

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
OCTOBER 25, 2011**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:01 a.m., Tuesday, October 25, 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: ...Commissioners are present except for Lori Sablas who has been excused. We welcome Corporation Counsel. First, I'd like to open the floor to public testimony for any agenda item. Please, please identify yourself and limit your testimony to three minutes. First individual is Sam Davis. You may testify now or wait until the agenda item comes up.

The following individuals testified at the beginning of the meeting:

Sam Davis - Item B-3, Alii Kula Lavender Farm, SUP2

Joni Remington - Item B-3, Alii Kula Lavender Farm, SUP2

Mercer "Chubby" Vicens - Item B-3, Alii Kula Lavender Farm, SUP2

Merrill Kaufman, Item B-1 - Council Resolution No. 11-77, Ke Kani Kai, DBA and Item B-2 - Council Resolution No. 11-85, Iwa Ike, DBA

Hannah Bernard - Item B-1 - Council Resolution No. 11-77, Ke Kani Kai, DBA and Item B-2 - Council Resolution No. 11-85, Iwa Ike, DBA

Johanna Kamaunu - Item B-1 - Council Resolution No. 11-77, Ke Kani Kai, DBA and Item B-2 - Council Resolution No. 11-85, Iwa Ike, DBA and Item B-3, Alii Kula Lavender Farm, SUP2

Wilmont Kahaialii - Item B-1 - Council Resolution No. 11-77, Ke Kani Kai, DBA and Item B-2 - Council Resolution No. 11-85, Iwa Ike, DBA and Item B-3, Alii Kula Lavender Farm, SUP2

Kaniloa Kamaunu - Item B-1 - Council Resolution No. 11-77, Ke Kani Kai, DBA and Item B-2 - Council Resolution No. 11-85, Iwa Ike, DBA

Lucienne deNaie - Item B-1 - Council Resolution No. 11-77, Ke Kani Kai, DBA and Item B-2 - Council Resolution No. 11-85, Iwa Ike, DBA and Item B-3, Alii Kula Lavender Farm, SUP2

Claire Apana - Item B-1 - Council Resolution No. 11-77, Ke Kani Kai, DBA and Item B-2 - Council Resolution No. 11-85, Iwa Ike, DBA

Joanna Jacintho - Item B-3, Alii Kula Lavender Farm, SUP2

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

Chair Hiranaga: Is there anyone else that wishes to testimony on any agenda item at this time, please come forward? Seeing none, public testimony is now closed. First agenda Item B-1, Public Hearing, Director, Deputy Director.

Ms. McLean: Thank you, Chair. There are three public hearing items this morning. The first two are adjacent parcels and –

Chair Hiranaga: Excuse me, Deputy, I guess there's someone that wishes to provide testimony.

Ms. Joanna Jacintho: Yeah, this is on behalf of Alii Kula Lavender. (Her testimony can be found under Item B-3.)

Anyone else that wishes to provide testimony on any agenda item at this time? Please come forward? Seeing none, once again, Deputy Director. Oh, yeah, my apology, we'll take a ten-minute recess.

A recess was called at 10:20 a.m., and the meeting was reconvened at 10:35 a.m.

Ms. McLean: Thank you, Chair. You have three public hearing items on the agenda. The first two are very similar to adjacent parcels in Makena, similar process that they followed, similar issues have been raised. The first item is a transmittal of a Council Resolution containing a bill for an ordinance to amend the State Land Use Classification from Agriculture to Rural with proposed conditions for Parcel 2-1-005:117 in Makena, the Ke Kani Kai, two-lot subdivision. Paul Fasi is the staff planner.

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

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 11-77 containing A Bill for an Ordinance to Amend the State Land Use District Classification from Agricultural District to Rural District with proposed conditions for Tax Map Key Number 2-1-005: 117, Makena, Kihei, Island of Maui. (DBA 2011/0002) (Ke Kani Kai 2-Lot Subdivision) (P. Fasi)**

Mr. Paul Fasi: Good morning. Resolution No. 11-77 which is Exhibit A in your package and Committee Report 11-73 which is Exhibit B in your packet were adopted by the Council on August 5, 2011. On August 12<sup>th</sup>, the County Council transmitted a letter to the Planning Department, to the Planning Commission and that is your Exhibit C in your package. That included a procedural history of the Commission to use during today's deliberations. So if you need a chronology you refer to Exhibit C and that will give you the time line. There's a 120-day deadline for the Commission to transmit its recommendation to the Council and that means December 6<sup>th</sup>, the Council needs your recommendation. You are not the final authority on this District Boundary Amendment. You are only making recommendations to the Council.

On October 14, 2008 and again, on November 25<sup>th</sup>, 2008, the District Boundary Amendment for the proposed change from State Ag to State Urban the recommendation from the body was unanimous, 7 to 0 with one absent. So this body passed the District Boundary Amendment from State Ag to

State Urban unanimously.

At the July 13, 2011 Council meeting the motion passed to send the Resolution back to this body because the applicant is now going to change the District Boundary Amendment request from Urban to Rural. So this, what the Council's asking you to do is to make further recommendations and verify that you have reviewed it under the rural standards to avoid any conflict with the State Sunshine Law.

So we will be reviewing this under the Rural District Boundary Amendment Standards. I would just like to emphasize that we're not talking about a change in zoning today. County Zoning is R-3. Okay, we're not talking about a change in zoning. This a State District Boundary Amendment from Urban, we now will be discussing it in the Rural Standards.

In your packet there is an Exhibit D, with all of the 12 conditions that are attached to the District Boundary Amendment. These are an exhaustive list of conditions that are put a lot of restrictions on this particular parcel. These were hammered out and ...(inaudible)... over two or three or four planning commission meetings and the Department is very satisfied with the restrictions that these conditions are to be placed on the particular parcel. For example, there was some discussion this morning about lights and lighting. That's already in the conditions. It's Condition No. 4 that no lights shall be directed towards the makai side of the property toward the ocean. Everything we, all testimony we heard this morning, we've heard before and I feel, the Department feels that the conditions mitigate those concerns.

In short, the Department would like to request that this body recommend the approval as recommended by the Council and that this body recommend it for further action in tact and to be discussed at the Council for further action. The applicant, Mr. Kaufman is here representing the applicant, Pine State Limited. He's the consultant to the property owner. I would just say that in all my discussions with Mr. Kaufman, you're the scientist, he's an environmentalist. You know, he gets it. He understands the archaeological significance of the properties, the sensitivities of the area. He's a family man. He's not going to upset the ...(inaudible)... in Makena and he gets it and understands that. He has a short ten-minute presentation just to give you a feel for what the property looks like and if there are no further questions I'm going to turn it over to Mr. Kaufman.

Chair Hiranaga: Please proceed.

Mr. Greg Kaufman: Good morning, Commission Members, my name is Greg Kaufman. I am a full-time resident of Makena. I'm the President of Pacific Whale Foundation. I'm an environmentalist. I co-founded the Oneloa Coalition which is a coalition set up to protect and preserve Oneloa or as you know it as Big Beach, the State park in Makena. I have no financial interest in property. I've been asked by the owner of the property, Pine State Limited to represent their interest in this Boundary Amendment.

As Paul stated the current uses of this property and this is an image of the property it is State Ag, County R-3, Residential, community plan Single Family, it's in a Flood Zone C, it's in the Special Area SMA Area and the property size is about 1.395 acres.

The surround land use and land use designations as you can see to the north there are rural

subdivisions, single family homes and obviously the Makena Resort project is down here at the bottom. To the east is vacant land, it's zoned Ag, it County Zoned R-3, and community planned Single Family and Rural. To the west is Oneloa, Makena State Park and it is State zoned Rural and Park with some Conservation as well. It's County zoned R-3, Park and Conservation and it's community planned Park. And to the south of the property are single family homes and vacant land and those areas are also zoned Rural and Ag in the State zoning. ...(inaudible)... District Boundary is the State – Rural and Ag, excuse me, the County zoning is R-3 and RU - 0.5 and I will note that the north is R-3 and RU-0.5 as well has been designated in the area. And the community plan to the south as well is Single Family and Rural.

I put this up because this is noted as the Holy Grail and I think I'm one of the few people that have a copy of it, but this is actually where all the planning comes from in the State, in the County of Maui and it is a map that's held together by lots of Scotch Tape but this indicates the underlying County zoning. If I could, just approach, this is the subject parcel, this is where I live, it's zoned RU- 0.5, but if you can see all this yellow land and through here is all underlying County zoning R-3. Everything you see is County zoned R-3 and there's some Reserve property here. But this is an issue that is going to come before this Planning Commission in the future for many, many years is what to do with all this R-3 land that you see down in Makena. Rightfully or wrongfully it is now currently zoned R-3.

This is the, this is the community plan designations and as you can see this is my, where I live right now it's Rural. This is the property we're asking to be Rural. You can see the designations around are Single Family, Park, there's some Rural here, Rural here and Rural down here, but again, you can see a wide, wide range of uses and this is Makena Resort. This is the golf course that runs here and there's single family zoned parcel behind us.

I point this out to show you the current density. These are the homes that now exist in the area. Wherever you see SF these are the homes. This is an eight-lot urban subdivision here. This is a R-3 urban subdivision and was rezoned in Makena surrounded by the Makena State Park right there. These again, are single family homes all located along the coastline here. This is the subject parcel. And this is where I live. And the subject parcel is since been kiawe, all the non indigenous foliage has been taken off this property. All the kiawe has been removed.

I gave you this key if you can pull it out, this will help you follow along. You have a copy of this in front of you, it was passed out earlier and I'm just going to simply when you see Photo 1 it will show you where I'm standing when the pictures are taken so that will help you.

Okay, so Photo 1 is a view north along, what we affectionally refer to Old Makena Road which is new Makena Road or both Makena Alanui. This Old Makena Road and this white lines here is the actual property line that actually really is about six-inches into the pavement, the real property line. We have setback a temporary fence here to allow people to have parking space and you'll note that these signs will show up here because the proposal is to remove these poles. As you can see they're very close to the roadway and they infringe on the parking for people wanting to go to the beach. This is a view south along Old Makena Road so looking towards La Perouse, and here we are standing on the road itself looking mauka towards the back of the property. And this is a view standing on the southern side of the property looking north and this is Lot 1 of the Kaufman Subdivision, right here is Ms. McDonalds property here. And this is viewing south to the adjacent parcel the next parcel you're going to hear about, that's Lot 4 or TMK 118. So that's looking south

to that parcel. And again, this, the issue brought up the lights, et cetera, you can see the very dense vegetation. There's no ocean view from these properties. Impossible to get light leak onto the beach from these properties at all in the current vegetative state. And then standing on the southeast boundary corner, the back of the property looking straight down again towards Oneloa or Big Beach, as you can see there's absolutely no beach view. These properties when developed, will not be visible from the beach in any fashion whatsoever. And again, this is standing in the northeast boundary corner looking down along the line here. I live here. My house is basically right there so it touches this property right next door to it. So myself and my family will be impacted by whatever happens on that property.

So this is what will happen. This is what it will happen once we finish the final subdivision many years from now. These telephone poles will come down. There will be a setback which is noted in your conditions that will move the boundary back here. This will become designated to the County. It will increase and allow space for probably six to eight cars now could easily park or even nose in park once the driveway is put into place probably right in here but there'll be a lot of parking now for people to go to the beach which they're really happy about. Just as an aside, when I cleared all this out, I filled a dumpster one of those roll on, roll off dumpsters with garbage. I pulled out suitcases, wallets, purses, et cetera, people just getting robbed all the time. This now, between here and these lots now are the safest spot to park at Big Beach because it's open and people can see if they're getting ripped off or not and I'm around all the time, tell people to lock their cars.

So here's what we have, here's what we've done so far. We did a draft Environmental Assessment which we submitted to you folks. We created it in '07 it came before the Planning Commission in '08. It was then rescinded when we were told that we were no longer zoned Interim and were encouraged to go Urban which you thankfully passed us through the Planning Commission before. What happened in August of last year, the County Council passed a new law. Said that you don't have to be in conformity any more, you have to be consistent. So I said, does that mean we can go back to be Rural like we wanted to be in the first place? And the Council said, and Mr. Giroux said, absolutely except one problem and he wrote a big report about this and said, you gotta go through the public noticing, you can't just do it on the fly of the Council, you gotta go back to the Maui Planning Commission to do it. And since that's what I wanted to do in the first place, that's why I'm here is to come back and pull back my Urban request and ask you please make it Rural because that's what we wanted from the beginning.

We did an archaeological assessment in October 2006. That was accepted by SHPD and we further created a monitoring plan was accepted in 2007. And this was – then it's been since reconfirmed in a letter to the Maui Planning Department. This is extremely important because I want to make sure we're gonna do the right thing. We then completed if you recall, ... I'm sure Mr. Mardfin will recall, when I came before you before I didn't – the last time I did this there was no such thing as a Cultural Impact Assessment so I wrongly did not have one done. Well, we did one. And you know what, I didn't even like the way they did it because I agree with Mr. Mardfin, they start asking people these silly questions and they don't dig in far enough. So I said, by goodness, you know what we're going to do, we're going to advertise in the Honolulu paper, we're going to advertise in Maui paper, I'm going to run three ads on three separate days and I'm going to ask people to come forward. Nobody came forward. I said, let's start calling people, we're going to start calling people. Well, as you heard today, people love Makena but there's not many stories you can hang your hat on on real cultural things other than it is a sensitive area, it is an important area,

I agree with that. And of course, they concluded that based on the lack of response and research that, and because there's no cultural activities identified that there would be no impact. The body, we sent that to OHA, OHA did not respond. I sent them, a year later I sent them another letter and seven days later I sent them another letter and they have not responded. They had initial comments and we addressed all their comments in the final. SHPD which is the accepting body for archaeological things concurred with the findings of the CIA, Cultural Impact Assessment and on May 4, 2009 issued a letter concurring with that.

Well, if you remember before some testifiers said they were concerned about traffic, well I'm not going to leave a stone unturned. I didn't have to do this but I hired Phillip Rowell and Associates to do a traffic assessment of the property. I wanted to know for myself and for my family is there going to be an impact. So he did an assessment not only this property but the second one too that we're going to talk about and combined them together and said, listen what's going to happen and he found that there was no change of service and that level of service will be at Level of Service A and it essentially will result in five trips in the morning and six trips in the afternoon and that's the level of impact there.

Well, as I told you before, I serve on the Oneloa Coalition. I'm very proud of that and Lucienne deNaie is also a member of that as well. We recently walked Oneloa together with, along with folks from the State government and we looked at the Paniaka, we looked at the wetlands there and we looked at the archaeological area. We actually found a couple new areas when we walked around there believe or not. So we're always discovering something new. But I, I will tell you that we are committed to preserving Paniaka. We are working the Coalition to do so and more importantly you'll see one of the conditions that we have agreed to is that a 50-year, one-hour storm and all pre and post development runoff we'll retain on site. We will insure nothing's going to flow off this site. We'll make sure it doesn't. I will tell you that the cultural site that was referred to, the cultural center that was referred to today, I would have wished that they had gone through this assessment that we've gone through because when it rains, it pours off that site into the wetland right now. So because they didn't subdivide their site they're not required to mitigate. I'm here before you and we've agreed to mitigate and to preserve and protect that. I also tell you a personal commitment that I will work to insure that Paniaka is restored to its righteous state that it once was.

To give you an idea this picture was taken when Ms. deNaie and I walked Oneloa the other day to give you an idea, this is what the eight-lot subdivision looks like and this is how they preserved the wetland. There's the house built right into the wetland. So we are several hundred feet away from Paniaka. This property sits at Black Sand Beach, sits literally, you could cast a fishing line from the lanai into that wetland. So when people talk about preservation there are different states of preservation. They've done a wonderful job here but it doesn't mean that you can't residences nearby a wetland area.

Finally, I will address since I am interested along with Hannah Bernard in the fate of Hawksbill Sea Turtles I will tell you that, history will show you that the first nesting of the Hawksbill occurred at Oneloa in recent times in 1999. There has not been nesting every year but almost every year. There are currently three nests on it at Oneloa and I will tell you that I could make the argument that when I created the Kaufman Subdivision it happened in 1998 so gee, all the Hawksbill came back they loved our subdivision so much. I won't fool you with that. In reality what happened about 1999 is that's when they put gates up at Big Beach and kept people from driving trucks on the beach,

kept people from doing camp fires. As a matter of fact, if you read the Hawksbill Recovery Plan that was issued here in 1997, one of the specific things it tells you is that artificial lighting for instance, they rate the problems and I'll quote this, "Hawaii a minor problem for Hawksbill Sea Turtles in the main Hawaiian Islands is related to artificial lighting." And the second thing they talk about which I think is very important and germane is coastal construction and ...(inaudible)... coastal construction the Recovery Plan makes something very clear. It says in coastal construction, "currently is a minor problem for the Hawksbills in the main Hawaiian Islands because most land adjacent to nesting beaches is located on National Park lands, State lands leased for agricultural purposes and the County park as well as private lands and that will continue to persist." Oneloa's not going away. As a matter of fact, we're going to improve it and hopefully there'll be more and more nesting there.

And on the issue one of the Commissioners raised about where they feed I know Hannah said a group, Dr. Bill Gilmartin who's done some tagging and really found that a majority of those animals are going to Hilo side to get something to eat and that's where they're hanging out over there. So that's the end of my presentation. I'll be happy to answer questions. Thank you.

Chair Hiranaga: Thank you.

**a) Public Hearing**

Chair Hiranaga: At this time I'd like to open the public hearing is there anyone here that wishes to provide testimony on this agenda item that has not testified before please come forward?

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

Ms. Merrill Kaufman: Yes, hello, good morning. I think I'm a little tall for the microphone. My name is Merrill Kaufman. I'm a resident of Makena. I live at 6699 Makena Road. I'm testifying this morning on agenda items B-1 and 2. I've lived in Makena since 2005, on Maui since 1989. Because I live next door to the subject property with my husband and children and because I am the Chief Operating Officer at Pacific Whale Foundation, I'm very much interested in the type of development and the nature of the community in Makena. I'm here in support of the reclassification to the Rural RU-0.5 designation. I just have a few comments to make on some of the mitigation efforts that I understand are tied to the development of the property from an environmental perspective.

Some of the things that the neighbors including myself next door to the subject property currently take on as a way to contribute to the place that we live in are through walking Oneloa Beach on a pretty much daily basis, picking up all kinds of trash which I'd like to say is deposited mostly by visitors but unfortunately my experience is that's not the case. A lot of the rubbish on that beach is unfortunately left by residents. I also participate in the ongoing effort to preserve the sea turtles that nest at the beach. I was, last night at 12 and 6 doing the nest watch. Nothing came out yet but we're hopeful that some of those Green Sea Turtles that are nesting they will come out soon. So I'm very conscious of the condition of the not only the beach but of the park, the safety of the park. I have four children born and raised on Maui, four girls. So I'm very concerned about what happens in the park, who's there, keeping an eye out for suspicious activity, all those sorts of things. I understand that the conditions that have been placed on the property are going to insure

that any development's low impact, conforms with the area and is consistent with the future growth plans for Maui. So as a neighbor and as someone concerned about the environment and also as a place that will be cherished for our families and our children to enjoy, I'm in support of the reclassification of the project. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Thank you for testifying. Did you say your property is adjacent to the property in question?

Ms. Kaufman: Yes, it is on the north side.

Ms. Wakida: On the north side. So it would be Lot 2 I guess in this.

Ms. Kaufman: Yes, that's correct.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: When you're watching the sea turtles.

Ms. Kaufman: Mostly what I watch is the sand unfortunately, but.

Mr. Mardfin: Is there light that gets on the beach?

Ms. Kaufman: The only light I've seen is if you look south along the coastline what I know as the Sugarman property, I'm sorry, I don't know the TMK number. When there are events happening, it's a catering property that's rented out for events. That's the only lights that you can see. It's quite a ways down certainly. But there are no lights even from the DLNR dwelling. There's a DLNR Officer's residence I suppose on the beach in the brush. I don't see lights from there. Occasionally there may be a small twinkling coming through from the caretaker's encampment that is property just north of us but you have to go quite a ways walking back and onto the road. Last night was a good example because there wasn't much of a moon so usually you can pick up any light. And of course, I'm always looking for that. We have, where we live now, we have no lights on our gate or driveway. We no lights that are always on up at our house which is, you know, several hundred yards back from the road. We have the kind of lights that trigger if there's motion, motion detector lights and certainly that would be something that we would support in the development moving forward that there be no lights mounted on the road even for security purposes. So the answer to your question is the only lights I see are quite a ways down the road and that's only when there are events or like a rented out situation.

Mr. Mardfin: And if these two properties were fully developed, you anticipate that there would be light going onto the beach?

Ms. Kaufman: I think that would certainly have to be something that was stipulated that there be no lights projected to the road from the gate or the front of the properties.



Mr. Mardfin: How about from the house itself?

Ms. Kaufman: I suppose it would have – if it was close to, I mean, the foliage is fairly thick as I'm sure you're aware along the Oneloa State Park, Big Beach State Park, so there would have to be some really powerful light to make its way down to the beach, but I think it would be reasonable to stipulate only motion sensor type of lights because of that because if your issue was security then that's enough. I've lived down there like I said with four daughters. My husband travels all the time and that's the only security light I have just in case, you know, if something should be moving around in the bushes then, then those lights will go on.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Are you aware of any cultural artifacts like heiaus and stuff like that in the region?

Ms. Kaufman: Well, on the property where I live now we split, there is a, a documented cultural site that is, it lays between myself and Linda MacDonald who's my neighbor just on the makai side, I'm mauka of her and when we developed the land, we not only took the recommendations of SHPD but expanded upon those to allow a greater buffer zone. So we have been sort of living harmoniously certainly with that cultural site and value it, feel like it adds a great deal to the area and we feel honored to be stewards of it. We, as accordance with the regulations put up interpretative signage and of course, allow for visitation from archaeologists or students or whomever, even the general public, there's a process that they can follow to come and view the site whether it be for spiritual –

Mr. Mardfin: And on the two subject properties, are there also archaeological sites?

Ms. Kaufman: I know they have been identified but not to this, they haven't risen to the status of the part, the piece that we have on our site in terms of the designation. I think in the one property they were listed as sort of fragments of habitation, sort of shells and whatnot. I don't know the exact archaeological term but not documenting any permanent habitation or any burial of any type.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Thank you for testifying Ms. Merrill, I mean, Ms. Kaufman. I'm interested in finding out what you know of the sites as that being one site but are there other groups within that area? That makes sense of maybe community or some institutional type of thing because there's heiau somewhat close by but yet here's another site and we haven't apparently found another one so that we can piece it together, in other words connect the dots to make sense out it.

Ms. Kaufman: Sure, I mean, I can speak a little bit from, from my personal experience as well as the ethic that we have in our family and that we are certainly committed to maintaining with regard to any cultural artifacts or archaeological sites which is a spirit of to preserve what is there even if we're not sure at this point if, if there's not enough knowledge or as you say connect the dots to know if there's significance or not. And many times obviously it seems like, oh, that's just a little this or a little that, but you know, we're certainly conscious of, of preserving, not – I know from when my children at Punana Leo Hawaiian language immersion school and they were exploring a

property above the current storage, storage space that used to be a bowling alley and they were told, oh you can build soft things on top of archaeological remains such as a play field, you know, as long as it's not a hard dwelling and of course, at the time along with many others was appalled to find out that that was possible. So we would certainly make plans for construction even if it's a driveway to go around anything that's deemed significant so that in the future, you know, it's there to be examined.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I'm sorry, what was your name again, please?

Ms. Kaufman: Merrill Kaufman.

Mr. Mardfin: Are you related to the applicant?

Ms. Kaufman: Yes, I'm the wife of the applicant.

Mr. Mardfin: Oh, okay. Thank you.

Ms. Kaufman: Thank you.

Chair Hiranaga: Any other questions? Seeing none, thank you. We have more people signed up. Hannah Bernard?

Ms. Hannah Bernard: Good morning, aloha kakahiaka. Thank you for this opportunity to testify. I'm speaking on the same agenda items, B-1 and 2. I've testified in the past as the President of Hawaii Wildlife Fund concerning this same development request for change in zoning to urban. I appreciate that the request is now a different type of zoning, it's less intensive than urban, much less concerning environmentally and culturally, however, I still have concerns. And as the program that is running that Hawksbill Sea Turtle project that Ms. Kaufman just mentioned we've identified two different individual female Hawksbill Sea Turtles who nest on that beach, one `ea or `ea, critically endangered species and this is one of, of the most important beaches for the nesting because they're successful there because lights currently don't bother them and if there is a light on we can talk to the landowners and they turn the lights off when there's been for a concern for the turtles coming out. So because this place is so dark and it is so healthy now we would hate to see it change.

In addition, we've spoken out in the past in concern for the water resources in this area and for the natural area reserve. The natural area reserve Ahihi Kinau, oldest reserve and the only one with the ocean component and it's on the, one of the healthiest reefs on Maui and any additional development might be, it really needs to have the kinds of conditions placed on it where the wastewater is reused or somehow there's a septic system that's put in place that maintains the waste so it does not leach into the ground, is not injected into the ground and in no way enriches this habitat, this ahupua`a is a dry land and it is not an area that is adapted for an enrichment and that can change the nearshore environment as we know from other areas of Maui and Hawaii.

So I think that it really needs to be evaluated in terms of what would be done with the wastewater, drainage, lighting as was mentioned and we do have a lighting ordinance but it's not good enough. We do need to have additional lighting protections. So the conditions absolutely need to take care of the sense of place of this place culturally, natural resource wise, environmentally and so I'd like to see that those conditions be very, the strictest possible conditions that can be in place. And I don't know if the zoning is going to cover that, but I would really hope that it does.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you, Ms. Bernard for testifying. You know, in terms of providing some means for the sea turtles to nest we're looking at the beaches. How about the ocean? Ogo, the seaweed, the various types of seaweed there are we trying to cultivate that? Because you know, after the keiki born they gotta eat. So where do they go?

Ms. Bernard: Yeah, so this species the Hawksbill, this one actually is not as much of a vegetarian as the Green Sea Turtles. The Green spend the first ten years of their life or so in the high seas and 90 percent of those nest in the French Frigate Shoals, part of Papahānaumokuākea National Marine Monument. We do have some nesting on Maui, but Big Beach, Oneloa is where Hawksbills nest and that is our program, Hawaii Wildlife Funds program down there. We're monitoring, we have research permit to satellite track and, and protect these animals and we have volunteers helping like Ms. Kaufman and her family which is how we are able to do the work. But what they're feeding on the first ten years is anything that they can catch with their mouths in the open ocean. They're not feeding on the ogo or any of the limu in the nearshore waters. They go out to sea and we, essentially we call those, "the lost years" because they go out and they're feeding on ... and zooplankton and lots of, of organisms that are floating in the ocean. So then when the Hawksbills come back to Maui to live and we only have approximately 100 Hawksbill Sea Turtles in all of Hawaii, and the don't migrate away. Our research has shown they don't migrate up to the Northwestern Hawaiian Islands. They stay here in the main Hawaiian Islands. They're genetically distinct. This is a very, very special and rare population and they feed actually on sponges and coral. So they're not so much feeding on the limu like the Green Sea Turtles different story. Those, those guys are doing really well.

Mr. Shibuya: Thank you.

Ms. Bernard: You're welcome.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Are you familiar with Paniaka Fish Pond?

Ms. Bernard: I don't know that name but is that the –

Mr. Mardfin: It's supposed to be –

Ms. Bernard: The pond in, in shore?

Mr. Mardfin: – a wetland pond.

Ms. Bernard: In shore of, of that, that beach?

Mr. Mardfin: Right.

Ms. Bernard: Yeah. I'm aware that, that, that there have been degrade – there are degraded wetlands that are overgrown. That there's been a discussion for recovering that area for a long time.

Mr. Mardfin: And that's between the subject properties and the beach?

Ms. Bernard: As far as I know.

Mr. Mardfin: So –

Ms. Bernard: Yeah, I don't know that, if that's the name of that pond, but I know that that habitat is.

Mr. Mardfin: So injections, you raised an issue earlier about injection of water and injection of water could affect that wetland?

Ms. Bernard: Absolutely any additional injection of wastewater or any type of water or even watering of the vegetation in homes down there could seep into the ground. It's very porous and it goes down into the groundwater we know this. This is not in dispute. This is scientifically proven that all waters leach into our a'a lava terrain and then they seep out into the nearshore waters especially that close to shore. We're talking about hundred yards to a 150, 200 yards from shore. So absolutely they can and do reach down into the waters in that surrounding area, ground water.

Mr. Mardfin: You said that last time this was before us, I was very early on the Commission at that point, you said you spoke against the zoning?

Ms. Bernard: It was request, requesting being requested for Urban which I believe is completely inappropriate.

Mr. Mardfin: Would you still be opposed to granting the zoning they're asking for today?

Ms. Bernard: It would completely depend on the conditions. The conditions are crucial. If the, if the conditions are strict enough and considered enough to include the cultural concerns, the environmental concerns, the natural resource concerns, ... wastewater, then it's absolutely a better, it's a much better proposal, but I have more background. I have five pages of testimony that I've brought to share with. Those of you who weren't on the Commission previously background information about the area. Glad to share that.

Mr. Mardfin: Has that been distributed to us?

Ms. Bernard: No, I've got it here.

Mr. Mardfin: Oh. Thank you.

Chair Hiranaga: Any other questions, Commissioners? Thank you.

Ms. Bernard: You're welcome.

Chair Hiranaga: Just for clarification, the applicant is requesting a District Boundary Amendment from Ag to Rural and not a zoning change. Next testifier is Johanna Kamaunu. Apologize if I mispronounced that.

Ms. Johanna Kamaunu: Aloha, there's three things I wanted to make comment on. So the shortest one first. Sorry, I forgot, I forgot the protocol. I'm Johanna Kamaunu. I'm from Waihee and I'm testifying on behalf of myself. Item 3 on the lavender farm, I just wanted to make the comment that I visited the farm over the years and I found that they've been good stewards and just based on that information, you know, I would support their application today. I see though that it's a challenge. They'll have a significant challenge and the part of that challenge in the capacity that they're willing to hold up there. These activities will cause more traffic and, you know, more people being up there so that would be a challenge. But as I said, they've been good stewards over the years, so you know, I would support that.

The two that I'm not clearly in support of or concerned is with Item 1 and 2. And a lot of it has to do with some of the culturally significant sites in the area. One I'm more concerned about is the Wili tree, the Wiliwili tree forest. I don't know if you remember years ago when we had infestation that practically wiped out all the Wili trees on the island and the University of Hawaii took pains to preserve some of the seeds so that at a more appropriate time the forest could be regenerated. Well, these trees are dropping seeds so it tells us that it's happening naturally on its own. And for anything to happen to this forest before we can, you know, see it come to its full potential, that would be a very sad thing to have suffered that infestation only to be destroyed or wiped out by this development is my concern. I realize that the Maui Island Plan also has been supportive of the protection of these sites in the Heritage Resource portions of that plan. So I see the mechanisms here that could protect it and I only ask that consideration be given to the trees.

The other thing in this is the wetland area or where the ponds are. I realize that they're not on the sites but we know water runs downhill. and whatever feeds into these ponds could be affected by whatever goes on uphill. And so that's my other concern. Those are my two main concerns today. I don't know how this is going to affect the development process, but you know, I would sure like to make sure we take care of the water and those trees especially in an area where water isn't doing very well either. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: On these two subject properties with regard to the Wiliwili do you know where the – how many trees there are and where they're located, are they central or are they going to have to be removed if they want to put up homes?

Ms. Kamaunu: I'm not exactly sure where the structures are going to be, but the Wiliwili trees are in the northern part of that, the mauka side of that parcel. I think it's in the Iwa Ike Subdivision. So I would, I would be concerned that's, that's a major portion of their parcel.

Mr. Mardfin: You know how spread out it is across the parcel?

Ms. Kamaunu: The one lot that I see it covers maybe the, a third of their upper portion of one lot.

Mr. Mardfin: Botany is my weakest area I have to admit. I can't tell one tree from another, I'm just hopeless on this, but let me ask if these trees are compatible with houses? I mean, will, are, is the root structure such that if you build a foundation it's going to kill the trees, are there, can they live close to homes, what are their water usage and would a home harm the water intake ability of these to survive? I don't know the questions to ask just 'cause of my ignorance, but those are a few that –

Ms. Kamaunu: The one tree that I know of that's, well, actually the one tree in Wailuku was over in the Maui Nui Botanical Gardens and I never notice the trees going beyond the spread of its branches. Then on the other side, they're all over Wailea but there's no buildings around them that I can see. So I would suspect that they need space, sorry.

Mr. Mardfin: Thank you. Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Good morning.

Ms. Kamaunu: Good morning.

Ms. Wakida: You said that the Wiliwili trees are in the northern part of the parcel, correct?

Ms. Kamaunu: The northern part.

Ms. Wakida: Yeah. And spread how far outside the parcel?

Ms. Kamaunu: From what I could see it's not that far outside. It's let's say it takes upper third. I would say it's half of that they're above the parcel.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Are there any other questions, Commissioners? Seeing none, thank you. Next individual is Wilmont, Kahaualii [sic]

Ms. Wakida: Kahaialii.

Chair Hiranaga: I thought it was a "u" I guess it's an "i". My apology.

Mr. Wilmont Kahaialii: It's not your fault I was born with a long name so it's okay. Aloha kakahiaka.

Commission Members: Aloha.

Mr. Kahaialii: Thank you. I think to begin with my name is Wilmont Kamaunu Kahaialii and

Commissioners, just so you know please don't forget your sense of place and if we are coming here before you because we think that oh, that you are giving us an ...(inaudible)... but if you forget your sense of place, then it doesn't make sense to come here this morning to say, "aloha" and not hear that aloha returned. See what I'm saying? For those of us who are born and raised in Hawaii, aloha is an important of the ...(inaudible)... If there is no aloha then my intentions and your intentions are two different things and we will be at an impasse. Commissioners, aloha kakahiaka.

Commission Members: Aloha.

Mr. Kahaialii: Commissioner Hiranaga, aloha.

Chair Hiranaga: Aloha.

Mr. Kahaialii: Maika`i.

Chair Hiranaga: I apologize, I do not understand Hawaiian language.

Mr. Kahaialii: Commissioner, you born and raised here, yeah?

Chair Hiranaga: We are not allowed to debate between Commissioners and the public.

Mr. Kahaialii: Well, that's all right, I'm not going to hold your ignorance against you. Okay, so I'm here to testify first of all on the Kula lavender farm. I will admit I have been there many times, have participated in many of the activities held up there and really to their credit they're very good stewards of the land, they e kulana lako, they are very, very responsible and in the many activities that I have participated in there has been more than sufficient or ample parking and no one has gone up there wanting for anything more. As far as the application is concerned I would, I would support the application for Kula lavender farm.

As far as the other two, my only concern actually has been echoed by the those who've come before. I really would be more concerned about the environmental impact. If they are granted this, this reclassification my concern would be what would the impacts be by the urban development upon that area on the cultural sensitive sites. And what would be adverse impacts of some of the activity that will go on there that will runoff into the ocean and how it would impact the sea life. And too many times now here in the 21<sup>st</sup> century we are finding that the many of our sea life are being, being impacted by the limu or the seaweed that they're starting to consume and some of our turtles are turning up on the shoreline with tumors and cancers on them. This is a result of a lot of the chemical runoff that has gone into the ocean. And unfortunately, we're not seeing that decrease, it is actually increasing. So we need to do a better job. So I think that needs to be a consideration if this Commission is going to entertain it and, and think about contacting all of the interested parties that can have positive impact on this and that's about it. So mahalo for your time.

Chair Hiranaga: Thank you. Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you, Mr. Kamaunu.

Mr. Kahaialii: Kahaialii.

Mr. Shibuya: Kahaialii. Thank you for testifying. And you mentioned about sense of place in your experiences can you describe for me the sense of place long time ago sense of place and give me the time span about for Makena area.

Mr. Kahaialii: Okay, okay.

Mr. Shibuya: And that area close in that area, the dry forest as well as the coast shoreline what, what sense of place because we now find certain sites and what I'm looking for is a, a description of that sense of place. I'm not looking just one site, two sites, connect the dots for me.

Mr. Kahaialii: I understand. You know, Commissioner Shibuya, that would really be a difficult thing to do because no matter how well I describe it or define it unless you live it, unless you breath it, unless you farm, unless you pick opihi, gather pipipi, fish, it really would be hard for you to develop a sense of place. Now let me, let me share this with you, regardless of whether it has any impact on the Commission from here on out, let me leave this with you. Mr. Kahaialii then chanted in Hawaiian. That may mean a little or a lot to all of you gathered here today. To me, it means a lot more. So I understand the sense of place in terms of my kupuna kawa kahiko, my genealogy, I understand when I go to Makena, when I'm in the ocean, when I'm one with my kupuna, I understand that. Again, if you really are going to develop a sense of place you cannot just say aloha, you have to live it. This property cannot mean nothing to you unless you think that there's going to be a benefit to the community, to the host culture. If the decision you are placed with today, the responsibility you have today to make the decision is only going to impact Ke Kani Kai, and it's hard for me to offer you description to give you the benefit of sense of place.

Chair Hiranaga: Thank you.

Mr. Kahaialii: Mahalo.

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

Ms. Wakida: Good morning, Mr. Kahaialii.

Mr. Kahaialii: Good morning, Commissioner Wakida.

Ms. Wakida: Is your position, what's before us today is that we are looking at rezoning the property from Ag to Rural. Is your, and the applicant's intent is to subdivide, is your position that you do not want this zoning to take place or are you looking at placing conditions on this?

Mr. Kahaialii: I would, yeah, I think you need to look at placing some very strict and some very real conditions because my concern is what's going to happen after this parcel's been divided and now all of a sudden you going to have a large group of people that are going to be trafficking to and from this site and that create some kind of impact upon the surrounding environment so just be aware of that. Mahalo.

Ms. Wakida: Thank you.

Chair Hiranaga: Again, for clarity the applicant is requesting a State Land Use Boundary



Amendment and not a change in zoning. Commissioner Mardfin, did you have a question for the testifier?

Mr. Mardfin: Commissioner Wakida asked the exact question that I was going to ask.

Chair Hiranaga: Okay.

Mr. Mardfin: We think the same on things.

Chair Hiranaga: Similar. Any other questions, Commissioners? Seeing none, next individual is Kaniloa Kamaunu.

Mr. Kaniloa Kamaunu: Good morning, Commission. My name is Kaniloa Kamaunu from Waihee Valley. And as I always testify to, my concern's always about impact not so much on only the environment or even it's, it's inhabitants as far as the animals, the creatures that live there, but my concern is how does it affect the native tenant. And a lot of these and, and AIS, and all this AIS don't really come to that conclusion. It's either about what's happening with the, the fauna and flora that's happening over there or animals. They never take into consideration the native rights. We have vested rights already. Rights that have been vested to us since 1846 which is still, ...(inaudible)... reserved through the State in HR 7-1, HRS 172-11, 172-12. So these are, you know, these are, besides I mean, when you talk about the animals and everything that's there, they don't have vested rights. But the kanaka, the person does. And nobody takes into consideration when these animals are gone, when the fauna is gone, when the water is dissipated, when the, when the ocean side is polluted how does it impact the native who actually has a legal and viable right to use? This person speaks about malama that, that, the ...(inaudible)... of the heiau. When in essence when you look at 7-1, the malama supposed to be from the native tenant because we're talking about the kupuna, we're talking about the culture, we're talking about the connections. The people that are living there a lot of them don't have that connection. You know, and you talks about spiritual, it's beyond spiritual. These are our people. These are our cultural practices that we're supposed to be allotted to be able to do. And we get, we're the ones put on the ...(inaudible).. to say that we're trespassing, that we're breaking laws. But yet when you look at what's vested to us, it's there. So besides all the other things that have been ...(inaudible)... the most important part is that you ...(inaudible)... the human factor. What imposes upon the human factor that is actually already a right even for them to traverse and to be able to live their customary rights. We talk about all, every, except the most important thing, the human being. It is, when you go down there and you were talking about sense of place, I grew up over there. I remember coming from Waihee to get to Makena was one half a day travel and that's on a car because even to get to Suda Store was one small little ruggedy [sic] road.

Ms. Takayama-Corden: Three minutes.

Mr. Kamaunu: And so you know what I mean, when you get to Makena, I think they when destroy 'em when they took away all the dirt roads and they ...(inaudible)... the parking lot. And all the walls are disappearing.

Chair Hiranaga: Okay, please conclude your comments.

Mr. Kamaunu: The thing is when I go there it's not the same no more. So it has an impact on me, what I would like to leave to my, to my children. Thank you.

Chair Hiranaga: Questions Commissioners? Commissioner Mardfin?

Mr. Mardfin: Mahalo and aloha. I take your point about the vested native rights. And I'm wondering, they, they often do a cultural impact study where they interview people about, you know, are there trails through there that you've customarily used, are there customary plants that you've harvested, you know, where I'm going on that. Do you, are you aware for either one of these subject properties of any cultural usage?

Mr. Kamaunu: I'm not familiar –

Mr. Mardfin: Customary usage.

Mr. Kamaunu: If you know Makena and especially, you know, in the early 70's, you know, everything was still intact until the golf course and Maui Prince came out. That place was just full of all dry stack walls. Had the kukui nuts, had besides that kiawe, had all the plants there before. You know, and it was to me, it was beautiful because it was natural and when you go today you got, I mean, these things are disappearing, they're gone. And we know that when you see that, I mean, you're talking about rows of dry stack lava going from, from makai to mauka 'cause remember used to have the road come from Ulupalakua. I used to, we used to travel that road ... (inaudible)... if you come through and you see all the stuff, you see everything, but that's gone. I went by Big Beach that beautiful wall is gone. They took it out and put one big, two houses over there. So, what these people are planning to do here is gonna impact, it changes everything about the area. It becomes a different area. It's no longer Makena. Last point, I know I gotta get off, but the lights, the flood lights. I grew up we never have lights. We stay on the beach and see all the satellites traveling through the sky and every single star. As soon as those condos came up, that's why it disappeared that you cannot seem 'em at night anymore. So for the turtles, 'cause once the light hit the sky, it's like anything else, reflects back down. So it's going to impact somewhere on Maui.

Mr. Mardfin: Thank you, and I, just to share with you a brief moment. In 1961 when I first came to Maui and lived in Kipahulu we drove down Makena Trail and around the island in a Jeep, and the following year in 1962 I turned 18 and I hiked around the island and I remember hiking down Makena Trail and, and up along there and it was all beach and kiawe and every mile or so you'd find a little windmill that would bring water up for some local person. Thank you very much.

Chair Hiranaga: Okay, questions for the testifier? Commissioner Shibuya?

Mr. Shibuya: Thank you, Mr. Kamaunu, I just want to thank you for your testimony and also get your mana`o on the, on the description of the sense of place there and I'm after this because if you look at the study it only takes one portion of the property that you're interested in and it doesn't put the pieces together for a whole community description. That's what I'm looking for. I used to be in that area from Camp 5 Puunene ride the bicycle go down there shoot rats, kiawe tree, and Mr. Suda was the real nice guy. I collected all the tails and gave him proof and he gave me a soda free. So but, you know, and we were resourceful in those days where we broke the ball bearings, the used ball bearings from HC&S and that was our ammo and that's how we got the rats. But Big

Beach is outstanding in a sense, I just want, it has changed yes. What is that sense from your perspective, in the Hawaiian's perspective and what time period are we describing?

Mr. Kamaunu: Well, we're looking at maybe mid-70's that's when we used to go there a lot because we surfed there. Everybody surf that area.

Mr. Shibuya: Yeah, I'm thinking in terms of a Hawaiian community because you talk about a heiau, that's something now and you get another site. There's got to be something that makes sense of all these small little pieces.

Mr. Kamaunu: Especially dry stacking of the lava stones.

Mr. Shibuya: There you go.

Mr. Kamaunu: You know, a lot of times people tend to think they're just walls separating but usually especially if you, if you were to take a look like in Honokohau, they're uncovering the heiau over there and you see these chambers and what the chambers are for, they don't have an idea, but each one have, there's chambers and so with Makena same thing. You know you see the rock wall running to the top then you see them running across the whole length of the drive, but now those walls are being all just taken out and now you cannot see all that beautiful rock walls and you know, so to me, like you said, the heiaus sometimes you think of it being a small area but sometimes it can run for miles and can run from depending on what the area is, can run from makai to mauka, like depending on what and can be more than one. And you know down that side, they get burials, the cones, yeah.

Mr. Shibuya: Yeah, I know.

Mr. Kamaunu: So how many of those are ...(inaudible)...

Mr. Shibuya: Okay, mahalo.

Mr. Kamaunu: Yeah, thank you.

Chair Hiranaga: Any other questions, Commissioners? Last testifier that signed up for this time is Lucienne deNaie. Give it to staff.

Ms. Lucienne deNaie: Each one has two sheets, there's a map and a, and a little testimony so just take two sheets and pass them on.

Chair Hiranaga: Please proceed.

Ms. Lucienne de Naie: Thank you. My name is Lucienne deNaie and happy to be here to testify on three items today. First, the Alii Lavender Farm, testify in support of this fine business that's really trying to do a good thing in our community and has reached out in so many ways to try to do things the right way. So I join the chorus of those who ask you to look favorably upon their permit needs here today.

And then onto Items 1 and 2, the Ke Kani Kai Subdivision, two-lot subdivision and the neighboring Iwa Ike, four-lot subdivision. As it was brought out by Commissioner Shibuya, these are a part of a greater whole. And part of what I was trying to illustrate by the little map I'm passing out is that these two parcels as well as the original Kaufman Subdivision next door to the north where the heiau is located as well as the cultural center that is further north on Parcel 123 as well as the chief's house that's further north on Parcel 115 are all part of an original land grant to a gentleman named Kenui and I'm sure they existed way before his time. As I point out in the background information here, he was a pretty important person and he was one of the founders of Keawalai Church, one of the original donors there and there was probably a reason he claimed this land. Mr. Kimo Alo who works at the cultural center there with Uncle Les guys and who is a kamaaina to Makena shared with me that this was like all a whole complex and it related to the fish pond which now is just on the State property but in earlier times actually extended across what we know today as Makena Road. And Mr. Alo theorized that the actual access way along this way was further mauka. He pointed out that the old trail which is shown on old maps and that's the map that I gave you. This is not a very old map, it's a 1972 Makena Resort Cultural Survey Map and all these little scratches are different cultural sites that were found even though they weren't on resort property, the archaeologist didn't know where the boundaries were so he just went and went everywhere. You can see that, that green line or blue line is a trail and it relates to these sites. It goes around them and it goes through the two subject properties and my point is, you know, Mr. Kamaunu is right, it's like there are things that went on here before that connect with people and it's important just to recognize these in the conditions that we place on this land. Now the MECO right of way will be preserved because it's MECO's now but I think it needs to be recognized that it, it had another life long before electricity was ever here. Also, the walls that Kaniloa referred to, they're being dismissed.

Chair Hiranaga: Please, please conclude your comments.

Ms. deNaie: May I just, thank you. They're being dismissed but may have a greater purpose than was acknowledged by SHPD and the landowner. So please consider these things and please consider the conditions you already worked so hard on because you had some good conditions for this. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Thanks, Lucienne. Just a clarification when you started off, you referred to a cultural center on the map?

Ms. deNaie: Yes. There is a cultural center. It's Parcel 123 and it was part of the settlement with Makena Resort in 1987 that it's a cultural center. The organization is called, Heaho'ohonuaua and Mr. Alo is involved with it, Dana Hall is involved with, Les Kuloloio is involved with it.

Ms. Wakida: Is that marked on our map?

Ms. deNaie: It's one, it's Parcel 123, it's next door to the chief's house.

Ms. Wakida: Oh, I got – I see it. And the cultural center is, you said –

Ms. deNaie: Yeah, it's, it's operating as a cultural center. It was kind of a trade off for developing the Seibu Makena Prince Resort.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Hi, Lucienne, thank you for coming. You just sort of concluded with saying keep the conditions that we have. Does that mean you're satisfied with it the way it is or do you want conditions, additional conditions put on or?

Ms. deNaie: Well, this, this, thank you for asking that. This Commission did a very good job of developing from community concerns and their own concerns especially Commissioner Hiranaga and Commissioner Hedani and Commissioner Mardfin, some of you folks weren't on the Commission at that time. And those are in the exhibits, Exhibit 1 and Exhibit E and all those should be moved forward and recommended to the Council because the Council wasn't very complete aware of those because the Commission especially on the Iwa Ike parcel did not recommend for the boundary amendment to Urban so, their conditions were sort of overlooked. But in addition, in your handout you'll see, I'm suggesting five things. One involves the Wiliwili trees which are a remarkable feature there and are very healthy and they are on Parcel 118 and the other is to continue to support a full SMA review which I think Commissioner Hiranaga spoke to very brilliantly last time and it's really needed. There's a lot of unresolved things here that could be taken care of through SMA conditions as well as conditions on a boundary amendment. A boundary amendment can have conditions. And it should be noted that SHPD is requiring although they do not require preservation of anything on Parcel 118, the Iwa Ike lot, they are requiring monitoring and so that should be made clear that monitoring would be required. I'm sure Mr. Kaufman would, he's been very good about complying in the past and I'm sure he would be complying with that, but I personally would like to see you go a step further. Two sites were preserved on 118, but the dry stacked walls were dismissed as less than 40 years. I don't think that that is provable, it's not in a AIS to that effect and if there's a way of incorporating them into the landscaping, they probably connect to other walls on the neighboring property. So Mr. Shibuya wanted to see the dots connected. If you saw a map, I tried to put one together but it's kind of hard. But, but someone should and that should be one of the things that you folks request.

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

Mr. Lay: Good morning, Lucienne.

Ms. deNaie: Good morning.

Mr. Lay: This is concerning the Wiliwili tree.

Ms. deNaie: Yes.

Mr. Lay: We know that there's been a lot of devastation because of that wasp larvae that eating away at the plants inside.

Ms. deNaie: Right.

Mr. Lay: I'm wondering if these trees that are down in this Makena region are they, are they all right? Are they getting better or what are their, I guess, their condition right now?

Ms. deNaie: Yes, Mr. Kanahale I believe gave you kind of a more definitive update on them because he recently inspected them, but they appear to be alive. They put out leaves during the last season and he observed seeds as well. And there's a small grove of about 25 trees but that's a lot because they're a rare tree and they're ideal for the landscape because they're completely drought tolerant so they're not using a lot of water.

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

Mr. Shibuya: Thank you very much Lucienne. Appreciate your helping connect the dots for all of us and I'm looking forward to hopefully the Maui County Council will also take a look at what the GPAC, the General Plan Advisory Committee did in terms of identifying it and you were a integral part of that.

Ms. deNaie: Thank you. I think if you folks just work on the conditions you've already worked so on and send them forward this will be a good project. I'm really happy to see that it's Rural not Ag. I'm in complete support of, you know, taking this action with the proper conditions and, and appreciate the cooperation of the Kaufmans.

Mr. Shibuya: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Next testifer, Claire Apana.

Ms. Claire Apana: Good morning, Commissioners. I am going to read part of Daniel Kanahale's transcript that you already have. Just to be sure that you have in your mind some of the important observations and recommendations that he has given and before that I'd just like to give my own two cents and that is, this is a place that I also grew up with. We camped there often during the summer time and when I look at intention here, if I was able to buy a lot across the street from Oneloa Beach I would be happy with that and I would preserve it in the way that I had bought it and I'm just looking at what's going on here and the intention is different. They subdivided already, couldn't they have saved one for their own family? Anyway, I just fear for the changing of the original intention of those house lots.

Okay, from Mr. Kanahale. "The ahupua`a of Mo`olooa is a wahi pana. People who live or own lands that are wahi pana have a sacred kuleana or moral obligation to malama its natural, cultural and historical resources. The standards for right or proper conduct on the aina should be much higher. To whom much is given, much is required. Ua mau ke ea o ka aina i ka pono. The life of the land is perpetuated in righteousness or right conduct. I hope the Maui Planning Commission will hold the applicants who are seeking the privilege of developing these wahi pana lands to the highest standards and require much in return for any land use entitlements you recommend as an advisory commission. I hope someone on the Commission will address by concerns at the 10/25/11 Maui Planning Commission meeting as I will not be able to attend due to work commitments."

“These two parcels are located in an area that is extremely sensitive environmentally, culturally and historically. The Mo`oloa ahupua`a of the Makena area. The Commission may propose conditions to insure that the applicants mitigate any impacts or the Commission may recommend denial of the bill if they deem that the applicants cannot adequately mitigate the impacts.”

Ms. Takayama-Corden: Three minutes.

Chair Hiranaga: Please conclude your comments?

Ms. Apana: Okay, I have, I have – may I just list his questions? What impacts –

Chair Hiranaga: Please, conclude. We have his written statement Clare, so if you have any closing remarks please state them now.

Ms. Apana: He wants to ask a question of Mr. Kaufman of the two dry land rock walls, he wants to ask the Wiliwili trees be maps for preservation so that you can actually tell what was there and if it's changing, he asked for the wet lands to be mapped and the cultural sites to be linked as you have said, and sorry –

Chair Hiranaga: Okay, thank you, Clare.

Ms. Apana: And then, and then the impact to the trails and if you didn't get to read it, it's very long, he does say where the trails go through these two, the historical trail goes through the two properties. Thank you very much.

Chair Hiranaga: Thank you. Questions, Commissioners? Seeing none, thank you.

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

Chair Hiranaga: Seeing none, public hearing is closed. I'll now open the floor to questions from the Commissioners. Commissioner Mardfin?

Mr. Mardfin: Mr. Kaufman said he'd be open to answering questions. I'd like to ask a couple. You started off by saying this is, we're talking about Ke Kani Kai and you said you're not a member of it, yet during the presentation there were a lot of we's and I's and things. What is your relationship to Pine, whatever, the company?

Mr. Kaufman: Pine State Limited.

Mr. Mardfin: Right.

Mr. Kaufman: I'm their authorized agent. I have no financial interest whatsoever. Happened, the history is when I started Lot 4 process my neighbor came to me and said, I'd like to do the same thing. My mom's been ...(inaudible)... Polo Beach for the last 30 years and I'd like to see her come live on my property that we subdivided. I said, it's a process and it's going to take a long time are you prepared to do it? And he said, I've got time on my hands. Well, he's not complaining about how long it's taken, but he asked me to do it and as a good neighbor I did it. And quite frankly I

have a little vested interest. It's right outside my bedroom window. I don't want something done wrong there quite frankly and that's, that's my sole interest in it. I do have interest in the next parcel coming up.

Mr. Mardfin: Okay. And is it possible if we put conditions on one and similar conditions on the other there might be some economies of scale and that depending on what the conditions were you could kind of share expenses if there were cost involved sort of thing or is that not likely?

Mr. Kaufman: No, no, that's exactly likely that's, that's why the telephone poles coming down, you'll see in the next presentation I'll identify another set of poles, we'll do that all at once. We've talked to MECO about that, in terms of taking it down and creating that right of way that will all be done at once as well. So there's definitely economies of scale. One thing we're going to make sure too is that you don't have these meandering roadways or driveways coming up. We can't have a shared driveway but we can build them side by side so they have less impact on the properties. Definitely going to be ...(inaudible)...

Mr. Mardfin: Thank you very much.

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

Mr. Shibuya: Thank you very much, Mr. Kaufman and for taking care of the aina and our environment. I also wanted to ask you, I noticed one of the shots there, I guess that was your home had photo voltaic panels it looks like.

Mr. Kaufman: Good eye sight.

Mr. Shibuya: I was wondering if there would be a recommendation would that be a problem if we made a recommendation, additional condition to recommend that a renewable energy generating system be added?

Mr. Kaufman: Absolutely. It's, it's in the CC&Rs right now. My house runs off the sun and I drive a Leaf that's parked right outside here so I drive an all electric car. My goal in life is to become zero, have a zero footprint and I will tell you that, you know, people ask, when I did my subdivision before I've never done this before. I'm a scientist not a planner like Mr. Hart ... great job. But when I did it before I said I'll never do it again and I tell you one of the real reasons that's driving this is I believe that, my goal is to create the greenest set of homes on Maui that run off the sun, powered by the wind and that's my driving force to do this to really live in harmony and create something from the lessons I learned from my previous undertaking.

Mr. Shibuya: Well, thank you very much because that's the way I believe too. Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: The last time we were dealing with this with respect – my recollection is that we were dealing with it, we initially got them both on the same day but then we dealt with them sequentially and on the first one which Paul refers to got unanimous approval and then on the next one we got some additional testimony and we did, had, had different decisions at the end of it and if we'd had



that information – but this one, although it might or might not have been different. But on the second, on the Iwa Ike, we had added various conditions and I want to ask you systematically whether these are acceptable for Ke Kani Kai.

Mr. Kaufman: Yes, I believe –

Mr. Mardfin: I'll go through them one by one.

Mr. Kaufman: Oh sure.

Mr. Mardfin: If you don't mind.

Mr. Kaufman: Are you going to go by the ones from the Planning Commission or the rework from the County Council because they've taken it ...

Mr. Mardfin: I know. I'm going to go from what we started with a couple of years –

Mr. Kaufman: Okay, if I could make a comment?

Mr. Mardfin: Sure.

Mr. Kaufman: They felt some of those redundant and they weren't properly worded so Mr. Giroux has sort of worked them up and he may want to comment.

Mr. Mardfin: As we go through maybe you can deal with that. I kind of like to hit these one by one.

Mr. Giroux: Yeah, just to touch real fast. Yeah, I think it needs a critical eye because of the whole procedural mess of going upstairs and coming back is that you really need to look at those and see if it's relevant today on what we're doing because the, the original conditions were in anticipation of a Urban development. Now when it got upstairs there was discussion, some changes were made but now you really need to craft those conditions because it's going to be a Rural development and you have an underlying zoning of ...(inaudible)..

Mr. Mardfin: I understand that and that's why I want to go through them one by one so we can –

Chair Hiranaga: Thank, thank you Corporation Counsel. Commissioner Mardfin, how many questions do you have?

Mr. Mardfin: There are twelve conditions and then there's another page with about 15. Some of them maybe short, some of them may be redundant.

Chair Hiranaga: Okay, can you limit those to three at a time and then I'll reopen the floor and maybe you could make sure there's not a redundant question?

Mr. Mardfin: I'd be happy to.

Chair Hiranaga: Proceed.

Mr. Mardfin: Just for the, Paul wants to say something.

Chair Hiranaga: Paul?

Mr. Fasi: Thank you. Just to make this, and get it clear in my mind. You're going to read the Iwa Ike conditions and you want to apply it to Ke Kani Kai?

Mr. Mardfin: I want to see if they are appropriate for Ke Kani Kai. If the Corp. Counsel has a problem, and if they are acceptable to Ke Kani Kai, yes.

Mr. Fasi: If I may, the conditions that were attached to Ke Kani Kai were extremely, extremely ...(inaudible)... and laborious and deliberative at Council. I don't think they're going to want to substitute Iwa Ike conditions for Ke Kani Kai's. I don't think that's our purpose here today.

Chair Hiranaga: Point taken. So what page are you starting from?

Mr. Mardfin: If the, if the body wants to follow me, I am on, we had a thick document dated October 25, 2011. I think that's the main document in front of us.

Mr. Fasi: Just for clarification. He's reading from the Iwa Ike report and not Ke Kani Kai.

Mr. Mardfin: That's correct.

Chair Hiranaga: What page?

Mr. Mardfin: Well, that's the problem. It's about ... seven-eighths of the way back, it's called Exhibit E and it's Maui Planning Department's Report to the Maui Planning Commission November 25, 2008. And I'd just mention in passing I take Paul's concern that we, they've already put conditions on, fine. Let me just go through these and if they're already been included let me know and we can proceed.

Mr. Fasi: Mr. Chair?

Mr. Mardfin: If you found Exhibit E and then Page 2 and there is, it says, "Background" and then it says, "various conditions were proposed by the Commission." And I just want to systematically make sure everything gets addressed and nothing falls through the cracks for either property.

Chair Hiranaga: Okay, I think, I think there is some redundancy in the, just a quick glance I see redundant conditions that's already been placed by the Council, so in I think you need to just address the one's that not addressed in the –

Mr. Mardfin: I don't know which are, which are redundant and which are not, let's go through them one and one and if you say it's redundant, it's redundant.

Mr. Kaufman: Could I identify those for you to speed the process up?

Chair Hiranaga: No. If you look at Exhibit B, the agenda item there are 12 conditions listed as

proposed by Council.

Mr. Mardfin: In Exhibit B?

Chair Hiranaga: Right.

Mr. Kaufman: Right.

Mr. Mardfin: I have them.

Mr. Kaufman: Right.

Chair Hiranaga: Now if you look at those various conditions on Page 2, maybe you could through them and cross out the ones so that we don't have to take time on the floor because they're redundant, some of them are – curbs and gutters, they're saying no curbs and gutters so why ask the question?

Mr. Mardfin: Because I'm not, for instance, 1, says, the County RU -0.5 Rural District standards shall apply. This says all lots shall be a minimum of one-half acre. Is that redundant?

Ms. McLean: It's the same thing.

Mr. Mardfin: Okay.

Ms. McLean: When it comes to lot size.

Mr. Mardfin: So that one's taken care of. No future subdivision shall be permitted?

Ms. McLean: That's in there No. 6.

Mr. Mardfin: That's No. 6? Okay, I knew we could get through these quickly. No condominiumizing of any lot.

Ms. McLean: That's also included in No. 6.

Chair Hiranaga: Okay, now I'm going to open the floor to questions from other Commissioners and maybe you could take that time to go through the two lists and reduce your number of questions. Is there anyone else that has questions regarding this, has other questions for either the applicant or the staff? Commissioner Mardfin?

Mr. Mardfin: No. 4, says setbacks to match that required. I presume that's No. 1?

Ms. McLean: Correct.

Mr. Mardfin: Building heights to be limited to 30 feet, is that No. 1?

Ms. McLean: That's No. 2. Ohana size restricted to a maximum of 700 square feet?

Mr. Ball: No ohanas.

Chair Hiranaga: Commissioner Ball, do you want to be recognized?

Mr. Ball: No, I'm just being helpful.

Chair Hiranaga: No, you're not because on the recording they don't know where that voice is coming from.

Mr. Mardfin: Ohana size restricted to maximum of 700 square feet.

Ms. McLean: Condition No. 12 prohibits ohana units altogether.

Mr. Mardfin: Okay, thank you. That's my second set of three.

Chair Hiranaga: Okay, I'll open the floor to questions from other Commissioners? Commissioner Mardfin?

Mr. Mardfin: No. 7, no curbs, gutters, sidewalks or streetlights and adhere to new DSA standards for Makena ... this is a nice word, Keoneoio Road.

Ms. McLean: The roadway conditions are specified in Condition 5 and there's also a separate condition about lighting.

Mr. Mardfin: So that its entirety that's been taken care of?

Ms. McLean: Yes.

Mr. Mardfin: Condition 8, retain all runoff on site, post and pre construction.

Ms. McLean: That's No. 3.

Mr. Mardfin: Thank you. Preserve archaeological sites 622, that's probably specific for Iwa Ike.

Ms. McLean: Correct.

Mr. Mardfin: We'll skip that one.

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

Mr. Shibuya: Okay, in terms of archaeological sites that are found on these properties—

Chair Hiranaga: Please use your microphone? Thank you.

Mr. Shibuya: On the properties that have these archaeological sites if they're identified, will the public have access to them?

Chair Hiranaga: Are you asking the applicant or are you asking the Department?

Mr. Shibuya: I'm asking the Department.

Ms. McLean: I don't believe so.

Mr. Shibuya: So it's private property and they have no means to access these for spiritual or cultural type of activities?

Ms. McLean: First to clarify for Ke Kani Kai there are no archaeological sites.

Mr. Shibuya: Okay.

Ms. McLean: Okay, for Iwa Ike –

Chair Hiranaga: Well, let's stick to Ke Kani Kai because that's the agenda item we're discussing.

Mr. Shibuya: Right, but if they do find it what happens?

Ms. McLean: That would be up to the State Historic Preservation Division to talk about preservation or documentation but it's most likely to be retained on private property.

Chair Hiranaga: And, and access is typically controlled. I don't think they want the general public to know a lot of these site and give access to them. Certain individuals might be permitted, you know, with notice to have access.

Mr. Shibuya: See at the same time we want to have these sites protected and yet we want to inform the public that these cultural sites even though they're small little dots they compose a, a group of community or some kind of activity trend or pattern that makes sense of long time ago and that's what I want to make sure that we can preserve.

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

Mr. Ball: I have a question just on what we're doing here?

Chair Hiranaga: We are asking questions of the applicant or Department.

Mr. Ball: No, but what Ward's doing. Because I'm kind of confused now what –

Chair Hiranaga: What Ward – he's trying to get clarification.

Mr. Ball: But he's going off of the agenda item and –

Mr. Mardfin: I could explain why I'm doing that.

Chair Hiranaga: That's, yeah, that's his prerogative.

Mr. Ball: Yeah.

Mr. Mardfin: And the reason I'm doing it is because when we dealt with this last time we dealt with it sequentially and the first one got through because we had no testimony like we had this morning. On the second one we did so we were very careful about putting in conditions. And had we had that testimony on the first one I would have asked the same, put in the same conditions for that so that's why I'm going... that one even though it's not our subject property for this agenda item. May I continue?

Chair Hiranaga: You may.

Mr. Mardfin: 10, driveway shall be relocated to avoid archaeological site assessments.

Ms. McLean: That wouldn't be applicable to this property.

Chair Hiranaga: There's no archaeological sites on the property, Commissioner Mardfin.

Mr. Mardfin: Okay, lot owners to allow for access to their properties for study of archaeological sites.

Ms. McLean: Again, not applicable to this property.

Mr. Mardfin: Because there are no archaeological sites.

Ms. McLean: Correct.

Mr. Mardfin: And the last one on this section, insure lights from – here's a different wording. This says, insure lights from the project cannot be seen from the makai side of the road. The closest one in No. 4 that no lights shall be directed towards the makai side of the property. I don't think those are exactly equivalent, do you?

Ms. McLean: I would say they're substantially similar. They're not identical.

Chair Hiranaga: Commissioner Mardfin, for that one if you wish to make a specific condition when there is a motion on the floor you can do that at that time.

Mr. Mardfin: Okay. So there's only one from that list of 12. If somebody else wants to speak I'll...

Chair Hiranaga: Any other questions? Commissioner Wakida?

Ms. Wakida: Could you just clarify, could I ask Commissioner Mardfin just to clarify that because I was looking at a map and distracted. You were looking at which condition on the subject –?

Mr. Mardfin: No. 4 says, on condition Exhibit B, Condition 4 says, no lights shall be directed towards. The other says, from the beach point of view light can't be seen from and I think those are substantially different.

Ms. Wakida: Yeah, thank you.

Mr. Mardfin: Or at least moderately different.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Since we finished that list, now the same report about a quarter in from the beginning there is an Exhibit 1, it's dated July 10, 2008, about a quarter of the way in, ...(inaudible).. still on Iwa Ike. Ready? Exhibit 1, it says, the Maui Planning, this is Iwa Ike but the Maui Planning Commission provided the following comments. These were comments not conditions. Clear mapping of the project site and adjacent areas within one-mile radius clearly identifying all archaeological sites, heiaus, fish shrines. Anybody know if that was done?

Ms. McLean: These were comments that the Commission made on the Draft Environmental Assessment so I would presume that these comments were addressed in some way in the Final Environmental Assessment.

Chair Hiranaga: The applicant wishes to address that question.

Mr. Kaufman: I think if Mr. Mardfin, excuse me, I was before – first of all, we went through the Draft EA, excuse me, my voice, I just arrived back from Panama, the United Nations meeting about 20 hours ago so sorry. ... came before this body with the Draft EA. There was a second meeting as Mr. Mardfin said. At that meeting I addressed all these comments and they will be in the transcript. Subsequent to that meeting or after that meeting, the DEA was withdrawn so the comments were specific to the EA and not to the project but I did address these and they will be found on the record. If you remember, you asked that question about the one-mile?

Mr. Mardfin: I'm sure I did.

Mr. Kaufman: And I brought you a printout, a beautiful 11 x 17 printout and I showed you all that. I showed the Kaeo Complex that Ms. deNaie's been involved with down the road, the connectivity et cetera. I did address these and maybe the Chair remembers that as well.

Mr. Mardfin: So all of these were dealt with I'm presuming?

Mr. Kaufman: In the meeting I addressed them, yes, I did.

Mr. Mardfin: Okay, I won't ask any more specific questions about that. Is the EA provided? I do want to ask if the EA is?

Mr. Hiranaga: The EA was withdrawn because no Community Plan Amendment's required.

Mr. Mardfin: I'm just thinking about should, because of the sensitive nature of this site if the EA should be on record somehow.

Mr. Hiranaga: It was never accepted because it was withdrawn. It's not a public document.

Ms. McLean: The Draft EA would still be on record and these comments and the response, the transcript, the minutes of the meeting, all of those are public record.

Mr. Mardfin: They are public record and they can be accessed through the Department of Planning?

Ms. McLean: Yes.

Mr. Mardfin: Thank you.

Mr. Hiranaga: Any other questions for the applicant or the Department?

Ms. McLean: Mr. Chair, are you ready for the staff recommendation?

Mr. Hiranaga: Actually I have a couple of questions. This is for the applicant. As you know, this was brought to us in 2008, and I think the climate, the political climate might have been slightly different at that time so my question is on Conditions 11 and -- on 11 as proposed by the Council which I guess is Exhibit A, their Exhibit B, no transient vacation rentals allowed. I just wanted you to comment whether you still agree with that or not. Well, not, I'm sorry, not no transient vacation rental but no B&Bs allowed? Do you still allow with that restriction?

Mr. Kaufman: Yes, a condition of no TVRs.

Mr. Hiranaga: I'm not really talking about TVRs more B&Bs.

Mr. Kaufman: Oh, no. This was a applicant induced condition. We asked for this.

Mr. Hiranaga: Okay. How about Condition 12, no accessory dwellings?

Mr. Kaufman: Applicant induced condition. We asked for this.

Mr. Hiranaga: Okay, all right, thank you. Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Mr. Kaufman, Condition 9, I assumed that when they talk about Condition 10, they meant Condition 9. I'm looking at the letter from -- in the first half from Ke Kani Kai to the, to the County, to the Land Use Committee requesting that this condition, you say Condition 10, I but I think 9 be amended because it was amended. It was a recommendation to amend and then it just went in. I didn't see any letter from them saying yes, we agree with that.

Mr. Kaufman: Yes, yes, I was just handed a letter as I walked in here from Department of Water Supply. Essentially what happened is that we referred to the CC&Rs and the Draft EA and it looks like there was ambiguity in the Draft EA. I was referring to the exhibits and what they said and it was very clear what the exhibit said. The Department of Water Supply found that on Page 20 it said it required it, but they have now said if the condition as worded in Council's Resolution is not consistent with the intent of the applicant and the applicant in fact does not have an alternative nonpotable source, the Department of Water Supply agrees that the use of nonpotable water for



irrigation purposes should be used to the extent possible. That was the intent. That's what the CC&Rs say and that's what we, that's what we had agreed to initially when they wrote the letter that we would do this to the extent possible. And they have now, and maybe Michele has a comment on this but it appears now that they've concurred with our assessment that they have agreed to allow us to do that to the extent possible.

Mr. Hiranaga: Deputy Director?

Ms. McLean: Thank you, Chair. Yes, we actually asked the Department of Water Supply for both projects to confirm that language in the condition because as the condition is written before you it requires that only brackish or reclaimed water be used during construction and for their nonpotable purposes and that seem to go a bit too far. And so we asked them for clarification and when we present the Department's recommendation we'll just add the term, "to the extent possible."

Ms. Wakida: Okay, and Condition 9 not 10 is erroneous ...(inaudible)... Thank you.

Ms. McLean: Correct, yes. Thank you.

Mr. Hiranaga: Any other questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: This is for the Deputy Director. I want to make sure I understand what the full process is going to be. Right now we're being asked to recommend, make recommendations to the Council about a District Boundary Amendment?

Ms. McLean: Correct.

Mr. Mardfin: Let's assume that the Council grants the District Boundary Amendment. What's the next step? Will they come to the Department and ask for a subdivision administratively?

Ms. McLean: The subdivision process is administered by the Public Works Department but it would get routed through Planning and we'd have the opportunity to comment on the preliminary subdivision and that's when we would convey relevant conditions. They would also have to go through some degree of SMA review whether that would be an SMA Minor or Exemption or major needs to be determined. And so they would have abide by the terms listed in the preliminary subdivision approval letter and if, once those, once they're able to check all those off the list then they would be granted their final subdivision approval and they could proceed with the subdivision.

Mr. Mardfin: Then they subdivide.

Ms. McLean: uh hm.

Mr. Mardfin: And then they either sell it or retain it but the next step would be to presumably put some buildings up on these two things?

Ms. McLean: Correct.

Mr. Mardfin: At that point, if I -- suppose they sold it, I bought one and I say I want to put up a

house, the Department's position on SMA is going to be well, I'm putting up a single family dwelling so it's SMA Exempt?

Ms. McLean: We would have to look at the criteria in the SMA Rules. Single family dwellings of a certain size are considered exempt but we would also need to make a determination that it would fall under that exemption class. So if for example there are other circumstances where we feel that the project is considered a development because of potential impacts then we could process it as a minor or a major. Just because it's single family dwelling in the SMA doesn't automatically exempt it. We still have to do analysis.

Mr. Mardfin: Is one of the things in your Analysis looking at archaeological sites not just on the property but in the larger region?

Ms. McLean: On the property, yes, I can't say that we would consider in the larger region. We'd have to look at if the development might have an impact on those but we'd be focused primarily on the parcel itself.

Mr. Mardfin: But if you had archaeological sites on a larger region and you didn't look at then you just look at the property and say, well, that's minor because it's, it's, it doesn't tie in. You're not looking at whether it ties in with the rest of it and so you could in a sense ignore the, the contribution of that site to the larger picture is that possible, likely?

Ms. McLean: I wouldn't say ignore, no.

Mr. Hiranaga: Well, just taking a step back and you can correct me Deputy Director but I believe there are no, no archaeological sites on this proposed property?

Ms. McLean: Correct. On the, on the Ke Kani Kai property.

Mr. Hiranaga: Yes. Now if there was discovery during development it would go through the State process.

Ms. McLean: Correct.

Mr. Mardfin: But the State process doesn't look at the larger picture. They look at it property by property and in this case, we'd be looking at half property by half property. And what I worry about, worry is too strong, I'm concerned about is that piecemeal we do destruction to a larger archaeological understanding of the area.

Mr. Hiranaga: Point taken. Any other questions, Commissioners?

Mr. Ball: I have kind of a follow up question to that.

Mr. Hiranaga: Commissioner Ball?

Mr. Ball: So let's say that they were, there were under construction and they did find something does that then void the building permit or it just halts construction and they just gotta go through

the Burial Council system. Then they would determine whether, I mean, if they find a thing in the middle of the structure then there might be some major changes.

Ms. McLean: My understanding is that they have an approved archaeological monitoring plan -- Chair the applicant seems like he wants to respond.

Mr. Hiranaga: Well, I think if you're asking for a process comment, you should ask it to the Department, but if you're asking for a specific question to the application --

Mr. Ball: I will ask that to the applicant ... (inaudible - not speaking into the microphone) seems to have an answer to that.

Mr. Kaufman: Here's the process. There's a monitoring plan in effect on both properties. We cannot even dig a hole to plant a palm tree. Any holes we dig have to be monitored. It runs with the land forever. It doesn't matter if it's subdivided or not. So all activities, all ground breaking activities are monitored at any given time. If there is a discovery and it's clearly stated in the monitoring plan, all activity must cease and it's evaluated by SHPD and it's evaluated by SHPD and it's evaluated based on the criterion that they use. It was deemed criterion E, significant for preservation purposes we would be required to preserve that and that perseveration process may require going to the Burial Counsel, the Cultural Commission, et cetera. It is, it is a rather involved process. I will also tell you that the Archaeological Inventory Surveys and the Archaeological Assessments that were made did take into account all the other archaeological features in the area. So it does tie it together in that very rather lengthy report. It isn't done in isolation, clearly that's taking into account. So it does run with the land. Every landowner has abide by it. Thank you.

Mr. Hiranaga: If there are no further questions from Commissioners, we'll, we're ready for the staff recommendation.

Mr. Fasi: The Department recommends that the Commission recommend approval of the Council initiated resolution to amend the State Land Use Classification from Ag to Rural and the conditions are 12 conditions in your Exhibit B. However, there was some discussion here and we'll make a small amendment to Condition No. 9 and 10. Number 9, we're going to insert the words, "to the extent possible," after "landscaping used in xeriscaping, native plants -- I'm sorry, "that brackish or reclaimed water shall be used during construction and for other nonpotable purposes to the extent practicable." The amendment to Condition No. 10 will read in parenthesis, Item No. 6 of Condition No. 10, instead of the word, "keep" we're going to cross that word out and put in, "all pre and post development." So it shall read, retain all pre and post development runoff on site." And that is the Department's recommendation to this body.

Mr. Hiranaga: Corporation Counsel wants to make a comment regarding the Department's recommendation.

Mr. Giroux: I just want to make a comment on Condition No. 6. It looks like the intent is to put a restriction on condominimization. I would advise against putting that restriction on a District Boundary Amendment as condominiumization is an ownership issue. When you're dealing with district boundary and zoning issues, you're dealing with use, you're not dealing with ownership. So the law kind of frowns on that type of restriction on the property.

Mr. Fasi: So if I can clarify Condition 6, we'll say, "that once a property has received final subdivision approval the two residential lots shall not be further subdivided" period.

Mr. Hiranaga: Was is the size of the current lot?

Mr. Fasi: 1.39 acres.

Mr. Hiranaga: So with a half-acre minimum lot size, couldn't resubdivide anyway. So it seems like that really is not necessary.

Mr. Fasi: Correct.

Mr. Hiranaga: If we're trying to condense the conditions.

Mr. Fasi: We don't, the County cannot monitor ownership. Which is what I think Corporation Counsel's --

Mr. Giroux: Condominiumization is different than subdivision.

Mr. Hiranaga: So you may want to strike Condition 6 totally.

Mr. Giroux: Let me just clarify. Subdivision is not an ownership issue. That is within the purview of zoning. It's just condominiumization specific law relating to ownership which is not within the purview of zoning.

Mr. Hiranaga: And my point is, based upon the recommended zoning -- State Land Use Boundary Amendment to Rural unless it's -- okay, the State Land Use say Rural or does it say Rural half-acre or Rural one-acre?

Ms. McLean: ... just Rural.

Mr. Fasi: It just says Rural. The minimum standard at the State level is a half-acre.

Mr. Hiranaga: So we really don't have to say cannot be further subdivided because you only have 1.4 acres.

Mr. Giroux: Chair, can I just throw something in here from legal?

Mr. Hiranaga: Sure.

Mr. Giroux: The reason this problem is occurring is because the zoning is R-3 and zoning is non conditional. You have no conditions on your zoning. So by having an overlay of Rural that doesn't have a standard, a lot of zoning standards, you're not going to have the opportunity to create those standards through your zoning. So I think the attempt is to, to add as much clarity as these properties will look like after subdivision.

Mr. Hiranaga: Okay, understood. Commissioner Wakida?

Ms. Wakida: On the issue of condominiumization if that is the intent of this body for example where would that come up that the property can't, that the property cannot be subject to Condominium Property Regime when does that, when can that restriction be applied?

Mr. Giroux: That's preempted by State law. The State law has created the section of condominiumization. So you have vertical and horizontal condominiumization. So that policy is that it's, it's a structure of ownership not of, not subdivision.

Ms. McLean: If I could also comment? Condominiumization doesn't increase density, it doesn't increase use, it doesn't change any of the uses or build out of a property. It's just an ownership mechanism. So I think there's sometimes thought that by restricting condominiumization you're restricting development or buildability and that's not the case, it's strictly an ownership mechanism.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: This is a procedural question. After these recommendations are done by the County are we as a body going to be addressing individual suggested changes or additions or do we have to make a motion and then have friendly amendments to each amendment that we would like to have or condition that we'd like to have?

Chair Hiranaga: Once the Department is satisfied that they have their recommended conditions in order then we would have a motion on the floor and if you wish to amend the staff recommendation then you would place amendments on the floor.

Mr. Shibuya: So that's the procedure.

Chair Hiranaga: Yeah.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I recognize the concern about condominiumization and I concur or at least understand it enough so that I'm objecting to it. Michele, the Deputy Director said that it doesn't affect density. Let me ask a question. If it's R-0.5 Rural designation so you split it into two lots, is there a limitation on how many single family dwellings can be put on that lot?

Ms. McLean: With the condition that, Condition No. 1 that County RU-0.5 Rural District standards shall apply and with the limitation on Ohanas then that would be one dwelling per half-acre lot.

Mr. Mardfin: One dwelling per lot. So if somebody, and there's standards about you can't go three stories or whatever it happens to be. So, whatever they'd built the condominiumization would only be you split the ownership with your kids or something like that. It wouldn't change the number of buildings you could have on it or anything else, is that correct?

Ms. McLean: With or without the condominiumization that's correct.

Mr. Mardfin: Thank you.

Chair Hiranaga: Okay, if we're trying to condense these conditions, so Condition 1 says County RU-0.5 Rural District standards shall apply, but then at the bottom, I mean on No. 6, you're saying, shall not subdivide, resubdivide the lots. But if Rural half-acre standards apply, do you really need Condition No. 6?

Mr. Fasi: I think what Item No. – Condition No. 6 is addressing further subdivision beyond the half-acre. Because the County zoning is R-3 which is one house per 10,000 square feet, Condition No. 6 would prevent that.

Chair Hiranaga: Wouldn't Condition No. 1 prevent that also?

Mr. Fasi: Temporarily. It would, it would until maybe further subdivision beyond that may or may not happen but it doesn't hurt to leave it in.

Chair Hiranaga: And then No. 3, pre development, post development runoff isn't that redundant with Condition 10, 6?

Mr. Fasi: I would agree to that.

Chair Hiranaga: And then Condition 7, if State Land Use District is amended to or reclassified to Rural this Ag condition I don't believe applies. It only applies to Ag Districts. I mean, do you really want Ag operations in a Rural area because they can be more obnoxious than what's allowed in Rural areas?

Mr. Fasi: This is, I believe this is addressing, this is talking about the County Ag Districts ..(inaudible)...

Chair Hiranaga: So not this property but surrounding?

Ms. McLean: Surrounding this property.

Chair Hiranaga: Okay, so you want to restate your recommendation as amended?

Mr. Fasi: We could reword it to say that there shall be a prohibition on any action that would interfere or restrain farming operations.

Mr. Mardfin: Mr. Chairman?

Mr. Fasi: Upon adjacent or contiguous lands in the Agricultural District.

Chair Hiranaga: Yeah, because the way I read No. 7, was it seemed to be pertaining to the subject lot.

Mr. Fasi: So we'll put, where it starts with, "on adjacent or contiguous lands in the Ag District," we'll put that up right after, "restrain farming operations." So it would read, "that shall be a prohibition

on action that would interfere or restrain farming operations on adjacent or contiguous lands in the Ag District.”

Chair Hiranaga: Isn't 7 and 8 redundant? Eight addresses surrounding property owners.

Mr. Shibuya: Yeah, it's the same.

Mr. Giroux: It never went to our office.

Mr. Shibuya: Can strike 7.

Mr. Fasi: I think, Condition No. 8 is dealing directly with the Chapter 165, Hawaii – the State Law of Hawaii Right to Farm Act and that this insures that notice shall be included with the sale of transfer of this particular piece of property so perhaps that particular condition, the intent of that condition shall be attached to deed and run with the land. I think that was the intent of the Council there.

Chair Hiranaga: Chapter 165 pertains to State Land Use Ag properties? Because this will now be State Land Use Rural if approved.

Mr. Fasi: That is correct. But I think you may not have as an extensive farming operation. I still believe and I could be wrong that you could still farm and do ag in the Rural.

Chair Hiranaga: Well, you can do Ag activities in Rural State Land but it's not as say, unrestricted as Ag there's a difference.

Mr. Fasi: Correct.

Chair Hiranaga: You want to take a ten-minute recess so you can take a look at these conditions and we can reconvene?

Mr. Shibuya: Yeah.

Chair Hiranaga: We'll have a ten-minute recess – oh, Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, you're, you're proposing changes to conditions sort of alone and I, I think we ought to be voting on these changes.

Chair Hiranaga: No, this is the staff's recommendation.

Mr. Mardfin: Right, you're trying to get them to change their recommendation now on a one on one thing whereas I think we ought to be voting on this.

Chair Hiranaga: I'm making suggestions whether they do it or not it's up to them. They will then come with their recommendation and if you wish to make amendments once a motion's on the floor you could do so. But what I'm doing is trying to remove redundancies, I mean – so we'll take a ten-minute recess and reconvene at 11:55.

A recess was called at 11:45 a.m., and the meeting was reconvened at 11:53 a.m.

Chair Hiranaga: ... since it's almost noon, we'll then take up motions after lunch. That way you can kind of have a chance to see what their revised conditions are.

Mr. Fasi: Thank you. Condition No. 6 is going to be amended to say, "that once the property has received final subdivision approval that the two residential lots shall not be further subdivided." Condition 7 will say, "that there shall be a prohibition on any action that would interfere with or restrain farming operations on adjacent or contiguous lands in the Ag District."

Chair Hiranaga: Could you just explain where that additional language came from? You're just moving it from?

Mr. Fasi: We're moving it from the bottom of the paragraph up to the first sentence.

Chair Hiranaga: Everyone clear on that? Okay.

Mr. Fasi: Condition 9, Condition 9, Line 1, 2, 3, 4, where it says, "purposes" we're going to insert, "to the extent practicable." So it's going to say, "that at a minimum the following water conservation measures shall be incorporated, brackish and/or reclaimed water shall be used during the construction and for other non potable purposes to the extent practicable." Condition No. 10, we're going to delete, Item No. 6 because it is redundant as the Chair pointed out with Condition No. –

Ms. McLean: Three.

Mr. Fasi: Three. Thank you. And we are deleting – and that is it, thank you.

Chair Hiranaga: Okay, since we have a little bit, couple more minutes, if there's any questions regarding the staff recommendation from Commissioners? Seeing none, if there's no objection we'll recess for lunch and reconvene at one o'clock.

A recess was called at 11:57 a.m., and the meeting was reconvened at 1:03 p.m.

Mr. Fasi: We looked up the Chapter 205, 3.5 which has to do with the reclassification of lands in the Agricultural District and I do have it on the screen. So what we're going to recommend is that we use that language verbatim and we'll cut it out and we'll past it to replace Conditions No. 7 and 8 and that should address those two concerns and before the break we also said that on Condition No. 6, that we will take out the word after, after "subdivided period" and we're going to take out, "and shall not be the subject of a condominium property regime" that comes out. And Condition No. 9, we're going to include the words, "to the extent practicable after the fourth line, the word, "purposes" and Condition No. 10, we're going to take out, the last portion of the last sentence where it says, and No. 6, "keep runoff on site" that will be deleted and those are the Department's recommendations as it stands right now. Thank you.

Chair Hiranaga: Okay, So I'll open the floor to a motion. Commissioner Shibuya?

Mr. Shibuya: At this time, I'll go ahead and make a motion to recommend that this Commission



approve Council initiated Resolution to amend the State Land Use Classification from Agriculture to Rural.

Chair Hiranaga: Per the Department's recommendation?

Mr. Shibuya: Per the Department's recommendations and conditions.

Chair Hiranaga: Is there a second?

Mr. Freitas: Second.

Chair Hiranaga: Discussion? Commissioner Shibuya?

Mr. Shibuya: I'd like to make a friendly amendment also and this friendly amendment is that, "that the development is encouraged to implement energy conservation measures and renewable energy producing systems consistent with implementing HRS 269, prescribed Renewable Portfolio Standards."

Mr. Mardfin: Second.

Chair Hiranaga: Motion by Commissioner Shibuya, second by Commissioner Mardfin on the amendment. Any discussion on the amendment? Commissioner Shibuya?

Mr. Shibuya: Supporting discussion would be that it is encouraged and it's not a requirement and owner/developer has assented to this and it is a means to insure that our scarce supplies of fossil fuels are not going to be a problem as well as reducing or minimizing the cost of fossil fuel cost. This would help each of the residences if we continue to do this.

Chair Hiranaga: Any other discussion? Seeing none, I'll call the vote, call for the vote on the amendment. Would you like to repeat the amendment Deputy Director?

Mr. Shibuya: I can read it for her. "That development is encouraged to implement energy conservation measures and renewable energy producing systems consistent with implementing HRS 269 prescribed Renewable Portfolio Standards."

Chair Hiranaga: All in favor of the motion so indicate by raising your hand.

Ms. McLean: Seven ayes Mr. Chair.

Chair Hiranaga: Opposed? The motion carries.

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

**VOTED: To Add the Following Amendment: “That development is encouraged to implement energy conservation measures and renewable energy producing systems consistent with implementing HRS 269 prescribed Renewable Portfolio Standards.”**  
**(Assenting - W. Shibuya, W. Mardfin, D. Domingo, J. Freitas, I. Lay, K. Ball, P. Wakida, W. Mardfin)**  
**(Excused - L. Sablas)**

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I have another friendly amendment and that would be, “that all roadway and utility easements listed on deeds be investigated and findings reported.” This relates with some of our archaeological finds that we have not actually connected all of the dots and we do have easements already listed on the deeds but we need to investigate them and this would be very helpful.

Chair Hiranaga: Is there a second?

Mr. Mardfin: Second.

Chair Hiranaga: Deputy Director?

Ms. McLean: Thank you, Chair. If I can make a comment? It would probably be a good idea to specify who that gets reported to?

Mr. Shibuya: You can report it back to this Commission.

Ms. McLean: Reported to the Commission?

Mr. Shibuya: Yes. ...you want to share it with somebody ...(inaudible)...

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I would suggest that it not be us. We're not going to see this after today. I would suggest it either be the Planning Department, the Building Department or the Council preferably the Council so they, they're aware of it when they pass the boundary amendment.

Ms. McLean: Well, the condition wouldn't come into effect until after the boundary amendment was approved so Council wouldn't see it again, so maybe the –

Mr. Mardfin: Then I would say, I would say then the Planning Department or the Building Department. No point sending it to us.

Mr. Shibuya: I agree.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I was just going to suggest can we use language like the next approving body? Do you have to be specific?

Ms. McLean: I would that being, that specifying would be preferred.

Mr. Mardfin: Then if you're going to –

Chair Hiranaga: Commissioner Ball, you had your hand up?

Mr. Ball: Can I get some clarification on what you were asking there again?

Mr. Shibuya: Okay, on the easements, on these deeds there are easements such as walkway or roadway easements. There also are utility easements and in this particular property the utility easements is suspected to be the actual trail of the ancients. And if you investigate you probably find that it is true.

Mr. Ball: We're talking about the, we saw some photos that, I don't know if those are power lines or telephone lines in the front.

Chair Hiranaga: I think Exhibit 1 there's an Exhibit A with a metes and bounds description and if you look at the back ...(inaudible)... subject to, I think there's reference to easements is that what you're talking about?

Mr. Shibuya: Yes. There might be some historical significance that's what I'm believing it may have and it will help us connect the dots with the understanding what our host cultures community may have used.

Chair Hiranaga: Could you restate your amendment?

Mr. Shibuya: That all roadway and utility easements listed on deeds be investigated and findings reported to the next action – ?

Ms. McLean: To the Planning Department.

Mr. Shibuya: To the Planning Department.

Chair Hiranaga: Well, just for clarity when you say deeds, there's really only one deed for the property.

Mr. Shibuya: Okay, deed.

Chair Hiranaga: For subject parcels.

Mr. Ball: Question?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Can we have the applicant maybe address that a little bit?

Mr. Kaufman: Mr. Chair, could I have my engineer come up and address this? He's more familiar with this type of work?

Chair Hiranaga: Sure.

Mr. Kaufman: Thank you. This is Stacy Otomo.

Mr. Stacy Otomo: Good afternoon, Chair Hiranaga, Members of the Maui Planning Commission. My name is Stacy Otomo. I, this may help answer Commissioner Shibuya's question. Whenever you do a subdivision plat whether you're creating a new easement or if there's an existing easement on the subject property that you're subdividing, the surveyor is obligated to put it on the subdivision map. And if it's an existing easement they normally state it's easement so and so in favor of and what the easement is for. So I'm not sure that will help you.

Mr. Shibuya: I'm looking for the reason and if we can investigate the reason for the easement. If there was no reason then there would be no easement, right?

Mr. Otomo: Yeah, again on the subdivision maps it will show the easement as well as tell you what the easement is for, how wide is it, who it's in favor of and what the easement is for.

Mr. Shibuya: Yes, okay, that's basically what I want to do to reveal the use of easement and if there was some history behind it like some of the easements we have like the railroad easements from the sugar industry. They're still in existence.

Mr. Otomo: One of the requirements when you do submit a subdivision applicant is you need to submit a title report or at the beginning of the subdivision process and at the very tail end. So all that document is on file with the Development Services Administration.

Mr. Shibuya: Okay, so it wouldn't take much to reveal this information?

Mr. Otomo: That's correct.

Mr. Shibuya: So it's not, I'm not asking for something very difficult.

Mr. Otomo: Again, it is on the subdivision maps.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Can't we answer that right now? Don't we know what the Easement 1 is for the electrical, right and one is for County right-of-way, and maybe –

Mr. Otomo: In looking at the preliminary map that the surveyor prepared there is an existing electrical easement along the frontage of the property as well as a road widening lot.

Mr. Ball: ... follow up?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: And there was some power lines that ran along like the southern, southern boundary, I don't know if that was part of that lot, I mean, that's the other lot but –

Mr. Otomo: It appears that that easement is no longer on this property. Our only easement that shows up again, is along the roadway and it's a electrical easement.

Mr. Kaufman: I resolved that easement with MECO when I did my property and the reason why that easement meandered through and it was a five-year battle with MECO is because the Carter Estate all the down to La Perouse in the 1940's sued MECO to put those poles exactly where they were. So MECO dragged their feet in taking them off. So those poles used to run through those properties and one of them was planted right in the middle of the shrine that's been preserved in my property. In my next presentation, you'll see an aerial view of that and you'll see how those things were affected. But the easement you're referring to was not related to the trail, it was a related to a lawsuit that was in the 1940's between MECO and well, what is now MECO and the Carter Estate at La Perouse. In order to resolve that, had to get the poles, all the poles moved in front of the road, they abandoned that easement and that's why now the new plot maps only show easements on the front of the road. It's all been taken. It's all been removed now.

Mr. Shibuya: I would still maintain that we just have a short report back that's all.

Chair Hiranaga: I guess, I'm having difficulty understanding your –

Mr. Shibuya: Rational?

Chair Hiranaga: No, the actual request. You want this underlying document number 2005-137170 copy of?

Mr. Shibuya: What I want is actually a description of that easement and what it was used long time ago. Was it a trail? Was it a roadway? Was it utility?

Chair Hiranaga: 'Cause looking at what's provided here via Quit Claim Deed dated July 12, 2005, there was reference made to a dirt road.

Mr. Shibuya: That's correct.

Chair Hiranaga: So you're asking for a historical research on the history of the dirt road?

Mr. Shibuya: That's correct.

Chair Hiranaga: Commissioner Fasi, I mean, Planner Fasi?

Mr. Fasi: I'm having a hard time understanding the Commissioner's request as it relates to a District Boundary Amendment.

Mr. Shibuya: I'm concerned in terms of archaeological significance. Right now we have sites,

archaeological sites identified. We have potential application of some of these easements as trails or ways in which the post culture may have transported their warriors and/or their economy.

Chair Hiranaga: Okay, question for Stacy Otomo. Is this a dirt road displayed on the prelim map?

Mr. Otomo: The topographic survey did pick up a dirt road but I believe the dirt road was used to maintain the MECO, old MECO power lines that are no longer there.

Chair Hiranaga: So it ran, ran along the pole line?

Mr. Otomo: Pretty much, yes.

Chair Hiranaga: All right, no further discussion, I'll call for the vote – Commissioner Mardfin?

Mr. Mardfin: I'm going to vote for this because while it, it followed the poles, the poles were put there for a reason, there might well have been a historical road so I'm going to vote in favor of this.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: I didn't hear a second, sir.

Chair Hiranaga: I believe, didn't Commissioner Mardfin second?

Mr. Shibuya: Yeah.

Chair Hiranaga: I'll have the Deputy repeat the amendment for clarity.

Ms. McLean: That all roadway and utility easements listed on the deed of the subject parcel be investigated and findings reported to the Planning Department.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: I think it needs a little bit more, to be more specified because investigative for what, I mean if you're investigating the historical significance than say for historical significance otherwise, I mean, they could, I mean, investigate what? That there was rocks there and now there's dirt? You know, I don't know, I mean it – and not that, I just ...(inaudible)... not that I'm voting in favor of it.

Mr. Shibuya: You know, I just want to maybe explain little bit more in terms of the Makena Keoneoio Government Road maybe this part of it, I don't know, there's also some historical sites at various locations plus there's a heiau and as one of the testifiers identified, there was even a chief's location. How these things are connected is important to me because it, it brings in the possibility of finding other historical aspects and I think this is very important that we, we take this first step to merely take a look and see what it was before. And if it's just a dirt road, then it's just a dirt road. Perhaps maybe later on, somebody in another plot may find out something different.

Chair Hiranaga: Okay, Commissioner Mardfin?

Mr. Mardfin: Yeah, the way the motion was read to us is not quite what this has sort of evolved into. I think this has morphed into the concern about the original dirt road not the current electric line. And if, if that's the case, then I would hope that the Commissioner would friendly amend the, his own motion and I'd be happy to second the revised motion, but the way the Deputy Director read it won't give us what he's looking for.

Ms. McLean: Well, Item No. 4, the list of encumbrances on the deed says dirt road.

Mr. Mardfin: And that's what he wants investigated.

Ms. McLean: And the motion says, roadway easements.

Mr. Mardfin: Oh, that is what he?

Mr. Shibuya: Yeah, roadway –

Ms. McLean: That's what I read, roadway and utility easements listed on the deed.

Mr. Mardfin: But Stacy Otomo said that the, that's along the front of the property. It's not that old dirt road is not part of it.

Ms. McLean: I think what will happen is the dirt road easement that's currently listed at as encumbrance on the deed may not may have been cured. It may not be an easement against the property anymore when a new deed is –

Mr. Mardfin: But that's what he, but that's what he's concerned about investigating.

Ms. McLean: Right.

Mr. Mardfin: Is the one? Is the motion, will the motion get what he wants?

Chair Hiranaga: Yeah, actually the way I read this is, there is no easement for the dirt road. It's an existing dirt road and utility easement. There's no dirt road easement. It an existing dirt road.

Mr. Shibuya: I just want it clarified and that would be helpful.

Chair Hiranaga: It follows the utility easement.

Mr. Shibuya: Okay.

Chair Hiranaga: So if there's no further discussion I'll call for the vote. All in favor so indicate – Commissioner Domingo?

Ms. Domingo: So what's the motion? Now that –

Chair Hiranaga: You want to –

Ms. McLean: ...(inaudible)... amended.

Chair Hiranaga: For clarity, we'll allow Commissioner Shibuya to restate his motion.

Mr. Shibuya: That all roadway and utility easements listed on the deed be investigated and findings reported to the Department of Planning.

Unidentified Speaker: ...(inaudible)...

Mr. Shibuya: Well, there's a utility easement.

Chair Hiranaga: Yeah, I think he stated it properly.

Mr. Shibuya: The roadway and utility easements.

Chair Hiranaga: I would just suggest you add the word, "existing," "existing roadway."

Mr. Shibuya: Existing –

Chair Hiranaga: Dirt road.

Mr. Shibuya: That all existing roadway and utility easements.

Chair Hiranaga: Yeah.

Mr. Shibuya: Thank you.

Chair Hiranaga: Okay, are we clear on the amendment? Commissioner Wakida?

Ms. Wakida: I agree with Commissioner Ball but the, the aren't we investigating this and I might want to ask this of Commissioner Shibuya, the purpose is to investigate these for archaeological significance, correct?

Mr. Shibuya: That's correct.

Ms. Wakida: Should that be added, be investigated for archaeological significance, so there's the reason why they're being investigated.

Mr. Shibuya: Sure. That's a friendly amendment that I'll accept. You can add that in.

Chair Hiranaga: Yeah. No objection from the seconder? Okay, are we ready to call for the vote? I guess you need to specify who should conclude, will be responsible for initiating this investigation, so say the applicant shall?

Mr. Shibuya: Yeah, applicant. Let's do the applicant.

Chair Hiranaga: Any objection for the seconder?



Mr. Mardfin: No objection.

Chair Hiranaga: Any more discussion? Okay, I'll call for the vote. All in favor please indicate by raising your hand.

Ms. McLean: Three ayes.

Chair Hiranaga: Opposed?

Ms. McLean: Three noes. The motion fails for lack of a --

Chair Hiranaga: Motion fails for lack of vote.

Ms. McLean: For lack of a majority.

Mr. Shibuya: No. I think those that did not vote that's an affirmative.

Chair Hiranaga: No wait. Who didn't vote. Let's do a recount. Raise your hand in favor of the motion, in favor of the amendment please raise your hand? Opposed?

Ms. McLean: Three to four.

Chair Hiranaga: Okay, motion fails to carry.

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

**The Motion to Add the Amendment: "That all existing roadway and utility easements listed on the deed be investigated for archaeological significance and the findings reported to the Department of Planning," FAILED.  
(Assenting - W. Shibuya, W. Mardfin, P. Wakida)  
(Dissenting - D. Domingo, J. Freitas, I. Lay, K. Ball)  
(Excused - L. Sablas)**

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I move to amend on Exhibit B, Condition 4, currently says that no lights shall be directed towards the makai side of the property towards the ocean. I wish to amend by adding the words, "and insure lights from the project cannot be seen from the makai side of Makena Keoneoio Road."

Chair Hiranaga: I think you need to be more specific say lights originating from subject parcel.

Mr. Mardfin: That's what I said, insure lights from the project.

Chair Hiranaga: Okay.

Mr. Mardfin: Cannot be seen from the makai side. It one of the conditions we had kind of wanted

before.

Chair Hiranaga: No. 4 says?

Ms. McLean: ...(inaudible)...

Chair Hiranaga: From a procedural perspective the Department recommendation is based on Exhibit B, original 12 conditions that you've amended. So this is the template we're working off of.

Mr. Fasi: That is correct.

Chair Hiranaga: So the language I see as Condition No. 4 is not what you're saying. No. 4 says that no lights shall be directed towards the.

Mr. Mardfin: And I'm adding these words.

Chair Hiranaga: Right.

Mr. Mardfin: I'm not substituting for these.

Chair Hiranaga: But did you say from the project site?

Mr. Shibuya: ... light from the project site cannot be seen from –

Mr. Mardfin: I'll read it in, what it would be in the entirety. It would now read that no lights shall be directed towards the makai side of – towards the makai of the property towards –

Mr. Shibuya: Towards the ocean.

Mr. Mardfin: Towards, towards the makai side of the property towards the ocean and insure lights from the project cannot be seen from the makai side of Makena Keoneoio Road. It's two perspectives. One is what you do on the property, the other is making sure that the result is correct. So my amendment is an expansion and elaboration.

Chair Hiranaga: Is there a second?

Mr. Shibuya: I second.

Chair Hiranaga: Discussion? Commissioner Lay?

Mr. Lay: Yeah, I'm not going to vote for that one just because of the reason your trees are the buffer. So if you're on that side of the road, the lights are on the house you can see the lights from the road, but if you're on the opposite of the trees, we're, we're out to block the lights towards the ocean and the trees themselves are on the other side of the road. So if you're on the road and you can see those lights, you know, I don't think it's – the lights would have to be off on the house all the time.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: The reason why I'm supporting this because the trees may last or there might be some storm damage and then the lights can be seen and in this particular we are not only insuring that the lights cannot be seen from the ocean side and that, that to me is very important.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: I'll speak against the motion because I, too, like Commissioner Lay it would be very difficult to cut those lights off without a huge wall or, I mean, even if you put some natural landscaping, you'd be seeing the light through and then we're talking about seeing the light bulb or are we talking about seeing the illumination from the structure. I mean it gets very broad as a definition when you say no lights. I agree with Ivan that you would have to just have no lights which is impractical.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I agree with that reasoning too. I was, would suggest that the, if you want to pursue this amendment that instead of saying the lights from the project not seen from the road, but change it to not seen from the ocean or beach.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I would accept, I take Commissioner Lay's and Commissioner Wakida's suggestions to heart. The intent the beach area and so I'd like to just have it be, cannot be seen from, what's the name of the beach?

Mr. Shibuya: Oneloa.

Ms. McLean: Oneloa.

Mr. Mardfin: That it can't be seen from, the lights from the project can't be seen from the Oneloa Beach because the intent is to protect the turtles and I take it that if you're just on the other side of the road, but if you're, if the trees are in fact blocking it, then that's not an impediment. I just want to make sure that the beach isn't disturbed by ambient, by light that would interfere with the turtles which are endangered species.

Chair Hiranaga: The applicant wishes to comment?

Mr. Mardfin: Will the seconder approve the, that adjustment?

Mr. Shibuya: Yes, I accept.

Chair Hiranaga: No objection.

Mr. Kaufman: First of all, I want to make it clear that State law prohibits anyone from directing a light at the ocean now. It's already covered by State law. Second of all, if Hannah Bernard was

here she would tell you, they have a brochure out that has about turtle lights, mitigating turtle lights. This is only an issue from July to October. So this is a seasonal issue, it is not a year-round issue. And how you mitigate this and it's been tested in Florida and elsewhere is that you simply make a requirement that all lights on the premises are down-lighted. They are not directional lights at the road. The issue is saying, I hope I can never see a star. Well, you can always look up and see the stars as the Commissioner said. So can you look at a house and say are the lights on? Yes. The issue is where are the lights directed. And all recommendations for turtle safe lighting is down-lit. And as my wife indicated, we have three outside lights on our home but they're down-lit. So you can stand at the road and not, you may be able to see some glow but they are not a spot light pointed at you. So I think you can achieve this by insuring that all lighting is down-lit in particular through the months of July to October. This is not a year-round issue for turtles.

Chair Hiranaga: Now are you saying all exterior lighting or all light interior and exterior?

Mr. Kaufman: Well, exterior. By nature interior lighting is down-lit because you know, you're trying to illuminate the house and you got a roof over top of it. So that's the definition of down lighting is you have something over top of it to prevent the light from emanating upwards.

Chair Hiranaga: but if you had a hanging light from the ceiling that is say at window, window height that would be a direct light out of the house.

Mr. Kaufman: They define directional lighting and what bothers the turtles was light that's directed at the beach or at, at that area. It's not necessarily just ambient lighting. It's directed lighting that when they come out of their nest, they become confused and head towards it. And as several Commissioners have pointed, you're talking about several hundred yards of dense underbrush before you can even get to the point of seeing it. The turtles literally have to be in the driveway of the, of the property to see the lights quite frankly.

Chair Hiranaga: Okay, so you're okay with interior and exterior lights, all lights.

Mr. Kaufman: Yeah, just down-lit lights that are not visible from the beach.

Mr. Mardfin: I'll accept that as a friendly amendment that, changing the wording, that's all – so 4, 4 currently says, "that no lights shall be directed towards the makai side of the property towards the ocean." I'm willing to have it be, "that all exterior lighting be down-lit." Is that understandable?

Mr. Shibuya: Acceptable.

Chair Hiranaga: So there's no objection from the seconder?

Mr. Shibuya: No objection.

Chair Hiranaga: Applicant is okay with that. Staff is okay with that?

Mr. Fasi: It's a policy in the Planning Department that shoreline houses are down-lit anyway.

Chair Hiranaga: Okay, so Deputy Director if you could repeat the amendment?

Ms. McLean: My understanding is that the amendment would amend Condition No. 4 in its entirety to read only, "that all exterior lighting be down-lit." That's the entire condition.

Chair Hiranaga: Okay, all in favor of the motion amendment please indicate by raising your hand.

Ms. McLean: Seven ayes.

Chair Hiranaga: Motion carries.

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

**VOTED: That Condition No. 4 be Amended to: "That All Exterior Lighting be Down-Lit."  
(Assenting - W. Shibuya, W. Mardfin, D. Domingo, J. Freitas, I Lay,  
K. Ball, P. Wakida)  
(Excused - L. Sablas)**

Chair Hiranaga: Any more amendments? Commissioner Mardfin?

Mr. Mardfin: I don't know how to do this exactly. It's, it's in a sense not an amendment but a request. Dr. Kaufman said that and ... my memory was a little faulty but he basically said that this map of the big regional concern about archaeological sites was developed for the SMA but the SMA isn't being submitted to the Council because that's, it was withdrawn. But that I would request that this map and any surrounding explanation of it, of the archaeological history of this place be transmitted to the Council so they have it in their deliberations.

Chair Hiranaga: Are you speaking of the Draft Environmental Assessment?

Mr. Mardfin: It was a response to the Draft Environmental Assessment as I understand it.

Chair Hiranaga: So you wish to make that an amendment to the motion?

Mr. Mardfin: It's not an amendment it's a request that that the Planning Department include it in the packet of materials that goes to the Council?

Chair Hiranaga: Applicant wish to comment or does the Department wish to comment?

Mr. Fasi: Yeah, we have until December 6<sup>th</sup> to get these comments to Council.

Ms. McLean: If the applicant can make that available to the Department then we can include it in the packet that gets transmitted to Council. If it's been part of the public record already then there shouldn't be an issue with including it in the packet.

Chair Hiranaga: Could you identify yourself?

Mr. Kaufman: Yes, Greg Kaufman, authorized agent of Pine State Limited. We don't have a problem. We prepared that document and provided it to the Maui Planning Commission prior so

yes, it's a public document already.

Chair Hiranaga: Okay, any more amendments? Commissioner Shibuya?

Mr. Shibuya: It's more of a clarification on No. 3, it says all pre development and post development runoff and I was wondering it's assumed that it will be water, does that include chemical and biocide materials in the runoff shall be retained by the owner on site?

Chair Hiranaga: I think the standard language we've been using is surface runoff?

Mr. Shibuya: Okay.

Chair Hiranaga: ... running off the surface.

Mr. Shibuya: Okay, so we can say that all surface runoff then, right? And then it will cover water as well as chemical and biocides.

Unidentified Speaker: Okay.

Mr. Shibuya: Thank you. Does it need an amendment? To word, add the word, "surface."

Chair Hiranaga: Yeah, if there's no objections and the Department's willing to accept that they could just incorporate that into their original recommendation. Include the word, "surface" runoff.

Mr. Fasi: Under what condition number?

Chair Hiranaga: No. 3, "pre development and post development surface runoff."

Mr. Fasi: Sure.

Mr. Shibuya: Because it's standard.

Mr. Fasi: Accepted.

Chair Hiranaga: Any more amendments? So we have one, two approved amendments? Is that correct?

Unidentified Speaker: Yes.

Chair Hiranaga: To the main motion? First one being?

Ms. McLean: The implementation of energy conservation measures.

Chair Hiranaga: And the second one being?

Ms. McLean: The second one is the lighting, all exterior lighting being down-lit. And then the last one, surface runoff.

Chair Hiranaga: All right, is there any further discussion on the main motion?

Chair Hiranaga: Well, I just wanted to make sure that she just mentioned half of the implementing energy conservation measures and renewable energy producing systems. There's two different parts of this.

Ms. McLean: Yes.

Chair Hiranaga: Right.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Any more discussion on the main motion?

Mr. Ball: Clarification on that, that was just a suggestion, it wasn't a requirement of the –

Ms. McLean: It was to encourage.

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

Ms. McLean: Seven ayes.

Chair Hiranaga: Motion carries.

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

**VOTED: To Recommend Approval of Council Resolution No. 11-77 to Amend the State Land Use District Classification from Agricultural District to Rural District Per the Department's Recommendation and Conditions. (Assenting - W. Shibuya, J. Freitas, D. Domingo, I. Lay, K. Ball, P. Wakida, W. Mardfin) (Excused - L. Sablas)**

Chair Hiranaga: Deputy Director, agenda item B-2?

Ms. McLean: Thank you, Mr. Chair, this is the second public hearing item. This parcel is adjacent to the one that the Commission just discussed. Also, transmitted from the Council a Bill for an Ordinance to amend the State Land Use District Classification from Agriculture to Rural with proposed conditions for parcel 118 in Makena, 2.79 acres. Joe Prutch is the staff planner.

- 2. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 11-85 referring a Bill for an Ordinance to Amend the State Land Use District Classification from Agricultural District to Rural District with proposed conditions for Tax Map Key Number 2-1-005: 118, Makena, Kihei, Island of**

**Maui. (DBA 2011/0003) (Iwa Ike 4-lot subdivision) (J. Prutch)**

Mr. Joe Prutch: Thank you, Deputy. Okay, I think what I'll do is I'll, I mean, this project is going to be very similar to the one you just reviewed, side by side projects. This is a four-lot subdivision rather than two but still we're discussing the DBA, to change the State Ag to State Rural rather than Urban you saw three years ago.

I want to give a little bit of history of what happened over time just to kind of bring you up to speed. Some of you that were here and some of you that weren't here just to let you know how we got to where we are today. And then the applicant will come up and give his presentation on this project.

This project came to us back in late 2007 for a DBA, Change in Zoning, CPA and a Draft EA. That was to conform to Rural standards at the time. In July, the Maui Planning Commission commented on the Draft EA and they gave 15 comments which you guys have alluded to earlier. So those are Exhibit 1 and Exhibit B of the staff report. So those are there if you want to look at them. A few weeks later at the end of July, ZAED determined that the zoning for this property was now Interim not R-3 and I believe this was from the Hanohano Case back in the day. So all of a sudden it was R-3 zoning, Single Family Community Planned and at that point, it changed everything and we realized that it was only a DBA was required to change the State designation to Urban and then everything would be consistent and he can go along with the subdivision and he was still proposing Rural standards but it was going to be an R-3 zone and State Urban. That went forward, oh okay, and then the Change in Zoning, the CPA, the Draft EA that all ... withdrawn by the applicant. So all we have now is the DBA.

You guys reviewed the DBA in October of 2008. You guys requested Rural standards and you deferred it to give the applicant time to get those Rural standards together. Either that or we ran out of time I can't remember. We came back a month later in November 2008, you guys reviewed it with all the Rural standards that Mr. Mardfin was alluding to earlier, all those standards were included but after it was all said and done, public testimony, you guys actually, you guys recommended denial of this project to the Council for three various reasons. One of them was that the project provided no public benefit. Number 2, that the public testimony was in opposition to the Urban designation. And number 3, that there were impacts to the environmental and archaeological sensitive sites.

It went to Council. Council reviewed the Ke Kani Kai one in great detail. Decided to send the Ke Kani Kai one back to you guys and at the same time realized send Iwa Ike as well, it's the same project very similar. So both of them came back to us to bring to you to bring back to the Council. So that's where we are today.

This morning, you guys received some additional testimony and some letters, you should have received a agency comment letter from the Water Department and from our Zoning Administration Department, sorry those came late but just received those a few days ago. You also got testimony from Daniel Kanahale and Mr. Kaufman gave you a site plan showing you the map, the map of the photos he'll probably go over later. Of course, you heard plenty of public testimony on this. Some in favor, a few opposed. A lot of them talking about the environment. The turtles and the cultural setting. And of course, we've gone over quite a few of the conditions extensively for Ke Kani Kai. When we get to that point, I guess I'll be suggesting a lot of the same changes and maybe some



additions for archaeological monitoring since this property is the property that does have the archaeological sites. For now, I think I'll turn it over to Mr. Kaufman and let him give you a little presentation on this and show you project and show you the site and then we'll come back. Okay.

Mr. Greg Kaufman: Thank you, Joe. I'm going to skip ahead for brevity because most of the first slides and many of these slides are fairly identical. There'll be a key for this property that you have sort of the L-shape key that you were given to follow along. The subject parcel is immediately adjacent and touches the Rural property next to it. This is a property we just considered now it's this L-shaped property. It's about double the size of the property that we're considering, it's 2.79 acres I believe.

So here's the subject parcel. This again was, was many years ago this picture was taken. I will point out this is one of the issues that's happening in Makena that you should be aware of. The value of subdividing parcels is that you get to come before the Maui Planning Commission and you get forced to start doing things like archaeological assessment, environmental assessments, et cetera. This is my neighbor for the past two years on the weekends when the County's not looking he has filled this property. He has bulldozed it and filled and I'll show you shot later on. Whatever archaeological exists on this property I guarantee you is now buried under feet of dirt. It is now turned into a horse corral. I have nothing against horses, but this is what happens and I want you to measure that and weigh that when you start putting conditions on because if you don't come before this body, this esteemed body, your neighbors meanwhile are covering up the very thing that you want to protect. He'll never know the connectivity you're after because it's now been buried on this property. Next slide.

So here's, here's your guide and I'll walk you around the property so you can get some idea. Next slide. This is again up at the northern boundary point looking down and again, these two telephone poles will come out. Eventually all three of these poles will come out and to give you some idea, all three of these poles used to be up here in the properties. This one right here was sitting right in the middle of the fishing shrine that is now protected. The fishing shrine is in the condition it is now because MECO ran a bulldozer through it about 60 years ago and planted this pole. And just so you know that when these conditions are placed I fought MECO for five years, five years of my life to get them to pull that pole out of that archaeological site and they refused. And summarily in the ending what they did, a guy came by with a chainsaw and cut it off about six feet over and dropped it on the ground, they walked away. That was their thank you to me. I ended up having to pull it out of the ground. Next slide.

This again, I put this slide in here so you can see this is looking toward La Perouse and this will give you some idea, eventually this property line will move completely back here with the deeded road widening lot to the County. So it will make that area far more accessible. Next slide.

This is standing now on the, on the southern boundary by the road looking up and you can see the fence line here where the horses are next door and this has all been cleared undergrowth here and it runs some 600 feet, 650 feet straight back there. Next slide.

Standing on next to the property and looking down towards Oneloa here and towards the road and again, you get the idea of the very dense undergrowth and Kiawe in this area. Next slide.

So if you're concerned about archaeological, that's my neighbor's property, it's gone. Whatever is there has been bulldozed and filled under. No permits, no AIS, no monitoring, nothing. So here I am standing on our property looking across and that's what you see here, this metal looking area and so it went from this very natural terrain to this area now. Next slide. Thank you.

So again, we're looking makai and you can see this property over here has been cleared, oceanfront here and it's been sitting there for years and that's why you get a little break through over in that area. It's a rocky shorefront over there. Next slide.

And again, this is looking northward, excuse me, east towards the back end of the property and all Kiawe, there are, there are about 20 Wili trees that are in the back of the property. Our intent was to not to disturb the Wili trees. Interestingly when someone talked about before the Wili trees that were decimated by the wasps, the native ones that are on this property were not decimated. The reason why the Wili trees along Mokulele Highway, you know, got really bad looking and around the airport is because they retain their leaves year-round. The native Wili drops its leaves after about three months. So they look dead nine month out of the year but they're not dead and they come back every say, January through March they blossom out, they bloom actually beautiful flowers and then they go dormant again. Next slide.

Sorry, we've got a problem with some of these so we'll have to skip. And I apologize it's County process doesn't read my property. Ah, here's what I want to show you. And there's a series of slides but I'll only show you this one. Everybody talks about Makena back when preserving the culture, et cetera. This photograph is taken by, is University of Hawaii, 1949 aerial view. This is a radio ...(inaudible)... in the 1930's with these towers out here. You can see that the area was flattened and denuded and eventually we were told that the parcel next to us the one we just contemplated was actually a munition dump and part of the property that we're talking about now was a munitions dump as well. As you can see, those concerned about that dirt road, it doesn't exist. The trail doesn't exist. It exists right here but it doesn't exist through the property that's because when this photograph was taken they had not yet started putting those poles in there for the Carter Estate down there. So again, keep in mind when you contemplate this that when people say this was a pristine area, et cetera, it had dramatic impacts taken again, in the 1930's, 1040's if you came down here this was ...(inaudible)... this was a farm over here. You see this farm right here, the road is across right here. And again, this area here, decimated where the wetland is over in this area here. Next slide.

So, Mr. Mardfin, there you go. That's what you asked for two years ago and I produced it for you.

Mr. Mardfin: Thank you.

Mr. Kaufman: Okay. So I decided to bring it along and show it to you one more time in case you forgot but you remembered. So Mr. Mardfin asked me a couple years ago or three years ago, he said, all right Greg, show me everything around that place, I want to see it. So I went to our survey and I said, show it to us. So here's what we've got. We did an archaeological inventory survey in 2006. It was accepted in 2007. The monitoring plan was accepted in 2007 as well. So what you have here is this is about a 600-year-old fishing shrine. From my deep conversations with SHPD, this is on my current property, I live right here, that this is not unusual that there were not any residences or villages nearby. Essentially what would happen is that they fish at Oneloa, they'd

come back and pay their respects here and then they would go elsewhere. And that document that you requested in the amendment you'll see in the Kaeo Complex which is where the majority of the folks lived down around Makena Landing et cetera, it was thought that basically they came here fished, paid their respects here and then lived elsewhere and may lived as Lucienne said, maybe at the chieftains house just down the way here as well. But, but this property here has no archaeological findings on it whatsoever.

I have walked this property sensibly with the archaeologist. I spent four hours on this property with SHPD as well. And we walked and we looked at each one of these sites. These are dry stacked walls right here. These are the dry stacked walls right here. These are about two feet in diameter, little rock piles that have been dug in and they had not found anything significant and this is a midden scatter area that had a couple coral abraders on it. I will tell you that I asked Hinano Rodrigues, Jenny Pickett of SHPD and Eric Fredericksen of Xamanek Researches. I said if this was your property what would you preserve there, what would you do? You own this property. First of all, how old is this? They said, well in their estimation without carbon dating but just with the features this is all probably less than a hundred-years-old on this property. This is about 600-years-old. But this is very fairly recent. So I asked them what they would preserve. We'd preserve these structures and this structure here. I said, fine I'm going to preserve it. You know, SHPD told me, you can't do that we didn't recommend it. I said, it's my property I want to preserve it. He said, but we didn't recommend it. I kept going around in this circle of the conversation. I said, is it possible for an owner to create a preservation plan and preserve things on their property? And they said yes, but we didn't recommend it. And I said, well, if I do it, will you accept it? And they said, that's highly unusual no one ever does that. And I said, well, I'm going to be the first guy who does that. I'm going to do that. Their concern about these small little rock piles and especially Hinano he just did not get the sense and they dug through them et cetera that they were really that significant and they were probably more recent in agricultural use as far as he was concerned. Nonetheless, you know, so I would concur that those dry stack walls are important. Now the dirt road you see, again, bulldozed right this. Bulldozed through here, bulldozed through here. This area has been bulldozed significantly through here. The Wiliwili trees are right here and unfortunately the picture that you could not see, you will see this back line is bulldozed clean. This line is bulldozed clean, this bulldozed clean. Someone has taken a bulldozer throughout this lot extensively and these walls as you can see, this probably went around and connected here, but it's clear it knocked down too and that's why the MECO pole is here and the MECO pole was right there. And this is, Sonny Vick tells me this is the trail he cut in from his house over here to go hunting. So that was his, his trail he said. Next slide.

Let's go back if we can, so those, these three areas, 1, 2, and 3, which are identified as 6223, 6224, and 6225, – 6223, 6225, and 6224 were identified as important for research purposed under criterion D, but did not rise to criterion E which is what this property is here. That protected areas there. Next slide.

So again, just a ... same thing we did a Draft Environmental Assessment which you received and it was withdrawn. We know about that. We did the Cultural Impact Assessment as well, did the whole thing and we did the traffic study as well. And the commitment in the CC&Rs and to ourselves is that this is will be green houses rely upon photo voltaic energy, will exceed LEED standards and will be neutral in tone, Hawaiian in nature, et cetera and these properties will all have single-story homes on them. That's it.

**a) Public Hearing**

Chair Hiranaga: We'll now open the public hearing. Is there anyone here that wishes to testify regarding this agenda item that did not provide testimony earlier, please come forward and identify yourself?

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

Ms. Merrill Kaufman: Yes, hello, good morning. I think I'm a little tall for the microphone. My name is Merrill Kaufman. I'm a resident of Makena. I live at 6699 Makena Road. I'm testifying this morning on agenda items B-1 and 2. I've lived in Makena since 2005, on Maui since 1989. Because I live next door to the subject property with my husband and children and because I am the Chief Operating Officer at Pacific Whale Foundation, I'm very much interested in the type of development and the nature of the community in Makena. I'm here in support of the reclassification to the Rural RU-0.5 designation. I just have a few comments to make on some of the mitigation efforts that I understand are tied to the development of the property from an environmental perspective.

Some of the things that the neighbors including myself next door to the subject property currently take on as a way to contribute to the place that we live in are through walking Oneloa Beach on a pretty much daily basis, picking up all kinds of trash which I'd like to say is deposited mostly by visitors but unfortunately my experience is that's not the case. A lot of the rubbish on that beach is unfortunately left by residents. I also participate in the ongoing effort to preserve the sea turtles that nest at the beach. I was, last night at 12 and 6 doing the nest watch. Nothing came out yet but we're hopeful that some of those Green Sea Turtles that are nesting they will come out soon. So I'm very conscious of the condition of the not only the beach but of the park, the safety of the park. I have four children born and raised on Maui, four girls. So I'm very concerned about what happens in the park, who's there, keeping an eye out for suspicious activity, all those sorts of things. I understand that the conditions that have been placed on the property are going to insure that any development's low impact, conforms with the area and is consistent with the future growth plans for Maui. So as a neighbor and as someone concerned about the environment and also as a place that will be cherished for our families and our children to enjoy, I'm in support of the reclassification of the project. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Thank you for testifying. Did you say your property is adjacent to the property in question?

Ms. Kaufman: Yes, it is on the north side.

Ms. Wakida: On the north side. So it would be Lot 2 I guess in this.

Ms. Kaufman: Yes, that's correct.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: When you're watching the sea turtles.

Ms. Kaufman: Mostly what I watch is the sand unfortunately, but.

Mr. Mardfin: Is there light that gets on the beach?

Ms. Kaufman: The only light I've seen is if you look south along the coastline what I know as the Sugarman property, I'm sorry, I don't know the TMK number. When there are events happening, it's a catering property that's rented out for events. That's the only lights that you can see. It's quite a ways down certainly. But there are no lights even from the DLNR dwelling. There's a DLNR Officer's residence I suppose on the beach in the brush. I don't see lights from there. Occasionally there may be a small twinkling coming through from the caretaker's encampment that is property just north of us but you have to go quite a ways walking back and onto the road. Last night was a good example because there wasn't much of a moon so usually you can pick up any light. And of course, I'm always looking for that. We have, where we live now, we have no lights on our gate or driveway. We no lights that are always on up at our house which is, you know, several hundred yards back from the road. We have the kind of lights that trigger if there's motion, motion detector lights and certainly that would be something that we would support in the development moving forward that there be no lights mounted on the road even for security purposes. So the answer to your question is the only lights I see are quite a ways down the road and that's only when there are events or like a rented out situation.

Mr. Mardfin: And if these two properties were fully developed, you anticipate that there would be light going onto the beach?

Ms. Kaufman: I think that would certainly have to be something that was stipulated that there be no lights projected to the road from the gate or the front of the properties.

Mr. Mardfin: How about from the house itself?

Ms. Kaufman: I suppose it would have – if it was close to, I mean, the foliage is fairly thick as I'm sure you're aware along the Oneloa State Park, Big Beach State Park, so there would have to be some really powerful light to make its way down to the beach, but I think it would be reasonable to stipulate only motion sensed type of lights because of that because if your issue was security then that's enough. I've lived down there like I said with four daughters. My husband travels all the time and that's the only security light I have just in case, you know, if something should be moving around in the bushes then, then those lights will go on.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Are you aware of any cultural artifacts like heiaus and stuff like that in the region?

Ms. Kaufman: Well, on the property where I live now we split, there is a, a documented cultural site that is, it lays between myself and Linda MacDonald who's my neighbor just on the makai side, I'm mauka of her and when we developed the land, we not only took the recommendations of SHPD

but expanded upon those to allow a greater buffer zone. So we have been sort of living harmoniously certainly with that cultural site and value it, feel like it adds a great deal to the area and we feel honored to be stewards of it. We, as accordance with the regulations put up interpretative signage and of course, allow for visitation from archaeologists or students or whomever, even the general public, there's a process that they can follow to come and view the site whether it be for spiritual –

Mr. Mardfin: And on the two subject properties, are there also archaeological sites?

Ms. Kaufman: I know they have been identified but not to this, they haven't risen to the status of the part, the piece that we have on our site in terms of the designation. I think in the one property they were listed as sort of fragments of habitation, sort of shells and whatnot. I don't know the exact archaeological term but not documenting any permanent habitation or any burial of any type.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Thank you for testifying Ms. Merrill, I mean, Ms. Kaufman. I'm interested in finding out what you know of the sites as that being one site but are there other groups within that area? That makes sense of maybe community or some institutional type of thing because there's heiau somewhat close by but yet here's another site and we haven't apparently found another one so that we can piece it together, in other words connect the dots to make sense out it.

Ms. Kaufman: Sure, I mean, I can speak a little bit from, from my personal experience as well as the ethic that we have in our family and that we are certainly committed to maintaining with regard to any cultural artifacts or archaeological sites which is a spirit of to preserve what is there even if we're not sure at this point if, if there's not enough knowledge or as you say connect the dots to know if there's significance or not. And many times obviously it seems like, oh, that's just a little this or a little that, but you know, we're certainly conscious of, of preserving, not – I know from when my children at Punana Leo Hawaiian language immersion school and they were exploring a property above the current storage, storage space that used to be bowling alley and they were told, oh you can build soft things on top of archaeological remains such as a play field, you know, as long as it's not a hard dwelling and of course, at the time along with many others was appalled to find out that that was possible. So we would certainly make plans for construction even if it's a driveway to go around anything that's deemed significant so that in the future, you know, it's there to be examined.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I'm sorry, what was your name again, please?

Ms. Kaufman: Merrill Kaufman.

Mr. Mardfin: Are you related to the applicant?

Ms. Kaufman: Yes, I'm the wife of the applicant.

Mr. Mardfin: Oh, okay. Thank you.

Ms. Kaufman: Thank you.

Chair Hiranaga: Any other questions? Seeing none, thank you. We have more people signed up. Hannah Bernard?

Ms. Hannah Bernard: Good morning, aloha kakahiaka. Thank you for this opportunity to testify. I'm speaking on the same agenda items, B-1 and 2. I've testified in the past as the President of Hawaii Wildlife Fund concerning this same development request for change in zoning to Urban. I appreciate that the request is now a different type of zoning, it's less intensive than urban, much less concerning environmentally and culturally, however, I still have concerns. And as the program that is running that Hawksbill Sea Turtle project that Ms. Kaufman just mentioned we've identified two different individual female Hawksbill Sea Turtles who nest on that beach, one `ea or `ea, critically endangered species and this is one of, of the most important beaches for the nesting because they're successful there because lights currently don't bother them and if there is a light on we can talk to the landowners and they turn the lights off when there's been for a concern for the turtles coming out. So because this place is so dark and it is so healthy now we would hate to see it change.

In addition, we've spoken out in the past in concern for the water resources in this area and for the natural area reserve. The natural area reserve Ahihi Kinau, oldest reserve and the only one with the ocean component and it's on the, one of the healthiest reefs on Maui and any additional development might be, it really needs to have the kinds of conditions placed on it where the wastewater is reused or somehow there's a septic system that's put in place that maintains the waste so it does not leach into the ground, is not injected into the ground and in no way enriches this habitat, this ahupua`a is a dry land and it is not an area that is adapted for an enrichment and that can change the nearshore environment as we know from other areas of Maui and Hawaii.

So I think that it really needs to be evaluated in terms of what would be done with the wastewater, drainage, lighting as was mentioned and we do have a lighting ordinance but it's not good enough. We do need to have additional lighting protections. So the conditions absolutely need to take care of the sense of place of this place culturally, natural resource wise, environmentally and so I'd like to see that those conditions be very, the strictest possible conditions that can be in place. And I don't know if the zoning is going to cover that, but I would really hope that it does.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you, Ms. Bernard for testifying. You know, in terms of providing some means for the sea turtles to nest we're looking at the beaches. How about the ocean? Ogo, the seaweed, the various types of seaweed there are we trying to cultivate that? Because you know, after the keiki born they gotta eat. So where do they go?

Ms. Bernard: Yeah, so this species the Hawksbill, this one actually is not as much of a vegetarian as the Green Sea Turtles. The Green spend the first ten years of their life or so in the high seas and 90 percent of those nest in the French Frigate Shoals, part of Papahanaumokuakea National Marine Monument. We do have some nesting on Maui, but Big Beach, Oneloa is where Hawksbills

nest and that is our program, Hawaii Wildlife Funds program down there. We're monitoring, we have research permit to satellite track and, and protect these animals and we have volunteers helping like Ms. Kaufman and her family which is how we are able to do the work. But what they're feeding on the first ten years is anything that they can catch with their mouths in the open ocean. They're not feeding on the ogo or any of the limu in the nearshore waters. They go out to sea and we, essentially we call those, "the lost years" because they go out and they're feeding on ... and zooplankton and lots of, of organisms that are floating in the ocean. So then when the Hawksbills come back to Maui to live and we only have approximately 100 Hawksbill Sea Turtles in all of Hawaii, and the don't migrate away. Our research has shown they don't migrate up to the Northwestern Hawaiian Islands. They stay here in the main Hawaiian Islands. They're genetically distinct. This is a very, very special and rare population and they feed actually on sponges and coral. So they're not so much feeding on the limu like the Green Sea Turtles different story. Those, those guys are doing really well.

Mr. Shibuya: Thank you.

Ms. Bernard: You're welcome.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Are you familiar with Paniaka Fish Pond?

Ms. Bernard: I don't know that name but is that the –

Mr. Mardfin: It's supposed to be –

Ms. Bernard: The pond in, in shore?

Mr. Mardfin: – a wetland pond.

Ms. Bernard: In shore of, of that, that beach?

Mr. Mardfin: Right.

Ms. Bernard: Yeah. I'm aware that, that, that there have been degrade – there are degraded wetlands that are overgrown. That there's been a discussion for recovering that area for a long time.

Mr. Mardfin: And that's between the subject properties and the beach?

Ms. Bernard: As far as I know.

Mr. Mardfin: So –

Ms. Bernard: Yeah, I don't know that, if that's the name of that pond, but I know that that habitat is.



Mr. Mardfin: So injections, you raised an issue earlier about injection of water and injection of water could affect that wetland?

Ms. Bernard: Absolutely any additional injection of wastewater or any type of water or even watering of the vegetation in homes down there could seep into the ground. It's very porous and it goes down into the groundwater we know this. This is not in dispute. This is scientifically proven that all waters leach into our a'a lava terrain and then they seep out into the nearshore waters especially that close to shore. We're talking about a hundred yards to a 150, 200 yards from shore. So absolutely they can and do reach down into the waters in that surrounding area, ground water.

Mr. Mardfin: You said that last time this was before us, I was very early on the Commission at that point, you said you spoke against the zoning?

Ms. Bernard: It was request, requesting being requested for Urban which I believe is completely inappropriate.

Mr. Mardfin: Would you still be opposed to granting the zoning they're asking for today?

Ms. Bernard: It would completely depend on the conditions. The conditions are crucial. If the, if the conditions are strict enough and considered enough to include the cultural concerns, the environmental concerns, the natural resource concerns, ... wastewater, then it's absolutely a better, it's a much better proposal, but I have more background. I have five pages of testimony that I've brought to share with. Those of you who weren't on the Commission previously background information about the area. Glad to share that.

Mr. Mardfin: Has that been distributed to us?

Ms. Bernard: No, I've got it here.

Mr. Mardfin: Oh. Thank you.

Chair Hiranaga: Any other questions, Commissioners? Thank you.

Ms. Bernard: You're welcome.

Chair Hiranaga: Just for clarification, the applicant is requesting a District Boundary Amendment from Ag to Rural and not a zoning change. Next testifier is Johanna Kamaunu. Apologize if I mispronounced that.

Ms. Johanna Kamaunu: Aloha, there's three things I wanted to make comment on. So the shortest one first. Sorry, I forgot, I forgot the protocol. I'm Johanna Kamaunu. I'm from Waihee and I'm testifying on behalf of myself. Item 3 on the lavender farm, I just wanted to make the comment that I visited the farm over the years and I found that they've been good stewards and just based on that information, you know, I would support their application today. I see though that it's a challenge. They'll have a significant challenge and the part of that challenge in the capacity that they're willing to hold up there. These activities will cause more traffic and, you know, more people being up there so that would be a challenge. But as I said, they've been good stewards over the years, so you

know, I would support that.

The two that I'm not clearly in support of or concerned is with Item 1 and 2. And a lot of it has to do with some of the culturally significant sites in the area. One I'm more concerned about is the Wili tree, the Wiliwili tree forest. I don't know if you remember years ago when we had infestation that practically wiped out all the Wili trees on the island and the University of Hawaii took pains to preserve some of the seeds so that at a more appropriate time the forest could be regenerated. Well, these trees are dropping seeds so it tells us that it's happening naturally on its own. And for anything to happen to this forest before we can, you know, see it come to its full potential, that would be a very sad thing to have suffered that infestation only to be destroyed or wiped out by this development is my concern. I realize that the Maui Island Plan also has been supportive of the protection of these sites in the Heritage Resource portions of that plan. So I see the mechanisms here that could protect it and I only ask that consideration be given to the trees.

The other thing in this is the wetland area or where the ponds are. I realize that they're not on the sites but we know water runs downhill. and whatever feeds into these ponds could be affected by whatever goes on uphill. And so that's my other concern. Those are my two main concerns today. I don't know how this is going to affect the development process, but you know, I would sure like to make sure we take care of the water and those trees especially in an area where water isn't doing very well either. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: On these two subject properties with regard to the Wiliwili do you know where the – how many trees there are and where they're located, are they central or are they going to have to be removed if they want to put up homes?

Ms. Kamaunu: I'm not exactly sure where the structures are going to be, but the Wiliwili trees are in the northern part of that, the mauka side of that parcel. I think it's in the Iwa Ike Subdivision. So I would, I would be concerned that's, that's a major portion of their parcel.

Mr. Mardfin: You know how spread out it is across the parcel?

Ms. Kamaunu: The one lot that I see it covers maybe the, a third of their upper portion of one lot.

Mr. Mardfin: Botany is my weakest area I have to admit. I can't tell one tree from another, I'm just hopeless on this, but let me ask if these trees are compatible with houses? I mean, will, are, is the root structure such that if you build a foundation it's going to kill the trees, are there, can they live close to homes, what are their water usage and would a home harm the water intake ability of these to survive? I don't know the questions to ask just 'cause of my ignorance, but those are a few that –

Ms. Kamaunu: The one tree that I know of that's, well, actually the one tree in Wailuku was over in the Maui Nui Botanical Gardens and I never notice the trees going beyond the spread of its branches. Then on the other side, they're all over Wailea but there's no buildings around them that I can see. So I would suspect that they need space, sorry.

Mr. Mardfin: Thank you. Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Good morning.

Ms. Kamaunu: Good morning.

Ms. Wakida: You said that the Wiliwili trees are in the northern part of the parcel, correct?

Ms. Kamaunu: The northern part.

Ms. Wakida: Yeah. And spread how far outside the parcel?

Ms. Kamaunu: From what I could see it's not that far outside. It's let's say it takes upper third. I would say it's half of that they're above the parcel.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Are there any other questions, Commissioners? Seeing none, thank you. Next individual is Wilmont, Kahaulii [sic]

Ms. Wakida: Kahaiialii.

Chair Hiranaga: I thought it was a "u" I guess it's an "i". My apology.

Mr. Wilmont Kahaiialii: It's not your fault I was born with a long name so it's okay. Aloha kakahiaka.

Commission Members: Aloha.

Mr. Kahaiialii: Thank you. I think to begin with my name is Wilmont Kamaunu Kahaiialii and Commissioners, just so you know please don't forget your sense of place and if we are coming here before you because we think that oh, that you are giving us an ...(inaudible)... but if you forget your sense of place, then it doesn't make sense to come here this morning to say, "aloha" and not hear that aloha returned. See what I'm saying? For those of us who are born and raised in Hawaii, aloha is an important of the ...(inaudible)... If there is no aloha then my intentions and your intentions are two different things and we will be at an impasse. Commissioners, aloha kakahiaka.

Commission Members: Aloha.

Mr. Kahaiialii: Commissioner Hiranaga, aloha.

Chair Hiranaga: Aloha.

Mr. Kahaiialii: Maika`i.

Chair Hiranaga: I apologize, I do not understand Hawaiian language.

Mr. Kahaialii: Commissioner, you born and raised here, yeah?

Chair Hiranaga: We are not allowed to debate between Commissioners and the public.

Mr. Kahaialii: Well, that's alright, I'm not going to hold your ignorance against you. Okay, so I'm here to testify first of all on the Kula lavender farm. I will admit I have been there many times, have participated in many of the activities held up there and really to their credit they're very good stewards of the land, they e kulana lako, they are very, very responsible and in the many activities that I have participated in there has been more than sufficient or ample parking and no one has gone up there wanting for anything more. As far as the application is concerned I would, I would support the application for Kula lavender farm.

As far as the other two, my only concern actually has been echoed by the those who've come before. I really would be more concerned about the environmental impact. If they are granted this, this reclassification my concern would be what would the impacts be by the urban development upon that area on the cultural sensitive sites. And what would be adverse impacts of some of the activity that will go on there that will runoff into the ocean and how it would impact the sea life. And too many times now here in the 21<sup>st</sup> century we are finding that the many of our sea life are being, being impacted by the limu or the seaweed that they're starting to consume and some of our turtles are turning up on the shoreline with tumors and cancers on them. This is a result of a lot of the chemical runoff that has gone into the ocean. And unfortunately, we're not seeing that decrease, it is actually increasing. So we need to do a better job. So I think that needs to be a consideration if this Commission is going to entertain it and, and think about contacting all of the interested parties that can have positive impact on this and that's about it. So mahalo for your time.

Chair Hiranaga: Thank you. Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you, Mr. Kamaunu.

Mr. Kahaialii: Kahaialii.

Mr. Shibuya: Kahaialii. Thank you for testifying. And you mentioned about sense of place in your experiences can you describe for me the sense of place long time ago sense of place and give me the time span about for Makena area.

Mr. Kahaialii: Okay, okay.

Mr. Shibuya: And that area close in that area, the dry forest as well as the coast shoreline what, what sense of place because we now find certain sites and what I'm looking for is a, a description of that sense of place. I'm not looking just one site, two sites, connect the dots for me.

Mr. Kahaialii: I understand. You know, Commissioner Shibuya, that would really be a difficult thing to do because no matter how well I describe it or define it unless you live it, unless you breath it, unless you farm, unless you pick opihi, gather pipipi, fish, it really would be hard for you to develop a sense of place. Now let me, let me share this with you, regardless of whether it has any impact on the Commission from here on out, let me leave this with you. Mr. Kahaialii then chanted in Hawaiian. That may mean a little or a lot to all of you gathered here today. To me, it means a lot

more. So I understand the sense of place in terms of my kupuna kawa kahiko, my genealogy, I understand when I go to Makena, when I'm in the ocean, when I'm one with my kupuna, I understand that. Again, if you really are going to develop a sense of place you cannot just say aloha, you have to live it. This property cannot mean nothing to you unless you think that there's going to be a benefit to the community, to the host culture. If the decision you are placed with today, the responsibility you have today to make the decision is only going to impact Ke Kani Kai, and it's hard for me to offer you description to give you the benefit of sense of place.

Chair Hiranaga: Thank you.

Mr. Kahaialii: Mahalo.

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

Ms. Wakida: Good morning, Mr. Kahaialii.

Mr. Kahaialii: Good morning, Commissioner Wakida.

Ms. Wakida: Is your position, what's before us today is that we are looking at rezoning the property from Ag to Rural. Is your, and the applicant's intent is to subdivide, is your position that you do not want this zoning to take place or are you looking at placing conditions on this?

Mr. Kahaialii: I would, yeah, I think you need to look at placing some very strict and some very real conditions because my concern is what's going to happen after this parcel's been divided and now all of a sudden you going to have a large group of people that are going to be trafficking to and from this site and that create some kind of impact upon the surrounding environment so just be aware of that. Mahalo.

Ms. Wakida: Thank you.

Chair Hiranaga: Again, for clarity the applicant is requesting a State Land Use Boundary Amendment and not a change in zoning. Commissioner Mardfin, did you have a question for the testifier?

Mr. Mardfin: Commissioner Wakida asked the exact question that I was going to ask.

Chair Hiranaga: Okay.

Mr. Mardfin: We think the same on things.

Chair Hiranaga: Similar. Any other questions, Commissioners? Seeing none, next individual is Kaniloa Kamaunu.

Mr. Kaniloa Kamaunu: Good morning, Commission. My name is Kaniloa Kamaunu from Waihee Valley. And as I always testify to, my concern's always about impact not so much on only the environment or even it's, it's inhabitants as far as the animals, the creatures that live there, but my concern is how does it affect the native tenant. And a lot of these and, and AIS, and all this AIS

don't really come to that conclusion. It's either about what's happening with the, the fauna and flora that's happening over there or animals. They never take into consideration the native rights. We have vested rights already. Rights that have been vested to us since 1846 which is still, ...(inaudible)... reserved through the State in HR 7-1, HRS 172-11, 172-12. So these are, you know, these are, besides I mean, when you talk about the animals and everything that's there, they don't have vested rights. But the kanaka, the person does. And nobody takes into consideration when these animals are gone, when the fauna is gone, when the water is dissipated, when the, when the ocean side is polluted how does it impact the native who actually has a legal and viable right to use? This person speaks about malama that, that, the ...(inaudible)... of the heiau. When in essence when you look at 7-1, the malama supposed to be from the native tenant because we're talking about the kupuna, we're talking about the culture, we're talking about the connections. The people that are living there a lot of them don't have that connection. You know, and you talks about spiritual, it's beyond spiritual. These are our people. These are our cultural practices that we're supposed to be allotted to be able to do. And we get, we're the ones put on the ...(inaudible).. to say that we're trespassing, that we're breaking laws. But yet when you look at what's vested to us, it's there . So besides all the other things that have been ...(inaudible)... the most important part is that you ...(inaudible)... the human factor. What imposes upon the human factor that is actually already a right even for them to traverse and to be able to live their customary rights. We talk about all, every, except the most important thing, the human being. It is, when you go down there and you were talking about sense of place, I grew up over there. I remember coming from Waihee to get to Makena was one half a day travel and that's on a car because even to get to Suda Store was one small little ruggedy [sic] road.

Ms. Takayama-Corden: Three minutes.

Mr. Kamaunu: And so you know what I mean, when you get to Makena, I think they when destroy 'em when they took away all the dirt roads and they ...(inaudible)... the parking lot. And all the walls are disappearing.

Chair Hiranaga: Okay, please conclude your comments.

Mr. Kamaunu: The thing is when I go there it's not the same no more. So it has an impact on me, what I would like to leave to my, to my children. Thank you.

Chair Hiranaga: Questions Commissioners? Commissioner Mardfin?

Mr. Mardfin: Mahalo and aloha. I take your point about the vested native rights. And I'm wondering, they, they often do a cultural impact study where they interview people about, you know, are there trails through there that you've customarily used, are there customary plants that you've harvested, you know, where I'm going on that. Do you, are you aware for either one of these subject properties of any cultural usage?

Mr. Kamaunu: I'm not familiar –

Mr. Mardfin: Customary usage.

Mr. Kamaunu: If you know Makena and especially, you know, in the early 70's, you know,

everything was still intact until the golf course and Maui Prince came out. That place was just full of all dry stack walls. Had the kukui nuts, had besides that kiawe, had all the plants there before. You know, and it was to me, it was beautiful because it was natural and when you go today you got, I mean, these things are disappearing, they're gone. And we know that when you see that, I mean, you're talking about rows of dry stack lava going from, from makai to mauka 'cause remember used to have the road come from Ulupalakua. I used to, we used to travel that road ...(inaudible)... if you come through and you see all the stuff, you see everything, but that's gone. I went by Big Beach that beautiful wall is gone. They took it out and put one big, two houses over there. So, what these people are planning to do here is gonna impact, it changes everything about the area. It becomes a different area. It's no longer Makena. Last point, I know I gotta get off, but the lights, the flood lights. I grew up we never have lights. We stay on the beach and see all the satellites traveling through the sky and every single star. As soon as those condos came up, that's why it disappeared that you cannot seem 'em at night anymore. So for the turtles, 'cause once the light hit the sky, it's like anything else, reflects back down. So it's going to impact somewhere on Maui.

Mr. Mardfin: Thank you, and I, just to share with you a brief moment. In 1961 when I first came to Maui and lived in Kipahulu we drove down Makena Trail and around the island in a Jeep, and the following year in 1962 I turned 18 and I hiked around the island and I remember hiking down Makena Trail and, and up along there and it was all beach and kiawe and every mile or so you'd find a little windmill that would bring water up for some local person. Thank you very much.

Chair Hiranaga: Okay, questions for the testifier? Commissioner Shibuya?

Mr. Shibuya: Thank you, Mr. Kamaunu, I just want to thank you for your testimony and also get your mana`o on the, on the description of the sense of place there and I'm after this because if you look at the study it only takes one portion of the property that you're interested in and it doesn't put the pieces together for a whole community description. That's what I'm looking for. I used to be in that area from Camp 5 Puunene ride the bicycle go down there shoot rats, kiawe tree, and Mr. Suda was the real nice guy. I collected all the tails and gave him proof and he gave me a soda free. So but, you know, and we were resourceful in those days where we broke the ball bearings, the used ball bearings from HC&S and that was our ammo and that's how we got the rats. But Big Beach is outstanding in a sense, I just want, it has changed yes. What is that sense from your perspective, in the Hawaiian's perspective and what time period are we describing?

Mr. Kamaunu: Well, we're looking at maybe mid-70's that's when we used to go there a lot because we surfed there. Everybody surf that area.

Mr. Shibuya: Yeah, I'm thinking in terms of a Hawaiian community because you talk about a heiau, that's something now and you get another site. There's got to be something that makes sense of all these small little pieces.

Mr. Kamaunu: Especially dry stacking of the lava stones.

Mr. Shibuya: There you go.

Mr. Kamaunu: You know, a lot of times people tend to think they're just walls separating but usually especially if you, if you were to take a look like in Honokohau, they're uncovering the heiau over

there and you see these chambers and what the chambers are for, they don't have an idea, but each one have, there's chambers and so with Makena same thing. You know you see the rock wall running to the top then you see them running across the whole length of the drive, but now those walls are being all just taken out and now you cannot see all that beautiful rock walls and you know, so to me, like you said, the heiaus sometimes you think of it being a small area but sometimes it can run for miles and can run from depending on what the area is, can run from makai to mauka, like depending on what and can be more than one. And you know down that side, they get burials, the cones, yeah.

Mr. Shibuya: Yeah, I know.

Mr. Kamaunu: So how many of those are ...(inaudible)...

Mr. Shibuya: Okay, mahalo.

Mr. Kamaunu: Yeah, thank you.

Chair Hiranaga: Any other questions, Commissioners? Last testifier that signed up for this time is Lucienne deNaie. Give it to staff.

Ms. Lucienne deNaie: Each one has two sheets, there's a map and a, and a little testimony so just take two sheets and pass them on.

Chair Hiranaga: Please proceed.

Ms. Lucienne deNaie: Thank you. My name is Lucienne deNaie and happy to be here to testify on three items today. First, the Alii Lavender Farm, testify in support of this fine business that's really trying to do a good thing in our community and has reached out in so many ways to try to do things the right way. So I join the chorus of those who ask you to look favorably upon their permit needs here today.

And then onto Items 1 and 2, the Ke Kani Kai Subdivision, two-lot subdivision and the neighboring Iwa Ike, four-lot subdivision. As it was brought out by Commissioner Shibuya, these are a part of a greater whole. And part of what I was trying to illustrate by the little map I'm passing out is that these two parcels as well as the original Kaufman Subdivision next door to the north where the heiau is located as well as the cultural center that is further north on Parcel 123 as well as the chief's house that's further north on Parcel 115 are all part of an original land grant to a gentleman named Kenui and I'm sure they existed way before his time. As I point out in the background information here, he was a pretty important person and he was one of the founders of Keawalai Church, one of the original donors there and there was probably a reason he claimed this land. Mr. Kimo Alo who works at the cultural center there with Uncle Les guys and who is a kamaaina to Makena shared with me that this was like all a whole complex and it related to the fish pond which now is just on the State property but in earlier times actually extended across what we know today as Makena Road. And Mr. Alo theorized that the actual access way along this way was further mauka. He pointed out that the old trail which is shown on old maps and that's the map that I gave you. This is not a very old map, it's a 1972 Makena Resort Cultural Survey Map and all these little scratches are different cultural sites that were found even though they weren't on resort property,



the archaeologist didn't know where the boundaries were so he just went and went everywhere. You can see that, that green line or blue line is a trail and it relates to these sites. It goes around them and it goes through the two subject properties and my point is, you know, Mr. Kamaunu is right, it's like there are things that went on here before that connect with people and it's important just to recognize these in the conditions that we place on this land. Now the MECO right of way will be preserved because it's MECO's now but I think it needs to be recognized that it, it had another life long before electricity was ever here. Also, the walls that Kaniloa referred to, they're being dismissed.

Chair Hiranaga: Please, please conclude your comments.

Ms. deNaie: May I just, thank you. They're being dismissed but may have a greater purpose than was acknowledged by SHPD and the landowner. So please consider these things and please consider the conditions you already worked so hard on because you had some good conditions for this. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Thanks, Lucienne. Just a clarification when you started off, you referred to a cultural center on the map?

Ms. deNaie: Yes. There is a cultural center. It's Parcel 123 and it was part of the settlement with Makena Resort in 1987 that it's a cultural center. The organization is called, Heaho'ohonuaua and Mr. Alo is involved with it, Dana Hall is involved with, Les Kuloloio is involved with it.

Ms. Wakida: Is that marked on our map?

Ms. deNaie: It's one, it's Parcel 123, it's next door to the chief's house.

Ms. Wakida: Oh, I got – I see it. And the cultural center is, you said –

Ms. deNaie: Yeah, it's, it's operating as a cultural center. It was kind of a trade off for developing the Seibu Makena Prince Resort.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Hi, Lucienne, thank you for coming. You just sort of concluded with saying keep the conditions that we have. Does that mean you're satisfied with it the way it is or do you want conditions, additional conditions put on or?

Ms. deNaie: Well, this, this, thank you for asking that. This Commission did a very good job of developing from community concerns and their own concerns especially Commissioner Hiranaga and Commissioner Hedani and Commissioner Mardfin, some of you folks weren't on the Commission at that time. And those are in the exhibits, Exhibit 1 and Exhibit E and all those should be moved forward and recommended to the Council because the Council wasn't very complete

aware of those because the Commission especially on the Iwa Ike parcel did not recommend for the boundary amendment to Urban so, their conditions were sort of overlooked. But in addition, in your handout you'll see, I'm suggesting five things. One involves the Wiliwili trees which are a remarkable feature there and are very healthy and they are on Parcel 118 and the other is to continue to support a full SMA review which I think Commissioner Hiranaga spoke to very brilliantly last time and it's really needed. There's a lot of unresolved things here that could be taken care of through SMA conditions as well as conditions on a boundary amendment. A boundary amendment can have conditions. And it should be noted that SHPD is requiring although they do not require preservation of anything on Parcel 118, the Iwa Ike lot, they are requiring monitoring and so that should be made clear that monitoring would be required. I'm sure Mr. Kaufman would, he's been very good about complying in the past and I'm sure he would be complying with that, but I personally would like to see you go a step further. Two sites were preserved on 118, but the dry stacked walls were dismissed as less than 40 years. I don't think that that is provable, it's not in a AIS to that effect and if there's a way of incorporating them into the landscaping, they probably connect to other walls on the neighboring property. So Mr. Shibuya wanted to see the dots connected. If you saw a map, I tried to put one together but it's kind of hard. But, but someone should and that should be one of the things that you folks request.

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

Mr. Lay: Good morning, Lucienne.

Ms. deNaie: Good morning.

Mr. Lay: This is concerning the Wiliwili tree.

Ms. deNaie: Yes.

Mr. Lay: We know that there's been a lot of devastation because of that wasp larvae that eating away at the plants inside.

Ms. deNaie: Right.

Mr. Lay: I'm wondering if these trees that are down in this Makena region are they, are they all right? Are they getting better or what are their, I guess, their condition right now?

Ms. deNaie: Yes, Mr. Kanahale I believe gave you kind of a more definitive update on them because he recently inspected them, but they appear to be alive. They put out leaves during the last season and he observed seeds as well. And there's a small grove of about 25 trees but that's a lot because they're a rare tree and they're ideal for the landscape because they're completely drought tolerant so they're not using a lot of water.

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

Mr. Shibuya: Thank you very much Lucienne. Appreciate your helping connect the dots for all of us and I'm looking forward to hopefully the Maui County Council will also take a look at what the GPAC, the General Plan Advisory Committee did in terms of identifying it and you were a integral

part of that.

Ms. deNaie: Thank you. I think if you folks just work on the conditions you've already worked so on and send them forward this will be a good project. I'm really happy to see that it's Rural not Ag. I'm in complete support of, you know, taking this action with the proper conditions and, and appreciate the cooperation of the Kaufmans.

Mr. Shibuya: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Next testifier, Claire Apana.

Ms. Claire Apana: Good morning, Commissioners. I am going to read part of Daniel Kanahele's transcript that you already have. Just to be sure that you have in your mind some of the important observations and recommendations that he has given and before that I'd just like to give my own two cents and that is, this is a place that I also grew up with. We camped there often during the summer time and when I look at intention here, if I was able to buy a lot across the street from Oneloa Beach I would be happy with that and I would preserve it in the way that I had bought it and I'm just looking at what's going on here and the intention is different. They subdivided already, couldn't they have saved one for their own family? Anyway, I just fear for the changing of the original intention of those house lots.

Okay, from Mr. Kanahele. "The ahupua`a of Mo`olua is a wahi pana. People who live or own lands that are wahi pana have a sacred kuleana or moral obligation to malama its natural, cultural and historical resources. The standards for right or proper conduct on the aina should be much higher. To whom much is given, much is required. Ua mau ke ea o ka aina i ka pono. The life of the land is perpetuated in righteousness or right conduct. I hope the Maui Planning Commission will hold the applicants who are seeking the privilege of developing these wahi pana lands to the highest standards and require much in return for any land use entitlements you recommend as an advisory commission. I hope someone on the Commission will address by concerns at the 10/25/11 Maui Planning Commission meeting as I will not be able to attend due to work commitments."

"These two parcels are located in an area that is extremely sensitive environmentally, culturally and historically. The Mo`olua ahupua`a of the Makena area. The Commission may propose conditions to insure that the applicants mitigate any impacts or the Commission may recommend denial of the bill if they deem that the applicants cannot adequately mitigate the impacts."

Ms. Takayama-Corden: Three minutes.

Chair Hiranaga: Please conclude your comments?

Ms. Apana: Okay, I have, I have – may I just list his questions? What impacts –

Chair Hiranaga: Please, conclude. We have his written statement Clare, so if you have any closing remarks please state them now.

Ms. Apana: He wants to ask a question of Mr. Kaufman of the two dry land rock walls, he wants

to ask the Wiliwili trees be maps for preservation so that you can actually tell what was there and if it's changing, he asked for the wet lands to be mapped and the cultural sites to be linked as you have said, and sorry –

Chair Hiranaga: Okay, thank you, Clare.

Ms. Apana: And then, and then the impact to the trails and if you didn't get to read it, it's very long, he does say where the trails go through these two, the historical trail goes through the two properties. Thank you very much.

Chair Hiranaga: Thank you. Questions, Commissioners? Seeing none, thank you.

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

Chair Hiranaga: Seeing none, public hearing is now closed. Have staff's recommendation. I'm sorry we'll open the floor to questions from Commissioners to the applicant or to the Department. Commissioner Ball?

Mr. Ball: Quick question about the power lines, the power poles. I got a quick question about the power poles where are they going to be moved to?

Mr. Kaufman: Underground.

Mr. Ball: It's going to stop there, underground and then come back up.

Mr. Kaufman: Yeah, it will go underground. Interesting thing I learned about underground utilities where they come up you actually need two poles and they explained it to me that they do that, they put one, 15 feet away from the other in case a car crashes into the first one. So it, it is a funny thing that you think that you're saving something by going underground but you have to remember that when come out of the ground then they actually put two poles over there. So yes, it's, it's a redundancy thing that's actually pretty wild so if you look way down from the left-hand side of the property where I live now there's two poles fairly close together with that whole area. I tell you, I was devastated when they moved those – I was happy when they moved those poles out of the archaeological site and down on the road. I was devastated because if you've been, been down there by my property where they call third entrance, those roads, those poles are literally in the road. They are a, I'm surprised people have not hit them more frequently. And so I, for the public's safety I'm very happy to get those things down and underground.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Dr. Kaufman, I'd like to say my, my memory is not as good as your perhaps but thank you for showing me that. When you did it, it started to come back vaguely to me but it looks like that was done and that, I think that's what we asked go to Council.

Mr. Kaufman: Yes.

Mr. Mardfin: So that's great. Thank you very much sir. And thank you for preserving that extra

stuff you didn't have to preserve.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, we're ready for the staff recommendation.

**b) Action**

Mr. Prutch: Okay, staff, the Department's recommending that the Commission recommend approval of the Council initiated Resolution No. 11-85 to amend the State Land Use Classification from Agricultural to Rural with the conditions contained in this resolution. And let me go ahead and go over some of the changes to the conditions now so that we have them out front and then of course you can make some additions or changes beyond that if you need to.

With a change to Condition No. 3, "that all pre development and post development surface runoff" would be the change for that one. Change to Condition No. 4 to strike completely Condition No. 4 and have it only say, "that all exterior lighting shall be down-lit or down-lighted" whichever it is. No change No. 5. Change Condition No. 6 to strike the end of the sentence so that it ends at, "four residential lots shall not be further subdivided." The rest of it will be struck. Completely eliminating Condition 7 and 8 to replace with them with the condition from Section 205-3.5 which was up on the board earlier. I don't have it to read but I will make sure that it's verbatim from that section of the HRS. And then on Condition No. 9, making the change on the forth line down where it says, "purposes" so it shall read, "or other non potable purposes, to the extent practicable," and the rest will stay the same. Condition No. 10, would be changed so that the last five or so words would be deleted so that the sentence would end on, "to minimize chemical runoff." And 6, "keep runoff on site" would be deleted. Condition No. 11 would stay as is. Condition No. 12 would stay as is.

Some of the conditions from the last one that were amended should I mention those now or should I bring that up to you guys to make those amendments and since they weren't part of our recommendation.

Ms. McLean: You covered all of them with the exception of Commissioner Shibuya's addition relating to energy conservation and alternative energy production.

Mr. Prutch: Yes. Okay so that there would be an added Condition No. 13 as it is now. I don't have it verbatim but I will find from Paul and I can find it in 269 for energy conservation renewable portfolio standards. A condition to encourage. That one can be added. And I think that was it. That's what I have in my notes.

Ms. McLean: You got it Joe.

Chair Hiranaga: Does the applicant wish to comment on the staff recommendation?

Mr. Kaufman: We can concur and accept those recommendations.

Chair Hiranaga: Thank you. Open the floor to a motion.

Mr. Mardfin: Can I ask questions first?

Chair Hiranaga: Sure.

Mr. Mardfin: Can somebody tell me, perhaps the Deputy Director? Back on that list I was reading from there was an Item No. 9, "preserve archaeological sites 6224A-E and 6225 as shown on the Iwa Ike subdivision map in situ by recording easements for historic purposes." Has that been done or is that part of this?

Mr. Prutch: No --

Ms. McLean: If you wanted that as a condition then you would need to make a motion to add it.

Mr. Mardfin: It's not part of it as it currently is?

Ms. McLean: Correct.

Mr. Mardfin: Perhaps Mr. Kaufman can answer my question?

Mr. Kaufman: It has not been done yet. However, we agreed to that and that was, that, that discussion came up in the last time I was here. I walked through then with Hinano and Jenny Pickett and Xamanek Research after that point because once you made that recommendation I wanted to make sure that it could be done. And that's why I said, when they said, you can't do it we have to order it and I said, no, but can we do it? And they said, that's highly unusual. The only thing I would ask is that based on their recommendation and my walk through and ...(inaudible)... and again, extensive looking at the sites I believe 6223 A and B are really the critical sites that preserve there and that the small little midden piles which, you know, are really questionable, I'm not trying to downplay it, but you know, I'm just repeating what they said, I don't think there's much gain by that. Now what normally happens is that when I created the preservation plan for the fishing shrine in the preservation plan and this was raised earlier by someone, by a commissioner, you identified visitation or examination opportunities. One of the real concerns is not letting people see it, it's letting people who may not be qualified or cognizant and say I want to go study that site. SHPD wants to have some control over that study. They want to know who's touching and why they're touching it. And I can just tell you from Uncle Les and Dana Hall and Uncle Charlie who were at the Burial Council at that time, their recommendation was let people look at that shrine but let no one touch it. It should be left there and deterred. Because I asked them should we rebuild these sites, should we make it nice and their answer is no. They are what they are, let them sit in situ, as they are. So I am agreeable to that condition but I would ask that really that the important of 6223 A and B are probably the ones that would really benefit most from that condition.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: This is a question for, well maybe Mr. Prutch can answer it, but has OHA been consulted since '08. There's a letter here dated '08.

Mr. Prutch: No, not since, no.

Ms. Wakida: And about their opinion?

Mr. Prutch: Not, not this last time around, no.

Ms. Wakida: So we don't have any feedback from them on their?

Mr. Prutch: From the staff report in 2008?

Mr. Kaufman: OHA at the time of their letter that they wrote, we had not conducted a CIA and not had been completed. They recommended a CIA be done and at the time when they made their comments they had not seen the archaeological survey and they did not know it existed and that's why Mr. Mardfin said, there was problems with the Planning Commission the last time because there was no confidence that they had seen that. As I showed in my slide there, they were given a copy of the AIS in '09 and I followed up with them with two more letters. I called them as well and they said they made their initial comments to have the AIS – the CIA, Cultural Impact Assessment done. We did that and since they are only a recommending body and not the receiving body their comments stood to that point. Since we conducted it based at their recommendation and to the extent that they asked for there would be no further comments. They have been solicited three times since 2008 including giving them a final, a draft and a final report. It's actually four times they've been in the loop and there has not be any further correspondence.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: So we don't have in front of us anything from OHA or any other, any other study that tells us what sites they recommend should be preserved?

Mr. Kaufman: They never offered, the Cultural Impact Assessment is different than the archaeological survey. They reviewed the archaeological survey and had no comment on any preservation. Their issue was more preserving traditional uses of the surrounding area and access et cetera. What their review and acceptance – their review of the archaeological inventory survey is not in their purview and they had no comments on it. SHPD would be the body that would review and receive it.

Ms. Wakida: Yeah, so I, but I'm saying we don't have anything in our, in our packet here that gives us any information from any of these bodies?

Mr. Kaufman: They never comment. OHA never commented on the archaeological inventory survey at all.

Chair Hiranaga: Any other questions, Commissioners? Floor is open for a motion? Commissioner Shibuya?

Mr. Shibuya: Unless anybody else wants to make the motion, I move to recommend approval of the Council, to the Council initiated Resolution to amend the State Land Use Classification from Agriculture to Rural with the conditions as stated.

Mr. Freitas: Second.

Chair Hiranaga: With the Department's recommendations as stated.

Mr. Shibuya: Department's recommendations.

Chair Hiranaga: Second by Commissioner Freitas. Any discussion on the motion?  
Commissioner Mardfin?

Mr. Mardfin: Can we go back to that map, the archaeological map? I want to make sure I understand 6223 A and B, I think those are the two walls weren't they? And 224 A through E and 225?

Mr. Kaufman: ...(inaudible - not speaking in a microphone)...

Chair Hiranaga: If you're going to speak you need to use the microphone.

Mr. Kaufman: Okay, 6224 A through E it is, these are small little piles here and then 6225 was scattered over in that area where they found a coral abrader.

Mr. Mardfin: Thank you very much. Can I move to amend?

Chair Hiranaga: You may.

Mr. Mardfin: I move we add the condition and I hope the applicant will bear with me and correct me if I say something wrong, preserve the archaeological sites 6223 A and B as shown on the Iwa Ike subdivision map in situ by recording easement for historic preservation purposes. If that's acceptable to the?

Chair Hiranaga: Well, we need a second first.

Ms. Wakida: I second it.

Chair Hiranaga: Seconded by Commissioner Wakida.

Mr. Kaufman: That's acceptable.

Chair Hiranaga: Who is going to make the easements in favor of since SHPD may not want them?

Mr. Mardfin: Let's force it on them. Let's try SHPD.

Chair Hiranaga: How about County of Maui?

Mr. Kaufman: Can I offer maybe different language? I would say that the applicant prepare a preservation plan and a easement and submit to SHPD for acceptance.

Mr. Mardfin: That's an acceptable friendly amendment.

Mr. Kaufman: Because that's the process.

Chair Hiranaga: Acceptable to the seconder?



Ms. Wakida: Yes.

Chair Hiranaga: Any more discussion on the amendment? Seeing none, if the Deputy could repeat the amendment, proposed amendment?

Ms. McLean: That the applicant shall prepare an archaeological preservation plan and easement for archaeological site 6223 A and B as shown on the Iwa Ike subdivision map for review and approval by the State Historic Preservation Division.

Chair Hiranaga: But it does not mandate SHPD to review or approve it. Any discussion on the amendment? Seeing none call for the vote. All in favor, please raise your hand.

Ms. McLean: Seven ayes.

Chair Hiranaga: Motion carries.

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

**VOTED: To Add the Following Condition: "That the Applicant Shall Prepare an Archaeological Preservation Plan and Easement for Archaeological Site 6223 A and B as Shown on the Iwa Ike Subdivision Map for Review and Approval by the State Historic Preservation Division."  
(Assenting - W. Mardfin, P. Wakida, D. Domingo, J. Freitas, I. Lay,  
K. Ball, W. Shibuya)  
(Excused - L. Sablas)**

Chair Hiranaga: Any more discussion on the main motion? Commissioner Mardfin?

Mr. Mardfin: I have a question for the applicant? Dr. Kaufman, I kind of understood what Pine State is doing. What are your ultimate plans for this?

Mr. Kaufman: The property is owned by four Maui residents. So I own one-fourth of the property. So as where I live right now all people there is a doctor, a lawyer, a entrepreneur and myself, scientists, we're all residents. All of them have been residents of Maui for at least 20 years. The folks that will be living at this subdivision eventually which will be many years down the road still are all current Maui residents and will live, will simply move, relocate from where they are to down there. So what I will be doing is ultimately building that green dream home that I told you about and so I will eventually move over. Uniquely, where I'll be living is directly straight across from where I am right now. Sort of on the other side of Lot 4. So the move, move won't be big for me which would eventually mean selling the parcel that I'm at right now and that's really the plans there. And I, and I think that if you've ever been down there and I'll just share this story with you, one day I walked down to the end of my street and a gentleman asked me if I lived in that house? And I said, yes. And he said, wow, has it been in your family for over a hundred years and that was the greatest compliment I ever got that that people felt when they saw what we did there that it had been there for a long, long time and that's what we hope to achieve as well only better this time and greener.

Mr. Mardfin: And so basically you'll each put up a single-family dwelling?

Mr. Kaufman: Correct.

Mr. Mardfin: That's it?

Mr. Kaufman: Yeah. I don't have an ohana now and that's why I realized ... in the subdivision we had two families build ohanas and two did not and I realized going forward, it's really not necessary down in that area and that's why we, we asked not to have. I know you guys recommended it the last time I was here and actually put in a minimum limit, but when I got to the County Council, I asked to take that out. I hope you was not offended by that but was sort of something you did recommend but I asked them to remove.

Mr. Mardfin: Less dense is always better than more dense.

Chair Hiranaga: Any more discussion on the main motion? Seeing none, I'll call for the vote. All in favor please raise your hand.

Ms. McLean: Seven ayes.

Chair Hiranaga: Motion carries.

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

**VOTED: To Recommend Approval of Council Resolution No. 11-85 to Amend the State Land Use District Classification from Agricultural District to Rural District Per the Department's Recommendation and Conditions. (Assenting - W. Shibuya, J. Freitas, D. Domingo, I. Lay, K. Ball, P. Wakida, W. Mardfin) (Excused - L. Sablas)**

Chair Hiranaga: We'll take a ten minute recess.

A recess was called at 2:15 p.m., and the meeting was reconvened at 2:25 p.m.

Chair Hiranaga: Deputy Director, Item B-3?

Ms. McLean: Thank you, Chair. This is the third and final public hearing item that you have today. A request from Alii Kula Lavender Farm requesting a State Land Use Commission Special Use Permit to conduct agricultural tourism on an existing working farm and that would include a gift shop, agricultural classes, workshops, tea parties, wedding ceremonies and catered receptions in the State Agricultural District on Waipoli Road in Kula. Livit Callentine is the staff planner.

**3. MS. LANI WEIGERT of ALII KULA LAVENDER FARM requesting a State Land Use Commission Special Use Permit in order to conduct agricultural tourism activities on an existing working farm including a gift shop, agriculturally-related classes and workshops, tea parties, wedding ceremonies and catered receptions in the State Agricultural District at 1100 Waipoli Road, TMK: 2-2-006: 108 and 109 (por. ), Kula, Island of Maui. (SUP2 2009/0011) (L. Callentine)**

Ms. Livit Callentine: Good afternoon, Commissioners. And I'll try to make this brief. As the Director said you are reviewing a Land Use Commission Special Use Permit for agricultural tourism at the existing Alii Kula Lavender Farm. This property is located about 1100 Waipoli Road in Kula and it straddles to tax map key parcels 2-2-0 – 2-2-6: 108 and a portion of parcel 9. You're reviewing this request because agricultural tourism is not permitted under the standards for the Agricultural District established by Section 19.30A of the Maui County Code. Agricultural tourism is, however, permitted in the State Agricultural District under Hawaii Revised Statutes 205-2D11 and 205-4.5A13 and I wanted to point out this morning we received five letters in support and one letter with concern and we also heard from five testifiers in support of the project and no opposition. Now the applicant's consultant, Chris Hart and Partners would like to make a, about a ten-minute presentation to illustrate the project and answer any questions that you may have.

Mr. Chris Hart: Mr. Chair, thank you very much. My name is Chris Hart of Chris Hart and Partners and I'm going to be sharing this with Raymond Cabebe of our office who has been the planner on this project. This is the Alii Kula Lavender Farm and we're asking for land use request, State Land Use Commission Special Use Permit for agricultural tourism uses pursuant to Chapter 205 which is the State Land Use Law, Paragraph 6A, the County Planning Commission may permit certain unusual and reasonable uses within Agricultural and Rural Districts other than those for which the district is classified. Our presentation outline first would be the introduction, our team, project overview, land use, existing site, infrastructure, agricultural analysis, and then our conclusion.

Our team, Lani Weigert and Koa Chang. Also, we have Ed Tremper, who is a partner of Alii Chang and all of you know that Alii, we just experienced an untimely passing of Alii Chang. This is the staff of the Alii Kula Lavender Farm and they're the applicant. Lani is the mentor and Koa is the son of Alii Chang. So we have a passing a generation to Koa and to Lani and we're very excited about that because obviously gave his heart and soul to this. You know, it's very, very important as an example of the potential of agricultural tourism here on Maui and in the State of Hawaii. Our firm, my name is Chris Hart and Raymond Cabebe have actually worked on this project. Stacy Otomo is our engineering consultant as the civil engineer. And at this point I'm going to turn it over to Raymond to take you through the rest of the presentation.

Mr. Raymond Cabebe: Good afternoon, Commissioners. Good afternoon, Chair Hiranaga. Okay, the existing Alii Kula Lavender Farm was established in 2002. Alii Chang originally purchased the property in 1992 and it was a protea farm. Currently, they're in cultivation of 45 varieties of lavender. Alii chose lavender because it's drought tolerant and it's pest resistant, requires full sun, doesn't require any kind of irrigation. It takes moisture from the air. They currently have about 55,000 plants on the property. All of the culinary and most of aroma therapy products are made with Maui grown lavender. And raw lavender is also sold to restaurant and florist on the island.

The also have other plants, protea, of course, mamake tea, olive trees, herbs and other, other

assorted flowers. They also have the Hawaiian garden onsite with 14 species. They're developing an apiary. I think initially the plan was to produce lavender honey and they're looking at having like about 50 hives. They have three hives currently and because of land issues, they don't have enough space, I think they're going to limit to about eight hives. They also walking tours. They have five tours each day. And all of these uses are allowable uses within the Agricultural District. Some of the agricultural tourism uses that they have there are the gift shop. I think in, let's see, your Exhibit 9, there's a list of what kind of items that they have at the gift shop. Agricultural related classes and workshops. Wedding ceremonies. They have approximately – on the average about five ceremonies per year. Catered receptions, special events, they have seasonal and holiday events that they hold there. This past July had the Aloha Fest which was in honor of Alii Chang. And of course, you have to have parking to support all of these uses.

Some of these, the community benefit, benefits are we provide 17 full-time jobs to the community and as the agricultural tourism term implies it provides a link between agriculture and the visitor industry. The farm also introduces a sustainable agricultural model that can be emulated and replicated by other farms in order to keep agriculture alive on Maui.

The project is located on the western slope of Haleakala. You can see ...(inaudible)... Waipoli Road comes up here from Kula Highway. This is Kekaulike Avenue running down here. Rice Park is right here and as you come up to Waipoli Road as it turns into a switchback that's where the farm is located.

The parcel 108 is about little over three acres and the farm leases about ten and a half acres from Kaonoulu Ranch on parcel 9 which, it's about 800 acres, yeah, and their lease ends in 2013. The farm has the option to renew their lease for another five years that will take it to 2018.

This aerial map shows the uses in the area. As you can see there's, Waipoli Farm is down here and there's other agricultural farms down on, on, what is this, northwestern side. Kaonoulu Ranch owns all the property up here and all of this forested area and it's mainly used for grazing.

The community plan shows it as Agriculture. It's also State Land Use is Agricultural also. County zoning is Agricultural. This site plan shows the property, Waipoli Road coming on this side, it wraps around this side and the main entrance is around here on the east side of the property off Waipoli Road. This is Parcel 108 and this is ten and a half acres on Parcel 9.

This shows the entry into the property off Waipoli Road. As you come onto the property there's – the driveway splits. This is a, you stay to the right and you come around here and you park and this is the exit driveway to come back towards the same entry/exit way.

This is a view looking towards Haleakala towards the gazebo. This is looking from the top, top of the property and this is southeast portion of the property, you see how it slopes down from that part all the way down to Waipoli Road or the adjoining property. It's a 25 percent average slope. And this picture here is part of the leased area on the, on the north side of the property.

Okay, this site plan shows the structures on Parcel 108. There's an open parking deck here, a covered parking deck, an office here that was previously the gift shop and actually previous to that it was a flower shed and behind the office is the nursery area. The largest structure on there is the

residence next to it is a gift shop. There's a garage here and on Parcel 9 there's a storage structure here.

If you've seen the comments from the Public Works, some of these structures don't have permits, building permits. The residence of course is permitted and the office is permitted, but we're in the process of getting building permits for all of the structures. Actually the gift shop and garage are already in and we're working on plans for the rest of the structures. This is the front of the gift shop and the office building that's on the bottom here and this is the front of the residence. The residence is actually a two-story residence. Appears to be one-story because of the, the way the property slopes down, the lower level is underneath.

This is the parking plan that we've submitted to the County which was reviewed and accepted by them. There's 43 stalls that are required for the project. And the applicant intends to apply for a variance in the future to have, have these stalls gravel paved instead of asphalt paved and that's something that we can discuss with you. If we can get your support as far as, you know, getting gravel paved instead of having more, adding more pavement to an agricultural property.

Infrastructure. There, I guess, I could tell you, explain how, how the water is provided on this property. In 1983, this property was part of a three-lot subdivision. The property is actually located above the public system. So it has a elevation agreement so they can pump water up to their property, hold it in a tank and provide it, water to the property. The subdivision was processed as a family subdivision so all the improvements were deferred. So therefore, they didn't have to put meters for each property. So they currently are doing the same way they did it back then. They're pumping water up to a tank and the tank is supplying water to all three of the properties. They are number 1270 on the upcountry list so when their number comes up they intend to get their own meter and to supply water to their property. Wastewater disposal is provided by they have onsite septic tanks and fire protection the Fire Department recommended that they have sprinklers in their structures because obviously they don't have a water system up there to provide fire protection with hydrants or anything like that.

HRS 205 defines what a, defines the uses in a Agricultural District. In Paragraph 5D it talks about agricultural tourism uses and it says that each County shall adopt ordinances setting forth procedures and requirements. Obviously, Maui County has not done that. The only county that has done it in the State of Hawaii is the Big Island and so that's why we're coming before you for a Special Land Use Commission Special Use Permit. And the Land Study Bureau Map which is provided by the University of Hawaii rates this land as C and D. That's on a scale of A to E. A being the best land. So it has like average to below average rating for LSB. The ALISH map which is a Agricultural Lands of Importance to the State of Hawaii this rating rates it as other important agricultural land. It's not prime or unique and that means that this land lacks desirable qualities such as slope flooding, seasonal wetness and erosion. It fair for food crops and best uses are for foraging and for grazing.

In context of the Special Permit, the Planning Commission has to determine whether the uses qualify as unusual and reasonable and these are some of the guidelines or these are the guidelines that you have to look at. These shall not be contrary to the objectives sought by, sought to be accomplished by Chapter 205 and 205A HRS and the Rules of the Commission. Aloha – Alii Kula Lavender is a, is a farming operation as defined by the State. And it's the agricultural

tourism uses that we are requesting permit for are accessory to his primary agricultural use.

The desired use should not be adversely, to not adversely affect surrounding properties. The activities are kept low-key so as to keep that agricultural ambience of the site. Some of the ways they do that is like, you know, limiting the number of weddings that they do there, keeping the number of participants in the wedding to a hundred or less, they don't allow buses to come up there onto the property to bring customers up there. Those are just some of the things that they do.

The next criteria is such use would not be unreasonably burden – would not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage and school improvements and police and fire protection. The farm will construct all improvements that are required by the government agencies and there are no unreasonable burdens to public agencies.

You know, since the when the State, State Land Use Law was enacted in 1961, agriculture was a major industry in the State of Hawaii and since then, you know, with the closures of the major plantations such as Maui Pine, Pioneer, the downsizing of HC&S and they're selling off of their lands, agriculture is no longer a big industry in Hawaii. And so the farmers have had to be creative and resourceful in order to survive.

And the last criteria that you have to look is whether the land is unsuited for the uses permitted within the district. As I have shown on the agriculture maps the land is average to below average and it's not prime land so it lends itself to these uses that are not, you know, primarily agriculture.

Now in conclusion, the requested special uses meet the criteria of unusual and reasonable uses. The requested special uses are not anticipated to result in significant environmental impacts and shouldn't significantly impact public infrastructure and services and we don't believe it impacts the visual character of the site and its immediate environs. You know, this is a existing farm and they're requesting the special permit in order to legitimize their operation. So you know, in conclusion we humbly ask for your consideration and respectfully ask for your approval of a State Land Use Commission Special Permit for the agricultural tourism uses on the farm. Thank you.

Chair Hiranaga: Does the Department have a analysis of the application? Not the recommendation, but an analysis?

Ms. Callentine: Thank you, Mr. Chair, and also I would like to point out that this morning the Planning Department was advised that although you'll see on the front of your report that the applicant is listed as Kapiolani Wiegert or Weigert, I'm, I'm sorry not sure on the pronunciation but that Forest Koa Chang has been added as a co-applicant just for the record. And the Department recommendation of course we've presented in our report, but I would like to say that based on the testimony and the concerns expressed this morning and the findings of fact –

Chair Hiranaga: We're not doing a recommendation. I was asking –

Ms. Callentine: Yeah, I understand. You're asking for our analysis.

Chair Hiranaga: Yeah, because we still have to have the public hearing.

Ms. Callentine: Sure, and I wasn't going to actually go through the recommendation. But to say that the Department does find that the proposed project complies with applicable standards and I won't repeat those that were just laid out to you, but that is part of the Department's finding of fact as well. So I don't have anything additional to add to that.

Chair Hiranaga: All right, thank you. I'll open the public hearing at this time. Is there anyone here that wishes to testify regarding this agenda item?

**a) Public Hearing**

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

Mr. Sam Davis: Good morning. My name is Sam Davis. I'm adjacent to the, the lavender farm up in Kula who's applying for a permit. I have lived on Waipoli Road since 1980. I'm the one in the beginning who actually planted that whole 12 acres with protea. When the lavender farm started years ago it was quiet up there but not anymore, but then again, that's progress and the economy with tourists helps everybody you know.

Myself, my wife, son, daughter have constantly told people that this is not the lavender farm as they stood in my yard, parked at my house, blocked my driveway. Many occasions they went walking up to the lavender farm, telling me if they can park because their car can't make it up. Several occasions parked in my garage eating lunch and they still wouldn't move when I told them, you know, you can't park here. My lawyer did tell me that any tourist or invited guests that got hurt my property we're totally responsible and this was mentioned to Alii Chang on many occasions. And, you know, we had put up no trespassing signs, keep out signs all over our property. I came to the conclusion, tourist cannot read. If the lavender farm is to stay, we want maybe like employees/tourists to enter and exit from the top entrance. The gate at the top closes at 4:00, but gift shop stays open till 5:00, so they're exiting down our driveway which three of us own.

If I went turning into my driveway off of Waipoli Road tourists are coming down, I have to back to Waipoli Road or I give them the hand signal to like kind of stop so I can get into my driveway. And besides being not able to read, I guess they don't know what hand signals are also. The cattle guard, cattle guard, right there the driveway has been a constant battle. I mean, noise like you just drop a pot in your kitchen every morning constantly so that's what, that's what's happening.

My neighbors have grandchildren that run about the place. This is another issue to enter the top. The kids are there every weekend and holidays and the no school days. Two weeks before Alii Chang passed on, he put up a fence that separates my property from his. My son and I was already in the process of putting in corner posts --

Ms. Takayama-Corden: Three minutes.

Chair Hiranaga: Sir, can you conclude your comments please?

Mr. Davis: I guess just sitting in front of my porch constantly in the past and people walking past me like every place was the lavender farm is my issue. But ever since the fence's been put up it's been, it's been a big help and I like these people. I've, I've known these guys for a long, Koa from

small kid time and I'm sure if him and I work together, work closely we can fix the problem.

Chair Hiranaga: Questions for the testifier? Commissioner Freitas?

Mr. Freitas: You said three people own the driveway. Is the lavender farm one of the owner?

Mr. Davis: Yes, sir.

Mr. Freitas: Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I didn't get your name. Can you tell me your name?

Mr. Davis: Samuel Davis.

Mr. Shibuya: Samuel Davis. Okay, Samuel, you're the house right by the cattle guard

Mr. Davis: Yes, sir.

Mr. Shibuya: Who owns that cattle guard?

Mr. Davis: It's Rice, Ka Ono Ulu Ranch.

Mr. Shibuya: Ka Ono Ulu Ranch. And the road that passes that cattle guard is the ranch's or is that the forest reserve?

Mr. Davis: It's cattle ranch and State from what I understand.

Mr. Shibuya: And so do you know who has responsibility for that short road from the cattle guard all the way up to the Alii Farm entrance?

Mr. Davis: I'm not sure. I've seen Sonny Vick's Paving redo the road. I've seen other companies do the road and Department of Land and Natural Resources came by month and a half, two months ago and did some welding on the cattle guard because it was springing up and down but they didn't do a very good job.

Mr. Shibuya: Yes. And you were going to say something else and you ran out of time. What did you want to say?

Mr. Davis: I think so much traffic on that road now. You got mountain bikers, you got hang gliders, you got parachute guys, you got remote control guys on air planes, you got hunting season now, you got people who come up and picnic. The road is bumpy, trees are encroaching on both sides and every time you come up, somebody has to go somewhere and then you got people coming down and they don't care, 20, 30, 40 miles an hour they're just blasting. And I passed at least 20 plus bikers the other night at dark, the mountain bikers. You know, I go slow, my wife go slow, and I usually, we're always courteous, you know, to whoever's coming down



Mr. Shibuya: Thank you.

Chair Hiranaga: Any other questions? Commissioner Mardfin?

Mr. Mardfin: Mr. Davis, I understand your concern living next to a fairly busy business. Short of saying you've got to shut down totally, what do you think we could do to help make your problems easier?

Mr. Davis: I think for now, even the neighbor, there's me, the lavender farm, William Neal. William, he has to pass everybody to go to his house. He couldn't make it today. And tourists don't move off of the driveway when you pull in. I just think entering from the top gate would be a really, really big help because right now the use of our cement driveway eventually we're gonna have to, you know, have it repaired.

Mr. Mardfin: I've been up there once a couple of years ago. Is it feasible to have them enter from the top gate?

Mr. Davis: As early as they come, yes. I think also that road has to be repaired because both sides –

Mr. Mardfin: Is it a private road or a County road?

Mr. Davis: It goes, right up, right up, right before the cattle guard is County and then after that State because it goes all the way up to the State Park. And both sides of the road, I would – I think has to be addressed, but I don't know who's gonna –

Mr. Mardfin: Would signage help?

Mr. Davis: Pardon me?

Mr. Mardfin: Would signage help? No parking here sort of thing?

Mr. Davis: Yeah, I would – I think parking up above is the way to go and the sign at the entrance to our driveway, all of our driveway has to be turned in because they stop too many times where the sign is addressing keep them not going forward because it says no deliveries, you know, I mean, deliveries only, so that has to be addressed. Just – because when you come up you don't want to go straight ahead, your first impulse is to turn up the driveway.

Mr. Mardfin: Thank you.

Mr. Davis: You're welcome.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Okay, addressing the parking issue again. Is the parking adequate for the lavender farm on the top for all the cars that come in?

Mr. Davis: Yes.

Mr. Lay: So it would be like you said, just addressing, letting them know where to park?

Mr. Davis: Yes.

Mr. Lay: And you said the fence did help with preventing people from walking through your properties, right?

Mr. Davis: Yes. After ten or so years. It should have been done sooner.

Mr. Lay: And you were saying that the souvenir shop closes after the, I guess the gate closes first and the souvenir shop is left open?

Mr. Davis: Yes, sir.

Mr. Lay: So you're saying if they left the gate open till the shops close would be a better –

Mr. Davis: Yes.

Mr. Lay: Would work out better.

Mr. Davis: Then they can exit out the same way. I mean, people still come in, I mean, you know. There's the fence and they did put up a big sign that says enter the lavender farm when you're coming from the top down.

Mr. Lay: Okay, thank you.

Mr. Davis: So my family and I are always courteous to invited guests. My wife's getting kinda nuts, but --

Mr. Ball: Aren't they all?

Chair Hiranaga: Commissioner Ball, did you have something to say?

Mr. Davis: But she's home a little bit longer in the morning than I am that's why.

Chair Hiranaga: Any other questions, Commissioners?

Mr. Ball: I have a question.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Mr. Davis, is your property on the bottom? I'm looking at this, is that your property right there, below that?

Mr. Davis: Yes.

Mr. Ball: And so this driveway that is right in the front here that's the road that's shared all the way down and then I see a little driveway of yours I guess?

Mr. Davis: Yes.

Mr. Ball: Kind of coming off that ...(inaudible)...

Chair Hiranaga: Any other – oh, sorry.

Mr. Ball: Is it fenced? You said they put new fencing. Is that fence in your frontage or just along the boundary of your property?

Mr. Davis: The fence is above my property so from pin to pin and it comes down maybe 20 feet.

Mr. Ball: Down towards your property?

Mr. Davis: Towards my property, yes. And the sign is to the top left right there.

Chair Hiranaga: Any other questions, Commissioners? I have a suggestion that you meet with the County Planner and the applicant now and try to work up some conditions that might be agreeable to you before their application comes on the agenda because we do have some time if you so do feel like doing it.

Mr. Davis: Okay, where would I go for that?

Chair Hiranaga: Right there, Livit.

Mr. Davis: Okay.

Chair Hiranaga: All right, thank you.

Mr. Davis: Right on. Thank you for your time.

Chair Hiranaga: Next individual is Joni Remington, Remington.

Ms. Joni Remington: Good morning to the Maui Planning Commission and to all those concerned. My name is Joni Remington and I am an Administrative Multi-Task Assistant in the Accounting Department at Alii Kula Lavender. I have been gratefully employed with the company since December 2003 to present.

It is a privilege for me to briefly share with all of you how working at Alii Kula Lavender has enhanced and enriched my life. It was the turning point in my life on December 2003 when I had the greatest opportunity to meet Lani Weigert and Mr. Alii Chang, co-owners of Alii Kula Lavender. They have both touched and changed my life forever. Helping me believe in myself that I can accomplish anything and that nothing is impossible. Their love and their can-do attitude helped me personally in more ways that you can ever imagine. Their constant enthusiasm, passion and living the spirit of aloha to provide the ultimate service to their local, mainland and international guests

made me realize that was fortunate to be a part of this unique locally-owned business.

Their customer service is unbeatable and I am proud to say that. It is all about the service to others, educating ag tourism, enriching their lives and their well being with the unforgettable lavender experience. In order to achieve of quality of service, Lani and Alii not only inspired me with their teaching but also provided all the employees with continuous training, moral and financial support throughout the years.

Mr. Alii Chang was a great inspirational landscaping artist who passionately created these unique beautiful gardens by incorporating our five senses to the local, mainland, international guests, and employees to enjoy. A sense of place that touches all of us in a very special way. We have had many repeat guests that return to AKL to see how the gardens is constantly evolving just like all of us who are constantly growing and changing with the times. Mr. Alii Chang graciously passed away on April 13, 2011. He is no longer with us physically but is here with us in spirit. His passion and the beauty of the gardens continue to be nurtured and perfected by his trusted ground stewards Harrison and Joey. I have also been very blessed to work with the finest 14 individuals who happen to be my fellow co-workers. Their love and dedication show their 110 percent commitment to make AKL a success. I am so proud to be a part of this AKL team. Alii's son, Koa Chang, who is our General Manager –

Ms. Takayama-Corden: Three minutes.

Ms. Remington: – also joined the AKL team by in May 2001.

Chair Hiranaga: Please conclude your comments?

Ms. Remington: Okay. To complete it, continue?

Chair Hiranaga: Go ahead and conclude your comments.

Ms. Remington: Okay, I just wanted to say that, yes, my life has been enhanced and enriched by all the positive changes working on Alii Kula Lavender and then with power of the old ways and the new generation of intellectual successors to carry on Mr. Alii Chang's legacy people who get it will make things happen. Thank you to the Maui Commission for your valuable time.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you very much for testifying Ms. Remington. I agree with you. It has a nice ambience and environment there and a sense of place. It has spectacular views and outstanding climate. I do want to ask about the parking, employees parking. You mentioned there is 14 other co-workers.

Ms. Remington: Yes.

Mr. Shibuya: Where do you park?

Ms. Remington: We actually on the property itself. There is ample parking at the lavender farm and

so we have some that park closer, you know, the production department, some by the office and then some park in the upper fields.

Mr. Shibuya: And the interesting thing is that when the tourist and visitors, I've been up there, they see that and they don't follow the signs. They see the cars parked in there so they think they can park there too.

Ms. Remington: Yes, I think that's probably true.

Mr. Shibuya: Okay, so –

Ms. Remington: Signage probably.

Mr. Shibuya: That might be something that you can mention.

Ms. Remington: Okay.

Mr. Shibuya: Okay, thank you.

Ms. Remington: Thank you very much.

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

Ms. Remington: Thank you.

Chair Hiranaga: Next individual is Chubby Vicens.

Mr. Mercer "Chubby" Vicens: Good morning, Chairman, Hiranaga, Members of the Planning Commission. My name is Mercer "Chubby" Vicens and I'm speaking as an individual today on the behalf of the SUP for the Alii Kula Lavender Farm. I had the privilege about six weeks ago by request to take State Senators Pohai Ryan, Senator Galuteria, and Representatives of Maui, our West Maui Representative Angus McKelvey up to the farm and to other ag-related projects. And I, I was amazed what they've done to the area because I remember when they first started. My daughter Darlene, a friend Easter Estevez, and Alii were the original three that had the dream of what is known today as the Alii Kula Lavender Farm. Things didn't work out for all three of them but Alii could take it on. And what I saw up there when I went there just blew, blew me away.

I mean, you spoke of parking, there's ample parking and it's my understanding that the adjacent neighbor is willing to give them additional land if they, if they want it. They've so far said no because they can, they can deal with what they've got now. So parking was, was addressed. I thought there the, there was many tourists while we were there and it's amazing because I missed the road two times and the tourist find it. It's just absolutely amazing how they can find this place, but I guess the tourist have the nose to, to go where they want to go when they want to go. So, but I am here to tell you that it is exactly the kind of ag tourism that we need, we need to have on this island and under Lani's stewardship and bringing in young Koa, who I knew out at Mama's Fish House, I think this is a opportunity to keep the, the operation in the family and, and when you look at the amount of people that they have working for them and you observe what they're doing there

on a daily basis, these are happy people. These are people that enjoy what they're doing. The service that they provide is, is one that I think we can be proud of as a County and I think that people look forward to things like this and I would ask you to favor them for their Special Use Permit so that they can continue doing what they do best. Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you.

Mr. Vicens: Thank you very much.

Ms. Johanna Kamaunu: Aloha, there's three things I wanted to make comment on. So the shortest one first. Sorry, I forgot, I forgot the protocol. I'm Johanna Kamaunu. I'm from Waihee and I'm testifying on behalf of myself. Item 3 on the lavender farm, I just wanted to make the comment that I visited the farm over the years and I found that they've been good stewards and just based on that information, you know, I would support their application today. I see though that it's a challenge. They'll have a significant challenge and the part of that challenge in the capacity that they're willing to hold up there. These activities will cause more traffic and, you know, more people being up there so that would be a challenge. But as I said, they've been good stewards over the years, so you know, I would support that.

Mr. Wilmont Kahaialii: Well, that's all right, I'm not going to hold your ignorance against you. Okay, so I'm here to testify first of all on the Kula lavender farm. I will admit I have been there many times, have participated in many of the activities held up there and really to their credit they're very good stewards of the land, they e kulana lako, they are very, very responsible and in the many activities that I have participated in there has been more than sufficient or ample parking and no one has gone up there wanting for anything more. As far as the application is concerned I would, I would support the application for Kula lavender farm.

Ms. Lucienne deNaie: Thank you. My name is Lucienne deNaie and happy to be here to testify on three items today. First, the Alii Lavender Farm, testify in support of this fine business that's really trying to do a good thing in our community and has reached out in so many ways to try to do things the right way. So I join the chorus of those who ask you to look favorably upon their permit needs here today.

Chair Hiranaga: Please identify yourself.

Ms. Joanna Jacintho: Joanna Jacintho. I've worked for Alii Kula Lavender for about eight years. And I just wanted to say how it benefit my, benefits my livelihood and others in our community and small businesses. It helps support the livelihood of a lot of small businesses in our community. I just think agriculture itself as a whole should be on the top of the list of everyone here as it pretty much the basis why we are alive and I think agriculture is not, not looked at as much as it should be. And I think, I think that's it for now.

Chair Hiranaga: Thank you. Questions, Commissioners? Seeing none, thank you.

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

Mr. Hiranaga: I guess, Koa Chang signed up earlier?

Mr. Koa Chang: Yes sir.

Chair Hiranaga: Please come forward and identify yourself.

Mr. Chang: Aloha, my name is Koa Chang. I am the General Manager, ...(inaudible)... As was mentioned earlier, my father was Alii. He passed away in April, and since that point I've been working back at the farm. Previously I was at Mama's Fish House ...(inaudible)... I just wanted to speak on behalf of my father and also on myself for those of you who knew my father and for those of you who didn't, he was dedicated, his whole entire life was dedicated to agriculture in Hawaii, State, probably and also more particularly in Maui. I'm very proud of my father and his accomplishments and especially the fact that he's been able to survive in times that have been difficult for agriculture in general here in Maui. What was mentioned briefly in the presentation was that there are, you know, diversions from true agriculture as we know it now, but one thing I will mention is the farms surrounding our farm now most of them are no longer actually active. Mr. Sam Davis is a long-time friend, my Uncle, ... his son was one of my best friends. He took me surfing since small kid time and it's very important that we are neighborly that we will try our very best to satisfy his concerns. For me, I think it is my responsibility and also the responsibility of my peers, my generation to continue where our parents have left off or are leaving off especially with regards to agriculture. If that may mean that we need to diverge from true growing protea and selling it which we cannot really compete any more, I mean, again, when I was kid, all the people my dad went to sell to they're not selling any more. All the distributors are not distributing. I think this is a wonderful opportunity for us to survive. I know if it wasn't for agri tourism as we now are explaining it, I don't think I could afford to keep the farm for myself. I think it's important that we, as a community support agriculture in general and look towards the future of agriculture because we are, my generation particularly, is the future of agriculture in Hawaii. If that means that we have tourists that come up so be it. We will try to be respectful and responsible but I think, you know, again, if they can't read or understand common sense we can do the best we can by producing signage, by letting people know where to route themselves up there now which we actually talked to Sam about we will do. But lastly, I will say thank you very much for the opportunity to approach you guys today because I think this is a greatest commitment that we can show in that a lot of farms, neighbor farms and throughout the State are having great difficulty staying basically in compliance. So being able to show that, you know, and prove to other neighbor farmers that it's possible to operate legally, legitimately with a permit in the State of Hawaii and Maui particularly. is very important and with God and we hope that we'll be back. So mahalo.

Chair Hiranaga: Questions, Commissioners? Seeing none – Commissioner Mardfin?

Mr. Mardfin: Do you live in the residence?

Mr. Chang: I don't. I live about five minutes away. My uncle does. I grew up in the residence. Hana is in there.

Mr. Mardfin: Thank you.

Mr. Chang: You're welcome.

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

Mr. Shibuya: Thank you. I knew your father and so, I'm sad to hear that he passed away.

Mr. Chang: Very sad.

Mr. Shibuya: I just wanted to ask you about the Kula Forest Reserve Road.

Mr. Chang: Yes, sir.

Mr. Shibuya: And that's a State road.

Mr. Chang: Yes, sir.

Mr. Shibuya: State-maintained road but it's not very well maintained.

Mr. Chang: Yes, sir.

Mr. Shibuya: Can you comment about that?

Mr. Chang: I would love to comment. Actually as soon as I came home it was brought to my attention that other people in the community especially our neighbors above us who access, but not directly above but beyond that they access their property through that road and it is in terrible disrepair. We've talked about who's responsible for redoing the road, repaving the road, whatever it is that you need to do. For us, one of the allegations is that, you know, the majority of people traveling the road are our customers which may be so, I don't personally believe so, but I will say it is State-owned as I understand. We were talking briefly earlier that we believe the State DLNR. We don't know who now is responsible for paving. All I know is that it's been brought to the attention of the State and nothing has been done and it keeps falling on us as far as our neighbors think it is our responsibility to do it. It's cost prohibitive for us, but we'd like to do whatever we can to redo the road.

Mr. Shibuya: I see some of the problems with this road being such bad shape that many of the customers know this and so they take the short cut and take a chance going up the concrete driveway with your neighbor and making, you know, humbug with him. And I, I can feel for that and maybe you can work out something with him putting maybe some kind of gate or something?

Mr. Chang: Sure. I'll speak to that briefly. I came home as soon as my father passed away. I was living on the north shore but traveling at time and took the next flight home. That was one of the first things that I addressed actually. Sam, again, Uncle to me, very important person I want to be neighborly. So first thing we did was address the concerns of the neighbors. We went down to Sam's house and then the gentleman above us, Billy, we asked them is there anything we can do to make your lives easier because I know it's very, very difficult for this reason. We constructed a 3 x 5, I believe, I think it was 3 x 5 nice big sign that said lavender farm boundary ends here towards Sam's property and that was immediately satisfying to them. I asked them if there was anything else that we could do to help them. And they actually didn't, they said they were happy with that so I'm personally surprised that Sam showed up but, you know, again, we're very, we want to help them. With regards to our neighbor above we put a sign for them as well, and I have not heard any complaints since that time. But again, we spoke briefly, an immediate solution that we



can offer that we've been talking about actually in the interim was that we would like to reroute every car above in and out of our property. Previously that was the way it was except for at the closing time we would let people go down through the property because if we kept the gate open people would keep flowing in. So at this point we will, staff it or something ...(inaudible)... property.

Mr. Shibuya: In terms of your employees, how many employees do you have average? I know they vary from weekend to weekday.

Mr. Chang: Sure. Well, average we have 14 staff. I would say per day. I mean, I guess, round number I might even say ten employees a day that are at the property. Again, the times vary, you know, basically starting time, any time it's different. Some work on and off property so will come at varying times of the day. I guess I answered your question.

Mr. Shibuya: Yeah, in terms of their parking they park down below?

Mr. Chang: Actually the north which you see is facing upwards that is our overflow parking. Generally most of our employees park there. This is perfect to see actually right now. I mean to ...(inaudible)... this right here, I don't know if I'm working this thing right, but anyhow, okay, I'll just show them, ...(pause while wireless microphone is turned on)...can you hear me now? This is where our overflow parking is here on the north side facing up. These are customers here and this is where generally they park. These are our employees, our employees will park around here. Mostly on the north side of this is actually a fence here. Something I'll point out which is I think reasonable to mention, these cars here are not our customers but you'll see it. There's just about as many cars there as we have in our parking lot and those people generally are the people who are traveling up to go hang glide down. They bring their dogs to the park and everything. So I mean, it's pretty, I don't know I think it's, it's pretty fair to say that a lot of the, I wouldn't say majority but probably a fair half are going to enjoy the park other than our property.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: While you're up there, can you show us where Sam lives and what the problem is?

Mr. Chang: Yeah. Sam, our neighbor is actually below us here. This is their house. This is the driveway that he was saying people come in. This is the driveway he's mentioning. This is Waipoli Road it comes around and this is where our guests will enter and leave Waipoli Road. Sam is concerned about the signage here which we talked about is the issue. It's facing a little bit, I don't know, a little bit awkward so people don't quite understand not to go up the driveway. I really haven't seen that many people up and down the driveway. I'm there very single day, all day so I don't see too much of that. But Sam lives here, our other neighbor is up here and this is our property. This is the residence and then the driveway. Really, the most use of the driveway comes from our neighbor up here to be honest. Otherwise, most people come through here. Our employees have had a habit of coming up here which was understood to be okay from our neighbors until this morning.

Chair Hiranaga: Any other questions for the testifier? Seeing none, thank you. Next individual is Chris Speene? Not here? Chris, Chris Speene?

Unidentified Individual: Speere.

Chair Hiranaga: Speere?

Unidentified Individual: Chris Speere. He left.

Chair Hiranaga: Okay, is there anyone else that wishes to testify at this time? Please come forward and identify yourself?

Ms. Jan Yokoyama: I am Jan Yokoyama. Sorry, aloha my name is Jan Yokoyama and I am the owner of Maui Upcountry Jams and Jellies. As the name implies, Maui Upcountry Jam and Jellies is, you know, we have grown our fruit and then we do much more with that. So using farmers products from primarily Kula, but also from other producers in Hawaii, Maui Upcountry Jams and Jellies produces over 75 products for sale in various retail outlets throughout Hawaii. It also has the beginnings of a thriving internet market sales. But one of our earliest clients was the lavender farm and has supported my growth in the course of our relationship. You know, the propriety of goods that I supply them remain a significant part of my company's earnings. With the stability they offer me, I've been able to pursue other markets with new products. My reputation has grown through my association with them and with other lines that have been able to develop for them over the years. This would have been significantly harder if not impossible with the relationship between our companies. So over the past nine years, my company has grown with more expansion than planned. Alii Kula Lavender also continues to contribute to my development as they too grow, you know, they take me to larger markets and share. So providing proprietary lines to Alii Kula Lavender has provided me the, you know, the development of proprietary lines for other farms. Through Alii Kula Lavender was not – well, though they weren't, you know, directly responsible for many of my relationships, in the case of Kahuku Farms or Kula Country Farms, you know, it was Alii who introduced us as far as us developing a product for them. So, the other farms and the general population of Kula have benefitted from examples set by Alii Kula Lavender. As a leader in the eco tourism industry in Kula they have shown others the possibilities of marketing their farms in new and innovative ways. These draws people and events to the Upcountry area that stimulates the economic health of our area. And people who come to the area to tour the lavender farm then take advantage of other tours and events that have popped up. Take for instance, the pumpkin patch which is now happening. So the various farmers markets are an example of trend and they support the tourist market, but they also make it possible for people –

Ms. Takayama-Corden: Three minutes.

Ms. Yokoyama: -- who live in the Upcountry area to support the growing tourist population as well as other, you know, cottage industries. These businesses provide new services and goods for the people who make Kula home as well as being revenue to the people in the area.

Chair Hiranaga: Okay, Jan, please conclude your comments?

Ms. Yokoyama: Okay. Well, as a business owner who has benefitted from its influence I can see how it's existence to the Upcountry area has contributed to our overall growth. So, ...(inaudible)...

Chair Hiranaga: Thank you. Questions for the testifier? Commissioner Shibuya?

Mr. Shibuya: Thank you, Ms. Yokoyama for testifying for Alii Farm. I'm just wondering are your products on consignment sales or is it, how is it sold?

Ms. Yokoyama: My products?

Mr. Shibuya: Yes.

Ms. Yokoyama: Or their products?

Mr. Shibuya: Your product.

Ms. Yokoyama: To them or?

Mr. Shibuya: Yes.

Ms. Yokoyama: No, it's not on consignment.

Mr. Shibuya: So how is it sold? They buy it from you and then they resell it?

Ms. Yokoyama: I produce it for them as a private label. So when we, when we make the product we make it specifically to their needs. So what you have today I guess was given to you, we produced the lavender honey for them. We infuse it. We also do the lilikoi lavender. I, too, am a farmer. I produce my own, you know, some of my own fruits and then I, in turn, has made a ...(inaudible)... product. I do own my own commercial kitchen on my property.

Mr. Shibuya: And so you get the lavender from Alii Farms?

Ms. Yokoyama: Yes, I do.

Mr. Shibuya: And then infuse it with your products?

Ms. Yokoyama: Yes.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Anyone else wishes to provide testimony at this time please come forward? Please identify yourself and limit your testimony to three minutes.

Ms. Lani Weigert: Aloha, Commissioners. My name is Lani Weigert and I am cofounder along with Alii Chang of Alii Kula Lavender and I thank you so much for your patience and endurance today for all of the testimony. I just wanted to bring to your attention the brochure that was handed out to you. In the brochure it says of our mission and also our vision. Those are very, very real to us. When we first opened the farm in February of 2002, we opened it to a 100 percent local residents. To this day we still welcome 70 percent local and only 30 percent visitor. We pride ourselves in creating a very strong and sustainable quality of life and our vision is grounded very much so in the, in the spirit of aloha and also we strongly push agricultural education which is what we do every day

of the year. We offer five educational walking tours, seven days a week and we educate over 500 school children every year with the collaboration of the Maui County Farm Bureau.

For us, it's really about raising a business meaning the old adage of it takes a village to raise a child, well, it actually takes a village to raise a business and in our collaboration with over 25 different businesses throughout the State of Hawaii we have been able to not make a lot of our products but instead go to those who have the expertise so that we can then include them rather than compete against them and our strong marketing machine has been able to distribute a lot of the revenue throughout our business communities rather than keeping it to ourselves and that has actually not only sustained us but has sustained a larger business community. So I really ask for your favor in our request. After operating for nine years, it feels so good to finally bring this request to this Commission because dreams do come true and people will believe once they know that the lavender farm has finally, hopefully been in your favor today. Thank you very much.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you.

Ms. Weigert: Thank you.

Chair Hiranaga: Anyone else wishes to provide testimony at this time, please come forward? Seeing none, the public hearing is now closed. Open the floor to Commissioners for questions to the Department or to the applicant. Commissioner Mardfin

Mr. Mardfin: Yeah, I'd like Livit? My understanding is this is a very specific request for a Special Use Permit for certain activities. What is the activities that they need this Special Use Permit for versus and then you can – I don't need to know the rest of the stuff because that's all legal.

Ms. Callentine: Okay, they need the Special Use Permit for, for anything that's not exactly agricultural.

Mr. Mardfin: So that list that they had up there, I don't know what slide it was on?

Ms. Callentine: Yes.

Mr. Mardfin: Those things? Gift shop, classes, weddings, catered receptions, special events and parking?

Ms. Callentine: Right. That's right.

Mr. Mardfin: Okay. One more question.

Ms. Callentine: Okay.

Mr. Mardfin: This is zoned what, Agriculture?

Ms. Callentine: Yes it is.

Mr. Mardfin: Do they claim home tax exemption?

Ms. Callentine: I will defer to the applicant on that. I do not know.

Mr. Ed Tremper: Yes.

Ms. Callentine: Please come up to the microphone?

Mr. Tremper: My Ed Tremper. I'm the owner of the land that Alii Kula Lavender is located on and live there.

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

Mr. Tremper: Yes.

Mr. Mardfin: What is your relationship to the business?

Mr. Tremper: Zero except they rent my land.

Mr. Mardfin: Thank you.

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

Ms. Wakida: I guess, yeah, I found sort of a discrepancy here. In one place of the, of this it says that you are going to limit, the applicant says they will limit it to small groups to maintain the rural nature of the area and then on the other hand, yeah, on page 11, the use is requested in this application are purposely kept low key and limited to small groups in order to reduce the effects on surrounding properties and the application is for weddings for a hundred people. I wouldn't call a hundred people a small group.

Ms. Callentine: I'd like to ask the applicant or the applicant's consultant to respond to that question. Thank you.

Ms. Wakida: Thank you.

Ms. Lani Weigert: I'll speak to that. So the regularity of having a wedding of a hundred people would be something that would be very unique and infrequent. Our groups that we do tours for will normally be under 25 people for a tour. So that's why we wanted to get this Special Use Permit so in the event that we do have a wedding that could be up to a hundred people we would be in compliance. But with regard to the regularity of that, it would be very rare.

Ms. Wakida: But it's possible that you might get more business?

Ms. Weigert: It is if we're lucky enough that could be. The way that the farm is laid out, you know, we could have a lot more than 25 people on the farm but we would never or you would never feel like that because everybody is walking around and looking at plants and doing, you know, their different crafts and things like that. So we're able to maintain the integrity of the ambiance. And in operating as long as we have now, nine years, we see that we are able to maintain that integrity daily.

Ms. Wakida: Thank you.

Chair Hiranaga: Just a follow up question. You know, again, for me on the wedding issue, wedding on these types of non-traditional areas can become very popular and profitable. And I've known of certain areas that have up to three weddings a week now that you would not think they are doing but it can become quite turnkey if you have a wedding planner that person will take care of the food, the entertainment, the decorations and you just charge an overhead for them to do this. So one of my concerns is that there is no limit on the number of ceremonies that could occur in a year. You know, I hope you take some thought to that versus just open-ended because I personally wouldn't want to see a 150 weddings being performed up there in one-year and right now you don't anticipate that but you never know. Also, hours, you know, it should be a shut down at 10:00 p.m., things like that. Those type of things I think are important if you're proposing a wedding operation in an agriculture area. So maybe with your consultant you guys can work on something as we continue through this application to put some restrictions that you feel comfortable with on this application that includes wedding ceremonies.

Ms. Weigert: I appreciate those comments, Chair, and we would not be adverse to any of those conditions because it is important to us to maintain the serenity of the place and in our philosophy which is grounded in aloha it wouldn't be a very loving thing to do to not only our neighbors but to the land itself to have it overrun that way. And in our history so far, it hasn't been about the money. So with regard to always bringing ... dignity and respect to the land itself, we have no problem controlling that as well because we don't want that beautiful farm overrun it would be like killing the goose lays the golden eggs. So I appreciate your comment.

Chair Hiranaga: Yeah, so if you could maybe meet with your consultant come up with some standard provisions that we might incorporate into the application?

Ms. Weigert: Absolutely.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: How are the 500 school children transported?

Ms. Weigert: Well, they don't come to our farm, we actually go to the Kula Ag Park and we teach them there with regard to how to plant our lavender and how to take care of it, et cetera. Throughout the year besides going to the Kula Ag Park we have various preschools all the way up to college students that will come at different times including the Maui Community College culinary students as well. So the agricultural education component is first and foremost in our farm's philosophy and that's how we continue to do that. In fact recently before Alii passed, he had a special effort to go to Maui High School Agricultural Program because it was failing so much and pretty much they only had the children were the less desired or low performing students. But after Alii had gone to the school and showed them the pride that they could have in agriculture this year the program has increased by 40 percent and also included students of higher grade averages as well. So we know that it does work.

Mr. Shibuya: Another question?

Chair Hiranaga: Yeah, Commissioner Shibuya, go ahead.

Mr. Shibuya: Unless somebody? I was looking in terms of the roadway. Waipoli Road is narrow and it's breaking down and I believe that's a County and this is mainly with County, can you tell me what is programed for this repair or upgrade or resurfacing of Waipoli Road?

Ms. Dagdag-Andaya: Currently in our resurfacing for –

Chair Hiranaga: Excuse me, we're in a public hearing at this point and you're supposed to be asking questions only to the testifier?

Mr. Shibuya: Oh, okay. Save that.

Chair Hiranaga: Oh, I'm sorry. We're open to questions. I apologize, yeah. Proceed.

Mr. Shibuya: Okay, proceed.

Ms. Dagdag-Andaya: As far as the County's maintenance responsibility on Waipoli Road we are responsible for the area between Kekaulike Avenue up to that first cattle gate near Mr. Davis's property. So currently our Makawao District does brush cutting, pothole patching and maintain drainage areas in that, along the roadway. And as far as the resurfacing, I don't – looking over the report last night, I don't think that we have it currently listed for or have it designed for Fiscal Year 11 and identified in Fiscal Year 12, our resurfacing schedules but that's something -- the resurfacing is something that we could probably add in for the next, next go around.

Mr. Shibuya: What is the width of that roadway?

Ms. Dagdag-Andaya: Good question. I believe the pavement width is roughly I think 18 feet and I believe the right-of-way is roughly around like 40. I can double-check with. I can ask Mr. Otomo, the civil engineer to, to confirm that, but for Rural standards I believe that's about – right-of-way width goes up to about 40.

Mr. Shibuya: Yeah, I don't want to be contradictory or confrontational here, but I know what the Rural standards are but when you have two cars passing each other and they're not on the road, then it's not, you know, within the standards. Okay, so may want to take a look at that.

Chair Hiranaga: Deputy Director wishes to speak.

Ms. McLean: Commissioner Shibuya, on Page 5, of the staff report it indicates that it's 50-foot wide right of way with approximately 18 feet of pavement.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Okay, on this aerial photo we have here, this is for the applicant, this brochure that you gave us and we see two main roads where your entrances and on the opposite side we have another gated area. Is that from one switchback side of the road to the other?

Mr. Cabebe: The entrance is here.

Mr. Lay: Okay. I just have a question on, on my travels with my family we've gone to several places and we've done the you passed the place already and coming up that road, I'm thinking that's what everybody's doing, we've passed the place already, turn around let's go back and we end up at that other driveway. So I'm wondering why, why wasn't this other side with the gate used just out of curiosity? Why that side entrance?

Mr. Cabebe: This side?

Mr. Lay: Yes.

Mr. Cabebe: Because there's Mr. Davis's residence is right here. It's a private road. It's actually an abandoned State road that the State has relinquished to them and it goes right by their house and it's not desirable by the Davis Family. And so that's why the main entrance was moved up here.

Mr. Lay: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: This is for the applicant, Lani, thank you. I'd like you to separate out if you could generally speaking what, what portion or what percent of your business is from, from farming activities versus other activities like gift shop, weddings, that kind of thing?

Ms. Weigert: The farming activity, the revenue from that is probably and it fluctuates to maybe 9 to 12 percent of our overall revenue. Over 80 percent comes from our ag tourism activities. So as a farm, we would not exist today if we didn't have that. Thank you for asking.

Chair Hiranaga: Commissioner Mardfin? I'd like to ask either the Deputy Director or the Corp. Counsel, something's been bothering me. And what's been bothering me is if somebody does a B&B we make them give up their home tax exemption, and yet, this is sounds like a fairly thriving business if particularly, I mean if we approve the ag tourism part of it but yet there's a home tax exemption on the property because it's leased out to them. Something seems out of wack. It doesn't seem consistent and I don't know why, I mean, what rational would we have for not making him give up the home tax exemption except that somebody is claiming it, I mean, they're renting it out?

Ms. McLean: Well, apparently the gentleman who lives in the home is the owner of the property and he is not a participant in the business. He lives in the home and is claiming the exemption because that's his residence and he's renting the land to the farm.

Mr. Mardfin: I heard that. It just seems very inappropriate.

Ms. McLean: And also the B&B Ordinance is law that went through an extensive process reviewed by the Planning Commission, the other Planning Commissions adoption by the Council for that to be part of the established law. This is an individual permit for this specific property. So there isn't



anything in the law that says all applications like this relinquish their homeowners exemption as there is in the B&B law.

Mr. Mardfin: We're going to be looking at home-based business today maybe that talks about commercialized residence without a home tax exemption.

Ms. McLean: And I don't believe that's the case in this situation. The residence is not being used as a business.

Chair Hiranaga: Yeah, let give a quick comment. Real Property Tax Homeowners Exemption dwelling needs to be owner-occupied. He is the owner and he's occupying it. Ag land, he provides an ag lease, there's nothing, there's no relation between leasing ag land and occupying your primary dwelling. There's no connection there. He could lease it out for pasture use, he could lease it out for –

Mr. Mardfin: That's a pretty good explanation. That works with me. Thank you.

Ms. McLean: And I would also add that on ag land dwellings are considered to be farm dwellings so it's understood that the purpose of those dwellings is related to the ag use of the property.

Mr. Mardfin: If it were restricted to ag use I'd have no problem with this, but what we're being asked to approve today is ag tourism. We're turning it into a commercial enterprise, a tourism-related commercial enterprise much like a B&B or short-term rental and so it, I wanted to have some consistency, but Commissioner Hiranaga, Chairman Hiranaga has come up with an argument that I can live with.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Question, back to the wedding thing. What do you envision as the, as the wedding, are you guys just going to be landowner, would you be the coordinator or is it going to be in the day only or at night or both or whatever?

Ms. Weigert: Well, all of our activities will always be during the day and largely it's because of the liability of having anyone up there when it's sunset or whatever and they can't see that much. The other thing too is our positioning more is working with the wedding coordinators. We don't want to assume that business because that's not the business we're in. So we would just be working in cooperation with the wedding coordinators who would then handle that and we would be more the site organizer. That way we can control it better too.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Lani, can you tell me about the parking because most of your business seems to be from the tourism area and yet we need to accommodate for this. We now have junk roads, inaccessible, kind of narrow, below standards and yet we depend on them and I'd like to see you succeed. Where are they going to park and show me where you mentioned asphalt and then you also talked about not having asphalt and you just throw gravel. There's more liability in terms of gravel, but you know, I'll listen to what your comments are.

Ms. Weigert: So I'm going to provide a comment and then I'm going to defer to Raymond so he can show you. What initially happened is that Chris Hart and Associates did come to us with a parking plan that showed cement paved parking stalls. But my partner, Alii, felt that it really detracted from the charm of the farm to put so much cement everywhere. He was just appalled by it. So he, he went to Chris Hart and said if he could come up with something else that was more country, that kept it looking more country, and yes, we understood the idea of having gravel versus cement because gravel moves around et cetera. But there was a way that Chris found that would stabilize it a lot more and still make it look just as charming as it would, you know, if we just kept the grass, because, you know, we're trying to maintain the compliance of what's necessary but without taking away the beauty. So it was one of those balancing acts. So Raymond, why don't you explain to them how that would happen? Oh Chris?

Mr. Hart: Thank you very much. Chris Hart of Chris Hart and Partners. You know, obviously, first of all, I'd like to say that the access road we just heard, you might say that it's substandard but it is, it meets the rural standards. It's a 50-foot wide right-of-way, there's 18 feet of pavement. That's basically the minimum width, pavement width and there's not a lot of times when people are going, in other words, you have somebody going up and somebody coming down at the same time, and with the right-of-way, you know, if you need to get off the road, so in the context of being safe, I wouldn't call it necessarily substandard, all right? That's, that's my opinion in terms of driving up there. I mean, I'm not saying that it's as good as a road in Kahului, but it does, you know, it is a safe road as far as rural standards are concerned.

The second thing is in the context of, of identifying the parking, we did essentially want to make the parking as, let's say, environmentally harmonious as possible. We didn't want to build a big parking lot. So essentially what we did was, included the parking essentially as, as 90 degree parking off the main road and as was indicated the entry, you essentially go in and essentially you're going, go down right, this is – come in this way, right? So, so you're not necessarily driving through a big parking lot. So you get to your destination and then you pull into, to your stall. And a lot of people don't park up here because obviously the walk. So essentially most of the parking takes place in this area. Alii was not in favor of asphalt parking. So, basically we're looking at the Ag District Zoning Ordinance, Maui County, it says, this is regarding the agricultural products stand basically it says that, the stands shall meet the off-street parking requirements for roadside stands ...(inaudible)... by section except that paved parking shall not be required. Okay, that's what the ordinance says as far as stands are concerned. It doesn't translate that it's, that in the context of ag tourism that you, you can't, that you, you basically have to provide gravel parking or you can provide gravel parking. So what we proposed was essentially creating a, these, these are, are gonna be contained areas with headers and essentially it will be a kind of a gravel and cement that will basically be compacted and watered and, and we feel that it will be quite stable. It's not going to be, it's still going to be porous, it's not going to be impervious but it will have the character of a gravel parking space and it won't be – it's not just like, you know, on blue rock gravel. I mean, it will have a stabilizing element to it and, and that would be the cement, okay, that would be basically sprinkled on and it would be, you'd, you'd basically apply water and compact it. And it was in an area that's defined by a header. So that's the proposal that we came up with.

Chair Hiranaga: Follow up, Commissioner Shibuya?

Mr. Shibuya: Just a follow up. I'm not accepting the roadway, Waipoli Road nor the Kula Forest

Reserve Road as being acceptable. I think they're substandard, but we can argue that all day. The, in terms of the parking I'll give you a personal experience because I go up there and I bring guests up there and I don't go on the tours because I've been there one time and I don't need to go and hear it five, six times. I parked in the first stall, almost like the second stall but nobody else was on the right side of me. A car comes in quite fast and almost slams into my car and I'm there. Now that tells me, you know, you got loose gravel you're gonna come into me whether I'm walking or I'm getting out of the car or I'm going to get into my car. People do funny things. And I'm saying we need to minimize some of these human errors that may occur because of some of the environmental conditions. Perhaps maybe would you consider maybe even grass type of block. They have these concrete blocks that maybe can hold the gravel? I don't know. Or some kind of a, you've been in the war, we actually had some gratings and –

Mr. Hart: PSP.

Mr. Shibuya: That's correct. So we have some systems today with even PVC pipes that go in to about six inches and they fill them up with whatever you want to.

Mr. Hart: We, we could look at that. I'm just relating to you what we discussed with Alii and that's what, you know, what Lani was referring to.

Mr. Shibuya: Yeah, I –

Mr. Hart: But you know, obviously those, you know, probably wouldn't be grass blocks, it would probably be something like the PVC, you know, material. Something like that.

Mr. Shibuya: No, I understand. I'm just saying there's something like that and maybe in the front so that the cars don't go up into the, in the front there's grass and they make grooves in them and the next time you have rain then you have erosion and that's why the top part people don't park there because it's really, it's steep and it's very gouged and eroded and that's why, you know, the problem here is that you need to somehow stabilize it to make it effective and I believe on the top is where you have that pavilion or gazebo as well as a platform where you probably do your wedding bit. Is that where it's happening?

Mr. Hart: Yes, right.

Mr. Shibuya: Yeah, okay. And more care must be done some place.

Mr. Hart: Okay, all right. Thank you very much.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: Yes, Chris, are you folks using gravel or crusher on, on the property?

Mr. Hart: I think it's more crusher waste.

Mr. Freitas: ...(inaudible)...

Mr. Hart: It's a crusher waste.

Mr. Freitas: Yeah, it's crusher waste. I have that in my parking lot and I have absolutely no problem. We water it and we pack it and I hold the abandoned action on the parking lot. The problem is what Mr. Shibuya said. If they speed coming into the parking lot, if you speed on a regular road you will have problems. I think if you keep your speed I don't think you'll have any problems with that.

Mr. Hart: Okay.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Good afternoon, Mr. Hart. On January in 2010 you wrote a letter to the Department of Public Works and you listed eight buildings that didn't have building permits. How many of those have applied for a permit since then?

Mr. Hart: Well, Raymond went over that. We could go over that again for you?

Ms. Wakida: Yes, please.

Chair Hiranaga: Quickly.

Mr. Cabebe: There's two, two building permits that are in right now. And we're preparing plans for the rest of them.

Ms. Wakida: And what are they, the two?

Mr. Cabebe: For the gift shop which is here and for this garage.

Ms. Wakida: And what about the other – why don't you have the building permits in for the other structures?

Mr. Cabebe: We had those plans prepared previously and so we are working with the architect, August Percha, he's preparing plans from – I just saw preliminary plans this past week.

Ms. Wakida: I see. Thank you.

Mr. Hart: Can I just add one clarification? In order to accept them as, you know, a building permit they have to be measured. So he has to go out to the field and actually measure the building and, and prepare basically produce plans that were never produced initially.

Ms. Wakida: I have a follow-up question for the Planning Director. It's about process here. We're, we're being asked for a Special Use Permit to operate among other things a gift shop in a building that doesn't have a building permit. I don't understand how that works.

Ms. McLean: Among the project specific conditions are that prior to permit renewal that all permits and inspections have to be obtained for all the structures.

Ms. Wakida: What do you mean by permit renewal though?

Ms. McLean: The original term of the permit that's recommended is that it be a two-term. So that, excuse me, three-year term. That prior to the applicant coming in to renew the permit that all of the – prior to the applicant coming in to renew the Special Use Permit, that all building permits and related inspections have to be completed.

Ms. Wakida: And so, so we don't require building permits before the businesses go into operation?

Ms. McLean: We take those kinds of issues on a case by case basis. I wouldn't say that there's, you know, standard condition in that regard. For example, with some B&B permits we're requiring that certain issues be satisfied at the time of permit renewal because we want to support these businesses this is an ongoing operation we want it to be lawful and we want to support it and we want to give them the opportunity to come into compliance.

Chair Hiranaga: Does the Deputy Public Works Director wish to comment since the, I believe, Occupancy Certificate comes from the Public Works Department?

Ms. Dagdag-Andaya: It does and we're requiring that they have their C.O. completed as well. And I believe that's one of the conditions in this application. So, with that, as far as – just what the Deputy Planning Director had previously mentioned that prior to their Special Use Permit renewal we're also requiring that they have all that completed.

Chair Hiranaga: Yeah, I think the underlying premise is that the County be it Public Works or Planning prefers compliance versus say prosecution. And prosecution I mean citing someone, shutting them down and making them conform before they're ready to reopen. Because if you do that, it may take a year or two and they won't be able to reopen because they'll be out of business. So by encouraging compliance, it encourages people to come out and come into the process. If you start prosecuting them, they're going to stay under the radar, they're going to continue to hide, and they're continue to operate illegally. Deputy Director?

Ms. Dagdag-Andaya: Sorry, Chair. If I could add to that. After-the-fact permits also have, they come with an additional fine as well. So, you know, we are, our, our philosophy at Public Works is to assist applicants. We don't want to turn them away, but at the same time we do have our rules in, in this instance because they're coming in for an after-the-fact permit they do have a fine for that. So they're, they're not just get away with, with not having a permit, along with it comes a fine.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I have two other concerns along these lines as long as I'm sort of being the bad guy on this. One has to do with a letter from the Department of Water. It says that, that the system had not been improved to provide adequate water service, several structures are built without the Department of Water Supply's approval and then it goes on the next page with a whole bunch of stuff. Where does the applicant stand in regard to all this?

Mr. Hart: Well, we have our civil engineer here with, with us. I would just like to say as, as, as, as a consultant planner that was basically asked to get involved in this project and to try to bring it to

a point of compliance in the context of the use and also in the context of the approval of the permits. There's challenges with regards to this project and I'm going to ask Stacy Otomo to come up and talk a little bit about the water. The water discussed by Raymond in our, in our presentation. It basically was a family subdivision and essentially, you know the lots were subdivided and sold and you know, without having appropriate water meters, okay, that, that happened and the results are that, you know, now we're trying to basically go through a process and to, to rectify, you know, any potential inadequacies in terms of infrastructure, any potential violations in the context of building permits, and in the context of use permits. So that's, that's where we are. I would like to ask Stacy to come up please.

Mr. Stacy Otomo: Good afternoon, Chair Hiranaga and Members of the Planning Commission. Stacy Otomo. Regarding the water, we did have several meeting with the Department of Water Supply as well as a review of the water system that's in place. And as Chris mentioned, it's trying to bring the system back into compliance. They are, I think, 1,240 or 70 on the water meter list. So they are in place to get a water meter. However, we all know that may take years to get the water meter. As far as getting it to compliance they've asked us to do a fire flow calculation, a domestic water calculation and there was one other issue with getting a backflow preventer on the existing meter which feeds the tank. And of the three, the calculations were done and submitted and the water backflow preventer has not been designed or put onto the system but that would come into as part of the compliance.

Mr. Hart: One other point that Stacy didn't mention and I think that Raymond mentioned is that in the context of our dialogue with the Department of – or the Fire Control, Department of Fire Control that because of the fact that there isn't, you know, basically a fire protection infrastructure in this area, you know, we are, are going to have to be looking at the installation of a sprinkler system in the building.

Chair Hiranaga: Buildings or building?

Mr. Hart: Buildings, yes.

Chair Hiranaga: Not just the gift shop, beyond the gift shop.

Mr. Hart: No, it would be, I think that the requirement is that the buildings have to be sprinkled.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: What are, after the testimony by Sam Davis, one of my biggest concerns is the adverse impact of this business on him. Koa expressed a willingness to work with him. You guys have a plan at this point?

Mr. Hart: Yeah, we do, and Commissioner Mardfin, and we do have some conditions that essentially Mr. Davis agreed to.

Mr. Mardfin: Which are?

Mr. Hart: Well, we can present them.

Ms. Callentine: Yes, Commissioner. I drafted some conditions at lunch time which I had discussed –

Chair Hiranaga: Are you going to incorporate that into the Department's recommendation?

Ms. Callentine: Yes.

Chair Hiranaga: Why don't we hold off on that?

Mr. Mardfin: Then I don't need it now.

Ms. Callentine: Certainly.

Mr. Mardfin: But it met with Sam Davis' concerns? He was happy with the conditions?

Ms. Callentine: Yes.

Mr. Mardfin: Thank you. That's all I need to know.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Maybe Liv [sic] you can respond to this, the Conclusions of Law on Page 3 of 4, Item No. 5, it says the land upon which the proposed use is sought although moderately suited for agriculture uses is irregularly shaped and located in close to proximity to school facilities making it less desirable agricultural activities, which school and how far?

Ms. Callentine: You know, I'm sorry, Commissioner. I happen to read that this morning and I, I believe that that is a mistake and I'm not sure why that is in there. What that should actually read is, the land upon which the proposed use is suited is, is sought, is unsuited for the uses permitted within the district being that the project is, has an average rating below of C and D according to the Land Study Bureau making it less desirable for traditional crops. And in addition, the site is considered prime agricultural land by ALISH standards which makes the site less than ideal from an agriculture perspective. However, the land is well-suited for the cultivation of lavender and the agriculture tourism activities and uses requested by the application.

Mr. Shibuya: Okay, so will you summarize that and correct it.

Ms. Callentine: I will. I will, I will, not sure of the form I will use. I won't revise the whole recommendation but I can include that as a finding in the approval letter should you move forward to approve this letter or this application or a Decision and Order should you choose to deny it.

Mr. Shibuya: Yeah, at least have it stated correctly here.

Ms. Callentine: Right. I will, I will so do it. So noted.

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

Ms. Wakida: Actually my question is for you. I would like to, to go further on the weddings and talk about restrictions. So that come with project specific conditions later?

Chair Hiranaga: Yeah, I mean, I sort of hinted or encouraged them to come up with some so we don't have to formulate everything from scratch so I'm hoping they'll be working on that. So we'll see what they have to offer and then you can make comments.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing –

Mr. Shibuya: I just have one –

Chair Hiranaga: Mr. Shibuya?

Mr. Shibuya: Yeah, and it's more of a suggestion. Because of the parking area is sloped, the rider who opens the door generally will slam into the next door car and that's generally what happens. You can't control it, you open the door and because of the slope the door just flings away from your hand it's, I have some dings that, you know, I'm not too happy about but it's a 1993 Pathfinder, but if you hit the pipe it's okay, but you hit my door, then you know, I get a mark. Thanks.

Chair Hiranaga: Any further questions from the Commission for the Department or the applicant? Seeing none, we'll have the Department's recommendation.

**b) Action**

Ms. Callentine: The Department recommendation is, has of course been presented in our report but in order to summarize I will say that based on the testimony and the concerns expressed this morning, the Department proposes and the applicant has agreed to additional conditions of approval which, you've seen the conditions that are written here. I can at this time read you the proposed amended conditions and then, and then give you the verbiage on accepting the report and recommendation. Okay, so there were three main concerns expressed by, by Sam Davis this morning. There was a concern about traffic and there was a concern about signage and then there was, well, actually kind of those were kind of rolled in together and then there was concern about the shop hours. That was also sort of rolled in together. So when we talked together, the Planning Department, the applicant and Sam Davis, the neighbor we came up with, this is just suggested language, of course, you're welcome to wordsmith it, I did really fast at lunchtime. And also, to start of with, if you look in your report, in your recommendation on page, starting at the bottom of Page 3, Condition No. 3 is regarding the submission of a compliance report. Now you notice in some applications and recommendations you're going to see that broken down into two parts of it. There will be a preliminary compliance report submitted at a certain time. And then later a final compliance report. For Special Use Permits like this we generally only have one compliance report, but because of the conditions I'm going to suggest you consider adding, I've revised this condition to ask for the preliminary compliance report and the final compliance report. So Condition No. 3 would be reworded, "That within 90 days of approval of the Land Use Commission Special Use Permit the applicant shall submit to the Maui Planning Department five copies of a preliminary compliance report addressing fulfilment of Conditions 10 through 13," which parenthetically you



haven't seen yet. "Further, the applicant shall submit to the Maui Planning Department copies of a final compliance report addressing fulfillment of the conditions established with the subject Land Use Commission Special Use Permit. The final compliance report shall be reviewed and approved by the Maui Planning Department prior to renewal of the Special Use Permit." So that would be an amendment to Condition No. 3 as it was proposed in the staff report.

And then new Condition No. 10 would, would address the issue of a signage program and it reads, "That to the satisfaction of the Maui Planning Department and prior to renewal of the Land Use Commission Special Use Permit, the applicant shall develop a signage program to direct guests and visitors to enter and exit via the upper entrance of the property and parking areas." And actually just even as a read that, I, I think just strike the, "and parking areas" and just say, "direct the visitors and guests to the upper entrance to the property." So that will be our recommended Condition No. 10.

Condition No. 11 would get more specific. So Condition 10 was more general about having a signage program. They'd have a longer timer to develop that program. It takes some time to do that and really think it all out. There's different types of signs, there's directional signs, informational signs, locational signs, all kinds of, of different signs they might consider using without, you know, going overboard with signage. So No. 11, would be more specific and it would read, "That within 30 days of approval of Land Use Commission Special Use Permit the applicant shall provide evidence to the Maui Planning Department that guests and visitors are being directed to enter and exit the property via the upper entrance only. So they would have to provide evidence of that. Now what might that evidence be? That evidence might be, maybe it's going to be an information sheet that gets handed to each visitor when they come into the property. Maybe it's a sign in each of the structures that the visitors visit that says please note that we would appreciate your exiting from the property and they've already entered so you wouldn't say anything about that. But it's mainly around signage. So that would be Condition No. 11 about requiring the applicant to show us that they have found a way to direct visitors and guests to enter and exit the property via that upper entrance only. Because it's that lower entrance that's next to the neighbor where, where it's causing disruptions to his life.

So then No. 12 more specifically would say, "That within 30 days of the approval of the State Land Use Commission Special Use Permit the applicant shall provide signage at the lower entrance to the shared driveway indicating that it is private and for residents only. Evidence of compliance with this condition shall be provided to the Maui Planning Department." So there is a sign at that lower entrance right now but what Sam Davis explained to us was that it's, it's somehow turned so that when you're driving up the road you can't really see the sign very well. Maybe it's turned so that if only if you turn in do you see it. So they're going to reposition the sign right a way. They're going to do that probably in less than 30 days but we just gave them a round number 30 days to get that sign positioned right and then they're going to add another little sign below it on the, I think on the same post that will say, you know, private road and for residents only. So that's one proposal that we have that you might want to consider.

And then finally, the issue of the gift shop. I don't remember if he said in his testimony but what he explained to, to me later, later on was that the gift shop closes at four o'clock, but the guests don't immediately leave at four o'clock. They may still be having tea and scones inside. So the gate needs to close so that no new visitors enter the property, but they still need to let the ones that are

there out. So they have been going down the lower road. So they have to address that. So we've, we've suggested a new condition that would give them an interim solution and relieve the, the neighbor's concerns and that is, "that within 30 days of approval of the State Land Use Commission Special Use Permit the applicant shall provide to the Department of Planning evidence that the gate at the upper entrance to the property will remain open or be attended by an employee at all times when guests and visitors are on the property." So you know, you may come up with some better wording of these conditions. That one is so that not that they have to always have an attendant but only if they, if the, if the gate isn't open. They have to have an attendant to open and close the gate for the last departing guest.

And then, and then there was one more condition that I'm sorry, I don't have the language but which the Deputy Director of Public Works suggested just before we began this hearing and it was about the drainage. So I would ask for help with how that was worded if you're ready to hear that one as well.

Chair Hiranaga: It's kind of unusual but I guess we'll just address the four proposed new conditions at this time since it relates to traffic and signage. Commissioner Ball?

Mr. Ball: I think if you have on the bottom a directional arrow instead of all these words because people are gonna just see the Kula Lavender Farm and assume that that's the driveway. So if you have a directional arrow saying, you know, that you gotta go further this way so they won't go in there, I think would work a lot better. People are very –

Ms. Callentine: We did discuss that and I believe let me just confirm, I believe that on this sign that's kind of misplaced right now, I believe there is an arrow. Let me just confirm. The applicant has nodded that there is an arrow. But that's a really good suggestion and one that when they're looking at their overall signage program I think symbols are a very good way of directing people. They don't have to stop and read it. They just see a symbol and that's more, more functional in a way.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Two things. One, I would add to that, entrance 200 yards or tell them how far to go, set whatever the number is. And secondly, when you were talking about closing the entrance, you talked about visitors. I didn't hear you say employees.

Ms. Callentine: We did, I did have that in there. I'd, I'd suggested that and my understanding is that Sam Davis actually doesn't have a problem with the employees using the lower road of the lower entrance and that is because they don't all swoop down at the same time. They really come and go at different times and they don't speed and they don't stop and park in his carport and eat lunch like some of the visitors do. So he didn't have a problem with the employees using the lower road.

Mr. Mardfin: If you don't need it in, you don't need it in. But to my mind, if everybody's doing it the right way, it makes sense to have the employees do it too, and then you just. You know, if one employee goes in, the following car may try to do it too, and the following car might not be an employee. I think you solve a lot of problems if you just have it for everybody.

Ms. Callentine: Okay, well, you can, we can check in with the applicant on that and see if they are agreeable to that being a part of that condition.

Chair Hiranaga: Yeah, my feeling is I'm hoping that this operation will grow and become more successful which will increase noise and traffic and unless there's some real strong reason I would encourage that all employees whatever do not use that private driveway and I would just put a very simple sign down there at the bottom, private driveway residents only, keep out. And then you have a nice lavender sign with an arrow or whatever, half a mile, keep going. But you know, private resident – private driveway, keep out, residents only. Simple. Guard dog on duty. Commissioner Wakida?

Ms. Wakida: And similarly I would have one at the other end of the driveway that says no exit.

Chair Hiranaga: Yeah, same signage, private driveway, no exit, keep out.

Ms. Callentine: Well, actually that is at the, at the upper end that is the way they enter and exit. There's, there's one gate there and they enter and exit through that upper driveway. Did misunderstand your question?

Chair Hiranaga: Yeah.

Ms. Wakida: Yeah, no I meant the other end of the private driveway.

Chair Hiranaga: The concrete one.

Ms. Callentine: Right. Now they already have a sign that's right at the edge of the property above Sam Davis's property and that has stopped. And that don't know what the wording on the sign is, I did see it on my site inspection and we did talk about it today. And it seems as though that has actually stopped people, visitors from going down that, that driveway.

Ms. Wakida: Is that a lavender farm sign or did Sam have to --

Ms. Callentine: It's a lavender farm sign. Actually Koa spoke about it, a big like 5 x 8 sign or something like that. Yeah. Do you want to, do want to hear what it says? Koa can just step and tell you what it says?

Ms. Wakida: No, it's okay. As long as it's there and that road, and I agree, that that road should be off limits to everybody.

Ms. Callentine: Okay.

Chair Hiranaga: My other comment is the main entrance is that a double swinging gate or single swinging gate?

Ms. Callentine: It's a single swinging gate.

Chair Hiranaga: Because my suggestion if it was wide enough and it was a double swinging gate,

normally if you're closing for business you would close one of the gates and put a sign, big sign that says, closed and you'd leave the other half gate open and people could come out. And most people catch the hint if they say see one gate closed with a big sign saying closed, that they're not going to come in. But it won't stop everyone but most people it will stop.

Ms. Callentine: Also in regards to the gate –

Chair Hiranaga: That way you don't have to put a attendant up there because it's expensive to have someone standing there so you may want to consider something like putting a stanchion that says closed but it allows people to get out, but I mean, you know? So I think the Director may have some suggestions on consolidating and rewording those conditions so we'll give you an opportunity a little later to work on that.

Ms. Callentine: Great.

Chair Hiranaga: And so the next item we suggested was regarding wedding and special events. Do you have some house rules?

Ms. Callentine: Right and I haven't read this before and this is what Raymond just handed me. "That the number of weddings per year shall be limited to ten and that the number of participants shall be limited to a total of 75."

Mr. Shibuya: Per?

Ms. Callentine: Per, per event.

Chair Hiranaga: Could you explain what, how catered receptions, special events and holiday themed events might differ from wedding events?

Ms. Weigert: So catered events are often events that are part of a wedding. So in other words, they would have their ceremony there and then they would have a very small reception and the reception would be catered. Holiday theme events would be like fall harvest, like our neighbors down the road do pumpkin patch. We do other things on our farm during fall harvest. Or we would do spring wreath making where we offer a lavender wreath making during certain times of the year. So it just depends on what is in season on the farm. So that's what we mean by that.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Are you okay with the ten weddings a year and the 75 person capacity?

Ms. Weigert: Yes, we are okay with that. I mean we would be lucky if we got ten. Like right now, more historically if we got anywhere from three to five a year that would be pretty major for us because again, weddings are just an accessory to what we really do. So although the lavender farm's probably one of the most romantic places on the island.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: In spite of all my hammering earlier, I really do support your, your enterprise. I was up there in August and I'm a strong supporter of small farms. And I'm very protective of small farms and don't want to see farms go down the slippery slope of becoming big tourist destinations in guises of farm, farming. And so I thank you for capping the weddings. I'd like to add no amplified music to that.

Ms. Weigert: Okay, so we'll put that – what happens there is it's almost a natural amphitheater the way that it is against the mountains like that so a lot of times we don't have to use that. But whatever music's going to be up there, it won't be that loud.

Chair Hiranaga: These are just suggestions at this point because we don't have a motion on the floor, but you mentioned that these events would be during only daylight hours?

Ms. Weigert: Yeah.

Chair Hiranaga: And I would prefer something more finite say like 8:00 p.m. or because I know daylight in the summer I'm not sure about Kula what time it gets dark there but usually about 7:30?

Ms. Weigert: I'd say specifically during our operating hours and our operating hours are 9:00 to 4:00.

Chair Hiranaga: So you'd want the wedding people to be out by 4:00?

Ms. Weigert: Definitely. So this is what happens is we normally will propose weddings to be mornings because that is the most pristine time there in Kula up on the mountain. So we would, we would propose to them to have their wedding say at 10:00 a.m. in the morning. Yeah.

Chair Hiranaga: And you sort of want them off the road before it gets dark.

Ms. Weigert: And also the weather gets pretty dicey after noon. So once twelve noon hits, the clouds come in and some people are adverse to have tents, et cetera, so you know, they need to be out of there. So we highly recommend it for them to come in before noon.

Chair Hiranaga: Any other comments, Commissioners?

Mr. Freitas: I would like to make a motion.

Chair Hiranaga: Well, I'd like to make another comment. For me, ten weddings seems a little restrictive and I would prefer that you combined all your special events, weddings, catered receptions, special events, holiday themed events into one category and a limit placed upon the entire. And for me, something like 26 a year which is like every other week or something like that, I would prefer that. So anything that's not a normal operational day, so you have themed events, weddings or special events, put a general limit on that, a cap. So I'm going to call for a ten-minute recess, I think Deputy Director wants to work with Livit to work on some language and maybe you guys can come up with, if you're happy with four o'clock that's fine, five o'clock, whatever and come up with a cap for all those events not just – but anyway, we'll take a ten-minute recess and reconvene at 4:20.

A Recess was called at 4:09 p.m., and the meeting was reconvened at 4:20 p.m.

Mr. Ball and Mr. Mardfin excused themselves for the remainder of the meeting.

Chair Hiranaga: Go ahead Livit.

Ms. Callentine: Okay, thank you, Mr. Chair. During the break, the Deputy Director helped me to reword and rework the proposed new conditions and so the three that I read to you have been combined into one and that is Condition No. 10, "That within 90 days of approval of the Land Use Commission Special Use Permit the applicant shall install signage and take other appropriate measures to insure that all visitors and employees enter and exit the property through the upper entrance and that the lower entrance be used by residents only."

And then No.11 would be, "That the number of weddings, catered receptions and special events shall be limited to no more than 26 per year with no more than 75 participants at each event and shall conclude by 8:00 p.m."

The Deputy Director of Public Works request that this condition be added, "That a drainage report shall be submitted to the Department of Public Works for review and acceptance at the time after-the-fact building permits are applied for." Sorry for the typo.

Chair Hiranaga: Okay, thank you very much. I'll open the floor to a motion?

Mr. Freitas: I'd like to make a motion to accept the Special Use Permit and the conditions proposed.

Chair Hiranaga: Is there a second?

Ms. Domingo: Second.

Chair Hiranaga: Motion by Commissioner Freitas, seconded by Commissioner Domingo to approve as recommended by the Department. Discussion? Just wondering, you went from 4:00 to 8:00? Any particular reason on Condition No. 11?

Ms. McLean: Mr. Chair, if I may? I suggested that that time be the limit because if over time the business grew and their opportunities for events may, may change sunset is typically, you know, in the summer time after 7:00 and so by the time people were able to pack their belongings and leave the property I thought 8:00 would be a reasonable time to accommodate that. And their reaction was, oh, we're never going to be doing things that late, but I think it would be safer to allow them that time.

Chair Hiranaga: And how would you define a special event? Is there a like a minimum head count? I know we put a maximum. But I guess they have small tea parties so do you want to say between 25 and 75 or 50 and 75 or?

Ms. Callentine: I had that question as well, Mr. Chair. And, because as I wanted the applicant to clarify that but I believe that there are some much smaller events that you probably wouldn't feel

the need to, to limit like this but you might think of some other language if the Commission desires to.

Mr. Hart: The, Chris Hart, Chris Hart and Partners. The small events usually there are around 10 or 12 people, but could we say the bottom level would be 25 and 25 to 75. Could I also mention that I, I did have an opportunity to attend with as a guest of Alii, a fall harvest festival when I was running for an office and there were, there were quite a few people there and I'll have to say that, you know, they didn't, you know, it was basically an advertised event, there were, there were other, you know, individuals there, but I just want to be honest about the fact that some of the special events like, something like ... fall harvest event could be, you know, significant in terms of little over a hundred people I would say were there and maybe about 125 or so. But I'm just estimating but I know that it wasn't under a hundred, okay. Just to be honest about it.

Chair Hiranaga: Is that people filtering in and out or they –

Mr. Hart: They were, yeah, filtering in and out, yeah.

Chair Hiranaga: Of, being there for a specific dinner ...(inaudible)...

Mr. Hart: No, no, they were just, they were there walking around the yard. They had some artist painting. They had, we were doing Dad's Donuts. You know, there were just a lot of people there. It was called the Fall Harvest event. And you know, I'll just be honest to say that there were probably about 125 people there but it really wasn't overcrowded. I mean, the idea is that, you know, we're talking about 13 acres of land.

Chair Hiranaga: Are you saying a 125 people that were there at one specific time or between a time period?

Mr. Hart: Well, a time period.

Chair Hiranaga: Yeah, so as long as there's no more 75 people at the same time.

Mr. Hart: Oh, okay. I don't know – but you know, there weren't a lot. I just want to be, you, know, can I just say this, you know, honestly, you know, Alii is a visionary type person and Lani has been very, very supportive and a visionary and you know, this whole thing started in 2002 and they didn't realize how it was going to, you know, expand. And I really appreciate the staff, the Planning Department and the Commission for being understanding that you can't always, things don't always, you know, work out exactly the way they should as far as all of the entitlements and the permits. So I just want you to be aware that we're very appreciative of your, of your tolerance and your belief in, in this particular project. Thank you.

Chair Hiranaga: And just for clarification, regarding the parking issue and the requirement for paved parking?

Mr. Hart: Yeah, I did, we were talking about it during the break and your suggestion of paving lets say ten stalls that are the most used stalls, you know, is a good suggestion and we're going to, we'll go along with that and then we're going to provide another, find another type of surface that will be

pervious and not impervious for the rest of the stalls. It either could be grass rings or you suggested this rubber matting. I just need to investigate it, but we will use something like that.

Chair Hiranaga: Does that require some type of a variance from the Public Works Department or are they just – you can sign off on it if it meets your approval?

Ms. Dagdag-Andaya: For different types of paving? I'm not quite sure.

Mr. Hart: Well, can I just say, you know that I, you know, we, we proposed today, you know, that we would be looking at it in the context of a variance, but I would like the opportunity to go and talk to the Director and the Deputy Director because for roadside stands in the Ag District, it, it specifically says that you don't have to pave the parking. And that's in the Ag District zoning ordinance. So, you know, if you don't have to do it there, why would you have to do it, I mean, we wouldn't do some like we're talking about but why would you need a variance? So let's put it that way.

Chair Hiranaga: Okay, as long as we're kind of clear on your intent. Any other discussion on the motion, Commissioners?

Mr. Freitas: No, I'd like to speak towards the motion.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: I have, I have not been to Alii Farm. I don't know neither of the parties, but they using a drought tolerant plant and their ag layout is, is superb. I support agriculture 100 percent. I came from an agriculture area and this is the reason why I made the motion and I will support this project.

Chair Hiranaga: Anyone else wishes to have discussion? Commissioner Lay?

Mr. Lay: On No. 11, I'm worried about the participants as far as the high number being 75. With Chris Hart saying at that Harvest that he went to where they had possibly in that whole area a 120 people during a given time, I'm wondering if we should move that number up to a hundred. From 25 [sic] to a 100 to make it more reasons. I'm not sure you guys agree with me, but –

Chair Hiranaga: Well, you can propose an amendment.

Mr. Lay: I proposed an amendment that we do that then.

Mr. Freitas: Second.

Chair Hiranaga: Is there a second?

Mr. Freitas: Second.

Chair Hiranaga: Okay, discussion on the motion to amend Condition No. 11 to set the upper limit to a hundred. Commissioner Shibuya?



Mr. Shibuya: I'm going to object to that because figure that we're coming up with this 75 and it's a good elevator size capacity and I like that. And it doesn't, you don't really have to do a real strong head count on it. I'm not looking for or nor am I suggesting we have a Woodstock here in Alii Farms.

Chair Hiranaga: Any other discussion? Call for the vote. All in favor of the amendment to the motion please so indicate by raising your hand.

Ms. McLean: Three ayes.

Chair Hiranaga: Opposed?

Ms. McLean: Two noes.

Chair Hiranaga: Motion fails.

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

**The Motion to Amend Condition No. 11 to Change the Maximum Allowable From 75 to 100, FAILED.**

**(Assenting - I. Lay, J. Freitas, D. Domingo)**

**(Dissenting - W. Shibuya, P. Wakida)**

**(Excused - L. Sablas, K. Ball, W. Mardfin)**

Chair Hiranaga: Any other discussion? Seeing none, all in favor of the motion to approve please so indicate by raising your hand.

Ms. McLean: Five ayes.

Chair Hiranaga: Opposed?

Ms. McLean: None.

Chair Hiranaga: Motion carries.

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

**VOTED: To Accept the Recommendation of Approval of the State Land Use Commission Special Use Permit by the Department with the Conditions.**

**(Assenting - J. Freitas, D. Domingo, I. Lay, P. Wakida, W. Shibuya)**

**(Excused - L. Sablas, K. Ball, W. Mardfin)**

Mr. Hart: Thank you very, very much.

Chair Hiranaga: Are we ready to move onto the next agenda item? Agenda Item C, Acceptance of Action Minutes of the October 11, 2011 meeting. We have a motion to accept?

**C. ACCEPTANCE OF THE ACTION MINUTES OF THE OCTOBER 11, 2011 MEETING**

Mr. Shibuya: So move.

Mr. Freitas: Second.

Chair Hiranaga: Any discussion? Seeing none, all in favor so indicate by saying aye.

Commission Members: Aye.

Chair Hiranaga: Motion carries.

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

**VOTED: To Accept the Action Minutes of the October 11, 2011 Meeting.  
(Assenting - W. Shibuya, J. Freitas, D. Domingo, I. Lay, P. Wakida)  
(Excused - L. Sablas, K. Ball, W. Mardfin)**

Chair Hiranaga: Item D, Director's Report. Deputy Director?

Ms. McLean: Thank you, Chair. This item is a report from the Planning Director notifying the Commission of the Director's intent to approve a non-substantive amendment to the Conditional Permit for Maui Youth and Family Services and this is an item where the Commission may take action to waive its review in which case you would review at a subsequent meeting. Excuse me, you could waive your review in which case, the amendment could be approved administratively by the Director or if you wish to review the application, you could review it at a subsequent meeting. Livit Callentine again is the staff planner and she can give you a quick overview of the proposed amendments.

**D. DIRECTOR'S REPORT**

- 1. WILLIAM SPENCE, Planning Director notifying the Maui Planning Commission of his intent pursuant to the provisions of the Section 19.40.080.D of the Maui County Code to approve the following amendment to the Conditional Permit as the amendment is deemed to be non-substantive and would not result in significant impacts above what would result from the approved conditional permit:**

**MR. JUD CUNNINGHAM, Chief Executive Officer of MAUI YOUTH AND FAMILY SERVICES, INC. requesting an amendment to their Conditional Permit to operate a residential treatment program and related structures for adolescents to include providing for social service programs which include residential, non-residential, and administrative services for Maui's disadvantaged youth, families, and adults with special needs at the 1931 Baldwin Avenue, TMK: 2-5-004: 006, Makawao, Island of Maui. (CP 990012) (L. Callentine)**

Ms. Callentine: Yeah, this is just a really quick overview. As the Director, Deputy Director just mentioned this is coming to you as a request for a waive in accordance with the streamlining bill that was bill that was passed in effect April 15<sup>th</sup>. So I think you understand the mechanics of it that you waive review or you do not waive review.

I wanted to just give you a quick overview of what actually, has been amended or is proposed to be amended on the property. The applicant has proposed slight modifications to the organizational structure of the program and the addition of a 10' x 32' prefabricated trailer set up as a permanent office on the site. The applicant did obtain a building permit for the trailer installation. I have a extremely short slide presentation just to show you where it is and what the site plan is and what the changes to the site plan on if you wish to see that.

Okay, so this is the location, I'm sorry, could, Jud could you turn the lights there, thanks. Sorry. So this is the, showing you the location on Baldwin Avenue. This is, there you go, you can see the project outlined, the parcel outline and you can see parking along the roadway and then a driveway and various different buildings which will be clear when I show you the site plan. So the site plan has got the Kapono facility is the number one building down in the lower portion, basketball court is to the right of the driveway. There's a what they call, a dormitory circa 2003 proposed, it is an existing residence. This plan was not update to strike the word, "proposed." That has been built, number three. And then building number two in upper right is the prevention facility and those are all part of the approved permit from previous. The change is the prefabricated modular trailer shown as structure number four of the property and this doesn't show it but I wanted to just show you that there's also parking in front of it. As you can see there's the trailer with three paved parking stalls in front of it. I guess, you have, you have the slides in front of you as well, so I don't know which slide number this is but you can see this photograph if you check the, check the presentation. This is the Kapono – Kaipono –

Mr. Jud Cunningham: It's Kapono.

Ms. Callentine: Kapono facility. Sorry, I spelled it in the other portion properly. Another, another elevation of Kapono. This is the prevention facility. This is the dormitory facility. And again, these changes to the program, the original scope was for operation of residential facilities for adolescents. The proposed scope is for social service programs which include residential, nonresidential and administrative services for Maui's disadvantaged youth, families and adults with special needs and that concludes the Department's quick overview. The applicant, Jud Cunningham is in the audience today and is certainly happy to answer any questions while you deliberate whether to waive review or not.

Chair Hiranaga: At this time, I'll provide an opportunity for the public to testify on this agenda item. Is there anyone here that wishes to do so, please identify yourself? Seeing none, public testimony is closed. Questions from the Commissioners? Commissioner Shibuya?

Mr. Shibuya: Simple question. Recidivism, how many times are we having repeat users and what causes this?

Ms. Callentine: I will ask the applicant to answer that as I'm not aware of, of how to answer that.

Mr. Jud Cunningham: I guess I'd have to ask for a little more detail or further clarification of what you're trying to get at?

Mr. Shibuya: I'm trying to see if your population is a small population and you have more frequent users.

Mr. Cunningham: Okay, the purpose or the original use of the facility up until about, I think about four years ago was a residential treatment facility, but because funding, you're aware the current economic situation and so on, the State budget situation, a lot of the money, resources to support that kind of treatment which is very expensive fell away and so it was no longer financially viable after herculean efforts to keep the program open by the staff at the time. I was not then involved but I, I knew about it and followed it. It, it failed and so they closed that program down. So now the, the primary use for treatment programs at the facility is in the Kapono Building and we're using that for intensive outpatient services for adolescent youth. And I believe that the, there are some issues around recidivism with kids, especially with kids more so even than adults. So you do see people, young people going through treatment and then failing and, you know, and then coming back. There's not a lot of really good research on it and we don't spend unfortunately a lot of money on evaluation because it's an expensive thing to do. But there's a something called, "a rule of thirds" in the substance abuse area and that's that about a third of the people who get treatment for substance abuse, that's all they'll need. You know, that, that whole course of treatment is about what they'll need. There's another third that will require multiple episodes of treatment and they, it's not unlike a lot of other chronic diseases, you know, like diabetes and things like this where their lifestyle and people makes choices and so on and then there's, there's, they fall of the wagon so to speak and, and continue to make choices and do things because of this disease that is counter to their best health interest. But another third of people, you know, will probably go through multiple treatment, multiple, multiple episodes of treatment and will eventually die, you know, from the disease or complications to disease.

Mr. Shibuya: Follow up?

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Interpersonal skills development, what type of programs do you have for them briefly?

Mr. Cunningham: Okay.

Mr. Shibuya: I see this because they cannot interrelate with their peers or with human beings that they regress or do something else that's where I'm coming from but I don't know how they're actually relating with interpersonal skills?

Mr. Cunningham: Well, we do a lot around interpersonal skills. In the one building that, that we're using up there now we're basically housing staff. Occasionally we will bring kids to the campus for some kind of activity, picnic or something like that, a special activity but most of the time activities actually occur in the schools either during school hours or after school hours so most of the time during the day the staff are out unless they're the after-school hour staff in which they're there preparing, you know, for the after-school activity. So we do a pregnancy prevention, we do tobacco cessation or tobacco prevention with youth, and we do substance abuse treatment prevention.

Over the last, I would say three years, we've also had in one of the dormitories what I call a moms and babies program. It's a gender specific substance abuse treatment program for generally young mothers. We're talking about often the prototypical individual is a woman maybe who started drug use, she comes from a abused, abusive background, a lot of trauma and, and sexual trauma, physical violence and so on, starts using drugs and then by the time she's in her late teens she's producing offspring and she may still be using drugs. So our goal is to intervene and work with those women and we do have a lot of success for those women, we work very intensively with those women and then we do a lot of reunification. The children have often been taken away, from the babies that are taken away and during their stay there we reunify them and teach them bonding skills and child development skills and that sort of thing. Now that program will be moving soon because we have another building that we just received a Certificate of Occupancy for, we're waiting for licensing which we hope to get this week from the ...(inaudible)... into Kahului. So that will vacate that other building and it would be available for some other social service type use. It would be lower impact than what we had previously done. So sorry for the long answer, but ...

Mr. Shibuya: Yeah, no ...

Chair Hiranaga: Okay, any other questions, Commissioners? I have a question. This facility located on Baldwin Avenue. Is this one of the old Maui Land and Pine residential homes? I'm trying to figure out where on Baldwin Avenue this is.

Mr. Cunningham: No, but the nearest neighbor just below us is Maui Land and Pine dormitories. You know, you know, those dormitories?

Chair Hiranaga: Yeah.

Mr. Cunningham: I would imagine those people came before you because they recently did huge remodeling.

Chair Hiranaga: Right.

Ms. Callentine: It didn't come ...(inaudible)...

Mr. Cunningham: They haven't come yet?

Ms. Callentine: ...(inaudible)...

Mr. Cunningham: Oh, okay, well at any rate there's a lot of going on. It was sold. That property was, so it's just below us. This property was owned by I think they called it, the Old McNichol Estate and I know it was owned by the Inamoto Family for many, many, many years and the Kapono Building was a residence that they had built 80 years ago or something like that. I mean, a long, long time ago they built that residence. In 1970, it was given to the County. The County actually owns the property and then they lease it to Maui Youth and Family Services. So only original building there was Kapono and then in the late 90's we built a dormitory and then in the early 2000's we built a second dormitory. One was for boys. One was for girls. And at the height of this, in the mid, you know, mid-2000's, five, six, seven, eight years ago, we probably had 36 to 50 kids, 24/7, 365 on campus with all the attended staff and so on. So it was a very heavy use.

What we're proposing is, is a much reduced impact because like I say, most of the services are occurring off. Even the intensive outpatient services that we do on the campus, we transport the kids, we pick them up at schools sites, bring them there and then take them home afterwards and there's usually only about maybe a dozen at a time.

Chair Hiranaga: Second question, it appears you have your parking lot right up to Baldwin Avenue?

Mr. Cunningham: Well, it's pretty close. There's a little buffer zone there.

Chair Hiranaga: Why do you have the parking lot so far away from the structures?

Mr. Cunningham: I, I can't answer that. I have no idea. I wasn't there at the time and I, I just, I don't know.

Chair Hiranaga: I guess my other last comment will be ...

Mr. Cunningham: But there is, there is a fence because of the nature of the program before was 24/7 residential treatment facility, the, the administration and board and so on felt that having that perimeter fencing with the ability to lock it would keep people out and keep the kids in, you know, be more likely to do that. So they wanted to keep the staff parking outside. It's safer that way, I think, you know, because you're not running a lot of parking onto the campus and so on and it's just down and it's not very far. It's not a far walk.

Chair Hiranaga: Okay. My concern, I guess, is the visual impact from Baldwin Avenue and if you could look at buffering that parking with visually from Baldwin Avenue be it, you know, planting a hedge and also your proposed new trailer, –

Mr. Cunningham: It's, it's existing.

Chair Hiranaga: If it's visible from Baldwin Avenue if you could also screen that –

Mr. Cunningham: Yeah, it's not.

Chair Hiranaga: – trying to maintain the residential nature of that property.

Mr. Cunningham: Really all you can see is, pretty much is the basketball court off to the right and the old Kapono Building which we've recently painted, and you know, dressed up, it looks very nice actually.

Chair Hiranaga: All right, thank you. Any other discussion? Commissioner Shibuya?

Mr. Shibuya: You're talking in terms of a ten-year extension and your program is primarily remedial. Is there any preventive action related with this ten-year extension? Or is there a master plan to minimize the intake of this, this problem?

Mr. Cunningham: We're, we're a nonprofit agency. And unfortunately, social problems, social ills exist. The State, sometimes the County, sometimes the Federal Government decide that they want

to do something about those problems. So as a nonprofit agency, we put in applications and we apply to be the agency that provides those services and so what, and many of them are preventive in nature. So what we're hoping is that by intervening and working in a positive way for the some of the evidence-based practice models that we use with kids, those are not going to be the kids that end up in jail, six years from now ...(inaudible)...

Mr. Shibuya: Yeah, I was trying to insure that you worked yourself out of a job and I would be very happy for that.

Mr. Cunningham: I would too, I would too, if we could something about families and we could do something about drugs and you know, all those issues and we'd be out of a job.

Mr. Shibuya: Thank you.

Chair Hiranaga: All right, any more questions or questions for the applicant or the Department? Seeing none, I'll open the floor to a motion. Commissioner Wakida?

Ms. Wakida: I move that we waive review of the request for an amendment for Conditional Permit by the Maui Youth and Family Services.

Chair Hiranaga: Is there a second?

Ms. Domingo: Second.

Chair Hiranaga: Moved by Commissioner Wakida, seconded by Commissioner Domingo to waive review of the Conditional Use Permit extension request. Any discussion? No discussion. We'll call for the vote. All in favor please so indicate by raising your hand?

Ms. McLean: Five "ayes," Mr.Chair.

Chair Hiranaga: Opposed?

Ms. McLean: None.

Chair Hiranaga: Motion carries.

**It was moved by Ms. Wakida, seconded by Ms. Domingo, then**

**VOTED: To Waive Review of the Proposed Non-Substantive Amendment to the Conditional Permit.  
(Assenting - P. Wakida, D. Domingo, J. Freitas, I. Lay, W. Shibuya)  
(Excused - L. Sablas, K. Ball, W. Mardfin)**

Chair Hiranaga: Motion carries. Thank you very much. Item D-2, Deputy Director?

Ms. Callentine: Thank you.

Ms. McLean: Thank you, Chair. The next item is a communication from Councilmember Don Couch requesting that the Maui Planning Commission refer a draft bill relating to home-based businesses to the Hana Advisory Committee for review and comment. The bills will also, by prior action, the bills will also be brought to the Planning Commissions including this Planning Commission in December, but it requires an action of this Commission to also review [sic] the bill to the Hana Advisory Committee for review and comment.

**2. Requesting Comments from the Hana Advisory Committee to the Maui Planning Commission on the following proposed legislation:**

**MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 11-97 referring to the Lanai, Maui, and Molokai Planning Commissions A Draft Bill Amending Title 19, Maui County Code, and Section 3.48.305 of the Maui County Code Relating to Home-Based Businesses. (J. Alueta )**

- a. September 27, 2011-letter from Council Member Don Couch requesting that the draft bill be referred to the Hana Advisory Committee for review and comment.**

Chair Hiranaga: Any questions for the Department? Seeing none, open the floor to public testimony. Anyone here wishes to provide testimony at this time, please come forward? Seeing none, public testimony is closed. I'll open the floor to a motion. Commissioner Mardfin, oh. Commissioner Wakida?

Ms. Wakida: Is the recommendation to refer the draft bill to the Hana Advisory Committee for review and comment?: Is that what we're dealing with? Then that's my motion.

Chair Hiranaga: So moved by Commissioner Wakida. Seconded by Commissioner Shibuya. Any discussion? Seeing none, we'll call for the vote. All in favor say "aye."

Commission Members: Aye.

Chair Hiranaga: Opposed? Motion carries.

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

**VOTED: To Refer the Draft Bill to the Hana Advisory Committee for Review and Comment.  
(Assenting - P. Wakida, W. Shibuya, D. Domingo, J. Freitas, I. Lay)  
(Excused - L. Sablas, K. Ball, W. Mardfin)**

Chair Hiranaga: Next item is D-3, Deputy Director?

**3. Planning Commission Projects/Issues**

- a. Revising the SMA Boundaries**



Ms. McLean: Nothing to report on Item D-3, Mr. Chair.

Chair Hiranaga: Items 4, 5, 6? Commissioners?

- 4. EA/EIS Report**
- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report**

Mr. Shibuya: I just have one. That's Page 12 of 14, PD Open SMA Assessments for Maui. SMX 2011/0407, DeJetley Subdivision, subdivide large lot into two parcels, Hana. The planner is Paul Fasi. Where's the water? That's my question.

Chair Hiranaga: Any other discussion, Commissioners? Seeing none, we'll move over, move onto Item 7. Discussion of Future Maui Planning Commission Agenda.

- 7. Discussion of Future Maui Planning Commission Agendas**
  - a. November 8, 2011 meeting agenda items**

Ms. McLean: Chair, the Commission was provided with a memo from Clayton Yoshida, who's also available here if there are any questions. Listing two public hearing items relating to the Awahi Wind Farm plus request for comments on the Draft Environmental Assessment, a copy of which is also provided to the Commission. And then a Communication item, and the Director's Report, all is noted on the memo.

Chair Hiranaga: Any discussion, Commissioners? Seeing none, the next regular meeting date is November 8, 2011, and if there's no objection this meeting is adjourned. Thank you.

**E. NEXT REGULAR MEETING DATE: NOVEMBER 8, 2011**

**F. ADJOURNMENT**

The meeting was adjourned at 4:53 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Present**

Keone Ball (excused at 4:15 p.m.)  
Donna Domingo  
Jack Freitas  
Kent Hiranaga, Chairperson  
Ivan Lay  
Ward Mardfin (excused at 4:15 p.m.)  
Warren Shibuya, Vice Chairperson  
Penny Wakida

**Excused**

Lori Sablas

**Others**

Michele McLean, Planning Department  
James Giroux, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Department of Public Works