

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
NOVEMBER 24, 2015**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:11 a.m., Tuesday, November 24, 2015, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Ball: Good morning everyone. We'll call this meeting to order of November 24, 2015. We are waiting for another member that's driving around in circles.

**B. PUBLIC TESTIMONY** - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed.

Chair Ball: At this time, we will have public testimony. Anyone that would like to testify at this time may do so. However, if you testify now, you wouldn't be able to testify later. If you wanna wait and testify when your item comes up on the agenda you can do that too, no problem. So we do have a list. Mike Moran? Wait?

The following individuals testified at the beginning of the meeting:

Patricia Hoskin - Item D1, Chapter 2.80B

Mark Hyde - Item D1, Chapter 2.80B

Diane Wakamatsu - Item D1, Chapter 2.80B

Tamara Paltin - Item D1, Chapter 2.80B and Item C2, A&B Properties, Inc., CPA, CIZ, PH1

Debra Greene - Item D1, Chapter 2.80B

John Gelert - Item C2, A&B Properties, Inc., CPA, CIZ, PH1

Trinette Furtado - Item D1, Chapter 2.80B and Item C2, A&B Properties, Inc., CPA, CIZ, PH1

Pamela Tumpap - Item C1, Dept. of Public Works, SMA and Item D1, Chapter 2.80B

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

Chair Ball: Anyone else like to testify at this time? Seeing none, public testimony is closed. We'll start with Item C-1, Public Hearing. Director?

Mr. Spence: Good morning Commissioners.

Chair Ball: Good morning.

Mr. Spence: Your first public hearing item is Mr. David Goode, the Director of Department of Public Works requesting an SMA Permit for the Kahana Nui Bridge Replacement Project, and our Staff Planner this morning is Mr. Keith Scott.

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

- 1. MR. DAVID GOODE, Director, DEPARTMENT OF PUBLIC WORKS requesting a Special Management Area Use Permit for the Kahana Nui Bridge Replacement project to replace and widen the bridge from 29 feet to 41 feet 4 inches to provide a wider roadway section with shoulders and a sidewalk between Hua Nui Place and Omaikai Place at TMK: 4-3-005: 029 (por.) and 083 (por.) and 4-3-019: 028 (por.) and 049 (por.), Kahana, Island of Maui. (SM1 2015/0007) (K. Scott)**

**Plans call for replacing the existing bridge with a new bridge and associated public improvements. Roadway improvements to the north and south of the bridge will be constructed to provide for a smooth transition to the bridge.**

Mr. Keith Scott: Good morning, Commissioners and Happy Thanksgiving coming up. The replacement of Kahana Nui Bridge on Lower Honoapiilani Road will provide for safer bicycle, pedestrian, and vehicular travel over Kahana Nui Stream. There are no additional vehicular lanes proposed. The project consists of wider travel lanes, a sidewalk on the mauka side of the bridge, transitions from the existing roadway to the bridge and utility realignments. The standards for reviewing the Special Management Area application are found in your report. And at this time, Tessa Ng of Munekiyo Hiraga will lead team presentation detailing the specific activities contemplated for this project. After that I'll return to present the Department's analysis and recommendation.

Ms. Tessa Munekiyo-Ng: Good morning Chair and Members of the Commission. My name is Tessa Munekiyo-Ng from Munekiyo Hiraga and I'm here today on behalf of the County of Maui, Department of Public Works who's requesting a Special Management Area Use Permit for the replacement of the Kahana Nui Bridge in West Maui.

Before getting into our project I'd like to introduce the project team that's with us today. The applicant is the Department of Public Works and we have Director David Goode, Deputy Director Rowena Dagdag-Andaya and the project engineer Ty Takeno. I'm from the planning consultant, Munekiyo Hiraga and here with me today is also Colleen Suyama. The engineer and traffic engineer for the project is Austin Tsutsumi & Associates and we have Terrance Arashiro, Adriene Wong, and Matt Nakamoto from ATA, and finally the biological consultant is AECOS, Inc., and we have Snookie Mello from AECOS with us today.

This is just to give you a little bit of context for where the project is. It's located on Lower Honoapiilani Road in West Maui. Here's Kapalua Resort to the north of the project, Kapalua Airport is here to the south, and if you're traveling north on Honoapiilani Highway you would take a left at Hoohui Road just before the Kahana Gateway Shopping Center. Once you get down to Lower Honoapiilani Road you would take a right and the bridge is in a residential area over Kahana Stream.

As you'll see later in our presentation most of the improvements are limited to within the

Lower Honoapiilani Road right of way. However, there are some minor improvements to the north and south of the bridge to provide for a new...smooth transition to the new bridge.

So just to point out what the existing uses are on either side of the bridge starting at the northwest. It's a single family property. To the north east is a County owned, Kahana Park. To the southeast is a single family residence. And finally to the southwest is Kahana Village, a multi-family condominium project.

And this is a aerial map of the area. You can see it's primarily single family in nature with the exception of the Kahana Village condominium. This is some photos of the existing bridge. It's a two-lane bridge. There are no...currently no sidewalks or shoulders on the bridge. As I mentioned earlier, there's going to be some minor work on either side of the bridge to provide for that smooth transition to the new bridge and there will be some easements and land acquisition required. So I just wanna go over that briefly.

So starting here to the northwest, Parcel 49, this is a single family residence. A utility easement has already been obtained by the County, 221 square feet for a new utility easement. To the northeast is the County owned Kahana Park. Because it's a County parcel, no easement is required. To southeast is another single family residence and there's an existing utility easement on that parcel and the work will be limited to that existing utility easement, so no new easement's required for this single family property. And finally to the southwest is the Kahana Village condominium project. The Department of Public Works has been in discussions with the landowner. A utility easement here, 221 square feet will be required and in addition, a road widening of 228 square feet will be required from the Kahana Village property and again, the department has been in conversations with the owner.

I wanted to just give a little bit of background on this project. The Department of Public Works proposed the Lower Honoapiilani Road Improvement Project, Phase 4 back in 2001 and this was a 1.4 mile roadway improvement project that spanned from Hoohui Road which is south of the Kahana Nui Bridge to Napilihau Street which is to the north. And the project included the replacement of Kahana Nui Bridge. And in November 2002 a Final Environmental Assessment and a Finding of No Significant Impact was published for this entire 1.4 mile roadway improvement project including the bridge. And there's been no significant changes since that time.

The Planning Commission did approve a SMA Use Permit for this project back in March of 2003. However, construction of the project didn't commence because of issues related to right-of-way acquisition. Since that time the SMA Use Permit has expired and so the Department has modified the scope of the project and will be replacing Kahana Nui Bridge at this time and so we're here today to request the SMA Use Permit for the bridge replacement component.

In terms of project need the existing bridge is structurally deficient because it does not meet the current standards of the Federal Highway Administration. And in addition, the wider bridge will allow for an increase in the hydraulic capacity which refers to the volume of water that passes under the bridge.

Currently there's no safe pedestrian access due to the narrow road...the narrow bridge span. As

you recall in the photos that I had shown earlier there's no shoulder or sidewalk on the bridge and so it was determined that demolition of the existing bridge and replacement with a new structure is the most practical alternative.

The scope will include demolition of the bridge and the bridge span will be widened from the existing 29 feet to 41 feet. It will continue to be just a two-lane bridge. A new shoulder and sidewalk will be provided on the mauka side of the road and a shoulder will be provided on the makai side. And just to speak on the sidewalks for a bit, there's currently existing sidewalks on the mauka side of the road on either side of the bridge thereby providing a sidewalk on the mauka side of the bridge it will connect the existing sidewalks on the road in that vicinity. There's currently no sidewalks on the makai side of the road on either side of the bridge. So that's why a sidewalk is not proposed on the makai side of the bridge. And again, the wider bridge span will provide greater stream capacity under the bridge. The project will include abutment walls along both sides of the stream, new grouted rubble pavement aprons, and CRM wing walls in the stream, and new utility connections for water, sewer, and drain lines will be provided. And finally roadway improvements to the north and south of the bridge will be provided to allow for a smooth transition to the bridge.

In terms of project implementation, construction at the earliest would be begin in Spring of 2017, and take approximately seven months. The cost is \$7.7 million, 80 percent of which would be Federally funded.

So this is the site plan of the bridge. This here in the gray is the new bridge span. Again, 41 feet wide and I as I mentioned there will be some utility line replacement improvements. So just to summarize that really quickly, three drain lines will be replaced and will drain to new abutment walls. So those drain lines are in blue here. And then a 8-inch and 16-inch water line will be relocated to be outside of the widened bridge span. So in green you see the water lines that will be relocated. And then finally in red here we have a 21-inch sewer line that will also be relocated to be outside of the widened bridge span. And I'll note that the new water and sewer lines will be constructed before the existing utility lines are removed to limit disruption in service.

This is a section of the bridge through the stream. On either side of the stream there is the grouted rubble pavement. There's an existing concrete slab below the bridge that will remain and will be widened to match the widened bridge span. From a structural standpoint, new concrete bridge abutment walls will be set on concrete foundation with 16 ½ concrete piles that are approximately 50 feet long, pre drilling approximately 19 feet into the substrata is proposed prior to driving the concrete piles and the contractor will obtain a noise permit for this pile driving operation which is anticipate to take 10 to 14 working days, and the bridge deck will be cast-in-place concrete. This is longitudinal section of the bridge looking across the stream. Here are the concrete piles that I referenced earlier. And this is just an elevation of what the bridge will look like, the new bridge railing. This is a similar design to what the County has used for its other projects on Maui.

In terms of hydraulic capacity, again this refers to the volume of water that flows under the bridge. The current capacity is 883 cubic feet per second and the wider bridge will increase it to 1,193 cfs. It's noted that the capacity is still less than the 100-year storm flow which is 5,100 cfs, and the County will be applying for a design exception for this and the reason is because mauka of the bridge, the existing stream channel only has a capacity of 900 to 1,200 cfs so it was determined

that providing a bridge capacity that matches the stream capacity mauka of the bridge would be appropriate.

Just a little bit about Kahana Stream. The stream is perennial in its upper reaches and an intermittent stream in the vicinity of the project. A sand dune currently blocks the outlet of the stream to the ocean under normal circumstances. And there is a muliwai or wide shallow basin at the mouth of the stream that isolates it from the ocean by the sand dune. And this is a picture here so you can see the ocean here on the left, this is the sand dune, and then the mouth of the stream here that's blocked. So during large storm events the sand dune is breached and the stream connects to the ocean, but following these storms the normal wave action would reestablish this sand dune.

Biological and water quality surveys were conducted for this SMA Use Permit application. No endangered or threatened plant or animal species were observed and a Best Management Practices Plan will be...has been prepared and will be implemented. And just to highlight some of the BMPs that will be used, work will not be performed during period of heavy rainfall. Temporary silt fences and cofferdams will be used. Work within the stream will be conducted incrementally to allow the stream to continue to flow and work will cease if a visible turbidity plume is observed downstream. And also exposed areas will be vegetated and stabilized as quickly as possible. And applicable monitoring and assessment plan will be developed to monitor the effectiveness of the BMPs during construction. And with these BMPs minimal water...the BMPs will minimize the water quality impacts during construction.

A marine water quality survey was also conducted by AECOS in 2012, and as I mentioned, the stream only flows into the ocean during infrequent large storms. The bridge replacement it's not anticipated to have any long-term adverse impacts on marine water quality. And with the implementation of the aforementioned BMPs minimal water quality impacts are anticipated during construction.

The bridge was constructed in 1964, so it is over 50 years old and eligible for listing in the State and National Registers of Historic Places. The County Cultural Resources Planner has recommended mitigation in the form of architectural recordation and the Department of Public Works have met with SHPD and will continue to coordinate on the appropriate mitigation for the bridge replacement. An Archaeological Inventory Survey and Archaeological Monitoring Plan were prepared for the Lower Honoapiilani Road Project, Phase 4, which was approved by SHPD in 2005. And again, this was the 1.4 mile roadway project that included the bridge. So both documents cover the bridge replacement project.

Cultural impact interviews were conducted specifically for the bridge replacement in 2012. The project's not anticipated to present long term impacts to cultural practices and with the implementation of BMPs the nearshore water quality and fishing resources in the vicinity will be protected.

From a traffic standpoint, the bridge will need to be closed during construction. It's about a seven-month construction period and a detour route will be provided by Hoohui Road and Napilihau Street. Here's a map of the detour. Here is Kahana Nui Bridge where the road would

be closed. So the detour will be provided by going back along Lower Honoapiilani Road, up Hoohui Road across on Honoapiilani Highway and then down Napilihau Street which will connect you back to Lower Honoapiilani Road.

From a long-term standpoint, the bridge will remain a two-lane bridge. The posted speed limit will remain 25 miles per hour. The road north and south of the bridge will also remain two lanes. So no additional traffic would be generated by replacing this bridge. And in addition, the wider bridge span will provide for a designated pedestrian sidewalk and shoulder shoulders.

In terms of other permits that will be required, the Department of Army Permit as well as a NPDES Permit will be obtained. 401 Water Quality Certification, Coastal Zone Management Consistency, Stream Channel Alteration Permit and Noise Permit will be obtained as well as County construction permits.

Just to summarize SMA process that we've gone through. The SMA Use Permit application was filed including technical studies such as the drainage, water quality, biological surveys and archaeology. It was reviewed government agencies and analyzed for consistency with the SMA standards and the Planning Department has recommended approval of the permit.

So today we'd like to respectfully request that the Maui Planning Commission approve SMA Use Permit for the proposed Kahana Nui Bridge Replacement Project. Thank you very much.

Chair Ball: Thank you. At this time we'll open it back up for public testimony.

**a) Public Hearing**

Chair Ball: Anyone that would like to testify on this item may do so at this time. I think Junya and who else was it, John?

Mr. Junya Nakoa: Howzit. Junya Nakoa from Napili. I was here in 2001 when they had ask for the thing come more wide, yeah the lower road. And us guys that live there, we there everyday. You know our kids cross the street. Right across the street when they say yeah about the fishing and all that, we catch fish plenty. We get moi. The limu kinda when runaway little bit 'cause the water not running. If the water was running like the lady said, she not running only when get heavy rains. Open the water maybe the thing would get plenty more fish, yeah.

But pertaining to this bridge, the reason why I came 'cause I never know what the heck was going on until I see them yesterday on...sista when show me the agenda for today. So I thought this was going be another one trying to sneak 'em by us without letting us know about the roads getting wider. If the bridge like that, good make 'em safe yeah, for them cross the bridge. Thing going impact too much on the guys going faster yeah. But I know that lady was here, David Goode them was here when the County when bring this guy from the mainland for talk about bikeable and walkable communities, yeah, like how can be more safe, yeah. And I when learn choke from that guy. You know what I mean? He supposed to smart I guess, you know what I mean? According to where his state came from the bugga was safer, you know more nice, more cherry. You know, I mean it wasn't one concrete jungle, you know had plenty plants and all that kind stuff. That's the

kind stuff we wanted down there. And according to what I when learn from him is that the wider the road, the more danger the thing come 'cause more fast the buggas going drive. I stay, like I said, I stay everyday. I know none of you guys, I don't think too much of you guys stay over there everyday, but I there everybody, okay and they smoke 'um. No get me wrong. I know no more police yet over here, but I throw stuff at 'em. I tell 'em slow the hell down. I no scared. I no scared. They turn around come back. Let's do it. 'Cause me kids going make then they going die. Okay, I just being straight up. So that's the reason why I so passionate about this. Okay. Our keikis go swim everyday after school. The school bus drop 'em off right there. Okay, right by Kahana, the Smith estates. It's maybe like, I don't know, I know I talk to the braddah over there, David Goode, how come he never tell us about 'em? We there everyday. Oh, you not in the 500 radius or whatever...(inaudible)... what kind County is that brah? Let us know. You know what I mean, let us buggahs know, we the one going get affected on that road. You know, long term, short term, we get affected. None of you guys get affected 'cause you no live over there. We live there every damn day. So the guy said, if you make the road smaller without the middle line, and only you know what I mean, they going mentally slow down. But if you make 'em big, they get sidewalk, the road over there...(inaudible)...cars smokin 'em. Us guys seem 'em right now. Couple times I when call my friend that work for the police station, kanaka bring down those speed things the one with the trailer and try watch 'em. Sure enough 35, 47 down in a 20 mile, not 25, 20 mile zone.

Ms. Takayama-Corden: Three minutes.

Mr. Nakoa: Okay, 20 mile zone. So it's very crucial 'cause during that class, whatever the thing I went to, the guy said if you get bang by one car going 15 miles an hour you have one 85 to 90 percent chance of living. You get bang by one car going 20 miles to 25, your thing when just drastically go down to 45 percent living. You go 30 you make, ...(inaudible)...make. And you put one curb and they going like 40, 34-40, they climb the curb, the hit the person in the shoulder. I when learn this from the buggah, you know what I mean? I never go to the da kine, but that's all I get. Just as long...the bridge can go, just no make 'em any further. Just no widen that buggah any further. We like 'em slow. In fact, I think I when tell David Goode this couple times I rather make pukas in the road so they slow down. You know what I mean. Make pukas, the thing cheaper than making one bump, you know what I mean? Even when get the big rain, and get the waters they all slow down, safer. That's what I'm saying. Thank you.

Chair Ball: Thank you, Junya. Any questions for the testifier? Seeing none, okay, anyone else who would like to testify at this time? Okay, John Seebart?

Mr. John Seebart: Yes, John Seebart. I live in Kahana about a quarter mile north of this proposed project. I don't think anybody really resist the notion that the bridge is old and needs to be replaced, but we conferred with the Public Works Department with Rowena and Mr. Goode and others almost four years ago now. And basically I see some things have changed but not much. One thing I wanted to correct on I forgot your name, testimony...the speed limit on that road is 20 not 25. And we definitely want it to stay 20. We have a tremendous speeding problem on the road. We formed a group called,"The Slower Road", and basically it was formed after there was a big crash, and there have been subsequent crashes. The worst offenders that we've had have been the County buses basically, and now we're starting after four, four and a half years, we're starting to get those people to slow down on the road. But our main thrust was to call commercial operators and say,

look we know you don't want your drivers driving this fast, and they all pretty much agreed with the exception of the County buses, Roberts I guess I don't know.

The point of this is is what Junya was saying is and we talked to a guy named Dan Burden that the County actually brought in to look at some of these situations and he walked through Lahaina Town and he walked on the Lower Road and he was in Makawao and did a lot of stuff. He does traffic calming and various adjuncts to making traffic safer, having better use for communities, walkable areas, preserving neighborhoods which is our primary concern. This road has been widened. I mean, at one point it was basically footpath, you know, and it's widened, and widened, and widened. And now with this bridge, they wanna widen it again, well, this is the precursor to widening the highway, I mean, widening the Lower Road. You know, the upper road, the Honoapiilani Highway is a block away. You know, if wanna go fast you can go up there, and they're saying well, it will still be two lanes. But the purpose is ostensibly safety but we're dispelled that with the notion that narrower roads creates slower speeds, create more safety. Wider roads create higher speeds and less safety. And a little curb and a little sidewalk is not gonna help. I mean, it sounds nice, you know, and who could be against sidewalks? I mean, I'm not against the sidewalk but when they talk about widening of lanes this is right down the same path as the people who are complaining about the community plan being changed, where are we going with all this stuff? They pointed out that yeah, Kapalua is up there and there's some developments that's gonna happen up there. We need more traffic flow, that's what they're looking at. And there are three E's, there's engineering, enforcement and education when it comes to these kind of things and the engineering is a big of it because we have precious little enforcement. We're working with the police, but you can't get it all.

There's one more salient point here and if you saw the design of the bridge, it's a ...(inaudible)...affair. That is really in my opinion not enough. The problem is that stream flows at the 100-year flow...first of all, the roadway is six feet above sea level at that bridge roughly I mean that's what the FEMA flood map shows. You can look it up on the Hawaii Flood Hazard Map online it's real easy. And so it's six feet there. At the 100-year flood which is not a big flood, I mean, think how long the island's been here, at the 100-year flood the water level is 16 feet above sea level. That means that bridge is gonna be 10 feet under water. And I don't know where, I think somebody's here from the condo complex, well, in they've had that water hit the bridge and go around and do damage in various developments and that single family home, that big Bali house they call it, and they're always digging out.

Chair Ball: Thanks John.

Mr. Seebart: Anyway, so we think that the bridge needs to be allow more water to flow through and I have actually forwarded pictures of bridges and guardrails that accomplish this to Rowena Dagdag and Steven Goode and John Smith. Maybe Steven...or maybe I didn't give them to Mr. Goode, but Rowena-

Chair Ball: Okay, thank you John. Thank you for your testimony.

Mr. Seebart: Thank you. And let's just pave it all, make it look like Oahu that's, you know, that's where we're going.



Chair Ball: All right, next is Mas Ceruti?

Ms. Marion Ceruti: Aloha kakahiaka o ...(inaudible)... My name is Marion Ceruti. I am the treasurer of the Kahana Reef Association of Apartment Owners. And this Association's Board of Directors is currently monitoring the project. But since we haven't voted on whether to support or oppose the project from now on during this testimony I will speak as an individual and not as a board member.

Tentatively I support the project and I don't necessarily agree with the previous speakers who claim that a narrow road causes people to slow down. My personal observation is that everyone treats it like a drag strip regardless of whether it's wide or narrow and we have seen our share of too many accidents really on that road.

Tentatively though I would say that from a pedestrian point of view, the Kahana Nui Bridge improvement will provide additional pedestrian safety. But I don't comment on any other aspect of the safety. Clearly there's multiple safety considerations in addition to that of pedestrian safety and I wish to emphasize that wherever this idea of 25 mile an hour on the Lower Honoapiilani Road came from that is wrong and the records should be corrected to show that that will remain 20 miles an hour and I hope that this project is not contingent on increasing the speed limit to 25 mile an hour, and that concludes my remarks. Mahalo nui loa.

Chair Ball: Thank you. W.F. Hoover?

Mr. William F. Hoover: William F. Hoover. I live at Kahana Reef. I'd like to endorse what many of the previous said about too many fast drivers on the Lower Honoapiilani Road. I'd also like to endorse what the immediately previous speaker said about the need for a sidewalk. As someone that has walked to Kapalua many times along that road, I've almost become a hood ornament a couple of times crossing the bridge. There's no sidewalk, there's no anything other than speeding drivers trying to get another point prior to reaching their destination. Thank you.

Chair Ball: Thank you. G. Langston?

Mr. Gordon Langston: Hi gentlemen, I'm Gordon Langston. I'm President of the Kahana Reef Association. I think most everybody has already covered kind of my feelings other than to be sure that that speed limit is just incredibly important. Ask that we keep that down. If keeping the road smaller helps that then I'm in all in favor of whatever it takes. We have unfortunately had you know, people that have lost their lives out there because of the speeding that goes on and it's just such a sad thing to say. And I think the other comment that somebody else had made earlier that the upper road is just so close. I mean, if you've gotta go some place in a hurry, it's a block away. Just drive up there and go as fast as...well, I shouldn't say go as far as you want, go the speed limit up there, keep ours down at the 20 mile an hour and let us go and enjoy our area and let the kids and everything do that. Thank you very much. Appreciate it.

Chair Ball: Thank you. Lets see, is there anyone else who would like to testify at this time?

Ms. Tamara Paltin: Okay, I used to be neighbors with John. Oh, my name is Tamara Paltin. I live in that area and I just wanted to reinforce...I got the bumper sticker it says, slower road, 20 miles

per hour not 25. And couple of points I wanted to make. I'm supportive of the bridge staying the same width that it is and I'm not against like you know, putting sidewalks on the outside of the bridge or something. But I agree with Junya and John about the driving part of the bridge should stay the same because when I lived there there were a few car accidents on the lower road that were just due to speeding.

Couple other points that I was concerned about is just the statement that BMPs will minimize marine water quality impacts. I wanna say that that is not a true statement. I lived through the Mahana Ridge development. They went above and beyond the BMPs. They did 'em all, sediment retention basin, silt fences, everything and it did not minimize marine water quality impacts. So if somebody tells you BMPs will minimize water quality impacts question how they will be monitoring. I don't wanna say that...I don't want someone to say that a monitoring plan will be developed. I wanna see the monitoring plan before you give the permission. And I also would request that while this is going on maybe a sediment retention basin might be something that can be looked into because when I walked there the water quality was not good. And I don't know about the three lot or less subdivision rule and contributing to the infrastructure of this area. But those were just off the top of my head. I live in the area and then the first I heard about this was last night so I didn't have a good chance to arrange all my thoughts, it was just off the cuff. Thank you.

Chair Ball: Thank you. Anyone else that would like to testify at this time? Please identify yourself. You have three minutes.

Ms. Tina Marshall: Aloha, I'm Tina Marshall. I live in Kahana Nui Village. I got the letter, certified mail so I wanted to come and see what was happening. I didn't do a lot of research like you guys did, but I just have two quick points. I have been here 35 years. I have the house that is right up against the stream. My house has flooded three times. So, I'm up on stilts but my garage is not, so that stream coming in when we've had high rains since 1996 I think the project was built, my garage has flooded three times. So anything that can be done to improve that for our safety that I don't lose things in my garage or my house I'm for. My older daughter is here. She's a local Hawaiian girl, born and raised here. We walk all the time up and down that road. I pray everyday for my 26-year-old daughter who's out in the car sleeping. She runs up and down that road and she won't wear a helmet. I took her bike away, but there's just so many dangerous things. I've lived up and down that road for you know 20 years. So sidewalks are imperative I think for safety because I don't know if it's wider, bigger, smaller, but people speed all time. We've got the death right across from Pohailani and it's just...it's crazy. So I thank you for listening.

Chair Ball: Would anyone like to testify at this time? Please identify yourself?

Mr. Dale Thompson: Thank you Council, I'm Dale Thompson there. I'm with the 500 feet south and it's a great idea, they need to do it and I walk that road all the time. Yes, they go fast and I hear about the speeding drivers. But there's right now in front of my house and the Sadangs it's under water. We don't have any storm drainage there along with no sidewalks. So the people, the cars have to go onto both sides of the lanes all the time. And yeah, Junya's right, pukas slow them down. I'm not really happy with that in front of my house, but it be nice. And also Pohailani which is south again of me, to continue sidewalks that connects all those residential housing, there's a bus stop for the kids and all that, Pohailani got huge boulders that stick out within I say 36 inches

of the road so not passable. I don't know if they can do it all in the same project, it be well worth it to move those boulders. I think the County has a five-foot access anyway. Move those back. People can walk all the way from Gateway to all those houses without getting run over. So I don't know how far the road improvement was planned but it would be nice if they could a little further and the storm drain. We've...I've lived there almost 30 years and today it's under water and it is a lot. So is that under consideration, storm drains you don't know? Anyway, that's my concerns. Thanks very much.

Chair Ball: Thank you. I see David Goode taking notes on your comments. So hopefully he can move your boulders for you.

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

Ms. Pamela Tumpap: Aloha, I'm Pamela Tumpap, President of the Maui Chamber of Commerce and I'm here to testify on two issues. First, I would like to just support the Kahananui Bridge widening to better accommodate pedestrians. It allows for better water flow and it is starting to become structurally deficient. So this is a project that brings in 80 percent Federal funding from the gas tax and brings that money back to Maui. I just think it's a good measure and a great improvement project for our community.

Chair Ball: Okay, would anyone else like to testify at this time? Seeing none, public testimony is closed. Can we get the recommendation?

**b) Action**

Mr. Scott: Certainly. Keith Scott again. The proposed project is in conformance with the goals, objectives and policies of the Hawaii State Plan and County plans and zoning regulations. Existing storm runoff and drainage will be somewhat improved by the project and no impacts upon infrastructure or public services are anticipated. The Planning Department has received two letters of testimony opposing this project, one was in your report and the other was distributed with your packet. Four alternative actions are listed in your report.

The applicant has recently asked for and the Department has no objection in Condition No. 1 to change the required date of initiation from November 30, 2018 to November 30, 2020. With that, the Department recommends approval of the project subject to six standard conditions and four project specific conditions.

Chair Ball: Okay, questions from the Commission? Commissioner Robinson?

Mr. Robinson: Keith, I wanna start with the stagnant water after the bridge I see where a sand dune develops. Now has there been any studies before? I know you're very well versed on that side where there's some type of gravel or rock basin underneath where the sand could go out to where water could actually ease through back to the ocean or does that naturally happen with the sand anyway?

Mr. Scott: That naturally happens.

Mr. Robinson: So what's holding that stagnation there? Is that the sea level? Is that what's keeping that there?

Mr. Scott: It's the sand berm that builds up with wave action that actually keeps the water stagnant behind.

Mr. Robinson: But isn't the water the same water level as the ocean?

Mr. Scott: Approximately.

Mr. Robinson: So if it was open, it would still kind of be that same ...(inaudible)...there's no elevation to let it drain out?

Mr. Scott: There would just be some wave action that would stir it up, but yes, you're correct.

Mr. Robinson: Okay, thank you.

Chair Ball: Further questions? Commissioner Higashi?

Mr. Higashi: I have a question, several. One is the widening of that particular bridge. The sidewalk that's gonna be there is on the inside, the roadway or is it on the outside perimeter where people will not be affected by traffic flow?

Mr. Scott: The sidewalk is inside of the guardrail. It's on the complete outside of the bridge. So it is adjacent to the shoulder which is adjacent to the travel lane.

Mr. Higashi: Is there any way of creating the sidewalk on the outside of the bridge, and I'm concerned about children who or pedestrians who are walking because apparently this particular road is a road that allows people to speed and just widening it will not protect the pedestrian. So if you have it on the outside that would prevent people from being on the traffic itself.

Mr. Scott: I will let the engineers answer that question.

Mr. Terrence Arashiro: Good morning, Chair and Commissioners. Terrence Arashiro with Austin Tsutsumi & Associates. Can, but it would change the project almost in its entirety. That was looked at before you know doing a totally separate type of bridge structure. But I guess the reality is that when we look at the bridge structure itself, where the sidewalk is, the curb it's basically just a continuous section. So I think the key is actually slowing down the cars even before they get to the bridge. Yeah, that would make the most sense. So with the striping that we're doing there and some demarcation, maybe even placing some above grade candlesticks or those flexible types of markers. The whole idea is to try to slow down the cars even before they get to the bridge.

Mr. Higashi: Well, pertaining to speed one of the prevention would be I would think of speed bumps on prior to getting to the bridge to slow down at 20 miles an hours versus 25 or 30 miles. That's one. But is there a large cost to put the sidewalk on the outside versus still leaving it with...

Mr. Arashiro: A large cost, I don't know. We haven't evaluated that. Basically what you see is the bridge structure would be narrower and then you'd have a separate walkway that's adjacent to it and that would have its own railings as well, yeah. Once again, it's possible to consider that.

Mr. Higashi: Yeah, I'm just looking from a safety pedestrian or a bikeway that it goes away from the flow of traffic.

Mr. Arashiro: Right, yeah.

Mr. Higashi: I believe something I would suggest.

Chair Ball: Commissioner Lay?

Mr. Lay: I have something...a question relevant to that. I know you're keeping the base of your concrete on that bridge. You have your existing side rails already. Is it possible to keep one of the side rails because it is what 50 years historic and can we put that existing side rail there and have our sidewalk outside there or is the existing side rail so dilapidated that it has to be replaced anyway?

Mr. Arashiro: Basically the rail structure as well as the base they all have to be replaced. It's deteriorating. I guess the good news is it's still standing after the 2002 action, but the bad news is it's deteriorated even further. So but yeah, all the side rails and the base have to be replaced.

Mr. Lay: Okay, thank you.

Chair Ball: Commissioner Duvauchelle?

Ms. Duvauchelle: Hi. Your site plan shows that you are adding several new storm drain inlets.

Mr. Arashiro: There are a few.

Ms. Duvauchelle: And some new 24-inch drain pipe?

Mr. Arashiro: Yes.

Ms. Duvauchelle: Is this sized to accommodate what's there now or have you sized it to take extra?

Mr. Arashiro: It's just there to accommodate what's there now in terms of the flow off of the street and some of the properties.

Ms. Duvauchelle: So will this help with the flooding that they're having?

Mr. Arashiro: Oh yes it will.

Ms. Duvauchelle: Okay, so you are making improvements on the drainage?

Mr. Arashiro: We are. Although I'd like to talk to that gentleman to find out specifically where that area is at is of concern to him. We can look at that as well.

Ms. Duvauchelle: Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Mr. Arashiro, the width of the road is it being widened on the bridge section from what it exists today?

Mr. Arashiro: Yes.

Mr. Hedani: What is the reason for that?

Mr. Arashiro: So, hard to see though. But it's currently, the width is 29 feet yeah, and it's basically all roadway so there's no shoulders, there no sidewalk or anything like that.

Mr. Hedani: Right.

Mr. Arashiro: So the widening is just to add shoulder on the makai side, it's just shoulder, eight-foot, and it's primarily there to provide...you know, we don't want pedestrians passing that way, but you're gonna have bicyclists, you're gonna have your casual pedestrian over there so we have some shoulder on that side. And then we have a little bit of shoulder for also bicyclists on the mauka side and then the pedestrian sidewalk.

Mr. Hedani: Okay, so the widening is not widening the travel lane for vehicles?

Mr. Arashiro: No.

Mr. Hedani: It's widening it for bicycles and pedestrians.

Mr. Arashiro: Yeah. I don't have the dimension in my head, but I know that the lanes are gonna be 11 feet wide, the travel lanes so in my mind, it's actually narrowing the travel way. This project is actually narrowing the travel way albeit it's just with striping though yeah.

Mr. Hedani: Okay, thank you

Mr. Arashiro: Yeah.

Chair Ball: Commissioner Robinson?

Mr. Robinson: On that note, you heard the concern about speeding, and I am from the school that smaller road, you know slow you down too. Are we able to put some type of mitigation to where you know, I don't like those—

Mr. Arashiro: Candlesticks.

Mr. Robinson: Yeah, it's Hawaii it's ugly. But what I do like, I do like putting those little round circle things on the ground and have those irritable noise makers.

Mr. Arashiro: That's possible too. Well, it's not a noise maker, it's to create vibration.

Mr. Robinson: Vibration I should say, I'm sorry. The vibration maker if we line those with both sides, I think that might also help people from using the shoulder as a larger lane.

Mr. Arashiro: Yeah, those type of things do deter, yeah, because people don't wanna run over that and exactly right.

Mr. Robinson: At least not at a high speed. And if they go over it, at least they'll come back so we'll keep that shoulder as a safety shoulder not as a wider lane that people can just use even through they're over the line.

Mr. Arashiro: That's correct.

Mr. Robinson: Thank you.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Yeah, I like...yeah, 'cause recommendation. And I also really like Commissioner Higashi recommendation about speed bumps. You know, why couldn't we have I'm looking at the picture, now speed bumps on either side of the bridge. If there is speeding, you know, speed bumps would deter them from going there, you know. And if they want their struts ruined go ahead do whatever they want.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay, I, for one, am against the speed bump only because if you live right next to there you got the trucks coming through, trucks tend not to slow down. They'll still do the jump and you're gonna hear the ...(made sound truck would make going over speed bump)...You'll hear that from way off. To me, the whole issue is speed limit, enforcing that speed limit in that area. If it is 20 miles an hour, let's go down there, be there a couple times, you know monthly and we'll catch all these guys and before you know it, nobody's gonna be speeding on there 'cause nobody wants a speeding ticket. So to me that's my way of resolving that one. And if the bridge, it's old we gotta replace it and I know how everybody is feeling about that. I mean, keep it safe for everybody and have some walkways for the pedestrians to walk through. And even those bumps, ...(inaudible)...

Chair Ball: Commissioner Hedani?

Mr. Hedani: I'd just like to compliment whoever did the design of the bridge. From an architectural standpoint I think it's a 100 times better than what was there before. And when I compare it against improvements that have been put in place on Honoapiilani Highway by the State where they do massive concrete walls that are higher than they have to be and block the view to the ocean, I think this is a refreshing change.

Mr. Arashiro: Thank you.

Chair Ball: Any further questions? Commissioner Robinson?

Mr. Robinson: Keith, I noticed that we're getting some easements, some utility easements on different corners of this project?

Mr. Scott: Correct.

Mr. Robinson: What are those easements for?

Mr. Scott: They're easements for utilities themselves. Okay, so the easements are for water lines, and drain lines specifically as far as the utilities.

Mr. Robinson: So our waters aren't connected to the bridge?

Mr. Scott: Yes.

Mr. Robinson: And the sewer, they're under the bridge right?

Mr. Scott: No they go around the bridge.

Mr. Robinson: They go around the bridge on the side.

Mr. Scott: Yes.

Mr. Robinson: So the easement it goes...it's gonna come in a...what angle to...that's pretty sharp for it. I thought it was gonna, we're gonna, we're just gonna use the natural flow what is now. 'Cause you're asking for parcels. That map doesn't show it, but there's another map that did. Yeah, that corner there, so we're taking that whole corner?

Mr. Scott: Correct.

Mr. Robinson: And the County's paying for that?

Mr. Scott: Yes.

Mr. Robinson: And is it just for water or you're taking for future electrical too?

Mr. Scott: It's not electrical.

Mr. Robinson: No, but for future, no there's no other conduits being set through there that you said. It's just for specifically for this project?

Mr. Scott: Not that I'm aware of.



Mr. Robinson: Okay, thank you.

Chair Ball: Any further questions? Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Ms. Duvauchelle: Second.

Chair Ball: Motion by Commissioner Hedani, second by Commissioner Duvauchelle. Any further comments? Seeing one, Commissioner Robinson?

Mr. Robinson: With the recommendations are we able to now talk about the conditions such as the mediation with the speed with the traffic...I wish I had the term for that that half thing too--

Unidentified Speaker: Botts' dots.

Mr. Robinson: What they call it?

Unidentified Speaker: Botts' dots.

Mr. Robinson: Botts' dots.

Chair Ball: I think the applicant is aware of the issues there and will take all the comments into consideration. Is that a yes? Okay. Any further comments? Seeing none, all in favor of the motion say, "aye", raise your hand?

Commission Members: Aye.

Chair Ball: Motion carried. We'll take a five-minute recess.

**It was moved by Mr. Hedani, seconded by Ms. Duvauchelle, then**

**VOTED: To Approve the Special Management Area Use Permit as  
Recommended by the Department.  
(Assenting - W. Hedani, S. Duvauchelle, J. Medeiros, I. Lay,  
K. Robinson, R. Higashi)  
(Excused - L. Hudson, M. Tsai)**

A recess was called at 10:35 a.m., and the meeting was reconvened at 10:45 a.m.

Chair Ball: We will move onto C2, Director?

Mr. Spence: Commissioners, your second public hearing item today is Mr. Christopher J. Benjamin and Mr. Charles W. Loomis of A&B Properties, Inc., requesting Community Plan Amendment and Project District Zoning for the Waiale Project and our Staff Planner this morning is Mr. Danny Dias.

2. **MR. CHRISTOPHER J. BENJAMIN and MR. CHARLES W. LOOMIS of A&B PROPERTIES, INC. requesting a Community Plan Amendment from Agriculture to establish a portion of Wailuku-Kahului Project District (Waiale), a Change in Zoning from County Agricultural District to Wailuku-Kahului Project District (Waiale), and a Phase I Project District Approval for the Waiale South Project District located on approximately 122.6 acres of land in the vicinity of the southwest corner of Kuihelani Highway-East Waiko Road intersection at TMK: 3-8-005: 037 and 040 (por.), Waikapu, Wailuku, Island of Maui. (CPA 2015/0001) (CIZ 2015/0001) (PH1 2015/0001) (D. Dias)**

**Waiale will be a master planned residential community with single & multi-family homes, village mixed use area, parks and open space, landscaped entries and collector roads, and related improvements. Waiale South is projected to be a portion of this master planned residential community.**

Mr. Danny Dias: Good morning, Chairman Ball, Members of the Maui Planning Commission. As stated by Director Spence the item before is a request for a Community Plan Amendment, Change in Zoning, and Project District Phase 1 Approval for the proposed Waiale South Project. The applicant, A&B Properties is requesting a CPA from Ag to Project District, CIZ from Agriculture to Project District, and as mentioned, the Project District Phase 1 Approval.

The Commission may be familiar with this project to a certain extent. It's sort of been in the works for quite some time. I wanna say approximately eight, nine years or so. It went through the Maui Island Plan process. It also went before the State Land Use Commission first for acceptance of a Final Environmental Impact Statement which occurred in about 2011, and also for a District Boundary Amendment from Ag to Urban in 2012.

I'll let the applicant present the details of the project but what is before you today is a portion of the entire Waiale Project. Waiale involves lands that are both north and south of Waiko Road. What they're coming in for today is just the portion that is south of Waiko Road and that is about 123-acre portion.

From a permitting standpoint, the Maui Planning Commission is making a recommendation to the Maui County Council on the CPA, CIZ, and Project District Approval. Assuming this Commission approves those permits it goes up to the County Council for final approval. I think it's also worth pointing out that since it is a project district there's also a Project District Phase 2 process which you folks are familiar with and that is when the applicant will come back with more details on the project, for example where the roads will actually be, where the specific uses will be, the types of buildings, et cetera.

Some housekeeping before I turn it over to the applicant for their presentation. The Department received a letter from the State DOT late yesterday afternoon and we handed it out this morning and they're requesting now we add four conditions to the project. So just a warning, we might need a recess. We were trying to talk to the applicant about language and what's acceptable to them, but this just did come pretty last minute so we're trying to work on that. And that concludes my short little introduction. I'll turn it over to, I believe Grant Chun is gonna do the presentation?

Mr. Grant Chun: Good morning everyone. I'm Grant Chun from A&B Properties and I'd like to wish you all a Happy Thanksgiving. We're here this morning to provide you with background on our request for a Community Plan Amendment, Change in...rezoning, and Phase 1 Project District Approval for the Waiale South Project District.

Just a quick overview of the project. This slide indicates the TMK numbers for the parcels involved. Acreage is 122.6 acres and the site is vacant and undeveloped. As we have all heard from media reports, even experienced first hand in our own families the housing shortage here on Maui and throughout the state is real and very serious. This project isn't going to single-handedly address that issue all by itself, but it's definitely a part of the solution. The hope is that we'll be able to provide a range of housing opportunities for Central Maui's working families in proximity to employment centers, schools, infrastructure and public services. We'd also like to note that the request before you is made in the interest of implementing the Maui Island Plan and that it is very much in sync with the goals of the Maui Island Plan.

I might also add that as some of you are aware construction for our Kihei residential project which is called Kamalani will be kicking off in January. In that regard, we've begun home buyer education classes, an outreach to first-time, potential first-time home buyers in the context of making them aware of the residential workforce housing that will be available in the project. And our experience in the past few months has been really illuminating. There's clearly a demand for these new homes for our local families.

As noted earlier, the request before you are as indicated on this slide. Being that this is a project district as Danny said there will be a Phase 2 review, a finely grained plan will come before you, this Commission at a later date and finally a Phase 3 review will also occur directly with the Department.

This is a conceptual plan for the Waiale South Project District. As you can see the project district is bounded by Waiko Road and Kuihelani Highway. The project district is planned to accommodate up 950 homes for Maui residents ranging from single family home types to multi family town home flats. There'll be a mixed use area, village mixed use area that will accommodate for both residential use as well as small neighborhood commercial activities. The neighborhood will also include park and open space areas and bikeways and pedestrian paths.

Danny gave you a brief reference to the chronology for this project. This is a fairly good representation of what people are talking about when they comment on the difficult and lengthy process we have here in order to bring housing to our community. Our first community visioning workshops began in 2004 and 2005. Leading up to those workshops I did a little research and particularly since I grew up in Kahului I thought it was really interesting to learn that this area has been envisioned as the southerly boundary of the Dream City of Kahului since the 1940's when what we now think of as Kahului was first established. The area planned back in the 40's encompassed the increments of Dream City, Maui Lani and this area called Waiale. As you can see from the chronology, the process that led us up to this point where we are meeting with you today has already taken over 10 years.

This slide provides a good perspective on the location of Waiale South. Here you can see Waiko Road, Kuihelani Highway, Maui Lani, and the future Waiale North. We decided to proceed

with Waiale South ahead of Waiale North because of a couple of different reasons. In conjunction with requirements that were imposed in the context of past entitlements for a number of our projects we were required to provide some lands for affordable housing, a community center and a neighborhood park acreage totaling 50 acres. That's all over here.

Beyond that of course, the State of Hawaii acquired 65 acres within this same corridor to build a new regional park facility and the Department of Education has also identified a site of about 20 acres within this same corridor for a new middle school. So you can see from this slide that all of these areas are situated within the Waiale North project area and we can see...already see synergy that will come from the ...just the position of these uses adjacent to Maui Lani. You'll note that the Maui Lani regional park and the Pomaikai School will blend right into the recreational area, community center, cultural preserve area and the school on the Waiale side of the property line.

Given all of the initiatives on this northerly portion of the area which we do not actually control, we see it as prudent to take up this matter, for our future entitlements for our north project area separately from our south project area so that our plans for the north can be informed by, responsive to, and in concert with the State and County's eventual plans for the area. Of course, we realize that the State and County's work on their initiatives will take a while thus we feel that it makes more sense at this point for us to focus on planning and entitlement for the southerly portion of the project district which is here.

Further it's not irrelevant that the State Land Use Commission conditions require that we proceed with Waiale on a timely basis. And given the dire need for housing in our community, we think it prudent that we move forward with Waiale South. As time goes on and the uses and plans for the public areas identified in Waiale North get fleshed out we'll be in a better position to prepare a plan for Waiale North that will compliment and provide cohesiveness for the area.

This aerial provides a good perspective on the location of Waiale South. Key landmarks include Kuihelani Highway, Waiko Road, Maui Lani. Key points of reference include the junction of the two highways Honoapiilani and Kuihelani Highway junction is here. And also, you can't really see it too well, but outlined here is a large tract of approximately 300 acres owned by the County of Maui which is planned for a future regional park facilities as well as an area in which to situate future County services.

An updated Traffic Impact Analysis Report was completed in 2015. The plan calls for improvements to Kuihelani Highway and East Waiko Road. A new project intersection at Kuihelani Highway and new intersections along East Waiko Road. All intersections are forecast to operate at satisfactory levels.

For water, A&B has been working with the County's Department of Water Supply on a new ground water source that would supplement the Central Maui water system. This will improve the existing system's ability to serve planned growth in Central Maui as called for in the Maui Island Plan.

We have been in discussion with the Department of Environmental Management concerning participation in a new regional wastewater treatment facility that would serve Waiale as well as other projects in the area.

An Archaeological Inventory including subsurface archaeological testing has been completed. No burials or archaeological resources were identified in the Waiale South project area. I might add that a future culture preserve is accommodated for in the Waiale North project area. The AIS was accepted by SHPD in 2010. Archaeological monitoring will be implemented during construction. We anticipate that Waiale South will accommodate a range of residential product types.

This is a conceptual rendering of a multi-family, eight plex, stack flat concept. Each unit will have individual front doors, individual front yards and each unit will be a corner unit allowing for good ventilation for all units. Multi-family town homes will have individual front doors, private back yards, private garages. They'll be two-story units. So there'll be no units either above or below the town home.

This is a compact single family residential concept which would be situated on lots between 1,800 and 4,000 feet in size. Each would have individual yards, private garages or carports and there will be one or two-story plans available. And of course they'll also be more traditional single family residences in Waiale South. These homes will be situated on lots of 6,000 square feet or more in size. They will have individual yards, private garages and come in both one and two-story plans.

The plan for Waiale South was prepared with an eye toward sustainable design features accommodating for mixture of land uses and home product types in the same neighborhood. The plan incorporates walking paths and bikeways with parks and open spaces within walking distance of homes. Of course, Waiale is ideally situated in close proximity to the key employment areas of Wailuku and Kahului.

This slide depicts the streetscape along the neighborhood park situated in the middle of the neighborhood. And this is a depiction of the street along the village mixed use section of the project district. Here's a depiction of the walking path along Waikapu Stream.

In summary, we're very excited about Waiale South and its potential to provide a range of housing opportunities for Central Maui's working families. It is located close to existing and planned infrastructure, public services, schools, and employment centers and it is consistent with the Maui Island Plan. I'd just like to add that personally as a son of Kahului basically it's very exciting for me to be able to be a part of providing for our next generation, our kids. I've kinda joked with our community participants who have worked with us over the years in crafting this plan at past meetings that, you know, it's something we all share in common is that we all love our kids, but we don't want them living with us forever. And that's kind of what Waiale South is all about really. It's about providing our next generation with the opportunity strike out on their own and grow our families and community into the future. So with that, very much appreciate your review today and I'm not sure what's next, testimony or questions. Thank you.

Chair Ball: Thank you, Grant. With that we will open it up for public testimony.

**a) Public Testimony**

Chair Ball: If anyone would like to testify at this time you may do so. Please identify yourself and you have three minutes.

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

Ms. Tamara Paltin: I'd like to also testify on Item C2. I oppose the Waiale change in zoning, community plan amendment for Project District Phase 1. One of the policies of our Maui Island Plan is to stop the conversion of ag lands to non ag uses and I'd like to ask who this developer is to think that their plan for this area is better than the community plan made by the residents of the area. Our community plans are more than land use maps and have the force of law to support community objectives.

The developer's plan shown today does not match the plan that was shown to the State Land Use Commission. And although affordable housing is cited, affordable is not really affordable when it's \$575,000, and only 225 out of 950 units meets that requirement. That may be the minimum that they're required to do, but it's not satisfactory.

I wonder where the water will come from. You can ask Mr. ...(inaudible)...too about that. The top concern though is the incomplete archaeological inventory survey as noted by SHPD not having received the required archaeological documentation within the proposed project area from archaeological monitoring, data recovery and preservation work conducted by Archaeological Services Hawaii.

This developer, A&B, they had a similar type of situation in Oahu and if you guys can look up the Waihonua Development. In that case, they took every possible method to ensure that the desecration of iwi kupuna did not take place. So I wonder why they come to Maui, this same company and they cut corners, they submit incomplete archaeological stuff. If that's the standard that they're willing to do on Oahu, hold them to that same standard here. Look it up, look up Wai honua Development what they did over there and say we want the same kind of treatment here on Maui. You know the desecration of the iwi kupuna are like the final act of conquest. In essence they want to behave as though the previous people never existed. Do not accept incomplete work, tell them come back when all their stuff is done and stop wasting people's time. Thank you.

Chair Ball: Thank you Tamara.

Chair Ball: Next is John Gelert?

Mr. John Gelert: Good morning Planning Department. My name is John Gelert, resident of Kihei. I would like to speak...this is not tall enough for me. I would like to speak on the development of Waiale. I am opposed to that development for a reasons and first of all, I would like to second everything that Tamara Paltin said about it.

First of all, it is not part of the community plan and the community needs much more affordable housing. Somebody brought to my attention that many promises have been made in the past and that the County actually owes the residents 10,000 affordable housing units. And there needs to be some kind of enforcement that they're actually gonna be affordable housing units. If that figure is true then we really need to build four times as many houses as this proposal.

But I am mostly against this development because it's development turning prime agricultural lands

into houses and the houses that we built just north of there by the highway it's just ugly seeing all of that as you drive through. And I can just imagine all the noise that the residents have to put up with the traffic going through there. We really need to take agriculture land seriously and use it for food production. If sugar cane production is getting less and less profitable then we need to convert it to food and you know, obviously California is suffering a drought and they're less and less able to feed the nation. So we need to feed Hawaii first rather than importing our food and you know, you know, especially I don't ever want to see Haleakala lands plantations be developed because they have such a great water system to you know, they could grow so much good food.

But also another reason I'm against the development of Waiale is the ancestral burial grounds and all that kind of stuff. Really have to respect the Hawaiian and the Hawaiians would not want this land developed. Thank you very much.

Chair Ball: Thank you.

Ms. Trinette Furtado: So now I'm gonna go into the second part of it which is the rezoning of Waiale leading into that. It's great to use Hawaiian mana`o. It's great to include the community. But when you only do so for one facet of a particular development and then you expect the community to take the entirety of it, that's hewa. What we're looking at here is not just ancestral lands but really water rights. The land before was for agricultural use. We already know we import over 90 percent of our food. We are not food sustainable here. We have no food security, but we're looking at putting more, more buildings on land that is prime land. And that land that we have now that our farmers are farming they're eking out what they can. Why not use prime land for food. We can be sustainable here on Maui. We have been before historically. We need to look at community. We need to look at how we sustain ourselves and though affordable housing really is a part of it, that's not a part of this project. The majority of this project will not be affordable for our ohana. Really when you look at it who can afford 20 percent even less than market price. I mean, if you're not working two, three jobs, if you kane or your wahine is also not working, if you're not living two families in one hale affordable housing here on Maui when we look at market prices is not affordable. And then to think of the length of time that it will be affordable, we have people that are waiting, waiting on so many lists for housing and we understand that and I understand that as well, but we need to look at how we do those developments intelligently and we need to involve the community. And I thank you for listening to me and thank you for your time.

Chair Ball: Thank you.

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

Ms. Laksmi Abraham: Good morning, my name is Laks Abraham. I am the President and CPO of Maui United Way. And first of all, please allow me to say thank you for allowing me to show my support of A&B Properties and Waiale South Project District. Just to give you a little background, Maui United Way works to support 37 different health and human service programs here on the island of Maui through funding that we generate throughout the community. Alexander and Baldwin has been supporting Maui United Way since 1969 contributing over \$3.54 million over the last 45 years.

We are all aware of the continuously growing problem in our community around homelessness. As the United Way we see firsthand how homelessness and housing challenges affect lives everyday. Our funding targets 17 programs connected to fighting homelessness. Within these programs homelessness is a result of many challenges ranging from substance abuse, domestic abuse, youth neglect, low minimum wage, lack of jobs and job training, natural disasters, and poor health mentally and/or physically. Through the outstanding work of our partners, we work to put people's lives back together and give them hope. However, housing is absolutely necessary for any healing process and remains to be one of the largest challenges our programs encounter in trying to help people.

Recently the Maui Farm shared that they continuously encounter challenges finding housing for clients that graduate from their programs because there are simply not enough houses to support the need. Ka Hale A Ke Ola Homeless Resource Center continues to operate under full capacity with a long waiting list of potential clients. Habitat for Humanity continues to provide first-time home buyers with affordable housing options that can only impact so many families annually leaving a long list of potential clients. Feed My Sheep continues to feed the homeless to help offset the high cost of living on Maui. Women Helping Women works to help find housing for women who have made the courageous choice to leave their abuser. We as a community can work to heal those in need, but increasing housing is where we need the support of government and companies like A&B to complete the circle of healing and have the ability to help a client attain the dream of home ownership or even just a place to call home.

Projects like this one are so important for Maui. It will provide our community with much needed local housing both affordable and market in a master planned community that will include recreational and commercial space. This is exactly the kind of housing that our local community needs if they're going to be able to sustain living here on Maui. It may not be the only solution, but is certainly a step in the right direction. This is a logical extension of Kahului and provides easy access to infrastructure, schools, employment, and services.

Just in my own immediate family I have two brothers, both with college graduate degrees which continue to live and work in California because of the lack of jobs and affordable housing on Maui. As a single parent of three beautiful boys, I was blessed to have the opportunity to become a homeowner just eight years ago solely because of affordable housing initiatives. Never a day goes by that I don't realize how lucky I am to live and work on this place I love most.

With your support, this project could serve many other deserving families the opportunity and dream of attaining home ownership, jobs, and much needed support for our economy. This is a community for the next generation, a place our keiki may be able to make a home for themselves in the future. Again, thank you for the opportunity to testify today, and I humbly ask for your support of the Waiale South Project.

Chair Ball: Thank you. Any questions for Laks? Commissioner Higashi?

Mr. Higashi: I have a question. I think we totally agree with you about affordable housing. When you bought your affordable house what was the price range that you had?



Ms. Abraham: I purchased my home for \$305,000.

Mr. Higashi: \$305,000. And your location is where?

Ms. Abraham: Spencer Homes, Waikapu Gardens.

Mr. Higashi: Waikapu Gardens?

Ms. Abraham: Yes. Not too far from this project.

Mr. Higashi: Okay, thank you.

Ms. Abraham: Thank you. Any other questions?

Chair Ball: Thank you.

Ms. Abraham: Thank you.

Chair Ball: Anyone else would like to testify?

Mr. Roy Katsuda: Good morning everyone.

Chair Ball: Good morning.

Mr. Katsuda: My name is Roy Katsuda. I'm the Executive Director at Hale Mahaolu and we've had the pleasure and privilege to provide home buyer education for the Kamalani Project that A&B is doing in North Kihei. And the response to that has been very, very strong. Briefly Hale Mahaolu manages over 1,000 units on Maui, Molokai and Lanai. We provide personal care to about 650 persons, meals to another 650 persons. We do home ownership, housing counseling, foreclosure counseling. I'd like to just share with you that at one of our sites, this is typical of all of our sites, one of our sites, 115 units, the wait list is 650 and that's without advertising. This project is sorely needed on Maui and I'd like to add my support and our company's support of this project. Be happy to answer any questions you might have.

Chair Ball: Thank you. Any questions for Roy? None? Thank you for coming.

Mr. Katsuda: Thank you.

Chair Ball: Mike?

Mr. Mike Moran: Mike Moran, and to be clear on this item, I am testifying as an individual. Aloha, Chair and Commissioners.

Chair Ball: Aloha.

Mr. Moran: And Happy Thanksgiving to all of you and thank you for your good work as volunteers

diligently getting down here and going through all this detail so often for the good of the community. On this item, C-2, for CPA and zoning changes. In political campaigns we are seeing it again as we have before. With the current group of U.S. presidential candidates they go before a particular group and say one thing and soon afterwards go before another group that has a different values and different opinions to the prior one so they change the message to fit the listeners. They shop the message to what they expect the listeners will approve. Of course this does not happen with our candidates on Maui.

However, we are seeing it in a very related way with this project before you today. When it was before the State Land Use Commission a few years back for this same project the developer showed a varied project than what is to be shown to you today. Will you ask yourselves or them why is this legal, is this pono? Also, is this truly affordable homes, residential project for Maui's working people or simply a selling point for justification where the vast majority of the homes will be for whatever the market will bear? Is there a specific condition that for the affordables will be built...excuse me, that the affordables will be built first or another case, the affordables on the back end which they don't get built at all. Please use caution. I am not testifying against the project, just asking you to do your due diligence and ask these questions. Mahalo.

Chair Ball: Thank you, Mike. Any questions? Thank you for coming. Eric?

Mr. Eric Miyajima: Hi everyone. My name is Eric Miyajima. I've been a resident here all my life. It's kinda funny that Grant talked about Dream City 'cause that's where I grew up too. And naturally in the first increment. So I'm supportive of this project basically because a number of things. One is I've been involved with youth sports for like 25 years and a lot of our kids that went to college on golf scholarships or whatever scholarships also told me in times that, you know, they cannot come home 'cause it's too expensive and there is not enough opportunities. So a project like this, I mean there's a lot of opportunities for jobs especially because as you know that I've been a mortgage lender for 35 years so I understand affordable housing is crucial for our children here. You know, a lot of...take example, I just gonna give you guys an example that one of my really good friends moved to Seattle because he couldn't afford to live in Hawaii, but given the opportunity to move back and have an affordable house to move back to he would jump at the moment. I mean, everybody loves to live in Hawaii, right, especially on Maui. So having something affordable and something that they can budget for especially living in central valley, Central Maui I think it's gonna be convenient for everybody. So...and then being born and raised here it's really important for me to understand because when I grew up here living in the central valley it's easy for my family, easy for other families to attend activities and everything like that. And the most important thing is to have an affordable project that everybody can live and work and given the job opportunities will help. That's my support for the community because this project will give our children a place to buy and live. I think that's all I have. Thank you.

Chair Ball: Thank you, Eric. Any questions? Commissioner Robinson? Hold on Eric.

Mr. Robinson: Hi Eric. You say you're...are you currently a lender or you were a lender?

Mr. Miyajima: No, I am currently, 35 years.

Mr. Robinson: So lets get to the crux of affordable housing. So what does...what does somebody have to make to get a affordable house right now to get a mortgage through you?

Mr. Miyajima: When you say affordable house, how much of a loan amount?

Mr. Robinson: That's a good question. So it's--

Mr. Miyajima: Somehow yeah, when you go...when you say affordable yeah, affordable in my eyes is between three to four hundred thousand, yeah. Yeah you go over five hundred, you're leaving out a lot of people.

Mr. Robinson: So somebody with \$400,000 home what would they have to make annually to get a mortgage today?

Mr. Miyajima: So about \$5,000 a month with no bills.

Mr. Robinson: That's their mortgage?

Mr. Miyajima: No, no that's not the mortgage.

Mr. Robinson: That's how much they gotta make?

Mr. Miyajima: Yeah,...the mortgage is gonna be about \$2,000 a month, yeah based on--

Mr. Robinson: Yeah, so it's 40 percent, right what you guys lent off of the...(inaudible)...

Mr. Miyajima: Forty-five.

Mr. Robinson: And so it's \$60,000 a year?

Mr. Miyajima: Yeah if they had no bills, of course.

Mr. Robinson: And that's, that you guys consider that family, you guys consider that single or it doesn't matter.

Mr. Miyajima: Either way, yeah.

Mr. Robinson: Either way. So if somebody files, somebody comes with, a marriage couple comes to you with that 60 is it any different than a single person coming with 60?

Mr. Miyajima: No, no.

Mr. Robinson: Doesn't matter.

Mr. Miyajima: Doesn't matter.

Mr. Robinson: Okay. And that's 400?

Mr. Miyajima: Four hundred, yeah. But you know ironically, ironically if the, you know like I notice that there's town houses and flats and stuff like that, so a single person making 60,000 and trying to afford maybe a town house or a flat might be at least given an opportunity to own a home, yeah. A family size of five or four making little bit more might be able to afford the 400, maybe depending upon the down and all that. But that's something that there isn't anything out there right now that can provide our kids right now, you know they're coming out of college and wanna come home. It's tough for them to come home. I mean, if they go to Seattle or Tennessee and buy something at 200,000 yeah great, but look where they're living you know. It's not Maui, you know what I mean? They wanna come home.

Chair Ball: Commissioner Lay?

Mr. Lay: So following up on that. This has a lot to do with market and demand, right where because we have so few affordables that will drive the price up already. If we had more, the price might possibly come down because of the availability of it, right?

Mr. Miyajima: Yeah, that's a possibility if there is more supply, but there isn't.

Mr. Lay: Thank you.

Mr. Miyajima: I mean, I can tell 'cause I'm involved in a project just down the street, Waikapu Gardens. They had 800 buyers for 56 units just 'cause it was affordable. It was 800 buyers for 56 lots. So it was pretty tough to see there was only a small amount of people that could be helped. So you know, a project like this would give everybody an opportunity to buy and to live here instead of move away.

Chair Ball: Okay, thank you Eric. Oh, sorry, Commissioner Robinson?

Mr. Robinson: And I just did my math that's \$29 an hour somebody would have to make.

Mr. Miyajima: That's not including you know, bills though yeah?

Mr. Robinson: That's gross though right?

Mr. Miyajima: Yeah, yeah, yeah gross, yeah.

Chair Ball: Okay, let's move on. Thank you Eric. Let's see who has signed up...anyone else would like to testify?

Ms. Kay Fukumoto: Good morning. My name is Kay Fukumoto and I'm here to testify in support of the project. I'm a Maui girl born and raised here. I initially lived in Pukalani with my grandparents and my parents. And my parents were very fortunate in that they were able to buy a property in the eighth increment of Dream City and so we moved down to Dream City when I was in Kindergarten. At the time, you know, really the subdivisions were just starting and I had an opportunity to literally

be at Lihikai School for eight years and then move onto Baldwin High School and go away to college and come back. And I have now purchased property in the 11<sup>th</sup> increment of Dream City. So I've almost lived in Kahului for about 50 years. I again, I'm a Kahului gal married a Wailuku guy. We raised a son who has now graduated from college and is working in California. And my dream is for him to come home and be able to live back in Kahului, and he has also acknowledged that that's what he would like to do as well.

So ten years ago when this project came before the community, you know, A&B literally asked the community to come out and look at the plans and for us, the community to give them input and I was part of those initial meetings. And I was there, you know we did several days of looking at the land, looking at walking spaces and bike paths and you know, making sure this is the kinda community we wanted to build for what I hoped was for my son. You know, he was freshman in Baldwin at the time and now he's already graduated. It's amazing to me how it's taken this long and we don't even have shovels in the ground yet. You know, I love the process of being able to be part of that, to have been involved in, you know, just I think giving our input. It wasn't just them saying this is what we're gonna plan. We literally had maps and we were, you know, putting houses where we wanted and putting the little town center that they wanna build. You know they wanted a walkable community and I really appreciated being part of that.

So I'm a mom with a grown son who is living and working and thriving on the mainland, but he's commented about how he would love to return home to live here one day. And when he does, I think that Waiale would present ideal opportunity for him to raise a family in a community in which he was raised. And Maui is no ka oi but only if can provide affordable housing and a safe community to support the kamaaina who want to live and work on Maui. And my request is to approve the Waiale project to finish the Dream City for the next generation. Thank you.

Chair Ball: Thank you. Any questions? Thanks for coming.

Ms. Pamela Tumpap: Aloha, I'm Pamela Tumpap, President of the Maui Chamber of Commerce, and I too, am here to support the Waiale project. All of us here want homes for our local residents. All of us here have been concerned about that and working for many, many years on doing that. And you know, when we looked to address legislatively how we were gonna create more affordable homes we sorta went too high. We have to understand that developments have to also pencil out to move forward and we had a high affordable requirement that we seen back then...an economist said back then would not pencil out and they have said for years since, hampered our affordable growth and our housing growth in a time when we desperately needed it. And now a project like this that offers a great diverse project with different levels of housing, different sizes, different price points for different markets, but a walkable community with bike paths and parks and the things that we dream of to have near our homes is on the table and this project, many people who has...as Kay said, and of the friends that participated in the process they've been waiting years for this. And now we have an opportunity to have it. And we know we have a pent up demand in the market.

And one of the huge things we hear Roy has talked about, you know the backlash...long back list that they have of people waiting for affordable housing. I remember when I was trying to buy housing years ago to get into Maui Lani you had to be lottery and I tried and tried and tried and never got picked. So I guess I wasn't that lucky. But you know, it is something that we all know has

to be addressed and we need to look at moving forward with great projects and I think this is one of those. I think it not only will help ease the market because we're hearing too that even people with HUD vouchers are having a hard time finding housing to go into. So because of the limited demand, rentals are down we've got a huge market for this. Now the time is right. We've got a group ready to move forward. It will also contribute to building our economy and give us the diversity that we need. So definitely support the continuation of the Waiale project and ask that you move this project forward. Mahalo.

Chair Ball: Thank you. Any questions? Seeing none, thank you.

Mr. Kaneloa Kamaunu: Aloha Commissioners.

Chair Ball: Aloha.

Mr. Kamaunu: My name is Kaneloa Kamaunu. I represent myself as kuleana related to the area of Maui Lani projects having growing on also connecting to this new project that is also being proposed. Also, I represent Aha Moku under Act 212 which talks about protecting resources under traditional and customary practices.

I came today to testify which a lot of people don't and is actually has been talked about before is a battle between Kahikili and Kalaniopuu in this area. And it was recorded by Kamakau and is written about and he's not the only that records it, but they talk about the scope of the area being from Maalaea to Wailuku up and in this area finding of remains of warriors have been, you know, dug up. And they make all these preservation sites not only for the warriors but also for those that lived in the area. And if you come throughout this project all the way down you continue to find preservation sites. Because not only of the battle which entailed 16 alii that came...or 1,600 alii that came from Hawaii Island that lie in this and throughout this area. And you know, that's...even the area of Safeway they have found those remains. Throughout those housing areas they have preservation sites on the lots. And even as of today, about a month ago they discovered remains where that new County baseyard is going to be put. They found more than one remain. And that only goes up to the counting of what is being said. And also if you look at the AIS from 2010, the report states and I not quoting, but states not to be surprised if more remains are found which has come true. It's continuous. It's continuous and this is to me, any other way this will degradation. It is part of my culture, my history. I connect to these that lying there. In 1900 there was a congregational debate, it was 56<sup>th</sup> United States Congress they had a debate on citizen on naturalization of inhabitants in Hawaii. After the discussion, the conclusion was there was a group of people who refused to take allegiance to the United States and their finding was they could not...if these people did not wanna come freely they could not take them—

Ms. Takayama-Corden: Three minutes.

Mr. Kamaunu: —which is we, and that is also in public law 103-150, it talks about the sovereignty of the natives. The DOI, the wanting to — the Department of Interior wanting to put a Native Hawaiian entity, governing entity government to government proposal that's coming up. Why are these things there? Because we still are kanaka. So my question is if we still kanaka, what about these people? So does the United States or the State of Hawaii, County of Maui have a true claim

to these people that lived there and is what they're doing a obtrusive and against the law by moving them? Because there is an 1860 law protecting and being in place. And that the only way that they can be moved is through proper authority which will be the lineal descendants. Thank you.

Chair Ball: Thank you. Questions? Commissioner Higashi?

Mr. Higashi: Yes, I have a question. The land we're talking about right now was at time sugar cane?

Mr. Kamaunu: Right. Yes, but even--

Mr. Higashi: During the time that HC&S was cultivating sugar wasn't that also the area of burial for warriors and my question to you is, what did the organization do during that time to oppose sugar cane in that area now that it's gonna be housing?

Mr. Kamaunu: Well, I cannot attest to that because that was a different time and knowledge about the area wasn't as forthcoming as it is today especially with having the initiation of the Burial Council which brings up these burials and of course, other cases that have come up throughout the years more recently. So I cannot attest to what happened, I'm still kinda young from that area, I mean that time. So, but I know of stories and people that have witnessed bodies there throughout you know, it's a known fact and it is a historian thing that Hawaiians do bury their people in sand. And with the last remains out in, out in the County baseyard the archaeologist on site showed us the land itself, the lay of the and described why this person would be found here. Well, they were kinda surprised. But my whole thing is how can they continuously call upon inadvertent when if you read the definition it supposed to be not there. I think everything should say that it's not there. So is the AIS which only takes about I believe six feet deep and 20 feet wide on two-acre lots is that enough? Because all the construction been going on they keep finding and so when does it stop?

Chair Ball: Thank you.

Mr. Kamaunu: I hope you answered your question.

Chair Ball: Thank you. Any others? Thank you. Bruce?

Mr. Bruce U'u: Good morning Commissioners.

Chair Ball: Good morning.

Mr. U'u: Bruce U'u, Carpenter's Union, life-long Maui resident. First of all, thank you guys for volunteering your guys time to be Planning Commissioners, a tough, a tough situation you guys in and a lotta dedication. Hats off to you guys.

I'd like to start by saying I support this project and I support mostly every home buyer opportunities there is for our Maui residents. And we all know that's needed. Secondly, as being a construction, Hawaii Carpenter's Union we get the incredible opportunity to not only participate in trying to own a home, to build it too. So it's the best case scenario for any construction worker other than

building a school. We like building schools. I like that part. But building homes that local residents live in it and perpetuate for years to come it's awesome and I can say that because I think the A&B project I live on that was gifted to me by mom in Paia was made by A&B, Hale Nani back in the day, you know, when we could live by the beach when was cheap. And the guys comes my house and they say Bruce this was my first project I ever worked on and you're living here. So I thank the people who had the authority to have the guys accept it and build it and secondly, I gotta thank my mom for giving me the house 'cause she had two more guys for choose from. So hey, whatever. I guess even got one lottery system within the family household yeah.

Thirdly, I was watching football. I'm football fan, but three hours is too long to sit in front the T.V. but I watched the first quarter between the Nevada Las Vegas game, UNLV and UH and what struck me by one incredible surprise was when the guy said hey, get 90,000 Hawaii residents that relocated to Vegas. So now we DVR, I gotta rewind, try repeat that again, 90,000. Now it's close to actually 115. That's what we get. So always told myself, self what is Hawaii without Hawaii residents? It's not Hawaii. They never say California residents moving there. They never say Arizona. They said us, Hawaii, ho hurt. So I get a hard time sit up here, and you know, people keep blocking. We short 10,000 homes as it is today, right now. We shy 10 grand. This is 950. This not even going fix or come close to fixing the problems we get. That numbers going continue to climb elsewhere throughout the United States. They're not from here, they're gonna move there and it's happening. We gotta stop the trend.

So in ending I'd like to tell I would love you guys for support this project and give our people an opportunity to make their life-long dream here, have their kids here, get my kids out of my house, generational living. And it happens right in the hood right now in Paia. So thank you guys for the time, thank you guys for your service. Happy Thanksgiving. Thank you, aloha.

Chair Ball: Thank you, Bruce? Question, Commissioner Lay?

Mr. Lay: Okay, with your knowledge in construction and everything how do they balance out affordable housing versus market value 'cause I understand affordable housing is almost difficult to build it at that rate or have it made. How do they...how does contractors work that out?

Mr. U'u: Thanks for the tough question Commissioner Lay. They're called apprentices. They're called apprentices and get 800 that graduate from high school a year. And I say, they say about 400, 450 go onto college but the remainder try to stay here and make a living. And guys like us in the construction unions we look for the opportunity to give people job opportunities. And this is a perfect example of job opportunities. So thank you for asking that question, Ivan, appreciate it.

Chair Ball: Any further questions? Commissioner Robinson?

Mr. Robinson: Bruce?

Mr. U'u: Yes.

Mr. Robinson: In your union how many make \$29, \$30 an hour plus percentage?



Mr. U'u: You're coming onto the upper percentage of the apprentices. So the apprentices can make that much money.

Mr. Robinson: And how many years would they have to put in to get that?

Mr. U'u: Well, depends on your work hours, school hours, work hours. So if you follow the protocol, you don't flunk classes, right. He was my principal by the way...I had to go night school because you know, I barely made 'em, but that's okay. By your third year.

Mr. Robinson: Third year.

Mr. U'u: Your third year you qualify. And we did the math too. The third year you can qualify to own, you know, to own a piece of the rock on Maui. So yeah, thank you for the question.

Chair Ball: Any further? Thanks Bruce.

Mr. U'u: Aloha.

Chair Ball: Aloha. Let's see...Dick Mayer? Hold on Ken, we'll go with...

Mr. Dick Mayer: Good morning, Commissioners. My name is Dick Mayer. I'm a...was a former Planning Commissioner sitting in your chair about 43, 44 years ago beginning 1971. And I also was a vice-chair of one of the community plan advisory committees and also vice-chair of the most recent GPAC for the Island of Maui.

The project came before the GPAC and I'd like to make some comments with reference to the activities that we did there and the representations that were made to us. And subsequent representations that were made to the State Land Use Commission. The State Land Use Commission has in there in their Condition No. 21, I would like just quickly read it to you, compliance with representation. Petitioner shall develop the petitioned area in substantial compliance with the representations made to the Commission. Failure to so develop the petitioned area may result in reversion petitioned area to its former classification or change to a more appropriate classification. What was said to the LUC was here's an EIS document. We've done the whole thing, we've analyzed the impacts of various kinds and these are the mitigation measures, et cetera.

We now see that they're coming in only for part of this area to be developed and that causes a number of problems. One of which is for example, and there are many but I'll just give you some examples, the schools. They talked about the number of students that would be coming out of this project, the whole Waiale project, the north and south and it was a large number and a school had to be built. I thought the number of schools was minimal given the fact that Baldwin and Maui High are both over capacity at present. They didn't require them to put in a high school. They said there would be a middle school, but there's no elementary school. Now we see this project coming in for 950 homes, families and no school being provided at all. And the elementary schools are quite distance that means school busing. Somebody else earlier said, oh they're gonna be near schools. That's not the case. They've moved as far away from the schools as possible with this project. I

think that that needs to be taken into account.

Traffic. They took a look at the traffic situation for the whole project. They talked about that, and now before you today is apparently a letter from HDOT which we haven't seen so we can't really comment on the questions or the conditions that they're asking you to do there. But there are certain things you should that are available already in their application. Waiko Road will not be increased from a two-lane to a four-lane road. They're talk of putting in sidewalks and things of that sort, but it will remain a two-lane road. This is 950 homes being put on a road that already is taking a lot of the traffic from Waikapu Town down to Kuihelani Highway and it will not be in any way increased in size. And I think that's a major issue that you need to look at even though the TIAR is available, it's not yet something that we can review easily.

Also, they only talk about the intersections going down to Kuihelani Highway. As many of you know, Waiko Road doesn't just go down the hill, it also goes up the hill to Honoapiilani Highway at the top. And it passes through a very tiny little neighborhood there at the top of that road. There's no provision being made how will the traffic and much of it from that community will go up that road to Honoapiilani where people will want to go into Wailuku to work at the County Building or whatever and that's a major issue there.

Wastewater. They talk about putting a wastewater treatment plant not on their property but across the highway on the south side of that highway, the east side of that highway they will have to cross the highway. That area that they're now talking about for their wastewater is not in the Urban Growth Boundary nor does it have an EIS done for that particular site both of which are requirements if they're going to locate it on that side of the highway as they're claiming they will.

The map for the project itself has changed considerably that what was presented to the LUC. It's a different representation now. They've packed in a lot more houses, 950 houses on that lot whereas previously it was a much larger park area and particularly along Waikapu Stream it was a park area all the way up. I urge you to take a look at what they gave to the LUC the basis for the EIS and for the LUC approval for a land use change. That has considerably changed.

There are many other things. The last thing that I would like to comment on is the affordable housing. This is being built...came to us at the Maui Island Plan process that this is gonna be for a lot of local residents and families. They have now reduced the number of affordable houses in this project down to 25 percent of the 950 which is 238. The remaining 712 houses are non affordable. They use a term of market user. They're basically...700 plus units of these houses are non affordable and will be probably not affordable to local families. Even the affordable houses are only affordable according to the County law for 10 years and not in perpetuity. So after 10 years all of those houses can be resold at higher prices and taken totally out of the affordable market. Those are conditions which I wish you would examine. If you go ahead and make a recommendation on this that you make sure that the schooling, that the traffic is properly taken cared of, that the affordable housing is not just at 238 affordables but at a much higher number because that's what this project had going for it as it went through the earlier stages both before the LUC and the General Plan Advisory Committee and the County Council. And make sure that these houses are affordable in perpetuity. Am I three minutes? That's all I really have at this point. Thank you

Chair Ball: Thank you. Questions of the testifier? Seeing none, thank you. Ken?

Mr. Ken Ota: Good morning Chair--

Chair Ball: Good morning.

Mr. Ota: --Commissioners. My name is Ken Ota. I'm representing myself and I am in support of the Waiale project for a couple of reasons. First is I love the location, and second is, I love the timing. On the location end, I am about half...I live in Waikapu about half mile up the road, Waiko Road, West Waiko Road. Love that neighborhood. I see from the standpoint of the location is it's central. It has growth over the last five years that really is an important role for my personal use. We've got now a supermarket, we've got a drug store, we've got all within basically walking distance but I still drive. But at the same time, it just brings that value within Waikapu and Wailuku. I see the growth no matter what will go outside of Waikapu and it falls in line with what A&B's plan is.

So the second from a timing a standpoint, I am in the construction industry. I've been in the construction industry for the last 24 years. Seeing the cycles go through, understand the process of the timing of the market. We deal with the economy, we deal with the interest rates, but we deal with many developers coming to Hawaii and trying to propose affordable housing. Try to have a goal of just having people in the house. The timing I think is a long process and it takes a lot of planning, it takes a lot of consideration of give and take. I think they're in the right timing where we're not gonna see this for still many years, but that process I think takes that time where we see some of the goals accomplished down the road in five years. So that's the important part.

The third thing is I actually love the people who is involved with this project. They're consistent, they're respectful, they're understanding. The thing about this project I think from a developer's standpoint, they care about the community's perspective and they're accommodating and I think that's important from a developer's point of view. They're homegrown, they're here on the islands, they understand what is needed, and they're concerned. That's all I have. Thank you.

Chair Ball: Thank you, Ken. Any questions? Seeing none, thanks for coming.

Mr. Ota: Thank you.

Chair Ball: Anyone else? Would anyone else like to testify at this time?

Dr. Joseph Cohn: Aloha--

Chair Ball: Aloha.

Dr. Cohn: --Thank you for the opportunity to speak. My name is Dr. Joseph Cohn. I'm a board certified internist living and working here in Wailuku. I've been on the island three years and I never thought I'd be at the center of so much representation of the struggles that we're all going through economically, financially, sustainably, agriculturally, chemicals, pesticides, corporations, government corruption, everything. And this is just a microcosm of all of that stuff going. I don't

have the answers for this. I oppose this particular rezoning because it seems like more of the same, and you know we could pave the whole valley which will work until it floods. And...but that's not actually gonna save us in the long term. And so my request is looking for expanded new thinking, innovative thinking that respects the culture and the land and the people, and create something new and different as a model for everyone to live by. We have that opportunity here and we got a lot of resource potentially, you have a lotta smart people in the room and outside, and I'd encourage you to take advantage and create something new and better and different and not the same old garbage that is tearing everyone apart except for a very small percent. And thank you for listening.

Chair Ball: Questions? Commissioner Higashi?

Mr. Higashi: Did you say you're a doctor?

Dr. Cohn: I'm a physician, yes.

Mr. Higashi: And you've lived here three years?

Dr. Cohn: I've been here for three years.

Mr. Higashi: Where were you originally?

Dr. Cohn: New York City.

Mr. Higashi: New York City.

Dr. Cohn: Oh yes, sir.

Mr. Higashi: You're comparing New York City with Maui, how would you compare the living condition?

Dr. Cohn: Thank you. Right now I would say that Maui is where the east end of Long Island was 30 years ago. It was very agricultural, down Suffolk County. I grew up in Nassau County. My home was ...(inaudible)...homes. After World War II, you know, blocks and blocks and blocks just like the suburban sprawl that you're trying to make more of here. Long Island is paved now just about out to the ends, but 30 years ago it was very rural like this. Most recently last 10 years, last 30 years, I lived in Brooklyn, Manhattan, back to Brooklyn before coming here and there's nothing green, there's nothing lush, there's nothing sustainable. Developers like that. They make money. Everybody else is in their little pigeon holes boxed in, separate. We can do better.

Mr. Higashi: My question to you is you've heard testimony about affordable housing. There's a great shortage in Maui.

Dr. Cohn: Agreed.

Mr. Higashi: And you're opposed to this particular project itself. What is your recommended

alternative for affordable housing on Maui?

Dr. Cohn: Thank you. I would use the same area...if I were gonna make this into a residential area, ...but my own thinking really would be...put...make 10,000 homes there. Figure out a way to make 10,000 people with affordable housing...10,000 homes there, nine...not 1,000 or 950. Yeah, stop, stop, stop paving the whole island. Pave one part, build it up so that everybody can live there. What if you were living on the moon? You wouldn't wanna pave the whole surface of the moon. Well, this is part of the moon, alright we got an area, let's build it, let's do it right.

Mr. Higashi: Thank you very much.

Chair Ball: Commissioner Lay?

Mr. Lay: Do you own a home here?

Dr. Cohn: I do not.

Mr. Lay: Do you consider yourself transient?

Dr. Cohn: No, I do not.

Mr. Lay: So you're looking to stay here?

Dr. Cohn: I would like to say that they're gonna drag me kicking and screaming off this island but paying me a boatload of money and then I'm coming back.

Mr. Lay: Thank you.

Chair Ball: Thank you for your testimony. Any other, anyone else want to testify at this time?

Ms. Johanna Kamaunu: Hi, my name is Johanna Kamaunu. I live in Waihee Valley. I'm here before you with a whole lot of experiences. Hopefully this will be the basis for my comments to you, but I'm also a member of the Maui Lanai Island Burial Council, and my comments are not reflective of what the Council has decided in this area, but I just wanna share with you a little bit about what I know is going on out there.

It was unexpected to find the burial remains in the County baseyard. And the site is, the site is also an unexpected setting, and it was believed that this would be outlier of any other remains that may be found. However, since the discovery last month there have been additional finds. Now this is an area that was heavily used for cane and still after all this time we find remains and it's not buried in sand, it's buried in soil. So there's changes we have to make, some adaptation we have to make as to what the possibilities are out there for even more.

Going back to the AIS that was done, it appears that trenches were made for every two acres. Now a trench could be as wide as the desk in front of you and along as 50 feet, but if we did that in this room you can see how much space is left undiscovered, unsurveyed and so the potential to find

more would be greater.

In this instance at the baseyard they hadn't expected to find it so almost half of the remains, skeletal remains were moved. And in the process of trying to identify where it was moved to the area was so vast that they were only able to recover 60 percent of it. But in that process they found that...they know that there's a second one, and they have several remains that are not related to the first two. So the thing is it appears that there is a lot more out there in an area where we thought there would be none. And now we move closer to where this project is Waiale South, and that's why I say this trenching idea and the way it's depicted in your maps appears that they've done a really good job of surveying, but in essence, you can see that a trench in a two-acre parcel is just barely small. There are also segments, larger segments of this area that hasn't had any surveying done. Looks like there might be about a 10-acre size, but none has been done in that area. So again, you have the potential for remains to be found.

The other item is that along the Maalaea side of this boundary where you have the water, the water body, there's a good chance that in those areas again, you may find either archaeological features or remains. So the problem is what do you do now? Do you make plans for this? My recommendation actually, my comment would be that you either correct the AIS and not correcting the AIS that if you approve it, and approve this project that you would do it with the following recommendations. That the Ahu Moku O Maui...no, Ahu Moku O Wailuku be included for providing recommendations. That the Maui Lanai Island Burial Council's recommendations also be included. There was one more...right now I can't think of what the last one is, but there are some things that should be done. 'Cause as I'm looking at this project especially with the presentation that was just made the appearance is so that you will have an oasis type of living experience there and there's a lotta...well, from what I could see from the pictures that were made, they're expected greenery in the area, and not many of the residential communities in Waikapu or this essential area have that, have that feature. I have to applaud that...what is that street going down, going down to the five-miles stretch, not Kuihelani?

Chair Ball: Waiko?

Ms. Kamaunu: What's that?

Chair Ball: Waiko Road.

Ms. Kamaunu: No, the other one by Long's Drug Store. That one, it goes all the way down to Pomaikai. At the bottom of that hill it's beautiful. You know it's green, it's lush, but only right there. And yet it appears that the community that's being presented may show that kind of...be demonstrating that kind of idea. And so, I have no explanation, no other comments to make on this, but I would hope that as you're thinking about this that you would remember one of the main reasons people live on Maui is because of those cultural features. It's because of the history. It's because of the lifestyle they think that Maui has, and that gets lost a lot with development and this type of development. So I'm hoping that as you work with the other groups that you'll be able to change that a little bit more.

Chair Ball: Thank you. Any questions of the testifier? Seeing none, anyone else who would like

to testify at this time may come forward.

Mr. Albert Perez: Aloha, Albert Perez. I'm with Maui Tomorrow and I would like to applaud A&B on their proposal to provide 119 truly affordable homes. Listening to the mortgage broker who testified earlier I did some calculations. So if you take 25 percent that's affordable between 331 and 579 that comes out to 238, and a 100 percent median I believe what he said was affordable was around 400,000. So I consider anything that's affordable to be kinda for people who can make the median or less. And people who can make more than the median income can fend for themselves. So 119 homes are truly affordable which leaves 831 that are not affordable truly. And the other thing is that after 10 years these can go into the market so they won't remain in the affordable market so we have...not only are they not affordable that there's no guarantee that they're going to local families. And many of these with our lack of enforcement on the vacation rental situation could go into the vacation rentals. So I have several friends who do vacation rentals and they say, and I'm talking about the ones that have permitted vacation rentals, for every one that's permitted there's probably 10 that aren't. So I would encourage you to try to condition things. Maybe you could add to some conditions that are more strict than the County ordinances, like maybe just a complete prohibition in this area for vacation rentals to increase the likelihood that local people could afford these homes.

Second, I'd like to talk about the stream. The previous map that was given to the Land Use Commission on this project had a buffer all the way along the stream and the new map has a buffer only about half way. Furthermore, the part that was removed from the buffer is upstream. So if anything, if you're gonna remove part of it, it should be downstream so that you can still have some protection from runoff upstream.

And by the way, on the affordable thing I think that A&B can really afford to be a little more generous with the pricing on this since they already own the land. Probably all of it can be completely affordable.

Finally, I just wanted to bring your attention to a land use condition, a Land Use Commission condition, No. 20 on this, the infrastructure deadline. Petitioner shall complete construction of the proposed backbone infrastructure, primary roadways and access points, internal roadways, on and off site water and electrical system improvements, and storm water drainage and other utility system improvements within 10 years from 2012, and that covers the whole thing not just the Waiale South. So, I would like to see the infrastructure for the whole thing put in in compliance with the Land Use Commission condition. Mahalo.

Chair Ball: Thank you. Any questions? Seeing none, thank you. Any other testifiers?

Ms. Lucienne de Naie: Aloha, Commissioners.

Chair Ball: Aloha.

Ms. de Naie: My name is Lucienne de Naie. I handed out a map a little earlier. It has some circles and everything so that will be part of my testimony if you can grab that. I, too, served on the Maui Island review and the GPAC so this project was part of our review. I also attended all the Land Use

Commission hearings and testified there. Is this in sync with our Maui Island Plan? Well, the concept of having some housing here, yeah that's in sync. But how, how it's gonna be done is another matter. I feel very strongly that the maps that were shown to the Land Use Commission that showed the park along the entire length of the Waikapu Stream and touted the idea that this would be an amenity of the project are the proper way to plan this area. The fact that half of this park...the park was eight acres according to the map I had along the stream. And the Waikapu Stream itself is a cultural resource. It is mentioned in the community plan for Kahului-Wailuku area as a cultural resource. The community has worked hard to restore the flows. That stream is a beautiful flowing stream. Eighty acres of this 122 acres drains into the Waikapu Stream right now. Not such a big deal 'cause right now at real peak storm that could be 9 million gallons, but when this goes in that's gonna increase to 135 million gallons a day capacity or 252 cubic feet per second. Now all that's supposed to be retained by a retention basin. Will that actually happen? There's not much follow through from our County to inspect all these things. They're busy doing a lot of things. So this stream could be impacted. It seems crazy to remove one more potential area to absorb that runoff which would be the linear park. Just having a bike path along the stream is not enough. So I would really recommend that just the park go back in, eight acres doesn't seem a lot. Probably three acres is still remaining. Let's do something and make sure that that eight acres is there.

Also, I'd like to speak to the little chart that I gave you. It shows the areas where the trenches were done. You've heard about the trenching. You've also heard about the fact that inadvertent burials were found really right just a little bit south of this project on the land that the County purchased for its baseyard. So there have been questions about why weren't burials found when farming took place? Well, sometimes because this is sandy soil there have been deposits and deposits over years and these burials were a little bit deeper. Are burials present where farming has been taken place? Yes, Maui Lani had 300 burials found inadvertently that were never known. The north part of this project has 100 burials that were found. Only five were found during the archaeological surveys. Should there be more trenches? Yes, there should be. Ten acres of this parcel was not owned by the applicant and so it was never surveyed. In their application they say we don't need to because we didn't anything in our other 54 trenches. I'm sorry, the State Law does not actually work that way. It basically says if there's an area that hasn't been surveyed especially if north of here you found burials and south of here you found burials you really need to do trenches on that area. So your recommendation I think should correspond with that from the State Historic Preservation that more archaeological review be done on this project. Listen, they can't build it till they have a sewage treatment plant so it's not like this is gonna happen next year. They certainly have time to do a more thorough archaeological inventory review as part of the process and I would hope that you would recommend that. Thank you very much for your time and really appreciate you putting a little intention to make this a good project.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, at this time we'll take a recess till...don't worry, we'll come back and we'll continue the public testimony at 1 o'clock. We're in recess.

A recess was called at 12:00 p.m., and the meeting was reconvened at 1:05 p.m.

Chair Ball: We will be continuing our public testimony on Item C-2. Anyone that would like to testify



at this time, come forward and you have three minutes.

Mr. Mercer Vicens: Aloha and good afternoon Chairman.

Chair Ball: Aloha.

Mr. Vicens: And Members of the Planning Commission. My name is Mercer Vicens and I'm resident of Spreckelsville. I am a over 30-year employee of Matson and Alexander & Baldwin, but retired about eight years and I'm a...I own a consultant business today.

What I wanted to speak about is that, you know, because Dick Mayer and I are older than most of the people in here we've been able to do a lot of things over the many years. I served on the Burial Council for about eight years and during the course of the Burial Council a lot of times the inadvertent burials and actually burials that were found, were found in areas that were earmarked were taken care of. I think we set aside about a 23-acre parcel maybe larger that I can remember to take care of the finds of the great battles that Kaneloa talked about. And I think that one of the things that we prided ourselves in is working with HPD to make sure that when we went in and did a survey of the area, archaeological survey we followed the law. We followed exactly what the law called for and we never deviated from it. Once done, it goes to SHPD, they either approve or disapprove our findings and then they move on. In this particular case, all of that has been done. So to say that, that you either haven't done enough holes or too many holes is kind of a redundant statement because we followed what the law said. That's my belief okay.

The second thing is is that you, as Commissioners, are the first leg of a fairly long journey if you don't count the LUC and State and all the rest of them. So you're the very first of the County that's gonna say yea or nay. So when I look at you I see opportunity, I see opportunity to put some fellow people into homes. And although you're talking about a first phase of an opportunity out here in Waiale remember that the project is around twenty-two, twenty-three hundred in total. So you call it phasing, you call it what you want this project district. We're doing that way. It's to be able to clarify what we can do now following on the heels of Kamalani. Kamalani will break ground next year, early first quarter, and probably deliver in '17. We should be able to deliver in '18 if everything goes well. But this is the area that I'm talking about where you have an opportunity to move this thing forward. We understand what's gonna happen at the County Council level. They're gonna come up with ideas that say you need to do this and you need to do that. Let them do their job, you do your job and afford us an opportunity to move on. That's all I'm saying. We find that many projects don't move because of indecision. Well, in the General Plan we said we're gonna provide 12,000 new homes by the year 2030 is that gonna be possible if we don't start somewhere? This is the somewhere for you. Again, I look at it as an opportunity. An opportunity to send a message to the County Council that this is what we want. We wanna provide housing for our people. We wanna be able to send that message to my kids on the mainland, 34 years can't return. Had a daughter recently return after 34 years and she's taking a chance. But guess what, she's part of the hidden homeless. She lives with me. So you know, we're not necessarily providing opportunities for homes. My oldest daughter is 56 years old. By all rights she should own her own home. She's paying 1,600 a month rental for a three-bedroom place. You know these are the opportunities I'm speaking of. This is the chance to say to them hey look, come home. Or if you're here this is an opportunity to start somewhere. So I'm pleading with you today to be able to look

at this opportunity and say, yeah we gotta start some place and we gotta move this project forward. And you know, the devil be damned. We gotta do it. Thank you very much for your kind attention.

Chair Ball: Thank you. Questions? Commissioner Robinson?

Mr. Robinson: I apologize I was tardy. I missed your introduction.

Mr. Vicens: Mercer Vicens, Chubby Vicens. And I've been on island for over 30 years. I worked for Matson originally and I ran the A&B Properties Division for a number of years and retired about eight years and own a consultant business.

Mr. Robinson: Consultant, okay.

Mr. Vicens: But I was...among the other things I was on the Burial Council for eight years. I was part of the 25 that made up the General Plan Advisory Group for a three or four-year stint. So I try to stay abreast of community efforts.

Mr. Robinson: Thank you.

Mr. Vicens: I love this place.

Chair Ball: Any further? Thank you.

Mr. Vicens: Thank you very much.

Chair Ball: Claire?

Ms. Claire Apana: Good afternoon. Is it on? Okay, I'm gonna have to ask for assistance at some point in my testimony just warning you. Thank you very much for letting me come today. And I have a little dilemma here because tradition would have it that you don't contradict your elders and I think Chubby you're definitely my elder even though you called me Aunty, okay.

As far as following the law, I think that I have done everything within my power to follow the law and to speak for these burials in this land for the cultural features. I've done my homework. I've walked this land many, many times for many years, and I have gone to the Land Use Commission. I've gone to the County Council. I've gone to the developer, A&B to talk to them to try to get them to hear that there is a better way to build these neighborhoods. What's missing is the kanaka maoli. I don't know how but we always forget us. We always for us in these commissions. You asked a history of this place, this is...these are the plains of Kula Ka Maomao. There's not one on every single island but there is one on Maui. Literally translated, the winds of the dead spoken about by Joseph Nawahe, great patriot, statesman, self-learned lawyer and judge and he states that it is an oily business that has lead to the giving of these lands. And these lands he's speaking of are actually crown lands. I want you to know that. I'm not making a case for that because I do know the entire history of land sales in this place and all of a sudden one day there was lease and the next time it was an ownership by A&B. I have all the documents.

But for the sake of Maui which is why I come to do this I want you to think about why you're sitting here. We don't want to build another Maui Lani where people have to bless their houses. Right now my cousin just came last month to see a friend who's really sick. She moved there three years ago. Ever since she's moved into the Dunes right on the golf course she's been sick. She's looking to sell her house, her beautiful dream house, and she's not the only story, not the only story 'cause I hear many of them. Do you want to rush through and get this done so that you can have houses that are haunted?

The last time I came before this board about this matter was with Safeway and I pleaded with you, not all of you, some of you were here to please be more respectful. Put in some rights for the cultural practitioner and a`ole. A`ole, and what did you get? I sat there brokenhearted before it opened saying I totally failed. They moved 12 more sets of iwi, of bones to build that store. I totally failed here. And to my surprise it was when it opened vodka bottles were flying off the shelf, footprints were appearing, people were getting locked in the freezer. Every kanaka maoli that worked in that store refused to work in that store. Is this the kind of community you're looking for? And let me tell you why. I sat through all, every single one of those Land Use Commission meetings just to tell them that the EIS is incomplete. And they admitted the EIS is incomplete, we haven't finished all the archaeology reports. In particular I believe was the one where they came, A&B or their affiliate whoever was leasing their land came before you with an SMA for sand mining. And your decision, finish up the last SMA and put in the burial treatment plans, the monitoring plans before you get this next one. What happened, they never did it because it was not their intention ever to comply.

I have here, and where's my man, oh here he is. Okay, I'm sorry I gotta ask him to read for me.

Chair Ball: Okay, let's wrap up the testimony Claire, okay.

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

Chair Ball: How long is it?

Mr. Dias: About a minute or so. Okay, safe neighborhoods, best practices, traditional values equals respect of land and kupuna. Referral to the Aha Moku O Wailuku as part of Aha Moku O Maui, LLC, and Cultural Resources Commission of Maui Nui for input. Recommendations and decisions about the protection of kanaka maoli traditional practices, values and artifacts and land features including all iwi kupuna already disturbed, identified or to be discovered before any grading or grubbing occurs and a cultural monitoring plan is approved by SHPD. Cultural monitoring, grubbing and grading by area descendants be done with each phase of development especially during grading, grubbing and ground altering activities. Also when sand moved be shifted. All sand mining defined as removing sand from the project boundaries be reported and preliminary monitoring reports that is submitted monthly to SHPD and to Aha Moku O Wailuku. Failure to comply with the monitoring plan or monitoring reporting requirements will result in immediate halt to any work activities on the development site. The Police Department, State Historic Department archaeologists or Maui County Planning Department representative can call for a stop work order to access and remedy the situation. Burial preserve areas will be recorded at the Bureau of Conveyances before any Phase 1 permits are given. A cultural preservation plan will be

established for management of important cultural resources. Identified in the burial treatment preservation areas, the Wailuku river and the sand dunes and any other pertinent cultural features. And lastly an accepted plan for the endangered species Blackburn's Sphinx Moth be established with the Department of Fish and Wildlife before considering any Phase 1 approvals of any parcels included in the A&B boundary amendment for the Waiale project.

Chair Ball: Let the record reflect that Danny Dias is just reading the testimony for Claire Apana and not a recommendation from the Department for that.

Ms. Apana: Thank you. What I was referring to about going against my elder is that if you look at the last three things, those are things that have not been done and are in the Land Use Commission requirements. And maybe it doesn't matter to you whether the burial preservations are recorded in the Bureau of Commerce but it matters to me. I went there yesterday just for the purpose of looking to see if they were there and they were not. I had the staff help me because as you can see I can't even read my own notes. So they helped me. They could not find them.

Chair Ball: Thank you, Claire.

Ms. Apana: I would like to finish the last two.

Chair Ball: Thank you. Any questions for the testifier at this time? Commissioner Robinson?

Mr. Robinson: Claire there was, there was meetings the last few years for this project. Did you attend any of those meetings?

Ms. Apana: I'm not sure which meetings you mean.

Mr. Robinson: I think I saw on the...there's the Kahului community meeting. They had that with regarding to this project or any ones before that. Were you able to attend any of those meetings?

Ms. Apana: You know, I was not given notice of those meetings although I have identified myself as a cultural practitioner in this area. And spent many hours with the staff. I was not given notice of that. I live in Wailuku and I have, I have not attended any of those because I did not get any notice of that. I would have, I would have thought that if you wanted to have the public actually know more 'cause I mean, I know the entire history. I know the history from the plantation. I know the history from before that. I know the history of going through land use and other projects, but they never contacted me or asked me and I am very willing to share that because I think that we can make a better plan.

Mr. Robinson: Okay, thank you.

Ms. Apana: Thank you.

Chair Ball: Any further questions for the testifier? Seeing none, thank you. Anyone else? Would anyone else like to testify at this time? Is that a yes? Is that a grunt? Seeing none, public testimony is now closed. We will move onto the recommendations by the Staff. Danny if we can

have that please?

Mr. Dias: Thank you, Mr. Chair. The Department feels that the proposed action is in compliance with the applicable standards for a community plan amendment, change in zoning and Project District Phase 1 Approval and the Department recommends approval of said applications subject to two conditions that we recommended and when the time is right, we do want to discuss the DOT conditions that they've proposed. Thank you.

Chair Ball: Thank you. Questions from the Commission to the applicant? Commissioner Robinson?

Mr. Robinson: Aloha Grant.

Mr. Chun: Aloha Keaka.

Mr. Robinson: I'd like to, I'd like to agree with a testifier, Mr. Ota about A&B, I think you guys are very well suited in the community. Every event I go to I see you guys as the lead sponsor if not a co-sponsor. I see you guys very, very involved and I think you guys are a positive influence to the community so I wanted to say that first and thank you guys for continuing to do that even though even the rough times you guys were still doing that so that's good. So now that the things are things are doing better and your guys production is, I wanna go back and I don't know if you heard this, I'm all about affordable housing. And we've heard a couple different testimonies about what affordable housing is, what is not, what the price is. We had a testifier from United Way testifying on how much you help them, but I'm pretty sure that the people in United Way under that program couldn't afford the houses that we're talking about now. My question is, at this point, do you folks have a...there's a couple...do you folks have a hard price on your affordable housing, and with that price the exact units you guys are promising to build. And third, of those units how many are you promising to keep in this area and not use it as a tax credit to go for some other project, but what amount of affordable homes are gonna be in this exact area?

Mr. Chun: Okay, so the plan for the affordable housing in this area would, of course the project is a few years away as you know, but in today's dollars what we're looking at is starting the sales of the affordable homes in the high 200's. The range of pricing is based upon County standards that are prescribed through HUD guidelines that are prescribed to by the Department of Housing and Human Concerns here, but in today's dollars that's where we would begin.

Affordable housing standards call for providing homes for a variety of income levels that by definition of ordinance fall within what is deemed affordable. And so the...and those are income categories 80 to 100 percent of median, 100 to 120, et cetera. And so the pricing of the units is based upon an interest rate that the County establishes as being a reasonable interest rate given the market conditions over time. So what a family can afford is based not only on their income but also the prevailing interest rates that are available. It affects their borrowing power, yeah.

Mr. Robinson: So let's say 300,000 high 200s, let's say 300,000-

Mr. Chun: Yes.

Mr. Robinson: How many of those units are gonna be in this project?

Mr. Chun: You know what it's a little early to say...well, the idea is that this project's affordable requirement will be accommodated within the project or in another project that we're doing in Kahului, you know. This project's affordable units are not intended to be used for another project 'cause I think that was one of your questions, yeah.

As far as the exact units, we're not at that stage yet, but we will be coming back to you folks with a...like I said a more finely grained plan that will speak to unit types, elevations even, you know, very specific kinds of planning discussions that will occur as we work forward to establish the mixture of home types that will be suitable for this neighborhood.

Mr. Robinson: But you had...I mean, you guys have penciled out this project with so many homes should fall in this category so on and so forth in that category and we're here, you know, granting a zoning change—

Mr. Chun: Yeah.

Mr. Robinson: —which that land is not worth as much, but as soon as we change that zoning there'll be all kind of people you know lined up. So there is an advantage of having a different zoned land and then it being changed after the fact, so it's just really the construction and the site work. So with that being said, do you have an estimate?

Mr. Chun: Are you asking about the number of units?

Mr. Robinson: Yes.

Mr. Chun: Oh okay. So the number of units that would be required assuming we do build 950 homes in this area, could be less, but if it is 950 homes you're looking at almost just shy of 200 affordable...units that are priced in that affordable range.

Mr. Robinson: But it's a minimum, but you guys can build it a 100 percent if you really wanted to right? A minimum and a requirement are two different things, right?

Mr. Chun: You know depending upon the market the pricing of the units will be adjusted accordingly. Now so what that means is in today's market until very recently at least many homes that were not technically encumbered by a residential workforce housing agreement were being sold at rates that would fall within that category, right. So it kinda depends on the market to be perfectly honest. That said, this is an area that is planned for you know, basically local working families. So in today's dollars the single family homes, traditional single family homes would start in the 500s.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay, Grant following up on that. Isn't it true that to build an affordable home at the rates that you guys are saying it is affordable, can't be done because we need some balance from

somewhere else so your market value homes help to build the affordable homes. Is that how it works or can a affordable home be built by itself at that price without any other money coming from anywhere else?

Mr. Chun: Yeah, that's the penciling that Mr. Robinson was referring to and definitely there's a significant subsidy that's required in order to produce the affordable homes, and that subsidy comes from the market, the market sales.

Chair Ball: Director?

Mr. Spence: I'd only like to just comment. It's hard for a property owner to say, you know, he can tell you in what today's dollars are but two years from now, three years from now, you know it's hard to say what the price of steel is going to be, the price of oil, the price of wood, transportation into the islands, you know for materials. I mean, he could give you, what it would...you know, they could do today, but what we find with our land use system here in Hawaii it takes so long to do stuff, it's hard to actually make a commitment. So I'm just offering that...you know, on the one hand Grant's saying the market is gonna dictate, but on the other hand there's externalities that we absolutely do not control living here on the island. So there's gonna be flexibility.

Mr. Chun: Yeah, exactly. And to the extent that the pricing of the affordable units is driven not so much by market conditions, but by the ordinance. The extent to what subsidy of those units is gonna be required is gonna depend as well, yeah.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Grant, I was concerned about several things with the infrastructure. One, beginning with Waiko Road.

Mr. Chun: Yes.

Mr. Higashi: I don't see anything that shows that it's gonna be widened in any way with the increase with 900 plus units on the south side of Waiko Road. Are you planning to do like a double lane so that it's wide enough so that the traffic can flow all the way to...

Mr. Chun: Yeah, maybe...I have our traffic consultant here so maybe it would be best for me to have him address that.

Mr. Matt Nakamoto: Good afternoon, Matt Nakamoto from Austin Tsutsumi & Associates, traffic engineer. yeah, so you know in our traffic study we did study the intersection of Waiko and Kuihelani Highway. And within the traffic study we didn't recommend any improvements knowing that the intersection could actually handle it assuming that the timing at the intersection is appropriate. That's primarily because the traffic along Kuihelani Highway itself is relatively light. But I also have the understanding that and you know, based upon the letter from Public Works you know that ultimately they're gonna have to, they're planning on doing an improvement at Waiko Road which ultimately will bring it up to 36-foot of pavement which is equivalent of three lanes. So inside the traffic study itself if you look on the intersections with all of the different access

points for Waiale actually shows having a left turn lane in and also on the Waiko baseyard project which is across the street in their traffic study they also have improvements along Waiko Road. You know and actually, so again there will be improvements that are beyond what's shown in the traffic study.

Mr. Higashi: Is it gonna be proposed for three lanes or is it just in a study?

Mr. Nakamoto: Ultimately the roadway will be three lanes, but there's also other things like the Waiko baseyard project. They're proposing to have a right turn lane in to their development and ...(inaudible)... that comes by widening Waiko Road to four lanes in that section between our first access point and Kuihelani Highway. Yeah, so...and I believe we actually have a graphic that shows that too. I don't have it handy right now. It was in the presentation.

So you know, currently right now Waiko Road is a two-lane which is 24 feet wide if I recall correctly. And so really that doesn't provide you with the ability to turn right off of Waiko Road onto Kuihelani Highway as a separate lane. I mean, ultimately when you hit the wider pavement width and that ability would be possible.

Chair Ball: What are we looking up?

Mr. Nakamoto: We actually have a backup slide with a conceptual drawing of what it looks like. Sorry it's taking so long. So this is the drawing that illustrates what we're talking about. It's hard to see the lane lines there. Sorry, it's a little bit small, but the way that the drawing is oriented north is actually to the right so the bottom part of the drawing is Kuihelani Highway and the road that's going up and down is Waiko Road. So as you can see that section there if we were building out to the 36-foot pavement width you actually have three lanes and on the right side of the drawing is that forth lane I was talking about that would be associated with Waiko baseyard which would be a right turn into that road.

Chair Ball: Is there a question?

Mr. Higashi: So the middle is stacking?

Mr. Nakamoto: Yeah, the middle...the middle part could be either median or you know, I mean I guess it depends like the pavement width will be 36 feet and it could, it could either be like a median or a turn lane is possible.

Chair Ball: Okay, any further questions? Commissioner Hedani?

Mr. Hedani: I guess this is for Grant. Grant, you know when I look at Waikapu Stream—

Mr. Chun: Yes.

Mr. Hedani: —that comes down adjacent to this project area the perspective that I have is that it makes a perfect opportunity to create the community asset for the entire community along the entire stretch of the stream. Is there a possibility that you can look at expanding the park designation that



you have along the entire length of the stream up to the existing Waikapu community?

Mr. Chun: Yes, Mr. Hedani just to clarify the exhibit that was provided in the presentation was...the green space indicated there was to show the loop trail system that would be accommodated because of the location of the neighborhood park as well as the treatment of the streetscape so that there would be a good loop for walkers, joggers, people walking their dogs or you know, kids riding bike. But that's not to say that there wouldn't still be a buffer area along the entire length of the stream, a green space along the entire length of the stream. And as Mr. Dias mentioned earlier, much of what's provided here is very conceptual because there is a Phase 2 review that will be coming before you all. So in that process we'll be continuing to have ongoing conversations and work with Will Spence and his staff to arrive at a plan that we all agree is worthy of your consideration. So right now it's very conceptual honestly, but the concept of you know, a buffer area along that corridor is you know, still something that we're thinking of that...the exhibit was more to exhibit...was more to demonstrate the loop trail system.

Chair Ball: Okay, Director?

Mr. Spence: Thank you. And if I could just follow up with that. We've heard some testimony that this illustration is not the same as what was presented in the EIS and...or what was before the Land Use Commission and it does differ considerably. But just maybe if I could explain a little bit about Project District Phase 1. What the Commission is being ask to make a recommendation to Council, is, it's just you know, Council you should approve this zoning and establish the project district. And there's exhibits in here with all the standards and all those kinds of things. Phase 2, they're actually gonna develop a map, they're gonna show hopefully the buffers along the streams and more detail with you know, where the parks are gonna go. And right now with...this is Exhibit 4 in your staff report, it is very conceptual and it just reports residential, residential, some park, couple roads and VMX. We're hoping this comes back with a lot more detail and you know, I'm a little concerned about the VMX just being oriented towards the highway, the park, I am not sure that this is enough park space for those number of homes, those kinds of things, but we will work together with A&B, happy to do so to get this project off the ground. So we are fully in support of granting this Phase 1 zoning.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Part of the reasoning you know of my suggestion was that because there are impacts that the project would create to the existing Waikapu community tying in the corridor or the park open space corridor to the existing Waikapu residents on the upside would give them something positive that comes out of the project that they can benefit from as well as absorbing the impacts of traffic going up into Honoapiilani Highway.

The other comment that I have if I could continue is that I really like the architectural renderings that you provided here. I think it shows a sense of place. I think it shows a mix of types of housing that would be truly attractive to a lot of people. Attractive to a lot of the 850 people that Eric was talking about of which only 56 had a chance to get a home. So I think the project is hugely attractive from that standpoint. I also like the ratio that you have of residential to VMX in the total project area that's displayed because we need the housing. We don't need a Long Island solution with

10,000 units on a 123 acres to make Waikapu to look like Long Island but I think the project that you proposed has a sense of place and it has the opportunity to be embraced by the Waikapu community.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Grant, I think from a commissioner's standpoint it will help us if A&B can give us kind of like a master proposed plan for Phase 1 and Phase 2 showing where you're gonna have your affordable housing, approximately how many affordable like for young couples with condos at whatever market price you figure it might. I think it will be a better selling point to get the project off the ground if we know because most of us are concerned about affordable housing and approximate number would definitely assist us in getting a better picture of the whole plan rather than only looking at the small Phase 2 part if we could see Phase 1 how you're gonna propose to do that, that might help us.

Mr. Chun: Okay, well just to speak to that and to clarify the process going forward. Definitely what's referred to as Phase 2 Project District review before this Commission those kinds of information and that level of detail will definitely be reflected in the follow up Phase 2 review for Waiale South. Now for Waiale North the issue as I had put out there previously. There's a lot going on in Waiale North that we don't control and so the concern on our part has been in order to be sort of responsive to that to develop a plan that is in concert with that, so basically have a neighborhood that fits and doesn't look real piecemeal, we're gonna have to let the State and County do their thing and establish their own plans for how the...how that area adjacent to Maui Lani is gonna look and feel, yeah. So that's really gonna inform how we do a good job in planning for Waiale North. So long story short, when we come back together with the Planning Director and Department with that level of detail it will be for the south, yeah. We won't, we won't, honestly we really won't have that level of detail for the North for a while because we're waiting. We're waiting to make sure we do a good job and plan in accordance with what the various agencies are doing.

Chair Ball: I have a question for you on the Exhibit 4, and you show an exit onto Kuihelani from the project?

Mr. Chun: Oh, yes. Yes sir.

Chair Ball: Is that mandated or is that be something that's eliminated?

Mr. Chun: That is actually an existing permitted access that's been there--

Chair Ball: That's the second light that's out there now?

Mr. Chun: No. It's beyond there. So the second light that's just past, immediately past Waiko Road will go away.

Chair Ball: Oh okay.

Mr. Chun: Yeah. And this second access will basically replace that. And it's desirable in the

context of relieving stress on Waiko Road and allowing people to go directly onto Kuihelani especially Lahaina bound traffic or even traffic coming into the community won't necessarily have to go to Waiko Road. So that's the idea.

Chair Ball: I was just concerned that we have another light, another light, and another light like how we fixed ...(inaudible)...

Mr. Chun: Yeah so that light that's there now will go away.

Chair Ball: Okay.

Mr. Chun: And this will replace that. So it will be further apart actually where it is now.

Chair Ball: Excellent. Anyone else? Is there a motion?

Mr. Robinson: I have, I have...I apologize I was ...(inaudible)...

Chair Ball: What are you apologizing for?

Mr. Robinson: For you guys. I wanna ask a question for Grant.

Chair Ball: Oh okay. Continue.

Mr. Robinson: You can do the motion after that. Sorry, Grant.

Mr. Chun: Oh, no.

Mr. Robinson: So with the housing being developed Grant, and the middle school being on the next phase is...did I hear you correctly saying that Maui Waena is already suitable to handle the influx of children and Pomaikai is also able to handle the influx if those in five years?

Mr. Chun: No. Actually, you know, actually as luck would have it I wear another hat, yeah.

Mr. Robinson: Oh, okay.

Mr. Chun: I sit on the Board of Education for Maui, and so the department has a pretty comprehensive strategy for addressing the needs of the school populations as anticipated going forward and that's why the key facility that has been identified as being necessary for the Kahului area in particular is a middle school. The anticipated population demands on the Central Maui schools are gonna shift somewhat because ultimately there will be a new school in Kihei, and right now a lot of students are coming in from Kihei to go to school in Central.

Mr. Robinson: For the high school or for the--

Mr. Chun: For the high school. For the high school. So right now that's what the DOE is calling for as being necessary for its long range plans and we have actually entered into an educational

contribution agreement with them to provide that parcel.

Mr. Robinson: So that new building at Maui Waena how many more students is that gonna hold when it opens next year?

Mr. Chun: You know, I'm not sure.

Mr. Robinson: Sorry, DOE I figure I could slide that in and ask that.

Mr. Chun: Yeah, I wish did. If I knew I'd tell you.

Mr. Robinson: Last question I have please. Grant, is there any restrictions on the people that's gonna purchase these homes that they have to first time home buyers or single home buyers or any type of those restrictions or is it first come, first serve?

Mr. Chun: The County ordinance has a preference in favor of first time home buyers. So they get basically first dibs if you will on the homes that are priced in that affordable range per ordinance.

Mr. Robinson: And how does that preference work? If 2,000 people signed up they would have a list if they're first time home buyer?

Mr. Chun: Yeah, and actually it's fairly fleshed out in the ordinance. If you've owned a home or greater than 50 percent interest in a home in the past three years then you cannot be considered for a first time. You cannot be considered as a first time home buyer.

Mr. Robinson: For this whole project?

Mr. Chun: For this whole project, yeah.

Mr. Robinson: Okay.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I'd like to move to approve.

Mr. Lay: Second.

Chair Ball: Moved by Medeiros, seconded by Commissioner Lay. All in favor, please say aye, raise your hand. Oh, Director?

Mr. Spence: Commissioners, we received that letter from Department of Transportation with some recommended conditions either...at a minimum it needs to be noted for the record that we've received it. And kinda maybe stressed a little time to discuss them thoroughly. Would you like to include those recommended conditions or would you like to pass those along to the County Council for their consideration? The record needs to reflect more than...

Ms. Duvauchelle: I have to talk? I would move that we pass them onto County Council.

Mr. Spence: Okay.

Chair Ball: Is there a second for that?

Mr. Higashi: Second.

Chair Ball: All in favor of passing those along please raise your hand?

Mr. Spence: Okay, that's six ayes.

Chair Ball: That's everyone.

**It was moved by Ms. Duvauchelle, seconded by Mr. Medeiros, then**

**VOTED: To Forward the Department of Transportation's Recommended Conditions to the Maui County Council for Their Consideration.  
(Assenting - S. Duvauchelle, J. Medeiros, I. Lay, W. Hedani,  
K. Robinson, R. Higashi)  
(Excused - L. Hudson, M. Tsai)**

Chair Ball: Thank you.

Mr. Spence: Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Discussion on the main motion? Actually it's still a question for Grant. Grant?

Mr. Chun: Yes.

Mr. Hedani: The Kahului Shopping Center, the super block, what is happening on that and the reason I ask is because you know the Commission views proposals that come to us, we approve it and then nothing happens. From my perspective, I wouldn't want the same thing to happen here. So the question is, is it moving?

Chair Ball: Let's...can you rephrase that question to be specific about this project?

Mr. Hedani: From the standpoint of this particular project on a timing basis can really look to A&B to move forward expeditiously on it on a time frame that will deliver housing in the near future? And at the same time can you give me an update on the Kahului Shopping Center project?

Chair Ball: You can answer the first one. You don't have to answer the second one.

Mr. Chun: I can talk to you after about the other one, but with regard to...we are under a condition

of the State Land Use Commission to basically move forward with this project within a 10-year window since approval by the Land Use Commission which was in 2012. So just to give you a time line as far as what our intention is. Our goal is to deliver homes within two and a half years after zoning is established. So once, assuming we're fortunate enough to have affirmative motion today, we still have to work with the County Council to establish zoning and then of course, continue our ongoing discussions and work with you all and the Department on the Phase 2 and Phase 3 Project District. But the goal is the first homes in this area in the 2018-2019 time frame. So that's why we just need to move things along so that we can achieve that.

Mr. Hedani: Thank you.

Mr. Chun: Okay, and I'll talk to you about the--

Chair Ball: Yes, and the other reason why I stopped you on that second question is because we did not agenda item that and so we don't wanna break any rules. Commissioner Lay?

Mr. Lay: Can I...back to Grant again, Grant I have a question just on everything, processing and being done in the right way, you're saying that a lot of these couples out there that you know, the first time homeowners, first time buyers is there anyway that you guys are helping out to educate these guys so they know what they're getting into and what it takes to get into your affordable housing?

Mr. Chun: We are. We actually we've reached out gosh I would say over a 1,000 individuals, employees of ours, employees at the various banks, different constituencies of...just Friday I was at the Westin Maui's Employee Health and Wellness Fair to make folks aware of a requirement that actually has kicked in nationally that first time home buyers actually a course in order to satisfy, in order to satisfy requirements to qualify for certain kinds of loans. So it's not just a nice to have in many cases, to get access to the pots of money that are made available through the lending institutions by the Federal Government people need to take these classes. And the reason they've been actually kicked up to the level of being required is because of course, during the downturn there was such an issue with people basically having gone into situations they probably shouldn't had gone into in the first place. So yeah, we've actually since the tail end of September and into October, we've been working with Hale Mahaolu which is a certified trainer in home buyer education and we've signed up classes of about 30 participants. So far, yesterday was sixth group, sixth or seventh group that had their two session, first of their two session class. So yeah, we're really wanting to...you know we're all concerned about you know, the local community and the next generation and so that's part of it. You know, that's why we're kind of...it's actually not our job to make people take this class but we just feel like so that they can be prepared to qualify for the loan when they try and go for a home and this is in our Kihei project. We really felt like, you know, if they're not getting the information then maybe we need to just take the lead and provide that, so thank you.

Mr. Lay: Thank you, Grant.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I feel because we do have...and not just the homeless problems that you read about in the paper. Chubby brought up the hidden homeless. There are families that are living together, you know, and a lot of them do qualify for affordable housing and listening to testimony people are saying are it's not enough, it's not enough or it's too high or what's...what I find baffling is you know, it's too high in my opinion, but there's a line to buy it. You know, I mean, you have earlier testimony said a 1,000 people applied for 52 units in Waikapu or 59 units, you know. Even though the affordable housing is too high in my personal opinion, people need it because parents want to get rid of their kids but they wanna be able to drive to their house, you know. I'm gonna vote for this because you gotta start somewhere and while this won't solve the entire problem it's a damn good start.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I like A&B and A&B does a lotta great things for Maui, but I don't think this project is one of 'em. I don't think this is an affordable housing project. When something is 25 percent affordable, when you have to make \$30 an hour to just be in the realm of it and that's using 45 percent of your wages. That's not Dream City. That's captured, that's I'm stuck, that's recipe for foreclosure. I'm glad they have these classes going on. I mean, there's not regular hotel workers that are making \$30 an hour, you know. There's construction workers which is good, and you know, they earn their trade. But this is not an affordable project if it's only 25 percent. This is a housing project. This is a housing project that we're gonna change the zoning for so now the land that could have been a lot more expensive these houses are gonna be in that range. And yeah, a lot of middle to upper income and married families are gonna be able to get a home, but some are also gonna buy their home and rent out their other one. I'm not gonna stop this project 'cause we need houses period in Maui regardless of what it is. But I don't think it's affordable. I was hoping that A&B would...being as, you know, a influence on Maui as it is kind of hopefully have been the leader and maybe gone a little bit more with affordable housing. In fact gone overboard because they got Phase 2 where they can make it back or they can make it back somewhere else. They're a great company. They got lotta resources. You know, my personal opinion, I just wish it wasn't 20 percent or 25, it was closer to the 50 like how we used to have. Thank you.

Chair Ball: Thank you. And just as a clarification this is not coming in as an affordable housing project.

Mr. Robinson: It's been called that all day and I just wanted to clarify it.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I'd like to speak in favor of the motion. I believe that this Commission over the past year has been busy converting residential housing units to hotels. We've basically taken residential units out of inventory and converted them to B&Bs and TVRs. This is the first opportunity that has come by to create housing that's new, that's real, and that would satisfy a need that definitely exists out there. We need to move in the right direction. We can say it has to be a 100 percent affordable and we get nothing built. We get a 100 percent of nothing. This is something. We've asked it to be independent in terms of water. They have to go find their own water not tap off the existing systems. They have to find their own sewage treatment process. They can't dump into the existing

system that exists. That's a lot of overhead cost. The sewage treatment plant out at Kaanapali cost \$14 million 20 years ago. So it's a big nut to crack. It's a requirement that they have to meet. And those are the things that go into the economics of the project that make it have to have a balance to some degree. I think they've got a good start. I really like the architectural. I think it has a sense of character that can be embraced and I think it provides an opening for the future for our children.

Chair Ball: Thank you. Anyone else? Commissioner Lay?

Mr. Lay: Well, it's already been presented and presented again, and again, and again, we need houses here in Maui. We have to start building houses here in our Maui for our people here. If we don't start somewhere, we won't it all, and like we said well, 100 percent no houses compared to we got something moving along in the right direction. So I'm all for this project. We should have more projects come before us so we help other people live and stay on Maui.

Chair Ball: Thank you. Anyone else? Commissioner Hedani?

Mr. Hedani: One other comment that I'd like to pass onto the County Council is that the County Council has participated with us in terms of removing housing from the market with the approval of 800 units of TVRs and B&Bs. So they need to work on providing housing in a positive manner.

Chair Ball: Okay, anyone else? Commissioner Robinson?

Mr. Robinson: I'd like to second what Mr. Hedani said to the Council and remove the TVRs.

Chair Ball: That's not a motion, okay. Anyone else? Call for the question? All in favor of the motion signal by raising your hand and saying, "aye".

Commission Members: Aye.

Mr. Spence: Six ayes.

Chair Ball: Motion carried. We'll take a five-minute recess.

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

**VOTED: To Recommend Approval of the Community Plan Amendment and Change in Zoning, and Phase I Project District Approval to the County Council, as Recommended by the Department.  
(Assenting - J. Medeiros, I. Lay, W. Hedani, S. Duvauchelle,  
K. Robinson, R. Higashi)  
(Excused - L. Hudson, M. Tsai)**

A recess was called at 2:02 p.m., and the meeting was reconvened at 2:10 p.m.

Chair Ball: Okay, let's call this meeting back to order. If it's okay with the Commission we are



going to move an item, in particular Item G-1 to right now. If there are no objections we will do that. Okay, so we will move Item G-1 to right now. Director's Report, G-1, Director?

Mr. Spence: Thank you, Mr Chairman. Item G-1 this is just a notification to the Planning Commission that the Planning Director intends to process a time extension request administratively. This is for Mr. Felix A. Corpuz, the Head Deacon of the Iglesia Ni Cristo Church in Lahaina, and our Staff Planner is Mr. Paul Fasi. And this is just for the Commissioners to acknowledge the request and either decide to waive its review or say that you wanna see the actual time extension.

## **G. DIRECTOR'S REPORT**

- 1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the following time extension requests administratively:**

**MR. FELIX A. CORPUZ, Head Deacon of the IGLESIA NI CRISTO, (Church of Christ) LOCAL CONGREGATION OF LAHAINA requesting a two (2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the new Iglesia Ni Cristo Church and related improvements at 1518 Malo Street, TMK: 4-6-014: 009, Lahaina, Island of Maui. (SM1 2008/0025) (P. Fasi)**

Mr. Paul Fasi: Thank you, Commissioners, and thank you Chairman for moving the schedule. We do have representatives from the church, but basically we're just here to bring this before you for a two-year time extension on their SM1 Permit. It's a two-year time extension to initiate construction. They just need more time. They've been having setbacks with the typhoon in 2013 and financial problems and architectural...changing of the architect and such. So as the Director mentioned, you're basically here either just to waive the review so he can administer the two-year time extension administratively. Thank you.

Mr. Lay: Motion to waive review.

Mr. Medeiros: Second.

Chair Ball: Let's have some public testimony first. How does that sound? Anyone that would like to testify on this matter may do so at this time? Seeing none, public testimony is closed. Questions from the Commission? Seeing none, how about a motion?

Mr. Lay: Motion to waive...waive the motion.

Mr. Medeiros: Second.

Chair Ball: Waive review.

Mr. Spence: Waive review.

Chair Ball: Motion by Commissioner Lay, second by Commissioner Medeiros. Discussion? Seeing none, all in favor of the motion please raise your hand and say, aye?

Commission Members: Aye.

Mr. Spence: That's six ayes.

Chair Ball: Motion carried.

Mr. Fasi: Thank you very much.

Chair Ball: Thank you.

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

**VOTED: To Acknowledge Receipt of the Request and Waive Its Review of the Time Extension Request  
(Assenting - I. Lay, J. Medeiros, W. Hedani, S. Duvauchelle,  
K. Robinson, R. Higashi)  
(Excused - L. Hudson, M. Tsai)**

Chair Ball: We are moving on...sorry, Item C, I believe. C-3, Director?

Mr. Spence: Commissioners, we have Mr. Charles Biegel requesting a Short-Term Special Home...Short-Term Rental Home Permit for Mango Cottage Short-Term Rental in Kihei, and our staff planner this afternoon is Tara Furukawa.

- 3. MR. CHARLES BIEGEL dba CKW MAUI, LLC requesting a Short-Term Rental Home (STRH) PERMIT in order to operate the Mango Cottage Short-Term Rental Home using five (5) bedrooms in two (2) dwellings at 45 Kilohana Drive, TMK: 3-9-004: 073, Kihei, Island of Maui. (STKM 2015/0003) (T. Furukawa)**

**The application is being taken to the Maui Planning Commission for action because there is a permitted short-term rental operation located within 500 ft. of the subject property.**

Ms. Tara Furukawa: Good afternoon, Commissioners. As stated by the Director this item is under your review because the applicant is requesting a Short-Term Rental Home Permit to operate an STRH that's within 500 feet of an existing permitted STRH. At this time, I will present you with the scope and details of the proposed project and then provide you with the Department's recommendation.

The proposed Mango Cottage STRH is located at 45 Kilohana Drive which runs perpendicular to South Kihei Road and serves as a border between Kihei and Wailea. CKW Maui, LLC has owned the .8 acre lot from 2012. Prior to that the dwelling amidst unimproved land consisting of sand and mango trees. Since purchase Biegel improved the property adding gravel to the driveway and

parking and then he planted grass to the sides of and behind the dwellings.

Two dwellings are proposed for short-term rental home use. One dwelling has two bedrooms, one bathroom, a study and deck. The other dwelling has three bedrooms and one a half bathrooms. Each dwelling has a living room, kitchen and three parking stalls. The side and backyard areas will be communal areas.

These are just some photos of the property. This is cottage one, bedroom one, bedroom two, the study, the kitchen, the bathroom. And this is cottage two, front and rear views, north and south views, bedroom one, bedroom 2, bedroom 3, the living room, kitchen, full bath and half bath.

And then the entire look and feel of the place will not change and it will continue to have an urban single family residential feel. The surrounding landscaping makes it difficult to see and/or hear anything from neighboring properties. To the north is the applicant's home which is separated by a fence, hedge and trees. To the south is Kilohana Drive and a retention basin or park that serves the Wailea Kai Subdivision. To the west is a vacant undeveloped lot. To the east are two single family residential homes which are unoccupied most of the time. The owners live on the mainland. Between the properties there's a stone wall and there are large mango trees throughout the yard area that should serve as audio and visual barriers.

As you can see there's one approved STRH within 500 feet within the proposed Mango Cottage location. The approved STRH is the Wailea Sun and Sea located at 3068 South Kihei Road approximately 450 feet away from the proposed STRH. Currently there are 29 permitted STRH operations in the Kihei-Makena Community Plan area out of a total maximum limit of 100 STRH operations and there are no permitted B&Bs nearby.

No protest letters were received after notice was provided. Neighbor notice was provided twice, once for the STRH application and more recently for the public hearing. Four letters of support were received. In one letter the supporter cited the fact that the applicant would do a good job as a manager as the reason for the support. In another the supporter mentioned the fact that the applicant did a good job of fixing up the property as reason for support. And then two supporters didn't provide any reasons. And that concludes my presentation.

Chair Ball: Thank you. At this time, we'll open it up for public testimony. Anyone wishing to testify on this agenda item may do so at this time?

**a) Public Hearing**

Ms. Furukawa: I have the applicant here too, Charles Biegel, if you have any questions for him.

Chair Ball: Okay, seeing none, we will close public testimony. Can we get the recommendation, Tara?

**b) Action**

Ms. Furukawa: Okay. The application complies with the applicable standards for an STRH Permit

and as such, the Department recommends approval of the permit subject to 23 standard conditions and recommends that the Maui Planning Commission adopt the Planning Department's Report and Recommendation prepared for the November 24, 2015 meeting as its findings of fact, conclusion of law, and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chair Ball: Thank you. Questions from the Commission? Commissioner Robinson?

Mr. Robinson: For the applicant.

Mr. Charles Biegel: Hello, my name is Charles Biegel.

Mr. Robinson: Hi Mr. Biegel. Thanks for being here. You bought the property three years ago?

Mr. Biegel: Yes.

Mr. Robinson: Bought both properties or did you own the house next door prior to that?

Mr. Biegel: Oh, I've owned the house next to it for ten years. I built the house next to it.

Mr. Robinson: And in the last three years have you remodeled it or has it been a long-term rental there?

Mr. Biegel: No, I remodeled it. It was in very much disarray when I purchased the property. It was overgrown. Oh, I've been spending, dumping money into it to fix it up.

Mr. Robinson: Have you looked at all about thinking about doing a long-term rental instead of a short-term rental and with two houses you probably could get close to 4,500 to 5,000 a month?

Mr. Biegel: We have a lot of relatives that live off island that would like to come visit us. I've got three young sons and so my thinking is when they come visit we can put them in there. If I have a long-term renter I cannot do stuff like that. So it wouldn't really work with my situation to do long-term rentals.

Mr. Robinson: Thank you.

Chair Ball: Further questions? Anyone? Is there a motion then? Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Chair Ball: Pardon?

Mr. Medeiros: Did we get the recommendation?

Chair Ball: Yeah, we did. Motion to approve. Is there a second for that?

Mr. Higashi: Second.

Chair Ball: Second by Commissioner Higashi. Discussion? Commissioner Hedani?

Mr. Hedani: Although the property still looks like there's a lot to be desired in terms of a actual hotel operation I think it's gone about as far as it can go under the existing circumstances. And that moving forward would give them an opportunity to complete the project and move forward. I think it's refreshing to see an STR come in from outside of Maui Meadows and that has no letters of opposition relative to it.

Chair Ball: Very good. Anyone else, comment? Commissioner Robinson?

Mr. Robinson: I think there already is a property within 500 feet that's why it is here. I do think is this we're losing two more, two more units that people could possibly live in. And the reason is not a financial. The reason is so relatives could come by and stay. We just a...we just had I don't know how many discussions we have here on this board about affordable housing and reasons for it. Commissioner Hedani just voiced at the last meeting about, you know, using prior meetings for a vote for reason for doing things and then asking the Council to say, you know, that we need more housing and here we are it's the same situation where we have something that's within 500 feet, we're putting another rental unit, two rental units in the same area that's close, that's you know, being clustered and I do not support a short-term vacation rental at this location.

Chair Ball: Any further comments? Seeing none, all in favor of the motion, raise your hand and say, "aye". Hold 'em up. Is it five?

Commission Members: Aye.

Mr. Spence: Five.

Chair Ball: Motion carried. Moving on. Oh, sorry, all opposed?

Mr. Spence: One.

Chair Ball: One. Thank you. For the vote. Thank you.

**It was moved by Mr. Hedani, seconded by Ms. Duvauchelle, then**

**VOTED: To Approve the Short-Term Rental Home Permit as Recommended by the Department.**  
**(Assenting - W. Hedani, S. Duvauchelle, J. Medeiros, I. Lay, R. Higashi)**  
**(Dissenting - K. Robinson)**  
**(Excused - L. Hudson, M. Tsai)**

Chair Ball: Director?

Mr. Spence: Mr. Chairman, we have Unfinished Business with Ms. Breanne Fortun, she is

requesting her...this is a request for Short-Term Rental Home Permit that has...it's been deferred a couple of times.

Chair Ball: Are you moving this item?

Mr. Spence: No sir. Chair, I don't have the authority to move it.

Chair Ball: I thought you were going...are you going there?

Mr. Spence: We can talk about PC-21.

Chair Ball: Okay, there's a suggestion by the Director that we move Item E.

Mr. Spence: No, I'm giving, I'm recommending a choice for the Commission. I'm happy to go first.

Chair Ball: Is there...Well, we do have a testifier for Item D that has a time constraint.

Mr. Spence: Okay.

Chair Ball: So let's go to Item D, and we can start with the Director.

Mr. Spence: Commissioners, I need a moment to set up the power point.

#### **D. COMMUNICATIONS**

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting a bill to amend Chapter 2.80B Maui County Code relating to land use designations in the community plans. (W. Spence)**

Chair Ball: Director, are you ready?

Mr. Spence: Yes I am. And first let me, let me address the Commission a little bit on this. This is a bill that's in front of Council right now and there was a lot of discussion and the purpose of the bill is to clarify the relationship between the community plan designations, the descriptions of those designations and how they relate to zoning. Being in title...in Title 2 it's not required to come down to the Commission, but we thought we would bring it down for your input and your comments, and we'll be going to the Molokai and the Lanai Planning Commissions as well.

And as you've already heard this has generated some discussion, you know, comments from the public, I think there's some misinformation out there or misunderstandings of what the intent of this is and really hope that this clarifies some things for the Commission and for the general public. I real sorry Akaku is not here.

Anyway, so introduction. The Commission is aware and the general public is aware we have a multi-layered land use scheme in the State of Hawaii. We have the four State land use districts, the next step down or up depending on how you wanna look at it is the General Plan and

community plans. These plans, the community plan is a planning document which provides guidance for government actions and decision making. The plans they designate all the properties in the County for a specific use. It's either what currently exists there or it could be for a change. It could be something very small for a water tank or you know a police station or it could be for future growth like what we discussed earlier today. Each one of those designations has a very general description within each plan. The zoning is what actually ultimately at the, whatever, the bottom layer, whatever you wanna call it, that's actually what specifies the very, the detailed land uses that an owner can do on those properties, but then of course, sometimes we have overlays like SMA or those kinds of things.

Okay, so with all those different layers in order to build for instance like Waiale to build new housing all those layers have to line up. You have to have the State Urban, you have to have your community plan in line. That's why they applied for a Community Plan Amendment, and then they're applying for zoning. But when you adopt community plans because it's a plan you're going to create inconsistencies between the zoning and the community plan. You're saying that this is a place for residential so you're ...you have to put that something on that's on a piece of land that's already zoned for something. So a very typical scenario could be State Agriculture District zoned Agriculture, but the community plan would be Single-Family.

This is out of the Makawao-Pukalani Community Plan. Here this is existing Pukalani, this is the community center up here, this is the bypass and then Old Haleakala Highway. This is a former pineapple field. It's about 50 acres. It's community planned single family. At some point in time it's supposed to have houses on it, but it's...right now it's in the State Ag District and it's County zoned Agriculture. So the question is, what can this owner do with this property? Is it the community plan that dictates the land use or is it the zoning? Right now, I mean even if it had State Urban to us, it doesn't have the proper zoning to do it. It still has County Agricultural zoning. They can still do agriculture on that, but they cannot build single family residences. They need to come in and change the zoning to fit the community plan then they could go in and subdivide provided they could get water and all those things. But it's ultimately, it's that Ag zoning that allows them to continue in agriculture if they wanted to do that.

This is the text of PC-21, and I'm a little bit sorry that I think people didn't really read this prior to testifying because if you look at that 14A this gives us an assurance that we must follow the community plan in order to get zoning. The community plan does come first. A land use designation that's what we're talking about here, the land use designation determines the zoning that may be established on a property undergoing a change in zoning pursuant to Title 19 of this Code. So the property I just showed was a Single-Family designation. Can they get Hotel zoning? No. Can they get Light Industrial, can they get Business? No. They have to follow the community plan. They must follow the community plan. It's already law in another section of our Code, but this is the proposal for 2.80B.

The second part of this is a land use designation shall not limit any use established by a property zoning unless the community plan prohibits or restricts a particular use. So the second part of this is saying that, example, where the underlying zoning is Agriculture that property owner could still do agriculture on that property. Now you think about that, that only makes sense. They can't do single-family residential because it's not zoned, but do you want to prohibit agriculture? No, you

don't wanna do that either, but that's their underlying zoning allows that and that's what these two things are meant to clarify.

I've run through a couple of examples, and pardon me for taking some time with this, I think this is very important. This is a proposed land use map for the Island of Lanai around Lanai City. This area right here, this is proposed to be Mixed Use Residential underlying Agriculture. This here is proposed like a 100 acres, 150 acres for Public/Quasi-Public. Pulama Lanai wants to build, I should say, maybe say Larry Ellison wants to build a University of Hawaii campus. Now does...do these land use designations, do these control the land uses because those designations are placed on a piece of ag land, can the company just go out and start building residential or developing a campus? No. They have to come back to the community, there has to be lots of discussion. They have to go to the Land Use Commission for one. There's a lot of discussion that takes place with the community before zoning is granted and before...that's like the final entitlement.

Same on Molokai. This is a 100 acres up above Kaunakakai. This is actually the existing community plan and I understand it's remaining the same in the proposed community plan that just got out of the CPAC. This is a growth area, it's proposed for growth, but there's a inconsistency because the plan it's like any plan it doesn't enable you today, you know, I wanna be, I wanna be a millionaire. My plan to be a millionaire doesn't enable me, I'm not instantly a millionaire. There's steps you go through. There's a progress. You have a plan in place in order to implement this plan. But also know and this is also for the public, the Council must follow out of Title 19 besides whatever is proposed here in Title 19 it says, the Council must follow the community plans when applying for zoning. Other places where the community plans have a regulatory weight is in discretionary permits, County discretionary permits like Special Use Permits. Subdivisions are required to be consistent with the community plan, SMA through State Law and then County budgetary CIP process. All these things have to be consistent. So our community plans have a weight in law because of other laws not just, you know they are not the implementation in of itself.

Okay, now why is this is an issue? There's an argument that in the back of the community plan there's a description of each one of these land use designations. There's an argument that the descriptions of the land use designations have the force and effect of law and are the definitive list of permitted uses not whatever is in zoning. Okay, now this is...what this comes from is the Piilani Promenade Project. Now this is a Light Industrial. There's a community plan Light Industrial. It's zoned Light Industrial and it's in the State Urban District. They have all their different layers line up. But there's people who do not want this project to be built and I'm not saying one way or another whether it's good or bad or anything. I'm just saying there are folks that do not want this project built and so they lean on the community plan description for Light Industrial. It says this is for warehousing, light assembly, service and craft-type industrial operations. The argument is that's all you can do on this property because that's what the community plan says can be done. The zoning, Light Industrial zoning as you know it's many tiered. The testifier was correct, you can do all the business uses, you can do apartments and I'll talk a little bit about that, actually a little bit more in a little bit.

Now if you take these really simple, really brief descriptions and you were to apply those literally as the sole list of land uses you would get three very negative, very drastic outcomes. First up, the community plan designations would prohibit many of the uses that we find desirable. The second



one, thousands of currently legal land uses would be rendered nonconforming. The third, and keep in mind this is if you look at that little language, that one sentence or two sentences and you take that literally as the law. The third one, some of the community plans designations are more permissive than our County law. If you take these descriptions literally you're gonna be allowing uses that we don't want.

Okay, the first one let's look at briefly at three community plan designations that would actually prohibit a range of uses that would be allowed by the zoning. You only get Single-Family, Parks and Light-Industrial. Community plans typically have about 15 different designations. We could go into great length with each one of those. On the left is the description, the Single-Family description. This includes single-family and duplex dwellings that's all. On the right, are all the uses allowed by zoning. You'll see single-family dwellings is the only one that lines up. Accessory dwellings, ohanas would not be permitted reason being those ohanas are accessory to the main dwelling. They're not considered single-family dwellings. Greenhouses, farm and truck gardens, community gardens, parks and playgrounds, schools of all levels, government buildings, accessory buildings, all your pools, all your detached garages, sheds, studios, none of those would be permitted. Your daycare centers that are outrightly permitted by the zoning would then not be allowed. Bed and breakfast homes are listed as a permitted use so long as you get a Bed and Breakfast Permit same with short-term rental homes like the commission just passed, none of those would be allowed. Home occupations sitting there at home selling stuff on Ebay couldn't do it. That's considered a home occupation and it's not listed in the community plan designation.

But you also couldn't allow special uses so all of your churches, all of your daycare centers above a certain size, housing for the aged run by government nonprofits, et cetera, et cetera, et cetera, public utilities, all the things that require special uses would not even be a consideration.

The County Council, you'll see this within the next couple of meetings, the County Council just passed down a resolution saying we want to allow more ohanas in more places than what they're allowed now in order to provide affordable housing. If we go by the strict definition in the community plan you would not be able to do that. Even the Mayor is sending down a draft ordinance to allow more ohanas in more places. And so this couldn't even be a consideration if the community plans is the sum total designation.

Parks. The description on the left, this designation applies to land developed or to be developed for recreational uses and it goes on and it talks about private and passive and golf courses. This Commission earlier this year went through a whole thing to review the parks ordinance, draft park ordinance. The...actually it might have been last year. It's up at Council now. We've had three long meetings with lots of discussion about what are the permitted uses? Gun ranges? No, those special use permits. Archery is that safe or is it not? They go on and on and on and on and on, long meetings not even, not even a consideration if you just go by that that description. Recreation can mean anything.

Light Industrial. Again, if you go by the community plan that lists warehousing, light assembly, service industrial operations, craft type industrial operations. The list on the right, I listed the things from those ordinances that would not be allowed including all the B-1, B-2, B-3, apartment houses, farm implement sales that doesn't fit into any of the community plan criteria, harbors, specialized

education, milk bottling, ice cream making, those don't all into that description and would be prohibited, but right now they're perfectly fine.

Give you an example in Kula of a mismatch and where if you take literally those descriptions as the use permitted, this is the von Tempsky property. It's 15 acres of light industrial, 125 proposed, these are proposed uses in the community plan. This property right now are heavily farmed, lots of small farmers, long term leases, this is one of the most productive agricultural areas in Kula. If you take the designations as the definitive use, you couldn't even farm here because neither the light industrial nor the rural talk about those things.

Thousands of currently legal uses, this is a second point, thousands of currently legal uses would be turned into non conformities. But what does it mean to be made non conforming? Right now you have a whole lot of legal uses within our Industrial Districts, et cetera. If you were to say, no you have to fit into these narrow descriptions, creating non conforming means the use of a property or building would no longer lawful. So if you say, gas stations are no longer permitted in the Light Industrial area, that's no longer a lawful use and it's considered non conforming. That would be the County's policy that that use be terminated and it go away. Being non conforming it can just be allowed to go away over time.

The effect on ohana units because these are not single-family dwellings we would make 3,600 ohana units non conforming that's...those are ohanas, that's not the second dwelling on farm lands, 3,600 on Maui, 41 on Lanai, 135 on Molokai. This is...and as stated, you know you could build no new ohanas. What this means is if an ohana had burned down, if the termites have their way, you couldn't rebuild that structure. It would not be permitted.

Look at the non conformities created in the light industrial areas. I know this is a bone of contention but this really needs to be made clear. Okay, we think of light industrial this is warehousing. We think of small businesses, small light industrial businesses this is also in Kahului. We also think of baseyards where people dump like almost everything. But this is light industrial too. This is permitted right now under the Light Industrial zoning. King's Cathedral is permitted under the zoning. Down to Earth this would be made a non conforming use. They just went through a great big remodel. Akaku, Akaku owns a multi-tenant building with a lotta little businesses in it. So the question comes up okay, if you...if you're limited to these certain uses, light assembly and those kinds of things, one of these places goes empty can you replace it with another retail or would you get into...or would they have to do some kind of craft style industrial use? It depends on how far the grandfathering goes, how long one of these units stays vacant, whether that unit is grandfathered or not, it's a huge quagmire of issues. Marmac Ace Hardware would be non conforming. That's considered a retail use. The Veteran's Clinic.

And what's more it doesn't show up, okay this is Maui Business Park Phase 2, this is Home Depot they see me quite often there, what you call it, I don't go there Walmart, thank you. This is...all this...the subdivisions for Maui Business Park Phase 2, the County purchased seven parcels here for \$7.1 million in order to build a service center. They're moving it out of Maui Mall and moving it over here. Wanna build something permanent, a permanent County facility. Service Centers do not fit into warehousing, light assembly, service industrial operations, craft type industrial operations. In other words, we would not be able to build a service center there though we already

paid \$7 million for it. Look at briefly at the Mill Yard, the non conformities there, Sam Sato's, the credit union, the Maui Visitor's Bureau and Hotel Association, Queen Liliuokalani Trust, both of their facilities there. I think the Mill Yard has more dentists per acre than anywhere else on the island. I was...I am highly surprised every time I drive through there. All the dentists, they invested their money, they built their offices the way they want them and everything, saying no, your dentist office it's no longer lawful 'cause it doesn't fit into this description.

Other uses, Wailuku Town Center, Wailuku Business Center, little businesses, shopping centers, the Carpenter's Union Halls, and UPW. I do not wanna be the one to go to the Carpenter's Union and tell them you now have a non conforming use. I probably wouldn't be Planning Director very long.

Kihei-Makena, the one, the one testifier this morning testified that I would probably show some stuff in Wailuku and in Kahului. You know this is far reaching into all the different parts of the island and I respect her opinions and everything, but it effects the Kihei-Makena Community Plan. The Charter School is in Light Industrial, not only are they in the industrial they take up ten spaces. Now if they wanna grow, if perhaps the Kihei High School is put off for a little bit and they need more space 'cause more people wanna enroll there, if you go by the community plan designation they would not be able to do that. You have entire office buildings permitted by the zoning, not permitted by the community plan. Lots of small businesses.

Head over to West Maui. Lahaina Gateway Mall, the entire mall which is allowed under the zoning would be non conforming. Oops, I went back, I think you saw that one. Multi-family Hoonanea 99 units multi-family, probably some of the most affordable. I haven't checked prices I can't claim that also did not fit within the description. Opukea, 114 units and they're building more. Star Noodle, if you guys have ever eaten there it's like one of those things you would wanna change the zoning just for them. Church of the Latter Day Saints has a beautiful building up there.

Then we go out to the rural areas, Haiku and Pauwela. Haiku Cannery, they're designated Light Industrial and they're zoned Light Industrial and these are the business centers for Paia and Pauwela. To say that these could not be in that area is...would be devastating to these communities. Haiku Town Center right across the street. Pauwela Cannery it's a mix of all different kinds of stuff in there. There's some retail, there's some small businesses. There is some light industrial within this building.

Okay, so I think I beat the non conforming use thing to death, but last thing, the last point to make is what...if you go...if community plan descriptions dictate use, what uses would be permitted that you don't want? Okay, in 1985 Kihei Community Plan designates this little area here for single-family residential and it's zoned I think it's R-2 or R-3. In the 1998 community plans, these properties there's three of them right there in a row were redesignated to business. So if you go by the community plan designation can you now do business on those properties? I don't think you wanna do that. There's wetlands in this area, there's some controversy within the community and I'm sure the Kihei Community Association will have things to say when this application comes up before this commission. But you don't want it to automatically dictate the use on there.

Where things would be more, would be more loose then our current zoning, agriculture. Agriculture

the community plan says meet the requirements and the procedures of 205. That's really broad compared to what we allow. It would allow farm dwellings of any size. Right now we allow two, one of almost any size and one a 1,000 square feet. It would allow farm dwellings with no specific restrictions on size or number. There's no farm plan required. It would allow any type of open land recreation that being ziplines, that means autocross, RC airplanes, it could be almost anything obnoxious. Restaurants and retail stores that have almost no relationship to agriculture that's what the State zoning allows. That's not what our zoning allows.

Same with Rural. State Rural allows golf courses. Our Rural zoning does not. Public/Quasi-Public uses our zoning requires special uses for a lot of those things, for churches, schools, government facilities, State zoning allows them outright. And they could just do half acre subdivisions. Our zoning is specified, you can do, two, one...or excuse me, half-acre 1, 2, 5 or 10-acre ag zoning.

Okay, I'm about done. Summing up, this proposed PC-21 it requires that you know the big concern that you've heard today is that zoning follow the community plan. This proposed bill requires that zoning follow the community plan. So if you wanna take up issue with you know the voice of the people and all those kinds of things even though community plans are multi-year process, always with the community involved but it's the Commission, the Council, it's the Planning Department too zoning has to follow the community plan. It clarifies that the underlying zoning gives the owner the list of permitted uses. And remember that's...you still need to deal with SMA Law, those kinds of things. It's not automatic, but it's...if you're outside of any special district, the underlying zoning is what gives the permission to use your property.

And this codifies 35 years of County practice. In 1980, we adopted zoning in 1960 or 1961 we only adopted the ordinance to require General and community plans from 1980. Since that was adopted, this is the way we've done it. Community plans guide decision making, it guides where growth is gonna go, it designs...it guides where zoning is going to take place, but still the underlying zoning is what gives the permitted uses. So thank you, Commissioners. I know that was a bit long, but we wanted to get your comments and send those up to County Council.

Chair Ball: Thank you, Director.

Mr. Spence: And I'm available for questions.

Chair Ball: Once everyone wakes up we'll ask questions. Just kidding.

Mr. Spence: I know it was long.

Chair Ball: Okay, at this time we'll open it up for public testimony.

**a) Public Hearing**

Chair Ball: Anybody wishing to testify on this matter may do so at this time. You have three minutes, please identify yourself.

Ms. Lucienne de Naie: Thank you, Chair Ball and Commission Members. My name is

Lucienne de Naie. I'd like to mention that after that thorough presentation there's some things that were never mentioned. Number one is that zoning definitions can change and have changed. And so a community can expect one thing from a zoning definition and then find a few years later that it's very different and it may not be that the community really had any say in that other than if they noticed that there was a meeting at 9:00 a.m. at the County Council or 9:00 a.m. at the Planning Commission. What is allowed can be changed and the definitions of what that zoning is can be changed.

Secondly, if you take a step back these community plans that have all these mistakes in them were created by this Planning Department. All those definitions they didn't come from the CACs, they didn't come for the citizen volunteers. They came from the Planning Department. How did we get so messed up if it's as bad as our Planning Director says? How did all these professional planners for the last 20 years come up with this terrible system that leaves everything in the lurch that can only be fixed by zoning? Well, I don't have the answer to that, but it's a food for thought.

Third, we have many more categories in our community plans. Some of you, I don't know if any of you participated in the community plan process, I imagine some of you did. I've participated in four community plans. There are many categories that are available that are not necessarily chosen by the final decision makers. For instance, King's Cathedral could have had Public/Quasi-Public zoning just like all churches do. They pushed for the Light Industrial. Why? Their property might be worth more later. Oh my God, it's non conforming now if we do this. Well, they could have had the zoning that fits churches. All of these industrial areas could have been business industrial. Every business would have been allowed. There would have been no conflict, zoning wouldn't need to be changed, business would have been allowed by definition. The Council did not choose to make the Mill Yard and these other places in the Wailuku-Kahului Community Plan business zoning. They had that option. There's a matrix in the back of each community plan about all the different choices. Nobody reads this stuff. Well, I don't know, I have nothing better to do and read it and you know we had more choices. We didn't have to be in any of these, in most of these situations. Another example is, it was never mentioned, we have given blanket zoning to hundreds of acres here in 60's and 70's. Makena State Park is zoned R-3. What if the State comes on hard times, they look at law here and it says, well community plan is just sort of a relative use, community plan says Park but our zoning is R-3, we need money let's develop some houses on it. Would that be what we wanted? Well it could happen. I think we need to think about yes, there's unintended consequences both ways is this the best way to fix it or should we some...expand some of our definitions in the community plan with consensus of people participating so that the community knows what's going on and get things straightened out.

Chair Ball: Thank you.

Ms. de Naie: Thank you.

Chair Ball: Any questions for the testifier? Commissioner Robinson?

Mr. Robinson: Can you please expand on just what you were saying about remedies?

Ms. de Naie: Well, I think others will speak even more for remedies but in our community plans it's

true they have very brief descriptions for the most part of what each of these categories are. A matrix could be put in saying, agricultural means...and take some things from the zoning laws. All our community plans are gonna be updated. My understanding is is that such a matrix was put in the Lanai plan that's currently being reviewed by the Council. So we have some simpler remedies that maybe will have fewer unintended consequences. No one wants to sue the, you know, Sam Sato's because they're not completing their zoning but people did sue over the Piilani Promenade because the citizens had worked so hard to get that to be Light Industrial and they put specific language about that specific parcel in the community plan and the County just chose to say, well the zoning says they can do anything here so we're fine. So I mean it's a little short shrift how we're looking at this thing.

Chair Ball: Anything else? Thank you for your testimony? Anyone else would like to testify? Tom? Mike go ahead.

Mr. Mike Moran: Good afternoon. Mike Moran for the Kihei Community Association testifying against Item D-1. Number one, changes of zoning are powerful tools for land use management and must be reviewed in the context of the community plan. These are not our words but those of the department offered to you back in April in a tutorial. Another lists which is number two, regulating paradise is complex and multi-layered and it lists a descending order of the levels of review. It begins with the State Constitution and then onto State laws and regulations, next to last is the Maui community plan, very last is Maui County zoning, these and many others, excuse me, these and many others are what we are asking to be passed around as reminders. This morning, no it's this afternoon does this not indicate that the County officials decisions are not bound by the State laws. HRS 46-4 says zoning must conform to the community plan not vice versa. This proposal today would severely weaken the community plans thus defeating this stated principle. In our opinion based on the timid rational offered by the Department it would make sense to tighten up the dysfunctional zoning patterns that have been created. We see this as convoluted planning. Instead of finally making rational, reasonable adjustments to the haphazard zoning allowances over the years to fix the stated concern, this proposes to further weaken the community's input in County planning in our regions. Why would anyone want to spend any free time in meetings and discussions creating a new community plan that will be basically meaningless.

Quoting from the current Maui County Code, "County plans created and revised by the citizen advisory committees shall set forth in detail land uses within the community plan regions of the county". As proposed in this amendment 2.80B.020, in the Summary, the purpose of the...the propose of the proposed bill is to clarify that zoning regulates land use and that community plans are intended to be a vision that guides future decision making.

Two, land..."land use designation means a designation of category assigned to a property in a community plans land use map that identifies representative but not exclusive types of land use envisioned for the property throughout the community's plan," 3.3.140B "a land use designation shall not limit any use designed by a property's zoning unless the community plan prohibits or restricts a particular use" And from the Lanai Plan, "unless specifically prohibited, the uses permitted by the zoning and the standards applicable to the zoning district apply to the corresponding community plan designations. The introduction to the proposed County Code amends...discusses relatively less controversial implications such as allowing a single family home

or apartment building in a district designated hotel in the community plan. It doesn't mention all the expected sources of the current amendment—

Ms. Takayama-Corden: Three minutes.

Mr. Moran: Okay, we have a second testifier who will conclude but we also have given this out in writing and I do wish to thank Deputy Director Michele who we sent this in kinda late yesterday, she advised me last night it was too late to get it printed, but she did take it upon herself to get it printed out this morning so it could be distributed and I wanna thank you for that. Aloha.

Chair Ball: Aloha. Any questions for the testifier? Seeing none, thank you, Mike. Would anyone else like to testify at this time? Tom?

Mr. Thomas Cook: Good afternoon, Chairman and Members. My name is Thomas Cook. I'd like to give testimony on behalf of two entities, myself who was a member of the General Plan, one of the 25 people on the General Plan Advisory Committee and also as the Vice-Chair for the Construction Industry of Maui. Okay, I'm gonna read a brief statement from the Construction Industry of Maui. And basically we're supportive of this that the zoning should determine the land use especially when there's inconsistencies between zoning and the community plan.

The community plan the process was very dynamic. We need to correct the Sunshine Law. I think that was a huge impediment. It took three and a half years. The first year all the meetings, literally without exaggeration was being coached on the Sunshine Law and the fact we couldn't talk each other in different situations. So hardly anything happened. We were...there's 25 members, a lot of the votes were like 11 to 13, you know. There was, I mean, Chubby was joking around with me it the only...(inaudible)...consensus was time to adjourn. You know, the polarization in our community and what we're experiencing now with this discussion now has been ongoing. And I think that trust, respect for the process, believing in the people who are elected into the government and who are being aid by the govern is part of the challenge and there is a certain element of the General Plan Advisory Committee who really didn't trust the government, really wanted to like, we had a tremendous amount of wordsmithing like we gotta make this stick, we gotta make this strong, we have to like make this be it. And to me, I understood from the beginning or my understanding and belief at the beginning this was supposed to be a tool, a planning tool enable landowners and developers and government and all of us in the community to have a point of reference, a place where we could all come together and hopefully have some consensus of what our future on the island, the future land use is gonna be.

I've lived on Maui for the last 43 years and it's like all of the examples, the Planning Director did an excellent, thorough analysis of all the...of a lot of different areas and we're a small community. We don't have the micro zoning for a business and a doctor's office and all of that so that we have general categories. You members, know better than anybody how hard it is to build anything. Nobody's gonna just run amuck in this community and just like shove something down our throats. It takes a lot of time, a lotta effort and a real commitment to build anything. So I don't think that we are, you know, our community is in jeopardy. I think that this issue is very...I'm gonna summarize with this. I think this issue is very expected. We were promised...(inaudible)... it was part of the plan from the Planning Department because we were gonna have overlays. We have GPS and we

were gonna have overlays to refer because it was always part of the discussion, well how does what we're saying tie in with what the zoning is and the existing use and areas because Maui has so many conflicts between State law, County law, zoning, et cetera, we all know that we deal with it constantly. The GPAC was very aware of that and we were told we were gonna have the methodology basically have this transparency where you could have the layers and see what it was. It never happened. It wasn't through any neglect from the Planning. It was we ran out of time. So my suggestion and advice is that we all collaboratively work together in a positive spirit. I think that this needs to be passed. This is the Planning Department's concerned with it, the Council's concerned with it. It has legal issues. It does not undermine the community plan in my humble opinion and it solves some, you know, a major discrepancy. We're arguing over what is wrong, what isn't wrong. So anyway, thank you for the opportunity to come on the behalf of the Construction Industry in Maui and Tom Cook and thank you for serving. I don't envy you.

Chair Ball: Thank you, Tom. Any questions for the testifier? Commissioner Medeiros?

Mr. Medeiros: General Plan I followed it when it was happening and everything. One part and I had asked this question when it was going on, you know, is everything set in stone? And I was told, no. You know, in your opinion are they trying to set things in stone now?

Mr. Cook: I think, yes sir, I think that's the interpretation is attempting to lock it in. I never understood that. I mean, every 10 years and we evolved and what we really need is good communication and collaboration and then ask what our community needs will do rather than you know, what this group 10 years ago, you know 10 years in the future...so no, I think that that's the case, they're trying to make it in stone and I don't think that was the intent. It was never my intent.

Mr. Medeiros: Okay, thank you.

Chair Ball: Anything further? Thank you, Tom.

Mr. Cook: Thank you very much.

Chair Ball: I apologize to Charlene. She had signed up a long time ago, so Charlene Schulenberg.

Ms. Charlene Schulenberg: Hello, thank you for serving. And I have been in front of before. I'm Charlene Schulenberg and I have at the risk of sort of tagging myself, I'm one of those B&B owners. The good news is we made it all legal. I'm actually super legal and so thank you all for that. And the other good news is when we're not always full, we donate a lot of our rooms to MASH units that help out Maui Humane Society and things like that that people are already volunteering their time for. So I know volunteering is huge and I do volunteer a lot and I have now volunteered to become part of the Kihei Community Association. So I'm not officially a board member yet, but I guess in January I will be. So I'm not speaking for the Kihei Association. I'm actually kinda speaking more for myself. But the gentleman that just came I think his name is Tom, it's fascinating because I was kind of saying in my mind the same exact things that he was saying although my results was coming out exactly the opposite. So I think that the point being, you know, the biggest point that he made about the transparency and the process is the key. So I think that that there's been a, again at nobody's fault but just a lack of education and therefore, a lack of inspiration to get the



people, the just, the regular people behind understanding what this is and not feeling like there's this big old process happening around us and that, you know, we don't understand. I gotta be honest with you, I'm feeling pretty dumb right now. I don't understand a lot of this. I don't understand how this came about. I think it's a false equivalence to be honest with you. To say that this zoning stuff applies and now all of a sudden because we're gonna use the context of community plans that we're just gonna wipe out zoning. I mean we are an old island. We were mostly agriculture. Of course there's gonna be dozens, and dozens, and mostly agriculture zoned areas here. This is about working together as Tom said. I feel like the process has missed something. So maybe we could just all find a way to hold on a minute and get together and talk this through a little bit because it just feels like there's a big broad stroke brush happening and we're smarter than that, we're more capable than that. Oh my goodness, I heard people all day long giving really great suggestions and solutions to things. So I think that there's a lotta brain power and willingness and volunteers and whatnot to let's put our heads together here, and let's not just wipe the slate clean of things that have been going on that of course businesses need to exist as they've been existing if they're legal. I mean that's not the intent I don't think of community, community plans. So thank you very much for your time and for all that you do.

Chair Ball: Thank you, Charlene. Any questions for the testifier? Seeing none, thank you. Tom Croly?

Mr. Tom Croly: Thank you, Chair. Tom Croly speaking on my own behalf. I'll be very brief. I know it's been a long day for you guys. I liked the Director's presentation. It showed that what we're trying to provide clarity for. And as the last testifier said, our zoning can be confusing and when somebody goes forward they need to be able to understand if I own a property what can I do with it. And the biggest concern that I would have is what would happen down the road if we were to change path here and say oh these places are non conforming. How many lawsuits are we going to have from a taking standpoint if were to do that. We have the stacked zoning sequence here that says, if you're in this zoning you can do all these uses that are below it. Some might disagree with that, but that's the way it has been set up for years. If we wanna change that then let's go and change the zoning, okay. But what the Director has proposed right here is bringing clarity to the way we do business today and I'm in full support that. Thank you.

Chair Ball: Thank you. Any questions for Tom? Thank you. Anyone, would anyone else like to testify at this time?

Mr. Dick Mayer: I'm gonna ask that you take out the handout that I handed out that was circulated with my name on top, Richard Mayer, Dick Mayer. Thank you. My name is Dick Mayer. I'm speaking on my own behalf. I'd like to go through this with you and Planning Director got 20 minutes and I'd like to have at least some time to go through this. Earlier I gave some testimony and no one asked me any questions and I think it would be very helpful if after I finish that you do ask me some questions about this because it is technical and I do have quite a bit of experience with this.

So start at the beginning. Although described as an amendment, in fact this ordinance is an attempt to repeal existing law, Maui County Code, 2.80B.

Chair Ball: Hold on, Dick. Did you testify already on this item?

Mr. Mayer: No, I did not. Only on the--

Chair Ball: You have three minutes. Go ahead.

Mr. Mayer: Requires all agencies to conform to the General Plan. And it says, all agencies shall comply with the General Plan notwithstanding any other provision. All community plans, zoning ordinances, subdivision ordinances, administrative actions by agencies shall conform to the General Plan. In other words, zoning shall conform to the General Plan. In this proposed ordinance, the one that you have before attempts to reverse the existing order of things by making the General Plans, community plans sort of conform to what the zoning does by putting out certain rules and then having zoning do it.

The Comprehensive Zoning Code has a very distinct purpose, and I'm reading down the second A there down below, the middle of the page, the purpose and intent of this comprehensive zoning article is to regulate the utilization land in a manner encouraging orderly development in accordance with the General Plan. In other words, the zoning should follow the community plan.

And further down, the regulate and future growth and development in accordance with the General Plan. And then further down, provide reasonable development standards. Everything should be done in conformance with the General Plan, the community plans that we have. The real problem is the stacking provisions in the Zoning Ordinance. This was done, much of it was done after most of the community plans or all of the community plans were done. They're especially bad in the area of Hotel zone and Light Industrial zone where many provisions were added to that thing which was never the intention of those people who prepared the community plans. In fact, the community plan that I worked on the Upcountry Community Plan, the advisor for that community plan was your present Planning Director, Will Spence who recommended the definition of light industrial to us on the committee. So it's he's now saying somehow that's not adequate.

Go onto the next page. Land use and subsequent zoning is determined not just by community plans. Land use designations is also defined by clarifying text in the community plan and that text is very important. In the middle of that next paragraph, these areas should limit retail businesses or commercial activities to the extent that they are accessory or provide service to a predominant light industrial uses. In other words, there's text in the plan itself in addition to the definitions that helps define what the zoning should be in that area and that hasn't come out in this ordinance and would be potential conflicts with the text if you would just clearly say it has to look at the definition of what light industrial is.

Next paragraph. All zoning applications and/or proposed land uses and developments shall be consistent with the land use map and objectives and policies of the text. So it's not just the map and not just the designations on there, light industrial, hotel, single-family, whatever, the text is also extremely important.

Ms. Takayama-Corden: Three minutes.

Mr. Mayer: And this plan does not speak to that. The light industrial thing, Item F, light industrial is this is for warehousing, light assembly...when I was on the Upcountry Advisory Committee and I was the Vice-Chair we put this definition in. Will Spence was our advisor. He was the staff person from Planning Department who recommended this definition to us. So it's not something that he would not be familiar with from 1994. Subsequent...No. G, subsequent zoning changes. After a community plan was adopted many changes were made in the comprehensive zoning ordinances that added certain provisions particularly stacking of all kinds of commercial uses, et cetera within the Light Industrial zone. We did not intend to have commercial areas in Light Industrial. We would have said that if we wanted commercial we would have put that in there.

So now what are the remedies, somebody asked that earlier. Let me give you three. One is—

Chair Ball: Okay, thank you for your testimony. Do we have any questions for testifier?

Mr. Mayer: I was asked what the remedies were and I'd like to give them.

Chair Ball: I didn't...who asked you for remedies? Is there any questions for the testifier?  
Commissioner Robinson?

Mr. Robinson: I'd love to hear remedy.

Mr. Mayer: Okay, thank you very much Mr. Robinson. With regard to existing nonconforming land uses there is an escape clause for the County and that would be existing nonconforming uses could be handled by an ordinance waiving compliance with prohibiting any future noncompliance. In other words, by saying that all of those pictures, the pretty pictures you saw of existing business all could be said, you are now conforming period. Now if one of those businesses says let's say I wanna change the use of my business or I wanna change the footprint slightly or put a second story in my building that ordinance could say, as long as...and this is an example, a 25 percent increase in the floor...in the footprint on the ground or 50 percent increase in the floor space is still gonna be nonconforming...it still will be conforming. In other words, you allow it to expand, change from a dress shop to a store of another kind, et cetera. You can put that in an ordinance and get rid of all these problems with nonconformance.

Number two. Stacking. Eliminate the crazy stacking that you now have in the zoning ordinance. The problem is not the community plans, the problem is that the zoning ordinances now have become big collections of a whole bunch of uses that were not intended for light industrial as an example. Or in the Hotel zone you're allowed to have single family homes. Imagine there were three or four lots together and in one of those lots Hotel zone, somebody put up a single family home and all of a sudden in the next lot also a Hotel zone somebody puts up a 12-story hotel next to it. How do you think the person in the first lot with a single-family home would feel? What we should make sure is that we do not have that kind of stacking in a zone like for example, hotels.

And lastly, one of the things that the Department has not done, it's neglected its job. I would defy any one of you to go to Mr. Spence or go to the Department and ask where are the zoning maps for Maui County? You will not find...Maui County does not even have a zoning map with all the parcels indicated. It does not have a community plan map with all the changes that have been

done since those community plans were adopted that would be available for the public to see. You can go into files and ask for meetings, but you won't find a map. Thirty-five years the County has been practicing doing this practice of overlooking the plans and that was in the slides there. Why hasn't that been corrected? Why hasn't somebody in the Department, somebody in the Planning Commission, somebody at the Mayor's Office said, Planning Department you shouldn't be neglecting the plans, you should be doing it the way the plan says, the law says, the Corporation Counsel.

Mr. Robinson: Just remedies.

Mr. Mayer: Okay, thank you. I'll stop.

Chair Ball: Thank you. Any other questions for the testifier? Seeing none, thank you for coming. We'll take a five-minute recess.

A recess was called at 3:25 p.m., and the meeting was reconvened at 3:30 p.m.

Chair Ball: Okay, let's call this meeting back to order. We are on Agenda Item D-1, continuing our public testimony. If you would like to testify at this time, please come forward.

Mr. Mercer "Chubby" Vicens: Mr. Chairman, Members of the Committee. I know you're tired, I'm tired so I'm gonna make this short and sweet. I think the points that the Planning Department are addressing on this inconsistencies between our Zoning Code and the General Plan establishing that...(inaudible)...land uses and performance standards are established by the language in the Zoning Code need to be looked at. I think they're on the right, they're on the right direction heading into it where we need to clarify exactly what falls under light industrial, exactly what falls under the different categories. And remember one thing, that the General Plan is the law. We're not talking about community plans any more, we're talking about the General Plan and there was a time when the community plans had a lot of bite in it, however they are just recommendations any more and we need to remember some of that because they General Plan is what was approved by our group.

The other thing is is that I noted that under, under the Maui County Code 2.80B.030, all agencies shall comply with the General Plan notwithstanding any other provision. All community plans, zoning ordinances, subdivision ordinances, administrative actions by agencies shall conform to the General Plan, okay. So there's been a lot of rhetoric today. I saw my friend, the Planning Director, shaking head and scribbling like crazy when misinformation was imparted on the Commission, but I'll let him defend his own self. Gentlemen, thank you very much for, and lady, thank you for very much for allowing me to come before you today. I consider it a privilege to be able to stand here and represent our community and I thank you for the job well done and your continued success and a Happy Thanksgiving. We have lots to be thankful for.

Chair Ball: Same to you. Thank you. Next, Charlie?

Mr. Charles Jencks: Good afternoon, Members, Mr. Chair, Mr. Director, Staff. I know it's...my assistant is gonna hand out something for you all, actually my two assistants. Thank you very much.

Mr. Lay: I went to this class.

Mr. Jencks: This is required reading. Tom would you hand this out as well, please? Thank you, Gina. I've just handed out a book. It's called, *The Death of Common Sense*, when I was the Director of Public Works I received this book in its first edition which was I think 1995. I read the book and I thought it was a great read and I think what we're talking about today is frankly common sense. That's why I handed out the book. Read it at your leisure. I think it is a good read. It's instructional and I think you'll get something out of it.

My name is Charles Jencks. I'm a Manager with Pacific Rim Land and Pacific Rim Land as I think you've heard before manages a lot of partnerships and projects here on Maui and statewide. For me, going back to 1991, as the Deputy Director of Planning when it was my job as the only planner in the Department of Public Works to interpret the Zoning Code this was a non issue. We looked at the Zoning Code to determine what was a permitted use because we had performance standards for height, setback and the uses all the in the Zoning Code. Yeah, the community plan...as long as it was consistent with the community plan in terms of the designation, we went to the Zoning Code for the standards and uses. Standard practice mid-90's jurisdiction was given to the Planning Department through a Charter amendment so I no longer had control of that in the Department of Public Works.

I think once again this is all about common sense, so I'm gonna read to you, the hand out I just gave you has a series of hand outs and I'm just gonna roll through those. There's been a lot of discussion about nonconforming uses here today and I'm astounded at the carefree attitude that some of the testifiers take with regard to non conformities because believe me gentlemen, ladies and gentlemen it is a treacherous, treacherous slope. There's one quote on the first page and it says, nonconforming uses can be accommodated and allowed to continue...I'm not gonna give you attribution on these quotes because I think you can probably figure that out, but that quote in itself that certainly is great news for the hundreds of businesses, residential condo, and timeshare units suddenly considered nonconforming. Anyone ask their lenders or insurance carriers how this would impact their fixed assets, believe me it could be severe. If you're suddenly designated as nonconforming it's a big issue. Check with Mr. Ball, he's a real estate agent.

Allowances could be made for nonconforming uses so that it is clear that they could continue but they could not expand or change to another nonconforming use. If they wanted to expand they could just file a CPA or change in zoning. Well, if Sam Sato's wanted to expand, he'd have to file a community plan amendment and a change in zoning at a cost of approximately \$100,000. Take about two years. Is that something you would support? I think not.

Doesn't see any real negative impacts to create nonconforming uses as long as they're allowed to continue as is. Clearly no fundamental understanding of the financing, insurance, and ability to expand and create jobs.

Last but not least, they would not go after benign uses such as churches schools, daycares in the single family use areas. I think that's great. Somebody can sit down and decide what's gonna be pursued and what's not gonna be pursued as a nonconforming use. So once again, just some quotes, but no attribution, but I think you can figure it out.

I also want to give to you—

Ms. Takayama-Corden: Three minutes.

Mr. Jencks: —in my early days as a consultant I was doing due diligence in Kaanapali for Intra West. I did the acquisition for the Honua Kai project. I wrote a letter to Michael Foley in 2003 asking him 'cause my client wanted to know, hey the community plan says Hotel is this, and zoning says this, what is it? If they were gonna spend \$40 million on land they wanted a definitive answer. Well, the answer is in this handout, and Mr. Foley said, the community plan is advisory. Zoning effectuates. That's what this letter says in 2003 to me. The next page, the next handout is a declaration when the Maui Lu was up for its approval as a timeshare and Mr. Hunt was asked the same question and this declaration highlighted, references Mr. Foley's letter. The community plan is a guideline, zoning effectuates. You go to zoning for the standards. Two planning directors consistent, consecutive planning directors with Mr. Spence saying the same thing. That's the way it's been, that's the way it should be.

Lastly, the community plans have within them and I went through all the community plans looking for these little tidbits where you could condition the property on this, condition the property on that. Unless you effectuate that to the change in zoning request it's not worth the paper it's written on. If for example it says, restrict commercial uses in a certain area of South Maui, well if you get a zone change and that conditional requirement isn't reflected in the zone change who's gonna enforce that? If the Council didn't put it on the change in zoning as a condition where does it go? It's ineffective. So if you're gonna write things like this into the community plans either pass ordinances to effectuate them or forget about it.

Chair Ball: Thank you.

Mr. Jencks: You can't go on that way.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Robinson?

Mr. Robinson: So you talk about the changing of commercial and zoning the hotels in the Wailea area, so in the Charter everybody's using the Special Use Permit to get around from that. How does that different from the zoning...for uses, right, uses and...

Mr. Jencks: Let's talk about three projects.

Mr. Robinson: Okay.

Mr. Jencks: Wailea Beach Villas, that's multi-family. It's zoned Hotel and community planned Hotel. Wailea Point is zoned Hotel, community planned Hotel. Hoolei is zoned Hotel and community planned Hotel. All three of those projects are condos, condominiums with kitchens. If you look at the community plan designation and definition of Hotel it's visitor accommodations without kitchens. Can you see the gigantic disconnect between the two? Those three projects that are huge projects in the event if someone got their way, if there was a hurricane and they were damaged someone could say you can't rebuild until get a community plan amendment and change

in zone request because you're inconsistent with the community plan.

Honua Kai, North Beach Makai, all the Starwood, Honua Kai, all of that products, thousands of units would be considered nonconforming. You don't wanna go there. This book is a listing, I'm not gonna give this out 'cause this cost me a whole lot of money to put together, but this book is a listing of all the owners in all of the Light Industrial Districts, Kahului, the Mill Yard, Lahaina, Kihei plus the owners in Honua Kai, Wailea Beach Villas, Hoolei, and Wailea point that would be affected. That's a lot of people. That's a lot of property. Not to mention the impact on real property tax. If you're a nonconforming use then what? You pay the hotel rate or do you pay a reduced rate 'cause you're a nonconforming use. This is serious business.

Chair Ball: Any further questions for the testifier? Seeing none, thank you, Charlie.

Mr. Jencks: You're welcome.

Chair Ball: Tom Blackburn-Rodriguez? That's part of your time getting up to the podium.

Mr. Tom Blackburn Rodriguez: Thank you very much. For those of you who don't use sidewalks I'd like to say on behalf of those who use three legs more sidewalks are great. Thank you very much Mr. Chairman. My name is Tom Blackburn-Rodriguez. My family came to Hawaii in 1870. I am proud to live in Kihei and I'm testifying as an individual. I'm testifying in support the legislation before the Commission today as presented by the Planning Department and vetted by the Corporation Counsel.

The purpose of this technical amendment is to align the corresponding land use descriptions within the community plan with the parallel zoning districts, common sense. For example, if a community plan designates a land use area as light industrial this amendment would clarify those permissible uses under the light industrial designation and would be those allowed by zoning regulations. I support the proposed technical amendment as a way of clarifying the relationship between land use designations in the community plans and zoning. Before we can have a community discussion we need to clarify what we're gonna be talking about. This legislation will not allow the kinds of actions raised by testifiers here today. In fact, I, and many others with whom I agree would oppose any attempt to use this legislation as allowing folks to go around land use designations in the community plan. Concerns have been raised that if an area were designated in the community as park as a land use, then this legislation will allow hotels to be built in that area if the area were zoned hotel...(inaudible)... This is not an action that would be authorized by this legislation. In fact, currently Title 19 of the Maui County Code, Section 2.80B.030 states that, "all agencies shall comply with the General Plan notwithstanding any other provisions. All community plans, zoning ordinances, subdivision ordinances and administrative actions by agencies shall conform to the General Plan." In other words, if a parcel is designated Park in the community plan and zoned Hotel and a permit for a hotel is submitted for approval that permit cannot be considered or cannot be issued unless the permit is consistent with the General Plan.

In conclusion, I support the proposed technical amendment as a way of clarifying the relationship between land use designations in the community plans and zoning. Mr. Chairman, on a personal note I wanna thank you for the opportunity to testify and providing a forum for expressions of both

support and opposition to this measure. I wish you a Happy Thanksgivings and I hope that the healing spirit of the season will extend to all who only wish the best for Maui. Aloha.

Chair Ball: Thank you, Tom. Same to you.

Mr. Blackburn-Rodriguez: Any questions?

Chair Ball: Is there any questions for the testifier? Seeing none, thank you.

Mr. Blackburn-Rodriguez: Thank you.

Chair Ball: Would anyone like...else like to testify at this time?

Mr. Albert Perez: Aloha, Commissioners. Albert Perez, Maui Tomorrow. You know I used to work in the Planning Department a long time ago. When I first got there one of the first projects that I was asked to review, I said, well but the zoning is inconsistent with the community plan and I was told well, it's just a guide. So, you know, I went ahead and did what they told me to do. But now, I know better.

Mr. Spence said that the first community plans were adopted in 1980. So what that means to me is that the Planning Department has had 35 years to eliminate inconsistencies between the zoning and the community plans and I think I heard about 100 examples of the inconsistencies today. Every time that we modify a community plan we need to do the complete job and fix the underlying zoning so that it's consistent with the community plan.

Mr. Spence: Yes, I agree.

Mr. Perez: Right?

Mr. Spence: I agree.

Mr. Ball: Order.

Mr. Perez: But we haven't been doing that. So all of those Sam Sato's and things those are created because it's not being applied properly. So I'd just like to bring your attention to the State law once again. You can do whatever you like here today but the State law says zoning needs to implement the General Plan and there are several court cases that support that. In your handwritten testimony that I passed out to you there's this diagram and you'll notice that zoning is listed on the bottom. So it's an implementation mechanism for the community plan. If the zoning is inconsistent...if I'm a carpenter and I'm given a hammer and I'm given a set of plans and I don't follow the plans, guess what I get fired. It's the same thing with the zoning. The zoning is the tool, and the General Plan is the plan. So...55 years after the comprehensive zoning was adopted in 1960, it's not, it's still not fully implemented. We have Interim zoning all over Molokai and all these different places. They need to finish the job.

The stacked zoning in the Hotel and Light Industrial Districts contains incompatible uses in the



same zone. This defeats the purpose of zoning which is to protect property values by segregating uses that are incompatible, and also to protect essential uses from rising property values that cause them to have to move.

So if this PC-21 which is a band aide solution is passed it will ignore thousands of hours and millions of dollars that have been spent putting together these community plans. And I'd like to bring your attention to this letter and I'll pass this out for the record. I only have one copy, but this was written by Jeff Hunt, former Planning Director in 2009, and they were dealing with the issue of stacked zoning. So the Council was wanting to stacked zoning and he brought it to the planning commissions, got advice and there was a, there was a human cry I guess you would say because of the all the nonconformings that would be created. So his recommendation instead was to go ahead and address all of these areas like the Mill Yard and everything during the community plan updates you can redesignate it to something like Business Commercial and eliminate all of that nonconforming problem.

Chair Ball: Thank you.

Mr. Perez: Thank you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Gene?

Mr. Gene Zarro: Good afternoon everybody. It started out with good morning, six hours ago, seven. But my name's Gene Zarro, I'm the Vice-Chair to Kihei Charter School and one of it's founders. And a lot big ideas have been tossed around here for the last hour of testimony, but I'd like to crystalize that into a potential victim. Kihei Charter School is a potential victim and I think you need to see someone up here that will be affected by intended consequences. These are not unintended consequences because we're all aware of the issues. So we cannot hide behind the fig leaf of unintended. This is intended consequences, okay. And I really think the most important thing we should do in this world and try and do no harm. So we gotta make sure we don't hurt the people that could be very well affected by these intended consequences.

So my point is we moved into the Kihei Commercial Center. In our second year of operation we moved into the old Rain Song Guitar Factory. We grew from 60 students at the Kihei Youth Center...as a matter of fact, we've had a history of nonconforming uses if this were to go into effect. We started with the Kihei Youth Center with 60 students moved into the Rain Song Guitar Factory in the Kihei Commercial Center, immediately jumped to a 135 students 'cause now we actually had 5,000 square feet. Couple years later we moved next door to the Hope Chapel and we grew to like multi-hundreds of students and then we took over a building behind us and we're currently in conversation with Val Peroff and Jack Walkins in case we need more space.

The point is we're 560 students now and every one of those moves would have been not allowed. The only high school in Kihei would not exist with 250 high school students if this were in place. And yes, there are remedies but they are very expensive remedies, they are very complicated remedies and there's no guarantee will produce the required result. So I guess my quick point is the people that are currently and businesses that are currently occupying these places that may or could possibly become nonconforming is it their fault? It's not their fault. They entered into an

agreement, they entered into a relationship with the County of Maui that what they were doing was fine. So retroactively to try and change that, I personally would consider that a breach of contract. I would consider it a taking. I would consider it something I would have to seek legal remedy on. So I truly support our Planning Director's solution whether it be temporary, permanent, nothing is permanent. No one 20 years ago could have predicted that you would need charter schools in light industrial uses. None of you would have predicted that 20 years ago and today they thrive nationwide in light industrial areas. So you can create a future, but you can't predict a future. Let's keep it flexible. Let's go with the man that we hired to know more than us, the Planning Director, and thank you.

Chair Ball: Thank you, Gene. Any questions for the testifier? Seeing none, anyone else that would like testify at this time?

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

Chair Ball: Patricia Hoskin? Please identify yourself when you come and you have three minutes. Thank you.

Ms. Patricia Hoskin: Hello. My name is Patricia Hoskin. Aloha Planning Commission. My name is Patricia Hoskin. I'm a resident and live at 2495 South Kihei Road, Number 163. I'm going to be talking about Agenda Item D1. I know that's way ahead, but it seems to be a rather crowded again.

The Maui Island Community Plans were created by stakeholders over several years after the zoning existed. The community plans came as a response by interested citizens as to how they would want their community to appear. I believe that this amendment is being brought before you because PC-21 which was brought before the Planning Committee of the Maui County Council who at least 22 testifiers most of these were not in favor of the change.

I realize Mr. Spence will present examples of problems in Kahului and Wailuku because I saw that presentation. I do not believe these are the motivation for the amendment. I personally believe the amendment is being put forth for the developers especially those who would want to develop by beaches, on land which was zoned H-2 earlier and then made Multi-Family by the Maui Community Plan.

This change would be an advantage to them. The developers would be able to develop larger structures with more units and have these units possibly be transient vacation rentable. This would make their investment more valuable. The developers would be able to immediately reap the advantage of this change and perhaps sell their land for a larger profit.

A possible solution is to make the zoning conform to the community plans in areas where the classification is not the same. The voting public believes that the Maui Community Plans will be adhered to and not modified for this special interest group. So I am asking you as Commissioners to take the public trust seriously and not approve this amendment. Mahalo.

Chair Ball: Move onto Mark Hyde?

Mr. Mark Hyde: Good morning, Commissioners. I'm appearing on behalf of South Maui Citizens for Responsible Growth. We oppose amending community plans. I'm speaking on behalf of D-1. We oppose amending community plans to redefine the definitions in those plans to include all the uses that are contained in like names zones while at the same time we believe that it's important clearly for community plans and zoning to mesh.

The problem as we see it is that zoning needs to be fixed first and then integrated with the community plans. You may believe for instance in Light Industrial zones in Maui County you will find traditional light industrial uses like warehousing, and distribution, light assembly and that sort of thing. But the fact of the matter is that there are many Light Industrial zones throughout Maui County that don't contain a single shred of typical light industrial use.

Now that's for two reasons. One is that the County has not enforced the Code which says that light industrial zones are to contain mostly, and then it defines typical light industrial uses. That's in the preamble or the purpose and intent clause. The next section then has been reduced to Swiss cheese that includes all kinds of uses B-1, B-2, B-3 that have nothing to do with light industrial and so for what you find is you have Maui Market Place which is entirely a commercial development, retail commercial development in a light industrial zone. And if you were to adopt the proposal of the Planning Department you would make that possible throughout. But the problem is we have to tighten up the zoning so that we can get that, that good mesh between the two concepts. Until then, I would say reject the concept that's being proposed but go to work on zoning. Thank you very much.

Chair Ball: Thank you, Mark.

Ms. Diane Wakamatsu: Diane Wakamatsu. Good morning, Honorable Chair and Members of the Maui Planning Commission. My name is Diane Wakamatsu and I am testifying on behalf of the Go Maui Board on a proposed bill to amend Chapter 2.80B relating to land use designation and community plans.

The Go Maui Board strongly supports the draft legislation proposed by the County's Department of Planning for the following reasons: One, historically from the time that the County first started regulating land uses it is zoning that determines what property owners are permitted to with their property not the community plan. Two, with the County Council and the County Administration has followed this principle by allowing zoning to prevail over community plan descriptions when conflicts or nonconformance have existed between the two. Three, if conformance is necessary to govern or control land uses then the community plan should be comprehensively amended by the County to protect numerous small businesses and a significant amount of property owners from being negatively impacted which will also effect our County's real property values and as well as Maui's overall economy. Four, the proposed legislation is a practical approach that makes sense because it clarifies how community plans should be interpreted when it comes to permitted land uses and performance standards.

Thank you for the opportunity to provide testimony on this matter. Your favorable consideration and support of the proposed legislation is greatly appreciated.

Chair Ball: Thank you, Diane.

Ms. Paltin: Aloha, my name is Tamara Platin and I'm testifying as kupa aina, a citizen of the land and I would ask that you folks also hear my testimony as citizens of this land. Whatever your jobs are in outside of this room take off that hat and listen as community members appointed to a commission. That being said, it's kind of disappointing that there's nobody that lives in West Maui on this Commission. But anyway, that's not you guys fault.

I just wanted to say I strongly oppose the bill to amend Chapter 2.08 [sic]. During the Maui Island Plan process we were told detailed land use decisions should be made during the community process by amending the community code as it allows zoning laws some of which are even more outdated than our community plans to supercede community wishes and ...(inaudible)...for example, Palauea Beach which has zoning of Hotel and the community plan designated they didn't want hotel use there.

I'd also like to remind you that you're not above the law and State :aw trumps County Code. Hawaii State Law HRS 46-4 states, zoning must conform to the community plans and shall be used to put them into effect. So if there are mismatches as stated by the Planning Director zoning should then be updated. I'd further like to cite Maui County Charter, Chapter 19.04 in regards to comprehensive zoning, specifically Sections B and C, the purpose and intent of this comprehensive zoning article is to promote and protect the health, safety and welfare of us, the people of the County. Nowhere in there does it say economics. You know, there's more than one standard than measuring by economics. And they do this by guiding, controlling and regulating future growth development in accordance with county, general and community plans and to provide reasonable development standards which implement community plans of the county.

The amended language proposed by the Director makes it harder to implement community wishes. It also doesn't recognize that some classes of zoning are overly broad as Mr. Hyde stated and create unintended consequences. Light Industrial zoning which was amended to allow retail businesses there are community plan designations that could be used when the people of the area want to see a wide range of uses in the same area.

In closing I'd like to add thousands of volunteer hours and millions of dollars have been invested in creating our community plans. Approval of the proposed amendment to the County Code would undo both the work and the will of the people. It will violate State Law and will result in law suits that would cost millions of dollars to our tax payers. Our community is losing faith with each tool that is being taken away from them to participate in the determination of their own future. Do not take away more, it will only bring us closer to mass revolution and rejection of the status quo.

Chair Ball: Next is Debra Greene.

Ms. Debra Greene: Good morning Chair, Members of the Planning Commission, staff, community. My name is Debra Greene and I'm testifying on behalf of the Maui Meadows Neighborhood Association and this is regarding Item D1. We oppose amending community plans to redefine community plan land use definitions to include all uses contained in like named zones. This will take us down a very slippery slope that elevates zoning over community plans. And with this

proposal we ask when would the community have input? Not in zoning. For example, Maui Meadows is zoned Rural, and what if someone amended the Rural zoning to allow commercial and other purposes? The average person wouldn't even know this change was made. With language such as that being proposed anything can happen.

We believe this is purely an effort on the part of developers to get the Planning Commission to allow commercial activities to take place in a community plan light industrial area in Kihei. The community plan says no commercial. Already in South Maui we're faced with major infrastructure problems. There have been several projects approved with no attention paid to the added burden on our infrastructure especially in terms of traffic and roads. There's a huge difference between commercial and light industrial in terms of burdening infrastructure.

Hawaii Revised Statute 46-4 is very clear about the relationship of community plans to zoning. It says, zoning in all counties shall be accomplished...sorry, can't read my own writing...zoning in all counties shall be accomplished, and it uses this legal language, it doesn't say that it's encouraged or suggested, it says that it shall be accomplished within the framework of a long range comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the County to put the general plan into effect in an orderly manner. In other words, the general plan is the master blueprint and zoning is meant to be a tool to implement that master plan not the other way around. Thank you.

Chair Ball: Thank you.

Chair Ball: Next up is Trinette Furtado?

Ms. Trinette Furtado: I also have two items, so I'm gonna do them separately. Aloha mai kakou. O wau o Trinette Furtado. ...(Spoke in Hawaiian)... I'm here today to again in the spirit of community to ask you to remove your hats as business people, as realtors, as those who profit economically off of this aina because we all in the end go home to places on this aina. And I ask you to reject the amendment to allow zoned...rezoning of districts within the plans and to circumvent community plans because community plans is where we get the input from the people who are pa`a to that area, who are pili to that area. And if we go against what they've put in the hard work, all the hana, all the coming together because as we know we're all different people, we come from different streams of thought, we come from different areas of learning and when we come together it's a serious thing. When we put together community plan, it's a serious thing, it's something that we all want to see work out. And to see projects slip by that by having their zoning, their projects come before community plans, come before island plans, you guys are our first line of defense for the public trust doctrine. It is your duty to make sure that you preserve and you protect our resources, our aina, our wai, our air, the makani. It is your job when you come and you sit in this commission to do that. And to allow a rezoning, to allow this amendment to happen, absolutely obliterates anything that could be called community. And so if you're gonna use Hawaiian words and you're gonna use the word, community, I think you better know what it means before you use it. I think that those that come to bring development into a community better know what it means before they use it.

Ms. Pamela Tumpap: I also want to support PC-21 because this again is a good governance issue.

Zoning has been in practice for they're saying roughly 40 years where zoning has always been the overarching legislative clarification on land use. Over time we have changed and modified our community plan process. And when something has existed for long and new legislation comes forward, sometimes we don't look at the interaction between the two pieces, and in this case, we didn't close the gap. It was never meant for the community plans and the limited descriptions on the community plans that included lesser uses to then become the overarching plan. And so now we have a situation where we have created a loophole. So what do loopholes do? Well loopholes create a situation for people to come and challenge things when they don't like a particular property, project or person or business and we've seen that a lot in our community of late. So we have to close these loopholes and look at things that are good governance measures and look at the practices that have been in place. If this is not clarified, and somebody is going to challenge it, you know if it were to be challenged and some have already said they might not on every project just on the ones they don't like. So we've now created a situation where the wheels of a few could trump what we have tried to create. Zoning is a long established process. It takes a lot of time to go through a zoning process. The community plans are there and include those uses. So we're not trying to usurp the community plans and what already exist. What we are trying to do is clarify that what exists is zoning as a practice has always been the ultimate definitive use determinator and clarify that so that we avoid frivolous lawsuits, we avoid challenges and we avoid businesses being harmed should there be major disaster and destruction. This year was one of the years that we saw the most hurricane challenges in a single year. So when might that come? We don't know. Have we seen examples where people couldn't build? Look at Hasegawa General Store. Have we seen examples of ...(inaudible)...in our community where people are challenging long standing companies who have been around for generations? Look at what's happening with HC&S. We need to create clarity and zoning has always been the overarching mechanism for determining land use therefore, we support this good governance measure, ask that you do the same, and ask that you send a strong message to the Council and encourage them to so as well.

Chair Ball: Thank you.

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

Chair Ball: Anyone else that would like to testify at this time? Seeing none, public testimony is closed. Director?

Mr. Spence: Thank you, Mr. Chairman. Just a couple comments on some of the testimony. For one, I don't think our current system is screwed up. This is the way we've done it for 35 years. The community plans, you have a single family designation, it says you will go get single family zoning. You're designated light industrial. You will go get light industrial zoning. That's not screwed up. This issue comes up because members of the community raised the issue that say that it's an issue, that say that only these, and this is in conversation with members of the community that say these community plan descriptions these are what dictate land use, and that's just incorrect.

Okay, so the issue was forced on us. We aren't forcing issue. The thought that I advised the Community Plan Advisory Committees to use screwed up definitions, those definitions come predominantly from the 1980's community plans. And this was not an issue either the 80's or during the 90's. It goes back to what I said that if you get the single family designation in your community

plan, you should go get single family zoning out of Title 19. That's not...there was no issue at that time. This was generally understood. This is understood around the country. When you go change a comprehensive plan in most places they do comprehensive zoning. I asked this question in Seattle and I asked it in Portland, I mean, we're talking when they complete a plan, they entitle tens of thousands of units at a time, super dense developments. They adopt the zoning just as soon as they adopt the plans. Personally that would be my preference. I appreciate that there are missed zonings. I'm wholeheartedly in favor of comprehensive zoning.

The thought that there are...the table that was referred to that possibly could go into Lanai Community Plan, that table takes the community plan designations and refers to a specific zoning code within Title 19. It's not a...it's deferred to Title 19 to what the zoning description is. So that's not a, you know, that's exactly what we are saying here. Community plan says this, you go do that whatever is available in Title 19.

And then the concept that there are no zoning maps, Mr. Mayer I will invite you up into Zoning and Enforcement Division and I will show you scores of zoning maps. They absolutely do exist. And we are working on making those digital. There's a lotta issues with that that are being worked out. We have some of those maps we call it the DSSRT project, the Dead Sea Scrolls project because some of those maps have more tape on them than they do paper anymore. So, but yes, we do have zoning maps and we have since the 60's. So anyway, thank you for the opportunity.

Chair Ball: Thank you for that. Okay, at this time we will ask for any comments from the Commission? Commissioner Hedani?

Mr. Hedani: I support the Department's recommendation. I think clarification is good. I believe in the system of stacked zoning. I believe that when a person purchases a piece of real property it comes with a bundle of rights. One of those rights is zoning. When you look at the Zoning Code what it tells you is that the use that's identified in the Zoning Code is allowed. And it also tells you that all of the uses that are subservient to that, that are below that that have less impact on the land and the surrounding properties are allowable uses under that zoning. That's the reason why you have different uses within different zoning parcels. If the uses are less of an impact to the surrounding area than what is allowed it's allowed and that makes sense. There is no death of common sense.

Chair Ball: Further comments? Commissioner Robinson?

Mr. Robinson: So when I came on here very shortly ago, I was handed stacks of community plans, right? Why? I mean, if we're gonna...if the community plans don't mean anything why was I given all these stacks? I mean if we're gonna refer back to zoning which again, I'm not opposed to, I guess it's there's so many contradictions and it's hard for me to keep up with the testimony, with your presentation, with what I'm reading with my own, with my own experience 'cause I own in the Kahului Industrial, I live in Maui Lani like they're talking about and there's all these contradictions and talking and I'm like, I live in all of these things and nobody's telling the right story, you know. And I read on top Mr. Jenck's one where he's talking about the Maui real estate, you know, where it's supposed to be light industrial with day time hours, yet they have meetings at night, the funeral home next door fills up the whole neighborhood parking and then you tell me that your...the County

bought seven lots and it's not even zoned for buying it. It is, but it isn't. I mean, shouldn't...I mean, the County's doing the same thing that we're having that problem with, why didn't we fix this before the community has to say something about it, that's what I don't understand. Why couldn't...why couldn't we just said, you know, from now on this is all conforming instead of the community have to do it and now it's kind of backwards and looks like we're trying to slide things through. I mean, as today we saw, we saw one of the largest companies in our island and they own so much property and it's all agriculture and it's every time it's gonna be zoned one way. I could see, I could see uses for it being the opposite way to where it if it was single family home they could go to the lesser, lesser value instead of always it being automatically to the greater value and that's what's been happening. You know, we look at all these examples Upcountry where you have the single family homes but the people wanna use it as ag, oh that's lesser value and I could see them moving it that way and coming to here because they wanna pay less property taxes 'cause they haven't developed yet which developers do and then come back ten years later say I wanna go back now, 'cause now I'm ready and I'll pay the higher taxes. So recommendations, it's all over the place. I mean, how do we, how do we, how do we just go one way is what I'm saying. How do we just go top down instead of, you know having to have a big master plan and you're gonna have to have, you know, the County is gonna have to go through all these small little checks instead of just one fits all is what I'm looking at, sorry.

Chair Ball: Other questions? Commissioner Hedani?

Mr. Hedani: I think the other point that I wanted to make is that I've served on Community Plan Advisory Committees, I also served on the General Plan Committee or the Maui Island Plan Committee. When you have a piece of property that has value and we're not a socialist government. If you own real property and a group of people decide that they don't like the zoning that you have on your property they can attempt through the community plan process to down zone your property. If you have a hotel property and they wanna change it to park, they can try to change it to park on the community plan. If 13 people decide it should be park and nobody stops them in the community plan process and if community plan controls zoning then your property suddenly goes from hotel to park.

We had a case like that in Kaanapali where the zoning was apartment, the community plan was park and when the person came in for his permits, in accordance with the zoning there was a human cry from people that said, no it has to be park. Person said, okay I cannot use my property for the use that it's zoned for right now, you say it needs to be used for park then you have essentially taken all of the value of my property away. You own it. You bought it from me by adverse possession or by inverse condemnation. So what you have to do is pay me for the value of the lost value that you took away from me. And it went to the County Council and the Council said, we're not gonna buy your property, your apartment zoned property in Kaanapali from you. If you wanna go ahead with your five single family residences go ahead.

And the same case applies in the community plan process. When you're looking at the entire island, the community plan committee isn't looking at everybody's individual piece of property and saying, oh this one is zoned such and such, we'd like to change it to a lesser use. We have their permission because they decided that they don't want the higher use. That's not the way it's done. Community plans are a consensus mechanism where people come to the community plan to say



I would like to go from designation to this designation, please give me approval to do that, and usually an up zoning rather than down zoning. But there have been cases where people that wanna stop development or reverse the chronology or go back to the flat earth society, you know, would pursue community plan changes that would down zone property without the permission or the consent of the people that they affect and I think that's wrong.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I guess coming from a former education area when Director Spence gave that presentation I was totally lost. I couldn't take heads or tails as to which is which and to define it would be an impossible task for me. I would say that it's like the parliamentary procedure there gotta be something that holds everything together and it sounds like it should be the General Plan and the zoning should dictate whatever it is through the General Plan. The community plan is something that is specific for that particular community that deal with their need not so much in the area of zoning or areas where I think it's the responsibility of the Planning Department to be dealing with that and if there are any exception to the rule such as we always talk about reasonable and situation, et cetera, I think that responsibility should be directed to the Director as the person who's responsible to make that particular decision for that and to me, it makes it so much simpler if those things are dictated and spelled out specifically in that manner. Otherwise, everything get all muddled up and I hate to be Sam Sato won't be able to go over there for do restaurants anymore.

Chair Ball: Director?

Mr. Spence: Just a comment. The thought we pay in our Department we pay attention to those community plans every single day. We get hundreds of requests from realtors and property owners and investors saying what's my community plan, what's my zoning, what can I do on my property? Sometimes, you know, it's just okay, you're all consistent and everything, sometimes you have inconsistencies. We pay attention to those everyday and especially with Special Management Area. We look for that consistency. I mean, please I don't wanna leave any, any impressions that we don't look at those community plan. They live with us.

I think what might be confusing is the stacking. Stacking actually predates our community plans. We have a very old Zoning Code. It's called the Euclidian Form of Code in which what Commissioner Hedani was saying was you can do all the most intense uses, but then you allow all the lighter uses along with it. There's been a lot of discussion over the years of should we fix that or not? The last two times we went to Council to change the light industrial to only allow light industrial and exclude business and exclude apartments, Council left it alone. So that stacking has been in place, since probably since we adopted the Zoning Code itself. It was a very popular thing in the early days of zoning.

Mr. Robinson: So what happens when a light industrial, a true light industrial operation moves right in next to the new DMV and –

Mr. Spence: No problem.

Mr. Robinson: So the noise, the spillage, whatever I mean the effects of it it's not gonna become

a problem or if it's next to the real estate or it's next to the dentist? The problem it's, it's all about money, right? So a person who has a light industrial he's only able to go to certain neighborhoods. He can't go to anywhere else but what he's zoned for. But a business, a dentist he can go anywhere, but he's going to light industrial because the land, 'cause the land—

Mr. Spence: Is cheaper.

Mr. Robinson: —is cheaper.

Mr. Spence: Yes.

Mr. Robinson: Okay, but it's not cheaper for the businesses like the light industrials who had to settle for Waiko Road and their lots were dust and they have to get a well for the water because the County decided well, these businesses we're gonna allow them to go to a different stuff and you other guys are gonna have to fight for yourselves and you guys gonna have to, you know, find a space. And in big community plans, in all the meetings I've heard is you have to have a mix to make things work. You have to have light industrial. But when you saturate light industrial with not light industrial that's not a community plan that becomes a quagmire and that is what I...that's why I say it is, what is is. We're not gonna kick people out I'm pretty sure of that, but it's at the point to where even our County we're perpetrating it by purchasing all that land, that we know it's not truly zoned yet when we have this thing going on and it's just you know, it's...and me being that light industrial it affects me having those different types of neighbors because they do complain about all those things, you know. It does affect me, you know. And the price that I wanna find another place does go up, you know. All those things affect different companies and a lot of people aren't in the industrial business, but I am. And so a lot of people don't think about it. They all think about the development and the business and all those other stuff, but it affects everybody and that's what we have to hold true to what a true planned community is. A light industrial has to hold true to light industrial because you're gonna have those businesses supporting the rest of the community. We can't keep on letting things blend into it and put a big circle in, all of it can happen in there because what happened is the guy with the big land he's the one who's gonna get squeezed out because he won't be able to afford it. And just like those lots that are for sale now open that commercial area, no industrial guy can go and afford that. Only the big retail stores can afford it. Because, because we're essentially pushing industrialization out and we're turning our community to people that are gonna be cashiers instead of people that can develop things and be self-sustaining.

Mr. Spence: Okay. And I'll just comment that—

Chair Ball: Director?

Mr. Spence: —the County Council, while they chose not to eliminate the stacking. As projects come in one by one and they request zoning often times, not always, often times they put a condition on that zoning that limits the amount of commercial that can go in. So the A&B property there, the Business Park Phase 2, they're only allowed to do a certain amount of commercial, the rest of it which would include the County Service Center, the rest there's...but they can't do past a certain amount. The other has to be light industrial.

Mr. Robinson: Zippy's, Zippy's that whole row is business commercial.

Mr. Spence: Yes, I know.

Mr. Robinson: There's zero light industrial.

Mr. Spence: That's like Phase, that's I think it's Phase 1.

Mr. Robinson: But you know what I'm saying?

Mr. Spence: Yeah, I understand. I understand what you're—

Mr. Robinson: It's not even a mixed use, it's a totally different use.

Mr. Spence: And that's why—

Mr. Robinson: And all those guys got pushed to Waiko Road and Puunene.

Mr. Spence: And that's why the Council is starting to put restrictions as people come in for their individual zoning.

Chair Ball: Okay, any other comments? What' we'll do is refer your comments...Commissioner Medeiros?

Mr. Medeiros: I'm gonna support this Planning Director. I was under the impression that, you know, the General Plan was not written in stone and I had asked Counsel if the zoning was written in stone and he said, yeah, that's right...(inaudible)...

Chair Ball: Speak in the —

Mr. Medeiros: He said that my thinking was right on that, you know, one is written in stone, the other one isn't. And you know, the General Plan in my opinion it's supposed to guidelines, and I think what Planning Director is doing you know, puts it where it's understandable. When we went through this General Plan deal and everything and they gave me a book this thick, you know, and I muddled through it, you know, I was going is this is a General Plan? And why is it so comprehensive? You know, I think the zoning laws are comprehensive, comprehensive enough because I can look it up and find what I need from it and understand that part. But I just like the direction the Director is going in where it simplifies what the regular guy, and I consider myself to be a regular guy. I'm never gonna be as smart as Dick Mayer, sometimes I get jealous of him, but you know, okay, so I going support you on this.

Chair Ball: Thank you. Commissioner Duvauchelle?

Ms. Duvauchelle: Yeah, I'm gonna also support the Director's recommendation. I know things aren't perfect, but I have always felt that the zoning laws were the that it is, what it is. I don't think that was ever the intention of the community plan. I would like to see some things simplified but

I don't think this is the way to do it, and I don't think that Will should allow these tools that were meant for other purposes to be used for that. So I am gonna support the Director.

Chair Ball: Thank you. Any further comments? Seeing none, seeing Commissioner Lay?

Mr. Lay: I'm also gonna support the Director and anybody knows how to...who sees all the problems is looking at this day to day and is trying to figure out what can we do to make this better will be somebody in his situation, so and follow through that.

Chair Ball: Okay, so the Planning Commission's comments will be transmitted to the County Council for their review on this matter. We'll move onto Item E, Unfinished Business. Director?

**The Planning Department will transmit the Maui Planning Commission's comments on the proposed legislation to the Maui County Council.**

Mr. Spence: Ms. Breanne Fortun requesting a Short-Term Rental Home Permit to operate the Napili Sunset Hale. This has been deferred several times already and our Staff Planner who just ran out the door...she went to go get the applicant...Staff Planner is Gina Flammer.

**E. UNFINISHED BUSINESS**

- 1. MS. BREANNE FORTUN requesting a Short-Term Rental Home Permit in order to operate the Napili Sunset Hale, a four (4) bedroom short term rental home operation located at 5205 Lower Honoapiilani Road, TMK: 4-3-007: 011, Napili, Island of Maui. (STWM T2015/0006) (G. Flammer) (Public hearing conducted on July 28, 2015. Minutes of that portion of the July 28, 2015 meeting for this item were accepted by the Commission at its August 25, 2015. The matter was also discussed by the Commission at its September 8, 2015 meeting. Minutes for that portion of the September 8, 2015 meeting were previously accepted by the Commission. Commissioners: Please bring your Staff Report with you to the meeting. A copy of the portion of the minutes of the September 8, 2015 meeting is included in your packet.)**

**This short-term rental home application is being referred to the Maui Planning Commission for review and action because one or more existing permitted short-term rental homes are operating within a five hundred foot radius of the proposed short-term rental home lot.**

Ms. Gina Flammer: Okay, good afternoon, Commissioners.

Chair Ball: Good afternoon.

Ms. Flammer: I'd like to just give you a brief summary of the application, but I do have the power point with me. The request is for a four bedroom short-term rental home where three of the bedrooms are in the main house and one of the bedrooms is located in a 725 square foot dwelling attached to the garage. The property is located in the State Urban District. It's County Zoned R-3

and it has a community plan designation of Single-Family.

The trigger for the planning commission review is that an existing short-term rental home is located within 500-feet of the subject property. In this particular case there are six permitted short-term rental homes within 500 feet. There was one protest received from a neighbor located three houses to the south. That, as well as the applicant's responses included in the staff report Exhibits 20 and 21. In the staff report are also two letters of support from the neighbors and an additional letter was provided at the July 28<sup>th</sup> meeting. That letter was distributed to everybody that wasn't at the meeting. At the September 8<sup>th</sup> meeting there were an additional three letters of support provided by the applicant as well as an economic projection of the rental proceeds to be collected by the County and State. And just for the record the Department did provide everybody with this handouts as well as the power point presentations to the Commissioners that weren't present at the meeting.

I did wanna remind the Commission of the staff report, Page 14 and 17 that's where the criteria is listed that you're directed by the law to use to review these applications. In particular, on Page 14, standards and directs the Commission to look at the character of the neighborhood and instructs the Commission to consider among other things community input and potential impacts. Page 17, there also is additional criteria that's in a different section of the law that directs the Commission to look at other things...amongst other things the number and distance of other permitted rentals as well as protests for the application.

As for a history of the application before the Commission, this item was first heard on July 28, 2015. At that meeting there were six commissioners present. There were not enough votes for an approval or a denial and thus the item was deferred. On December 8<sup>th</sup> of this year, the item was heard for a second time. Again, we had three commissioners absent from that meeting. There were also questions asked at that meeting that needed additional research by the Department. That item was deferred in order to receive additional information including a current map showing beach access in the area. A site plan showing the property boundaries. We did some research into...if there were any government beach reserves located in the area, there are not. And I also provided you with a list showing the status of the existing six permits. That information was provided to you in your meeting packet. You can see that there. I see that there's three commissioners here that weren't here at the July 28<sup>th</sup> meeting. The presentation is about five minutes, it's your discretion? Those of you that missed it I don't know if you've had a chance to review the power point? I'm seeing some heads nodding yes.

Chair Ball: Would the commissioners that weren't present at the meeting like to see the presentation? You looked through it. Okay. Continue.

Ms. Flammer: Okay, I'm hearing that the commissioners that weren't here did have a chance to review all the information that was provided to them.

Chair Ball: Is that okay with the applicant if we ...(inaudible)...

Ms. Flammer: There is a lot of information in the power point about the character of the neighborhood. It's also in the staff report. And I also wanted you to know that both the applicant

and her manager, Debbie Mitchell are here to answer any questions that you might have.

Chair Ball: Okay, very good. Do we have the...sorry, open it up at this time for public testimony. Anyone wishing to testify at this time may do so? Seeing none, we will close public testimony. Can we get the recommendation by the staff, Gina?

Ms. Flammer: I did wanna mention one other thing. There was a comment made by Commissioner Lay at the last meeting on September 8<sup>th</sup> and we really do listen to you guys. And the question was clustering and what's the magic number? When is too many enough? So we took that question to the County Council last Thursday for the Planning Committee. The Department went even went as so far as to recommend a cap of five within 500 feet. I was really surprised at the Council there was no support for that. They see this Commission as reviewing each individual application and its own merits. And they wanted the Commission to understand that they really value the work that you do and they trust your judgement on these different applications. So we tried to get some clarity.

Chair Ball: So they deferred to us. Real nice, yeah.

Ms. Flammer: Yep, it's back at you for this one.

Chair Ball: They didn't wanna handle that.

Ms. Flammer: Okay, we did try to bring you some more guidelines but-

Chair Ball: They're elected, we're not. I get it.

Ms. Flammer: Okay, so in terms of the Department's recommendation we are recommending approval with the 23 different conditions that we put on the short-term rental homes. I can go through and discuss them. You're pretty familiar with them. You do see a number of these. So seeing people telling me not to, in consideration of the foregoing the Department does recommendation that the Commission adopt the Planning Department's report and recommendations prepared for the July 28<sup>th</sup> as the findings of fact, conclusion of law, decision and order and authorize the Planning Director to transmit said written decision and order on behalf of the Commission. Thank you.

Chair Ball: Okay, questions from the Commission? Director?

Mr. Spence: Commissioners, as you know this has been deferred from several meetings and I forget what it is it's a 120 days from the first public, from the public hearing. State Law says that you have a 120 days to make a decision on an application. If and...at other meetings there was not enough Commissioners to get five votes and get...if that continues after 120 days, the application, the permit would be automatically approved if there's not an affirmative or a denial here today. In other words, if you still cannot get five votes one way or another the permit will be automatically approved.

Chair Ball: Okay, questions? Motion? I'm ready to go home, so...

Mr. Hedani: Sounds like a 120 days.

Chair Ball: A 120 days, right. A motion to defer? Okay, come on gang let's do this.

Mr. Medeiros: Motion to approve for discussion.

Chair Ball: Motion to approve by Medeiros. Is there a second?

Mr. Hedani: Second.

Chair Ball: Second by Commissioner Hedani. Discussion? Commissioner Hedani?

Mr. Hedani: I oppose the application in the last vote that we took because I felt that having six short-term rentals and B&Bs in the area was saturation and that it was too much for one area.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I personally disapprove it, not because of the applicant's qualifications for getting that bed and breakfast. It's just that whole idea about the clustering, the number of approved bed and breakfast we have right there now. And that I think as a Commissioner we should be aware of the fact that if we have a rule about 500 feet in that particular area and we already have four or five and we approve them then what's the sense of having one of the restrictions being 500 feet perimeter area? And that's the only thing about I'm real concerned about is that the number that's located in that particular area. It's not so much the applicant itself, but I think it's just the numbers that are in that area, the 500 feet.

Chair Ball: But the 500, and also just a clarification the 500 feet is to trigger that there is another one in the area not a requirement if you will.

Mr. Higashi: Right.

Chair Ball: Anyone else? Commissioner Duvauchelle?

Ms. Duvauchelle: Can I still ask Gina a question?

Chair Ball: Yeah.

Ms. Duvauchelle: Gina, how many times...so how many times have you sent out neighborhood notices, public notices on this one?

Ms. Flammer: It's gone out twice. It went out in the beginning as all do with the notice of application to the neighbors when the application first comes into the Department. It is then the public hearing item gets posted in the newspaper by the Department once, and then the applicant places an ad once for three weeks in the newspaper. And then the applicant before the hearing is required to send notice to everybody within 500 feet.

Ms. Duvauchelle: And out of those two times you only received one letter and one negative letter?

Ms. Flammer: One letter of protest and then we had six letters of support.

Ms. Duvauchelle: Thank you.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Director, just to reconfirm. The permit is for the person, not the property, correct?

Mr. Spence: That's correct.

Mr. Robinson: And it's non-transferrable. If they were to sell the property the permit will then be null and void and it has to come back and get a new permit is that correct?

Mr. Spence: That's correct. The new owner would have to file an application with the Department and assuming at that time if there was still other short-term rentals within 500 feet it would come back to this Commission.

Mr. Robinson: And how many years are they asking for initial?

Ms. Flammer: They get one year.

Mr. Robinson: One year the first time.

Mr. Spence: But the extensions are administrative.

Chair Ball: Anyone else? Commissioner Robinson?

Mr. Robinson: I'm gonna, I'm gonna go in favor of the applicant this time, because I think without him not being able to sell it for a financial benefit and because the rental is such on the high end and we'll actually make some tax dollars out of it, like I said before I think it's not taking, not taking anybody, nobody's gonna be able to rent this house is what I'm saying so I'm gonna back this one.

Chair Ball: Thank you. I see it like this, we're talking about these clusters of rentals and it seems now we've been in this rental...in this short-term rental and B&B game for a few years and it seems that the trend is clustering and maybe it's just because of the desirability of the area or something like because we've seen it Paia, we see it in Lahaina, we've seen it on the upper west side, we see it in Maui Meadows, we see it all over the island so it's something that I'm thinking that it's a some kind of desirable area that we didn't really think about the clustering effect. Council doesn't wanna touch it obviously. They want us to do it. There might be something to be said about clustering everybody together. Hotels do it with their units. You know, and we're kinda talking about a hotel too with transient accommodations. So a part of me is you know, I would like to see that the area doesn't get destroyed with a bunch of rentals. But on the other half, side of that, I'm with Commissioner Robinson is you know, we're not really taking it out of rental pool, because you know in the upper end. And as far as the clustering thing, if there's only one letter of...six letters of



support and one of what did you call it?

Unidentified Speaker: Protest.

Chair Ball: Protest. Thank you. You know I think that's okay. Some of the other ones we've had, we've had multiple letters of protest where you know, it's probably not good for that neighborhood. In this case, you know, we got one out of six. I think that it would....it's gonna be okay. That's my two cents. Commissioner Lay?

Mr. Lay: Okay, my view of this. Like we...about clustering. Once that clustering starts, what's to keep it from spreading or saying it's okay and it spreads, and it spreads, and it spreads. You know all of these people, I'm gonna buy a place over there just so I can rent it out. It's renting, it's making money, we bought this place, then what? That's what I'm afraid of. I mean, I'm not against you know any one in particular, anybody, you know, anything. It's just, this might spread and we're saying it's okay. So I have a difficult time with that.

Chair Ball: Okay, everybody say their piece? Call for the—

Mr. Medeiros: Yeah, I made the motion.

Chair Ball: It was already by Hedani and—

Mr. Lay: No, it's his comment.

Mr. Medeiros: I made the motion for discussion purposes you know? And you know, I am against clustering you know, so I'm gonna vote against this motion, my motion.

Chair Ball: Okay, anyone else let's call for the...Commissioner Hedani?

Mr. Hedani: Ditto.

Chair Ball: Okay, let's vote. All in favor of the motion, raise your hand and say, aye? In favor of the of the motion, one, two. All opposed?

Mr. Spence: Four.

Chair Ball: One, two, three, four. I would vote in the affirmative so it would be three.

Mr. Spence: Okay, so the motion fails.

**It was moved by Mr. Medeiros, seconded by Mr. Hedani, and**

**The Motion To Approve the Short-Term Rental Home Permit as Recommended by the Department FAILED.**

**(Assenting - S. Duvauchelle, K. Robinson, K. Ball)**

**(Dissenting - W. Hedani, J. Medeiros. R. Higashi, I. Lay)**

**(Excused - L. Hudson, M. Tsai)**

Chair Ball: Is there another motion? Are we gonna go through that exercise?

Mr. Hedani: Motion to adjourn.

Chair Ball: Motion is denied. Is...Commissioner Robinson?

Mr. Robinson: Motion to defer.

Chair Ball: There's a motion to defer. Is there a second?

Mr. Medeiros: Excuse me, we cannot defer because we –

Chair Ball: Well, we can, but we know what the result is. So if you vote yes, it's an affirmative. If you vote defer, it's an affirmative by rule. But it was already voted...it was not voted, yes. There is a motion to defer. Is there a second?

Ms. Duvauchelle: Second.

Chair Ball: Second by Commissioner Duvauchelle. Discussion? Commissioner Higashi?

Mr. Higashi: Clarification. What's the purpose of the deferral from the standpoint we either gonna accept it or deny it 'cause we have enough members here to do one of the other.

Chair Ball: We do have enough members. We don't have enough votes. You have to have five votes to make it affirm or not.

Mr. Higashi: We need five. Oh I see. Okay.

Chair Ball: So and so they let you do a few deferrals 'cause of that case, but they don't let you go forever.

Mr. Higashi: Okay, thank you.

Chair Ball: So we're at the forever stage right now.

Mr. Lay: Discussion on that right?

Chair Ball: Continue discussion? Commissioner Lay?

Mr. Lay: First of all, I'd like to say I appreciate the County Council giving us this opportunity to express our feeling towards clustering and everything, but I would like to get a feeling on how what they think about it too. You know get some feedback from them on if they think clustering is all right or they think it's not all right. And then we have something at least you know, the upper...

Ms. Flammer: They did feel comfortable with clustering.

Chair Ball: They did or did not?

Ms. Flammer: They did. They felt comfortable with certain resort areas. I was surprised even the West Maui Council person knew the area, knew about where the lot was and didn't have a problem with where it was. She didn't agree that that was necessarily a resort area.

Chair Ball: Okay, further comments? Commissioner Higashi?

Mr. Higashi: Listening to what Planner Flammer had said about the feeling of the County Council, it sounds like if we defer it to the County Council the County Council then override the Commissioners deferral, no?

Chair Ball: No, we don't defer it to them.

Mr. Spence: No.

Chair Ball: We just defer it in-house which means that we're—

Mr. Higashi: Oh, I see, okay.

Unidentified Speaker: It means we go home.

Mr. Higashi: I got the answer from the planner. Thank you.

Chair Ball: Thank you. Director?

Mr. Spence: If you defer, the 120 days is like tomorrow and so time will run out. If you take no action then the 120 days still runs out and tomorrow they would have a...assuming that's the case, tomorrow they would have a permit and it would contain all of the regular conditions of that all short-term rental homes have.

Chair Ball: Question for Gina. Where there any added conditions?

Ms. Flammer: No. There were no project specific conditions for this one.

Chair Ball: Okay, anyone, anyone? Commissioner Medeiros?

Mr. Medeiros: I'm gonna support the motion to defer because we're deadlocked and I voted against it because I'm taking a position on clustering. If these people had come before the clustering I probably, I know I would have voted for this TVR, you know. So my vote against it was to send a message to Council.

Chair Ball: Commissioner Lay?

Mr. Lay: I also feel the same way, we're not picking on anything. I totally you know, you guys got a chance to build your place out there and have that short-term rental and it's not picking on anyone, it's just trying to figure out what we gotta do in the future.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I'm against clustering. I just feel that this area is not a prohibitive area where clustering would affect the normal guy like me.

Chair Ball: Anyone else? I'd like Corporation Counsel not necessary to comment right now, but maybe do some research on the stance of some of the Commissioners on their feeling on clustering as a justification for denial. You don't have to comment on it now if you don't know, but I think we need clarification on that stance.

Unidentified Speaker: Still have a motion?

Chair Ball: Yes, the motion is to defer. I just wanna get clarification on that since we have a strong feeling in the Commission about that.

Mr. Medeiros: In prior Counsel ...(inaudible)...clustering was a reasonable reason for denial?

Chair Ball: I'm not sure. That's why I want our Corp. Counsel to take a look at that.

Mr. Spence: And just a comment?

Chair Ball: Director?

Mr. Spence: In front of Council, it's deferred to you...the big thing is that these are supposed to fit within the neighborhood. More than one in 500 feet it comes to the Planning Commission so you can determine whether it fits in the neighborhood or not. Throughout the discussion with short-term rental home permits I don't recall the term clustering ever used. They may say too many together or something like that. I mean, there was no specific discussion of exactly like that. They're looking out for the character of the neighborhood.

Mr. Medeiros: I'm talking about the previous Corporation Counsel. I remember in one meeting he said that clustering could be considered.

Chair Ball: Corporation Counsel?

Mr. Murai: I don't know what any of my predecessors might have opined. I'm not aware of that particular term. However, as the Director points out you know you may consider other factors like impacts upon the nature of the neighborhood and that sort of thing. Now, so if you believe that this cluster or this concentration would adversely impact upon the neighborhood then that would be an appropriate consideration. But as far as I know there is no definition of...in other words, there's no condition based upon a cluster of short-term rental homes. But to me personally, cluster is just synonym for other things like concentration or you know, some other adjective.

Mr. Medeiros: Yes, I believe that the previous Corporation Counsel did state that that if we believe clustering does impact the neighborhood, you know, that could be a reason for our decision.

Ms. Flammer: If I could just comment that there is a criteria written right into the law that asks you to consider the number and distance from the subject parcel to other permitted short-term rental homes. Now that's for each individual case. I believe the Chair's question to Corp. Counsel had to do with if there's a policy being implemented by the Commissioners that's not in the law is that problematic.

Chair Ball: Yes. Commissioner Hedani?

Mr. Hedani: I think the clustering from my perspective is a problem because it creates cumulative effects. Each individual property does not create the entire effect, but cumulatively it becomes a problem. In this particular case, they can't secure five votes in favor and we can't secure five votes against, so deferral works.

Chair Ball: Yeah. The problem I see with using that is that is their neighbors said it's okay, but you create that when you got a bunch of people doing the same thing. Because I don't live there so what do I know. So anyway. Commissioner Lay?

Mr. Lay: Just one more comment. I'm just afraid we're gonna be creating short-term rental communities. You know, I've got one person that says, no and I've got five other guys that said, yes and they're all short-term rental people too. So the backing's there. Just trying to get something I guess to hold it back or have some protectiveness against it.

Chair Ball: And that's why we have it come here I guess which is good. Commissioner Hedani?

Mr. Hedani: I know Corp. Counsel isn't busy enough these days, but the reason I didn't make a motion for denial again is because I think with only person protesting against this particular application it makes it much more difficult from a defensive position in the event to a possible litigation in the future.

Chair Ball: Anyone else? Motion for deferral. All in favor please raise your hand and say, "aye"?

Commission Members: Aye.

Chair Ball: Any opposed? Six ayes on the deferral.

**It was moved by Mr. Robinson, seconded by Ms. Duvauchelle, then**

**VOTED: To Defer the Matter.**  
**(Assenting - K. Robinson, S. Duvauchelle, J. Medeiros, I. Lay,**  
**W. Hedani, R. Higashi)**  
**(Excused - L. Hudson, M. Tsai)**

Chair Ball: Hold on gang, we got a few more items. Thank you for coming.

Mr. Spence: Item F, the Action Minutes of November 10<sup>th</sup> and the Regular Minutes of October 13th.

**F. ACCEPTANCE OF THE ACTION MINUTES OF THE NOVEMBER 10, 2015 MEETING and  
REGULAR MINUTES OF THE OCTOBER 13, 2015 MEETING**

Chair Ball: Is there a motion to accept the Minutes.

Mr. Hedani: So move.

Mr. Medeiros: Second.

Chair Ball: Motion by Hedani, second by Medeiros. All in favor, please raise your hands, say, aye.

Commission Members: Aye.

Chair Ball: Six ayes.

**It was moved by Mr. Hedani, seconded by Mr. Medeiros, then**

**VOTED: To Accept the Action Minutes of the November 10, 2015 Meeting and  
Regular Minutes of the October 13, 2015 Meeting.  
(Assenting - W. Hedani, J. Medeiros, I. Lay, S. Duvauchelle,  
K. Robinson, R. Higashi)  
(Excused - L. Hudson, M. Tsai)**

Chair Ball: Moving on.

Mr. Spence: Commissioners you have your SMA Minor and SMA Exemptions Reports.

**G. DIRECTOR'S REPORT**

**2. SMA Minor Permit Report**

**3. SMA Exemptions Report**

Chair Ball: Commissioner Hedani?

Mr. Hedani: Move to accept.

Mr. Medeiros: Second.

Chair Ball: Motion to accept by Hedani, second by Medeiros. All in favor please raise your hand and say, aye.

Commission Members: Aye.

Chair Ball: Motion carries unanimously.

**It was moved by Mr. Hedani, seconded by Mr. Medeiros, then**

**VOTED: To Accept the SMA Minor and SMA Exemption Reports.  
(Assenting - W. Hedani, J. Medeiros, I. Lay, S. Duvauchelle,  
K. Robinson, R. Higashi)  
(Excused - L. Hudson, M. Tsai)**

**4. Discussion of Future Maui Planning Commission Agendas**

**a. December 8, 2015 meeting agenda items**

Mr. Spence: Your next meeting is December 8<sup>th</sup>. Public hearing, Kaanapali Beach Hotel SMA Permit and Shoreline Setback Variance. Numbers 2 and 3 are two different bills to allow accessory, additional accessory dwelling in the zoning in Title 19. One bill comes from County Council, one bill comes from the Mayor's Office. And those are amendments to Title 19 which permits those uses. And then you have a fourth public hearing item, Mr. Bruce Nunan wanting a short-term rental home permit in Lahaina. They'll be communications for a Special Use Permit for short-term rental home in Hana. There'll be a communication for TJ Gomes wanting a transfer of a permit from Mr. Jack Freitas, and then there will be design modifications for SMA plans for Wailea Old Blue commercial development and then you have Unfinished Business, another deferred short-term rental home by Mr. Mick Fleetwood. So and there'll be settlement agreements.

**H. NEXT REGULAR MEETING DATE: DECEMBER 8, 2015**

Chair Ball: It is 4:42 meeting adjourned.

**I. ADJOURNMENT**

The meeting was adjourned at 4:42 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Present**

Keone Ball, Chair  
Sandy Duvauchelle  
Wayne Hedani  
Richard Higashi  
Ivan Lay  
Jason Medeiros  
Keaka Robinson

**Excused**

Larry Hudson  
Max Tsai, Vice-Chair

**Others**

Michele McLean, Deputy Director, Planning Department  
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Department of Public Works