

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
MAY 24, 2011**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:04 a.m., Tuesday, May 24, 2011 Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Hiranaga: Today is Tuesday, May 24th. For the record, all Members are here except Lori Sablas. At this time, I'd like to open the floor to public testimony. We'll start a list of sign ups. First individual is Rick Rutiz? Please come forward and state your name. Did you wish to testify at this time or at prior to the agenda item?

The following individuals testified at the beginning of the meeting:

Rick Rutiz - Items B-1 & C-2, Ala Kukui Spiritual Retreat Center, CP, SUP2  
Erin Lindbergh - Items B-1 & C-2, Ala Kukui Spiritual Retreat Center, CP, SUP2  
Kimokeo Kapahulehua - Items B-1 & C-2, Ala Kukui Spiritual Retreat Center, CP, SUP2

Their testimony can be found under the item on which they testified on.

Chair Hiranaga: Okay. Is there anyone else that wishes to testify at this time? Seeing none, first agenda item, Director?

Mr. Spence: Mr. Chairman, Members of the Commission. We're on Item B-1, Mr. Gregory Schneider, President of Genesee Capital requesting a three-year time extension for an SMA Permit to initiate construction on the Maui Lu Redevelopment Project. Our staff planner this morning is Ann Cua.

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

1. **MR. GREGORY SCHNEIDER, President of Genesee Capital requesting a three (3)-year time extension on the Special Management Area Use Permit condition to initiate construction of the Maui Lu Redevelopment project, a 388-unit hotel condominium time-share project with related service and recreational amenities, landscape planting, parking, and infrastructure and utility improvements at TMK: 3-9-001: 083, 086, and 120, Kihei, Island of Maui. (SM1 2003/0021) (A. Cua)**

Ms. Ann Cua: Good morning Chair and Members of the Commission. I'd like to give you a little bit of background information as to why we're here today and then I'm going to turn it over to the applicant to take you through the project. On March 17, 2008, the Planning Commission granted a Special Management Area Permit for the Maui Lu Redevelopment Project after a lengthy contested case hearing by a hearing officer and reopening of the contested case hearing by this Commission.

And real briefly, the application was submitted back in 2003, it went for a public hearing in 2005, the Commission granted intervenor status to a party. You selected a mediator and hearing officer. It went through the mediation process. It went through the entire contested case hearing process. In January of 2008, the hearing officer after contested case hearing stood here before you with his hearing officer's report. At that time, the Commission had lots of questions and did not feel comfortable with the report as it, as it was and decided at that time to reopen the hearing, the contested case hearing to allow the applicant to do a presentation again, to allow for additional testimony by the Department and the applicant's consultants, and that's exactly what you did, and after reopening, and exploring a lot of, of the facts, specifically with regard to shoreline issues is where your, your specific concern was. You did grant approval of the project. Your decision and order, the Commission's decision and order dated January, excuse me, July 23, 2008 as been attached as Exhibit 3 so that you can actually see the project. I didn't go through all the facts again in my brief report, but that kinda tells you all the exhibits that were submitted and the whole process that this project went through since it was filed with the Department in 2003. I've also attached the power point presentation that was presented to the commission back in January 2008 when the hearing officer stood before you to present their report. I do want to take you to Page 3 of my report. I want to go over the applicable regulations for this particular project and for any extension, SMA extension for that matter.

And the part I'd like to go over is Paragraph 3 on Page 3 which says, "Unless waived by the applicant and the Director, notice of the public hearing to amend or determine the permit shall be given pursuant to the procedures set forth in Section 12-202-13. A public hearing shall not be waived if a petition to intervene was filed or any person other than the applicant was admitted as a party to any prior proceeding on the matter unless a written waiver from all parties has been received by the Department. In instances in which the proposed amendment or determination does not clearly pertain to or could not affect the same rights, privileges or interests on which the intervention was based, a written waiver from all parties shall not be required for purposes of waiving a public hearing." In this particular case, the applicant was not able to receive waivers from the intervening parties. Both the Department and the applicant at the end decided to take a conservative approach and move on with a public hearing and that is why we are here today.

So at this point, I'd like to turn it over to Chris Hart would take you through the project. Again, I felt it was important to do this because we have a lot of members that have not gone through this whole process for this particular application. So there's a, there's a lot that happened when you reopened the case. I think the biggest thing was that the Commission required that the two habitable structures on the shoreline side of the, the project was asked to be removed and there is a condition. So the applicant whereas I believe there's a potential of 48 units in those buildings they were proposing to renovate that to 12 units and the 12 units was part of the project which made it 400 units. With your conditions removing those two buildings, the total project unit count will be 388. So with that, I'll turn it over to Chris Hart.

Mr. Chris Hart: Thank you very much Ann, and morning Commissioners. I'd like to first of all, say that we have some individuals in the audience that are part of the Maui Lu project team and I'd like to introduce them to you first. Greg Schneider who is one of the partners and he's from San Diego, so he's here. Paul Mancini is, has been our attorney through this process. Let's see, Mike Wright is here as the project coordinator. And Michael Fujita who is our, our civil engineer is also present.

And Raymond Cabebe is our project planner. Thanks.

This is a, a really special project. It's as Ann said, has a lot of history and it's a project of really high quality that I hope the slide presentation will present to you or communicate to you. The request is for a Special Management Area Permit time extension and it's for the redevelopment of the Maui Lu. The Maui Lu is a historical project that has existed in Kihei since the early 1950's, actually when Mr. Gordon Gibson purchased the property. It's really South Maui's first resort destination and it was basically an attraction that a lot of Canadians came to in the early days on Maui and in terms of the growth of the visitor industry in South Maui.

The land use designations, the property has been identified as Urban since the adoption of the State Land Use Law in 1962. The property is also been identified as Hotel since the adoption of the Kihei Civic Plan which was in 1968. And the property has been zoned H-1 Hotel and HM Hotel. H-1 is two stories, HM is six stories and that zoning designation has existed since the adoption of the Kihei-South Maui Zoning Ordinance, Zoning Plan in 1969. The existing facility was basically built in the late '50's, early '60's. The site is 27.28 acres. There's currently a 120 transient vacation units available. Forty-eight units are in three, two-story masonry buildings with parking on the makai portion. The total unit count was 218 units. That was at its prime in 1982. Currently, dilapidated buildings exist on the site. The long house is basically vacant, I'm sorry, dilapidated buildings exist on the site in the context of vacant buildings. The long house, restaurant building exist still on the site. Also, minimal recreation facilities on site.

In the context of redeveloping the site, since the 1950's, the 1960's, a lot of development has taken place in Kihei in terms of development around the property. The project site has always had a reputation of having a park-like atmosphere to it and the scale of development around the property has been residential in scale. So the challenge was to essentially look at the zoning, H-1 Hotel on the ocean side and on the first 200 feet of the site on the makai side of the mauka property and HM Hotel and come up with a design that was residential in scale and in character.

The design basically, 52 percent of – is actually 52 percent of the allowable density. It includes beautification of roadways and public spaces. It embodies or incorporates traditional Hawaiianna or kamaaina architectural design. It also is going to result in the removal of units on the makai parcel which was a condition of the Maui Planning Commission. It also provides enhanced view corridors from South Kihei Road.

Beach improvements involve beach nourishment, dune stabilization and enhancement, improve pedestrian beach access, improve shoreline lateral access, additional public beach parking, removal of the northerly revetment on the ocean which was also a condition of the Maui Planning Commission.

Traffic improvements, there'll be a new traffic signal at the intersection of South Kihei Road and Kaonoulu. The Level of Service will go from F to C. There will also be a roundabout, the first one in North Kihei at Alulike and Kaonoulu Road – Kaonoulu Street which will be basically incorporated as a traffic calming on Kaonoulu. Road widening to County standards. There'll be installation of curbs, gutters, sidewalks, install landscape median refuge island along South Kihei Road. Install median left-turn storage lanes, new bike paths and sidewalk. We also have bus pull outs on South

Kihei Road on the mauka and on the makai side of South Kihei Road.

Drainage and utilities. One hundred percent retention of project generated storm water plus 40 percent of the existing. Mitigate flooding on South Kihei Road. On site water well for irrigation and we also have three existing water meters. It's important to note that the project is existing and this is an – a redevelopment project and that water, basic water service, water supply to serve the expansion is available on site.

The architecture. Now I want to say that the architect that was chosen was Watanabe Chun Iopa and Takaki from Honolulu. Rob Iopa and Kevin Chun were architects that were involved in the design of the Four Seasons Resort and our firm, together with Rob Iopa who is the chief designer worked to basically come up with a theme for the Maui Lu that essentially reflects the history of, of the Maui Lu as a kamaaina place. Not only did it serve visitors like we indicated from Canada and other parts of the world, it also, over the years has become an important kamaaina visitor facility on Maui.

Again, the intention as landscape architects working with Rob Iopa was to, and the client, was to basically perpetuate the character of the Maui Lu as a part like project. There's substantial open space has been maintained. Even now as you drive along South Kihei Road you can see walls and, and ironwood hedges and there's no real views to the ocean. All of those walls and hedges are to be removed and the opportunity for visual access to the ocean from the mauka to makai, you know, has been provided. And of course, as indicated, the existing buildings are, are to be removed. The existing parallel building to South Kihei Road and to the ocean is, is being renovated to a one-story building would basically become a beach club pavilion.

One other thing I'd just like to say before I get into the parking, well, the parking summary. There's 388 mauka units times 1.33 is 517 stalls there is for the basic guest rooms, the employee parking is 50 stalls, the restaurant parking is 16 stalls, public beach parking is 12 stalls, the total number of stalls is 687.

Greg, can we go back to the site plan? Sorry, I just wanted to basically give you a couple, make a couple of points. Kaonoulu is actually the mauka-makai collector from South Kihei Road. We'll see a larger drawing that shows Piilani Highway up here. That's the major arterial. Traffic will come from the airport, turn right down Kaonoulu and the main entrance to the Maui Lu will be off Kaonoulu in this location here. Also, there as an article in the paper just the other day about improvement to South Kihei Road and, or, in, in North Kihei. From Kaonoulu to the intersection of Mokulele highway the opportunity exists essentially to provide a two-lane road with pedestrian amenities. In this particular case, we have curbs, gutters, sidewalks, bicycle paths, sidewalks for pedestrians, they also have a median strip down the center which basically provides a parkway type presence in this particular area of South Kihei Road. This is something that we worked a lot with the Department of Public Works, and of course, all of the infrastructure improvements will be provided in this area, and of course, it will provide opportunity of great, safe opportunity for pedestrians, guests from the mauka side to be able to walk across South Kihei Road to the makai side.

The character again or the architecture, the kamaaina theme in terms of the hip roofs, the stucco,

white stucco which is typical of some of the buildings that Charles W. Dickey designed and others during basically the period in Hawaii before World War II. And, you know, we, we feel and, and the use of natural rock and, of course, of plant material that's appropriate in Hawaii.

This is the main entrance building. You can see that it has a friendly porte cochere and canopy so that guests basically are able to get out of their cars, go into the second floor where the registration would be then, of course, on the bottom floor would be the restaurant which can exit out into the main pool recreation area.

This is the character of our two-story buildings. And the building, the actual units are, are condominiums, residential condominiums. The basic square footage is 1,200 square feet. This essentially is our, our three-story configuration and it's very similar to the four-story.

This essentially, you know, shoreline improvements was a condition, Condition No. 31. What we did was we basically removed the two-story and essentially we're renovating the other two-story building and to a one-story. And essentially what we're doing is, we removed 12 guest rooms from these particular structures.

And I'd just like to point out, these encroachments, these are revetments were created by Mr. Gibson actually back in 1964 according to our records and it was as a result of significant storm actually he thought, you know, there was also gonna be a tsunami associated with it. As part of the project improvement we were required by the Planning Commission to remove the northern most revetment which we are in the process of negotiating with the State Department of Land and Natural Resources.

Also, I'd like to note that the area to the south is actually a County park and that this is the area in addition to essentially the removal of the buildings in the context of getting approval from the State Board of Land and Natural Resources for the revetments we agreed to do a beach nourishment project. So the beach nourishment project will continue along and actually go to the south extend beyond our property and actually tie in with the Kalepolepo fish pond which is the fish pond that Kimokeo is involved in restoring. So there will be a lens of sand that should be pretty stable in this particular area.

The proposed shoreline improvements again, essentially in this particular instance what we're proposing to do is to renovate this, this two-story, 20-unit structure. So actually reduce it down to a one-story building. Also, all of these hedges again, are gonna be removed and of course, these buildings that exist to the south will be removed. So all of this area essentially will be open as far as visual access to the ocean from South Kihei Road.

This is the character of the one-story beach club and so it's very much like a pavilion more than a significant building on the ocean. This shows the two structures that will be removed. This shows the beach club and the renovated building. Also, it gives you a clearer feeling for the improvements that will be provided for along South Kihei Road.

This is the shoreline improvement identifying the beach nourishment and also, we also have a commitment to do dune enhancement. In the context of the seasons in South Maui, sand blows

a lot and essentially becomes a problem for the County in terms of South Kihei Road. So you know, essentially we're going to be working with the community – committee from the KCA, Kihei Community Association to basically do dune enhancement and to assist in that. Plus we are also doing the beach nourishment project which does show it extending south and tying into the wall of Kalepolepo fish pond.

This is a basically pictures of the sand and the beach looking south from the Vancouver Memorial, Maui Lu Hotel room structures at left and center. Those structure will be gone together with the Vancouver Memorial the encroachment revetment will be gone. Looking north from the center, looking toward the rock revetment toward the Vancouver Memorial. You can see it here. All of that stone revetment will be removed. Essentially looking north from the southern rock revetment towards Building A. This building again, will be renovated and become a one-story beach club. Looking north from the County beach park toward Building C, and you can see these are the two buildings that will be removed. This is the County beach park to the north – to the south, excuse me.

This gives you an understanding of some of the roadway improvements. Again, I indicated to you that Piilani Highway is the major arterial. Kaonoulu is the mauka-makai collector road and you're all aware that Kaonoulu will basically go mauka of Piilani Highway and actually become the Kihei to Kula highway at some time in the future. This drawing basically shows the improvements to South Kihei Road as I indicated, I discussed with you. Also it shows the improvements that we were required to, to do items of working with the Kaonoulu Estates residential subdivision to basically calm traffic moving mauka and makai on Kaonolulu. This will be the first roundabout in North Kihei. Also, at the intersection of Kaonoulu and South Kihei Road we will be providing a full service traffic signal with turning lanes. I'm sorry, Alulike and Kaonoulu we're doing a roundabout, Kaonoulu a full service signal and then also the bus pulls out, there will be a bus pull out on the makai side of South Kihei Road as well as on the mauka side of South Kihei Road. And essentially providing facilities for, for the bus to pull out and for pedestrians in this area to actually wait and use the bus. South Kihei Road we're doing road widening with curbs, gutters and sidewalks on both sides. A 12-foot wide planted median strip with raised crosswalk for safe pedestrian crossing. We're doing an improved left turn movement into the project and to Kaonoulu that's in this location. We have safe pedestrian crossings. This is a section through this area which gives – this would be the makai side, this would be the beach club, you can see it's – the area is gonna be open. All the visual barriers will be removed. This provides a view of the sidewalk. This would be the two-lane traffic, the median strip, the mauka sidewalk and, and bicycle path and the great lawn of the Maui Lu.

As far as drainage is concerned, the existing runoff, the existing sheetflows to South Kihei Road. And again, the drainage plan was studied, preliminary drainage report and drainage by Wilson Okamoto is our civil engineer and Michael Fujita is here if there are any questions from the Commissioners. We have a requirement in our SMA permit for onsite retention of 100 percent of the – of new development runoff, plus we are required by the Commission to increase to 40 percent of the existing. This is Condition No. 29 of or –in our decision and order of our SMA permit.

Project history, the Maui Lu Resort was actually built in the early 1960's and is currently in poor condition. The Maui Lu redevelopment SMA permit chronology is as follows: As Ann said, we

submitted in 2003 our draft Environmental Assessment and Special Management Area permit application. In 2004, the Commission hearing for the draft EA. In 2000 and – September 28, 2004, the Commission granted our acceptance of our final EA with a Finding of No Significant Impact, and then on May 17, 2005, our Urban Design Review Board and approval by the Urban Design, unanimous by the way. July 12, 2005, the Planning Commission SMA permit hearing was held. And in March 14, 2006, the Commission granted intervenor status to the Maui Beach Vacation Club as a, an intervenor. Then in July 22, 2008, the Planning Commission approval with 31 conditions. So here we are in May and, and our basic project approval was granted for three years through July 22, 2008.

The request, the deadline to initiate construction is July 22, 2011, Condition No. 3, the request is for a three-year extension through July 22, 2014. The request was submitted on February 11, 2011 meeting the 90-day requirement. The request is due to the challenges and uncertainties of the U. S. financial market preventing the applicant from obtaining the necessary resources to move forward with this project. I might add that there is obviously certain recovery that's, that's actually taking place and opportunities for funding, you know, are, are getting much better at this time.

The challenges since July 8<sup>th</sup>, we basically processed a 55-year term easement from the State for the rock revetments and that was in accordance with Condition No. 31. We went through an appraisal process, an easement ...(inaudible)... process, and an easement agreement has not actually been signed by the State, but I will say that all the easement fees have been paid to the State.

Beach nourishment, Condition No. 31, an extension for the Conservation District Use Application Permit, Water Quality Certificate is pending with the State Department of Health for the beach nourishment project. Until we get the Water Quality Certificate from the Department of Health we can't proceed with the beach nourishment project.

This is the Maui Lu redevelopment. I, as a planner, and a landscape architect here on Maui believe that this is a very well-designed and really good quality project that fits in this neighborhood of north Kihei and that it will be a significant, positive addition to our community in terms of providing jobs and construction and in the context of the operation of the project and we ask you to be favorable toward our request for a three-year time extension. Thank you very much.

Chair Hiranaga: Thank you. At this time, I'm going to have staff, if you wish to add any additional comments?

Ms. Cua: Just that as of, as of today, actually, we have not received any letters in support of or in opposition to this request. We believe, as you've seen the request was timely filed. There's no deficiencies or violations that would affect the applicant's request and the most important thing is that the scope of this project has not changed since it went through its most extensive review and analysis by this Commission and Department in 2008. So we would like to definitely see this project be constructed and we're prepared to go forward with a positive recommendation unless you have any questions?

Chair Hiranaga: Okay, I'm going to ask the Commissioners to reserve their questions till after the

public hearing.

**a) Public Hearing**

Chair Hiranaga: At this time, I'd like to open the public hearing. Is there anyone here that wishes to testify regarding this agenda item? Seeing none, I will close the public hearing. At this time, I will open the floor to Commissioners for questions to the applicant or staff? Commissioner Mardfin?

Mr. Mardfin: Yeah, this is familiar to me. My first three months on the Commission, I think this came before us twice January to March that year. My recollection is however, that the economy wasn't horrible back then, and yet, – were there attempts to get financing? I mean, you're using the lack of financing as the reason for the extension, what happened to the financing at that time?

Mr. Paul Mancini: Good morning. My name is Paul Mancini and I recall the hearings very well and if you recall, we had come in to develop the project and we had a party with us called Marriott at that point in time and we had submitted an application with Marriott to move forward. But just as that was to proceeding the – basically the financial markets in the United States and Europe collapsed and at that time Marriott decided it did not want to go through with the project with us. So I think to some degree your chronology is correct. While we were going through the hearings the financial markets were fine. If not for the intervention this project would have been built and we would have many things going on right now with regard to the project. But the intervention as you recall, this SMA process took over five years. If you recall when we started my hair was black, when we finished it wasn't black after that. But it did, just as we were moving forward with the project with the permit it was in that time that the financial markets came apart and Marriott decided it didn't want to do any new projects and financing and shut down worldwide and we saw the results of that a short time afterward. So the chronology is almost right, but not quite.

Mr. Mardfin: Thank you.

Mr. Mancini: Any other questions I can answer while I'm up here? Thank you.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Lay?

Mr. Lay: I'd like to make a motion?

Chair Hiranaga: Well, actually I have a couple of questions. More for clarification. On the 40 percent reduction of existing runoff, I had – we had a similar question at a previous meeting, the existing runoff is that from the, the current state of the property which has been previously developed is that prior to the original development of Maui Lu when this property was probably covered with kiawe?

Mr. Hart: I, I have to ask Mike Fujita answer that question.

Mr. Mike Fujita: Hi, good morning. My name is Mike Fujita. It is the existing developed condition not the predevelopment condition. I guess the theory back then was because it's developed the increase in runoff based on the development wouldn't be that significant so I think at that time the



Commission wanted to make sure that we added additional storage. So I think it's the additional 40 percent is based on existing developed site.

Chair Hiranaga: The current?

Mr. Fujita: Right, the current.

Chair Hiranaga: The current condition. Okay. And I'm just wondering, as far as the removal of the north revetment are you waiting for construction to start or have you been working on that for the past two or three years?

Mr. Hart: We've been working with the State Office of Conservation and Coastal Lands and essentially what we have been – in, in our negotiations, in our discussions with them what we have been basically doing is anticipating that the process would begin, you know, in the context of the initiation of construction. In other words, we wouldn't go in and remove the revetment before, you know, we're ready to mobilize to do, to begin construction like which would involve the demolition of the buildings on the ocean side of the property and so on, and, and the beach nourishment.

Chair Hiranaga: And as far as the Certificate of Occupancy that wouldn't be granted until all conditions of the SMA are fulfilled?

Mr. Hart: That's correct. We would have to do a final compliance report and in the context of the issuance of the final compliance report and verification by, you know, all the agencies that, you know, we have met those conditions then the Certificates of Occupancy could, could be granted.

Chair Hiranaga: I, I have no further questions? Commissioner Wakida?

Ms. Wakida: Good morning Mr. Hall [sic], I am a new to this project and I have just two small questions for clarification but first of all, I would like to compliment the, the developers on doing a roundabout. The one that we have at Launiupoko in West Maui is very successful. It only slows traffic down that comes barreling down the hill, but it keeps traffic moving so it's a very successful item to include.

Mr. Hart: Thank you.

Ms. Wakida: Just the clarification, if you could put up slide 13, at least that's the number in our packet? The revetment that's, that's coming out is the one to the far left of the screen?

Mr. Hart: Yes, that's correct.

Ms. Wakida: Okay. And my second question is, if you could put up slide 16? Where, could you please point out where the crosswalks are going to be?

Mr. Hart: Okay. Here's one. At right, right at the intersection and here is the – in the middle? In here, yeah.

Ms. Wakida: In the middle?

Mr. Hart: Yes.

Ms. Wakida: So the normal or expected flow of pedestrian traffic then is, looks like there's a little sidewalk on the mauka side there?

Mr. Hart: There's a sidewalk and a bicycle path on the mauka side, yes.

Ms. Wakida: Okay, and the crosswalk's right in that middle part there?

Mr. Hart: Yes, this is the – Raymond could you do a site plan, you know, showing where the –yeah, here. This is the main building, the, the lodge, the entry building and the restaurant and the main recreation area as far as the swimming pool. And then this is basically the – an access walkway to South Kihei Road and then this would be the crosswalk to the, to the ocean side. So this, this would be the focal point essentially of the project. Another one thing I wanted to mentioned that I didn't, you know, the decision of this project, you know, was very carefully thought out the site plan. These are clusters so each cluster of units has an identity. This is a water pool, same here, and over here. And also, I just wanted to point out that the parking is around the perimeter and the circulation and so there's a substantial setback from these buildings to the property line, Alulike Street and then to the Kaonoulu Estates residential project. It's about a, almost like a 110 feet of, of setback. And then this is the service area, the service building which accesses from a small portion of Kenolio Road.

Ms. Wakida: Thank you.

Mr. Hart: Sure.

Chair Hiranaga: Commissioner Sablas?

Ms. Sablas: As a resident of Kihei for 32 years, Mr. Hart, I, too, would like to compliment the whole project team on this wonderful project. I pass this place daily and I think it really needs that facelift and it's a good fit for our community. So you do have my total support. I do have one question. I think you mentioned earlier that the view plane is going to be pretty much clear. You're going to remove, if you could bring up slide 15, I think? Yeah, slide 15. I think you mentioned earlier that, you know, that that hedging would be removed and it's going to be clear yet I see a rock wall that you're proposed. How high is that rock wall? And what is the length? Is it only on the makai side and not on the mauka, if you could clarify that please?

Mr. Hart: It's basically it would be designed so that it would be – you would be able to see over it from, from an automobile.

Ms. Sablas: Oh, okay.

Mr. Hart: Yeah.

Ms. Sablas: Cool. Thank you.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Back to the pedestrian crosswalk.

Mr. Hart: Sure.

Mr. Ball: Is that going to be a pedestrian signal there also or is it just run for your life across South Kihei Road?

Mr. Hart: Okay. We have to look at the plan, Ray. What we're going to be – this is a full service traffic signal which doesn't exist today, okay. And right now, essentially the way the project crossing is designed pedestrians would essentially have to cross one lane at a time and that the median actually acts as a refuge. So they would wait. But in the context of traffic as it flows along South Kihei Road now, there's, there's no stops. So essentially the traffic light will provide basically an opportunity for traffic to stop and there will be gaps and the opportunity then for pedestrians to safely cross. We went through several design thoughts. One to do a bridge but you know, character wise, quality wise, visually, you know, it's not the right thing to do. So this is a much softer approach and basically, you know, we talked a lot with the Kihei Community Association about this in the sense that, you know, their interest of providing pedestrian amenities and more park like or park way type roadway design and of course, they were also involved in the roundabout decision. So, you know, it's, it's been, it's been an issue that's been talked a lot about. But we feel with the stop light and the opportunity for gaps and the median with the refuge that it's going to be a safe crossing for pedestrians.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: I'd like to make a motion now for approval?

Mr. Freitas: Second.

Chair Hiranaga: Motion to grant, to waive –

Mr. Lay: To grant the extension.

Chair Hiranaga: Actually let's have the recommendation from staff before we have a motion.

**b) Action**

Ms. Cua: Yes. The Planning Department is recommending approval of a three-year time extension and it's a time extension of Condition No. 3 of the Decision and Order granting the Special Management Area Use Permit. I would like to make a small amendment. It says, "construction of the proposed project shall be initiated," it says, "by July 22<sup>nd</sup>," I'd like to say, "July 31<sup>st</sup>." As a standard, we always go till the end of the month and I missed that when I, when I drafted this. So basically it would be establishing a new expiration date of July 31<sup>st</sup>, 2014. And the other language

remains the same as the original condition unless our attorney has a issue with that?

Chair Hiranaga: Corporation Counsel?

Mr. Giroux: Ann, I'm looking at the condition that you have where, where it talks about extensions again. Again, I'm asking that if you're not going to be following the rule as we've amended the rule in orders that, that it needs to be discussed at the Commission level if you're not going to be following – because we amended the extension process, how we are doing the extension and it's kind of what caused a lot of confusion in the first place because our orders are not in congruence with our rule. So what I'm asking is if, if the Department is not opposed to it, if you guys would just put in language that extensions will be done pursuant to the Maui Planning Commission Rule 12-202-17.

Ms. Cua: All right.

Mr. Giroux: And then that way there's not going to be any confusion in the future, is this a public hearing, is it not?

Ms. Cua: Okay.

Mr. Giroux: Okay?

Ms. Cua: All right. All right, so we'll add that to the end instead of where it says, "the Planning Director shall review and approve a time extension request but may forward said request to the Planning Commission for review and approval," that's pretty much essentially what the rules say, but it is better to just state the section of the rules which is 12-202-17. So we will do that.

Chair Hiranaga: Okay, now floor is open for a motion.

Mr. Lay: Motion. I'd like to make approval motion along with the said conditions and recommendations by the Department.

Mr. Freitas: Second.

Chair Hiranaga: Moved to approve by Commissioner Lay, seconded by Commissioner Freitas. Discussion? Commissioner Mardfin?

Mr. Mardfin: I have a question first. Ann, had this not been a contested case historically this would barely be, probably wouldn't be before us at all except to waive a review of the time extension?

Ms. Cua: That's correct. It would be listed as a Communication item on the agenda, no public hearing. Actually not even Communication item, it would be listed under Director's Report.

Mr. Mardfin: And it would be do we want to waive review of a time extension?

Ms. Cua: Exactly. Exactly. We chose in this case, and the applicant agreed to go with a much

more conservative route because of the intervention, because they couldn't get the waiver. Even though the facts really hadn't changed that's why we're here.

Mr. Mardfin: Yeah, thank you very much. Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Just a correction. I'd like to have a typo corrected on Page 6, about half way through it says, nourishment of, "beach nourishment of 6,500 cubic years," –

Ms. Cua: Oh, sorry.

Mr. Shibuya: I wanna change that to, "yards of beach quality sand."

Ms. Cua: Thank you. Spell check.

Chair Hiranaga: Any other discussion? Commissioner Mardfin?

Mr. Mardfin: Yeah, I'm going to vote in favor of the motion and I want to explain why. This was one of the first projects that I dealt with on here. I learned a lot from it. One of the things I learned is that even though there's an intervention, the intervenors may not have the good of the community at heart, and that's why we gave grief to the – the intervention portion, the hearings officer had a very good report but it didn't deal with issues that were coming, that the Commission was concerned with and it's something we have to kind of beware of. And, just 'cause it's a contested case and the hearing officer report doesn't mean that they've dealt with all the issues that we would be concerned with. In particular, I remember those two buildings on the makai side and the developer wasn't real thrilled by taking them out, but through a lot of hard discussion they agreed to do that. I think they've gone the – in doing that, I think they went the extra mile and I was happy to support at the time. I'm happy to support the extension now.

Chair Hiranaga: Any other discussion? Commissioner Shibuya?

Mr. Shibuya: Just a comment, and it's not related with this project other than the fact that the shoreline management is related to my personal experiences there. As I walked up and down the beachfront, I notice that the dry sand would be blowing through and going mauka onto the land and I felt that that would be even though small, with continuous types of, I guess, particle blowing over into the land area you would have beach erosion. If you can somehow consider ways of mitigating or stopping or slowing down the wind and perhaps you can capture some of this sand that is blowing. That might be part of your dune restoration project. It's just a side note.

Chair Hiranaga: Any other discussion? Commissioner Lay?

Mr. Lay: Hearing brother Kimo this morning talk about the history and the heritage of the Maui Lu, you know, I oftentimes I had great times staying there and a long time ago I danced the hula over there at the Maui Lu with Jesse. So there are some feelings to it and I'm looking forward to these improvements in that area.

Chair Hiranaga: Any other discussion? Just one last comment. On the additional retention of 40 percent of existing runoff, I hope the applicant if they see opportunities to increase that that they will do that voluntarily. We all know what happened to the ocean recently with the recent storm Upcountry. You have a lot of brown water out there now. It's a slowly dissipating, but you know, it's gonna impact the reef and I think the owner wants a healthy ocean out there so that the visitors will go into the water. So again, if you see opportunities to increase your retention, I would encourage that. If there's no further discussion, I'll call for the vote. All in favor of the motion so indicate by raising your hand.

Mr. Spence: That's eight ayes.

Chair Hiranaga: A motion is approved. Thank you.

**It was moved by Mr. Lay, seconded by Mr. Freitas, then**

**VOTED: To Approve the Time Extension of the Special Management Area Use Permit as Recommended by the Department.  
(Assenting - I. Lay, J. Freitas, D. Domingo, L. Sablas, K. Ball, P. Wakida, W. Shibuya, W. Mardfin)**

Ms. Cua: Thank you, Commissioners.

Chair Hiranaga: We're going to take a short recess and reconvene at 10:20.

A recess was called at 10:12 a.m., and the meeting was reconvened at 10:20 a.m.

Chair Hiranaga: Next agenda item is B-2. Director has a request to modify the agenda.

Mr. Spence: Okay, Commissioners, I would like to take Item B-2 which is a public hearing for a Conditional Permit for Ala Kukui and Item C-1 which is the transmittal of the recommendation and materials from the Hana Advisory Committee but this also pertains to Ala Kukui. So what happened with this application is midstream, you know, we have a new Administration and, you know, we did a little bit of reconsidering and made the determination that in addition to the Special Use Permit, a Conditional Permit would also be appropriate for this project. We are in support of it, and we can get into that, but we would like to take these two things together just like you would for so many other applications that require both a Special Use and a Conditional Permit.

Chair Hiranaga: Is there any objections?

Commission Members: No objections.

Mr. Mardfin: I thought we needed a motion to change the agenda?

Chair Hiranaga: I'm doing it by consensus unless you have an objection?

Mr. Mardfin: No, I don't. I'm looking at our Corp. Counsel and he seems to be okay with that.

Chair Hiranaga: You're welcome to make an objection if you wish?

Mr. Mardfin: I do not want to objection. I think it's a smart thing to do.

Chair Hiranaga: Okay, thank you. Director?

Mr. Spence: Thank you, Commissioners. So we are taking up two items B-1, or excuse me, B-2 and C-1 both pertain to Ala Kukui Spiritual Retreat Center. This is a facility with overnight accommodations for spiritual and educational activities and other retreat activities, approximately 12 acres of land in Hana. Our staff planner is Mr. Paul Fasi.

## **B. PUBLIC HEARINGS**

- 2. MS. SUSAN O'CONNOR of ALA KUKUI requesting a Conditional Permit in order to operate the Ala Kukui Spiritual Retreat Center, a facility with overnight accommodations for spiritual and educational activities and retreats on approximately 12.008 acres of land in the State Agricultural District at TMK: 1-3-004: 008, Wakiu and Kawaipapa, Hana, Island of Maui. (CP 2011/ 0004) (P. Fasi)**

## **C. COMMUNICATION**

- 1. MR. DAVID KAWIKA KAINA, Chairman of the HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting the Committee's record and recommendations on the application of MS. SUSAN O'CONNOR of ALA KUKUI requesting a State Land Use Commission Special Use Permit in order to operate the Ala Kukui Spiritual Retreat Center, a facility for spiritual and educational activities and retreats on approximately 12.008 acres of land in the State Agricultural District at TMK: 1-3-004: 008, Wakiu and Kawaipapa, Hana, Island of Maui. (SUP2 2009/0013) (P. Fasi) (The public hearing was conducted by the Hana Advisory Committee to the Maui Planning Commission on January 20, 2011)**

Mr. Paul Fasi: Good morning. Before you get into this, you've got two colored sheets here. You've got a green one and a blue one. The blue one is the recommendation for the Conditional Permit. The green one is the recommendation for the State Special Use Permit. We're going to be discussing both items today simultaneously for these two application requests. I'm going to call up the applicant's representative here fairly shortly, but let me just give you a little chronology as to why we're here on this day.

On May 4, 2010, the Planning Commission did a site visit for the property. That was May 4, 2010. Back in April 22, 2009 is when the State Special Use Permit was filed. On January 20, 2011, the Hana Advisory had their public hearing. However, at this meeting they decided to defer because they wanted to do a site visit. On February 15<sup>th</sup>, they did their site visit, the matter was forwarded

to the Planning Commission without a majority vote because it only had four Advisory Committee Members there and they were unable to get a consensus on the vote. So the matter is forwarded before this body with a no recommendation from the Planning Commission, I'm sorry from the Hana Advisory Committee. The no recommendation stems from the Department's recommendation of no recommendation. On April 13, 2011, there was a meeting in the Planning Director's Office with the Deputy Director and the applicant. At this meeting, it was discussed that the Conditional Permit would be applicable to this particular application request. So the SUP, the State Land Use Commission Special Use Permit is required because the land is in the State Ag District. They're using non ag uses in the State Ag District and the overnight accommodations in the County and State Ag District. The Conditional Permit's required because of the non ag uses in the County Ag District and overnight accommodations in the County Ag District. So these two permits are required in order for this matter to proceed. I'm going to bring up the applicant's representative. They've got a excellent power point presentation which will explain this thing as clear as it can be explained. They've done most of my work for me because they've covered the – how it relates to the County Code and the State Land Use Commission. So unless you have any questions for me, I'm gonna bring the applicant up.

Mr. Chris Hart: Thank you, Paul. Members of the Commission, my name is Chris Hart, Chris Hart and Partners. Before I begin, I'd just like to introduce some people. Arnie Kotler and Therese Fitzgerald are the co-directors of Ala Kukui in Hana and also my son, Jordan Hart who has been the planner working with Paul Fasi on this project since its beginning. Before I do the power point the applicant actually is Susan O'Connor and Therese Fitzgerald would like to read a statement in the context of Susan O'Connor and her role and some thoughts about Ala Kukui.

Ms. Therese Fitzgerald: Thank you, Chris. Good morning, Members of the Maui Planning Commission. My name is Therese Fitzgerald and Arnie Kotler, my husband and I, are co-directors of Ala Kukui Hana Retreat. I'd like to say a few words on behalf of the applicant and the founder of Ala Kukui, Susan O'Connor. The O'Connor family has been blessed to be part of the Hana community and to live in Kipahulu for the past 40 years. It has been Susan O'Connor's intention to give back to the Hana community at least some of what she and her family have received by helping create a gathering place, a place of renewal in the beautiful, respectful way that has been shown to her by the people of Hana. And it was the horrific human disaster of 9/11 that coalesced in Susan the deep desire to provide a place, a feeling and transformation.

In 2003, Susan helped start a nonprofit organization and acquired 12 serene acres near Hana Town and found Ala Kukui, Pathway of Illumination to be a resource for the people of Hana and for those throughout the island and the continent through retreats and other spiritual and educational programs. Ala Kukui has become a spiritual and cultural center for people to connect through land and quiet to their deepest selves. A sanctuary and a place of rare, natural beauty within a community that has maintained Hawaiian traditions for many generations.

Ala Kukui's purpose is to host spiritual, cultural, educational and ag related programs for young people, adults and elders. Programs include cultural teachings, crafts, music, art, writing as well as programs in meditation, contemplation and spiritual study in the Christian, Buddhist, Hawaiian and other spiritual and cultural traditions. Programs at Ala Kukui are guided by experienced teachers. There are both day long programs and also retreats of three to five days and



occasionally longer during which time a retreat can stay at Ala Kukui. This is necessary for the establishment of group camaraderie, focus and insight that build over the days. Receiving income for retreat activities is also vital for the long term financial sustainability of Ala Kukui, and will allow us to host community programs at little or no charge. In all cases, Ala Kukui programs are quiet and low impact. And as you see from the more than 25 letters submitted and testimonies offered Hana community leaders, our nearest neighbors, local businesses and long time residents of all ages and walks of life express their support of Ala Kukui to be a community gathering place and retreat center.

On behalf of Susan O'Connor and the Board and the staff of Ala Kukui, we request your approval to open our doors to be able to serve the Hana community and others seeking refuge, peace, wisdom and harmony. Thank you very much for your consideration. Are there any questions at this time?

Mr. Hart: Okay, could turn the lights – I'm sorry. The application for the Ala Kukui Spiritual Retreat Center is for a State Land Use Commission Special Use Permit in the State Agricultural District for parcels less than 15 acres and a County Conditional Permit.

The project team, Susan O'Connor is the applicant. Chris Hart and Partners has been involved in the permitting. Engineering Dynamics has done the engineering and drainage reports. Phillip Rowell has been our traffic engineer. Our Archeological Services Hawaii was our archaeologist. Kaimipono Consulting Services was the cultural consultant. And Ferraro Choi and Associates is the architect. They actually did the site master plan as well. I would say Ferraro Choi is a very environmentally sensitive architecture firm.

Project objective is to obtain a State Land Use Commission Special Use Permit in the State Agricultural District for the operation of a religious institution and also to obtain a recommendation for approval from the Maui Planning Commission to the County Council for a County Conditional Permit. Maui County Code, Chapter 19.30A, Ag District under Special Use, the following uses and structures shall be permitted in the Agricultural District if a special use permit, pursuant to Section 19.510.070, Maui County Code, has been obtained. Except that if a use described in this section also requires a special permit pursuant to Chapter 205, Hawaii Revised Statute, and if the land area of the subject parcel is 15 acres or less, the State special permit shall fulfill the requirements of this section. The listed Item J, Churches and religious institutions and the Ala Kukui Retreat Center is identified as a religious institution.

On April 13, 2011, the Applicant met with the Planning Department, Planning Director, Deputy Director, Staff Planner to discuss the project. The Department requested that a Conditional Permit also be filed to alleviate any concerns regarding the applicability of the Special Use Permit and overnight accommodations, community and education programs which are non religious.

The Special Use Permit in terms of the scope of the projects. The uses that we're looking at are Spiritual Retreat Center providing retreat and educational activities based on – in religion, spirituality, agricultural practices without overnight accommodations such as prayer workshops, interfaith programs or education for taro cultivation and these would be more community oriented. The structures that are being proposed would be a pavilion a hale pule, parking area and

associated improvements.

As far as the Conditional Permit the uses would be providing overnight accommodations for multi-day retreat events and expanding educational and community programs which are not required to be religious in nature such as multi-day retreats, writing workshops, slack key guitar classes, hula halau meetings and practice. The structures would involve a cluster of four hale units.

Project profile. The access is from Hana Highway. The property is actually located on quarter mile mauka of Hana Highway on a driveway. The land area is 12.008 acres. The minimum lot size in the Maui County Ag District is 2.00 acres. To be operated within existing facilities with a phased expansion based on positive reception as follows: The Hale or four rooms, 900 square feet included, all included would be scheduled to be built in 2012. The Hale Pule there's one. It's 300 to 400 square foot that would be a prayer room. It's also being proposed in 2012. Pavilion which is 900 to a 1,000 square feet. That would be a gathering room. That would be proposed for construction in 2014.

This is the location, location in Hana. Sorry, about that. Okay, this is Hana Highway and this is actually Hana High School. So if you're driving into Hana from Central Maui, Hana High School would be on the makai side on the, on the left-hand side and it would be a right turn along that's .25, quarter mile driveway to the 12.008 acre site.

This also shows the character of development which in the immediate area is essentially single family and it's essentially, the density is rural so the, the lot sizes are about one-half acre. It shows the driveway, it shows the site.

As far as the State Land Use District Boundary, this would be the Hana Highway School site which would be urban. The property is, it's the properties along Hana Highway again are, are shown as rural. The property is actually in the Agricultural District. Also, the Land Study Bureau rating system identifies the 12-acre site as Class E which is as far as the Land Study Bureau the lowest possible soil quality rating. Very marginal productivity. Also, the 12-acre site is not rated by the Agricultural Lands of Importance in the State of Hawaii. This is the Maui County zoning map. The Hana High School site, elementary and highway is P-1, Public/Quasi-Public, the properties that are identified in the Rural District are essentially Interim. It identifies our site which is still in Ag District which is Ag District zoning. So the State Land Use Classification is Ag. The Hana Community Plan is Agriculture. The County zoning is Ag and the flood zone designation is Flood Zone Z - C, an area of minimal flood hazard.

This is our project site. Again, the master plan was completed by Ferraro Choi. This shows the existing buildings and this shows the proposed structures. This is the existing driveway entry. And driveway entrance to the site. The site is very pastoral. This essentially shows the master plan. This is the access at the bottom of the site, the makai side of the site. This shows the water tank. This is the shed, utility shed, studio. This is the existing residence.

The site has a very park like setting. When the property used to be owned by a man by the name of Dan Omer and he actually, the property was actually subdivided a quite a number of years ago by Hana Ranch and Dan Omer bought it and constructed his residence and through a relationship

in terms of getting to know Dan as a member of the Hana community, Susan O'Connor decided to buy the site for establishment of the Ala Kukui Retreat Center.

The Hale consists of, of four rooms. Total is 900 square feet. The project is going to be constructed in 2012. This is the character of the cluster. There's two together. The Hale Pule has 300 to 400 square feet to be constructed in 2012. Again, these structures are very low impact structures. The Pavilion 900 to 1,000 square feet to be constructed in 2014.

The Special Use Permit criteria. The use is not contrary to the objectives of Chapter 205 and 205A and the Rules of the Commission. The proposed use is not contrary to the objectives sought to be accomplished by 205. Uses would not adversely affect surrounding property. Ala Kukui is located a quarter mile mauka of Hana Highway. It will be a low impact use on a 12-acre parcel operations are not anticipated to be noticeable to neighboring property owners. The applicant will work with neighboring property owners abutting Hana to insure that any potential impact to the traffic to and from Ala Kukui can be mitigated. The use would not unreasonably burden public agencies to provide roads, streets, sewers, water, drainage, school improvement.

The Ala Kukui's Spiritual Retreat Center has undergone agency review, comment, and response process. It has been concluded that any unreasonable burden will not be placed on public agencies to provide roads and streets, sewers, water, drainage, and school improvement, police and fire protection as a result of the proposed project. These findings are documented by the agency comment letters contained in the project staff report.

The usual conditions, trends, and needs have arisen since the district boundaries and rules were established. Hana is located in a remote area. Residents and visitors do not have access to programs readily available in other areas of Maui. Ala Kukui proposes to provide opportunities for interfaith religious agricultural education and traditional educational programs successful to residents and visitors of Hana. The 12-acre site with Class E marginal land has been developed over time with a residence and accessory buildings, barn, shed, water tank in support of diversified agriculture, orchard and landscape ornamentals, and due to its remoteness and park like setting, the residence and grounds are a desirable environment for spiritual retreat center.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The soil classification by the Land Study Bureau identifies it as Class E, the lowest rating on a scale of A to E which indicates the soil is marginal with lowest overall productivity rating. Even though the soils on the site have lowest overall productivity rating, over the years the site has been developed in accordance with uses permitted in the State Agricultural District. The 12-acre site has been developed with a single family dwelling with an accessory barn, shed, water tank support diversified agriculture. There's an orchard. There's landscape ornamentals on the site. However, due to the site's remoteness and 12-acre park like setting the residence and grounds have also become a desirable environment for a spiritual retreat center. Therefore, the subject Special Use Permit application has been filed.

In conclusion, in consideration of the foregoing analysis it is verified that the proposed uses and structures are appropriate for the granting of a Special Use Permit from the Maui Planning Commission.

The Conditional Permit, the intention of the Conditional Permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that the effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

The project site is accessed by a private driveway and is located approximately one-quarter mile mauka of Hana Highway. The subject parcel is 12 acres in size, is not rated by the Agricultural Lands of Importance in the State of Hawaii map and is designated Class E, the lowest rating possible in the Land Study Bureau Rating.

The proposed use is compatible with the surrounding agricultural uses because it will not disrupt or interfere with them in any way. As established during the agency review process no significant impacts are anticipated to the neighboring property.

Establishment. Upon finding by the appropriate planning commission that reasons justifying granting of a conditional permit exist, and that the proposed use would not be significantly detrimental to the public interest, convenience or welfare, and will be in harmony with the area in which it is to be located issuance of a conditional permit may be recommended subject to such terms and conditions and for period of time as the facts may warrant.

The proposed overnight accommodations are necessary because Ala Kukui plans to host religious leaders and guests from around the world, state and island. Due to the remote location of Hana, the site itself, and the solitary nature of religious practices onsite accommodations are necessary for the continuity of multi-day functions. The proposed nonreligious, educational and community programs are necessary because the Hana community has a limited number of venues for resident gathering. Ala Kukui has hosted many culturally enriching events which have been of value to the community including but not limited, writing workshops, slack key guitar lessons, hula halau gatherings, nonprofit service organization meetings and craft workshops. Programs and/or facilities have been provided by respected experts in various fields creating educational and community program opportunities and access to specialized instruction in various fields for members of the remote Hana community which otherwise would not exist.

Conclusion: In consideration of the foregoing analysis it is verified that the proposed uses and structures are appropriate for the granting of a conditional use permit. We respectfully request the transmittal of a recommendation for approval for the Maui Planning Commission to the Maui County Council.

Could I, can I just look at that site plan? I would just like to say that in the context of, in terms of talking about numbers of guests, in the residence itself the discussion is that, that there would be seven individuals that could be accommodated in the context of the existing structure. And in the context of the, of the Hales that will be built, there would be another eight. So the total number of individuals staying overnight in the context of a, of a retreat would be 15 individuals. I also like to point out that the parking area is a grass parking area which is designed, again, but with Ferraro Choi and the location of course, is remote from the retreat center. You would have to walk to it. But also, it would be available for community gatherings and the number of cars that could be

accommodated at any one time on this, in this area would be approximately 35 stalls.

The requested Special Use and Condition Permit, Special Use Permit and Conditional Permit meet the land use criteria of the State and the County. The agency comment process has verified that the environment and public infrastructure will not be unduly burdened or damaged. The Ala Kukui is in communication with neighboring property owners and will work to mitigate any potential impacts which may result from the operation. We respectfully request approval of the Special Use Permit from the Maui Planning Commission for the Ala Kukui Spiritual Retreat Center as an unusual and reasonable use in the State Agricultural District, along with a recommendation to the County Council for approval of the requested Conditional Permit. Thank you very much for your attention.

Chair Hiranaga: Is there going to be a staff analysis?

Mr. Fasi: The staff analysis would pretty much be a regurgitation of the governmental requirements that you just saw on the screen. The requirements for the Special Use Permit and the County Conditional Permit could be considered that they've met the criteria on, I just want to point out that since the Hana Advisory Committee Meeting, we have received a substantial amount of support letters up to this morning in favor of this proposal probably in the vicinity of 30 to 50 letters. There is – all in favorable. There is one that's conditionally favorable, favorable if the, if you add conditions to it and that will be one of the testifiers this morning I'm assuming, but the analysis has basically been done by the applicant's representative which makes my job easier. Thank you.

Chair Hiranaga: At this time I'm going to open the public hearing.

Mr. Mardfin: Mr. Hiranaga?, Commissioner Hiranaga, may I ask a question?

Chair Hiranaga: I would prefer you reserve your questions until after the public hearing.

Mr. Mardfin: Okay.

Chair Hiranaga: Thank you.

**a) Public Hearing**

Chair Hiranaga: I'm going to open the public hearing at this time. We have a couple of people signed up. Ryan Uchiyama?

Mr. Ryan Uchiyama: Good morning. My name is Ryan Uchiyama. I'm the landscape supervisor there on the property. I have worked there for 25 years before Susan came on board. And one of the reasons I stayed with the property because of her vision that, you know, I seen what she wanted to do with this property. Just a – she wanted to do this with the ranch. She's part owner on the ranch, but listening to the kupunas I guess it wasn't a good place. So she purchased this property and I stayed on there because I like working there. It's real surreal as they say. So, the reason I'm here for is just letting you know please support this project. That's all I gotta say.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: Hi, Ryan. When you said you started 25 years before Susan so that would make it how long ago?

Mr. Uchiyama: I started there about in '87.

Mr. Mardfin: Okay. At that time, was it being used primarily for agriculture?

Mr. Uchiyama: It was a private home, but you notice the land below the property is DLNR. The property owner was leasing that DLNR land. We had a big nursery down there which is still in existence, but we're not leasing that any more. And we also encroached on his property and we aged, we were aging the property, yeah. We were aging most of it palms, landscaping palms.

Mr. Mardfin: Okay. And to, to what extent, to what extent is that continuing today?

Mr. Uchiyama: We're still doing palms but we're diversifying. We're doing other, we do have our section of just Hawaiian plants, the kalo, the sweet potatoes. We have an orchard of citrus. In the future, we're looking to go to more potted plants because the ground, it's kind of one of the last lava flows through Hana and people who live in there know it's, it's just rocks. The grass looks good on top of the rock. So we want to go more towards the nursery type of thing.

Mr. Mardfin: Back in 1960's I think, correct me if I'm wrong but wasn't that part of Eric Craig's Hana Tropical Fruit Plantation where they were growing papayas on, on basically lava?

Mr. Uchiyama: Yes, papayas do grow good on rocks. But it was the Menehune Papaya Plantation back in the '60's. If you know the history of the plantation most of our parents worked for them, I mean, just for packing, picking. It wasn't a full-time job but he had jobs on weekends. When I took over on the property there was an older Japanese man that worked for the papaya plantation and he stayed on with the private owner there and I started working with him and he passed on so I'm still there on that.

Mr. Mardfin: Thank you very much.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Next individual is George Kahumoku?

Mr. George Kahumoku: Aloha, aloha to Planning, Maui Planning Commission. I'm George Kahumoku. I'd like to offer this chant that was taught to me by my kupuna from the Big Island where I come from. .E Ho Mai Ka Ike, Mai luna Mai e Ona Mea Huna Noheau O na Mele. E Ho Mai, E Ho Mai, E Ho Mai. That's a chant I learned from my late Aunty Edith Kanakaole. I did all her music for her when she was alive. Yes, my name is George Kahumoku. I'm a Hawaiian slack key guitar master. I'm a teacher at Lahainaluna for 18 years. I just recently retired. I taught for Kamehameha School for 25 years as a Principal for their Opportunity of Ed in Kona called Hale Pono Pono at the City of Refuge. I'm also a Hawaiian planter, a kuhu. I've held the priesthood since I was 18 years old and a herbalist. I've had the blessing of attending and leading several

workshops in slack key guitar, Hawaiian song writing and composing and ukulele at Ala Kukui in the last five years with my son, Keoki Kahumoku and Hawaii's greatest song writer alive today is Dennis Kamakahi. We actually wrote, you know, many songs. The bulk of our students were kupuna and na`opi`o, the opi`o from Hana. We ...(inaudible)... about 30 kupunas and sometimes 50 to 100 keiki would come for our workshops over there. We also performed several concerts for the Hana community organized by our friends, Claudia Kalaola and her husband and family. When we organize these concerts we were able to participate because we had a place to stay. We didn't have to pay outrageous rates at the Hana Hotel. We were able to stay over there, you know. Also went up and planted about 60 varieties of kalo. I don't know if they still alive because you know, like I said, it was hard to plant in that `a`a and pahoe hoe over there. I had a, I had a vision also for that place where every time they would lawn mow the grass and all the ...(inaudible)... want to compost and make pile. I even go steal all the newspaper and the cardboard from the Maui High School, I mean, the elementary right across street for make compost. I still do that on my own farm till today. I used to take all the rubbish from Lahainaluna. My wife still grumble with me today, I take 'em all the way to Kahakuloa. I also haul about 15 barrels everyday of compost from the other side of the island. I have the tree trimmers just dump rubbish, you know, all their tree trimmings inside the bushes and I go get 'em and still – so if you put cardboard and stuff down you no need weed for one whole year. For a farmer that's your biggest concern is weeding. Anyway, I participate in Hana Film Festival with Uncle Ray, Uncle Boy Kanae when he was alive and Ken Burgimier...(inaudible)... But Ala Kukui assisted with housing and workshops for the Hana community. I believe that Hana is a very spiritual place full of legends and mele and Ala Kukui will further the spiritual cause that benefit Hawaiian culture. I also see it as a place where people can build tolerance and bridge for –

Ms. Takayama-Corden: Three minutes.

Mr. Kahumoku: ... standard of living. Anyway, I'm also teaching a class of ethnobotany and a lot of the plant you read about in the books are right there, live. You know, they call them weeds but it's not really weeds, it's Hawaiian plants and herbs. This Tiny Mailaikini who brought me to Hana in 1974 for play for the Hana Music Festival. So I want to say Ola Ala Kukui e Ola Makemake, please feel free to call or email me with any questions you might have. Aloha nui loa, George Kahumoku.

Chair Hiranaga: Thank you. Questions, Commissioners? Seeing none, thank you. Next testifier is Winona Matsumura.

Ms. Winona Matsumura: Thank you for allowing me to speak this morning.

Chair Hiranaga: Please state your name?

Ms. Matsumura: I'm Winona Matsumura. I was born in Hana and I live just outside the gates of Ala Kukui. So I'm their closest neighbor besides Gary Chow. I live about a quarter mile uphill or Ala Kukui is about a quarter mile uphill from me. My home is on the side of Ala Kukui's long driveway. I'm able to see any cars that use the driveway coming or going. My living room is about 25 feet from the driveway. So you can see I'm very close.

Ala kukui is bound by shrubbery and trees on all sides. It is spacious as well as spiritual. As soon as one enters the premises, the feeling of calmness settles in and one becomes enveloped in the tranquility and the spirituality of the surrounding. The sounds of the birds and the other wildlife can be deafening. The occasional sound of an approaching auto may be heard as it enters the gate way below the living area. The ocean that can be viewed over the tree tops seems to enhance the freedom that can only be found in this special place. I often walk my dog up to Ala Kukui when the area is free of guests. One cannot ignore the fruit and the nuts, the flowers and colors of the many plants that line the entire area. I have seen different senior and cultural groups use the facility for practices or for weekly meetings. I have never had any problem with traffic or noise at any time. Ala Kukui in my opinion could be one of the most spiritual retreat centers in the world next to a monastery. It would be a grave mistake to refuse Ala Kukui's application for a permit. Thank you so much.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: Hi Winona. One quick one. In, in Hana there was some discussion about doing something with the roadway between the Hana Highway and the entrance to the Ala Kukui property. Do you have any preferences as to how that is, what kind of surface there be or how they care of that?

Ms. Matsumura: I think if they put complete roadway in they'd probably speed up there. Perhaps if it's just enough for the wheels they'd probably go up slower. It can be very dusty during dry times and I find myself yelling at cars because they go by too fast and because I'm so close to that roadway I get all the dust. Dan Omer planted some palm trees there to help keep the dust down but sometimes they trim it. I don't think it's Ala Kukui that does the trimming but the nursery sometimes trims it and trims it too clean.

Mr. Mardfin: Do you think crushed rock would be a useful surface?

Ms. Matsumura: Yes, they've tried putting gravel but gravel, you know, turns into dirt and more dust. Probably, I've been to some homes where they have crushed rock and it doesn't bring up as much dust.

Mr. Mardfin: Thank you very much.

Chair Hiranaga: Any other questions for the testifier? Seeing none, Is there anyone else that wishes to provide testimony on this agenda item? Please come forward. Please state your name.

Ms. Essie Sinenci: My name is Essie Sinenci. I'm a Hana resident and board member of couple of nonprofits organizations and member of the Pastoral Council of St. Mary Church in Hana. But the one I count mostly is probably because I'm married to Hana native for 44 years. Aloha everyone. Ala Kukui grounds and facilities would allow and afford groups to meet and conduct special retreats in a most conducive environment. We already know that Hana is a unique place for folks to enjoy peace and hospitality. Ala Kukui is a beautiful spot remote enough from Hana Town proper to avoid distractions for a successful retreat. I've been a participant there in various learning workshops for kupuna, cultural and writing classes. Facilitating a youth confirmation day



retreat at Ala Kukui proved to be a very positive experience for the adult leaders as well as the young people we mentored. I also help host a successful gathering of the vicariate meeting of the all priests of Maui and Lanai and Molokai. Granting a Conditional Use and Special Use Permit to Susan O'Connor and Ala Kukui would only mean a plus for the Hana people and the organizations who use it. Thank you. Questions?

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Is there anyone else that wishes to provide testimony at this time? Please come forward and state your name.

Mr. Lane Suzuki: Hi, good morning everybody, my name is Lane Suzuki and I'm the Executive Director of Ohana Makamae, the Hana Family Resource Center and all I gotta say is I really don't know much about zoning and planning laws but I do know that Ala Kukui will be beneficial to the Hana community because I learned that the basis of spirituality is honest and loving, committed to action. It's where they're all interrelated and interconnected and there's a sense of just oneness. Instead of, ...(inaudible)... pick one and other up instead of turn each other down. Misery loves company so it can be said that happiness loves company too. I'm an outsider to Hana. I just moved there a little while ago. I find that Hana is a spiritual place where one can find their spiritual nature. Hana is also where the aloha spirit thrives. Ala Kukui will be beneficial and would be a good place where Hana residents and outsiders can interact and learn about one and other. The more we understand about each other the better we can live in harmony on our quest to self ...(inaudible).. people and ...(inaudible)... There's no other place to get enlightened in Hana than Ala Kukui and that's all I got to say.

Chair Hiranaga: Thank you. Questions, Commissioners? Seeing none, thank you. Anyone else wishes to provide testimony at this time? Please state your name.

Mr. John Blumer-Buell: Aloha Chairman Hiranaga and Commissioners and new Planning Director. My name is John Blumer-Buell and I would like you to use my written testimony which is part of your packet. A February 15, 2011 to reference both the Conditional and Special Use Permits. I want to point out on a procedure letter – level. That the conditional permit should have been scheduled in Hana before the Hana Advisory Committee. Now, the Commission, I mean, the Commission has created no delays in this process and because I was the one person after the – that raised the issue of the Conditional Use Permit, I was inaccurately characterized as being against this project by the applicant's representative. That's not true. I understand the importance of the procedures here.

Hannibal Tavares appointed me to the first Hana Advisory Committee and we in the late '80's we fought very hard for that. Velma Santos who was on the Council at that point, recommended that because the controversy that the Council got caught up in without out knowing what was going on in Hana. So my point is, don't every – please don't bypass Hana.

Secondly, the applicant's consultant, Mr. Hart, argued in Hana that a three-year permit would be appropriate and I agree with the three-year permit, not the revised recommendation which I understand is five years. The three-year permit will allow more accountability with the community and we have – I advised in my letter to please have an advisory committee to work with Ala Kukui and the idea of accountability and in working with the community is for one thing and that's the success of this project. There's – I, I listened to all 30 testifiers in favor, but not many of them had

read the 82-page report. I read everything and the land really is, is not really lousy ag land, it's Class D, Malama Stony Muck. OHA wrote a five-page letter, Exhibit No. 9 in the original report saying that there should be agricultural component.

Now in my letter I offered an Exhibit A with all the conditions I'm recommending, and let me tell you that first I don't think there should be a transfer of ownership –

Ms. Takayama-Corden: Three minutes.

Mr. Blumer-Buell: – or anything without a hearing in Hana before the Hana Advisory Committee. I want the Advisory Committee, the community advisory committee to be able to meet with Ala Kukui, you know, a couple times a year or something. And at the bottom of page I think is most important, "it should be noted the community expressed support for senior yoga, senior gardening, youth programs, canoe gardens, agriculture, walks, employment for local residents including Mr. Uchiyama and the gardens, agricultural food preparation.

Chair Hiranaga: Please, please conclude your comments.

Mr. Blumer-Buell: Okay, and so forth. And I will tell you that a number of people that support this project were not sure that the things that they have enjoyed about Ala Kukui would be set in stone. And so, my testimony has really been to try to condition this project so it will be successful with the community and I hope you'll take the time to go over the thing. Last thing –

Chair Hiranaga: Thank you very much. Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: John, if you have three more minutes what would you have said?

Mr. Blumer-Buell: One thing I'd say, the last really is that in thinking about this, I would like to see this project, Americans with Disabilities Act compliant. I think that's very important and I know people with disabilities and they're an important and, and reserve of spirituality and we need to make this retreat accessible to them.

Mr. Mardfin: Thank you very much.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Thank you for coming in to testify and all the other Hana residents who've made the trip this morning. We really appreciate your, your participation in this process. It's a big chunk of time out of your life to do this. But getting to my question, in your testimony to the Hana Advisory Committee, you brought up some concerns about TVRs. Would you like to make some short comments about that?

Mr. Blumer-Buell: Okay, well, they, they really are – in my letter, my concern is that the County Planning Department had changed its interpretation of the whole project and it seemed to me that the Condition Permit was also an appropriate permit which they should have. Now, I'm not – and you know, frankly I asked for the Corporation Counsel to have this opinion ready when they came

to Hana. They didn't have it. You know, this could have helped sort out the process in Hana. And I just want to say that, you know, this has, this application has straddled two Administrations so, you know, I think that the current Administration may – has reached the appropriate conclusion that a Condition Permit is appropriate. I think it will – the other thing that was in my testimony, I was concerned that packaging the retreats with food and housing and the retreat is one thing that they were effectively bypassing the general excise tax requirement and I thought that was not appropriate when it clearly was overnight accommodations and the State is in great debt right now. So that was the concern about that. I think it's worth considering just the scope of what they're proposing. I understand what retreats are and the desire to have everybody there, the whole retreat, at the same time, I would be concerned that it could evolve into a true overnight accommodations so that maybe a condition for you to think about. But again, this is why I'm suggesting three years instead of five so when they, if they come back and everybody's happy they'll be going with at least five-year permit at that point.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: Yes, I heard you say transfer of ownership to go before the Hana Advisory group. Why transfer of ownership should go before a advisory group. I believe it's private property and I don't think anybody should be advising anybody ...(inaudible)...

Mr. Blumer-Buell: Okay, well, thanks for the question. The special use permit and the conditional permits are both specific permits for Mrs. O'Connors. And so if they want to transfer the, if they want to transfer those permits to somebody else then I think it would be appropriate to address them of the issues of why and how. I believe and stand to be corrected by Corp. Counsel or Mr. Spence that the original condition said that they shall not be transferred without written prior permission. In other words, that gave, I think I gave the discretion to your Planning Director to do that and I simply said that I think if it's going to be transferred it would be appropriate to at least seek an advisory opinion from the Hana Advisory Committee. I mean, there's a, there's a bit of red flag there now. I know Mrs. O'Connors and Mr. O'Connors and I, I and I understand their good intentions, but you know, I think this is just a good way to keep the community in the loop and Mrs. O'Connors needed to transfer ownership and the community found it reasonable there would be no opposition to it. It's that simple. I don't, you know, this is, there are, these are just conditions to make things work for the community.

Chair Hiranaga: Thank you. Any other questions? Commissioner Shibuya.

Mr. Shibuya: John, I applaud your request for transparency in this and having accessibility of the community in overseeing or having oversight on this operation. I have a concern here related to the fact that the Hana Advisory Committee in several instances now since I've been on the Commission here has not been able to meet. They've failed because of their lack of quorum. With this understanding and if we do provide them the opportunity to oversee, how effective will they be because of their poor attendance and quorum record?

Mr. Blumer-Buell: I think that's a good, very good question and I was going to write our Planning Director a letter about that very subject. I think when people take these positions, as you know, the Hana Advisory has seven members. It takes four to have a quorum and they need four votes to

move anything. Now I've served on there twice. Once through Hannibal Tavares and once by Linda Lingle. We, we almost always had six or seven members. Everybody that ...(inaudible)... showed up at every meeting unless it was an excused absence. So I think, you know, we need to work with the Planning Department and the Administration to be sure that people that accept these appointments understand what they're getting into and they should make a commitment to be at every hearing if possible.

My feeling is that if, if there's three unexcused absences then we should find another volunteer, that's up to the Council and Administration. So I'm very concerned with the lack of – I've been to meetings where we had the whole Planning Department out there and there's three people. ... (inaudible)... ridiculous.

Chair Hiranaga: Thank you. Commissioners, let's keep our questions to the agenda item. Is there any other questions for the testifier? Seeing none, thank you.

Mr. Blumer-Buell: Thanks for your time.

Chair Hiranaga: Is there anyone else that wishes to provide testimony at this time? Please come forward.

Mr. Gary Chow: Aloha Commission. My name is Gary Chow and I live right at the beginning, right off of Hana Highway. I'm the first property on the, as you're going up the hill on the left. Anyway, I just wanted to say that Ala Kukui project, you know, there's actually not much that I can say. Everything's probably been said about its benefit to the community, but I implore you to support this. The benefits far outweigh many of the other issues I think that that is work in progress. I give much credit to Susan O'Connor who her past participation in the community I think speaks for itself. You know, she's not doing it for money, obviously it is for the welfare and benefit of the Hana people and the community. So that's primarily my ... and support for this project.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Mr. Choi, how far away from the driveway is your home?

Mr. Chow: You mean the road going up to Ala Kukui?

Mr. Shibuya: Yes.

Mr. Chow: Probably 50 feet.

Mr. Shibuya: So it's further than Ms. Matsumura?

Mr. Chow: Aunty Winona, yes it.

Mr. Shibuya: Matsumura.

Mr. Chow: Yes. And the previous owner had planted palms on both sides to help keep the noise

and the dust down and I would say, you know, like she mentioned, it's a double-edge sword. It's sort of like if you pave it, now everybody going 40 miles an hour up and down that road. If you keep it in its present condition which is almost conducive to Hana in general it's a natural deterrent and kind of controls the speed other than Aunty's holding her broom and – gives you the look when you speeding up and down the road.

Mr. Shibuya: The stink eye.

Mr. Chow: That's basically what controls the speed of the traffic. And the traffic hasn't actually been much of a problem as far as – I know there was concern about quantity of traffic, but in a retreat situation, you know, once the people are there, they stay. It's not like people going back and forth all the time. So as far as quantity it hasn't been much of a problem.

Mr. Shibuya: Yeah, how about considering some hedges such as ...(inaudible)... little bit more dense than palm trees. Would that help?

Mr. Chow: Yeah, something like that would probably help, yes.

Mr. Shibuya: How about asphalt paving with puka inside or, or dips?

Mr. Chow: Yeah, well, the crushed rock, you know, depending on the size would probably also help assist that problem as well probably more so than paving.

Mr. Shibuya: I know it's kinda funny but in the Kula area we have a residential area and they used to pave it real well and then pretty soon it degraded with pukas and the traffic was slower. Then they grumble about the pukas in the road, they fixed it up and then they grumble about the cars going too fast now so they have to put speed bumps. So somehow we gotta keep some of the pukas in there.

Mr. Chow: Yeah, yeah, and I think the condition of the road also alleviates any potential heavy drainage problems as well.

Mr. Shibuya: Thank you.

Chair Hiranaga: Any other questions for the testifier? Seeing none, thank you.

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

Mr. Rick Rutiz: I would love to testify now, I've got to be at school in Hana in about four hours.

Chair Hiranaga: Okay, if you could state your name and limit your testimony to three minutes?

Mr. Rutiz: Thank you. My name is Rick Rutiz. I am testifying for the Ala Kukui matter. And I've been a Hana resident for 25 years. My kids have grown up in Hana. Right now I'm Executive Director and Founder of Makahana Ka Ike, a building program out in Hana. We're a nonprofit. I'm familiar with the game of nonprofit and survival in that world. And I've also been, being in Hana in

the last 25 years I have seen many attempted, trying to arrange places, trying to create places of gathering for cultural and other type of events that benefit the Hana community. I've participated in many of these events, hula events, music events, cultural events and sometimes we used to use the hotel, that was before the latest of the, you know, 27 changes in the last two years of ownership. I'd hate to rely on the hotel. Ala Kukui if you've been out there and seen it, it's a magnificent setting. It's got lots of room for people to be in and to gather in. Events can take place there. I've been in four or five events like this in the last three or four years and everyone feels at ease there. It's a very special setting and in Hana, we definitely need this. We don't have a venue to get people together. I know the permit talks about it being a retreat center and that retreat center is necessary to bring in small amounts of money because they can't get grants as easily as for example, I can because they do different things. So they've gotta generate a little bit of their own income which would help have the infrastructure and the money to malama the town of Hana and their needs for free and that's what they've done in the past and I have full confidence they will continue to do that in the future make -- I'm sorry, all the stuttering I'm a little nervous on this, but they're coming from the heart. They have been taking care of the needs of kamaaina Hana, of the culture, of the people, of the people without money and in the future I know they will continue to take care of our needs there. That's, that's about all. If you have any questions, I'm just coming, talking from the heart and what I've seen in the years that I've been there. So I support you allowing them to get this permit to continue. Thank you. Any questions?

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Mr. Rutiz, I've just visited Hana several times and I just wondered are there public areas such as parks that would be more amenable and to be helpful for addressing some of the community needs of being together, having activities there?

Mr. Rutiz: We have our school which I'm very involved in. We have a park and we have down at the bay. None of them are able to have privacy at all for a more closed meeting. When we have festivals, you know, it works out to have it in the park, it works out to have it in the bay, but none of these places are able to have that intimacy and privacy of you know, 20, 30 people getting together and, and talking, going in a direction on a subject. And then the other thing that's magic about there is if overnight accommodations are a reality I'm sure all of you understand that what goes on between nine and five at a table with an agenda is one thing, what goes on between, you know, seven and midnight with ukuleles out and people getting closer together is on a whole different realm and that seven to eleven realm out in a place where noise is not an issue, where you're a quarter a mile away from the next neighbor that's magic in, in stuff like that.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you.

Mr. Rutiz: Thank you very much.

Chair Hiranaga: Next person is Ryan Uchiyama

Mr. Ryan Uchiyama: I want to speak when the agenda comes up.

Chair Hiranaga: Next individual is George Kahumoku.

Unidentified Speaker: He hasn't arrived yet.

Chair Hiranaga: Next individual is Erin Lindbergh? Not present? Oh, okay. Please state your name.

Ms. Erin Lindbergh: Aloha, good morning. My name is Erin Lindbergh and I'd like to speak in support of Ala Kukui receiving the SUP Permit and the Conditional Use Permit. I'm originally from Montana and I've been a resident of Kipahulu, Maui for the past eight years. And have visited the Hana area for over 30 plus years prior to my residency as my grandparents lived there. Working in Hana as a yoga instructor, I've offered classes at Hana School, Hana Arts, Ohana Makamai, Hale Hulu Mamo and Hotel Hana Maui. For the past four years I've taught kupuna yoga at Ala Kukui, an experience which has provided nourishment and feeling for many of my students, given my own life more meaning and instilled gratitude and joy in all our hearts. The solace and beauty of the well tended land there is available to all who enter whether participating in healing arts practices, cultural workshops, writing conferences or meditation retreats, Ala Kukui has provided people with a source for developing an awareness and an appreciation and for the tranquility and beauty of the natural surroundings and to reflect that within their own being. Apart from teaching I have also participated in a variety of workshops and events hosted by Ala Kukui. In the past, these programs have all shared a high quality of integrity and heart. To mean a few, Pacific Writers Connection, Bob Hobby's lectures on East Maui ahupuaa, the pasana meditation, lauhala weaving classes taught by the late Kuulei Haina.

As a resident of the outlying Hana community I greatly appreciate learning through these extraordinary programs which provide the community with ample opportunities to share their own manao and learn from the skills and wisdom of guest presenters.

As a nonprofit in a remote place, Ala Kukui has offered invaluable programs to community members and guests with funds derived from foundations, donations and grant monies in these tough times the funding sources are limited. In order to continue offering these extraordinary programs in order for Ala Kukui to survive it must become self-sustaining. Allowing paid overnight accommodations for retreats and appropriate gatherings could give Ala Kukui not just a foothold but also a foundation on which to flourish. Without that financial support, the Hana community risks losing this vital center for educational, inter-cultural, and ecumenical exchange. Therefore, I am in strong support of approving both the SUP and the, and the, and the Conditional Use Permit.

Chair Hiranaga: Thank you.

Ms. Lindbergh: Mahalo for your –

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: Chair Hiranaga: Erin. First I want to thank you. My wife is your, as you know, in your yoga program and it does her worlds of good. Is it your understanding that if these permits are granted that the same programs that you've referred to in the past will be able to continue in the

future?

Ms. Lindbergh: I think that's the desire of the board and the staff and definitely the community members that have been able to participate in those programs before.

Mr. Mardfin: So largely what would happen would be, you would have additional programs that would be brought on board that would primarily serve visitors from out of the East Maui region, is that correct?

Ms. Lindbergh: And possibly charge for some of those, definitely overnight accommodations to people that are visiting from elsewhere that would definitely benefit the programs for the community which have been free, yeah.

Mr. Mardfin: Thank you very much.

Ms. Lindbergh: Thank you, Ward.

Chair Hiranaga: Any other questions, Commissioners? Thank you. Next individual is Charles Silva.

Mr. Charles Silva: If I could defer my comments until the subject comes up on the agenda?

Chair Hiranaga: Okay, thank you. And last person signed up is Kimokeo Kapahulehua.

Mr. Kimokeo Kapahulehua: Morning Commissioners, my name is Kimokeo Kapahulehua. I first want to speak in behalf of Kukui Ala. I just want to tell you that I've been a resident of Maui since 1970 and have been visiting Hana since then and I just recently came back from a canoe regatta out at Hana that held by Hana Canoe Club and me from this side of the island went in there to support them because this is only one event that they have for themselves and from here on, on, starting June 4<sup>th</sup> they will be traveling from Hana to come to seven events on our side. So we go out there to support Hana community. And same with this Ala Kukui, Rick Rutiz and myself have been together since 2002, and if you know this individual he's grown and given it all to Hana community. So the people in the Hana is very, very special especially the kamaainas who's gone and get houses and built their businesses. They did built their businesses by living out Hana community. They built their businesses with making sure that they give back. So Ala kukui is one of these programs that needs your help. So I support their permit because knowing that if you go through the coastline out in Hana, I no think you find one of those individuals out there that did not, and want to give back to Hana. So it's, it's a whole different deal and I'm pretty sure many of you know that. I sit before you, your Commissioner Ward is a good example, and I not speaking to have any points with any one of you I can tell you that. He was here serving food two days in a row for Hana Canoe Club. The community came down and supported Hana Canoe Club who doesn't even paddle. You know, so I just kind of tell you the kind of people that's out there. So my compliments to you Commissioner Ward and I really enjoyed ourselves in Hana and we'll back there for every year to support Hana community.

So my other topic that I came to support and I hope I don't run out of time is Maui Lu redevelopment. I come here to ask you to approve the extension of this permit because we've



always been there. You do know that I'm the President of the fishpond, Ko'ie'ie Loko I'a. I've also been involved with Hawaiian Island Humpback Whale Sanctuary in the rescues of our mammals and also involved with the Kihei Canoe Club. And in the shoreline management in 1999, received an award, Congressional Award in the Congress for that, and Maui Lu recognizes that and includes us with their program. So I'm before you to tell you to support this deal because they definitely support the culture program that we have. They have a luau going on. We're working with the luau to bring some tradition back that Uncle Jessie had there from the beginning. We're working with the canoe clubs and working with the fishpond and knowing the guest that they have will be part involved us. So they do have the culture component as a serious component to the development. So I ask you to consider their application today. Mahalo, Commissioners, thank you very much.

Chair Hiranaga: Any questions? Thank you.

Mr. Kapahulehua: Thank you.

Chair Hiranaga: Is there anyone else that wishes to testify on agenda item at this time? You can, you can just come forward.

*Note: Long pause while waiting for individual to approach the podium.*

Ms. Cua: Excuse me, according to this lady here, she's indicated she would like to wait to speak on the Ala Kukui matter when it comes up on the agenda. I'm not sure if anybody else that walked in though wants to testify.

Chair Hiranaga: Is there a Winona Matsumura?

Unidentified Speaker: Aunty Winona said she wants to do it later.

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

Chair Hiranaga: Anyone else wishes to provide testimony at this time? Hearing none, the public hearing is now closed. Open the floor to questions by the Commissioners. Commissioner Ball?

Mr. Ball: I'm not sure which slide this is near the end.

Chair Hiranaga: Use your mic please?

Mr. Ball: This is the structure, one of the hale structure. And okay, so in the right – the left-hand corner there, we'll it's not where it says hale 2. It's obviously a bedroom then a bathroom and then what appears to be a large empty room ...(inaudible)... to bathroom on the opposite wall and then go around the corner to hale 1 which is the bedroom.

Mr. Jordan Hart: This is Jordan Hart. So basically this is a preliminary design by Ferraro Choi. It did show two bathrooms but we didn't submit for two bathrooms. So basically that is a highly sophisticated white square that I placed over that bathroom just to alleviate confusion. Obviously you noticed that it wasn't to slip it by anybody it was just because we're not going for two bathrooms

and so showing another bathroom was just going to be – you know, raise questions of, you know, why are you showing two bathrooms, is it really two bathrooms. It's gonna be two units. Each unit will share a bathroom and then there will be another pod of two units and they'll share their own bathroom. But we're into the process and we weren't getting new designs for the preliminary layout.

Mr. Ball: You are getting new?

Mr. J. Hart: Well, when we go for building permit, they'll obviously have to be upgraded and that will have to be revised, but we're into the permit process, the special use permit process and so we worked with the design that we had that we started out and so it showed two bathrooms initially but there will be one bathroom split by two units. And there will be two sets of those ...(inaudible)... four halves total, two bathrooms total.

Mr. Ball: They'll have the Brady Bunch door.

Mr. J. Hart: The final design will have to be defined, I don't know exactly how it's going to be configured but yes.

Mr. Ball: Okay, so there'll be a different design on that?

Mr. J. Hart: Yeah, one bathroom for two units.

Mr. Ball: Thanks.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Paul, when they, when Ala Kukui went before the Hana Advisory Committee for the SUP only, not trying to get a CP at that time. There was a great deal of reliance on this being a church or religious institution. With them now going for the CP to what extent does this rely on it being a church or a religious institution or would it, would it meet the criteria even without that designation?

Mr. Fasi: In Title 19, under Definitions, I don't believe there is a definition for church and religious institution, what do the County consider to be a church or a religious institution is, is not something that the County has a definition for. So it would be a judgement call. Are they a registered church, are they a registered religious institution, I would have the applicant answer that. Am I answering your question?

Mr. Mardfin: Well, what if they scratched that whole thing out and said, it's not a religious institution. That's not their position, but if it were considered not a religious institution would the SUP and CP still be appropriate?

Mr. Fasi: Would still be appropriate.

Mr. Mardfin: So if they don't rely on that at all for –

Mr. Fasi: Because of the use.

Mr. Mardfin: Okay. So as a retreat center –

Mr. Fasi: A religious – are you getting to the overnight accommodations?

Mr. Mardfin: No, I'm not – overnight accommodations, that's what you needed the CP for.

Mr. Fasi: Correct.

Mr. Mardfin: But for the SUP I think you've answered my question. You don't have to rely on it being a religious institution. You're basically saying the activities that are there are appropriate for an SUP?

Mr. Fasi: Correct.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Thanks, Paul. Would you look on Page 10 of the packet that we got? And I need a clarification up at the top starting with, "the applicant will operate".

Mr. Fasi: What that means is the applicant will operate within the existing facilities right now and they're not going to do any expansion. The expansion will be phased expansion as the attendance grows and the need arises. And then they'll come in for building permits to expand it as conceptually presented to you today.

Ms. Wakida: Okay, I think you dropped a word, a phased expansion of something?

Mr. Fasi: Correct.

Ms. Wakida: Of the?

Mr. Fasi: Of the, of the conceptual design that you've seen today.

Ms. Wakida: Okay, but the next line goes on to say, "the applicant has not indicated what the total build out will include.

Mr. Fasi: Well, it's conceptual right now, but we're got, it's going to be, it has to be fairly accurate as to what they're presenting to you today. In other words, they're not going to be getting six structures as opposed to two. It pretty much has to be in substantial compliance to what they're representing to you today.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Wakida, I mean, Shibuya, excuse me.

Mr. Shibuya: I just want to get back to the basics here of who owns the property?

Mr. Fasi: Susan O'Connor is the owner.

Mr. Shibuya: And is that an incorporated type of a property ownership or the owners actually lives on the property?

Fasi: I'm going to defer that to the applicant's representative.

Mr. Arnie Kotler: My name is Arnie Kotler. I'm Co-Director of Ala Kukui. Susan is a private owner. She bought it. She rents it at an extremely nominal fee to a nonprofit organization legally Hana Retreat dba Ala Kukui.

Mr. Shibuya: And you're incorporated?

Mr. Kotler: Ala Kukui is incorporated as a nonprofit organization.

Mr. Shibuya: Is it registered with the DCCA?

Mr. Kotler: That is correct.

Mr. Shibuya: And it's also registered with the IRS?

Mr. Kotler: That is correct.

Mr. Shibuya: And what standing on the IRS?

Mr. Kotler: I have the IRS determination letters with me, it's a 501(c)(3) nonprofit organization.

Mr. Shibuya: And do you know the purposes of that organization?

Mr. Kotler: It's primarily educational which the question were raised earlier the SUP was as a spiritual retreat center because of the kinds of activities are primarily spiritual but it's not a church and it's not specifically by IRS ruling religious, it's educational.

Mr. Shibuya: And it also includes music and art because you're just emphasizing spiritual?

Mr. Kotler: No ...(inaudible)..

Mr. J. Hart: I'm Jordan Hart, could I add more information? Basically when we initiated this process this special use is for a church and religious institution. There is one definition for a church in the County Code and it's under the Subdivision Code. that basically is a facility that is more than 50 percent for religious uses. And so basically that was the test when we were talking about ZAED

about whether or not this application was appropriate for the special use permit process. So because they were doing spiritual retreats, prayer group meetings and things like that, we basically proposed 51 percent of religious in nature with 49 of educational nonreligious and initially that was okay for ZAED. Now as we went through the process as the Director mentioned, you know, as a new Administration and they basically wanted to reevaluate it so what we did is we added the conditional use permit. Now the conditional use permit there's no tests for any sort of religious uses and it also alleviates any concern of whether or not the overnight accommodations were appropriate. Now the County Code does say that religious and nonprofits basically, the definition of transient does not apply to religious and nonprofit organizations. So we basically ...(inaudible)... under that. That's what Mr. Mardfin was saying as far as we were, you know, it was the central point of our applications is what we're presenting. After our meeting with the Director, we basically revised the project and added a conditional use permit and put the areas, the items of concern under the conditional use permit and then special use permit continues as it was filed initially.

Mr. Shibuya: So it also includes education as the mainstay, main purpose by they also include spiritual aspects and you are on a agricultural area so would it be possible or are you having educational types of presentations?

Mr. J. Hart: We absolutely area and, and we've been proposing that from the beginning. Now there was some negotiation. Like I said, the initial test when we met with the Planning Department, Zoning Division was the only definition of a church is the Subdivision Code. So 51 percent of our programs were religious in nature, but there was 49 that were not and there were craft workshops, guitar lessons. But after going back and forth with it, basically the Department wasn't comfortable with the non religious uses being under the Special Use Permit so we had to amend our application and remove them and then now again, with a new Director we are basically asked to file a Conditional Use Permit and that provide an opportunity of bring those non religious programs back in. So now we are proposing religious programs under the Special Use Permit and then we'll have the opportunity to do non religious based educational programs through the Conditional Use Permit.

Mr. Shibuya: Okay, I'm looking at the State requirement, you're on agricultural land –

Chair Hiranaga: Commissioner Shibuya can I ask you to yield the floor and we can return if you have additional questions? Commissioner Mardfin?

Mr. Mardfin: Jordan, you're saying what had been with the SUP. I don't understand now why, you have two permits, they both have to apply to the same land piece. I don't know, and particularly with Paul's answer that we're not having to rely on it being a religious institution to get the SUP. I don't understand why you're dividing up the activities. To me, both permits apply. All the activities seem to be okay since you don't have to rely on a 51 percent religious test now. I don't see why it's bifurcated in that fashion.

Mr. J. Hart: We could, you know, technically just drop the Special Use Permit. –

Mr. Mardfin: I don't think – no, you can't do that.

Mr. J. Hart: It would be all covered under the Conditional Permit is what I'm saying. Okay, well,

anyway –

Mr. Mardfin: I think you need both.

Chair Hiranaga: Okay, let's allow the applicant to answer your question.

Mr. Mardfin: Sorry.

Mr. C. Hart: Chris Hart. You do need both actually, okay. You know, my, my view of it is in the context of the Ag District, the Agricultural District zoning, religious institutions, churches and religious institutions are mentioned as special uses that can be considered. So in this particular case, you know, we have a situation that has a mix of uses. There's religious uses that are religious in nature as well as uses that could be considered educational in nature. And so therefore in this particular instance we are applying for the special use. Now the issue that was a sticking point was the issue of having a retreat center and essentially an individual coming to the retreat center and saying, paying "x" number of dollars for a retreat and as part of the retreat having the opportunity of staying overnight. Now he didn't come there to rent a room, he came there for a retreat and by definition and by basic confirmation of the Zoning Enforcement Division that was permitted and it was not considered a transient vacation rental, but the issue has always been hanging out there. So in order to bring clarity to it, we agreed, you know, with the new Administration and with our Director, Will Spence, and the Deputy that that we should go through the Conditional Permit process so there's no question. But the fundamental permit because it's in the Ag District and it's a zoning issue is a Special Use Permit. Okay. But in order to give better, let's say a more encompassing, all encompassing basic qualification to do this particular use, you know, the Conditional Use is, is appropriate, I feel that it is as well, and I agree, and so that's what we're doing.

Mr. Mardfin: I agree that both are appropriate.

Mr. C. Hart: Okay.

Mr. Mardfin: And I would say from the beginning, but that's neither here nor there, but we don't have to have a 51 percent test now. We're not – you're not putting –

Mr. C. Hart: No.

Mr. Mardfin: – both permits apply to all programs --.

Mr. C. Hart: That's right.

Mr. Mardfin: – in effect.

Mr. C. Hart: So we don't need that but, but again, Jordan's correct when we initiated the process that's where we were coming from, okay.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: My question is for the applicant. Thank you. You have a tremendous support for the work that you're doing here and it sounds like you have been doing wonderful things over the years. The devil though is in the details and one of the details of course is that this is Ag property and the application is a little, in my opinion, vague on the agricultural end of the operation and could you be a little more specific on, on the type of farming you're doing, on things that are income producing as opposed to – I know you want to bring the Hana youth in, but that is, when and if they show up. I mean, the things that you have as an ongoing farming venture?

Mr. Kotler: I have a piece of paper I can pass out to you which addresses your question, and also, I'd like to invite Ryan Uchiyama, the grounds supervisor to respond.

Mr. Uchiyama: Yes, as far as –

Chair Hiranaga: Please identify yourself?

Mr. Uchiyama: Ryan Uchiyama, I clean the yard out there. As far as aging, we are aging, we do have all different type of ornamental palms that are already – it's in the ground. It was considered a tree farm when we, when Susan purchased the property we were already aging it as a tree farm. We have lots of rare palms that we do sell. We are going into the, like I said, potted plant thing. We were on hold for a while pending our Special Use Permit. We didn't know what direction to go and if we're accepted we can start really aging the place and, you know, if we're not accepted, you know? So we were in limbo of which way to go but as far as ag right now, we do have a lot of different types of palms in the ground out there.

Ms. Wakida: So it's basically tree farming is that what I'm hearing?

Mr. Uchiyama: Yeah, it's a tree farm. Yeah, we started as a tree farm.

Ms. Wakida: Thank you.

Chair Hiranaga: The Director wishes to comment.

Mr. Spence: Thank you, Mr. Chairman, also to – just to explain a little bit about special uses and conditional uses and when these things occur on ag land. There's kind of a misconception I believe that if you have a special use on agricultural land you're somehow required to do an agricultural use. It's maybe desirable to do that, and I, I share some of the sentiments in that direction, but special uses, conditional uses, what you're doing is you're permitting something that's not outrightly permitted within that district. Special uses for instances on agriculture include King Kekaulike High School. They don't any agriculture there. The Lahaina Community Center that was originally established, I don't think anything has changed but it was, it was established with a special use permit on agricultural land. I think it still is ag underneath. The Kula Fire Station. So there's no express requirement to do agriculture as a part of a special use within the Agricultural District. I agree it's something that I think we would all like to see, but it's not a requirement as such.

Ms. Wakida: May I ask one follow up question of the Director?

Chair Hiranaga: Sure.

Ms. Wakida: Should we grant these special use permit and conditional permit do they run with the land or run with the owner?

Mr. Spence: No, they are specific to the owner. I know the questions have come up about transferring and those kinds of things. Whenever you grant a permit like this, conditional, special, maybe a couple others it – they run specifically to the owner of the property. So Ms. O'Connor could not sell it and then just somebody else take over. There's gonna have to be a process for a new owner to – if that was ever to happen.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Clarification with the Director. My question is you mentioned examples such as King Kekaulike High School and the fire station and/or Lahainaluna High School properties. I believe these are quasi-public, quasi type of operations and I believe in the County they are zoned that way. They're not zoned agriculture in the County. They're really more quasi-public and I'm trying to look at this aspect too in terms of how this would apply for the County to rezone it as quasi-public because it's actually a public type of a function that they're performing.

Mr. Spence: I would agree that these are public/quasi-public types of uses. But all the same, they are on agricultural land and the very same process for the Special Use Permit applied in those cases that, you know, we're dealing with here.

Mr. Shibuya: You know, procedurally, how would we go about something like this and keep it consistent with what we have already in existence today such as public school sites, fire stations, public parks?

Mr. Spence: At some point I think that's a larger planning issue than what we're dealing with here. But at some point it would be appropriate for the County to go rezone those properties but for the purpose of here, I'm just saying that, you know, the agricultural use was not a required use.

Mr. Shibuya: In this case, if we, as a body approve this use, would the County take efforts to review these things for possible, I guess, correct nomenclature or?

Mr. Spence: Possibly some time in the future, but that would be something to go out to the community and discuss, but, but much further beyond the scope of what we're dealing with here.

Mr. Shibuya: Yeah, I just want to have consistency.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: This is for the applicant, Arnie. In both the SUP and the CP, there are, there's a



Standard Condition 5 that says, "the applicant shall develop the property in substantial compliance with representations made." So I'm gonna save having to make some amendments if I get you to commit to doing certain things. There was concern at the Hana Advisory Committee meeting that this not be just for any B & B, TVR type of operation. That any people staying overnight would have to be part of a program put on by Ala Kukui is that correct?

Mr. Kotler: That is correct.

Mr. Mardfin: So somebody can't call up the night before and say, hey can I stay overnight?

Mr. Kotler: We get calls like that and the answer is no.

Mr. Mardfin: No, they can't.

Mr. Kotler: No, they cannot.

Mr. Mardfin: Thank you. My second one. There is a – on the SUP I think it is there is a condition that says the – project specific condition and it's No. 7, "applicant shall maintain an advisory committee comprised of Hana residents who shall provide input on the types of programs and operations occurring under the State Land Use Special Permit. That the types of programs and operations shall be balanced list of community, cultural and spiritual events subject to the final concurrence by the Planning Department." With regard to that, are all the things that historically have been done there be part of that list as far as you were concerned?

Mr. Kotler: It's our intention, yes.

Mr. Mardfin: So when the Hana Advisory Committee listed yoga and had a laundry list of things they would be all included as far as you're concerned?

Mr. Kotler: Yes.

Mr. Mardfin: Secondly, John Blumer-Buell in his suggestions, had basically a – he wanted to modify this and I think we can get it by an understanding instead, the advisory committee shall be made up of concerned citizens groups and individuals. All meetings shall be publicized and open to the community? And then he has some details about how often they meet. Would you, your intention be that the meetings to decide what is appropriate would be open to the community?

Mr. Kotler: Hadn't thought of it and I hadn't read John's statement. Offhand, I would –I'm making this up on the spot, four meetings a year, three not open to the public, one open. Just made that up.

Mr. Mardfin: Okay. Because I think –

Mr. Kotler: In other words, if the entire community to have input, we, we would love that but if we have an advisory committee of six or seven people, I would think it would more effective not to have those as public meetings personally.

Mr. Mardfin: Would you be willing to after you've come up with your list of things notify the community of what it is that you're proposing?

Mr. Kotler: Beautiful, yes.

Mr. Mardfin: So that, the, the Director could have input from the community if they said, wait a minute why are you doing this?

Mr. Kotler: Of course, yes. And as you can sense from the kind of testimony and letter writing you're getting we, we're in full accord with that spirit.

Mr. Mardfin: I thought you would be. My third question –

Chair Hiranaga: Mr. Mardfin, Commissioner Mardfin, can I ask you to yield the floor?

Mr. Mardfin: Sure, certainly.

Chair Hiranaga: Thank you.

Mr. Mardfin: I'll get back to Arnie later.

Chair Hiranaga: Is there anyone else that – any other Commissioners? Commissioner Shibuya?

Mr. Shibuya: I just wanted to ask about the 501(c)(3) status. So I understand that you are actually filing a Form 990 every year?

Mr. Kotler: That is correct.

Mr. Shibuya: Every year.

Mr. Kotler: That is correct.

Mr. Shibuya: And in that Form 990, you do show a gain or net gain or some–?

Mr. Kotler: We break even with, with a subsidy. But as you probably know from your materials since mid-2009 agreement between Mr. Hart and the County, we haven't – for all intents and purposes haven't done anything so Susan O'Connor and a few other donors have subsidized the operation during this two-year application period.

Mr. Shibuya: So is that how you are getting funds from the Hawaii Community Foundation as well as from the tourist?

Mr. Kotler: Prior to 2009 a number of applications were submitted and some approved for some of the projects such as a series of workshops on kalo growing and I think, the slack key program that George Kahumoku taught was funded in part by HTA. And we also did a series of programs in Central Maui on the same theme but not at Ala Kukui that HTA helped underwrite.

Mr. Shibuya: I just wanted to make that distinction here. This is not a Hawaii Polynesian Cultural Center type operation is it not?

Mr. Kotler: It is not, but, but there are many cultural offerings, the programs are in fact of that nature.

Mr. Shibuya: Because it lends itself to that type of operation where you encourage the tourist to be part of this operation and that you get your income from this type of activity.

Mr. Kotler: That is correct. Basically the income is from overnight retreats. It could be yoga or any other kinds of retreats like that and people contribute towards their room, board, and something for the teacher, et cetera. And then also, some grant writing for some of the local programs and a lot of this is, is, you know, tourist would like very much. Yeah, but a lot of them, even though tourist are welcome are geared toward the local Hana community and their needs and interests.

Mr. Shibuya: So you are a certified IRS foundation with annual meetings?

Mr. Kotler: A public charity, yes. Yes, with annual meetings, in fact four times a year.

Mr. Shibuya: And that includes inviting to the public?

Mr. Kotler: Well, the board meetings are not public for a nonprofit.

Mr. Shibuya: No, annual meetings.

Chair Hiranaga: Okay, I'm going to ask you to yield the floor, Commissioner Shibuya. Is there anyone else that wishes to ask questions, Commissioners?

Mr. Shibuya: I just want to finish the annual meeting.

Chair Hiranaga: Okay, just a reminder, please limit your questions to two questions and then yield the floor and the Chair will recognize you if you wish to continue so we can keep business moving forward. Commissioner Mardfin?

Mr. Mardfin: Arnie, it wasn't raised at the Hana Advisory Committee, but on – we've had similar projects and there has been a concern in the past on some other projects about weddings and receptions. Do you folks have a policy on weddings and receptions?

Ms. Therese Fitzgerald: Yes, we do. This is Therese Fitzgerald. We will be happy to host intimate wedding ceremonies and encourage people to have their receptions elsewhere. We do have a no alcohol policy and so, we want to celebrate their wedding ceremonies and let people celebrate the rest of the celebration elsewhere.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioners, any other questions? Commissioner Shibuya?

Mr. Shibuya: Back to my annual meeting. I'm trying to make a distinction here with one of the testifiers recommending that they have some public oversight and if you do have annual meetings as normally public charities do, are the public members invited to have some oversight?

Mr. Kotler: We haven't combined the two yet but these are sort of concepts in the works. There's the Hana Advisory – not the Hana Advisory Committee to the Maui Planning Commission but a local Hana Advisory Group to Ala Kukui proposed in one of the conditions that we fully appreciate. There's also the Board of Directors that have stewardship for the nonprofit. Just to make that distinction any of those meetings of either could be public. We just haven't thought it through yet, but certainly the idea of having a public gathering in Hana annually or something and Therese and I, as maybe representatives of the Board and can bring things to the board. Some of our board members are on the mainland. You know, those are the logistical concerns but I believe the principle you're speaking to we appreciate and would want to hear.

Mr. Shibuya: Yeah, I'm just trying to combine some, something.

Mr. Kotler: Yeah, I had, we had - frankly in my mind I had not put together the Board of Directors and the local advisory committee how to do that.

Mr. Shibuya: Okay, thank you.

Mr. Kotler: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I have one for Arnie. Project specific Condition 9 says, "the applicant shall post signage calling for slow driving within the access driveway area. Will these be done in compliance with the Hana Design Guidelines for signs?"

Mr. Kotler: Yes.

Mr. Mardfin: Thank you.

Mr. Lay: I have a question.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: I have a question on your wedding ceremonies. We've seen it where these have become very money making and I'm wondering if that's your intentions or do you see that happening or are you going to keep it as a, also is it going to be public and open to the public, what exactly are your thoughts on that?

Ms. Fitzgerald: Well, we see that, you know, with programs where people are coming together to really get stronger in their religious faiths and their spiritual cultivation, many people will fall in love and want to marry after being in such programs. So that's, that's, you know, the, the strong thought, but of course, we're in Hana and it's the Hana people's place too, so really see the Hana

people celebrating their weddings there, their wedding ceremonies there and we have a great rapport with, you know, the spiritual pastors and leaders in that area so it's open to people of different faiths.

Mr. Lay: Not to pursue it so much but the monetary 'cause you know we've got people that would love to – it's a beautiful place you see from the photographs.

Ms. Fitzgerald: Yes.

Mr. Lay: And we, living here, have a difficult time getting married at these very beautiful areas just because of the cost that's incurred for saving and reserving these areas and I'm wondering what are you looking at, I mean, as far as cost, just a general cost of something like that just to give some idea on price?

Ms. Fitzgerald: Well, it would depend too on, on how you do the food. The food is, you know, a big issue in Hana. In Hana it's substantial, more than most places in the United States. The cost of, you know, catered events. You know, but if, if there are people who can bring the food or use the, the kitchen that we'll have established after a Certificate of Occupancy, you know, people can do their own cooking, if they can contribute in other ways then it's very affordable rate you see, and then there are people who want everything done, the decorations, the food, ministry, et cetera, then money will go out into the community for all those services and Ala Kukui will also take a rate. So I think it is a – it can be very affordable.

Mr. Lay: Kamaaina rate, kamaaina rate?

Ms. Fitzgerald: Kamaaina rate, yes, yes.

Chair Hiranaga: Any other questions, Commissioner Mardfin?

Mr. Mardfin: I have two for Paul. My first one is when you presented this to the Hana Advisory Committee it was for a three-year SUP.

Mr. Fasi: That's correct.

Mr. Mardfin: In reading the SUP recommendations you're now up to five years?

Mr. Fasi: Correct.

Mr. Mardfin: Would you explain that?

Mr. Fasi: Well, based on the overwhelming support that was received from the community we thought five years would be appropriate, and you know, three years goes by so quick and before you know it, this matter is going to be before this Committee again. So we're trying to space things out now and go for longer periods, longer time extensions and that's part of the policy on this as well.

Mr. Mardfin: And I presume also, matching the time period for the two ...(inaudible)...

Mr. Fasi: Correct. It will start upon the Conditional Permit effective date.

Mr. Mardfin: My second question for you. In the presentation to the Hana Advisory Committee there was talk about improving the road from the Hana Highway up to the property. And I've asked a couple of people about that already. I don't see that in any of your recommendations?

Mr. Fasi: No, it wasn't in the recommendation that we brought to the Hana Advisory Committee, we weren't aware that there would be a traffic problem. And I'm glad you asked that because I was going to bring that up. If you could refer to Exhibit 3 in your SUP report, the Department SUP Report. This is a letter from the Police Department making their recommendations and basically what they're asking for is for the driveway entrance to be two lanes rather one so you don't have a waiting car on the Hana Highway. They can just pull into the driveway. So that's a good idea, and then I know there's some discussion at the Advisory Committee how far up are they going to pave it? But having the two lanes driveway at the entrance would alleviate traffic. We just approved, this Body just approved the Uakea Bridge went from one lane to two lanes. It's to have traffic flow so it only makes sense to keep the traffic flowing on the Hana Highway and you're gonna have 60 round trips coming out of this driveway every day. So it only makes sense to make that entrance two lanes.

The other thing that's going to happen is when they do go in for the building permits, the Fire Department needs to get their vehicles up and down that, that gravel driveway and when it's wet it could be slippery. The Fire Department may require them to do two lanes all the way to the top as the Police Department requested. That hasn't, that hasn't been thoroughly discussed out yet but that's certainly a possibility and because this is group, you know, gathering place you may have ambulatory services required as well. They need to get their vehicles up there as well. So the width of the driveway comes into play, the surface of the driveway comes in to place. I don't think putting potholes in the driveway is a good idea.

Mr. Mardfin: My understanding from the discussion is Hana people did not want a double width highway. It gets far less traffic than Uakea, then, then Hana Highway by Uakea Bridge.

Mr. Fasi: Well, keep in mind that the double width driveway is only at the entrance. Okay, so maybe the first 50 feet will be a double driveway.

Mr. Mardfin: that's what my understanding had been at the meeting.

Mr. Fasi: Right.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions, Commissioners? I have a question. So there's proposed improvements from Hana Highway up to the gate for the driveway. What exactly are those proposed improvements?

Mr. Fasi: Well, the paving for one and the width of the driveway.

Chair Hiranaga: Is it asphalt or concrete?

Mr. Fasi: That hasn't been determined yet.

Chair Hiranaga: But it will be a hardened surface?

Mr. Fasi: That hasn't been determined yet.

Chair Hiranaga: Okay, did Public Works have any comments regarding that because I believe in the past they've had issues regarding gravel being transferred from the driveway onto a public roadway and previous Administration had asked for a hardened driveway apron.

Ms. Dagdag-Andaya: Not according to the letter that was dated November 2, 2009.

Chair Hiranaga: No requirements?

Ms. Dagdag-Andaya: No.

Mr. Fasi: You know, if this is a public/quasi-public type of operation then it only makes sense to get the most crucial parts of that driveway paved. The Fire Department, Police Department, ambulatory services aren't going to be too happy trying to get up there on a gravel surface driveway if they can even make it up there.

Mr. Jordan Hart: Could I add?

Chair Hiranaga: Yes?

Mr. J. Hart: This is Jordan Hart. We did do preconsultation with the Fire Department and they basically provided two options to our engineer. There could be hydrants to basically for a fire truck to connect to and that would require the full basically construction of a paved driveway all the way to the top from the bottom to top or they could do a tank and pump system with sprinkling and that wouldn't require the improvement of the driveway. The applicant, before the Hana Advisory Committee was open to paving the initial portion that basically gets past the two neighboring properties but as far as which method is going to be the final method to provide fire protection that hasn't been determined and so that will basically establish whether or not— I don't want to say that will establish but, but because it's up in the air that would establish for the applicant whether or not they're going to pave or, or do a line of water all the way to the top.

Chair Hiranaga: Okay, just a follow up I guess on the recommendation from Staff for the SUP, Condition 8 specifies some type of improvement to the access driveway from Hana Highway to the gate so I'd like you to be prepared to explain what type of improvement you're proposing?

Mr. Fasi: We would be comfortable with the, Exhibit 3 drawing from the Police Department and it's Attachment E and they've got a schematic here of the project driveway approach to the Hana

Highway. If the Public Works Department is happy with this, the Department is happy with it as well. But I think this is a good solution that's, that's doable and cost effective to the applicant. It's a good start.

Mr. Mardfin: Where is this Paul?

Mr. Fasi: It is –

Mr. Mardfin: Thank you.

Chair Hiranaga: Okay, I would like it clarified as to what type of surface the applicant would be proposing. You don't need to answer me now but do it during the motion section and also, I would like the applicant to consider some type of noise and dust abatement along the neighbor's property lines. Not the entire driveway but just bordering their property line. Commissioner Ball?

Mr. Ball: Going to these, these photos here, Jordan you want to – to look at the map and then look at this? It kind of doesn't lend itself to expansion. I mean, you could take out these trees but then there's this other driveway.

Mr. J. Hart: So basically if you look at the survey and you look at the photo, the person who planted the hedge didn't look at the survey so there', there's more room than is shown between the hedge to work with and so we would –

Mr. Ball: The other side.

Mr. J. Hart: Yeah.

Mr. Ball: There's like a water meter box or some kind of utility box here.

Mr. J. Hart: I believe that you're correct about that. So we would be open to providing a hedge for dust protection and we would probably propose something native so we'll have to determine that. We can have final review of that plan by the Planning Department. So we'd be willing to pave it. We're proposing asphalt right now if that's acceptable. We'd do dust mitigation with a hedge with the review by the Planning Department and like I said, the survey of that roadway area is provided in the application report and basically, you know, what you see now in the ground is not representing what is actually existing as far as parcel lines.

Chair Hiranaga: I would suggest you, you take the time now to discuss with those two neighbors and when we go to the motion section of the meeting you have a consensus of what you're proposing as far as noise and dust abatement.

Mr. J. Hart: Okay.

Chair Hiranaga: Are there any other questions for the applicant? Commissioner Mardfin?

Mr. Mardfin: This isn't quite for the applicant but it is relevant. When we come to this, there was



concern in the Hana community that, that they wanted to modify standard conditions and I know the Department is loath to change the wording on standard conditions but I will be making a proposal to amend this by adding a project specific condition –

Chair Hiranaga: Can we wait till we have a motion on the floor and we can do amendments?

Mr. Mardfin: Okay, okay.

Chair Hiranaga: Commissioner – Paul?

Mr. Fasi: Just to kind of address the dust and noise abatement issue and put it to rest. The applicant's willing to get this paved past the residential houses, a 100 to a 150 feet from the Hana Highway which will take care of the dust and the noise past the two residential houses that are close to the driveway. Going up a 100 to a 150 feet would provide that solution.

Chair Hiranaga: Okay. Any other questions for Commissioners? Seeing none, we'll ask for the staff recommendation. I guess we could take the SUP and CP individually so why don't you start with the SUP?

**b) Action**

**State Land Use Commission Special Use Permit**

Mr. Fasi: We'll start with the SUP. One standard condition is the first one and that it will be for five years. There are two other project specific, three other project specific conditions that are notable, No. 7, "that the applicant does maintain that Hana Advisory Committee to be involved in the program and the direction that the programs taken out there in regards to the community and how it affects the community.

Project specific Condition No. 11, "that the current cesspool be upgraded to the septic system that will accommodate the final build out." So the maximum build out the cesspool should be engineered and designed to handle the maximum build out and that should happen within one year of the State Special Use Permit becoming effective.

"That a property manager does reside," I'm sorry, No. 13, "that a property manager does reside on the property full-time," so the residents do have a contact person there to call in case some event there and something needs some quick attention to.

And lastly, "that the Special Use Permit will become effective on the same date as the Conditional Permit effective date from the Council."

Chair Hiranaga: I'm wondering if it would be prudent to modify project specific Condition No. 8, you're talking about improving the access driveway from Hana Highway to the gate. You may want to expand that to say –

Mr. Fasi: That's a very good suggestion that the applicant shall improve the access driveway, that

it be paved with either concrete or asphalt at a 100 to a 150 feet from the Hana Highway. Something to that effect.

Chair Hiranaga: Is it beyond the corner, the back boundary of the property owners or is it from Hana Highway?

Mr. Fasi: From the edge of Hana Highway going in mauka a 100 to a 150 feet which would satisfy the residents concerns regarding noise and dust.

Chair Hiranaga: What is the approximate depth of the lots?

Mr. Fasi: Well, it's a 12-acre lot and it's –

Chair Hiranaga: No, no I mean –

Mr. J. Hart: They're greater than 150. I have the survey but it doesn't show the parcel length. I'm trying to look at the TMK map right now.

Chair Hiranaga: Yeah, I think it would be better if you say it will extend, "x" number of feet beyond the real boundary of the property.

Mr. J. Hart: We're fine with that.

Mr. Fasi: Okay, I can draft similar language to that that would address that concern. Thank you, that's an excellent suggestion.

Mr. Mardfin: Are you ready for a motion?

Chair Hiranaga: Are you ready for a motion?

Mr. Fasi: Yes, I am.

Chair Hiranaga: Okay, floor is open to a motion.

Mr. Mardfin: I move we approve the Maui Planning Department's Recommendation, Findings of Fact, Decision – Conclusions of Law with regard to the Land Use Commission Special Use Permit for Ala Kukui.

Chair Hiranaga: Second?

Mr. Shibuya: Second.

Chair Hiranaga: Motion by Ward Mardfin, second by Commissioner Shibuya. Discussion? Commissioner Mardfin?

Mr. Mardfin: I move to amend, you ready? I move to amend by adding a special – a project

specific condition that the –at the time of renewal and/or transfer of the permit that a hearing be held before the Hana Advisory Committee to the Maui Planning Commission in Hana.

Chair Hiranaga: Is there a second?

Mr. Shibuya: Second.

Chair Hiranaga: Discussion on the amendment? Commissioner Wakida?

Ms. Wakida: Would you please repeat the amendment?

Mr. Mardfin: Yeah. The standard condition is that the Director approves either a transfer or a renewal. The Hana Advisory Committee was extremely concerned that it be done outside of Hana without any local input. My – I know the Department does not like changes in wording of standard conditions so I am proposing a project specific condition that before the Director approves either a transfer a renewal that there be a hearing before the Hana Advisory Committee to the Maui Planning Commission held in Hana.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I, I thought I understood the Director to say that the permit couldn't be transferred?

Mr. Spence: Yeah.

Ms. Wakida: So therefore that precludes that part of the motion, right?

Chair Hiranaga: Commissioner Mardfin, we'll ask the Director –

Mr. Mardfin: Okay.

Chair Hiranaga: – to explain.

Mr. Spence: Okay, your standard condition No. 3, "that the State Land Use Commission Special Permit shall not be transferred without prior written approval of the Planning Director," and then it goes on from there. So what Commissioner Mardfin is – so it can't just, you can't just go here you go, here's your new, here's your property with this permit in place and, and all is fine. It takes some kind of review before, you know, a new owner could take possession of the property and operate under that permit. What Commissioner Mardfin is asking is that rather than just the Director approving a transfer that it go back to Hana Advisory Committee.

Ms. Wakida: Okay, got it.

Mr. Mardfin: And it was unanimous by the Hana Advisory Committee that that condition be in there, in a different format but the same, the content be that.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Just speaking very quickly on this, during all Hana plans the people in Hana prefer having it processed through that Hana Advisory Committee and I respect that and therefore, that's why I seconded it and I'll be supporting this amendment.

Chair Hiranaga: Paul?

Mr. Fasi: The Staff Planner has two issues with that. One, the Department is trying to streamline our operations and we're trying to get business done in most efficiently as possible. Secondly, we're having a difficult time trying to get a quorum out in Hana. If we don't get a quorum, you know, you set this thing months behind and as the Director said, it's just, it's not just a carte blanche transfer it does go over some extensive analysis by the Department. So it's not just handing over the permit.

Chair Hiranaga: I would like to make one suggestion on, a friendly amendment, that some type of time limit be placed upon the Hana Advisory Committee addressing the request for change of ownership and so say, you know, earliest available meeting agenda and if there is, if the Hana Advisory Committee is unable to come to a determination that this requirement be waived. So it won't be holding up the process. As soon as it can be agendaed, if they're unable to meet or make a determination, that requirement is waived. It's a friendly amendment.

Mr. Mardfin: Commissioner Mardfin?

Mr. Mardfin: As the maker of the motion to amend. I don't have a problem with that but I think it's unnecessary. All I said was that there would be a hearing in Hana. It didn't say that they had to have a quorum, it didn't say that they had to approve it as a formal motion, but I have no problem with your concern about timeliness because that has been frustrating to people of Hana anyhow that they not have quorums or – but they did have four votes out of seven for both these two concepts, the transfer and renewal come back to Hana first.

Chair Hiranaga: Any other discussion on the amendment? So the maker of the amendment is agreeable to some language regarding urgency?

Mr. Mardfin: Yes.

Mr. Shibuya: I agree.

Chair Hiranaga: Any other discussion on the amendment? Seeing none, I call for the – oh, I'll let the Director restate the amendment.

Mr. Spence: Okay, the amendment is that if, if the permit is to be transferred or a time extension granted that there be a hearing in Hana. And what the clarity that it –there may not be a quorum out there at the time.

Mr. Mardfin: This be held that in front of the Hana Advisory Committee to the Maui Planning Commission.

Mr. Spence: Right, and I'm not clear on –

Chair Hiranaga: It's just, just to clarify that if once the, the request is placed on the agenda for the Hana Advisory Committee, if the Committee is unable to reach a – hold the hearing due to lack of quorum or unable to make a determination that this requirement be waived.

Mr. Spence: Okay. Okay.

Chair Hiranaga: Call for the favor so indicate by raising your hand.

Mr. Spence: Seven ayes, on the amendment. Excuse me six ayes.

Mr. Freitas: I oppose.

Chair Hiranaga: Six ayes.

Mr. Mardfin: How many opposed?

Chair Hiranaga: Can we see those hands again please?

Mr. Spence: This is just for the amendment. That's six ayes.

Mr. Mardfin: Don't you need –

Mr. Shibuya: How many opposed?

Mr. Mardfin: Shouldn't you ask for opposed?

Chair Hiranaga: Opposed?

Mr. Spence: Two opposed.

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

**VOTED: To Add a Condition that if There is a Transfer or Time Extension of the State Land Use Commission Special Use Permit that There be a Hearing Conducted by the Hana Advisory Committee.  
(Assenting - W. Mardfin, W. Shibuya, D. Domingo, L. Sablas, K. Ball,  
P. Wakida)  
(Dissenting - I. Lay, J. Freitas)**

Chair Hiranaga: Motion carries. Are there any other amendments. Seeing none, I'll have the Director restate the motion.

Mr. Spence: Mr. Chairman, if you could allow me just for clarity on standard Condition No. 1, that it be that the SUP be valid for five years from the effective date of the County Council ordinance

that's for a Conditional Permit. So it's going to from here to the Council. The effective of that five years will start running when the Council approves the Conditional Permit. Other than that it's the motion is for approval as amended by the Commission.

Mr. Giroux: Paul, like I've stated before we're getting rid of that redundant naming names on the insurance part so that it's twice within Condition No. 2. We're just taking out that extra naming. Once you name them, you're named. You don't have to name names.

Chair Hiranaga: Just for clarity on Condition No. 8, I'm not sure if we want to mandate concrete or asphalt. It should be some type of noise abatement, dust abatement, improvement that is, I don't want to say mutually agreeable to the neighbors because then they could hold it up so I don't know how you want it. Because there's other methods to do noise and dust abatement. You can reinforce the driveway with this plastic – I'm not sure what you call it, it's almost like grasscrete but it's not concrete enforcement, it's reinforced with hard rubber or plastic that's acceptable to the Fire Department because it can carry the weight, it still allows grass to grow but it hardens the surface so that it's not a purely hard surface. I don't know how you want to clarify what type of improvement. I recently had to do a improvement to meet fire requirements and they allowed this hard plastic subsurface improvement under the grass. So it looks like grass but there's this strengthening under the grass. I don't know with 60 cars a day that might just expose all the dirt. So I just want to kind of leave it.

Mr. Fasi: I would say the Department could make a suggestion that a surface that is acceptable to the Fire Department would just be the bottom line because they would be having the heaviest vehicles traveling that highway. If it's good enough for them then it should be good enough for everyone else.

Chair Hiranaga: Is that acceptable to the Commissioners? Okay, so you did you state the motion already or?

Mr. Spence: To approve as recommended by Staff and as Amended by the Commission.

Chair Hiranaga: Call for the vote, all in favor so indicate by raising your hand.

Mr. Spence: That's eight ayes.

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

**VOTED: To Approve the Land Use Commission Special Use Permit as Recommended by the Department with the Added Condition if There is a Transfer or Time Extension of the Conditional Permit That There be a Hearing Conducted by the Hana Advisory Committee.  
(Assenting - W. Mardfin, W. Shibuya, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Ball, P. Wakida)**

Chair Hiranaga: Motion is carried. We will recess for lunch.

Mr. Spence: Do we want to take care of the Conditional?

Chair Hiranaga: Oh, okay. Okay, we'll take care of the Conditional.

### **Conditional Permit**

Mr. Fasi: ...(inaudible - changing of tape)... standard conditions there's only two that I just want to reiterate. They're not too notable but that the planned build out and timing match the representations made today and that the non ag uses be limited to uses similar in nature to those representations made today. Again, the Conditional Permit will become effective upon the effective date of the ordinance and the Department recommends that this Commission recommend approval to the Maui County Council.

Chair Hiranaga: Director?

Mr. Spence: Thank you, Mr. Chair. Just for the Commissioner's consideration, on No. 2 same thing as Deputy Corp. Counsel James Giroux mentioned eliminating the named names just to be consistent. Also on number, on Condition No. 3, these things go by my really fast so sometimes I don't read them very quickly. The third proposed condition we can delete, "however in the event of a contested case hearing and the rest of that sentence just because it's a legislative act there are no contested case hearings for legislative acts. It's more of a – it's something for special uses. So the, the – No. 3 Condition should just be, "that the subject Conditional Permit shall not be transferred with the prior written approval of the Planning Director."

Chair Hiranaga: I'll open the floor to a motion. Commissioner Mardfin?

Mr. Mardfin: I move that the Maui Planning Commission adopt the conclusions of law and recommendations of the Maui Planning Department with regard to the County Conditional Permit for Ala Kukui and that we therefore, recommend approval to the County Council.

Ms. Wakida: Second.

Chair Hiranaga: Second by Commissioner Wakida, moved by Commissioner Mardfin. Discussion? Commissioner Mardfin?

Mr. Mardfin: Two things. Paul in the project specific conditions were the dates 2011?

Mr. Fasi: That is correct.

Mr. Mardfin: Six and seven. And Mr. Chairman?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I move to amend by adding a project specific condition similar to the one I had for the SUP namely that before extension or transfer this is referred to the Hana Advisory Committee with the same caveats that the Chairman had recommended.

Chair Hiranaga: Is there a second?

Mr. Shibuya: Second.

Chair Hiranaga: Second by Commissioner Shibuya. Any discussion on the amendment? No discussion. Director?

Mr. Spence: The motion is to add a condition for – if there's a transfer or time extension on the Conditional Permit that there be a hearing conducted by the Hana Advisory Committee.

Chair Hiranaga: Call for the vote. All in favor raise your hand.

Mr. Spence: That's seven ayes.

Chair Hiranaga: Opposed?

Mr. Spence: One nay.

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

**VOTED: To Add a Condition that if There is a Transfer or Time Extension of the Conditional Permit that There be a Hearing Conducted by the Hana Advisory Committee.**  
**(Assenting - W. Mardfin, W. Shibuya, D. Domingo, L. Sablas, I. Lay, K. Ball, P. Wakida)**  
**(Dissenting - J. Freitas)**

Chair Hiranaga: Motion is carried. Any further discussion on the main motion? Director?

Mr. Spence: The main motion is to recommend approval to the Maui County Council as amended, as recommended by staff and as amended by the Planning Commission.

Chair Hiranaga: All in favor of the motion please raise your hand.

Mr. Spence: That's eight ayes.

**It was moved by Mr. Mardfin, seconded by Ms. Wakida, then**

**VOTED: To Recommend Approval of the Conditional Permit to the County Council as Recommended by the Department with the Added Condition if There is a Transfer or Time Extension of the Conditional Permit That There be a Hearing Conducted by the Hana Advisory Committee.**  
**(Assenting - W. Mardfin, P. Wakida, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Ball, W. Shibuya)**

Chair Hiranaga: Motion is carried. We're gonna break for lunch. Is there any objection to



reconvening at one o'clock, 1:15? We'll reconvene at 1:15.

Mr. C. Hart: I'd like to say thank you very much.

A recess was called at 12:30 p.m., and the meeting was reconvened at 1:17 p.m.

Chair Hiranaga: ... Mr. Benjamin Miura, Project Manager of the State Department of Education, Facilities Development Branch, Planning Section requesting a State Land Use Commission Special Use Permit for the Paia Elementary School on approximately 9.94 acres in the State Ag District. Go ahead Danny.

**\_\_\_\_\_ 3. MR. BENJAMIN MIURA, Project Manager of the STATE DEPARTMENT OF EDUCATION, FACILITIES DEVELOPMENT BRANCH, PLANNING SECTION requesting a State Land Use Commission Special Use Permit for the Paia Elementary School on approximately 9.954 acres in the State Agricultural District at TMK: 2-5-005: 004, Paia, Island of Maui. (SUP2 2011/0001) (D. Dias)**

**The scope of the request includes the construction of a new cafeteria building as the old one burned down in 2005.**

Mr. Danny Dias: Thank you, Chairman Hiranaga. Good afternoon, Members of the Maui Planning Commission. I'm just gonna kind of go over the reason why we're here and how this all came about and I'll let the applicant's representative get into more detail about school property itself.

Basically around 1963, the State designated lands throughout Hawaii and placed them into four different categories. As you know, Urban, Rural, Agricultural and Conservation. For some reason, Paia Elementary School was placed in the Ag District and we don't really know why because the school existed in some shape or form at that location since 1909. So it had been there for over 50 years and yet it still ended up in the Ag District. That was never really a problem. You know, it was more or less grandfathered in in the sense that if they had to do any repair or maintenance to the existing buildings and they got permits for that. The Department approved it.

Fast forward to 2005, the cafeteria on campus burned down and around 2008, the DOE started working on replacing that cafeteria. So in 2010, they went through the Environmental Assessment process that eventually resulted in a findings of no significant impact. The DOE then applied for building permits late last year and at that point, the Planning Department determined that they needed to get a Special Use Permit. The reason why is it's an entirely new building so you can't really grandfather in something that doesn't exist. So that's why we're here. It's an existing use it's been there, as I said, for a really long time. So with that, that really concludes everything I think I have to say and I'll turn it over to the applicant's representative for about six-minute presentation.

Mr. Gerald Park: Mr. Chairman, Members of the Maui County Planning Commission for the record my name is Gerald Park, planning consultant to the Department of Education for procuring a special permit to allow a non agricultural use in the State Agricultural District. I'd like to ask for the Planning Commission's indulgence that I be allowed to sit at the table in front of the laptop so I can run

through the power point presentation? Thank you.

I have to ask for a second indulgence and this is in regards to the presentation. What you're gonna see worked fine on Oahu yesterday. Coming to Maui today, somehow I think it went on holiday, but we can still make our way through it.

The State Department of Education is requesting a State Special Use Permit to allow a non agricultural use in the State Agricultural District. To orient the Planning Commission Paia Elementary School is located in what we generally refer to as Upper Paia. It's located about one and a half miles to the east of Paia Town and roughly a mile to a mile and a half to the west of Pukalani. The school comprises 9.954 acres and is shown in the yellow border. Across the street from the school is Baldwin Avenue which runs east-west and Holy Rosary Church. Skill Village is about one-half mile to the west of the school.

The tax map outlines Paia Elementary School in black and as represented by Staff Planner, Danny Dias, it's about 9.954 acres in size. The property is owned by the State of Hawaii. I'd like to point out that much of the land comprising Paia Elementary School was donated to the ten Territory of Hawaii by several agricultural companies doing agriculture in Paia. This included the Paia Plantation, the Maui Agricultural Company and Central Mill. These land donations were or I should say these land donations took place roughly between 1908 and 1936.

This exhibit shows the State Land Use Districts for the area surrounding and including Paia Elementary School. The "A" indicates Agriculture and as you can see it includes a school, Holy Rosary Church and much of the land surrounding the school. There is an Urban District designation which is for Skill Village. There is a Rural designation further to the east of Paia Elementary School. I'd like to also point out that much of the land around the school is designated Urban by the Detailed Land Classification System. The Agricultural Lands of Importance to the State of Hawaii map for this area designates the schools as existing urban development. So we have two references that deal with agricultural land that show Paia School to be an urban type activity although the State Land Use District Boundary map shows it to be in the State Agricultural District.

This is a site plan for the school. What I would like to point out is most of the buildings, in fact all the buildings are ...(inaudible)... along the east, north and west sides of the site. This is Baldwin Avenue, excuse me, I don't know how to get back. Oh, thank you. Baldwin Avenue runs east-west. This is the site of the proposed new cafeteria. This is the Hawaiian garden or mala at the school. This is Building A which is the administration building and Building B which is an existing eight-classroom building.

We've identified six permanent structures which I will show most of them in the upcoming slide show. The buildings are set back from Baldwin Avenue by roughly 300 lineal feet of open space. The open space is used as a lawn area for school activities and gatherings. This exhibit shows where some of the upcoming photos are taken. Gonna start from the east side of the school work our way to the west.

This is a view looking east in the Hawaiian Garden. Please note lot of the vegetation in the

background is part of the adjoining Agricultural District. In the Hawaiian garden the students and faculty at Paia Elementary School raise traditional Hawaiian crops. This is part of their Hawaiian Language Immersion Program as well as part of their standard English Program.

This is a view looking north, in the foreground is part of the garden and in the background the interface between agricultural lands and the school property.

This is a view of a stone enclosure at the north end of the school site. The enclosure we're not sure when it was constructed but the stone uprights within the enclosure are marked with Japanese characters. We're led to believe that this is a Japanese cemetery.

This is the rear of the administration building, quite a bit of buffer space between the building and the adjoining agricultural lands. This photo is taken from the front of the administration building looking towards Baldwin Avenue in the back. Trying to capture the large open space area in front of the school.

This is a photo taken behind of Building B it shows large open space and again, agricultural areas further to the, to the west.

This last photo shows a multipurpose play court which is in the southwest corner. This is a play structure and again, agriculture fields in the background.

There are two structures of the school site that have been placed in the Hawaii and State – Hawaii and National Registers of Historic Places. This is Building A, two-story administration building. It was constructed in 1926, and continues in use today. The second structure is Building B. Building B was constructed in 1930 and is used as a eight-classroom building.

One of the triggers for this special permit is this next building. This structure used to be Classroom Building E. It is now used as the school's cafeteria. It is not a prep cafeteria but meals are prepared at Kalama Intermediate and brought to Paia Elementary for breakfast and lunch every day.

This is a rendering of the new school cafeteria. The architect for the cafeteria is here with me today and he will be available to answer any questions you might have.

I thought it would be interesting to go over a chronology of events that that have taken place at Paia Elementary School.

Chair Hiranaga: Could you just summarize that please?

Mr. Park: Okay. The existing Paia Elementary School was located at this site in approximately 1909. The school was cited as the first all English speaking school on Maui in 1924. The two-story classroom building which is now the administration building was constructed I have it as 1930 but it was really constructed in 1926. In 1936 a new school cafeteria was built. That is the cafeteria that burned down. In 1936 school enrollment also reached roughly 1,300 students with 43, I'll say faculty and teachers.

The Hawaiian Language Immersion Program was introduced into the curriculum at Paia Elementary School in 1988. This was the first immersion program on the island of Maui where classroom instruction in grades K to 5 are done in the Hawaiian language. In 2005, the school cafeteria burned down and in 2008, the Department of Education started the planning and design process for the new cafeteria. As indicated by Danny earlier, plans for the cafeteria was submitted to the Planning Department in late 2010 and it was discovered that a Special Use Permit is required to allow the construction of the new cafeteria in the State Agriculture zoning – State Agricultural District. And this concludes my presentation.

Chair Hiranaga: Thank you very much. Danny, do you have a staff analysis?

Mr. Dias: Yes, Mr. Chair. Very briefly, the Department feels that the continued operation of the Paia Elementary School meets the requirements for a Special Use Permit. It's also located in the community plan area of public/quasi-public and zoned in Interim which allows for this use to continue.

Chair Hiranaga: Thank you.

**a) Public Hearing**

Chair Hiranaga: I will open the public hearing at this time. Is there anyone here that wishes to provide testimony on this agenda item? Seeing none, the agenda - the public hearing is closed. Commissioners, do you have questions for staff or the applicant? Commissioner Wakida?

Ms. Wakida: Danny, you can answer this. Do you know what the current enrollment is at Paia School?

Mr. Park: Approximately 250 students.

Mr. Dias: Approximately 250 students.

Ms. Wakida: And that's K through 5?

Mr. Dias: Five, yes.

Ms. Wakida: I have a second question. On the plans that, just a clarification maybe for DOE representative. One of your rooms is labeled repair/office what does that mean?

Mr. Park: Commissioner, may I ask the architect, Mr. Nhan Nguyen to come forward and try and respond to your question?

Ms. Wakida: Certainly.

Mr. Nhan Nguyen: My name is Nhan Nguyen. I'm the project architect. What that is is the office for the maintenance crew and they also repair within that office space.

Ms. Wakida: Maintenance crew for the whole school?

Mr. Nguyen: Yes.

Ms. Wakida: And the – while you're up here, may I have one more question? The dining room capacity for seating, what is that projected as?

Mr. Nguyen: That designed to, right now to sit, to serve 220 students every day.

Ms. Wakida: But the enrollment's 250, yeah?

Mr. Nguyen: The enrollment is vary from year to year anywhere from 220 to 230. The last we talk to school is about 220. But the capacity of the cafeteria if I remember correctly it's been hold up to 370 people.

Ms. Wakida: It can hold up to 370, did I hear you?

Mr. Nguyen: Yes.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Two things. Right now they serve, I think I saw that they serve three groups of 75 to a 100 each to take care of things. With the higher capacity is the intent to have one serving at the same time?

Mr. Nguyen: Yes, they have that flexibility of serving one lunch or just –

Mr. Mardfin: Now I also saw that currently they're being served by Kalama cafeteria, Kalama Intermediate.

Mr. Nguyen: Correct.

Mr. Mardfin: And I think I saw in there that they will continue to be served by Kalama Intermediate, is that correct?

Mr. Nguyen: Correct.

Mr. Mardfin: Do they have any kitchen facilities to cook or to preserve, refrigeration?

Mr. Nguyen: Yes, they do. They have cold storage, some refrigerator and they do have a small oven to heat up food for the students.

Mr. Mardfin: But this isn't a commercial kitchen?

Mr. Nguyen: It's not a full kitchen. They do not cook the food there. They have food to serve to student and they heat the food if necessary.

Mr. Mardfin: On Exhibit 15, maybe Danny can help you, this seems to be the most detailed aspect of it and on the left-hand side of there it says, note for kitchen equipment layouts see Kitchen DWGS(tyt) and yet I didn't find anything in here. What is that referring to?

Mr. Nguyen: It's a kitchen drawing by a kitchen specialist that laid out all the kitchen equipment.

Mr. Mardfin: And we don't have that.

Mr. Nguyen: Not in this packet.

Mr. Mardfin: You happen to – you've seen this diagram?

Mr. Nguyen: yes.

Mr. Mardfin: One stove, two stove, big stove, little stove?

Mr. Nguyen: Have a single oven basically. I don't believe there's any cook top.

Mr. Mardfin: No cook top?

Mr. Nguyen: No.

Mr. Mardfin: And the refrigeration facilities?

Chair Hiranaga: Mr. – Commissioner Mardfin, can I ask you to yield the floor please?

Mr. Mardfin: Sure.

Chair Hiranaga: Is there anyone else that has a question? Commissioner Lay?

Mr. Lay: I have a question. Why is the choice been made not to cook at the facilities?

Mr. Nguyen: I believe that's a decision made by DOE to save money on the, on the tight budget that they placed in right now. That statewide policy that they have right now.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I just wanted to find out is Paia cafeteria or school a defense, natural disaster recovery site?

Mr. Nguyen: The State Civil Defense ask the building to also serve as a hurricane shelter, Type B hurricane shelter. What it is is the shelter will give protection for nearby resident that person live in a single wall constructed house. And the opening of the ...(inaudible)... of the proposed cafeteria

has what's called a hurricane screen that can take projectiles, small projectile and med size projectile that might penetrate the building.

Mr. Shibuya: It's a wire mesh type covering is it not?

Mr. Nguyen: Yes, it is a stainless steel wire mesh that put on the window and that will substitute the security screen that they usually have. That's also substitute for the insect screen that they usually have.

Mr. Shibuya: And in terms of elevation and flooding, how high off the existing grade is the floor?

Mr. Nguyen: The floor I believe is about six-inch off the existing grade right now. It's in, I believe it's in the ...(inaudible)... C flood zone. So there's no special flood elevation requirement for that site.

Mr. Shibuya: And so that would be adequate for as a disaster recovery site?

Mr. Nguyen: I'm not sure if State Civil Defense call it a disaster recovery site, they never mention that. The intention is this, is for us to provide them a ...(inaudible)... service as a hurricane shelter and during the emergency.

Chair Hiranaga: Okay, Commissioner Shibuya, going to ask you to yield the floor.

Mr. Shibuya: Sure.

Chair Hiranaga: Is there anyone else that wishes to? Commissioner Freitas?

Mr. Freitas: I have two questions. Why did it take so long from 2008 to 2010 before you folks applied for a permit? It seems like a long time. Did the State and the people that you folks have available to work on this thing and the second thing is, I cannot see how you're saving money by transporting food twice a day from being cooked at Kalama to Paia and back to Makawao, the transportation and also the cooking. I would think it would be more prudent to prepare the food there. The chances of having them have warm food and what have you would be better. Explain that to me how it would save money, please.

Mr. Nguyen: I can only speak for DOE on the operation matter. My understanding is they save a lot of money on staffing for a full kitchen, and it's happen all over the State. And the labor for them to staff every school who have a full kitchen throughout the State add up to quite amount of money.

Mr. Park: If I – may I try to respond to your first question, Commissioner Freitas?

Mr. Freitas: Please.

Mr. Park: The Department of Education went through a site selection process for locating the cafeteria when it was decided that there is a need to replace the burnt down structure. Several sites on campus were looked at and it was finally decided to go back to the site of where the old

cafeteria as located. Once that was done, conceptual plans were prepared by the project architect and his staff. This may have taken maybe about a year. The design process was a back and forth effort between the DOE and the consultant. We also had to prepare an Environmental Assessment for the project which took roughly maybe eight months to prepare the assessment and take it through the Chapter 343 process. So in early or mid-2010 plans were submitted to the County for building permit approval and that's when it was discovered no can do right now, you need a special permit to allow a nonagricultural use in the Ag District and to allow a nonconforming use to continue.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: When I was asking you questions we had resolved the heating element that there's a stove but no hot top.

Mr. Park: It's a convection oven.

Mr. Mardfin: What is there in terms of refrigeration?

Mr. Nguyen: They have some under counter refrigeration to keep milk for the kids and vegetable.

Mr. Mardfin: But not a large refrigerator?

Mr. Nguyen: No.

Mr. Mardfin: How about dish washing and that sort of stuff?

Mr. Nguyen: Yes, they do have a dish washing area, but that will a dish washing for the ...(inaudible)... pans.

Mr. Mardfin: Are there any other equipment in there?

Mr. Nguyen: There's a general storage and there's a ice machine.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Maybe I'll ask the question a different way. Where is the drainage and at what percentage of drainage can we expect from this – any storm 50-year, storm what happens? Where's the water going?

Mr. Park: For the cafeteria, at the cafeteria building runoff from the roof will be discharged into, I believe it's five dry wells to be placed around the cafeteria. The down spouts from the roof will be or direct runoff into these dry wells. Any excess flow that cannot be accommodated by the dry well, will collect on site in the open area and percolate into the ground or evaporate.

Mr. Shibuya: Okay, now, how – what's the topography of Paia School in terms of all of the drainage water coming from the avenue as well as from the existing surrounding area? Where would that



water go?

Mr. Park: I cannot speak for Baldwin Avenue. I would suspect it flows from east to west along the road surface. For Paia Elementary School, the eastern side of the property is slightly higher than the western side. So runoff right now flows from the upper areas onto grass or lawn areas where it's allowed to evaporate or percolate into the ground. Runoff that is not absorbed into the ground or evaporated flows off into the adjoining agricultural fields on the western end of the property.

Mr. Shibuya: Okay, I just want to make sure that when we say, you folks in Skill Valley, I mean, Skill Camp, when you guys have a natural disaster you guys report to the cafeteria in Paia School and so when they report there, you have a foot of water there and I just don't want that situation to be happening.

Mr. Park: We don't want that to be happening too, Commissioner.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Mr. Nguyen, in here it said it's basic – the new cafeteria is basically on the site of the old cafeteria but it's an expanded footprint. Is there a way to, I forget if you had a thing up there but could you show us what the original was and how it's expanded? You need something like this diagram. Like Exhibit 15 or?

Mr. Nguyen: If the satellite, based on this satellite picture, it's probably an old one. I believe the old cafeteria is right there. This little dot you see right there, that's the old cafeteria.

Mr. Mardfin: That's not helping me too much. What I need is something like – if you don't have it, you don't have it, but Exhibit 15? That's not going to show enough detail either or maybe it will. Maybe it will.

Mr. Nguyen: The old cafeteria footprint is about –

Chair Hiranaga: Please use the microphone.

Mr. Nguyen: The old footprint for the previous cafeteria is about right there. It's about 2,200 square feet or so.

Mr. Mardfin: And the new one is?

Mr. Nguyen: 8,400 square feet.

Mr. Mardfin: So about four times the size extending toward Baldwin Avenue?

Mr. Nguyen: Correct.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: On the design of that feature I notice that this is an agricultural area and that's why one of the reasons why you don't have a operating kitchen also, and yet I believe you don't have it air conditioned but you have open are. In agricultural areas there's a lot of dust. Have you considered that and how are you going to mitigate that? Put up signs saying no dust come in side?

Mr. Nguyen: When we were on site we did not experience any dust. As you see in the photos the campus is quite green there's a lot of grass and lot of landscape and trees around.

Mr. Shibuya: And they're surrounded by cane fields.

Mr. Nguyen: That's correct.

Mr. Shibuya: And then?

Mr. Nguyen: When we interviewed the staff and the school, they have never complained about the dust issue.

Mr. Shibuya: You have never lived close to a camp. I grew up a camp. Anyway, you've heard of HRS 269-92, Renewable Energy, Hawaii Clean Energy Initiative, it requires that you have 30 percent efficiencies and 40 percent generating renewable power by 2030? How are you working towards reaching these goals? As a State agency, how are you complying with the intent of HCEI?

Mr. Nguyen: Well, DOE intention is to design, have this building designed to meet LEED Silver to save energy. Although we not going for a formal LEED Certification design would intended to meet that LEED Silver. So step was taken to introduce water solar, maximize natural light penetration and of course, natural ventilation that's why the approach of not using the ACs was taken also.

Mr. Shibuya: And you do have renewable water heating, solar water heating?

Mr. Nguyen: Yes.

Mr. Shibuya: How about solar electricity?

Mr. Nguyen: We do not have solar electricity, but we do have efficient fixture ..(inaudible)... and timer set into the building minimize the use of energy.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Lay.

Mr. Lay: I just have one about the students right now. Where are they eating right now?

Mr. Nguyen: They are eating in the small classroom about 1,400 - 1,500 square feet.

Mr. Lay: So they have a designated area now where they all go for their lunch?

Mr. Nguyen: But the school had to serve three to four lunch a day to the kids.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Just a clarification. You said that the square footage of this was about 8,400 square feet?

Mr. Nguyen: Correct.

Ms. Wakida: On this plan, it says 77. Is this interior versus an exterior measurement?

Mr. Nguyen: That could be just the net area of the space itself.

Ms. Wakida: Okay, usable floor space.

Mr. Nguyen: Yes. The footprint is about 8,400 square feet.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Any other questions Commissioners? Commissioner Mardfin?

Mr. Mardfin: On Exhibit 23, Danny, you might want to get that out for him, it's a letter from the Department of Planning. I'm sorry, it's from the Maui County Urban Design Review Board and it has two comments and one comment is the applicant consider lowering the east elevation of the cafeteria to match the west elevation and the second is, that the applicant consider changing the exterior lighting near the cafeteria from high pressure sodium bulbs to something brighter and more efficient such as LED lighting. What is the response to those two concerns?

Mr. Nguyen: For the light fixtures we can change the pressure sodium to a brighter light as ...(inaudible)... light which is still give out the same efficiency as a pressure sodium. The suggestion of LED lighting, we look into that and LED lighting at this point to serve as the site lighting it says, it's still a little big lag behind in technology. Right now we have three post lighting on the parking lot. To put in LED lighting we probably have to increase that to up to six or seven and the initial cost on LED lighting is still very high and so the efficiency is gone because we had to double the amount of light poles on the site.

To answer your first question regarding lowing the east side elevation, we went back an take a look at the building again the east elevation and the west elevation and the reason of the west elevation is little bit lower – the west elevation is little bit lower because on the back side we have a overhang of 15 feet and the student coming into the building from that side. So we'd like to create an area that they can stand under and wait to get into the cafeteria to eat and that area also double as an outside eating area or entertainment for the kids, especially for the kids stay after school for A+ and the elevation on the east side we keep it little bit higher because we like to bring in some natural light and ventilation in the afternoon without the heat gain. So we also look to project the overhang out little bit as per the Urban Design request but because the front the building is – I'm sorry, the area in front the building is limited by some existing power pole. So we can't really move the building further out.

Mr. Mardfin: So the short answer is you're basically not following their suggestion?

Mr. Nguyen: We're looking at the pro and cons of it and I think the benefit – the building will benefit greatly if we can keep the east side a little higher.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: On the exterior lighting question you said, I wasn't clear what you said. You're not going to be – I understood you're not going to use LED, what about the high pressure sodium bulbs?

Mr. Nguyen: We will replace that with metal ...(inaudible)... light.

Mr. Mardfin: And what are you doing to prevent light pollution to escape Paia?

Mr. Nguyen: That's why we use the pressure sodium in the first place. The pressured sodium is, it doesn't put out as much light, but the school and the board prefer to have brighter light for that area and I assume the ...(inaudible)... behind that is not many or no neighbors around the campus at night and they have vandalism problem. The one way we can control the light is we can put a shield around the light and light can shine directly down to the pavement.

Mr. Mardfin: So it will, it will be shielded?

Mr. Nguyen: Yes.

Mr. Mardfin: Okay.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Still back on renewable energy. I'd like you take a look and investigate not only putting the photo voltaic systems up on the cafeteria but on, on better south facing roofs such as Building A that be a consideration. What we're looking at is a total avoidance of cost of electricity, energy and it doesn't have to be just the cafeteria. What we're trying to do is reduce the expense for the entire school. Okay, so if you can take that back?

Mr. Nguyen: My understanding is DOE's review of the possibility of putting PV panel on all their buildings in the future.

Mr. Shibuya: In the future when?

Mr. Nguyen: I don't know.

Chair Hiranaga: Some time in the future. Commissioner Mardfin?

Mr. Mardfin: This is not for you Mr. Nguyen, this is for the DOE person. We've heard 25 to 250 students enrolled. How many are in the Hawaiian Immersion Program?

Mr. Park: First of all Commissioner, although I'm representing the DOE, I'm not the DOE person. I'm a planning consultant helping out the DOE. I believe there's approximately 125 to up to about 140 students in the Hawaiian Language Immersion Program. So roughly 20 to 25 students per grade.

Mr. Mardfin: So it's about half the population roughly?

Mr. Park: Yes, now it may be a little higher because I think – no, that's probably around the number.

Mr. Mardfin: Have – is there considered – since there's half the population roughly is in Hawaiian Language Immersion has any thought been given to having the native Hawaiian diet provided to these students as opposed to having Kalama Intermediate serve diet set may or may not be as healthy as possible for these students?

Mr. Park: To my knowledge it has not been considered. It might be something we can take – we will take back and point out to the principal of the school.

Chair Hiranaga: Any other questions, Commissioners?

Mr. Mardfin: You may or may not be able to answer this, but is it a conflict of interest to have DOE essentially – a DOE project commission the EA study and then be the accepting agent for the DOE study without there being an arms length examination of this?

Chair Hiranaga: I think maybe you should direct that question to the Director or to Corporation Counsel?

Mr. Mardfin: I so direct.

Chair Hiranaga: So it wouldn't appear to be a conflict of interest with their answer to you?

Mr. Spence: Good point. Thank you, Mr. Chairman. Commissioner Mardfin, now their EA predates my being in office but there is a rigorous process that they go through and there's a lot of comments they get from other agencies and what not. So it's – I understand what you're saying that, you know, it's easy for – it appears easy that an agency can go, well, this is my project and I think it's good and there's no conflicts. It's part of what State law is right now. At the same time, there are a lot of reviewing agencies, it's not just Department of Education looking at a Department of Education document and thinking it's great and thereby I approve it. There's, there's a lot more than just that.

Mr. Mardfin: I know they followed it legally, the problem is I think it's an improper process myself but that's a personal view.

Mr. Spence: Okay.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Still on energy and conservation. Has there been sky light included in this as well as cross ventilation and what type of cross ventilation? Does it include a large cupola?

Mr. Nguyen: Cross ventilation is what we have right now for dining area is the louver system on – at both end of the building and also louver on top, on top – of the ceiling to release heat for the space.

Mr. Shibuya: You've been in such a building I presume?

Mr. Nguyen: Yes.

Mr. Shibuya: It gets very warm.

Mr. Nguyen: Depend.

Mr. Shibuya: When you have 200 students in there it gets warm and humid.

Mr. Nguyen: Yes, we also have, we also have fans, ceiling fans in the space.

Mr. Shibuya: To circulate the air within.

Mr. Nguyen: Right.

Mr. Shibuya: This is the issue I have. If you don't exhaust it then you get a heat problem and the condensation and the humidity problem.

Mr. Nguyen: Right now we do have a louver on the highest part of the ceiling that will release the hot air out.

Mr. Shibuya: Is it automatic or is it holding open?

Mr. Nguyen: It stay open at all time.

Mr. Shibuya: And how much light does it bring in?

Mr. Nguyen: We have a very extensive double window system at both end.

Mr. Shibuya: No, no the top.

Mr. Nguyen: The light?

Mr. Shibuya: Sky light type of?

Mr. Nguyen: Oh, we do not have a sky light system.

Mr. Shibuya: Why not?

Chair Hiranaga: Commissioner Shibuya, again, please limit your questions to two and yield the floor.

Mr. Shibuya: Okay.

Chair Hiranaga: Thank you. Is there anyone else that wishes to ask questions of the applicant or staff? Commissioner Wakida?

Ms. Wakida: Well, I think Mr. Shibuya brings up a good point about venting out hot air from the top there. There are things like exhaust fans and was it solar exhausts and things like that, are those at all practical for this project?

Mr. Nguyen: Yes, as I mentioned, we do have two louver at the highest part of the ceiling to relieve hot air.

Ms. Wakida: But there are no exhaust fans?

Mr. Nguyen: There's no exhaust fans. It's deemed that it's unnecessary for. We do have the exhaust fan in the kitchen, we do not have it in the dining area.

Ms. Wakida: Okay, you didn't think it was necessary, I assume?

Mr. Nguyen: Right.

Ms. Wakida: Okay. Is that because it's cooler up there?

Mr. Nguyen: It's a bigger space, exhaust fan so introduce noise and maintenance problem for the DOE ...(inaudible)... to the space. Every time you penetrate the ceiling. So it does not serve its purpose in this particular area in the dining area. In the kitchen we do have it.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Sablas?

Ms. Sablas: Just out of curiosity in the designing process of this cafeteria, has input been sought from the present, present administration or faculty on as to what they think would work best for the a new cafeteria or has it just been proposed and this is what we're giving you take it or leave it?

Mr. Nguyen: We met with school on different occasion. We walked through them step by step at every phase of the design they have their input, we adjust it, they approve and we move into the permit drawn.

Ms. Sablas: Okay, thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Before I was interrupted, can you answer the question of why we're not having sky light?

Mr. Nguyen: The sky light again is also a maintenance problem for DOE. It's again, it's a leakage problem and it's hard for them to maintain to have a sky light worked in the building. It's a trade off, you gain natural light but every time you put a sky light, every time you penetrate a roofing system with a sky light, you open yourself up to 85 percent of leakage through that roof and that's something that the DOE does not want to spend the man effort on to maintain the structure.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I'm not sure I totally understood your answer to Commissioner Sablas, were the students and/or the teachers consulted on this? You said staff, to me, staff primarily means the principal and the vice-principal? But I want to know whether teachers and/or students were consulted?

Mr. Nguyen: We went to the school and the principal bring in the staff that she think that is necessary to have the input into the design. We do not have control over that.

Mr. Mardfin: Were they, were they teachers?

Mr. Nguyen: I don't remember there was any teacher there.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any further questions, Commissioners? Seeing none, thank you. May we have the staff recommendation?

**b) Action**

Mr. Dias: Thank you, Mr. Chair. The subject application complies with the applicable standards for a State Land Use Commission Special Use Permit therefore the Maui Planning Department recommends approval this Special Use Permit subject to six standard conditions and one project specific condition.

Mr. Mardfin: Mr.Chairman?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I might have been half asleep during it, but did we have the public hearing portion of this?

Chair Hiranaga: Yes we did.

Mr. Mardfin: Okay, I was asleep during it.



Chair Hiranaga: Possibly. I will open the floor to a motion.

Mr. Freitas: I move that we accept the report provided by the staff to accept the Special Use Permit.

Chair Hiranaga: Is there a second?

Mr. Ball: Second.

Chair Hiranaga: Motion from Commissioner Freitas, second by Commissioner Ball. Director, the motion is?

Mr. Spence: To approve Special Use Permit as recommended by Staff.

Chair Hiranaga: Any discussion? Commissioner Shibuya?

Mr. Shibuya: Although I want and I encourage the development and the new construction of the new cafeteria I find it very distressing and disappointing that if on the one hand they're talking about energy conservation and energy generation of renewable power but there's nothing that has added to this. It doesn't seem like there's any value added except copy and use the same design at other rural cafeterias. So in that respect I find that some of the amenities for a Maui school is much less than those presented for Oahu schools.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: I feel this cafeteria is way overdue. I'm glad that we're gonna hopefully get this thing going.

Chair Hiranaga: Any other discussion? Seeing none, I'll call for the vote. All in favor so indicate by raising your hand.

Mr. Spence: That's eight ayes.

**It was moved by Mr. Freitas, seconded by Mr. Ball, then**

**VOTED: To Approve the Land Use Commission Special Use Permit as Recommended by the Department.  
(Assenting - J. Freitas, K. Ball, D. Domingo, L. Sablas, I. Lay, P. Wakida, W. Shibuya, W. Mardfin)**

Chair Hiranaga: Motion is carried. Next agenda item, B-4. Director?

Mr. Spence: Yes, this is Mr. James Wicker requesting a B & B Permit in order to operate the Wai Ola Vacation Rental, excuse me not vacation rental, Wai Ola Vacation Paradise Bed and Breakfast in Lahaina and our Staff Planner is Mr. Kurt Wollenhaupt.

- \_\_\_\_\_4. **MR. JAMES R. WICKER, JR. requesting a Bed and Breakfast Permit in order to operate the Wai Ola Vacation Paradise Bed and Breakfast, a four-bedroom bed and breakfast (B&B) home at 1565 Kuuipo Street, TMK: 4-5-027: 033, Lahaina, Island of Maui. (BBWM T2009/0003) (K. Wollenhaupt)**

**The B&B application is being brought before the Maui Planning Commission because there is another permitted bed and breakfast operation located within 500 ft. from this property.\_\_\_\_**

Mr. Wollenhaupt: Good afternoon, Members of the Maui Planning Commission the item before you is indeed a proposal to operate a four-bedroom bed and breakfast located within the five-bedroom residence in the State Urban District at 1565 Kuuipo Street in Lahaina. This is an image on the power point of the existing residence in which the bed and breakfast is to be operated. The reason that we're here before you today is due to a clause in Section 19.46 that requires a bed and breakfast that is locate within 500 feet of a currently existing bed and breakfast needs to have a higher level of review. Just by way of note, this bed and breakfast as indicated in the middle of the circular diagram, the bed and breakfast is within 500 feet is the guest house operated by Tanna Swanson. It's at the outer marker of the 500-foot radius, however, at approximately 475 feet. If this house had been just one house up, this bed and breakfast would have been approved by Staff with a recommendation to the Director, with the Director's signature as they have responded to every comment from multiple departments with regards to wastewater, traffic, DSA and construction. However, because they're within 500 feet of another bed and breakfast that is why we're here today. The Commission has looked at another case in Maui Meadows in which they did approve a bed and breakfast that was located within 500 feet of another bed and breakfast. However, this is to give you an example that within one mile there are four approved B & Bs this would be for a total of approximately 18 approved rooms within those four bed and breakfasts. Within the entire West Maui area they have a cap of 88 bed and breakfasts to be approved and I believe we're at 11 currently. So we're considerably below the maximum number that could be approved.

Just briefly, State Land Use is Urban, the West Maui Plan indicates Single Family, the zoning is R-3 Residential and we're outside of the Special Management Area. The applicants are noted as James R. Wicker, Jr., and Kimberly S. Wagner, they are full-time residents of Lahaina and they are in the audience today to answer any questions. As stated previously it is a four-bedroom B & B. They've met the requirements and the regulations as this project was sent out for agency comment and staff has gone on site to review the project. There were issues such as the bougainvillea being trimmed which they addressed promptly. There was an issue about the spacing between the main bedroom and an office and that issue was addressed architecturally and DSA has signed off on all of the requirements. The parking plan was reviewed by the Zoning and Enforcement Division and was approved. By way of history there was a former TVR that was permitted by the County Council, the ordinance is attached to it under the ownership of Mrs. Frank so this property has had a history of being used as some type of rental property there being a TVR. The residential character of Lahaina I believe in this specific area has been is maintained. The public hearing notice was done properly with the three notices in the Maui News. All residents were sent 500 feet the notice of the application, all residents were sent another notice of application 500 feet for the hearing today. There have been no objections. There have been two, however, letters one from Ms. Tanna Swanson who is the owner of the other bed and breakfast commenting favorably on the

project and the next door neighbor commenting favorably upon the project. There are no request for service on this property regarding complaints for any reason. This is just a parking plan that indicates that the required number of parking is located on site. Again, these are site plans at which I'm sure you've seen, so I don't need to go into great detail except the project has been approved with building permits by the DSA. This just shows the bedroom plan. There are, is an amenity of having a swimming pool, as indicated onsite parking. This shows that the bougainvillea hedge that was of concern to the Department of Transportation that has been trimmed and that would conclude the short presentation.

As indicated in the staff report on Page, well actually on Page 12 of 13, there really aren't specific criteria by which this project is looked at from the 500-foot, however, Staff has put together some of the highlights. I've gone over most of them indicating that the total of about 19 rooms within the four approved B & Bs that approximately ten B & Bs in the West Maui Plan area. This type of operation does provide a range of visitor related activities. No letters of objection have been filed with the Department. The Department doesn't feel as if there would be a cumulative negative impact as the other B & B's located again, at the extreme distance of 500 from this and there's been no request for service regarding property and the departments and agencies have addressed the comments to our satisfaction. That could conclude the staff analysis. Again, the owner is in the audience.

Chair Hiranaga: Does the applicant wish to say anything?

Mr. Wollenhaupt: I'm not sure.

Mr. James Wicker, Jr.: Mr. Chairperson, Commission Members, Counsel, Director, this has been a long haul for us. We put in our first application in 2004 with Julie Frank and I believe this is the fifth application we've put in. We have done everything that's been asked by the State, the Federal Government and the County and we certainly appreciate the persistence and understanding and help the Department of Planning has given us throughout this very long process and hopefully you will approve our application. Thank you.

Chair Hiranaga: Thank you. I would like to open the public hearing.

Mr. Mardfin: May I ask a question?

Chair Hiranaga: Please reserve your questions until after the public hearing.

Mr. Mardfin: It's a testimony.

Chair Hiranaga: He's the applicant. He's not testifying. He's the applicant.

**a) Public Hearing**

Chair Hiranaga: I would like to open the public hearing at this time. Is there anyone here that wishes to provide testimony please come forward and state your name?

Mr. Tom Croly: Hi, my name is Tom Croly and I don't know the applicants and I don't know their property. I can say that I, my bed and breakfast which approved two years ago is one that was within 500 feet of the one in Maui Meadows that you had to approve. I don't believe that there was any cumulative impacts from having the two bed and breakfasts within 500 feet of each other and I'll point out just how big is 500 feet is. In a residential neighborhood like, like these folks are in, 500 feet can include about a hundred homes. So when you're asked to approve the second bed and breakfast, the density that you're looking at is still very small, it's like 2 percent. In my area, Maui Meadows where the homes are a half acre, my 500-foot radius include 56 homes. So again, when there was a second one in my area, in my 500-foot, the density was only 4 percent, that's, that's a very low number and I'll ask you just to consider how big that is and how far away the other bed and breakfast is. Thank you.

Chair Hiranaga: Questions for testifier? Seeing none, is there anyone else that wishes to provide testimony at this time? Seeing none, the public hearing is now closed. Commissioners, questions for the applicant or Staff? Commissioner Mardfin?

Mr. Mardfin: I'd like to ask the applicant, I understand you bought this from Ms. Frank in 2004?

Mr. Wicker: Correct.

Mr. Mardfin: Did you continue to operate as a B & B at that point?

Mr. Wicker: Yes.

Mr. Mardfin: When did you cease operating as a B & B?

Mr. Wicker: We have not.

Mr. Mardfin: You're continuing to operate as a B & B?

Mr. Wicker: Correct.

Mr. Mardfin: Are you aware that the County has said that B & Bs without permits are not legal?

Mr. Wicker: We have been in constant communication with the Department of Planning and the County since 2004, and we never received a Cease and Desist Order from the County or the Department of Planning.

Chair Hiranaga: Would you like to ask the Director a question?

Mr. Mardfin: I would certainly like to ask the Director a question.

Mr. Spence: I was going to say why's everybody looking at me? I'm going to run out times really shortly where I can I'm new. The enforcement within the Planning Department comes on largely on complaints. If, I'm sure if this applicant had had complaints against him, we, we would have been a lot more stringent. In this case, he would have had his permit a long time ago except he got

caught in the transition of, you know, the whole B & B permit processing thing versus the Conditional Permit versus all the different things. I know that they've been very diligent in trying to comply with every conceivable thing that has come their way. It doesn't quite answer the question other than there have been no complaints about this particular applicant so we didn't –

Mr. Mardfin: Is it the policy of the Department to not shut down B & B operations that don't have permits if as long as there are no complaints?

Mr. Spence: I can't say that's policy. What I will say is we get a lot of complaints in the Planning Department over a lot of different things. Over multiple units within a single family dwelling, you know, SMA violations, I mean, you name it and we're very busy doing just those things let alone looking for – it's also kind of contradictory if you will that here you have an applicant who comes in and they're really trying to comply and it takes years for them to comply in the meantime they're going broke. You know, you also just don't want to be punitive towards an applicant's efforts to be complying with the law either. So it's, it's, you know, if there was complaints, if there were noise problems or parking problems or something like that, you know, we probably would have engaged in enforcement.

Mr. Mardfin: Mr. Chairman, may I make one more comment?

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I agree that you are new to the Department and that buys a certain amount of goodwill.

Mr. Spence: And I'm running out of that really –

Mr. Mardfin: No, you're not, but in the past when the B & B Bill was first passed and we first started to get applications, one of the questions we asked was did you shut down and when did you shut down. And if they hadn't shut down we were rather critical and sometimes turned them down.

Chair Hiranaga: Correction, maybe it's I was rather critical versus we?

Mr. Mardfin: There were more than one commissioner that was rather critical.

Chair Hiranaga: Okay.

Mr. Mardfin: I do think this is a different, somewhat different situation, in that it had been permitted to begin with, they applied for permits when they purchased it so I think that distinguishes it from some of the other cases. But I would urge that the Department if a new B & B application is coming in and they're currently operating that they be advised to cease and desist because it will get an automatic no from me if they haven't shut down. I think this is an exception so I won't vote no necessarily on this, but I think other ones that don't have these particular circumstances should know that they'll have one vote against them if they don't cease and desist.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: You are living in this house is that correct?

Mr. Wicker, Jr.: Correct.

Ms. Wakida: And you're living in the garage turned into a master suite?

Mr. Wicker, Jr.: No, we're living on the entire main floor except for the one small room on that, on that floor.

Ms. Wakida: Your website says that you can rent out the entire house, what does that mean?

Mr. Wicker, Jr.: We're adults only when we rent as a B & B and if a larger group with children come that's what we mean when we say rent out the entire property.

Ms. Wakida: So where do you go when they rent out the entire property?

Mr. Wicker, Jr.: The main floor and the kitchen area become part of the common area which we can still use, and then we over in the combination of where our master bedroom and the office is.

Ms. Wakida: So, so there's one kitchen, there's a main kitchen downstairs where you are or the main floor, correct?

Mr. Wicker, Jr.: Main floor which is not the downstairs floor.

Ms. Wakida: I see.

Mr. Wicker, Jr.: Downstairs floor is the pool level.

Ms. Wakida: Oh, I, I see. Do you have a private cottage on this property?

Mr. Wicker, Jr.: It's connected to the main house by a breezeway.

Ms. Wakida: And is that part of the B & B operation?

Mr. Wicker, Jr.: Yes, it is. That's indicated on the diagram.

Chair Hiranaga: Once again, I'm going to ask you to yield the floor. We should limit our questions to two questions, yield the floor and if you wish to continue you can. So is there any other Commissioners wish to ask a question? Commissioner Shibuya?

Mr. Shibuya: I'd like to ask Public Works to outline where the existing sewer line is located.

Ms. Dagdag-Andaya: Commissioner Shibuya, I don't have that information in front of me right now and the information that we have gotten or provided in our packet doesn't – I wouldn't know. I would have to ask Environmental Management for assistance with that.

Mr. Shibuya: Would you please?

Chair Hiranaga: Mr. Wicker, do you know if there's a manhole cover in the middle of the street fronting your property?

Mr. Wicker, Jr.: No, there's not. If I may, that entire neighborhood is not sewer.

Chair Hiranaga: Oh, that's right. It's noted in here, it's cesspool.

Mr. Wicker, Jr.: The nearest ordinary sewer, the sewer line is ocean side of Honoapiilani Highway.

Chair Hiranaga: Yeah, it's noted in the report you're on cesspool and they've contacted the EPA and they've had approval from the EPA.

Mr. Wicker, Jr.: We do have approval from the Environmental Protection Agency, yes.

Mr. Shibuya: It was implied that they would have a existing sewer line close by. So I just wanted to know where it was located. What's troubling me is the unlined cesspool.

Chair Hiranaga: Did you have another question, Mr. Shibuya?

Mr. Wicker, Jr.: Is that, is that a question because I can answer what I think you're asking.

Mr. Shibuya: Okay, –

Mr. Wicker, Jr.: There's two sets of regulations, State and Federal regarding large capacity cesspools.

Mr. Shibuya: Go ahead.

Mr. Wicker, Jr.: We had been approved as is with the structural modifications we made by both the State Department of Health and the Environmental Protection Agency.

Mr. Shibuya: And do you drain it out or pump it out?

Mr. Wicker, Jr.: I do not.

Mr. Shibuya: Okay.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Do you currently make GET and TAT payments?

Mr. Wicker, Jr.: Yes.

Mr. Mardfin: Do you claim a home tax exemption?

Mr. Wicker, Jr.: Yes.

Mr. Mardfin: You understand that if this is granted that you have to give up the home tax exemption?

Mr. Wicker, Jr.: Absolutely.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: You said that the private cottage is connected by a breezeway?

Mr. Wicker, Jr.: Correct.

Ms. Wakida: I'm having a little trouble reading the plans, perhaps Kurt could help us out with the plans?

Mr. Wicker, Jr.: The breezeway is right here going from there to there. This is cottage right here and then this is the downstairs unit right here.

Ms. Wakida: Where it says hall on the plans is that the breezeway?

Mr. Wicker, Jr.: Yes.

Ms. Wakida: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya.

Mr. Shibuya: Just a, maybe this is for Staff. I'd like to know the elevation of this property?

Mr. Wollenhaupt: I'm not aware of the elevation of this, of this specific property.

Mr. Shibuya: The reason for the question is because you have a cesspool and if it's at a low elevation and then the water table can be compromised and they're very close to the ocean, shoreline.

Mr. Wollenhaupt: I can only comment that this issue on environmental management has been ...(inaudible)... literally for not months but we're practically on years now through multiple conversations with the Department of Health. Communications from the EPA, engineering studies by Linda Taylor and Associates to the point of becoming – to the point of becoming – anyway we did have a final letter issued by the Department of Health that this was an approved use of the cesspool. So I can't speak as an expert as to – that's why I referred and have to rely upon Department of Health to give me an answer.

Mr. Shibuya: Thank you.



Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: This question I think is for Public Works, but I'm not sure who answers cesspool questions. I was under the impression that this neighborhood, this is a general question not project specific, was supposed to be getting rid of their cesspools and putting septic?

Ms. Dagdag-Andaya: That would be a Environmental Management call. Public Works, we were – at one point Public Works and Environmental Management were combined, but now the duties have been separated. So, and I'm not aware – I know there's been discussion on that but I don't know about the phasing out.

Chair Hiranaga: Cesspools are allowed to be grandfathered in if they meet certain criteria. Apparently they have met that criteria or else most of the home in Hana would have to be converted at this time, they are not.

Ms. Wakida: No, I know people who've had to get rid of their cesspools in this neighborhood. Do you know anything about that?

Chair Hiranaga: Criteria I think is if you have one cesspool servicing a detached dwelling along with your main dwelling, that's one of the criterias. Apparently with this breezeway it is considered a attached dwelling and meets the criteria of the EPA. So if EPA is satisfied they're the controlling authority. Commissioner Mardfin?

Mr. Mardfin: I draw my colleague's attention to the last letter before the green recommendations which is a letter from the EPA in San Francisco stating that this cesspool – based on the information provided, the cesspool of this non residential facility does not serve 20 or more persons in a single 24-hour period, therefore, is not subject to EPA's large capacity cesspool regulations. So that gets them out of the EPA target line. I don't know what it does to the County.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, Staff recommendation.

**b) Action**

Mr. Wollenhaupt: The recommendation of the Maui Planning Department is to adopt the Department's report and the recommendations with the 19 conditions as indicated prepared for today's May 24, 2011 meeting and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on behalf of the Planning Commission.

Chair Hiranaga: Floor is open to a motion.

(Note: Long pause after the recommendation being presented.)

Chair Hiranaga: Not all at once. Corporation Counsel is there a customary time period a motion needs to be made before we move on or?

Mr. Giroux: That's a point of order.

Chair Hiranaga: Shall we take a ten-minute recess and reconvene? So we'll have a ten-minute recess and reconvene at 2:40.

A recess was called at 2:34 p.m., and the meeting was reconvened at 2:42 p.m.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: May I still ask a question?

Chair Hiranaga: Sure.

Ms. Wakida: Of the applicant? One of, one of your, one of the websites that advertises your bed and breakfast advertises four bedrooms and a private cottage are available.

Mr. Wicker, Jr.: That's incorrect.

Ms. Wakida: That's incorrect.

Mr. Wicker, Jr.: You sure that's on our website?

Ms. Wakida: It's on a website that that, not your website, it's on another website but that advertises your property.

Mr. Wicker, Jr.: That's incorrect. The cottage is one of the four bedrooms and if you look on our web sites those are the four rooms that are described and if you look at the video on the website those are the four rooms that are shown.

Ms. Wakida: I see.

Chair Hiranaga: Okay, the floor is open to a motion.

Mr. Lay: I'll make the motion to approve.

Chair Hiranaga: Motion to approve by Commissioner Lay. Is there a second?

Ms. Domingo: Second.

Chair Hiranaga: Second by Commissioner Domingo. Any discussion? Commissioner Lay.

Mr. Lay: I'm making the motion to approve on the basis that they've done their due diligence. They've gone through the rings, the hoops, they've done everything they possibly can to get this thing going. Just with the cesspool system alone must of been incredible and that's why I'm approving it and within that given area we do have a low amount of houses – I mean, of those rentals there so I'm going to approve – that's why I'm for it.

Chair Hiranaga: Any other discussion? Commissioner Mardfin?

Mr. Mardfin: I'm not wild about the policy of not having people shut their operations while they're in the process of getting this. On the other hand, they've been in line a long time so I'm going to break my personal rule of voting no on B & Bs that haven't shut their operations down and then for this exception I will be able to vote yes on it.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Unfortunately, I feel that integrity is the issue. When you are aware of the Code and you know of the ordinances in existence and you continue to persist that is troublesome for me. How do I know that you're gonna continue to do and care for the public when you're on your own and you have your permit? Also, the fact that we are so close to the shoreline line and the water level and the water level is, is very troublesome because now we start talking about potential contamination of the shoreline or impacting the shoreline. And I am not a scientist to know that kind of a hydrology question. So I'd like err on on safety. The third one is that I've not been very friendly with B & Bs because I am very strong supporter of the hotel industry. We've taxed them to a point where we need to insure that they are sustained. And yes, I appreciate the visitors but there's a time and place. Residences are for residents and you have hotels for the visitors. Thank you.

Chair Hiranaga: Any other discussion? Commissioner Ball?

Mr. Ball: I feel like Commissioner Shibuya where the applicant admits that they're doing things. I understand that the County does things slowly but to take the homeowners exemption knowing that you're not doing homeowners activities just sets a tone with me that, that I think Commissioner Shibuya expressed already.

Chair Hiranaga: Do you care to offer an amendment to the project specific conditions?

Mr. Ball: 'Well, I'd like to see that I don't know how to formulate this figure, but some sort of back taxes and I don't even know if that's possible with a snort from the Director.

Chair Hiranaga: Well, I guess, allow me to help you phrase this?

Mr. Ball: Go ahead.

Chair Hiranaga: Basically since the ordinance was passed that allowed for a tax class where you no longer claim your homeowners exemption, I think it's a different tax rate now, I'm not sure that the applicant pay retroactive real property taxes during the period either that he operated as a B & B or when that new ordinance was enacted.

Mr. Spence: I know that he will be losing their homeowners exemption and they will be taxed at a different rate. It's like a commercial, residential-commercial rate. So they're not –

Unidentified Speaker: Which currently they're neither?

Chair Hiranaga: Yeah, he's proposing –

Mr. Spence: Yeah, currently they're neither.

Chair Hiranaga: Director, he's proposing a rollback tax.

Mr. Spence: Yes, I understand.

Mr. Ball: If it's not possible, then it's not possible.

Chair Hiranaga: No, it's possible. Need a second on the motion but it's possible.

Mr. Mardfin: Was there a motion?

Chair Hiranaga: His motion –

Mr. Ball: ...(inaudible)...

Chair Hiranaga: A rollback tax.

Mr. Mardfin: I'll second it.

Mr. Giroux: Chair, I'd just strongly caution against this. We're getting into the area of finance and taxation that it's not anticipated in the B & B Bill or Ordinance. Council has addressed it. There's a system outside of this program to deal with taxes and tax evasion and tax collection. I don't think this board wants to get into that field.

Chair Hiranaga: Are you saying we should not vote on the motion or what are you telling us, Counsel?

Mr. Giroux: Well, you can go ahead and vote on it, but you know, as far as the effect on the County and how they're going to be able to administrate that condition or if it's ultimately found to be an illegal condition it's gonna really – you're gonna end up putting a tax on the County to figure this out ...(inaudible)... gonna do. So, we don't need any more work.

...(Members laughing)...

Mr. Spence: I know, maybe another way to ask it does the, does the Planning Commission have the authority to direct the Real Property Tax Division to reassess years past. I'm not sure that – my understanding of real property tax is only set by the Council, you know, under their Direction. Commission is not a legislative body.

Mr. Ball: Chair?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: What I'm seeing here is, is after your statements earlier is that people will just start contacting the County and knowing that it's going to take a long time and take advantage of the

system is what I'm seeing is going to happen. I'm totally in favor of rescinding the friendly amendment by the advice of Corp. Counsel, but what I want to see is that they Department needs to take some kind of action on this or else there's going to be abuse on this issue.

Chair Hiranaga: You want to say something?

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Yes, Director?

Mr. Spence: Just in response. It is a difficult thing what Commissioner Ball is referring to. We do have instances where people do file applications just to, you know, work the system as it, as it may be. In this case, I know it's not, this is not the case. I think really when you're working with the EPA, I mean, as you can imagine we have enough problems getting responses from County departments let alone, you know, then State departments and then we start getting into Federal offices, you know, it becomes that much more difficult. The – I'm aware that this applicant has been working for all of these years trying to resolve all of these issues and just get to this point. They have not been working the system. This is one of those weird cases where things have been especially difficult.

Chair Hiranaga: Okay, I would like to say something. I know when B & B applicants come in I believe Planning Department advises them that they should be paying their GET and they should be paying their TAT even though they haven't been granted a permit. I would suggest that the Department also advise the applicant that they no longer take the homeowners exemption when they submit their application. That's for future, future applicants. So if the maker of the amendment wishes to withdraw?

Mr. Ball: Withdraw.

Chair Hiranaga: Is the seconder in agreement?

Mr. Mardfin: Not exactly but I will withdraw, but I totally concur with the Chairman on people attempting to do things should start playing by the financial rules right a way and as retroactively wouldn't bother me.

Mr. Wollenhaupt: Can I ask a question?

Chair Hiranaga: Okay, any discussion on the main motion?

Mr. Wollenhaupt: Well, I have, I have a question, I think that the applicant might be able to provide you with kind of a detailed time line that might help at least to resolve some of the questions. I know that it only take a couple of minutes.

Chair Hiranaga: I don't think that's necessary.

Mr. Wollenhaupt: Okay, all right.

Chair Hiranaga: If there's no further discussion, Director if you could restate the motion?

Mr. Spence: If I remember correctly, to approve as recommended by staff.

Chair Hiranaga: Call for the vote. All in favor so indicate by raising your hand.

Mr. Spence: That's four ayes.

Chair Hiranaga: Opposed?

Mr. Spence: That's four nays.

Chair Hiranaga: The Chair votes in favor of the motion. The motion is carried.

**It was moved by Mr. Lay, seconded by Ms. Domingo, then**

**VOTED: To Approve the Bed and Breakfast Permit as Recommended by the Department.**

**(Assenting - I. Lay, D. Domingo, K. Ball, W. Mardfin, K. Hiranaga)**

**(Dissenting - L. Sablas, J. Freitas, P. Wakida, W. Shibuya)**

Chair Hiranaga: Next agenda item is D-1. Director?

Mr. Spence: Thank you, Mr. Chairman, Commissioners. This is Mr. Robert McDaniel III for Kanaha Professional Plaza LLC requesting an Environmental Assessment Determination for the final Environmental Assessment for Maui Medical Plaza. Our staff planner today is Mr. Jim Buika.

**D. UNFINISHED BUSINESS**

- 1. MR. ROBERT T. MCDANIEL III, Development Partner of KANAHA PROFESSIONAL PLAZA, LLC requesting an Environmental Assessment determination on the Final Environmental Assessment prepared in support of the Special Management Area Use Permit for the proposed Maui Medical Plaza Project consisting of the construction of a six-story approximately 132,865 square foot professional medical office/laboratory facility, a six-story approximately 365 stall parking structure, and related improvements in the M-2 Heavy Industrial District at 151 Hana Highway, TMK: 3-7-011: 028, Kahului, Island of Maui. (EA 2010/0002) (SM1 2010/0006) (J. Buika) (The Draft EA was reviewed at the July 27, 2010 meeting.)**

**The accepting authority of the EA is the Maui Planning Commission.**

**The EA trigger is the utility work being done within the State right-of-way.**

**The project needs a Special Management Area Use Permit. Action on the**

**Special Management Area Use Permit application will be taken by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. Jim Buika: Good afternoon Chairman Hiranaga, Commissioners, Corporation Counsel, Planning Director, Deputy Public Works Director. My name is Jim Buika, Planner with the Planning Department. This session is a continuation that was necessarily deferred at the April 26, 2011 meeting of the Maui Planning Commission due to time.

On April 26, 2011, the Commission reviewed the final Environmental Assessment against the required significance criteria under Hawaii Administrative Rules 11-200-12. At the last meeting from the presentation and analysis, provided in the final Environmental Assessment the Planning Department has recommended that the Maui Planning Commission concur on a finding of no significant impact determination based on the significance criteria prescribed by the EA process. The Commission voted to defer a decision on the FONSI, the finding of no significant impact and asked for more information. This session is a continuation of the deferred discussion on April 26, 2011. On April 4, 2011, the Planning Department issued a letter to the applicant transmitting the eight remaining questions to be answered that were identified by the Commissioners during the final Environmental Assessment process.

The eight topics have been full explored and documented by the applicant and presented in the mailed out handout that you have in front of you for review. So the purpose today is for you to finalize review of the final Environmental Assessment as required by Chapter 343, Hawaii Revised Statutes pertaining to Environmental Impact Statements. Regarding the proposed Maui Medical Plaza and related improvements located in the M-2, Heavy Industrial Zone in Kahului on approximately 2.5 acres of land that is not part of the Kanaha Pond. The parcel is zoned six stories and allowed by the Wailuku-Kahului Community Plan in the M-2 Heavy Industrial Zone. The proposed project is consistent with all land use requirements.

Thus, your task today is to review the project against the environmental significance criteria as defined by the Hawaii Administrative Rules and as presented on April 26, 2011 in the applicant's power point slides which had been handed out to you. And from this review, the Commission may take one of the following actions on the document today. First is to accept the final Environmental Assessment and issue a finding of no significant impact determination. The second is to defer the final Environmental Assessment. If you require that still additional information is required to make a determination on the final Environmental Assessment and then we would have to come back to you once again. Or three, to prepare an Environmental Impact Statement. This would a case when the Commission determines that the proposed action may pose significant impacts and requires a preparation of a more detailed Environmental Impact Statement. The EIS assesses the proposed project through additional research, discussion and review. And would probably be about another year-long process.

So please keep in mind following this Environmental Assessment review that the Maui Planning Commission will again see this project as an SMA, Special Management Area Major Use Permit and as a public hearing item at a future date. The Maui Planning Commission acceptance of the document as a FONSI does not mean that the Maui Planning Commission has accepted the project design as presented and recommended by the Urban Design Review Board.

Just some history, we had two dates, July 27<sup>th</sup> and August 10<sup>th</sup> when we reviewed the draft Environmental Assessment. We had 28 questions posed by the Commissioners. These were answered and developed through a track change process into the final Environmental Assessment. We had two Urban Design Review Board meetings on September 7<sup>th</sup> and October 5<sup>th</sup>, 2010 to modify the design of the building. There were only three comments there. So I think with a vote of affirmative votes, the Urban Design Review Board is very satisfied with the design of the project and then just, finally just the trigger for the EA is the work in the County or State lands to improve the roadways fronting the parcel and the Maui Planning Commission is the accepting authority for the final Environmental Assessment. So I'll ask the applicant to focus his comments on the eight remaining questions that we had discussed and concluded with on April 26<sup>th</sup>. So with the Chair's permission I'd like to have the – a short presentation on this where we can ask questions and discuss? Okay, thank you. I'd like to present Mark Roy from Munekiyo and Hiraga who is the applicant's representative who will do this presentation.

Mr. Mark Roy: Thank you, Jim. Good afternoon, Chair and Members of the Maui Planning Commission. My name is Mark Roy. I'm here today representing the applicant for the project. I'm with Munekiyo and Hiraga. As Jim mentioned, the project is located on Lot 8 of the Kanaha Industrial Subdivision, 2.5 acres in size is highlighted by the yellow outline on this particular slide. It's not located in the pond. It's zoned for heavy industrial use. It sits adjacent to Hana Highway and directly across the street from 24-Hour Fitness. The site is situated within the commercial core of Kahului between the two main hubs of inter-island commerce these being the harbor and of course, the Kahului Airport. Next slide is just a site photo again just showing the current condition looking across the highway at the site. It's vacant and currently overgrown with nonnative vegetation.

This project...(inaudible)...to address the general shortage in centrally located medical office space in Maui. Very briefly, it's a six-story medical office facility with an attached parking garage. The project's staggered or stepped back design has been adopted specifically in respect to recommendations issued by the UDRB, the Urban Design Review Board throughout the course of four separate meetings. And as Jim mentioned, the UDRB issued project approval last year for the current design. As Commissioners may recall and as Jim mentioned the final EA was presented at the April 26<sup>th</sup> meeting. Today, what I'd like to do with the presentation is offer a brief summary of each of the applicant's responses contained within the written document that's before each Commissioner this afternoon.

At this point, we'd respectfully ask if it's okay for all questions to be held until the end of the presentation and we are, of course, available to answer any additional questions that come up in regards to the responses.

The first comment from the Commission at the previous meeting asked for additional information on the project's renewable energy system. The total electrical load for the facility at full occupancy is estimated at 1,000 kilowatts. The applicant is proposing an onsite renewable energy system which is consisting of 328 photovoltaic panels that will be mounted on the roof of the facility. The system uses all available space on the roof and we process an estimated 100 kilowatts. The energy produced from the PV system will be enough to service 100 percent of the core energy needs of the project's building. Couple of examples, cooling, ventilation, exterior lighting, parking



garage lights and will all be provided for through use of this system. In addition, a number of energy efficiency measures have been incorporated into the design of the facility. Examples include use of exterior corridors on the outside of the building, balcony overhangs for shading, installation of reflective windows, use of natural daylight within the medical suites, also a number of lighting control systems throughout the facility to curb energy use. Based on industry standards use of these measures is estimated to generate between 36 and 45 percent in energy saving compared to conventional building designs.

Commission's comment at the previous meeting also asked how the project relates to the commitments set forth in the State's renewable energy legislation or Act 269. Act 269 places requirements specifically on the State's utility companies through the establishment of a couple clean energy targets that I believe were mentioned earlier in today's meeting, the first being 40 percent use of renewable energy by 2030; the second being, 30 percent saving through energy efficiency programs by 2030. Like to emphasize that there are no specific requirements placed on individual private landowners by this legislation. In meeting the prescribed targets, the legislation focuses predominantly on the use of energy from large scale commercial renewable energy projects such as the large wind farms. Although as Commissioner Shibuya did point out at the last meeting, utilities are able to take limited advantage of renewable energy produced by customer connected systems such as the PV on this project. In this capacity, the project is, we believe consistent with the intent of the legislation as it will very much enhance MECO's ability to meet its overall clean energy obligations as established under Act 269.

Commission's, ...(coughed)... excuse me, the Commission's second comment asked about potential impacts posed by the heights of the buildings on aircraft utilizing Kahului Airport. Project will not present an impact on aircraft landing or taking off at the airport. Federal Aviation Administration, the FAA has reviewed the heights of the buildings in relation to the aircraft operations at the airport and has issued a no hazard on air navigation determination for the project. A copy of the determination is provided in Exhibit B1 of the supplemental documents before Commissioners today. The distance from the project site to the nearest runway at the airport, Runway 5 as it's known, is shown on this slide and it's about just over 1.6 miles away. Here we have the project site in yellow and if you follow this line which is just intended to show separation distance, you have the beginning of Runway 5 here. The runway, Runway 5 is used by light aircraft such as Pacific Wings and Mokulele Airline and is used – and is not used, excuse me, is not used by the larger mainland and international jets. These kind of aircraft use Runway 2 which is the main runway at the airport.

Since the previous meeting, we have been able to make contact with a couple of experienced pilots to review some of the questions raised by the Commission at the previous meeting. Two letters, one from a Hawaiian Airlines pilot and a second from a former Air Force pilot have been included in the supplemental document as Exhibit B2. We are fortunate today to have one of these pilots here with us. Mr. Garret Goo is in the audience, is an experience former Air Force pilot with over 1,400 hours under his belt in military flying time. Since leaving the military, Mr. Goo now works as an attorney in Honolulu and frequently flies into Runway 5 at Kahului Airport using his own private four-seater cessna propeller plane. With the permission of the Chair I was hoping to ask Mr. Goo to offer a brief overview as to how he as a pilot would typically be directed by air traffic control to land his aircraft at Runway 5.

Chair Hiranaga: You may proceed.

Mr. Roy: Thank you, Chair. Mr. Goo?

Mr. Garret Goo: Good afternoon, Mr. Chairman, Members of the Maui Planning Commission. I'm Garret Goo, and the applicant has asked me to give a brief summary of from a pilot's perspective on how I would fly into Kahului Airport and just given a little bit of insight and I will try to avoid using the terminology that you will hear sometimes pilots use just to give you a sense of how this looks from a lay person's perspective.

When I fly in from Honolulu, I normally come over the north shore of Molokai and come around Cape Halawa and then into middle channel directly towards Kahului Airport. The FAA has designated the Kahului Airport area as a fairly congested air space. So they've classified this air space as Class C or Class Charlie airspace. What this requires is that at least ten miles out from the Kahului Airport all pilots, small airplanes and large airplanes have to make contact with the approach controllers, the air traffic controllers. So two-way radio communications have to be established. So generally we would make contact about ten miles out and the typical instruction is to continue flying directly towards the airport usually to maintain no lower than 2,000 feet.

One of the intricate dance of air traffic controllers is try to make sure there's a consistent and safe flow of traffic in and out of the airport both large airplanes and small airplanes. So we typically maintain an altitude until they tell us typically the instruction is to head directly to Kahului Harbor. The reason for that is the breakwaters are clearly evident. They're easily recognizable from the air. From Kahului Harbor the subsequent instruction is usually to make a left-turn to Runway 5. So coming from the northwest, you would come heading towards Kahului Harbor – and I forgot mention also that the air traffic controllers often will tell us to maintain at least two miles offshore from land. So we'll be coming into Kahului Harbor and you see Runway 5 over here. We would try to align ourselves up with what you can hear often time the captain of Hawaiian Air, ...(inaudible)... you fly making a final approach and that's to line yourself up with the runway line extended. So my motion of my, of my pointer is generally the motion that, that the track that the air craft will fly into the, into the runway. I can point out, and I did mention this in my letter that was submitted as part of my written testimony, we are trying to establish a three degree glide path or better heading into the airport. So if you can imagine the runway for every thousand feet you're away from the touchdown point of the runway, you want to be at least 50 feet above the ground. So I know from an earlier slide that Mr. Roy had they showed a separation distance from the proposed project and the threshold of the runway being 8,500 feet, but I did point out to Mr. Roy, that the touchdown zone is about 500 to 1,000 feet down the runway.

There are lights located along side the runway here that are called visual approach indicator lights and it helps us visually to establish our selves in a three degree glide path into the runway. So you know, just using math, a little bit trigonometry, you a ...(inaudible)... three degree glide path would be approximately 550 feet or more over, over the proposed flight. I flew this path last week and I think I was pretty much at 600 feet flying over this general area. And for a structure that is only 93 feet tall at its highest point that generally doesn't present any concern to most pilots we'd be well above that altitude whether it be a small airplane or large airplane. The aircraft I flew in the Air Force was a C-141, large four-engine jet transport although the visual patterns we would fly are

actually fairly similar. Those glide paths that I was talking to you about three degrees that's standard for both small and large aircraft. So, I do stress that flying to Runway 5 is mostly and primarily visual. We are looking for the runway and we are looking to see where we are aligned along the shoreline to give us some guidance into the runway. Sometimes and this happened in my last flight, the air traffic controllers may have you come out a little bit to the west so you might find yourself out this way coming over the runway, but still the glide path remains the same. I think that's a summary.

Mr. Roy: Thank you, Garret. I'd like to now move to address the second part of the Commission's comment was which asked how bird strike risks to air craft over Kanaha Pond are managed? This is an important issue that is taken very seriously by both the FAA and the State Department of Transportation. The potential for bird strikes, excuse me, at Kanaha Pond ...(inaudible)... manage to strict control of bird populations within the sanctuary itself. These populations are controlled by limiting the extent of habitat rehabilitation that can occur within the pond. A number of restrictions are set forth in a 1996 Memorandum of Understanding between the FAA, the State DOT and the agency tasked with managing the pond, the Department of Land and Natural Resources. This agreement gives the FAA and the State DOT authority to review all habitat enhancement projects within the pond. Should any concern be raised by either of these agencies the enhancement project would not be allowed to go forward. This veto authority was very effectively demonstrated during review of the first version of the wetland mitigation plan for this particular project.

Upon review of the wetland mitigation work that was proposed for a five-acre portion of Kanaha Pond, the State DOT issued a letter stating that they would not allow implementation of a habitat restoration project such as this one citing a potential for increasing bird populations in the pond. An alternative location for the wetland mitigation work was then identified and explored and located at Waihee Refuge. This is a very good example of the MOU in action and how bird strike risks are really effectively managed given the close proximity of Kanaha Pond to the airport runways.

Commissioner's third comment spoke to the involvement of DLNR in the review of the proposed project. Included in the written document as Exhibit C is a letter from Penny Levin, the project's conservation planner providing a detailed summary of the five-year Section 404, Department of Army permit process that has been undertaken for the wetland mitigation aspect of the project. This process involved extensive – an extensive process of consultation with Federal, State and County agencies including those responsible for the management of wildlife such as the U. S. Fish and Wildlife Service and Department of Land and Natural Resources.

Biological Resources Survey of the site was also completed as part of this process. A key finding of the study was that the bird species within the pond have adapted successfully to the numerous human uses around the pond such as the continuous stream traffic along Hana Highway, the numerous aircraft flying overhead into the airport and the large number of retail, commercial and industrial land uses that surround the harbor area. In fact, there is a car crushing operation right next door to this particular project site.

All aspects of the proposed project have therefore been reviewed as part of the Section 404 agency consultation process. Again, it was five-year process. This dialogue with agencies resulted in a number of revisions to the plans and also the incorporation of a number of mitigation measures into

the project. Some examples of these mitigation measures include – included specifically to insure protection of bird species within the pond, include the placement of the office building use and all exterior lighting on the Hana Highway side of the project site. The implementation of shielding of all outdoor lighting fixtures, the use of low glow lighting, – low glow orange lighting system through the project to reduce lighting produced during the evening hours. The incorporation and use of native plant species in the landscaping plan for the project and also the implementation of Best Management Practices to, – such as dust fencing to insure that construction activities are fully contained onsite.

During the last meeting, the Commission also requested that some additional exhibits be prepared to support the View Impact Analysis findings of the final EA. In response to these requests, the proposed buildings have been now superimposed on the photographic analysis that was included in the final EA. This analysis is included in Exhibit D of the supplemental document. A series of three-dimensional perspectives taken of the project from a driver's perspective along Hana Highway have also been included as Exhibit D-1 of the document.

With the Chair's indulgence I'd like to now offer the Commission a brief summary of the photographic analysis which is a series of real time photos or real photos, excuse me, taken from various points around the project site in Kahului.

The first here is looking from Costco and just to, state the locations of the photos that have been taken was specifically the locations identified by the Commission in one of its comments during review of the draft EA for the project.

The first is looking from the Costa intersection back towards where the project site is located and as you can see there's a stand of kiawe trees that actually borders the pond. This is the boundary of the pond. So the facility would not be able to be viewed from this location.

The second is taken, here is the number, So the facility would not be able to be viewed from this location. The second is taken, here is the number from Maui Mall, across from Safeway. I'm going to have before and after picture just to point out the facility. This is before without the facility and this is with the proposed Maui Medical Plaza in place. As you can see the upper two stories and the elevator shaft can be viewed from this location. The rest is buffered by the existing landscaping within the parking area.

The third location we have here is from the Ale House location within Maui Mall looking across the existing car storage facilities that are across the street on Kamehameha Avenue. Again, here you have before and after, the after shot here shows how this facility would be observed from this particular location. Again, you would be able to see the upper two stories and the elevator shaft of the proposed building.

The fourth here is taken from IHOP within Maui Mall. And again, before and after, this is very difficult to make out as there is quite a bit of landscaping in this particular area, but ultimately the facility is behind the existing shade trees within the parking lot.

The fifth is taken I believe just in front of the DMV office. Here again, the facility is unable to be

viewed. Actually you can just see I think the top story of the building from this location. Again, the existing landscaping in the area is buffering the view of the entire facility.

This next couple of shots is actually taken from the Dairy Road intersection down Hana Highway. What we found at this location is those – there's quite a bit of landscaping that is sitting in between the project site and where we were standing on Hana Highway and Dairy Road intersection and I think this is the case as you would drive down Hana Highway there's a big stand of date palm trees that are actually within the pond that actually act as a fairly substantial buffer for drivers driving in this direction up Hana Highway.

Again, the next photo is looking down on the other side of Hana Highway just near Kmart. Again, you've got this stand of vegetation that is really buffering the facility from the driver's view.

This next shot, probably the most prominent shot, it's taken within the industrial area of Kahului Harbor itself as you can see here, No. 8, it's on Hobron Avenue looking back towards the side of the facility of a before and after shot and as you can see, you can see the, you would be able to see the upper two stories, two or three stories of the attached parking structure and the upper two stories and the elevator shaft of the actual building itself.

Again, this is taken the other way looking back down Hana Highway, I think near one of the dealerships. As you can see delineated by No. 9 looking back towards the facility. But the after shot here you can just make out the outline of the six-story facility which you can make out I believe the upper two or three stories through the, through the landscaping. The lower floors are obviously buffered by the existing retail and heavy industrial land uses that exist between here and the project site. I'd just like to note that a consultant was hired to specifically put these together as a result of the previous meeting and these are to scale views of what, what the facility would look like based on the setback distances from the locations where the photos were taken.

Moving now to the next comment. The Commission asked for some additional information on the provisions of the Wailuku-Kahului Community Plan that relates specifically to building height. An analysis of the project's location in relation to these particular provisions of the community plan is provided on Pages 11 to 15 of the supplemental document. We've also included some photos of some existing buildings throughout the region as Exhibit E just to give the Commissioners an idea of some comparable structures that exist throughout the area today.

In essence the project represents a unique urban infill opportunity that is consistent not only with the intent of the Wailuku-Kahului Community Plan but also the comprehensive planning documents that have been prepared by the County since adoption of the community plan in 2002. These include both the Countywide Policy Plan and the draft Maui Island Plan. Both documents seek to encourage a more sustainable land use pattern through adoption of a directed growth strategy. This newly implemented land use strategy seeks to promote the use of vacant appropriately zoned lands within existing urban areas such as Kahului to reduce urban sprawl and also the unnecessary use of agriculturally zoned land. We believe this project represents one of the first steps towards realizing the directed growth vision that really is the dominant planning theme embraced by the 2013 General Plan Update process.

The sixth comment raised by the Commission asked for some additional information on the reservations that have been placed by medical practitioners for the floor space within the facility. As of this point in time commitments have been made for just over 60 percent of the floor space within the project. These commitments have been secured through the signing of letters of intent. These letters are typical in forms of commitment documentation at this particular stage of the development process.

The need for improved medical facilities in Kahului is illustrated by the fact that over 90 percent of the space commitments are from practitioners who currently reside and are currently based on Maui. Also worth noting we believe is that about 23,000 square feet of space is being reserved by current tenants of the aging Maui Clinic building located on Puunene Avenue. This space commitment is a considerable expansion in the floor area currently taken up by these doctors at the existing clinic. This demonstrates that there is a – is also a need for a larger medical office suites in Kahului as many practitioners are seeking the opportunity to expand their individual businesses. These statistics confirm that there is a need for both improved and larger medical office facilities in Central Maui. The proposed facility has been designed this ...(inaudible)... demand and based on the market research completed by the applicant is expected to reach full occupancy as the project continues through construction or towards construction, excuse me, and as national economic conditions continue to improve.

Moving to the second to the last comment the Commission had also asked for a review of, of the written testimony that was provided at the April 26<sup>th</sup> meeting. This review has been completed and a letter prepared by Penny Levin. It's been included as Exhibit G of the supplemental document. This letter compares to statements made by Mr. Gamponia at the previous meeting in relation to the findings of Bob Hobdy's Biological Resources Survey. The findings of this review indicate that both and flora and fauna conditions within the project site are very different to those within Kanaha Pond Wildlife Sanctuary. This is explained by the fact that the site is separated from Kanaha Pond by the Kahului drainage canal and the canal which separates the project site from the pond was actually constructed by the U. S. Army back in the 1970's.

Given this lack of suitable habitat and suitable vegetation within the project site for nesting birds, the presence of existing higher intensity industrial uses adjacent to the site and the observation that over time birds within Kanaha Pond have adapted well to the surrounding urban environment the proposed project is not expected to present significant impacts on Kanaha Pond Wildlife Sanctuary.

Finally, the Commission's last comment at the April 26<sup>th</sup> meeting had asked for some additional information on how the project relates to the improvements contemplated under the Kahului Airport Master Plan which is in the process of being updated. Prior to the last meeting a section had been included in the final EA document summarizing the various improvements that had been proposed by State DOT for inclusion in the overall master plan. During the process of researching the Commission's comment from the last meeting we have since learned that this list of improvements was recently updated to include a proposed 1,500-foot extension for Runway 5. This extension is however proposed for the Paia/Spreckelsville end of Runway 5, and to our understanding there is no extension proposed for the Kahului end of the Runway 5 which is the side closest to the project site. The extension work, therefore, is not expected to significantly alter glide path taken by aircraft approaching Runway 5, and if anything, it may result in a shift in the point at which planes currently

touchdown on the tarmac further towards Paia/Spreckelsville side which again would increase the height of an aircraft landing at Runway 5 as it flies over Kahului.

The construction of the project we don't believe will impact the implementation of the Kahului Airport Master Plan in any way. This finding is supported by the No Hazard Determination that was recently issued by the FAA for the project which I mentioned earlier in our presentation. With that, I'd like to conclude our presentation to you this afternoon. I'm sorry it went on a little longer than was expected. We wanted to be sure that we presented all information in response to the Commission's comments and we really hope that the information that we've been able, able to gather since the last meeting addresses the questions and comments that were raised at the April 26<sup>th</sup> meeting. As I mentioned before we, of course, available to address any further questions the Commissioners may have during review of the responses to the eight comments. Thank you very much.

Chair Hiranaga: Jim, did you have any additional comments?

Mr. Buika: The only – I have no additional comments to present, other than at the April 26<sup>th</sup> meeting I did present the Department's conclusion of law and recommendation, if you would like me to repeat that at some point I can provide that for you also.

Chair Hiranaga: Yes, I'll give you an opportunity later.

Mr. Buika: Okay, thank you.

Chair Hiranaga: At this time I'd like to open the floor to public testimony. Is there anyone here that wishes to provide testimony please come forward and state your name.

Ms. Irene Bowie: Good afternoon Chair and Commissioners. I'm Irene Bowie, Maui Tomorrow Foundation. I've been here a couple of times to comment on this project. You've, you've heard my thoughts on whether this is indeed a good example of an infill project and also selling this project by saying that there is a need for it that doctors are not staying on Maui because there's a lack of space rather than the rate of pay.

I would like too also, since the Wailuku-Kahului Community Plan was referred to, I would mention that Kanaha Pond is included in the community plan's List of Significant Site. It also states, "drainage canals should not be used for building sites but rather for public open space." And the community plan also states, "the low rise character of the central business area should be maintained. Higher building forms up to six stories should be sited in the central portion of commercial blocks." Not on the edge of the wetland, not on the edge of the view plain for Central Maui. This is for our community. This is, this is an area that means something to us.

I would also like to refer you to the May 17<sup>th</sup> issue of the Maui News. Maui Memorial Center's article on building space at Maui Lani. The, the – next to Kaiser, Maui Lani Clinic on Maui Lani Parkway. I don't know if you saw that but it's a 20,000 square foot empty building next to Kaiser and the hospital will be using that building. They, they, had a lease agreement back in 2008, but with the economic situation they have, they have just been paying leasing for that and not using it. Within

the next three months the hospital should have design and construction drawings completed for the building's interior. Within a year after finishing those plans, the building should be ready for use as a medical office building for cardiologists, outpatient services and as a possible sublet to other medical practitioners. The building will not be occupied completely right a way but with a population of patients growing it's prudent to have space for future expansion. In other words, a smaller building like this they don't feel that they're, they're – they need to fill it up immediately. They also inquired, asked the hospital if it was interested in a similar building next door which nearly finished and the hospital declined. So I think that would be a much more realistic view of infill. The buildings that are number one, near the hospital, they've been built and they are in the central area they're not out on the, on the edge. So I hope you consider that. I, I would really say if there's, you know, a situation where maybe an EIS should be looked at this is it. We've got traffic, we've got a lot of different, different issues that come up with this.

And lastly, I'd just like to let everybody know, I mean, this, this is a bit irrelevant but it, but it contributes to this that if you've noticed the changes at Kanaha Pond recently and you think it's because of the tsunami it's not, it's that the, the brackish water pump broke there months ago and I'll read in the procurement request, "it is necessary for controlling and maintaining the water quality and circulation of the Kanaha Pond Wildlife Sanctuary in order to protect and recover three endangered Hawaiian water birds." They need \$80,000 to fix this water pump. They turned in this request back in April. It's been denied by the Procurement Office because they don't deem this an emergency situation. It doesn't affect the general public. So you know, I would say as a resident –

Chair Hiranaga: Please conclude your comments, please?

Ms. Bowie: – of Central Maui, Kanaha water – Kanaha Pond needs our help in a number of ways and, and this project I think is just really a slap in the face to it.

Chair Hiranaga: Thank you very much.

Ms. Bowie: Thank you.

Chair Hiranaga: Is there anyone else that wishes to provide public testimony at this time, please come forward and state your name?

Ms. Ellen Lavinski: Aloha Commissioners and Chairman, my name is Ellen Lavinski. I have lived on Maui 33 years. I'm an avid hiker and bird watcher. After seeing the video of the meeting from April 26<sup>th</sup> on Akaku, on Sunday, May 15<sup>th</sup> I was in Kahului so I drove to the shopping mall right next to the site and parked in the parking lot because one of the items from the meeting that really surprised me was that it was stated there were no birds within the site. And I don't always think birds respect fences and so I parked right next to the shopping mall and walked up to the fence and looked into the site and in 15 minutes I saw nine different birds fly over and land in the bushes there. It's a dry area but I saw three Hawaiian stilts, to egrets and then four other birds that I didn't recognize. So I thought this would definitely affect the birds because they fly over the water and if they get tired or they might see some bugs or something they would land and then stay a while and move on.



This past Sunday, I drove from Lahaina to Kihei and went past Kealia which is the other major wetlands and usually I enjoy watching the stilts there. I was really surprised to see it was very dry. I didn't see water except for small waterways there. I don't know how long that's been that way but I saw one stilt over there. So I thought if it's so dry here, where are all the birds? And probably they've flown over to Kanaha Pond because it's wet there, there's food there for them and so I think it would be a mistake to approve having a FONSI. There is definitely going to be an impact and I think there needs to be an EIS done on this. It just doesn't seem that this is an appropriate site for such a large building. Also, when I was standing in the parking lot looking through the fence, I was thinking here's Haleakala and there's going to be a six-story building. So from where I was standing, Haleakala would be blocked from sight and there were a lot of photos shown of different viewing points but I don't think there was one if you were driving from around the curve from Maui Mall then towards – if you were going to Paia there would be an impact on your viewing also from this large building. So I appreciate being able to speak and I hope you vote to have a EIS done for this.

Chair Hiranaga: Questions for the testifier? Seeing none, – Commissioner Freitas?

Mr. Freitas: Yes, you stated that you're an avid bird watcher and you said there was four birds that you didn't recognize. I thought bird watchers knew all the birds that they were watching?

Ms. Lavinski: I'm avid. I'm not a professional ornithologist. Three of the birds I didn't know the names of they were small brown ones. So they could have been finches and there was a few other birds like that. The one bird I didn't recognize at all was larger than the other ones and a creamy off white color but I wasn't sure what it was.

Chair Hiranaga: Any other questions? Thank you. Anyone else wishes to provide testimony at this time please come forward and state your name?

Mr. Kenny Hultquist: Good afternoon, Commissioners, Kenny Hultquist. I've been videoing this meetings since 2007. I have two observations to make about the Maui Medical Plaza project. One, it will create much needed temporary employment for construction workers and many permanent professional positions. And two, is it fair for us to decide what someone can or can't do with their property? It is, when the project will have a continual and permanent effect on the surrounding habitat. I think I can make a pretty fair assessment of how much time, energy and capital has been expended to carry this project to its present status. Nevertheless, every now and again, a proposal comes chugging down the track that defies common logic and you feel the need to say that enough is enough.

This prime supportive wetland should be placed in the care of a land trust. The main request before the Commissioners today is will this six-story, 93-foot tall building with an attached five-story, 365-stall garage have an unusual or everlasting effect on the surrounding environment. This project fails the litmus test on every level primarily the environmental damage to the flora and fauna that would result from construction of the foundation due its close proximity to Kanaha Wildlife Refuge and that's pretty much I would say indisputable building the foundation. Harmful impacts would mainly be due to the execution of the foundation requirements notably the extensive excavation of the existing landscape that would be necessary and the disruptive drilling and pile driving of

essential support infrastructure, the subsequent introduction of foreign so-called engineered fill to a point of 7.6 feet above sea level and that's one foot above the Hana Highway roadway elevation. Not to mention considerations about the permanent disfigurement of the view plane. The topic of archaeological and cultural resource assessment uncertainties, drainage and runoff concerns, the substantial strain on the infrastructure resources such as electrical, water and sewer usage, doubts about traffic mitigation measures, and the many concerns about its location as related to the Kahului Airport and that's a pretty good mouthful.

Lastly, is this project really needed? An article in the Maui News which is laying over there on the table, by the esteemed Harry Egar, who's right here, reports that MCC has been paying \$50,000 a month for the past 30 months on a 20,000 square foot building next to the Maui Lani Clinic right down here by the hospital. They now have financing and will convert that space into exactly what KPP Partners are proposing to provide office space for professional medical practitioners. The estimated completion date is around August 2012.

In light of all the above, I feel today is the day for the Commissioners to say enough is enough. To make a determination that this project will have no significant impact is inconceivable at best. It's time to take a stand and make a statement. I strongly urge the Planning Commission to deny the application for a FONSI and encourage the applicant to continue to move forward and seek out a more suitable location for the Maui Medical Plaza project.

Chair Hiranaga: Thank you. Questions for the testifier? Seeing none, seeing one, Commissioner Mardfin?

Mr. Mardfin: Hi Kenny, thank you for your testimony.

Mr. Hultquist: Hi.

Mr. Mardfin: Have you recently made a video of some of the issues that have been raised in this?

Mr. Hultquist: I actually did. Last week I drove over from Lahaina specifically to go to the project site and videoed just the surrounding area for about three hours and just to observe for my own self if birds were coming onto the property and what was really going on on the property. It was very quiet and a lot of birds flew which I don't know if you saw the video that I put on You Tube but birds were flying over that property and I was a little tongue in check but I made statements about this bird just flew through the third story of the building and circled around and then that was a, a stilt. And then one of the – another one of the large endangered birds flew like about through the fifth story of the building right about the height and circled around and came back and landed. Also, two mainland mallard style ducks came in for a landing. They were coming right at me and I'm a duck hunter. I know when ducks are coming in to land I used to hunt on California and those mallards were coming right in and they were going to land until they saw me and then cut out and split and went out over the – so birds do hang on that property.

Mr. Mardfin: Did you see them actually land on the property?

Mr. Hultquist: No, no, they, they went, they left.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Kenny, can you tell me the height, I know you gotta estimate, the height of the birds flying. What was the highest level that you seen approximately, you said about five stories?

Mr. Hultquist: The highest level was probably around like 70, 60-70 feet and the one stilt that came in, well, that was the heron. The heron actually came in twice and flew at that level like what would be the fourth or the fifth story and then the stilt which flew through first flew about through the second or third story and circled around. And I thought it was going to land. It sort of started to touch down, it's in the video and then it took off and landed right in front of me in the canal which is a half inch deep which I had no idea.

Mr. Shibuya: Yeah, no, just looking at the video I couldn't tell the height that's why I'm asking. Thank you.

Mr. Hultquist: Yeah.

Chair Hiranaga: Any other questions for testifier? Seeing none, thank you. I do have someone did sign up a Charles Silva is he present? Come forward and state your name.

Mr. Charles Silva: Good afternoon Commissioners, Chairperson. My name's Charles Silva. I lived here all my life. I grew up down the street in Sandhills. My great-grandfather was an H'poko. I'm fourth generation and my son is fifth. I've lived on this island all my life. I didn't come here from some place else. I've lived here all my life. I've seen this island grow especially Kihei in the '70's when there was no control.

I know Dr. James, Ben, and Robert since they started this project and I want to give them my support. I pass that area every day, you know, pretty much and if you've walked into that area there's nothing but junk in there. Empty containers, cars, stuff from whatever site is next to that. And I think Dr. James and his crew have put a lot of work into planning this building where the local community would appreciate. I'm talking from a local viewpoint. I'm talking from an educational viewpoint. I feel pretty inadequate because I'm not education type person. What I talking comes from here and what I know comes from here. But knowing Dr. James, Ben, and Robert they've put a lot of effort into making this project appeal to the local community. Puunene Clinic was built before I was born so that's how old that place is. The people there going need a new residence and I think a first class residence like this for the people of Maui start now. I mean, that's one nice facility, nice facility.

The birds going come. You know, the building going be there but the birds going come anyway, you know. With all the traffic and noise and jets and everything else the birds still come and Kanaha Pond is one big sanctuary. And if you look that ditch runs into Kahului – into Kahului Industrial area, you try look that ditch by 24-Hour Fitness, look at the condition of that cause way. If they can keep taps on the construction part of it and make sure that nothing violates Kanaha Pond and I'll be the first one to get up their butt if something gets into Kanaha Pond.

I think it's a worthwhile project and I think the local community is going to benefit a great deal from

that project. I'm speaking for myself, you know, but from what I know talking to people and my experience on this island that project will be a nice, you know, the guy from Hawaiian Homes walks into this building that's just nice and Dr. James and his crew service people very well. He's an old-time doctor. He's going to provide that kind of service for the local people and whatever. And I'm just speaking for myself from a local point of view. A lot of people have different ideas and this going harm this, going harm that, going harm this, going harm that and all that. My legs shaking 'cause I nervous, yeah. But you know, it's going to benefit the community. I retired after 27 years of civil service. I've worked all my life on this island from 15 till now. I still get one small business I take care of.

Ms. Takayama-Corden: Three minutes.

Mr. Silva: Three minutes, okay. Portagee so I talk plenty, you know. I admire you guys 'cause I sat here this whole – your whole day I sat here and I listened to you guys. You guys gotta deal with the public. You guys asked some very, very important questions, especially Mr. Shibuya about the environment and you know, stuff related to it. I admire that. I think this project it will be a benefit to the community and Dr. James and his crew have done everything to satisfy whatever questions was asked from them. I think you guys should give it a thumbs up and wish 'em well and right on. We'll see you guys in the future. Thank you guys for letting me share. I appreciate it. Thank you.

Chair Hiranaga: Thank you very much. Questions for the testifier? Seeing none, seeing one again, Commissioner Mardfin?

Mr. Mardfin: It's not a question, it's a comment. I saw you sitting here the whole time. You have a great deal patience and thank you for your testimony.

Mr. Silva: Yeah, you too. You ask plenty questions.

Mr. Mardfin: Yeah, I do.

Mr. Silva; And that's good. That's good. 'Cause you know, people need to ask question to find out what is going on. Thank you.

Mr. Mardfin: Mahalo.

Chair Hiranaga: Thank you. Is there anyone else that wishes to testify please come forward and state your name?

Dr. James Hansen: Thank you, Mr. Chairman, Commissioners, my name is James Hansen, I'm a gastroenterologist who've been here for about ten years. You know, I'm from California too, I'm a duck hunter. I love that and actually I love birds too, but we're talking about human beings here. We're talking about health care for people on Maui. I go to Molokai, I go to Lanai, I know what's going on at the point of service because I'm there. There's a desperate need for physicians on this island and in this County. That's the reason we're here. That's the reason we're talking about all of this stuff here. That's what we need to focus on. This is not a Korean bar. It's probably easier to get one of those. This is not some kind of box store and this is not a competition with the

hospital. As a matter of fact, those spaces at that building for the hospital are for hospital employed doctors. That's who's going to go there. We're talking about your private physicians who are on the last string of where they're being. They're leaving. I see them every day. If you were here when Ron Kwon was here, he left and if you don't think others are going to leave, you're mistaken. This is a absolute necessity to keep health care at the very best on Maui County. Anything less is substandard. Thank you for your time.

Chair Hiranaga: Questions for the testifier? Seeing none, – seeing Commissioner Mardfin.

Dr. Hansen: ...(inaudible)...

Mr. Mardfin: Yes, it is. Thank you for testimony.

Dr. Hansen: You're welcome.

Mr. Mardfin: And I understand the passion with which you've wanted to develop this.

Dr. Hansen: Thank you very much. I hope so.

Mr. Mardfin: And, you've – it was in partial answer to my question about, last time about whether you have commitments to this stuff or not, but you went out and got some, I think, maybe got stronger commitments from some people. What happens to Puunene Clinic? Does that?

Dr. Hansen: I think you for that question. Puunene Clinic actually is – from the evolutionary point of view, and I'm not an old-timer so bear with me here, that was the hospital in Puunene and then it became Maui Clinic. So what we're doing – we're not creating a new health care environment or a new health care building, this is the same people who are at that place, Maui Clinic who came from Puunene who came from the plantations going to a new and better place. A & B is going to tear that down and we felt there was a large community of, of local people that had no service, no doctor, they would be lost. So we tried to find a place that was close to Puunene Clinic so that they would have seamless care and that's why we chose the site and that's why we're doing this because otherwise, a lot of those folks would have no place to go and that's a huge community/

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions for the testifier? Seeing none, thank you. Anyone else wishes to testify at this time regarding this agenda item? Seeing none, once again, staff if you could restate your recommendation? Oh, I'm sorry, actually at this time we open the floor to questions by the Commissioners to Staff or the applicant. Seeing –

Mr. Mardfin: I was going to – I was going to let somebody else go first.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: To lets see this I guess is to Mark. Two of the additional questions that we brought that were answered for us this time around came from me and I was actually sort of disappointed

in the questions, response to question 3 for two reasons. One is what I was hoping I would get would be prime testimony from the DLNR or some other, the endangered bird program or the Audubon Society or somebody. I didn't want to get this opinion filtered through a paid planner. And so I was disappointed that I didn't get any new information. And secondly, I, I, my concern is not the mitigation of the jurisdictional wetland and a great deal of that response was devoted to that. So I – that didn't really address my concern. I did reread Mr. Hobdy's report and he had one assessment but I didn't anything new so I was disappointed in that. So I just feel that the response on Item 3 didn't provide me with any additional information.

Mr. Roy: If I could guide Commissioners to Exhibit C of the written submittal. I'll do my best to address Commissioner Wakida's question.

Ms. Wakida: Well, I read the whole response and it's by a planner. It wasn't a – I wanted the information directly from say the DLNR or the Forestry and Wildlife Division or somebody like that.

Mr. Roy: We note your comment at today's meeting. We obviously went in accordance with the official Commission's comments from the previous meeting and the response was a lot of work went into the response and it was tailored specifically to the official comment that the Commission voted on as a group. I think it's important to look towards Exhibit C because Penny Levin, though a consultant on the project, has been extremely heavily involved in the coordination of the Section 404, Department of Army permitting process. This process has been going on, actually it came to a conclusion earlier this year where the applicant received the D.A. permit for wetland mitigation and for the, for the actual project, but it was a five-year process. This process isn't typically gone through for a lot of development applications and for this particular project it was of course triggered by the filling of a jurisdictional wetland which is isolated from the pond that sits within the project site. So it was a very extensive process. Penny Levin has been involved I think for the last two or three years and the intent of the letter that we provided in Exhibit C is very much provided in response to the official comment that provided by the Commission and is intended to provide a detailed summary, detailed overview as to the involvement of both Federal and State agencies and the State agencies, when I say, State it included heavy involvement by the Department of Land and Natural Resources who are the agency responsible for the management of Kanaha Pond. What I would like to do if it's okay is have Penny come to the microphone and she can offer the Commission a brief overview maybe focusing more on the extensive input that was provided by the agencies responsible for the management of endangered species specifically U. S. Fish and Wildlife Service and the DLNR, who again, is the agency responsible for the management of the pond. So with the Chair's permission I'd like to invite Penny to the microphone?

Chair Hiranaga: I'm not sure if that's necessary. I think we're here to ask specific questions and have specific answers.

Mr. Roy: Sure.

Chair Hiranaga: Rather than have an overview of a letter that we have in front of us. So I guess specific questions regarding the letter –

Mr. Roy: She would like to address a specific question from Commissioner Wakida.

Chair Hiranaga: That's fine.

Ms. Penny Levin: My name – Aloha, is Penny Levin, conservation planner. I asked Fern Duvall, I left him messages many times. So there was a very strong attempt on my part to try to get him to come and talk with you about this. I also know that the protocol for response from agencies is typically that they have to respond through the State office and so on one hand I know that he's an extremely busy person and on the other hand, also he would have had to request permission to respond in person or directly to that kind of question through the State office. So I hope that helps you understand. I also, during the past course of the year I met 16 times, we had formal meetings with all of those agencies, five field site visits out there as well as weekly and monthly email contributions from all sides.

Ms. Wakida: But you didn't contact for example the Hawaii Endangered Species Group or the Audubon Society or any of those people about their concern for Kanaha Pond?

Ms. Levin: All of the, all of the direction that comes to – for the activities for Kanaha comes from DLNR, the Fish and Wildlife Service, the Army Corp of Engineers and we meet consistently with those groups. All of those, where there was public comment period during the 401 – uh, 404 process and all of the agencies of concern and the public and private entities and individuals who had concerns about the pond did respond during that time but that was two years ago.

Ms. Wakida: I understand, thank you, but what I actually was looking for I wanted to see their responses in writing. Apparently you didn't get that?

Ms. Levin: We get – those come in directly to the Army Corp of Engineers when they did respond during that period of time and they were forwarded to us and our response is directly back to the Corp of Engineers in that regard.

Ms. Wakida: Because that's what I was interested in was firsthand look at those, at their, at their information. Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Yeah, Penny, this is going to be a follow up with you. And I'm going to say something prefacing this and I hope you don't take offense. I'm referring to comment, I don't know, I guess it was Comment 6 or something, Exhibit G, the letter from you, when I had said third-party, I viewed this as a first party response to again being not a third party objective view. Nonetheless, let me say that I thought you did a very thorough job at that. I was very concerned about the birds. I want to refer to Page 3 of your letter. This is in appendix, Exhibit G, and it says, Lot 8 harbors a number of predators, feral cats, et cetera that negatively impact adjacent populations, blah, blah, blah, once completed the Maui Medical Plaza offices with managed landscape will be less likely to shelter or conceal such predators all of which harbor pests and diseases. That was an extremely good point to me and made an impact.

The following paragraph that refers to Mr. Hobdy and he says that basically they adapt to human activity around which is another very good point. Let me ask a specific question however, because

Kenny in his testimony talked – because I've been thinking the ongoing thing once the building's built and I'm somewhat relieved at least with this aspect of it. But Kenny raises an interesting issue that you're going to be driving piles down and all the rest of the stuff, what kind of impact is that, does the construction impact likely to have on the bird populations?

Ms. Levin: In terms of driving pilings specifically or?

Mr. Mardfin: Yeah, and, and Kenny says, notably the extensive excavation of the existing landscape would be necessary, disruptive drilling and pile driving of the central support infrastructure, engineered fill. I mean, I can see these pile drivers going on and I was wondering what you, your as an expert what you think the impact would be on the bird life?

Ms. Levin: I think with like – as with any construction project whether it's human beings or birds there's a temporary time when that building is being constructed where there's some noise. There's going to be – birds are going to stay away from that area. They're intelligent beings. They're not gonna fly into the area because it's not hospitable to them. If there's a structure there, they'll go around it in the same way that all of the other buildings that have been – come up around the pond, the gas facilities and the VIP and all of those during the period of construction there's noise levels and there's probably vibration as they're putting in pilings but it's a temporary thing.

Mr. Mardfin: And you don't think it will permanently disrupt breeding behavior or anything else?

Ms. Levin: No, no. And, and as a matter of fact, the building is not going to be going on during breeding time any ways.

Mr. Mardfin: Thank you very much.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I want to commend the director's of Kanaha Professional Development Company, LLC as well as Mr. Mark Roy for a very thorough and very comprehensive type of treatment here on my questions. I'm also very pleased to hear about the proposed 100 kw type of system that the owners of Kanaha Professional Plaza has committed to. This is outstanding. It's not only outstanding for you folks but it's outstanding for entire Maui nui. It just helps everyone. Everyone is part of this energy canoe.

I also like to thank Mr. Garret Goo. Thank you very much. You're outstanding. More outstanding because you're a one for one pilot. I'm also retired Air Force too. So you came from the right place. He's not the kind of pilot that bounces into something that moves and expect the cable to hook onto. He's one that is very safe, reliable and glides it in. That's the difference between a Navy pilot and a Air Force pilot. Okay. You glide in versus bounce in. So thank you very much for that explanation and for speaking to us in normal language English. Thank you, thank you very much.

Chair Hiranaga: Any other questions for the applicant or staff? Commissioner Mardfin?



Mr. Mardfin: I think this is going to be for you. On Page 14 of I guess it's your main, final Environmental Assessment you had a Table 8, comparison of four or more story buildings in Wailuku-Kahului. And I know you put it in that way because it's one legal community plan, but I think Kahului and Wailuku area entirely communities in their character and nature. So I took out all the buildings that were sited in Wailuku because I don't think they're relevant to this. That left me with one, two, three, four, five, six buildings located in Kahului, two of which are proposed, not completed. There was only one with five stories at the Kahului Town Center. Everything else was four stories. So this six-story building is going to be the biggest thing in Kahului. And last time Commissioner Wakida correctly pointed out that the I guess it's the building form and character, objectives and policies for Kahului. Building form and character, maintain compatible – this is on Page 106 of previous Volume 1. Between existing low scale character of the area adjacent, public uses and higher buildings. The low rise character of the central business area should be maintained. Higher building forms up to six stories should be sited in the central portion of the commercial block. I do not view this in the central portion of the commercial block. This is right on the edge, right next to a wetland sanctuary. I'll grant you the zoning is Industrial and Industrial allows six-story buildings but I don't think this meets neither the spirit nor the letter of the community plan for Wailuku by putting this right on the edge of the situation. Feel like responding to that?

Mr. Roy: I would like to respond to that comment Commissioner Mardfin. I'm glad you raised it because it's one element of the Wailuku Community – Wailuku-Kahului Community Plan. To your first point, the intent for the table was to respond to the previous Commission's comment regarding other buildings within the Wailuku-Kahului area. So the intent of the table itself was to provide an overview of structures, comparable structures that are in the general area of the Wailuku-Kahului Community Plan region. In regards to Goals, Policies and Objectives of the Wailuku-Kahului Community Plan, the – there a number of – and it's the same way with all of the community plans across the island. They were adopted at various points in time. They have numerous policies in them that guide development within the community plan area itself. The applicant's belief on this particular project specific to this provision is and I think it's true when you look at the true intent behind the formulation of a community plan from a, from a planning standpoint is that you're taking a regional outlook on growth management for a specific area and in this particular case it's Wailuku-Kahului. We believe that this project is, is – meets the intent of this provision in its very location between the two major hubs of inter island commerce that being the Kahului Harbor and the second being the obviously the Kahului Airport. We've got a number of uses that gravitate between those main hubs, retail-commercial, heavy industrial, light industrial that may not necessarily be that way if those central hubs were not in existence. So from a regional standpoint I think taking a stand back and looking from a planning perspective that the intent of the community plan we believe this project site by its very location within the midst of Kahului commercial area meets the intent of this particular provision.

Mr. Mardfin: I would contend it's not in the midst, it's on the edge of and I think that make a lot of difference. It's not in the midst, if it was in the midst it would be on Lono Avenue or something like that.

Chair Hiranaga: Any other questions for the applicant or staff? Seeing none, ready for staff recommendation? I'm sorry, actually I have a couple of questions. Maui Clinic that's located on leasehold land. Does anyone know when the lease expires or has it expired?

Mr. Roy: I think Dr. Hansen may be able to answer that question for you.

Dr. Hansen: The land is owned by A & B. The building is owned by some physicians. In '08 the lease was to have come to an end, but A & B has had their own issues with the Town Hall plan so they've given us a year by year lease to stay there. I mean, they have the right to us 60 days to get out. ...(inaudible)... they haven't done that. And so, that's my own response, personal urgency.

Chair Hiranaga: Okay, thank you. And maybe this question is for Staff. I know the sixth, the sixth story is an issue, but if the EA is approved, approved with a FONSI it does not mandate that a six-story building shall be built is that correct?

Mr. Buika: Correct. It does not mandate that the building shall be a six-story building.

Chair Hiranaga: Okay, thank you. And if there's no further questions, we'll ask the Staff to restate their recommendation.

Mr. Buika: Thank you. Jim Buika, planner. Just real quickly, just listing off the eight, eight concerns here, the energy efficiency, 36 to 40 percent energy savings was the first one. The impact on the flight patterns. The FAA has shown that there is a no impact determination. I think we had good testimony today there. So there really poses no problems. The MOU in, from 1996 with FAA shows that bird strikes on planes are mitigated. The third was the issue of the birds, the birds adapting to the space. The Biological Survey shows that they have been. There's a stable population. The fourth, the view impact, we saw some that the view impact is actually minimal. The applicant demonstrated that. Number 5 is the Wailuku-Kahului Community Plan. The project is consistent with zoning M-2, six stories. It's community – it's consistent with the various, the various plans, the Countywide Directed Growth Strategy and the proposed Maui Island Plan. If we look in that area the zoning across the street I believe is, is zoned at the 24 Fitness, those buildings as they age, as they get replaced, those are all four-story. That is the central core building district and you can, you can debate – I mean, the language in the Kahului – Wailuku-Kahului Community Plan is very nebulous it doesn't state where those locations are but the applicant does believe and the Planning Department does believe that central business district is located in the, the harbor/airport area and that area will continue to grow under the Directed Growth Strategy, so it is, it is situated well, and it's consistent with the community plan. The floor space issue I think it shows that there is demand. Maui is growing, we will need medical services so from a societal impact it has a very, very positive societal impact. The review of the testimony, Penny's letter, Penny Levin's letter from Sonny Gamponia, I apologize for his name, showed that there is no significant impact to the birds and then that the Kahului Airport Master Plan the project is consistent with that. So looking at those issues and all of the review criteria in the final EA, the Department concludes that their project as proposed with mitigation measures does not pose a significant impact to the environment relative to the significance criteria stated in Section 11-200-12 Hawaii Administrative Rules which is what governs the, the FONSI recommendation.

The Department's recommendation is that the Commission accept the final EA and issue a Finding of No Significant Impact Determination at today's meeting. And again, to address the Chair's issue at a future meeting, the Maui Planning Commission will conduct a public hearing and review the

SMA Use Permit application and please note that the issuance of a FONSI Determination does not preclude the Commission from requiring additional information or mitigative measures during review of the SMA Use Permit application. This concludes the Department's recommendations and remarks about the project final Environmental Assessment.

Chair Hiranaga: Thank you. Floor is open to a motion. Commissioner Shibuya?

Mr. Shibuya: I move to accept the FONSI as recommended by the Department.

Chair Hiranaga: Is there a second?

Mr. Lay: Second.

Chair Hiranaga: Move to accept the FONSI, motion by Commissioner Shibuya, second by Commissioner Lay. Discussion? Commissioner Wakida?

Ms. Wakida: Yes, I will be voting against the FONSI. I do feel there's – my concerns haven't been adequately addressed either about the impact to the wildlife and I do not agree with the conclusion that this is part of the central community area. The – the community plan specifically says that the, that larger buildings should be in the central area of any business area not on the edge. So I disagree with their conclusion on that. So I'll be voting against this.

Chair Hiranaga: Any other discussion? Commissioner Mardfin?

Mr. Mardfin: I also will be voting against and I'd like to explain why. I do think they've gone a long way toward resolving a lot of my concerns. The aviation concern has been taken care of in my opinion. The wildlife bird activity has largely been alleviated – has largely been alleviated but maybe not a 100 percent. But that alone wouldn't cause me to vote no. The demand there seems to be well-demonstrated although quite frankly it almost doesn't matter to me whether it's professional, medical professional is in there or some other office building. I mean, for all intents and purposes it's an office building. So that isn't a huge issue one way or the other although it's nice the medical people will have an alternate. The site views were helpful but have not totally been a concern because I'm picturing myself driving down there. Now I will say in mitigation that the architectural design looks actually pretty nice. I think I could come to learn to like it once it's built but – ... I'm not quite so sure. My main concern is the one Penny alluded to. I really do think this by far this is going to be the larger thumb sticking out of the, out of the ground in Kahului. I do not combine Wailuku and Kahului even though it's one community plan. In Kahului most of the things are fairly low rise. They've pointed out two, I think four, maybe five, four-story buildings, one proposed five-story building. This is six stories, it's right on the edge. The Chairman has mentioned that approving the FONSI does not necessarily mean that we would have to approve a six-story building. On the other hand, if we've said today that we have a Finding of No Significant Impact I don't see how you could say, well, they can't go to six stories they have to be limited to five or four. Moreover we've had testimony in previous meetings from the applicant that financially it doesn't make sense to do it a lower level. Therefore, I'm – I do see this right on the edge. It's right – this is going to be the tallest building right on the edge of a wildlife sanctuary and while it might not affect the wildlife, I think it will affect the humans. I think they've come a long way. I think it's

a better project and they are better answers than they were when we started this project. As somebody once said a couple of weeks ago. If this were where Safeway is proposed to be in Maui Lani it would be a great project and I kind of agree with that, but this to me is not meet the criteria of the community plan and I cannot vote yes on a Finding of No Significant Impact. I think there are significant impacts. So I will have to vote no.

Chair Hiranaga: Any other discussion?

Mr. Ball: Chair?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: I'll be voting in favor of this and for a few reasons. I do agree that it's not in the center but when you look at the surrounding uses of the businesses if you will around the proposed project of the gas companies, storage facility there and I know it doesn't look like it but I work out quite often at 24 Hour Fitness and I see, I look at the site and I've looked at the site many times trying to imagine this big building there. And I see them discharging some excessive gas out of the thing which is like a 30-foot flame thrower which I'm sure the birds don't like but I think they're smart enough like some of the testimony that they're going to move out of the area of the flame. So that really sways me when, when it's on the edge from saying, well look at the rest. I mean, there's a, there's a car crusher thing, there's a gas station, you know, further down the road, there's more gas stations and fuel storage facilities. The – something the doctor said impacted me about Ron Kwon leaving. Ron Kwon when he was here diagnosed a friend of mine where no one else could diagnose him and he ended up living because of it. And if a doctor, one doctor stays because of that and ends up saving one life, you know, what is that worth? Is it worth impacting the environment, maybe, maybe not. But I don't think it's a significant impact. I definitely think it's an impact. I definitely think it's an impact in the environment when you have nothing and you build something, but I think we can move this forward and go onto the next step in this and, and we're not bound by the six stories. If we think it should be five then we'll tell them it's going to be five. That's what our rules say. So anyway, that's my two cents on that. Thank you.

Chair Hiranaga: Any other discussion? Commissioner Lay?

Mr. Lay: I would like to agree with Commission Ball simply because I don't see you congesting all this hospitals in this one area like they were saying up where the Safeway would have been, you've got a hospital up there. I'm upcountry, I like the choice where I can go to different doctors at different areas, it's more convenient. If we spread out these doctors in different areas, we have a better chance of getting these things that we need and like Commissioner Ball said if we can get professional really good physicians out there for us here on Maui that's what we need here. We need help, the best that can be and if it's available, let's go for it.

Chair Hiranaga: Any other discussion? Seeing none, Director if you could restate the motion?

Mr. Spence: The motion is to accept the final EA and issue a Finding of No Significant Impact.

Chair Hiranaga: Call for the vote. All in favor so indicate by raising your hand.

Mr. Spence: That's five ayes.

Chair Hiranaga: Opposed.

Mr. Spence: That's three nays.

**It was moved by Mr. Shibuya, seconded by Mr. Lay,**

**VOTED: To Accept the Final Environmental Assessment and issue a Findings of No Significant Impact (FONSI).  
(Assenting - W. Shibuya, I. Lay, D. Domingo, J. Freitas, K. Ball)  
(Dissenting - W. Mardfin, L. Sablas, P. Wakida)**

Chair Hiranaga: Motion carries.

Mr. Buika: Thank you.

Chair Hiranaga: Next agenda item is acceptance of action minute. Have a motion to accept the minutes please?

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE MAY 10, 2011 MEETING**

Ms. Domingo: So move.

Ms. Sablas: ...(inaudible)...

Chair Hiranaga: Moved by Commissioner Domingo, second by Commissioner Sablas.

Ms. Sablas: No, I didn't second.

Chair Hiranaga: Oh, you have a – I'm sorry?

Ms. Sablas: Sorry, I just wanted to point out a correction to the minutes.

Chair Hiranaga: Why don't you second the motion and then you can –

Ms. Sablas: Okay, second.

Chair Hiranaga: Second by Commissioner Sablas. And Commissioner Sablas you have a correction.

Ms. Sablas: I don't have it before me but I think in the last minutes it showed me in one of the items as dissenting rather than excused and I was not here so it should be corrected to show as excused not dissenting. Thank you.

Chair Hiranaga: Any other discussion? Seeing none, all in favor of the motion to accept the minutes do so by saying aye.

Commission Members: Aye.

**It was moved by Ms. Domingo, seconded by Ms. Sablas, then**

**VOTED: To Accept the Action Minutes of the May 10, 2011 Meeting, as Corrected. (Correction was made on Page 4, top of page, "dissenting - L. Sablas" corrected to "excused - L. Sablas" for the Settlement Agreement.)  
(Assenting - D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Ball, W. Shibuya, P. Wakida)**

Chair Hiranaga: Opposed. Motion is carried. Next agenda item is Director's Report. Director?

**F. DIRECTOR'S REPORT**

Mr. Spence: Thank you, Mr. Chairman. We transmitted a number of items to you.

- 1. May 10, 2011 memo from Joshua Stone, Chair of the Maui County Charter Commission requesting submittal of proposed charter amendments and/ or recommendations.**

Mr. Spence: The first item is a memorandum dated May 10, 2011 from the Chairman of the Maui County Charter Commission Mr. Joshua Stone. They're looking for suggested charter amendments and that's not just across the board anything that the Commission would like to see, you know, on any item but things that are under the purview of the Maui Planning Commission, and then of course, as individuals you're welcome to participate in that process as well. So if there's anything right now that would be fine, but perhaps we want to put this item back on the agenda after Commissioners have had a time to review the Charter and perhaps come up with items of their own?

Chair Hiranaga: So you want a motion to defer this matter?

Mr. Spence: I think that would be appropriate.

Chair Hiranaga: Is there a motion to defer?

Mr. Mardfin: I move to defer.

Mr. Ball: Second.

Chair Hiranaga: Motion to defer by Commissioner Mardfin, second by Commissioner Ball, any discussion? Seeing none, all in favor say aye.

Commission Members: Aye.

Chair Hiranaga: Motion is carried.

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

**VOTED: To Defer the Matter in Order for the Members to Review the County Charter and Suggest Amendments, if Any, Which are Under the Purview of the Planning Commission.  
(Assenting - W. Mardfin, K. Ball, D. Domingo, L. Sablas, J. Freitas, I. Lay, P. Wakida, W. Shibuya)**

Chair Hiranaga: Next agenda item.

**2. May letter from Council Member Don Couch, Chair of the Council Planning Committee requesting that the Council Resolution No. 11-24 regarding the Short Term Rental Home Bill be taken to the Hana Community for their input.**

Mr. Spence: The second item is a letter from Councilmember Don Couch, Chair of the Council Planning Committee requesting that Council Resolution 11-24, Short Term Rental Bill be taken to the Hana community for their input. That would be the Hana Advisory Committee.

Chair Hiranaga: You need a motion for that?

Mr. Spence: Yes, I believe that would be proper.

Chair Hiranaga: Motion? Commissioner Mardfin.

Mr. Mardfin: I move that we refer the Don Couch's Council Resolution No. 11-24 regarding Short Term Rental Home Bill to the Hana Advisory Committee to the Maui Planning Commission.

Mr. Ball: Second.

Chair Hiranaga: Motion to refer to the Hana Advisory Committee by Commissioner Mardfin, second by Commissioner Ball. Any discussion? Seeing none, all in favor say aye.

Commission Members: Aye.

Chair Hiranaga: Opposed?

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

**VOTED: To Refer Council Resolution No. 11-24 Regarding the Short Term Rental Home Bill to the Hana Advisory Committee for Comments, as Requested by Council Member Don Couch.  
(Assenting - W. Mardfin, K. Ball, D. Domingo, L. Sablas, J. Freitas, I. Lay,**

**P. Wakida, W. Shibuya)**

Chair Hiranaga: Motion is carried. Item F-3, Director?

- 3. EA/EIS Report**
- 4. SMA Minor Permit Report distributed with the April 26, 2011 agenda**
- 5. SMA Minor Permit Report distributed with the May 10, 2011 agenda**
- 6. SMA Minor Permit Report**
- 7. SMA Exemptions Report distributed with the April 26, 2011 agenda**
- 8. SMA Exemptions Report distributed with the May 10, 2011 agenda**
- 9. SMA Exemptions Report**

Mr. Spence: Okay EA/EIS Report, I don't believe there's anything.

Chair Hiranaga: We had a question by Commissioner Wakida. Are you satisfied with that answer?

Ms. Wakida: Yes, I was given the plans of this project and, but I have a question for Will. This was a 3,000 square foot addition on the shore – right on the beach plus a swimming pool. Does a project like that get special scrutiny?

Mr. Spence: Thank you, Commissioner Wakida. Yes it does. Any property that is on the shoreline and somebody wants to do an addition or put in a swimming pool, something along those, those lines they have to – well, one they're in the Special Management Area, that's number one. I believe this one – okay, this is on Front Street we're also in the National Landmark so you have to check for historic and then because it's in –

Ms. Wakida: Wait, can you, I'm sorry, could you elaborate? They're in the National Historic Landmark so what do you have to do?

Mr. Spence: We would see if any – and I'm talking in generalities of any project within the Landmark you would check and see if historic resources are being affected. Say there's a historic house on the property or if they're doing a large amount of excavation or really much excavation at all, you know, you would probably have some kind of archaeological report and then because it's a shoreline property you're checking for your shoreline setback. So there's a large amount of scrutiny that goes on and particularly a property in Lahaina like this.

Ms. Wakida: Right because I mean it's practically a whole new house going up, 3,000 square feet.

Mr. Spence: Yeah, I'm not familiar with the particulars of this project but I'm sure there was considerable amount of information provided to the department.



Chair Hiranaga: Okay, I guess Chair will entertain a motion to accept Items F-3, 4, 5, 6, 7, 8, and 9.

Mr. Shibuya: So move.

Mr. Lay: Second.

Chair Hiranaga: Moved by Commissioner Shibuya, second by Commissioner Lay. Any discussion on Items F-3, 4, 5, 6, 7, 8, and 9? Seeing none, all in favor say aye.

Commissioner Members: Aye.

Chair Hiranaga: Opposed.

**It was moved by Mr. Shibuya, seconded by Mr. Lay,**

**VOTED: To Accept Items 3 through 9, as Circulated.  
(Assenting - W. Shibuya, I. Lay, D. Domingo, L. Sablas, J. Freitas,  
K. Ball, L. Sablas, P. Wakida)**

Chair Hiranaga: Motion is carried. Item F-10.

**10. Planning Commission Projects/Issues**

**a. Revising the SMA Boundaries**

Mr. Spence: Planning Commission Projects/Issues. Revising the SMA boundaries. I know this was something Commissioner Ball brought up before. We are currently looking at the – we're just beginning to review the SMA boundaries. We'll be working with Current Planning Staff but also referring to – we have quite a bit of GIS information and we'll be looking at different things like coastal hazards and from the Department's just initial look at this kind of thing our boundaries far exceed in some places anything that would protect the shoreline and in other cases it's so small that it absolutely needs to be increased because it virtually provides no protection. So we'll be looking at that and as things progress we'll bring it to the Commission.

Chair Hiranaga: Are there any other additional Commission projects or issues any Commissioners would like to add? Seeing none, Item F-11, Discussion of future Planning Commission agendas. Staff Planner, Clayton Yoshida or Senior Staff Planner.

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

**a. June 14, 2011 meeting agenda items**

Mr. Yoshida: Oh, yes well, hopefully we're not talking about age, but however, we have a three-week break between now and your next meeting on June 14<sup>th</sup>. We will be taking up the Council Resolution 11-24 that was circulated to you in late March regarding, relating to short term rental

homes. We will be going to the Hana Advisory Committee on June 7<sup>th</sup> for their input on this bill as we already have a public hearing scheduled on the Mark and Haunani Collins SBR zoning change. If you want us to put on the Charter amendment request from Joshua Stone we can have that on the agenda and we have one SMA time extension to waive or not to waive from the Department of Public Works for the Kaholopoo Bridge project. So the primary focus is going to be on the short term rental homes bill. And also if you're, any of the Members are interested in attending the HSAC Conference hosted by the Maui County Council on June 22<sup>nd</sup> and 23<sup>rd</sup> and the Makena hotel if you can let us know probably by the end of the week.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: What is the cost of that?

Mr. Yoshida: I think the registration is 155.

Mr. Mardfin: And that's ..(inaudible)...

Mr. Yoshida: But there's like mobile workshops for \$30 on Wednesday afternoon.

Mr. Mardfin: And this would be paid by the individual commissioner? This would be paid by the individual commissioner?

Mr. Spence: We, we can double check with Avis. We're paying for registration, the workshop and I believe if you want to stay at the Grand Wailea there's a kamaaina discount.

Mr. Yoshida: It is at the Grand Wailea, not –

Mr. Mardfin: So this is the postcard we received last meeting?

Mr. Spence: Yes.

Mr. Mardfin: Oh, I thought we were told that we didn't get to go to these. Just me, cause I ask too many questions.

Chair Hiranaga: Are there any questions?

Ms. Wakida: Just one. Clayton, do you know general what this conference is covering?

Chair Hiranaga: There is a website with the agenda.

Mr. Yoshida: Yeah, I guess on the County, on the County web page there is a letter from the Council Chair Danny Mateo and the HSAC member from the Maui County Council Joe Pontanilla and it does list this website that you can access to get the agenda and the mobile workshops and other activities. They're having – I think Frank Delima is for the dinner on Wednesday night if you're into Frank Delima.

Chair Hiranaga: Any other questions? If not, thank you. Next regular meeting is June 14<sup>th</sup>. Is there any other new business?

Mr. Shibuya: I regret I won't be able to come to the 14<sup>th</sup> of June. I'll be in California.

Chair Hiranaga: So if there's no objection, this meeting is adjourned.

**G. NEXT REGULAR MEETING DATE: JUNE 14, 2011**

**H. 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**

Keone Ball  
Donna Domingo  
Jack Freitas  
Kent Hiranaga, Chairperson  
Ivan Lay  
Ward Mardfin  
Lori Sablas (in attendance at 9:12 a.m.)  
Warren Shibuya  
Penny Wakida

**Others**

William Spence, Planning Department  
James Giroux, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Department of Public Works