrounding of some of these power lines. The reason for that is on page-13 of the same community plan, it's talking about the environment, and it says a clean and attractive, physical and natural environment in which man made developments or alterations to the natural environment relate to sound environmental and ecological practices, and important scenic and open space resources are maintained for public use and enjoyment. So this comes directly from some of the goals in which the community plan would like to see. And I think we would try to see if we can work something out here.

Mr. Starr: Following up on that, you know, I'd like to ask what new lines are proposed that will radiate out from here with the jolly green giants marching off into the distance. I recently heard a couple of tourists talking at Kaahumanu Center, and they were describing Maui of Pole land, and I thought it was quite . . . (inaudible) . . . So could you tell us or have the engineering department tell us what we're going to look at in terms of new lines radiating out from there and spoiling our view scapes?

Ms. Skogg: So this substation there aren't really going to be any new lines coming out. Like I pointed to you before, there's a transmission line that's within the cane field. And there's going to be an extension of that to feed the substation. But actually, there's one – sorry, it's not on the picture but there's two old HC&S poles that will be replaced – that will be distribution poles. But only those

two poles will be replaced. And then once the line crosses the highway, it will go underground.

Mr. Starr: So there won't be new radio lines going?

Ms. Skogg: No. No, no, no. Yeah, there's just going to be those two poles that are replaced which will carry the distribution lines across the highway, and then from there, it will go underground and into Maui Lani.

Mr. Starr: Okay, and Maui Electric -. That's on the record. Could you come up and confirm that? Because now that it's on the record, that becomes something for the future.

Mr. Oshiro: Let me help her. Along Kuihelani Highway, it's underground system already, going to Maui Lani. So what we're going to do, we're actually going to install two poles adjacent to the highway, and we're going to cross over to the existing HC&S old pole line. And then we're going to dive under and go into the existing underground infrastructure. From there it goes underground towards, you know that Pomaikai Elementary School. And also it goes back towards, you know, Kahului way, the Harley Davidson way.

Mr. Starr: Okay. Good. So I commend that. Commissioner Wakida?

Ms. Wakida: So how many new poles are being built?

Mr. Oshiro: Two new poles adjacent to the highway, on the Kihei side. And then, we're going to - there's poles already there, two wood poles, and there's an overhead line that crosses the highway. We're going to replace those two poles and then we're going to add another pole on the Kihei side of Kuihelani Highway.

Ms. Wakida: Okay. Because it does say in here that six new electrical poles will be installed. It said the wooden would be replaced by 55 foot steel poles.

Mr. Oshiro: There's poles inside the substation. I'm talking about the poles outside. You know, what's inside?

Ms. Wakida: Okay. And then the 45 foot. And there will be two 80 foot poles.

Mr. Oshiro: Yeah, the two 80 foot poles are - these are two 80 foot poles, and they're to get the transmission line from the existing transmission pole line here to the structures over here. So these have to be tall because they're coming from . . . (inaudible) . . . and we have to come from across. These two are the distribution poles. These are inside the station. And there's another pole down here that's an existing pole, right here, so right here and right here. Actually, yeah, there's one, two - two new poles here. Then we're going to replace the pole that's here, and here also, so this four - so six all together, yeah.

Mr. Starr: We ready for our public? Commissioner Shibuya?

Mr. Shibuya: I just wanted to explain a little bit more. You noted that they photo voltaic banks or arrays there, and I believe theses . . . (inaudible) . . . I believe these are actually to recharge the

batteries that they are planning to install. And these batteries are energy storage batteries that accommodate for fluctuations. And whenever you put in renewable energy and these will help smooth out the power of distribution. You can correct me.

Mr. Oshiro: Yeah. No, perfect.

Mr. Shibuya: And so that's what the photo voltaic array is actually for. To provide through that power and recharge those, I think, couple mega watts of batteries that you probably are going to be putting in.

Mr. Oshiro: Yes.

Mr. Starr: We're going to proceed with our public hearing now. This is a public hearing item. So any members of the public who wish to testify on this please make yourself known. Chris? No? Not seeing any, public testimony is closed. Commissioner Mardfin?

Mr. Mardfin: Can I ask the engineer one quick question?

Mr. Starr: Yeah, sure. Ask him a slow question.

Mr. Mardfin: I'm concerned about transmission lines. If you replace transmission lines, do you usually follow the same route, or do you typically move them significantly? I'm not asking about this in particular. I'm asking in general. When you replace transmission poles, you usually keep the same right of way, don't you? It would be very unusual to divert, wouldn't it?

Mr. Oshiro: I don't quite understand the question.

Mr. Mardfin: If you're replacing electric poles, do you usually keep the same route that they currently have?

Mr. Oshiro: Yeah.

Mr. Mardfin: It would be unusual to divert to a different route.

Mr. Oshiro: Yeah.

Mr. Mardfin: Thank you. One last one. Exhibit-9 talks about a civil defense siren, and exhibit-9 says that MECO basically said that they don't have the authority to grant the siren replacement and suggest the land owner, A&B, be contracted directly. Has that been done? There's a letter from –

Mr. Oshiro: I don't think so.

Mr. Mardfin: They haven't been con – you haven't contacted A&B?

Mr. Oshiro: I think –

Mr. Mardfin: State Civil Defense wanted a siren.

Mr. Oshiro: I guess the State should contact A&B.

Mr. Mardfin: You folks aren't going to do it?

Mr. Oshiro: Actually, we're getting an easement for the property, yeah, so it's not really our right, I think, to give it to them.

Mr. Mardfin: Okay, thank you.

Mr. Starr: Commissioner Shibuya?

Mr. Shibuya: On this issue on visual blight, I would like to have a little more descriptive explanation as to the landscaping plan, and how you plan to place your berms, and how high are these berms, and how will this impact the view from both the highway, as well as from the golf course area?

Ms. Skogg: There's actually no berms that will be made in front of the substation. But that grassy area you saw in the photos, there's going to be 35 feet of that. But within that, MECO is going to plant a hedge, and that hedge will be native plants like Ma'o, Ilima, A'alii to grow in front of the side of the substation that faces the highway.

Mr. Shibuya: The reason why I'm asking possibly or suggesting berms is that you have mischievous or vehicles having some accidents, and the berms would tend to absorb much of the energy before the vehicle gets into the substation area. Also when you have this build up, the vegetation doesn't have to grow that tall, and it will cover a greater portion of your substation. Also the water, it diverts the water that's from surrounding areas from getting into the substation.

Ms. Skogg: We'll have Stacy come up.

Mr. Starr: Okay. Mr. Otomo, please introduce yourself. Welcome.

Mr. Stacy Otomo: Good afternoon Chair and member of the Planning Commission. My name is Stacy Otomo. To answer Commissioner Shibuya's question, if you noticed back on the photos back here, the ground is already elevated approximately two feet higher than the highway, so there is some sort of berm that is existing. And what happens is as you go further to the north east, the land starts actually getting lower than the highway itself. But there is sort of like a natural berm there to begin with. And if at all possible we can look at maybe increasing it a little bit and putting some landscaping on there. That is certainly a possibility.

Mr. Shibuya: That's what I was suggesting.

Mr. Otomo: Okay.

Mr. Starr: Thank you members. We ready for some action or ask questions? Commissioner Mardfin?

Mr. Mardfin: My question, Paul, I was confused when I was reading your report. And what confused me was on page-8 of your report, at – I'm sorry, page-10, my mistake – at the bottom of page-10,

it says County land use regulatory review triggers for the CUP. Should that be SUP?

Mr. Fasi: No, it's a County Special Use Permit.

Mr. Mardfin: So you're using CUP for County special use permit, rather than Conditional Use Permit?

Mr. Fasi: Conditional Use Permit is a CP.

Mr. Mardfin: Is what?

Mr. Fasi: Is a CP.

Mr. Mardfin: CP. Okay. Because I was reading and going, what's going on?

Mr. Fasi: Yeah the acronyms don't really match up. I agree with you.

Mr. Mardfin: So it's not SUP.

Mr. Starr: Okay, are we ready for some action? Who would like to take some action? Okay, let's have recommendation Mr. Fasi in 10 words or less.

Mr. Fasi: The application complies with the standards for a County special use permit per Maui County Code 19.5.10 based on the proceeding conclusions of law, the Maui Planning Department recommends approval of the County Special Use Permit subject to the following conditions of which there are six. Most notable is probably the expiration date, and we would like to see it run till 2031 if not longer. That's 20 years.

Mr. Starr: Okay, would someone like to make a motion? Commissioner Wakida.

Ms. Wakida: I move that we go with the department's recommendation which is to accept – help me.

Mr. Starr: Till 2031.

Ms. Wakida: No, I meant –. Let me back up here.

Mr. Starr: You're recommending till 2031?

Mr. Fasi: I'm just pointing out at one of the conditions, one of the notable conditions, just to let you know that's going to run for 20 years.

Mr. Starr: Okay.

Mr. Wakida: No, I'm not going – I didn't mean to single that out. I meant to go with the Planning Department's recommendation that we adopt the department's report, and authorize the director to transmit such Findings of Fact, Conclusions of Law, Decisions and Order on behalf of the

Planning Commission.

Mr. Starr: That's excellent. And second by Commission Sablas. The motion is, Director?

Mr. Spence: The motion is to approve as recommended by staff.

Mr. Starr: All in favor, please raise a hand.

Mr. Shibuya: Just a minute.

Mr. Starr: Wait a second. Commissioner Shibuya has –

Mr. Shibuya: I would like to make a friendly amendment to include to take appropriate steps to reduce the visual blight by creating berms especially fronting the Kuihelani Highway.

Mr. Starr: Okay, so we have an amendment being offered. Is there a second to the amendment?

Mr. Mardfin: I'll second it.

Mr. Starr: Moved by commissioner Shibuya, seconded by Commissioner Mardfin. The amendment is –

Mr. Spence: To –

Mr. Starr: For berms.

Mr. Spence: Yes. To incorporate berms to – landscape berms to –

Mr. Starr: Familiarate. That's a good word.

Mr. Spence: Familiarate visual impacts especially along Kuihelani Highway.

Mr. Starr: Good. Well done. Okay, discussion commissioner Hiranaga?

Mr. Hiranaga: I would like the applicant to comment on that. I'm wondering if the amendment is more practical and reasonable, or are you mandating grounds?

Mr. Starr: Okay, who wants – Mr. Otomo or – who wants to comment? Yeah, come on up. Introduce yourself again.

Mr. Oshiro: Fred. Engineer. You know, one thing that we – we got to balance this landscaping in front of our substation because one of the things we want to do is we want to see inside for security purposes. So, you know, we got to kind of balance, you know, the height of it. Like if you noticed along Dairy Road, that substation, the hedge is not really tall, but it's kind of cut to a certain level. And the reason why is because we want to see inside it because if there's someone inside that's not suppose to be there, we want to know about it. So, it's kind of a balancing act, yeah.

Mr. Starr: Does that mean, you know, you don't really like the idea of berms?

Mr. Oshiro: No. It's just that –

Mr. Starr: Commissioner Hiranaga, follow up question.

Mr. Hiranaga: So this is a homeland security issue?

Mr. Oshiro: Yes. Exactly.

Mr. Hiranaga: So as long as it does not jeopardize our homeland security, for reasonable and practicable, you should amend your language.

Mr. Starr: Can we vote on the amendment? Okay, the amendment is for berms. All in favor of the amendment? He's mandating is the amendment. Okay, all in favor of the amendment which mandates berms, please raise your hand. All oppose?

Mr. Spence: Six oppose. Motion fails.

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

The Motion to amend the motion to include taking appropriate steps to reduce the visual blight by creating berms especially fronting the Kuihelani Highway – FAILED.

(Assenting: W. Shibuya)

(Dissenting: K. Hiranaga, J. Freitas, W. Mardfin, D. Domingo, L. Sablas, P. Wakida)

(Excused: O. Tagorda)

Mr. Starr: Okay, main motion. Main motion is –

Mr. Spence: The main motion is to adopt – is to approve according to the conditions by staff.

Mr. Starr: All in favor, please raise their hand. All opposed?

Mr. Spence: Six in favor. Motion is carried.

Mr. Starr: Good. Make lots of power.

Mr. Fasi: Thank you.

It was moved by Ms. Wakida, seconded by Ms. Sablas, then

VOTED: To Accept the Recommendation of Approval of the County Special Use Permit by the Department.

(Assenting - P. Wakida, L. Sablas, K. Hiranaga, J. Freitas, W. Mardfin, D. Domingo, W. Shibuya)

Excused: O. Tagorda)

E. UNFINISHED BUSINESS

- 1. MR. DON NELSON of NELLIE'S ON THE BEACH, LTD., requesting a Special Management Area Use Permit in order to construct the Nellie's Wedding and Catering Project, a 6,816 square feet commercial building, 41 on-site parking stalls, one (1) loading zone, landscape planting, and associated infrastructure improvements to support a wedding hall, accessory restaurant, and retail shop in the B-R Business Resort District at 85 North Kihei Road, TMK: 3-8-013: 011, Kihei, Island of Maui. (SM1 2010/0001) (G. Flammer) (Public hearing conducted on February 22, 2011.)**

Mr. Starr: Commissioners, are we ready to go or do we need a break? Let's go.

Mr. Spence: Commissioners, item-E, unfinished business. Mr. Don Nelson, of Nellie's on the Beach, requesting an SMA permit in order to construct Nellie's Wedding and Catering Project, and et cetera. Gina Flammer is the staff planner, and other items have been handed out to the Commissioners.

Mr. Starr: Ms. Flammer, please.

Ms. Flammer: Okay. Good afternoon, again, Chair Starr, Commissioners. I'm going to begin by summarizing where we are with this permit process for this project. At your last meeting which was held on February 22nd, the department and the applicant gave an overview of the project. There was an intervention filed by 40 residents who live on the property adjacent to the south. A settlement was reached, and the agreement was signed during the hearing. Happy that settlement was presented to the Commission. The intervention was then withdrawn. However, the intervener's attorney requested that the Commission adopts those settlement conditions onto the SMA permit. A public hearing for the project was held where public testimony was accepted. The department did present it's recommendation and then the Commission deliberated and held two votes about adding the additional conditions on the project. Neither motion passed due to a lack of votes. The items were deferred until this meeting when more members would be present. The deferral did give time for a new settlement to be crafted, which a copy has been distributed to. That new settlement does have some stronger, private enforcement of those – of the settlement of the conditions in there. It was asked of the department to add the conditions relating to the building on to the SMA permit. Those have been included in the department's recommendation which was handed out to you this morning. Our recommendation does not include the business operational conditions. If you would like for the benefit of the two Commissioners who were not here at the last meeting, we could go ahead and give a brief overview again of the project. Copy of that previous presentation was handed out for you to review. I recognize you're running late, so it's up to you.

Mr. Starr: Let me –. I want to paraphrase that again for those who were not here. The applicant is proposing a wedding facility and have a design for it. And there was concerns by the neighbors, the people in the condos next door, and they were going to intervene, but they settled with the applicant. They gave a list of suggested conditions. When it came before the body, the acceptance of those conditions was not – failed on a vote, so the whole thing was deferred. Now it's back with conditions – with less conditions because some of the conditions that they had agreed upon were

taken cared of in a private – a private letter agreement. So, does any of the Commissioners have any questions or want more of an organic presentation on the project? First Commissioner Shibuya, then Commissioner Sablas, then Commissioner Wakida.

Mr. Shibuya: First of all, thank you. I did get this amended settlement agreement at the start of today's meeting, and so I did not have a chance to look through it. But I did review the previous background statements and settlement agreement. And so I just wanted to know the net difference or what was from the earlier agreement, is there something substantially different?

Mr. Starr: Ms. Flammer.

Ms. Flammer: It's the end of the document where it shows the private enforcement of it. So if you compare the two, you'll notice it's the last couple of pages that are different. The original settlement conditions remain the same. What they did is they outlined a strategy for enforcement where both parties understand what will happen.

Mr. Starr: Okay, Commissioner Sablas next, then Commissioner Wakida.

Ms. Sablas: I just wanted to make note that I did receive copies of the tape, and I had listened to – I had to find a cassette player, but I did listen to it.

Mr. Starr: Commissioner Wakida?

Ms. Wakida: I just wanted to make a comment to the Commissioners that were not here that one of the items, one of the concerns that came up was who was going to enforce all of the conditions and should it be the Planning Department's job to be running out there enforcing music and so on? So, this was a sticking point. And so the enforcement has been – that's why the enforcement issue.

Mr. Starr: I wanted to comment too that, you know, we did go into the design elements in a lot of depth, and it really seems to be very energy efficient. It's a very green project. It's not going to – it's going to retain all the runoff and not damage the reefs, and it seems to be really in keeping with the traditional Hawaiian design. So I for one am happy that the neighbors have found common grounds with the applicant. Perhaps, we should see if there's any public testimony. So if there are any members of the public who wish to testify on this please come forward, introduce yourself and thanks for being patient.

Ms. Kathleen Heller: Sure. Good afternoon Commissioners. My name is Kathleen Heller. I'm one of the owners and representative of many of the owners at Nani Kai Hale who filed the initial petition to intervene. After listening to the Commission's concerns with enforcement primarily, our concerns for those Commissioners who were not here the last time, were primarily, they were not designed related. They were primarily related to noise and the livability issues. But now that we've had additional time to craft an amendment, we basically heard your concerns that were voiced of the hearing on February 22nd, and we, along with Mr. Nelson, has sat down and reached a mutual agreement and amended our original agreement. We believe that this amendment amended settlement agreement, which was signed today and I believe you have copies of it, is beneficial to all parties. We believe it's beneficial to the County because it does not add the potential for any costs of enforcement related issues, ongoing. We also believe that it's beneficial to the owners at

Nani Kai Hale because it outlines a process by which we can, without seeking additional legal action potentially mediate any issues that may arise in a neighborly fashion first of all. And thirdly, we believe that these six building conditions, if added to the permit, will benefit Mr. Nelson by speeding the process should you agree to adopt them and make the decision today to approve his SMA permit application. Lastly I guess I would like to thank the Commissioners, and most definitely I want to thank Gina Flammer who has been an outstanding assistance to me in this process. It's the first time I've ever done anything like this, and I really would like to thank you. Okay. Very good. Thank you.

Mr. Starr: Thank you. Any other members of the public wishing to offer testimony? Not seeing any. Last call for testimony. Public testimony is now closed. Is there a new recommendation Ms. Flammer?

Ms. Flammer: Okay, you have a copy of the department's recommendation. It is different from the previous meeting in that it added six conditions related to building design. If you start on page six the conditions start – the new conditions start with no. 17. If there's any specific questions I can go over with you instead taking your time to read them all. Okay, so in consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopts the Planning Department's report and recommendation prepared for the March 8, 2011 meeting as it's Findings of Fact, Conclusions of Law, and Decision and Order, and authorize the Director of Planning to transmit said written Decision and Order on behalf of the Planning Commission.

Mr. Starr: And just for clarification, the department's recommendation includes those – all of that?

Ms. Flammer: Yes it does.

Mr. Starr: Okay. Commissioner Shibuya?

Mr. Shibuya: I just wanted to find out that let's say this Commission approves it or agrees with this and will this agreement run with the property, the deed?

Ms. Flammer: The –

Mr. Shibuya: Because if the owner changes.

Ms. Flammer: I'll give you the County's perspective. We are not a party to the settlement agreement. The settlement agreement is between the applicant as well as the – and the residents.

Mr. Shibuya: So let's say Mr. Nelson sells the property.

Ms. Flammer: Right, the six conditions that the department has added on to the SMA permit, that applies to all owners. We don't have the attorney here so I'm not sure how the settlement.

Mr. Shibuya: Can I ask our Corporation Counsel?

Mr. Giroux: I'm not sure. There probably is some kind of clause that says the agreement would be mutual binding upon any assigned, but I'd have to look. There's probably a clause in there

somewhere. But again, it is a private agreement that's enforced between the parties. It's not a County enforcement. It's not going to get involved in it.

Mr. Shibuya: I really appreciate what Kathleen Heller and the owners have come together and worked out this kind of agreement, but I'm also very concerned in terms perpetuity. I think it has an impact on the properties of adjoining owners, so that's why I'm asking this long term type question.

Mr. Starr: Any more wisdom on this Ms. Flammer?

Ms. Flammer: I'm reading through the settlement right now. Yeah, I don't think we have an answer for you.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: If the two parties are happy with what they have, I don't know what business it is of ours. We're looking at an SMA permit.

Mr. Spence: Yeah, I was going to make the same comment that if the parties are agreeable – I think the parties are agreeable – this is binding between them. I mean, the things they're agreeing upon with the exception of the construction items are operational in nature and not necessarily affecting the near shore waters or the other things in the special management area.

Ms. Flammer: I did find an answer for you. On page-8, no. 29, at the very top, it says "these conditions shall apply with equal force and effect to any wedding or event, auxiliary businesses operating on the property."

Mr. Starr: Thank you. Is there any last comments or possible motion?

Mr. Freitas: I'd like to accept the SMA as presented by staff.

Mr. Starr: Is there a second?

Ms. Domingo: Second.

Mr. Starr: Moved by Commissioner Freitas. Commissioner Domingo seconded first.

Mr. Spence: The motion is to approve with the revised Planning Department's recommendation dated March 8, 2011.

Mr. Starr: Okay. All in favor, please raise their hand.

It was moved by Mr. Freitas, seconded by Ms. Domingo, then

VOTED: To Approve the Special Management Area Use Permit as Recommended by the Department with Conditions.

**(Assenting - J. Freitas, D. Domingo, K. Hiranaga, W. Mardfin,
W. Shibuya, L. Sablas, P. Wakida)
(Excused - O. Tagorda)**

Mr. Spence: Seven in favor. Ayes have it.

Mr. Starr: Okay. Thank you. Congratulations.

Mr. Spence: Commissioners –

Mr. Starr: Let's take a short break. We'll be back at a quarter of.

(The Maui Planning Commission recessed at approximately 3:39 p.m., and reconvened at approximately 3:47 p.m.)

F. DIRECTOR'S REPORT

- 1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the time extension request administratively on the following:**
 - a. HOST GROUP MAUI GP LLC requesting a 2-year time extension on the Special Management Area Use Permit condition to initiate construction of the Hyatt Regency Maui Addition, the two timeshare towers and related improvements at TMK: 4-4-013: 003, 4-4-013: 004, 4-4-013: 005, 4-4-013: 008, Kaanapali, Island of Maui. (SM1 2006/0001) (J. Dack)**

Mr. Starr: . . .2011. The Director will introduce the next item, the Director's Report.

Mr. Spence: Okay, thank you. Commissioners, item F-1, the Director's Report. Item-A, the Host Group Maui GP LLC is requesting a two-year time extension on an SMA permit to initiate construction to a Hyatt Regency Maui addition. Staff planner is Jeffrey Dack.

Mr. Jeffrey Dack: Thank you. The application for this was filed on August 2, 2006 after the applicant had processed a final environmental assessment. It's filed by HMC Maui LLC for a use permit for an approval of 131 unit, 12-story timeshare as an addition to the existing Hyatt Resort in Kaanapali, along with various site improvements including modifications to a couple of the existing parking lots mauka of the main resort complex. The Commission granted a three-year approval on March 25th of 2008, with 67 conditions. An extensive preliminary compliance report has been submitted and approved by the department in October of 2009. You now have a letter requesting a two-year time extension that was received on December 23rd of 2010. As the reasons for requesting the time extension it references upheaval in the economic climate since the time of approval making initiation of the project within the three-years impractical, but they still intend to pursue the project, quote, which becomes more feasible as the economy improves. The Commission has in your packet a location map, site plans, building elevations, site photos, and drainage report. The drainage report concludes that with the site improvements, runoff leaving the parcels will be 34% less than it currently is largely due to approximately 3,000 cubic feet of

underground detention that will be added. The department supports the time extension. I, as well as representatives of the project, are here including the applicant, their planner and one of their engineers. Any questions?

Mr. Starr: Okay, members, questions on this? Commissioner Mardfin?

Mr. Mardfin: On the second page of your report, at the very bottom, you have a note: "in addition we note that the proposed subdivision of the property discussed within the SMA permit may occur prior to the initiation of construction. We wish to confirm that this subdivision will not invalidate the SMA permit." Can you explain that to me?

Mr. Dack: The subdivision – the initiation subdivision would not invalid the SMA permit, no. The – no, it wouldn't do that.

Mr. Mardfin: I just want to understand what that means and whether that will make it difficult.

Mr. Dack: The applicant is – or the consultant is interested in helping us.

Mr. Mardfin: Okay.

Mr. Starr: Okay members. Mr. Hart.

Mr. Chris Hart: Mr. Chairman, members of the Commission. My name is Chris Hart. Consultant to Host Maui. Actually the subdivision is a large lot subdivision, and the purpose behind it is to essentially subdivide out from the major hotel site the timeshare tower. And in the context of the sale of the timeshare – timeshare purchasers actually buy an interest in the land, as well as the ownership, partial ownership of the units. So it's not essentially going to change any of the infrastructures. It's basically a large lot subdivision.

Mr. Mardfin: Well, the next thing on our agenda has to do with enforcement of conditions. And when I read this I was concerned that the subdivision – if they subdivide prior to construction that it might be difficult to enforce the conditions. Will the conditions of the SMA permit be on everybody's deed and recorded in the proper offices?

Mr. Hart: The conditions basically – the conditions are going to be basically enforced in primarily in the context of the construction of the project because most of the conditions deal with basic construction related aspects of the project. So they will be, you know, part of the deed. They will be a part of the project. All of the conditions will be met in the context of the special management area permit that has been issued.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Freitas?

Mr. Freitas: Yeah, Chris, have these been pre-sold?

Mr. Hart: No. No units have been sold. No. This project has not been initiated. There has been

work done by our civil engineer with the Department of Public Works, and they are just about ready to sign off on the final civil engineering and drainage – part of construction drawings. But the other part of the project is still in the process of being basically developed – the plans for the building and so on.

Mr. Freitas: Yeah, your time extension is relatively short. When do you expect to start the project?

Mr. Hart: Well, we believe that we can start it within two-years. And maybe it would be good to talk to Jerry Haberman from Host because, you know, the economy is picking up and they are doing – beginning to do work, and you know, basically build new projects in other parts of the country, and so maybe it would be good to hear from him.

Mr. Starr: Yeah, Mr. Haberman, why don't you come forward and tell us about your intentions. Welcome.

Mr. Jerry Haberman: Good afternoon. Jerry Haberman with Host Hotels and Resorts. Thank you very much for your time today. I appreciate you taking the opportunity to hear our request for an extension. As we had stated in there, it has been obviously, everybody knows, a very difficult economic environment so it was difficult for us to move forward with the project. But we do see this as a great opportunity to step in and do this project. The economy is turning around. We see an opportunity to come in and bid and construct the project is a good time. And so we do have every intention of moving forward with the project in this calendar year. Whether we can start by the end of year or not, depends on how quickly we can get through some of the permitting process. So yes, two years seems like a long time in some sense, but it is a little short. But we recognize that that's the process. But we think we can do that within two years.

I also wanted to say that even though that we did not start this project within those three years, it was – we did not just walk away from Maui. We have spent as a company at our two hotels, the Fairmont Kea Lani and the Hyatt Regency Maui in the last 18 months, approximately \$60 million in investments into those hotels. We renovated all the guests rooms at both properties. We've renovated two food outlets at the Hyatt. We're in the process of renovating one at the Kea Lani. We did the pool deck at the Kea Lani. So it's been a difficult time, but we did not shut off for the island. We did put money back into the island. And now that we have that behind us and the hotels are positioned well for this recovery, we look forward to starting this project as well.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: You have secured funding for this project?

Mr. Haberman: We have – I can tell you that we as a company can fund this project. We would prefer not to fund it 100%. We would prefer to try to find construction financing and work those markets. Those markets have gotten better. I can't stand here today and tell you that those are all in place, but we feel confident given the state of the financial markets and the state of our company that we are in the position to be able to make this project happen. So to sit here and commit, I mean, it's a significant amount of money our board of directors would need to approve the project which they have in the past approved moving forward, but we would have to go back and do that again.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: So reviewing your drainage report which is dated something 2008. Reviewing the conclusions basically does any surface runoff enter the ocean or does the balance go into that water way?

Mr. Dean Alcon: Mr. Chair and members of the Commission, my name is Dean Alcon, I'm the civil engineering consultant for the project. Basically to answer your question, most of the water – well, there's three components, the site itself and the two parking lots. The parking lots follow their natural drainage flow and do go into the water way, and the site where the timeshare unit is going to be also goes follows the existing paths right now. But what we've done with all three components of the project is that we've incorporated underground retention. And we also, as we stated to you back when we were here before, we've incorporated the use of drainage filters, water quality filters, which as time goes on in these last couple of years since the last time we've been here, the efficiency and the operations of these filters have improved. So, you know, not only have we reduced the drainage flow by 34% but we're also committed to, you know, keeping the water quality at an acceptable level. And I think, like I've said, with the filters, they've gotten better. They're more compact, and more efficient. So again to answer your question, yes, the water does go into the ocean because that's where everything goes, but it gets stepped on with filters and underground retention.

Mr. Hiranaga: So water does flow directly from your project into the ocean?

Mr. Alcon: No. Right now everything goes into the water way which essentially goes into the ocean.

Mr. Hiranaga: Right.

Mr. Alcon: But before it gets to any of the water ways, you know, we do have the drainage filters, the water quality filters, and we have also incorporated underground retention where the water gets held, you know, during the peak periods. It goes from the retention, and also from the retention it goes into the filters. So, like I've said, we've processed the water, you know, essentially twice. But some of that also goes over land flow because we've eliminate some parking areas and we've replaced them with kind of grass areas. So I think, you know, we've done, like I say, besides reducing the overall flow of the net flow by 34%, we've also increase water quality.

Mr. Hiranaga: So the answer is no water flows directly into the ocean from the site.

Mr. Alcon: No.

Mr. Hiranaga: Thank you.

Mr. Starr: The item that's actually before us is whether the Commission wishes to have a, you know, an overview over the time extension or whether we would leave it in the hands of the Director. So you know it's fine to ask some questions, and general questions, but I just want to keep in mind that we're not approving the time extension. We're either approving or denying that it will remain in the Director's purview. Commissioner Mardfin?

Mr. Mardfin: Are you ready for a motion?

Mr. Starr: No. I'd like to see if any members of the public are here and wish to share testimony. And I don't see any so testimony is closed. Commissioner Mardfin?

Mr. Mardfin: Are you ready for a motion?

Mr. Starr: Yes sir.

Mr. Mardfin: I move that we acknowledge receipt of the request and that we waive our review of it.

Mr. Starr: Is there a second?

Mr. Shibuya: I'll second it.

Mr. Starr: So we have a motion by Commissioner Mardfin, seconded by Commissioner Shibuya.

Mr. Spence: To – the motion is to waive Commission review of the time extension.

Mr. Starr: I just wish to make a comment that I'm happy to hear that as much effort as possible is being put into both retention and also filtration. About a week and half ago I was on the beach over by the Kea Lani and it started raining, and there was kind of sudden river coming out right down across the beach carrying black mud. You know, it's just more shallower on a sunny day, but it will be great when we move past that type of thing so thank you for taking steps. Okay, we have a motion on the floor to waive the review.

Mr. Mardfin: Acknowledge receipt and waive review.

Mr. Starr: Acknowledge receipt and waive review. All in favor please raise their hand. All opposed?

Mr. Spence: Seven in favor, and zero nays. Motion is carried.

Mr. Starr: Okay. Thank you.

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

VOTED: To Acknowledge Receipt of the Request and waive its review of the time extension.
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas, D. Domingo, L. Sablas, P. Wakida)
(Excused - O. Tagorda)

H. Maui Planning Commission Discussion on how to make Condition No. 23 of the Special Management Area Use Permit for the Kai Holu (formerly Kaunoa II) Subdivision regarding the limit of one dwelling per lot at Spreckelsville, Island of Maui. (95SM1-1000) The item was placed on the agenda as voted on at the January 25, 2011 meeting.)

Mr. Spence: Okay commissioners, we're moving onto item-H. This is the Maui Planning Commission discussion on how to make condition-23 of SMA permit for the Kai Holu subdivision regarding the limit of one dwelling per lot at Spreckelsville. This is SMA permit 95/SM1-1000, and I see that Jimmy Takayesu handed out a letter with attachments dated today, and it says Glenn Kosaka at the top of the handout.

Mr. Starr: Okay. Are you going to handle this . . .(inaudible) . . .? Was Gina involved? Want to grab her?

Mr. Spence: This isn't assigned to her. I don't know that this has been assigned to anybody. It's really discussion on – the intent is to provide clarification so future owners know this is a condition, but not alter it any way. I know this came up during enforcement of conditions and there was a lot of discussion on do we want to remove the condition, do we leave it there and just enforce? Maybe Mr. Takayesu would like to speak.

Mr. Starr: Yeah, I'll give them an opportunity.

Mr Spence: You know, was this condition outside the Commission's purview? Was there any findings made that made this a proper condition? You know, was it related to the special management area?

Mr. Starr: You know, I disagree with the Director that we should examine an old condition and decide if it has merit or not when, you know, the problem seems to be that the enforcement people have trouble enforcing that which is on the books because, you know, kind of a lapse almost in the chain of title. So, I think we should kind of treat this at this time kind of as a workshop, you know, and kind of let it hang out a little bit about ideas and how the process should work. Because I'm sure there are a many of us who believe that conditions once passed as part of an SMA or other process, they should be applied equally to all, and they should not be applied because of a lapse in the process of recordation. You know, if they're not going to be applied there should be a reason for it. I was going to ask Mr. Giroux to make a comment, and I'm going to call on Mr. Takayesu as well. He certainly has . . . (inaudible) . . . Okay, yeah, Mr. Takayesu – Jimmy why don't you give us some wisdom on this.

Mr. James Takayesu: Okay, what I did is I basically outlined out position with respect to the enforceability of condition-23. The first attached is actually a portion of Chapter 205A, the section that specifically authorizes the Planning Commissions throughout the State to impose reasonable terms and conditions, and it spells out the type of subject matters where terms and conditions are appropriate. And we also pointed out that in this particular case, one dwelling per lot condition is not one of those items spelled out by statutes. And if you review the minutes of the Planning Commission in 1995, you see that they address that issue where you don't have the statutory authority to impose a condition. If the applicant has indicated that they're willing to do a certain thing, then the Commission can go ahead and impose that condition by agreement. And because of that – that's why Gary Zakian made it very clear that the first thing you have to do is make a finding that there is that representation. And that finding then creates the basis to impose a condition. Secondly he wanted the unilateral agreement to be recorded where you actually grant the authority to the County to enforce the condition that is not authorized by statutes, but is

authorized by agreement of the applicant and the County. And also to give notice to purchasers that the County had been granted this specific authority. Now this is different than a CC&R. CC&R's are enforceable by the private association for the member of that association as owner against another member. So the unilateral agreement, the purpose is entirely different. It's to grant that specific authority to the County to enforce indication that you didn't have authorized by statute. The problem here was that the unilateral agreement was required to be recorded as a condition to obtaining final subdivision approval. Because once you have subdivision approval, then you can start selling your lots to the public. Okay? So it's important to have it filed before you start selling lots, so that in their chain of title they would have specific notice. That wasn't done, and also later on for whatever reason when the developers submitted their final SMA or CZM compliance report, the Department of Planning signed off on it. You complied with all the requirements, so go ahead and sell your lots. I think the actual developer of this project they may have been set up solely to go ahead and do this development, and then once everything is completed they dissolve themselves and move on to another project, and you're left here with a CC&R's that were recorded. But as I said that's different than the County being granted authority to enforce the condition.

The – and when I talked to Mike I told him, even if condition-23 is not enforceable, the people who live on those lots at this time, if they come in and they wanted to have a second dwelling, then they're going to have to come in for an SMA Assessment, and they're going to have to get SMA approval. And because it's ag, they're also going to have to document to show that they have sufficient ag activity on the property to justify a second farm dwelling. So if condition-23 were not to be there, it's not like you can charge in and do anything you want. You still have to go through the process of getting a second dwelling approved.

Now one of the strange things that I found in dealing with this whole situation was when Michael's neighbor went in for a B&B. At the time it was six rooms, so that's 24 people, in addition to a family of four and two borders. I wrote to the former Director saying you have to have them go through an assessment, and to see if they should get a permit because there's an intensification of use of that lot and that structure. And the response was, no, it went through an assessment to build the structure and because they're just dealing with rental, we don't require an assessment. I read the rule, there's no authority on the Planning Director to waive an assessment, unless the applicant agrees to go ahead and apply for a permit. And in this case where you're going from a small family to 30 people, I think you have to go through the process and have the Planning Commission address that as part of the State ag permit, special permit, and also the B&B County permit. You know, again, my position is if you're going to come in for a second dwelling or a B&B you have to do your assessment, you have to be evaluated on your SMA, and the County is going to have a say as to whether you can proceed. It's just that this particular condition-23 the County somehow dropped the ball in this entire process in terms of they shouldn't have finalized that subdivision without recording the unilateral agreement. And my understanding is that the community plan may have designated this area to be other than ag in the near future. So, again, no matter what happens, you still have to come in, in my view, through the SMA process.

Mr. Starr: Okay. Thank you. I just wanted to make a comment. It sounds like, from what I heard, you're saying that under 205A that one dwelling is not part of the criteria. But if there is a nexus of connectivity to the health of the shoreline – in other words if you say, you know, that having more than one dwelling will have an impact on the shoreline, then that may be another case. But in any case, I do want to ask Mr. Giroux to comment.

Mr. Takayesu: Let me also add one thing. In 2001, the definition of development included the whole cumulative impact. In 1995, you didn't have that. But from 2000 – I believe it was 2001, that's when the law definition so that when you're starting to look at density, even though something might be considered not a development, the County can say because of it's cumulative impacts, we're going to require to go and obtain an SMA permit.

Mr. Starr: Mr. Giroux? Yeah, I don't know where we're going with this.

Mr. Giroux: Yeah, this is highly academic, so I just want to give that caveat there. I mean, as far as I'm concerned, there's a condition that was placed there. The County, if it has any opportunity to enforce it, it's going to enforce it. If they have any will to enforce it, they will enforce it. We've already seen they dropped the ball – fumble. So, you know, as Mr. Takayesu said, now that you've got multiple owners over the subdivision, each owner as they come up with an idea of wanting to put another dwelling on their property is going to have to deal with the County. And when they deal with County, they're going to submit their permit, and then whoever is there at the time, whoever is the director is going to be sitting there having to sign off on an assessment. And that assessment is either going to be SMA exemption, minor or major. And while they're doing that review, you're going to pray to God that whoever is the planner is going to flip over the conditions for the whole subdivision and say, oh, by the way there's a condition that you only have to have one farm dwelling. Is this an application for your second? And until that happens because the County didn't go and file the unilateral agreement, the owner is going to say, oh, I don't know what you're talking about. Well, back in 1990-something, when they subdivided your property, da, da, da, da, we have to go through this whole thing for every property, for every person who wants to come in and get a second dwelling on this property for the next century because somebody forgot to check the SMA permit on the subdivision before giving final subdivision. So, you know, I mean, as your attorney it's frustrating because you guys, you know, the Commission, makes a condition hoping that everybody understands what the purpose is for. And another department who has the responsibility of looking at that permit before signing off on stuff, signs off on stuff. So, it's a matter of enforcement.

Now going forward, just because it's not recorded in the deed, doesn't mean it's not enforceable. The County has the responsibility of enforcing 205A. Now if somebody wants to say well that's an invalid condition, then let them take it to the Courts, and we'll review it from there. We'll see, well, what is the scope? What is the power this Commission to make reasonable conditions on an SMA? You've got an SMA ag subdivision in an ag area, in a special use district, and you've got an airport there, you got, you know, coastal concerns, you've got density issues. You know, and if the Court decides in the future because somebody challenges it that, you know, reducing density, by reducing the amount of structures in an area, is not reasonable under this circumstances then so be it. But until then, it's on the record. There's a condition. And because somebody dropped the ball doesn't mean that it's not enforceable. It just means that it creates a whole other legal problem for the County to take an even closer look at the permits that are coming through and make sure that they're doing what 205A says that all agencies are suppose to be enforcing, and upholding the objectives and polices of 205A, you know? So, it's not just the Planning Commission. Everybody. Everybody in the County. Parks. Solid Waste. Everybody is suppose to be looking at the objectives and polices of 205A before they sign off on something. Especially if it's a permit that says you can or cannot do something after doing a public hearing where the analysis is done about what are the impacts. And the law is clear that this body can make reasonable conditions in order

to protect the social and economic and ecological well being of the coastal zone. So that's the position of the County right now, you know, as well as your attorney goes, and as far as Corporation Counsel goes. And we do instruct you we think, oh, that condition might be going a little far, or, you know, that's not really within, you know, protecting the ecological, you know, benefit of the coastal zone resources, and that type of thing. But you have to look because you've got nine people on the board. You're looking at the totality of the circumstances. We weren't there at the original hearing. I was there when the subdivision came to eliminate that condition, and I know what happened at that hearing. And there was analysis of ag, about the airport, about density, about traffic, you know? So as far as I'm concerned that condition is on the books, it's enforceable, but it takes the will and the confidence of the County to make sure that it continues to be in enforcement. Because it's a matter of processing these permits that, you know, where the rubber hits the road. And if somebody so happens to go and get a permit from a Director or somebody who doesn't read the permit, then that's just going to raise it to whole other level of litigation, you know. So every time somebody drops the ball, it just raises a whole other level of litigation when the County isn't on the ball to do the enforcement up front. It doesn't mean it's a free for all, you know? Fumble, touch down. No, it's fumble, now, you're on the one yard line. Fumble, now it's a touch back. Fumble, we have to kick off again. You know, I mean, there's got to come a time when we've got to stop fumbling, when enforcement means something. When people are saying, hey, you know what, I went to the County, they crossed their i's – they dotted the i's, they crossed the t's, and this is what the law is and we're going to have to follow it. You know, so, I mean, we've gone through the whole process. And like I said this is academics. You know, as far as coming from Corporation Counsel, the position is that this is on the books, this Commission has every, you know, ability to review. It reviewed it. You know, it reviewed this condition, so I don't know what more I can say about it.

(Commissioner Jack Freitas excused from the Maui Planning Commission at approximately 4:33 p.m.)

Mr. Starr: Mr. Giroux, you know, I thank you for that because I think that's really well reasoned. There were two possible actions though that come to mind. And one is in this particular situation is there a way that we can create some better community and public awareness of these conditions since the ball was fumbled at a certain point? Is it possible to either record it or to use some other mechanism as a tickler so of speak? And the second which is a more global idea is how can we help in making sure that process, departmental process, is such that it doesn't happen in the future? Yeah, Director?

Mr. Spence: Can I –. You know in regards of my feelings on the particular condition, it is, I agree with James, it is on the books. It's not something we can ignore. Particular to the department, without recording anything, we can put a flag in KIVA for all these properties saying, you know, go check the conditions of this particular SMA permit. And we do that fairly regularly, you know, with SMA permits that this Commission passes. I think for, I don't know, just from the discussion it wasn't really clear to me what Mr. Takayesu wanted us to do with this. Or if they would be applying to Commission to remove the condition. Or what the –

Mr. Starr: Okay, I'm happy to hear from but just be aware you're not arguing a case. You're here as a public sharing your mana'o in a short period of time.

Mr. Takayesu: The only reason we're here is it was on the agenda.

Mr. Starr: Yeah. No, I'm glad you're here.

Mr. Takayesu: But in terms of the legal analysis, as I've said, 205A-26 says you have the right to impose conditions for a, b, c, d. When you go beyond that and you're going by agreement, then you have to take those extra steps. And unfortunately not only Public Works –

Mr. Starr: Okay, please –

Mr. Takayesu: – but Planning kind of dropped the ball.

Mr. Starr: I want to ask you to keep on point as to what action – is there an action you desire you recommend?

Mr. Takayesu: Okay. Well, I really think it's not enforceable. But as a practical matter, you still got to go through the SMA to get any kind of additional structure. And again as a practical matter a person who applies for an SMA permit, and then I guess, Planning Department will say, well, you also should at the same time concurrently apply to amend condition-23 as to your lot. When they came in blanket – yeah, get rid of condition-23 for everybody. I can see you starting to look at cumulative impact. But if one person comes in and they're going to add one addition dwelling on you're looking at 34 acre, well, maybe first come, first serve, they'll say okay, this is okay, but at a certain point, they'll say, enough, enough already. The first five people we approve your SMA application plus your request to amend condition-23, but at a certain point we'll cut it off. And that might be justified in terms of infrastructure. At a certain point the existing water and sewer infrastructure, yeah, might get to the point where not everybody is going to have this. But as a practical matter, I think that's what going to happen.

Mr. Starr: Okay. Thank you.

Mr. Takayesu: Even if you meet in Court, to ask the citizen to fight in Court, costs tens of thousands of dollars.

Mr. Starr: Okay. Thank –

Mr. Takayesu: . . . (inaudible) . . .

Mr. Starr: Well, it's good there's horse races. Commissioner Hiranaga?

Mr. Hiranaga: No, just a couple of comments. I was actually employed by A&B Properties in 1995 when the SMA permit was granted by the County. But very shortly thereafter they did sell the project to a private investor who created an LLC or whatever. But he's from Indiana. He went bankrupt. He acquired final subdivision approval, subsequently, he went bankrupt. So there's nobody out there that's going to sign this unilateral agreement, unless you get the 17 owners to sign an agreement to encumber their property. I live in Spreckelsville. I've lived there for 16 years. This project is surrounded by R3 zoning. If you look at it, it's got part of Spreckelsville. You've got 17 homes on 34 acres that's surrounded by R3 zone. I think it's a bad condition. It is proposed to be

in the rural growth boundaries for the next general plan update. And it's just kind of sad thing that, you know, the challenge is it won't show up in your title report. You've got to discover this in the SMA report. If you don't look at the condition in the SMA report, you will not know this condition exists when you purchase your property, and that's the bad thing.

Mr. Starr: Would the KIVA flag help that?

Mr. Spence: It would help if somebody – and thank you, I was just going to mention that – it would not help for the purposes of a buyer. It's not going come up in your title report unless somebody purchasing one of these properties, they would have to come to County to do their due diligence, and it would show up at that time. But that's not guarantee that, you know, anybody is going to look. Your title report is guaranteed. Checking with the County what conditions are on your property, that might only come up at the time somebody wants to build their second dwelling and then it would be a surprise.

Mr. Starr: Okay. Commissioner Wakida, then commissioner Mardfin.

Ms. Wakida: Well, in response to Mr. Hiranaga whether it's a good condition or a bad condition, wasn't this a condition originally proposed by the subdivision? It didn't come from the Planning Commission did it? Wasn't it originally a condition of the applicant?

Mr. Starr: Yeah. Kent, why don't –. Where did it come from?

Mr. Hiranaga: It came from the Spreckelsville Homeowners Association, and the applicant, A&B, wanted the SMA permit so they said whatever. But they subsequently sold the property within six months. So like I said, I've lived in Spreckelsville for 16 years. And if you look at our community, this has like zero impact to our community. We have maybe 250 homes, they're R3, and they've got 17 homes on 34 acres. Who cares if they get 1,000 square foot ohana. I have no problem ingressing or digressing my subdivision at all. It's like they want County water, they want County sewer.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Hiranaga: White elephant.

Mr. Mardfin: Mr. Director, I don't know about this file, this KIVA file, but it seems to me that you say this is a way to put conditions in so that they might catch it. Is that the equivalent of notifying the Director of the building department so that they would know not to do without checking the conditions?

Mr. Spence: Well, the building department – everybody – all the different departments in the County use KIVA when it comes to issuing building permits. So if there's a flag in there, or say it's in the flood zone, or whether there's conditions, SMA permit conditions or something like that, it's going to show up in KIVA. So it's going to show up, but the only sure time it would come up is if somebody is requesting some kind of building permit. It's not going to show up at all in the title report.

Mr. Mardfin: But the Director of Building – Building Director or whoever proposes it would spot the condition – would for sure spot the condition?

Mr. Spence: Probably. My office would because they deal with the SMA.

Mr. Starr: I think we're kind of, maybe, kicking a mule the dirty . . . (inaudible) . . . or something. But really quick Mr. Takayesu.

Mr. Takayesu: I thought you applied for an assessment regarding SMA exemption from the Planning Director. And that KIVA thing, when the building inspector visits the property that's . . . (inaudible) . . . can't do that. Now if you're going to be selling a property now, I would put it and I'll make a disclosure so that the buyer wouldn't turn around . . . (inaudible) . . . to the seller just to cover yourself. Say, you know, there is a condition so you might want to check on it further but if not . . . (inaudible) . . .

Mr. Starr: I think you're dealing with a higher class of seller than I do. Commissioner Shibuya?

Mr. Shibuya: You know I wanted to see more transparency and I like what James said. And is there a way that we can ask the Counsel to come up with some kind of ordinance that supplements these 17 properties? Or is that too much?

Mr. Starr: Job security.

Mr. Shibuya: Don't even go there, huh?

Mr. Giroux: . . . (inaudible) . . .

Mr. Starr: Any way, this doesn't seem to be going any where nor is it likely to, so maybe we should put this to rest.

Ms. Wakida: And we're losing members.

Mr. Mardfin: Can we go to item-I?

Mr. Starr: Okay. Anyone else wants to? Mr. Buzianis, you want to give any testimony or comments? Okay, let's move along.

The Commission discussed Condition 23. No action was taken on the matter.

I. ACCEPTANCE OF ACTION MINUTES OF THE FEBRUARY 22, 2011 MEETING AND REGULAR MINUTES OF THE OCTOBER 26, 2010 MEETING

Mr. Spence: Commissioners, item-I, acceptance of action minutes for the February 22nd, 2011 meeting, and the regular minutes of the October 26th, 2010 meeting.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I move acceptance of the action minutes of February 22, and the regular minutes of October 26th.

Ms. Domingo: Second.

Mr. Starr: Moved by Commissioner Mardfin, seconded by Commissioner Domingo.

Mr. Spence: To accept the action minutes and the regular minutes as supplied.

Mr. Starr: Okay, all in favor, please raise your hand. All opposed?

It was moved by Mr. Mardfin, seconded by Ms. Domingo, then

**VOTED: To Accept the Action Minutes of the February 22, 2011 Meeting and Regular Minutes of the October 26, 2010 Meeting.
(Assenting - W. Mardfin, seconded by Ms. Domingo, K. Hiranaga, W. Shibuya, L. Sablas, P. Wakida)
(Excused - O. Tagorda, J. Freitas)**

Mr. Spence: Six ayes. Motion is carried.

J. DIRECTOR'S REPORT

- 1. Planning Commission Projects/Issues**
- 2. Discussion of Future Maui Planning Commission Agendas**
 - a. Agenda items for the March 22, 2011 meeting**

Mr. Starr: Commissioner Wakida?

Ms. Wakida: Well, I was wondering, we got – I was wondering what this pertains to. It was the transcript of an October meeting, and I was wondering –. I don't know that I sort of flipped through it. I didn't know if it was relevant to one of the items on our agenda, or why did we get this.

Mr. Spence: I don't know.

Ms. Wakida: Or I just got a mystery topic. Okay, mystery topic.

Mr. Spence: Okay, item-J, director's –

Mr. Starr: Maybe it's a message from the other side.

Mr. Mardfin: Coming attractions.

Mr. Starr: I think that's it.

Mr. Spence: Director's Report.

Mr. Starr: Oh yeah we have the SMA. Mr. Yoshida?

Mr. Clayton Yoshida: Mr. Chairman, members of the Commission, for your March 22nd meeting, we have three public hearings that includes the Pauwela Farms LLC coming before you for rural instead of R3 and urban. We also have the – you're commenting on the draft EIS for the Auwahi Wind Farm Project in Ulupalakua, and the Olowalu Driveway-D SMA application, and continuation of the Commission's session on protecting developing and conserving coastal resources, and thank you resolutions for outgoing Commissioners.

Mr. Starr: Okay. Members? Okay, thank you Mr. Yoshida. We will see you next time. We had a memo. Director?

B. DIRECTOR'S REPORT

- 1. EA/EIS Report**
- 2. SMA Minor Permit Report**
- 3. SMA Exemptions Report**

Mr. Spence: Yes, this is in regards to Commissioner Wakida's question about the SMA minor permit, demo permit in Lahaina.

Mr. Starr: Okay, so I'm satisfied with the questions that I asked that were answered. Does anyone else have anything else on the SMA list? Maybe a motion to accept the list.

Ms. Wakida: I so move.

Mr. Starr: Is there a second?

Ms. Domingo: Second.

Mr. Starr: Moved by Commissioner Wakida, seconded by commissioner Domingo. The motion is –

Mr. Spence: To acknowledge receipt of the SMA minor report.

Mr. Starr: Minor and exempt. Okay, all in favor, please raise your hand. All opposed?

It was moved by Ms. Wakida, seconded by Ms. Domingo, then

VOTED: To Acknowledge Receipt of the SMA Minor and SMA Exemptions Reports.
(Assenting - P. Wakida, D. Domingo, K. Hiranaga, W. Mardfin, W. Shibuya, L. Sablas)
(Excused - O. Tagorda, J. Freitas)

Mr. Spence: Six in favor. Motion carried.

Mr. Starr: Thank you. Till March 22nd, be there or be square.

K. NEXT MEETING DATE: March 22, 2011

L. ADJOURNMENT

The meeting was adjourned at 4:40 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Jonathan Starr, Chairperson
Donna Domingo
Jack Freitas (excused at 4:33 p.m.)
Kent Hiranaga
Ward Mardfin, Vice-Chair (in attendance at 10:05 a.m.)
Lori Sablas
Warren Shibuya
Orlando Tagorda (excused at 2:35 p.m.)
Penny Wakida

Others

William Spence, Planning Department
Clayton Yoshida, Administrative Planning Officer
Ann Cua, Staff Planner
Gina Flammer, Staff Planner
Paul Fasi, Staff Planner
Jeffrey Dack, Staff Planner
James Giroux, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works