

**MAUI PLANNING COMMISSION
REGULAR MINUTES
AUGUST 11, 2009**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice Chairperson Bruce U'u at approximately 9:05 a.m., Tuesday, August 11, 2009, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. U'u: ...August 11, 2009 meeting of the Maui Planning Commission. Commission will now take up testimony for those individuals who cannot be present when the agenda item is to be taken up by the commission. Testimony will also be taken when the agenda item is taken up by the commission. If you testify now, you will not be allowed to testify when the agenda item comes up before the commission. You will be allowed a maximum of three minutes to present your testimony. I'm going to open it up for public hearing. First on the list Paul Laub. Please state your name for the record and talk directly into the mike.

The following individuals testified at the beginning of the meeting:

Paul Laub - Proposed Home Occupation Bill (not on this agenda)

C. Mike Kido - Item B-1, Proposed Bill Amending Chapter 18.04 MCC, Subdivision General Provisions

Tim Tattersall - Item B-2, Jeff and Sharyn Stone, SUP

Eric Taniguchi - Item C-1, Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions

Carlene Wong - Item B-2, Jeff and Sharyn Stone, SUP

Anthony Plitt - Item B-1, Proposed Bill Amending Chapter 18.04 MCC, Subdivision General Provisions

Their testimony can be found under the item on which they testified on (except for Mr. Laub's testimony which is the following).

Mr. Paul Laub: Aloha kakahiaka mai ka kou. (spoke in the Hawaiian language). First of all, I know some of you saw that article in the paper. I want to make it very, very clear it doesn't cover everything and I am very, very appreciative for the Planning Department bringing up the issue and working on this issue of home based businesses. My point of view is the other point of view, I'm the end user and from our point of view, there's some things that need, that really need to be changed for it be usable as a business as an end user.

I don't know if you have the list of times that it covers but if you don't it's going to kind of be necessary. Number one restricts the number of people who are employed there and my question is why? If five elderly ladies are making quilts it's not going to be negative. The key thing is how much it affects the community where the person is having his home based business. Each community, each area is different. In some places, bigger is okay, and some places smaller. So rather than make every little item very restrictive, I would like to see something wider where you can do what you need to do but if there's a complaint or a problem then that is addressed in that instance.

So the second item is, restricts anyone's home use to a percentage of 25%. Now why 25? Why not 42, 17 or 33? I mean, I don't know where that number comes from. And secondly is that it's kind of you know, it makes you wonder I mean, 25%, I mean, who pays the mortgage, who pays the taxes? It's not the Planning Department. And if they say, you know, 25% is your restriction, you know, does that open the door for them to say in the future like, your closet will not exceed 22% of your bathroom. I mean, if you're using a part of your house for a home based business, it doesn't matter what percentage it is.

The third one is that there shouldn't be any more than two people coming to your house at a time. That means, no hula lessons, no guitar lessons, no anything that's – no ukulele lessons for more than two people. Doesn't seem to make sense either.

Number four says you have to sell only those items made there. Okay, if you come to my house and I'm working on a bicycle and you say, hey I got one flat can you sell me an inner tube, no can, why? ...(inaudible)... why? Because I didn't make the inner tube. So it should be something like the retail sale of items will be reasonably related to the items produced at the home.

Okay, next thing, no sign. Nothing? No sign at all? I think there should be some kind sign.

And the next one is, it tells you how many axles the trucks can have when they come to deliver your stuff. I mean, how do I tell UPS okay, you're coming to my house you can only use two axles.

Mr. U'u: Three minutes Paul.

Mr. Laub: Okay, I leave my paper. Mahalo.

Mr. U'u: Questions for the testifier? Seeing none, thank you. Is there any members that want to give public testimony? Seeing none, public testimony is now closed. We'll turn it over to the Director.

Mr. Hunt: The planning commission's first item involves Mr. Milton Arakawa, AICP, Director of the Department of Public Works requesting review and comments on the proposed bill for an ordinance amending Chapter 18.04 of the Maui County Code pertaining to Subdivision General Provisions. The proposed bill addresses the issue of consistency. The file number is RFC 2009/0199. The planner assigned to this actually Joe Alueta. We got kind of a team approach here. Mr. Arakawa from Public Works will give a brief presentation and then we've asked Gwen Hiraga, a consultant to give the business side of the issue. She'll talk about several projects that could be affected by this and other potential problems that the bill addresses and then Joe Alueta will give you some remarks concluding the team presentation.

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

- 1. MR. MILTON ARAKAWA, AICP, Director of the DEPARTMENT OF PUBLIC WORKS requesting review and comments on the proposed Bill for an Ordinance Amending Chapter 18.04 of the Maui County Code, pertaining to Subdivision General Provisions. The proposed bill addresses the issue of consistency. (RFC 2009/0199) (M. Arakawa)**

Mr. U'u: Go ahead Mr. Arakawa.

Mr. Milton Arakawa: Thank you Mr. Chair. I'm Milton Arakawa. I'm the Director of Public Works for the County and I want to thank the commission for the opportunity to be here this morning. I have a power point presentation which I wanted to go over with the commission today.

Any way, I'm happy for the opportunity to explain the bill, the proposed bill to you and this is sort of unusual for the Department of Public Works. This is a joint proposal of the Planning Department and the Department of Public Works and subdivision regulations as you know are noted in Title 18 of the Maui County Code and amendments to Title 18 are not normally reviewed by the planning commissions. However, this proposal involves planning and land use and so therefore, the Planning Director and myself, both felt that all three planning commissions should have an opportunity to review and comment on the proposed bill.

Basically the proposed bill pertains to how state land use, community plan and zoning must relate to each other in the case of a proposed subdivision of land. Let me go over the current provisions of the code and it just stems from that one paragraph you see there which I've noted in pertinent part and it reads, "the Director" and that pertains to the Public Works Director, "the Director shall not approve any subdivision that does not conform to or is inconsistent with the County General Plan, community plans, land use ordinances, the provisions of the Maui County Code and other laws relating to the use of land." This provision has been in effect since 1994, and there has been no County Code definition of what constitutes conformity or consistency.

So over time, what has happened is that conformity has been interpreted to mean that the three designations state land use, community plan and zoning must match. Just as an example, if a state land use classification of agricultural, if the community plan designates your parcel as agricultural and you have county ag zoning for that parcel, this would be considered conforming or matching. If the three designations do not match for a particular property then one or more of the designations would need to be amended to match in order for the subdivision to be approved.

Lets go over some examples and there are many examples actually that run across but lets take an example of a proposed school. Lets assume that the state land use for this school site is in the urban district. It's community planned, public/quasi-public and it's zoned R-1 Residential. Now in the way that we looked at conformity. These three designations would not be considered conforming. It's not considered matching. However, if you dig a little further, a school is permissible in the state urban district. It's also permissible in the public/quasi-public district in the community plan and if you peruse the R-1 zoning of the code, a school is allowed, and it's fairly commonplace where you have like an elementary school or a private grade school within a residential district. So although a school use is allowed within all three of these designations, a conformity requirement would not allow the subdivision to be approved. We would require a change in zoning to public/quasi district first before the school subdivision would be approved.

Here's another example. If a person wanted to do a single family residential use on land which is state land use urban, it's community planned single family residential, but the zoning is A-2 Apartment District. This example also would show a non conformity. However, single family residential use is permissible in the urban district. There's a single family residential district in the

community plan in which of course, single family residential is permissible and single family residential is also allowable, it's a permissible use in the A-2 Apartment District. So although single family residential is allowed within all three of these designations, a conformity requirement would not allow the subdivision to be approved.

Lets take another example. Lets say for example if you look at the proposed use graphic at the upper left hand corner of the screen. Lets say you have a proposal where a person wants to do a commercial use on a portion of the site and you have maybe an intermittent stream along one end of it and this is fairly commonplace where maybe property boundaries go down to the invert of the stream. Lets say the state land use for the entire site is urban, community plan calls for business commercial along the flat portion of the site and the stream is designated open space. But lets say the zoning for the entire site is B-2 Community Business District. Here again, you look at the open space area, it would be a non conformity. So because of this non conformity issue, the subdivision would not be approved.

The crux of the matter is that if you look at a number of zoning districts, zoning districts allow a variety of uses. If you look at it another way, individual land uses are also permissible in several zoning districts. So there's some flexibility as far as individual land uses as far as where they are permitted within the zoning code.

I know this is a little busy but we can take a look at some of this uses that may be in various portions of the code. If you at the first example, it shows parks and parks as a use are allowed in the PK1, PK2 and PK3, the Park Districts. It's also allowed in the Open Space 1 and Open Space 2 Districts. It's also allowed in R-1, R-2 and R-3, the Residential Districts. It's allowed in the Duplex Districts and it's also allowed in the Rural and RU 0.5 and RU 1 acre District. So it's allowed in a variety of districts.

If you look at commercial use, just in general, commercial use of course is allowed in the B-2, B-3 and Business Country Town Districts. It's also allowed in the Resort Business District and commercial use is also allowed in the M-1 and M-2 Industrial Districts. Commercial use is also allowed in the Hotel District as an accessory use.

Public parking, of course it's allowed in the Public/Quasi-Public District, but it's also allowed in B-2, B-3, the Resort Business District as well as M-1 and M-2, the Industrial Districts.

Apartments, allowed in A-1, A-2 and it's also allowed in the Business Country Town District where you want to have perhaps your apartment use above your storefront. It's also allowed in B-2, and B-3 Districts and also in M-1 and M-2.

Single family residential is allowed in R-1, R-2, R-3, R-0, It's also allowed in the Duplex District and allowed in the Apartment, A-1 and A-2 District and single family residential is also allowed in B-1, B-2 and B-3 District under certain conditions. Here the thought was that you would have your structure housing your business and you may have a single family home on the same parcel.

Practically speaking, in some case we have had difficulty to determine you know what constitutes conformity because there are some community plan designations such as business multi family, business industrial and service business residential which currently do not have a corresponding

zoning. So you know, in those types of cases, you know is the business zone conforming to business multi family or is the apartment zoning conforming to the business and multi family. You know, it's somewhat of a practical issue that we have to deal with when the subdivision application comes before us.

And the third point basically mentions that, you know, for some community plan and zoning designations it is unclear as to what constitutes a match. And some other examples we're not sure like on business resort commercial designations or duplex zoning. What exactly is the matching category?

So basically the three land use and zoning categories do not match then if conformity is required, this would mandate a state land use district boundary amendment, a community plan amendment and/or a change in zoning. And if a community plan amendment is needed, as you know, this also triggers environmental review requirements of Chapter 343, Hawaii Revised Statutes. So the existing provision of the code affects not only large developers but also small subdividers as well.

So conformity mandates that many subdividers would need to complete a lengthy and costly permitting process before their subdivision is approved. And conformity may require state land use district boundary amendment, community plan amendment or a change in zoning applications even if a subdivision may otherwise comply with all other requirements.

The proposed amendments which you have before you would require consistency. Basically eliminates the wording of conformity and for the first time, consistency is going to be defined as, "land uses that are proposed within the subdivision are permitted by the County General Plan, community plan, state land use classification and zoning for that portion of the site where each land use is proposed." So as long as the land uses are consistent, a subdivision may be approved.

And our proposal, we had to twist the Planning Department's arm a little bit, but since the Planning Department is intimately involved with state land use, community plan and zoning processes, the Planning Director should be the appropriate authority to determine consistency.

One hang up we had was that normally when we have subdivision applications, subdividers do not normally declare a proposed use as part of the subdivision submittal. So with this proposed bill to ensure that subdividers comply with a proposed use requirement, the code amendments would allow the Planning Director to impose conditions to ensure consistency. For instance, conditions as to use may be attached to SMA permits which come before this commission or a project district approvals just as an example. The Planning Director may also require that a unilateral agreement be executed and recorded and this is of course an agreement that's put forward by the applicant, it comes before the commission that they will do things that they represent that they're going to be doing. And of course, what happens in a subdivision approval is that once the subdivision approval is granted, subdividers may then convey or sell properties to the purchasers. So with the conditions of approval or the unilateral agreement, the subdividers and any subsequent purchasers would be bound by these declarations of use.

So if we go back to our previous examples, the school use is permissible in the Urban District, it's allowed in the Public/Quasi-Public District in the community plan and school use is also allowed in the R-1 Residential District. So this would meet the test of consistency.

Similarly, single family residential use is permissible in the Urban District. It's permissible in the Single Family Residential District in the community plan and it's also permissible in the A-2 Apartment District. So this would also meet the test of consistency.

And where there may be more than one of each state land use, community plan or zoning designations for a proposed subdivision, the proposed amendments state that consistency can be determined for that portion of the site where each land use is proposed. So if we go back to that graphic that I showed you earlier where there was a split community plan designation, as long as the subdivider guarantees that they're going to be doing the allowed use within that portion of the site, the subdivision would be approved and that would be guaranteed via the conditions that this commission may impose or the unilateral agreement that the subdivider would put forward and would be recorded in the Bureau of Conveyances to give notice to any future purchasers that this is what they need to comply as well.

So the Department of Planning and the Department of Public Works are recommending approval of the proposed bill and we believe that the amendments provide much needed clarification as to how state land use, community plan and zoning must relate to each other in the case of a proposed subdivision. We also believe that consistency is a fair and reasonable basis on which to approve subdivision of land in the County of Maui.

So I'll be happy to answer any questions. I guess, you want to do Gwen first and I'll come back later.

Mr. U'u: I'll ask the commission if you can save questions or you want to ask questions?

Mr. Mardfin: I'd prefer to ask.

Mr. U'u: Okay, we're going to prefer to ask says Commissioner Mardfin. Commissioner Mardfin.

Mr. Mardfin: At least one would, I would. Your first example was an example of a school. Why does a school need a subdivision? I mean, maybe you have to combine land to make it happen, but assuming you don't, the school would come in, this whole thing wouldn't apply isn't that correct?

Mr. Arakawa: It may not apply. We may have uses for instance where they come in on a specific site, we may require a road widening lot. To do road widening lot we need to do a subdivision and then you need consistency or conformity and that's where the problem lays.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I think the Director wanted to comment.

Mr. U'u: That's okay. Director Hunt.

Mr. Hunt: Another example is the West Maui Hospital where they will be subdividing that site, that site for the hospital out from the main parcel and so that would be an issue under that example.

Mr. U'u: Commissioner Mardfin: Trying to look at the bottom line on this. Correct me if I'm – I'm going to make a statement but I want you to correct me if I say anything factually incorrect. It seems to me this has several advantages. Advantage one for the developer it vastly shortens their time and expense in getting approvals. Number two, for the planning commission at least, we've had a number of these things come in where people have asked for one thing or another. It takes up our time. These would not, no longer have to come before us. Our able Planning Director would be able to determine those kinds of things. And three, I've been often bothered by people coming in with statements that they want to do this, they want to do that and they get the stuff and then you're never quite sure what's going on. And if they were bound to the use of it I would feel much more comfortable anyway. Are those kind of three big advantages of this?

Mr. Arakawa: With the proposed bill the commission could certainly impose conditions as far as use and specific portions of the site to ensure that that is in fact what is constructed. That's correct. And what happens here with the bill is that we just want to make sure that for each of the three categories, state land use, community plan and zoning that the use is permissible within each but the designations themselves may not necessarily be conforming. But they would certainly be, the uses would be permissible.

Mr. Mardfin: Thank you very much.

Mr. U'u: Commissioner Shibuya.

Mr. Shibuya: I just have a question and this is more directed, could be directed generally because we haven't heard from Joe Alueta and Ms. Gwen Hiraga and this question is the advantages of this conformity versus compliance. There is this part of this questionnaire interpretation of general goals and objectives developed in there and reflected in the general plan and the community plans and these are very difficult to determine specifically the application when it comes to land uses. And in – I see this as an opportunity to streamline this process in which we approve land uses. I'm speaking like this because I know Akaku, they're smart folks that cannot be here today are watching T.V. and they're learning about this. And the issue here is that it allows for a speedier, a faster processing of the approvals. Do you see this as that?

Mr. Arakawa: I kind of look at it as eliminating some of the unnecessary permits that would have been required with the conformity requirements. So some subdividers would be allowed to simply continue and get their subdivision approved without a change in zoning or a community plan amendment. But yes, it would streamline the process.

Mr. Shibuya: Right. And so there's this advantage and also there is a possibility that the public may be confused and may not have the total picture and the interpretation of the general plans and the community plan goals and objectives may not be totally consistently applied. That's the other fear that I have. Is that a possibility too?

Mr. Arakawa: Well, the way the code reads now you know, the subdivision approval is basically done by Public Works Department with review by the Planning Department, but in these amendments it's clear that now the Planning Director will be the authority as far as determining consistency. I think that's the appropriate place to place that burden.

Mr. Shibuya: Right, and today we have lots of technology and data bases and so we have layers of data that we can put on a computer such as the GIS, Geographic Information System. And this system is available to us and if we don't use it, then shame on us. This question may be more towards Director Hunt than to you. The question is how extensive are these inconsistencies and non conformities as we have applied this conformity issue? How significant is this?

Mr. Hunt: How extensive are they in our community?

Mr. Shibuya: Yes.

Mr. Hunt: We believe they're fairly extensive. Gwen Hiraga will show during her power point presentation that especially with open space, which has fingers that go up into the hillside to correspond to the topography it could affect a number of properties and so we believe it is a serious problem and we think this would be a good solution, a streamlining solution.

Mr. Shibuya: Right. Thank you very much.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I don't know which director this is for, maybe both of you. There's still a lot of property that's zoned interim. Would this affect them at all or would the interim people still have to go through some sort of a process to it changed into something else?

Mr. Hunt: During the staff discussions, the Planning Department staff discussions, it was noted that there's some people who are fond of requiring bringing these non conformances into a matching. There was discussion that perhaps the Council may not be that keen on this streamlining because there's an ability to affect the zoning at that level. There's concern in Council that interim zoned land should be done away with. We've heard that recently. We passed the interim bill that this committee reviewed, we got it to Council and there was concern that why do we even still have interim zoning lands? So based on that discussion, the staff recommended that we put in a clause in this bill that says interim zoned lands will not be subject to subdivision. So in other words, you'd have to go and get a change in zoning for those lands and that would further that idea that, you know, there should be some consistency. There's some examples where we should require consistency and interim zoning seemed to be at the top of the list.

Mr. Mardfin: Thank you.

Mr. U'u: Any questions? Seeing none, we will turn it over to Gwen.

Ms. Gwen Hiraga: Morning Chair and Members of the Commission. Name is Gwen Hiraga. I am not here today representing any property or land owner. I'm here as an individual and I really appreciate being part of the director's presentation on this proposed bill.

First of all, I want to take the opportunity to commend the Mayor, the Director of Public Works and the Planning Director in taking the initiative to address this problem. Okay, as Milton noted and there may be some duplication of what Milton said, so I'll just quickly go over it, but this is the

provision in the County Code that we're talking about.

And not to confuse the issue but where the planning commission gets involved with is at the SMA level and the commission through the department makes a determination in terms of a project subdivision whether it's consistent with zoning and consistent with community plan and that's SMA. For subdivision purposes, you need both. It conforms to and consistent with zoning and community plan.

The next few slides are just examples of where you have inconsistencies. The first one is the Royal Lahaina property out in Lahaina. This is the subject property. As you can see the community plan designates the entire property – I'm sorry the West Maui Community Plan designates most of the property as hotel. There's a portion here that's designated open space that's along the shoreline as well as here along the highway is designated open space. Now this is the zoning map for the Royal Lahaina property and the entire parcel is designated, they have multiple zoning. So this portion here is HM Hotel. This portion here is H-2 Hotel and they have a small portion down here that's zoned as A-2 Apartment.

The next example is the Honua Kai project out in Kaanapali North Beach and Mr. Anthony Plitt earlier testified. This is the community plan designation similarly the parcel for the most part is designated as hotel. There is open space along the highway, open space along the shoreline, a park designation along here and business in here. The underlying zoning for the property is again, split zoning. This is R-3, and I'm sorry this is hard to read, but this area is HM Hotel, H-2 Hotel and then you have R-3 again.

The last example that I'm going to show you is the Lot 3 project in Kaanapali North Beach. This was the SVO, Kaanapali Ocean Resort Villas. I am only going to show you a community plan map because the property, the entire property is zoned hotel. So here it's hotel designation, open space along the shoreline, open space along the highway. And this community plan map shows all this yellowish, greenish color that's all open space designated areas, up the mountains as well.

Real quickly, and like I said, you know, I'm not here representing any land owner or private property owner but there are several major projects that are affected by this inconsistency, all of which have received planning commission approval through the SMAs. These projects were designed and configured to conform to and be consistent with the open space designation on portions of the property. These projects propose no vertical improvements aside from landscaping in the open space area. The project meets the intent of the open space designation and the SMA approval confirms this. However, because of the current provisions in the Maui County Code, the county is saying that regardless of how a project is designed, the Public Works Department will not approve building permits unless state land use designation, county and community plan designations and zoning are all the same.

And real quickly, I want to note that the construction of four or more dwellings also constitutes a subdivision. So it's not just a subdivision of land. Subdivision is also the construction of four or more dwelling units.

To continue on, you know, there are projects that are in limbo because of this situation and in

almost all cases the open space designated areas are limited to corridors along major highways, the shoreline and gulches.

The next few slides are areas within the West Maui and Kihei-Makena Community Plan areas. And everything that you see on the next few maps that are in these colors are designated as open space. So you have all these gulches and the corridor along the highway. And we have several examples of these. This is also West Maui right here. And West Maui, this is the Kahoma area, again, this is all open space areas. Kihei, as well. This is also Kihei-Makena area and I apologize it's hard to see. The community plan maps are so large that when we try to get it into a slide like this, it really diminishes the size of the plan. Okay, the next two are Kihei – this is Kihei Town area and this is Wailea.

Okay, in terms of economic impact, the total investment by these four projects that I briefly mentioned is over a billion dollars. In terms of direct construction jobs over the next two to five years if these projects could move forward is over a thousand jobs and permanent jobs after completion of these projects result in more than 870 jobs.

Additional economic impacts or losses are you know, indirect construction operation related spending, permit required spending such as highway improvements, effluent reuse improvements and as you know, the commission had imposed certain conditions on certain projects especially on the west side that they had contribute to R1 improvements. Required affordable housing is also part of your SMA approvals. And in terms of revenues to the county, it's direct real property tax revenues as well as TAT revenues that flow through the state and finally visitor spending.

This concludes my presentation. Thank you.

Mr. U'u: Questions? Commissioner Hiranaga.

Mr. Hiranaga: Gwen, could you elaborate on the building permit issue. You're saying if they're –

Ms. Hiraga: Four or more.

Mr. Hiranaga: You're saying if the land designations in conformity they're unable to receive building permits?

Ms. Hiraga: Yes, that's correct.

Mr. Hiranaga: Even if no subdivision is involved?

Ms. Hiraga: That's correct. If you look, and even in the draft bill, they define subdivision as four or more units. That's in the existing code and carried onto the bill that's before you and that is in Section 18.04.470 where it says that the construction –

Mr. Mardfin: Page?

Ms. Hiraga: I'm sorry of the bill? Page 5. The construction of four or more dwelling units on a lot,

parcel or site shall be subject to the provisions of this title. So it's considered a subdivision for all intents and purposes. As an example, I'm going to bring back the slide on –

Mr. Hiranaga: Excuse me Gwen, it only applies if it's four or more dwellings?

Ms. Hiraga: That's correct.

Mr. Hiranaga: So it doesn't apply to one or two dwellings?

Ms. Hiraga: No. So on these hotel projects –

Mr. Hiranaga: You kind of answered my question.

Ms. Hiraga: Okay.

Mr. U'u: Questions? I got a question. So if it's not consistent or doesn't conform you will need to get a community plan amendment or a change in zoning prior to submitting your application?

Ms. Hiraga: For a building permit, yes. If I may, expand upon that. Specific example is the Lot 3, Honua Kai project and I had showed you that, you know, although they have multiple zonings on the property, the commission did grant an SMA approval and a Planned Development approval to shift, to address the project needs in terms of a project itself. Now the underlying community plan though is that they have open space designations along the highway and along the shoreline. And they are in building permit for their last phase which is the town homes and they're not able to get building permits because it's four or more units on the property. Their last phase is 72 units.

Mr. U'u: Question. A lot of the properties upcountry get, have gulches.

Ms. Hiraga: That's correct.

Mr. U'u: Or along the shoreline there is open space.

Ms. Hiraga: Yes.

Mr. U'u: That's shown there. So if you were to subdivide, say a small home owner subdivide and you're faced with open space and were to get a community plan amendment or a change in zoning, what would be a typical cost for a change in zoning for any person upcountry looking to subdivide for his family? What would be the nominal cost or high end? Give us the low figure and give us the high figure because I heard from some of the commissioners it would actually streamline the process, but it seems to me if you run into the problem, it's not streamlining. It might be costly.

Ms. Hiraga: Okay, right now I think the options that a property owner has if they have this problem with inconsistency, is to either get a community plan amendment, a change in zoning or a variance. First of all, with a community plan amendment as Milton mentioned, it will trigger Chapter 343 requirements. The community plan amendment itself I would estimate \$60 to \$75,000 just for a small property because it goes through the 343 process. It comes to the planning commission at

least three times to review the draft environmental assessment, the final environmental assessment and the actual public hearing on the community plan amendment. Then it goes to Council and Council will have you know, a minimum of three meetings. For a simple zoning change, I would, without a community plan amendment that's also maybe \$40 to \$60,000.

Mr. U'u: Before you even start?

Ms. Hiraga: That's correct. And you know, in recognition of the process, we estimate approximately two years.

Mr. U'u: Two-year process?

Ms. Hiraga: That's correct.

Mr. U'u: That's going to be costly for – how much properties on Maui would this effect off the top of your head? Take a wild guess because the concern I see we have family property abutting ocean and I haven't even taken a look at it, shame on me. It would scare me to see it was designated open space let alone an SMA that's my concern for myself. Maybe I'm being greedy, but I know there's people out there that facing the same thing I'm facing.

Ms. Hiraga: Yeah. I'm sorry I don't have an idea of how many individual properties would be affected. We could probably do some research and the best that, you know, I could come up with was just looking at the two community plan areas and that's only two, right, West Maui and Kihei-Makena and looking at all the areas that have open space designations. In your particular case if you have shoreline property most likely you have open space designation on the frontage and you will be subject to SMA requirements.

Mr. U'u: You guys work for kamaaina rates?

Ms. Hiraga: Of course.

Mr. U'u: Kidding. Any more questions by the commission? Seeing none, thank you Gwen.

Ms. Hiraga: Thank you.

Mr. U'u: Turn it over to Joe Alueta.

Mr. Joe Alueta: Good morning Commissioners. I don't have a slide show projection or anything like that for you today. I'll keep it pretty straight and simple. Our role is to try to see what the advantages and disadvantages are to the department impacts. Again, I would just remind you that this board is not required to comment or to provide any type of – we're seeking the comments because we feel it does impact the Planning Department and overall planning process through the subdivision, through this consistency and conformity issue.

So we did work it out, we did transmit it out to agency comments. I did give you an August 6th memo with regards to – summarizing the agency comments. You can see only the Fire Department

had some comments with regards to not being able to what do you call, require infrastructure improvements for fire flow during the subdivision, but the section they commented on is already in the code. So it wasn't anything new. So it was – they were commenting on an existing section that was not being ...(inaudible)... modified. Because that section was already exempted from having to comply with the conformity provision.

Again, the previous two speakers talked about the advantages and the streamlining. It will significantly streamline the process. For the private sector it will probably be a net decrease in time for the Planning staff because you would eliminate the need for a change in zoning or a community plan amendment processing by the Current Division.

However, again, the disadvantages, be the bad guy, the disadvantage to the whole thing is that, one, staff is going to be under the gun during the subdivision process to get their comments in. So that really limits the time for Zoning Administration and potentially even Current Division if they have to pick up some of that workload to review all of the community plan statements and policies. As you know there are many given the General Plan and the Islandwide Plan that you guys are currently reviewing. It basically consolidates the Old Testament, New Testament and the Koran and the Dead Sea Scrolls all into one and so those are the types of documents that we would probably – that they would have to review and they would have to get those comments in and requirements to Public Works within a 45-day period. So that's the disadvantage. Okay, that's something that we, the staff will have to make adjustments for to make sure that if we want them put a condition on during that subdivision process and get those comments in, we need to do it as quickly as possible. There as been a few occasions where we missed the deadline and we didn't get what we wanted in the subdivision review process.

Another thing is conditions. Traditionally, when you're reviewing a project or a property, whether you be a land owner or a regulator, right potential land developer, you pretty much go straight to what does it say, what's the zoning restrictions? And hopefully, you know, a lot of due diligence, if you have a good realtor, I'm not going to make any comments about that, but you're going to have to really be – know what has been recorded against the land and whatever else has been and the conditions to that. I think that's – as well as the Planning Department will have to look at not only just what is the community plan, but when someone comes in for a development whether it be SMA or just a building permit review, we have to now check what the zoning says, if there was an SMA that's one thing, now we have to check was there any, anything recorded against the property during the subdivision phase and then say where on the property was those conditions placed. And so I think – but the overall net effect is that yes, it's more work for the Planning Department but you're decreasing as a lot of you know and developers know it can be a year and a half to two-year process and the reason for that is because you are going through those, you now, Bible, Koran and Dead Sea Scrolls to figure out what is impacted on this property.

Another thing is like I think one of the advantages of doing it the way they have this proposal is that it will eliminate and may not be to the Council, but it will eliminate Christmas tree hanging. As you know, when you come in for a change in zoning or community plan amendment, you kind of have – it's kind of like your second thoughts, you know, there may have been zoning for a property 30 years ago and now when they come in if they have this little section of open space or whatever, you kind of get everybody coming out of the woodwork on their second thoughts and trying to Christmas

tree hang their little condition on a change in zoning during that process. And I think this will eliminate that and make it pretty much a straightforward process. What's your zoning, what's your use, are you consistent? And I think from that aspect, I think it hopefully will be a more fair process.

Again, from the department standpoint those are straightforward again. We're just seeking your comments on it and to help with Public Works. Again, and it's kind of more of a courtesy. So, hopefully you'll take advantage of it and give us I guess some good comments. Thank you.

Mr. U'u: Questions for any one of them? Commissioner Mardfin.

Mr. Mardfin: Mr. Alueta thank you very much. I had seen the positives of this and you've – I was having a hard time finding negatives but you found some important ones and I'm glad you did because we need to talk about that too.

Let me focus on the 45-day one. You know if they have to come before us, all those things have to be checked anyway. It's just you have more time to do it. Isn't that correct?

Mr. Alueta: Oh you mean, as far as without these changes?

Mr. Mardfin: Without these changes, the planner, the Current planners have to go through –

Mr. Alueta: Correct.

Mr. Mardfin: All three things anyway. They have to get it organized for us. It's just that they have more time to do it.

Mr. Alueta: That is correct.

Mr. Mardfin: So it's not that they have more work to do, it's just that they have to do their work faster.

Mr. Alueta: Correct. And that's why I mean. That's why I say the net time, I think although they're under the gun both Zoning Administration and probably Current would be under the gun more. I think the turnaround is quicker but also the overall time spent reviewing and sending comments to Public Works saying I want this condition or have – the applicant needs to address this condition, this condition or this I think would be quicker and probably a lot more quicker than them getting an application, also save a lot more trees with the amount of paperwork to be done, transmit out an application to 30 different agencies. You're not only saving time in the review process for the Planning Department but also the dozens of state and federal agencies and county agencies that review every single change in zoning regarding of – I mean, even if you just have a small portion of open space that you have no desire to put anything on but just because you want to subdivide you have to go through that change in zoning process. And I think in all from Planning Department standpoint, from staff, all we're looking for is have that person identify on a map with metes and bounds where is that open space on your property. And I think that's going to be the primary conditions.

You saw this one example, it was Betsill Brothers, I think it was Betsill Brother out in Waiehu where they did a subdivision, large ag lot subdivision, they had to change the zoning and actually zone the water way or the open space that was designated on the community plan before they could get their subdivision. And from the Planning Department stand, the only thing that we were concerned with was where on your property is this open space given metes and bounds and where and what are you going to do in that. The developer at the time had no desire to do obviously, you know, on a rainy day like this, he wouldn't want to put anything in there. But that person needed to go through the whole change in zoning process just so that we could pretty much get identified where is the open space on the zoning map.

Mr. U'u: Commissioner Starr.

Mr. Starr: Thank you for bringing it before us. I have some great concerns on this because you know, even now with the amount of scrutiny that occurs on all the different levels, stuff happens and when you know, something does get approved by accident, by error and omission, it creates a vested rights. And we've all seen those examples of that, you know, whether it's Montana Beach or I'm trying to remember what the name of the – GATRI you know, that was Kamaole Point that created the problems and a number of others where, you know, stuff almost slipped through the cracks. I know that the people who've appeared before us today, you know, we have some really excellent people in this industry and I'm sure they would never try to slip something through, but there might be some other folks not here today who might, you know, try to slip stuff through. We've certainly seen that and by cutting the level of scrutiny way, way down, and putting a time constraint on it, we're making it easier for that to happen. And then once it, you know, kind of flows through then it's almost impossible to take it away. I mean, could you – we kind of have checks and balances now, am I perceiving it right that we're getting rid of a lot of those layers but at the same time we're also getting rid of the checks and balances that are keeping those type of things from happening, that that will go away and we're likely to have, you know, stuff approved that's by mistake?

Mr. Alueta: First of all, I think GATRI was a good example of without this, I mean, with or without – I mean, with the changes it wouldn't have made a difference. GATRI upheld the community plan. GATRI showed that during the SMA process we reviewed it and it was – the proposed use was inconsistent with the community plan and that went all the way to the courts and it was upheld that the community plan stood during the SMA process. So it would not have made, that's the kind of stuff that gets caught no matter what, regardless of whether there's a subdivision. It got caught because we reviewed it during the SMA process. We reviewed the community plan and the director made the call and said this is inconsistent, we're not processing it. Yes, it is layers upon layers and I think what you have is every time you have – we often make laws for 3% of the criminals, 3% of the people, and so you create this – every time a problem comes up and you address, you write a new ordinance or law or permit for that one incident that happened and then you keep just adding and adding and adding and adding thinking that you're somehow, the more nets, right you make, you're going to catch more fish. And sometimes like if you keep making nets with a one-foot hole in it, you know, you're not going to catch any more fish. It's just not going to work. And I think that if you refine and if you make one net, you know, I don't know what the legal size is, but – and you spend your time keeping that one net patched, you're going to catch more fish and you're going to catch the ones that you're trying to catch and not the ones you're – And I think that seems to be the

issue is that you've piled on layer upon layer upon layer and you still get incidences where you have a Montana Beach or – I mean, examples of different areas where you wanted to try to catch just that one person. I think if we try to focus in on what we're trying to do and the purpose I think that's – you're going to get better results. You're still going to get mistakes, that's – I don't know of any perfect system and to me I think that you know, the way we got it right now and what this will eliminate, I don't want to say redundancies but it add a lot – it will reduce a lot of wait from the workload that the Planning Department and a lot of government agencies are doing right now. And if they have to only, they know that during the subdivision and they look at that's all I need to make sure that they're not – I'll have more time to review those subdivisions from the get go and ...(inaudible)... comments. Instead of either letting the 45-day lapse and having no comments. I think –

Mr. Starr: May I make a follow up?

Mr. U'u: Commissioner Starr.

Mr. Starr: I want to address this to the Director because I think it's – this becomes a departmental policy thing. You know, if we do this and it reduces the amount of process and layers of scrutiny is there a way to I guess put in almost a best management practice type of policy in the department with these? Because, you know, subdivision is – that's where stuff happens and that's where good stuff happens, that's where bad stuff happens and if there's only – you know, if it's going to cut down on workload and cut down on processing is there a way to create a departmental policy that we know that, you know, it will be checked and double checked and really thought through and that the current planner who's dealing with it is not going to have to be in a position where they've got five things they've got to process through today. You know, they just don't have the time or resources to do it.

Mr. Hunt: I think we need to realize that this isn't taking away scrutiny to a large degree. Any subdivision in the SMA or most subdivisions in the SMA would still come before the commission. The situation is that we would be taking out the change in zoning review. But there'd still be all the other laws that we have or community plan review, but there's still be all the other laws that we have and the way the law is designed as proposed is we would still seek consistency with the community plan, with zoning and with the state land use. I'm not sure what kind of clause the commission could add to this proposed bill to state the Planning Department will assure consistency with these document – the language is already in there. So as Joe as said, it would eliminate a few change in zonings and community plan amendments but it's not like we're opening the flood gates to review less development or anything like that.

Mr. U'u: Commissioner Guard.

Mr. Guard: Thank you. To follow up on Jonathan's and this was more of a courtesy to come here anyway correct? Like we never really reviewed subdivisions anyway. This isn't our purview I believe, am I correct?

Mr. Alueta: Correct, outside of the SMA.

Mr. Guard: Outside of the SMA.

Mr. Alueta: You do not review subdivision.

Mr. Guard: So like up in Kula or Makawao when we're talking about gulches, it would have to be zoned open space instead of rural to go through, something like that.

Mr. Alueta: Right, and so now we would just like I say, require, instead of requiring them to actually zone the open space to OS1 or an OS2 designation, right, and then fight over what do we mean by OS1 and OS2, they would then just say, here's my gulch, I'm not building in my gulch, therefore, you know, I'm okay with zoning – I mean, outside of it, I'm just building on the top part and then you can go ahead and do your subdivision to build your couple houses or whatever you want to do.

Mr. Guard: So my only question was on the presentation it talked about the Director of Planning being the one that said, oh yeah, this is consistent or not. I guess the commission would only be involved if there was an appeal to that process? If say the director said oh, I don't think this is consistent then what happens?

Mr. Hunt: Appeal would go to the BVA. Planning commission would be involved – the director wouldn't make that determination unilaterally. If the project was in the SMA –

Mr. Guard: Well, outside of the SMA I wasn't sure if you still –

Mr. Hunt: Outside of it, yeah, then it would be the department.

Mr. Guard: It does concern me. I mean, Royal Lahaina Resort, that's the one I think possibly my first year in that one it's being held up by here is this great project, everyone oh we really thank you, great project, now it's being held up because of, is it the open space along the highway that they want them to do a subdivision so that's –

Mr. Alueta: Shoreline.

Mr. Guard: Oh, the shoreline side. So to me that's a scary thought that they went through a few years of work already and then now to be held up, I'm pretty certain that was three years ago that they got through us and now to be stuck on – they weren't going to build on the beach, we have a shoreline setback and now they're being asked to change that zoning when they weren't going to touch it anyway. I'd like to hear from the public as well as –

Mr. U'u: Commissioner Shibuya.

Mr. Shibuya: I just have a few questions here. It deals with the original question that I had that I shared earlier and this deals with your experience. From your perspective, how large of a problem is this? Are we dealing with a gorilla, mongoose or a canary or a sparrow? Is it a big problem when you start overlaying these regulations and ordinances, land use provisions? How large of a problem is it? It's just your estimate.

Mr. Alueta: I'll defer to Public Works on that because they are the ones that deal with the subdivision right now so I wouldn't – as to how often this comes up on the amount of subdivision review that they have. Because again, this is Title 18 not 19. So this comes into them and it's they who have to – they submit it to us for comment and then – but right now they are the ones that make that determination on the conformity. And so, how often do they send it up to us and say, tell the applicant you don't meet – you have to change the zoning or get a community plan amendment or whatever. So I'll turn it over to them.

Mr. Arakawa: Commissioner Shibuya. I find it a little hard to answer your question too, but I think the point really needs to be stressed is that I realize the commission made some decisions, SMA decisions on major projects some years ago, and what we're trying to do with these proposed amendments is basically trying to ensure that the subdivision consistency follows SMA consistency. Because right now the subdivision code requires conformity, which is a different standard. So we just want to make sure it's the same. You know, everybody follows the same set of rules. That's kind of the main crux of it. And in certain project cases what happened is after the commission approved the SMA, they've had to go back and either get a variance or get a change in zoning. It's just a further delay before they get their final subdivision. So we're trying to basically eliminate that, what we feel is an unnecessary step.

Mr. Shibuya: I'm still uncomfortable in the sense that is this a large problem in terms of how prevalent is this? Lets say 10 applications come in, are there variances to this how many of them of these 10?

Mr. Arakawa: That's a hard question to answer. Maybe we can try to get some handle on that, some better handle on that. But I think if you take a look at the maps that Gwen showed you earlier, you could say that potentially it could affect a lot of different properties. And if you looked at the way the zoning on certain parcels are, they have split zoning. You may have split community plan designations. So it depends on whether you have a proposal for subdivision that comes in. Like properties like, you know, the Chairman's property may be, you know, it just sits like that without any proposal that comes in, but when it comes in you'll find out that, you'd have to do all these application procedures. So it's basically trying to make the subdivision process consistent with the SMA process and how the standards that you review your SMAs. That's the bottom line.

Mr. U'u: Commissioner Shibuya.

Mr. Shibuya: It's a follow up question. It might be with Director Hunt in this case. Is the GIS information available to the public that they can review their impacts on their proposed subdivision? In other words, the layers of data from the state land use, General Plan, community plans, if we put these layers of data on this visual map, and look at their property, would that highlight the extent or problems that they could experience?

Mr. Hunt: I think potentially down the road and that's where we're headed. Right now the GIS that's available on the county website for the public is fairly rudimentary. The department is, and you've witnessed the more elaborate GIS that we have available for internal discussions, but those maps haven't been verified down to specific parcels. And so, we're reluctant to release those to the public who even with a caveat that they're just draft maps because people don't read that kind of

thing. They see the map and they think that's it. So I think in the long run and I always try and look for solutions that is one of the solutions is to try and get a GIS available to the public and this information accurate and we have a team staff that is working on that, getting all the zoning and community plan maps digitized.

The other long term solution is during the comprehensive planning of the community plans when we have a community plan map designation, the department's going to propose that we do comprehensive zoning to be consistent with the community plan map. So we won't have this inconsistency. Most jurisdictions I've worked in, all other jurisdictions I've worked at you do a plan and zoning amendment simultaneously and when the county or city does a comprehensive plan change, they do a comprehensive zone change so that everything's consistent. And we won't have this discussion hopefully in 10 years.

Mr. Shibuya: Right, and I really applaud the Planning Department for doing and taking that initiative and moving in that direction. I think that is the way that the future approvals should be approached. The information be shared with the public because the public is actually our customer and this is where the rubber really meets the road. Thank you.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: This is for Joe. Where does it say the 45 – where's the 45-day comment in there? I'm somehow not finding it. Maybe I'm blind.

Mr. Arakawa: Commissioner Mardfin, the 45 days that Joe was referring to is the 45 days that we need to make a decision on a preliminary subdivision approval.

Mr. Mardfin: So it's not in this draft legislation?

Mr. Arakawa: No, it's in other portions of Title 18.

Mr. Mardfin: Would it make sense to increase that to 90 days or something?

Mr. Arakawa: Well, typically what happens is that we send out, once we receive a complete subdivision application, a preliminary plan, we would send it out to a number of agencies for review and one of whom is the Planning Department. A number of agencies right now are overburdened with work and we do not receive the comments within 45 days. So we typically issue a preliminary approval mentioning that you still – the subdivider still needs to comply with any comments that the agencies such as the Planning Department or Water Department may not comment within 45 days. Subdivider still needs to comply with those requirements. So it would be the same thing with this bill here. If the bill passes, if the Planning Department does not come up with comments within that 45-day period, it does not excuse the subdivider from any requirement that they may come up with later. ...(inaudible - changing of tape)... and they'd still have to comply, the subdivider would still have to comply.

Mr. Mardfin: Can I follow up?

Mr. U'u: Follow up question.

Mr. Mardfin: I mean, there was groans in the room when I said maybe you need a longer period. But right now the period is 18 years they'll hang up until they get things changed. So I mean, even 90 days is a lot shorter than it seems to currently be if you're just not approving subdivisions. So, you know, it's an improvement even though it's more time than we currently have.

The second, and still as a follow up, Joe had mentioned hanging Christmas tree ornaments and one of the ones we've somewhat consistently been putting on is that all post – all runoff has to be zero in effect, pre and post. And of course, if it came through here on an SMA that little Christmas ornament will still be hung on it. If it doesn't come through here, the Director probably wouldn't apply it. So there is, there would be some things that might not get as – all the ornaments on that they would if they came through here. Is that correct?

Mr. Arakawa: If there are no discretionary approvals that come before the commission or the Council that would be correct. But we do have, of course, with regard to drainage, the department still has our drainage rules which would apply.

Mr. Mardfin: But the drainage rules say cover additional runoff from the development. They don't say pre and post.

Mr. Arakawa: The commission as I understand it adds requirements on top of what the department requires. So if there are no change in zoning or SMA requirements that would apply for a particular subdivision then you're correct.

Mr. Mardfin: Thank you.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, my understanding on the 45-day period for preliminary subdivision approval from a practical standpoint it's almost always a letter stating that the conditions for from the Planning Department have not been finalized. But you must meet their conditions prior to final subdivision approval. So I think this is not a concern to all. I mean, I may be wrong but it does not happen very often that you get final comments from the Planning Department within that 45 days.

The other question, again, the director said SMA still comes before the planning commission, it doesn't matter, unless you're building less than a \$125,000 worth of improvements, you're going to need a major SMA permit. So they're not going to be circumventing us.

One question is, and maybe you answered this earlier is the concerns of the Fire Department have been satisfied? Their letter of June 24, 2009?

Mr. Alueta: My reading of the code is that they're commenting on an existing section and the changes don't impact the meaning. The code already allows and Milton can correct me if I'm wrong, exempts that provision of consistency and conformity to those specific ones which are affordable housing that's initiated by the county and whatnot are exempted anyway from being the

consistency. Doesn't exempt it from subdivision. It just exempts them from that provision already.

Mr. Hiranaga: Okay, thank you.

Mr. U'u: Any more questions? Seeing none, we're going to open up testimony. I'm going to open it up for public testimony. Please state your name for the record.

a) Public Hearing

Mr. Perry Artates: Aloha and good morning Vice Chair U'u and Commissioners. My name is Perry Artates, the Executive Director for the Hawaii Operating Engineers Industry Stabilization Fund. As I sat down there and listened to the presentation, one vital issue caught my eye which was the projects that are in stagnate right now. When I say that in stagnate is because of our workforce that is really in jeopardy which is the construction industry.

I just wanted to make a few comments on this because as you said Commissioner U'u, yes it's very vital that you know, the ordinance divides not only open space but it divides lands that are mauka to makai of any streambed and it's a financial burden really for local families. If you really heard what you guys mentioned now of how much it costs. I, too, have family property from my mother in Hana. So those things gotta be tightened up into exactly where do we want to go with this issue.

What else now. I was writing all kinds of things down. Now I kind of going brain dead. Simply because I think there's going to a lot of delays in this and while we're delaying projects, has these four major projects that was mentioned that could stimulate our economy that's on the map already. Commissioner Shibuya you mentioned about a gorilla and mongoose that we facing in regards of these type of details. What do we see in the real world out there in our industry is that we facing losses of homes, we facing divorces, we facing abuse, whether it's substance or physical abuse at home because there ain't any work in our industry right now. This is the most, utmost times that we see our construction industry falling and if we're not going to do nothing, except throw the ball in each other's park, I'm just devastated to see what's going to happen socially. And not just because of the construction work. I'm saying from sending your children to school because your financial ends are not met. So you have a lot on your plate and the only reason why I stepping up here to speak to you is that you know, families are not so – you know, what I end my testimony.

Mr. U'u: Three minutes. Any questions for the testifier? Seeing none, thank you. Any more public testimony? Please state your name.

Mr. Rory Frampton: Good morning Chairman and Commission Members. My name is Rory Frampton. I'm here testifying as a community member. I'm also a planning consultant so I've had a lot of experience with this portion of the law. This amendment or this proposed bill is doing three things. It eliminates this word "conformity," it delegates the responsibility to the director for determining and interpreting use and planning – to the Planning Director and then it defines consistency. The most important thing that it's doing is getting rid of the word, "conformity." And that's a problem. You've heard the examples, and I thank the director and the Public Works Department for bringing this bill forward because it's been out there for a long time. And just remember, conformity means that it was an interpretation, it actually stemmed from the interim

district and people were subdividing the interim district and they said, hey, we want people to conform to the land use designations in the community plan so they inserted this word conformity.

Since then the opinion from the Corp. Counsel has been that conformity means I don't care what your use is, all of the three layers have to line up and that's some of the perverse results that you've seen. It doesn't say, is the use consistent, it just says I don't care what the use is, do the three layers line up and that's kind of bureaucratic interpretation that just doesn't make sense. Lets look at what the use is like if the planning commission does at the SMA level, is the use consistent with each of these layers and remember, we have three layers, you guys are working on a forth right now. So all the word, the most important thing this bill does is get rid of that word conformity, you still have to have consistency with the community plan. The Planning Director I think arguably has that power now to determine consistency with the community plan. He can recommend denial of a subdivision if he feels it doesn't conform to the community plan. So I think delegating the power to the Planning Director is just codifying that, it makes sense.

The third thing is where we're kind of grappling with a bunch of issues and this is with consistency and how do we determine consistency with the community plan. The question earlier about streamlining, and this question I think I don't want to muddy the water because this question is going to be there regardless of what happens with this bill, this bill should eliminate the word, "conformity." But with regards to consistency, Joe Alueta mentioned that it might mean that the planners are going to have to go look through all those, the General Plan language, the policy document, the Maui Island Plan policy documents, the community plan policy documents and there are conflicts in those things. I don't know if you'd be able to find one project that would be consistent with every single word, statement or policy that you guys are working on. But what is simple is being able to define it from the land use layers, the maps, the zoning standards. So if the definition of consistency said that consistency shall mean that the County General Plan or the Maui Island Land Use Map, the community plan designation, those would be the only two amendments here. State land use classifications and zoning for that portion of the site which you just proposed. If you clarified that it was a map, then it would be very simple, the Planning Department should be able to do it in 10 days. He should be able to pull out the layers, look at the – is this subdivision consistent with the open space designations, with the urban and rural growth boundaries, with the residential district, with whatever district it is, it should be fairly simple to look at the land use designations.

Mr. U'u: Three minutes Rory.

Mr. Frampton: Okay, so thank you, and I'll just summarize by saying, thank you very much and I hope you move forward. If anything, move it along to the Council and let them determine what the consistency thing is. I think the Commission's input on that is important but the most important thing is to get rid of this silly definition of conformity.

Mr. U'u: Questions? Commissioner Guard.

Mr. Guard: Thank you. Rory, you've worked with some kind of local families trying to do small subdivisions etc. Can you think of any examples of maybe people we've seen that wouldn't have come here for any other reason except for that change in zoning?

Mr. Frampton: There's some projects that don't actually happen because of this definition. You tell them don't even think about it. There was a project that came before this commission a long time ago, it was multi family community planned, zoned residential and I know it went through lawsuits. I'm not sure, I think they might have actually come in and had to change the community plan. It was a project in Kihei. You know, I think what this does do it makes it easier to conform to the community plan. I mean, if a family is coming in and it has open space along the gulch, you get rid of the stupid conformity and you say, okay, show me how you're going to conform to the community plan? He says okay, I'm going to do an open space easement within the gulch. Okay, that works. You're consistent with the community plan. It doesn't have this -- You at least get to look at the use for consistency. Right now, it's I don't care what your use is, go and change your zoning and come back to me in two years. So you're getting rid of that problem. It's a problem. You're not streamlining it, you're just getting rid of this definition that says I don't care what you guys are proposing, I just want things to line up and it just seems like a shortsighted way to implement things.

Mr. U'u: Commissioner Guard.

Mr. Guard: So Bruce had kind of asked on the number side of like, oh you're saying a couple thousand, \$10 thousand, \$20 thousand or so what kind of number are you --

Mr. Frampton: The numbers that Gwen used earlier anywhere from \$40 to \$70 thousand for a change in zoning. I don't care what your size is.

Mr. Guard: So for a small family that's the price of them being able to actually build a cottage or house on that property.

Mr. Frampton: And two years, yeah.

Mr. U'u: Any more questions? Thank you.

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

Mr. C. Mike Kido: Good morning Vice-Chair and Members of the Maui Planning Commission. My name is C. Mike Kido, external affairs for Pacific Resource Partnership. After reading the subject matter memo, I'm ...(inaudible)... trying to understand how the proposal in its current form provide equitable treatment of the applications in the various stages of the approval process. I look forward to the information that will be exchanged in the public meeting begin and understanding of this complicated situation. Thank you for the opportunity to express my interest in the subject matter.

Mr. U'u: Questions? Seeing none, thank you.

Mr. Anthony Plitt: My name's Anthony Plitt. Good morning Vice Chair and Commissioners. My name's Anthony Plitt and I'm the development manager for the Honua Kai Resort and Spa in Kaanapali North Beach Lot 4. This morning I thank you for the opportunity to testify on the proposed bill to amend Chapter 18.04 of the Maui County Code pertaining to the Subdivision General Provisions which is on your agenda today.

My understanding of the proposed bill is that it addresses the current requirements of both consistency and conformity with the County General Plan, the community, etc. It further defines consistency and clarifies other much needed housekeeping items including that the clarification that construction of four or more dwellings on a single lot is subject to the subdivision requirements.

Our project is directly affected by this current interpretation and it is my understanding that the proposed language would amend that and would allow for our project and other projects to be able to move forward. Thank you.

Mr. U'u: Thank you. Any questions? Commissioner Mardfin.

Mr. Mardfin: So you're in favor of the changes?

Mr. Plitt: Yes, we are.

Mr. Mardfin: Thank you.

Mr. U'u: Seeing no other questions, thank you.

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

Mr. U'u: Any other testifiers? Seeing none, public testimony is now closed. Staff recommendation.

b) Action

Mr. Alueta: Hopefully this amendment if passed, will put out a lot of consultants out of business because they won't - no just kidding. Again, we're seeking your comments and options on it, but we did give you your standard recommendations of approval of the proposed bill to the Maui County Council, recommend approval of the bill with amendments, recommend denial or vote to defer.

Again, we're seeking your comments on it. It's not a requirement, but we think it's important because it does impact Planning Department and the planning commission. Thank you.

Mr. U'u: Commissioner Guard.

Mr. Guard: Is the Director ready to handle this extra responsibility?

Mr. Hunt: There'll be extra responsibility but only for those subdivisions where there's non conformity right now between the community plan and the zoning. So other than those instances, the routine's the same.

Mr. U'u: Comments? Commissioner Mardfin.

Mr. Mardfin: Joe, what would you think if the time period were changed from 45 to 90 days? Would that help things, hurt things, make no difference?

Mr. Alueta: It's not part of – I'll turn it over to my boss.

Mr. Mardfin: We have actually had discussions on the 45 days. There's actually a lawsuit regarding the 45 days. The problem is is that 45 days isn't enough time for the departments that are overburdened especially when there's turn over or vacations, etc. The alternative is to extend it and of course, certain people in the community wouldn't support that. They would want more of a streamlining approach. So we're struggling with that. As much as I support the idea that we should at least consider extending the 45 days, I think if you throw that in this bill it's going to muddy the water and we don't want that. We just want to keep this clean, move it along and we can come back and talk about 45 and 90 at another time.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, I have some comments which I'd like to go on the record and I feel that I probably differ with some of my fellow commissioners. You know, it's important to be aware of both sides because this is something that will open the flood gates to a lot of subdivision. We've heard that it will open up opportunities to subdivide that probably would never happen and it will make those that are currently non conforming able to be developed. This is a two-edge sword.

You know in the community there's a lot of sentiment on both sides of this issue. You know if you ask two people what the state of you know, development on Maui Island is you'll have people who'll tell you it's terrible, we're all out of work, we're losing our houses, we got to jump start it. That's valid. But there's a lot of people who if you ask and they say, we want to stop the bulldozers, enough already. That's valid too. You know, the problems we're having now really are over a national or even worldwide economic crash that is not something we can really blame on anyone locally but it's you know, was based on greed by people many, many thousands of miles away from here who really bankrupted the banking system a year ago and two years ago. That will change and we'll be back to where we're building great guns again. You know, there's an upside to that and a downside. But as I see it, conformity, consistency between the community plan, zoning, and on the three layers, is the check and balance and it's especially the checks and balance when it comes to building in those areas that should be open whether for view plane or for drainage. And you know, the thing about maintaining open space zoning in the stream beds this is very real, you know, and we got a miss on a hurricane this week, but one day we're not going to get that miss. And by making it easier for stuff to kind of slowly encroach into those stream beds and flood planes, one day we're going to pay the piper on that.

I really don't feel that I can support this because I just don't think it's in our overall best interest to make it a lot easier and to allow, you know, many, many, many more subdivisions to occur even though a lot of them will be aiding local families. Some of them will be just being done by speculators as well. I just think that it may be more difficult now, but I think that we're preventing more bad stuff by happening than would occur if we were to make this change.

Mr. U'u: Thank you Commissioner Starr. Commissioner Shibuya, comments?

Mr. Shibuya: My comment would be that that I would be contrary to Commissioner Starr is I'm fully supportive of this recommendation. With the amendment of further simplifying for the general public

the layers, the three layers of data, putting it on maps and this will be a challenge, yes, I understand. But we can work towards this to allow for and provide the community with this types of maps, land use maps with this three layers of data or even four layers of data if there's some variances and/or commission approvals. This type of information would be invaluable to the community and I see this as the way we move forward in the 21st century.

Mr. U'u: Comments, Commissioner Guard.

Mr. Guard: I agree with Commissioner Shibuya and I guess as a follow up for the Title 18 and 19 on the layers of having more things available to the public because I believe a few years ago, and I don't know if that's still a process if you're looking at piece of property you have to come in for a zoning confirmation and you submit that to the Planning Department, is that correct? I believe there's been mistakes made at level when you have one person's signature saying yeah, this was the zoning or the land use. They have a signature from someone that made, maybe a honest mistake and that's created a lot of problems for the County. So Commissioner Shibuya's might be taken seriously for that reason.

Mr. U'u: Comments, Commissioner Mardfin?

Mr. Mardfin: This is actually a question and I guess it's for one of the two directors or maybe both of them. I'm kind of curious where this comes in and there are two situations. Suppose a situation is that it's an SMA, they need an SMA permit, that will come before us, we'll get our whack at the pinata here then it goes from here, once it gets through us, then it goes to Public Works and that's where the hang up has been. So is that where it cuts in? I mean, where it starts to impact?

Mr. Hunt: Yes.

Mr. Mardfin: So that then the Director of Public Works would with a clear conscience could say, we'll look at it and if the property, you know, if we've done our work and if it's on the right places then you'd have no problem going, yep, okay, you got the building permit.

Mr. Arakawa: Whatever plans that are approved by this body via an SMA or any other permit, need to be reflected in the subdivision application or the building permit that's processed by our department. That's the bottom line.

Mr. Mardfin: And so basically this will give – looking for consistency of use rather than technical matching will give you more ability to carry out our will in a sense?

Mr. Arakawa: It makes the subdivision process basically consistent with the SMA process, more consistent with the SMA process now.

Mr. Mardfin: The second part, suppose it isn't an SMA because I mean, basically if it comes through us then it goes to him, it's hitting after we've given it the oki doki. If it isn't an SMA then we wouldn't see it at all. It would go to your office Director Hunt and then you'd have your Current Planning staff look at it and check all the things and if it looks okay to you then you'd give it the okay and send it over to the Director of Public Works. Is that correct?

Mr. Hunt: That's how the system works right now. If it's not in the SMA we have staff that review the subdivision and send out our comments to Milton's staff. So the only difference that we're proposing is if there's this conformity issue, the department may be able to say, well, you're still consistent. You don't need a change in zoning. We believe you're consistent. We may require a unilateral agreement that okay, you don't build anything in the open space area along the highway or along the shore, something like that.

Mr. Mardfin: And so you'd be doing what I would like to see happen. You'd be able to enforce the use of the property as opposed to the technical matching in designation?

Mr. Hunt: Yes, yes.

Mr. Mardfin: And by the bill you'd be able to get this not only in writing but in a legally registered form so it would run with the property.

Mr. Hunt: If necessary. Again, the only scenario that I see that occurring is if there's a – if the three entitlement levels don't match exactly and it's outside the SMA or some other planning commission review then the department would have the ability to require a unilateral agreement.

Mr. Mardfin: Thank you very much.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Question for the director. There was discussion about the Maui Island Plan update, the CAC, the community plan updates and comprehensive zoning. So it in place that once this community plans are adopted that if there is a conflict the zoning will be changed to conform with the community plan or is that something we'd like to see or is that something that's an ordinance.

Mr. Hunt: There's policies in the draft Countywide Policy Plan and I believe also in the Maui Island Plan that speak to doing a comprehensive rezoning with the updates of the community plans. At this point, I believe they're still draft policies. There may be some backwash at the Council level because I'll try and say this as diplomatically as I can, I think the Council likes to have some review of those projects and having the change in that zoning gives them that review. It does give them review but the community needs to realize that it bogs down the system incredibly and most communities don't have that kind of a review.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: One of my concerns when the community plans are adopted in the future, the new community plans are adopted is you will create situations where you will be providing multiple designations on parcels that owners are unaware will be happening to them and so an example, someone has a large piece of property that's zoning rural and they've had it for a long time and now the community plan as designated a section of its property open space because there's a stream running through it. And now he's ready to subdivide, low and behold he was unaware of this community plan change and now he's got to go through a zoning change in order to do his subdivision. Something like this will alleviate that situation because I know in the current

community plan there were changes in designations to people's property without their being aware of it. The case in point is that condominium in Kihei which was designated hotel and then got redesignated single family and now they're going through this process of getting hotel zoning. They have to do a EA, SMA and all that just because someone with big, broad brush and happen to change the existing property from hotel to single family. So I think this is a good thing.

Mr. U'u: Any more comments. Seeing none, –

Mr. Mardfin: I'll make one more.

Mr. U'u: No, you had enough. Kidding. Commissioner Mardfin.

Mr. Mardfin: Mine were mostly questions before, now I'll comment. While I understand Commissioner Starr's concern, I'm going to vote for this. There are several things I like. It basically doesn't take – for SMA property it doesn't take effect until after it's gone through I suggest gives the Director of Public Works the ability to carry out the wishes and the conditions that we've put on things. So I think that's a positive. It's only for non-SMA properties that wouldn't come before us anyway and except for the fact that we might have to do zoning changes of various sorts and community plan amendments and we get a whack at it that way. I'm willing to take the chance on that.

I do think it's consistent with what we've been seeing throughout our Maui Island Plan process where we've asked for streamlining and consistency and making things work and I think this is one step toward that kind of streamlining that will get things moving.

I basically agree with Commissioner Starr. I wouldn't be doing this just to take care of a short term economic problem in the U. S. that is hitting Hawaii. That's not why I'm going to be in favor of it. I think this is long term thing where we're – the people with a lot of money, the \$50 thousand or \$80 thousand or whatever it turns out to be is a huge stumbling block. I think it's a stumbling block more for local people that might want to be doing a subdivision to help their families out or inheritance sorts of issues. I can see all kinds of reasons why this would be good for local people as well as offshore investors and so I intend to vote in favor of this motion.

Mr. U'u: Any other comments? Seeing none, do we have a motion?

Mr. Guard: Is there a staff recommendation?

Mr. U'u: Staff gave recommendation.

Mr. Alueta: I gave it already.

Ms. Sablas: He gave.

Mr. U'u: He gave staff recommendation, so any motion? Commissioner Mardfin.

Mr. Mardfin: I move that we support the recommendations which is to support the bill as it's been

drafted.

Mr. U'u: Do I have a second?

Mr. Guard: Second.

Mr. U'u: Seconded by Commissioner Guard. Motion moved by Commissioner Mardfin. Comments? Discussion? Commissioner Shibuya.

Mr. Shibuya: I'd like to ask for a friendly amendment to include an amendment that the Planning Department be encouraged to further develop the GIS system to allow for maps to be drawn out with these layers of data.

Mr. U'u: Commissioner Guard, comment?

Mr. Guard: I don't want to – Again, I think we've used the term often, we don't want to muddy the waters. I think those comments can move up with that and that might not have to pertain to this exact change in a bill, but just as policy for the director. So I don't really want to add that to the motion at this time.

Mr. Mardfin: I'm of the same position. I think the director's expressed his interest in doing it. I don't see a need to muddy the water. Just a clear recommending approval of this language to the Council is where we are, in my opinion where we ought to stay.

Mr. Shibuya: Fine.

Mr. U'u: Any other comments? Seeing none, call the vote. All those in favor. All those opposed.

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

**VOTED: To Support the Recommendation to Recommend Approval of the Proposed Bill to the County Council.
(Assenting - W. Mardfin, J. Guard, K. Hiranaga, D. Domingo, W. Shibuya, L. Sablas)
(Dissenting - J. Starr)
(Excused - W. Hedani)**

Mr. U'u: One nay. Motion approved.

Mr. Alueta: Thank you.

Mr. U'u: At this time, we'll be taking a 10-minute recess.

A recess was called at 11:07 a.m., and the meeting was reconvened at 11:20 a.m.

Mr. Hunt: The commission's next item involves Jeff and Sharyn Stone requesting a State Land Use

Commission Special Use Permit in order to operate the Huelo Point Lookout Bed and Breakfast, a 4-bedroom and breakfast located in the State Agricultural District at 222 Door of Faith Road, TMK 2-9-007: 058 in Haiku. The filed number is SUP2 2001/0027. Robyn Loudermilk was the planner originally assigned to this and she has now taken up employment with the State Land Use Commission so Joe Prutch will be substituting for her.

2. JEFF and SHARYN STONE requesting a State Land Use Commission Special Use Permit in order to operate the Huelo Point Lookout Bed and Breakfast, a 4-bedroom bed and breakfast located in the State Agricultural District at 222 Door of Faith Road, TMK: 2-9-007: 058, Haiku, Island of Maui. (SUP2 2001/0027) (R. Loudermilk)

Mr. Joe Prutch: Good morning, good afternoon. This application is a State Land Use Commission Special Permit. It filled back in November of 2001 along with a Conditional Permit at the time. It's approximately two acres of land in the state ag district in Huelo. The application is to operate a four-bedroom bed and breakfast within an existing farm dwelling and an accessory farm dwelling at 222 Door of Faith Road. The applicant has recently applied for a Bed and Breakfast permit in lieu of the Conditional Permit. That is something that staff would likely approve pending approval of the State Land Use Commission Special Permit.

The project is state ag. Paia-Haiku Community Plan ag, county zoning is ag and it's located in the Special Management Area.

The location is shown there is Huelo Point. Her property is the dark one in the center that. That's a 500 foot map you can see that there's no other B&Bs pending or approved anywhere within the vicinity of her project site. To the north are ag lands and farm dwellings. The east side is ag land and no structures, I believe that's where the lady that spoke earlier where her cows are to the east side there. To the south is more ag lands with farm dwellings and to the west is more ag with farm dwellings on the Door of Faith Road there.

Existing services that are there, the water is provided by private water system comprised of a well and two underground storage tanks. Sewer is provided by individual wastewater system cesspool and a septic system. Fire protection would be provided by the Paia Fire Station located on Hana Highway in Paia Town and Police protection would be provided at the Police Substation located at the Haiku Community Center.

The applicant proposes to operate the Huelo Point Lookout, it's a four-bedroom B&B within the main house. The farm dwelling is an 1,800 square foot structure with four bedrooms located in three separate wings. They're all connected by a connected walkway. So there's three rooms to rent in the main house one in each wing, the Rainbow Lookout, ... (inaudible - stepped away from the microphone) and the Star Lookout, I'm sorry. And then the fourth bedroom would be located at the bottom corner in the Haleakala Cottage a second dwelling.

The project was reviewed by various county agencies and state agencies. These letters were included in your staff report. The applicant did respond to all the agencies and we're here today.

The Maui County General Plan the project does meet the objectives and policies of the General Plan. It does meet the – consistent with the various policies of the Haiku Community Plan including just one in particular it says “limit visitor accommodations to owner-occupied bed and breakfast establishments that are residential in both scale and character. County zoning wise it is zoned ag and according to the recent B&B Ordinance 3611 bed and breakfast homes that meet certain criteria are permitted uses within the ag district. For this one it was a lot created prior to November 2008. It’s comprised of five acres or less and it does have an approved farm plan and implemented farm plan.

I did say the subject property is located in the special management area. Determination has been made by the Planning Department that bed and breakfast homes are not required the SMA permit when there are no physical improvements. There are no physical improvements to this site so the proposed project does not require an SMA permit.

As far as agriculture is concerned the property is classified as D land on the Land Study Bureau with A being and E being worst. It’s classified Pauwela clay which has moderate permeability, medium runoff and moderate erosion hazard. It’s mostly used for pasture and woodland.

In 1992 the applicant purchased this property and immediately began work to improve the quality of growing conditions through the planting of a windbreak and improving the soil quality out there. She’s been utilizing organic farming techniques, permaculture principles. They’ve been able to transform the property into one of active agriculture. As far as the ag, the applicant will elaborate a little more on what she has out there, what’s she’s growing and what’s she’s doing with it. Like I said, a farm plan was approved back in March 2009, it’s been implemented. In order for the planning commission to approve a bed and breakfast as a special use permit in state ag there’s certain unusual and reasonable uses within the ag district. There’s five guidelines that you need to make. Staff has made a determination that the five – the use is not contrary to the objectives sought to be accomplished by Chapter 205 and 205A and the rules of the Land Use Commission and the staff report has a description in it, a breakdown of each if you want to hear that I can read it, but it’s in the staff report. Number two, the desired use does not adversely effect surrounding property. Number three, the use does not unreasonably burden public agencies to provide roads, streets, sewers, water, drainage and school improvements and public and fire protection. Number four, unusual conditions, trends and needs have arisen since the district boundary rules were established. And number five, that the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

As far as public testimony is concerned, the staff report and the letters that were received by the Planning Department there were 15 of them in support and I’d like to point out that those shaded areas are eight of the support letters that are within the 500-foot zone of her property. I didn’t receive any opposition letters. Obviously someone spoke earlier in opposition. That’s my staff report. I’ll do a recommendation report afterwards. I believe the applicant would like to get up and kind of talk about some of the ag she’s got on the property.

Ms. Sharyn Stone: Aloha Commission Members, aloha members of the Planning Department and mahalo for giving so generously of your time to plan for the future well-being of this special island we’re lucky enough to call home. I’m Sharyn Stone, owner of Huelo Point Lookout Bed and

Breakfast with Jeff, my husband, and we've there since 1992.

I wonder if it would be appropriate first of all to some of Carlene's concerns or would you like me just to stick to the ag because I hadn't met Carlene before.

Mr. U'u: If you could stick to the presentation.

Ms. Stone: Okay, okay, that's fine. We had been organic right from the get go. We belong to HOFA, Hawaii Organic Farm's Association for over 10 years and we're also members of Maui Permaculture Network, Maui Aloha Aina, that's MAA and the Maui Farm Bureau. We have a young son, Kainalu who was born here so the issue of sustainability is something we are deeply passionate about. We want him to inherit land and indeed a planet that's in better shape than when we found it.

The best way to do that we feel is through permaculture. You've probably heard of it already but in a nutshell, the name says it all. Permaculture is permanent culture. It's basically a design system of interdependent systems modeled as closely on nature as we can get and includes the cultivation and well being not only of soil and plants but also of people and communities. Basically, it's working in harmony with nature much like the ancient Hawaiian. We put together a few slides to give you a small taste of what we're doing, please do feel free to stop me at any time and ask questions.

So that funny little structure you see to the left there, I'm sorry we don't have a pointer but you see a little square box thingy, no SMA required for that one. That's my chicken tractor and it's actually a movable chicken cage. It's called a chicken tractor and was built by one of our first WOOFRs. Now WOOFRs are not puppy dogs. WOOFRs are willing working on organic farms and they come and stay with for on the job training and frankly I end up often learning far more than I teach. These kids are great and it's a great program.

One of the aims of permaculture is minimum tillage of soil. This is called a chicken tractor for a good reason, the chickens do all the work not me. Each day we add feed, bamboo mulch and some fruit and vege scraps from our compost buckets. The chickens then get to work on it turning it into soil, eating the bugs, eating the weed seeds, pooping like there's no tomorrow and therefore giving us freed nitrogenous fertilizer. We need it because we're on old pineapple country and the soil there is deficient, very deficient in nitrogen. Over a period of six weeks or so we keep feeding the chickens and adding mulch. They continue to tractor the soil and in a few weeks, wah la instant new garden ready for planting fertilized and weed free. This is an amazing system. So then we just move the tractor to a new spot and start the whole process all over again. Meanwhile, we get fresh eggs and we've saved money by not having to buy expensive fertilizers. I bought a bag a bloodmeal recently it was \$54 a bag and it's about three pounds per 100 square feet that you have to use. So it is really expensive and of course, it's bloodmeal we are purely organic.

B&B guests families who stay with us have their kids – they are totally fascinated by our chickens. Most of them think chickens lay directly into supermarket cartons. Hopefully they take away some of what they see and learn at our place and one day use it themselves as do their parents. I've often got calls from previous guests asking about compost piles.

Now that scrubby little plant in front of the chicken coop there in the foreground this is one of my favorite plants in the world because it has the ability to capture nitrogen from the atmosphere and store it in its small white root nodules making it available for surrounding plants every single part of this plant is useful. Its yellow flowers attract bees. You know our bees are in big trouble at the moment so anything we can do for a bee nectary we certainly do. Its seed pods are eaten like lentils or fed to the chickens. Its stems and leaves can be cut regularly for nitrogen rich mulch and it's roots as I said fix and share nitrogen. Did I mention that it's also tough so it can be used as a medium height shrubby wind break essential where we live believe me. The original owners of this property set up a macadamia nut farm but unfortunately didn't plant any wind breaks and so those mac nuts were totally blasted out of existence. You can also use these funny little bushes around any fruit trees that look sick on your property because they share so much nitrogen you can actually grow them within a few inches of your basic citrus and you keep cutting and mulching and that thing just keeps on giving nitrogen.

On over to your left if I can just show you, it's not pretty but it works, let me show you this. That is an example of what we call sheet mulching you've probably heard the term. It's also called cardboard or lasanya mulching. Basically we throw down lime and fertilizers in our case bloodmeal and green sand as we're always short of nitrogen and potassium. We top with unbleached cardboard then wet it, cover it with bamboo mulch and then you plant through the cardboard mulch to the soil below. The mulch and goodies under the cardboard bring worms, the mulch and cardboard controls weeds. My husband's really happy he hates weed wacking and we plant our main orchard crops through the cardboard. The fruit trees will be surrounded then by a flowering peanut which is the nitrogen fixing ground cover you see around the papayas there. Sweet potato we have three different varieties and comfrey another miracle plant. Oh, you got the two there. Okay, I was looking at the – the two slides look like they're one. You see the row of papayas on the right-hand side, to the very left of that road there is also a row of comfrey. Comfrey is one of my other fabulous plants. It looks like a weed and most people would call it one but it's not. First of all, you can make tea with it and secondly, it's called a dynamic accumulator now this sounds more like a new washing powder but in truth it does great stuff. It's the miracle plant that it is. This kind of plant is attracted to terrains that are deficient in the very element that it needs so it sends deep, deep roots down into the subsoil, brings out potassium, puts the potassium up into its very broad leaf. We get to cut that leaf and use it as a green mulch more free fertilizer.

So the other thing of course is windbreaks, I was going to talk a little bit about those. Yeah, the next photo will do. This is part of windbreak, actually go back to the photo before Joe if you wouldn't mind. Where the two slides join together is actually the boundary of our property –

Mr. U'u: Can you hang on one second we got a question by Commissioner Hiranaga.

Mr. Hiranaga: Personally I'll take the word of the staff that you have met your farm plan require so we can maybe move on if there's no other objections from commissioners, we can go specifically to your B&B permit request. I'll take your word that you've got farm activity and staff has confirmed it.

Ms. Stone: Okay, okay. You don't want to know all about my wonderful free fertilizer?

Mr. Hiranaga: It's not that. We have a full agenda.

Ms. Stone: Sure I understand. Well, you can take my word for it that we have a lot of ag going on. This is gliricidia also nitrogen fixer, windbreak. I did want to tell you about the fruit fly stuff we have. We have joined with the neighborhood to eradicate the fruit fly from this neighborhood. We've got melon and oriental fruit flies and a half a dozen of us went down to the UH Extension, came back loaded with all of the good trap stuff and for the first time I've actually been able to harvest huge mangoes. I'm used to these poor little things that big being nasty wormy messes. So we have a lot of great people in our community who are willing to work together.

Mr. U'u: Thank you.

Ms. Stone: I guess all I really want to say is it's encompassed in this last picture and I'm lucky enough to wake up to view every morning give or take a rainbow and we are truly blessed. The future well-being of this beautiful place, not just my place but our whole island is something I care deeply about. We all care, that's why I'm here and that's why you are here. I truly believe we are and businesses like ours are good for our land, our community and our island and I hope you do too.

I'd like to leave you with one statistic and one great quote. First the statistic and it's an encouraging one, over 7 million hectares of farmland world wide are now devoted to organic agriculture, up 10 times from 1990. And my quote is from someone with the appropriate name of Gary Gardener and he says, "once individuals, businesses and governments becomes advocates of sustainability a global transformation as great as the industrial revolution could be unleashed." So let the unleashing begin and mahalo everyone for your time.

Mr. U'u: Thank you. Questions? Commissioner Starr.

Mr. Starr: I notice the lot is a flag lot with a very narrow approach. Could you describe where your driveway is and how wide it is?

Ms. Stone: It's a 12-foot wide driveway Jonathan and it starts up at Door of Faith. It starts on a private section of Door of Faith Road and goes down to a standard 12-foot driveway.

Mr. Starr: Physically if a car gets stuck there, is there room for another vehicle to get around it in an emergency.

Ms. Stone: Oh you mean if a car was stuck in the driveway? We actually have two drive – they're not two driveways but our neighbor has a driveway that's parallel and there are palm trees that are done and he can actually and we sometimes do it we hop over the other side if one of our gates are closed. So yes, that is –

Mr. Starr: So in an emergency there's still access?

Mr. Stone: Yes, that is no problem whatsoever.

Mr. U'u: Question, Commissioner Mardfin.

Mr. Mardfin: You mostly – are you exclusively taking WOOFRs on or do you have other guests as well?

Ms. Stone: Oh, we have no guests at the moment. We've been closed for about 18 months.

Mr. Mardfin: Closed for 18 months.

Ms. Stone: The WOOFRs come and use our cottages at the moment or stay with us in the house.

Mr. Mardfin: I'm sorry say that again please?

Ms. Stone: The WOOFRs.

Mr. Mardfin: Yes.

Ms. Stone: Are in our cottages at the moment, a cottage or they stay with us in the house. So either they're in Haleakala Cottage or they stay in one of the places in the house.

Mr. Mardfin: And how long do they stay for?

Ms. Stone: It varies between one month and three.

Mr. Mardfin: So they're in effect B&B residents?

Ms. Stone: I wouldn't call that B&B. Oh, no they're not paying. They come for work exchange. I'm sorry. Yes, they don't pay at all. They simply come for work experience.

Mr. Mardfin: Do you have home tax exemption for real property tax?

Ms. Stone: I've never taken one because I knew I was going to be closed this year I rushed down on the 31st of December last year and I'm taking one for this year but of course that won't apply if I do get the permit for this year. But no, we've never taken one Mr. Mardfin.

Mr. Mardfin: And the value of agriculture – how much agricultural production have you sold in the past several years?

Ms. Stone: We don't sell it, we eat it. I have quite a number of receipts in my permit application to the Maui Food Bank and we eat what we grow and we share it with neighbors.

Mr. Mardfin: Any idea of the value?

Ms. Stone: Now you've really got me. I don't know. Absolutely priceless. I mean I can tell you that once I sold 20 pounds of limes to Alive and Well because I did this for an experiment for myself. They paid me \$15 and it cost me about \$15 in gas to take it to them. So when Kent say it's

priceless I think he's probably correct. I mean we have a lot of limes and lemons and we have a huge vegetable and herb garden and we eat from that exclusively.

Mr. Mardfin: How are the macadamia nuts coming?

Ms. Stone: Well, much better now, I've got some windbreaks around them. The gliricidia are a perfect windbreak for mac nuts.

Mr. Mardfin: Would that be a cash crop?

Ms. Stone: I think they closed down the mac nut production here on the island for a good reason. No, I wouldn't particularly say it was a cash crop.

Mr. Mardfin: Thank you.

Mr. U'u: Questions? Commissioner Hiranaga.

Mr. Hiranaga: Okay, Department of Health had some concerns about your private well. And I'm wondering if you would be agreeable to complying with DOH standards for a public water system which I think requires periodic testing.

Ms. Stone: Well we test periodically ourselves anyway.

Mr. Hiranaga: So is that a yes?

Ms. Stone: Well, it depends what those standards are. I think I perused them they were pretty intense weren't they. It wasn't just –

Mr. Hiranaga: Not really.

Ms. Stone: I mean, you're welcome to taste my water. I can give you –

Mr. Hiranaga: I think you provide test samples to the DOH periodically.

Ms. Stone: Oh, that's easy. I'm getting them tested next week anyway.

Mr. Hiranaga: But you have to do it I think every six months or once a year or something like that.

Ms. Stone: Right. Whatever it takes. I mean the water comes into our house through string filters. They are maintained. Each bedroom has a RO system. And we test our water regularly. We have no heavy metals and our e coliform count is less than one per whatever it is, whatever it is and 500 is the acceptable drinking water level. So our water quality is extremely good. The previous owners was so excited by this fact –

Mr. U'u: Could you just answer the question if you don't mind. Is it a yes or a no?

Ms. Stone: It would be a yes, honey. I'm going to do whatever I've gotta do.

Mr. U'u: Thank you.

Mr. Hiranaga: I've got many questions but I'll just limit to two for now and there's an access easement that's shown on the TMK map, do you have rights to that access easement?

Ms. Stone: Not that I know of, no.

Unidentified person in audience: (Inaudible)

Mr. Hiranaga: Yeah, it goes to the ocean I guess, it goes to the cliffs.

Ms. Stone: No that's a strange one. That was actually put in there, actually Carlene could probably answer that question. That was actually put in there when the land at the top of the map there, this is a family subdivision several years ago and it was put in as part of the family subdivision to Dave ..(inaudible)... lot which is I believe the very top one which is about 20 acres, but no, we do not have access to that road.

Mr. Hiranaga: Okay, thank you.

Mr. U'u: Any more questions for the applicant? Commissioner Hiranaga.

Mr. Hiranaga: Fire protection from the Paia Fire Station I guess that would take about a half an hour to get you without traffic?

Ms. Stone: 20 minutes if you step on it.

Mr. Hiranaga: With the sirens blaring.

Ms. Stone: Yes.

Mr. Hiranaga: I notice you have a swimming pool on site, are all the dwelling within 300-foot radius of that swimming pool?

Ms. Stone: Yeah, easily.

Mr. Hiranaga: Can we just have staff confirm that? I think that's one of the requirements of fire or that's what they'd like to have a water supply within 300 feet of dwellings.

Mr. Prutch: The main house surrounds the pool so definitely and the cottage from the pool I would estimate probably less than a couple hundred feet away, so yeah, definitely.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: From earlier testimony it sounds like at least one of your neighbors is not in favor of

this. Do you want to address her concerns?

Ms. Stone: Oh I would love to. Thank you very much for asking Mr. Mardfin. I actually went up and introduced myself to Carlene and Lester before we started because I actually haven't met them before and I'd always assumed they were these shadowy people who lived on the Big Island somewhere. So I've never actually seen them out there and I totally understand and appreciate concerns. When you've had land in your family for a long time and the Tavares family has been here for a long time you really – that land is precious and I absolutely understand their concerns and I do want to reassure them that not only will we be good neighbors we will be outstanding neighbors. I screen personally all my guests and one of the first things they always ask is oh, can we walk to the ocean. And the first thing I always tell them is no, we get to enjoy the cows. It's pastureland in front of us and if you went over there you'd be chased by a thumping great bull. So it's very, very clear up front our guests are not allowed to go onto the private property.

There are however people who do wander onto that property. There is an access road right there. In fact last week I was talking to Casey, Mel's sister and she said they'd found some people camping there. So it does happen. Odd people used come wandering down to my property too before I put a gate up. It's just part of the beautiful place where we live and sometimes you know people do stumble in. I've found old ladies sitting under one of my trees in my backyard. So we also used to have a big drug problem in the neighborhood, but I did tell Carlene when I talked to her never, never have one of my guests gone across that property. There's a thumping great barbed wire fence along the access road and it's also on top of a, it's about two feet up so you've got the barbed wire fence and then it's even two feet up, so you'd have to be fairly athletic to get over there. We love the cows. Ag land is ag is ag and ag always trumps over everything else. We understand and acknowledge that totally. We love the cows. We are blessed to have them. We love taking photos of them. We're very happy we don't have to feed them. We don't feed them actually because the cows –

Mr. U'u: Thank you I think you answered the question. Any more questions? Commissioner Shibuya.

Mr. Shibuya: I'd like to have some clarification on the cesspools and septic tanks. Can you explain that to me.

Ms. Stone: It's a complicated system Mr. Shibuya I understand. We have a letter from the EPA saying our system is fine with the EPA. We have an unusual situation in that the main part of the lookout wing is on a cesspool. The Rainbow wing is on that same cesspool. Star when it was originally built way back when was on an individual small cesspool and then Haleakala as part of the permit process we put a septic system in and it was approved as a hybrid system. So it goes into the septic and then the existing cesspool that was outside Star was used as a leach field. It just came to my attention though that the county is not okay to have Star's cesspool used as a cesspool for Star. So we have agreed to put a little pumping station in and they have graciously allowed us to make that part of the hybrid system so it will now go into the septic tank and that Starr cesspool will just be used as a leach field. But everything as is, it's not a large capacity cesspool and it has been cleared. There is a letter of clearance from the EPA in your ...(inaudible)..

Mr. U'u: Questions? Commissioner Hiranaga.

Mr. Hiranaga: So regarding the fencing, animal noise and feeding of animals on your neighbor's property would you have any objection to a additional condition that you will control your guests so that they will not cross the fence.

Ms. Stone: Of course.

Mr. Hiranaga: Complain about animal noise.

Ms. Stone: They never have they love it.

Mr. Hiranaga: Or feed – so you would put that in your house rules.

Ms. Stone: Absolutely. They'd be in house rules and –

Mr. Hiranaga: The website. So they don't come here –

Ms. Stone: Whatever it takes. No people who come here come for that lifestyle. They don't go out and feed the cows. The cows actually run away from them.

Mr. U'u: Thank you. Commissioner Mardfin.

Mr. Mardfin: Do you have a copy of your house rules with you by any chance?

Ms. Stone: They're in my permit application.

Mr. Mardfin: Did I miss that?

Ms. Stone: I don't think it was in the – I've got a spare copy with me if you would like them. I've got a spare copy.

Mr. U'u: And while we're waiting on that any more questions? Commissioner Hiranaga.

Mr. Hiranaga: One last question. I'm really interested to see pictures of your connections between the three dwellings that make them one dwelling.

Ms. Stone: They were all in my permit application.

Mr. Hiranaga: I'd like to see pictures.

Ms. Stone: I have a spare copy of my permit application if you'd like to see it.

Mr. Hiranaga: If it has pictures.

Ms. Stone: The walkways are covered, the walkways are enclosed and the walkways have solid

connections at each end and the walkways are fully permitted.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, this is to the director, this is another case where we're asking questions that were answered in the applicant but we do not receive the application we receive you know a very tiny bit of excerpts from it and if we had the application we would be able to proceed without having to ask questions. I still continue to feel that it is wrong that we are making decisions without getting to see the application.

Mr. U'u: Director.

Mr. Hunt: Do we have pictures in the file Joe?

Mr. Prutch: Yes, I do have some pictures in the file, I'd have to look through and see which ones you want. Once again remember though this is a special use permit. This isn't a B&B application so we didn't think that pictures of the house were pertinent information for an SUP permit. So we didn't include photos of the house.

Mr. Hiranaga: Guessed wrong I guess. I guess you guessed wrong.

Mr. Prutch: Yes, in this case I did.

Mr. U'u: Questions? Can we open it up for public testimony. Anybody who want to give public testimony please state your name for the record.

a) Public Hearing

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

Mr. Tim Tattersall: Hi, I'm a neighbor of – my name's Tim Tattersall. I'm a neighbor of Jeff and Sharyn Stone.

Mr. U'u: Could you please speak into the mike?

Mr. Tattersall: My name is Tim Tattersall, I'm a neighbor of Jeff and Sharyn Stone. I've lived next door to them for the past two years. They share part of our property line. We have a very good relationship. I try to do as much organic as I can and so we share a lot of going back and forth with trees or plants and shrubs. We have a shared well that we use together that is actually really good.

Mr. U'u: Any questions?

Mr. Tattersall: Yes, any questions?

Mr. U'u: Commissioner Guard.

Mr. Guard: So you're in support of their application for a State Land Use permit?

Mr. Tattersall: Oh, I'm sorry. Absolutely, yes.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: Do you have any intention of ever opening a B&B yourself there?

Mr. Tattersall: No, I do not.

Mr. Mardfin: Okay. Do you know of any of your neighbors do?

Mr. Tattersall: No, not that I'm aware of, no.

Mr. Mardfin: Thank you.

Mr. U'u: Any questions for the testifier? Seeing none, thank you.

Ms. Carlene Wong: Yeah, my name's Carlene Wong and I am an owner of the property that's east of the proposed bed and breakfast by the Stones. And my proposal is concerning the agricultural land zoning. You know, we have – our property has been used for agricultural use by my parents and grandparents for like over a hundred years. We've had this property in our family. And right now we still have just cattle on the property. I'm concerned with the bed and breakfast if this is going to create like – how would it affect the zoning later on in the future as far as the ag zoning for the properties around that area. We're also concerned about liability and trespassers. Because our property is just a meadow with cows and because we are oceanfront, in the past we've had problems with visitors crossing the property to get a closer look at the ocean or to look at the whales. We also have – because we have animals, you know, the cows the make noise, and I'm concerned that that will be a future problem where you know, they would because they're having visitors and using it for a visitor thing that they will have concerns with maybe or complaints that the cattle are making too much noise or our dogs are barking too loud. Or if we in the future decide to put up a building or put up a tank for water purposes, that oh, that then it will be a problem because we are blocking the view because we are directly in their path of view of the ocean. So then have a problem with how they're going to advertise or how it makes their bed and breakfast look as far as for business purposes. So you know, that is my concern as far as owning an agricultural property because I would hate to see my taxes or the zoning be changed for us because the neighbors decide to do a bed and breakfast.

Mr. U'u: Thank you. Any questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: Is either your property or their property fenced at all?

Ms. Wong: It's fenced, yes, both.

Mr. Mardfin: So if they wanted to go onto your property – if there were people there and they wanted to go on your property they'd have to cross the fence?

Ms. Wong: Exactly. And because there's – it's a large piece of property and there's not people there, like I don't have a dwelling, I don't live on the property. I don't – I'm not out there very often. You know, when we're not around people could be climbing the fence and going over. I'm not saying that it would be their patrons, but the more people you have coming to that area for a business than the more I feel is the, you know, the possibilities of that happening. Because in the past we've had problems with trespassers. They break the fence, the cattle get out, you know, all those kinds of problems. And you know that you put up signs that say no trespassing and all of this but you know, it's nice, it's scenic and you know, a lot of times people don't think it's a big deal to just, we're just walking on your property to go look at the view, you know, but you always are concerned about liability.

Mr. Mardfin: Thank you very much.

Mr. U'u: Director Hunt.

Mr. Hunt: The problems you've had in the past are those from when the B&B was operating or has there been any specific problems with the B&B when it was operating or are these potential concerns? Could you just elaborate a little on that?

Ms. Wong: I don't know, because it's been ongoing. So I don't know when their B&B started operation. I don't know, you know, if it ended, I don't know those details. All I know is that over the years, I mean, it may not be the bed and breakfast. You know, I'm not like accusing them or anything, but I'm just saying that this is a concern. You know, with more people coming through, you know, I don't want it to be a problem.

Mr. U'u: Commissioner Guard.

Mr. Guard: Thanks for your testimony. It sounds like if it being just a concern, this permit isn't forever, it's a certain time period so as a neighbor, by receiving this temporary bed and breakfast permit they have to be the good neighbors for you as well. For your concerns to be alleviated you have that kind of card in your pocket saying that they want to make sure they're being good neighbors as well because that's kind of their livelihood just like the cattle is your family's livelihood. So as long as it can work symbiotically, if they're controlling their visitors and you're keeping your ag land ag and your taxes low and they can't say no more cows, you gotta make sure they don't come by our property, they stink. You know, they bought ag land. They know they bought ag land. But if they can work together with you, is it something that you would be okay with giving them a temporary permit to run their bed and breakfast?

Ms. Wong: Yes, I mean, the other concern is is a bed and breakfast an agricultural thing? I mean, this is agricultural land that they are on and you know, I don't see that as being ag. I see that as being – and in the future because then if it's made – a decision is made that oh, okay, we're going to change the zoning, how is that going to affect me? I don't want my property tax to go up because somebody decided to do a bed and breakfast on a ag zoned property. So that's the other thing.

Mr. Guard: But that's why they're coming in for a special use permit because it's not definitely an

ag. It's not like they're doing a farm.

Ms. Wong: Exactly.

Mr. Guard: Like putting horseshoes on horses.

Ms. Wong: Yeah.

Mr. Guard: But it's a special use for that.

Ms. Wong: Right.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I have two more questions. One, is did— you said that people are coming onto your property, are people already coming onto your property and disturbing your animals?

Ms. Wong: It's been nonstop. You know, it differs. You know, some weeks, and like I say, I'm not out there a lot, but my brother lives, has the property next to mine and so he like patrols the property and he'll be at a certain point and he'll see somebody walking through. I mean, it doesn't happen weekly, no. You know, seasonal. You know, summer time, yeah more. But I just, you know, I just want people to like respect the property and so that's a concern, but that's —

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: This is supposed to be on ag property, your neighbor's ag property. Are they actually doing agriculture on the property or is it just B&B?

Ms. Wong: As far as I know it's just B&B.

Mr. Mardfin: No agricultural production.

Ms. Wong: I don't see any — I mean, I don't walk through their property, but as far as I know I don't see any animals or any kind of vegetable farm large base where they could be selling you know, or anything like that.

Mr. Mardfin: Thank you very much.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Hi.

Ms. Wong: Hi.

Mr. Hiranaga: Again, this is a request for a State Land Use Commission permit and typically it's for a three-year period and they have to come in for a renewal, but if there are concerns by neighbors

they could limit it to two years in which you can – if there are problems you can report them to the Planning Department which they will keep a record of. But addressing some of your concerns, we can also place specific rules on this permit such as the operator shall control all of their visitors so that they will not enter your property. Basically put it in the house rules. Do not jump the fence. The other thing is we can put in there they will also inform the neighbors or the visitors that there are farm related issues with animals nearby doing whatever nature calls for so be aware we're not going to allow you to complain about this. So by you coming forward, we can put those types of conditions into the permit. So it's a good thing that you did come forward. I guess I needed to ask a question but I didn't ask a question.

Okay, I'll ask a question of the director then. What is the likelihood of her ag property being rezoned if this permit was granted to the neighbor?

Mr. Hunt: The testifier's property?

Mr. Hiranaga: Yes.

Mr. Hunt: I don't see much chance of her property being rezoned based on the approval of the Stone's B&B permit.

Mr. U'u: Commissioner Shibuya.

Mr. Shibuya: I just have one question here. Would you have any objection if the visitors stayed on their side of the fence and fed your animals? There is a temptation for visitors to do that. And there are farmers and ranchers that object to that.

Ms. Wong: Yeah, I would object to that.

Mr. Shibuya: Thank you.

Ms. Wong: Thank you for asking.

Mr. U'u: Any more questions for the testifier? Seeing none, thank you.

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

Ms. Cindy Biggers: Aloha everyone I'm Cindy Biggers and I am a neighbor of Jeff and Sharyn Stone and have known them for almost 10 years and I just wanted to say they're really good neighbors. They're really good people. They don't cause a disturbance. Their guests come and go quietly and one thing that we all do in the neighborhood is we all contribute to the maintenance of the road. It has to be graveled and graded and Jeff and Sharyn are always participating in that aspect. Those roads are also used for hauling horses and livestock trailers and it's kind of backbreaking work but the people that live in the community all pitch in because it's not paved and that's just all part of the aloha that we share out there. Other people have horses and cows out there and the people that come out there want to see that. They want to get away from what they have on the mainland and they want to see what we have out here in the country and it's very rural and it's very

friendly out there. And anytime we do have a little trouble with kids in the neighborhood or whatever we kind of hui up and handle it. So I just wanted to put my two cents in and show support for Jeff and Sharyn.

Mr. U'u: Thank you. Any questions? Commissioner Mardfin.

Mr. Mardfin: Do you have any intention to do a B&B on your property?

Ms. Biggers: No, I am a lowly renter not a property owner.

Mr. Mardfin: Thank you.

Mr. U'u: Thank you.

Mr. William Spence: Good morning Commissioners, it's almost afternoon. My name is William Spence. I'm a land use consultant. I am not representing Sharyn Stone today but I have helped her with her application over the last seven years. The comment earlier Gwen Hiraga that you could get a change in zoning in two years well she's been in this process for seven now. As the rules have changed as the requirements have changed she's really bent over backwards to try to accommodate all of the changes and the ways that you know what the different agencies want and whatnot and you know, if she's granted a permit today I think you'll find her very responsible operator. She's always expressed to me over these years of helping her through this process. So thank you very much.

Mr. U'u: Thank you. Questions? Seeing none, thank you. Please state your name for the record.

Mr. Lester Wong: Aloha, my name is Lester Wong. I'm Carlene Wong's husband. I've been associated with this piece of property in Huelo Point for 31 years since 1978. We've been working the cattle there and maintaining this family property since I've been involved.

My main concern is the tax liability. Recently we just got our tax assessment and we now go at the minimum rate of \$150 per year for ag zoned land. My point of contention is ag land should stay ag land for ag purposes. Okay, a bed and breakfast to me is outside of that realm. In Kihei, Makena, Maui Meadows, the people who're doing bed and breakfast applications there they pay their property taxes to the county based upon their valuation and the size of the property being residential. Ag zoned land is far less. If they're not making a profit or if they're not bartering or giving away fruits that's their thing but zoning or they're paying their fair share taxes like other bed and breakfast applicants throughout the county or throughout Maui should be the same.

Basically our cattle production is cattle for generations now and we look forward to passing it onto our children for the next generation to raise cattle and stay in agriculture. That's all I have. Thank you.

Mr. U'u: Questions? Commissioner Starr.

Mr. Starr: Yeah, where you guys live?

Mr. Wong: We live in Makawao.

Mr. Starr: Oh, okay. Is that property – your property is adjacent to theirs?

Mr. Wong: Yes, it's a eight-acre parcel on the east side directly to the cliffs.

Mr. Starr: And is that – you run your own cattle there?

Mr. Wong: Yes, we run family cattle business.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: So just to summarize, your objection is the impact of real property, the valuation of your land for real property taxes due to the adjoining proposed use?

Mr. Wong: Yes, and speculation for if the applicant were to want to sell someday, you know they've got that business as opposed to us is just raw land. We don't even have a tree on that property just grass.

Mr. Hiranaga: You know, I'm not expert on real property tax valuations but typically if your property is fenced for cattle grazing the assessor will apply a very large discount, I think it's like 90% to the appraised value for that agricultural use. I'm assuming that you have, you're getting that discount.

Mr. Wong: Yes and a homeowners exemption elsewhere because that's where I reside. I don't live on the property.

Mr. Hiranaga: So I don't really see an approval of a B&B permit impacting your real property tax.

Mr. Wong: No, but I'm talking generations to come.

Mr. Hiranaga: Yeah, unless they change the real property tax law.

Mr. Wong: Yes. And the point is, you know if it is a bed and breakfast, it is a business they advertise at a \$180 a night. One night alone will pay for the real property tax for the year.

Mr. Hiranaga: I don't believe they get that full exemption. They actually come out and inspect. If they see 50% of the property in ag they'll give them a 50% discount. Yeah, they do come out.

Mr. Wong: Yeah, there's a step level or something.

Mr. Hiranaga: Yeah, they do come out and check it, the Real Property Tax Office.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I'm just curious. Do you have a structure on your property?

Mr. Wong: No.

Mr. Mardfin: No structure at all.

Mr. Wong: No. Just grass, kiawe fence post covering the whole property and that's it just grass.

Mr. Mardfin: Mahalo. Good luck.

Mr. Wong: Okay, thank you.

Mr. U'u: Thank you. Anyone else interested in testifying? Seeing none, public testimony is now closed. Staff recommendation.

b) Action

Mr. Prutch: I was just sharing the one sort of photograph I have of that corridor area that Mr. Hiranaga asked for. I don't really have an overview of the entire building. The only thing I do know is in your staff report I forget which exhibit it is there is the building permits that were issued for that corridor. So it is a permitted structure. The whole house is a permitted.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Whose responsibility is it to determine that those connecting structures met the building code is that Public Works or Planning?

Mr. Prutch: It would be Public Works through the building permit issuance.

Mr. Hiranaga: And they approved it?

Mr. Prutch: Yes.

Mr. Hiranaga: So they went out and visit, physically inspected the property.

Mr. Prutch: I think they actually signed the final inspection. In fact it was who was it, Mike Ramick was the one who signed the final inspection and building permit. It's right here in exhibit –

Mr. Hiranaga: Yeah, I read the report. I'm asking clarification.

Mr. Prutch: It's in there. Yes, that who would – it would be the Building Department.

Mr. Hiranaga: Okay thank you.

Mr. Prutch: The Planning staff we just make sure that the permits were obtained.

Mr. U'u: Any questions? Seeing none, staff recommendation.

Mr. Prutch: Okay, the application for the State Land Use Commission Special Permit complies with the applicable standards for an unusual and reasonable use within the state agricultural district. I read the five unusual and reasonable standards, the guidelines into the staff report. Is that adequate or should I read them again? Okay, we'll move on. The Maui Planning Department – well let me, the Maui Planning Department's recommending that the Maui Planning Commission approve the State Land Use Commission Special Permit subject to the six conditions listed in your staff report with an additional condition I believe that Hiranaga mentioned.

Mr. Starr: I think we should have that as an amendment if we're going to have that.

Mr. Prutch: Okay. So as the six conditions as stated in your staff report. I would like to mention that as far as the house rules condition I've already been putting something together and if you'll allow or just direct staff when we issue the bed and breakfast approval assuming this Land Use Commission Special Permit gets approved at that point we would amend the house rules condition, the standard condition and have her put in a fourth house rule. I think there's three of them that are standard. A fourth house rule basically saying please inform guests not to cross any fences to get to the coastline and understanding that the private property, adjacent private property is in ag use and essentially don't feed the animals, don't pester the animals and I'll craft that but staff will include that in the house rules section. So I did want to make that a condition of the special use permit. So if that's okay with you guys. That's our recommendation for the moment. It sounds like you may want to make an amendment to it.

Mr. U'u: Commissioner Starr.

Mr. Starr: First I want to pass this back around. I want everyone to look at it. This is what we should be getting and we should just see what's in here. This is the application that the department receives. My own feeling is we should get it, have access to it electronically so we don't have to cut down trees. Having said that, I move that we approve the Land Use Special Permit as per the department's recommendation.

Mr. Guard: Second.

Mr. U'u: Motion made by Jonathan Starr, seconded by Commissioner Guard. Comments? Questions? Commissioner Starr.

Mr. Starr: First of all, the neighbors living in the vicinity are all very positive and to me it shows that they're operating and potentially will be operating an operation that benefits their neighbors doesn't hinder it. I do feel sympathetic for the pure ag use next door but I really don't think that it will be affected detrimentally by this. In fact, you know, maybe by better communication there can be ways to be mutually helpful. I also feel that I don't think it's a good thing to require conformance with Department of Health water requirements. It sounds like they're doing things in a safe manner and I believe that those requirements will require chlorination of the water and specifically contact time with the chlorine in a tank and people who are living organically may not want to do that. I know I would not want to have that imposed on me not with reverse osmosis and UV. There are plenty of ways to be perfectly safe without having to create contact time and then you create disinfection byproducts, chlorine residuals which are a major cause of different health issues especially for

pregnant women and the newborn.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Yes, I'd like to propose an amendment that the applicant comply with Department of Health regulations for public water system and if I have a second I'll explain why.

Mr. U'u: Do I have a second? Seconded by Mr. Shibuya. Commissioner Hiranaga.

Mr. Hiranaga: This is a commercial activity in an agricultural district and people are coming here have a certain level of – need to have a certain level of assurance regarding their public, health and safety. I don't believe chlorination is a requirement. There are other methods of treating water if it's necessary. So, it – I think the requirement is if there is more than 25 users to a well it's classified as a public water system. So it's not like we're trying to make you comply like you're the Department of Water Supply, but I think there's a certain standard that we have to maintain as we have visitors come and stay in this proposed B&B. So that's why I'm making the amendment.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, I'd like to speak against the amendment. It's very difficult, in fact, the County has small water systems both in Kaupo and in I believe it's Honokowai where the County limits the size of the water system to below that threshold so that the County doesn't have to comply because it is really difficult. It's almost impossible to do it without chlorine and it really would make it almost impossible for these people to be able to have a B&B. It is – the paperwork is difficult and it requires chemical treatment and you have to be certified treatment plant operator to certify and handle the chlorine. It's something I really would not wish my worst enemy.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Okay, I'd like to amend the language to my amendment so that it would read, "per the letter of July 15, 2009 from the Department of Health, Comment No. 3." And if you would like I can read it.

Mr. U'u: Please do.

Mr. Hiranaga: This is Exhibit 28B. "The Department of Health does not recommend the use of private wells, roof catchment or stream diversions as sources of drinking water. The responsibility for water quality for this water system falls upon the owner of the water system. It's highly recommended that the owner takes precautions to insure that the water is safe and wholesome and not detrimental to the health and safety of the consumer. " So that's a little bit less offensive language. With the consent of the second, I would like to change –

Mr. U'u: Do we have a consent?

Mr. Shibuya: Consent.

Mr. Starr: So what's the language, just to be?

Mr. Hiranaga: Exhibit 28B?

Mr. Starr: What would it be?

Mr. Hiranaga: That exact language except for the first.

Mr. Starr: That they take steps to be safe basically.

Mr. Hiranaga: You want me to read it again?

Mr. U'u: Please do Commissioner Hiranaga.

Mr. Starr: No, what do they have to do in relation to it? That they have to?

Mr. Hiranaga: It's highly recommended that the owner take precautions to insure that the water is safe and wholesome and not detrimental to the health and safety of the consumer.

Mr. Starr: Okay, so we're adding language that it's highly recommended? That's fine with me.

Mr. Hiranaga: Yeah, I'm just using the State DOH language.

Mr. U'u: Okay, we use that as a friendly amendment. Any more discussion? Seeing none, all those in favor say aye.

Mr. Starr: Of the amendment.

Mr. U'u: Of the amendment. Say aye. All those opposed.

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

VOTED: To Add the Following Amendment: "The Department of Health does not recommend the use of private wells, roof catchment or stream diversions as sources of drinking water. The responsibility for water quality for this water system falls upon the owner of the water system. It's highly recommended that the owner takes precautions to insure that the water is safe and wholesome and not detrimental to the health and safety of the consumer."
**(Assenting - K. Hiranaga, W. Shibuya, W. Mardfin, D. Domingo,
L. Sablas, J. Starr)**
(Excused - W. Hedani)

Mr. U'u: Back to the main motion. Back to main motion.

Mr. Mardfin: Wait, wait, wait.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: Now I lost my point. I guess I want to ask the director something or Joe maybe. I'm a little bothered by something about this agricultural requirement. They're required – if it's less than five acres they're required to have a farm plan that they've implemented, no income levels, you know, you grow one piece of cactus outside your backdoor it counts. Our first ones that came in here under this B&B they were doing a huge bamboo business. I think the second one was doing significant stuff. We've allowed a couple that have had none. If you're under five acres that's what you have to do. If you're bigger than five acres you've got to have \$35,000 a year worth of production. This seems a little disproportionate to me. I'm just expressing my view on this. If it's a two-acre property it looks like they've committed to a half of that being agriculture that's one acre. This would strike me as something that ought to be getting \$7,000 worth of production a year to be sort of proportional. I'm just bothered by the whole. I think there's a big inconsistency depending on the size of your lot.

Mr. U'u: Commissioner Guard.

Mr. Guard: I think we brought that up when we were looking at the original bill and I don't want to keep asking the same questions on every property when the Planning Department before it gets to us takes it through a litmus test and we talked about it and all of these issues came up and it was 50/50 split in the room on the commission we went this way and I don't want to keep trying to reinvent or go back and rewrite the laws of the ordinance. So if once it gets to here I think it should be fairly simple to see. The last one was personal horses. We approved it.

Mr. Mardfin: I know.

Mr. Guard: So, I mean, ag and ag conservation and we went through these arguments when the room was packed with people that ag conservation, yada, yada, you could have a yard full of weeds and call it ag because I'm waiting to till it next year. So I don't know, at some point I really hope we can get these things going fairly quickly.

Mr. U'u: Commissioner Guard.

Mr. Guard: You know, I sympathize with that. It is kind of, you know, you take a tiny step and you jump off a cliff. But you know, I do feel that there are different kinds of ag and for me, you know, when people are feeding themselves off the land, that maybe the highest and best use, you know, when people are doing – I mean, I do bees. You know, I have honey, I raise fruit, you know, it wouldn't pay me to sell it but it – I do feel it's a good thing and I appreciate when people do that. You know, whether if they were, you know, farming a commercial crop that no one here would eat and shipping it off and making some money from it, you know, whether it be sugar or whatever, I'm not sure if that's a better thing. But I do think that it's something that's very hard to regulate but I do feel that certainly in this case they're doing some good and they're educating people and they're eating stuff coming off the land. That's what counts.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I take Mr. Starr's point. I was just expressing some unease with this.

Mr. Starr: Yeah, I agree with you.

Mr. Mardfin: And the fact that they're doing WOOFRs on the property is a positive. I was just expressing some ideas. I wasn't trying to relitigate it, I was just expressing a personal unease with this whole thing and I may continue to do that.

Mr. Starr: And I agree with that.

Mr. Mardfin: My other point is, Joe when you submitted this there were no objections, you had no letters against this so your recommendation was for three years.

Mr. Prutch: Yes.

Mr. Mardfin: We've now heard some objections to this and so I think it's appropriate to knock it down to two years, but –

Mr. Prutch: That's up to the commission you guys can do that if you wish.

Mr. Mardfin: May I move?

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I move to change the term from a three-year period to a two-year period.

Mr. U'u: Is there a second?

Mr. Shibuya: Second.

Mr. Shibuya: Seconded by Commissioner Shibuya. Discussion? Commissioner Starr.

Mr. Starr: Yeah, I don't support this. If anything I would want to lengthen it to a five-year. I think the neighbors who do know them feel very supportive and you know, my guess is if the other family that look like really nice and community people as well got to know them they would be supportive as well. I hate to create additional staff work and additional work for these people. I'd rather they grow more fruit.

Mr. U'u: Any more discussion? Voting on the amendment. All those in favor of the amendment say aye. All those opposed.

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

**The Motion to Amend the Time Period of the Permit from Three Years to Two Years,
Failed.**

(Assenting - W. Mardfin, W. Shibuya)

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

Mr. U'u: Five opposed. Amendment dies. Back to the main motion. All those in favor of the main motion say aye. All those opposed.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit, with Conditions.
(Assenting - J. Starr, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo, L. Sablas)
(Dissenting - W. Shibuya)
(Excused - W. Hedani)**

Mr. U'u: One opposed, Commissioner Shibuya. Motion passes. We break for lunch till 1:20 p.m.

A recess was called at 12:20 p.m., and the meeting was reconvened at 1:20 p.m.

Mr. U'u: The planning meeting of August 11 is back in session. At this time, I'm going to turn it over to the Director.

Mr. Hunt: The next item on your agenda involves the director transmitting a bill for an ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code relating to Residential Districts and amending Title 19.04, General Provisions and Definitions. Joe Alueta is the planner assigned to this.

C. UNFINISHED BUSINESS

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting a Bill for an Ordinance repealing Chapter 19.09, Maui County Code, R-0 Zero Lot Line Residential District and amending Title 19.08, Maui County Code, relating to Residential Districts and amending Title 19.04 General Provisions and Definitions. (J. Alueta) (Public hearing conducted on June 23, 2009.)**

Mr. Hunt: You did hold a public hearing on June 23rd. This is a follow up to that and at that June 23rd meeting, the commission requested some potential draft language and we included a memo dated July 21st in your packet, hopefully giving you some tools or some potential language you could incorporate into the bill if you'd like.

Mr. U'u: Take it away Joe.

Mr. Joe Alueta: Good afternoon commissioners and we're just again, continuation from your thing. I did pass out a July 21, 2009 memo from our director with regards to some of your questions that you had at the last meeting that I was not able to attend. I'll just address two from some of the testifiers that you had with regards to R-0. R-0 is not being deleted per se, I mean, the chapter is,

the number, but if you look at the ordinance, we're actually merging it together with the regular residential district. The residential ordinance that establish R-1, R-2, R-3 zoning standards came first and then when they came up with this way of theoretically providing more affordable housing by doing smaller lots and eliminating setbacks in some areas, they just created this separate ordinance called the R-0 District as well as a process called the R-0 Overlay District process. But we feel that it should just be added. So that's what we're doing. If you look at the development tables to the proposed ordinance, you'll see that we've added R-0 in there for this thing. So we're eliminating the hard work that ..(inaudible)... Mr. Laub, his comments. He had some great descriptive comments and my only response is he described exactly what you have in the Business District. So he should look at the Business District if we wants to have all of those non restrictions. We're dealing with a Residential District and a primary purpose of a residential district is theoretically for single family homes and long term residential homes and we are making our best effort to try to accommodate small scale home occupations as well as the director proposed today for home-based businesses which is again, a new proposal that you're going to discuss today.

So going – I guess because I wasn't here at the last time, you had requested a few things as well as some questions. Hopefully the memo addresses them. I'll just over one. You wanted some language. You didn't have a preference as to whether you wanted to include it or not. So I guess you'll have that discussion here today. But from the department's standpoint this is our first stab at assisting you with some language for your consideration if you wanted to incorporate it in your recommendations with regards to amendments to 19.08 and that is for, under "Special Uses" you would have instruction of traditional Hawaiian practices such as lei making, ukulele classes, hula classes and lomi lomi. Group instruction shall be limited to no more than six off site students conducted between 9:00 a.m. and 6:00 p.m.

Again, commission also raised questions with regards to maximum lot coverage ratio and that was based on existing setbacks for the Residential Districts and again, I had that attached as you Exhibit 11 under the original memo. And then on this memo I just provided you what those lot coverages would be relative to – so if you had a 6,000 square foot lot and you applied just your setbacks to it, the lot coverage would be 63%. In the R-2 District on a 7,500 square foot, it would be 66%. And on a larger, 10,000 square foot it would 71%, and that's if you maxed out. So again, on the existing Exhibit 11, we show you what the sizes are of the houses that you could potentially do as a far as the square footage.

And then again, on energy systems, this came up during your discussions but also, Molokai also brought in, had concerns over the incorporation of what we call small scale energy systems within the residential district so we would recommend that the amendment similar to what came out in Molokai is that energy systems, small scale, be allowed but provided that no noise, dust, smoke, glare or odor that negatively impacts the neighborhoods be produced.

That's – hopefully I addressed the majority of some of your discussion points. Do you have any?

Mr. U'u: Director Hunt.

Mr. Hunt: Just to add a little bit, to clarify, the newspaper article indicated that the home occupation ...(inaudible - changing of tape)... zoning districts then you'll have the choice whether to add one

or both to them depending on that district.

There has been some concern expressed that the home-based business while it's liberalizing the standards isn't going far enough but again, we want to remind you that we're trying to balance the economic development and still retain our neighborhoods for peace and quiet and a place to go home and recharge your batteries after a hard day at work. So there's that balance there. We don't want to turn our residential districts into commercial districts. We want to allow some home occupation, some home-based business. And what we did is we based the home-based business on a review of our existing home occupation ordinance against other home occupation ordinances in other jurisdictions and our existing ordinance is very stringent. By adding a home-based business our new ordinance with the home-based business would be very lenient. It would be one of the most lenient that we studied. So I don't think you should look at this as any kind of baby step. It's actually a fairly substantial change and I think the community should be aware of that that we would be allowing a substantial increase in business in our residential districts. We support that, we're proposing it, but we don't want to make light of that fact.

Mr. U'u: Thank you. Commissioner Starr.

Mr. Starr: Yeah, you know, in planning principles more and more you're seeing especially for affordable housing, they're looking for more density. You know I think that trend is changing and so, you know, especially in transit corridors and infill, we're looking for – to kind of maximize density and I'm wondering what kind of density, I guess, you know, the standard is units per acre, you know, these zero lot line will allow. I'm not sure if it even, you know, if it even kind of even goes far enough, if it will actually allow enough density.

Mr. Alueta: The R-0 ordinance is an existing ordinance that has been in existence, I don't know the exact incorporation date but it's been around since I've been with the department so at least 15 years. You know, it allows for those who seek the R-0 zoning category a minimum lot size of 3,000 square feet. So that's about 10, 11 units per acre, probably 10 when you consider roadways and stuff like that as opposed to you know, an R-3 is four units per acre. So it more than doubles your densities relative to the existing residential categories. The concept behind the original R-0 as well as the R-0 Overlay was to again, share common wall, reduce the – have smaller lots and theoretically because of the smaller lots and the higher density per acre the cost of infrastructure such as roadways, sidewalks as well as underground utilities would be less. I mean, it makes sense, you know, higher density, you know, the cost structure per unit theoretically comes down and theoretically that cost savings that the developer receives from having a higher density would hopefully be passed on to the end user. And so that's the thought behind it.

With regards to our, you know, we're not necessarily lowering the density. I mean, I'm not – with the lot coverage because if you look at the table that I provided, the size of the house is still a significant size even for a 6,000 square foot lot. If you look at the table you would have a potentially, you could build on a R-1 you could build a 4,800 square foot house on a 6,000 square foot lot. So that's – I mean, I'm not sure the argument that you know, you're going to be limiting certain people and their sizes.

Mr. U'u: Questions? Commissioner Mardfin.

Mr. Mardfin: I haven't had a chance to digest it yet but when we came in this morning there was a three-page comment from the Department of Public Works about this. Have you had a chance to review that and want to react to different portions of it, dated July 27?

Mr. Alueta: Yeah, from the original review by variety of agencies with regards to the amendments to Title 19.08 and 19.09, after it was sent out and discussions with staff and the director the home-based business was added. Again, as director pointed out we didn't want to make light of it and therefore we felt that certain agencies should be commenting and that's primarily what you have your comments are coming back from specifically toward that amendment.

Mr. Mardfin: But some, at least in my quick reading of this, it looks like there are some serious conflicts with existing laws and ordinances and other context. You know, I'd hate to recommend something that would have caused more problems rather than fewer problems.

Mr. U'u: Questions, comments? Commissioner Hiranaga.

Mr. Hiranaga: One of the concerns I had regarding the energy systems was I believe the proposed height limit was higher than residential building heights. I was concerned about impacting views, view corridors. I think residential building heights are 30 feet and you are proposing a 35-foot limitation on these energy systems.

Mr. Alueta: You would get a bonus for just the energy. So if you had a solar panel and you had to tilt up your solar panel or your PV panel on your roof and that exceed the height of the 30 feet then you would get that -- you could go up to 35 feet and then same thing with, you know, if somebody had a rooftop heat vent, you know, they're common now, those little mushroom things people put on to vent their ridge line. Sometimes they put that on, that exceeds the 30-foot threshold for houses as well as you have roof mounted, very limited roof mounted windmill systems.

Mr. Hiranaga: Well, my concern is you know, my parents built their home next year, 50 years ago and they had an unobstructed view of Kahului Harbor all the way to Pauwela lighthouse. Now people are building in front of them so they have an obstructed view, and now if people are allowed to put windmills up they're going to have their views obstructed even more. I have an issue with that when you're erecting -- I mean, they complied with the building heights and then all of sudden someone puts a 35-foot windmill in the middle of their remaining ocean view. I have an issue with that.

Mr. Alueta: Well, again, our proposal is to try to, given a balance between trying to provide for sustainable energy. Again, the windmill or small scale energy system is considered an accessory use to the single family residence. So you wouldn't necessarily be able to plop one of those large two megawatt windmills in your yard because, I mean, I'm not sure what you would be using two megawatts at your single family house. So the scale of these windmills or energy system would be related or had to be an accessory to your home. So you couldn't necessarily become an energy producer, large scale supplier. That's why it's called small scale. It has to be accessory to the -- has to accessory to your single family house.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: But you could place one on the top your roof that's five feet high?

Mr. Alueta: Correct.

Mr. Hiranaga: And that would impact the people behind them.

Mr. Alueta: That is correct.

Mr. Hiranaga: I have a concern about.

Mr. Alueta: Okay.

Mr. Hiranaga: I think the private individual rights need to be protected and there's a balance between you know, trying to be green and still being able to see the ocean like you have for the past 50 years.

Mr. Alueta: Right.

Mr. Hiranaga: So how do we convey that concern?

Mr. Alueta: If you feel that – if the commission as a body feels that it should be reduced back to 30 feet then fine that can be the recommendation from the body. I just feel that in a lot of other districts that we have come in before you including the interim district and some of these other districts we've always given a slight bonus to, so this is not an unusual thing. It's not the first time in the code in amendments that we propose to you where we've given that five-foot bonus to small scale energy systems. We also have it in the small town code for Wailuku in the MRA where you go another five feet for energy systems or natural light and ventilation. So it's not uncommon and in past practice for the amendments that this board has reviewed to give a five-foot bonus.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Not to belabor the point, but when I was three years old I could see this much of the ocean and now we can see that much of the ocean. I don't want that little sliver to be knocked away with a windmill and so I could say well, we could see the ocean before.

Mr. Alueta: I don't know. Like I say, I just – I have a piece of property and all I know is I have view corridor to my property lines and that's pretty much all I have – that's all I was ever entitled to and that was to my property lines. So –

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, a lot of houses are built out to that 30-foot and if you want to add solar hot water or you want to add PV onto it, you need to go a little above that and You know, and to kind of penalize it I feel would be wrong where this allows it. To put a windmill with the top of it at 35 feet is probably not going to really make any real usable power. But certainly solar hot water and PV need a little bit of extra and I think it's a good thing that we're doing.

Mr. U'u: Questions? Commissioner Mardfin.

Mr. Mardfin: Mr. Alueta, I see this as doing fundamentally two things, one changing the parameters of buildable space and the other, the usage of the property for home-based businesses and you addressed earlier the testimony by Mr. Laub I think it was and he was primarily addressing the home-based businesses aspect of it, but we had earlier testimony this morning, we don't have a written copy of it where a gentleman was talking about the architects are against this, I'm paraphrasing, the architects are against this because it would change what they're able to do in terms of parking and covered and lanais and that sort of thing and I don't remember the full impact of it but would you address the issues that gentleman was raising this morning?

Mr. Alueta: Yeah, I talked to him briefly but it's – under the ordinance any covered surface is considered under floor area. So can have a – your garage obviously is considered is lot coverage. If you built a covered patio that would be going to lot coverage. So if you paved it and had it open that's not lot coverage. So it's not going to prevent people from paving to their property lines but as far as coverage structures. But I found it humorous, I don't know, I've been in several homes and I have a three-car garage and I only have one car in it and I've driven around many neighborhoods and I've looked in many garages and I don't know of anybody who parks their car in their garage. I mean, that's a rarity now. Most people have used it as storage or liveable space or game room or whatever, but it would be nice. It doesn't preclude it, it will be counted. He thinks people are going to park, increase or park on the property and that's actually one of the reasons if you have a lot coverage you're going to create a little more open space so that people, even though they meet the "parking requirement" of two stalls for a single family home, there'll be additional yard space on the property where they could have overflow parking. But his concern was that people are going to where the garage – because the garage is counted toward it, that that would eliminate some of the space that they're gonna just build more usable space.

Mr. Mardfin: On your comparison chart, where you gave us the lot coverage for the existing, and we probably had it last time and I'm not – is the proposed amendment going to increase lot coverage or decrease lot coverage?

Mr. Alueta: It would establish a lot coverage. Currently there is no lot coverage requirement. Currently if you came into a house, all it is, is based off is you have a front yard and side yard setback. Okay, and that setback goes up if you are above two stories or 15 feet, you have an additional setback for that floor. It doesn't mean you can't build to that six feet on the first level. So we are proposing again, the number 40% came out as a result of analyzing a variety of different communities and different ordinance that we could do through research and 40% is the one that we came up with as a starting point for discussion. And given, you know, how much, in some communities it's smaller. I mean, their lot coverages is 25%. And some areas is bigger. Lot coverage and also another term called floor area ratio is normally used in the commercial district. Originally we had put in a FAR but we felt that would be too cumbersome. And again, so we stuck with just a lot coverage.

Mr. Mardfin: So just to follow up on that if I may? Looking at R-1, you say buildable area 40% of the lot under the proposed. And under the existing it would be 63%. So basically you're shrinking the amount of covered?

Mr. Alueta: Correct. Because right now – and again, because it's based upon your setbacks, so that's why it increases, it goes up.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, in the suggested wording regarding energy systems you have small scale provided no noise, dust, smoke, glare, odors that negatively impact the neighbors is produced, and I'm curious about what the criteria is on that. Particularly windmills, a lot of the small windmills that people put on houses are really noisy and you know, really can be a problem. You know, I'm not sure if that's something you want in a dense residential area. So if that crops up, what are the criteria and what's the enforcement on that?

Mr. Alueta: Well, again, if it impacts the neighborhood we would obviously send an inspector out and find that the project, that the windmill does not meet – is producing an adverse impact to the neighborhood. So we would try to figure out that and work with – find out based on neighborhood complaints if that's really the case and then try to you know, cite them because it does not meet the code as far as meeting that definition of when and where you can have a small scale energy system. On Molokai and I guess in some areas, because remember, it can be biomass gasification if you've ever had a barbecue, that's pretty much biomass gasification, so campfire. So there was concern that you know, smoke and smell of that would be more of an issue especially – at least that's how it came about on Molokai. And so in a small dense – a smaller neighborhood that could be an issue. So we wanted to add that caveat and we thought it was a good caveat. Again, with anything, enforcement is troublesome but you know, I think that if you have a small windmill and it's whistling pretty loud and everyone can hear it in the neighborhood then we would pretty much say hey, you gotta do something, but if it's bothering your neighbors, chances are it's going to be bothering that person living in the house too. So I would think that person closest by is going to be just as affected.

Mr. U'u: Director Hunt.

Mr. Hunt: Just to follow up. There's two approaches, the way we're proposing it is it would be a permitted use outright. If does start producing noise or we get complaints then we would have to follow up and as Joe said you work with the neighbor or you work with the owner. The alternative is to do some kind of permitting and you have some standards that would give you better chances of not having an enforcement issue but then you'd have to go through the whole regulatory process and neither – you know, there's no perfect solution. We're suggesting as Joe said, if it's that noisy, it's disturbing the neighbors perhaps the owner wouldn't want it either. The industry also is aware of this and I think they can come forward and help the owners and say, look this is a quieter model than this other one. There's no perfect solution.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Just going back to the home occupation, home business, you said you know, we want to keep residential areas residential so people have a place to go back and recharge their batteries. So in my opinion, someone that's wanting to build an energy system would need a permit because if you're going to start impacting your neighbors and place the burden on them to file a

complaint, you're taking away their peace and quiet. So to me, the person who's proposing something should have to get a permit, do a 500-foot notification radius and not put it up and then wait for people to complain about it and put the burden on the neighbors to initiate action.

My other question is, could you just explain again, what is the access yard in your chart?

Mr. Alueta: Access yard is that, if the property fronts a right of way, a vehicle right of way, that you have that additional setback.

Mr. Hiranaga: So it's like a second front yard setback basically?

Mr. Alueta: Correct. So it applies to corner lots.

Mr. Hiranaga: The other comment, I think there's a differentiation between buildable area and lot coverage. Because the buildable area could be larger than the lot coverage, allowable lot coverage. Because the buildable area is between the setbacks. So you can move your lot coverage.

Mr. Alueta: Okay, you're correct. Yeah.

Mr. Hiranaga: So you should make a differentiation between them.

Mr. Alueta: Okay, I think –

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I'm sorry, would you explain that to me I don't quite get it.

Mr. Hiranaga: I'll let Joe explain that to you.

Mr. Alueta: The lot coverage is 40%, okay. And so that basically creates a triangle, a smaller triangle on a piece of paper, so that this represented your buildable area and this represented your lot, you could then move this square around or theoretically you could split this in two right, and place it anywhere on this piece of yellow provided you met the setbacks.

Mr. Mardfin: So how does that differ from – then lot coverage is the same as buildable area.

Mr. Alueta: Well because the buildable area is really defined by your setbacks, and then so you could take like say – you have a 40% lot coverage, that's just assuming that you did one big house or thing, but if you wanted to do a cottage and a house, right, you would separate the cottage from the main dwelling, right. As long as they fell within the setbacks. For simplistic – say doing the calculation of how many square footage, we just showed you where it met on the overall lot itself.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: To put it in simpler terms if you look at this comparison chart, the handwritten word

lot coverage 63%, that should be buildable area. The lot coverage is 40% and buildable area is 63%.

Mr. Mardfin: So the term is the same. In the right-hand column, it's buildable area 40% and the left-hand it's buildable area at 63%.

Mr. Hiranaga: No, no.

Mr. Alueta: Actually it's buildable area and lot coverage.

Mr. Hiranaga: The lot coverage is 63% as long as you're in the setbacks. So you can move that 40% within that 63%, you can move it from back and the front, left, right. So the buildable area is 63% of your lot, but the lot coverage is limited to 40%.

Mr. Alueta: Correct.

Mr. Hiranaga: So you've got if my math is correct, 23% of play.

Mr. Mardfin: Still not getting it, but that's okay.

Mr. U'u: Questions? Commissioner Shibuya.

Mr. Shibuya: Joe, I just don't want to complicate this even more, but in some residential areas and subdivisions, people have been talking about walking paths especially for children going to school that you avoid having parents taking them around the block and to school rather than having these access routes right between the houses, you just walk through them and going to school or church or however you want to do. This does not seem like it accommodates that or where would I see that kind of accommodation?

Mr. Alueta: You see that accommodation during your subdivision review and so, you know, during the subdivision review and also the new legislation which called complete streets that was adopted, when they come in for subdivision we would look at how the subdivision is laid out whether they provide for alternative paths and meet the criteria for complete streets. So that's where we would implement that portion during the subdivision, but this just deals with once you got the thing subdivided, here's the lot, what can I build on the lot.

Mr. Shibuya: Okay, thank you. Because during the General Plan deliberations much was said about that and having walking paths that even golf carts could use going to shopping and ..(inaudible)...

Mr. Alueta: Like I said, during the subdivision review process we would implement. Even if it's not in the SMA, we do look at that during the subdivision review process.

Mr. Shibuya: Okay, thank you.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: I'm not sure if this is related but somehow I got a copy of this resolution 09-60. This is not part of the agenda item on C-1 or is it? About allowing accessory dwellings on 6,000 square foot lots. Is that something in the future?

Mr. Alueta: That's a future.

Mr. Hunt: That shouldn't have been involved with this packet.

Mr. Hiranaga: Okay. But I just note that they're proposing a 25% lot coverage maximum.

Mr. Alueta: Yeah.

Mr. Hiranaga: I know I should not have read ahead, but –

Mr. Alueta: I'll just say that we were in discussions with the Council, with Councilmember Molina and we were discussing what should be the appropriate lot coverage and we threw out a variety of numbers to him with regards to how much it should be. And again, he's just making his recommendation, he sent that down and you'll be commenting on that. And so, and that 25% again, is more restrictive. Again, I'm seeing a variety of ordinances that have lot coverages ranging from 17% to you know, higher numbers. So it's – we kind of just started with the 40%, we thought it was a reasonable number.

Mr. U'u: Director Hunt.

Mr. Hunt: When we discussed sending that bill down to the planning commissions we noted that the 25% would likely be reviewed and perhaps refined. So that's just a starting number at this point.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I think my colleague next to me helped me understand the lot coverage a little bit better. It's basically a restriction from what currently exists. And if that's the case, the gentleman this morning raised a point what would happen to existing buildings that had a lot coverage of greater than 40%, would they be grandfathered in or it permanently not apply to them? If their house burns down will they be limited in what they can rebuild? What's the plan?

Mr. Alueta: Again, they would fall under 19.510 existing non conforming uses. As far as reroofing, no they can reroof. I don't administer the thing, but they couldn't add on to create more of a nonconformity than already there. However, they could if the house burnt down, I'm not exactly sure whether or not, if they had a legal building permit, how the nonconformity issue whether they could rebuild it to that building permit that was originally issued. In some cases they can. I don't know the code big enough. In most cases, if it burns down you would have rebuild and meet the new code.

Mr. U'u: Commissioner Guard.

Mr. Guard: Could they do it to say new subdivisions in the future. I don't like I mean Hawaiian Homes out at Leialii is all 6,000 foot lots and I don't know how big some of those guys are but a lot of them are I mean, multi generational. A lot of North Kihei which might even be in flood zone areas right now, I mean, some of these lots are going to be prone to possible damages that they'd need to tear down, I don't know about soon, but at some point. House is built in the '50's, the '70's are a lot of those smaller size lots. So I mean, the useful life of those homes is coming up. So I don't know if that would maybe just a not for Council to look at establishing it for new subdivisions.

Mr. Alueta: And that's a good point. That's why, I mean, we're trying to get your comments on, you know, we kind of created a starting point. The main purpose of doing this amendment was to simplify the code. That was the main thrust of it. At the same time we had a few issues or things we wanted potentially add on it. You know, if those are the hanging points that you guys have or you have concerns on we want to get those comments. Another thing that probably you may want to consider is that point of smaller lots. There are a lot of lots out there especially in Wailuku and there may be a need you know, for adjustment there with regards to the lot coverage because of their – you know, either applying it only to lots of certain size with the lot coverage or you know, so that smaller non conforming lots can continue to build to the setbacks because you know if you got like a 2,400 square foot lot, I mean, you're limited to – that means you could build a footprint I mean, of 800 something square feet but you could build two stories. But in some cases, you may not want to – because the scale of that house relative to its lot is probably more appropriate. You know, an 800 square foot house or a 1,600 square foot, two-story house on a 2,400 square foot lot is probably appropriate. But it's just food for thought. I mean, again, we're looking at the scale of things.

And as a side note, I talked to my aunt who lives in Manhattan Beach in California and they are doing the same thing. I mean they already have it. They're going one step further because they're having – these have these 6,000 or 7,000 square foot lots but the movie industry has moved into the neighborhood to build a sound studio and you're getting these very rich people coming in and they're buying two, three lots, tearing them down and building one big mansion up. I mean, it's just maxed out to the max. And so they just passed an ordinance where they are prohibiting the consolidation of lots because people are building these houses. You know, you got a guy with a 6,000 nice little bungalow and all of a sudden you got a 5,000 to 8,000 square foot mansion next door and it just – for them they're having a hard time. And so they recently passed that. It was kind of interesting how every community is facing similar situations.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Just couple things you may want to look into. If you create this non conforming issue for existing homes there may be some refinancing and insurance issues. You know, if someone wants to refinance their loan and it's now non conforming there may be issues as well as insurance.

Mr. U'u: Questions? Seeing none, open it up for public testimony. Anybody want to give public testimony. State your name for the record.

Mr. Wil Spence: Good afternoon Commissioners, my name is Wil Spence. I just briefly looked over this ordinance and I agree with a lot of the provisions in it. I have just a couple of comments. One,

under the special uses it talks about having to come in for a special use permit if it's a traditional home occupation and if it doesn't meet the code. I don't really know what a traditional, you know, use within a residential district is. You know, I think in everybody's mind, you know what traditional is but for every person here that is different. So you know, I would just say, if it needs a special use permit, it's not traditional. You know, I would just leave the regular language, it's just certain uses you know that could be done.

My other concern was about the non conforming and we went through this with the stacking bill where there could be problems with getting insurance. We really don't know how many homes out there would be rendered non conforming all of a sudden. I mean, there could literally be thousands. You do have older neighborhoods, and then I even think about some of the luxury areas with some of those homes maybe they're more, already more than 40% of the lot coverage.

In other ordinances that are passed, for instance the ag bill, there's a section in there that says if a certain structure was built lawfully prior to the enactment of this ordinance they can be rebuilt. And in this instance, you're saying no they couldn't be. You would have to then come back and then conform. And so, I would prefer to see that kind of provision in this that people could rebuild if they already have all their building permits. Otherwise, we really don't know what the impact of how many homes, you know, what the expense would be, the insurance implications, etc. So I'd be in favor of just, you know, letting people that already have their building permits go ahead and rebuild if they need to.

Mr. U'u: Questions? Seeing none, thank you.

Mr. Spence: Thank you.

Mr. U'u: Any more public testimony? State your name for the record.

Mr. Dave DeLeon: Good afternoon, Dave DeLeon from the Realtors Association of Maui. I'll be brief. Basically following with what Wil was saying. Our association reviewed the bill and our Government Affairs Committee thought that they supported the 40% lot coverage concept. However, they are very concerned about the existing properties and particularly about the ability to refinance, the ability to get insurance and believe that once you got a building permit that's the deal, you should be able to redo it if that's - if that's what you did originally, you should be able to continue that use and I'll leave it at that. Thank you very much.

Mr. U'u: Questions? Commissioner Mardfin.

Mr. Mardfin: But you're content with going down to the 40% area?

Mr. DeLeon: Yes sir.

Mr. Mardfin: Why are you -- do you have a reason?

Mr. DeLeon: Well, that's the association. I mean, the Government Affairs Committee debated it and came to the conclusion that the impact of the larger properties or the larger homes is such that

in future uses, in future permits that it's just too big. It's too dominate. If you look in Kahului and look at how, you know, the bigger mansions fill up the whole property and then dwarf the properties next door, the existing property, the same conversation we were just having about California.

Mr. Mardfin: Thank you.

Mr. U'u: Questions for the testifier? Director Hunt.

Mr. Hunt: Did your committee debate the home-based business provisions?

Mr. DeLeon: I didn't repeat that because we've already supported that in testimony. We believe that that's a very good provision and well written. Thank you.

Mr. U'u: Any questions? Seeing none, thank you.

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

Mr. Eric Taniguchi: Good morning Commission Members. My name is Eric Taniguchi. I am an architect. I'm from Pukalani and I am the President of the American Institute of Architects, Maui Chapter. I represent about 52 members of which 36 are licensed professional architects practicing here in the County of Maui.

First, I want to thank the commission for deferring a decision on the proposed bill to repeal Chapter 19.09 R0 Zero Lot Line Residential District, Amending Title 19.08 Residential District and Amending the provisions and the definitions in Title 19.04 in the Maui County Code.

We, the AIA Maui had an opportunity to review several parts of the proposed bill by the Planning Department. We recommend that the commission don't support any changes to the current Chapter 19.09 R0 Zero Lot Line Residential District and don't support specific changes to Title 19.08 and don't support specific changes to the provisions and definitions in Title 19.04 in the Maui County Code. Again, I repeat we don't support changes to Chapter 19.09 R0 Zero Lot Line Residential District and we don't support specific changes to Title 19.08 and Title 19.04.

We as architects refer to the Maui County Codes Chapter 19.09, Title 19.09 and Title 19.04 almost on a daily basis. It is one of our most important references we design projects within Maui County. After reviewing the proposed bill we noticed certain inconsistencies and conflicts in the rules the Planning Department are proposing.

First we don't understand or we don't support repealing Chapter 19.09, Maui County Code, R0 Zero Lot Line Residential District. This change makes no sense to us architects. Actually we coauthored this ordinance with the County back in the early 1990's as a way to produce affordable housing here on Maui. One of our members, Hans Riecke worked tirelessly with the County to help produce this housing district. As we move forward with our new General Plan, community plans and urban growth boundaries, zero lot line districts are still a viable housing scenario. Please don't touch it.

The specific changes to Title 19.08 and 19.04 we don't support are provisions which add a 40% lot

coverage and the addition of an access yard on a residential zoned lots. Again, as previously stated on my initial testimony given on June 23, 2009, these changes to the residential zoned lots seem to target a certain cultural group which tend to live in a multi-generational family setting. These families live together for three reasons. They want to live together, number one. Number two, they have to live together. And number three, a combination of both. They want to and they have to live together and we all know why this situation occurs here on Maui. Also with the urban growth boundaries that we introduced in our community plans we should be promoting more density in our residential zoned areas.

Mr. U'u: Three minutes. Questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: I have a question. You spent most of your time saying that you just opposed it and only at the very end did I hear any reason why to oppose it and it's about – you think it's targeting particular ethnic groups I think.

Mr. Taniguchi: Thank you Commissioner Ward so I can finish this, because I get into the specifics and I will leave my testimony for you guys to review. But yeah, we also reviewed the planning models that the Planning Department had done using the 40% lot coverage and the access yards. And by looking at it, we saw that it almost kills outdoor covered lanais. That's gone when you look at the 40% lot coverage. Because anything under a roof is considered lot coverage. So the outdoor lanai, covered outdoor lanai, pau, gone.

And the other one is the two-car garage or the coverage garage or the covered car port, pau, gone. Because if you have people who still want to live together, they're going to find ways to do that. You know what I mean? Even though you look at what the Planning Department did and produced this models if they got to live together and they gotta make so many rooms, they're going to forego making the two-car garage because that's part of the lot coverage, right? So instead of parking the car under a carport, you park um next to side of the house. You know, what I mean? Park um to the side of the house. Especially with the access yard they make, you know, that it's setting that up. So you're going to have all these cars sitting outside around the yard because there's no provisions in the code to prevent that from happening. And you know, that's going to happen. You know. That's an obvious one. So when we look at these changes that's how we see it you know. I mean, when clients come to us and ask us to design their home and they no can do this and no can do that, then they going think other ways we can come up. And those are some of the solutions that we came up with.

The other implication that we saw is that, if this code goes in place, what happens to the existing houses that are already built like that? They become existing non conforming so they no can repair the roof or you know, change their roof or repair their house without having to reconfirm back to that so that means demoing some of that house right there.

Mr. U'u: Thank you. Anymore questions? Seeing none, thank You.

Mr. Taniguchi: Okay, thank you.

Mr. U'u: Any more public testimony? Seeing none, public testimony is now closed. Staff

recommendation.

Mr. Alueta: Again, the department is recommending that you recommend to the County Council approval of the proposed amendments subject to the amendments that we talked about with regards to energy systems small scale, adding that language in. As well as, --

Mr. Starr: Hawaiian cultural.

Mr. Alueta: We're not recommending that. We put that out if you wanted to incorporate that, but it wasn't a recommendation - I do not believe it was a recommendation by our director. I'll leave it to him if that was an official recommendation for that language.

Mr. Hunt: I think we're responding to a request for draft language. We can support the draft language if that's the will of the body.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, I move for recommendation of approval per the staff report with the addition of the Hawaiian cultural practices as suggested by staff.

Mr. U'u: Do we have a second a second?

Mr. Shibuya: Second.

Mr. U'u: Motion made by Jonathan Starr. Seconded by Warren Shibuya. Discussion? Commissioner Starr.

Mr. Starr: Yeah, I happen to think this is an excellent job of drafting, you know, I think we can all pick at it but then we can all see the other side of it. And as far as home occupations, I think it's done as - probably as well as can be done in terms of giving leeway but taking away those areas that are likely to cause noxious effects on the neighbors. So I just want to commend staff. I think it's a - a good job has been done and hope it moves forward.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: A point of information. In your motion Commissioner Starr, you moved to adopt the special use 19.08.031, instruction of traditional Hawaiian practices. Did you also mean to include the amended portion 19.08.030K about energy systems?

Mr. Starr: Yes, because that was part of the staff recommendation.

Mr. Mardfin: Okay, thank you.

Mr. U'u: Comments? Questions? Commissioner Guard.

Mr. Guard: Propose a friendly amendment to add the language for the existing homes with the

building permits. I don't know if you discussed that or if we can send that up for comment or actual amendment.

Mr. Alueta: I thought the comments that they made with regards to - that if you receive the building permit that you can make a recommendation that the department look into adding that type of language that should you house need to be rebuilt, that if you were granted - any structure that was granted a legal building permit at the time of the adoption of the ordinance -

Mr. Guard: So we don't need that as an amendment?

Mr. Alueta: I would make it as an amendment if that's the wish of the body. To help you along, we would look at it as from what I gather from the testimony and from their comments here was that that if any structure was burnt down or needs to be rebuilt, they may be rebuilt provided they were granted a legal building permit at the time of the adoption of this ordinance.

Mr. Guard: Suggest that as a friendly amendment.

Mr. Starr: Would the department be supportive of that?

Mr. Alueta: Yeah, I think -

Mr. U'u: Okay. Commissioner Mardfin.

Mr. Mardfin: We're not going to do an amendment?

Mr. Guard: Friendly amendment.

Mr. Starr: I mean whether it's part of the original motion or we make an amendment, I'd be for it either way.

Mr. U'u: Is it okay with the maker of the motion?

Mr. Starr: Yeah.

Mr. U'u: Second?

Mr. Shibuya: ..(inaudible)...

Mr. U'u: I'd like to suggest as you draft the language for that down the road that there be comments about to the - if it was legal to have it to the same scale as existed. I mean, you could take a certain square footage and really go outlandish on it. It should be same scope and scale of the existing structure as of the time of adoption.

Mr. Alueta: You would only be able to build whatever you got your building permit for.

Mr. Mardfin: Right. But you could do it in terms of area or the same building plan.

Mr. Alueta: You would have to get approved your same building plans.

Mr. Mardfin: The same building plan?

Mr. Alueta: Yes.

Mr. Mardfin: That's the way I would like it.

Mr. Alueta: Yeah.

Mr. Mardfin: If it's that way, then I'm fine.

Mr. Alueta: Yeah, it has to be the exact same plan.

Mr. U'u: Discussion? Commissioner Guard.

Mr. Guard: So barbeques and imus are still allowed under the small energy biomass burning?

Mr. Alueta: That's under traditional Native Hawaiian practices if you want to - that's according to the Fire Department.

Mr. Starr: As long as they're not noxious.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I raised an issue a little bit earlier about this memo from the Director of Public Works and I think our director has had a chance to look it over, do you - does that suggest to you that we ought to make some alterations or?

Mr. Hunt: I haven't had a chance to look over it real thoroughly. I think there's some issues that he raises that would have to be addressed through permitting process and what we're proposing under this law is a home based business would be permitted outright. And once you go into the permitting process and notify neighbors and agencies it's a much longer process and there's pros and cons. You get a lot better review. The neighbors have a chance to object, etc., but it's a prolonged process, it's extra work for everyone involved. I think at a minimum we can try and address these issues as we take it further to the Council and try and work with Public Works.

Mr. Mardfin: On the understanding that that's what you'll be doing, I don't think we need to make any modifications here. It's too complex to make modifications here and you'll have time to do it down the road.

Mr. U'u: Call for the question? All those in favor? All those opposed.

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

VOTED: To Recommend Approval of the Proposed Bill with the Recommended

Amendments.

**(Assenting - J. Starr, W. Shibuya, K. Hiranaga, J. Guard, W. Mardfin,
D. Domingo, L. Sablas)
(Excused - W. Hedani)**

Mr. U'u: None opposed. Motion passes. We're going to take a five-minute break and we'll be backing five, 1:15, 2:15.

Mr. Mardfin: Mr. Chairman, was that unanimous.

Mr. U'u: Unanimous, passed unanimously.

A recess was called at 2:10 p.m., and the meeting was reconvened at 2:17 p.m.

Mr. Hunt: Your next item involves the County of Maui, Office of the Mayor, requesting a Special Management Area Use Permit for the proposed South Maui Emergency Ambulance Station consisting of a single-story, 1,500 square foot building for the South Maui Emergency Ambulance Station and related improvements at 300 Kilohana Drive, TMK: 3-9-038: por. of 026 in Kihei. The file number is SM1 2006/0024. Livit Callentine's the planner assigned to this and it was deferred from your July 28th meeting.

- 2. COUNTY OF MAUI, OFFICE OF THE MAYOR, requesting a Special Management Area Use Permit for the proposed South Maui Emergency Ambulance Station consisting of a single-story, 1,500 square foot building for the South Maui Emergency Ambulance Station and related improvements at 300 Kilohana Drive, TMK: 3-9-038: por. of 026, Kihei, Island of Maui. (SM1 2006/0024) (L. Callentine) (Public hearing conducted on June 9, 2009.) (Deferred from the July 28, 2009 meeting) (To be taken up at 1:00 p.m. or shortly thereafter.)**

Ms. Livit Callentine: Good afternoon Commissioners. Nice to see you again. As the director said, this is located in the Wailea district in South Maui on Kilohana Drive and it's located adjacent to the existing Wailea Fire Station. The project is going to be a one-acre portion of a parcel of about 3.15 acres. You held a public hearing on this item on June 9th. And at that time, you had concerns about retention of drainage runoff and incorporation of energy conservation or generating measures such as solar water heating or photovoltaic cells and on your behalf the department did request additional information.

Subsequently, the department did receive a revised drainage report, a grading plan and a plan to retain an additional 20% of the difference between pre and post runoff. Further -- that's post runoff excuse me. Further, we received acceptance of the drainage report by the Department of Public Works and these documents were provided as exhibits to the director's memo to the commission dated July 16, 2009 in a subsequent mailing to the commission and that was shown as Exhibit 2 in your July 16th memo.

Based on the request made by the commission and advice of counsel, the department made

several changes to the conditions presented in the staff recommendation report prepared for the June 9, 2009 Maui Planning Commission meeting. Since several of the conditions were either deleted, amended, added or renumbered. You have received a list of the proposed revised conditions.

So the scope of the work remains construction of a single family 1,500 square foot building for an emergency ambulance station and related improvements including two sleeping rooms, an office, a kitchen and storage area. The station will be operated 24 hours a day, seven days a week.

The work has changed with regard to onsite drainage retention. In order to accommodate additional drainage, additional runoff onsite, the applicant's engineer, Michael Conway has proposed construction of an above ground detention basin around the lower portions of the project area to be constructed of CMU. Mich Hirano of Munekiyo and Hiraga stated to staff that at its highest point it would be approximately four feet above finished grade.

And as I said, related improvements also include site grading, installation of underground utilities and you'll note a difference in the number of parking stalls because of the increase in the detention basin size there are now going to be five rather than seven parking stalls provided where as the code requires four parking stalls. So they are in excess of that and it also includes a paved driveway off of Kilohana Drive.

Roy Silva from the Mayor's Office is here today and also Mich Hirano of Munekiyo and Hiraga. Bud Pikrone and Larry Clark of the Wailea Community Association. Laressa Ferrer, project architect and Michael Conway, project engineer.

Further, as far as other regulations go since the proposed action involves the use of county lands for the development of the new ambulance station an environmental assessment was prepared as required by Chapter 343, Hawaii Revised Statutes and the Office of the Mayor, County of Maui was the approving agency for the EA. The final EA was provided for your information on May 26th of this year.

In conclusion, I would just like to mention that the two significant comments that were made by the planning commission during the public hearing meeting were about drainage and asking that the applicant be willing to retain more of the runoff onsite and they have indicated now they are willing to retain a 100% of the post development runoff and 20% of the difference between pre and post development runoff onsite. The applicant submitted a revised drainage report and grading plans and once again, the Department of Public Works has accepted and approved of these documents.

And further, in terms of energy conservation measures, the applicant has indicated that they are willing to incorporate into the project either solar water heating or photovoltaic cells to generate energy and your standard Condition No. 10 does incorporate this condition.

The department has received no additional testimony to the one letter you've received that was shown in your staff report dated June 9, 2009 as Exhibit 43 and that was from the Kihei Community Association. So with that, I will ask that you deliberate and make a decision to approve this project.

Mr. U'u: Questions? Comments? Seeing none, we're going to open it up for public testimony. Any member wants to testify? Seeing none, public testimony is now closed. Staff recommendation. Livit take it away.

Ms. Callentine: Thank you Mr. Chair. You received a document dated August 11, 2009, a memo from Jeff Hunt, the director to the chair and members of the planning commission and it's entitled, "proposed amended conditions." Because – well lets see, the standard conditions are included and there have been amendments to the numbering system which is under each one of the conditions it is the former condition that it's showed as is listed. For example Condition No. 8 was formerly Condition No. 9. So that's been noted under each of the standard conditions.

And then the project specific conditions were amended both by the renumbering system and by a combination of the three conditions that addressed landscaping and so now those three conditions have been incorporated into one condition as you requested on June 9th.

So the Maui Planning Department recommends approval of this permit based upon the revised conditions. In consideration of the foregoing the Planning Department recommends the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the June 9, 2009 meeting and revised conditions prepared for the July 28, 2009 as the Findings of Fact, Conclusion of Law and Decision and Order and authorizes the Director of Planning to transmit said written decision and order on behalf of the planning commission. Thank you.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah is any of the – do any of the conditions include the energy conservation?

Ms. Callentine: Yes, standard Condition No. 10. It is not specific as to what system the applicant is going to adopt and I don't believe they've made that decision yet but if you want to ask them, they are here. Number 10 says, "that the appropriate energy conservation measures shall be incorporated into the project which may include but are not limited to energy conserving building materials, solar water heaters, state of the art air conditioning systems, photovoltaic systems, etc." And this condition was inadvertently omitted from the original staff report recommendation.

Mr. U'u: Commissioner Starr.

Mr. Starr: That's our standard condition. I'd like to ask whether the department would be willing to incorporate as you stated a specific condition that either solar hot water or photovoltaic energy generation will be incorporated into the project.

Ms. Callentine: Well, I think that's up to the commission to decide upon. We're not adverse to adding a specific condition. I also think you want to check in with the applicant.

Mr. U'u: Commissioner Starr.

Mr. Starr: Can I hear from the applicant on that?

Mr. Mich Hirano: Good afternoon Vice Chair U'u and Commissioners. At the last meeting the applicant stated that they will install one or the other. They hadn't made up their mind. I thought it's covered in the condition, the standard condition, but the applicant is amenable to that language.

Mr. Starr: Okay, I would prefer that it be either or so that they can choose which they want, but I would like to see it specific.

Mr. Hirano: Either, yes, that's fine.

Mr. U'u: Commissioner Guard.

Mr. Hirano: Would that be in the standard condition or a new condition?

Mr. Starr: No, in the project specific.

Mr. Hirano: Project specific okay.

Mr. Starr: Because the standard condition doesn't specify anything other than in general energy conservation.

Mr. Hirano: Oh, I see, okay. That's fine we could add another.

Mr. U'u: Commissioner Guard.

Mr. Guard: Thank you. I just wasn't sure like if they do solar hot water I don't know how many showers are going on. It's mainly a site of business so a lot of times a solar hot water heater may not be the best energy efficient thing versus a on demand hot water when you're using it for washing your hands more than actually firing up a 100-gallon tank. So I think the standard condition may be a little better suited. I mean, if you don't need a hundred gallons of hot water why keep heating it up realistically? They're doing a good job.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, there will be a lot of hot water used. There'll be two people living there round the clock so you figure that they'll be showering, they'll be cooking so it actually is more use than a normal home and I'm sure that it will pay for itself within a year or two. So I, for one, would like to see a project specific condition. I know the Mayor's office is here. I'm sure that they would support it as well since they're pushing.

Mr. Hirano: That's fine with the applicant.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I'd just like to say ditto to Commissioner Guard's comments. I also have another comment. Condition 18 says the applicant will accommodate 20% of the preexisting runoff but then we have this report dated July 17th signed by you, Mich, and on page 3, it says that you

will be storing more than 100% of the predevelopment storm water runoff flow.

Mr. Hirano: Yes, and I needed to clarify that. When I looked at the report that volume is more than the existing predevelopment runoff that is being stored, I believe it's 27,000 cubic feet and the predevelopment runoff was 2,200.

Mr. Hiranaga: 24.

Mr. Hirano: 24. So I mentioned that it's going to be store more than that but it's also somewhat misleading because it doesn't incorporate the post development runoff on that. When you incorporate the post development runoff which is the additional increase attributed to the project that is going to be captured a 100% as well as 20% additional.

Mr. Hiranaga: Of the 24, 20% of the 24?

Mr. Hirano: Yes. So that's a little extra clarification I needed to add.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, move to approve as recommended by staff and with the inclusion of a project specific condition as per the applicant's statement that they'll include either/or, solar hot water or photovoltaic.

Ms. Callentine: Mr. Chair, can I just check on the language of that or do you want to see if there's a second first?

Mr. U'u: We'll see if there's a second?

Mr. Shibuya: Second.

Mr. U'u: Well, now you can check on the language. Seconded by Warren Shibuya, Commissioner Shibuya.

Ms. Callentine: So this is the wording I've proposed, "that a solar water heating system or a photovoltaic system be incorporated into the project."

Mr. U'u: Discussion?

Ms. Callentine: And may I also point out Commissioners if you look at the project specific Condition No. 18 that I think we were just discussing, I believe that this condition should be amended. The way it reads now is, "that as represented by the applicant, a voluntary increase in the drainage storage capacity to accommodate 20% of the preexisting runoff for the project's developed area shall be retained on site." My understanding is that it's actually 20% of the difference between the post and predevelopment runoff. Have I got that right? No. Is the condition worded the way you want it to be worded then?

Mr. Hiranaga: I believe so. Maybe we could ask Public Works.

Mr. U'u: Follow up.

Ms. Callentine: The way it's worded, 20% – in addition 20% of the preexisting runoff. Okay, thank you for the clarification.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: I would prefer the proposed additional specific condition be handled as an amendment because I may not be in support of that additional specific condition and rather than jeopardize the main motion because of that addition.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, I'd like to ask for comment I believe that the Mayor's Office is here represented by Mr. Silva. I know that this is – the applicant is the Mayor's Office, County of Maui and I know that the Mayor has been working very hard on energy efficiency measures.

Mr. U'u: Please state your name for the record.

Mr. Roy Silva: Roy Silva, Mayor's Office.

Mr. Starr: I'd like to know you know since the Mayor's Office is the applicant and I believe that the Mayor's Office has been working very hard for energy efficiency in these areas whether the Mayor's Office – you know what the Mayor's Office position is on whether this should be a part of that.

Mr. Silva: Well, there is no specific law right now that requires a commercial unit to have solar. As far as we know the applicant has agreed to put in solar so we are in favor of that.

Mr. Starr: Okay, so it is supported?

Mr. Silva: Yes.

Mr. Starr: Thank you.

Mr. U'u: Any questions? Commissioner Hiranaga.

Mr. Hiranaga: Actually it's solar or photovoltaic as they choose. My concern is we don't want to put you know a \$500 toilet in that's not going to be used. So I would prefer to leave that discretion to the county to determine how they want to use their budgeted funds most effectively and so again, I would prefer that be an amendment rather that jeopardize the main motion because it's not –

Mr. U'u: Well, at the time we have a motion on the floor so I'm willing to take a vote for the motion on the floor. Commissioner Starr.

Mr. Starr: Yeah, the motion is on the floor. I'm not going to pull the motion and I know I certainly will not be supportive of the project and will be working very much against the project if this is taken out.

Mr. U'u: Okay, having said that we'll call for a vote. All those in favor of the motion by Jonathan Starr and seconded by Warren Shibuya raise your hand. All those opposed.

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

**The Motion to Approve the Special Management Area use permit, as Recommended with the Inclusion of a Project Specific Condition as Per the Applicant's State that They Will Include Either/Or Solar Hot Water or Photovoltaic, Died.
(Assenting - J. Starr, W. Shibuya, W. Mardfin)
(Dissenting - K. Hiranaga, J. Guard, D. Domingo, L. Sablas)
(Excused - W. Hedani)**

Mr. U'u: Motion dies. Commissioner Guard.

Mr. Guard: Make a motion to approve as recommended by staff.

Mr. U'u: Do we have a second?

Ms. Domingo: Second.

Mr. U'u: Motion made by Commissioner Guard, seconded by Commissioner Domingo. Discussion? Seeing none, call for the vote. Sorry, Commissioner Guard.

Mr. Guard: It's just a wording and I'm just choosing to go with this motion based on I feel I can trust the county and this homeowners association who've raised the funds to do this. If it's the right thing to do – a solar hot water system can be \$4,000 to \$6,000 I don't think it's going to destroy the environment if they don't do it or if they go with an electric on demand as they choose. It's an energy efficient device. They know it's good for everyone. They can buy an energy star refrigerator and do more good than a lot of things that we may be trying to require of them. So I just ask for your support with my motion.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I'm wondering if Commissioner Starr wants to make a motion to amend to include whatever criteria he wanted to include?

Mr. U'u: Commissioner Shibuya.

Mr. Shibuya: I have a great concern on this because just having energy conservation is not going to solve the problem. In my mind you generate electricity through renewable systems and that way you can also include energy conservation by producing energy. It's not so much as trying to conserve and restricting your quality of life or your services, it's providing a greater potential of having a better quality life. You're supporting lots more electronics, telecommunications as well as

some of your hot water and creature comforts so that's why I'm saying and I support Jonathan's motion to include energy generating systems.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, this project the applicant is the County of Maui. The County of Maui policy is very forthright in pushing forward for energy efficiency and renewable energy. The County of Maui needs to and is trying to be a model of this. Anyone who will be attending the energy expo coming up in September will be very much aware of the County's movement in this direction. The applicant has stated that they will be including it in the project when they actually build it to not make a statement that's forthright saying that some actual measures are being included is making a statement that no one should take it into a consideration or do it. Solar hot water is something that first of all it's now mandated for all residential in the State of Hawaii. Most commercial is being built with it if the people who are building it are the ones who are going to operate it for the simple reason that it pays for itself in two or three years. So it's, you know here the County of Maui is going to be operating it as well as permitting it and building it. It is not a right statement to make that it's not something for the County of Maui to do as such I offer an amendment that the project shall include either solar hot water or photovoltaic in its construction.

Mr. Mardfin: Second.

Mr. U'u: Thank you Commissioner Starr. Commissioner Guard.

Mr. Guard: If this is the only way it's going to get approved that's fine. I just more than anything at some point it be great for this commission to be able to trust your neighbors and people in your community. They said they were going to do it and the only think the only way that people will put solar hot water on is to condition them to do it. I don't know if that was case with Commissioner Shibuya on why he did photovoltaic or why you did. You did it because you knew it was right thing to do Commissioner Starr and you don't always have to condition people. I mean, now they can do a one-panel system when they might have done a 10 just to spite us. So at some point it's okay to trust people. That's all I have to say. I'll vote for the amendment just to get it done and because the association said they were going to do it.

Mr. U'u: So clarity, the amendment was a friendly amendment will be that it will be accepted by –

Mr. Mardfin: It's an amendment.

Mr. Starr: We'll vote on it.

Mr. U'u: Okay, lets vote on the amendment. Voting on the amendment to the motion. All those in favor say aye. All those opposed. All those in favor of the amendment raise your right hand. All those opposed.

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

The Motion to Amend and Add a Condition That the Project Shall Include Either Solar

Hot Water or Photovoltaic in Its Construction, Failed.
(Assenting - J. Starr, W. Mardfin, W. Shibuya, J. Guard)
(Dissenting - K. Hiranaga, D. Domingo, L. Sablas)
(Excused - W. Hedani)

Mr. Guard: I voted for it. The motion dies.

Mr. U'u: Motion dies.

Mr. Guard: Main motion.

Mr. U'u: Back to the main motion. All those in favor of the main motion. Say aye. All those opposed?

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

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

Mr. U'u: Motion passes. Two nays.

Mr. Mardfin: Three.

Mr. U'u: Three nays.

Mr. Guard: Congratulations.

Mr. U'u: Congratulations.

Mr. Hirano: Thank you very much Commissioners.

Mr. U'u: Turn it over to the Director. Director Hunt.

Mr. Hunt: The next item involves the Planning Director notifying the Planning Commission pursuant to Section 12-202-17(e) of the Planning Commission's SMA Rules of the intent to issue a time extension for the following request. This was deferred from your July 28th meeting. Pam English of Maui Land and Pineapple Company, Inc., requesting a two-year time extension on the Special Management Area Use Permit and Phase 2 Project District approval to initiate construction of the Kapalua Mauka first phase including the 51-lot Mahana Estate Subdivision, redesigned golf course, a clubhouse, a driving range, a 22-unit mauka village project as well as on-site and off-site utility improvements at TMK 4-2-001: 042 (por), 4-3-001: 006 (por) and 4-3-001: 008 (por). This pertains to file number PH2 2006/0004 and also on TMK 4-2-004: 036 (por) and TMK 4-2-004: 037 (por) which pertains to the SM1 2006/0013 application. This is located in Kapalua. The project planner

assigned to this is Gina Flammer.

Even though the notice, let me give you a little intro first, even though the notice speaks to the Phase 2 Project District Approval that's really not part of the time extension request. The Planning Director has the authority to approve project district extensions. So the only action before you really is the SMA extension and it should be noted that the SMA only applies to the off-site infrastructure. The SMA approval for this body did not address the majority or the main project itself. So just some clarification on that. And we also have Ann Cua who was the original planner. She's available here to help out. She was the original planner on the original application.

3. **Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following request: (Deferred from the July 28, 2009 meeting) (To be taken up at 1:00 p.m. or shortly thereafter.)**

MS. PAM ENGLISH of MAUI LAND & PINEAPPLE COMPANY, INC. requesting a 2-year time on the Special Management Area Use Permit and Phase II Project District Approval to initiate construction of the Kapalua Mauka First Phase including the 51 lot Mahana Estates Subdivision, redesigned golf course, a clubhouse, a driving range, a 22 unit Mauka Village project as well as on-site and off-site utility improvements at TMK: 4-2-001: 042 (por.), 4-3-001: 006 (portion), and 4-3-001: 008 (portion) pertains to PH2 2006/0004 and TMK: 4-2-004: 036 (portion) and 4-2-004: 037 (portion) pertains to SM1 2006/0013, Kapalua, Lahaina, Island of Maui. (G. Flammer)

Mr. U'u: Ann, are you going to give us a presentation or was that it by the Director?

Ms. Ann Cua: Mr. Chair, Members of the Commission I think on these matters that are coming to you in accordance with your SMA Rules for time extension I think they come to you under Director's Report. The director usually announces it. We have provided the applicant's letter that they submitted as well as the application. The Project District Phase 2 approval letter and SMA approval letter which was granted November 17, 2006. And then some maps showing you where the Kapalua Mauka project is and where the portion of the SMA laid which is basically with the off-site infrastructure makai of Honoapiilani Highway.

Mr. U'u: Thank you. Commissioner Guard.

Mr. Guard: So this is the one we were in the vans and it was just that – It was kind right by Flemings Beach Park, D.T. Flemings. That's the one that needed to hook into the line or something down there?

Ms. Cua: Yeah, when we went in the vans we kind of looked at a whole lot of stuff.

Mr. Guard: That was the one down there.

Ms. Cua: But yeah mauka of the highway is where the actual project district is but they're –

Mr. Guard: The SMA was just the tie in down there, right?

Ms. Cua: Yeah. They're required to do. Not only for this Kapalua Mauka project but for some other projects within the Kapalua Resort that they need this infrastructure project for. So that's what the SMA was limited to.

Mr. U'u: Questions? Commissioner Mardfin.

Mr. Mardfin: I see and I think it's page 2 of this request for an extension in the second paragraph it says, "Maui Land and Pine notes that the reason for the time extension request is that they have not been able to initiate construction due to the current economic recession and the related slowdown of the housing market." And I guess I'm looking at when it was approved back in November 2006 the economy was great then there would have been no problem getting it. So I'm a little bothered by events in the last six months being the reason that we have to grant an extension. Now, the next paragraph partially explains this. It says, "while Maui Land and Pine has not initiated construction it has made substantial progress regarding compliance with many of the conditions." There is a reference to a 2009 State Land Use Commission annual report which I didn't see here. I refers to progressing regarding compliance with the conditions imposed on the project as a result of change in zoning ordinance, County of Maui ordinance and some other stuff but I don't see any evidence of that here. So I guess I don't know how to – whether it's their fault or whether it's beyond their fault.

Ms. Cua: Mr. Chair, if I could comment?

Mr. U'u: Ann.

Ms. Cua: I don't think it's a fault situation here. I can go over some dates with you if that would help because there's been a lot that's happened through this whole process. Back in – excuse me, in 2006, after coming to the planning commission, the County Council approved the community plan amendment, change in zoning and project district phase 1 application to expand the project district from 450 acres to 925 acres. Initially the 450 acre project I believe consisted of like 720 units and I might have the actual number incorrect, but when they went up to 925 acres, they're actually proposing and are limited to by ordinance 690 units on this project so the densities got a lot less. So that was in 2006.

Also, towards the end of 2006, this planning commission, well not all of you but some of – maybe one of you approved the project district phase 2 application and the SM1 application. And you guys remember from your training the whole, you know, project district phase 1 is the creation of the ordinance where you have the standards yada, yada, and then you have your phase 2 which is actually your preliminary site plan and then your phase 3 which is your construction drawings. So back in 2006, they got project district phase 2 and SMA for the first phase of the project which includes 51 rural residential lots, redesigned golf course, clubhouse, driving range, 22-unit mauka villlage project and then on- and off-site infrastructure improvements.

Then in March of 2007, they came in with a phase 3 project district application so that's your construction drawings or actually they came in – I'm sorry it's the final – it's actually the final site

plan that is in accordance with the preliminary you submitted and we granted that approval in March 2007.

Then 2009 is when they came in for the extension. So you know, they have – and in the meantime they've been trying to meet certain conditions. You know, there's State Land Use Commission conditions, change in zoning conditions, SMA conditions, project district conditions, so they're trying to knock those off one at a time and so all of that has been going on through this whole project. I guess in 2009 is when they recognized and I'm not speaking for them because I think they should address you as well, but that's when they came in for the extension.

Mr. Mardfin: As a follow up are you suggesting that they did not engage in any foot dragging that they were doing this expeditiously as possible?

Ms. Cua: I cannot. All I am doing at this point is giving you factual information that I have by dates. There has been things happening every year. I cannot speak to and I think maybe we're at the point where you want to just ask them.

Mr. U'u: Can we have the applicant? Commissioner Starr.

Mr. Starr: Point of order Mr. Chair. We're here not to really make any decision on the time extension but rather to decide whether we will look at the time extension or we will waive our ability, our jurisdiction to look at it. And if we're going to ask questions and I know I have a long, long list of questions and I know the community has a long list of questions. I've heard from some of them then our right action would probably be not to waive it but rather to set up an agenda when we can look at this. To kind of do a half-way type of thing where we're asking questions about it but then we may waive our right to ask those questions I feel that is really wrong and outside of the scope of what is on the agenda. So my suggestion is that we should keep it to whether we're going to keep it or we're going to look into it and not actually start asking questions.

Mr. U'u: Okay. Commissioner Hiranaga.

Mr. Hiranaga: Clarification for the director. So the SMA permit is for the improvements in the SMA area which is makai of Honoapiilani Highway?

Ms. Cua: Correct.

Mr. Hunt: Staff's telling me correct.

Mr. Hiranaga: I would just like a brief description of what those improvements are. I know it says utility and wastewater connection.

Ms. Cua: Trying to remember where I read that. I know there's a water line – no, this is what I wanted. There's a 8-inch sewer line connecting the proposed Mahana Estates Subdivision to the pump station at D.T. Fleming Park, there's a 12-inch water lines one potable and the other non potable. The potable 12-inch water line will be installed as a backup to the proposed Mahana Estates Subdivision potable water system to insure continuous water service. The non potable 12-

inch line will be installed as a backup to the Mahana Estates non potable water system. Again, you know that this is all under private, the water is all under private ownership by Kapalua Water Company. And then an 8-inch PVC sewer line connecting the proposed Kapalua Mauka Project District to an existing sewer line in the golf academy parking lot. I believe I have that there.

Mr. U'u: Commissioner Guard.

Mr. Guard: Yeah, we've run into this with other projects as well that what we're supposed to be looking at is, I mean, just to get – they want to get out of the SMA area. Is that correct, Director?

Mr. Hunt: The review before you is to either waive the review of the SMA or let the – don't waive and then you guys would review it. But again, just to be very clear the whole project district that's not before you.

Mr. Guard: So yeah, like the questions that I feel like everyone had and maybe people brought up at last week's meeting were for the project trying to open up Kapalua Mauka not the SMA.

Mr. Hunt: I don't believe you have the ability to open up the whole project district review.

Mr. Guard: Okay. So I mean, I'd make a motion to approve just waiving. You've saw it right, and you're just looking for guidance from the commission.

Mr. Hunt: We would recommend you waive your review.

Mr. Guard: Is that appropriate now or? I'll make a motion to –

Mr. U'u: We still got questions.

Mr. Guard: Well, normally it's a communication item I think.

Mr. U'u: Commissioner Starr.

Mr. Starr: What – the SMA is the SMA and the SMA is the impact on the shoreline, reefs and water quality and view plane and all of that related to the project. Now we can't discuss any of that today when all we're discussing the – whether we're going to review it or not but a lot has changed since that time. I think we should have public testimony then I'll give my comments. It's more – you know, I think the shoreline SMA issues go way beyond just a pipe connection.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I understand the concerns of my fellow Commissioner Starr.

Mr. U'u: Thank you.

Mr. Mardfin: I'm not finished.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I just paused for dramatic effect.

Mr. U'u: Good job.

Mr. Mardfin: This isn't one that went back to the '90's and they've been asking for extension after extension after extension. Before I can know whether to waive review or not I need to have in my own mind some knowledge about whether they were proceeding expeditiously with this and if they were, I'm reluctant to try to second guess a previous commission. Now if on the other hand if they were dragging their feet for some reason or another then I think that subjects them to a whole level of review and whether it be a full review of the time extension or something else so I need the question answered is how they were progressing and what caused them to get to this point where they needed a time extension before I can know how to vote on the motion to review of the time extension.

Mr. U'u: Ann, just answer yes or no. Kidding.

Ms. Cua: Well, what I didn't go through the applicant provided us something July 27, 2009 and I really don't know if you want me to go through this, but I have a page and a half of different actions with a whole bunch of dates on it as to you know things like when they got their NPDES permit, when they got grading permits.

Mr. Mardfin: Can you read that please?

Mr. Starr: I'd like to ask Corp. Counsel for an opinion on this because I really believe we straying outside of what has been agendaed which is solely a discussion on whether we're going to waive review or not and if we're going to review it then we need to agenda it. Can I ask Corp. Counsel for an opinion on this?

Mr. U'u: Corp. Counsel, you've been silent the whole day. Speak.

Mr. Giroux: I think you guys have to make that decision because the way these rules are written you're going to have enough information to understand whether you need to review it or not and that kind of creeps into you know, a gray area of okay, now is that too much information now? But as a group, and maybe guidance from the Chair if there's been enough discussion if you guys can come to a vote as to have you heard enough information to make you understand that you may or may not want to review this at this juncture and if not, if you need more information as a group then you can make that decision too.

Mr. U'u: Commissioner Guard.

Mr. Guard: I mean, I know the area. I know the Fleming Beach Park and I remember the van ride. I was in Ann's van, it was fun. And we also heard earlier testimony today from other people saying that they had their permits approved four to five years ago and they've been held up in other agencies. So that may be part of the case so I mean, without delving into our own individual

research project and sticking to the program you know, I'd be willing to say that I know how slow it is to move forward on some of these projects and when I got the request and I got the letter, it seemed like a kind of smaller issue to me to waive the request. So I'd like to make a motion to waive review and go along with Director Hunt's sound judgement.

Mr. U'u: Motion made by Commissioner Guard. Is there a second?

Mr. Starr: We haven't had public testimony.

Mr. U'u: I'm sorry. We're going to open it up for public testimony. Anybody want to give public testimony please state your name. Seeing none, public testimony is now closed. Open it up for a motion. Commissioner Guard.

Mr. Guard: Motion to waive review and I guess leave it up to the Director on the time extension request.

Mr. U'u: Is there a second?

Ms. Domingo: Second.

Mr. U'u: Motion made by Commissioner Guard, seconded by Commissioner Domingo. Discussion? Commissioner Mardfin.

Mr. Mardfin: Regrettably I'm going to have to vote against this it may not be defeated but I have to vote against it because I haven't gotten sufficient information to know whether they've proceeded expeditiously or not.

Mr. U'u: Commissioner Starr.

Mr. Starr: There's a reason why these come back to us and you know, in many cases where there's not contentious issues I think it's a right thing to do for the director to do it. In areas where you know it seems like the project has been stopped because of economic concerns and then other factors that were involved on the original decision you know there was a lot of testimony about employment, you know, how many jobs they were providing in the community and so on which you know, I don't think with the current agendaed item on the table is right to get into, but there is a reason why this was to come back before us and we're supposed to look at it and see whether there is justification for a continuance or not and it becomes above the – when we do it the public has the ability to see and hear what happened and to chime in. Whereas the difference is although I believe the director would make the correction decision the public is not in the loop. So you know, I really do feel that the right thing to do is to air it out and let the community hear the presentation, us have the presentation and then make the call on that rather than take that right away from the community when there are community concerns.

Mr. U'u: I got a question if you guys don't mind. How much conditions were imposed on the project?

Ms. Cua: Which ones you want?

Mr. U'u: Total and the reason being I know, maybe this would help out Commissioner Mardfin, I think was in 2005 or 2006 it was – everybody was filing permits and I went for a one-bedroom extension on my house, one bedroom granted was in the SMA area, it took one year with no conditions. That is the reason you use your judgement when it was busy. So you know, you can come to your own conclusion but for my sake it took one year for a one-bedroom in 2006. Questions?

Ms. Cua: I'm ready to answer that if you're okay.

Mr. U'u: Yes.

Ms. Cua: The State Land Use Commission Decision and Order has a total 27 conditions, the change in zoning 13 conditions, the Project District Phase 2 and SMA 15 conditions, the Project District Phase 3, probably only has a couple – it has three conditions and if I could just real quickly throw in that according to the applicant it was their discussions with DOT that pretty much took – after they got a whole bunch of approvals, I was telling you they did a whole bunch of work and then things – they have been working with DOT for a long period of time. I don't even know if that is completely resolved, but I know they've been working with them to try and hash out what requirements they're going to have to do.

Mr. U'u: That was 58 conditions. Questions from the Commission? Director Hunt.

Mr. Hunt: Just to clarify again, the commission certainly has the ability to call up the SMA permit but I don't want it to be misconstrued either by the commission or the public that you're calling up the Kapalua Mauka Project District approval because that's not under purview at this point.

Mr. U'u: Okay, we got a motion made by Commissioner Guard, seconded by Commissioner Domingo. Comments? Commissioner Shibuya.

Mr. Shibuya: I'm going to be voting against this even though that I'd like to pursue this and expedite its action. It's an integrity issue for me and the public. I want the public to know what is all involved. I don't know anything about this project and that you want me to waive. My whole integrity issue here is that I need to know so tell me.

Mr. U'u: Thank you Commissioner Shibuya. Commissioner Hiranaga.

Mr. Hiranaga: Do you have pictures of the proposed water lines and sewer lines because that's what's being – those are the improvements in the SMA area so –

Ms. Cua: I believe that if you look at – that letter that you got, the very last page, it kind of shows you the location. I don't know if the applicant has something.

Mr. Hiranaga: No, the actual water lines. I think some commissioners want to see what the sewer lines look like and the water lines look like.

Ms. Cua: Do you have that? They have that. You want to see that.

Mr. Hiranaga: We're talking about the improvements within the SMA area.

Ms. Cua: Right, right. We can get that for you, pass that around.

Mr. Shibuya: Now you pass um out, kind of late, huh?

Mr. U'u: Any more questions? Commissioner Mardfin.

Mr. Mardfin: Ann, can you tell me what the issues are with DOT and what the current status of that is? If you have to check with your – the applicants please do.

Ms. Cua: Do you want them to just come up and tell you? Is that okay?

Mr. Mardfin: That would be fine for me.

Ms. Cua: Okay, I think that's appropriate.

Mr. U'u: Please state your name for the record.

Ms. Pam English: Aloha, my name is Pam English with Maui Land and Pineapple Company. Thank you for that question. It's been a real long difficult process with DOT. In order to get these pipelines across the highway the first thing that the requested was an easement and after they deliberated on that easement for approximately one year they came back and said they weren't granting easements any more they were only granting use and occupancy agreements of some kind. Then they looked at that particular standard agreement for over a year and then they had to do an appraisal on the property before and after in order to figure out how much they were going to assess us for the right to put pipes under the highway where we already had drainage pipes. And then they required us to pay them a huge amount for that right and we had to do another agreement with them and go through several months more of negotiation with DOT. We finally got that agreement and paid them their fee for the right for that use and occupancy agreement and then –

Mr. Mardfin: What was the date of that?

Ms. English: I don't – I'm sorry, I don't have the date for the use and occupancy, I know that that took - it took a couple years. It was ridiculous and then after that then they felt that they would then look our plans. During this entire time they wouldn't look at our construction plans for those pipelines. So they finally agreed to look at that and I still don't have approval from them on all the plans. So what I've been able to accomplish thus far is to get an approval of partial and then go back and ask them for approval of another parcel and as of this date I do not have approval from DOT. So what – the one thing that Ann didn't mention is after all of the Planning Department conditions we have to then go to subdivision and I'm not sure how many conditions there were on subdivision but that's what we've been struggling with right now. Everyday that's what I do is try and work to get all those subdivision conditions completed. It's a requirement that every single one

of the construction plans be approved by every single department in the county before we can get a grading permit to start construction. So I cannot pull a permit for this work now. You know, my SMA is ready to expire.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: If I can interrupt. So the bottom line is you've been doing everything you folks can do to proceed with this and it's been administratively –

Ms. English: Impossible. Absolutely.

Mr. Mardfin: Held up.

Ms. English: Yeah.

Mr. Mardfin: So that it hasn't been your fault that you haven't been able to get through it as far as you're concerned?

Ms. English: I'm pretty good at what I do and I tell you what I've been trying really hard to get this done.

Mr. Mardfin: Thank you very much.

Ms. English: You're welcome.

Mr. U'u: Thank you. Back to the motion. Commissioner Starr.

Mr. Starr: Yeah, once again I speak against the motion. I think that it is our – well, to me I feel it's our duty to allow the public to have a knowledge of what's happening with this and to take a look at it. The trigger was those drainage and water lines but a lot of this project – you know we are responsible for the SMA area and the health of the reef. We are the final authority for that. A lot of this project is in the watershed of Honolua Bay which I think we've heard some talk about that lately. It is crashing and my own belief is some of the grading for this is causing that.

Mr. U'u: Thank you Commissioner Starr. Call for the question. All those in favor signify by saying aye.

Mr. Mardfin: Is this for the motion to call for the question?

Mr. Guard: If you have more discussion?

Mr. Mardfin: I do.

Mr. U'u: I'm sorry. Discussion? Commissioner Mardfin.

Mr. Mardfin: I think I'm going to have to vote in favor of the motion to waive. I don't in general

believe that we should not overrule our predecessors and if they had approved this SMA and it didn't go back to the '90's or anything like that, this is the first time extension and I'm now convinced that there has not – it was not the foot dragging on the part of the applicant so I'm going to have to waive review.

Mr. U'u: Commissioner Shibuya.

Mr. Shibuya: I'm still going to have to vote against it. The reason why is that I'm past this information. That they had an opportunity to send it to me at least a week earlier and 10 minutes before we take a vote you pass this information out to me. I think it's just disrespectful.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Can we ask the Director to repeat the motion just for clarity?

Mr. U'u: I would love that. Director Hunt.

Mr. Hunt: The motion was made by Commissioner Guard to waive review and it was seconded by Commissioner Domingo.

Mr. U'u: Everybody understand what we're voting on? Call for the vote. All in favor to waive its review say aye. All who disagrees, nay.

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

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

Mr. U'u: Motion passes. Thank you.

Mr. Mardfin: What's the vote?

Mr. U'u: Five, three. Could you read back the vote Director.

Mr. Hunt: The vote was four, three and with the Chairs vote it made it five, three. The motion passes.

Mr. U'u: Congratulations.

Mr. Hunt: Your next item is Mr. Stanton Cohen on behalf of James P. Argyropoulos and Ms. Dawn Wilson on behalf of Gary Goetzman requesting comments on the draft Environmental Assessment prepared in support of the Shoreline Setback Variance for the hybrid shoreline protection structure consisting of a lower revetment with an approximate four-foot wide lateral accessway above and a seawall structure behind the revetment at 475 and 465 Hana Highway, TMK 2-6-009: 005 and

021 in Kuau. The file number is EA 2009/0002 and SM1 2009/0007 and SSV 2009/0002 and Thorne Abbott is the planner assigned to this. Do we need some time to set up?

Mr. Abbott: Doesn't appear so.

Mr. U'u: Go ahead Thorne.

D. NEW BUSINESS

- 1. MR. STANTON COHEN on behalf of JAMES P. ARGYROPOULOS and MS. DAWN WILSON on behalf of GARY GOETZMAN requesting comments on the Draft Environmental Assessment prepared in support of the Shoreline Setback Variance for the hybrid shoreline protection structure consisting of a lower revetment with an approximate 4 ft. wide lateral accessway above and a seawall structure behind the revetment at 475 and 465 Hana Highway, TMK: 2-6-009: 005 and 021, Kuau, Island of Maui. (EA 2009/0002) (SM1 2009/0007) (SSV 2009/0002) (T. Abbott)**

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

The EA trigger is the Shoreline Setback Variance.

The project needs a Special Management Area Use Permit and a Shoreline Setback Variance. The public hearing on the SMA and SSV applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.

Mr. Thorne Abbott: Thorne Abbott, Coastal Resource Planner. What you have in front of you is a draft EA in support of a shoreline setback variance and a SMA major. This is to do shoreline hardening out in Kuau Bay. If you're standing at Kuau Bay looking makai you look to your left there's a beautiful natural beach full of sand, no houses, no development. If you look to the right, there's a house with a CMU seawall that's parked on top of a little perched clay embankment that's collapsed in places then there's a rocky bluff about 15, 20 foot high with a lot of clay behind that and parked up on top of that scarp is a nice home. There's a little channel in front of that that people use to get out to a very nice surf spot. Then just next to that is a big cliff and that cliff continues on, mostly clay embankment. There used to be an old seawall there that collapsed and then the neighbor cut down a tree, a big ironwood tree, they had a big storm and big puka about 40-foot deep, 40-foot wide formed in a very short period of time, I think two or three days. Unfortunately we don't have the video here for you but there's some very empowering video showing a storm surge wave literally going over the existing revetment and the existing bluff and landing just shy of the house and then basically washing everything away, grass, fences, weeds, tiki torches all back out into the ocean. Typically – yeah, those photos there. So typically we don't support shoreline hardening particularly if it's next to a beach, but in this case the houses are endangered and so there would be some practical support for considering shoreline hardening and stabilization. Also behind this is primarily clay. You don't really want that clay to go out to the ocean that gets on the

coral reefs causes them to get overgrown with algae and that causes the reduction and the buffering of those. So I'll turn it over to the consultant.

When Mike Foley was first director here he had a meeting where John Summers came and testified on an item and John sat down on the left and then the next person to come up was Mike Summers representing the applicant and Mr. Foley was concerned why one of his employees would be presenting both the department and then subsequently the applicant. So you might be confused by who's representing the applicant this time because they look like a 30-year veteran of the department but realize it's actually Colleen Suyama with Munekiyo and Hiraga.

Mr. U'u: Colleen.

Ms. Colleen Suyama: Good afternoon. I'm representing the property owners James Argyropoulos and Gary Goetzman. The project team is composed of Dawn Wilson as well as Stanton Cohen who represent both property owners. Mich Hirano and myself represent Munekiyo and Hiraga, Inc., and we had Demont Hansen of Sea Engineering, Inc.

We did early consultation before we designed the wall and before we came with the application and the environmental assessment we consulted with both the state, the Planning Department and the UH Sea Grant Program before we came up with a solution as how we were going to deal with the shoreline erosion.

This the property location. This is Hana Highway. This is Kaulahao Beach that Thorne was talking about the sandy beach that's located here with the point and just west of the properties, this is what they call the blue tile house in Kuau and the property is parcel 5 owned by James Argyropoulos and parcel 21 owned Gary Goetzman and the shoreline.

This is a site plan showing James Argyropoulos property. This is where the house is located further back on parcel 5, the shoreline, there was an existing seawall that was located here as well as the pavers that was within the setback and parcel 21 which is a flag lot that comes off of Hana Highway with an existing revetment and the existing single family dwelling and accessory dwelling. This is the blue tile house located here.

This is parcel 5, a site visit on January 7th of this year. You can see partially the erosion of those pavers that are beginning to fall into the ocean and you can see the house further back from the shoreline.

In 2007, this is how the shoreline looked like when Sea Engineering went out to do their survey. Then just July 29th, this is how the shoreline is. That same seawall that was existing has basically collapsed as well as you can see undermining behind the seawall.

This is a view showing the 2007 situation and the 2009 situation. That's the same wall. This portion of the wall has basically collapsed and the hole that was here has basically gone – become a bigger hole behind the wall.

This is showing you these are the steps that went down to the ocean and you can see the hole

that's created behind the seawall because the erosion is coming from behind the seawall now.

This is the same parcel 5 showing the 16-foot, approximately 16-foot escarpment that's along the shoreline. This is that same seawall that used to be all the way in front of this property. And as of 2009 most of the seawall has collapsed and now the ocean is starting to erode into the embankment and coming from behind the seawall and eroding it from behind.

And this is one the east property boundary of parcel 5 the remnant of the seawall that was there and you can see some of the erosion that's occurring behind the wall and this are existing rock revetments that were on the adjacent property to the east. This is showing you the shoreline along Kuau. Basically people have put rock revetments or rocks along the shoreline to protect the shoreline and this is the property boundary.

This is a site plan, the same site plan for orientation purposes because we're going to parcel 25 now and parcel 25 besides the existing dwelling there is that existing rock revetment that fronts that property.

This is in 2009 showing you the blue tile house here, some of the erosion that's occurred, the existing revetment along the shoreline and this is the existing dwelling. It's important to note this particular coconut tree located here.

This is 2004 this is how the shoreline setback area looked like. You had this existing single family dwelling approximately 20 feet before you got to the top of the revetment and there was this existing fence that was along the property boundary.

This is a 2007 storm and as you can see, unfortunately the photos are not very well, you can see the waves starting to overtop the revetment, starting to come and as it comes in it basically, you know, it hits the home, the existing deck and then it retreats back and as it retreating back the existing fencing that was along that shoreline was taken out and today that fencing is gone.

What we're proposing to do is a hybrid revetment that was proposed by in consultation with state, the Planning Department and the UH Sea Grant Program and what it is is where it's going to be a revetment on the bottom and as much as possible trying to stay out of the high tide mark and a seawall behind that revetment and trying to place this revetment as far away as we can from the shoreline. As you can see, along the Goetzman property it probably will be very close to where the existing house is because of the lack of space between the house and the revetment and as much as possible trying to come back as far enough into parcel 5 as possible to keep it out of the high tide mark.

This is a section of the revetment what it's going to be is although it looks like it's a concrete wall this is actually a rock revetment in section with the seawall behind. We're going to try to do, you know, place the wall as far back as we can. This is the existing grade of the embankment so it will require excavation of that embankment to put this wall back as much as possible. The reason we're doing that is that there is an existing sand channel that fronts the properties and this channel is used for recreational purposes and we're trying to make sure that whatever happens with this revetment it does not detract from the existing recreational use of the sand channel.

The proposed revetment is it will mitigate turbidity and improve water quality. As Thorne had mentioned the existing embankment is a clay bank and right now that erosion that's occurring is all going into the ocean. So with the revetment it's going to stop some of the turbidity that's currently occurring. It provides the necessary protection to the property. It also allows safer lateral access on the top of the seawall or the top of the revetment and it also minimize impacts on the existing recreational uses in the area and it reduces the encroachment of the structure within the state owned lands.

Before I open myself up to questions from the commission, Dawn Wilson who represents the property owners wanted to speak to the commission also.

Mr. U'u: Please state your name for the record.

Ms. Dawn Wilson: My name's Dawn Wilson and I am representing Gary and Leslie Goetzman who own the house and I just wanted to let you all know that how much they love their home. It's their family vacation home and it's never been used as a vacation rental and never intends to be. And that they're really concerned with the safety of their ocean front and particularly like the cave that you saw over on Stanton's property or the Argyropoulos property that it's really dangerous and we're concerned about children playing down there because they play there everyday. I live there on the property and there's kids playing and there's surfers and fishermen out there in the early mornings and who will be responsible if something happened to them. We're just very concerned about it and want to let you know that it's not just some you know mainland investor it's actually a loved family home and just to put a personal meaning behind it and just to let you know the concern we have for the house and for the safety of the public.

Also, the house itself since now both sides have been – are being eroded from the sides not only from the wave action coming from the forward, there's cracks all over our house now and the walls and the floors and we've hired an independent structural engineering team to come in and give us, you know, rule out things like termite damage and things like that that are causing the house to fracture the way it is and so we're really concerned about not just the cost of the house and what's happening to it, but also the entire shoreline and the safety of everyone. So I just wanted to give you kind of a little personal touch there so when you look at this you see that there's people and families behind it and anyway, that we love the property a lot.

Mr. U'u: Thank you Dawn. Hang on a second, Commissioner Starr, questions.

Mr. Starr: Yeah, how long have these people owned the property?

Ms. Wilson: They bought it in 2003.

Mr. Starr: And where do they live?

Ms. Wilson: They live in Los Angeles.

Mr. Starr: Okay, thank you.

Ms. Wilson: You're welcome. Anything else?

Mr. U'u: Questions? Commissioner Mardfin.

Mr. Mardfin: I'm sorry, I didn't – maybe you said it and I missed it. What's your – are you a long term tenant there or are you a relative?

Ms. Wilson: No, I'm not I actually I just take care of the property for them and I'm their friend.

Mr. Mardfin: And you live there?

Ms. Wilson: And I live there, yeah.

Mr. Mardfin: Okay, thank you.

Mr. U'u: Thank you. Any more questions? Seeing none, thank you. Open it up for comments on the draft EA. Commissioner Starr.

Mr. Starr: Yeah, my comment is that this is will definitely have an irrevocable negative effect. I don't think that – I think this is something very wrong to do. There is a sandy beach leading right up to the Goetzman property and that sandy beach would continue except it's been hardened for a long time and so because of that there's no lateral access along the ocean. There's no beach and it's purely to provide safety for a vacation house for someone living in L.A. who bought it recently you know several years ago. I guess, you know they bought it cheap because it was threatened and now they're trying to protect their investment. Unfortunately it's leading to the loss of lateral access and a sandy beach so to me this is a you know the whole thing stinks.

Mr. Giroux: Chair can I just remind the commission that we're here to review the EA document and it will be before you again for an SMA and possibly variance so I'd just like to have this commission remain neutral in its comments as far as information gathering.

Mr. Starr: Yeah well you know that is my information that I feel it will have significant impacts and you know will likely need to be kicked up for an EIS and the process. But you know I'll hold off making any statement to that until we see the final document.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Okay, page 34, potential impacts and mitigation measures, "the proposed shoreline protection improvements have been designed to reduce wave action that will create further erosion problems to the small pocket of sand west of parcel 21." I think that's a poorly worded sentence. So is this improvement going to create more erosion to the sandy beach or reduce the erosion to the sandy beach?

Ms. Suyama: My understanding is that because there is really no sandy beach in front of both the Goetzman and the Argyropoulos property it's basically a rocky shoreline that's been there and if you read the draft EA document we did contact people that lived in the area in Kuau before to gather

some historical perspective.

Mr. Hiranaga: I'm talking about the sandy beach not in front of the property because there is no –

Ms. Suyama: You're talking about Kaulahao Beach.

Mr. Hiranaga: Yeah.

Ms. Suyama: It's not supposed to because that's why we worked with both the state, the Planning Department and Zoe Norcross from UH Sea Grant that the best way to prevent any impacts on the ocean was to do this hybrid wall. Originally they were looking at just a plain revetment but that would have gone too far out into the sand channel. So to protect the sand channel as well as the shoreline this revetment, this hybrid revetment was proposed by all three parties.

Mr. Hiranaga: I'd like more information regarding that statement because that sandy beach there is basically there year round as far as I'm concerned. I many not have been there in the past six months but over the years, the past 15, 20 years it's always been a sandy beach. So I don't know if – I'd like to know more definitely what impact these proposed improvements will have on that sandy beach and if in fact the assumptions are that there won't be any impact to the sandy beach means their assumption is wrong, what are the remedial actions that will be done such as removing the improvements because the assumption that it would not impact the sandy beach was wrong so you built it now you have to take it out. I mean, you know, they're saying we don't foresee any irreversible damage but that's guesswork.

Ms. Suyama: I can take your comments and have Demont Hansen from Sea Engineering respond to them because unfortunately he wasn't able to come today because he was worried about the possibility of the tropical storm being on Maui.

Mr. Hiranaga: Okay, I have many questions but I'll do two at a time. Second one, I also would like to look at impact to the parcel, parcels east of the properties since they're not participating in this improvement what impact will have to their properties. I mean if you're going to have scouring, what type of remedial action are you going to do to protect the properties if they are adversely impacted by this improvement? Because this cliff condition extends all the way to the drainage channel by Tavares property this 200 foot or maybe 50-foot drop in elevation that's a consistent condition all the way down to that I think it's this Corp of Engineers project there on Tavares Bay. You couldn't have missed it, right, that huge, big outfall that's 15 feet high concrete.

Ms. Suyama: So we can Sea Engineering address both of your questions.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I have a number of things. The first one will be a little nit picky. You called it proposed shoreline protection improvements, I'd call it alterations Improvements has a value connotation to which I ought to be alterations whether it's an improvement or not is a different issue.

Secondly, my big concern and what I think is needed in here is some systematic impact on the

reefs. You referred to the reefs but I need to know and I think it should be environmental assessment what the impact will be if this is built on the reefs, what will be the impact if it isn't built on the reefs and you know natural processes are allowed to proceed. I think that's crucial.

A third thing is I'm really bothered by the fact that lot 1 is not being included in this and that they're not proposing the same kind of solution if I'm reading between the lines. They're only suggesting a seawall I believe instead of a rock revetment and I really wish the whole package would come in together with everybody in this area even if you have different consultants dealing with it on the same day I think is going to be important.

Mr. Abbott: We both respect and support that same idea. We would have like that too, but that's just not the way it happens so I apologize for that.

Mr. Mardfin: But if they're coming in with a separate thing maybe we just need to hold it on the same day.

Mr. Abbott: Okay, we'll do our best.

Mr. Mardfin: I'll pass for a while.

Mr. U'u: Commissioner Starr.

Mr. Starr: Yeah, in the analysis of alternatives I'd like an analysis of the case where the shoreline would be restored to the condition it would be had there never been a seawall or revetment which I would assume would mean removal of the clay, it might be removal of the house and you know, sand, putting on a sandy shoreline which would probably just – whatever it is the idea is not just not doing anything but to actually restore to the way it would have been had there never been any hardening of the shoreline.

Mr. Abbott: Kind of a no alternative and then a no, real no, back in the old days no alternative.

Mr. Starr: Precisely, thank you.

Mr. U'u: Commissioner Guard.

Mr. Guard: Thank you. It may be beneficial for them to I guess see what's happening around there because to me I think it is going to be a benefit. Go in there at a high tide when you can be trying to paddle out to go surf out there and you're almost under rocks and trees and you'll see big chunks of clay falling in. So it's a problem right now. I don't know how you'd be able to kind of confirm that for people on the body but they need to do something down there.

Mr. Abbott: Would it be appropriate to enhance the history of how that original revetment came to be and –

Mr. Guard: Possibly –

Mr. Abbott: To the extent that we know.

Mr. Guard: The revetment I think this body had to deal with that part of that revetment.

Mr. Abbott: Back in the day.

Mr. Guard: I mean, within the last five or six years, right, but I don't think it's – it's all natural boulders down the way. There's not that many rock walls within the bay.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, on page 37, cumulative and secondary impacts, second paragraph there's a statement that says, "there are no other infrastructure projects anticipated within the project context. Scope of the proposed project is limited to construction of shoreline protection involving a hybrid rock revetment and seawall." And yet we hear that there is another application going through for the parcel to the west of that.

Mr. Abbott: Can I point something out? Let me get the light in here real quick. Yes, perfect. Okay, just to point out this is the blue tile roof and the CMU wall that's existing. It had collapsed over in this area. This is the property in question and their property line extends along here but is just a few feet on the inland side of this edge and extending to about I'd say right here at this corner and then the wall itself would extend from here back towards this direction. The intent is to get the other applicant to participate in this overall project and tie their wall into this so you have one continuous circumstance here and you're addressing one continuous circumstance.

Now according to the DLNR, Office of Conservation Coastal Lands they have a no tolerance policy when you have a sandy shoreline. So in the presentation in front of you there is no sandy shoreline because they're not addressing that. There could be possibly the end of the revetment you know somewhere in here probably because you're going to want to have a least some public access but they're not actually going to the beach or the sandy shoreline. They're just going into the existing bluff. This site however, blue tile roof is fronting a sandy shoreline so that creates a much more intricate response and that's part of the reason you haven't heard from that applicant yet and their application. We will try to get them to come together to the best that we can.

Mr. U'u: Thank you Thorne. Commissioner Hiranaga.

Mr. Hiranaga: I thought I read that at some point those two projects will be connected you hoped.

Mr. Abbott: You would want that. I think that would be the appropriate way to do it but you know we can't predict that applicant is going to propose.

Mr. Hiranaga: So I would like some explanation as to what's being proposed for the property to the west.

Mr. Abbott: I do know that they looked at this same hybrid design. They've also looked at just a revetment. They'll have all the different alternatives listed including tying in with this one.

Mr. Hiranaga: I'm just looking at cumulative and secondary impacts and I think that's a cumulative and secondary impact and it should be included in this EA.

Mr. Abbott: Absolutely. I agree, however we unfortunately we can't force that particular applicant into participating at this time.

Mr. Hiranaga: To your best of your ability.

Mr. Abbott: To the best of my ability. When the final EA comes back to you we'll try to have had the other draft EA in front of you by then so we can create some nexus with these two.

Mr. U'u: Thorne, yes we can. Kidding.

Mr. Hiranaga: My second question, page 49, the coastal hazards. I would like to have address the impact of a tsunami hitting this improvement especially to surrounding properties that do not have this improvement. I know you talked about storm waves but I think a tsunami has hit that area.

Mr. U'u: Any more comments? Commissioner Mardfin.

Mr. Mardfin: On page 52 and 53. There is a thing about, "shall permit artificial light flood lights, up lights or spot lights used for decorative or aesthetic purposes when the light directly illuminates the shoreline and ocean waters." The response the way it is now reads, "the proposed shoreline protection measures will not involve or result in direct illumination." That's not going to keep me happy when we come down to the final thing. I want to make sure that house does not illuminate the ocean and that there be some characteristics. Saying this development won't does not impress me at all.

A second one if I may on page – go on, I can't find it yet, I'll get back.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Page 51, under beach protection at the bottom it says, "it is anticipated that the redesign reduces impacts on the shoreline especially on recreational users utilizing the narrow channel fronting the properties." So I'm just wondering, I was looking at the diagrams and at low tide how high is the lateral access above sea level?

Mr. Abbott: Good question. I believe the actual revetment is five-foot back from the channel because that channel is real important to keep clear for surfers to get in and out. I don't know what the elevation will be but we'll point that out. Colleen, do you know? I believe it's – actually I do know. Here's your shelf it's at +10 so 10-foot above and you'd have 6-foot, actually 8-foot behind you. You have a wall of 8-foot high, a shelf at 2-foot wide, I'm sorry 4-foot wide and at elevation of 10-foot above sea level. So at low tide it actually be probably 12, 14 feet.

Mr. Hiranaga: -2 is probably low tide. So what you're saying is if you build this thing you're going to remove the existing grade which that dotted line, the ocean will then lap onto the toe of the rock revetment. So is the lateral access meant for surfers to slide down into the water or they continue

paddling through the sandy channel?

Mr. Abbott: The access is meant for – this is for the surfers. This is for just general public that wants to go down the shoreline. I'm not sure what they'd be going to but they might do some fishing from that spot, might just want to park it and –

Mr. Hiranaga: Okay, thank you.

Mr. U'u: Commissioner Mardfin.

Mr. Mardin: On page 29, the EA refers, draft EA refers to scenic and open resources. And it says, "they are subject adjacent to the shoreline – the subject properties are currently developed with existing residences that obstruct any views to the shoreline from the coastal highway. The project area is not located in a scenic view corridor." I was driving along there coming in from Hana this morning and I'm not sure which property was which but I just turned my head to the right looking to see what I could see, the reason I can't see anything is because there are big walls, growth of shrubbery or something else there. Because I don't know which property is which I can't quite tell, but those are kind of blocking off views that could have existed and if we're doing something to help them preserve this property they want to do something – consider doing something to improve scenic views. It's just a suggestion you might want to consider when they do the final EA.

Mr. U'u: Questions, comments? I got a comment. Is that the old Hamai's house?

Mr. Hiranaga: No.

Mr. Abbott: No.

Mr. U'u: Okay, it's been answered.

Mr. Abbott: And just an FYI when consultants or even the department refer to – it's not a protected scenic view or something like that. We actually did a study, the department a scenic view corridor study and identified views to be protected, but those are big views not specific.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Page 59 you talk about strategic retreat alternatives and the second to the last paragraph at the bottom you say, "relocation of the structures is not considered an alternative for parcel 5. Did you mean 21 or 5? Because 5 you've got quite a bit of setback and you've got a little ohana there that's like a tear down and the main house is probably 60 feet, 70 feet from the edge of the cliff. That's the one further east.

Mr. Abbott: I believe that might have been a typo, we'll look into that. The Goetzman property doesn't have much ability to relocate.

Mr. Hiranaga: Right the flag lot.

Mr. Abbott: Yet the neighboring property is already as you pointed out well back. The blue tile roof property because of their subdivision there's a mauka lot they have issues with relocating.

Mr. U'u: Second question, Commissioner Hiranaga.

Mr. Hiranaga: Second question. Someone told me that there is a spring between parcels 5 and 21 that may be causing that erosion.

Mr. Abbott: Could be.

Mr. Hiranaga: So can you take a look, not you, but the preparers of the EA.

Mr. Abbott: I have, I climbed down in there and I looked around, you know, there's probably are some seeps in there that contributed – between the high wave action and cutting down the ironwood tree and the seeps and the heavy rainfall, you know, it's three little incremental things but they have kind of a epidemic effect.

Mr. Hiranaga: But if you have a natural spring that is running there this could jeopardize whatever improvements if there's water coming out through that.

Mr. Abbott: You'd have to put weep holes in for sure, yeah, I will mention that to Sea Engineering and get a comment from them.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: On page 24 you were interviewing Raymond Kokubun and his last paragraph he said, "he's aware of erosion in the area. He is against seawalls. He believes once something is gone you cannot get it back. Seawalls are known to effect adjacent neighbors. He's concerned that the neighbors should be informed." I don't know if you've yet gone to all the neighbors, but I don't know if the applicant has yet gone to all the neighbors but I would think that would be a very good thing to do if it hasn't already been done.

Mr. Abbott: Okay.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, just a follow up to Commissioner Ward. Yeah, the Hamais live directly east of parcel 5 and I think they've probably resided there for at least 50 to 55 years so I think they would be a great resource if they're willing to speak to them. And also I am concerned with the impact of this improvement on their property. Everyone's experiencing erosion along the entire coastline.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: In the letters the Department of Planning, this is on page 33 of the some later section where they have the letters, Department of Planning letter of July 5, 2007, writes, number 2, well, it's hard to read this, number 2, "provide a cost benefit analysis of all options including structure

relocation.” I looked for that cost benefit analysis since I love reading them as an economist and I don’t see anything even close to a cost benefit analysis in here.

Mr. Abbott: We’ll have one in there.

Mr. U’u: Any more comments? All right.

Mr. Hiranaga: Last one.

Mr. U’u: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, if you could just look at potential impact to the surf area as far as creating a backwash. I know there is a reef between that creates that sand channel and I’m not exactly sure how far that reef extends to the east, but if your proposed improvements extend beyond the sand channel you know possibility of creating backwash which could degenerate the quality of the surf spot there.

Mr. Abbott: Okay, good point.

Mr. U’u: Commissioner Mardfin.

Mr. Mardfin: I want to say something really positive about this.

Mr. U’u: Why start now? Commissioner Mardfin.

Mr. Mardfin: I wait till the end. I was part way through this when I saw the reference to Appendix A, and I read the Sea Engineering report, first I loved it. It was good engineering and I really liked reading it and the on page 31, I thought they gave a fairly considered reason why no action is probably not a desired result and I think that whoever wrote this took the Sea Engineering report and incorporated a lot of it which I thought was a good idea. But I like reading the original document. It helped me a lot.

Mr. Abbott: Okay. I don’t believe the Sea Engineering – the recent collapse of that cave and all that stuff and the big puka that formed which the testifier mentioned is causing cracks at this juncture even though that puka is not on their property you know, they kind of stick out on the end of this peninsula and that puka is to the right and that’s now encroaching to about 18-foot away from their home and since it’s a pretty big overhang, I think that’s why they’re nervous at night especially on typhoon days. So I don’t believe that was considered in the Sea Engineering though, yeah that big puka wasn’t there.

Mr. U’u: Commissioner Mardfin.

Mr. Mardfin: In the letters, there’s a letter from the Sea Grant Extension Service by Zoe and on page 27, the way you’ve numbered it here, the way it’s numbered here it says, “options to consider may include but not be limited to: 1. The hybrid revetment seawall which ...(inaudible)... 2. A vertical seawall. 3. A revetment constructed on private land excavating the yards of the properties

in order to move the entire revetment mauka and out of the channel.” I think you’ve – it’s been referred to today as more or less doing that. I don’t know if more needs to be said about that.

Mr. Abbott: How about the distance of the top of the seawall from the actual existing house.

Mr. Mardfin: That would probably be useful.

Mr. Abbott: Juncture at all points.

Mr. Mardfin: I guess I want to have a sense the owners are taking a hit in this and it’s not just going onto state land.

Mr. Abbott: Yeah, I think that was Zoe’s intent, Ms. Norcross- Nu’u’s. Thank you for pointing out the page numbers too, that’s very helpful.

Mr. U’u: Any more comments by the commission? Seeing none, does the commission need it to be read back or we can trust Thorne.

Mr. Mardfin: I have one more.

Mr. U’u: Commissioner Mardfin.

Mr. Mardfin: Thorne, on page 14, there’s a comment in passing lets see if I can find it, the subject properties were previously graded in connection with the completion of the existing single family residences and landscaping. I’m wondering when that was done and how it was done and why it was done and why didn’t they take better action at that point. I got a hundred questions about that sort of thing. I guess partially it’s timing. You know if it’s done in 2007, that’s one thing. If it’s done in 1907 that’s a very different thing.

Mr. U’u: Any more comments? Commissioner Mardfin.

Mr. Mardfin: On page 22, It’s clear that they’ve referred to bones, iwi being found on the beaches there and that’s right down from this place so I really hope they will look long and hard and maybe in their final EA have something really – have the plan of how they’re going to deal with the iwi really cleared up because I suspect they will find something when they do this.

Mr. Abbott: Okay, they will have to have an archaeological approved monitoring plan from SHPD.

Mr. Mardfin: But I didn’t see it in here and I think that’s sort of the thing that I would hope that they might include.

Mr. Abbott: Okay.

Mr. U’u: Any more comments? Seeing none. Thank you Thorne. Does the commission request a break?

Mr. Hunt: You want to take public testimony?

Mr. U'u: I'm sorry. We open up now for public testimony. Anybody want to give public testimony please state your name.

Mr. Paul Peters: Good afternoon, my name is Paul Peters. I'm a representative of the owners of lot 1 which is west of the subject property that you're discussing today. I would like to support, I would like to express my support for the Goetzman's plan. They have been cooperative in keeping us apprized of what they are doing. They've integrated us into the process. We don't believe that they are creating a structure that cannot be reconciled with any structure that would need to be constructed on parcel 1 should we get approval through this body obviously. That's important to us. The site is very important to my wife and I we swim in the sand channel almost every day and we are happy to see that the Goetzmans are protecting the lateral access. I believe that's one of the elements that's in the plan that's important to us and we see that that's there. So I think it's important for this body to know that we have no objections to the plan and we support the process.

Mr. U'u: Questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: It was somewhat cryptic in here as to what you were planning but it sounded like you were looking at a seawall only solution and if that's the situation I'd be very concerned about how it hooks up and how the combined effect will effect the beach and the reef and the erosion and to my mind at least if it would be much stronger if there were a complete plan for the area presented to us then one comes in with one plan, one comes in with another plan, we're not quite sure how they tie together and it's likely that one could be approved and one could be disapproved or you know, you never know how that's going to work out whereas if it were a holistic comprehensive – and in here there is a term “comprehensive solution.” If there were comprehensive solution to this it would probably be more likely to gain approval than if it wasn't. If it was a piecemeal solution where you're never sure how the parts are going to interact.

Mr. Peters: And we agree with you and that's one of the things our concerns was that the structure was being built that we couldn't reconcile with what – if we had to go the piecemeal process. I think there's an acceleration from our process because I believe they have a greater sense of urgency on their part so they have effectively leaped forward, leaped ahead of us in this process but we will do our best to catch up, but at least as I see it I don't see any reason why this plan couldn't be reconciled with what eventually I hope gets approved on our side. But we are cognizant of it, we will make the effort to join but I don't know necessarily if the timing will work for the Goetzmans and their particular needs.

Mr. Mardfin: Thank you.

Mr. U'u: Questions? Commissioner Starr.

Mr. Starr: The people who own your property where do they live and about how long have they owned this?

Mr. Peters: That property that is, lot 1 is owned by the Ching family in Oahu, and it's been subject

to a 50-year lease for quite some time. I think that structure was originally built on the same leased land.

Mr. Starr: Okay, so it's been a long, long term?

Mr. Peters: Yes sir.

Mr. Starr: Thank you.

Mr. U'u: Thank you. Any more questions for the testifier? Seeing none, thank you. Any members want to testify? Please come forward. Seeing none, public testimony is now closed. Take it away Thorne.

Mr. Abbott: All right, I only have 22 comments here. That's good. I'll try to be brief. Please feel free to call out the correct page number and paragraph location.

Mr. U'u: Do you guys want Thorne to read it back?

Mr. Abbott: No? Excellent.

Mr. U'u: Save you some time Thorne.

Mr. Starr: He's got it. He's good.

Mr. Abbott: You'll get a copy of the letter that will say everything you said today and I'll cross that with the minutes of the meeting. Thank you very much for your input.

Mr. U'u: Thank you Thorne. Back to the Director. Director Hunt. Just going to make a note, Vice-Chair will have to leave at 5:00 p.m. I don't need the overtime pay.

Mr. Starr: We're going to take a break?

Mr. U'u: We'll take a 10-minute recess.

Mr. Starr excused himself at 4:02 p.m.

A recess was called at 4:02 p.m., and the meeting was reconvened at 4:10 p.m.

Mr. U'u: I'll turn it over to the staff planner.

- 2. VICTORY DEVELOPMENT NANI LOA , LLC requesting comments on the Draft Environmental Assessment prepared in support of the Community Plan Amendment for the Nani Loa Hotel Condominium Project, 32 residential units in 2 buildings with ground level parking, swimming pool, shade pavilion, walkways, and administrative offices for property zoned H-2 Hotel District situated at 2505 South Kihei Road, TMK: 3-9-020: 032, Kihei, Island of Maui.**

(EA 2009/0001) (CPA 2009/0001) (SM1 2009/0003) (J. Prutch)

The EA trigger is the Community Plan Amendment.

The project needs a Community Plan Amendment and Special Management Area Use Permit. The public hearing on these applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.

Mr. Joe Prutch: The next project before you is another environmental assessment. This one is for the Nani Loa Hotel Condominiums. It's a Special Management Area Permit, community plan amendment which is what triggers the Chapter 343. The applicant has a nice slide show to tell you so am able to speed things up and get through we'll go ahead and let him go ahead with the presentation. I'll take down some notes for you guys and if you want me to read them at the end I will, if not, we'll just move on.

Mr. U'u: Thank you Joe.

Mr. Chris Hart: Vice-President U'u and Members of the Maui Planning Commission.

Mr. U'u: That won't sway my vote by the way.

Mr. Hart: I know it won't. Aren't we glad you're not going to vote on this one today. My name is Chris Hart, Chris Hart and Partners and we're here to discuss with you the Nani Loa Residential Condominium as Joe pointed out to you. This is an environmental assessment pursuant to an application for a community plan amendment and also a special management area permit application.

The project team is Victory Development Hawaii, LLC, they're the applicants and the representative today is Greg Walker, he's here. Jerry Nardini is the architect they're from California. Chris Hart and Partners, we're the land use planners and landscape architects. Otomo Engineering, Inc., has done the grading plan and the engineering and drainage reports and Stacy Otomo is here. Wilson Okamoto is our traffic impact assessment report. Scientific Consultant Services prepared our archaeological assessment and cultural impact assessment reports.

The project is located in Kihei. This is the ocean, South Kihei Road and this is Kihei Kai Nani right, right next door is a project that's proposed the Aloha Village project. This is the Denny's Shopping Center. This is Kihei Akahi condominium project.

The project objective is to develop and an urban infill project consistent with surrounding land use patterns. This is a little bit of chronology regarding the project site. In 1969 and 1970, the Kihei Kai Nani was developed that's the larger makai parcel which we'll show to you. It's one of the first hotel condominium projects developed in this area of Kihei. It was developed by a developer at the time by the name of Walter Witte. 1969, 1972 the Nani Loa parcel was subdivided from the Kihei Kai Nani parcel and a perpetual access, a utility easement were dedicated and the reason for that is it was intended that the parcel, the Nani Loa parcel would become phase 2 of the Kihei Kai Nani

project. In 1991 there was a hotel moratorium enacted within Maui County and there was the beginnings of a negative reaction to hotel development and in 1994, there was a special management area use permit issued for the development of this Nani Loa site. It was a 48 unit hotel condominium project at the project site. And in 1998, the Kihei-Makena Community Plan update was adopted by the Maui County Council, the process started in 1992 and that's why we mentioned about the concerns about the hotels in the area and you'll see that as we move forward.

The Kihei Kai Nani hotel condominium project, this is looking from the mauka site toward the ocean. You can see this is part of Hale Pau Hana which is along the ocean. This is the beginning of the phase 2 site which is the Nani Loa site. The parcel again subdivision the parcel's were created and this parcel was created as phase 2 in June 25, 1969. A perpetual easement was granted to the parcel in November of 1972.

The land use entitles, the state land use district currently is urban, we're proposing no change. The Kihei-Makena Community Plan is multi-family and that's as of the 1998 Kihei Community Plan update to and we're proposing to amend the community plan to hotel which would be our proposed designation. The current county zoning is H-2 Hotel and we're proposing no change. It would still be H-2 Hotel and of course, in the context of hotel district zoning that's the most dense hotel district zoning ordinance and it does allow up to 12 stories.

The environmental assessment is triggered by the community plan amendment. Also the project is located within the special management area and a special management area use permit for the construction of a two-building, 32-unit residential hotel condominium project will be required and we'll be submitting this as a consolidated application to the commission.

This is an aerial photograph which gives you a sense of the concept of this being an infill. You can see this is Kihei Akahi which is immediately to the south. Now this is a six-story hotel condominium project. This is the Kihei Kai Nani and the access to South Kihei Road. This is the Denny Shopping Center. This is the site of Aloha Village which is a approved condominium project. This is a parcel called the Yamane project or Yamane parcel which is owned currently by a man by the name of Mr. Dennis Blaine. This is the actual alignment of the north-south collector connecting Keonekai Road with Ke Alii Alanui which runs along the northerly boundary.

This shows our site as an infill site the Nani Loa project as it would look as an infill. This is a view looking over our site toward the Kihei Akahi project which is an existing six-story hotel condominium and this is looking west actually looking makai from our site to the Kihei Kai Nani existing hotel condominium project. And again, this is shows South Kihei Road, it shows our access, perpetual access easement, our site and this would be proposed projects, this is called the Kamaole Plantation, this is Kihei Akahi project site, this is the Aloha Villages site and of course, this is the Denny's Shopping Center, Kamaole Shopping Center it's called.

Now this is our state land use district boundary map. One of the things I wanted to talk about with this in addition to the site you'll note that it is in the urban district. This is Piilani Highway and there is a current drainage issue that exists, comes down, comes through our site and goes all the way through the Kihei Kai Nani site down to South Kihei and basically outfalls into the ocean. We're proposing and Stacy Otomo is here and he can answer any questions about it but to retain a 100%

of the water that's generated by our project on site. Now that's for a 50-year storm, that would be the project generated storm runoff. We've also been in discussion with the Department of Public Works about the possibility of participating in the study and the drainage improvement that would be above Piilani Highway which would essentially would be a retention to really seek to try to bring about some mitigation to the existing natural storm runoff. As part of this draft EA you know we have initiated that process and we have discussed it with our client and you know, I'm not sure what the actual improvement will be at this time but you know that's in the process of being developed as a basic mitigative measure.

This is our Maui Island Plan which is part of the General Plan that you're working on. This is the director's recommended urban growth boundary. It shows our site which is definitely within the urban growth boundary. Now this is the community plan map that was adopted in 1998. You can see that the hotel zoned parcels and there was a significant amount of land that was actually in the hotel zone and proposed in the hotel zone in the prior community plan that was basically taken out of the hotel, proposed hotel zone and made multi-family. Now because this property was actually partially developed and this was to be phase 2 we did go to the Planning Department and we sat down with the department and discussed, not the director, but one of the planners and discussed the possibility of asking for an amendment of the community plan in order to basically develop the whole parcel as hotel and basically we were told you know that because of basically the configuration of the land use pattern that it didn't appear to be something that would be at the time perceived in the negative light by the Planning Department so we did that.

So this is the zoning map. This is probably the original zoning map going back to 1969, but anyway this shows our parcel. This is the line separating the H-2 Hotel District from the HM Hotel District. This was actually called in the original General Plan for Kihei the Kamaole Super Block. It was supposed to be the hotel district that served basically the more local community as opposed to the more luxury resort destination development at Wailea and at Makena and that was the original intent. So this is our parcel.

This shows basically the flood insurance rate map and it shows that we're in Flood Zone C which is an area of minimal flooding.

The project profile, the land area is 1.44 acres. The access is by a perpetual easement through Kihei Kai Nani to South Kihei Road. The number of buildings, actually there's going to be two buildings, right – Oh, the manager's, I'm sorry three buildings. Buildings 1 and 2 and a manager's office. Additional onsite amenities include a swimming pool and a shade pavilion. The total units are going to be 32. Again, there was a project approved for this site of 48. Building 1 will be 12 units. Building 2 will have 20 units. Parking there will be 82 parking stalls, 32 stalls within garages and 32 stalls covered, 18 stalls will be uncovered.

This is our site plan. This is the access that comes through the Kihei Kai Nani and basically we're proposing to provide the parking underneath the buildings, Buildings 1 and 2. This is our preliminary landscape plan. It shows again, the access, automobile access and basically Building 1 and Building 2. Another thing that I want to point out to you and this is another issue, we do realize in the context of the traffic that we're impacting the Kihei Kai Nani, but essentially the project was designed that way from the beginning. We've met with Kihei Kai Nani Board of Directors.

We've met with their attorney but still in the context of you know, providing you know mitigation which is the issue here we have been in contact with the developer of this parcel, his name is Mr. Dennis Blaine and we are seeking to work together with him to get an access, at least a secondary access that would connect to the driveway of their parking and eventually connect to the north-south collector so that there would be a secondary access for the parcel.

This is the rendering. Again, this is the access from Kihei Kai Nani so we're looking mauka and this is Kihei Akahi which is next door. This shows both buildings with the amenities and related to Kihei Akahi which is a six-story building.

In the Hotel District the opportunity is available to build to 75 feet. What we're proposing is 57 feet as the maximum height and again, the parking is located underneath the building.

This shows basically the site with access from South Kihei Road through the Kihei Kai Nani project and then Building 1, Building 2 and this shows our drainage retention area. Thank you very much.

Mr. U'u: Comments by the Commissioners? Commissioner Mardfin.

Mr. Mardfin: Could you show me on there where the manager's house is?

Mr. Jordan Hart: This is Jordan Hart with Chris Hart and Partners. I believe it's this structure here, a portion of the structure.

Mr. Mardfin: Thank you.

Mr. U'u: Comments? Commissioner Hiranaga.

Mr. Hiranaga: Just trying to understand the project. So hotel zoning allows taller building than multi-family?

Mr. Chris Hart: It does. The multi-family, the Kihei Community Plan again, the 1998 version has basic urban standards that were established. Multi-family maximum height is 45 feet. Okay, and the Hotel District allows up to 75 feet. So it essentially, in the context of the SMA permit because of the issue of consistency it does basically change the zoning. It no longer is 12 stories allowed in Kihei. But in order to do a really, a nice project number one and you put the parking under the building, we're basically proposing 57 feet which is 12 feet higher than the 45 allowed. The Kihei Kainani itself is a hotel condominium project and that was our original intent was to try to do – be consistent with what's basically there now.

Mr. Hiranaga: Second question.

Mr. U'u: Second question, Commissioner Hiranaga.

Mr. Hiranaga: Hotel zoning would then also allow I guess short term rentals?

Mr. Hart: Oh yes, it would be. That's the whole idea. It would be allowed for short term rental, yes.

Mr. Hiranaga: Why do you call it a residential condominium?

Mr. Hart: Well it's going to be a – it's not going to be a pure hotel. It's going to be a condominium project like the Kihei Kainani that can be rented for a period of less than six months.

Mr. Hiranaga: Condo hotel?

Mr. Hart: Condo hotel, yes. We can change that, but it will be a condo hotel, yes.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: Yeah, that's where I was going. I want a little bit more clarification. Here you say Nani Loa hotel condominiums. Basically it's a condominium?

Mr. Hart: It is a condominium.

Mr. Mardfin: You're not running it as a full service hotel in any way, shape or form?

Mr. Hart: Well, the idea is the individuals probably will buy the units and live there part-time and be able to put it in a rental pool and rent it as a, basically for short-term rental. It's pretty normal.

Mr. Mardfin: So it's not a hotel in the sense that you're going to have a lot of house maids, that may not be the politically correct ...(inaudible)... sorry if it isn't.

Mr. Hart: No, but you know, because it will be a transient vacation rental project. You know, there will be a need to employ people to maintain it on a more regular basis.

Mr. Mardfin: It will be less, I don't know what the numbers are but I imagine for a regular hotel there's a certain number of employees per room and I would guess for this there is substantially fewer hotel workers per room. Am I in the right ballpark here?

Mr. Hart: You mean, in the context of comparing it to a hotel, pure hotel and a hotel residential condominium? I would say they're probably would be fewer yes.

Mr. Mardfin: Okay, thank you.

Mr. Hart: I don't know the number.

Mr. Guard: I would going to follow up on that. It might be more like a Polo Beach Club.

Mr. Hart: Exactly.

Mr. Guard: People own it and then they have their own housekeeper that comes in as needed.

Mr. Hart: Yeah, Kihei Kainani is the same model and we've met with their board and you know discussed the operations.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: This type of zoning would also allow it to be set up as a time share?

Mr. Hart: Lets see, it could, but you know, that's not being anticipated.

Mr. Hiranaga: And my last question is, is the Workforce Affordable Housing Ordinance apply to something like this?

Mr. Hart: Yes.

Mr. Hunt: Yes, it does.

Mr. U'u: Thank you. Any more comments? Commissioner Mardfin.

Mr. Mardfin: I wanted to ask the Director, suppose that bill that we talked about at the very beginning of today's meeting -- consistency were in effect would Mr. Hart and his applicant still have to come before us for this?

Mr. Hunt: It's within the SMA so it would come before you.

Mr. Mardfin: But would he need -- he's proposing changing the zoning from multi-family to hotel that still be necessary?

Mr. Hunt: I believe the reasons are more than just so that there's not inconsistency ...(inaudible)... that there's height issues in just the zoning.

Mr. Hart: That's correct. We're not proposing, in the context of that first item on the agenda regarding consistency, we're not proposing to subdivide, we're proposing to do a condominium. It could be, you know, that because of the fact that we're building more than four units it could be that if we don't have consistency, in other words, if we don't have the community plan designated hotel and the Hotel District zoning that we might not be able to get a building permit to build more than four units. That's a possibility. It depends on how the attorneys would interpret that. That's true, you know.

Mr. Mardfin: Okay.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: This is more of a question for the Director. So as far as these community plan amendments, department is not opposing these requests until the new General Plan is ...(inaudible - changing of tape)...

Mr. Hunt: ...plan, etc., the department promulgated a policy that we wouldn't support community plan amendment for land that -- let me rephrase that, with exceptions and some of those exceptions are if the land is within an urban area that's already built. So an infill project and this site meets that

definition clearly.

Mr. U'u: Questions, comments?

Mr. Hiranaga: This is not a SMA permit hearing, but you said Stacy was going to explain the drainage?

Mr. Hart: He's here to do that if you have questions for sure.

Mr. Hiranaga: You said you were going to retain all surface runoff generated by the development which is the minimum requirement of the code.

Mr. Hart: Correct.

Mr. Hiranaga: That's what you're plan is?

Mr. Hart: That's what our plan is. Now, you know, I indicated to you that there is a drainage issue with this and there has been flooding in the past in the context of Kihei Kainani. And in order to basically do our part to mitigate you know this existing drainage issue, you know, we are talking with the Department of Public Works and we will be prepared in the context of our SMA permit to propose mitigation. If you want to discuss that with Stacy that's fine.

Mr. Hiranaga: So the flooding issue is coming from above the parcel?

Mr. Hart: It is, yes, it's off site.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I have to confess. I haven't read this as carefully as I normally do but it was 2:30 in the morning when I got to it. So I didn't read, how are you dealing with the show me the water bill?

Mr. Hart: There is actually at the site, again, the project you know, did get approval for a development, a 48-unit development and there is a 2-inch water meter that exists and we would seek to basically work within the requirement –

Mr. Mardfin: And that's sufficient for 48 units?

Mr. Hart: No, it would be 32 units.

Mr. Mardfin: I mean 32 units.

Mr. Hart: Yes.

Mr. Mardfin: Thank you.

Mr. U'u: Comments, questions? Seeing none, I'd like to open it to public testimony. All those in the

audience who want to give testimony please state your name. Seeing none, public testimony is now closed. May I have staff.

Mr. Prutch: It sounds like you have no comments to forward to them in a letter. The comments that were raised or the questions that were raised, I believe the applicant answered so, as far as I'm concerned I don't hear any comments you want forwarded to them to address in the final.

Mr. U'u: Not at this time?

Mr. Prutch: Do you want me to repeat those comments that?

Mr. U'u: That's okay, brother. Seeing that, – Commissioner Mardfin.

Mr. Mardfin: Joe, you know, we were asking questions but clearly if we were asking questions about it, it would be useful to have the final EA be – it wasn't sufficient enough for us to not ask questions so in the final EA you're going to probably want to clarify those kinds of concerns.

Mr. Hart: We will. Thank you Commissioner Mardfin, yes. You know, in the context of the final EA we'll be able to make basically a statement in the context of the mitigation of offsite drainage, you'll take about the other issues, development related issues.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: Just real quick. Do you anticipate giving us a final EA like this or should we hang onto this and you'll give us a four-page addendum of something?

Mr. Hart: I feel more comfortable, I'm sorry, giving you a full document. I've run into that before. I'll client would rather pay to have a full document given to you.

Mr. Mardfin: Thank you.

Mr. U'u: Good move. Commissioner Shibuya.

Mr. Shibuya: I was just wondering if they had considered a renewable energy generation because I didn't see any comment to that effect. You have beautiful south facing roofs.

Mr. Hart: I know. Basically in the draft on page 6, we did talk about sustainable concepts. This is also is going to get, you know, evolve in the context of the final. Employed in the design have included assessment of existing infrastructure, site characteristics such as topography, solar orientation, water usage, storm drainage. Buildings have been oriented and designed to promote natural ventilation through use of narrow, one-room unit widths to enhance cross ventilation, open walkways were used to minimize obstruction of air flow through the units. Buildings were sited to minimize the use of elevators, shared access were designed to reduce the quantity and reliance on energy consuming mechanical devices. We're using double-paned windows and doors in order to minimize solar heat transfer. Use of local materials such as concrete and concrete masonry units will build a high insulative value into units. We're also going to be specifying high efficiency

lighting, water heating, low flow water dispensing devices, mechanical systems will further promote energy conservation through design. Tenant sub-metering has been designed to promote conscious energy use and conservation. The specification of low Volatile Organic Compound materials in building construction and furnishings will prohibit the use of building materials containing hazardous chemicals commonly found in building materials. We could look at solar heating as an issue. I think the orientation as you indicated would be basically accommodate that.

Mr. Shibuya: Yeah, the first priority for me would be generating electricity.

Mr. Hunt: Renewal, yeah, I understand.

Mr. Shibuya: Energy as well as heating water. It's already hot in that area. I don't know if they really want hot water as much. Thank you.

Mr. Hart: Okay, thank you.

Mr. U'u: Thank you. Any more comments? Seeing none, thank you very much. Turn it back to the Director, Director Hunt.

Mr. Hunt: The commission's next item involves Mr. Gary Yabuta, Chief of Police, Maui Police Department requesting a Special Accessory Use Approval to operate a morgue in the M-1 Light Industrial District at 1831 Wili Paa Loop, TMK 3-4-020:039 and 040 in Wailuku. The file number is ACC 2009/0001. The planner assigned to this is Gina Flammer.

F. COMMUNICATIONS

- 1. MR. GARY YABUTA, Chief of Police, MAUI POLICE DEPARTMENT requesting a Special Accessory Use Approval to operate a morgue in the M-1 Light Industrial District at 1831 Wili Pa Loop, TMK: 3-4-020: 039 and 040, Wailuku, Island of Maui. (ACC 2009/0001) (G. Flammer)**

Ms. Gina Flammer: Good afternoon Commissioners, Vice-Chair U'u. Today we're here to review an Accessory Use Permit application for the use of the property at 1831 Wili Paa Loop for the new county morgue. The current morgue located at the Maui Memorial Medical Center has reached its capacity and is overwhelmed. There's no room for expansion at the hospital. For a more detailed and graphic explanation of the need for the morgue please refer to the letter from the retired Police Chief Phillips in Exhibit 1. The reason the Police Department initiated the project is because under Hawaii State Law the Chief of Police is designated as the County Coroner.

Briefly the project site is 24,614 square foot lot. The state land use designation is urban. The community plan designation is light industrial and the county zoning is M-1 Light Industrial District.

The immediate surrounding uses can be seen in the photographs in report Exhibit No. 3. There is an industrial building to the north, a medical office building to the east which is across the street, vacant land to the south and the vacant land to the west which is behind the building is the lao drainage channel.

The subject parcel houses the current Clinical Laboratories building which is a 9,693 square foot building. The existing garage will be converted to the morgue. The rest of the building will be used for the police accidental and fatal traffic investigation units. This building was determined as the best facility for a new morgue because it was built as a medical laboratory and it has a highly specialized plumbing system and it's centrally located.

The project went through the very public and lengthy County Council budget review process. It was allocated \$4 million for the purchase of the building and to complete some interior renovations including providing two large walk-in freezers, a separate h-vac system, a generator and electrical upgrades. I'd like to point out that energy efficiency was a concern. They've found the most energy efficient equipment that they could. Originally a parking canopy was proposed but there wasn't enough money in the budget for that. In fact the project's final cost were above the original estimates and necessitating the cancellation of two other Police Department projects. As of today, the project stands at \$4.3 million.

So we're in the last step of the process here today to sign off on the final building permit and make the facility operational a special accessory use permit is needed. And why this is is because when the code was written you can't think of everything, so they didn't about the morgue. The hospital had been built in 1958, the morgue was located there, but the people that write the code they're smart so they put in provisions for this. Usually those provisions are for certain specific or similar related uses and the application before you today the property is zoned M-1 Light Industrial District and properties with this type of zoning may also have any permitted uses in the business 1, 2 or 3 districts.

The applicable provision that governs this application is Section 19.18.020 permitted uses in the B-2 Community Business District and that lists out the following uses, Item 66 is the catch all provision and that reads, "any other retail business or commercial enterprise which are similar in character of rendering sales or commodities or," and this is the specific applicable clause, "performance of services to the community and not detrimental to the welfare of the surround area provided however that such uses shall be approved by the commission as conforming to the intent of this article."

So just to give you a little more quick background on the Maui County Code, the code does specifically permit laboratories which is why you had the Clinical Laboratories building. It also permits mortuaries with the approval of the commission. A morgue can be described as a medical laboratory under mortuary, however a morgue is a lesser use than a mortuary. You don't have cremation services or funeral services that bring parking. However, back to our guiding provision which is Item 66 that does provide guidance on the specific criteria that apply to this application. So that guidance is two things. First, is it considered a performance of services to the community. And second, is the use determined not to be detrimental to the surrounding neighborhood.

So on the first criteria a morgue is clearly a performance of services to the community. On the second item is it detrimental to the surrounding neighborhood? Now being detrimental means to cause injury or damage. To determine if the use of the building would have a detrimental effect on the neighborhood I reviewed the plans, I looked at the specific uses and activities that will be performed within the building, I conducted a site visit and I spoke with the Millyard property manager, Debbie Anthony of Commercial Properties. We spoke about the neighborhood and

potential impacts of having a morgue in the Millyard and she informed me that the use of the building was discussed by the Wailuku Millyard Board of Directors and that they did not see it as a detrimental to the neighborhood. They viewed the activity as similar to the existing Clinical Labs usage there only with less traffic in the area. She also stated that the Millyard houses many medical buildings and the board found the morgue to be compatible which by the way is not the criteria for 66 but I thought you'd want to know that as well. So after review of the project, the board welcomed it into their neighborhood.

Also a very large project sign which you can see in the photos that are in your exhibit has been up for a few months. There haven't been any inquiries or comments made to the property manager or the board of directors at the Millyard about the use of the building. The Planning Department also has not received any inquiries or comments about the project from the public. There are no significant comments from any of the agencies that reviewed the application and please keep in mind that there was a very thorough review of the project first during the County Council budget proceedings and second, during the building permit application process and they reviewed the specific uses and the specific building that was going to – or renovations to the existing building. There are no concerns at this point and again, this is the final step in a lengthy process. So before I move onto the department's recommendation, I'd like to have Captain Larry Hudson introduce his project team and make both ourselves available for any questions about the project or the law.

Captain Larry Hudson: Good morning Chair, Mr. Hunt. My name is Larry Hudson, I'm with the Police Department. I was named as the project manager for this county morgue project. I'd like to introduce a couple of speakers that will help me answer any questions that you may. First would be Dr. Manokian who does most of our postmortems and then we have Mr. Aaron Fujii, he's the principal architect and consultant on this project and then we have Mr. Bert Freeland who is the most familiar with the current morgue operations of Maui County. So I think between the four of us we'll be able to answer or address any questions that you have.

Mr. U'u: Thank you. Questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: I was kind of shocked when I read how few spaces you have for clients. What will your capacity be if this goes through?

Captain Hudson: We'd have the capacity of 50 in on refrigeration unit and 10 in another.

Mr. Mardfin: So a total of 60?

Captain Hudson: That's correct.

Mr. Mardfin: And do you anticipate that will satisfy your space requirements for the indefinite future?

Captain Hudson: We hope so, but yes, and ...(inaudible)... answer to your questions, 60 bodies as opposed to four that's a considerable markup.

Mr. Mardfin: Thank you.

Mr. U'u: Thank you. Questions? Commissioner Shibuya.

Mr. Shibuya: I assume that there are some provisions handling the hazardous fluids and materials?

Captain Hudson: Yes, Wastewater was one of the departments we went through and Wastewater gave us a ...(inaudible).. as to exactly what we had to do. We'll conform with all of their Maui County ordinances regarding releasing any kind of infectious materials into the sewer system or otherwise. We're not allowed to release any kind of infectious materials which includes blood, plasma, dialysis release or any solid body part into the sewer system. So absolutely we're up to that and we will comply.

Mr. Shibuya: But you do have procedures to handle those materials?

Captain Hudson: Yes we do.

Mr. Shibuya: Okay, thank you.

Mr. U'u: Thank you. Commissioner Mardfin.

Mr. Mardfin: What are they? Do you incinerate them or?

Captain Hudson: You mean to handle the infectious materials?

Mr. Mardfin: Right.

Captain Hudson: Well, the waste and I'll the doctor explain a little bit more on that but the waste that would actually go into the sewer system goes through a catchment system. So before it's released into the sewer system it's treated with lye, lime. When it's released into sewer system it's no longer infectious. But as for the actual procedures as to handle hazmat, doctor.

Mr. U'u: Could you come up to the mike and please state your name for the record?

Dr. Tony Manoukian: Hello, my name is Tony Manoukian and I'm the coroner's physician here in Maui County. With each case that we do there's probably at the very most two to three liters of fluid, blood tinged fluid that is released into our treatment system. Right now currently in the hospital all our waste is put straight into the sewer system without any kind of treatment at all. No solid material is put into the system. It's all kept with the body for ultimate burial or cremation.

Mr. U'u: Question? Commissioner Shibuya.

Mr. Shibuya: I'm more concerned also not only the bacterial or viral type of threats but more of the hazardous chemicals because usually there's a reason for overdosing and what do you do with that condition? How do you treat that?

Dr. Manoukian: You're talking about drugs and medications and so forth?

Mr. Shibuya: Yes.

Dr. Manoukian: That is a good question. I don't know honestly the answer to that other than the lime treatment might be able to take care of that but also dilution could be a possible solution to that. Infectious wastes is not a problem. We're not adding any kind of chemicals in terms of formalin or xylene or anything to the sewer system. Those are treated especially they're retained in the 55-gallon drums and disposed of properly by hazmat personnel.

Mr. Shibuya: Are you planning to incinerate any of those materials?

Dr. Manoukian: No. No.

Mr. U'u: Commissioner Hiranaga.

Mr. Hiranaga: This is just a comment. I think it's a typo, but on the staff report, page 5, under agency comments, third sentence it says, meters are not available for the Central Maui district. I don't believe there is a water meter moratorium. So if you look at Exhibit 5, the letter from the Water Department I think they use the word, "may" and not, the word, "not."

Ms. Flammer: So noted. Thank you.

Mr. Hiranaga: Since this is the last step and we may lose quorum I think we should move forward.

Mr. U'u: Open it up for public testimony. Seeing none, public testimony is now closed. Staff recommendation.

Ms. Flammer: The department recommends that the Maui Planning Commission approve this accessory use permit subject to following five conditions which are all standard conditions. First condition is the standard non-transferrable condition. Second condition is the full compliance with all government requirements. Third condition is the substantial compliance with representations made to the commission. The fourth is that building permits shall be obtained prior to any construction at the site. And the fifth condition was recommended by the Department of Health and reads, "that noise created during the construction phase during the project may exceed the maximum allowable levels as set forth in the Hawaii Administrative Rules. A noise permit may be required and if required shall be obtained from the Department of Health before the commencement of this project." In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission find the proposed use to be a performance of services to the community and not detrimental to the welfare of the surrounding area and in conformance with the intent of Title 19.24.020 of the Maui County Code. Further the department recommends that the Planning Commission adopt the Planning Department's Report and Recommendation prepared for the August 11, 2009 meeting subject to the stated conditions of approval as its findings of fact, conclusions of law and decision and order and authorize the Planning Director to transmit said findings of fact, conclusions of law and decision and order on behalf of the planning commission.

Mr. U'u: Thank you. Do I have a motion on the floor?

Mr. Guard: So move.

Mr. U'u: Do I have a second?

Ms. Domingo: Second.

Mr. Mardfin: Second.

Mr. U'u: Moved by Commissioner Guard, seconded by Commissioner Domingo. Discussion?
Commissioner Shibuya.

Mr. Shibuya: I would be a little bit more favorable to this if we can add an amendment so that we can deal with the mitigation of diluting the hazardous chemicals. I'm not very comfortable about diluting hazardous chemicals particularly cancer treating chemicals, birth control chemicals, all of these materials are actually injected in our environment and I'm very concerned that maybe perhaps we may need to have filters or some other means other than diluting such hazardous material. Our population is increasing, the treatment of these people or all of us who are dying or have suffered is too great, too great a risk for our future population. That is my concern.

Mr. U'u: Is that posed in a form of a friendly amendment?

Mr. Shibuya: I would like to propose as a friendly amendment that we investigate mitigation more effective than diluting hazardous chemicals.

Mr. U'u: Is that all right with the maker of the motion and the seconder? Do you want to vote on it separately?

Mr. Guard: I think we would have to vote on it separately. For myself, I just don't know – they don't really have an alternative to that right now it sounds like and to me I thought the morgue was just there for a few days to refrigerate the bodies. It sounds like that might be something that the mortuary would handle bodies find their end resting place possibly.

Mr. U'u: Do we have a second on Commissioner Shibuya's amendment? Seeing none, amendment dies. Back to the main motion. Call for the question. All those in favor say aye. All those opposed.

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

VOTED: To Approve the Special Accessory Use Approval.
(Assenting - J. Guard, D. Domingo, K. Hiranaga, W. Mardfin, L. Sablas)
(Dissenting - W. Shibuya)
(Excused - W. Hedani, J. Starr)

Mr. U'u: We have one nay. Thank you. Turn it over back to the director. I have to be leaving in one minute and 30 seconds.

2. TOM DONOVAN, General Manager of The Ritz-Carlton at Kapalua requesting a Special Accessory Use Approval for its Jean Michel-Cousteau Kapalua Ambassadors of the Environment Program at The Ritz-Carlton Kapalua, One Ritz-Carlton Drive, TMK: 4-2-004: 021, Kapalua, Island of Maui. (ACC 2008/0001) (P. Critchlow)

Ms. Ann Cua: The next request is from the Ritz-Carlton Kapalua Hotel and basically they're asking for a Special Accessory Use permit for the Kapalua Ambassadors of the Environment Program to open the program to guests of the Kapalua Resort. And just real quickly, this is Office Road, this is the porte cochere leading you into the Ritz-Carlton Kapalua Hotel. This is where the Ambassadors of the Environment Program is currently conducted. It's been there since 2008. What the special accessory use permit is needed for is the hotel zoning allows the hotel to do this for hotel guests but they want to open it up to other people within the resort and just other people within the county. They do quite a number of programs free to the public and at this point they're not able to open it up. Parking for the facility is located here as well as people are able to park to here and go through the hotel.

Like I say the property is zoned hotel. It needs this special accessory use permit. We sent it out for agency comments. There really was no substantial comment that precludes from granting. The facility is 2,000 square feet. It can more than accommodate the proposed use. The program has a maximum of 36 children and 40 adults that are able to come and that's right now. But now they can fill those numbers only with people, only with guests of the hotel and so what they're hoping to do is be able to out reach more and they're not going to increase the numbers, the 36 children and 40 adults but they're going to be able to again, outreach more to schools and community groups to be able to participate in this program.

The program operates six days a week from 8:00 a.m. to 4:30 p.m. and there's two night time programs which run from 5:30 p.m. to 8:30 in the morning.

Unless you have any questions. You all have the report. I can answer any questions. We do have letters I passed out to you both in support. We just got them this afternoon and that's why you got them late. We didn't give it to you at the start of the meeting. But other than that, if there's any questions I would like to stop the report at this point.

Mr. U'u: Questions for the applicant? Seeing none –

Mr. Mardfin: One really quick one.

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: Why is this even before us? Why does this need approval from the planning commission?

Ms. Cua: If you look at the zoning for this property which is they're in the Project District 1, it says other accessory businesses or service establishments which supply commodities or perform services primarily for the hotel guests, however such uses shall be approved by the commission.

So it's not this particular use because it's not for only the hotel guests it has to come to us for approval. So it's really minor in nature we feel but this is a formality it has to come before you.

Mr. U'u: Thank you. Open it up for public testimony. Seeing none, public testimony is now closed. Staff recommendation.

Ms. Cua: Department is recommending approval of the application. We have five conditions. I won't go through the conditions. I only want to mention the first one that the Ambassadors of the Environment Program give priority to guests of the Ritz-Carlton Hotel. The other three conditions are standard conditions.

Mr. Guard: So move.

Ms. Domingo: Second.

Mr. U'u: Motion moved by Commissioner Guard, seconded by Commissioner Domingo. Discussion? Commissioner Shibuya.

Mr. Shibuya: I just have concerns in terms of the amount of Maui residents that will be allowed to participate in this. Is there a minimum amount or is there, you're just saying as space is available. I'm not too sure I like just as space available. I would like to have no less than.

Ms. Cua: I think on page 6 you have the numbers there. Maximum of 36 children and 40 adults at any given time. Right now my understanding is they have about 100 people go through the program a week and so it's very short of the numbers that they're projected to do. What this permit will do is it will allow them to outreach more and be able to fill the numbers that they have accommodated in the program.

Mr. Shibuya: Understand, but you're not saying what specific number. I mean, the minimum amount that will be offered to the local residents.

Ms. Cua: And that's probably something you can just ask the applicant really quick. I know they did inform me that they have various schools come in. I don't know what the ratio is from guests to and maybe you can ask them very quickly.

Ms. Karlynn Fukuda: Karlynn Fukuda of Munekiyo and Hiraga, Inc. Commissioner Shibuya, I think the condition no. 1 that Ann Cua pointed out would kind of be in conflict with the question that you had because the condition does say that the program give priority to guests of the hotel and I think that's based on it being created for the hotel use. But what we wanted to do was to be able to open up the program to people outside of the resort and when we met with the Zoning and Enforcement Division we were told that we had to do this permit in order to be able to do that. Right now, on average you know there's maybe a hundred guests per week that go through the program and we'd just like to be able to open it up to anyone to participate.

Mr. U'u: Commissioner Shibuya.

Mr. Shibuya: I understand the benefit. I also understand that you can write in a minimum no less than number and I'm not dictating a number. I'm asking you or the applicant provide that no less than number.

Mr. U'u: You want to make that as a amendment Commissioner Shibuya.

Mr. Guard: There's a motion on the floor.

Mr. U'u: Do you want to make that as a separate amendment?

Mr. Shibuya: I'll make it a separate amendment.

Mr. U'u: Do we have a second on that? If not, amendment dies. Back to the main motion. Commissioner Mardfin.

Mr. Mardfin: The answer I think to Commissioner Shibuya is the answer could be as few as zero but it's zero now. So anything is an improvement. I'm concerned on page 9, program that allows guests to examine the living communities of fish, coral and algae and I'm wondering whether increased numbers of people which is what the goal is will harm the coral community in the area.

Ms. Fukuda: I'll have Ashley Carroll the director of the program come up and speak but basically the prime principle of the program is to provide education to participants about protecting the reef, about what we can do as a community to make sure that these resources are sustained over time. But I can have Ashley.

Mr. U'u: State your name for the record.

Ms. Ashley Carroll: Ashley Carroll, Director of the Ambassadors in the Environment Program by Jean Michel-Cousteau. It is our goal with our staff who all have degrees in the biology fields or equivalent to educate our guests on everything that we're talking about right here. The whole purpose of the program is that we do go to the ocean or to the rainforest or terrestrial sites and really just give them an in-depth understanding of what's going on and what not to do more importantly than anything. A lot of times you do have tours where they just go out and snorkel and they're free to do what they want. We have guides that are with them hand on hand and saying don't touch the coral, don't feed fish, you know, understanding, recognizing coral bleaching. So those are goals, those are principals and that's what we are here to do.

Mr. Mardfin: So they're not touching the coral?

Ms. Carroll: No. In fact, we're telling a lot of people that we see out there that aren't even in our program please don't touch the coral.

Mr. Mardfin: Thank you.

Mr. U'u: Any more discussion? Commissioner Shibuya.

Mr. Shibuya: I like the intent of the program. However, I don't like the application or the possibility of not being applied to the local residents and this is my concern. I like the effort but I don't want this to be a tourist activity just to have people sign up for or be occupants of this hotel. There are some balances here. The local residents actually should have access to all of these sites and they should have no less than opportunity than these outside visitors. Visitors are important. However, our local children have higher priority.

Mr. U'u: I agree with you and that's why I'm voting for it, possibility of voting for it. Commissioner Guard.

Mr. Guard: Yeah, I'd hope that's why you would vote for it because right visitors or local community is not – aren't allowed to go there. So I think if the one day a year on Christmas Day we have to give us that right because they have 76 visitors staying at the hotel and 100% occupancy, I think we could all give that one day up for the benefit of this program being on Maui protecting our reefs. So I'd like to call for the question because I'm already overdue, I gotta go protect local kids in the water.

Mr. U'u: Commissioner Shibuya.

Mr. Shibuya: I'm just objecting to the fact that there's no guarantee. They're just saying that they'll allow for the local residents if and when they have room and I object to that. That's disrespectful. I want a no less than number.

Mr. U'u: That's your opinion Commissioner Shibuya.

Mr. Hiranaga: Point of order, he made an amendment which failed and he's bringing the subject back up.

Mr. U'u: Thank you so much for reminding me of that. Back to the main motion. All those in favor say aye. All those opposed.

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

**VOTED: To Approve the Special Accessory Use Approval.
(Assenting - J. Guard, D. Domingo, K. Hiranaga, W. Mardfin, L. Sablas)
(Dissenting - W. Shibuya)
(Excused - W. Hedani, J. Starr)**

Mr. U'u: We have one nay. Thank you.

Ms. Cua: I know you guys have to leave. We have one quick item. I don't know if we –

Mr. U'u: I'll stay for it. I don't know if you can, but make it quick.

Ms. Cua: I'll do it if you guys are willing to stay. I'll present it.

Mr. U'u: Back to you Ann.

Ms. Cua: Director you want to introduce it or you want me to just go ahead.

Mr. Hunt: I think we should read it into the record. The next item involves Vanessa Medeiros of Lokahi Pacific requesting a four-year time extension on the Special Management Area Use Permit and R-0 Lot Line Overlay condition relating to the initiation of construction of the Kenolio Leilani Subdivision, a 7-lot affordable housing subdivision on approximately one acre of land at 250 Kenolio Road, TMK 3-9-006:019, Kihei. Ann Cua is the planner substituting for Livit.

- 3. MS. VANESSA MEDEIROS of LOKAHI PACIFIC, INC. requesting a 4-year time extension on the Special Management Area Use Permit and R-0 Zero Lot Line Overlay condition relating to the initiation of construction of the Kenolio Leilani Subdivision, a 7-lot affordable housing subdivision an approximately 1 acre of land at 250 Kenolio Road, TMK: 3-9-006: 019, Kihei, Island of Maui. (SM1 2003/0022) (R0 2003/0002) (L. Callentine)**

Ms. Ann Cua: Back in February of 2005 the commission granted approval of the applicant's request for Special Management Area Use Permit for the 7-lot residential subdivision to provide affordable housing under the R-0 Lot Line Overlay District. A number of events has happened through the years but what has brought us here today is that the applicant is asking for a time extension of this permit but because of the time they submitted which was back in 2006 they asked for a time extension because so much time has passed they need to get a four-year time extension which doesn't allow the department to – the director to grant it so we're bringing the request before this commission.

Basically according to the applicant they've not been able to proceed with the start of construction due to delays in obtaining approval for construction of the subject subdivision. The show me the water bill created further unforeseen delays and in addition, the primary consultant suffered a severe medical emergency over an extended period of time and finally the department contributed during the delay during staff transition and temporary loss of project files this in our own staffing. So the applicant did file a timely extension request. There's no deficiencies or violations that would affect the applicant's request. Further, the scope of the project remains the same. The previous findings, conclusions and decision are applicable. The director or the department has determined that there have been no changes within the SMA since the granting of the permit that will cause the permitholder's development to have any substantial adverse environmental or ecological effect.

As of today, the department has received no letters either in support of or in opposition to this request for extension.

Mr. U'u: Questions from the Commission? Seeing no questions, open it up for public testimony. Seeing no public testimony, public testimony is now closed. Staff recommendation.

Ms. Cua: The department is recommending approval of the SMA permit time extension following to the proposed revision of Condition No. 1 which will extend the time to February 28, 2011.

Mr. U'u: Thank you. Do we have a motion on the floor?

Ms. Cua: Oh, and then excuse me Mr. Chair, you note in the – I'm sorry, I need to read this into the record just this because there has been some changes. So after it says, "construction of the proposed project shall be initiated by February 28, 2011, initiation of construction shall be determined as construction of offsite improvements, issuance of a foundation permit and initiation of construction of the foundation or issuance of a building permit and initiation of building construction whichever occurs first." The amendments come here, "failure to comply," and we want to delete, "by June 30, 2008." So just, "failure to comply within four years will automatically terminate this Special Management Area Use Permit," delete, "and Shoreline Setback Variance," "unless a time extension is requested no later than 90 days prior to the expiration of said four-year period."

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I move the adoption of the Planning Department's Report and Recommendation and we adopt as our findings of fact, conclusions of law, decision and order and to authorize the Director of Planning to transmit said decision and order.

Mr. U'u: Do we have a second?

Mr. Shibuya: Second.

Mr. U'u: Motion made by Commissioner Mardfin, seconded by Commissioner Shibuya. Discussion? Director Hunt.

Mr. Hunt: Did we do public testimony?

Mr. U'u: Yes we did, gotta pay attention. Kidding, kidding. Commissioner Hiranaga.

Mr. Hiranaga: I'm a little concerned about Condition No. 15. Is there a homeowners association?

Ms. Cua: I'm not sure. Vanessa Medeiros is here, maybe we can ask her.

Mr. U'u: Please state your name for the record.

Ms. Vanessa Medeiros: Vanessa Medeiros, Development Manager for Lokahi Pacific. The answer is no.

Mr. Hiranaga: So this Condition 15 that the owners of each lot shall be made aware of and shall maintain the onsite retention basin in perpetuity, now if they fail to do that what happens? The county sues all seven lot owners? I mean, to me you would have to have an entity to create a fund to maintain the retention basin. To just say you guys figure out sounds pretty weak to me. Seems like you're creating a headache for these future homeowners.

Ms. Medeiros: The retention basin, each lot has its own retention basin. So you would not need

necessarily homeowners association because each lot, each family will take care of the retention basin on their own lot. We will include that information in their deed documents as far as their responsibility and kuleana.

Mr. U'u: Questions?

Mr. Hiranaga: Okay, I guess that explained somewhere else because this particular condition, I'm reading it by itself, when I see an onsite retention basin that is servicing the subdivision and you're saying that each lot has their own separate onsite retention basin. So there's seven retention basins.

Ms. Medeiros: Yes.

Mr. U'u: Thank you for the clarification. Commissioner Mardfin.

Mr. Mardfin: I intend to vote for this in large part because there's a good explanation of why this wasn't complied with in a timely manner. It sounds like they've made every effort so I'm happy to vote for it.

Mr. U'u: Call for a vote. All those in favor say aye. All those opposed say nay.

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

VOTED: To Approve the Time Extension of the Special Management Area Use Permit.
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, D. Domingo, L. Sablas)
(Excused - W. Hedani, J. Starr, J. Guard)

Mr. U'u: Congratulations.

Ms. Medeiros: Thank you.

Ms. Cua: Thank you Commissioners for hanging in there. Appreciate it.

G. APPROVAL OF ACTION MINUTES OF THE JULY 14, 2009 (Deferred from the July 28, 2009 meeting) AND JULY 28, 2009 MEETINGS AND REGULAR MINUTES OF THE MAY 12, 2009 MEETING

Mr. U'u: Commissioner Mardfin.

Mr. Mardfin: I move the approval of Action Minutes of July 14, July 28th and the regular minutes of May 12th meeting if that's in order.

Ms. Domingo: Second.

Mr. U'u: Moved by Commissioner Mardfin, seconded by Commissioner Domingo all in favor. All opposed.

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

**VOTED: To Approve the Action Minutes of the July 14, 2009 and July 28, 2009 Meetings and the Regular Minutes of the May 12, 2009 Meeting.
(Assenting - W. Mardfin, D. Domingo, K. Hiranaga, W. Shibuya, L. Sablas)
(Excused - W. Hedani, J. Starr, J. Guard)**

H. DIRECTOR'S REPORT

- 1. Planning Commission Projects/Issues**
- 2. Discussion of Future Maui Planning Commission Agendas**
 - a. September 8, 2009 meeting agenda items**
- 3. EA/EIS Report**
- 4. SMA Minor Permit Report distributed with the July 28, 2009 agenda**
- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report distributed with the July 28, 2009 agenda**
- 7. SMA Exemptions Report**

No action taken on Items 3 through 7 due to time.

- 8. Special Maui Planning Commission Meeting on the Maui Island Plan Review - August 18, 2009, 9:00 a.m., Planning Conference Room, Wailuku, Island of Maui**

Mr. Hunt: This is the opportunity for you folks to raise issues. The only one that we have is just to remind you that you have a special meeting next week regarding the Maui Island Plan. You're starting to get into the directed growth issues. Will anyone not be here? Thank you.

I. NEXT REGULAR MEETING DATE: September 8, 2009, 9:00 a.m.

J. ADJOURNMENT

The meeting was adjourned at 5:20 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Bruce U'u, Vice Chairperson
Donna Domingo
J.B. Guard (excused @ 5:09 p.m.)
Kent Hiranaga
Ward Mardfin
Lori Sablas
Warren Shibuya
Jonathan Starr (excused @ 4:02 p.m.)

Excused

Wayne Hedani, Chairperson

Others

Jeff Hunt, Planning Dept.
James Giroux, Dept. of the Corporation Counsel
Mike Miyamoto, Dept. of Public Works