

CULTURAL RESOURCES COMMISSION
REGULAR MEETING
MARCH 4, 2004

A. CALL TO ORDER

The regular meeting of the Cultural Resources Commission (Commission) was called to order by Vice-Chairperson Erik Fredericksen at 9:10 a.m., Thursday, March 4, 2004, Lahaina Civic Center, Lahaina, Maui, Hawaii.

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

Mr. Fredericksen: Okay, good morning everybody. Let's go ahead and get things rolling. Call the meeting to order, let's see, where are we? March 4 Cultural Resources Commission Meeting. Let's see, so that's Item A., now, Item B., I'm not going to say anything about myself.

B. RESOLUTIONS FOR OUTGOING COMMISSION MEMBERS ERIK FREDERICKSEN AND KUULEI HAINA

Ms. Duensing: Thank you, Mr. Chair. Today is the last meeting for Vice-Chairman Erik Fredericksen and also the last meeting for Aunty Kuulei Haina, who is our Commissioner from Hana who could not be here because of bad roads. Alright, as I was saying, today is Commissioner Fredericksen's last meeting, and it's also the last meeting of Kuulei Haina, who could not attend from Hana today. And what I'd like to do is read into the record the Resolution for Mr. Fredericksen who has served us quite well for the last five years.

Ms. Duensing read the Resolution for Erik Fredericksen and Kuulei Haina into the record. (See attached.)

Ms. Duensing: Thank you very much, Erik.

Mr. Fredericksen: Thanks, Dawn. Well, thank you, everybody. I grew up in Lahaina and so it's interesting to have my last Commission meeting here. We've got an issue that we're going to be talking about in a bit and it's going to be -- there are a lot of strong feelings involved and I just want everybody to know that, you know, we understand too but let's all try to be, you know, civil and see what we can get sorted out, okay?

C. INTRODUCTION OF NEW COMMISSION MEMBER - BARBARA LONG

Let's see, continuing on with the agenda, we got Item C., and I'd like to welcome the newest Cultural Resources Commission member, Barbara Long, to the left here, and if Barbara wants to say a word or two, she's very welcome.

Ms. Long: Good morning. I kinda grew up in Lahaina too, I've lived here for a number of years back in the '60's, and have served on the Maui County Planning Commission as well as the Urban Design Review Board, and I hope that my time with the Cultural Resources Commission will be a time of bringing the community together and preserving our historic and archeological resources. Thank you.

Mr. Fredericksen: Yeah, and I'd just like to say I'm real pleased to have Barbara on the Commission, I'll just miss not being here, and having Barbara here would have been a lot of fun. Anyways, let's go on to Item D. and this is Approval of the Minutes, we've got two, for December 4, 2003 and January 8, 2004 Meetings. Does anybody have any changes they'd like to say into the record on those?

D. APPROVAL OF THE MINUTES OF THE DECEMBER 4, 2003 AND JANUARY 8, 2004 MEETINGS

Ms. Long: I'll move to approve.

Mr. Fredericksen: Okay, we've got a motion to approve. Is there a second?

Mr. Whelchel: Second.

There being no discussion, the motion was put to a vote.

It has been moved by Ms. Barbara Long, seconded by Mr. Lon Whelchel, then unanimously

VOTED: to Approve the Minutes of the December 4, 2003 and January 8, 2004 Meetings.

Mr. Fredericksen: Okay minutes, December 2003 and January 2004 minutes approved. Okay, now Item E., this is New Business.

E. NEW BUSINESS

- 1. Use of Banyan Tree Park for special events and arts fairs. Commission review and approval of revised policy for use of Banyan Tree Park in the Lahaina National Historic Landmark District, TMK 4-6-001:009. (D. Duensing)**

Mr. Fredericksen: Let's see, I think Dawn will -- staff will give a presentation first, but if anybody needs to testify on this issue shortly thereafter because you need to take off, please make that -- make yourself known, otherwise, we'll take testimony subsequently in the order in which they -- you folks have signed up. Did I miss something? Okay.

Ms. Duensing: Thank you, Mr. Chair. This is a rather lengthy staff report and would you like me to read it to familiarize our audience members here and read you the whole thing?

Mr. Fredericksen: Yeah, I think -- I think it would be a good idea.

Ms. Duensing: Okay, under the topic of Proposed Revisions for Banyan Tree Use in Lahaina, what I will be presenting is Background Information, an Analysis, and also some comments by the reviewing agency as well as my staff Recommendations.

The Banyan Tree Park in the Lahaina National Landmark District has been the site of ongoing arts and crafts fairs for more than three decades. Over the years, there have been concerns regarding the frequent use of the park and the commercial nature of park activities. The Maui County Parks Department has expressed concerns over the increasing use and commercialization of the Banyan Tree Park. The Maui County Cultural Resources Commission has also expressed its concerns regarding the park's status and its use in the Lahaina National Historic Landmark District. From time to time, there have been various complaints by community members about the ongoing arts fairs, commercialization, and adherence to Historic District Permits for the fairs in Banyan Tree Park. As such, the Maui County Cultural Resources Commission is being requested to reconsider the appropriate use of the County's Banyan Tree Park.

Some Background Information: 1. The subject land and Lahaina Courthouse Building were set aside by Executive Order No. 16-2 to the County of Maui for courthouse and park purposes in 1912. Any uses other than for public purposes requires the prior approval of the Board of Land and Natural Resources.

The Lahaina Arts Society was granted Historic District Approval for its Banyan Tree Fine Arts Fair from the Maui Historic Commission on April 14, 1971.

On September 8, 1971, the Historic Commission granted permission to expand the Lahaina Arts Society event to include Saturdays, holidays, and scheduled passenger ship arrivals.

On January 22, 1974, the Lahaina Arts Society event was expanded to include Sundays.

In January 1975, the Historic Commission granted approval to sell art under the tree for six months, subject to the condition that all sales transactions would be conducted inside the Lahaina Courthouse Gallery after April 5, 1975. This stipulation was in accordance with Ordinance No. 804, Bill No. 26, adopted on July 7, 1974, and effective April 5, 1975, which prohibits peddling throughout the County of Maui.

The issue of cash sales in Banyan Tree Park was raised again in 1998. At that time, the Maui County Cultural Resources Commission had opposed cash sales in Banyan Tree Park believing that it results in commercialization of the park. From March 1998 until May 1999, the Lahaina Arts Society had permission to conduct cash sales in the park because its space in the Lahaina Courthouse was closed while that building was being renovated. Although the Lahaina Arts Society moved back into its courthouse facilities in May of 1999, the use of Banyan Tree Park as a conduit for commercial activities continued to be raised.

On April 21, 1999, the Planning Department received a complaint from the public that the numerous vendors in the park were sometimes restricting the general public's access to the park and its benches.

On July 1, 1999, the LahainaTown Action Committee requested and received CRC approval for a Hawaiian He U`i Cultural Arts Festival. The CRC approved the LahainaTown Action Committee's use of Banyan Tree Park for half the weekends and holidays each year. Consequently, the Lahaina Arts Society's use of the park was reduced by half.

Several months later, on September 2, 1999, the Lahaina Arts Society requested the addition of Fridays to their bi-weekly Fine Arts Fair to compensate for the lost weekends and holidays. The CRC denied the LAS request on the basis that an additional day for art fairs under Banyan Tree Park would further commercialize a public park. In addition, the CRC agreed with the Maui County Arborist Committee's concern that the increased use of the park might impact and damage one of Maui County's exceptional trees, which is the Lahaina Banyan Tree.

In October of 1999, the County of Maui requested permission from the Board of Land and Natural Resources to allow private non-profit organizations to conduct arts and crafts fairs and community events at Banyan Tree Park. The County Department of Parks and Recreation received approval from the Board of Land and Natural Resources to manage and approve such events.

Since the approval of the He U`i Cultural Arts Festival, a Lahaina citizen has submitted written complaints to the Planning Department and the CRC that the fair has not adhered to the conditions established by the CRC in July 1999.

On November 20, 2003, the Lahaina Town Action Committee submitted a request for the CRC approval of amendments to the He U`i Cultural Arts Fair. As a result of the Lahaina citizen's complaint and the Lahaina Town Action Committee's request for amendments, the Planning Department and Parks Department have reopened the issue of arts fairs in Banyan Tree Park and are submitting a revised proposal for activities held at the park.

In addition to the regular art fairs at Banyan Tree Park, there are also annual events held at the park, including: Aloha Week, King Kamehameha Day Ho`olaule`a, the Banyan Tree Birthday, In Celebration of Canoes, Holiday Lighting of the Banyan Tree, and the Ocean Arts Festival.

Okay, the Analysis: The Banyan Tree Park is located in the Lahaina National Landmark District and the Maui County Historic District No. 1.

Banyan Tree Park is subject to the provisions of the Maui County Code Title 19.

Pertaining to County Historic Districts No. 1 and 2, Section 19.52.090B3 states: Recreation, refreshment, amusement and service buildings or structures may be permitted in public parks and playgrounds when under the supervision of a government agency charged with the duties and responsibilities of maintaining and operating the parks and playgrounds.

Chapter 19.52.090E addresses selling in public places in the historic districts, and I'm quoting, "It is unlawful for any person to carry on or solicit business in any location on any street, highway, or sidewalk. The same is also unlawful in any location, in any park or open space that is owned or maintained by a government agency without the approval of the Cultural Resources Commission and the responsible government agency having administrative authority over the park or open space."

Banyan Tree Park qualifies as a publicly operated and managed park and it is permitted to have recreational, refreshment, amusement, and service buildings within the park grounds.

According to Title 19 of the Maui County Code, Section 19.04.040, a park is defined as a tract of land designated and intended to be used for active or passive recreation. The same section also defines "passive recreation" as leisure-time activities that are not active, such as walking or picnicking.

The Maui County Council has designated the Lahaina Banyan Tree as “exceptional.”

The Maui County Arborist Committee, in an August 2, 1999 letter, noted that ongoing art fairs under the Tree may impact the tree’s health. Concerns included soil compaction under the tree and the growth of new aerial roots that support the horizontal branches. The Arborist Committee emphasized that the fairs, and I’m quoting, “detract from the natural beauty and grandeur of the tree . . . and are not in keeping with a historic treasure.”

The West Maui Community Plan of 1996 has cultural resources goals as follows: To preserve, protect and restore those cultural resources and sites that best represent and exemplify the Lahaina region’s pre-contact, Hawaiian Monarchy, missionary and plantation history.

As such, the Community Plan’s objectives that might pertain to the Banyan Tree include: Preserve and protect significant archaeological, historical, and cultural resources that are unique in the State of Hawaii and on the Island of Maui; Promote distinct cultural resources as an identifying characteristic of the region; and ensure that developments address potential impacts on archaeological, historical, and cultural resources.

There are also implementing actions to achieve these objectives and they include: Enforce the provisions of the Lahaina Historic District in order to preserve the cultural integrity of Lahaina town; Identify specific historical or archaeological sites for protection and interpretation.

The Maui County Cultural Resources Commission has approved the Lahaina Arts Society use of Banyan Tree Park for arts and crafts fairs for more than 30 years, contingent upon the sales transactions are to be conducted inside the Lahaina Courthouse.

In 1999, the CRC did approve the use of Banyan Tree Park for the LahainaTown Action Committee sponsored He U’i Cultural Festival to be held on half of all weekends and holidays of each month.

CRC approval of He U’i Cultural Arts Festival reduced the Lahaina Arts Society use of the Banyan Tree Park by half the weekends and holidays each month. The Lahaina Arts Society’s request to use the Park on Fridays was denied by the CRC in September 1999.

The Maui County Planning Department recognizes the historical and cultural significance of the Banyan Tree, which was planted by Lahaina resident and Sheriff William Owen Smith in 1873.

And last, the Maui County Planning Department emphasizes that no organization has exclusive use or rights in perpetuity to any park facility. In 1999, the Planning Department

warned that increased demands for the use of Banyan Tree Park could lead to degradation of the park and the prohibition of certain activities within the park. Although the Banyan Tree itself appears to be healthy and is withstanding the ongoing heavy use of the park, it is necessary to consider how the continual activities might impact one of Lahaina's most renown historic treasures.

Okay, this issue was also reviewed by Parks and, as a reviewing agency, I would like to present what they have stated in their February 25, 2004 letter, which is before the Commissioners.

Mr. Fredericksen: Excuse me, Dawn, and Parks Department would be -- how would they be classified?

Ms. Duensing: As a reviewing agency.

Mr. Fredericksen: Okay.

Ms. Duensing: So, in other words, when we did the work on reviewing this issue, we asked for Park's input because they are the permitting authority for Banyan Tree Park.

Mr. Fredericksen: Yeah, they are actually in charge of the parks, as it were, and Banyan Tree is a park, is part of the County Parks ...(inaudible)...

Ms. Duensing: Right, so they're in charge of the maintenance and care of the Banyan Tree Park as well as the Banyan Tree itself. So the Maui County Department of Parks and Recreation maintains authority in Banyan Tree Park. As such, Parks is responsible for the care and maintenance of the Banyan Tree Park, including the care of the exceptional Banyan Tree itself. In February 2004, the Department of Parks and Recreation reviewed the use of Banyan Tree, and the memo's in -- the comments in their memo before you are as follows: Since 1999, Banyan Tree Park has become an active park with continuous commercial activity. Banyan Tree Park should be a passive park where "both residents and visitors may sit and enjoy the tree and its beautiful surroundings."

The Department of Parks is concerned about the overall health of the 131-year-old tree.

Arts fairs in Banyan Tree Park should be limited to only two Sundays each month, plus an additional Sunday in those months that have five Sundays. The Department of Parks and Recreation's comments follow the rules established for other County venues used for arts and crafts fairs, and referring to, for instance, the Lahaina Civic Center and other places.

And their fourth recommendation was: There should be a maximum of 25 artists under the tree.

And their last recommendation was that a time limit should be added to CRC approval of activities in Banyan Tree Park, with an annual review of the activities.

Okay, so those are the comments by the reviewing agency. The Recommendations: The Planning Department recognizes the authority of the Department of Parks and Recreation in issuing Banyan Tree Park permits. The Planning Department recommends that art fairs in Banyan Tree Park be approved subject to the following conditions: 1. That art fairs be limited to two Sundays each month, plus an additional Sunday in those months that have five Sundays.

2. Applicants for art fairs obtain the approval of the Department of Parks and Recreation for the use of the Banyan Tree Park prior to the day of event.

3. That applicants obtain the approval of the Cultural Resources Commission.

4. That all arts and crafts to be sold in Banyan Tree Park be handmade in Maui County and be sold by the artist and/or an immediate member of the artist's family. We define an "immediate member" as a son/son-in-law, daughter/daughter-in-law, sibling, mother/mother-in-law, father/father-in-law, spouse, or grandparent.

5. That the Cultural Resources Commission shall have the right to review and approve all criteria for organizations sponsoring art fairs at Banyan Tree Park.

6. That art fairs in Banyan Tree Park be limited to 25 vendors.

7. That the artist's booth be limited in size to 10 by 12 feet and occupy a limited area under the Banyan Tree Park, as established by the CRC, in order to de-intensify use of the park.

8. That no ground altering, including the use of stakes to hold down any structure, shall occur.

9. That there be no structure in Banyan Tree Park for the collection of money. All sales transactions shall be conducted inside the Lahaina Courthouse building.

10. That all structures be of a temporary nature and installed no earlier than the day of the event. Artists' booths shall be removed at the close of each day of the event.

11. That the appropriate building permits be obtained from the Department of Public Works and Environmental Management.

12. That the applicant shall carry liability insurance for the event for a minimum of one million dollars and shall name the County of Maui as an additional insured.

13. Should any another organization in the future apply for a permit to hold arts fairs or another activity at Banyan Tree Park, the Department of Parks and Recreation shall have the authority to administer which organizations shall participate in events at Banyan Tree Park.

14. That a time limit of one year shall apply to ongoing arts fairs at Banyan Tree Park. The Cultural Resources Commission or the Department of Planning and the Department of Parks and Recreation shall review arts fairs on an annual basis.

And, again, this is the report for over -- considering overall use for Banyan Tree Park.

Mr. Fredericksen: Okay, let's see, I guess now is a good time to get some public input on this, and we can, as a Commission, also have some discussion, but why don't we listen to the -- what folks have to say first. Okay, I'm going to read out your names as best as I can make them out so bear with me, okay? First person is Donna Soares. You wanna - let's see, where are we gonna -- I guess you can come up over here for the microphone. Good morning.

Ms. Donna Soares: Good morning. Aloha, members of the Maui Cultural Resources Commission. My name is Donna Soares and I'm the General Manager of The Wharf Cinema Center, which is located at 658 Front Street, which is directly across of the historic Banyan Tree. First and foremost, I'd like to thank all of you and, Barbara, I'm so glad to see you on this Commission, but I'd like to thank all of you for holding this meeting in Lahaina so that all of us could attend, so a very warm mahalo for that.

I'd like to take this time really to address the issue that we're discussing, which is the crafts fairs in Banyan Tree Park. Over the years, there have been several concerns expressed over the frequent and sometimes excessive use of the Banyan Tree Park, and this is for the ongoing arts and crafts fairs, and, in general, what has now become almost commercialization of the area. For many years, we, as a shopping center, actually supported, and we still do, the Lahaina Arts Society in their efforts to promote art in the park where they actually had onsite artists painting and creating in the area, and we still support this kind of activity, we're not asking that this be taken away. This, however, has now expanded or been replaced with various other activities and numerous vendors and, simply put, has just become too much of a good thing.

Several of my tenants, which is The Wharf tenants, have expressed some real concern over the fact that the vendors across the street are now carrying many of the same items that are found and sold in their stores and, quite frankly, they have asked, "When was approval given for a shopping center to be constructed across the street?" The vendors sell clothing, we sell clothing; the vendors sell jewelry, we jewelry; the vendors sell picture

albums, we sell picture albums; they sell wood carvings, some from Bali, we sell wood carvings, some from Bali; they sometimes sell food, we sell food.

For years we have supported, and we still do, the efforts of the LahainaTown Action Committee. And as a profit group, meaning The Wharf Cinema Center, we have totally supported the non-profit groups in this town, and we have done so for years. We even hang all of the banners. The banners are hung, basically, across the street from our balcony, so we do put up the banners as approved for the Lahaina Arts Society and we do put it up for He U`i. But please know that as the non-profits eat into our pocketbooks and the profits of the center, there is definitely going to be less for us to give to the non-profits; it's simple math. We do support, and we'd like to continue to support, most, if not all, of the annual activities to include Kamehameha Day, Festival of Canoes, Lighting of the Banyan Tree, the Ocean Arts Festival, the Birthday - the Annual Banyan Tree Birthday, and so forth. I honestly don't agree, being a local girl, I don't agree with the argument that excessive use or harm is going to kill the Banyan Tree. I tried to kill a Banyan Tree in my yard and I just couldn't do it, so I don't think that's going to happen --

Mr. Fredericksen: Okay, excuse me.

Ms. Soares: And I don't think that's the point.

Mr. Fredericksen: Excuse me, Donna, over here? We do have a three-minute limit, okay, just so we can --

Ms. Soares: Okay, I'm ending up. I'm wrapping up. Okay. I'm not saying to eliminate all activity, what we're saying is that the arts and crafts fairs should be limited, not only to the number and types of vendors, but as to the frequency, and that if, in fact, we are promoting Hawaiiiana, that artists and crafters be actively demonstrating their wares. We're not trying to deny the right for anybody to make a living, however, venues and areas are already provided for multi arts and crafts fairs. Are we trying to eliminate competition? No. We agree that competition is healthy, however, this is only true if it's done on a level playing field. In any event, we ask that this entire matter be reviewed and, if nothing else, that every Saturday, every Sunday, and every conceivable holiday not, and I emphasize "not," be a crafts fair day in Banyan Tree Park. Thank you for your time.

Mr Fredericksen: Thank you. Okay, oh hold on, just one sec. Donna, Lori Sablas has a question.

Ms. Sablas: Donna, my question is to you, you mentioned other activities, I got from your testimony that you're pretty much okay with what's been happening, but then you mentioned that other activities have happened, so can you clarify what specific activities that are -- you're concerned about and about how long ago has this been because, at one

time, I think pretty much things were okay, so how long has these other activities been happening?

Ms. Soares: Well, Lori, for quite a time, you know, we did not have a problem, and if it's actually hands-on art, like for example, art in the park or if there is Hawaiiana that's being done in the park, i.e. poi pounding, lei making, tapa, you know, those kinds of things that are actually arts and cultural kind of things, we're not opposed to that. What has happened is the frequency, I think, of what's happening in the park as well as a lot of the retail items that people are starting to sell in the park, and that's when our tenants, you know, prior to this, the tenants were fine with it, and we've actually supported it, we've given a lot of money to the various organizations, you know, to continue the activities, but, you know, all of sudden it's become, you know, they sell jewelry, we sell jewelry, and that's the kind of thing that -- and the frequency, I think mainly the frequency as well.

Mr. Fredericksen: Okay, thank you. Next person is Becky Lennon. If you could hop up to the microphone, not hop, but you know what I mean. My sons hop.

Ms. Becky Lennon: Aloha.

Mr. Fredericksen: Good morning.

Ms. Lennon: Again, I'd like to extend a welcome, a thank you for having this meeting on this side. If you had not done that, I, personally, would not have been able to come to testify just because of the time constraints that are placed on me. I'm Becky Lennon and I'm here this morning testifying as Treasurer of Front Street Properties Associates, which is the entity that owns or holds the leasehold of the block of Front Street commonly known as the Pioneer Inn, between Hotel Street and Papalakani Street, directly across from Banyan Tree Park, and I also would like to say that we strongly support LahainaTown Action Committee. Last year, I was President of the Board of LahainaTown Action Committee, so we are strongly behind the organization and for what it does for Lahaina; also the Lahaina Arts Society, however, we are concerned.

Our tenants are coming to us and expressing their concern at the fact that it has become a market that is competing with them. We support the periodic festivals that are held under the tree: The Ocean Arts Festival, which is coming up, its application is here this morning; Kamehameha Day; the Holiday Lighting of the Banyan Tree; Festival of Canoes; all of the festivals that LahainaTown Action Committee and other organizations would propose under the tree because it provides a gathering place for visitors and residents alike of Lahaina to come and meet and experience each other, and our culture, and history of our town. However, we are concerned. Our tenants tell us that the proliferation of the park as a retail market is strongly cutting into their business. They quote, "examples such as we have a busy day on a Friday, then come Saturday and Sunday, where there's exact merchandise

like ours being sold across the street, and our days go down to zero.” So it is a real constraint on our merchants and these are the people that also live here, support their families, pay taxes, pay property taxes, have employees, so they’re contributing to our town.

It’s been argued that this is the source of income for these crafters and artists, and I understand that, but they do have other venues. Inside the Courthouse itself, there are three retail venues where they can put their goods on consignment and sell them. They can also put those goods on consignment with the retail merchants up and down Front Street. It has been argued that it is a source of funding for three not-for-profits: LahainaTown Action Committee, Lahaina Arts Society, and Na Kupuna O Maui; all very strong, good organizations that add to our community. However, they do have other sources of funding. They have grant funding; they have contributions from businesses, such as the very businesses that they’re hurting, and they have sponsorship of their events and their programs. So I recommend that they look to those sources of funding as opposed to going into direct competition with the businesses that are across the street from them and support them.

It’s also been argued that it brings people into town when they have the cultural festivals and, in theory, this is true; in theory, good retail begets good retail; I would be the last one to say, “Don’t build a shopping center down the street,” but it’s not fair to have a not-for-profit in competition with a for-profit business, it’s not a level playing field.

Mr. Fredericksen: Okay, we’re running up on our three-minute time limit so if you could wrap it, please. Thank you.

Ms. Lennon: Okay. Alright. For these reasons, as representing the merchants in our shopping center, we strongly support the recommendation, both to limit the amount of time that it’s held, the frequency, and also to monitor it so that it is local crafts, local artists demonstrating and selling as they demonstrate. Thank you.

Mr. Fredericksen: Thank you. Do any of the Commission members have a question for the -- for Becky? Thanks. Okay, next, and I’ll keep reminding everybody, I know this is a, you know, everybody’s got lots of, you know, thoughts, etcetera, but let’s try to keep to our three-minute time limit just so we’re not here to nighttime. Next person is Joan McKelvey. Sorry, I couldn’t quite make it out.

Ms. Joan McKelvey: Mahalo. My name is Joan McKelvey and I am one of the businesses that is really severely impacted by, what my people refer to as, the shopping center under the tree every weekend. A case in point is, last Saturday, we had a very normal day and I said to the girls, “Well, that’s good,” you know, and they said, “Yes, but there was nothing under the tree because of the rain,” so, you know, there was dollars and cents saying to

me that we're severely impacted. I am a lifetime member of the Lahaina Arts Society, one of the original members, and I fully, fully support the Lahaina Arts Society and everything that they do. I'm also one of the founders of LahainaTown Action Committee and twice have been its President and I fully support LahainaTown Action Committee in what they do. But there are limitations. We have a courthouse that has become, literally, a retail center. We have the whole underneath is retail, the whole ground floor is retail, and now we have retail going upstairs into the museum. So we have that to also compete against. We have employees. We have high taxes. We have high rents. I realize that's not your problem, but it is ours, and for us to be totally -- to have competitors, they're selling the same thing under the tree, the same thing under the tree every Saturday, every Sunday, every holiday. I think we should have limitations. I understand that the non-profits have to raise funds. LahainaTown Action Committee has a gross income in excess of a million dollars a year, so -- which is a lot more, let me tell you, than most of we retailers even dream about. But I am in full support of limiting the activity under the tree so that it does not severely impact the businesses, retail businesses, and for-profit businesses in the area. Mahalo.

Mr. Fredericksen: Thank you. Any questions for the testifier? No? Okay, next person is, and now again I can't make out the last name, but it's Noel and then it begins with an "M," Mont -- and I can't get the rest. My name gets lost in translation sometimes too. It has to do with my handwriting.

Mr. Noel Monteleone: Aloha no to the committee. My name is Noel Monteleone. I'm a 30-year resident of Lahaina. I've owned four retail businesses on Front Street, and now I'm a vendor under the tree. I'm a Hana tour driver and I'm very familiar with the community and both ends of this conversation being in both positions. Basically, this is about free trade. The enemy of free of trade is someone trying to capture a market. Obviously, the landlords that press the 25 to 35 dollars a month per square foot rent want to keep their prices up. Obviously, the retailers on the street want to make their money in order to be able to have the situation. They look at the people under the tree as actually being there for free. That couldn't be farther from the truth. We are held to a much higher standard of business under the tree than the retailers are on Front Street. I know of a couple retailers in this room that understate their incomes in order to avoid paying a higher rent and also to avoid paying their excise taxes. The standards of business practices by the people under the tree don't get a chance to accommodate to that because they pay up front. I mean if it was to be equal on a business practice level, then the people who have retail businesses should have a County cashier so that the State can take their money first, the same as it's done for us.

We're going through a period of time where we've had a very beefed up market over a very depressed market because we've three to four ships a week come into Lahaina. Now Daniel Inouye has seen fit to give a sweetheart contract that was initially given to the Constitution and Independence to the Norwegian Star so that we only have one ship a

month or two ships a month. I think a lot of this pressure that's coming about what's going on under the tree is coming from retailers that are feeling this impact of not having this retail business right now. The ships are gone. The boat has sailed. This meeting, I mean as far as the retailers are concerned, should have been about that to Inouye. We have a State Senator from another State who is protesting this, McCain. But all of this directly impacts retail in Lahaina, and that's what this is about, the amount of taxes that is drawn by the County by a certain amount of retail that goes on on Front Street. And, yes, the tree vendors provide a certain service to the public that is very colorful; it's more than appreciated. I have lots and lots of people who email me and tell me about how wonderful my products are --

Mr. Fredericksen: Okay, we're past -- we're up on the three minutes thing so, please, try to wrap up. Thanks.

Mr. Monteleone: Thank you. Alright, anyway, it's in my contention that this issue, basically, is complaints that are, possibly, by private individuals, but I don't believe they are. I think the actual complaint that was initially listed in her report were not complaints by private individuals but by landlords and by merchants. That's basically it; the text of what I had to say. Thank you very much.

Mr. Fredericksen: Thank you. Any questions for the testifier? Okay, next person -- I'm assuming it wasn't something I said. Next person is Kenny Hultquist, next testifier. Again, let's try to stick to our three minutes as close as we can, folks, okay?

Mr. Kenny Hultquist: Good morning, Commissioners. I'm Kenny Hultquist --

Mr. Fredericksen: Good morning.

Mr. Hultquist: And I'd like to welcome the Cultural Resources Commission to the west side of Maui and I'd like to thank you for holding your meeting on this side as other people have and providing the opportunity to speak today. First, I would like to apologize for any inconveniences, disruptions, or distress caused to any County agencies or community organizations, especially to members of Na Kupuna O Maui and to the Lahaina Arts Society. It was never my intent to cause any harm to either of these organizations due to my attempts to seek a fair and just settlement of certain issues affecting the artistic business and the cultural communities of Lahaina Town. For the past few years, I have been seeking a resolution, through the County of Maui, to the issues that have concerned many of the artists and crafters participating at events conducted inside the Lahaina Historic District. I am fully aware that I have offended some people because of my somewhat unorthodox methods and my insistence that these issues be addressed. For the record, I'll no longer make phone calls or write letters or use any other forum to communicate my concerns to the County of Maui to newspaper editors or to anyone else.

I feel that it is an extraordinary phenomena and, certainly, a milestone that the organizations and agencies involved are conducting meetings to discuss these important issues pertaining to the future of art and culture here on the west side of Maui. My hope is that the meetings being held and/or proposed at this time will result in a cooperative and positive conclusion to these issues to the benefit of all parties involved.

Mr. Fredericksen: Anybody have any questions? Okay, thank you. Let's see, next person is Peggy, I believe it's, Robertson.

Ms. Peggy Robertson: I think I'll sit down.

Mr. Fredericksen: Good morning.

Ms. Robertson: There's usually a platform. Good morning. My name is Peggy Robertson. I'm a resident of West Maui and a past Board Member and Scholarship Committee Chairperson of LAS. I have been involved with the County as a member of both Linda Lingle's and Kimo Apana's Advisory Board for West Maui and the State Board of Registration. I say this because, through my experience, I believe that whether it is a County or State Government or a non-profit that everyone should have a right to be heard and rules should be made to benefit the community or non-profit out of respect for all individuals involved. If there is a problem with the operation or use of the Banyan Tree Park, it should be brought to the attention of the users and an equitable solution between the authority and users should be worked out for the betterment of the community. I believe this Administration should support this solution.

Last of all, because LAS has been the heart and soul of the artistic community for the past 30 years and has benefitted the community in many ways, I'd like to read two things, I also believe, before I do that, LAS does not do any retail or sell anything not handmade by the artists themselves. We do not have any exact merchandise like anything across either street. I welcome monitoring of our art because I have never seen any of our type of art at Lahaina Arts Society across the street in any of those venues. Anyway, the letter:

Dear Lahaina Arts Society, I'd like to express my thanks for the arts scholarship you provided for me. Without this scholarship, my education at the California College of Arts and Crafts would not be possible. Thanks so much for caring about Maui's art students. Much Aloha, Ana Duvel. I have found children and parents, their lives changed because of those scholarships.

The last thing I'd like to read is: Lahaina Arts Society nurtures the development of artists and the art appreciation of the general public with its frequent classes, demonstrations, and constantly changing exhibits. Lahaina, on the island of Maui, need to the influx of creativity. We support the support and inspiration that Lahaina Arts Society provides. One day a

month will not do it. Art society -- it would create a void in West Maui art scene. The newly emerging local artists would have only one day to display their work and the buying public would be denied the exposure to new talent. Lahaina Arts Society provides a vital link between the artists and local artists and the visitors buyer. Maui needs this link to remain a thriving diversified and supportive center for the visual arts in the Pacific. Please help preserve the continuance of the Lahaina Arts Society two weekends a month. Thank you.

Mr. Fredericksen: Okay, thank you. Let's see, next person I believe is Evelyn Goo. Is it a "B" or a "G?"

Ms. Evelyn Goo: "G."

Mr. Fredericksen: Okay, good. I got it correct.

Ms. Goo: Aloha. I want to thank you for coming to Lahaina and thank you for allowing me to speak. I'm simply here because in what was read this morning, it allocates that other non-profits should be able to benefit under this Banyan Tree. The only two that I have seen benefitting is the Hawaiian group and the Arts Society, more the Arts Society because they've been under there thirty something years. It does say that it's supposed to be opened up to other non-profits, and I promote for different non-profit organizations. I can give you a list a mile long. None of them have been able to get under this Banyan Tree even though it's in your rules and regulations. I've made calls to Keoki Freeman. He has said that we can't take money under the Banyan Tree, so I was told that there's an Ali'i Room that can be rented by the public. Well, they won't allow us to use that room, even though it's a public room, we're not allowed to use that room. I have talked to Donna at The Wharf trying to lease a building so other non-profits could use the Banyan Tree; that won't be allowed either. She told me she didn't support it. I also contacted the Pioneer Inn, spoke with a merchant over there, who I personally know very well, he was willing to rent me part of his space to use and he spoke with management or owners of the Pioneer Inn, they said, "no." So even though your rules say that it's open for other non-profits, it's not, and I don't feel that's fair. This is a County park. Everybody pays taxes. All of us pay taxes. Why is only two non-profits allowed to use it? That's just simply not fair. I believe it is County property, it should be held just like any other craft fairs on this island that is -- that is on County property and they hold the lottery system. Okay, this lottery system, Department of Parks and Rec fully are aware of how this is used and, you know, to make it in all fairness, we should do a lottery system on the Banyan Tree too because, you know, year after year, the County and State cut funding on every non-profit. I've sat on many boards in the community, I've done a lot of community work, and I see it every year. It's not going to stop, okay, and there's a way that we can use the County facilities for our non-profit and we should be allowed to do so. We all pay our taxes. Why should some non-profits use it and not others? You know, the two groups under there, from what I hear, they

fight like cats and dogs, you know, that -- they don't own the tree; the County owns the tree; it is the public's tree, the people's tree.

Mr. Fredericksen: Okay, Evelyn, excuse me. We do have our -- we're on our three-minute time limit.

Ms. Goo: Okay.

Mr. Fredericksen: If you could, please, wrap up. Thanks.

Ms. Goo: Okay, well, the main deal is it should be opened up under a lottery basis for all non-profit organizations to use. We should be allocated a room in that courthouse to take money or I also know, on special occasions, the County has granted, they have granted money to be taken in the park. So there's no door that's closed here. If in fact it is in your rules and regulations, it needs to be put into action and other non-profits should be able to use that tree. That's all I have to say, thank you.

Mr. Fredericksen: Question. A question for you.

Ms. Rotunno-Hazuka: What are some of the non-profits you're talking about?

Ms. Goo: Oh, well, today we've got the Feline Foundation here, they were the only one to be able to come on short notice and I asked her to speak; there's the Ronald McDonald House; there's Make-a-Wish Foundation; there's the Bad Island Crew who does Toys for Tots; there's, gosh, there's just -- there are so many, I mean I could submit to you a list of the non-profits that I've raised funds for. This weekend we have a deal at Kalama Park and it's for Spring for Education. All of the funds, we do not make one cent off of this, all of the funds are allocated and divided between all of the schools in Kihei.

Ms. Rotunno-Hazuka: Well, what type of arts or what would be the goods that they would sell?

Ms. Goo: Okay, now these people these are the people who do Lahaina Civic Center, okay, so you have anywhere from arts and crafts, from handmade items, all the way to t-shirts, so I mean if they want to keep the Banyan Tree strictly gift and craft, I mean just craft fair, that's fine, but allow other non-profits to gain from it as well because this is not fair, it's a public facility. Thank you.

Mr. Fredericksen: Okay, next -- next person, Gary, and I can't read your last name.

Mr. Gary Cendjas: Cendjas.

Mr. Fredericksen: Okay. Why is it that only other people can't read my writing?

Mr. Cendjas: Good morning. Thank you for letting me speak here today. I'm the other half of Maui's Best Gift and Craft Fair. Oh, my name is Gary Cendjas. We also provide for the Humane Society; the Kihei Youth Center; we have many, many, many, I mean -- also, you were asking what kind of venue we have or people we have, we have more artists than 25. We have people that make jewelry, we also have commercial people but, you know, you don't commercial so that's okay. Anyway, I could have not even come today because most of what I was going to say has been covered already about competition. I mean we do shows in Azekas Shopping Center. We have found, and Azekas has found, that when we have shows, they have more people come to their shops. They're business goes way up. So, you know, what I heard this morning is just they don't want competition, that's the main deal. I mean it's true what he had said about the 25, you know, 25 dollars a square foot, I mean that makes them sell stuff so expensive, they cannot complete, I mean that's the whole thing.

You know, it was also said that, you know, there's only one or two entities that can get into this under the Banyan Tree and what that does is it opens up a whole can of worms of it's kind of like Chicago, the Monopolies that happened in the '20's that people can actually stipulate who can come, you know, how much people are paying, how much -- I mean it can get really, really messy, exactly. I mean it's just the way it happens. If you open the market up, it can become more that when people don't like the person that's there or they can't control it, it can actually open up and if someone less expensive or works better for them, that's what they should be able to do. I mean I'm not saying that everyone should come to our shows, we -- we are very open, free trade, you know, I mean that we're -- we're easy to work with, you know, we don't control, we don't -- but, anyway, the primary thing that I wanted to say was it should be open for other non-profits and that the competition's the reason that, you know, people don't want people in, that's all. Thank you very much.

Mr. Fredericksen: Thank you. Yes? There's a -- Barbara Long would like to ask you a question.

Ms. Long: Gary, thanks for coming. You folks then are producers of these craft shows?

Mr. Cendjas: Promoters.

Ms. Long: Promoters.

Mr. Cendjas: Promoters, yeah, we raise funds for non-profits, that's what we do.

Ms. Long: Okay. Who pays you?

Mr. Cendjas: Who pays -- we get -- in this place, we are -- the rule is that we have to give at least 51 percent of the monies that we take in. We give much more than that. Like we said, Spring for Education, we don't make a dime.

Ms. Long: Okay, when you present a craft fair on private property, say Azekas --

Mr. Cendjas: Correct.

Ms. Long: Something like that, you pay Azekas a fee also?

Mr. Cendjas: Absolutely. Oh, at Azekas, there is no fee. What we do is we find the non-profit. Our last non-profit that we gave to was Tae Kwon Do place in Kihei, and he makes no money, but he has to pay for his room and his insurance and everything else, so we provided that monies for them. Before that, we were making monies for Junior Achievement and gave them about \$35,000.

Ms. Long: Okay, my question was when you use a shopping center --

Mr. Cendjas: Yes, ma'am.

Ms. Long: Do the shopping centers require a fee for your group? Yes or no.

Mr. Cendjas: One we do is Kukui Mall now and, yes, they do.

Ms. Long: Okay, is that a flat fee or a percentage or what?

Mr. Cendjas: It's a flat fee.

Ms. Long: Okay. When you use public facilities, parks, whatever --

Mr. Cendjas: Yes, ma'am.

Ms. Long: Is there a fee?

Mr. Cendjas: Absolutely.

Ms. Long: And how much is that?

Mr. Cendjas: It's -- it depends on where it is, but here it's \$1431. Well, it's 806 and 600 for a deposit for cleaning and whatever it is, so it comes out to 1430, yeah.

Ms. Long: Okay, so you clean it, you -- so it's \$800 for you to use the civic center facility?

Mr. Cendjas: Correct. Correct.

Ms. Long: Okay, thank you.

Mr. Fredericksen: Any other questions? Okay, next person, Donya Izbicki Ross, I think.

Ms. Donya Izbicki Ross: Aloha.

Mr. Fredericksen: Good morning.

Ms. Ross: I really wasn't sure what I was getting into but I would like to thank Evelyn and her husband because they represent one of the many non-profit groups here. Our group, the Feline Foundation, is a 501(c)3, in our fifth year, now trying to get our permanent non-profit status, and it's a heck of deal to fundraise for feral cats on Maui, for us cat lovers, and our mission is to end overpopulation, which we know is a tremendous problem here. I just had to cancel a fundraising event on Sunday, which was going to be a whale watch, which certainly doesn't go with cats, but it was an option and there was a lot of competition. So I've been at this fundraising efforts now five years strong and we've got about 80 colonies on this island of heartwarming people who will, not only feed these cats, but spay and neuter them, and we raise money for this. And this is, probably, should be in a more appropriately funded by the County and that's why I saw this opportunity today to emphasize the fact that if non-profits could participate in this particular park and have some of the profits, and we do go through Evelyn who's opened that opportunity to a lot of us groups, like the Humane Society, Homeward Bound, and many, many other groups, and, anyway, I've been very well educated this morning and I think -- I can see the competition.

I'm a former business owner and we used to have some of the craft fairs in some of the parking lots of the shopping centers. And a lot of times, the items that were being sold were really not competitive. And I think if the shopping center felt that, you know, if this was a perfect world, then we could limit the types of items that were being sold and if it was going to have to be handcrafted things made by the artists. Like we have a vision to make -- we're in process, actually, of having an art competition, so to speak, in the schools, whereby we would have students design their perfect cat, and we were going to try to get together with some of the great artists here and see if they might know a doll maker and manufacture. In fact, the cat, it would be a feral cat from Maui, and sell it as a unique item and have a fundraiser where we would have these original dolls bid on, and then manufacture from there. When we attend these fairs -- and I'm very, very much a supporter myself, a former board member of many art organizations here, and attended the Art Institute in Chicago, where I'm from, I am also a very strong supporter of trying to keeping it as harmonious as we can in having quality items sold. When we have our booth at these fairs, the non-profit groups also do complete their mission by handing out, you know, brochures on what our mission is and, boy, when the tourist see that and they feel

that they're helping, it might be just a stray cat on Maui, whatever it is, they're taking back a piece of Maui and they're seeing goodwill, and thank you very much.

Mr. Fredericksen: Okay, thank you. Good luck on that; that's a good thing that needs to get dealt with, lots of cats. Okay, let's see, next -- next testifier, Tim Regan.

Mr. Tim Regan: Hello.

Mr. Fredericksen: Good morning.

Mr. Regan: My name is Tim Regan. I am a vendor throughout -- I do craft shows all throughout the island, and I really appreciate the discussion about whether the park is being overused and, you know, how it should be used, that's really not really within my scope, but it seems like the conversation has been between the two groups that are currently using the Banyan Tree and it seems like other vendors, you know, I do make handmade crafts, my wife makes jewelry, and we sell imported items as well, and I think that kinda has been locking us out of this, that opportunity of the Banyan Tree. You know, we're not -- I'm not an artist and I'm not selling exclusively Hawaiian crafted gifts and that's why I wanted to speak in saying, you know, if, you know, if it is -- if it is being determined that it's safe for the park and the tree to have commerce or have craft shows to, you know, open it up so, you know, so people like myself could participate as well. Thanks.

Mr. Fredericksen: Thank you. Any questions? Okay, next person on the list is Durk Keene.

Mr. Durk Keene: Hi, my name is Durk Keene.

Mr. Fredericksen: Good morning.

Mr. Keene: Good morning. I want to thank you all for listening to me, giving me the time to speak. I've been a glass blower since 1974. I make a wide variety of different things, and I was listening to these guys about consignment, and I have consigned my art, and I will give them a piece at a price of, let's say, \$50. I go back to their shop; they want 250 for it. How can I put my name on that art and be competitive? I can't. I've consigned to Makawao, on Front Street, I've been with David's of Hawaii, when he was there. I used to blow glass for Chadwick Jewelry. I do a wide variety of it, and we've tried to get into the Banyan Tree and they just flat tell us, "no," and, like Evelyn was saying, I think that that's just not fair. If there was a problem with the impact on that tree, then I think that there should be steps taken, you know, so that the tree does not take an impact where it kills it or -- but, like I say, on this consignment thing, I sign all my art, and so when I have it in someone's shop, and then the guy comes in there and sees my art, and then they say, "Well, we just saw this guy out at a craft show and the same piece was \$50 and you guys

want 250 for it," my art sits there for months, and months, and months and, then again, sometimes it doesn't even sell because they come to this place here where I blow glass and then they go out to Front Street and they see my art there, they're not going to buy from them. So that's my main deal with it, is with the consignment, is you just can't do it because they have to jack the price up so high, noone's going to pay that price for that art now; that's about all I got to say, thanks.

Mr. Fredericksen: Thanks. Okay, oh, was there a question? No? Okay, let' see, next person on the list is Koana Smith.

Ms. Koana Smith: Aloha. I'm a member of Lahaina Arts Society and one of the Banyan Tree artists, and, for me, it's always been a win-win situation. I'd just like to give you a little bit of background. We are all juried in. We're all Maui County residents. One of our requirements is that we do demonstrate. If that's not practical because you're a ceramicist and you can't bring your kiln or something, we have displays showing how we do our work. The feedback under the tree has always been extremely positive from all the tourist that come around. A lot of them come just to wander, and enjoy the tree, and see the art they may or may not buy. It's a wonderful opportunity for many of us who wouldn't be gallery quality perhaps, but it's an opportunity for us to get our work out there. It's a big investment in time, and energy, and equipment. It's not a simple thing so that you casually go under the tree, there's a lot involved. Excuse me, I have a sinus condition. Part of our proceeds do go, I think this will be addressed later, but we have free art classes for children all over Maui, so we are benefitting our local children, and everybody in the Lahaina Arts Society is a Maui County resident. Excuse me. We have Lanai and Molokai residents as well. So it is a win-win. We're not out there to compete with the local merchants. I've always felt we bring a lot of business around the area and we also do shop at the Pioneer Inn for breakfast and lunch, Bad Ass Coffee Shop for coffee; we are patronizing some of the local merchants in the area. So I strongly hope that you'll consider the good that we're doing in making your decision. Thank you.

Mr. Fredericksen: Excuse me, stop, there's a question for you, please.

Ms. Rotunno-Hazuka: If you're not under the Banyan Tree, where else could you go?

Ms. Smith: In my case, probably nowhere.

Ms. Rotunno-Hazuka: Okay, what about closer to the courthouse? You know there's a small area in front of the courthouse. Does anybody paint in that area?

Ms. Smith: Well, one of the things, I mean there are a lot of people who really appreciate that we're under the Banyan Tree because they come to town, they walk around, it's sort of a cultural enhancement. It kind of is a unique thing to Maui and to Lahaina, and there

are a lot of people who appreciate that. I get comments all the time when I'm under there, "How great. I wish we had something like this in our community." And I think if we were off in some place that was harder to get to, it wouldn't have the same impact, plus it's a beautiful place to be under the shady tree, it's nice.

Mr. Fredericksen: Okay, thank you. Let's see, next person on the list, and here's another one I'll do my best at, it looks like Fileena, and I can't make out your last name. You're going to have to tell me when you get up to the microphone, please.

Ms. Fileena Barus: Well you're doing pretty good.

Mr. Fredericksen: But I only got half of it though.

Mr. Barus: Good morning, everybody. My name is Fileena Barus, and I'm a vendor, and I sell at many different craft fairs around the island, I handcraft all of my own jewelry, and I just wanted to say that I believe that the Banyan Tree should be opened up to all of us vendors; that's, basically, what I wanted to say up here, and I do firmly believe in things being handcrafted and made in Hawaii, not Bali, Indonesia, or the Phillippines. So, basically, that really is it that it should be opened to all of us. We should all be equal in selling at the Banyan Tree. Thank you.

Mr. Fredericksen: Thank you. Let's see, next -- next person on the list, excuse me, is Terry Nutt.

Ms. Terry Nutt: Thank you. Aloha. Thank you.

Mr. Fredericksen: Good morning.

Mr. Nutt: I'm Terry Nutt; I'm a certified Arborist; I'm also a member of the Maui County Arborist Committee. Anything I'm going to read or say here has nothing to do or is a reflection upon the Arborist Committee itself. I'm going to read something that was actually written by Ernie Rezens, which is another member of the Arborist Committee and a certified Arborist. He couldn't be here cause he was under the weather. He asked me to read this here: My name is Ernie Rezens and I'm a certified Arborist. I'm been on Maui County Arborist Committee for about 13 years and, most of the time, as its chairman. I studied arboriculture and taught arboriculture in classes at the Maui County Community College since 1975. I know, I was one of the students.

In 1999, the Maui County Arborist Committee discussed the use of the Lahaina Banyan Tree by the Lahaina Arts Society and LahainaTown Action Committee. At the time, there was a request to expand the usage of the area under the Banyan Tree to include Fridays. It was the Committee's opinion that the tree's health would be better served if all scheduled

activities under the tree were discontinued and groups were diverted to a nearby park such as Kamehameha Iki. As a compromise, your committee said the usage would remain as is without any increase.

All the readings I've done, at all the conferences I have attended, I've never encountered that there is no impact on the tree's roots from traffic whether it's vehicle or foot on bare soil, which also exist under the Banyan Tree. Soil compaction limits oxygen going to tree roots, and roots die; the tree's health is compromised, and the tree goes into decline. And let me just put it this way, once the tree starts going in decline, most likely you're not going to save that tree. Soil compaction is accumulative, it worsens as time goes on, and when symptoms of stress are seen, the tree will already be in decline.

By State law, Chapter 58, the Maui County Code, 12.24(a), we are bound to protect "exceptional" trees from activities that threaten or compromise their health. In England, they protect old "exceptional" trees by erecting iron railings around the tree's canopy to keep people away. They even post security to ensure the public's compliance.

So, in summation, in the best interest of the tree, all scheduled activities under the tree should be stopped. As an interim measure, I support Parks and Recreation's recommendation that usage be limited to two weekends a month. I may add that this should only be for a specific number of years. The groups should go elsewhere to do their sales in a year or two. If they have good things for sale, the people will follow them and they will suffer no loss income. As an additional concern, please consider special events, these have increased the -- that have increased under the tree's activities quite a bit. In my opinion, it is inappropriate to use a historic tree for monetary gain. It is there for viewing, photography, and admiration. The Banyan Tree owes nobody a living.

With continued good care and appropriate action by your committee, the tree should continue to grow for a very long time. Each new additional aerial root plant itself to the ground to support an extending limb, which is considered as a new trunk by arborists. Because the Maui County Arborist Committee was not aware that this topic was going to be discussed by your committee today, the Committee did not make a stand. My presentation is from myself, as a certified Arborist, one who has been mentally, physically involved in planting and caring for Maui County trees. I thank you so very much.

Mr. Fredericksen: Thank you, Terry. Yeah. Dawn, is that going to go into the record as testimony? Okay, thank you. Okay, next person on the list is Graham Watson.

Mr. Graham Watson: Good morning.

Mr. Fredericksen: Good morning.

Mr. Watson: I'm Graham Watson. I'm Executive Director of Lahaina Arts Society. Thank you, once again, for holding this hearing here so we are able to be present. Someone said a short while ago the Banyan Tree is unique. Well, curiously enough, it's not. The word "banyan" itself, as some of you may be aware, actually comes from the Indian for "market." It's a traditional gathering place in many countries and in many cultures. It is, however, unique to Lahaina in the way that it is. It's been there for 30 years supporting an artistic community. It was the start of the artistic community in Lahaina. It was the start of everything that we now associate with Lahaina and the art capital of the Pacific. Curiously enough though, we, ourselves, have no profit motive whatsoever. We have a long term commitment to Lahaina; we have a long term commitment to the courthouse; we have a long term commitment to artists, and we do it all from our own funds. The little grants that we receive go to art education and are not used at all in the maintenance of the courthouse, we pay 44 percent of that. We've used our own money for 30 years to help upkeep that place; lots of it too.

We are about, we are preparing, apart from our art classes, to open a full-time arts and cultural education center in Lahaina. We would hope to have opened it already but plans were delayed. We are thoroughly committed to Lahaina; we are thoroughly committed to the health of the community, of its civic welfare, and its educational welfare, and of its artistic community itself. We're also committed to the health of its business community, it need to be said. Many of our artists make their start there. Many of them only sell there. Many of them never sell anywhere else, and never will; that's what we're about. We're about encouraging those things. There are many communities across this country, many communities in other countries that greatly value the type of thing that we do, and we believe that there is a lot more to be said and discussed.

We've heard from our neighbors and friends here about their concerns. We're very well aware of them. We'd like much for the opportunity to comment on park uses, upon the use of the park as a gateway, and of the economic value upon the condition of the tree, and I urge the Commission not to be too quick to approve anything here. It would seem to us that this qualifies as a change in administrative rules, which should, therefore, go before the full public hearing process and the promulgation process, and we look forward to taking part in that and putting forward some very much more detailed proposals ourselves, and, in the meantime, we'd ask that the Commission leave this matter to sit pending public hearings and pending actually what will likely to be amended recommendations when the public hearings are taken place. Thank you.

Mr. Fredericksen: Hold on, got a question, or couple. Go ahead, Barbara.

Ms. Long: I have a couple of comments. Good morning, Graham. Thank you for coming. I've purchased artwork under the Banyan Tree and I do admire the tradition of artists selling their wares. However, as far as the public hearing, this is a public hearing and there have

been, over the years, a number of public hearings about the use of Banyan Tree Park. The Cultural Resources Commission, by Federal, State, and County law, is the authority within the Lahaina Historic District and the Lahaina Historic Landmark, and because the tree is a part of that, this is pretty much the extent of the public hearings as far as that goes. With regard to Lahaina Arts Society, you have been renting your space in the courthouse but I know that you get a break on rent, could you tell us what the rent is?

Mr. Watson: We, actually, never used to pay any rent and we still don't. What we do pay is 44 percent of the maintenance cost, which is running about \$25,000 a year at the moment.

Ms. Long: Okay, thanks. And how many salaried employees do you have?

Mr. Watson: Salaried employees or paid employees, we actually have 2 salaried employees; we have about 15 or 16 employees all totaled.

Ms. Long: Okay, thank you very much.

Mr. Watson: May you pick up one point there on public hearings?

Ms. Long: Sure.

Mr. Watson: I pointed out that Maui County Code 1.16.020 does actually define this as a rule and the procedure is laid out in 13.04.220 on promulgation, and in HRS 91-3 on rule changes should probably also be taken as applying. Thank you.

Mr. Long: We'll discuss this with our Counsel at the appropriate time.

Mr. Fredericksen: Okay, I don't know if we can have different -- I mean members from the public questioning testifying individuals. I'm not sure if that's -- is that legit? Yeah, I would just suggest asking the testifier when there's a break in the meeting. Okay, that is -- at least that sums up what we have on the list. Is there anyone who wasn't on the list that wants to say something? Okay, come and sign up first. Let's do the second wave of signing. You know what? Let's take about a five-minute recess and then anybody else who wants to sign up, come on and sign up.

A recess was called at 10:35 a.m., and reconvened at 10:50 a.m.

Mr. Fredericksen: Okay, everybody, thanks for bearing with us. You know, we're just trying to get public input and -- but, again, we are going to keep things to a three-minute -- three-minute time limit just so we can get this sorted sooner rather than too much later. Okay, now, what we're doing is we're continuing to take public testimony on Item E. of the

agenda. The next person that's signed up, and once again, if anybody has signed up to testify again, try to keep it to -- I mean so it's something new, not just sort of rehashing something that you already said, okay, next person is Mary Murphy. Come up to the microphone, please.

Ms. Mary Murphy: Good morning.

Mr. Fredericksen: Good morning.

Ms. Murphy: I want to -- oh, okay. Good morning. Thank you for holding the event here in Lahaina. First of all, I'd like to see how many, cause I know a lot people are really too shy -- oh, Mary Murphy. First of all, I'd like to see how many people out here are actually artists, crafters currently participating under the Banyan Tree, cause I know a lot of people don't -- are too shy to say something so -- and I can tell you folks this is just a small percentage of the total amount of people this would impact. I know a lot of the other artists and crafter vendors, they're doing their second and third jobs, so they're not able to attend here. As for the last point about the arborist, I'd like to suggest, in the next month, if you folks could actually go under the Banyan Tree and take a look at it, that is one very healthy, happy tree. I think the last years, because of the drought -- I think with the drought, that probably might have caused, you know, a little bit deterioration of the tree, but with so much rain this year, it's a very happy tree; that's kind of a moot point.

What I'd like to say also is there has been an underlying bone of contention of what has actually been sold under the tree. Lahaina Arts Society has had a very high standard of criteria to join. I would say it's mostly about 70 percent painters. It's difficult to join. I used to be on the Jury Committee myself. We have refused people that were accepted into Art Maui. It's not easy to be a member of Lahaina Arts Society.

As far as alternative places to sell, it's pretty limited. Myself, I make baskets. I gather all the local materials, so it is Maui material, and I used to do the craft shows here; I've done the swap meet; I've done hotel lobbies; there is no alternative really. I started checking in the last year, well, where else can I go now? The civic center is full because the spaces have been limited here, so that's out. I thought, well, there's always the swap meet, and I started talking to people doing the swap meet. I didn't realize, the last year-and-a-half, it's full; they're turning people away and if you're willing to spend the night in your car and wait, then maybe you can get into the swap meet. I know the Four Seasons, in their lobby there, with their artist program, they kicked out a whole bunch of artists last year cause they weren't making a quota; you had to make a lot of money, or you were out. For these poor painters, they have nowhere to go except under the Banyan Tree. They can't put their work in galleries, they won't accept them. So this would have a devastating effect on people's personal finances. But more importantly, this would have absolutely devastating effect on our children's art programs. This has been our mission.

LAS has been very quiet, you know, just going about our business. We don't toot our horn about what we do with the children's art program, but we specifically target at-risk kids after school. We are part of the solution for the Ice problem that's going on on this island and we need your support. That is our number one issue is our children's art programs, and we also have the high school scholarships that we give away, but we need to teach those kids and our funding comes a lot from what the artists sell under that tree.

So, also, I would like to suggest, in the next month, defer any action this at the moment and, in the next month, for you personally go down, take a look under there, and you see what's going on. I believe this coming weekend is Na Kupuna; the following weekend is the Ocean Art Festival; again, it's Na Kupuna, and Lahaina Arts Society will be there March 20 and 21. Take a look. Make up your minds. I don't believe we are in competition with the stores at all. We have strived very hard not to have commercial items. So this bone of contention with other non-profits want to come in, I know personally cause I have worked in their events, there are a lot of imports. There's a real gray area. What do you make? If you string up beads and then you can call it that this -- I've crafted that?

Mr. Fredericksen: Okay, we're at our three-minute limit so, please, try to wrap it up.

Ms. Murphy: Alright, thank you. Just one last point I would like to make that since I, personally, have been involved, a very active member for nine years in Lahaina Arts Society, I can tell you that, personally, hundreds, and I'm talking hundreds of visitors have come to me and they said, "This is such a wonderful event. Look at all these painters here. That we're able to speak with you." The tourist love it as long as that criteria is very strict, very strict, that it is handmade by the artist. Thank you.

Mr. Fredericksen: Okay, any questions? She's got a question for you.

Ms. Rotunno-Hazuka: So every weekend it alternates on who is allowed to go under the Banyan Tree and sell their products?

Ms. Murphy: Correct. It used to be only Lahaina Arts Society for many years, and then, I believe it was in 1999, I was involved in all the CRC meetings, but I realize most of you are new so you're not aware, that was when Na Kupuna came in, in 1999, and there has been, I'm sorry, a little bit of bone of contention about what they have allowed in. That's why I said that -- we have pages and pages and pages of rules and regulations and criteria. It is really difficult to be a member of Lahaina Arts Society, if you're not a painter; if it's a crafter, believe me, it's tough.

Ms. Rotunno-Hazuka: And how often you there -- is your society there?

Ms. Murphy: Currently, we are there, normally, two weekends a month and we are, at the moment, since last Christmas or so, we're running in the red, so we're not making a huge profit. We're barely getting by as it is. So if there is any less days there or less artists, this is going to be devastating to our children's art programs. We cannot afford it.

Mr. Fredericksen: Okay, thank you. Okay, next testifier, Chris Burke.

Mr. Chris Burke: Aloha. My name is Chris Burke and --

Mr. Fredericksen: Good morning.

Mr. Burke: That's for having this meeting this morning. I came from Haiku to be here. This is a very strong and emotional issue. It's hard to be an artist on Maui, there's a lot of competition, and it's really wonderful to have the Banyan Tree. I'm a member of Lahaina Arts Society, I've also been fortunate enough to do shows with Na Kupuna O Maui, and Lahaina Action Committee. I first moved to Maui in 1990, just starting out as jeweler. I couldn't make it. I left and went back to the Mainland. I then realized, as my talents progressed, that maybe I could come back and make it here, this is my paradise dream, and so I did, and shortly after I moved back, I got into Lahaina Arts Society and I've been there since 1997. I've also served on the Board of Lahaina Arts Society and on the Jury Committee, and we do have tough guidelines but anybody that makes their product, please come in, get juried in, and then you can, you know, be a member and sell under the Banyan Tree. It's a good thing to have the art in this community. It really represents the freedom of expression and it does, you know, say this is the art capital of the pacific and, you know, we represent a huge hunk of that here.

The Banyan Tree and Banyan Trees have traditionally been market places around the world. There's Banyan Trees in India that are 2000 years old that have been market places and, yeah, we hammer our stakes in to keep our paintings up and easels and, supposedly, that may help un-compact soil. You know, there's so many little issues here, I'm trying to touch on every one, but there's going to be a huge hunk of Maui income that is lost if the Banyan Tree is taken away. There's going to be a lot of displaced artists. I don't know what I would do. I really don't know what I would do so -- I love it here, I love being an artist, even though sometimes it's really hard, and right now, especially, in this time frame of the last maybe five months, business has been way down, and I think we are all feeling it and it's not just, you know, the people under the tree taking income away, it's just business is down, and it hurts, and we're all squirming a little bit, you know. So, you know, let's really take a look at what some of the other issues might be. Thank you very much.

Mr. Fredericksen: Okay, thank you. Let's see, next person on the list is Fred Lorenzo.

Mr. Fred Lorenzo: My name is Fred Lorenzo. I'm a local artist here. I've been a member of Lahaina Arts Society; I'm a member now of Na Kupuna; I do do the LahainaTown Action shows. But two shows a month for Na Kupuna, I still have zero days, so I don't know how most of you artists are making it. Right now, LahainaTown Action shows, the last application I saw, it's \$40 to do the show and 25 percent of your sales; even at that, you're still, I mean most of us aren't making it even with that. So I think with the amount of shows we're having under there, most of them should be for Lahaina Arts Society and Na Kupuna. LahainaTown Action shows, like for instance, something that's cultural, like the Canoe Festival stays there for a week, they're building canoes under there, pouring gas into their machinery, sawing, drilling, sanding, spreading varnish all over the place; that is not a good thing. I think, as a Hawaiian artist, I should be under there just as much as any other artist. I think the Hawaiians should have more of an impact on the tree because it's a cultural thing, not only because it's ceded land. The vendors say that we can put our stuff in their stores, we're lucky if we get 30 percent from the vendor -- I mean from the merchants when we put something in the store. I'm fortunate enough, I get 50 percent from some galleries; most of us don't get that, most of us don't even get accepted to a gallery. So if you guys stop the amount of days that we have already, most of us will not survive as artists. I think you guys should really seriously think about how we can affect all groups, how we can somehow compromise, and work together. But we should definitely really think about what really is affecting the whole -- the program, the amount of money that's going and where it's going. LahainaTown Action, I think, has brought more festivals there but it doesn't only benefit only the merchants, it benefits the artists too, but we all have to work together and somehow compromise, I think. Thank you.

Mr. Fredericksen: Okay, thank you. Okay, next testifier and, let's see, okay, I can't make out your name, Re'-Bell is the last name, what's the first name?

Ms. hg Re'-Bell: hg.

Mr. Fredericksen: hg, oh, okay.

Ms. Re'-Bell: Aloha. hg Re'-Bell. I'm one of the crafters and vendors under the Banyan Tree, been there since '99. My mother goes under the Banyan Tree and sells my work. I make everything that's under the tree, nothing is bought. I stay up, I have back problem, I stay up for hours every night to make my wares along with the other vendors. We used to go off-island to the Mainland and then they, the craft fairs there, got too expensive, they want \$345. Other craft vendors, on the other side, they want \$100, \$80; we can't afford that. We have to buy -- I have to buy materials to make what I have to sell, so it's really hard. Na Kupuna O Maui, under the Banyan Tree, helps us and helps the community. Our percentage goes to Punana Leo to perpetuate the Hawaiian language, which is a good thing, and we don't argue under the tree. We have aloha. We know what aloha is. We feel aloha. We don't argue. We have a good time under the tree. We know how to have

a good time. We know how to celebrate life. We do annual craft fairs. We go to the hotels. We used to go to the Renaissance. We had to wake up 6:00 in the morning to go, which is very difficult, you know, when there are rainy days and sometimes we don't make money, and this is my only source of income, so it is very difficult for me. And if we can't get into the hotels, I have nowhere to go. I have bills like everybody else, you know. And the tree is good for us; it's good for everybody. Other non-profit organizations, the school, Punana Leo, is under there also. We -- nothing is cooked under the Banyan Tree, everything is pre-made, nobody cooks under there, everything comes pre-made, so I don't know where, you know, talk is being going on with that, and, gosh, I was going to say something, there's just so many things in so limited time, but I, you know, I just wanted to stress that everybody, everybody here works very hard, you know, and we're not trying to compete with anybody. And Donna said that they put up signs, they put up signs for the Arts Society, they don't do anything for Na Kupuna O Maui. They will not do anything for us, you know. So our organization benefits a lot of people too, a lot of organizations. Okay, that's all I have to say.

Mr. Fredericksen: Okay, thank you. Let's see, okay, next person on the list is William Tully, I believe.

Mr. William Tully: Good morning. I stutter so maybe I can have an extra minute in there. I am an artist. I have been an artist since 1989, when I moved to Maui, and I participate in all three organizations. I am also a board member of the Lahaina Arts Society. I just want to express some of my beliefs in selling my art and that is there's been many times when people have come to my booth, and they've been celebrating their honeymoon, and that they like the work, they're not sure if they can afford all of it, and that many times I presented them with prints at no charge. I do this for the fact that is as what I'm trying to create is a welcoming attitude towards Lahaina. I also, periodically, give prints out to children, again, as what I'm doing is I'm promoting Lahaina in an extremely positive way. I don't know one shop on Maui that would participate in that type of an activity. And that -- all of us artists combined throughout the years in that literally have thousands of adjurations of people who bought underneath the tree and that we provide a, excuse me, let me back up in there, is the other thing that I'm really, really curious to find out, and I will definitely find out, and that is what is the percentage of local artists on Front Street in the Front Street galleries? I know of one gallery that concentrates on local artists, that's Linda Shue at the Village Gallery. If you make this decision and cut the amount of local artists in Lahaina, that basically what you're serving in that is a high percentage of import artists. Thank you very much.

Mr. Fredericksen: Alright, thank you. You made that under three minutes too. I'm just trying to keep it so the meeting keeps you going, folks. Let's go to the next person, Jerry Covey.

Mr. Jerry Covey: Hi, my name is Jerry Covey, I live here in Lahaina, and thank you very much for listening to me. First of all, I want to tell you that you have two great organizations under the Banyan Tree: Lahaina Arts Society and also Na Kupuna O Maui. I, fortunately, am with Na Kupuna O Maui, and we find that tourists are big business here in Maui, not only for us here, but for all the merchants here too as well. Na Kupuna O Maui gives culture, music, and food. These are all Hawaiian things brought from the Hawaiian people to the tourist. This is what they're looking for. This is why they come over here, not to come over and shop, not to come over and enjoy our rain and our winds, but we also have things of culture that the people are looking for. They want to know what Hawaiian people are all about. So this is what Na Kupuna O Maui offers to them, and this is free, this is not -- this doesn't cost them a thing. They come to park, they sit on the benches, listen to the music, watch the dancing, and they have all these things of Hawaiian culture that is offered to them free, at no charge. This attracts visitors and benefits all of us. Now the responsibility of anybody selling their product either whether it's commercial or as non-profit under the tree, this depends on the vendor, not anything else, but at the vendor. Just because we're not there, doesn't mean they're going to sell a product. It all depends on what -- how they present the product. Now the number of vendors is mentioned here. We only have 25 in our organizations, I'm not sure how many Lahaina Arts Society has, but this depends on what you people decide on what we're going to have, not what we want, but you have decided that we're going to have here. So we have, unfortunately, both organizations have the responsibility of determining who's going to be here and who's not going to be here to represent our community. And that's, basically, all I got to say and I do appreciate you listening to us, thank you.

Mr. Fredericksen: Okay, thank you. Okay, getting into the second page of folks that have signed up, let's see, looks like Richard Dancil.

Mr. Richard Dancil: Aloha. Good morning, everybody. Thank you for having me over here. Yeah, my name is Richard Dancil. I'm Filipino, Hawaiian. I speak on behalf of Na Kupuna O Maui and as a crafter and musician perpetuating through self-determination, Hawaiian music best as I can for the He U'i Cultural Craft Fair. In 1778, there were between four-hundred thousand to one million pure Hawaiians in Hawaii. A silent enemy was introduced. The enemy was disease. By 1822, there were two-hundred thousand pure Hawaiian left alive. By 1828, one-hundred eighty-eight thousand Hawaiians. By 1836, one-hundred eight thousand Hawaiians. By 1922, twenty-four Hawaiians were left. Today, we have approximately five hundred, no five thousand pure blooded Hawaiians from a census in the year 2000. The Hawaiian people took a very devastating hit in a very short period of time. Not only close to losing a proud race of people, but also they're culture and history by being displaced over the years by standards set by foreigners.

Today, we face the same as before, persons using these policies to their advantage: Rice versus Cayetano; Patrick Barrett versus Cayetano; Arakaki versus Lingle; all using the

U.S. Constitution on grounds that we are discriminating against other races and contesting that the Hawaii State Constitution is in violation to all their own advantage. We, the Hawaiian people, are going through a lot of adverse attacks to our culture, identity, and soul. The phrase "self-determination" is one of the Hawaiian's biggest challenge in regaining our identity and preserving our culture.

He U'i Cultural Craft Fair is one of the stepping stones that gives the opportunity for Hawaiians to come out to sell arts, crafts under the Banyan Tree. They are working second jobs, spending time with their families on weekends. These are the people that we try to bring out, Hawaiian people, to help with the craft fair, but it's hard for them, like I said, they're spending time with their families, or working second jobs, or maybe in jail. Being a crafter and trying to sell our products, is hard work, and it's a gamble. Despite the gamble, the crafters of He U'i still take pride in what they do and love. Na Kupuna O Maui and LahainaTown Action Committee started a unique system of helping, not only this generation of Hawaiians, but the next generation.

The He U'i Craft Fair, with the money it generates, a percentage helps out Punana Leo; or Lahaina Aloha First, a non-profit organization; Kula Kai Aupuni; Princess Nahienaena; Cultural Awareness; West Maui Hula Halaus; Miss Keiki Hula; Queen Liliuokalani Competition; West Maui Hawaiian Childrens Project; Kahiki Nui Project, restoration of native Hawaiian trees and plants, and native Hawaiian rights. Each crafter knows, even haole crafters, who I call friends, knows and takes pride that they are helping the Hawaiian people with self-preservation and self-determination. He U'i Craft Fair is like a family, who has their ups and downs, but still very tight in supporting the Hawaiian cause best as they can exhibiting the true very humble hospitality of aloha that the visitors absorb and know what is real. We are the real deal, not like a machine of corporate structure whose main goal is profit, but the true flavor of what is truly the aloha spirit. As a Hawaiian, we need all the help we can get in preserving what little we have. He U'i, under Na Kupuna O Maui, is that entity by opening an opportunity to the artists and crafters and to help with the healing of our Hawaiian people. Mahalo. Thank you. Thank you.

Mr. Fredericksen: Alright, thanks. Okay, next. Good morning, William.

Mr. William Waiohu: Good morning. My name is William Waiohu, Jr.

Mr. Fredericksen: Okay, William, you gotta speak into the microphone.

Mr. Waiohu: Aloha. My name is William Waiohu, Jr., Keiki O Ka'aina No Kai No Lahaina. I was born and raised here. I'm 62 years old; watching Lahaina changing, oh man, not like before. You know, excuse me a little bit because in 2002, I had one slight stroke and -- but I still walking. And, you know, the thing that get me, the County call Lahaina a park. To me, that's one shameful name, calling my place as one park. I think everybody gotta

remember Lahaina was one time the capital of all islands and I wish you guys find one better name for the Banyan Tree, you know, because Banyan Tree get lot of culture. One time it was a taro patch; then the next time, now today, they call it Banyan Tree. That name, the Banyan Tree, is not my culture, to be honest with you, that's not. Like many years ago, I say, if this is going on, I say I get all my Hawaiian ohana come with the green machine and knock down the tree and plant taro, that's the culture of Lahaina, and never forget get a lot of history in Lahaina: Moku`ula; down at the lighthouse, there's a birthstone; then you go around Lukini Street; get lot of culture over there, a lot of Hawaiian history. Today, we Hawaiians, we have to fight for our rights for which the foreigners came here and take away our rights. The foreigners is the republicans. Who is the republicans? The whites? Not Hawaiians. Hawaiian is Hawaiian. And, today, I'm 62 years old, I'm still yet standing, and I will come back over here and fight for my history, I no care who it is, I will fight. Thank you.

Ms. Sablas: Williama?

Mr. Fredericksen: William, you gotta speak in the microphone again.

Ms. Sablas: Aloha to you. You made an interesting point about a place name for the Banyan Tree, so I ask you, Williama, being a lifelong resident of Lahaina, what is your suggestion for this place that we have renamed Banyan Tree? Just my curiosity.

Mr. Waiohu: The thing is, to be honest with you, I cannot give you my opinion. The only thing we have to do, we have to go back and do the research of the place, what it was.

Mr. Fredericksen: Thanks, William. Okay, next person on the list is Denise Serylo.

Ms. Denise Serylo: Aloha, thank you for your time.

Mr. Fredericksen: Good morning.

Ms. Serylo: My is Denise Serylo. As a crafter, making all of my things that I am selling under the Banyan Tree, it has been a real blessing for me, and I believe that we all are assets to the merchants on Front Street. And as far as the environmental impact on the tree, I'm not an environmentalist, I don't know, but I know that, in reality, the center of the tree, the mother of the tree, is protected while there are artists and crafters under the tree. And with Na Kupuna O Maui, I know that when keiki attempt to climb or swing from the vines, there's always an aunty stopping them. They're always saying, "Get down!" And that's an important -- and our visitor children are learning something from that that they have to respect their elders. As far as being an asset to the merchants, I believe that when our visitors arrive and visit up under the tree, they may receive a history of Lahaina, some Maui Island history, the story of our wonderful Banyan Tree, or the history of Hula. They're

not just purchasing merchandise, they may find out about a specific store that they ask about, that the merchants on the street have, or a restaurant that they're looking for, but the most important thing is when they leave the tree, they have a feeling of aloha, of what aloha is, and they know that they're somewhere special, which makes the rest of their time here, their shopping and the rest of their visit very satisfying and content, and contented visitors is what we all want because they will take home great memories of our wonderful home, Maui, and want to return again soon. Mahalo.

Mr. Fredericksen: Okay, thanks for that. Let's see, next person on the list is Laurie Kerr.

Ms. Laurie Kerr: Hi. I'm an artist who is a guest crafter at the He U'i craft show and only painters and handmade crafts are allowed in that show. Aunty Patty and Na Kupuna O Maui put on beautiful craft show. There are only 25 artists allowed. There is live local music and dancing. I can't count how many times both the locals and tourists have thanked us for the show. They appreciate knowing that what they are buying is actually handmade by the person selling it to them. Many say it is the highlight of their visit to Lahaina. If you drastically reduce these art fairs, you will only be contributing to the further commercialization of Lahaina. Thank you.

Mr. Fredericksen: Thank you. Okay, let's see, okay Evelyn Goo?

Ms. Goo: Aloha, thank you once again for allowing me to speak. My heart is with the Hawaiians, I have Hawaiian children myself, and being half Indian, I know what was done to the Indians so off to you guys. On the other hand, I believe all non-profits need funding, okay, that's all I'm going to say on that because I did speak on that earlier. I do have a question though. With people who are under the tree, my question is, and only because we get slammed as to how we're profiting from this, even though we're doing it for non-profit, we get slammed by the Parks Department all the time or questioning us on, well, what money do you make? My question is, who is profiting under the Banyan Tree? Because I've been told that, right now, it is under, what is it called? Reconstruction of a non-profit to be a profit making entity. So are you non-profit or are you profit? That's a question. There's also spaces being given under the tree, permanent spaces, by other board members. Now I've sat boards, my God, I don't even know how many years, and as a board member, you cannot profit, that's stipulated in the 501-3(c) rules, so who's profiting from what? That's what I needed to come up here and let you folks know what was really -- I'm the type of person who is put it on the table, I mean say what it is, let's just not put up these smoke screens and play these little games, let's just put it out on the table, so that's what I'm here to do, sure I've made some enemies, but, hey, we all have them. Aloha.

Mr. Fredericksen: Okay, thanks. Okay now, next, let's see, Lana Perry?

Ms. Lana Perry: Aloha. Thank you all for giving me this opportunity to speak to you. My first show under the Banyan Tree was in 1977. It wasn't very organized then and it was just the beginning. We all just kinda went down there and tried to do our thing and started helping out the children. As always, with most things that I've ever done, they became very successful. And as they become successful, other people wanna get in on it, and that's the way it always is because that's progress, and this is good because the children need something to do, so we share. We gave up half of the weekends to be with the other group. Some of us belong to both of them. And we also had the opportunity too to be in the galleries, which I also tried. It's very hard to make a living there because they do charge so much and, therefore, we are supporting the landlords. I feel that now, with my painting, I'm supporting the children. I'm painting so that when I'm sitting there in the park, and painting a picture, and a child comes by and his mother says, "oh look, she's painting," and the child comes over and looks at me and gives me the attention and warmth, it makes my day worthwhile whether I have a sale or not, and that's why I'm there. I'm sure that I will survive, I will find something to do, as I always do, however, I do ask you to please help us to continue to help with the children, to keep them off the streets, to give them something to do because our taxes are not covering that now. We need to address this. And I know there are other people that also have their reasons for wanting there too, and I do hope that if they would like to apply to LAS or to the other groups, that they can also be taken in if they can meet the criteria that we all have and still do maintain, not that we don't have problems like everyone else. Aloha.

Mr. Fredericksen: Okay, thank you. Okay, I'd just like to thank everybody for being patient and, you know, taking the time to be here, I mean it's obviously -- this is obviously an important issue to all you folks who've been sitting through it all and enjoying the flies as well. Is there anyone who hasn't testified about this that would like to or -- okay, if there's someone who's had something to say before, wants to say something again, but please recall, let's try to keep it so it's something new and not rehashing things, okay? So anybody -- okay, please state your name.

Ms. Robertson: I'm Peg Robertson. I just wanted to make a correction and let everyone know that when I was on the board, we voted that any non-profit, let's say the Lahainaluna Swim Team wanted to come down and sell a hundred leis underneath the tree, all they had to do was fill out an application and bring a table. So if there are any non-profits out there that want to use that venue, Lahaina Arts Society has always had that, at least since, not always, but since we -- since I was on the board a couple years ago, so come on down and fill out the application. Thank you.

Mr. Fredericksen: Excuse me, Patty, just a second. Dawn's going to need to have -- cause you haven't signed up.

Ms. Patricia Nishiyama: Aloha. My name Patricia Nishiyama, born and raised in Lahaina. I would like to say that I am very proud of He U`i. My people has worked very hard to do a cultural perpetuation of their Hawaiian culture. We promote live music, coconut weaving, and fresh flower lei. Next door to us, they have false leis, they perpetuate the African culture, they bring in all their Manila things from Manila, Japan, wherever, but we, He U`i, is the real thing. They work hard every night to the next morning. They call me up early in the morning to tell me, "Aunty, I'm sorry, I can't make it because I don't have much items to put on the table." Because they work hard, they work really hard, and they need to continue to do that for our culture, but I can say that I'm very, very proud and even Na Kupuna O Maui and Aunty Pua Lindsey, bless her soul, is very proud of He U`i and we are there to stay. Thank you very much.

Mr. Fredericksen: Thanks, Patty. Okay, anybody else have anything? Okay, so we've had public input. I believe that there was a member from the Parks Department, is this the time? I think so, to have Parks -- we're trying to get all the information, if you will, and opinions out so we can try to hash this thing out.

Mr. John Buck: For the record, my name is John Buck, Deputy Director for the Parks Department. I'm kind of the messenger today from the Department and the administration, so you have to bear with me. I'm not limited to three minutes, but I'll try and make it short. Alright, I should make a correction that the position that we had given the Planning Department was like our second and we've had -- made some -- several changes and I will, just to confuse everything more, we're going to give you it. We had a meeting as late as 6:00 last night with Administration to come up with a new position on this, so I'm just going to confuse everything a little bit more. As the Parks Department, we do have concerns about what's going on under the Banyan Tree and to, Willy, if that's the wrong name for that park, please let us know or have somebody help us to find out what the correct name is for that park. It's called the Banyan Tree Park because there's no other really appropriate name for it right now besides the Banyan Tree, so if there's an appropriate name for that park besides Banyan Tree Park, the Department is more than willing to take a suggestion and bring it to the Street Naming Commission, which also does park names, so we support that.

As far as what the concerns is, one of the concerns that the Department has is what's the purpose of the tree? The tree is a historical -- it's a historical monument. Should it stay as a historical monument for the tourists, locals alike that come down and enjoy the spiritual and whatever the tree has to offer, the quietness, the reflection? Or is the tree the purpose for groups and individuals to make a livelihood or to raise money for various activities? That's the first concern that we have; what is the purpose of the tree. One of our other main concerns is that we get hit all the time from it is do two groups have exclusive -- the rights to have exclusive use of what's going on under the tree?

That saying, I'm going to give you the new position of the Department working with the Administration as of late, actually, what Dawn got was, the Planning Department got was our second recommendation, the first recommendation was no activities in the park at all. What was read was our second recommendation. They did not get our third and fourth recommendation because we've changed our positions. Now, I'm going to give you one as of early as 8:30 this morning before I left for Lahaina. Our recommendation, and Don Couch, who's representing the Mayor's office today, if I err, he will correct me, I'm sure he will, we're recommending that they rotate weekends between the two groups; that they get equal dates; limited to 25 vendors; no hanging of items from the tree; no cooking under the tree; we'd like to continue and to support that all art items and craft items are handmade; and that we do an annual review. That's our new position, and if I've left something out, Don, you can correct me.

Mr. Fredericksen: John? John? Excuse me. When you said the, let's see, handcrafts, you said handmade, but handmade and that's it? Or handmade with Hawaiiiana theme or is there no --

Mr. Buck: If the intent of the Kupuna group is to do Hawaiiiana handmade, then it should stay that way. One of the -- some of the issues that we've been addressing is that one group is complaining about the other group, and the other group's complaining about the other group. Now we're not going to be here playing -- we, the Department, doesn't want to play the referee, okay. If the Kupuna group says it's strictly Hawaiiiana that they're doing and it's not commercial activity or it's not, you know, the same stuff that you see at the swap meet, or the other craft fairs, I think it's up to them to be able to control that cause I'm not the policeman, okay. We just address the concerns when we get complaints. The same thing with artists. I love art in the park. When I travel to the Mainland, travel to Honolulu, even sometimes when I even come to Lahaina, I enjoy the art under the tree. I think it's, not only there's a spiritual thing the tree has to offer, but you're also watching how some of the artists will actually take the tree, the beauty of the tree, and express what they see out of the tree or the surrounding of Lahaina Town. But I think the main concern is if we're going to do crafts, handmade crafts, and the request from the Kupuna's was that it's Hawaiiiana, then it should stay Hawaiiiana, in that theme, and it's, basically, up to their group to make that determination and bring forth to the Commission as far as what is classified as Hawaiiiana.

Ms. Rotunno-Hazuka: When you said your first decision was no activities at all, when was that?

Mr. Buck: That was previous to us --

Ms. Rotunno-Hazuka: In the February letter?

Mr. Buck: Yeah.

Ms. Rotunno-Hazuka: Okay. And, in February, that's when you thought it should be just two Sundays a month?

Mr. Buck: Correct.

Ms. Rotunno-Hazuka: And why did the Park -- why did they come out with that letter? I mean did they think, okay, maybe we should try to help the people or -- what kinda came down for that decision?

Mr. Buck: As far as two weekends a month, we were trying to be consistent with what's going up at the -- up at this facility up here.

Ms. Rotunno-Hazuka: Oh, with this civic center?

Mr. Buck: Correct.

Ms. Rotunno-Hazuka: Okay. And then so last night there was a meeting, and this morning there was a meeting, and now it's changed again?

Mr. Buck: Right, they felt that we should be perpetuating the arts under the tree as far as our Department and the Administration.

Ms. Rotunno-Hazuka: Okay.

Ms. Long: Mr. Buck, one moment please. I do want to mention here that I have been a member, my husband and I, of the Lahaina Town Action Committee for a number of years. I've never served on their board. I have also been a member of the Maui Outdoor Circle, did serve on their board for a number of years. In doing that, I have attended, been involved in a number of meetings of the County Arborist Committee, which I believe is staffed by the Parks Department, am I right?

Mr. Buck: That's correct.

Ms. Long: It seems to me that the Arborist Committee has not been given a recent opportunity to comment on Parks' position or to be included in the deliberations that resulted in Parks decision. Is that correct?

Mr. Buck: That's is correct, and also the Planning Department did not find out about our new position, working with the Administration, till 6:30 last night.

Ms. Long: Besides the Banyan Tree being historic, having been planted by the Sheriff of Lahaina in 1873, it's also an exceptional tree, one of a pretty short list on Maui of trees, that are considered significant by virtue of historic or cultural value, age, rarity, location, size, aesthetic, quality, etcetera, and I quote from the Arborist Committee rule here, "A tree so designated shall receive special County review prior to any action that may destroy it or negatively impact its health and vigor." I'm not an arborist but I do know that the previous letter from the arborist, and Ernie Rezens' letter, and we've also been given an Outdoor Circle letter, there is concern about the tree. Do you think it would be appropriate, before Parks writes this position in concrete, that you take it to the Arborist Committee for some advice from professionals?

Mr. Buck: We can. We did discuss this with the County Arborist and, at this time, he felt that the tree was healthy with what's going on that's why we're limiting the activities only for weekends and not during the week.

Ms. Long: There's nothing in your recommendation that limits the area under the tree that's used.

Mr. Buck: There is, the 25 vendors, based on whatever the original recommendation from the Planning as far as the size of the vendor space, and I don't have that in front of me.

Ms. Long: Okay, but my, from reading the minutes and the previous information, that the vending was limited to one side of the tree on one weekend and another side of the tree on another weekend in order to limit the impact on the tree.

Mr. Buck: I'm not going to dispute you. If that's the -- if that's what has been happening to alternate, then that would be our -- continue to be our position to alternate the sides. Unfortunately, I don't have all the information in regards to that in front of me.

Ms. Long: Okay, and I did ask you before, when we weren't sitting, about the fees that are paid by these non-profit groups to utilize the tree as a venue and what was the response to that?

Mr. Buck: The tree is considered, in the permitting process established by the budget ordinance, is considered a other facility. We have different prices for community centers. The per day, the rental or the fee to use that facility, is a \$150 a day; whereas, if it's only a non-profit wanted to come up to the Lahaina Civic Center, it's \$806.

Mr. Fredericksen: Because of the infrastructure, etcetera, difference, if you will, that's here versus there.

Mr. Buck: That could be part of it. It's just that there was, at one time, it's -- the Banyan Tree was considered like another facility like the parks, beach parks, tennis courts, basketball courts, ballfields, so there's a different classification. Now if the Commission is recommending that that fee is too cheap or too expensive, then that would be a matter that would have to go up before the Budget and Finance Committee. We don't set the fees. We do make recommendations to them, but the Budget and Finance Committee and then go into the County Council is what set up fee ordinance.

Ms. Long: Thank you. One more question. There have been complaints over the years, obviously, and when there is a complaint, does it go to Parks Department or does it go to Planning Department?

Mr. Buck: I think it goes to both Departments. If either Planning gets it, then it goes to us, they communicate with us. But because it's considered a park, the jurisdiction of the Parks Departments, we probably get about 95 percent of the complaints in regards to those issues.

Ms. Long: If those complaints, for instance, are that the things that are sold are not handmade or the things that are sold are not represented by the artists, that sort of thing, how do you follow up on them?

Mr. Buck: That's a real tough question and I'll try to answer the best that I can because we do get approached on a lot of events that take place. The Parks Department, basically, issues the permit to the applicant so when there is a complaint, we will discuss it with the applicant themselves. In this case, because before we can approve the permit under the Banyan Tree, it has to come before CRC, then we would probably, if there's a number -- numerous complaints, that's probably why we're here today, in regards to, you know, one group saying this and one group saying that, and one group's not living up to expectation, you know, and all that, that's one of the reasons why we're here, that -- those complaints would be forwarded to both the Planning and the CRC in regards to the Banyan Tree, but we deal mostly with the applicant themselves where there's concern.

Ms. Long: In other words, if the applicant has criteria, then you expect the applicant to impose those criteria so that they deal with the complaints?

Mr. Buck: That's correct.

Ms. Long: Okay. Thank you very much.

Mr. Fredericksen: We got one more question, and then I have a question too.

Ms. Rotunno-Hazuka: I know you're the messenger, I'm sorry, but, well, I mean it is confusing, but it goes from one spectrum to the other on the Parks, you know, position, and when you say you had the meeting, is it, Administration, is that everyone in the Administration, or who was concerned and -- can you answer that?

Mr. Buck: There was several groups that have approached, not only the Parks Department receiving numerous phone calls, numerous emails, we had several meetings with these groups up to, in the Mayor's lounge, on both sides in regards to, especially the restrictions of one group getting one Sunday, the other group getting the other Sunday a month, and they felt that, after many numerous discussion, basically, the same thing what you're hearing today, we felt that -- we changed that position to let continue to do what's going on where, hopefully, that some people got the message that there are some concerns, that they go back and address those concerns. You know, we don't want like two little kids fighting, you know, who's doing what, I'm going to tell mommy, I'm going to tell daddy. We hope that everybody got the message that there are a lot of concerns by both the commercial entities. The tourists love it. I mean it's a benefit for the tourists. But I'm sure you've got the landlord's, across the street, next door, concerns about the type of merchandise that's being sold. So we're hoping this, you know, we did change our position but when we made the -- with the original position, we hope that everybody got the message that there are a lot of concerns and whatever decision the CRC comes up with, we'll do everything possible to be sure that those guidelines are met. But that's the reason why for the change, we thought, you know, it probably could work if we continue -- if everybody was working together. You know, art is art, and it's more enjoyable in the outdoors. I'm not an artist. I do, I guess you can say I'm an artist, I'm a writer. I've published four books. I don't have time to go out and sell them. If you want them, they're in the library. I don't have time, but that's -- however, I'm not saying I got rejected, I'm just saying I am an artist in another way. I do have Indian blood, so I understand some of the concerns of the Hawaiian people. I'm one-eighth Cherokee Indian so I do have those sympathies. But what we want to get here is that we have it, art in the park, and we do have Hawaiian handcrafts, which is very beneficial to the tourists, we just hope it stays that way and then everybody can work as a group together. That's why we have the restrictions on -- as the size because we don't want it to expand too much; we don't want people cooking under the tree, there was that complaint, but then everybody says, "oh, we're not doing it," but why is there a complaint if somebody wasn't doing it? There was some issues brought out about chainsaws under the tree, that's a whole different issue that we may need to address later, and the gasoline and varnish and all that.

Ms. Rotunno-Hazuka: Okay, just one more question then. You know, we're like the landlords of the Historic District, we need to take care of the district, we need to take care of the tree, and if we did not feel it was appropriate to have these vendors or people under the tree, where would they go? How could the County help them with a different venue?

Mr. Buck: We could look at other park facilities, like Kamehameha Iki, or with maybe the Na Kupuna's, when the Friends of Moku`ula, you know, get going over there, they can go over there. We're willing to work on it. I think that's one of the reasons why we changed our position, after the meeting with some of the groups, that we have not identified the additional areas for them to do the culture type activities, and I want to stress culture and art.

Ms. Rotunno-Hazuka: Yeah. Thank you very much.

Ms. Long: One more.

Mr. Fredericksen: I got one.

Ms. Long: Oh, go ahead.

Mr. Fredericksen: Let me go. Okay, and I'm sure everybody recognizes this too, this is, and it's not you, John, but this, to say the least, is quite awkward, this whole, you know, basically a flip-flop, and, you know, it's been important to have public input because this is a very complex issue and we're going to, like I said, we're going to try to hash this out, but I'm glad to hear that Parks, no matter what happens, is cognizant of the fact that some things are appropriate and some things are inappropriate in that park for that area, the Banyan Tree, let's just call it the Banyan Tree, how's that? The Banyan Tree. Okay, Barbara, you had another question? Oh, gosh, I wasn't speaking into the mike, I'm sorry. Okay, anyway, we got a big snafu here and we're going to try to -- try to get some resolution to it, if possible. Okay, go ahead, Barbara.

Ms. Long: Well one thing I'm hearing, which is great, is that the Parks Department is going to be proactive in trying to meet some of the objectives of the West Maui Community Plan. One of them, and Keoki is still here, an urban park along the south side of Dickenson Street, between Luakini and Front Street, maintaining the historic character of structures and landscaping. I don't know how that got into the Community Plan, but it certainly sounds like a great place for a small park. And then the other one is encourage the development of cultural parks for visitation and education. So great. Since 1996, Parks Department was supposed to be working that, I hope you will work hard on that now. Can you clear up for me, is the use of the Banyan Tree by these two organizations, is it limited to them?

Mr. Buck: At this time, that's the position that they want it to the two groups.

Ms. Long: The Administration's position is that they are limiting --

Mr. Buck: To alternate between the two existing groups now.

Ms. Long: Okay. Thank you.

Mr. Buck: And, Mr. Chair, I apologize for confusing the matter more.

Mr. Fredericksen: Okay, any other questions? Okay, does anybody else, just for the record, Dawn Duensing will be having the last word on all of this because of the way things have come down. I would like to have her say something at some point, but was there someone else who was going to say something? Nobody? Nobody from the government - governmental side? Okay, briefly, state your name. Go ahead.

Mr. Watson: Thank you. If I may briefly pick up on two points from Mr. Buck. One is whatever history might have been between the two organizations, we are organizationally very much in support of each other and you'll find, in fact, that's further down the agenda, there is another application from Na Kupuna, one of my function is to be here is actually to testify on behalf of the Lahaina Arts Society Board in favor of that application. Secondly, I would only mention that in the three years that I've worked with Lahaina Arts Society, we have never had a complaint related to us by either Parks or Planning, just for the record. Thank you.

Mr. Fredericksen: Okay, John, you want to say something else?

Mr. Buck: Yeah, just appreciating Graham's comments, that's great. If they're working together, that is great. If both sides are working together, that's great. Unfortunately, there has -- what we try to do is research out the various complaints because we know -- it might not be the big group itself, maybe an individual or something that maybe group's not aware, but we do try to -- and we're hoping that's the case, and we'd like to hear that that's the case that everybody's working together.

Mr. Fredericksen: Yeah, I'd just like to say something about, you know, the whole -- the issue of the use under the Banyan Tree. See this isn't just like it's a, let's say a ballfield somewhere, okay, this is in a Historic District. One testifier, William Waiohu, made several interesting points, you know, Lahaina was the capital of the Hawaiian Islands. I mean it's a very significant area, that place is very significant. So, you know, what it boils down to, and this is my personal opinion but I think some of the other Commission members share it, it boils down to, you know, there's some activities just aren't appropriate for that place and it's not a commercial, you know, it's not like it's a place where you can just do what you do, sell whatever you feel like selling. It is in a Historic District, okay, and that's, you know, this is something that we're trying to deal with. As long as the parties, you know, adhere to that and respect that, you know, that's something that's workable but, you know, if people wanna sell stuff from wherever, Bali and other -- it's just not appropriate, it's not an appropriate scene, period. Okay, now, let's continue. Anybody else? I think we'll listen -- I would like to hear something from Dawn. You need to turn the microphone on.

Ms. Duensing: It's on. Well, first of all, you know, I'm staff and I am to be impartial. I think what --

Mr. Fredericksen: That's what I'm asking for. I just wanted to give you courtesy, because you're kinda caught in between all of this, to say anything if you did have any additional comments or anything else.

Ms. Duensing: Well, mostly, I think that it's important to keep in mind that the Commission is charged with operating the Historic District in an appropriate way. It's not just Lahaina Historic Districts 1 and 2, but this is a National Landmark Historic District as designated by Congress, it's not like it's just an ordinary place that's listed on the National Register of Historic Places, Landmark status is only given to places that are not only of local significance, but of significance to the nation in general. And, you know, that's why the County ordinance gives the Cultural Resources Commission the power to do what is appropriate in Historic Districts. And I think that Lisa calling it the, you know, really charged as the landlords of the Historic Districts is an appropriate way to put it. You know I think the point that was raised earlier about the Arborist Committee not having any say or not having been requested by the Parks Department to discuss this issue is pretty important, and, in all that testimony, the only person who stuck up for the tree as a Historic Landmark was Mr. Rezens' testimony and, you know, as you said, Mr. Waiohu was the only one that even mentioned what the place had meant to Hawaiians in past times.

Mr. Fredericksen: Okay, I'd like to thank Dawn, she's in a position that the Cultural Resources Commission had requested that it be filled for quite some time, and she's been in there for a few months and I'd just like to, again, thank, you know, thank her for taking the position and doing a really fine job as staff in the Planning Department. Okay, now, folks, where do we go from here? As a Commission, we've got a lot of issues to look at, but Dawn did bring up an interesting point, and this is something that we need to talk about, the Arborist Committee really hasn't been involved in this change, if you will, in view point by the Parks Department, and so I, you know, this is my last month on the Commission, it would be nice to have this resolved, but I'm not sure if we're going to be able to get resolution. Let's -- I'd like everyone on the Commission, let's talk story about it a little bit. Barbara?

Ms. Long: Thanks. I'm going to digress too. I asked our Counsel here about the Board of Land and Natural Resources' ruling back in 1999 that the area under the Banyan Tree may be used by non-profit groups, and I, for one, wonder what that means. Does it mean that artists and vendors may make a livelihood, take home 85 percent of their gross sales leaving 15 percent to go to non-profits? Is this what the Board of Land and Natural Resources understands is happening and would they be okay with that? Would they want a more equitable split to the non-profit side? And, besides the Arborist taking a look at this, I'd, frankly, like to have an opinion from the BLNR.

Mr. Fredericksen: Yeah, that's an interesting point. Does Corp. Counsel want to wade into that?

Mr. Akama: I'm not aware of the specific language in the -- or if there is even a written agreement. I'll ask staff if there is specificity in that agreement of October 1999 where the County was granted permission from the BLNR to allow non-profits to conduct the arts and crafts fairs at the Banyan Tree Park. And, also, I'd like to ask, well, is there a protocol in bringing this before the BLNR now in the event there is no specificity in that agreement? I think I would like to ask staff's assistance with that.

Mr. Fredericksen: Is that doable?

Ms. Duensing: I think what I have in my folder, and if you read my analysis, what happened in 1999 was that we discovered, and, Erik, you might remember this because you were also on the Commission at that time --

Mr. Fredericksen: Yeah.

Ms. Duensing: We discovered that all along, since the 1970's, the County has been allowing this fundraising activity to go on under the Banyan Tree, but when you look at the executive order that handed over the area from the Territory, at that time, to the County government, there was to be no, you know, monetary gain, and then I believe, and I don't think I have it with me today, but Parks never wrote a letter to the Board of Land and Natural Resources until all of this came to a head in 1999, and then I never found any correspondence that actually said when the date was that the BLNR granted the County authority to say, "Okay, it's okay for non-profits to do stuff here," and the language of the letter from Parks to the Board of Land and Natural Resources, you know, was centered on non-profits, but I'm relying on my memory from -- do you have it? Okay.

Ms. Bosco: Hi, good morning, good afternoon, Commissioners. I have a document here that, basically, reflects an approval to the two organizations to conduct arts festivals under the Banyan Tree. In 1997, the Board approved the County of Maui's request to lease the courthouse and the uses were limited to museum, art gallery, visitor center, community center, office administrative space, and then they listed who the potential users would be. Then they went back in '99, in response to the original request that came before the CRC for the new organization, and the Board did amend the 1997 approval to add the park as an area where the art exhibits and sales could take place. The uses for the Lahaina Banyan Tree Park were limited to the following, and this was set forth in their 1999 approval: arts and crafts exhibits and sales; cultural demonstrations; community events; and other related activities, and, specifically, the two organizations name to be users of the courthouse were the LahainaTown Action Committee and Lahaina Arts Society with the Lahaina Restoration Foundation being the, actually, the lessor of the courthouse, and under

that umbrella, these two organizations have been permitted by the Board to do what they're doing. And I would like to add that I did have a discussion with the DLNR yesterday, Department of Land and Natural Resources, and they indicated that if the Parks Department or the County does so desire to be very specific about the purpose of this park, it can be set forth again in drafting a new purpose and revisiting the original executive order. So there is a mechanism by which the purpose of this park can be redefined and I just wanna --

Mr. Fredericksen: Thanks, Simone, so -- and excuse me too for interrupting you. The -- so the County, presumably Parks Department with Cultural Resources Commission input, could fine-tune, if you will, the usage and then that would need to be re-permitted?

Ms. Bosco: It would go back before the Board of the Department of Land and Natural Resources for reconsideration of the purpose of this park.

Mr. Fredericksen: Okay, thanks. So, Dawn, were you done?

Ms. Duensing: Yeah, I'm done.

Mr. Fredericksen: Okay, yes? Yes, we are taking lunch, for everybody's information, at 12:30. Well, what does everybody else on the Commission feel in terms of where we stand? I mean it sounds like there's some outstanding issues that's still -- that need some additional input.

Ms. Long: I've got a serious problem with limiting the users to the two people in the courthouse. It seems arbitrary to me. The purpose of the park, this sounds like a big title, who codified that initially? Simone, was that the Parks Department or the BLNR or what? Where'd that come from?

Ms. Bosco: This was set forth in the original executive order and I don't have the date of that, it might be in a staff report, 1912, and it was very broad, it was set forth as public purposes, a park with public purposes, and, again, like Dawn just mentioned, this was a long time ago so --

Ms. Long: Yeah, and that was done by the State? The Territory, yeah, obviously. Okay, I have questions about two other venues that are not quite as shady, but are certainly as close, neither of which, I think, belong to the County, and I just want to clarify that, one of them is right across the street at Campbell Park, and the other one, which was mentioned before, is a quite large strip of land, makai of the courthouse, between the harbor and courthouse, is it -- does the County have any ownership or any --

Mr. Fredericksen: Barbara, you're talking about the strip between the courthouse that has the canon's?

Ms. Long: Yeah.

Mr. Fredericksen: I think that might be State land, but I don't know.

Ms. Duensing: Can I -- I'd like to, please, make a comment on what Mrs. Long has just said. The County Ordinance, Chapter 19, that deals with the Cultural Resources Commission's duties does address selling in public places and, as such, you would also have to approve these other areas because it says that it is unlawful for any person to carry on or solicit business in any location on the street, highway, or sidewalk, the park and the open space, but --

Ms. Long: Well, Campbell Park does get used frequently.

Ms. Duensing: Yeah.

Ms. Long: But it's private.

Mr. Fredericksen: I believe Campbell Park is private property.

Ms. Duensing: It is private property owned by Waiola Church.

Mr. Fredericksen: Okay, let's see, I guess we can have somebody come in -- go ahead if that answers that.

Mr. Don Couch: Yeah. Hi, I'm Don Couch, Executive Assistant to Mayor Arakawa, and to answer your question, Commissioner Long, the street right there is called Wharf Street right from the courthouse to the graded area or the now cemented area with the planters and the paths, that is also part of the County -- part of County land, all the way up to the wall, that would be County land.

Mr. Fredericksen: Don, what is that called? There's a name for it.

Mr. Couch: You mean --

Mr. Fredericksen: That strip, there's a name for it. I've never --

Mr. Couch: I think it's called a parkway, not a park, but a parkway. When Public Works was fixing it, I think it was called the parkway there. At one time, it was a big planter, I mean a big dust area with grass and a little bit of planters.

Ms. Long: Thank you.

Mr. Couch: Okay, thank you.

Mr. Fredericksen: Do you have another -- anymore comments, Barbara? Okay, Lon, comments?

Mr. Whelchel: I like this, the two weekends, is -- may be an issue. Right now they have it set so that they have two weekends plus a third if it is a five-weekend month, and I like the idea that that third week be dropped, and that's what they're doing, and expand crafts to the road, to the trees, the canon trees to the ocean side opposite the courthouse is a good idea, that gives them more area, and to get Hawaiian products made by Hawaiians integrated with what is there is a superior idea. I'd go along with that.

Mr. Fredericksen: Sol? You got some comments? Just cruising right now. Okay, Lori?

Ms. Sablas: We've had over 30 people testifying and, of that 30 who testified, there really was only one person who really spoke to what we, as CRC, are charged with, and that's the responsibility of the historic nature of the tree and to maintaining it. While I sympathize with a lot of the groups that are here and your -- what you're talking about, you know, as an individual, I do sympathize, but this is not CRC's responsibility to take care of livelihood. Our responsibility here, why I serve, why I volunteer on this Commission, is because I care about our Maui and our charge, again, as I understand it, is to protect our sites.

And I am rather surprised about the change of position from Parks Department, especially knowing that we are going to be coming into a meeting like this that scheduled for a whole month, to kinda change, change, even though it was explained, but I think my position, at this point, is kinda like, you know, I think about the *Giving Tree*, if anyone of you had read that book, about if you keep giving, giving, giving, giving, until there's no more. And Maui is a very special place and sometimes -- I think what I've heard here were more on economic needs, and not so much the spiritual needs of our island, and sometimes we need to stop, and maybe, you know, I guess my mind is now, you know, like it's a tough decision to make, but maybe we need to give that place a rest, maybe we need to just have everybody cool off and, you know, think about what our real purpose is. I think it was said again, by that fellow from Parks, what is the purpose of the tree? What is that purpose of the tree? It's kinda like if you were in New York and, you know, that big, big city and then they have the Central Park, you know, it serves a purpose for the community and it's, basically, passive, it's, basically, where people go and kinda like, you know, relax, and I appreciate what people are saying, I appreciate the fact that it does make, you know, I mean having people come in and seeing artists and seeing both sides display, I mean I don't have argument with that, but my, again, where I'm at is what is that purpose of the tree? And, really, this why I'm sitting here and that's why we, as the CRC, have to be here

is to make some hard calls, and that is to protect our historic sites, and so I'm kinda weighing everything and, you know, I'd like to have more discussion. I don't think I'd like to -- and I want -- I think some of the advice was let's think about it, let's weigh it, because it impacts so many people. So, you know, I agree with Erik that the decision maybe will not be made today but ...(inaudible)... like William had talked about, maybe, you know, give responsibility to the place, give back that name of that original place, and, you know, maybe we can help you do some research, find out. You know, we've done a lot of research on Lahaina area and I'd, you know, I'd be happy to share whatever we have, but I'd like our thoughts to kinda go back and think about, I'm speaking for that place, for that tree, I'm not speaking for economic benefit, and I'd like to be that voice for that place there. You know, it has a heart, it has a soul, you know, maybe it's like, my gosh, every week I'm used, I'm getting people who want, you know, tearing me here and tearing me there, and, you know, what about me? That place? I just want to be the voice of that place that we're talking about.

I don't know if I'm making sense, but I care. I was born and raised right in that area. I grew up, like Erik, that was play area, I played, what you call, catch cause we didn't really run on the tree and remember that was our whole game, I grew up, you know, I spent -- I went to the old Kamehameha III School, so I have a lot of roots in Lahaina, and I'm speaking again because I feel passionate about that place, and it's changed, it's like, again, read the *Giving Tree*, it seems like everybody wants to take, take, take, until there is no more to take, so I just want everybody to kinda cool off, I guess, is what I'm trying to say and reflect on what our real intent is.

Ms. Rotunno-Hazuka: Well, I agree with what Lori and Barbara and the points they brought up, and Erik, I mean for us, as a Commission, it's not an appropriate place for commercialization, but, then again, where are you supposed to go? I mean I don't want to say, "let's don't use it at all." I think the Hawaiian products are very important as well. There's certain products I wouldn't want to see there like what you see at ABC, you know, nothing against ABC, but those kind of products. I would like to see authentic beautifully made products from the artists. So I don't think that we can make a decision today. I am very concerned about the health of the tree as well. I think we should move towards finding another venue for the people and trying to include all the artists at -- some way, and that's about it.

Mr. Kapu: Aloha. I say mahalo to everybody for giving their time and their mana`o for sharing with us pertaining to a lot of concerns that they have about Lahaina Town. One thing that comes to my mind is, you know, the Cultural Resources Commission also takes on a big responsibility as pertaining to the outcome and the outlook of Lahaina itself. And let me give one prime example and it has a lot to do with the signage around town, so that's always been ongoing problem for us that we didn't want no flashy signs because it -- it takes away the character and identity of a small town setting, yeah. So our job, basically,

is try to make sure that just the town, the essence of the town and its cultural recognition is everlasting, to make sure that we don't turn into another Disneyland or a Waikiki. So by using that signage guideline, we also gotta look at that in retrospective to what we're dealing with here as pertaining to what kind of crafts that we sell down the Banyan Tree.

I'm all in favor for local crafters. I'm a crafter myself. I've been a crafter for many years, and I do coincide with the person that said that, you know, going out there and trying to put your things in the gallery and put your stuff on consignment ain't definitely a way to go. You have a hard competitive range of people. You sell your percentage for a low cost, at the same time, the dealer is the one that making the bigger profit because they're upping the prices. I've been through a lot of those things.

As a Commissioner for the Cultural Resources Commission, our duty is, basically, to make sure we protect the integrity and the character of our town and also protect whatever we have left. There's many stories about this place that sort of go over everybody's head, but it's our identity, it's who we are, so if everybody was to focus on how we can live on this small little island and how we can be friends and neighborly with each other without coming to big settings like this and sharing our eha with each other as pertaining to what is fair for one, it definitely must be fair for the other, but, at the same time, we also gotta remember that, you know, our culture alone is basically taking some heavy whacks right now. Not only that, but just our character, as a Hawaiian Nation, as Hawaiian people, is taking some major whacks. So taking into consideration of what's going on in the arena of making profit or for money just to pay for our rents, we also gotta make sure or think to ourselves inside as pertaining to who it's actually going to benefit and it's hard. I mean if you're here and doing things that, hopefully, you can share some mana`o to enlighten on our struggle as being an existing race, there's a lot of things that have to play here. Never in my wildest dreams that, out of everything that would be talked about, would be the concerns of the environment pertaining to the Banyan Tree also, yeah, as pertaining to all those things that happened over there whether or not it's good or it's not good for the Banyan Tree. So we have so many things that we need to discuss and talk about pertaining to what is right, not just for the people, not just for the culture, but also for the land, also for our environment. I mean there's another play in town, we have cruise ships that we also -- everybody wants to be a part of but we also gotta remember, yeah, when the cruise ships land, you see all the buses, they load them up and take them out of town, right? Yeah? So the vendors and everybody who try to make the money there, we have bigger competitors out there, and you know all those people that load up these buses and take them out of town, they're taking your bread and butter away. Now that's one concern. There's many concerns that everybody have. Try to draw up some kinda concern -- some kinda platform, put it together, submit that.

Right now, I kinda little bit leery as pertaining to my judgement as pertaining to how we're going to persevere in Lahaina because we have so many issues, but we're given issues right at the last minute, and we need to make a determination, so the Commission is only an advisory Commission, the more concerns that are addressed to us, maybe we can answer with the help of everybody to try to make this place what needs to be made which has to do a lot with our character and identity as people, as all people around the world, that's the bottom line. Mahalo.

Mr. Fredericksen: Okay, thanks, Keeaumoku. Now I've got a question for Dawn. Now I have to remember what it was. On -- when we had -- we had recommendations before about, you know, the activities, sales activity in the Banyan Tree, you know, under the Banyan Tree, could you refresh us, if you've got the information with you, Dawn, what sort of recommendations we made at the time referring or, you know, referring to what sorts of activities were envisioned for, you know, occurring under the Banyan Tree?

Ms. Duensing: Are you referring to five years ago or today?

Mr. Fredericksen: Yeah, 1999. If you have the information.

Ms. Duensing: Yeah, if you -- I believe it's in the packet that I gave you last month.

Mr. Fredericksen: I did bring it. The reason I'm asking this, for everybody in the audience, is, you know, my memory of it, and you know '99 for me is a ways back, I've got three sons and they keep me quite busy, but --

Ms. Duensing: Erik?

Mr. Fredericksen: Yeah?

Ms. Duensing: It is in the packet that I prepared the Commissioners last month on the He U'i, the Hawaiian arts and crafts, and Maui Flowers, which was the way it was originally presented, it's dated July 1, 1999, and you have the application, the project description, the analysis, and the recommendations that were made by the Commission on that day. July 1. It's after all the minutes that you have in your packet.

Mr. Fredericksen: Okay, I'm looking at -- I'm looking at the highlights of the, let's see, July 1, '99 CRC minutes. This was the, what we were -- what was being discussed was having, I don't know, a Hawaiian venue, if you will, come into the park, and I was on the Commission at the time, Dawn, you were, I think we were the only two folks here that were but --

Ms. Duensing: Yeah, Milton was too but he didn't make it today.

Mr. Fredericksen: Yeah, Milton, but he's not here today. My recollection is that, you know, we, as a Commission, supported cultural or activities that promoted Hawaiian -- the Hawaiian culture because that is a -- that would be an appropriate activity in the Historic District in Lahaina Town because, you know, if you do walk down Front Street, there's not an awful lot of Hawaiian culture out there, I mean it's -- a lot of it's really, just face it, it's real commercial and, you know, I understand the realities and stuff, but still that doesn't -- that doesn't -- I mean, you know, the Hawaiian culture was here before all of this stuff and the Hawaiian culture is still here and we, as a Commission, felt that it was very important to recognize the importance of the Hawaiian culture and allow that, you know, those sorts of sales in the park and sales activities in the park, and I, you know, just me personally, I would hope that whatever happens, whatever gets sorted out, is that, you know, folks respect that, that there are appropriate activities and inappropriate activities, inappropriate activities, to me, is selling stuff that's not -- that's not Hawaiian, that's not made here, okay. Anyway, I think, from what we've been discussing and everything, it's clear that we can't or I don't feel that we should try to make a decision today. If anyone of the Commission feels strongly otherwise, please say so, otherwise I think it would be best to defer this and get this action and get more input. We've had a lot of public input. Once again, I'd like to thank everybody. I know, you know, you took a lot out of your day, you know, we all volunteer so, you know, we know we're going to have a day gone but, for you folks that, you know, you're doing other things, I appreciate you taking the time. I'm sorry that we can't come to a conclusion today but I -- it's a real important issue and it's something that needs to get sorted out and it's just not -- trying to sort it out today, I think would not be fair all the way around. Anybody on the Commission have anymore comments? Barbara?

Ms. Long: Sure I do. It's going to be difficult for us to take up --

Mr. Fredericksen: Yeah, the next item or that's coming up.

Ms. Long: The item after the next, after this. I would like to do something proactive today. If we put off a decision on the Recommendations that are before us today, I would like to suggest that if we take them up at our next meeting, and I totally agree with Lori that our responsibility here is to protect and preserve the historic and cultural aspect of the National Historic Landmark, but the non-profit groups, Lahaina Arts Society, LahainaTown Action Committee, and their vendors have a responsibility too and that is to work with the Parks Department to identify other public venues that might be appropriate in Lahaina Town and to do some research on checking out what private venues, like, not Lahaina shop -- Lahaina Center, the new one that has a big kinda courtyard in the middle, and to make proposals back to the Cultural Resources Commission that give us six months, give us a year to work on other kinds of funding. I have worked for a number of non-profits, including Bailey House and Outdoor Circle and the Humane Society, and if we had focused on just one way of making money, we would -- they would not be in existence today. You cannot depend on just what you're doing now to keep you in funds, personally or the non-profits.

I know that Lahaina Town Action Committee has a number of sources. What I'm talking about are the Na Kupuna and the different vendors. There are grants, there are other venues to sale, there are bakes sales. Heaven knows, across the country, there are a million ways now that you can raise money for organizations. And I would like to hear from you. You guys have a responsibility to come back to us and say, "We have investigated all these other things. We feel that if you reduce our days to this, that with these other ways of raising money, we'll be able to survive." We need to hear from you. Otherwise, there's no give and take, and Parks Department, is Mr. Buck still here? There he is. I want you guys to sit down today and say, "okay, we're going to meet in a week or whatever, and we're going to walk through Lahaina, and we're going to say, what about this place? What about that place?" acknowledging that the Historic District law says you gotta -- you can't make sales, you can't -- you gotta have special permission to use the glorious harbor side parkway, or whatever that's called, and other public areas. If it serves the purpose of protecting Lahaina as a National Historic Landmark and a County Historic District, then fine, we can work with you. But I don't want to just postpone this for a month and not have you guys do something.

Mr. Fredericksen: Yeah that -- thank you, Barbara, good points. And, once again, I think everybody, you know, it's real important to remember, you know, we need to work stuff out and work together. I think, ultimately, it's probably going to be a good idea to ultimately look at reducing the usage to some extent just so the place doesn't get overrun. I think there will always be a place though for the Banyan Tree to be, cause it does serve a really important purpose in terms of the ...(inaudible)... and everything. Can the County, oh, here's John.

Mr. Buck: I apologize for stepping out. I had to call and say that I can't make another meeting which started about a half-hour ago. You're going to be transmitting that request to us?

Mr. Fredericksen: I'm sorry. What did you say?

Mr. Buck: What was the request? I understand it was to find alternate sites?

Mr. Fredericksen: Well, yeah, if some of the parties or if all the parties involved can get together, basically, with Parks and talk story and see -- and try to see if there can be some long range solution that might be possible.

Mr. Buck: Between the two groups, existing groups now? Or future groups too?

Mr. Fredericksen: And, well, I'm looking at potential other alternate sites for activities.

Mr. Buck: Okay.

Mr. Fredericksen: So I'm assuming that you're open to that.

Mr. Buck: We are open to that. I'm just requesting that it, you know, we get a transmittal in regards to that request so it is, you know, documented that we have this.

Mr. Fredericksen: Okay, Dawn, how would we handle that?

Ms. Duensing: I can take care of the transmittal, but I'd like to also make a caution to the Commissioners in that, in past years, CRC has had problems of the same nature, for instance on the, the reason why I'm saying this is we need to be careful where we're going to encourage this activity to go, for instance on the library lawn, we've gone through this issue already. One of the other things to keep in mind is that we have design guidelines for Lahaina District whereby we say, "no, we don't want things to be hung outside your store," and stuff like that so, you know, it needs to be carefully thought as to where we might move this and how it might be done to pertain to, you know, keep in mind the design guidelines and the overall appropriateness for the Historic District.

Mr. Fredericksen: Dawn, would you, would it be possible for you to be involved in those discussions too as --

Ms. Duensing: I suppose.

Mr. Fredericksen: As staff, you know, support, or whatever you want to call it, to CRC?

Ms. Duensing: Yes.

Mr. Fredericksen: And, I'm not sure, maybe one of the Commission members might want to be involved too. I, obviously, won't, I'll be off the Commission, but if there's a Commission member that would be interested in talking story with folks, speak now. Barbara, do I -- is that a volunteer?

Ms. Long: Well, I'm a million miles away but the Lahaina residents, who are on the Commission, would be logical.

Mr. Fredericksen: Alright, thanks for volunteering, Keeaumoku. No, serious, thank you.

Ms. Sablas: And, while we're at it, I also -- I mean a strong point was brought out about just limiting the use to the two entities, I think we need to address that and, while we discuss it, in all fairness to everyone.

Mr. Fredericksen: Okay, well, as we discussed earlier, we are going to defer this action but with the request that additional information be gathered and, as a starting point, the

Planning Department will send a letter to Parks requesting that, you know, meetings, a meeting be conducted that involves folks from, you know, from the Banyan Tree and that area, okay?

Ms. Long: Dawn, could you include in that that the Arborist Committee --

Mr. Fredericksen: Oh, thanks, Barbara.

Ms. Long: Take a look at this too.

Mr. Fredericksen: Okay, I think, we don't have any recommendations, per se, right, Dawn, from staff at this point?

Ms. Duensing: Sounds like you just gave me your recommendation. I have so noted it.

Mr. Fredericksen: Okay, let's move on. What are we doing on time?

Ms. Duensing: It's 12:37 if you want to take your break.

Mr. Fredericksen: Okay, yeah, let's -- we're going to break for lunch folks. Thanks for bearing with us and we'll be back at about 1:00.

A recess was called at 12:37 p.m., and reconvened at 1:10 p.m.

Mr. Fredericksen: Okay, let's see, let's go ahead and rock this, what are we -- Item F., oh, Simone's not here? Yes, she is. So we're looking at Historic District Applications, No. 1.

F. PERMIT REVIEW

1. HISTORIC DISTRICT APPLICATIONS

- a. LAHAINATOWN ACTION COMMITTEE requesting Commission approval for the Ocean Arts Festival at Banyan Tree Park and Campbell Park on March 13 and 14, 2004, TMK 4-6-001:009, 4-6-008:006. (D. Duensing)**

Ms. Bosco: Hold on.

Ms. Duensing: Hold on a minute.

Mr. Fredericksen: Yes?

Ms. Duensing: What item are we on?

Mr. Fredericksen: Oh wait. Yeah, we did Item E. --

Ms. Duensing: Right.

Mr. Fredericksen: And now we're on Item F, Permit Review. Yes. Oh, the preamble, I'm sorry.

Ms. Long: Question. Question here. Do we need to vote to defer? No? Thank you.

Mr. Akama: No, a vote is not necessary, a motion is not necessary. The Chair, on his own motion, may defer the matter.

Mr. Fredericksen: Okay, Dawn, so Permit Review, Item F.

Ms. Duensing: Okay, thank you, Chair Fredericksen. The next item on the agenda is a request by the LahainaTown Action Committee to do the Ocean Art Festival, and the reason why we're bringing this before the Commission today is that their activities for this year are slightly different from last year, so we decided that it needed Commission review and approval. The project background is that the Ocean Art Festival originated from Whale Fest Celebration in Lahaina in 1995. At that time, the event included a stage and bleachers in Campbell Park as well as a food booth and information booth on the Lahaina Library lawn. In 1996, the event expanded to include activities on Front Street, which was closed to traffic between Lahainaluna Road and Dickenson Street for this festival. In 1999, the Ocean Art Festival was inaugurated as part of the Fifth Annual Whale Fest Celebration. The Ocean Art Festival is a two-day arts and crafts fair of marine related art, continuous entertainment, an artist demonstration booth, children's art class, hands-on marine feelies, an amateur photography contest, art-in-action booths, and food booths that took place in Banyan Tree Park. The 1999 festival was reviewed and approved by the Cultural Resources Commission.

This year, the Ocean Art Festival will be held in Banyan Tree Park on Saturday and Sunday, March 13 and 14, from 9 to 5 p.m. The festival will consist of an arts and crafts fair of marine related art, continuous entertainment, children's art display, and food booths. The event will also include non-profit informational display and games. The information booths include the Pacific Whale Foundation, Maui Ocean Center, Whalesong Project, and the National Marine Sanctuary. All cash sales will be transacted in the visitor center of the Lahaina Courthouse.

Now this is the new part that we're looking at today, as you make a consideration for this approval for the festival, the applicant proposes to use Campbell Park for the showing of

the video production by Flip Nicklin, a National Geographic photographer. The video will be free to the public and is intended to promote ocean awareness. The event is scheduled for March 10, 11, and 12, from 5 to 10 p.m. The movie showing involves the set up of a movie screen and I think it should be approximately 75 chairs, and I talked to Lisa after I did this and I can give you more information or maybe Theo can about how they're going to set up. Permission to use Campbell Park has been granted from Waiola Church, which owns the property.

Okay, agency review, just like with the Banyan Tree, I asked the Maui County Department of Parks and Recreation to review this activity because they maintain authority in Banyan Tree Park and they have reviewed the application. In a February 17, 2004 memo, Parks' comments on the Ocean Arts Festival in Banyan Tree Park included the following: a. That the applicant obtain a Parks permit for the subject activity, and that there should be a maximum of 20 vendors at the park per day. They also included a comment on there that there should be no cooking under the tree but they're not going to have any food booths, so that's a moot point.

In the Analysis, Chapter 19.52.090.E, Maui County Code, Regulations for Historic Districts No. 1 and 2, Selling in Public Places, states that, "It is unlawful for any person to carry on or solicit business in any location on any street, highway, or sidewalk. The same is also unlawful in any location, in any park or open space that is owned or maintained by a government agency without the approval of the Cultural Resources Commission, and the responsible agency having administrative authority over the park or open space."

In the past, the Cultural Resources Commission and the Planning Department have been concerned with the use of public parks as sites for commercial activities, however Campbell Park is privately owned.

A major concern of the CRC, as expressed in minutes and letters presented to the Commission in an information, has been the overall health of the Banyan Tree and the impact of continuous activities in the park.

Periodic review and approval by the CRC of major events in the Lahaina Historic Districts is, such as this Ocean Arts Festival, is appropriate. Since 1999, the event has been approved administratively by Planning Department staff. This year, however, the LahainaTown Action Committee is requesting an additional activity for the festival, thus CRC review and approval is required.

The LahainaTown Action Committee showed a movie in Campbell Park in February 2004 as part of its Chinese New Years celebration. This amendment to an annual event was reviewed and approved by the CRC at its regular meeting in December 2003; actually, that

never happened. The approval happened, was just my point; the movie never happened.

Okay, and last but not least, the increase in the use of parks, streets, and other undeveloped lands for festivals, crafts fairs, and other special events, demonstrates a clear interest in the open spaces in Lahaina for such special events which often involve a commercial aspect. The Commission should consider the designation of an appropriate open space and public lands to allow for these types of events.

Do you want to speak to the applicant to this here or do you want to just go into the Recommendations?

Mr. Fredericksen: Let's go ahead and listen to the applicant and then we can do the Recommendations. Thanks.

Ms. Theo Morrison: Good afternoon. The only change we made was this addition of this free video by Flip Nicklin, and if you pick up the *Lahaina News*, the photograph's on the front. He's a phenomenal underwater photographer with National Geographic, and I saw some of his video, it's fantastic. It's all free. There's no charge to this. It's just part of our education awareness for everybody.

Ms. Long: How big is the screen?

Ms. Morrison: It eight foot by eight foot. We'll just sandbag it down. It's one of those portable kind.

Mr. Fredericksen: What's it about?

Ms. Morrison: Oh, by the way, it's just -- the film? The video? It's on whales, yeah. It's called *Whale Windows* and he's -- he has a researching permit so he actually gets to go down right with the whales. It will only be on Friday, by the way. We had three days, it's only Friday.

Mr. Fredericksen: It will only be scheduled for March 10?

Ms. Morrison: I think it's the 10th.

Mr. Fredericksen: Cause in here it's 10th, 11th, and 12th.

Ms. Morrison: No, 12th. The 12th.

Mr. Fredericksen: The 12th? Okay.

Ms. Morrison: So we've -- yeah, this is a great ...(inaudible)... thing.

Ms. Sablas: So, are you okay? You're not going to have competition from the next door with the music?

Ms. Morrison: No, we talked about it.

Ms. Sablas: They're all okay to not have any live music?

Ms. Morrison: Yeah, they just have one guy who plays a little softer or something, that's not problem.

Ms. Sablas: Okay.

Mr. Fredericksen: Anybody have any questions for Theo? Okay, well, let's -- then we can end with the Recommendations. Thanks, Theo.

Ms. Duensing: Just for Commissioners information is when I was sent the application, I didn't have information on what the actual set-up at Campbell Park is and when I talked to Lisa at the LahainaTown Action Committee, she said there would be a table for the projector, 75 chairs, a canopy tent with two tables for complimentary refreshments, screen and, of course, trash cans, so -- okay, Recommendations for the Ocean Art Fair are subject to the following conditions:

1. That construction and placement of the booths, exhibits, stage, and art displays shall be in accordance with plans submitted on February 4, 2004.
2. That all equipment required for the video showing in Campbell Park shall be temporarily installed no earlier than Wednesday, March 10, 2004, and shall be removed at the close of the event on Friday, March 12, 2004, and Lisa told me that they take everything down at the end of each day so -- it's only one day now so it doesn't matter. Thank you. I'm always the last one to know those things.
3. All structures for the arts fair shall be temporary in nature and installed no earlier than the day of the event. Artists booths shall be removed at the close of each day. The arts fair shall be held on March 13 and 14 as indicated in the application.
4. That the number of booths for the arts fair under the Banyan Tree be limited to 25 on each day of the event.
5. That there shall be no structure set up for the collection of money. All cash transactions will be handled inside the visitor center at the Lahaina Courthouse.

6. No ground altering, including the use of stakes to hold down any structure, shall occur.
7. That the art fair booths shall be no larger than 10 by 12 feet and shall be limited to cover only half the area of the Banyan Tree Park.
8. That the applicant obtain a Department of Parks and Recreation permit for the arts fair to be held at Banyan Tree Park prior to the day of the event.
9. That the applicant obtain prior written approval from Waiola Church for the use of Campbell Park for the video showing on March 12, and they have submitted that written permission to me already.
10. That appropriate building permits shall be obtained from the Department of Public Works and Waste Management prior to the initiation of construction.
11. That areas used for the event shall be cleaned of all trash immediately following the event.
12. That the applicant shall carry liability insurance for the event for a minimum of one million dollars and shall name the County of Maui as an additional insured. A copy of the Certificate of Insurance shall be filed with the Department of Planning and the Department of Parks and Recreation for record purposes, and I have that in the files already.
13. That full compliance with all other applicable government regulations shall be rendered.

Mr. Fredericksen: Okay, thanks, Dawn. Do any Commission members have anything to say about this?

Ms. Rotunno-Hazuka: I just have a quick question. Do you have to share the Banyan Tree then with the normal vendors that are there?

Ms. Morrison: No, this is regularly scheduled event.

Mr. Fredericksen: You gotta speak into the mike, please, just so we got it on record.

Ms. Morrison: This is a regularly scheduled annual event that the other groups schedule around it.

Ms. Rotunno-Hazuka: Okay.

Mr. Fredericksen: Okay, any discussion from the members here? Sounds good to me.

Ms. Rotunno-Hazuka: I second that.

Ms. Long: Just -- yeah, it sounds -- I love outdoor movies. I think that is just wonderful. I would just like to add Condition No. 9, Dawn, that the prior written approval that LahainaTown Action Committee submit a copy of same to the Planning Department.

Mr. Fredericksen: Didn't you get that?

Ms. Long: I think that was the intent, but it doesn't say that.

Ms. Duensing: I need to add "to the Planning Department."

Ms. Long: Yeah.

Ms. Duensing: Yes. And, again, as I said, it has already been submitted.

Ms. Long: And there is a difference, the Parks are recommending 20 vendors, staff's recommending 25.

Ms. Duensing: I spoke to Parks and it was okay.

Ms. Long: Okay.

Ms. Duensing: Yeah, and it's 25 vendors plus their 4 informational booths, and, originally, they had asked for 35 so Parks had cut that number down significantly.

Mr. Fredericksen: Any other comments? Well, like I said before, it looks good. Do we need to vote on this? I guess we do, yeah?

Ms. Duensing: Yes.

Mr. Fredericksen: Okay.

Ms. Duensing: You need to approve this or disapprove.

Mr. Fredericksen: Do I have motion to approve this application?

Ms. Long: Move to approve the Recommendations with that little amendment on No. 9.

Mr. Fredericksen: Any second?

Ms. Rotunno-Hazuka: Second.

Mr. Fredericksen: Okay.

There being no further discussion, the motion was put to a vote.

It has been moved by Ms. Barbara Long, seconded by Ms. Lisa Rotunno-Hazuka, then unanimously

VOTED: to Approve the Recommendations with the Amendment to Condition No. 9.

Mr. Fredericksen: Okay, motion carries. Lahaina Town Action Committee and the Ocean Arts Festival will be on the road, as it were, actually, under the tree. Okay, now B., Item B., how are we going to do this? Is this Simone?

Ms. Bosco: Yes.

Mr. Fredericksen: Okay.

b. LAHAINATOWN ACTION COMMITTEE requesting Commission consideration and approval of amendments to the He U`i Cultural Arts Festival, TMK 4-6-001:009 (S. Bosco)

Ms. Bosco: Thank you, Commissioners and Mr. Chairperson. The request before you is to amend the previously approved 1999 Historic District Permit for the He U`i Cultural Arts Festival and to the use the Banyan Tree Park for half of the weekends of every month, from 9 to 5 p.m. In essence, the Lahaina Town Action Committee would like to amend the event scope and various details of the original request.

In light of the earlier deliberations, we -- you have choices, you have several choices: you could act on this request; approve it as it is; you can approve with amendments; you can defer it, or you can deny it. Those are your choices. If you were to approve it as is, there would be no changes to, well, actually, how do I say this? The number of vendors allowed in the event has not been actually specified in the recommendation; that's largely left to the Commission to deliberate or, I think, actually wait. No, I'm sorry, the number of weekends. I'm sorry. I'm sorry. I take that back. It would be the number of weekends and the days of use of the park that has not been set forth. If you were to amend the request, then that would go into deliberations, which I think would be premature. If you were to defer, then you could defer to -- until the matter of the Banyan Tree Park is resolved at your next meeting or any subsequent meeting. And then, of course, you can deny.

As far as approving with amendments, the request is time sensitive in one respect or two -- several respects. If the applicant would like to go forward with starting this change to the event, if they're anxious to start with what's being set forth here, then, of course, that would be -- that would be the urgency. If the applicant would like to wait, then we can consider deferring; however, there is a complaint on file within the Department and I'm hoping that that doesn't create, well, I would hope that we can come to a decision carefully even in light of any kind of complaint. So it's really up to the Commission whether or not they would like to approve what's being recommended with amendments in order to honor the, you know, the applicant's request, or to wait until the matter is completely resolved. And if you'd like, I can go through the changes and --

Mr. Fredericksen: Yeah, let's go ahead and go through it.

Ms. Bosco: Okay. Basically, the applicant is revising the original event, it's under the Project Description, Page 2, that the artwork will be handmade by the artist in the State of Hawaii, and that the artist, or his or her immediate family defined as his/her grandparents, son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, sister or brother be present at the booth at all times. So, essentially, the artwork, the criteria for what is sold under the Banyan Tree should be handmade, and the applicant has proposed that it be handmade in the State of Hawaii.

Ms. Sablas: Can we ask you questions along the way or ...(inaudible)...

Ms. Bosco: Oh, yeah, certainly.

Ms. Sablas: Oh, sorry, speaking in the mike. We talk artwork that will be handmade and an earlier point was made, that I think it's an important issue, is that you can get all foreign imported material and just sew it together and claim to be handmade but, yet, nothing is of local material. Does this address that?

Ms. Bosco: No, it does not.

Ms. Sablas: Because it does happen, and if the intent is to, you know again, to showcase our cultural heritage, then maybe we should be more specific, if that's the use, that it should be and, again, I have to say that I'm not an artist and I have to respect that sometimes it's hard and difficult to get materials cause I've heard that said, but what is our real intent in the showcasing of these things? Cause, anyway, I kinda just want us to think about that that we address the items. You know what I'm saying?

Ms. Bosco: Yeah.

Ms. Sablas: It's so easy to get so many things from outside and just string it, and I made it, and I'm selling it. I don't know if that's the -- what we'd like to have happen.

Ms. Duensing: I'd just like to point out one other thing to Commissioners too is in my previous Recommendations, and this is a change from what Simone is doing and that you did not accept, I just want to put it out there so you're aware that it was in there, is we had handmade in Maui County items.

Ms. Rotunno-Hazuka: Is that as opposed to the State of Hawaii?

Ms. Bosco: Okay, let me draw attention to Exhibit 3. This is the proposal that the applicant has written in to our Department. To address that point, the applicant has here in this letter that, anyways, how do I explain this? The applicant has requested that the art work be made in the State of Hawaii. Now where is that? Third paragraph.

Mr. Fredericksen: It's way down.

Ms. Bosco: Yeah, here it is. And we never really discussed this point; however, the Department's recommendation is that it be made in Maui County, and that's why I'm saying this is the applicant's proposal because this has never been discussed with the applicant as far as whether that request is changing to be made in Maui County. Do you follow me?

Ms. Sablas: Because what's the difference with Maui County as opposed to fiber that you can get from another island or Ni'ihau shells that are still part of our culture? And if we say Maui County, we may be just, you know, I mean I'm just concerned that it's the State and it's not from Bali or some other place.

Ms. Bosco: Okay. Okay. Going forward to the other changes, and I'd like to just clarify, the original request has, I look at this as it's completely changed. What the applicant is requesting is that, well, what's showing in Exhibit 3, that is the new project description, okay, so the references to the 1999 request, many of them are changing, so I want the Commission to realize this is -- this is new, this is a new proposal, and this is the -- the intent of this is to --

Mr. Fredericksen: Rectify some problems that were occurring.

Ms. Bosco: Right, exactly, thank you. The artwork shall be juried by the non-profit organization Na Kupuna O Maui; that the festival may include live music, and the applicant is willing to make the stipulation that it is live music entertainment, demonstrations; originally, we had discussed eliminating the food booth, the applicant, at the time we discussed this, is willing to remove the food booth, and I'm not sure if that is still the case, but we can allow the applicant to clarify that point; all sales would be conducted inside the

old Lahaina Courthouse at the visitor center; and then the last point is that the applicant welcomes and encourages the Maui Parks Department, the CRC, the Planning Department to set guidelines, rules, regulations, enforcement mechanisms, and stiff penalties for non-compliance for all events held at the Banyan Tree Park in the heart of Lahaina Town. The applicant is not setting the maximum number of booths, leaving that up to us, and also is not setting the site coverage limits, that's also largely left to us, the Planning Department, and in light of what the Parks Department's recommendations are, the Parks is recommending, well, 25 vendors, but is not setting forth the limitations and the restrictions relating to site coverage. So the Department does have recommendations relative to every single point here and if you want me to go into those, I can, however, it is in your staff report. Would you like me to go and explain?

Mr. Fredericksen: Yeah, why don't you.

Ms. Bosco: Okay.

Mr. Fredericksen: Sorry, Simone.

Ms. Bosco: No, that's okay. Okay, the primary concerns of the Planning Department are that the park not be overused in such a way as to degrade the health of the Banyan Tree, the historic significance of the park, archeological or cultural resources within the park, including subsurface resources, and the park's primary use remain available for the public as a passive park and important historic site. And then I did list a number of goals and objectives that the Planning Department has relative to the park use: setting a limit on the number of participating art vendors; limiting the area of use by artists; and limiting the days of use are ways which the County can employ to minimize overuse of the park. There have been a number of alternatives that had been proposed by Planning and by Parks. Highlighting the most important ones are, again: limiting the number of artists and booths; limiting the site coverage; limiting the days of the event; and as kind of a monitoring mechanism, requiring that the event be reviewed on an annual basis or tri-annual, whichever would be appropriate. At this point, the Department is recommending that the number of artists be limited to 25; that the booth spaces be limited to 10 by 12; and the Department defers the matter of the number of days of the event to the Commission. Okay, at this point, it's alternating the use with the Lahaina Arts Society, that's currently the practice, and we are not making any kind of recommendation, at this point, for this event until the matter is resolved for the entire park.

Ms. Rotunno-Hazuka: Okay, that was my question, this goes hand-in-hand with what we talked about before, so if we defer what we talked about before, we shouldn't make a decision on this one?

Ms. Bosco: It would be -- it would be a good idea.

Mr. Fredericksen: I would like to say something though. I'm glad that the applicant is tightening up, if you will, things just so it's less, you know, it's less ambiguous and also, you know, that can be -- can also serve as kind of a, I don't know if "roll model" is quite the right word, but just to make sure that there aren't inappropriate activities occurring in the park itself, so that's good. Did you have something, Dawn? Oh, I thought you were going to say something. No? Okay.

Ms. Bosco: I'd like to read something to the Commission for their consideration for the subsequent meeting. This comes from the board action in 2000 relative to the uses in Banyan Tree Park. It's under the Remarks, in the review of the request to expand the area for arts and crafts exhibits to the park, the board did identify the criteria that the potential users, for both the courthouse and the Lahaina Banyan Tree Park, must meet, and there's four, and I'm going to read them: a. The organizations are tax-exempt non-profit; b. Their occupancy in the courthouse or the park must provide a demonstrated public benefit to the Lahaina community and to the citizens of Maui County; c. The activities of the organizations shall have a significant educational component; and d. Other criteria as may be determined by the County of Maui.

Mr. Fredericksen: Thank you for reading those, Simone, and those qualities, if you will, I'm sure will be revisited when this matter, well not this matter, necessarily, but the whole Banyan Tree matter is taken up by the CRC in the coming, you know, in the future; I don't know if it'll be months, but it'll be a bit of doing, but those are things for all the Commission members to remember. Those are some of the qualities that need to, you know, the various folks that are trying to do stuff, that's what they need to be striving towards.

Ms. Bosco: So I would recommend deferral of this item until we can --

Mr. Fredericksen: Any Commission members have any questions? While we're on this, I'll just -- because, I mean we're not going to take any action on this today, but if there's anyone from the public that would like to say anything about this, come on up and, you know, give your name and say your piece, please.

Ms. Perry: Thank you, again. My name is Lana Perry, and I thought a lot about this, and I just went and had a talk with the caretaker that takes care of the tree on a daily basis and, of course, he's doing his job now so he's not able to really be here and I am in no way speaking for him. But I am here to say that the tree is cared for every day, it gets plenty of attention, there was a problem with the water sprinklers, I believe, a while back, and that has been fixed now and so that is no longer a problem with maybe the tree drying out before, and it looks like a very healthy, happy tree. And as far as the people being under it, whether the tree likes that or doesn't, I have an old joke. What's worse than not being used? It's being used. Or maybe the other way around. What's worse than being used? Not being used. I think the tree probably enjoys all the attention, all the good, loving care

that we put into it. And if the two organizations are there, like a mother and father, we watch after the building, we're like a family that's around, and we take care of it all the time. But if all the other non-profits come in, these organizations that are not there on a daily basis, will they come in and take care of the building and the grounds as we have? Or will they be people who just come in, do their event, and leave? So my concern with having the other non-profits there is that they come in under the umbrella, as was suggested, that they can make an application to LAS and they can have a program that can take care of that. But to take away the sort of momma/poppa ability of the two organizations to take care of it as a family, I think would be totally watered down by bringing in the rest of the non-profits.

As far as limiting it to 25 people, I wonder, if we're talking about the wear and the tear on the tree, where is the wear and tear coming from? The extra artists? Or from the people they bring in that are enjoying the tree? Is the wear and tear going to be really significantly different if there's 25 artists or 35 artists? And I do believe 40 is more the number of artists that normally show up under the tree although we do have a permit to do 60 with LAS, and with the 25 under the other group, so I don't really see how limiting the numbers is going to really help the health of the tree. And at the end of the day, when I'm talking to God and I say, "I've taken care of the earth as well as I can, and we kept it all picture perfect, and we didn't let any of the kids go in there and play because they might mess it up and they might do some damage, but I kept it picture perfect so I did my job right." I do believe there is a compromise between, yes, it is going to use the tree a little bit, I don't think it's going to damage it a lot, and to compromise between -- we need a place for the artists to grow and to be able to develop. We need an organization to help the children get better lessons and to help with the Hawaiiana that's being supported there.

So, again, I do hope that we take a long time to look at this and understand it's been going on for 30 years, we've been doing the art under the tree for 30 years, and if it is diminished greatly, will we be able to struggle on and be able to show up and do 12-hour days to try to be able to make this work? To be able to be entertainment as well as a money-making organization to help the whole? Thank you very much.

Mr. Fredericksen: Thank you. Any -- oh. Okay, Keeaumoku has to take off. Anybody else? You sure, William? Okay, I think we're in agreement that we're going to defer this item. Anybody feel strongly the other way on the Commission?

Mr. Whelchel: I have one -- I have one curiosity. Back in Texas, when our yards got compacted on top, hardened, we ran aerators, which was spikes, and we're trying to control no spikes driven, someone brought that up that it might be good for the land.

Mr. Fredericksen: I think, Lon, the problem is the depth and I don't -- I'm not sure -- what, Barbara?

Ms. Long: It's the tree roots that they're trying to not impact, not necessarily the grass. It's a different issue. Totally different issue.

Mr. Whelchel: I was just curious.

Mr. Fredericksen: Okay, so we're going to defer this. Sorry, folks, but there's too many -- there are too many other issues, we can't just kinda go like that, so this will be deferred, presumably, till next month. Simone, do you wanna -- let's see, in terms of -- is there any fine tuning the applicant could do in the, you know, in the meantime?

Ms. Bosco: Theo, would you like to speak to that or would you like me to? Okay. Well, I can tell you that we'll continue to work with the applicant, and the Parks Department, and within our own Department to try and come up with some good suggestions for the Commission. Fine tuning, what I would, well, most of my conditions, I would say, cover most of the issues, most of my recommendations, I should say, with the exception of how often the applicant will be using the park, how many days per month. I would also recommend that the applicant consider, how should I say this? Consider if there are any other sites that might be available for this kind of use, just as we asked earlier, the same question of the public, or come up with other suggestions that might be useful in trying to deal with the issues. And I would have to say, in terms of my recommendation, consider site coverage, if we want to set some more restrictions regarding site coverage, and consider if we want to limit the users to Maui residents, and also pay very close attention to Condition No. 19.

Ms. Long: Simone, if I may, Mr. Chair. In Theo's letter of January 30, the last paragraph, ask the Planning Department to set guidelines, rules, regulations, enforcement mechanisms, I would like to see some suggestions from Lahaina Town Action Committee, Na Kupuna themselves. I'd like to determine that their criteria for vendors complies with what your first letter of application in 1999 was, you know, instead of making it hard for us, and I had a discussion with Simone the other day saying that it's difficult to read this thing as an amendment, it would be way easier for us if we were looking at the whole kit and caboodle. Your letter of May 9, 1999 proposes showcasing Hawaiian arts and crafts, so we kind of have to make the jump ourselves; it's a lot of pages to go through; we have to look at the two sets of conditions, the ones that exist, the ones that are proposed; we have to look at your first letter and this letter. It would be way easier for the Commission if you put it all together and said, "This is what we want to do. We're going to showcase Hawaiian arts and crafts. We're going to have the artists present. We're going to have some educational component. Our criteria for selection will be such and such." That will be very help to us to understand what that is, the guidelines, rules and regulations. Give us some idea of what you guys think is fair, you're the ones who are going to be there. If you see a vendor who has inappropriate products, it should not be up to the County to send an inspector out there to punish somebody, it should up to you guys internally to do this, I

would think, and I'd like to see that, no matter where, in what park, in what public place you're doing it, not just the Banyan Tree, because it shows that you're going to take responsibility for the actions of your members and your people, so that's -- when we do defer, if we do defer it and we do come back here, I'd like to see a total complete submittal on what they're going to sell; who's going to sell it; where is it going to be made; how they're going to police it; what the criteria are; what's -- I'd like to see some specifics of what is not allowed that will make it easier for Na Kupuna, for Lahaina Town, and for the County to monitor it.

Mr. Fredericksen: Yeah, cause, ultimately, I mean this is, you know, I, personally, support this and I know the Commission, you know, supported this concept before. I think it is good to get things tightened up though because there's just -- there's that -- there's more and more, the usage and everything else, it's going to be good to have it be as tight as possible, and if, you know, if you have a real clear like set of parameters, it'll be simpler to deal with too for you folks. But I think it's a really good idea and, you know, I certainly support this and, you know, from whenever it was, 1999 too. But we are going to defer, right, folks? We are deferring. So I guess that's it.

Ms. Bosco: Okay, and just to clarify for the Commission, deferral with the recommendation that the applicant submit a more comprehensive request.

Mr. Fredericksen: Yeah, thanks, Simone.

Ms. Long: Excuse me, should we defer this to the same agenda that we're going to take up the policy, or should we defer it until such time as we adopt a policy? I'm in favor of waiting until we adopt a policy.

Ms. Bosco: Yeah, having it, yes, that would be the case.

Ms. Long: So include that.

Mr. Fredericksen: Okay, so that takes care of that item. Thanks, folks. I know you don't have everything answered but, because of our earlier conundrum and whatnot, we've got a lot of things to deal with. Okay, so moving on here, Advisory Review, nothing; Demolition Permits, nothing. Nomination, okay, Item G., Nomination to the State and National Register of Historic Places. Dawn, are you going to talk about this?

G. NOMINATION TO THE STATE AND NATIONAL REGISTER OF HISTORIC PLACES

1. Ka`ahumanu Avenue-Naniloa Drive Overpass, Wailuku.

Ms. Duensing: Yes, thank you, Commissioner Fredericksen. We were going to take this off our last agenda, and I did, and then -- I've been driving under the Ka`ahumanu-Naniloa Drive overpass for so long and I think, "this bridge has gotta get on the National Register," and so I put it back on the agenda with this particular item in place. As many of you know from our Chapter 2.88, one of the things that we are supposed to do is encourage the identification, preservation, promotion, and enhancement of those properties that represent or reflect distinct elements of cultural, social, architectural history, etcetera, and one of these things is for us to nominate properties to the State and National Registers, and this Commission is also charged with reviewing those at the local level and passing them on to the State Review Board and, eventually, to the National Review Board. I think everybody knows that I've done a lot historic road and bridge research, and I have most of the research already compiled to do this nomination, so it's just a matter of putting it together and getting the Commission's blessing, if it wishes me to do that, and moving on with it, and I think it would be very worthwhile to do.

Mr. Fredericksen: Thanks, Dawn, and, you know, on behalf of the Commission, I'd like to thank you for, one, thinking about it. You know, quite frankly, I thought, and it was a mistake on my part and I've told you this before, but I thought it was on the Register, but I'm glad that you, you know, cleared that up and brought it up because it is -- it definitely is worthy of going onto the Register.

Ms. Duensing: Yeah, one of the reasons why I was thinking of this, as some of you may remember that I worked on the Bronx River Parkway a couple of summers ago in 2001 for the National Parks Service, and the Naniloa Overpass is ridged framed concrete arch bridge, and one of the guys that I was studying as part of my research was the gentleman that developed this technology and made it possible to be used all over the world, so this bridge has, you know, important connections to the National Transportation Development as well as serving as a, you know, entryway to Wailuku, so it's pretty important.

Mr. Fredericksen: When was it built? Do you know?

Ms. Duensing: Early 1930's, I think.

Ms. Long: Is this the Waiale Drive, the basalt --

Ms. Duensing: No, it's the bridge over --

Ms. Long: It's the upper -- the upper.

Ms. Duensing: Yeah, it's the Naniloa Drive Overpass. The one that you drive over coming into Wailuku is the Waiale Bridge.

Ms. Long: Right.

Ms. Duensing: And that is on the National Register.

Ms. Long: It is. Yeah.

Ms. Duensing: But the Overpass is not.

Ms. Long: Okay.

Ms. Duensing: And the Overpass was designed by Bartels who is one of the primary bridge engineers and transportation guys during the Territorial era and, again, with its ridged frame and concrete construction, it's a pretty important example in Hawaii, and I think it dates to about 1930's.

Ms. Long: Go for it.

Ms. Rotunno-Hazuka: Yeah, I agree.

Ms. Long: That's great.

Mr. Fredericksen: Now, Dawn, you were, you know, I assume you don't need us to offer any other encouragement, at this point, this is great.

Ms. Duensing: Oh, no, I'm ready to go on it.

Mr. Fredericksen: Yeah, great.

Ms. Duensing: Yeah.

Mr. Fredericksen: No, that's a great idea and it, definitely, needs to happen. And, once again, thanks for bringing that up, you know, this matter to our attention because it's, like I said, I thought it was on it.

Ms. Duensing: Yeah, I know, we don't have CLG funding now and, you know, there's really nobody else on Maui that's doing a whole lot of National Registration stuff so I'd like to be able to at least do one or two a year, as time permits --

Mr. Fredericksen: Great.

Ms. Duensing: And, you know, get some of the important structures on the Register if I can.

Mr. Fredericksen: Well, and it's very appropriate to your position now too because I mean it's certainly related and it's not, you know, it's fun.

Ms. Duensing: Yeah, I'd like to do some fun stuff instead of just mediating Banyan Tree issues.

Mr. Fredericksen: Well, but it's very important -- it's very important issues though and that's great. I'm glad that -- I'm glad that you're gonna take that one on. I'd be interested to know what one's next on your list. You should be developing a list.

Ms. Duensing: I have one.

H. UNFINISHED BUSINESS

Mr. Fredericksen: Okay, let's see, H., do we have Unfinished Business?

Ms. Duensing: Nothing.

Mr. Fredericksen: Nothing. Okay, I. Discussion on Preservation Planning & CRC. Let's see, first one, are you going to handle this or do you want me to just read it off and then you'll say it or --

I. DISCUSSION ON PRESERVATION PLANNING & CRC

1. Letter to County Council regarding CRC Ordinance Chapter 2.88.030

Ms. Duensing: Whatever you'd like. Okay, the letter to your County Council regarding CRC Ordinance Chapter 2.88.030 is in regards to our outgoing Commissioners Fredericksen and Aunty Kuulei, and the concern that the ordinance isn't necessarily being observed as it should be, and what I'm referring to is that 2.88.030(b) says, "The Commission shall consist of nine appointed members. The members shall be appointed by the Mayor with the approval of the Council and shall be chosen from professionals and persons with special interest in the following disciplines . . ." and it goes on to list architecture history, archeology planning, architectural history, Hawaiian culture and ethnic history, and culture of the County, and it sums up that paragraph by saying, "Commission members should have a demonstrated interest, competence and knowledge in historic preservation." And my concerns, in dealing with this Commission, is that with Erik stepping down and I left the a couple months ago, anyway, I'm, number one, concerned with following the ordinance and, secondly, okay, the second thing was that, and this is not intended as any insult to Commissioner Long who has a demonstrated interest in historic preservation, but I'm a little bit concerned that we're losing professionals on this Commission and out of the three that are stepping off, there are no professionals stepping

back on to the Commission. So my suggestion is that we frame this, not as to insult any nominees that are currently being considered, but just to point out that this ordinance exist to the Council members as they're considering nominees, and also to the Mayor because, according to one of the people who was sitting on his nominee commission, they weren't even presented with this and that really bothers me because we get Federal funding and these ordinances were written so that we can comply with the law that gives us the money from the Federal government to be a Certified Local Government, and I think it's a matter of principle, and it's very important that we try to follow the law.

Mr. Fredericksen: Well, and, Dawn, what, I mean, as you just said, you know, to -- what is it? CLG? And part of your job description is to keep us apprized, the Commission, apprized of what, if we're complying, if you will, with the intent of the ordinance, and if the Federal side of it may not be -- is being followed and that's, you know, I think that is -- would be a concern. What happens if, just out of curiosity, if over time, the guidelines aren't followed? I mean can CLG funding be pulled? I don't know.

Ms. Duensing: I would assume so and I think that's what my concern is because, again, I don't want to point any fingers at anybody and I don't want to get personal about this, but if it's not brought to anybody's attention that this ordinance is in existence because we are a Certified Local Government, well, down the line, what kind of nominees are we going to be getting? Is it going to be -- I mean, you know, community members are a very important part of the Commission, but the law says we should have professionals too.

Ms. Long: I have a suggestion, or two. First of all, we have a letter signed by Erik, dated February 10, kinda regarding this was that that was sent?

Ms. Duensing: Yes, and it was acknowledged so it did get recognized.

Ms. Long: Okay, I would suggest that next September, which is when the so-called Blue Ribbon Nominating Committee starts its work, that the Commission put it on the Commission's agenda to communicate directly or even invite Dick Meyer or whoever the chair of that Blue Ribbon Committee is to come to a Cultural Resources Commission meeting. The second thing I would suggest, since the Council's Government Relations Committee is the one that deals with the list of nominees, that you get on their agenda in the month of, oh, I don't know, November, December, because, well, they get the list the end of January, so maybe in January, and get up there and talk to them and say, "We've already spoken to your Blue Ribbon Committee, we've communicated with the Mayor, with Dave DeLeon, whatever, but we want to present to you the laws, and the reasons, and the financial reasons why we must have professionals on this Commission." And that way all of them, sitting there together, will hear.

Ms. Duensing: That's fine, and with all due respect, I disagree because what happens if one of our Commissioners should have to resign and then we get another inappropriate member between now then? We're in the same boat we are in now.

Ms. Long: Well then maybe we should be inviting the Mayor or Dave DeLeon, who is responsible for kicking people into vacancies, down here so we can talk to him face-to-face.

Mr. Fredericksen: I think that's a good idea.

Ms. Long: Sending letters, yeah, sending letters isn't going to cut it.

Ms. Duensing: Well, I disagree because two years ago, when I was on the Commission, letters were sent and it was acknowledged, and, you know, our letter that was sent last month regarding our Hana advisory member was acknowledged too. I got a call from Mr. DeLeon on that just to tell me that, you know, it was already in the works so --

Ms. Long: Well then talk to the Administration's representative and get some sort of commitment that, yes, they got your letter and, yes, we'll do what we can. What I heard, in this last go around, was that the Blue Ribbon Nominating Committee was trying to create balance on this Commission, and you know and I know, we all know, balance is not the name of the game here because we are all advocates for our sites.

Ms. Duensing: And that's why I think it needs to be taken care of now, in writing, and we can ask them to still come, but it needs to be done so it doesn't continue.

Mr. Fredericksen: I think maybe -- maybe drafting a letter or having a letter, you know, transmittal sent and then requesting that the, whatever, executive assistant come to the next meeting; that's appropriate and for the Commission to request that.

Ms. Duensing: Okay, and I think it also needs to go to the Council who approves everybody.

Mr. Fredericksen: Okay, yeah.

Ms. Long: It needs to go to Government Relations.

Ms. Duensing: Government Relations, whatever, yeah.

Mr. Fredericksen: Cause it's not -- this isn't about, oh, well, you know, whatever, this Commission member or this Commission member, it's the pattern that needs to be rectified.

Ms. Duensing: Yeah, it's the pattern, and you remember from a couple years ago, Erik --

Mr. Fredericksen: Yeah.

Ms. Duensing: That we did have to take action because, I don't even remember who the person was, it was just inappropriate whoever it was, and that person was not confirmed by Council, and, again, you know, I mean I never expected to step down from the Commission before the end of my term and things like that happen, so I don't see the reason of waiting till September in hopes that nobody else will step down and you know --

Mr. Fredericksen: Well, and September can be done as well, but I think something should be done.

Ms. Duensing: Yeah, it can be done. Yeah. Yeah. It should be done now because, you know, there's no guarantee that we're all going to be here, you're all going to be here, excuse me, in September so that this doesn't happen again.

Mr. Fredericksen: Do we need a motion for that?

Ms. Long: Why don't you go ahead and write the letter, and I think a personal follow-up if someone sat through one of our Commission meetings, they would understand what this is all about.

Ms. Duensing: Okay.

Mr. Fredericksen: No, I think they should be -- I mean a request should be made that the appropriate -- an appropriate party show up so they can -- because they may, you know, just so they know, so they're not exactly put on notice, but just so they know all the facts. So we're in agreement that there needs to be a letter written right away regarding, you know, what we've just been talking about, the --

Ms. Rotunno-Hazuka: Nomination.

Mr. Fredericksen: The CLG funding and the, what would it be? Is it the County Ordinance, Dawn, or what's the word?

Ms. Duensing: Well it's a County Ordinance but it's pretty much written so that it --

Mr. Fredericksen: Whatever the statement.

Ms. Duensing: No, it's within the County Ordinance that regulates the CRC, but one of the reasons why we have this County Ordinance is because we're a CLG, so we have to abide

by these guidelines, for instance, my job position requires that you have a masters in archeology or history or blah, blah, blah, and the reason for that is cause we get CLG money from the Feds.

Ms. Long: If Dawn writes a letter and we have no chair --

Ms. Duensing: He's still chair until the end of the month.

Ms. Long: Till the end of the month, okay, so Erik will edit and sign.

Mr. Fredericksen: Okay, let's see, No. 2, Dawn.

2. Upcoming CLG Budget Preparation

Ms. Duensing: Yeah, this is just to make you aware that the upcoming Federal Fiscal Year we will have Certified Local Government money so we will be needing to work on what kind of projects we might want to be using that money for over the next year cause it'll be our year to get monies. Yeah, so, I mean for instance, one of the things that, you know, I would probably recommend, and I'll be working on this with Clayton as he shows me the ropes, is in October is the Nation Trust Conference and it would probably be appropriate for a couple of our members to go to that, like I did and Lon did last time around. So if there's any special projects, we'll probably take this up in more detail after we get our new members, okay.

Ms. Long: We get the money in July?

Ms. Duensing: You know, that's a good question. I thought Wayne said we did get the money in July but the Federal Government's Fiscal Year doesn't start until October 1. I know about that because I was a Federal employee so, yeah, I have to find out about those dates, but we're online here pretty soon.

Ms. Long: Would you please factor in Historic Hawaii Foundation's Annual Conference into that?

Ms. Duensing: That's already been done.

Ms. Long: Okay.

Ms. Duensing: Yeah, as a part of our work plan, I will probably be attending along with two of our members and that'll be in early or mid-May, I think it is, and it's at the Convention Center in Honolulu this year so, yeah, I've already talked to David Scott at Historic Hawaii Foundation, and I've already gone over this with Wayne and, since it's inter-island travel,

it's a lot easier to get funding to go to that as oppose to the National Trust Conference, which I think is in Kentucky this year.

Ms. Long: Louiseville, yeah.

Ms. Duensing: Yeah. Would you like to move on to the Director's Report, Mr. Chair?

Mr. Fredericksen: I thought we were at the Director's Report.

Ms. Duensing: No, you're still on I.

Mr. Fredericksen: Yes, Director's Report.

J. DIRECTOR'S REPORT

- 1. Cultural Resources Commission Meetings in other locations - Lahaina, Moloka`i, Hana, etc.**
- 2. Cultural Resources Commission Correspondence**
- 3. Correspondence received from the State Historic Preservation Division**
- 4. Administrative Permit Reports**
 - a. Demolition Permits**
 - b. Historic District Approvals Report**

K. ANNOUNCEMENTS

Ms. Duensing: Okay, Cultural Resources Commission meetings in other locations, well, we're in Lahaina today and there's probably a pretty good chance that we will need to come back to Lahaina in May. I got a call regarding possible, well, I should say probably demolition permits for Pioneer Mill. They are, you know, this was brought up a couple years ago, I think it was in summer 2001 cause it was when I was working in New York, and they're proposing now to get rid of the mill because it's falling apart and collapsing, you've heard this story before, right? And they will preserve the smokestack but there's a lot of buildings in that area and it sounds to me, and I don't have a whole lot of information, but, you know, there's movement to go start through the demolition permitting process. So I talked to Gwen Hiraga, a couple times this last week, and I was telling her mostly about the Puunene smokestack, which we had not desired to see demolished but as mitigation, we got a lot of good photographs, documentation, the original building plans, and a very good engineers report out of that, so I'm telling, you know, Gwen these are the kinds of things that we will require for Pioneer Mill because it's such a landmark structure in the community. And, as part of this, she would like to have a site visit, if it's possible, with all the members and, at a minimum, you know, I could go out and look, or if we could possibly

arrangement this before our May meeting, it might be appropriate too. So I just wanted to put Commissioners on notice that, probably, we'll be back here in May. She also related to me that they have been doing meetings with the community regarding this so that it's not just going to be announced, then everybody's going to go, "wow, you can't do that!" like it usually is, so they're getting prepared.

Mr. Fredericksen: Dawn, in the past, like, well, I'm thinking specifically of Hana, we've done field trips, it wouldn't necessarily have to be done in conjunction, you know, on the same day of a meeting, but it could be.

Ms. Duensing: Yeah.

Mr. Fredericksen: It could be done, you know, in the morning.

Ms. Duensing: It's just, you know, that was just suggested because it's probably easier for, you know, members like Lisa and Barbara who have to come from, you know, great distances for all of us to get together, and, also, the May meeting, I will probably be requesting that the CRC do it the second Thursday of the month instead of the first Thursday of the month, so if you wanna just keep that in mind. Yeah, May, the second Thursday, as opposed to the first Thursday because I'm going to be attending the -- I'll probably be attending the Historic Roads Conference as a speaker, like I have the last couple times, they've invited me back, I just found out about this yesterday, but I wouldn't be able to get back in time for the meeting.

Mr. Fredericksen: Where's it going to be?

Ms. Duensing: It's in Portland this year, which is pretty exciting cause they have all the really cool coast bridges, and the Columbia River Highway, and all those other things that road historians get excited about. Okay, if we could move on, we had Cultural Resources Correspondence, as our next item. I did send a letter to the Mayor's office regarding the need for a Hana community member on the Commission and that was acknowledged, sent out and acknowledged, I think you had that in your packet, and we are getting a Hana nominee for next month, Sam Kalalau. The other correspondence and thing I've been working on from last month was you'll remember the demolition permit for the Albarano residence in Kihei and they advertised that and said they got three offers on it, and I thought, that's just terrific, I was so thrilled, but -- but they would have to cut the house into so many teeny tiny pieces because the road she lives on is so narrow. So they told me about this and, as it turns out, there's an empty lot behind them, but nobody's been able to get in touch with the lot owner, so I'm trying to write a letter that can go from, you know, the Planning Director to see if we can get the lot owner's permission to just move this house across the lot; that's kinda what I think, but I mean it seem like a real tragedy to watch the house go but I'm working on it.

Okay, and then we have Correspondence from the State Historic Preservation Division. I've gone through that pile of stuff and Commission Fredericksen received it as well, and the only thing I had noticed is that there was a EA going out and another review about the Sandwich Islands Communications project that has been on our agenda, I think it was on about a year ago, and SHPD missed the bridge that was along the way so I pointed that out to them and that's being reviewed. And Administrative Permit Reports for demolitions and Historic District Approvals, we have none. So that's it for the Director's Report. And then you asked me to put Announcements on the agenda so I did that.

Ms. Sablas: I have --

Ms. Rotunno-Hazuka: I don't think it's working.

Mr. Fredericksen: Yeah, I don't think it's -- just talk loud.

Ms. Sablas: Anyway, can I make a suggestion for staff? When we have a lot projects, like today, it was kind of confusing, it was confusing today when we were talking about different things and you were already starting reading your report and it was like halfway, then I finally found out, oh, this is the paper you're working at, working from. I'd like to suggest that maybe, you know the attachments, put an A or a B, a big here so --

Ms. Duensing: So as they correspond with the agenda item?

Ms. Sablas: Yeah.

Ms. Duensing: Okay.

Ms. Sablas: It just makes it easier. Today we were scrambling to --

Ms. Duensing: Especially when the whole agenda is the same issue.

Ms. Sablas: Yeah. Thank you.

L. NEXT MEETING DATE: April 4, 2004

Ms. Duensing: Okay, suggestion noted. And then there is one correction to the agenda too, **the next meeting date is April Fool's Day, April 1, not April 4.**

Mr. Whelchel: Change to April 1, is that what you just said?

Mr. Fredericksen: Yeah.

Mr. Whelchel: I can hardly hear you because she's breathing so hard.

Mr. Fredericksen: April 1. Okay, well, if anybody has anything else, otherwise, let's go ahead and wrap it. Yeah, the flies are nasty. I'd just like to thank everybody. It's been great. You folks take care and don't take any kukai, okay. Okay, everybody, let's go ahead and adjourn.

M. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 2:40 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Commission Support Clerk

RECORD OF ATTENDANCE

Present

Erik Fredericksen, Vice-Chairperson
Lori Sablas
Lisa Rotunno-Hazuka
Lon Whelchel
Barbara Long
Solomon Kaopuiki
Keeaumoku Kapu (arrived at 9:40 a.m.; excused at 1:45 p.m.)

Excused

Milton Pa
Kuulei Haina

Others

Michael Foley, Planning Director (left at 1:00 p.m.)
Dawn Duensing, Planning Staff
Simone Bosco, Planning Staff
Dudley Akama, Deputy Corporation Counsel
John Buck, Deputy Director, Department of Parks and Recreation
Don Couch, Executive Assistant to Mayor Arakawa