

CULTURAL RESOURCES COMMISSION
REGULAR MEETING
APRIL 1, 2004

A. CALL TO ORDER

The regular meeting of the Cultural Resources Commission (Commission) was called to order by Deputy Planning Director, Wayne Boteilho, at 9:10 a.m., Thursday, April 1, 2004, Planning Conference Room, Kalana Pakui Building, 1st Floor, 250 S. High Street, Wailuku, Maui, Hawaii.

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

Mr. Boteilho: Members of the Cultural Resources Commission, being that we do not officially have a chair this morning, I will serve as a temporary chair and I hereby call this meeting to order. First of all, for the old members, it's great to be back. I used to staff them last year. First of all, yeah, on behalf of the Planning Department, I'd like to welcome the new commissioners, Sam Kalalau III and Perry Artates. Gentlemen, if you don't mind, could you introduce yourselves and maybe say a little thing about yourselves?

B. INTRODUCTION OF NEW COMMISSION MEMBERS - SAM KALALAU III and PERRY ARTATES

Mr. Kalalau: Okay, my name is Sam Kalalau III. I'm from Hana. I've served on other commissions for the County of Maui. I also served on the State Burial Council. It gives me great pleasure to be serving on this Commission now. I know some of you -- most of you on this board right here. I can see that we do have a very diverse Commission here and I hope we can complete or give solutions that can complete problems that started five, six years ago; some of the minutes I've been looking at, we're still dealing with the same problems, hopefully, we can address some of those problems in the real near future. Thank you.

Mr. Artates: Good morning, commissioners. I'm a born and raised resident here on Maui. Lived up in Keokea, Kula for quite a while, and I'm a married man, I have eight children, and my youngest is five years old, and I am honored to serve as a commissioner on this Commission. I applied to various commissions back in -- when our Mayor was Linda Lingle, and now I have the opportunity to serve on this Commission. Because I'm a host culture of native Hawaiian, I believe in preserving our historical and archeological rights even though most of you know that I work for the Operating Engineers Union, but that was my employment ever since I was in high school where I used to work for Fong Construction. In our past practice in construction while working with Fong, we used to encroach archeological sites and, at that time, our operators were of native Hawaiian ancestry and we knew what was right and we knew what was wrong, and we respected

those sites and by notifying the right authorities to come in and determine or do an inventory of those archeological sites. So, again, I know it's a lot of work. I kind of read over, when I was afforded this binder to look over what our responsibilities are, we have a task and, as you know, we have a couple or more in the future of development coming up on Maui, so we need to exhaust all our remedies to make it pono. Now, like I say, even though I work for the Operating Engineers Union and there are livelihoods that I need to take care of, it's just making it right. So, with that, mahalo.

Mr. Boteilho: I'd just like to end by saying that, yeah, Sam I knew for many years when he was on the Planning Commission, and, Perry, I don't know if he remembers, but I used to play football against you, but you was Maui High and I was Baldwin. And, so, members, the next item on the agenda is the Election of the Chairperson and the Vice-Chairperson for the 2004 and 2005 Year. Maybe we'll just jump right into it. Do we have any nominations for chairperson? Yes?

C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR THE 2004 - 2004 YEAR

Ms. Long: I would like to nominate Lori Sablas --

Mr. Whelchel: Second.

Ms. Long: For chair.

Mr. Boteilho: Okay, we have one nomination. Are there anymore? Seeing none -- oh, yeah?

Mr. Kapu: I'd like to nominate Barbara Long for vice.

Ms. Long: Oh, no, no. I'm too new. Thank you.

Mr. Boteilho: Oh well, we're not on that one.

Ms. Long: I respectfully decline. I have not put in my time.

Mr. Boteilho: Well, they might elect you anyway. Okay, seeing no more nominations, the nominations are closed. The motion is to elect Lori Sablas as Chair of the Cultural Resources Commission.

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

A nomination was made by Ms. Barbara Long, seconded by Mr. Lon Welchel, and unanimously

VOTED: to Elect Lori Sablas as Chair of the Cultural Resources Commission.

Mr. Boteilho: It is unanimous and congratulations, Lori. So, you may take your rightful place.

Ms. Sablas: So this is April Fool's Day, no joke, right?

Mr. Boteilho: Congratulations and you can run the election of the -- I mean you have to --

Ms. Sablas: For the vice-chair? I have to? Sure. Well, thank you fellow commissioners for honoring me with this awesome kuleana and, I think like Perry said about our duties that we have, Maui is at an area I think that we need to be able to be concerned, take action, some bold action about maintaining all that's special about our island and this Commission certainly has a lot to do with that, and I look to each and everyone of you for support. It's exciting when we can make a difference as we sit here, as we sit around the table, so, hey, imua. So, first order of business again, I open the nomination for the office of vice-chair. Any nomination?

Mr. Kalalau: First of all, I have a question. Is this the complete Commission or we have people absent or --

Ms. Sablas: Our commissioner from Molokai, Milton Pa, is not here, and other than that, we have --

Mr. Kalalau: And so he's the only one that's not --

Ms. Sablas: Yes.

Mr. Kalalau: Present here today. Okay.

Ms. Sablas: Yes.

Ms. Rotunno-Hazuka: Well, I would vote either for Lon or --

Ms. Sablas: You're nominating for it?

Ms. Rotunno-Hazuka: Yeah, I mean nominate, sorry, Lon or Milton. I just don't know if Milton's here if we -- can we nominate him?

Mr. Boteilho: Yes, you can.

Mr. Whelchel: Yes.

Ms. Long: Sure, even if he can't protest.

Ms. Rotunno-Hazuka: Yeah. And, actually, Barbara, if you were on longer, I would nominate you.

Ms. Long: No, it's just not appropriate.

Ms. Sablas: And I did speak to Milton and he was willing to serve as vice-chair.

Ms. Rotunno-Hazuka: He was?

Ms. Sablas: Yes.

Ms. Rotunno-Hazuka: Okay, then I, sorry, Lon, I nominate Milton.

Mr. Kalalau: I second.

Ms. Sablas: Okay, we have -- nominations closed.

There being no further nominations, the nomination was put to a vote.

It was nominated by Ms. Lisa Rotunno-Hazuka, seconded by Mr. Samuel Kalalau III, then unanimously

VOTED: to Elect Milton Pa as Vice-Chairperson.

D. APPROVAL OF MINUTES OF THE FEBRUARY 5, 2004 AND MARCH 4, 2004 MEETINGS

Ms. Sablas: Okay, moving along. Item D is approval of the minutes of February 5 and March 4, so I'd like to take first February 5 minutes.

Ms. Long: Madam Chair, on Page 7, the very last word in my testimony near the bottom of the page where it says, "this is my two sense," that should be "cents."

Mr. Whelchel: What page?

Ms. Long: Page 7. That's what happens when you've got spell check. And similar kind of situation on Page 57 and same word on 61, and Mr. Akama's testimony where he's talking about, "we need the full compliment of the Commission," that's the second paragraph on the bottom, it's "complement," that occurs twice in that line and again on Page 61. And, I'm sorry, I used to be an English teacher and I can't help myself. That's all I've got for that one.

Ms. Sablas: Any other corrections, additions, deletions? Hearing none. Do I hear a motion to approve the minutes of February --

Ms. Long: Move to approve the minutes as corrected.

Ms. Sablas: Second?

Mr. Kaopuiki: Second.

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

It has been moved by Ms. Barbara Long, seconded by Mr. Solomon Kaopuiki, then unanimously

VOTED: to Approve the Minutes of February 25 as Corrected.

Ms. Sablas: Okay, let's move on to the minutes of March 4.

Ms. Long: I didn't find anything ...(inaudible)...

Ms. Rotunno-Hazuka: I didn't either.

Mr. Whelchel: You didn't read the minutes?

Ms. Long: No, I read them.

Ms. Rotunno-Hazuka: I move that we approve the minutes.

Mr. Whelchel: I second.

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

It has been moved by Ms. Lisa Rotunno-Hazuka, seconded by Mr. Lon Whelchel, then unanimously

VOTED: to Approve the Minutes of March 4.

E. ORIENTATION

Ms. Sablas: Okay, it's been moved and accepted and so action done. Let's move on to Item E, Orientation.

Mr. Boteilho: Okay, thank you, Madam Chair. First of all, if there's no objections, could we move up Items 2 and 3, Parliamentary Procedure and County Policy on Sexual Harassment? I have to go to another meeting. Okay, thank you.

3. County Policy on Sexual Harassment

You know, I'd like to start with the Sexual Harassment part first, if you don't mind, that is the more legalese part, and the Parliamentary Procedure is more the fun part so I saved that for last. First of all, the County of Maui does have a policy against sexual harassment and that policy is it is illegal and against County policy for any officer or employee to sexually harass or engage in the sexual harassment of another officer, employee, the public, or individual under consideration for County employment. All employees have a legitimate right to expect the workplace to expect the workplace be void of sexual harassment. The County, its departments and agencies, its management and supervisory personnel have a responsibility to prevent acts of sexual harassment. The County of Maui will not condone or tolerate sexual harassment in the workplace. Violations of sexual harassment policy by any officer or employee will result in disciplinary action up to and including termination. You know, as members of this Commission, you all are officials of the County of Maui, unpaid officials. So what is sexual harassment? Okay, sexual harassment is conduct of a sexual nature in the workplace, including commission meetings, and this includes any unwelcome sexual advances, request for sexual favors, verbal and physical conduct of a sexual nature, and the display of a sexually explicit or suggestive materials.

First of all, you know, I'd like to stress the word "unwelcome" because you know in Hawaii, you know, culturally, you know, we hug and then we kiss each other on the cheek when we're greeting someone or we give them a lei, so I talked to the Department of Personnel Services about this and they said, yeah, you know, when you get down to it, that is acceptable but there's some people that may be offended, so if they're offended, then they should bring it to the attention of someone and then we'll take it from there, and maybe that's why I almost want to stress that if it's true sexual harassment, it will be taken very

seriously, but sometimes if it is not, you know, if there was no harm intended, it doesn't have to be a big deal, and I'll get to that more later.

Okay, if you are -- if you feel you are a victim of sexual harassment, the main thing I want to stress, go to somebody, come to me, come to Director Foley, Dawn, you know, the Mayor. Do not like just hide thinking, oh, you know, I'm going to get in trouble or shame or anything like that. We encourage you to come forward because it will be investigated and it will be investigated confidentially, not only for the alleged victim, but for the alleged, I guess, harasser. But no, no, yeah, that is the main tenet of the sexual harassment policy is that everything is kept confidential and we shall hear from both sides before we make a judgement on that. Now if, for some reason, anyone does not want to go to any County official, you may also go to the State Government and to the Federal Government.

There are some specifics about board and commission members. Well, first of all, the chair. As chair now, Lori, each board and commission chairperson is responsible for supervising their respective members. Failure by a chairperson to control sexual harassment may be cause for disciplinary action against the chairperson. Chairpersons may be held to a higher standard of accountability as they are the Mayor's representative. Any board or commission member who feels subjected to sexual harassment should immediately make a complaint to his or her chairperson unless the chairperson is the individual committing the alleged harassment. In that case, talk to Dawn, me, or whoever. Board and commission members may request legal representation from the County's Department of the Corporation Counsel. The County's Equal Employment Opportunity Officer or the EEO Officer will designate an investigator in case of complaints filed by or against a board or commission member.

So with all that being said, I guess I'd like to sum up. Yeah, it's like, getting back to what I said earlier, yeah, you know, again, it doesn't have to be a big deal. Many times, you know, sexual harassment, someone may think it's sexual harassment, but it's not, but they should still come forward, and then what would happen in that sort of case is that we would investigate and if it's a true case of sexual harassment or we have grounds to think that it's a true case of sexual harassment, then we would refer it to the Managing Director who is the EEO Officer for the County of Maui. If it's something that maybe should be minor or, you know, again, we gotta hear both sides of the story and they say, "Well, you know, I just was greeting them in Hawaiian style." Then we talk to that person and say, "Hey, you know, okay, we're not accusing you of nothing, but we had this complaint so you gotta watch and --" and that might be the end of it. So, with that being said, are there any questions? Okay, thank you.

2. Parliamentary Procedure

Now I'd like to move on to Parliamentary Procedure and I'm not going to be long on this, trust me. In fact, that is the first lesson, it's like parliamentary procedure is not meant to make things harder, it is intended to make things easier. It is also intended to guarantee the rights of everyone, including opposing views. Parliamentary procedure is also intended to have order within the meetings, and, finally, parliamentary procedure is intended, basically, to take up one thing at a time.

You know last year, I went before all the boards and commissions and I gave them briefings on parliamentary procedure and now I have the benefit of going through a whole year to see how the boards and commissions actually use it and, really, they use it in a very, I guess, localized way, I mean it's not really formal as *Robert's Rules of Order*, which is the County's standard for parliamentary procedure. So the background to this whole briefing is that be informal, basically, but I'll get to that more.

First of all, even though Robert's Rules is the official standard for the County, do not attempt to read Robert's Rules cover to cover. By trying to learn everything in Robert's Rules, you would take about six months of very hard studying to master it and you will not need it. But there's some basic things that I'd like to bring up and also include some things that I seen in the past year that commissions did that maybe could be a mistake.

Okay, first all, motions. Motions, basically, are as everyone knows, you know, I move to approve something; I move to disapprove something; I move to defer something; I move to take a small recess; that, by motions, you put a question before the entire body. Motions must be seconded and once it is seconded, then the body should only discuss the motion itself, you shouldn't be getting off into tangents. Votes are a motion is carried by a majority vote so, in the case of this Commission, it's five. Now, prior to voting on a motion, you can have an amendment to the motion and, in that case, the original motion is the main motion and the amendment is the secondary motion. So in a case like that, somebody moves, "I approve this project." And then somebody else -- and it was seconded, someone says, "Madam Chair, I would like to amend the main motion by saying that we approve this project but they must have an insurance policy of a million dollars." And that also must be seconded. If that is seconded, then again, you discuss only the amendment, and then you vote on the amendment first. If that amendment passes, then you move on to vote on the main motion as amended. And, again, it would take five votes. There is a -- there are times when you need more than five votes and probably the best example or the only time it's used is to bring something before the commission that is not on the agenda. So, basically, what you're doing in that case is saying, "We move to waive our rules on this particular matter and we're going to allow this person to testify on something that's not on the agenda." But that, if you're going to waive your rules, it takes a two-thirds vote, which on this body is six. But, in a case like that, the person can only testify. It's not on the agenda; the person is just giving you information; that's it. You should not discuss and please do not take action on it.

One offshoot about voting is that, and Robert's Rules actually says this, the strongest vote or the strongest tool in parliamentary procedure is consensus. If you have consensus, then you, basically, can do anything, I mean, in theory, you don't even need a motion. For example, if there's no objections, we shall defer this item, and everybody goes, "Oh, okay. Okay, no objections." So, in that case, that's as good as a vote. However, if one person, even one person disagrees, then you do not have consensus and, in a case like that, you must go through the regular process of motion, second, and vote. Consensus means consensus. You all have to agree.

Some of the things that I've seen that the -- that some of the boards and commissions do is that when members, actually, they're trying to make a motion but then they say, "Madam Chair, could we have -- make sure that the applicant works with the State DOT to work out the road situation?" And then chair says, "Okay." But that is not a motion, but the person thinks that's his motion and the person thinks that is going to be part of the official recommendations. If you're going to do something like that and you want it to be part of the official recommendation, you should say, "I move, Madam Chair, I move that the applicant work with the State DOT." And then it would be a subsidiary or a secondary motion.

Other than that, you know, like I said, I going keep it short. Yeah, I'll end it there, but I'm going to end by saying, and the reason I'm being as short as possible is because we're going to be purchasing *Robert's Rules of Order* for all the board and commission members. We'll see. Maybe that little condensed version might be better. So, having said that, yeah, do not try to read the whole thing. If you've got a lot of time, go for it. Okay, but -- you know why? Ninety percent of that is not used. Now some bodies use it and it really gets in the way. They use it to filibuster. Anyway, yeah, okay, that's all I had unless there's any questions.

Ms. Long: Good job, Wayne.

Ms. Sablas: So, is there such a person as Robert?

Mr. Boteilho: Yeah. Yeah.

Ms. Sablas: Yeah? There is? That actually had wrote --

Mr. Boteilho: General Robert.

Ms. Sablas: Who did all the rules?

Mr. Boteilho: Yeah.

Ms. Sablas: I always wondered about that. Thank you for the clarification.

Mr. Boteilho: Okay, seeing no further questions, thank you very much and have a good year.

Ms. Long: Thank you.

Ms. Sablas: Thank you very much, Wayne.

Mr. Boteilho: Oh yeah, Madam Chair?

Ms. Sablas: Yes?

Mr. Boteilho: This is very appropriate because we have a request from a member of the public, Mr. Bertram, and he would like to testify and give information for a matter that is not on the agenda. I shall turn it over to him, he can make his request, and we would need a two-thirds vote.

Mr. Joe Bertram: Madam Chair.

Ms. Sablas: Good morning.

Mr. Bertram: Good morning. Thank you for your opening comments about taking bold actions because that's exactly what's needed and, subsequent to that, I am requesting that I be able to make a -- enter evidence, three minutes, about the Makena development and the importance of the Cultural Resources Commission in addressing that development.

Ms. Long: Question for our counsel. We have J, Director's Report, Item 4, Correspondence received from the State Historic Preservation Division, I would assume that would refer to the March 15 letter from Holly McEldowney, which deals with the Makena Resort, and also with the Maui Tomorrow letter. If it does, then we don't need to have a motion here. If it does not, I'm ready to make a motion.

Mr. Akama: Well, I'll check staff. Is that letter pertaining to Makena or is it some other -- it looks -- it looks, from the Director's Report listed here, No. 1, that it pertains to a conference. Is that correct?

Ms. Duensing: Actually, if I may, Madam Chair, the Director's Report every month --

Mr. Akama: No. 4, I'm sorry.

Ms. Duensing: Yeah, list the Correspondence Received from the State Historic Preservation Division. Some of our members, who have been with us for a while, might remember that we used to get like an inch-thick copy of all the correspondence received over the month and what it is intended to do is review what we're getting, on a monthly basis, it's not to this particular letter that Commissioner Long referred to but, in general, to State Historic Preservation Division correspondence. In the recent, well, since September, this Commission made a motion that the chair and the vice-chair would receive those and go over it and see if there were any concerns, so it's kind of a general item, it's not to anything in particular.

Mr. Akama: I see so was there a letter from Holly McEldowney or not?

Ms. Duensing: This month there is, yes.

Ms. Long: That was handed out this morning, though I have had it for a while.

Ms. Sablas: Is this the one? March 18?

Ms. Long: No.

Ms. Rotunno-Hazuka: It's March 15.

Ms. Long: It's on DLNR letterhead and it's --

Ms. Sablas: Oh, I see.

Ms. Long: And I guess this morning, yeah. Yeah, this is just to clarify, I guess for the future, whether this generalized kind of thing covers this kind of situation.

Ms. Duensing: Madam Chair, can I just add a few comments to that?

Ms. Sablas: Sure. Yes, Dawn.

Ms. Duensing: In general, most of the correspondence received from the Historic Preservation Division, in the past, is just on the archeological, the huge volumes of archeological reports that is received by this department, and so those are the types of letters that we have gotten in the past and that's why the decision was made in September that, you know, most of it's pretty run-of-the-mill obvious stuff, they're basically form letters, so that that's why every commissioner hasn't been receiving the entire stack since September when we made that -- when the Commission made that decision.

Ms. Sablas: Counsel?

Mr. Akama: This letter, if it is dated March 15, 2004, pertains to Makena and it is listed here under J, Director's Report as -- in the generic category of correspondence received from the SHPD, and the Corporation Counsel's office, therefore, feels that this matter, being of major importance and not being agendized, should not be the subject of public testimony today, at this meeting, unless it is put on the agenda in a future meeting. So it is correct, according to 92-7, HRS 92-7, if the -- if this Commission wishes to amend the agenda by adding an item, it can do so by two-thirds vote; however, the law is clear, under 92-7, that no changes, and it says, "No changes may be made if the matter is of reasonable and major importance and action will affect the significant number of persons," and I don't think there's any question that Makena is of major importance, not even reasonably, and it will affect the significant amount of persons, so I think it's critical that although correspondence listed generically under Director's Report, there is no reference made whatsoever, in other words, the members of the public must be advised, there must a notice that today we will be hearing Makena. I think as critical as it has been, and obvious to everyone, that without that kind of notice, we cannot, under 92-7, take any public testimony regarding Makena today.

Ms. Sablas: Commissioner Long?

Ms. Long: I'm kinda glad you said that because of the fact that this letter is not on our agenda. I received a copy of this letter from a totally different source, pretty soon after March 15, and I questioned, number one, why, since it's dated March 15, it did not come to the members of the Commission in their packet even though the letter from Maui Tomorrow, which is dated March 18, was included in our packet, and it upsets me that a matter of such importance was not placed on our agenda to give us an opportunity at least to discuss it while the Council's Planning and Land Use Committee is still in deliberations on it. So, having said that, I would like to make a motion that we do give three minutes to Mr. Bertram, or whatever time the chair will allow, to comment on this even though it is not on the agenda, and I so move.

Ms. Sablas: Do I hear a second?

Ms. Rotunno-Hazuka: Second.

Ms. Sablas: Discussion?

Mr. Kalalau: Yes, being that if we do vote and give Mr. Bertram his three minutes of time and because this notice haven't been publicized for the public at any time soon or it not have been published for this agenda, are we going to have to make another motion later on to say that we're going to bring this item up on the next agenda?

Ms. Rotunno-Hazuka: And then I have a question too. Does that mean other people can come up and testify?

Ms. Sablas: Which was my question for counsel in discussing this --

Mr. Akama: Well if this Commission chooses to, by two-thirds vote, allow public testimony today, then, yes, the public testimony will be open regarding this issue.

Ms. Sablas: Any other comments, discussion?

Ms. Rotunno-Hazuka: I guess I thought if it was just going to be open for him to present some data, that that would be fine, but if it opens it up to the whole floor, then I don't think we should do it.

Mr. Akama: You withdraw your second?

Ms. Rotunno-Hazuka: Yes.

Ms. Sablas: Okay, we have a motion. We need a second. That's been withdrawn.

Mr. Kapu: Second.

Ms. Sablas: Okay, I'm sorry, so you second Commissioner Long's motion to allow Mr. Bertram three minutes, which in turn will allow, open it to anyone else? Is that --

Mr. Kapu: Yes.

Ms. Sablas: Part of the motion? Or it's just, I'm sorry, I'm just learning. Should we just stick to Mr. Bertram first and then make a second motion as amendment to the first? My understanding was if we vote to allow him to speak three minutes, then it's open to everyone else in the room, so is that what we're going to be voting on?

Ms. Long: No, I limited it to Mr. Bertram.

Ms. Sablas: To Mr. Bertram. That was the original motion. But I think what he's saying --

Mr. Akama: However, the affect of granting this motion will be to open public testimony on this issue, which is not on the agenda.

Mr. Boteilho: Yes, Madam Chair, if I may. Actually, what the motion would do is it would place the matter before the entire body so, therefore, anyone can testify.

Ms. Sablas: But, for clarification purpose, if everyone is -- say if our body, by two-thirds, say it's okay to have everyone testify, it's with the understanding that no action is going to be taken but just to be able to have people testify?

Mr. Boteilho: Yes.

Ms. Long: Madam Chair?

Ms. Sablas: Yes?

Ms. Long: Most of you probably saw Dorothy Pyle's letter in the *Maui News* yesterday. I think to deny the public the opportunity to speak in this matter and, certainly, eliminating any possibility for deliberations or going forward by this Commission would be to deny the public the opportunity to participate in something that, as our counsel says, is of major importance when the question has been raised publicly that this is the CRC's purpose, this is why we're here and --

Mr. Akama: Commissioner Long? Excuse me, Commission Long?

Ms. Long: Yes?

Mr. Akama: We are not denying anyone an opportunity to testify. The issue here is whether this matter is on the agenda, or whether it is not, and whether notice was furnished to public; that's the issue here. Please don't confuse the Commission. The public will have an opportunity to testify once it is placed on the agenda. By passing this motion, we are amending the agenda.

Ms. Long: Right. I'm saying though that to give Mr. Bertram an opportunity to testify is appropriate for this body.

Mr. Akama: He will have that opportunity once it is placed on the agenda, so this is the purpose of this motion. If your motion is amend the agenda to add this item, then it should be so stated.

Ms. Long: Right.

Mr. Boteilho: And, Madam Chair, if I may again. Yeah, you know, when I stated that you can add matters to the agenda by two-thirds vote, that is accurate; however, I guess I didn't mention, but is also subject to Corporation Counsel's advice. Hearing that advice, I guess you still could vote it in but, usually, this is used for smaller matters that, you know, is kind of manini, you know, there's no big thing, so we're going to allow the guy to testify. Also, this letter was not placed on the agenda, management had made a decision that there's

a certain protocol in parliamentary procedures that if one body is hearing a matter, that another body should not hear it at the same time. So, on that basis, the Planning Department would concur with Corp. Counsel that this is too big an issue; I did not know what the issue was prior to this, thank you.

Ms. Sablas: Thank you. Any further comments or discussion? Commissioner Kapu, did you want to say something?

Mr. Kapu: No. No.

Ms. Sablas: Well, we have been advised by counsel that this is too big an issue to put on the agenda, and by staff, and while I understand the importance of this issue to all of us who live here on Maui, what the law states is that we need to put this on the agenda for the general public, is my understanding, and so we have the motion still in place, it's been made, it's been seconded, so we're ready to call for a vote, and we need a two-thirds to put the -- what we're going to be voting for now is to put -- to add -- to amend the agenda to add public testimony. Counsel, is that correct?

Mr. Akama: Well, I think the motion should be as stated. I think, I don't know whether --

Ms. Sablas: The motion was to have -- allow Mr. Bertram three minutes to give testimony on Makena; that's the motion, and to add that to the agenda.

Mr. Akama: And the affect of that will be to amend the agenda and to allow and open this matter to public testimony without notice to the public.

Mr. Kalalau: Madam Chair, I will not be supporting this motion based on the facts that it was not on our agenda and it should have been a public notice so you can have both sides or all people in the public be aware of -- if we're going to make an agenda change or put it on the next agenda.

Mr. Artates: Madam Chair?

Ms. Sablas: Yes?

Mr. Artates: Madam Chair, I support Commissioner Kalalau's request because it's not aware that the public is -- well the public is not aware of being able to share their views regarding this issue and Corp. Counsel has brought it clear that because this is a big issue within our County, I will not support the motion also.

Ms. Sablas: Okay, it seems pretty tight. We need to have six is what I understand.

Ms. Rotunno-Hazuka: Do you want to take, I mean, are we taking a vote because --

Ms. Sablas: We already have two nay.

Ms. Rotunno-Hazuka: Okay, I'm a nay.

Mr. Whelchel: Also nay.

Ms. Sablas: Four. Uncle Sol?

Mr. Kaopuiki: Yeah.

Ms. Sablas: What is yeah? Yay? Nay? Or what's your vote? You understand what we're voting on, Uncle? Okay, what's your vote. Do we amend the agenda as -- or we don't?

Mr. Kaopuiki: I'd rather have --

Ms. Sablas: Not? What?

Mr. Kaopuiki: Yeah, amend it.

Ms. Sablas: The motion by Commissioner Long is that we amend the agenda to add testimony by Mr. Bertram which in-turn will allow -- open it to public -- our counsel and our staff are advising us that this is not something we should do because it has to go to the public and give public due process so that everyone would have fair say at this meeting, which is what our Cultural Resources Commission meeting is, we haven't had due public announcement that this would be on the agenda so that gives the public an opportunity to come, so that's the -- what we're voting on. So if you say, yes --

Mr. Kaopuiki: You know when he talked this morning about parliamentary procedure, yeah, presented that thing ...(inaudible)... and I feel that we should amend it to let this guy can go ahead and present his --

Ms. Sablas: Okay.

Mr. Boteilho: But, Madam Chair? If I may, Madam Chair?

Ms. Sablas: Yes.

Mr. Boteilho: In effect, the motion has already failed. Further voting --

Ms. Sablas: Because you have to have consensus is what you said I think, the strong consensus, is that --

Mr. Boteilho: No, you've counted enough votes that the motion fails. You need six and three, four said nay, the motion has already failed.

Ms. Long: Madam Chair?

Ms. Sablas: Yes?

Ms. Long: I'm willing to withdraw the motion having gotten some insight from our Deputy Director over there on what the objection was; however, because it is such an important topic and if the second is withdrawn as well, will we have an opportunity now to place this on our next agenda?

Ms. Sablas: I would think so. Staff?

Mr. Boteilho: We would, basically, recommend that you not because another body, the Council is discussing this, and not only that, but they're discussing a large part of referring matters to the CRC, so it may be a case where you've taken a position prior to the referral to you from the Council. Now, however, you could do that but if you do, we would request that the discussion be very limited and, basically, overview type of thing, don't get into specifics about any recommendations or actions.

Ms. Rotunno-Hazuka: I mean, obviously, a lot of the, I guess, controversy for Makena has been with cultural resources, so if it's best for us to wait until it's referred to us, that's fine. I hope that we, in the interim, get a lot of data, a lot reports, things so that we can make informed opinions. I mean, it's my understanding, SHPD had already commented and now they're kind of changing their comments and I would like to have all the history because it is important and I think we do need to have at least a couple of meetings on it.

Ms. Long: Madam Chair?

Ms. Sablas: Yes?

Ms. Long: When this came to the Planning Commission, when the change in zoning, in 1998, came to the Planning Commission, it was presented as a paper transaction and there was no request, at that time, for the Cultural Resources Commission to comment on it so that this change in zoning has now proceeded to the Council. The Council, as we speak, is working on these conditions that have been proposed by the State Historic Preservation Division. It is our job to advise the Council and what better time to advise them then before they make a final decision. This deals with conditions on zoning that will run with the land

and the only time, the way it's set up now, that the Cultural Resources Commission is going to look at development in Makena Resort is when the individual parcels come to us with requests for building a hotel, or building a timeshare, or residential, whatever, and we will look at it piecemeal, and then the final decision will not be made by the elected officials at the Council but will be made by the appointed Maui Planning Commissioners who are not, theoretically, responsible to constituents.

Ms. Rotunno-Hazuka: That's a good point but aren't they going to vote like any day? I mean we don't have time. Why wouldn't -- we should have been consulted a long time ago --

Ms. Long: Exactly.

Ms. Rotunno-Hazuka: Because it is such an issue.

Ms. Long: Exactly. And that was why I was hoping that we could at least try to advise them in some way today, obviously, we can't.

Ms. Rotunno-Hazuka: No. We don't have enough data.

Ms. Long: But if we meet next month, if the Full Council has not yet had an opportunity for first and second vote on it by the time we meet next month, but even then, this is our job --

Ms. Sablas: Yes.

Ms. Long: And we've got to be able to do it is what I'm saying. I'm willing to withdraw, I think Joe has left so it's moot, but I truly think that it's our responsibility to take this up as soon as we can.

Ms. Sablas: So, the question to staff is, staff? The question to staff is why wasn't this important matter brought to put on our agenda for discussion, and to hear public testimony and to talk, and address the cultural issues in that area that we're -- that's our kuleana?

Mr. Boteilho: Well, first, because this matter was referred to the Council and, therefore, like I said earlier, it's like it's the property of the Council; two, that we actually were waiting for the Council to ask if they wanted any advice.

Ms. Long: Can we make that happen?

Ms. Rotunno-Hazuka: I'm sure we know a lot more than the Council.

Ms. Sablas: Yeah. I mean, I don't know, I mean I'd like to hear it from the floor but I mean it's such an important area I would have not thought that we would have waited from staff if we were in, you know, if it was brought to us as a group.

Mr. Boteilho: Well, you know, it's a very human thing too. I mean, you know, I guess the Commission didn't strongly ask for this, you know, earlier and, you know, I guess we -- we just assumed that the Council would take it up and they would ask if they needed advice. The Council has not asked for advice yet, you know, it's just something that happens.

Ms. Sablas: Well, if we can make a difference, and that is what we're here -- you know, on one point, I'm hearing from counsel that, because of the law, we are prohibited to have public testimony today, but I just want to ask counsel, so what happens, I mean we, obviously, how -- are there ways we can go around this rule?

Mr. Boteilho: Madam Chair?

Ms. Sablas: Yes?

Mr. Boteilho: If I may offer a recommendation. Perhaps, you as the chair, could write to the Council and ask them, could we advise you on this matter? Could we discuss it and advise --

Ms. Sablas: Before they make a decision.

Mr. Boteilho: Put in our input on this matter? Yes.

Ms. Sablas: Before they make a decision.

Mr. Boteilho: Yes.

Ms. Sablas: Okay, I see nodding. I think it's a really important issue that we as a body have a say in here because it does involve many important archeological sites and this whole process we're going to be held off the loop, I want us to be part of that discussion, and I'm just asking guidance from counsel, from staff on how we best approach this, so the recommendation is that, if I read in the paper, they're trying to move on with the decision though, so what? Is that a moot recommendation if we recommend and they make a decision?

Mr. Akama: May I say something?

Ms. Sablas: Yes?

Mr. Akama: I've been attending the hearings and I think the fact that it was reported that the decision was imminent is hopeful at best, and I think that while it is not a legal issue as to whether or not this Commission has -- should have purview, I think it's more a matter of protocol, as Mr. Boteilho has stated, and I believe comments were invited from SHPD and I don't know at what stage the Council Committee will ask this Commission to give input, I just don't know, staff wise, whether that request was made here or not, but it is not too late for you to, for the chairperson to write to the committee and say, "It is appropriate that we do want to give our comments, and hold our own hearings, and contribute to the process of approval." I don't think it's too late.

Mr. Boteilho: Yeah and, Madam Chair, even if they were to pass this out of committee tomorrow, when they meet next, there still if first and second reading to go, so there is time.

Ms. Sablas: Okay, so having said that, do I have a motion then now for the recommendation by staff?

Mr. Kalalau: I just get some -- now if we move forward, we make a motion to, from this Commission, that we would like to be included -- what I'm trying to say is I agree with Barbara and Lisa is that we need the information to make right decisions and we need the time to -- so that we can make right decisions to submit to the Council before they do their final approval and stuff. You know, just reading this guy's letter right here, they're giving us all the TMK's and stuff, but we don't know what archeological, what site, or what cultural site is on what TMK and because we are the Cultural Resources Commission, I think all those information should have been given to us and we should have been involved maybe on an earlier period of this decision-making. I don't know about the motion, how we should make the motion, and move it forward to the Council.

Mr. Boteilho: Madam Chair?

Ms. Sablas: Yes, sir?

Mr. Boteilho: You know, I would not recommend that you vote on this cause this was not on the agenda. Part of being the chair is that you are authorized to act on behalf of the Commission by yourself.

Ms. Sablas: Okay.

Mr. Boteilho: And I would recommend that.

Ms. Sablas: Okay. You understand then the action -- yes, Commissioner Long?

Ms. Long: Thanks. I'd like to mention a few things that you might want to take up in your letter, if I'm clear to do that. I certainly think that a request to the Council that they defer a final decision on the rezoning of the Makena Resort; this is just a request, mind you, until they've -- till the CRC has had an opportunity to review, at the very least, the March 15 letter from the State Historic Preservation Division, and to review the materials mentioned in 1, 2, and 3 in that letter, and, hopefully, in a timely manner prior to any Council decision, to hold a hearing to gather cultural information, and then to have an opportunity to present our conclusions to the Council so that there would be a -- some Maui input, local input.

Ms. Rotunno-Hazuka: What is realistic on the first and second reading? Cause I know that they've been going through this and Makena Resort has, you know, this was up last year and now they keep going through the motions, so what do you think would be realistic on first and second reading?

Mr. Akama: Are you asking a timetable?

Ms. Rotunno-Hazuka: Yeah.

Mr. Akama: Oh, I have no idea. Someone with a crystal ball would have a better idea than I do. Right now they're going through roughly 40 different conditions and they have not --

Ms. Rotunno-Hazuka: Aren't they are on like what?

Mr. Akama: They're going through --

Ms. Rotunno-Hazuka: Twenty-eight?

Mr. Akama: Towards the end but they have not voted yet. They're just discussing pros and cons and reaching consensus on certain ones, and they're going back, and then they're going to refine the conditions where members have questions on, and then, presumably, take a vote on the ultimate issue of whether they're going to approve with conditions, or deny, or approve without conditions, or deny with reasons, and these are the choices they were given, so they haven't reached that point yet. They're just only discussing conditions in general.

Ms. Rotunno-Hazuka: So when they get through the 40 conditions and then they take a vote, do they vote to accept those conditions or do they have to go through them again?

Mr. Akama: I cannot second guess what they're going to do --

Ms. Rotunno-Hazuka: Okay.

Mr. Akama: But once they get through the conditions, they still have to decide on whether they're going to approve with those conditions or deny with explanations, so I can't say when. I really don't know.

Mr. Rotunno-Hazuka: Okay.

Mr. Akama: And as far as their protocol and referring this matter to you, I think staff would be better in advising you whether there would be a point where the Cultural Resources Commission would be involved, you know, I just don't know. I know there are some conditions concerning cultural historic resources.

Ms. Rotunno-Hazuka: Yeah.

Mr. Akama: I know there are some proposed conditions but --

Ms. Rotunno-Hazuka: Right. Okay.

Mr. Artates: Madam Chair?

Ms. Sablas: Yes?

Mr. Artates: It seems to me as this came to like an element of surprise. I also attended the Council meeting yesterday and what the Council are saying they are that close, because of the long hours that has been put in, to make a decision. If we or you, as the Madam Chair, submits a letter of request, what specifically is going to be entailed in this request? Or this is what we're discussing of what is going to be specifically the request of this Commission to the Council? To the Planning Committee?

Ms. Sablas: My understanding is we -- I will be submitting a letter to -- is it to the Council?

Mr. Boteilho: Yes.

Ms. Sablas: To the Council, right?

Mr. Boteilho: Yeah. I would suggest that you work with staff on the wording.

Ms. Sablas: Yes. Yeah, and we can do it immediately after the meeting. But I think it's an important issue. I'm very concerned though that we are able to have some input as CRC and that's my question to staff and to counsel that we have not missed -- we have not missed that window of opportunity for us to be involved.

Mr. Boteilho: Well, if they were to pass that out tomorrow, then it could be on the -- for first reading on the Council meeting of April 16. It may be that this committee report will take so long to be drafted that it gets deferred till two weeks later for first reading, but, yeah, and then, as Corporation Counsel has indicated, yeah, I really don't know what they will do, I mean they may choose, well, I guess the basic range is not to ask for input; two, they would send it back to committee, possibly, based on what they receive from the Commission, and then, three, they may just accept everything that the Commission ask for. I guess to answer your question, we really don't know. It all depends on when they pass it out of committee.

Ms. Sablas: Okay, I have a question for counsel. You were part of the deliberations and discussions, during the discussions, at any time, did any of the Council ask for input from the CRC as another body from -- of government when, especially when the cultural issues were brought up?

Mr. Akama: Yeah, I cannot answer that because I was not at every hearing, and this has been going on for about a month, so I cannot recall whether any of the Council committee members requested input from the Cultural Resources Commission. I'm sorry. I don't know that.

Ms. Rotunno-Hazuka: Lori?

Ms. Sablas: Yes.

Ms. Rotunno-Hazuka: I do know that Makena Resort was going to come to -- before the CRC after the proceedings. I heard that from the archeologist.

Ms. Sablas: After the proceedings?

Ms. Rotunno-Hazuka: After they -- I'm assuming it was after they made the vote.

Ms. Sablas: To let us know why they decided -- made their decision or --

Ms. Rotunno-Hazuka: Yeah, I mean after -- I think, it's my understanding that after they got their rezoning, they would be coming to the CRC regularly, you know, with updates, kind of like Palauea.

Ms. Sablas: We have some clarification now.

Ms. Rotunno-Hazuka: Oh, okay.

Ms. Sablas: Thank you for coming down.

Ms. Cua: Ann Cua from the Planning Department. I am the Planner on Makena and maybe I can give you some background information. This project initially came to the County in 1999. We went through the Planning Commission in 2000, actually, no, I'm sorry, in 1999. The project did not come before the CRC then. Their application has and always -- has always been just for a change in zoning, that's it, no development at this point in time. The change in zoning was filed to conform with the Community Plan that was done prior to 1999. When we went through the Planning Commission, and we do our normal sending out the application for agencies to comment, one of the agencies was State Historic Preservation Division. We have a letter on file with them. I don't have the date, but I could get you a copy of that letter, that original letter, which we used in our report, which basically said based on the fact that it was a change in zoning application, there was no effect. They fully understood that as each project comes through with a development, and each project would have to have an archeological report for each development, like we always do, that they would see it at that time. So we sent it up to Council, that letter was part of the packet. This year, I believe, last month, we got a new letter from SHPD which says something a little different, basically.

Ms. Long: That was ...(inaudible)...

Ms. Sablas: Right.

Ms. Cua: Correct. My understanding is that what they've entailed in that letter is what the applicant is doing. However, the Council is presently, we have for the last three weeks, been meeting on the Makena project. They are putting some conditions. They are looking to put some conditions dealing with cultural resources and I think one of the those conditions is going to be that every project comes to this body, which is not a normal situation. We don't have every SMA come to this body. We never do. That may, I'm not saying it's going to, I'm saying that may be different for Makena because we don't know how those final conditions come out, and I can't tell you if the condition is there that we would bring every application to you unless it's something that you request because it's just not the normal situation. They would, again, have to give an archeological report, like everybody else, and we would send that to SHPD, like everybody else, and we would get comments. Depending on those comments, we would see what we would need to do. A lot of times, the comments is that you do a monitoring report, you do, you know, whatever they ask that be done, they normally have conditions, and that's what we recommend to the Planning Commission and almost never do those get modified. They're pretty much incorporated verbatim. Do you have any questions?

Ms. Sablas: So my understanding is we will have opportunity, in the future, to comment on each --

Ms. Cua: I'm not saying that.

Ms. Sablas: But that's per the condition that's being proposed that it may be?

Ms. Cua: I'm saying, right now, on the table --

Ms. Sablas: Yes. Okay.

Ms. Cua: That's a condition. If that's something that you request, that's something that can be done. It's not normal practice so I'm not going to tell you every one will come.

Ms. Sablas: Okay, but we could put that in a letter.

Ms. Cua: If it is a condition of zoning, then I can stand here and tell you definitely every one will come. If it's not a condition of zoning, it would depend on what comes back from SHPD because, again, you know it's not the norm that every SMA application comes before you, so that's what I can tell you thus far.

Ms. Long: Yeah. And that's -- that's my concern is that if it's not a condition of zoning and if development, and they're saying it's going to go 8, 10, 20 years maybe to develop those parcels --

Ms. Cua: Correct.

Ms. Long: Things happen, things fall into black holes, just as this particular thing did.

Ms. Cua: What fell into a black hole?

Ms. Long: The fact that, first of all, the CRC never got to review it because of the letter from Don Hibbard saying, "no effect," and now, all of a sudden, they've changed their tune 180 degrees and there is an effect.

Ms. Cua: Okay, I need to comment on that. Two things: one, the reason why you didn't review it to the change in zoning was not only because a no effect letter, you don't normally review every single change in zoning that comes through the department, had -- you don't normally review every change in zoning, okay.

Ms. Long: Community Plan.

Ms. Cua: Well, I'm just saying, that's normally -- that's normally -- you don't normally review every change in zoning that comes -- I don't think you want to review every change in zoning that comes through.

Ms. Long: No.

Ms. Sablas: No.

Ms. Cua: Okay, again, there are no development proposed so there was no specific archeological report in terms of what's going to happen when they put something on the property so, to me, that's what you guys normally see is when they're gonna actually dig into the ground, you know, what's going to happen and, again -- so, anyway, I just want to make that clear.

Ms. Long: I understand.

Ms. Cua: It's not you were -- you were not left out of the process by any means, intentionally or, you know, whatever.

Ms. Long: Well, okay, the Kihei-Makena Community Plan indicates certain sites within the Makena Resort and --

Ms. Cua: I think it says -- does it say Makena Landing or --

Ms. Long: Yeah.

Ms. Cua: Yeah.

Ms. Long: Yeah, and I'm not all that familiar with it.

Ms. Cua: So the application is much broader than just Makena Landing.

Ms. Long: Right. Okay, the policy of not reviewing a change in zoning that encompasses so many acres by the CRC in an area where there are known archeological sites, where apparently there were some six thousand people living there in the mid-nineteen century, there are, according to Dorothy Pyle, place names that are being forgotten, there's cultural history that needs to be recorded, there are people who may still remember now, my point is in 10, 15, 20 years, when the individual parcels come here, will there be people left who remember those things? This kind of local Maui information needs to be heard now, needs to be recorded now so that, in the future, you guys won't be seeing intervention after intervention from people who are saying, "Oh, but you've forgotten this; you've forgotten that," if we get it all on record now. This, I think, the developer would think would be a good thing to do now to avoid down the line.

Ms. Cua: Well I'm not saying that nothing is being done, I mean there is Aki Sinoto is their archeologist, and he has been for some time, I mean it's not like nothing's being done and that letter is being complied with.

Ms. Rotunno-Hazuka: Yeah but -- and the other thing is though does -- should that affect the change in zoning? I mean if they're trying to change the zoning to match the Community Plan, are we going to say that we want to collect all this information before they -- I mean I'm not sure that that makes sense.

Ms. Long: No, you just put conditions in that are -- that run with the land that are followed 10, 15, 20 years from now.

Ms. Cua: And that's looking like it's going to happen, I mean it's on the books right now, okay. But, you know, if you, as a body, tell us that, you know, as each application comes in or, you know, once the, you know, once the change in zoning is done, you know, right now, there are just so many meetings on Makena and we don't know when the next meeting is going to be; that was the reason why we didn't put it on the agenda because, you know, they're still trying to deal with the issue there and, I mean, as a department, we believe that we need to complete that process, see how those conditions fall, and then we can deal with you. But, right now, like I say, you may schedule a meeting and we may not even be there because we're in meetings with Makena because, literally, it goes, I mean we don't know when the next meeting is going to be, it's just pretty much when there's time available and so, you know, we made the decision to finish with the County Council before we try and tie up any more meetings on Makena because, you know, there are other projects that, you know, need attention from the department and everybody else so --

Mr. Boteilho: Madam Chair?

Ms. Sablas: Yes?

Mr. Boteilho: If I may, you know, with all due respect, we seem to be verging on getting to discussion and taking positions on this matter. You know, I would suggest that we end and we send a letter.

Ms. Sablas: Okay, that's fine with me.

Ms. Long: Yeah.

Ms. Rotunno-Hazuka: Thanks, Ann.

Ms. Sablas: Thanks, Ann, for your input.

Mr. Kapu: So the next following month's meeting is -- the Makena going to be on the agenda or not?

Ms. Rotunno-Hazuka: Should be.

Mr. Kapu: With the request? When you forward the request to the Council?

Ms. Long: We can always defer it if it's still with the Council.

Ms. Sablas: My understanding from Ann is to let them do due process, what they're doing, and that we will have an opportunity, I think, I mean depending on the kind of conditions that are accepted.

Mr. Kapu: So we're only going to be reviewing everything that -- the steps go by, basically?

Ms. Cua: Could we do this? Could I suggest this that as soon as the meetings are concluded, I mean I'm sure you guys are going to know because you read the paper, but as soon as the meetings are concluded, if you allow me to come at the very next meeting, when the meetings are concluded, and then we can look at what we want to do at that point and what the conditions are. Is that okay with you? When we see, okay, this is the conditions that the Council has imposed, if it even gets approved, we don't even know if it's going to be approved, you know, and we're assuming it's going to be approved, possibly, but we don't know that so, you know, if you allow me, once we have concluded Makena with the County Council in whatever form, then at the very next meeting that we can get it on the agenda, if we get it on the agenda, and we can discuss where we go from here. Does that --

Ms. Rotunno-Hazuka: And I think the letter should state that we want to be consulted, even though it's not the norm, when projects come through if -- in the future, that we would like to be apprized of those projects and we would like to be consulted, even though each project doesn't always come before us, but we would like to be part of the process. But not that, you know, they have to wait for our opinion.

Ms. Sablas: Okay, are we okay with Ann's suggestion?

Ms. Cua: Can we do that?

Mr. Akama: I have question. Ann, do you mean that you'll want to be placed on the agenda or will this part of the Director's Report? The critical --

Ms. Cua: I think the Director's Report. I think it would be part of --

Mr. Akama: Yeah, critical, see what is critical here is that we open this matter up for public testimony, which could take us, like Makena, it could take us a week and if the Commissioners are willing to sit through 11-hour days --

Ms. Cua: Right.

Mr. Akama: Then, you know, we should plan accordingly.

Ms. Cua: No, I'm thinking that at -- because we need to discuss where we go forward so, I mean, all I'm thinking is that, under Director's Report, we'd let you know, officially, even though you're gonna have read it in the paper, but we'll let you know this is what happened at the Council level, you know, these are conditions, if there are conditions, and, you know, where would you like to go from here. But, right now, it's kind of up in the air and, you know, to start taking a direction when we don't even know the direction up there, I just, as a department, we did not feel was the best way to go.

Ms. Sablas: Okay.

Ms. Long: Madam Chair, I'm relieved to know that it was in 2000 when I was not on the Planning Commission because, for the life of me, I couldn't remember that coming to the commission when I was on it and I can't --

Ms. Cua: '99 it went to the commission.

Ms. Long: '99 it went to the commission.

Ms. Cua: We sent it up to the Council in August of 2000.

Ms. Long: In 2000, so I was on in '99.

Ms. Cua: 1999.

Ms. Long: Okay. It slid under the radar. I -- if that's policy, if that is this County's policy and this administration's policy to deal with changes in zoning with no development plans on -- in locations, in large locations that are discussed in the Community Plan as having archeological resources, if it is -- even if the State office says, "no effect," I think that somewhere the ball was dropped that it did not come to the CRC then.

Ms. Cua: Well, maybe I need to -- maybe I didn't communicate exactly what I meant, but the way you're saying it is not how I thought I said it to you.

Ms. Long: Okay.

Ms. Cua: I'm not -- what I thought I said was that not every, the normal process is not for every change in zoning to come before you. I did not say that if there's a change in zoning that has archeological significance involved, that it wouldn't necessarily come before you. I was just trying to correct the statement that you made --

Ms. Long: Oh, I understand.

Ms. Cua: That it was just because of SHPD's letter that it didn't come before you. I think it was the combination of both so there, you know, if there was, you know, a change in zoning that was thought that, you know, in this particular area, it needed to come to the CRC at that time, if we felt that it needed to come to you at that time, we would definitely bring it to you. We just didn't feel that, in Makena's case, at that time, it was required, again, both because it was just a change in zoning and then we had the letter from --

Ms. Long: But when you say just a change in zoning and when there is an opportunity to put conditions on the zoning that deal with an overall situation, cultural, archeological, historical that will guide decision-making forever, that's an opportunity that this body needs to be involved in; that's something that I --

Ms. Cua: It's a point well taken.

Ms. Long: Yeah.

Ms. Sablas: I think that's the message that we wanted to convey to staff that this is a very important issue to our Commission and that we would want to be kept in the loop, and we would like to have the opportunity to give input, and I think you clarified that we will have opportunity in the future so, I mean, possibly.

Ms. Cua: And just one more thing, real quickly, just so you know, when we did go to the Planning Commission in 1999, we had three people testify on the project: one person in support of the project and two people having concerns, and none of the concerns raised dealt with archeological issues so, I mean I'm not saying, you know, good or bad, I'm just giving you the facts that this is what happened.

Ms. Sablas: It's changing times.

Ms. Cua: But times change, that's correct. It's been almost -- it's been four years.

Ms. Long: And that is part of my reasoning that the ultimate SMA decisions are going to be made by the Planning Commission that does not have the expertise of this body and you can give them archeological reports, you can give them all that stuff, I can count on two fingers, probably, the people who do their homework and read all that stuff at Planning Commission, so this body needs to get involved.

Mr. Akama: Commissioner Long?

Ms. Cua: I think we differ with you on that point, Commissioner Long.

Mr. Akama: Excuse me, I advise the Planning Commission and I beg to differ with you.

Ms. Long: I hope you're right these days.

Ms. Cua: The commission is a different, maybe when you were on the commission there were two that read, but --

Ms. Long: Yeah.

Ms. Cua: You need to look at the commission makeup today and I don't agree with you. I'm sorry.

Ms. Long: Good, I'm glad to hear that. I would hope though that we would ask the Council, in this letter, for an opportunity to advise them in this matter. They can turn us down if they want to, but I would hope that we would ask for that opportunity.

Ms. Sablas: Yes. Done. Thank you very much so --

Ms. Long: Thanks, Ann.

Ms. Sablas: Okay, wow, boy.

Mr. Kapu: Okay, so you got a big request.

Ms. Sablas: Yes. Yes. Well, thank you for your passion and input, all commissioners, and so I needed, at one point, counsel, to ask for any public testimony on items that are on the agenda. So is this the time?

Mr. Akama: Yes.

Ms. Sablas: Okay, are there any public testimony on items that are on the agenda? Okay, so let's move on. Public testimony is therefore closed. So we're moving on to Item F on the agenda. Under F.1., Historic District Application.

Ms. Duensing: Excuse me, Madam Chair?

Ms. Sablas: Yes?

Ms. Duensing: We did not finish the Orientation and I have no problem with doing that later --

Ms. Sablas: Oh, I'm sorry.

Ms. Duensing: If the Commission would like to revise you agenda so that we can deal with matters that --

Ms. Sablas: Get through it at the tail-end?

Ms. Duensing: That the public are here for now.

Ms. Sablas: Okay.

Ms. Duensing: If you would like to do that.

Ms. Sablas: That's fine.

Ms. Duensing: And so we want to go on to Item F. Permit Review?

Ms. Sablas: Yes.

F. PERMIT REVIEW

1. HISTORIC DISTRICT APPLICATIONS:

- a. Mr. Sean Corpuel requesting Historic District approval for a sign and the placement of the sign for the Cool Cat Café located at The Wharf Cinema Center in Lahaina, 658 Front Street, TMK 4-6-008:005, Lahaina, Island of Maui. (D. Duensing)**

Ms. Duensing: Okay. The Historic District Application before you today is requesting Historic District Approval for a sign and the placement of a sign for the Cool Cat Café, which is located at The Wharf Cinema Center in Lahaina, and the reason why I asked for the Commission to consider this, you did not get any handouts on this because, in February, I requested that the applicant provide an illustrated color sign of the illustration of the sign proposed, and I don't know if he's brought that with him today. Okay, he has. So we are considering whether the sign meets the criteria for our sign design guidelines and also because the placement of one of the signs was previously approved by the CRC, and it's now for another business, so because it is non-conforming, we would have to, again, approve it, and Colleen's going to be assisting me with this because she has a little more history with this than I do.

Ms. Sablas: Okay, Colleen, so do you have the mike?

Ms. Suyama: Yeah. Actually, Dawn's going to do the presentation.

Ms. Sablas: Okay.

Ms. Suyama: I'm just here for resource.

Ms. Sablas: Dawn, I'm going to recommend a five-minute recess. One of our Commissioners had to leave and so you can kind of get your things together. So five-minute recess.

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

Ms. Sablas: Okay, I'd like to call the -- reconvene the meeting, please, and we have a report by staff.

Ms. Duensing: Thank you, Madam Chair, and, again, I apologize for not having a more formal report. I'm kind of winging it here because I had asked for what you received this morning from our applicant and he was unable to get that to me. So the Cool Cat Café is a business that's located at The Wharf Cinema Center in Lahaina and when I got the application for his sign, it came for, this is his corporate logo, okay, so I requested a color illustration of this sign and also an accurate site map. The restaurant is located in the front of The Wharf Cinema Center, on the second floor, and the locations for the proposed signs are non-conforming but there is, however, a previous sign that was hung on the wall of that shopping center to stick out, which is not necessarily conforming to the sign design guidelines, but it was previously approved by the CRC. So what the request is today is to ask you to consider, based on what was there before, could this applicant also place his sign again in that same area.

In looking at the color illustration, which I just got, this is a bit little bright. I would suggest that perhaps if we had a beige cat instead of a bright yellow cat, this might work. He is going to follow the design guidelines in that it will be a wood sign with carved sandblasted lettering, and so I guess that's basically it.

Ms. Long: How big is it?

Ms. Duensing: It will fall within the 12 square feet.

Ms. Suyama: Eight square feet ...(inaudible)...

Ms. Duensing: Eight square feet, yeah.

Ms. Rotunno-Hazuka: Dawn? Oh, I'm sorry.

Ms. Duensing: He is aware of the size requirements and it's going to be more of a round sign like this.

Ms. Long: So this stuff is --

Ms. Duensing: Right. Right. What you're looking at is if you took away the borders and just considered what's round.

Ms. Long: I sure like the borders.

Ms. Rotunno-Hazuka: Cut out the circle?

Ms. Duensing: Yeah.

Ms. Rotunno-Hazuka: Okay.

Ms. Duensing: You're just looking at this.

Ms. Rotunno-Hazuka: So the one -- the one that preceded that that was not in conformance, what was our reasoning or --

Ms. Duensing: The location of the previous sign, I believe that the reasoning for putting it there -- or would you like to address this, Colleen?

Ms. Suyama: Okay.

Ms. Duensing: She's nodding her head. I'm going to defer to Colleen.

Ms. Suyama: Yeah, this is just for some background information. Originally, Black Beard's Restaurant was the first restaurant that was up on the second story and they're the ones that originally got the approval from the then Historic Commission to make an exception to place that sign there, and the reasoning that was used, at that time, is that it was a restaurant, it was immediately facing Front Street, in other words, it wasn't one of the interior tenants and, for that reason, they wanted, you know, for the restaurant itself, they allowed them to have the sign. There were other restaurants that's come in since Black Beard's and they were always given approval by the Historic Commission to place a sign on that location, which is generally an eight square-foot hanging sign.

Ms. Rotunno-Hazuka: And, well, why wouldn't one be allowed there? What's the --

Ms. Suyama: Because it is an exception to your sign ordinance. Usually, generally, the signs are above your frontage entry to your establishment, either a hanging or a wall sign.

There is no entrance on the second floor that would qualify it as a meeting that -- conforming to that criteria. The other thing too that you have to realize is that this is a shopping complex and unless there is a direct entry from the street side, we do not approve signs for individual tenants. We do approve signs for the shopping complex, but not for the individual tenants. And it's important that, when you approve something that's an exception, that it's an exception that's applicable only to that tenant so that other people that are within the interior shopping center will not come back with proposals saying, "He got a sign. I'm the same situation. I want my sign also to be given." And I think, at that time, the Commission's exception was it is the front tenants that's against -- along Front Street, and they were a restaurant, and, for that reason, they allowed the exception.

Ms. Rotunno-Hazuka: Okay, so it's along the frontage but there's no access cause it shows you where the place is?

Ms. Suyama: There's no direct access. No.

Ms. Rotunno-Hazuka: Okay.

Mr. Kalalau: So what you're saying is it's only involving the historical district or of a shopping mall?

Ms. Suyama: It's for Historic District.

Mr. Kalalau: Historic District.

Ms. Duensing: Yeah, but shopping centers are, specifically, have different guidelines that individuals shops you would see along Front Street.

Ms. Suyama: Right, and The Wharf does have a comprehensive guideline for signs, that was established years ago, and, generally, it was that, in their guidelines, their tenants are allowed a hanging and a wall sign over the entry to their shop, so that's their general guidelines.

Ms. Sablas: So staff recommendation is that we remove the non-conformance sign? Is that what I understood?

Ms. Duensing: No, my recommendation would be, if you look at what you have --

Ms. Sablas: Yeah.

Ms. Duensing: This is as originally presented to me. The applicant wanted to put his sign on the banister, which I am not recommending, I disagree strongly with that, and I am

recommending that we allow consideration of him to put the sign in the place where it was previously. I don't really have a problem with that.

Mr. Kalalau: So is it going to be laying flat on the building like this or is it --

Ms. Duensing: It will be protruding like it's a blade sign, yeah.

Mr. Kalalau: Okay.

Ms. Duensing: And then my other recommendation, now having seen the color illustration of the sign, would be to, you know, I would like to see the final red and blue that will be on the sign, and I recommend that the cat hand and head be tan colored rather than that bright yellow, and then I think it'll fall within the guidelines.

Ms. Rotunno-Hazuka: Just on the color issue, I see Crazy Shirts is right below it, do they have -- did they have to --

Ms. Duensing: Is that another exception cause it's the same thing?

Ms. Suyama: I think it is.

Ms. Duensing: Yeah.

Ms. Rotunno-Hazuka: Cause they have pretty crazy colors.

Ms. Duensing: Yeah, it's not that bad though because their background is, basically, within the sign design guidelines.

Ms. Rotunno-Hazuka: Okay.

Ms. Duensing: And then the rest of it is their logo so it does conform I think.

Ms. Rotunno-Hazuka: Okay.

Ms. Suyama: And that's been there for years.

Ms. Duensing: Yeah. And, again, that's what the applicant is asking for, our consent also, is to use his logo and Mr. Corpuel is here if -- you'd like to address the Commission? Or if you have any questions for the applicant.

Mr. Sean Corpuel: Dawn pretty much stated everything. Sean Corpuel from Cool Cat Café. Dawn pretty much stated everything about the sign and I just, you know, I'd like to

reiterate that, you know, cause we are upstairs, we're more of an anchor tenant for the shopping center, and, you know, to have a sign out there that's visible so when people are walking down the street they can see where we are, you know. And the colors, our color scheme of our restaurant, it's a '50's restaurant, so it is somewhat historic in itself and our colors are black and white and red, like the colors of the '50's, and that's why we chose the red on the outside of the sign because it is the same red we have throughout our restaurant. I don't have a problem changing the yellow to a beige, that was just kind of what I had to work with at the time to put on the paper, but I would actually like to kind of keep a red that fits with our theme because I believe that it ties in, and people see it, and they think of the families -- the '50's style and that's what they think of when they see it and that's kind of draw, you know, is for the families and people to come in and they like that.

Ms. Rotunno-Hazuka: Is your food good?

Mr. Corpuel: Best burgers on the island they tell me.

Ms. Long: Sean, you're saying it's a '50's theme but I see that your lettering is more of '20's kind of a deco.

Mr. Corpuel: It's a little Broadway but that's kind of the -- that's what we came up with about 12 years ago and --

Ms. Long: You've done this before?

Mr. Corpuel: Yeah, we have a store in California that we still have.

Ms. Long: Where's that?

Mr. Corpuel: San Luis Obispo. We've been there for about 12 years, and we're still there, and that's just kind of the logo that we came up with; it seems to work; people like it.

Mr. Whelchel: Did you get to see the colors that were recommended by the sign booklet?

Mr. Corpuel: Actually, yeah, we looked at those and they were all, what I read, was it is suggested colors but it does say in the design guidelines --

Ms. Long: We have an expanded palette here.

Mr. Corpuel: It says in the sign guidelines that you are allowed to use the colors that are the majority of what is in your restaurant or place of business.

Ms. Long: It does?

Mr. Whelchel: So this just about gives you everything. I was going by these --

Ms. Long: Now wait a minutes, that's the One-Shot guys, yeah, and we're --

Ms. Duensing: I can address the color issue for you I think is that the signs are allowed to be, what's the term we use? Highlighted --

Ms. Long: Garish?

Ms. Duensing: No, not garish, but highlighted with primary colors as long as they're limited in use. The palette is for the background colors, okay, and then as far as the art deco lettering goes, that was put forth in my original comments to Mr. Corpuel that the Broadway lettering does not meet the suggested lettering styles but, as he pointed out, that is part of his corporate logo and we also do make some exceptions for the business owners to use their logo for First Amendment rights and such and that was a big part of our discussion when we wrote these design guidelines.

Mr. Whelchel: What's the color of the background?

Ms. Sablas: So, yeah, that was going to be my question.

Mr. Corpuel: It would be like the wood coloring ...(inaudible) ...

Mr. Whelchel: Natural wood?

Mr. Corpuel: It would be a white or the wood so it will not be any bright colors.

Ms. Sablas: The natural wood or a white color?

Mr. Corpuel: White.

Ms. Sablas: Yeah, painted white.

Mr. Corpuel: An off-white so it doesn't look very bright.

Mr. Kapu: Yeah.

Ms. Long: Is that cat then going to be ivory? These are the colors that you're choosing from?

Mr. Corpuel: My sign guy was kind of mixing some colors, but I don't have a problem, the yellow wasn't what I was looking for but it will be more of a beige to kind of look like a cat so similar to the ivory.

Ms. Sablas: What's your logo's color? What is the cat, Sean, on your logo color?

Mr. Corpuel: We actually do a lot of different shirts so we have different -- we have multi-colored logos.

Ms. Sablas: So it's not a one-color --

Mr. Corpuel: We don't have a one-set pattern, we have --

Ms. Sablas: So you have different color cats?

Mr. Corpuel: Yes, we do.

Ms. Sablas: Okay.

Ms. Rotunno-Hazuka: Calico --

Mr. Kapu: What about the hanging? How is it going to be hung?

Mr. Corpuel: It hangs on the side of the building where the old one used to hang so you see it both sides.

Mr. Kapu: Same way?

Mr. Corpuel: The same way. The same place.

Ms. Rotunno-Hazuka: I move that we accept the sign with the beige coloring on the cat and the location that Dawn suggested.

Ms. Sablas: Any second?

Mr. Kapu: Second.

Ms. Sablas: Discussion?

Ms. Duensing: Madam Chair, if I might --

Ms. Sablas: I think we need to wait for recommendations from staff.

Ms. Rotunno-Hazuka: Oh, sorry.

Ms. Sablas: Yes, so, sorry.

Ms. Rotunno-Hazuka: Sorry, Dawn.

Ms. Duensing: Off the top of my cuff here, I would recommend that you accept the location of the blade sign as proposed since the prior restaurants did use that; the second recommendation would be to tone down the color of the cat with more of a beige color palette; I think it's important that the illustration of the sign as it actually will appear, I would like to be able to see that before the sign goes up, if the Commissioners will go along with the recommendation; and I guess that's it. Did I forget anything, Colleen? She's the master.

Mr. Kapu: I get one more comment. I get one more comment. What about lighting? Is there going to have any lights?

Mr. Corpuel: I believe there is existing light where the sign was and we'll use the existing light that's already there.

Ms. Duensing: And I will ask for opportunity to review that lighting too to make sure that it's in conformance.

Ms. Long: Shielded.

Ms. Duensing: Yes.

Ms. Sablas: So if this sign is in conformance, Dawn, do we put our emblem on it already?

Ms. Duensing: Yes, he will get the emblem with the approval letter.

Ms. Sablas: And you can be a good example, Sean, to the rest of your neighbors?

Mr. Corpuel: I'll try.

Ms. Sablas: Yes.

Ms. Duensing: He is trying.

Ms. Sablas: Yes.

Ms. Duensing: He came down here and met with me one afternoon and we discussed it.

Ms. Sablas: Thank you. Okay, so your motion is on the floor, seconded. It's pretty much recommendation per staff. Second. Further discussion? If not, call for the vote.

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

It has been moved by Ms. Lisa Rotunno-Hazuka, seconded by Mr. Keeaumoku Kapu, then unanimously

VOTED: to Approve the Sign and the Placement of the Sign per the Planning Department's Recommendation.

Ms. Sablas: Motion carried, pass. Thank you and good luck. Moving on. Next on the agenda is the Advisory Review, Item a.

2. ADVISORY REVIEW

- a. **MR. RAY NAKAGAWA of PAIA GENERAL STORE requesting advisory review of a project to construct a 3,290 sq. ft., one-story, retail, commercial building to demolish and replace the existing Paia General Store building, renovation of existing 1,460 sq. ft., two-story office/warehouse building, new parking lot, and related site work at 149 Hana Highway, TMK: 2-6-004:012, paia, Island of Maui. (SM1 20030023) (C. Suyama)**

Ms. Suyama: For orientation purposes, just for your information, Hana Highway is located here; this is the, in Paia Town, the old Kobayashi Store; the intersection of Baldwin Avenue is further down to the west of the property; this is going towards Hana; this is the old Ikeda residence located here, there's some offices right now. What the applicant is proposing to do is demolish a portion of the Paia General Store, the only portion that they're proposing to keep is the two-story warehouse building that's located in this location, and to redevelop Paia General Store, to provide a loading zone, and parking lot, and landscaping for the project. And, just for your information, in the back, there's an entry driveway that goes to the back, and the back lot is where the nato factory is located, it's located right here, the Iwamoto Nato Factory is located there, so, basically, it's mostly commercial development in this area, and this is one of the few lots in Paia Town that's actually not zoned Business Country Town, it's actually B-2 zoning, but they are incorporating the design guideline recommendations of the Paia-Haiku Community Design Guidelines for Paia so they are following those guidelines, essentially.

The reason this is before the Commission is that a portion of the original building, about 1,000 square feet, was pre-1943, in other words, it's a building over 50 years old, which

makes it an historic structure, and the demolition of the structure requires review. The Department recommended that it come before the Commission as an Advisory Review. We did get comments from the State Historic Preservation, which basically said, "no comments to the demolition." And, from the photos that's been transmitted to the Commission, there's been significant rebuilding of this structure and there are only some interior members that are still existing from the original building. The whole facade of the structure has been redone through, you know, additions over a number years while Mr. Al Santos owned the project. And I believe in the handouts that was given, passed out to you, included a site plan that shows you where the original building was which is this, and what it shows is that this is where the two-story warehouse building is. All of these structures are what's going to be demolished, you know, for the new construction, and only approximately 1,000 square feet that's located here is part of the original building. The front facade has been redone. The roof has been redone. I mean there's just some interior wall members and framing that's still existing from the original building. He has done, you know, the inventory survey that's recommended for demolition; he submitted that information. He's also showed -- given some tax record information as part of his documentation, and I thought it was in here. I thought this was included but it's not. What the architect has done, he's done a chrono history of where all the different additions that were done to the original building for your information.

Ms. Rotunno-Hazuka: That's in our packet.

Ms. Suyama: Oh, that is? Okay. This, basically, shows you all the improvements and all the construction that has occurred with the original warehouse building or the original building. And, for your information, what I could gather from the history of this site is that prior to 1974, it was a Volkswagen repair shop, and then it was turned into a retail establishment doing tanning kind of leather goods, and then, finally, Mr. Santos obtained the property and he, basically, started the Paia General Store, he started the snack shop, which is an addition to the building, he built all the warehouse facilities that surround this structure today, so he's the owner that Mr. Ray Nakagawa, who's the current operator of the Paia General Store, got his, I guess, I think -- so I think he's in the process of getting the property. Also, I have asked the applicant if there were any old photos that might have shown the building before any of these renovations had occurred and I believe he found something, but it's not of a very good quality. Yeah, it's really bad. It's part of an insurance estimate that was given that kind of showed the building.

Ms. Sablas: Have you tried to look in the Maui High School Yearbook? Cause usually they have, you know, like Lahaina Town, our yearbook have a lot of the old town pictures and it's always a good source to look at high school yearbook.

Mr. Calvin Higuchi: The picture that's being sent around, we're not sure exactly when that was --

Ms. Sablas: Oh, by the way, I'm sorry, I need to have you state your name for the record.

Mr. Higuchi: Calvin Higuchi.

Ms. Sablas: I'm sorry?

Mr. Higuchi: Calvin Higuchi. I'm with Hiyakumoto and Higuchi Architects. I'm the architect for the job. The picture that's being sent around is part of an insurance document and we're not sure, there's no date on that thing, but some of those things may have been done after or within the last 50 years, so the last 50 years would be, what? 1954; that may have come from like 1970's or so, so it may not be the original, yeah.

Ms. Suyama: What I could gather from the record was that, in 1974, when they changed it from a Volkswagen repair shop, they did some renovations to the building to make it not look like a repair shop, so probably that's, you know, knowing how repair shops were, it probably was a flat building, you know, roof building and somebody, at some point in time, put the pitch to the roof.

Ms. Rotunno-Hazuka: When you said SHPD had no comments on the demolition meaning?

Ms. Suyama: They have no comments to make so they, usually, State Historic Preservation will tell that they have comments that they want it to go before Cultural Resources Commission or they want additional work to be done, photos, etcetera.

Ms. Rotunno-Hazuka: Okay.

Ms. Suyama: And, in this case, I got a call -- an email from Susan Tasaki from State Historic Preservation Division and she said they had no comments but --

Ms. Rotunno-Hazuka: Meaning they don't think it's significant.

Ms. Suyama: They don't think it's significant but based upon, you know, discussing this with Dawn, we decided to bring it before the Cultural Resources Commission.

Ms. Duensing: Madam Chair?

Ms. Sablas: Yes?

Ms. Duensing: I -- may I say why I wanted this to come before the Commission is that I was the one that asked Colleen to see if she could up with the historic photo because even though the building is gone, it would still be nice to have some kind of a record of what did

exist there at one time, whether or not it was a glamorous building or whatever, and the historic resources inventory sheet is, basically, done from the premise that there's nothing left so we're not even documenting it, so I had hoped to do that, and the second reason why I had asked for review is I was curious about the materials and I was very concerned about the setback and the parking lot that's going in front of the building. I guess it's allowable but I don't see it as the right thing to do because of the way the Paia Design Guidelines are written. It's on a major thoroughfare and Paia wasn't designed to have parking lots in the front of its buildings, and then I guess the other thing was is because that's the way they're building now. Those are my concerns. That's enough said.

Ms. Sablas: Can the applicant address those concerns?

Mr. Higuchi: We knew about this from the time we started, which is about three years ago, and so at that time, we had gone in and talked to John Min, the Director at that time. The lot is less than 10,000 square feet and to make the best use of the lot, with the number of parking that we needed and so forth, this was, basically, just about the only way we could do it. So we went in to get some feedback as far as whether or not they would accept it or not and it was accepted at that time. The project dragged on, we went into another administration, so we went in again with Mr. Foley and it was accepted again at that time, so we went through -- we're going through this whole SMA process. It went through the Urban Design Review Board; they accepted the fact that they parking was in the front, and we tried to pull the building as much as we could toward the front so we have a portion of the building on the front. We went to the Paia Main Street Association. We actually had the building flipped over the other way so that the part that comes toward the front is on the Kobayashi garage side. They had insisted that we flip it over the other way so that the setback would kind of match the Kobayashi garage, so we did that.

Ms. Rotunno-Hazuka: So like an L this way then before?

Mr. Higuchi: Yeah. The other way with the parking on the right side. So we've been going through a lot of, you know, we tried to check every step of the way and we did make a major change when we flipped the building over so, you know, with the property constraints and so forth, this is the best that we can do. If we leave the building where it is right now, there's no way we're going to put the parking that we need.

Ms. Rotunno-Hazuka: So this retail space here, wouldn't it be more advantageous to have it along Paia?

Mr. Higuchi: We wouldn't be able to get back there with the number of -- with trying to get as much retail space as we wanted.

Ms. Sablas: Could we speak in the mike, please.

Mr. Higuchi: If we put the parking in the back, then we'd need a driveway that runs through, which means that, basically, you would have a reverse of the parking and the retail space, so your retail space would be really small cause you'd have a driveway with the parking in the back. But even if we wanted to keep the old building, it's right in the center of the lot, so there's no way you'd be able to park.

Ms. Suyama: And you have to realize, they did go before the Urban Design Review Board, which is the body that reviews the architecture and the siting of the project, and it was reviewed in the context of the design guidelines and, you know, there is an exception in the design guidelines for buildings that were already set back from the street that as long as you don't set the building any further, you are allowed that exception, you know, cause the guidelines does generally recommend the buildings against -- along the roadway with parking in the back except in situations where the setback is already existing.

Ms. Sablas: Which is the case here.

Ms. Suyama: Which is the case here.

Mr. Higuchi: I'd like to say something else. When we were preparing the SMA report, we did know about the historical inventory review so I started working with Susan Tasaki at that point, and as I was doing the report, I came to realize that most of the building was not exposed and so I asked her if we really needed to do this, and so we started sending her a lot of the photos and the records and so forth, and, at that time, she decided that we actually didn't need it but we almost had completed the form so we sent it in anyway, and then she said, "well" --

Ms. Rotunno-Hazuka: No need.

Mr. Higuchi: "No need," so -- and then we sent through the SMA review by the different agencies and then, at that time, she wrote the letter saying they had no comment.

Ms. Suyama: Right. And I think, from our perspective, what we're looking at is besides the inventory survey, if there's additional information that the Commission feels that they should do prior to the demolition, you know. I mean your suggestion about looking at the Maui High School Annual to see if there's an old photo of the building is a good suggestion. Where you're going to find the annuals? I don't know.

Ms. Duensing: They're in the Kahului Public Library, Colleen.

Ms. Suyama: Kahului Public Library? Now you know.

Ms. Rotunno-Hazuka: Well, archeological monitoring, I would think, would be necessary for demolition and reconstruction.

Mr. Kalalau: Cause they going trench and stuff too, yeah, the parking lot ...(inaudible)...

Ms. Rotunno-Hazuka: Yeah, cause they'll have to redo sewer, water and --

Ms. Suyama: Fortunately, we didn't get that comment from State Historic Preservation.

Ms. Rotunno-Hazuka: When did you submit it?

Ms. Suyama: Early on. Beginning of January.

Ms. Rotunno-Hazuka: 2004?

Ms. Suyama: 2004. The only comment we got was from Susan Tasaki, which is a no comment, basically, so, you know, I didn't -- so -- but if you suggest that, you know, archeological monitoring should be part of it, I don't see why that can't be put as a condition.

Ms. Rotunno-Hazuka: Well, I mean, it's being -- I'm surprised that they did that cause I've just gotten a few RFP's for like a garage demolition and they have to do monitoring so --

Mr. Higuchi: Can I say something? The archeological monitoring would be more for probably pre-contact --

Ms. Rotunno-Hazuka: It's historic as well.

Ms. Long: It's historic.

Ms. Rotunno-Hazuka: Anything over 50 years old is what we're concerned about.

Mr. Higuchi: Cause what I was going to say is most of this lot has been built.

Ms. Rotunno-Hazuka: Okay.

Mr. Higuchi: The back side, there is an existing retaining wall that goes along the back over here and this is like six feet high.

Ms. Rotunno-Hazuka: Right.

Mr. Higuchi: So this whole area has been filled.

Ms. Rotunno-Hazuka: Oh, so that's probably why then. Did they know that? SHPD knew that it was filled six feet?

Mr. Higuchi: Yeah.

Ms. Rotunno-Hazuka: Okay, that makes sense.

Ms. Sablas: So you're dropping that from our recommendation, Lisa?

Ms. Rotunno-Hazuka: Yeah, if there's six feet of fill, I'm sure the utilities won't --

Ms. Sablas: So staff's -- are we ready for staff recommendation?

Ms. Suyama: We have nothing. I mean it's, basically, to see if you have any comments.

Ms. Sablas: Just advisory review because of the age of the building. Any other comments? If not, thank you.

Ms. Rotunno-Hazuka: Good luck.

3. DEMOLITION PERMITS - none

G. NEW BUSINESS

H. UNFINISHED BUSINESS

Ms. Sablas: Okay, moving on to Item No. 3, Demolition Permits, staff? None? We don't have any demolition permits, right? Anything under New Business? How about Unfinished Business? I remember at the last meeting we talked about if we could put the Lahaina sign enforcement as a regular agenda item just so that we can discuss it. Would that come under Unfinished Business?

Ms. Duensing: Probably, yeah. It had been a running agenda item and we -- when we removed the Hana Belt Road as a running agenda item, I thought that -- I mean now there's nothing going on with the sign enforcement either.

Ms. Sablas: Well, I think because Director Foley had said that he, by the time he comes back next year, a lot of things would be done, so we just wanna kinda keep this on a regular basis so we know that, you know, how many are we -- what's the progress report on the sign enforcement. So even if it's just there so we can just address it.

Ms. Duensing: As Unfinished Business then I could state that there was one more zoning inspector hired, she is from the Lahaina area, so hopefully something will be coming of that soon.

Ms. Sablas: Well that's good news. Okay, Discussion on Preservation Planning.

I. DISCUSSION ON PRESERVATION PLANNING

Ms. Duensing: Actually, Madam Chair?

Ms. Sablas: Yes?

Ms. Duensing: Could we finish the Orientation first?

Ms. Sablas: Oh, yes, I'm sorry.

Ms. Duensing: Before we continue with items. Enlighten some of our new members.

Ms. Sablas: Yes, okay. Orientation, so we need to do 1 and 4?

E. ORIENTATION (CON'T)

1. Commission Roles and Responsibilities

Ms. Duensing: Yeah, and I'm just going to stand over here because I don't like looking at half the members' backs. Okay, so if we continue going back to Item E, Orientation, I did want to speak a little bit about the commissioners' roles and responsibilities. Most of these are laid out in the County Code, Chapter 2.88, and I'd like to highlight some of the important ones, and then I've also asked Corporation Counsel Akama to address the Sunshine Law and ethics that all commissioners should be aware of.

Title 2, Chapter 2.88, of the Maui County Code, the Council states that preservation of historic properties enhances the educational, cultural, economic, and general welfare of the County. And the reason why the Council enacted this legislation is because they stated that they believe it is essential that the qualities relating to the history and culture of Maui County be preserved through comprehensive historic preservation planning, and that is what we are here to do, as such, the Maui County Cultural Resources Commission was established and it superceded the previous Historic Commission that was on Maui.

Chapter 2.88 directs the CRC to protect and preserve historic properties, encourage appropriate use of historic sites, very important, it also encourages the restoration,

rehabilitation, and continued functional use of historic properties. Another thing you are charged with is to encourage the identification of designation, preservation, and enhancement of historic properties that represent distinctive elements of our cultural, social, economic, political, and architectural history. Finally, they also ask the CRC to formulate County wide comprehensive historic preservation policies, programs, and plans. And all of this is encouraged to be done to ensure the preservation of Maui County's cultural and historical ...(inaudible)... for present as well as future generation of not only the residents, but of also Maui's visitors -- 2.88 says that the CRC has a variety of powers and duties and, as a former commissioner, I know that we've sometimes argued how much power does the CRC have and, in order to address that, it's very simply put that the CRC has the ultimate authority and the power in the County's three Historic Districts: two of which are in Lahaina, and the other one being in Wailuku, and the powers of the CRC in the Historic District, generally, pertain to, No. 1, architectural design review for the renovation of historic buildings and also for the construction of new buildings. If you looked in your packets, you all received the Lahaina Historic Guidelines and that should guide us in how we look at renovations of older buildings as well as how we look at new architecture. Secondly, as you saw already today, is the CRC powers include the design of signs in the Lahaina Historic District, and the CRC also looks at the appropriate uses of properties in the Historic District. As an example, your last meeting, you looked at the appropriate use of the Banyan Tree and the Banyan Tree Park and that's within the Historic District and within the purview of the Cultural Resources Commission.

Most of the other duties that the CRC does are advisory in nature, and that's what you just went through with the review of the Paia General Store project, you know, is this appropriate as far as cultural resources goes. Chapter 2.88 says that the CRC should advise and assist both State and Federal agencies with historic preservation responsibilities. As an example, I asked for the Paia General Store plan to be put on the agenda and, as I interpret the ordinance, I think I would have preferred for it to come before the CRC at a little bit late -- earlier time prior to when everything was designed, and redesigned, and now presented as this is the way it's going to go because I -- there might have been some issues that would have been better done in other ways.

So, at the State level, we can help the State Historic Preservation Division implement Chapter 6E of the Hawaii Revised Statutes, which relate to historic preservation; that chapter has been included in your packet. On the Federal level, the CRC also has some responsibilities. First and foremost, the National Historic Preservation Act that was enacted in 1966, after the massive periods of urban renewal projects that tore down historic structures and had no regard for history and archeology in the 1960's. The National Historic Preservation Act has Section 106, which stipulates that if a project is receiving Federal funding, it should have local community consultation if any historic properties are to be impacted. In the past, the CRC's been very active with this, for instance, in the Hana Highway, which is now listed on the National Register of Historic Places. When they review

or when they propose to demolish the historic bridges along the road, it's very appropriate that the CRC be considered a consulting party because it gets Federal money and it's a historic resource that's being impacted. So, very often, or not very often, but from time to time, you will be assisting in these types of Federal money projects and that is one of the CRC's important advisory roles. And, again, it's important to keep in mind that it's advisory, you don't have the power to say, "that will not be done," you have the advice to provide.

A major reason for the existence of the Cultural Resources Commission is to administer the Certified Local Government program, otherwise known to us as CLG. And the Certified Local Government program is sponsored by the Federal Government, through the National Parks Service, to assist Maui County as well as other counties throughout the Nation in its historic preservation program. Here, in Hawaii, Maui is a Certified Local Government as is the island of Kauai, so we have another commission on Kauai very similar to ours. The CLG allows Maui County to receive about \$30,000 every second year to use for projects, we go on meetings to other islands, we have sent people to the National Historic Trust Preservation Conference, and had work plans, the CRC has used this money to fund studies in the past since -- in 1993, they used it for a Historic Architectural Survey of Wailuku, they also did another survey of the Keanae area, and some -- several brochures in the past. So one of the things that we will be looking at, in upcoming meetings, is it's our turn to get this money this year and how will we use it, so that's why I wanted to do this before we get on to preservation planning as part of our agenda.

Because we are a Local Certified Government, we have to maintain certain standards, such as professional qualifications of our members, I'll speak a little bit more about that in a few minutes, and also the need to use the Secretary of the Interior Standards for Historic Preservation, which is also located in your handout. One of the things that's been on our agenda in the past is to redo a workshop on the Secretary of the Interior guidelines so we know how are we supposed to assess historic buildings and the rehabilitation so that we meet the Secretary of the Interior Standards. Because we get Federal money, we're expected to meet Federal standards, in other words.

The other role that is very important in the CRC, and as your staff person I would like to do more on this in the next year, is that the CRC is supposed to initiate, accept, review, and recommend properties to the State of Hawaii and the National Register of Historic Places, and we haven't done much of that in the past. Recently, we, the CRC, I shouldn't say, "we." I'm sorry, I used to be on the Commission and it's really easy to say, "we." I gotta get out of that. The Commission recommended that the Kula Sanatorium Hospital be placed on the National Register, and this Commission initiated getting the Hana Belt Road on the National Register of Historic Places too. Right now, we are currently working on the nomination of the Naniloa Drive Overpass, as you come into Wailuku, to have that placed on the National Register. So what happens is the CRC is sponsoring this work, any individual can nominate something to the National Register, but when they do here in Maui

County, because we are a Certified Local Government, the CRC is the first agency that has review of that nomination, so we hold a public hearing to consider the nomination, we will then recommend or not recommend that nomination be submitted to the State Historic Review Board, and, at that time, if it goes on, the Mayor will sign the letter and say, "Yes, I think the Kula Sanatorium is a great building to have on the National Register of Historic Places." It goes to the Mayor's office, he sends it to the Historic Review Board, and if they accept it, they'll place it on the Hawaii Register of Historic Places, and if they think it's worthy of National recognition, as they did with the Kula Hospital, they then send it on to the National level to be reviewed by the National Parks Service, and, hopefully, then it becomes listed.

So those are some of our major duties. Other duties that we have is we work to increase public awareness of our historic places and we encourage the public to support preservation of these historic places. The CRC may also provide advisory design review on other projects, as you saw with the Paia General Store. We have no power to control the design process; we only make recommendations. And we are also asked to redo technical reports, such as you talked about the Makena issues this morning. In the past, the CRC have reviewed a lot of these archeological reports and, again, this is only advisory because the only powers we have to say what is done is actually in those Historic Districts.

So, in the guidelines that you have received today, you have our Cultural Resources Management Plan, which dates to 1984, and is probably in dire need of updating. We also have the Maui County General Plan as well as Community Plans to guide us in our work. You have in your packet the Lahaina Design Guidelines and the Architectural Style Book for Lahaina. The last work plan for the CRC had all these design guidelines redone so that, in the future months, we will be presenting this to the CRC, that is the Planning Department will be presenting it, and then it will have to go to Council for approval, also it has to be approved by the Cultural Resources Commission, and one of the things that's going to be happening is that they combine design guidelines for both Historic Districts in Lahaina, which would make the CRC's job much easier. So those are the kind of issues we'll be considering with the Lahaina Style Book. You should also have in your handouts the State Historic Preservation Plan, also Office of Hawaiian Affairs Guidelines, and the Secretary of the Interior Guidelines for Archeology and Historic Preservation. So, again, you have everything from the local level here in Maui County, to the State level, to the Federal level.

Some housekeeping details. Obviously, we are comprised of nine members. We meet the first Thursday of each month, usually, in Wailuku, but because we do consider issues in other locations around Maui County, for instance last month we took up the issue of -- you took up the issue of the Banyan Tree and we met in Lahaina; occasionally we met in Hana because -- Hana with the Belt Road being a very important cultural resource here in Maui County; in the past several years, the CRC also made field trips to and regular meetings on Molokai and Lanai, and, again, those are funded with our CLG money. Your

membership represents various geographic locations from Maui. We have a Lanai representative and also a Molokai representative, and even though it's not in the Historic District Ordinance that Hana be represented, this Commission has, in the past, sent letters to the Council and the Mayor saying, "We desperately need a Hana member because the cultural traditions of Hana are so important to Maui County," and we're fortunate that we did get another Hawaiian -- another Hana member on this Commission. And, very important, the County Code does specify that the majority of members shall be professionals in history, architecture, Hawaiian studies and culture, and also archeology, and we do have those professionals, we are short in several areas. Mr. Whelchel is our resident architect, we obviously have members familiar with Hawaiian issues, and we have our archeologist in Lori and a former --

Ms. Rotunno-Hazuka: Lisa.

Ms. Duensing: Oh, I looked right at you and I said, "Lori," didn't I? Lisa. It's been a really long week. I'm sorry. Lisa is our archeologist. Okay, the administration of the CRC: Suzie is our Commission Support Clerk, she will be in charge of making sure that you all get paid for mileage, she will be making friendly calls to you right before each meeting to make sure we have a quorum, and, in the past, we have also, speaking of quorum, pointed out how important it is for our members to let Suzie, or myself, or somebody in the Planning Department know, as soon as possible, if you cannot, you know, make a meeting. In November, we had an unfortunate circumstance where we didn't make quorum and the Friends of Moku`ula, which is a non-profit group very concerned with money, obviously, had to fly over consultants from Honolulu and then there was nobody to present their project to, so it's very important for us to be aware that we meet on the first Thursday of the month and, you know, it's important for regular attendance and to just set aside that first Thursday of the month for these meetings. I will be your staff person assigned to the Cultural Resources Commission and, for the members who are new, I'd like to introduce myself because I was the Cultural Resources Commission's Historian until December. In July, I think it was, the County funded a position for a Cultural Resources Planner, I applied for that, and was with great hesitation that I step down from the Commission to take this job, but I do have five years of experience with the CRC so I have some background as to what you are doing and hope to provide as much support to the Commission as I can. I think my job description says 30 percent of my time, or somewhere around there, is supposed to be devoted to staffing the Cultural Resources Commission, and I'm very pleased to work with Chairwoman Sablas, and, you know, any of the staffing or technical issues that you have, I encourage you to bring them to me and I hope to be as much service as I can to the Commission. I do believe that the Commission provides a valuable public service and it doesn't matter whether I was a commissioner, now that I'm a County employee, I still think of myself as a public servant and I'm here to serve the Commission but also serve the public in any way that I can. So I encourage you to bring questions and concerns to me if Commissioner Sablas does not have the time or maybe not be available to hear those

concerns. And then I've asked our Corporation Counsel this morning to speak to you on other important matters that you have as commissioners is to be aware of the Sunshine Law and the County's Ethics Code.

Mr. Akama: Thank you, Dawn. My name is Dudley Akama for those of you who are new today. I'm rather a new employee with the County. I started here in October. I have been licensed for about 30 years and I have specialized in labor and employment management law most of my career, so this entire area is new to me; however, I staff the Planning Commission, Lanai Planning Commission, Planning and Land Use Committee, everything related to planning and zoning. So I will be at every meeting to assist you and assist the chairperson to the extent that I can. You can call me at the Corporation Counsel's office at any time. I'll be happy to help you as I can. I'll be very brief because --

Ms. Sablas: Do you have a direct line?

Mr. Akama: Yeah, I do have a direct line and it's 270-7185. I'm going to cover just three areas this morning and very briefly. We'll revisit these matters as we go along. The Sunshine Law is one area, the other area is ethics, and the third area is liability. Everybody's concerned about liability; if I get sued, what do I do? Will I get sued? This and that. So I will cover those three areas very briefly.

We had kind of a good experience this morning with the Sunshine Law. The Sunshine Law, basically, is a nickname for Chapter 92, Hawaii Revised Statutes, meaning sunshine, everything's out in the open. Everything that we do, that you do, as commissioners, is open to the public - everything. There are some exceptions. Two of you can get together and discuss issues, but no more than two, as long as you don't make a decision in terms of how you're going to vote. If two of you get together, under Chapter 92, that's fine, you can discuss matters, you know.

Members of the public might approach you; they may call you; they might say, "Well, you know, how about this and that?" The best advice for me to give you is to avoid this contact and say, "well, you know, we'll have a meeting; when this comes up, fine; check the agenda; I don't have any idea when it'll come up. When it does, then you can give public testimony at that time." Be very careful with that cause there are ethical problems involved with giving people free advice or saying, "Well, sure, I can help you with that," being accommodating, you know.

The other area is that you should be careful not to do your own investigation. It's good to go out and want to check things out on your own and whatnot, but then if you do, inadvertently or what have you, then you should report back, but really the advice is to not go out and go check on things out on your own, calling people, and doing this, I'm a commissioner, and this and such, not good, alright?

Oh, I want to just touch on field trips or what we call site visits. There will be occasions, other than meetings, out of Wailuku where we will go out to check a site, especially this committee -- this Commission which, you know, it would be good to look at a bridge or what have you. Dawn has a real passion about old structures I was never aware as I drive. So it's a good idea to have a look at what we're talking about: this old structure; this 50 year old house is being demolished. Dawn, by the way, will not allow any demolition of anything, I mean, you know, anything over 50 years old, forget it, you know, she sees some value in it. So, anyway, you'll come to appreciate that cause, you know, she's a real expert in this area, a real resource for the County, so, hopefully, we'll be able to get out and do it, but remember that when we go out to these site visitations, this is an open meeting so whatever you say will be taken down, the people that -- members of the public will be looking at you, you know, you being, you know, Commission members. There will be rules laid out. We just recently went to a site visitation at what was arguably a dangerous site and members of the public were excluded from that site, but there are certain rules that we follow in terms of that kind of visitation and if that occurs, we'll approach that when we come to it. But what's important is even if we go out on a site visitation, it's not really a field trip like we remember from school days, you know, you have a responsibility as commissioners so --

Okay, Sunshine Law. As we go along, questions will come up and you can ask me or the chair will ask me, okay, so basically I think as long as you're aware and you're aware that notice is essential, it must be placed on the agenda before we can take public testimony if it is of reasonably major importance and will affect a significant number of people, those are the buzz words. Very few things, I think, should be added to the agenda, period. I'm a proponent of the Sunshine Law. I think that anything that comes before this Commission, should be notified, it should be noticed properly so that everyone can weigh in on all sides of the issue. And that is the beauty of a board and commission, that it involved people like you who are giving of your time, who have committed to the issues at hand, and it gives the general public an opportunity to give their input also.

Alright, now ethics. Big hot area. As you know, there are people who have been fined, who maybe even potentially will go to jail because of ethical violations. I think very, very clearly, and I'll put this as briefly as I can, our Charter, which you may or may not be familiar with, chapter -- Article 10 is the Code of Ethics and, specifically, 10-4 are prohibitions of what, as a Commissioner, you are not allowed to do, and some of these are pretty obvious, like accept gifts, you know. Somebody offers you, in exchange for approving a demolition on this beautiful historic building, that trip to Paris or something, you know. I think that's pretty obvious. Unless there's some purpose attached. So, however, the State Ethics Commission has the same rules and they have made decisions that will affect you. Now you don't need to call me for every little thing. If the gift was given freely in the traditional spirit of aloha, a lei, you know, a rather minor matter, then it's okay, and, two, if there was no solicitation on your part to receive the gift, and, third, if the gift is of

nominal value, there would be no violation of this section regarding gifts, okay. But if there's any questions, of course, ask, ask first.

Okay, the other area is disclosure of information. I was involved -- the reason I took this job to being with because I was on loan to the Ethics Commission over a Council person's alleged violations of this code, and one of the areas was disclosure of information. This person disclosed information that he or she obtained in an executive session or that would not otherwise be disclosable to the public and then disclosed this to the public. Now if you do this, you're in hot water, believe me, so you gotta be careful what you tell other people. Public, press, they're going to ask you things, okay. Think twice. That's why the general rule is it's better to say, "I'm sorry, I can't discuss this matter with you," or, "I have to check with Corp. Counsel or what have you," better not to go and, you know, have discussions with the general public; each other, okay, if there's two of you, you want to talk about some issues, that's fine; more than that, I'd be very cautious cause three is a public meeting, alright?

The other area is the area of what we call conflict of interest. If you have a financial interest, direct or indirect, you should recuse, alright? For example, someone works for a bank and the bank has handled a loan for this person applying for a renovation, coming in for a renovation, that is subject for recusal, alright? Now, of course the code says, "incompatible proper discharge of your duties and intent to impair the officer's independence or judgement," probably better to bring it before us just to disclose it cause there is requirement in our rules that any potential interest should be disclosed, alright?

The other area is where you will be asked to file a disclosure statement, right? This is required? So, if you fail to disclose an interest and then we later find out that this was a material disclosure, then you can be in trouble for that, so that's an easy one, okay. You cannot receive any compensation for service rendered on behalf of any private interest after you are finished with your term here, alright? So I think that's a one-year period after you're off of this Commission.

Ms. Rotunno-Hazuka: Oh, after you're off.

Mr. Akama: Yeah, after you're off.

Ms. Rotunno-Hazuka: Then what?

Mr. Akama: Then you cannot receive -- you can't get a contract.

Ms. Rotunno-Hazuka: With who?

Mr. Akama: With the County in relation to any case that was decided by this Commission.

Ms. Rotunno-Hazuka: Okay.

Mr. Akama: Okay.

Ms. Long: Even if she recused herself?

Mr. Akama: Yes.

Ms. Long: Yikes.

Mr. Akama: Alright, the last area regarding ethics is appearing on behalf or representing private interest and you can't go before another -- you can't go, say, to the Planning Commission and represent a private interest while you're a Commissioner, alright, if you're representing someone else. However -- okay, erase that. I'm sorry. As a member of a commission, you can appear on behalf of other agencies other than the one, except unless, like in this case, your actions, the Commission's actions are subject to review by, say, the Planning and Land Use Commission, so you have to be careful of that; just ask if you're going to appear before another board or commission, okay? You can -- you can as a member of a commission, this Commission. I'm sorry, you can appear, alright? Provided that the other agency you appear before doesn't review our actions here, this Commission's actions. Lisa?

Ms. Rotunno-Hazuka: Okay, so for instance, I need to go before the Land Use Commission for one of my archeological projects, probably in May and July, what's wrong with that or what do I need to do to represent my client?

Mr. Akama: You just need to go before the Land Use Commission and disclose the fact that you are a member of the Maui --

Ms. Rotunno-Hazuka: Oh, CRC.

Mr. Akama: Cultural Resources Commission.

Ms. Rotunno-Hazuka: Before I --

Mr. Akama: Right, and that there -- and there are matters -- there aren't any matters pending before you or there are these matters pending before you and that sort of thing. That's it. You just need to make a disclosure.

Ms. Rotunno-Hazuka: Okay.

Ms. Long: Excuse me, that's only when she's being paid to give testimony. She's been hired by some -- my understanding is that you can go and testify if you say, "Well I'm a member of the CRC but I'm testifying as an individual on something that's --" cause that's First Amendment stuff.

Mr. Akama: Yeah, the code says private interest, so this is if you're being paid. I assume your job --

Ms. Rotunno-Hazuka: Yeah, and that's what I meant. I was going to be --

Mr. Akama: You can go ahead as a -- but you should identify yourself as a member of the CRC, in any case, alright? Alright, let's move on. Liability. Oh, first, do you have any questions thus far?

Ms. Long: Yeah, when -- if a person needs to recuse themselves, is that only from voting? May they participate in discussion?

Mr. Akama: If there is a conflict, under Article 10, they should recuse themselves, period, not participate in discussions cause the discussion could be persuasive, it could be interpreted as persuasive. I think if you're going to recuse yourself, you should just stay out of it, period.

Ms. Long: Cause I was reading some old minutes and Lyons Naone was -- recused himself from voting but testified monumentally.

Ms. Rotunno-Hazuka: Yeah, and that's -- we've done that and I'm going to have that problem with Makena when that comes up. I was going to recuse myself.

Ms. Duensing: You know, may I say something, Madam Chair? In the past, we have not got very consistent rulings from our Corporation Counsel on this because Barbara is right about Lyons Naone and then there was one time when another -- one of the attorneys told Erik Fredericksen not to participate in the discussion at all, and, perhaps, it would be a good thing for the Corporation Counsel office to discuss that matter and render an opinion on it.

Mr. Akama: Alright.

Ms. Duensing: Cause it hasn't been applied consistently.

Mr. Akama: Perhaps the State Ethics Commission already has a position. We'll check with them.

Ms. Duensing: Could you research that?

Mr. Akama: Yes.

Ms. Duensing: Could I add one other thing?

Mr. Akama: Yes.

Ms. Duensing: Don't forget, we do have a Board of Ethics if, you know, there's a substantial question, and this happened to me when I sat on the board, Brian Moto was our counsel at that time and he said, "This is what I think and I don't think it would be a problem, but if you have any reservations at all, make a request of the Board of Ethics and get an opinion from them in writing to answer any of your concerns."

Mr. Akama: Thank you, Dawn, yeah, that's important.

Mr. Kapu: I get one question.

Mr. Akama: Yes?

Mr. Kapu: The chapter, the book that you was referring to, is it open to the Commission?

Mr. Akama: This one?

Mr. Kapu: Yeah.

Mr. Akama: You should have it.

Mr. Kapu: I don't have one.

Mr. Akama: Are they given one?

Ms. Long: Yeah, it's in ...(inaudible)...

Ms. Duensing: It's all online too.

Mr. Akama: You should have it. If not, we can get you one. It's Article 10, Code of Ethics, Page 37. I think -- is it in your binder? It might be -- oh, yeah, there you go. Okay, liability. Okay, if you get sued, and hopefully you won't, but if you get sued, what do you do? That's what our office is there for. First thing you do is you call our office and say, "Well, I've been served." Now let's hope this doesn't happen, okay. The real question is can I be held personally liable for what you do. Can you be held personally liable for what you do and

that's a real issue. Okay, most of the time you will be sued because of some action you took here, alright. Now, when are the instances when you can be held personally liable, okay, suppose that you act against legal advice and you go ahead and do it anyway, you are not going to be covered. You call your insurance carrier. You ahead, you know, that's why we're here to give you legal advice, alright? Now, another instance is if, for some reason or other, there's some interpretation that this board acted arbitrarily and capriciously, which means just kind of a wild, which is unlikely as long as you have legal counsel, I don't think that, at least the advice that is given, is followed then you'll be in good standing, alright? I am, right now, a defendant in a lawsuit and a U. S. District Court lawsuit because of an action that I took in my official capacity in my previous job, you know, so it is not a happy role, and I hope none of you get to that point, but, fortunately, I have been indemnified by the Hawaii County Council so they're providing defense for me. So I can't tell you for sure that, yes, that our office will invariably provide defense for you, but if you do get sued, whatever, just notify our office, alright, that's all needs to be said. Any questions?

Mr. Kalalau: Question.

Mr. Akama: Yes?

Mr. Kalalau: On executive sessions, what action would an executive session be most likely to be used?

Mr. Akama: Most of the time executive sessions are used to get the advice of your legal counsel on an issue that is pending, so what happen then is any of you can ask for an executive session but it has to be stated that this is to seek the advice of our counsel and it has to be put to vote, and then everybody is excused, and then you ask me the questions. Now what happens in that executive session is that whatever advice I give you is privileged so it's not -- you cannot go out to the public and say, "In executive session, this is what we did," alright, so, Sam, if your question is concerning what I said about that person who had a complaint filed against regarding disclosure of what was in an executive session, yes, that person happen to disclose or -- yeah.

Mr. Kalalau: Is it gotta be a pending thing or would it be like just because we need legal advice because, you know, for that instant with Mr. Bertram this morning, could we have called a -- to get legal advice about that? About the whole thing?

Mr. Akama: You could have. You could have. But, yeah, but this morning, I think the question was right for legal opinion so I just gave it to you and I think it would have been, either way, it would have been fine, but you can ask for an executive session.

Ms. Sablas: Any of the members, right?

Mr. Akama: Any of you can.

Mr. Kalalau: Okay, thank you.

Mr. Akama: That's all I have. Yeah, Keeaumoku?

Mr. Kapu: Pertaining to the ethics, you talked about if somebody work for the County that they cannot work for -- within one-year span? What chapter was that?

Mr. Akama: Okay, this is under 10-4, Prohibitions.

Mr. Kapu: 10-4.

Mr. Akama: Yeah, one, Paragraph 1.f.

Mr. Kapu: Okay.

Mr. Akama: Actually that's not a one-year, I said that wrong the first time. You cannot receive compensation for any service rendered on behalf of any private interest after termination of service to or employment with the County in relation to any case with respect to which the officer was directly concerned. See if you voted on something --

Mr. Kapu: Then you don't work for them after?

Mr. Akama: Cannot.

Mr. Kapu: Yeah, okay, that's all I wanted to know. Mahalo.

Ms. Rotunno-Hazuka: So but you can still do work for the County as long as it doesn't involve any action that comes before us?

Mr. Akama: One year after leaving.

Ms. Rotunno-Hazuka: What if like currently?

Mr. Akama: Oh right now?

Ms. Rotunno-Hazuka: Yeah, cause I already work -- do work --

Mr. Akama: You're already doing work for the County?

Ms. Rotunno-Hazuka: For the Parks.

Mr. Akama: Oh, as long as it's not a subject matter that we consider it's okay.

Ms. Rotunno-Hazuka: Okay.

Mr. Akama: Other questions?

Ms. Sablas: Press again. When I was out there, Valerie asked me couple of questions this morning. Should I just have said, "No comment?"

Mr. Akama: No. I'm not particularly a proponent of the press but I think that you need to answer. I mean if -- I don't know if the press will approach any of you individually but probably the best advice I can give you is if you are approached as a member of this Commission by the press, it's probably better to defer to the chair or to the Corp. Counsel rather than being cornered, you know, I think it's probably good advice.

Ms. Rotunno-Hazuka: Yeah, she asked me. She asked me how we got into the discussion on Makena and I just said because Bertram came to us and then we went through this whole dialogue.

Mr. Akama: That fine. Yeah, she asked us all the same question trying to get a consistency.

Ms. Rotunno-Hazuka: A different answer?

Ms. Sablas: Yeah, basically, that's the question she asked me. How did that come to discussion? I told her it was discussion amongst the members.

Ms. Duensing: Madam Chair?

Ms. Sablas: Yes?

Ms. Duensing: From past experience, it is a good question to ask because I got a lot of phone calls from Valerie, at home, asking about issues that we had discussed, you know, I was working out of my home so, you know, she would call me and say, "Well what do you think about this and that?" And, in many cases, I would just say, "Well, you know, we didn't talk about that at the Commission meeting and me, personally, this is what I think." And she's been pretty good about, you know, she has been very good about putting in, "Dawn Duensing speaking as individual, not as a commissioner," so, yeah, I don't want to encourage everybody to just go out and talk like that but it does bring another good point too because we need to be careful that -- or the commissioners need to be careful that when asked by the press or going to another public meeting, you need to make it very clear that, you know, unless the Commission has asked you to represent it and taken a vote on

it, which was Mr. Moto's counsel in the past when, for instance, the Commission designated me to handle all the Hana Highway issues with the Department of Transportation, it was because there was a motion and there was a vote, and the Commission supported that as a group, not so that, you know, if there were another issue that somebody will call and say, "Well, you know, the Commission didn't ask me to do that so, you know, I cannot represent the Commission," so there needs to be a really careful reminder here that you need to be a commissioner in this room and an individual outside of this room unless the Commission has granted you the authority to represent it on a given issue. And, in the past, I think before we had Brian Moto as counsel, it was very kind of a leisurely, yeah, let her go out and do it, but under his tenure as our counsel, we made it very formal that, you know, we will allow so and so -- for instance, at our last meeting, Commissioner Kapu was asked to represent the Commission for the Lahaina Banyan Tree issues with these two groups so that's another important point to follow, I think.

Ms. Long: Anything happening there?

Mr. Akama: Anymore questions? Alright, well, that does it for Orientation.

Ms. Rotunno-Hazuka: Thank you.

Ms. Sablas: Thank you, counsel. So shall we proceed then with the rest of our agenda? Do we have a lot of stuff to cover? Okay, we're okay to just plow right through to get it done? We didn't take any lunch orders so I'm thinking we're not going to have lunch today.

Ms. Duensing: I think we can finish up rather rapidly.

Ms. Sablas: Okay, fine. So we are on Item I?

Ms. Duensing: Yeah.

Ms. Sablas: Preservation Planning.

Ms. Duensing: If I may, just because Commissioner Long mentioned unfinished business in the Lahaina Banyan Tree, that was not put on the agenda even though this Commission deferred it. The decision was made to not put it on the agenda because Parks, Planning, and the other interested parties have not come to any recommendations to consider for action. The Arborist Committee did meet. I'm still waiting for a letter for them so all of that is --

Ms. Long: You're kidding?

Ms. Duensing: No, they sent me the minutes, but, yeah, we're still waiting, so that item, as Unfinished Business, I'd like to put on the agenda when there's something to be done and some concrete recommendations so we avoid the situation that we were in ...(inaudible)...

Mr. Kapu: Madam Chair?

Ms. Sablas: Yes?

Mr. Kapu: I also did some walkthroughs and got with Lahaina Action Committee and Lahaina Arts Society about a couple weeks ago pertaining to the matter of the Banyan Tree. We talked about ways of addressing the arborist's concerns so as soon as I compile the information, and there was some concerns about, basically, the jewelry, all the things that are sold under the Banyan Tree, so once I get all that information, I'll forward it to Dawn to be included.

Ms. Sablas: Maybe, as long as it's unfinished, I would like to just suggest that you still put it there even if you just give us an update, progress report just so we know that it hasn't been a forgotten item, even as brief as we did today.

Ms. Duensing: Okay, I'm rather hesitant to do that because I'm still getting a lot of phone calls from people that want --

Ms. Sablas: Oh, people are going to want to come and speak.

Ms. Duensing: Yeah.

Ms. Sablas: I understand, sorry.

Mr. Kapu: Oh, a lot, a lot.

Ms. Sablas: As long as it gets on the agenda then they want -- okay. Good point.

Ms. Duensing: In fact, I got so many calls last month I called Theo as well as Graham, of the Lahaina Arts Society, and said, "No, we have nothing to put on the agenda because no decisions or recommendations have been made."

Ms. Sablas: Okay. Good point.

Ms. Duensing: I'm learning.

I. DISCUSSION ON PRESERVATION PLANNING

Ms. Sablas: Preservation Planning.

Ms. Duensing: Preservation Planning. As I said earlier, we will have our Certified Local Government funding this year so we do want to start thinking about things that this Commission might want to achieve over the next year. I don't wanna load up our new Commissioners with too many things but a few of the things that will be appropriate to include in that budget are probably, and I think we don't get it until the Federal fiscal year, which isn't till October, actually, probably send the chair and vice-chair, or other members if they -- usually we offer conferences to the chair and vice-chair first to the National Trust for Historic Preservation Conference is in the first week of October and it's in Louisville, Kentucky this year. Lon and I went last year, as representatives of the Commission, to the Denver conference. And then we will need to also finish up these Lahaina Design Guidelines, you know, whether we fund the printing or whatever, so if members want to think about activities that they might want to participate in or, like I said, one time we did some brochures in the past. When we know better when exactly we get this money and how much, it'll be easier to plan, of course.

Ms. Rotunno-Hazuka: Is there any kind of -- other conferences?

J. DIRECTOR'S REPORT

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

Ms. Duensing: Yeah, as part of my Director's Report, I've put on the Hawaii -- Historic Hawaii Foundation Preservation Conference, which is an annual event. Several years ago, most of the commissioners attended that out in Lahaina, I was one that didn't, that will be this year, Wayne ran off with my agenda so I have to look in my -- I had it marked on my agenda, it's going to be Friday, May 14, and Saturday, May 15, and this year it's in Honolulu, it's going to be at the Hawaii Convention Center, so I will be attending as a staff member and we will offer the opportunity to the chair and vice-chair to also attend, and I don't know if we can go beyond the two members, I need to talk more to Wayne Boteilho about that. So those are probably the two big conferences is the National Trust and Historic Hawaii Foundation here at the local level.

Item 2, Commission meetings in other locations, as I said last week, there's probably going to be another need to go to Lahaina soon because they are talking about demolishing structures at the Pioneer Mill and if that comes to pass, it would be very appropriate for the Commission to meet in that location. We haven't been to Hana, Molokai very recently. In September, we made a trip to Lanai, so, possibly, as part of our CLG funding for the next year, we might want to consider taking a Commission meeting to Molokai. The last time the Commission went there, we had quite a lively meeting and heard about a lot of items of importance to the local community there, and it's been, I think, a full two years since we've been there so that might be another appropriate part of our work schedule for the upcoming year, and it's been a long time since we've been to Hana too.

Ms. Rotunno-Hazuka: I know that it seems like there's a lot of development right now in Hana.

Ms. Duensing: Yeah.

Ms. Rotunno-Hazuka: Versus Molokai.

Ms. Long: Dawn, excuse me, if we do go back to Lahaina, and I'm assuming we'll be at the civic center again --

Ms. Duensing: Probably.

Ms. Long: Would you please ask them to do something about the flies. It was a serious problem.

Mr. Kapu: I think they were cleaning the area that's why, so I guess the Cultural Resources Commission was down there so they was cutting the grass and all that and emptying the rubbish at the last minute, I don't know. It was the first time I ever seen that much flies in that place.

Ms. Duensing: Yeah, we have had meetings there other times and it wasn't that bad. But, generally, when we meet in the Lahaina, this is again where Suzie helps us out, she calls up and finds the meeting location, and it probably would have to be at the civic center because I think the courthouse, right now, doesn't have any space to meet, so I'm assuming it would be at the civic center, and that's a possibility for May. I don't have any confirmation of that as yet but it's just a possibility.

We've already discussed Item 3 under the Director's Report, which is the Cultural Resources Commission Correspondence, and, 4, the State Historic Preservation Division. Our correspondence from the CRC this month was a transmittal to Parks regarding our last meeting. I transmitted a, well, I informed the Department of Transportation that has the

jurisdiction over the Naniloa Bridge that we intend to place that on the National Register because the property owner must agree to have that done, so they've been forewarned, and the DOT isn't always happy with placing structures on the National Register, but they're getting used to it. So I do believe we took care of all the Commission's requests from last month.

The Correspondence Received from the State Historic Preservation Division primarily focus on archeological reports and SMA permits and the run-of-the-mill stuff and, as you heard earlier, also the letter from Holly McEldowney regarding the Makena readjustments to their opinion, and I will try to -- I didn't see that letter until Commissioner Long brought it to my attention, and I will try to come up with a system by where Suzie gets the correspondence, I can take a little bit more timely look at it, and be aware if there's anything out of the ordinary as that letter was as opposed to the run-of-the-mill stuff it usually is.

And the Administrative Permit Reports and the Historic District Approvals Reports, if you look in your agenda packet, you get that with every month to show what administratively has been handled, for instance, I think it was the Banyan Tree Birthday Party and because that's a regular item every year, we don't need to bring that to the Commission, we can, you know, do that administratively as long as they don't have any substantive changes, which they didn't. I process their permits, they get on with their community celebration, and that's it. So that's all for the Director's Report unless there are any questions.

Ms. Sablas: Thank you, Dawn, you've been busy. Announcements?

K. ANNOUNCEMENTS

Ms. Duensing: Oh, we should tell them the history of why we put Announcements on there.

Ms. Long: Yeah, it's an announcement.

Ms. Duensing: Do you remember? Couple of months ago, I'll just --

Ms. Sablas: Thank you.

Ms. Duensing: Just refresh everybody's memory. I'm the resident historian so I don't forget anything. Well, I do have senior moments now and then but -- the Announcements were put on as a regular agenda item because a few months ago, Commissioner Pa from Molokai had a few things he wanted to share with us and, you know, we took an amendment to the agenda and everything and we started talking about it and I said, "Well, should we put this on because sometimes we don't get to hear enough about our local neighborhood groups or our neighbor islands like Lanai and Molokai," so that's the opportunity to, you know, just share things of interest to historic resources that have been

happening. For instance, Lisa had mentioned, well, you know, more development going on in Hana than there is Molokai, but one of the important issues to Molokai to update us and interest us is usually Hawaiian homelands and also the fishpond restorations that are going on there and, you know, things were happening and Commissioner Pa was anxious to share some things so that's why the Announcements are kept on there.

Ms. Sablas: Okay. Uncle, nothing happening on Lanai?

Mr. Kaopuiki: Fried chicken.

Ms. Sablas: Fried chicken, he says, okay. Well the next meeting is May 6. We hope to have a hundred percent attendance, so, until then, Happy May Day, and it's -- the day's not over yet so you can play your April Fool jokes. Anyway, thank you. It's been a pleasure to run the meeting for you and I look forward to making things happen. Meeting is adjourned.

L. NEXT MEETING DATE: May 6, 2004

M. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 12:15 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Commission Support Clerk

RECORD OF ATTENDANCE

Present

Lori Sablas, Chairperson
Lisa Rotunno-Hazuka
Lon Whelchel

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Solomon Kaopuiki
Keeaumoku Kapu
Barbara Long
Samuel Kalalau III
Perry Artates

Excused

Milton Pa, Vice-Chairperson

Others

Wayne Boteilho, Deputy Planning Director
Dawn Duensing, Staff Planner
Dudley Akama, Deputy Corporation Counsel