

**CULTURAL RESOURCES COMMISSION
SPECIAL MEETING
JULY 8, 2004**

A. CALL TO ORDER

The special meeting of the Cultural Resources Commission (Commission) was called to order by Chair Lori Sablas at 9:05 p.m., Thursday, July 8, 2004, Planning Conference Room, Kalana Pakui Building, 1st Floor, 250 South High Street, Wailuku, Maui, Hawai'i.

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

Ms. Lori Sablas: Aloha kakahiaka kakou. Good morning, everyone. Thank you for being here. I'd like to call the meeting to order. And I'd like to -- I see a lot of the members of our public here today. Thank you for taking your time to be here to be a part of government processing.

And I'd like to open up our meeting, first of all, by inviting all those members of the public to come up and if you have -- if you would like to testify on any items of the agenda that are on the agenda items today, you're welcome to do so. Please keep in mind that the limit is three minutes per person per agenda item. So once you are there and you're allowed the three minutes on that agenda item, that will be the only time we would allow for that. So think about what you'd like to say on the agenda items here. And this is just to accommodate those who would have to leave, but you're also welcome to stay when the agenda item comes up later. We would like to be able to accommodate the public as much as possible. So again, for those who need to leave for whatever reason and you feel you need to testify on the agenda items today, you have three minutes to do so. We would like you to come up, identify yourself, and give your testimony. Okay, mahalo. I think we have people who testified. So all those who would like to testify now, the floor is open on any agenda items.

I'm so sorry. Could anybody hear me? Now you can? Now can. Okay. I see kupuna in the audience and I'm going to that age too. So I'd like to just go back and repeat what I said this morning. Again, good morning and thank you for being here to be involved, to be interested in our process of government in Maui County. I appreciate you being here.

We would like to open this meeting by inviting members of the public to come up and testify on any agenda items that we have today. Okay? All the agenda items. We are going to limit it to three minutes only, though, okay, because we don't have all unlimited time.

Now, I'd like to clarify that the three minutes is on the agenda item. Once you've spoken on that agenda item, pau, you cannot come back again and ask for that and this is what I've been advised. So, understand? Okay, now again I'd like to say that we're opening the floor now. However, if you'd like to stay until the agenda item comes up, you're also

welcome to do that. We would just like to accommodate people. Time is precious. So if you feel you need to testify now and move on, the floor is open.

I'm a soft-spoken person, but I'll try to project my voice. Anyone who would like to come up please. The floor is open. Okay, then. Uncle Charlie, is that --? (Inaudible)...the agenda? Sure. Okay. Well, thank you, everybody.

Oh, I guess I need to call the meeting to order.

B. APPROVAL OF MINUTES OF THE JUNE 3, 2004 MEETING

Ms. Barbara Long: Page 22, "view planes," it's there in three spots, and it's "p-l-a-n-e-s." And the other was "muttens," page 41, those dividers in the windows at the bottom of 41. And also on 42, in the middle, it's spelled -- according to Lon, you have two choices: "m-u-n-t-i-n" or "m-u-n-t-e-n," but not with a double "t." Thank you.

Ms. Sablas: Any more corrections? Comments on the minutes? If not -- oh, I'm sorry.

Ms. Long: I do have a question. It's about the minutes. On page 29 in the minutes it says that, yes, a letter will be sent with regard to the project in Pukalani that we looked at with the heiau. I asked specifically, "It's going to be a letter?" Mr. Boteilho says, "Yes." We didn't get a copy of that letter. So that was --

Ms. Dawn Duensing: I think Ann did it, and I do recall seeing it, but I'll check on it because I wasn't here at that portion of your meeting, but I'll follow up on that.

Ms. Long: Thank you.

Ms. Duensing: It's the Kualono Subdivision.

Ms. Long: Yeah.

Ms. Sablas: Any more corrections? If not, I'll entertain a motion. Yes, Sam?

Mr. Sam Kalalau, III: Just a question. You know, on some of our approvals that we have done with some of the other applicants that we took it for granted that every Commissioner here is in favor of the application and we just let it go on that way. My personal feeling is I think we should not keep practicing that. I think we should vote on every applicant that comes through here instead of take it for granted that we all agree with the project so, you know, we're gonna -- we're gonna ...(inaudible)...

Ms. Sablas: Does this apply to the minutes that we're talking about?

Mr. Kalalau: Well, there's these two projects in here that we just took it for granted that all of us were approved of the, you know, of the applicant's --

Ms. Sablas: I think we had a motion and called for the vote. Those who were present all voted.

Mr. Kalalau: No, there's --

Ms. Long: No, not on page 29.

Mr. Kalalau: 29, and also I think the Silva's project that we all took it for granted that okay, you know, it's complying, everybody's happy about it, and it's okay. So the CRC --the department just approved it because we all felt that it was okay. I think what we should do on items like that is that we should take a vote so that in the future, if there's any adversity on us saying that, you know, just by verbally saying inside here that it's okay with us that -- you know, so it passed through this Commission without a vote. You know, it says an approval, by verbal approval, because everybody seems to be on the same line. But I'm just thinking that I think it would be better that we do vote on the applications that come through us. What is this is my -- you know.

Ms. Long: I'd support that.

Ms. Sablas: So noted. Okay. Anybody else? Call for a motion. Can I have a motion?

Ms. Lisa Rotunno-Hazuka: I move to accept the minutes of June 3, 2004.

Ms. Sablas: Thank you. Second?

Mr. Lon Whelchel: Second.

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

It was moved by Ms. Rotunno-Hazuka, seconded by Mr. Whelchel, then unanimously

VOTED: To accept the minutes of June 3, 2004 as corrected.

Ms. Sablas: Motion carried. Thank you.

C. PERMIT REVIEW

1. **HISTORIC DISTRICT APPLICATIONS - None**
2. **ADVISORY REVIEW - None**
3. **DEMOLITION PERMITS - None**

D. COMMUNICATIONS

1. **LAHAINA HONU TOURS: Kahu Charles Maxwell requesting the Commission's consideration regarding the appropriateness of duck tours in the Lahaina Historic District. Dawn Duensing will inform CRC members of rules pertaining to the Special Management Area and Historic Districts. The Commission may consider whether to make recommendations and take action on this matter. Public testimony will be accepted.**

Ms. Duensing: This item was requested as an agenda item by Kahu Charles Maxwell last month. And we have also in our packets, a letter requesting deferral because there was a mixup in the applicant's understanding of when this Commission was going to meet so that the applicant and his attorney cannot be present. So in this case, it's probably appropriate to listen to Mr. Maxwell's concern, and take public testimony, and defer the item.

Ms. Sablas: Thank you. Okay. So the public who are here who would like to testify on this matter, you're welcome to do so at this time. Uncle Charlie.

Mr. Charles Maxwell: Good morning, Madame Chair, members of the Commission. Aloha.

I became involved in this issue and was called by Lahaina Honu sometime in February of this year for me to lecture their tour guides that would be taking tourists through Lahaina Town. And having been born in Lahaina and attended Lahainaluna High School, I told them yeah. I know a lot of things that happened that's historical and cultural in Lahaina. So I told him, though, before we ever do that, I'd like to have a meeting with the Na Kupuna O Maui, the fishermen of Lahaina, and so it was set up in March 20th, and we met at the senior -- Lahaina Day Care Center for Adults at Malu Ulu O Lele Park. And Mr. Sutherland; one of the owners; Mr. Brad Cronshaw, the manager; and several others, some tour guides was there, and they brought this huge thing there which they call the honu.

And I tried to tell them that whatever happens in Lahaina, it's important that the people of Lahaina and the fishermen are well informed as to what was going to transpire, and also the Cultural Commission should be informed. And they told me that the Cultural

Commission had no jurisdiction over them because they already contacted them in some form or another.

So I told them -- So we met. We met with about ten kupuna and fishermen in Lahaina. And they had promised, I said, you know, this is only a small number of the Lahaina community, you should have a mass meeting with the fishermen because you're going to take -- go to Mala Wharf and use Mala Wharf. And what they did, they bought one of the permits to the slip, and I thought it was kind of unusual, but they supposedly paid over a hundred thousand dollars for this permit in order for them to access the ocean through Mala Wharf. And so, they told me, yeah, no problem. They would meet with everybody. And we set up a meeting after that at the -- there was a meeting on Mala Wharf on March 25th at Kamehameha III School and we were all there. Carol Shay was conducting the meeting. And, of course, she wouldn't let nobody talk. And the fishermen was all upset. And these people didn't show up. And I contacted them. They wouldn't return my calls. And all of a sudden, after finding out from Patty Nishiyama, they started the tour. The tour is being conducted.

And the reason I am very against it, because number one, it doesn't have the sanction of the people of Lahaina, the people of Hawaiian -- the Na Kupuna O Maui. The fishermen of Lahaina is not happy with that. But they just blatantly went ahead and they're doing their tours now and it looks like a -- I mean it's not proper for a historical district and it looks just like a -- it's a zoo. It's a farce. And it shouldn't be continued, let continued. And I didn't teach the tour guides.

Ms. Sablas: Thank you. Welcome, Uncle Sol.

(Mr. Solomon Kaopuiki entered the meeting at 9:20 a.m.)

Ms. Sablas: Thank you, Uncle Charlie. Any questions for Uncle Charlie? Mahalo.

Mr. Kalalau: Yes, maybe this is for the County, I think. What kind of business is it? Is it marina? Do they have a permit for a marina business, or a...(inaudible)...business, or a special...(inaudible)...business, or -- I know it's a tourist thing, but what kind of permits do they have? Because I see this thing running down on Front Street. I see this thing running in Kahului. What kind of license? What kind of permit do they have to operate this kind of business?

Mr. Maxwell: That's a question I also asked. Thank you, Commissioner Kalalau.

Ms. Duensing: Madame Chair, if I may? I have been speaking to Mr. Cronshaw who's the proprietor of the business since February of this year or thereabouts when he called me and asked what else he needed to do. And, apparently, he has the appropriate commercial

vehicle licenses. He also has a permit from DLNR, and he's gone through the coast guard or whoever does the permitting for the vehicles in the water. So he's got all the appropriate permits as far as operating that vehicle. That's what he told me. I never called up all the agencies to confirm that.

Okay, and as far as what we're here to do today, I had faxed him a historic district application as well as a special management area application in March. And those applications were never returned to us for consideration so that's why this item is on the agenda as well. So does that answer your question?

Does anybody know what a DUKW is? What this Honu tour is? A DUKW is a World War II amphibious vehicle. It was used to launch troops onto shore. So it's a vehicle that can operate on land, and then it goes in, and then it can do ocean tours as well. And the DUKWs were about -- in 1947 and used for tourist purposes in Wisconsin, Dells, and, you know, now it's being used in other areas around the country as well, so that's the whole thing. So they're running these DUKW, it's this amphibious vehicle, through Lahaina Town down Front Street.

Mr. Maxwell: Madame Chair, if I could add? There are many other circumstances that everyone should be aware of. The boat goes from land to sea. They said they have everything all sealed. There's no oil. Nothing leaks into the ocean. Then there's also the problem: the Lahaina fishermen was kicked out, literally, from the pier, Lahaina Pier, and sent to Mala for fishing, for having these small vessels. Now, it's becoming a tourist mecca and this is one of them that's doing business by displacing the fishermen down at Mala, and numerous other incidences that should be looked at by this committee.

Ms. Duensing: Madame Chair, if I may interject? I have a letter from Mr. Cronshaw here listing all the permits that he does have. So if members so wish, I can ask Suzie to make a copy of this for you.

Ms. Sablas: That would be helpful.

Ms. Duensing: So he's got a PUC license, a commercial ramp permit from DOBAR of the DLNR, and an official coast guard number, so those are apparently the three things that he feels he needs.

Mr. Maxwell: In a meeting with Carol She, I asked her -- you see, supposed to be only trailer-driven boats that can access and ingress and egress the Mala Pier. And she said, "Well, you know, it's on wheels." I said, "But that's not a trailer." She said, "That's stretching it, but they allowed it."

Ms. Sablas: How about operating in a historic district?

Ms. Duensing: Pardon?

Ms. Sablas: What about operating in a historic district?

Ms. Duensing: As far as the historic district goes, there's nothing in Chapter 19 that would absolutely outlaw this, but Chapter 19 -- Let me pull this out. And it's Chapter 19 of the Maui County Code. And, unfortunately, most of the Maui County Code, as this goes, pertains to historic architecture but there is a section on historical tours, which is 19.52.090, Regulations for historic districts no. 1 and 2, and I'm looking at Section 53, which talks about historical tours, and they can be operated, ". . .provided," and I'm quoting:

. . . that only motor vehicle(s) shall be used, and the same parked or stored in an off-street parking area and that all customer transactions shall be conducted within an enclosed commercial building. . .

"Historical tour' means a tour of all or any part of, and which originates or ends in, historic district no. 1 or historic district no. 2." "Motor vehicle" means motor vehicle as defined in Section 10 of the County code. And it expressly prohibits any vehicle propelled by human or animal power. In other words, a horse-driven carriage or a jitney pulled by somebody.

They do have space at 505 Front Street and that's supposedly where they are doing their commercial transactions with their customers although I've been told that they will be moving out of that at the end of June, I think it was. And they also have, out of the historic district, storage for their vehicles. So as for the letter of the historic district ordinance, they do comply. But as for the spirit of the historic district ordinance, it could be argued that it is not in keeping with Lahaina's historic character.

Ms. Sablas: Thank you.

Mr. Kalalau: Dawn, do they have an office at 505?

Ms. Duensing: Yes, that's what I've been told.

Ms. Sablas: Just keep in mind, this item is being deferred, but we are taking public testimony so it will come up again. So thank you very much. Okay, next we have --

Ms. Long: Excuse me, Madame Chair. This is deferred until our meeting which I believe is in Lahaina? Yeah.

Ms. Duensing: And we also may have trouble getting to it in the next meeting because we have two big agenda items already scheduled for that August meeting in Lahaina.

Ms. Long: Okay, my concern is that I don't know what an amphibious vehicle looks like. I think it would be in the interest of making a determination for this Commission to either see the thing in person, have them drive it up there so that we can look at it, or show us a video of the thing in action so that we can evaluate whether we think it actually does fit into the national landmark and historic district. And also, I'd appreciate it at that meeting, or whenever it is on the agenda, if you could distribute to us the section of Chapter 19 that you just read to us.

Ms. Duensing: Weren't you distributed that with your -- ? It should've been in your binders

Ms. Sablas: It was, yeah.

Ms. Duensing: And we had given it I think on ...(inaudible)...

Ms. Long: I didn't bring my binder today.

Ms. Duensing: It should be in there. And if members don't have it, please let me know or let Suzie know.

Ms. Long: So we'll look it up.

Ms. Duensing: Yeah.

Ms. Long: Thanks.

Ms. Sablas: ...(inaudible)... well, there's further discussion. Yes?

Mr. Perry Artates: Madame Chair, has this applicant ever come before this Commission?

Ms. Sablas: No. Not that I'm aware of.

Mr. Artates: And he's existing and running his business as we speak?

Ms. Sablas: Yes.

Mr. Artates: Even though he didn't come before this Commission to present this?

Ms. Sablas: Yes. Yes.

Ms. Duensing: And he was requested, on March 22nd of this year, I had faxed him the historic district application as well as an SMA assessment application. On your agenda for today it says that I'm going to explain to you the SMA rules, but all I'd like to say about the

SMA rules is that Lahaina district is in the special management area and nearly every activity whether due to construction, or the marathons, fund-raisers for Sacred Hearts, all of these go through the special management area assessment process to get permits. And that's why when I saw this announced in the paper, I called him up and I said, you know, this is the way we do it, and then that was never returned.

Mr. Artates: So my question is, is he running illegally, then, if he didn't submit those permits to the County?

Mr. Dudley Akama: Until he submits those applications, we cannot say it's illegal or not. I think that maybe if there is any illegality, it would be in the definition of motor vehicle under Chapter 10 because I don't know whether an amphibious vehicle can qualify under that chapter. I have not looked at it. But the applications were left with him. And as far as enforcement, I don't think the Planning Department itself can enforce the lack of compliance with turning in those matters. He's apparently applied for the permits as far as amphibious use of the vehicle and using the ramp. But as far as tours through a historic district, that's in question.

Ms. Duensing: Well, the big thing here is the special management area assessment application is completed in order to determine whether a special management area permit, minor or major, is required. So without that, it's hard to make an assessment.

Ms. Sablas: Okay, we are taking public testimony. So, yes, okay.

Mr. Ke`eaumoku Kapu: So in spite of what he has right now, there's nothing that the County Planning Department can place upon him to, basically, shut him down for the time being until we get clarification on what's going on? I mean, let me give you one small, little example as pertaining to our ordinance that talks about sign designs. This is a ...(inaudible)...violation. It's a big sign that's going up and down in a historic district so, you know, if the SMA is a problem, then we need clarification on that; if the permits is a problem, we need clarification on that; and what about the sign design that basically was put together by community members, and put together by other affiliates to mandate something to make sure that these people are in compliance? What I see is they're not in compliance. So maybe the Planning Department or the County should do something about that based on a small, little discrepancy which will eventually build to a bigger discrepancy in the end. But look at the sign designs for one, the laws on the sign guidelines as pertaining to what this guy is applicable.

Mr. Akama: There's an ordinance concerning signs here, and if they're non-compliant, then they can be put on notice.

Mr. Kapu: They're not in compliance.

Ms. Long: They got signs all over the thing?

Mr. Kapu: Yeah, they got signs all over that monster.

Ms. Duensing: I think it's important to remember that you're going to defer action on this, though, because the applicant is not here to represent himself. You're supposed to be hearing what Mr. Maxwell's concerns are and taking public testimony on the item, not action, if you're deferring it.

Ms. Sablas: I think but the question was to defer it meant is it going to be the next meeting, deferred to the next meeting and that's an important thing that we need to decide, as a Commission, if it's going to be at the Lahaina meeting that's coming up in August in spite of the fact that we have two other agenda items that's going to take some time, but, you know, that needs to be addressed.

Mr. Kapu: But I just like say one more thing. I don't think we're taking action on this. I think that the action should've been taken on this prior to this – the agenda coming to our meeting in front of us. And my question is, does the deferral pertain to the letter that he sent not being adequately notified prior to this meeting? Now, if he was adequately notified, then he is basically requesting that the item to be deferred. He is doing the request. Are we also complying with for him to be allowed to defer this item?

Mr. Akama: I think he contacted staff and he was already informed that this matter would be deferred. But you're correct, Commissioner, that if you – if the Commission wishes to proceed in light of the fact that Mr. Cronshaw received sufficient notice, then it could do so except that I think he was already notified that this would be deferred.

Ms. Rotunno-Hazuka: Was he notified?

Ms. Duensing: I spoke to his attorney this morning and I told him that, you know, that you guys would have his request for a deferral, and that it probably wouldn't be a problem. We would try to reschedule it, but I did tell him also that we would allow Mr. Maxwell to make his concerns known at the public meeting, and to also take public testimony to those who took the time to come. And the attorney acknowledged that that was appropriate because, you know, you're all volunteers, and the members of the interested public had their right to testify if they had taken the time to come here.

Ms. Rotunno-Hazuka: Just quickly. I know you want to get on to the public testimony, but what is the requirement to inform the applicant? What's the requirement?

Ms. Duensing: The public notice of the meeting is posted six days ahead of time. And I had called him as soon as I got Mr. Maxwell's request. And the mixup was that he got the date

wrong. And then Suzie sent him, by registered mail, the notification of the meeting by sending the agenda. But because Monday was a holiday, he didn't get it till Tuesday, and he'd already talked to the attorney who had scheduled this for Friday, not Thursday. So it's one of those honest mistakes.

Ms. Rotunno-Hazuka: Okay.

Ms. Long: Madame Chair? In the interest of fairness, and because I have not seen this, any photograph, or anything, and I think it's important for all of us to see it, I would support a deferral. But I would also like to suggest that as individuals and who have seen it, we have the power to contact the Mayor's office or the Planning Department and request sign enforcement without waiting for a month to go forward with that.

Ms. Sablas: Thank you. Good point. Yes?

Ms. Duensing: And one other thing I do want to want to let you all know is that when I spoke to Mr. Sutherland this morning, he said that they did want to make a presentation to the CRC so that you could be better informed of what they're doing. I don't know what that presentation entails, but if you want a video or a site visit, you could plan for that.

Mr. Artates: Madame Chair? How long has this been in operation so far from the residents that are in the west end? How long has this operation been going on?

Ms. Duensing: March.

Ms. Sablas: The next we have is Patty, Auntie Patty.

Ms. Patricia Nishiyama: Aloha. Aloha kakahiaka everyone. My name is Patty – Patricia Nishiyama, Auntie Patty – a.k.a. Auntie Patty Nishiyama, Na Kupuna O Maui.

When Lahaina Honu came to Na Kupuna O Maui seeking our blessings, we asked the following: to meet with the fishermen and Mala boating community about launching at the overburdened small boat ramp, and, number two, to meet with the Cultural Resources Commission. They did neither. Na Kupuna noticed also that the trail followed by Lahaina Honu is not the same as we were told. They are cruising Lahaina Harbor generating with their huge, ugly vehicle more congestion. The sight of this Disneyland-like tour vessel traveling down Front Street is a disgrace to our community and the heritage and culture of Lahaina.

More boaters also have serious questions about the launching permit use. Permits for trailer boats at Mala are only permitted. Is Lahaina Honu a trailer boat? We don't think so.

My mo`opuna . . . Vierra, who is in school today at Kamehameha, was treated a ride on Lahaina Honu. She came home and called me up on the phone and said, "Tutu, I rode the Lahaina Honu today. And guess what? When we launched into the ocean, I turned around, and all the opala came off the boat." So Lahaina Honu said to us that they would wash the boat down before entering also. That was one of their promises that they made to us. So my mo`opuna said, "That is . . . Tutu, you know, put it in the ocean." So she knows about our culture. She speaks fluent Hawaiian for the last seven years.

So anyway, this is truly a Mickey Mouse operation that we don't want to see desecrating our historical town anymore. I thank you very much. Mahalo.

Ms. Sablas: Mahalo. Next we have Uncle Bill.

Mr. William Waiohu, Jr.: Aloha . . . William Waiohu, Jr. . . . long time. I'm 62 years old and seen Lahaina change. Today, we say Lahaina is a historic. To me, it's not historic because the people come up from the Mainland, they thought they own Lahaina. They can do whatever they like, but they don't care about the people who live there. And you have this big, damn, ugly thing traveling Lahaina Town, and you call that historic? They call that Lahaina Honu? You know, I think ...(inaudible)... Lahaina. That's a shame, because Lahaina is a historic name. And they're using it for benefit themselves to make money. ...(inaudible)... Honu -- what is honu? Honu is the creature that swim our ocean that once upon a time Hawaiians used to eat that. Today, we cannot eat that because of the...(inaudible)...tourists come here, they look at that, but us Hawaiian people, we use that for eat to survive, our body, to strengthen our body. This white people come here, they use the kind word. It's a shame. You know, to be a Hawaiian, it's a shame because of the culture. If you call Lahaina is a culture, then why don't they use the appropriate -- the regular name like amphibian? That big, damn, ugly thing. Excuse my English. But now I talk English. I like talk Hawaiian but I came here one time to speak Hawaiian, the Chairperson told me they cannot take my testimony because they don't understand Hawaiian. That is culture: speaking my language.

But that big, ugly, thing that they call "honu." And I listen to you guys, Lahaina Honu, I listen to you guys talking about culture. Lahaina is a cultural name. And they putting one big sign on top there that said, "Lahaina Honu" when that is an amphibian. That's one motor that running. That's not Lahaina. Lahaina is there. It's stay there already. So I wish you guys can do something about that. Stop these guys from running that big, ugly thing in Lahaina Town. And not only that, they traveling up to Lahainaluna, and that is wrong. Yeah, if they get accident with somebody else, who's going take the blame? Not them. Who going suffer? It's the family that they hurt. So I thank you.

Ms. Sablas: Mahalo. Next to testify is Dorothy Pyle.

Ms. Dorothy Pyle: Good morning, everyone. My name's Dorothy Pyle. Some of you know me. Some of you do not. So I would like to just say for two seconds that I've had a lifelong interest and involvement in historic preservation, and I'm currently a professor of Hawaiian history at Maui Community College, and I've served for five years on this Commission, three years of it as the Chair, and have done a lot of other things as well.

There are a few things that I really want to say. Lahaina is a national landmark. And while some of us may not agree, and I certainly pay deference to all the Hawaiians who are here that as a national landmark, it should emphasize the Hawaiian history. But that's what it says. But it does have an emphasis. And is it truly appropriate to have a World War II vehicle or whatever those things came from running down the streets of a historic district that its emphasis, correct or not, is in the 19th Century? So I think that there in itself is the appropriateness that needs to be considered for the whole concept.

But there are a couple of other things that I also would like to point out. I really sat here and kind of shocked that this has been going on for five months and that no one has seen fit to actually turn in a permit for this, an application for the SMA or the historic district. And while I know that the Corporation Counsel says that we cannot decide whether this is appropriate or not because we don't have the proper applications, well, heaven forbid, I should just have a piece of property, and get to go build whatever I want on it for as long as I want, and as long as I never apply for a permit? It's perfectly okay and you can't decide whether it's right or wrong? So I really feel that there needs to be a whole lot more -- I don't know how to even put it -- how about some enthusiasm, you guys, to protect what you've got before this kind of stuff continues to happen over and over again. So I would really encourage you to study what your obligations and your abilities are as a Commission. And in fact, perhaps there should be a workshop for all of you so you understand your relationship to the historic districts perhaps a little better. I know it's a complicated issue and I really encourage you to do that because that's the only way that these things are going to be prevented in the future. Thank you.

Ms. Sablas: Mahalo. Words of wisdom. Appreciate it. Okay, next we have J. J. Elkin.

Mr. J. J. Elkin: Madame Chairman, my name is J. J. Elkin from 505 Front Street. I would like, first of all, declare my interest in this. I have no interest in this particular matter except that these people have an office in our complex, the lease of which lasts for further five months, just to clarify it. So I'm not here for monetary or other interests. I have no interest in this. However, what I am here for is to give some enlightenment to your decision-making.

I think that with all due respect to the kupuna and the people who brought this matter forward, I think it's also fair to look at another side of this, and that is the following: it has been pointed out, and I think it's generally acknowledged, that Lahaina is a historic district,

and what we want to do is encourage the further -- furtherment of understanding of the history of Lahaina and the general area. And I think we all agree on that.

There has been objection. If I could boil it all down to one thing or a couple of things? First of all is a question of legally, whether they met every requirement. I cannot give an opinion on that other than to say that they have certainly tried, as far as I know, to go through every permitting process. It has taken them a great deal of time. And they've spent over a year just getting all the various permits to which they thought they had to do. And I know that there was goodwill on their part to try to meet all the obligations, whether or not they have, I cannot comment on. So that's one issue. And you'll have the lawyer next time and you'll be able to discuss that.

The second issue is really the question. I think the real issue here is it's considered ugly. And, therefore, because it's ugly, it's some type of affront to the culture. Well, I'd like to give another perspective. In my view, to have cars going down Front Street with the smoke, with the pollution, with the traffic jams, with big trucks, and buses, and all the different types of vehicles going -- Incidentally, trucks with advertisements on their sides telling you all about them is something -- If you want to be scandalized by Lahaina and what's going on there, I think it's very unfair to pick on one particular item. Let's be frank. There's no relationship between what's going on in Lahaina today and historic preservation. So I guess I object to the fact of singling out one thing. I think it's all ugly. And I think the proper thing to do eventually in a historic area is to clear Lahaina of vehicles. What should happen is it should be some type of pedestrian mall. We should have parking. You know, it's such a traffic jam. It's such a mess there. We should have parking mauka of the highway. Charge them a dollar or two, and have some type of vehicle that comes down Front Street and deposits people, some type of nice-looking vehicle. So if you want to get into that type of argument, you know, I think that's the proper emphasis that this Commission should look at in terms of Lahaina. I think the whole thing's a scandal. And I guess as I say my objection is singling out one thing. If this is going to be the rallying cry to get something properly done with Lahaina, I'm all in favor of it. But what I'm not in favor of is picking on one particular item and these people who have tried to do what they think is appropriate.

Now, the other thing that I think is important to note here is that when we look at an issue like this -- I agree very much with the lady, Ms. Long, who said that what you should really do before making any decision is see what it's about. Go out, get on the vehicle, and see what it's about.

Lastly, and this is very important, and it gets back to the mission of this particular group, look, most people who come here, the tourists, we've got in round numbers, 135,000 permanent residents, and we've got 2.3 million tourists. Of the 2.3 million tourists who come here, how many people get any exposure in any manini way to culture? Virtually,

nobody. The golf, the beaches, all the various things. They get very little exposure. What's their exposure? Well, there's a luau so there's some exposure there.

Ms. Sablas: Sorry, you need to wrap up, yeah.

Mr. Elkin: Pardon?

Ms. Sablas: You just need to wrap up ...(inaudible)...

Mr. Elkin: Yeah. The last point. There's a luau. There's the walking tour of Lahaina. But what the Honu does is in a manini way, in a fun way, give some type of exposure to what's going on that people would otherwise not have.

And the last point I would make is that they operate in Kapalua, Kaanapali, and Lahaina, and they past through. They're basically, as you will see when you take the tour, mostly an amphibious type of tour which some little bit of culture that the tourists can get that they otherwise would not get.

So all I'm saying, thank you, Madame Chairman, is that before you make your decision, let's be fair about it, let's listen, and let's not crucify these poor people just because we have some other issues that are important to us. Thank you.

Ms. Sablas: Mahalo. Thank you. Commissioner Perry? I'm sorry, J. J., we have a question for you.

Mr. Artates: J. J., you're saying that the business is operating out of a section of where your building is?

Mr. Elkin: No. Here's what happens: they have an office. The office is for accounting and, you know, all the various things. I think they answer the telephones, etc. Okay? The vehicle is housed in an industrial park which is opposite the Lahaina Cannery. You know, there's an industrial park up there. That's where they keep their vehicle. Okay, so it's well away from historic Lahaina. That's where it is. What they do is they take the vehicle and they start in Kapalua. They pick up at the hotels there. They also go to Kaanapali and they also go to Lahaina. So Lahaina is incidental. When they go through --I've been on the tour once -- when they go through Lahaina, they talk about Lahaina and a little bit of the history. Then when they go in the water, they talk about the animals, etc., etc. That's basically what happens. So it isn't just a Lahaina tour and it isn't just centered in Lahaina. They use the vehicle to pick up at these various hotels. And I think, you'll have to ask them, but I think most of the people who go on the tour are from these hotels which are not in Lahaina, although I guess if you consider Kaanapali Lahaina, but on the strip there, the hotel strip, I think that's where most of their people come from. They don't have any operating -- they

don't operate out of Lahaina, sorry, out of 505 except the fact that they happen to have an office and, as was pointed out, they may be leaving there shortly. So as I say, that's all I know about that.

Ms. Sablas: Thank you. Next to testify is-- I'm sorry?

Mr. Kapu: Before we go to the next testifier, I just like maybe possibly make a comment to just the Board and also some of the people that came on the last testifier. Based on the fact that, you know, you mentioned a lot about, you know, not just singling out one person, yeah. The bottom line it boils down to like certain fiascos that happened over there. That's the concern based on the Commission's responsibilities of protecting the integrity of a place.

Now, as pertaining to what we need to make judgements on is when the applicant's come forward -- or if they do come forward, then it's up to us to make a judgement as pertaining to whether or not they are doing the right thing or not doing the right thing. But for me, myself, I feel it's unfair to, basically, clarify the fact that if we're going to do something, let's not single out a single individual, and let's look at everybody. I would love to have Love's Bakery inside here and tell them you get one ugly sign that's going down Front Street. I would love to also at the same time -- the fact of the matter is that why don't we just shut down the whole Front Street and make it a pedestrian? You know, I like that. But we're dealing with the matters at hand. Once they come up to us one at a time individually. And we can only, as a Commission, can only take on these matters one at a time. And I feel for myself, I don't know how you feel, about being pressured on -- being faced on these so-called single agendas to be slapped in our face as pertaining to us unfairly deciding that is unfair and only singling out an individual. I'm totally -- I strongly feel against that.

Ms. Sablas: Thank you, Commissioner Kapu. E kala mai, I was looking at two different sign-up sheets. So for Lahaina Honu, did we call everybody who signed up? So is there anyone else who wanted to testify on this subject?

Ms. Lucienne de Naie: Thank you, Madame Chair. My name is Lucienne de Naie. I don't live Lahaina Town but I happen to have a copy of the proposal that was put in the 1960s to realize the dream of making this a historic district. And I just have to say if you read that and the noble aspirations that the folks had when they worked very, very hard to try to move Lahaina from a sleepy little town into a place that was recognized for both a whaling and a Hawaiian cultural attributes -- for both the whaling era and Hawaiian cultural attributes, and you kind of look at what the place has become today, I just want to say, I agree with Ms. Pyle and the folks from Na Kupuna. We need to raise the bar a little bit. The point isn't to just say, well, everybody's doing it, so, you know, we can't say these guys can't. Let's start raising the bar. That's all I have to say. Thank you.

Ms. Sablas: Thank you very much. Commissioner Long?

Ms. Long: Thank you. I'd like to request also, when this gets to our agenda, and I'm talking now as a former Planning Commissioner, I'm horrified by the apparent disregard of the coastal zone management area rules. The fact that these people have not submitted an application so they're not subject to being ruled upon. Could I please request a memo from Planning Department staff on the status of this particular applicant and what Planning Department would require of them in the special management area?

Ms. Duensing: I'm not really sure how to respond to that. And I'm not really sure what the effectiveness of a letter from Planning, from me would be.

Ms. Long: No, no. Not ...(inaudible)...

Ms. Duensing: Because -- unless they want it from the Director.

Ms. Long: Yeah, I'm saying that our function is to advise the County government. It may well be that in the process of SMA consideration, this would go, not just for a minor SMA permit, it might have to go to the Planning Commission. The Planning Commission would then require advice from this Commission on what we feel about this thing in the special management area and the historic district. So I would like to know how -- because Planning seems to have ignored it until now. Not you. Not you. I'm talking about upstairs there, not across the street. And I would like to know what they plan to do about this and will we be advising them on it.

Ms. Sablas: So your request is to have a letter?

Ms. Long: I want to hear something from the Director or the Deputy about what they're going to be doing about this: where it is now, what its status is in the special management area review process, and what criteria, whatever, and are we going to be advising them. Thank you.

Mr. Kalalau: Madame Chair, I strongly support Barbara's request. It's kind of like we need to know -- at least have some kind of information before we have our next meeting with the owners of this business or the people of this business so that we're not kind of in the dark. It's kind of hard for us to make, you know, accurate decisions or good decisions just getting information today either from the applicant or from the people that is testifying today. This is why I feel strongly in support of Barbara's request because in order for us to make good decisions, we need to be aware of what has happened, or what have transpired, whether permits are being met, and whether they're complying with the SMA. All these stuffs is very important to this Commission.

Ms. Sablas: Commissioner Lisa?

Ms. Rotunno-Hazuka: Yeah, I agree. I think we do need a letter. There's a couple of questions that I have that, hopefully, can be clarified. One is, you know, who requires them to do the SMA? I know a lot of times, you know, I have people or clients that are waiting on a water meter because they have to comply with the SMA rules, and that's a minor undertaking. I mean, this is a major undertaking. So how can they operate without an SMA? Who are the permitting agencies? It seems like there's a fair amount of people they need to go before, before they can operate. And then we have some gray areas like the trailer, signage. It seems there's several different agencies or things that we need to look at to see if they are in compliance with those. And, again, it seems like it should've come before us because we have things much less major than this and they come before us, and so I think we need a lot of clarification on those items. And, again, you know, with going with Ke`eaumoku said, you know, the singling out, a lot of times when we look at items, we always think of if we vote on this, how is it going to affect other people, you know, and we did that with the car show. Okay, if we let these guys do the car show, then we're going to have more applicants come in because we let them do that. So we do have to start with one, and, you know, go down the line.

Ms. Sablas: Okay. Now, this item is being deferred. So point of clarification, we have several suggestions coming from the Commissioners. One is a letter. One is to get more information before the next meeting. So would that be all in compliance?

Mr. Akama: Don't forget the site visit that's been requested.

Ms. Sablas: I'm sorry, and the site visit. These are all important before the next meeting. So should we talk about when this meeting – when it should be on the agenda, I think, at this point so we can move forward?

Ms. Rotunno-Hazuka: What are our two big agenda items next time?

Ms. Duensing: The Banyan Tree and Pioneer Mill demolition.

Ms. Rotunno-Hazuka: And what pertaining to the Banyan Tree? Is it just the Banyan Tree in general or we have --

Ms. Duensing: Art fairs.

Ms. Rotunno-Hazuka: Oh, the art fairs, still?

Ms. Sablas: It was previously discussed at our meeting.

Ms. Duensing: It was deferred from March or April, I think, one of those, yeah.

Ms. Rotunno-Hazuka: With the two opposing -- two groups.

Ms. Sablas: Right

Ms. Duensing: It was deferred from our last Lahaina meeting.

Ms. Rotunno-Hazuka: Okay.

Ms. Sablas: So --

Ms. Rotunno-Hazuka: It seems appropriate. I mean, we're there.

Ms. Duensing: I just wanted to caution everybody that both of those items typically have a lot of public testimony as will this item. So will you be able to get through three items of that nature on your agenda in one day? That's my caution.

Ms. Sablas: All three are very important issues in Lahaina, and it's in an area where, you know, it affects the community, and ...(inaudible)... the majority of the Commissioners, whatever you say, but it makes sense to us ...(inaudible)... the site visit, let's talk about it, about the time, because I think it involves perhaps maybe an hour. I'm not sure. I'll just guess. A tour would last more than that. Maybe ...(inaudible)... time so --

Ms. Rotunno-Hazuka: I think we -- if we know what type of presentation they give us, I mean, certainly, we can look at this vehicle, but if we have to go on the actual tour, no. Also I think if it's in Lahaina, then the fishermen can come forward. So I would like to hear, you know, their views, and I think we should do it. I know it'll be a long, long meeting, but maybe the next meeting will be short.

Ms. Long: I'd agree with that. It would give us an opportunity to see the vehicle without having them drive it all the way over here, and it would give an opportunity for the people who are concerned on the west side to participate more easily. Yeah, if it's going to be a long meeting, it'll be a long meeting.

Ms. Sablas: ...(inaudible)...

Ms. Ann Cua: Could I make a comment? If you want to do the site visit, because I know this Commission has done that before, you do like a site visit, maybe schedule that at 9 o'clock, and then maybe your meeting could start at 10:00. I don't know. Starting it at 9:30 might be rough.

Ms. Duensing: This is -- the other caution with this is that Pioneer Mill also requested a possible site visit. So there's only so much you can get done in one day.

Ms. Cua: Yeah, I, you know, and there's a small, little sign item that -- but that seems like a lot for the day, and will we have a quorum up until the afternoon. That's maybe something you guys can talk about now because those are all heavy items that could take, you know, just with testimony alone, hours of discussion.

Ms. Duensing: Could I make a suggestion referring back to Mrs. Long's first request for figuring out what this thing is and what it does is maybe we could just request that part of their presentation be a video of this thing going down Front Street and, you know, whatever it is they do so you could keep it all at your meeting location?

Ms. Long: I have a better one. Suppose this vehicle takes us from a meeting point up to the Pioneer Mill?

Ms. Duensing: I don't want to have to coordinate that.

Ms. Long: Okay. Just a suggestion. No, my concern is not a site visit. I don't really care about riding down Front Street or whatever on this thing. I want to see what it looks like in person. They can easily do that by parking it outside the community center, the civic center. So, yeah.

Ms. Cua: Another option might be that you could also on your own, one at a time, you know, if you're in Lahaina, take a look at it.

Ms. Sablas: Okay. Good suggestion. Again, I'd like to just -- the next meeting, again if it's August -- what is the date? I'm sorry. August 5th? Is that the first Thursday? Okay. Because it's a very important meeting and because we know it's probably going to last the whole day, can I get at least an idea around here because we have a full Commission today? You know, and we would have the commitment from this Commission to fully be there at our next meeting, you know, and then if there are some emergencies or whatever, that we can devote the whole day so we can conduct business. Lisa?

Ms. Rotunno-Hazuka: Yeah, I'll be there.

Ms. Sablas: Yes? Yes? Uncle? Yes. I'm yes.

Ms. Long: Yes, ma'am.

Mr. Artates: Yes.

Mr. Kapu: Yeah.

Ms. Sablas: Okay. So we got the commitment from this Commission that we're prepared to sort it out.

Ms. Cua: Even if it means dinner?

Ms. Sablas: Even if it means dinner. Lunch and dinner. You know, this is very important to the Lahaina community and of Maui, and we're committed.

Mr. Kapu: Do we have the area?

Ms. Duensing: I just asked Suzie about that and it's reserved till 4:30, so she's going to have to call them and double check that it can go later than that.

Mr. Kapu: Civic center?

Ms. Duensing: Yeah.

Mr. Artates: Madame Chair? I just have a question. From this time until the meeting happens, who enforces whether it's legal of him operating since March until our next meeting? It's like you commit the crime until you get caught. I mean, that's what I'm saying.

Ms. Sablas: I defer to counsel for that question.

Mr. Akama: Well, it hasn't been established that they're operating illegally. So I don't know that the Planning Director would want to take a position of ceasing and desisting further operations until the SMA application is submitted or not, but I will discuss it with Mike or whoever it is that is in charge of this process and they can take appropriate administrative action if they feel it's, you know, if it is in order. Until then, I have to say that they have to just continue.

Ms. Michelle Anderson: Madame Chair, could I testify?

Ms. Sablas: On this item, yes, ma'am.

Ms. Anderson: Yes, please. We're all shocked. I mean, it's very clear that the coastal zone management act is very clear that you have to have an SMA permit before you go forward with any planned development. And so if they don't have the permit, they're in violation, and there should be a stop work order issued until they get the permit. Otherwise, why are you guys here? Why is the Planning Commission here? Why do we

have rules and regulations if people can just go and do whatever they want and there's no penalty? This is outrageous. And it's outrageous that counsel is not saying they need to stop work until they get a permit. Sorry, but --

Mr. Artates: But I think it's stop business, it's not really stop work, yeah. It's not a really planned development. It's a business operation.

Ms. Anderson: They're in a historic district. They're affecting the quality of this historic district. They have not come to you for the appropriate recommendation and approval. They have not gone to -- Dawn said she sent them an application back in March. They're thumbing their nose at County authority and nobody's doing anything about it. Hey, buddy, everybody, now is a free for all. Just come and do whatever you want. This is outrageous. You guys are here to protect the public interest. And the Planning Department is here to protect the public interest. The coastal zone management act is there to protect the quality of our coastal zone. We got DUKWs now. Next thing you know -- I mean, let's just turn Lahaina into a circus for the sake of the almighty dollar because no one's going to do anything about it.

Ms. Sablas: Thank you. Commissioner -- yes?

Mr. Whelchel: Madame Chair, I finally agree with her. She made a good point. When a building -- when there's an application for a new building, they have to submit certain applications, certain documents. And if they don't send them, they don't complete the documentation, then they're red-tagged, and they're fined. They're given so many days before the fine starts. Only this thing, this DUKW has fallen through the cracks because it isn't sitting there with -- under observation. It moves around. And building inspectors are the ones that discover the violations, that's their job, and there's no building inspector looking at that. So it's just kind of fallen through the cracks, in my estimation, but it does -- something does need to happen.

Ms. Sablas: So again, I mean, it's an interesting point. The issue we're discussing is, can something be done now?

Mr. Artates: That's correct.

Ms. Sablas: And this is what we're -- you know, are we the body to do it?

Mr. Artates: Well, that's the question I asked Corp. Counsel, and he's going to follow up on that with the Planning Director.

Mr. Kalalau: Well, I think we're going to have to make a motion here. I think this is a very appropriate time, right now, being that this is a new fiscal year and we have a lot of new

people on this Board. I think it is our time to make that stand and send them back upstairs. You know, it's been dumped on us, you know, so let's make a stand right here. But we need clarifications from Corp. Counsel because the applicant is not here today whether we can do a motion on, like Lon was saying, complying with a building permit or a business permit. So we need some clarification from Corporate Counsel right now whether we can make that motion.

Mr. Akama: Your role is advisory. And as much as we've had public testimony today, strident public testimony, about this matter, this was not brought to my attention until this meeting. I just want this Commission to know. And I think there is a question as to whether or not this falls within the definition of development, and I'm not so certain that it does. And what I said earlier was correct is that I will take it up with the administration. Now, whether there's administrative authority by the Director to cease and desist on the basis of non compliance with the request for an SMA application, I'm just not sure. So I'm not prepared to give you a legal opinion, yes, that we can go ahead and stop it. You can move to have the -- to express the Commission's recommendation, if you wish, to the Director, and then it will be taken up appropriately.

Mr. Kalalau: Okay, what you're saying that it's appropriate for this Commission to make a motion to cease this thing coming from the majority of the Commissioners?

Mr. Akama: Certainly. Certainly.

Ms. Sablas: Okay.

Ms. Pyle: Excuse me, Lori. This is Dorothy Pyle again. I just would like to make a comment very loudly. Your role is advisory to the County Council, to the County administration in some areas. In the historic districts, which Lahaina is a historic district, you are the decision-making body. You are not only advisory. Permits come before you and you make the decisions. Please remember that. Thank you.

Mr. Maxwell: Madame Chair, if I might? Kahu Charles Maxwell. You know, it's really upsetting to sit back here and see the Corporation Counsel is not with it. He don't know what is happening. And a lot has been violated. And this is why Hawaiians go out and protest. We were going to plan a protest but we figure we come here to let government help us out so we don't have to go protest. If you folks cannot do something about it, then we'll have to. And that is the plight of the Native Hawaiians. They have to come and protest every time that something is violated because government will not happen, will not help them out.

Ms. Sablas: Mahalo. Okay. Commissioners?

Mr. Kalalau: Yes, I think I'm cleared about the Corporate Counsel's decision on, as a Commission here, that we have that right to make a motion and to move it forward to the, I guess, to the Planning Director. This is my feelings. And however everybody else's feelings here are, I'm going to try and make a motion that we -- do we ask or do we -- do we -- do we say that as Commissioners of the Cultural Resources Commission that we would like the Lahaina Honu project to stop operating right now until they meet all the proper SMA requirements and the permitting requirements?

Ms. Rotunno-Hazuka: Second.

Ms. Sablas: Okay. A motion has been made and seconded. This is a very important motion. So all in favor, say aye. Do I have to say--? Oh, I'm sorry. Discussion?

Ms. Long: I certainly support that, and I'd like just to add not only SMA requirements and permits but approval from the Cultural Resources Commission before they can start operating again.

Ms. Rotunno-Hazuka: And that's keeping in mind that we know exactly every permit and every agency that they need to go before. Because remember Dawn was saying that they have applied to everything that they think they need to apply to, but who is telling them you've got to do this, this, this, and this? We just need to make sure.

Ms. Sablas: Further discussion? Do you all understand the motion? Yes, sir?

Mr. Kalalau: I just want to ask my fellow Commissioners if we should put a time and a date on this --

Mr. Whelchel: To take effect?

Ms. Long: For stopping --

Mr. Kalalau: For get our answer back to us, or whether -- how soon they can -- this project is going to be stopped?

Ms. Long: Stop immediately.

Mr. Whelchel: It's meaningless without a time restraint.

Ms. Sablas: There is a motion that it be immediately ceased.

Ms. Long: Immediately, stopped, yeah.

Ms. Sablas: That's what I understood and that's --

Mr. Kalalau: And what I'm trying to get at is we want to know how immediately we can get replies back or actions been taken.

Ms. Sablas: Can I have an answer from staff on that?

Ms. Cua: Well, I think your direction is for a letter to be prepared from you to the Planning Director and the word is "immediately," to stop immediately, and that's something that he would discuss with our enforcement division and it would happen.

Ms. Sablas: Immediately, after this meeting today, right?

Ms. Cua: Yeah, I mean --

Ms. Sablas: Okay.

Ms. Cua: We'll discuss with him today.

Ms. Long: Okay, I'd like to clarify the motion a little more, and, Lori, you might want to restate, but I think that we have the power to say that they should immediately stop all action within the Lahaina National Historic Landmark and Lahaina historic districts, I don't care if they do it at Kapalua --

Mr. Kalalau: Right. Right.

Ms. Long: Until such time as they have met all the requirements: Federal, County, State and Cultural Resources Commission, immediately.

Ms. Duensing: May I ask a question?

Ms. Sablas: Sure.

Ms. Duensing: And just getting back to what you have discussed before in a letter to the Director, which was requesting clarification on what they needed, is this going to be part of the same thing, or is this going to be two different efforts, or are we changing efforts?

Ms. Long: That's a separate issue in view of the fact that they're not going to shut down without a fight, and they're going to come to us, and they're going to be on our agenda, and we're going to need to hear from the department on whether this thing constitutes a development, and whether there's some legal opinion on that. If the department believes they are not in violation, we're going to have to come up with our own opinion on that.

Ms. Rotunno-Hazuka: Dawn, yeah, I think it's separate. I think that we are making this motion under the assumption that we know they needed to come before us. We don't know whether they needed an SMA. We don't understand if the trailer boat, you know, those kind of gray areas. So we want it to stop until we get clarification on those issues.

Ms. Sablas: Okay? Are we ready for the vote? Do you want to restate the motion just so we all understand that the CRC is -- the motion has been made that we write a letter -- have Planning -- I'm sorry -- advise the Director to -- that CRC would like to immediately stop all action within the Lahaina historic district until such time as the Lahaina Honu have met all of the requirements from State, Federal, County, and the CRC. Okay. Ready for the vote? All in favor? It's really important. I want everyone of you to signify by raising your right hand, please.

The motion was then put to a vote.

It was moved by Mr. Kalalau, seconded by Ms. Rotunno-Hazuka, then unanimously

VOTED: To advise the Director that CRC would like to immediately stop all action within the Lahaina historic district until such time as the Lahaina Honu have met all of the requirements from State, Federal, County, and the CRC.

Ms. Sablas: Motion carried. Thank you very much, Commissioners, and thank you very much public members. I'd like to call a break before we go to the next agenda. Mahalo.

(A recess was then called at 10:30 a.m. and reconvened at 10:50 a.m.)

Ms. Sablas: Aloha, everyone. I'd like to reconvene our CRC meeting. Okay. I'd like to continue on. We're going to be just changing the order again, if it's okay with the Commissioners, and we're going to move on to item three and come back to the Lahaina Small Boat Harbor. Is that okay, everyone? We're just going to move on to item three and come back to -- while she's here. Ann is here. She's going to, you know, so that she can, you know, just in the interest of time, and she can address this.

Ms. Cua: Are you ready?

Ms. Sablas: Yes, I am. We're all ready.

- 3. COMMISSION CONSIDERATION OF A LETTER FROM SHPD TO SEIBU MAKENA RESORT DEVELOPMENT dated March 15, 2004. The Commission may consider whether to comment or respond to SHPD's letter. Public testimony will be accepted.**

Ms. Cua: Madame Chair, members of the Commission, just to give you a little bit of background information on this item, the Commission has been asking that this item be placed on the agenda. And the item, in particular, is a letter, which you all have a copy of, I know you had gotten it before but we included another copy in your agenda, a letter from the State Historic Preservation Division dated March 15, 2004, on the Makena Resort change in zoning application. And I won't read the whole letter; I'll just kind of summarize.

Initially, back in 2000 when we sent the change in zoning application to agencies for review, we did get a letter back -- actually, we sent it out in 1999 -- we got a letter back from the State Historic Preservation Division basically saying that the change in zoning application had no effect on significant historic sites. That's a letter we had on file. That's what we used as part of the Planning Commission's review of the change in zoning application. The change in zoning application was sent up to Council in 2000.

What happened since then and according to the March 15th letter, SHPD is saying since their 2000 review comments, they, I guess, was approached by the Council Planning and Land Use Committee as well as numerous citizens regarding the rezoning application. So they apparently considered the opinions of the people that had called them, and they took a look at the issues again with regard to the change in zoning application.

And what they're saying is that there was a bunch of earlier work done within Makena Resort that didn't meet the current standards, and, you know, we all understand that the standards keep changing, and so they are saying that, presently, the earlier work that was done did not meet the current standards of investigation, and they cite -- they cite the sections of the rules.

Another item they commented on was that some of the sites that were recorded in more than one investigation -- was recorded in more than one investigation, therefore, they were issued duplicate numbers identifying the sites. And so SHPD is saying that, currently, their data base doesn't accurately reflect the archaeological record of the area. So based on that, they revised their original comment letter on the change in zoning application saying that they believe the requested action, if approved, would have an effect on significant historic sites. And so they offered four comments in order to mitigate any effect on significant historic sites, and they asked that these comments be made conditions of the change in zoning application. So that kind of summarize the letter.

The Council conducted -- the Council's Planning and Land Use Committee conducted meetings in Kihei, a series of meetings. At one of the meetings -- I can't remember which meeting it was -- but at one of the meetings, the applicants' archaeologist came up and took comment on this letter indicating that, basically, the comments that SHPD was expressing, they were intending to comply with. They were intending to take all the past surveys that had been done and kind of put it all together.

Anyway, in formulating conditions in various areas, and the area of particular concern to you, is the area of historical and cultural resources. And what I've passed out at today's meeting are the proposed conditions by the Planning and Land Use Committee.

The Planning and Land Use Committee passed the change in zoning out of committee. And what's happening right now, which is still what's happening from when I reported to you months ago, is that the conditions are being reviewed by Corporation Counsel, Planning Department, Parks Department right now because there were some conditions that needed work on some of the language, not content work, just cleaning up of the language, if you will, from a legal perspective. And with regard to Parks, clarifying exactly what was said at the meeting. And so my understanding, in talking with David Raatz this morning, is that the conditions that are still not yet finalized are the conditions with regard to the Parks Department. The Parks Department is still working on the language of the conditions, and again, not the content, per se, just clarifying the language -- words here and there.

So what I passed out to you are conditions 14, 15, and 16, which basically are found on three pages: pages 3, 4, and 5. I want to point out that condition no. 16 is, for the most part, verbatim of what SHPD is outlining in conditions one through four. With regard to condition no. 4, if you look at condition no. 4, and you look at item no. D on page 5, are you all there? Item no. D on page 5? Basically, item no. D is like the first half of item no. 4. The Council didn't incorporate the reason why this step was needed. If you look at item no. 4, it says, "This step is needed because . . ." They didn't include that part in the condition, but pretty much everything else, item A, B, C, and D is verbatim except for that item, that second part that I mentioned of item D, to what is in SHPD's letter. The other conditions, conditions 14 and 15, came from the Council.

So, as the agenda discusses, the Commission may consider whether to comment or respond to SHPD's letter. If you wish to do a letter to the Council commenting on some of these conditions, maybe some of the language of it, we would address that letter to Councilmember Wayne Nishiki because the item has not yet gone back to full Council. So I spoke with David Raatz this morning, and he informed me that, you know, if you do decide to do a letter, that's who the letter should be addressed to.

So that concludes my little background information on this matter unless you have any questions.

Ms. Sablas: Questions from Commissioners?

Ms. Long: Madame Chair, I would like to thank the department for rethinking it's so-called protocol, and allowing the Cultural Resources Commission to discuss this very important

matter and deliberate on it even though it is still up there on the ninth floor at the Council. I appreciate that.

Ms. Cua: And again, we never intended to not have you look at it when you asked for it. We were just waiting for it to be more in a final format. And like I said, even when I come before you today, I think the CRC -- or the conditions that pertain to the CRC, I don't believe are going to be modified before it goes to full Council. They may still be modified when they get to full Council, though. But we were trying to be able to have all the conditions be reviewed by the other departments and have that concluded before we brought it to you. But, based on last meeting, we decided to bring it before you today.

Ms. Sablas: You want to comment? Any comments on the conditions?

Ms. Long: Do we hear testimony?

Ms. Sablas: Okay. Shall we just hear public testimony then? Okay, I have here the testimony sign-up sheet on the agenda item of the Makena Resort. So first on the list is Patty Nishiyama. And, again, I remind everyone in the interest of time, we would like to keep it to three minutes on this agenda item. And once you testify, pau. Okay? Thank you.

Ms. Nishiyama: Aloha, again. My name is Patricia Nishiyama. I represent Na Kupuna O Maui. I am here for the sacred site of that Makena. We are honored to be the advisors and being guardianship of the sacred sites at Makena. The number of kupuna available to our elders like Uncle Charlie Maxwell, Uncle Leslie, and many more will participate with us. We also have Na Kupuna O Hawai'i Nei. Please be assured that these treasures will be protected by Na Kupuna O Maui and Na Kupuna O Hawai'i Nei. We have accepted this wonderful kuleana and we have plans for educating our children and our mo'opuna. We will form a school for the young generation of the sacred sites. And Na Kupuna is one body of authority, and that we are strong, we are well organized, and we are many. So far we have met with Mr. Aki and Mr. Roy many times coming together to make a plan. So we're happy to be a part of this preservation site. Mahalo.

Ms. Sablas: Mahalo. Next on the sign-up sheet is Uncle Charles.

Mr. Maxwell: Kahu Charles Kaluawehe Maxwell again. Thank you, Madame Chair, members of the Commission. I've been involved with the Makena land for when Seibu first -- was in Seibu's hands. In 1966, my wife and I sued. Through Life of the Land, we sued Seibu to protect the sites. And throughout the many years, they have done so. And I am totally happy that the Na Kupuna and the kupuna will be the caretakers of these sites because it's only proper. They know the right protocol, spiritually and culturally, and along

with myself and Leslie Kuloloio, we'll make sure that all the proper buffer zones are on the sites, that it'll be protected forever for the future generations, not for us. Thank you.

Ms. Sablas: Mahalo. Next we have William. Uncle Bill?

Mr. Waiohu: You know, I no was going to talk about the Makena one, but --

Ms. Sablas: Get your name, though, Uncle.

Mr. Waiohu: I know. I get my name on top there. I was going to save that for the Lahaina Harbor. But anyway, always remember Keone`o`io all the way down to Makena and Honu`ula, that place used to be a war place. So I don't know how many heiau get. But anyway, like Charlie and Patty said that the Na Kupuna is on the kind -- well, you know, they going take care. We going take care. But we really gotta maka`ala our maka. Thank you.

Ms. Sablas: Mahalo.

Mr. Waiohu: Oh, William Waiohu, Jr.

Ms. Sablas: Next to testify is Ron Sturtz.

Mr. Ron Sturtz: Good morning, Madame Chair, members of the Commission. Aloha. My name is Ron Sturtz. And this morning I'm speaking as president of the Maui Tomorrow Foundation on the Makena issue.

You've been given the March 15th letter, and it's been referred to by Ms. Cua, and what you might not be aware of is this is in response to a letter from Maui Tomorrow on March 3rd along with other agencies and citizens asking to reconsider their prior findings of no historic impact. We copied you on that letter, but I've heard that you haven't gotten it. Is that true?

Ms. Duensing: It was included with the March handouts.

Mr. Sturtz: So you have received that?

Ms. Duensing: Yeah.

Mr. Sturtz: And then we also responded with a March 18th letter which -- I'm sorry, do we have an answer on that one? Do you have the March 3rd letter?

Ms. Long: I couldn't find it.

Mr. Sturtz: Does anyone here have a March 3rd letter copy that we provided?

Ms. Sablas: Did any of the Commissioners receive -- remember having a copy of a March 3rd letter from Maui Tomorrow in the handout packet?

Mr. Sturtz: May I? I have --

Ms. Long: Could we please have that ...(inaudible)...

Ms. Sablas: You have copies handy?

Mr. Sturtz: Sure.

Ms. Sablas: Do any of you remember receiving this letter? We are copied here, the Maui County Cultural Resources Commission. Do you remember? You remember receiving this in your packet?

Mr. Kapu: It was part of one of our meetings, but we deferred. It was not part of our original agenda.

Ms. Sablas: You remember seeing it?

Mr. Kapu: I remember seeing it.

Ms. Sablas: Okay. Sorry.

Mr. Sturtz: So the reason for our letter was because back in 1999, 2000, the applicant said there was -- this was simply a papered application, there was no development going to go on, and we pointed out that au contraire, there seems to be some development going on and planned. And so we asked them to take a fresh look at this, and they, in fact, did.

You're being asked today to look at their March 15th letter, and to adopt or respond to it. May I suggest humbly that you have the opportunity to look at that letter as well as make your own determinations and decisions irrespective of that letter?

We wrote a letter on March 18th which I trust you have a copy of where -- do you have a copy of that? Yeah. Okay, fine. Where we raised a couple of points where we feel the response of SHPD was not quite adequate, and I'd like to address just two of those points right now. One has to do with the -- attaching the conditions to the zoning approval rather than making a determination ahead of time as to what's appropriate. And the second is, what does it mean by an independent archaeological consultant?

First of all, in terms of -- we've heard testimony earlier today as to your responsibilities and what you are able to do. I'd like to encourage you to take affirmative action here today and make your own choices as to how to appropriately proceed. You have support for your actions with the Kihei-Makena Community Plan which basically requires identification of all cultural resources as -- prior to the application, and as part of the development review process. It's on page 24 of the Kihei-Makena Community Plan. It also points out that there should be a map. There is a map showing all the sites that are involved in this particular area and that this map should be consulted prior to the proposed development and that you should be consulted prior to any development approvals. So I'm suggesting strongly that this is the appropriate time for you to be deciding these things and not adopting SHPD's position that it should be attached as an adjunct to an already approved application. I'd like to suggest you step forward and deal with this now rather than later.

There's also support in the Hawai'i Statute 6E-42 which says, "Before any agency grants approval concerning land use changes, they shall comment on the effect of any proposed development." And then in the regulations, interpreting the Hawai'i Administrative Rules, interpreting, it again says that by review ...(inaudible)... identify significant historical properties in project areas, assess any effects, and then develop and execute plans to avoid, minimize, or mitigate adverse effects to the significant historical properties in the public interest. So I'm suggesting there's law; there's the Kihei-Makena Community Plan; and you have adequate support to act today and to do this in a manner prior to the application being approved.

The other point is in the letter --

Ms. Sablas: You need to wrap up, sorry, though.

Mr. Sturtz: I hope you weren't counting the time when I was waiting to have you review my letter.

Ms. Sablas: Okay. Yes.

Mr. Sturtz: But I'll end in just a minute.

Ms. Sablas: Okay. Thank you.

Mr. Sturtz: The other point is that it refers to an independent archaeological review. And I know it's the opinion of Makena Resorts that Aki Sinoto fulfills that requirement. And I've met Aki on a number of occasions. I have a great deal of respect for him as an individual and as an archaeologist. The question is, having been working for Makena for decades, from the public perception, I'm not very certain that he's perceived as being independent of this process. And since there are significant questions as to the policies so far adopted by Makena Resorts as to how much they're preserving, what's the process by which they're

preserving it, what kind of mapping their doing, etc., it may make sense to bring someone truly independent and well qualified to look at these issues rather than adopting the employed representative of the applicant. As I say, I have a great deal of respect for this gentleman and it has nothing to do with him personally. It has to do with the public perception. And how do we, as a community, have a sense of fairness and a sense of objectivity and independence when we look at these very, very important issues. Thank you very much.

Ms. Sablas: Thank you very much.

Ms. Long: Thanks for coming, Ron. Could you spell out for us, I know you read the law to us, we don't have that in front of us, could you -- because my concern is a land use decision made by Council, and then this stuff is going to happen, can you specifically talk to this Commission about how we should advise the Council if we feel it's appropriate that the cultural resources management plan should be reviewed by this body, and then the Council should be advised before it completes the change in zoning? What basic -- you say we have the legal authority to do that. Could you maybe either distribute something to us or go over it again so that we will understand that, you know, just where you're coming from there?

Mr. Sturtz: There are two -- there are three documents in which your legal authority vastest in this particular respect. And, Mr. Akama, correct me if you think I'm wrong. The first is the Kihei Community Plan. This project is within the boundaries of the Kihei Community Plan. And this document, I can make copies for you, I don't have more than one with me, but it's pages 24, 26, and 27 where they -- and that is a law, by the way, it was passed by ordinance on March 9th of 1998, so it is a law, and it says that this is what's supposed to happen, and that you guys, you folks, pardon my vernacular, is supposed to be consulted and give your opinions prior to the development process going forward.

Ms. Long: It says "prior to application."

Mr. Sturtz: Page 27.

Ms. Long: 24 is what I'm looking at.

Mr. Sturtz: Oh, I'm sorry.

Ms. Long: "Require development projects to identify all cultural resources located within or adjacent prior to application."

Mr. Sturtz: Correct.

Ms. Long: So that that would mean prior to the application for the change in zoning?

Mr. Sturtz: That is ...(inaudible)....

Ms. Long: Okay.

Mr. Sturtz: Then on page 26 and 27, referring to the site maps, they should be consulted prior to development proposals. And prior to any development approvals, the map shall be referenced and the comments of the State Historic Preservation Division and the County Cultural Resources Commission shall be sought. So it's not a "may;" It's a "shall." It's a mandatory, as I read it, which means that they are required to consult with you prior to going forward.

Ms. Long: The magic word is there.

Mr. Sturtz: So I would suggest that it's in your authority and in fact your responsibility to respond back to them and say, here's what we believe. And they're required to inquire from this -- inquire from you, these opinions.

Ms. Rotunno-Hazuka: Prior to development? We're saying prior to development?

Mr. Sturtz: Prior to development approvals, approvals.

Ms. Rotunno-Hazuka: Is a change in zoning a development approval?

Mr. Sturtz: I sure think so. It's not? You don't see it that way?

Ms. Cua: An SMA is a development approval.

Ms. Long: That's always been the sticking point.

Mr. Sturtz: It's a sticking point.

Ms. Cua: (Inaudible)...permit. A change in zoning is a land use change, a land use permit.

Mr. Sturtz: I'll be delighted to adopt your definition since -- in looking at the Revised Statutes 6E-42, it specifically refers to prior to land use changes, which is the next thing I was going to raise, 6E-42.

Ms. Long: Which is the section of what?

Mr. Sturtz: It's ...(inaudible)... Hawai'i Revised Statutes, 6E-42, Historic Preservation.

Ms. Long: HRS, 6E-42, okay. Okay, so we have community plan, which references development approvals, and we have State law, which references land use changes. And what does it say about that?

Mr. Sturtz: Before an agency or an officer of the State or its local subdivisions approves any project ...(inaudible)... permit, license, certificate, land use change, and lots of other things, now, the agency or officer shall advise the department and prior to any approval, allow the department to review and comment on the effect of the proposed project on historic properties, etc., etc., burial sites and things of that sort. And then when you look at the regulations which interpret what that means, this comes under Hawai`i Administrative Rules, Title 13, Chapter 284, where it says, "The following procedures, in part, define how agencies meet this statutory requirement. The goal of the review process, " which is what we're doing right now, "is to identify significant historic properties and project areas, assess any effects, and then develop and execute plans to avoid, minimize, or mitigate adverse effects to the significant historic properties in the public interest." Now, this review process is supposed to occur prior to the approval of the land use changes which is where we are right now. Did that answer your questions, Ms. Long?

Ms. Long: Thank you. No.

Mr. Sturtz: So I just want to encourage you and empower you to take appropriate actions, as you see fit, here in the broadest possible way to preserve this very rich archaeological heritage that exists here. Thank you so much.

Mr. Akama: I just want to comment on 6E-42.

Ms. Sablas: Okay.

Mr. Akama: I'd like to comment on Mr. Sturtz's response to Commissioner Long's question about 6E-42. Quoting 6E-42 verbatim, it says, "Before any agency or officer of the State or its political subdivisions approves any project involving a land use change, which may effect historic property, the agency or officer shall advise the department, and prior to any approval, allow the department an opportunity for review and comment." Not the Cultural Resources Commission. Now, this is State law. However, the proposed change here specifically states, paragraph 15, that the cultural resources management plan shall be completed and submitted for approval, and one of the entities here is the Maui County Cultural Resources Commission, so I don't think there should be a concern. I think this is covered by the proposed paragraph 15 here. You will have an opportunity to review this prior to approval.

Ms. Long: Approval of the plan?

Mr. Akama: Yes, of the land use change.

Ms. Long: Of the land use change?

Mr. Akama: Yes.

Ms. Duensing: Madame Chair?

Mr. Sturtz: Since Dudley is responding, may I reply?

Ms. Sablas: Sure.

Mr. Sturtz: Prior to what approval? The point is, this is supposed to occur prior to the approval of the subdivision, pardon me, prior to the approval of the application. The way it's worded is that this will occur as an attachment to an already approved process later on sometime, and I think that's the key point, Mr. Akama.

Ms. Duensing: May I interject something? I think the point is not when it happens, but that Chapter 6E-42 is referring to the department having the opportunity to review, and the CRC is not the department. The department refers to SHPD. CRC has no authority from Chapter 6E-42 because it's a State law giving State Historic Preservation Division the authority, not the Cultural Resources Commission. And that's -- so 6E-42 doesn't really pertain to this Commission.

Ms. Long: If I may? The issue here is, does SHPD have unilateral control? Or does the Cultural Resources Commission of the County of Maui advise the State Historic Preservation Division, which sits in Honolulu, about a land use change that is happening on Maui? And there is nothing in no. 15 in these conditions that says that the Maui County Cultural Resources Commission will review the cultural resources management plan prior to the State Historic Preservation Division reviewing it. And there is nothing in no. 15 that says that the SHPD will review it prior to the County of Maui approving the application for a land use change. So it's sequence and it's timing in these conditions and, you know, whether we, Mr. Sturtz believes, or our counsel believes that the law supports it, I would think that the Kihei Community Plan, which says "shall," and we've been told that's the magic word, not "could," or "should," but "shall" prior to any development approvals --

Ms. Duensing: But it's not a development approval.

Ms. Long: It's not a development approval? It gives the applicant the power to build something, to develop land, which he did not have before the change in zoning. So if we want to wait for a legal court opinion, or an attorney general opinion on whether a change in zoning is just a paper change or whether it's a land use change, we need to make our

feelings known. As of right now, the zoning they have does not permit them to develop. If they get a change in zoning, they can develop. Does that make it a development approval?

Ms. Sablas: Can I interject? We're in public testimony. So if we would just complete our public testimony, close it, and then we can have a Commission discussion. But very important, as our public testifies, make notes because, you know, then we can move on. And then keep your questions. When public testimony is closed, then we can discuss it. Is that okay? Thank you. So we have two more on the list to sign up. The next person is Kathy McDuff.

Ms. Kathy McDuff: Aloha. My name is Kathy McDuff and I live in Haiku, and I have a masters in history, and I'm also a retired land use attorney. And I love Maui. And I love Makena. And what I'm about to talk about comes from my heart because like Dorothy, I have a ...(inaudible)... interest in historic preservation.

First, I'd like to thank you for agreeing to hear -- I'm sorry. First, I'd like to thank you for agreeing to hear testimony regarding the recommendations from SHPD regarding the archaeological work within the Makena Resort development. I attended a previous meeting where you were told by both your staff and someone from the Planning Department that the Commission should not hear public testimony about Makena because the Council was already hearing testimony. I assume that you agreed to discuss the SHPD recommendations and hear testimony because of the Commission's duties and powers delegated to it through Bill 71, which is codified in the code as Chapter 2.88. And I further assume that you realize that the CRC is the entity that is required by law under 2.88.060.A of the County Code to advise both the County Council and the Planning Department on historic preservation issues, not the other way around. And I commend the members here for making that decision.

With respect to historic preservation of the Makena Complex site, as you may be aware, the community plan for Kihei-Makena has set aside numerous sites that should be identified for preservation. Included in these sites that the plan set out to be preserved are the Makena Complex and the Makena Landing area sites. And as we previously stated, the community plan specifically states that prior to any development approval that comments from the SHPD and CRC shall be sought. For all of these reasons, it is very important that you, as the CRC, give input regarding the archaeological work that needs to be done within the Makena Resort development project boundaries prior to any rezoning designation.

Not only is your input required under existing law prior to any approval, but it is critical to adequately protect the historic sites still remaining within this complex. It would appear from its stated duties that CRC should not only be able to review the recommendation

SHPD has stated, should be complied with prior to any rezoning approval, but that CRC should make its own recommendations based upon its expertise as to what should be required prior to any rezoning decision. This would be consistent with the directives set out in the County Code that CRC shall advise and assist Federal, State, and County government agencies in carrying out their historic preservation responsibilities, and that CRC may review and comment on archaeological reports submitted as part of development proposals to various County agencies.

Nowhere does it say that CRC has to wait to be called upon by either the County Council or the Planning Department before it makes a determination that historic properties and artifacts may be at risk. You are the entity that Maui law has designated to make such a determination. Not only should you comment and reply to the State Historic Preservation Division letter, but it would appear that you may be required to by law if historic preservation is an issue.

For these reasons, I sincerely thank you for your interest in the historic archaeological preservation issues. Please do whatever you can to protect these historic sites. Mahalo.

Ms. Sablas: Mahalo, Kathy. Next to testify is Dorothy Pyle.

Ms. Pyle: Hello again, everybody. Dorothy Pyle. I am here because I heard that there was a lot of issues about this whole Makena development going on way back in February and March. And then I was essentially out of the country for three months out of the last four or five months. So here I am again.

I really am very gravely concerned that this -- all of these issues have been brought to the CRC so late. This is just plain backwards. The role of the CRC, as you've been told over and over again, and as my own experience showed before, is to be proactive in these issues and to bring things forward. And I think that in some ways for maybe lack of information, or I'm not even sure why, that hasn't necessarily happened, and I hope that that will not continue to be the case.

Because you have come into this so late, I would recommend and really hope that you will take the time that is necessary to properly review and comment. To not be pushed into saying this needs to be done. This has been going on so long, we have to hurry it up. To take the time. Maybe some of that time is to schedule a special hearing that allows people that you haven't heard come to the Cultural Resources Commission and explain why they feel so strongly about preserving these sites. Certainly there have been endless hearings with the County Council. How many of you attended all of those? Have you heard the commentary from the people who really are interested in preserving the culture of Maui? That's part of your job.

I've always felt that one of the obligations of the Cultural Resources Commission is the enhancement of the cultural resources of Maui County. Enhancing means to enlarge and to make better, and you can only do that if you have information. It's not possible to enhance the cultural resources in a vacuum. So please take the time to have the meetings. Call people. Ask them to come and give you the information. Even if it does not have an impact on your final decision, the information will be recorded for posterity which is something that doesn't happen very often anymore. Some of our faithful kupunas come. How many people don't come? Can't come?

Ms. Sablas: You need to wrap up, Dorothy.

Ms. Pyle: Okay. I would like to make a couple more points. The Cultural Resources Commission should make two additional conditions that I would suggest. One of those is that each time -- now, you know, I'm assuming that there's going to be some development in Makena. I'm assuming. Each time a request comes in, please do not allow it to be a piecemeal request. That when there is a request for a development on this parcel, please insist that you see all of the cultural resources of the entire area as a whole so that you can determine whether this parcel contains something extraordinarily valuable in relationship to other parcels. Don't allow Makena to be piecemealed. I think that's a very, very serious thing that has happened over and over again in our County.

And the other thing, which I think Ron has already said but I would like to say again, insist that the Cultural Resources Commission review and comment upon the cultural resources development plan, the preservation plan, whatever it is that you wish. That don't allow that to go undone and be sure that you use all of your advisory powers to make your voices heard.

One last thing. I've said this many times in many public hearings: the sites, the historic places, sit silently as observers of their own fate. The only voice they have is your voice. Please let your voices be heard. Thank you.

Ms. Sablas: Mahalo. Okay, unless anybody else didn't sign up, I have the sign-up sheet here. Is there anyone in the audience that need to -- that has not spoken? Oh, I'm sorry. Okay, I'm sorry. Yeah, Lucienne.

Ms. de Naie: Thank you for this opportunity to meet with all you folks. Anyway, I think it's very important that you're considering this letter. And being -- I echo the comments of those who say that it would be appropriate for you folks to comment to SHPD. I recently spent a couple of days there. And they really count on what folks here at the local Maui Cultural Resource Commission can give them as feedback because they don't have the time or staff to pay, you know, detailed attention to every single project or every single

application that comes in front of them, so you're a valuable resource to them, and they value hearing from you. That's the message that I got.

Referring to the letter itself, ...(inaudible)...there were a couple of different points brought up in the letter that were inconsistencies and available data that some of the earlier archaeological work didn't meet the current standards of investigation, and that it was difficult for SHPD to evaluate the status of individual sites or site complexes, and all of these are conditions that you folks would face as well, so I think that what we're asking for here this comprehensive plan that correlates the work of many, many years that has been done all would be very effective.

And I think we also need to put one more condition on what has already been stated there in the SHPD letter in that besides ...(inaudible)... the, you know, the existence of these sites and the location of these sites, we really need to know the current status of these sites. We need to know if they're destroyed, intact, or ...(inaudible)... for data recovery, if they're planned for demolition, or planned for, you know, site avoidance. These things are addressed in numerous piecemeal reports, but there really needs to be a comprehensive look. The little handout I passed out to you is to give an example of why this is important. If you look at the first page of the handout, it shows a map that the Cultural Resources Commission, your predecessors, have used to look at the Makena area. However, a lot has happened since this map even -- I think this map is from the '90s. Some surveys have been done since then. There are additional sites. It's well out of date. It's to illustrate, you know, how much further needs to be done. And the Makena Complex is highlighted there. The next map also shows kind of a broader scope of the whole coastline where the Makena Complex fits in. And the next page is not about the Makena Complex, but shows some sites that are immediately mauka of the State park. These sites were recorded in 1978 by Alan Han. And ...(inaudible)... in the circle, the site 41, if you flip to the next page, you'll see kind of a detailed analysis of what's in site 41. This is just to give you a sense of the scope of what you're dealing with here. You're dealing with hundreds of sites. And an individual site may have 14 to 30 features. There's a lot of decisions to be made here is I guess what I'm saying. And all the questions that this Commission really needs to answer is, who will be making the decision on how these sites interact to one other, their cultural significance.

A tremendous amount of data recovery has been done by Seibu. They've invested a lot of time and money. I personally reviewed, I don't know, dozens of reports. I don't know if you guys will have that opportunity. But, really, this comprehensive map with the conditions that the map be viewed as a whole process rather than just this is a map that they were planning a golf course, which has been the past. There have been maps done. But it was a map -- this is where we're planning a golf course, so look at these sites, and now we're going to do this golf course, and we'll move on. And there's a new Cultural Resources Commission. I don't know what happened the last time. But we need to

be ...(inaudible)... all the way up to date. The last two maps where it shows the Makena Complex, for example, shows some of the sites that were identified during the 1979 survey, but there's other areas that haven't had surveys released, you know, surveys are still being completed on, and we really need all that information before we start changing zoning and saying what is and what isn't significant within that zoning.

So I agree with those who said your position is to get in early and get in deep because you're the people who we're all counting on to make these important decisions. And for instance, this area at Makena Landing, it has a fish pond, it had many house sites in the maps from the 1860s and the 1870s. It's like, are we going to leave anything from the historic period? Right now, the draft plan that Seibu has presented, at least for some public review in January of this year, does not indicate one site in the Makena Complex that is going to be preserved. Is that good? Bad? I don't know, but you should be asking those questions.

And included as the last comment or the sheet of my handout, a map that does show kind of the overall Seibu area that is proposed for development. The area ...(inaudible)... reflects back to the site map where site 41 is just to show you kind of where these things are located, and give you a sense of the scope of variety that -- of the decisions that have to be made.

So thank you for this time. And I really hope that you will make sure that there's the best information possible. And when you write to SHPD, you will ask for a very, very comprehensive plan to be in your hands so that you can advise before the final management plan is formulated. Otherwise, you're just putting band-aids on decisions that have already been made. Thank you.

Ms. Sablas: Thank you very much. Okay. I think this is -- unless there's anyone else? I think we've accommodated everyone who signed up. Okay, I see raise of hands. Come on up, Auntie. Identify yourself please.

Ms. Annie Kekona: Hello. My name is Annie Kekona. I'm one of the Na Kupuna O Maui. I just want to ask the people in the back that testified: how long have you been on Maui?

Unidentified Speaker: Seven years.

Ms. Kekona: Seven years? Well, I've been here since I was born. So when you folks talk about Makena this, Makena that, they already bought the land. What are you guys talking about? What are you guys want from Makena Resort? We already know. We seen the sites. We went there. How many times we went to the sites. We, the kupunas, know about the site. We get the mana`o. We have that in us. No matter where you people go. (Inaudible)...where the Hawaiians go, the kupuna go, they have the mana`o already. They

feel that. We felt that when we went to Makena. We went to all the sites where it's going to be preserved, preserved for our grandchildren, my great-grandchildren. We're going to teach them to preserve these things. That's what we want them to preserve these things and it was set by the Makena people that took us around the sites. We seen the sites. We went three times to the sites. And what more these people want? I don't think so it's right for them trying to stop things. They had bought the land before. So what more they want? Be somebody that belongs to this `aina that we know about. If you don't have that mana`o in you, forget it. Thank you.

Ms. Sablas: Mahalo, Auntie. Okay. This would be the last person to testify? Can you share copies? Ann needs to have a copy so she knows what you're talking about. Can you share over there? Perry, I mean, if you and Uncle can share, and take the other one to Ann. So we do have the three-minute rule.

Ms. Anderson: Thank you, Madame Chair, for bearing with me, but I think it's important that you have these materials since you guys have been left out of the loop for so long.

Ms. Sablas: Thank you.

Ms. Anderson: My name is Michelle Anderson. I'm Executive Assistant for Councilmember Wayne Nishiki. I'm here today testifying on my own behalf. I'll try to go through this very quickly as possible.

The large map I gave you is the map that is attached to the community plan. This is the map that's referred to in the community plan. This Cultural Resources Commission developed this plan when the Kihei Community Plan was put together back in the 1990s. It was passed in 1998. 1998 is not that long ago. And you will see in the community plan, and I passed my dissertation on the community plan or rather the handout on that out when Ron Sturtz was talking because he was referencing it, and you will see, on page 26, that it does say prior to any development approvals, the said map shall be referenced and the comments at State Historic Preservation Division and the County Cultural Resources Commission shall be sought.

Now, the reason this is important is because Makena Landing area sites and the Makena Complex area, which are highlighted on the map and indicated as significant sites in the Kihei community plan, are not indicated either on the cultural resource management plan maps, which are these smaller colored maps that I passed out, that the applicant has distributed to various members of the community. There's no map. There's no sites shown for preservation in the Makena Landing area or in the Makena Complex.

The March 3rd letter that I passed out from Councilmember Wayne Nishiki to State Historic Sara Collins, on page 2, he delineates the fact that there are properties within this request

from Makena Resort -- additionally, located on properties within this request are historic sites at Makena Landing and the Makena Complex. Both are cited in the community plan as important sites for preservation. The applicant has recently stated in a January 30th letter to this committee that the sites in these two areas have been redefined. The Makena Landing area sites are located in a vicinity zoned for park use and slated for multi-family development, and the Makena Complex is in the vicinity of two undeveloped parcels slated for hotel development. He asked State Historic how have these sites been redefined. We got no response to that. We also asked about a site that was -- that's located on undeveloped hotel property. This site is referenced from a report that is listed as still pending for a Four Seasons Hotel proposed by the Dowling Company on this site.

So I think it's very important that because these sites -- the previous Cultural Resources Commission, your predecessors, the kupuna on the Historic Sites Commission, over 30 years ago, delineated these sites for preservation, and now they're no where to be found. Where are they? How do you redefine a site? And why hasn't it gone through the proper State Historic Chapter 6E administrative procedures laid out for inventory survey, site designation determination, whether or not it's going to be preserved?

You guys are the stewards here. You're the ones that we're looking for to protect these sites. You're the official, legally-empowered entity to steward these sites, and that's why I think it's very important because we got no response. We just -- just a vague letter. In fact, I think part of the reason we got the second letter from SHPD is because they couldn't answer these questions.

And you look at the list here of all the previous inventory surveys that have been done. All disparate. None of them-- All disconnected. None of them comprehensive. And you need comprehensive historic preservation, not disparate, you know, a little piece here, a little piece there five years apart. This is a whole settlement area, early Hawaiian settlement pattern, that needs to be preserved for the future, for the keiki o ka `aina, so that some day we can show them this is how the early Hawaiians lived along the coastline in Makena.

A second letter was sent March 3rd to Mr. Figueiroa at Makena Resort, I gave you a copy of that, delineating the hotel site and asking about the draft inventory survey that's being processed right now. Maybe you've seen a copy of that, but it is, you know, in existence.

The other thing I wanted to point out to you is, why is it important that we have a comprehensive inventory survey and proposed preservation plan together, that you have reviewed, given your recommendations on, that then goes to the Council before they make a decision? Why is that important? Well, because the Council is the only entity who has the power to set conditions, and these conditions are -- this power is given to them through the State statute, which I passed out on this paper. Chapter 6E-15 says that the government body has the power to set special conditions, to maybe even delineate a

cultural easement protecting the whole area from development. And if the preservation plan isn't done, and your review given to it, and your recommendation given to the Council before they make a zoning change, the Council is advocating their right to impose these conditions. And you have a right to ask them to impose the conditions as the stewards.

Ms. Sablas: (Inaudible)...Michelle, please.

Ms. Anderson: Okay. I'll wrap up with one more. I passed out this condition. This was a condition that Councilmember Jo Anne Johnson made a motion on the floor to be passed, and it did not pass. The Council was told, don't worry, everything can be done during the SMA period. But I would encourage you to read this because she delineates why it's important, why it is very important that we have a comprehensive preservation plan. You know, in the past when things have been done through the SMA, what's ended up happening is our precious cultural sites become privatized. They become privatized behind gated walls, on golf courses, and once they're out of sight, they're out of mind. And we need to preserve our sites in a manner that the public, the children of Hawai'i can enjoy them, and understand the ancient past of the Hawaiians. So I would encourage you to step up to the plate, and, you know, use your power and use your authority as the stewards of the cultural sites because you're the only ones that really care.

And I want to tell you, if you're waiting for SHPD to step forward, you all should read this audit that was done just in December of 2000, the State audit on the State Historic Preservation Division showing that they're failing their mandate, seriously failing their mandate. So the onus is on you guys. We look to you to make sure that the proper thing is done for cultural preservation in Maui County.

Ms. Sablas: Thank you, Michelle. I didn't get a copy of Jo Anne Johnson's recommendation, seems like. Thank you. Okay. Thank you, everyone. So public testimony is closed.

Mr. Kapu: I get one question for Michelle.

Ms. Sablas: I'm sorry. Okay. Commissioner Kapu?

Mr. Kapu: Pertaining to the maps that you gave here, you gave two similar maps but it's -- I need clarity, a little bit of clarity on the definition for both maps.

Ms. Anderson: Thanks for asking, yeah. Okay. One map is archaeological data recovery sites. These are sites that are going to be destroyed eventually that they -- that Makena Resort -- you'll see I wrote in blue ink on the bottom "sites to be destroyed," trying to make it easier to understand. Right here it says "sites to be destroyed." So data recovery sites, these are sites, they're going to go in, they're planning on doing some kind of data

recovery, and then the sites will be destroyed. Then this other map -- if they get approval from SHPD to do that. Okay? And then this other one is sites to preserve. And so their terminology is, "archaeological preservation sites" as of January 2004. And this is really the one that I think is very important to look at. A lot of these sites are already preserved within the golf course. And I might mention that it's been 20 years since these sites were preserved on the golf course. And to this day, there is still not an accepted, finalized, approved preservation plan for these sites. And that's why it needs to be done in a big comprehensive manner because there's no other onus on these people to finalize the preservation process unless they have to do it to get their zoning change so they can go forward to build. I mean, the golf course has been there for 20 years and we still have no preservation plan for the sites on the golf course. And that is the final process in the historic preservation review program under Chapter 6E. And then again, you can see along the coast line, there's nothing here for Makena Landing and nothing for Makena Complex, both areas that are sited for development. Does that answer your question?

Mr. Kapu: Yeah.

Ms. Anderson: Ke`eaumoku, thank you.

Mr. Kalalau: I have a question, too, concerning the same maps. Isn't it, you know, it's all been recorded, it's all numbered, it's -- isn't it recorded with the State, all these archaeological sites?

Ms. Anderson: Most of these sites, yes, received these numbers from earlier inventory surveys. But just because they have a number doesn't mean they're saved.

Mr. Kalalau: No, but even if I should purchase that property, doesn't those numbers would affect me as a new buyer that I have to comply to these numbers that these sites are already been registered with the State of Hawai'i?

Ms. Anderson: Just because the sites have numbers like the map that shows all the sites that are going to be destroyed, they all have numbers too, so it doesn't mean just because they have a number that they're registered for preservation, you know. The number is given during the inventory survey and some of these surveys are 30 years old. But you have to understand, the process is you do an inventory survey, then you do a significance determination, that is an evaluation to determine whether or not the site is valuable enough to save, or whether or not you can do data recovery and then destroy the site, or whether or not you then have to preserve the site. And the preservation plan, according to State law in the implementing regulations, under Chapter 6E, the preservation plan entails, and it can entail, especially if you guys recommend it, stabilization, restoration of a site, interpretation, and education programs so people can go in and learn about the area, and access. And if you don't have access, you don't have anything because, you know, unless

you're a golfer, you're not going to see – or someone specially escorted by Makena Resort to go in and look at the heiau and the burial sites that are at the golf course. You don't get to be a part of it. And that's why where we're making our mistake in Maui County is allowing sites to be preserved but privatized at the same time. If we don't have open access and interpretation programs that go with it, we're all wasting our time here. The only body that's getting any benefit out of this is the developer's archaeologist who's making a living, you know, doing their bidding. But in the final analysis, if we don't have sites open for public interpretation, education programs, and access, you know, I mean, to me, ancient Hawai'i is disappearing behind, you know, large, gated communities, and becoming landscaped features in millionaires' homes. And is that why we're saving our sites? You know, the purpose and intent of Chapter 6E–

Ms. Sablas: If you could just answer the question, though, yeah. I'd like you to just stick to the question that was asked.

Mr. Kalalau: Thank you.

Ms. Anderson: I forgot what the question was asked. Thank you very much for asking.

Ms. Sablas: ...(Inaudible)... Do you have a specific question of Michelle?

Mr. Artates: Yes.

Ms. Sablas: Okay.

Mr. Artates: Michelle, so you -- so your opinion as far as what has been submitted by the State Historic Preservation Division, as well as the preliminary conditions by the Council, referring to these different entities such as Na Kupuna O Maui, SHPD, to be the caretakers are not adequate enough, is that what you're saying, in preserving our Native Hawaiian archaeological sites?

Ms. Anderson: Yes, I'm saying that it's not adequate and it does not follow the law. Number one, anybody that wants to be involved in the preservation review process, and I don't care if you're born and raised on Maui or if you just have a passion about Hawaiian culture, any person has a right to be involved in it. The administrative regulations that lay out the process for inventory survey and everything that they're saying in their letter, you know, they're just reiterating what's required by law. You know, but then they condition it as saying, you know, make this a condition of the permit when, in fact, this should be done before the permit's issued so that you guys have a chance to advise the Council and to say, well, you know what? We find that there's a lot of burial sites here, or we find that there's some kauhales here that, you know, reflect a real, beautiful, you know, seaside ...(inaudible)... that we want to keep intact, and we want to have an educational

center here, or whatever. Then the Council, by your advice, would have the power to put a condition on the zoning to have a cultural easement there. And if you do this all after-the-fact, one SMA permit here, one SMA permit there, you're never going to have any kind of contiguous comprehensive, you know, preservation program, and you'll never be able to connect one site to another site just because we, in our Western world, have divided everything up into little, you know, neat parcels. Back when the Hawaiians were living there in the ahupua`a system, you know, it was all contiguous. Just because it's on different parcels now doesn't mean it should be, you know, considered separately five years apart.

Ms. Sablas: Thank you.

Ms. Rotunno-Hazuka: You know, Michelle, that has been one of the things that we've tried to do within developments is to preserve sites that you can look at and say even though this parcel is owned by one person and this one's owned by another one, they are still connected.

Ms. Anderson: Right.

Ms. Rotunno-Hazuka: And as far as with your comment with access, that's part of a preservation plan is when you talk about access, but there have been lots of times that access has resulted in the desecration of sites. And a lot of the sites, if they're burials or heiaus, the Native Hawaiian people don't want access.

Ms. Anderson: Of course, things have to be done, you know, considered in a sensitive manner, but that doesn't mean that you close off access to everything.

Ms. Rotunno-Hazuka: But how many people when we provide access to sites, use it?

Ms. Anderson: Lisa, I don't want to get into a debate with you about that, but I would bring up a couple of examples. The canoe hale at Makena Surf now, you know, is a landscaped feature for the people at Makena Surf. Nobody can even see it. There's not even an interpretation sign there. It's behind a large hedge.

Ms. Rotunno-Hazuka: Okay.

Ms. Sablas: Thank you.

Ms. Anderson: I'm just saying this place deserves—

Mr. Maxwell: Point of information, Madame Chairman. How long is this lady ...(inaudible)... She sent way over three minutes.

Ms. Sablas: Yes, I'm sorry, but she --

Mr. Maxwell: I want equal time. I want equal time.

Ms. Anderson: Thank you, Madame Chair. And thank you for your interested questions.

Ms. Sablas: Again, the questions were asked of the person who was testifying by Commissioners, and I had tried to limit time, and you know, so --

Ms. Anderson: I hope I answered your question, Perry. I don't think it goes far enough.

Ms. Sablas: No, just-- yea, okay. And I did make it clear at the beginning that...(inaudible)...three minutes and including the questions, and, Uncle Charlie, you had spoken.

Mr. Maxwell: I spoke three minutes. She spoke 15 minutes. She took three minutes to pass out -- Why can't I get three minutes more?

Ms. Sablas: Okay, Uncle, you got three minutes.

Mr. Maxwell: I'm sorry, Madame Chair, but I really resent the fact that haoles come up here and talk about preserving our cultural rights, our cultural sites, our iwi, when we are doing it. We work with archaeologists. Some archaeologists are working for developers, yes. They don't listen to us. We know who they are. But in this particular case, this archaeologist is working with the Hawaiian people. We have people to represent the burials and the archaeological sites. I resent the fact that our sites and our archaeological sites are being used to stop this project. That's what it's being used because the lady said she -- I hope all the papers she -- maps and everything didn't come out of the County of Maui because she works for Wayne Nishiki. I really hope so. But I really resent this that haole people come up here and talk about us, what we should do, and what we should know. It is our culture. We are the koko. We are the people of this land and we will fight for our right to do so.

Ms. Sablas: Mahalo, Uncle. Oh, boy. Okay...(inaudible).... I'm sorry. (Inaudible)...yeah.

Ms. Rotunno-Hazuka: Can we talk to the applicant?

Ms. Sablas: Did you -- I'm sorry. Uncle Charlie. For the record, Charlie Maxwell. Thank you. Charles Kaluawehe Maxwell. Commissioners, have any questions?

Ms. Long: Yes, I do.

Ms. Sablas: For Kahu Maxwell?

Ms. Long: Well, yeah, yeah. I hope that this does not become an issue of us versus them because I know that you believe that we have your interest in our hearts. I hope that you understand and believe that.

I do need some clarification, though, on how the -- how Na Kupuna relate to Seibu to the archaeologists. Are you employees? Are you compensated in any way? Are you volunteers? I just want a response. Can Uncle Charlie respond?

Ms. Sablas: For Uncle Charlie, yeah, it's for Uncle Charlie who's there.

Ms. Long: It was a question for Uncle Charlie. I want to know what the relationship is.

Mr. Maxwell: There is no financial exchange. These are volunteers because we are very close to the projects, to the, not projects, to the sites there, and whether it's ko`a, whether it's the heiau, or whether it's burial mounds, or whatever, cairns, as they call it. No, we're just there as a group that come out to consult them, and to advise them of all the buffer zones, and what's proper and what's not proper.

Ms. Long: Thank you very much.

Mr. Maxwell: Thank you. And if I can just elaborate? My comments weren't on this Commission. It was, specifically, for that last speaker.

Ms. Sablas: Any questions of the speaker? Okay, I see another hand raised, please come --

Mr. Artates: Are you closing public testimony already?

Ms. Sablas: (Inaudible)...public testimony. The applicant? Okay. We're closing the public testimony. Oh, are you part of public testimony?

Mr. Roy Figueiroa: I'm not sure whether I would've been given a chance to explain. I'm not sure if I have ...(inaudible)....

Ms. Sablas: Okay, before you come up, then, can I just close the public testimony? Sorry. Okay. No, no, I'm sorry. Can we have the applicant come up? We're giving you some exercise there.

Mr. Figueiroa: Well, I'm getting some advice from this side of the room, too, which I concur with. I'm not the applicant. There is no applicant in this particular case, so that's why I thought I wanted clarification as to whether you would want the --

Ms. Sablas: Can you state your name, please?

Mr. Figueiroa: Roy Figueiroa, Vice-President of Makena Resort Corp. I'm sorry.

Ms. Sablas: Okay. So you're speaking on behalf of your ...(inaudible)...

Mr. Figueiroa: I wanted to clarify, yeah, some of the things that came up. I do appreciate your looking at this. I understand your concern as far as being in the loop. I'm sorry that we thought we were following the procedures. And as I understand the procedures when we first made this application, SHPD was notified, and then they did respond and said there was no effect. Later on, they came up with this other letter in March 15th. And I really -- I wasn't even copied on that revision. If you notice in the back, we weren't notified about this revision of their comments. It went to Mr. Foley, besides the Cultural Resource Commission, Ed Lindsey, Wayne Nishiki, Bert Ratte with the County, Ron Sturtz. And it was only today that I find out that it was in response to his letter which is -- which we just saw again, just today, March 3rd, and we just had an opportunity to read it.

And as I said, I do believe that it should -- you should be looking at this as to what your comments would be. But even in looking at Maui Tomorrow's letter, it doesn't say they wish you to be consulted. It says that they should be consulted, when I look at that first paragraph, which was interesting in view of the comments that they made today.

What we're trying to do is do whatever we're doing on that property, doing it the right way. Showing respect for the culture of the people. We thought and we believe that we are doing it the right way.

When we talk about archaeological sites, we've had archaeology done on our property for a very long period of time. And these reports were submitted to SHPD for approval and they got approvals. And each time you go back for another project, you get some more approvals. Now we find that some people are saying, well, we should have something more comprehensive. We believe that as a developer -- and our change in zoning project did cover about 600 acres, most of that the golf course. I believe the archaeologists, from what I understand in talking to them and I'd like to have Aki explain some of this because -- but in my understanding that they do look at the overall, you know, archaeology throughout that area. You look at a site, but you don't just look at that site by itself as if it exists all by itself in, you know, in the universe. They take the whole region into consideration. That's done, as I believe in looking at the reports, all the time. You know, to say that you have to redo that every time, you know, expand it -- I mean, what would happen, for example, if I

came in with a subdivision? Would you make a requirement that I, say the subdivision was in Kahului or Kihei, you study the entire region for my project? Anybody here, if you had something that you were going to develop, Ann Cua, or Lucienne, or Ron Sturtz, is he going to have to study the whole region where his property is located, and then it's not satisfied until the whole culture of the whole -- everybody else's site is also included or studied? I think you have to be looking at the project, and you have the benefit of looking at Makena as covering a large region, and we do cover a large area, so our studies do cover a large area, and we've been conscientious in that, even as far as further development of a resource management plan; that's why we consulted with Na Kupuna. We've also talked to Hui Alanui O Makena. We've talked to these people hoping that we would get that input to know how to handle these sites. When we say we wanted the sites to be visited, we want their feeling about how that should be handled. You know, as I've told them before, you know, I might think, well, you know, it should be done a certain way, but it might not take their feelings into consideration. What I think may be right may not be what they think is right, and that's why we consult with them. That's why even in the proposed conditions with the Council, if you noticed, it not only included the conditions that SHPD put down, but also additional conditions that we recommended. We recommended having consultation with the Maui Cultural Resources Commission. That was a condition that came from our side, our archaeologist recommending these conditions.

So, you know, going through it, and understanding it, we hope that you do, and we are open to any questions you may have as to how we are doing it. We know that the change in zoning does not give us approval to develop. It gives us an opportunity to apply for development. And when we apply for that development, then we have to do this process again, where we come to you again, and again demonstrate what we are going to do with that particular development project on that particular site affecting the archaeological sites identified, and do further study to see if there are any more that may have been missed the first time around. So, you know, it's not just, oh, okay, we have this map now, and this is all we're going to follow. We take that map, they go out, and then confirm that map, and look for any additional information to really do it comprehensively. And so I think there's a lot of effort put into it. They're very diligent at it. And I, working with Aki over these many years, I have confidence in what he tells me about these sites.

So, as I said, I'd be happy to call upon him to explain what the sites are like, you know, refer information or misinformation about the Makena Complex. There's a lot of misinformation about it from those that perhaps are not familiar. They're not experts in the field. Well, let's hear from an expert in the field. And that's what we're willing to offer you.

Ms. Rotunno-Hazuka: Well, one thing on the Makena Complex, it has always been understood that there were sites there and, from what I recall and Aki can comment on this, it was just a line that was arbitrarily drawn with -- connecting different sites. So it has been

a misconception that it's this huge complex that stretches across all along the coast. But there does need to be clarifications on what sites are there and what aren't.

But my question for Roy is, on this map here, what is the 600 acres that has started all this? The change in zoning? What -- I mean, where does it apply to here? Do you know? Does it show? And the white, I assume, is all the golf course?

Mr. Figueiroa: Yeah, the white is the golf course, and the land that is adjacent to the golf course on the mauka and the north side of this, right here, right along this side, it's all the urban zone, not the agricultural areas, but all this side. And then also this property next to the golf course, below Makena Alanui, that's the main part of this change in zoning.

And, you know, as far as that plan being reviewed prior to the land use change, when we went through a land use district boundary amendment, we had six petitioned areas which were referred to in that letter, and we did make that plan. That was submitted to SHPD and approved by SHPD for those petitioned areas involving the change from the agricultural designation to the urban for those properties.

Ms. Rotunno-Hazuka: That was a separate report, right?

Mr. Figueiroa: That's correct.

Ms. Long: Roy, would you have any objection to the Maui County Cultural Resources Commission reviewing the draft cultural resources management plan prior to the SHPD?

Mr. Figueiroa: No, I believe that's how we intended to do this. We intended to get the community input. And maybe Mr. Sinoto can explain that process.

Ms. Long: Well, that -- okay, I ask that because the condition no. 15 is not clear on that. And also with regard to condition no. 15, I don't see a time frame. Could this conceivably take --

Mr. Figueiroa: I see, but we're intending to finish that soon. We're doing it right -- I mean, as we speak. We've had already discussions with them. So it is being formulated.

Ms. Long: So what would you say -- when would you say the draft plan would be ready to come here?

Mr. Figueiroa: I'd like to ask Mr. Sinoto that myself. So let's ask him right now.

Ms. Long: Let's.

Mr. Aki Sinoto: Commission members, my name is Aki Sinoto. I'm an independent archaeologist. I've been working at Makena for over 30 years, however.

Regarding your question about the completion of the draft plan, actually a draft plan exists right now, but what we intended to do was, as a lot of the testimony pointed out, there's volumes of reports and previous investigations that you would have to read and digest before you can come to any kind of evaluation of the product. So what we intended to do was to do that for you. So in this first review draft, we'll have a compiled section of all the previous reports that talk about all of the sites that are involved in this plan. So the 16 sites that are slated for preservation, and the 48 sites that are slated for data recovery will have full descriptive portions extracted from previous reports. And that's why one of the misunderstandings occur that there's some new work involved here. But all we're doing is compiling previously completed studies, which have already been completed some years ago, some more recently, into a easily comprehensible report so that you can make the decision at that time. And we intend to have that, I would say, by August of this year.

Ms. Long: We have heard, though, that some of those reports were done years ago with different methods than are used today.

Mr. Sinoto: Yeah, well, you know, that's where I'm kind of appalled that how long misinformation and misunderstandings get disseminated and, I mean, it's still continuing today. And, also, I'm a little bit disappointed that it came to the point of where they question my, you know, credibility too.

But regarding that, as a lot of these things occur, we're talking about progressive, I guess, evaluation of information just as this plan is set forth to be. So, I mean, it's not unique to this project. There are very many other projects where inventory surveys were completed before 1990 when the new conditions really came into play. And sometimes, the State requires a redo of these reports; sometimes they don't, depending on the subject matter and whether there were any findings. So in this case -- oh, also what's -- I think what needs to be known, too, is very often, the questions about updating the report doesn't have much to do with the substance of the report itself in terms of the information regarding the sites. That information is usually just transferred verbatim to the new report. What's the main difference is the background section in the front of the report which discusses previous archaeology because, in some instances, 20 years have gone by since that report came out. There's been a lot more work done in the region. So the State wants us to include the new information and discuss at the end, the findings in context of the new findings.

So the gist of the information given really doesn't change that much. We don't go out and do a whole new survey. The information is there, but we do go and go to the State to do research so that we can look up newer studies in the area, compile that information, and

then talk about the old information in context of what's been found since that report was done. So actually, when you say, you know, some of these are dated 20, 30 years, certainly, the information is not obsolete. In fact, in some instances, they're the only sources of information that we have. And that's a real good example of why the maps that we produce today, and as we say in our cultural resources management plan draft, that unfortunately, some of the sites have already been mitigated because we're talking about a 30-year span of archaeological investigations and also development. And that's why you see some blanks on the map because we think it's really important for you folks to deal with sites that are extant today on the ground.

Ms. Long: But in view of that, the ones that have been mitigated contribute to the comprehensive overview of what happened there.

Mr. Sinoto: Yeah.

Ms. Long: Is your management plan based on only what exists today? Or are you going to determine that this site needs to be preserved even though others are gone?

Mr. Sinoto: Well, basically, I think, a management plan is just that; it's a management plan is a plan to manage the sites that are existing today. I think you're talking about maybe a regional synthesis that would look at all the work including sites that have previously been mitigated in a large compiled document. But what's required here -- we'll certainly do an overview of the sites and the information found from the region, but we're not going to do an exhaustive site-by-site description of sites that have already been mitigated, no.

And also, the recommendations that we're giving are actually not our own recommendations from today, but they're the recommendations that are extracted from all of the previous studies. And where the recommendations need to be modified because they've already been followed through, we'll certainly mention that. You know, It was brought out that some of the sites are already in preservation within the developed areas, and those are certainly included in situ preservation recommendations, you know. And the data recovery sites are those that are in areas that haven't been developed, for instance, in the rough areas in-between the golf course fairways and so forth. But I think it's really important, especially for you folks who are going to be making some of the decisions and evaluations, to understand that a cultural resources management document deals with the sites that are existing on the ground today.

Ms. Long: Do you in any way give them an order of importance?

Mr. Sinoto: Yeah, we prioritize the sites, but we don't say that one site is more valuable than the other. What we do is we follow the Hawai'i Register criteria. We give it either a single significance of "D," or multiple significance if it reflects, you know, different eras,

different functions, that sort of thing. And then in terms of the interpretation, a lot of the interpretations about especially for recommending access, that's where we're depending upon Na Kupuna and other community organizations to actually tell us how they would like to see the preservation plan lay out those items.

Ms. Long: Okay. Would you object and would Makena Resort support -- this is a really big topic and because there is such conflict over is it a development approval or a land use change, or do we do this piecemeal or comprehensively, and who has the right ultimately to decide, a workshop that would be less formal, more informal, informational, so that those of us who are not archaeologists and not kupuna could gain an understanding of how the process works because this is not going to be the only time in the history of Maui County that something like this is going to happen? And because we've not been involved since the beginning, I think that the public would welcome the opportunity to hear and participate in a workshop. I certainly would. And if your draft is going to be ready in August, maybe we could do this in early September, separate from our regular meeting schedule, to give us the opportunity, if possible, to still do some advisory work, if we feel it's necessary, then. Is that something you folks would be willing to do?

Mr. Figueiroa: Maybe I can -- you know, I don't object to giving you some more advice on it, if that's what you're talking of being advisory, but could you explain, Aki, the process we're going through as far as bringing it to them?

Mr. Sinoto: The intended process was that initially, this very skeletal plan was disseminated to specified groups in the community with a very targeted focus, and that was to receive input especially on the cultural aspects. And then following that, the plan would be more fleshed out with all the pertinent descriptions of each of the sites, and then the recommendations, including the input that we've received from the community. And, for me, probably the most important aspect of this is the GPS ground-truthing because a lot of -- like, as was brought out previously, we're looking at work that was done over a number of decades. And, also, the mapping techniques and the mapping methods used have been various.

So that's another one of the reasons the State brings out that their data base is currently, sort of in disarray. And so we're actually working with the State so that the data base, the electronic data base that we'll create, will interface directly with theirs. In fact, we'll give them all the information that we generate. And we're working together with Eric Camari who is the GIS person for SHPD to do that.

And so I think that ground-truthing is really important for the future planning because unless you have the sites located precisely, you can't really make any decisions regarding it and that's also where your comment earlier about piecemealing, you know, the implementation comes out because piecemealing is, actually to me, is a lot more feasible way to handle

this large volume of information, but we have this cultural resources management plan which will be broad-based and it'll cover the whole property. But once we have this document, once we have the planning maps, as any development initiatives come up, we can look at it within that particular area, and this is how historic preservation process works for any given project in the State anyway. So we're not proposing to do anything different or unique here.

Ms. Sablas: Aki, you mentioned ground truthing. I saw the terminology. I don't understand that.

Mr. Figueiroa: Can I comment? I'd like to comment on that. Yeah, I tried to research that too. And since it is something that is familiar mainly with, I guess, this discipline, Makena Resort was hoping that we would be able to clarify that so it would be an expression or terminology that we all could understand. So we hope that when the final conditions do come out, there is clarification so that the meaning is not only for a certain few, but now I'll let him explain what he meant.

Mr. Sinoto: Ground-truthing is a term that's used by geographers, mainly. We sort of borrowed it from them. It talks about making accurate locations of sites on the ground. Okay, that's what it means. As close as possible, as accurate as possible, a location on the ground on a real time surface basis in relation to other known, you know, markers or reference points on the ground. And in this particular case, we're using a sub-meter global positioning system to do that. And then that will be downloaded into the State GIS data base system for later use.

Ms. Long: I really didn't get an answer to my question about a workshop, but since you are planning to send the draft out to community groups, maybe I would ask if that be part of that process.

Mr. Figueiroa: I'm not sure. Do you have a copy of the draft plan? Okay, we'll distribute copies to you also, then. While we are working on and developing the draft, we'll send you the draft that we do have so far so that you can look at it. And then when we do bring it to you, we have no objection to your scheduling whatever you feel is necessary, a workshop in order to understand it more, and that would be fine. It's your prerogative to do it in order to come up with your -- what you would want to advise on the subject.

Ms. Long: Could we have, if it's ready to go, I'd -- do you have it today? Could we duplicate that?

Mr. Figueiroa: You mean the draft that's now being reviewed?

Ms. Long: Yeah.

Mr. Figueiroa: Do we have a clean copy? We'll try to find a clean copy right away.

Ms. Long: Thank you.

Mr. Figueiroa: Okay, we could get it to you today.

Ms. Long: Yeah, and we all need bedtime reading.

Ms. Sablas: Commissioner?

Mr. Kalalau: Yes, Madame Chairman, you know, just on Michelle's testimony and on this map over here, she says "sites to be destroyed," I just wanted to know what she mean. You guys going destroy sites?

Mr. Sinoto: That's another good example of jumping the gun on us. Our maps says "archaeological data recovery sites." Although very often that does, you know, indicate that the sites that are being data recovered will be mitigated so that they may be destroyed in the course of development, but that's not exclusively so, and we say that in our document, that should during our data recovery we discover something significant, more significant than we've known before about these sites, such a really early date, for instance, we would recommend these sites for preservation. So just because it's on the data recovery sites list doesn't mean that they're just going be completely, totally, destroyed. They're still an opportunity to look at the data and re-evaluate that -- this position.

Mr. Kalalau: Okay, I have one other question. This is for George. George, since you're working with the Na Kupunas, part of the question that I have is access. Who will decide the access to these sites?

Ms. Long: Who's George?

Mr. Sinoto: Who's George?

Mr. Kalalau: I mean, I mean, not--

Mr. Sinoto: Roy?

Mr. Kalalau: Roy. Roy.

Mr. Figueiroa: Sometimes I swing from trees, but I'm not George of the Jungle.

We have been talking to them; that's why I said we want to take their feelings into consideration, so we are working with them, and as far as -- "Them" is Na Kupuna. I'm

sorry. We're working with Na Kupuna to identify that and how it's to be handled even as far as educational sites, because we have a particular site that we really thought would be good, and that's what we showed them also, and they concurred, and now we're trying to flesh out, well, how does it work? What kind of educational program would work there? I don't know if you can explain more on that.

Mr. Sinoto: One of the things that have been brought out in the past is just the number of sites that we have recommended for either preservation or data recovery. But we recommended 16 sites for preservation, but in terms of individual features, the 16 sites comprise of 309 separate discrete features, so that's a pretty large number. And then one of these sites, it's about a three-acre site, and the single site contains 237 features. And so that's a pretty major complex, and it's also a type complex for this area in Makena, and this is the Makena type kauhale complex, really different from the kauhale at Palauea, for instance. It's an agricultural and habitation site complex that's sort of unique to the Makena area. And within the preservation scheme, we have one large and about three smaller such complexes designated for permanent preservation. And in terms of the data recovery sites, we have 48 sites. And the 48 sites comprise 174 separate features. So don't be misled by just the total number of sites in terms of the features. We have a lot more features designated for preservation.

Mr. Kalalau: Right. My concern was that if they would provide an eco-tourism kind of organization. Anyway, my experience, I just got back from Central America, and I visited some of the Mayan archaeological sites and ruins and they have a fantastic ecosystem there where you can't go visit those sites unless you go with one of the trained tour guides. Like you're talking about features, I mean, there's like thousands of them in that area, but they got only several hundred that is available to the public. I would think if you guys could put something like that together, it would be very important. That way, not only few people get to access some of the important sites, but -- and as far as education, a lot of those sites were where children from the native people there went there for education purposes. I think that's why some of the concerns about people feeling like access, and it's on a golf course, so I cannot go there, or it's in the hotel grounds, so I cannot go there. This is why I feel that if you guys could put together some kind eco-tourism plan to where everybody can go but it's a guided thing, and it's only open -- only certain sites is available for public education or public viewing.

Mr. Sinoto: Yeah, as previously stated, the access issue is also the primary -- recommendations will come from Na Kupuna on who can access which kinds of sites there. We also have plans to look at, you know, lineal and cultural descendants that can access the burial and the ceremonial sites, which will probably be excluded from general, you know, visitors except maybe once or twice a year on a special occasion or something, but that's still to be ironed out.

In terms of like this large kauhale complex, that's certainly a good site for public education and visitation, so we are looking at, you know, that kind of program, but again, we're looking for input on that also. And that's where help from you folks would come into play because we're talking about regional interpretation. So it's not just Makena that has these remains, you know, Everett's property in Palauea has the same, Wailea's going to be developing and Wailea has preservation areas. So when these people come up before you, we'd like you to recommend that, you know, some of these areas be set aside, and perhaps the different, you know, developers can come together in forming this kind of an interpretive program.

Mr. Figueiroa: Any other questions?

Ms. Long: One more comment. I would hope you would join together with adjacent landowners, including Dowling, etc., hire a historian, do an appropriate regional history illustrated with maps showing those sites that could be accessed, and work it into some kind of -- maybe they're probably widely separated, but a greenways plan that would unify somehow the cultural history of the region. That would be, to me, someone who's only lived here 38 years, a marvelous way of experiencing the culture and history of a region. And I would think, as owners and stewards of the area and a very large area, that it's something that maybe you could get the ball rolling in that manner.

Mr. Figueiroa: That's an interesting suggestion and we'll be talking to others and, I guess, an effort like that would only be implemented or could only work if you really encourage the others also to join in that effort, but we wouldn't object to joining with them to try and accomplish this.

Ms. Long: Thank you.

Mr. Figueiroa: If I may? Could I clarify one thing that came up earlier about that without this change in zoning we couldn't develop? I'd like to just clarify that. That's not true. Even without the change in zoning, we could develop with the existing zoning, but we wanted to conform to the community plan designations. So even if the change in zoning doesn't go through, we would be able to come in with developments. We had no intent to circumvent the approach to the Cultural Resources Commission. We intend to come to you with this plan. Every single project of ours is within the SMA area. So there was no attempt to get around this process. We'd like to support it.

Ms. Long: Thank you.

Ms. Sablas: Commissioners, all okay? Thank you very much for being here. And thank you, Ann, for being here. This is a really, really important issue to all of us, and I think the steps we're trying to do is just get involved and get the information because when you look

at the Makena area, I mean, for those of us who were born and raised here or all of Maui, it's changed a lot, and so we have been advised that we are responsible to preserve our resources, and it's a major, major responsibility that we have. I think Commissioner Long's suggestion is that, you know, we set a separate time to further discuss this issue. Perhaps, I just kind of -- I guess at this point, you know, I think it was earlier that we better be careful that we just don't pinpoint one developer, whatever; that whatever we do is going to be fair for all. And, you know, I think we kind of wanted our day in court to be able to hear from them, the applicant, which we have had, and you're comfortable with the discussions, explanations ...(inaudible)...

Ms. Long: Madame Chair, our agenda says that the Commission may consider whether to comment or respond to SHPD's letter. We've heard some -- a lot of testimony today, and I have a few comments that I'd like to get back to SHPD.

Ms. Sablas: Okay. Okay, then. It's about quarter of one. Should we take a short recess? Lunch is ready. You don't mind if we work over lunch then? But lunch is ready. Take a short five, and come back, and we'll reconvene, and work through lunch and address that.

Ms. Long: Thank you.

Ms. Sablas: Thank you.

(A recess was then taken at 12:50 p.m. and reconvened at 1:10 p.m.)

Ms. Sablas: Reconvene our meeting and I apologize for the long five-minute break. Okay, if we could reconvene, please? Are we ready again to be able to make comments and respond to SHPD's letter at this time, Commissioners?

Ms. Rotunno-Hazuka: Yes.

Ms. Sablas: Yes? Okay.

Ms. Rotunno-Hazuka: I think so.

Ms. Long: Are we reconvened?

Ms. Sablas: We're reconvened and we are at the point now to comment or respond to SHPD's letter.

Ms. Long: Okay. Because of the wording of our agenda, is it only possible for us to respond to SHPD? Or could we also respond to Councilman Nishiki as far as the conditions?

Mr. Akama: It isn't specific as to who to respond to, but I think more appropriately, you would want to respond to the Planning and Land Use Committee rather than SHPD because the letter, the SHPD letter, is not addressed to the Cultural Resource Commission, so your comments would be addressed to the Planning and Land Use Committee.

Ms. Long: Okay, so listening to the testimony, and having my own concerns, and I think some other Commissioners share those about procedure here, I'd like to communicate to -- oh, it's not in committee anymore, I'd like to communicate to the Council.

Mr. Akama: Excuse me. It's still in committee.

Ms. Long: Ann said it was --

Ms. Cua: It's been passed out of committee, but it's getting ready to be sent to the full Council.

Mr. Akama: The full Council for first reading.

Ms. Cua: Again, in talking to David Raatz, if you address your letter, it should be addressed to the Planning Committee at this point. But in any event, it's going to go to all the members.

Ms. Long: It'll be distributed to everybody?

Ms. Cua: Yeah.

Ms. Long: Okay. So, obviously, we appreciate the opportunity to participate in this review, and we'd like to comment on the draft conditions that we've been given this morning specifically, no. 15. I would like my fellow Commissioners to think about this, but it would be logical to me to ask the County Council's -- ask them to consider a request from us that the Maui County Cultural Resources Commission be involved, beginning now, in the preparation of the cultural resources management plan being prepared by Makena Resort rather than in this kind of generic kind of way that no. 15 is talking about. And as far as the wording of that, maybe we could suggest that -- let's see -- see, because this says "shall be completed and submitted for approval" in no. 15. My concern is that we've heard the -- we've heard Aki and Roy say that, yeah, this draft is going to be circulated. I think that it's appropriate that we ask to receive the draft, and to participate in discussions with Makena Resort and their archaeologist regarding the draft plan so that we can be involved in making sure that it's prepared in a way that responds to the community's wishes and to what we -- is that --

Ms. Rotunno-Hazuka: I thought before we wanted to make sure that we are able to comment on the draft before SHPD approves it.

Ms. Long: They're not -- okay, we're not talking about draft here, if you look at no. 15.

Ms. Rotunno-Hazuka: Right, I mean --

Ms. Long: Which means the CRMP shall be completed and submitted for approval. The draft is a process of completion. And if there's no objection back there, and I didn't feel any objection before --

Mr. Sinoto: I think there may be a misunderstanding. By draft, we're talking about the first draft review edition that goes in. So there's opportunity to comment on that. That'll be reviewed by yourselves and also SHPD. That's not the done deal. That's going to be first time SHPD sees this document. So it's going in for their review.

Ms. Long: So that perhaps then we need to look at no. -- do you have no. 15? Okay, and you see what I'm talking about here? It is ambiguous. Maybe it should say "the cultural resources management plan draft."

Ms. Rotunno-Hazuka: No, but the thing is, is that --

Mr. Figueiroa: Can I suggest? Is that okay?

Ms. Rotunno-Hazuka: Go ahead.

Mr. Figueiroa: I think the County was concerned in -- the Council maybe was concerned in having this that the word "draft" means something to them that's not finished yet. I think a lot people think that way. Draft doesn't mean -- so if it read something like "It shall be completed and submitted for approval by the State Historic Preservation Division after consultation with the Maui County Cultural Resources Commission, Maui/Lana`i Islands Burial Council, and Na Kupuna O Maui." Maybe if just you change that wording, I think that would make it right. It would be completed, submitted for approval after consultation.

Ms. Long: After review and comment?

Mr. Figueiroa: After review and comment. That's fine.

Ms. Long: And comment by the Maui County Cultural Resources Commission and --

Mr. Figueiroa: And those others also.

Ms. Long: And those others.

Mr. Figueiroa: Yes.

Ms. Rotunno-Hazuka: Yeah, Barbara, because what happens is, is we turn in what we call a draft. It's what we think is finished, and we turn it in, and then they have their comments.

Ms. Long: I'm used to the draft environmental assessment process where it's a real draft. This, obviously, is not because you're dealing with stuff that's on the ground. But you're also making recommendations in that as to the preservation plan, mitigation methods, and that sort of thing, and we would want to comment on that before it goes to SHPD.

Mr. Figueiroa: That's fine.

Ms. Long: And that our comments be included when that happens.

Mr. Figueiroa: Thank you.

Ms. Rotunno-Hazuka: I think that's what it reads here.

Ms. Long: Okay?

Ms. Rotunno-Hazuka: Okay.

Ms. Long: Okay? So we would ask that Council makes those changes in no. 15. I'm confused here. Okay, so that on page 4 here: A, 1, 2, 3; B, 1, 2, 3 is all part of no. 15. So let me look at that more closely. I think we should address, because it's an issue that's been raised in testimony, the SHPD's recommendation that Makena Resort Properties hire an independent consulting archaeologist.

Ms. Rotunno-Hazuka: That's what I want to comment on.

Ms. Long: Go ahead.

Ms. Rotunno-Hazuka: The way we've always viewed this is there's a list of archaeological firms that can perform work in the State, and they are all independent consulting firms. So Aki Sinoto is an independent consulting archaeologist, as I am, as Erik was. So I don't know -- I mean, I can see where the other people are going with that, but the only independent person you would have, meaning a person that's not paid, is Melissa, and she's going to review the document.

Ms. Long: Well, I kind of define independent as someone who is not joined at the hip with Makena Resort Company. Maybe I'm wrong.

Ms. Rotunno-Hazuka: Yeah, but we're all paid by -- and you guys are right.

Ms. Long: And you guys are all paid and all hired by everybody so ...(inaudible)...

Ms. Rotunno-Hazuka: Right, and then there are some firms that, you know, you have the developer's archaeologist, and you have firms that we feel present the data in a fair manner, so --

Ms. Duensing: Can I make a comment on that?

Ms. Long: Please.

Ms. Duensing: I agree with what Lisa's saying. And I think that, in this case, it's almost as if a private party is telling the developer, in this case, who to hire, because, you know, the State has a list of permitted archaeologists, and they have Mr. Sinoto on that list so --

Ms. Long: Yeah, I'm not disputing, you know, who they chose and I'm --

Ms. Duensing: That's just the way this system works and like how are you going to hire somebody truly independent without bringing them in from somewhere else and ...(inaudible)...

Ms. Long: Okay, so that would be a comment then that I would send to SHPD that in the future, they better define what the heck they're talking about when they say an independent consulting archaeologist.

Ms. Duensing: But they have. That's what their list is all about.

Ms. Long: It's titled that, right?

Ms. Duensing: For instance -- I'll bring a copy of the list for all you next time.

Ms. Rotunno-Hazuka: I think it says "Archaeological Consultants," but --

Ms. Duensing: Yeah, I think it says, "Archaeological Consultants Permitted to Work within the State of Hawai'i for the Year 2004," something like that.

Ms. Long: Okay, I just want to be sure that their intent is being met and --

Ms. Duensing: It is.

Ms. Long: Okay.

Ms. Duensing: And what the independent archaeologists are for is, for instance, a homeowner might come in and ask for a building permit to construct a spa and a swimming pool. And if the State says, well, you're going to dig a big hole in the ground, you need to have an archaeologist look at this, I give them the list of, you know, it's four pages long of various independent contract archaeologists that they can call because you can't keep a -- I mean that's what an independent archaeologist is, is a contractor, basically. It's for somebody who doesn't have an archaeologist within his firm to do the work, and they are permitted by the State on an annual basis.

Ms. Long: I can totally understand that. I just wanted that on the record that we have discussed this, and we're clear on it.

Ms. Rotunno-Hazuka: Okay. I mean, we don't usually use "independent" so that might be a little weird.

Ms. Long: Yeah. Yeah.

Mr. Kalalau: I think what it is it's like having an hearing officer to be just on the -- to hear, you know, both sides of the situation.

Ms. Long: Yeah. Yeah.

Mr. Kalalau: You know, and the hard thing you have about it is in independent contractors, it's like -- I mean it's just like you have all these judges, and you go pick whoever is available to sit on this hearing and stuff. I think that's the concern right here is it's like because they all work -- they all do contract work for everybody else in the State of Hawai'i.

Ms. Long: Yeah, it's difficult to find someone who's never worked for someone before. So, yeah, I'm comfortable with that.

Ms. Rotunno-Hazuka: Yeah, if they haven't worked for anybody, then you better be wary.

Ms. Long: Yeah. Okay. I'd like to suggest to Councilman Nishiki and the rest of the Council that we add another condition here that has something to do with what I was talking about as far as bringing the -- I can't say the region because, you know, but just the Makena Resort comprehensive history and a plan so that access is not limited to the kupuna. I don't know whether -- that's not an archaeological responsibility, but that's --

Mr. Akama: Commissioner Long, I think that's already covered in 15-b-1.

Ms. Long: B-1?

Mr. Akama: Yes. And representations have been made by the developer today that they've been in contact, and I think we've heard testimony from the kupuna that they already have -- they've been very responsive to these issues.

Ms. Long: Well, I wanted to go beyond that.

Ms. Rotunno-Hazuka: You're worried about precluding someone?

Ms. Long: Yeah. I'm worried -- I'm not worried. I'm remembering how when specific SMA applications would come in for development, and we would say, "Put in a greenway, put in some kind of contiguous thing that joins this stuff together." That unless there is a condition in the zoning that mandates that these sites are somehow related to one -- the sites that they preserve are somehow related to one another either in a historical overview document that people who stay at the hotels can read, or by a system of greenways, or by some way that relates the sites on the different parcels, which are going to be developed over the next 10, 15, 20 years, together because Sam knows, he was probably hearing this, and a developer will say, "Well, I'm going to do my subdivision here, and I'd love to put in a greenway, but what am I going to connect it to because no one required it next door?" It would be -- and I don't know if in the other conditions there is a requirement for a system of greenways or inter-related thing between the parcels. But, to me, to have some sort of eco-touristic, cultural, history system of relating these things together as the parcels come in for development approval that when it's all done, there would be a way you could look at it and say, "Oh, I see now that this site relates to that site here, and this is what happened there 500 years ago." Is that something that makes sense to -- it's really long range, but if you don't do it now, it is not going to happen.

Ms. Rotunno-Hazuka: So recommending that Makena and other landowners around the area --

Ms. Long: No, no. We're only talking Makena here because this is just their whole change in zoning here. But to condition the CIZ on some sort of method that connects the cultural, historic aspects of all the parcels either on the ground or in some sort of historic -- a book, like Maui Land and Pine did a whole thing on the Honolulu Plantation before they bulldozed everything and it's nice to have that.

Ms. Rotunno-Hazuka: You mean in lieu of the -- like if you did it in a book, it would be in lieu of the report?

Ms. Long: No, it would be in addition to the archaeology. It would be a -- and Aki alluded to it that there would be some way of relating -- even though sites that are gone now, the ones that have been mitigated, and just providing people, because there's going to be hotels here, there's going to be vacation rentals, and Lord knows what, and there's going to be people who live on Maui who would like to know what these different sites mean to one another even if they're on an undeveloped parcel as it relates to a development.

Ms. Cua: I have some questions.

Ms. Long: Go.

Ms. Cua: Because I'm the person that's trying to figure out in words to describe what you're trying to say, and I'm very confused.

Ms. Long: Me too.

Ms. Cua: And I think my confusion is because, from what I heard Aki say, that's what's going to be done in that report. And the first part of the report, he said he can expand a little bit more on --

Ms. Rotunno-Hazuka: The background?

Ms. Cua: Yeah. But the concern that comes to mind, though, because I think you're talking about a couple things, you're talking about the report, but then you're talking about the report being somehow available to the general public, like in a hotel or something so people can know where all the sites are. I think that comes back to the question that was sort of addressed here that they're still trying to work with Na Kupuna to decide. Some sites, maybe they don't want, and that goes along with Commissioner Artates' comments about when he went on that tour, it wasn't all the sites he could visit. And to make that kind of -- to try and formulate a condition now when you really don't know, when the work hasn't been completed, when there are still ongoing discussions with Na Kupuna and the developer, I can't -- I don't know how you would make that kind of condition because I don't think you want some of these sites to be in somebody's hotel room where they --

Ms. Long: No, no. I --

Ms. Cua: Or maybe I'm not understanding what you're saying.

Ms. Long: Separate what I'm asking for, and I'm still just kind of trying to figure out what I want. Separate that from the cultural resources management plan. And Aki did say that he is going to do an overview. Okay. I would hope, for the general public's education in the future -- Na Kupuna is saying we're going to educate our children. We're going to

educate the Hawaiian children. Fine. But the rest of us need education, too, and we want it. Offer something that could go to a hotel guest, that could go to a prospective homeowner of a seven-million-dollar home down there that discusses the Makena Resort as a whole and what happened there in prehistoric and historic time with regard to history and culture, and, if possible, after Na Kupuna, and the CRC, and everybody have decided, okay, which sites are appropriate for the public to visit, formulate some way of connecting the dots on the ground as the individual parcels are developed so that possibly, and I don't know if it's possible, but possibly, you might be able to take a walking tour or a biking tour from the sites that are approved by Na Kupuna, by us, so that you will understand better what happened there.

Ms. Duensing: Can I make an interjection here to maybe try to sort things out? I think I understand what Commissioner Long is saying. And two points: number one, you have to carefully consider what's within the bounds of what we can require the developer, ask the developer to do; and, secondly, I guess what you're asking for is some kind of an interpretive program. And that's how I would summarize it. And this interpretive element would be separate but complimentary to the cultural resources management plan.

Ms. Long: Well said.

Mr. Whelchel: Is that a master plan? Is that what you're talking about?

Ms. Duensing: No. They're going to do a cultural resources management plan, which the State is asking them to do and the Council committee has put in here which is appropriate, and I think what Commissioner Long is doing is asking it to go one step further in making the cultural resources management preservation, so to say, available to the public for public interpretation so that not only Na Kupuna and the Hawaiian keiki learn about it, but making this resource and this knowledge available to everybody instead of having a static document that sits on somebody's shelf.

Ms. Rotunno-Hazuka: Like the little Wailuku Town book.

Ms. Duensing: Yeah, whether it be a walking tour, or interpretive plaques like Lahaina, or whatever, some kind of -- she's asking for some kind of an interpretation plan, interpretive plan, to be explored.

Ms. Sablas: To avoid the piecemeal interpretations?

Ms. Long: To avoid it being -- the opportunity being lost.

Ms. Duensing: Or you might even want to call it interpretive master plan so that the whole thing is incorporated together.

Ms. Long: I'm seeing head-shaking.

Ms. Duensing: But again, I think that you need to consider it in terms of a recommendation.

Ms. Long: Yeah.

Ms. Sablas: This is all recommendation.

Ms. Long: It's a recommendation to the Council to consider adding this condition. Yeah, that's all.

Ms. Cua: There's a big difference between you asking the applicant in their efforts to do this plan, and, you know, they're going to come before you for this so-called workshop or meeting, and they're probably going to come before you in the future as, you know, part of their efforts, if they would look into this possibility, maybe discuss it with Na Kupuna, and come back and report to you as, you know, maybe what they can do to try and satisfy the concern you raised. That's one thing. It's a totally different thing to form a condition, a proposed condition, that you're asking Council to put on a change in zoning, which cannot be changed unless they go through like the whole change in zoning process again, so it deals with the level that you want to impose this concern, and I just throw that back at you.

Ms. Long: Yeah, and I totally understand what you're saying, Ann. My only concern is that unless it's done now, and unless it becomes a condition of the CIZ, it's most likely not going to happen. So what would you suggest? How would you, as a planner, make sure that the developer connects the dots somehow for the future so that the history of the place is available to everyone and that -- and I realize it may not be possible to do a greenway or something like that. So how do you deal with that? Because if it is possible, it needs to be in here.

Ms. Rotunno-Hazuka: Well, it may be further expanding on 16-D where they're supposed to be providing a scope of work detailing, you know, areas to be developed, but, you know, maybe the applicant can talk a little bit further.

Ms. Long: Maybe they could submit to us.

Ms. Cua: Maybe you want to ask -- have this discussion with the applicant because they know -- maybe with the archaeologist especially, they know what they can and cannot do, and maybe they have some proposed --

Mr. Kapu: I'd like to make a comment. I think the reason this is so important is because it reflects on our future generations later on down, and it reflects basically on, you know,

once these parcels get subdivided or whatever is going to happen to these parcels, they're going to file an interest, a private interest, where it has nothing to do with the master general plan to begin with. So once a subdivision approval has been approved, then all of a sudden, the lots go for sale; the next thing you know, you're not dealing with just with Makena Development, you're dealing with the whole massive amount of private sectors, private landowners. We're dealing with this in Lahaina. Yeah. And we're dealing with the fact that once another private entity comes inside, they're not -- they don't have to follow the recommendations from this because they was never a part of it to begin with. So once the cultural resource management plan is set out, and what I'm hearing from here is that this would be a model or a tool that everybody follow the requirements, the basic requirements, to make sure that these sites stay related. If these sites are not related, then you get this other so-called guy that comes in and purchases a property which somebody else sells five years down the road, doesn't have no idea as pertaining to this so-called cultural resources management plan, and decides to put in a water park. Yeah. So I think not only the whole model or the whole thing what we should try to do to provide for our future on these sites is like what she said. How we going make sure that all these sites are connected, not right now, not to be just something that we just going lay down on the side for now because I guarantee you, five years from now, we not going be here as resource -- Cultural Resource members? But I guarantee you that the next person that takes our seat going to have to deal with this same thing again. I guarantee you. Why? Because we're dealing with it right now. First we dealt with one corporation. Now we're dealing with 15 corporations. One topic which never been addressed. That's the concern I see. So how we going tie all this in together to be a part of the cultural resources management plan? It is a concern.

Ms. Rotunno-Hazuka: And it is part of the CRMP. I mean we're talking about how to manage the cultural resources.

Mr. Sinoto: I have one specific request. Because of your request, we've made arrangements to disseminate the current draft out, but I don't want you to comment on that draft because that draft has key pertinent information for the cultural comments to be made, but I'd like you to look at the draft that we're going to submit to you prior to submission to the State because that -- all of the different aspects of the plan will be fleshed out in there. A lot of these concerns that are being brought out now will be covered in that submission, the draft submission. So it's at that point that I would like this Commission to comment on the plan. Because like some members brought out, it is premature right now because those things are being discussed and they're being considered right now, and they will be, you know, put into writing for that submission.

Mr. Figueiroa: I'd also like to add that in trying to make that a condition, it's almost like you have to make an interpretation now on something that you don't fully understand yet as far as how it's going to be preserved. It's almost like you've got to eliminate "The cultural

component shall be prepared in consultation with.” Although you say it’s a separate issue, you know, you cannot divide that from the determination of how the sites are going to be handled. So to try to put an additional condition that may be contrary to this, I think would be a problem. You have that opportunity to tie in the sites. I think, in fact, it is even in the Maui County Code that you have the charge to formulate Countywide comprehensive plans for preservation, and this can be part of it, and our effort can be part of it, and that’s what we intend. Making it a condition that’s not really specific yet, when we don’t have that specific information yet, I think you’re going to have difficulty trying to formulate that into a condition.

Ms. Long: I’m reluctant to wait, and I understand why you’re asking us to do it, and you’re right, we’ve not seen your draft plan. But I’m reluctant to wait because that means that whatever decision we make will not be included in the conditions of zoning. In order for it to be effective 20 years from now, when you and I are retired, it’s got to be in there.

Mr. Figueiroa: So if I’m reading -- interpreting what you’re telling me is that if it’s not included in the change of zoning, it will never be added as a component required of any application we put in? Is that what you’re saying?

Ms. Long: It may be -- Okay. It may be --

Mr. Figueiroa: Because you will be reviewing every single application for SMA, like what Mr. Kapu said, you have one developer that comes in. With the preparation of this, in completion of this plan, after consultation with all the parties named here, to come up with that plan, then anybody coming in for an SMA would have to conform to that plan. So even if you had a subdivision, you come in with a subdivision, you couldn’t ignore it. You’d have to respect all of the sites that have been identified in that plan, and that’s the purpose of having the overall comprehensive plan. So tying them in together, I believe, has always been a component of the cultural resource management plan. It is a part of that plan that you are going to review. So trying to define it even further becomes a difficulty in my mind as to -- I mean, how else do you want to try to define it without really adding anything more to that plan?

Ms. Duensing: I think Mr. Figueiroa is right because I think as you see the cultural resources management plan developed, this is the opportunity you have to insert the interpretive program into that. And I can see what he’s saying and I don’t think it needs to be a separate condition either. Because, I mean, Lisa’s right, it’s part of the management plan.

Ms. Long: Then what is the harm, then, of including in 15 that the cultural resources management plan shall also include an interpretive plan?

Ms. Duensing: You could say that but --

Mr. Figueiroa: Can I respond to that particular comment because I hear it often -- "What's the harm?" And it is often times, harm, because sometimes nobody understands what you really meant. And I think because this really covers everything we meant and everything that is included, sometimes it's better to just leave it alone.

Ms. Long: I'm sorry. I disagree. And in five years as a Planning Commissioner, I've heard a lot of promises. I don't think I heard any from you so I'm not saying anything about you. But my experience tells me that unless something is in there and is understood that somehow or other it either doesn't happen, it gets misinterpreted down the line, or whatever, I'd like to ask the County Council if they would consider adding an interpretive plan and a -- some sort of a public-friendly written cultural history into this thing just to make sure that it happens.

Ms. Rotunno-Hazuka: Barbara, one thing, too, is maybe if you had the rules and regulations of a preservation plan which goes through what's the short term uses, what's going to be allowed during construction, what's long term projections, is the preservation avoidance and conservation, is it interpretive, those types of things. If we're going to comment on the CRMP, we can do that when we comment, and we can say, this what you'd like to see.

Ms. Duensing: And just to go one step further is what Lisa's saying, I mean, cultural resources management plans have all kinds of different things in them. I mean, a cultural resources management plan can be as much as putting a fence around something, it can involve interpretation plans, you know, there's just a wide variety, and until you go through the steps, which you will have a chance to do because you're going to review and comment on the draft, and then you're going to, as this reads it also, you know, have that opportunity before it's completed and submitted for approval by SHPD.

Ms. Long: Can it be amended down the line, though? Suppose we get it in there and then the cultural resources management plan gets amended ten years from now, and they say, we don't want to do this anymore, take it out?

Ms. Duensing: But they could amend a condition ten years from now, too, can't they?

Ms. Long: Well, it's a lot tougher.

Ms. Duensing: I mean, you can't guarantee anything ten years down the road.

Ms. Long: Well, okay.

Ms. Duensing: I don't know.

Mr. Sinoto: May I comment? What I wanted to say was that an interpretive plan is a key element of the preservation plan. So we'd, definitely, have that in there and, you know, you'll be able to review it when that draft comes in.

And on the second point, if you put your input into the cultural resources management plan, that plan is already included in the conditions. So if you want to put in your comments so that we include, you know, what you want included into the CRMP, there's no reason to change the conditions.

Ms. Long: Okay, I don't see a huge groundswell here. We are agreed, though, Ann, that it's going to read, "The cultural resources management plan shall be completed and submitted for approval after review and comment?"

Ms. Cua: (Inaudible)

Ms. Long: Okay. Okay, I'll back down on that one. I hope I'm not sorry.

Ms. Rotunno-Hazuka: No, you won't be.

Ms. Sablas: Do we have any comments, recommendations, from the other Commissioners?

Mr. Kalalau: Yeah, I just got a comment on --

Ms. Sablas: On the conditions?

Mr. Kalalau: On the global positioning system and the State geographic information system. I just wanted to know if the State system is up to standards, I mean, or if they have the majority of the datas that has been recovered on Maui because if we've gotta make decisions on this from here, and in Oahu they don't have the information that we have here, or we don't have the information that they have there, I just have this problem about the State and County government wrestling each other. I just felt that, in this meeting, we should've had somebody from the State Historical Preservation here so they could kind of bring us up-to-date on where they're at with the GIS system, with their GIS system, and how our communication with them would be. Right now, it seems like they send us letters, but they don't send us other information on how we can support the letter or how we can make changes to the letter. We're kind of looking at the developer here with his archaeologist to make decisions based coming from them and not too much support coming from the State.

Ms. Sablas: So what would you recommend? You're looking at 15-a?

Mr. Kalalau: "I."

Ms. Sablas: "I."

Mr. Kalalau: Yeah. I just feel that, in the near future, that when we're going to cover areas like this where it has a lot of the State Historical Preservation Department in it, I think that we should have somebody from them over here, I mean so that they know how we feel and how we feel about making decisions on things that has to be decided by the State too. Because I feel that we're totally trying to make a deal with the developer and his archaeologist where this whole agenda thing is coming up from a letter from the State of Hawai'i whether these standards and these policies are going to be used and be approved by the County Council. It's kind of real difficult to have government agencies supposed to be talking on the same line but are in different levels of the State and County buildings that they cannot even have proper communication. This is why I feel that, in the near future, that we should have people from that department, too, so we could -- I think a lot of the concerns that Barbara had, too, might've been addressed by the State, and maybe could've helped address some of the statements that she was trying to make right now.

Ms. Long: Would it work to have somebody, if we do a workshop on the cultural resources management plan, to have someone there?

Mr. Kalalau: I believe so. If we're going to have a workshop that --

Ms. Long: I would very much like that.

Mr. Kalalau: That's going to, you know, entail all these people, all these bodies, we should have somebody from --

Ms. Long: Yeah, they've got a local person. And, yeah, I think we need -- especially because of Lisa's connection with Makena Resort and that sort of thing. She is going to have to recuse herself at some point.

Ms. Sablas: So that's a good recommendation again for a future workshop. So can we just continue on our comments?

Ms. Long: Okay, I'm going to bring something up, and I just want to float it and see what happens. You have heard testimony today. You have heard chapter and verse about how in development approvals and land use changes that cultural resources management plans need to be reviewed and accepted before these things happen. Now, we know that this is either a development approval -- the change in zoning -- or a land use change. I would

appreciate it if the Chair would kind of poll the Commissioners to see how they feel about asking the Council, in light of what we've heard today in testimony, request that we proceed according to the various State and County laws that were quoted and also the Kihei Community Plan, which says certain things shall happen before any development approvals, that we ask the Council to delay action on the change in zoning until the Cultural Resources Commission has discussed and commented on and approved the cultural resources management plan, and the State Historic Preservation Office, obviously, they have to too. And if you want to vote on it, I will so move as something to request in a letter to the Council. Let me make it a motion.

Ms. Rotunno-Hazuka: I wanted to ask Dudley, it seems to me, in the past, that for a developer, if we had a change in zoning, certain things were or were not required. But if the change in zoning was applied for with a subdivision approval, then what Barbara's asking for, those type of things, needed to be implemented. But when you only have a change in zoning application before you, what --

Mr. Akama: I think that should be clarified here now because Commissioner Long said something that I think was inaccurate. This is strictly a change in zoning, pure and simple, and is not an application for a development. Makena has the right to develop on land that's already been zoned, so this is not a development application. This is a change in zoning. Furthermore, I question this Commission's authority to say hold up approval on this matter when this is already a condition. And if it's been already hung up in terms of committee, and first reading, and all this, and I don't know, and I question the wisdom of this Commission, now, you can do what you want, but I question the wisdom of this Commission saying hold this up, hold any further action up until we can comment on this when we're already, by this condition, if it passes, we're going to have a right as the Cultural Resources Commission to review and comment, approve this cultural resources management plan. So we will have sufficient input and sufficient time. It's not as though this matter is going to be -- this change in zoning is about to be approved imminently that we need to weigh on it at this time, or that furthermore that we have any right to. I question the right of this Commission to request that this matter be postponed.

Ms. Long: It may not be a development approval but it certainly is a land use change, and that was specific language in another section of the law. We are the only ones, as Dorothy Pyle said, to speak for these cultural sites. The Council doesn't do it. The Planning Commission doesn't do it. We're the only ones.

Ms. Rotunno-Hazuka: Barbara, one --

Ms. Long: No, I'm willing to put it to a vote. I'm, you know, you've heard my arguments before. It really matters to me the process that government goes through to make things happen. And we have seen different kinds of government make things happen based on

false premises. And I don't want to let this body let a chance go by if we have the ability to do it to ensure that the cultural resources that we have don't get the fullest public scrutiny and the fullest scrutiny from this Commission, which is here because we're supposed to be looking at it. So I made the motion. If anybody wants to second it? If not, it will die.

Ms. Sablas: Any second or would you like me to poll the members?

Ms. Long: No. No. If there's no second, there's no --

Ms. Sablas: Is there any second? Well, the motion dies.

Ms. Long: The motion dies. Okay.

Ms. Duensing: Can I make one comment, too, Commissioner Long, is that when the previous testimony we've heard specifically to legislation that talks about land use change, that was Chapter 6E-42 of the State Historic Preservation Law, which gives the State Historic Preservation Division the authority to do that, not the CRC, so --

Ms. Long: Yeah, but we've already agreed to make a change here in no. 15 recognizing that we're the folks who live here who have the best knowledge, and possibly the best, the strongest feelings about Maui's, Maui County's sites, so -- okay, move on.

Ms. Sablas: Any of the Commissioners have to make comments or additions again to the letter? Ann, you want to read the summation of what you got?

Ms. Cua: Okay. First of all, the letter would be going to Wayne Nishiki, Planning and Land Use Committee Chair. First of all, indicating that you appreciate the opportunity to participate in this process, and that you did -- were able to review SHPD's letter at your meeting on July 8th, and that you would like to offer comments on the draft conditions specifically with regard to historical and cultural resources.

Your first comment is on condition no. 15. And I'm going to read from start to finish on that condition, not all the a's and b's, but just that first paragraph:

The cultural resources management plan, currently being prepared by Makena Resort Corporation, shall be completed and submitted for approval by the State Historic Preservation Division after review and comment by the Cultural Resources Commission in consultation with the Maui/Lana'i Islands Burial Council and Na Kupuna O Maui.

And then it goes on.

Ms. Long: That's fine.

Ms. Cua: Okay.

Ms. Duensing: Can I make one other comment on that paragraph? I would continue by saying the CRMP shall consist of -- it should be three major components. It should be archaeological, historical, and cultural because all of these conditions don't -- none of them mention post-contact history, and that should really be treated as a separate item from archaeology and cultural concerns.

Ms. Cua: So what is item B? It says the cultural component.

Ms. Duensing: No, at the bottom of 15, the paragraph you just read, I would insert "archaeological, historical and cultural."

Ms. Long: Thank you, Dawn. Great.

Ms. Duensing: It's a minor language change, but I think it's important.

Mr. Akama: Dawn, then we would need to describe what historical component is under sub C.

Ms. Duensing: You can put "post-contact." Yeah.

Mr. Akama: We should have a sub C for clarification.

Ms. Duensing: Because there's a difference between -- archaeological concerns usually are pre-Western contact, pre-1778; historical would be post-contact.

Ms. Cua: So you want to add a section "c?"

Ms. Long: Yeah.

Ms. Rotunno-Hazuka: Yeah, historical ...(inaudible)...

Ms. Duensing: Yeah, because for instance, in the post-contact era in Makena, you've got ranching history, and I don't think that that should be ignored.

Ms. Long: So C is the historical component shall include?

Ms. Rotunno-Hazuka: Post-contact.

Ms. Duensing: Or "The historical component shall be defined as post-contact," something like that.

Ms. Cua: Well, if you're going to -- are you proposing that it be added in that last sentence? Or are you now going to propose another item C?

Mr. Kalalau: No, I think only that last paragraph. The 2 should be changed to 3. And then at the end, you add "historical," -- "archaeological, cultural and historical."

Ms. Long: Yeah, but then it needs a C.

Ms. Rotunno-Hazuka: Why? It's part of a sentence. I don't see a C. Oh, when you go to the other side?

Ms. Long: Because it continues. Yeah, it would be a, b, and then c because that tells --

Ms. Rotunno-Hazuka: Yeah, "The historical component shall --"

Ms. Cua: Right.

Ms. Rotunno-Hazuka: Consist of the post-contact era.

Ms. Cua: "The historical component shall --" Are you saying that you want a C also?

Ms. Long: Yeah.

Ms. Cua: And then what should that say? "The historical component shall --" what?

Ms. Long: Include something of the post-contact era?

Ms. Rotunno-Hazuka: "Shall consist of the post-contact era?"

Ms. Long: "Shall consist of --" yeah.

Ms. Cua: And you don't need to -- I mean is that enough to say that? Because if you look at Section A and Section B, I mean, is that -- We could do that. Just C say, "The historical component shall consist of the post-contact era."

Ms. Long: Specific sites, Dawn? No?

Ms. Duensing: No, that's to be determined.

Ms. Long: Okay. That's good enough for now.

Ms. Cua: Okay. So your next comment, your second comment would be that to condition no. 15, you add the word "historical" after "archaeological." And then, you add a 15-C that says "The historical component shall consist of the past-contact era."

Ms. Duensing: "Post-contact era."

Ms. Cua: I'm sorry, "post," sorry, "post-contact era."

Ms. Duensing: And then "post 1778," yeah.

Ms. Rotunno-Hazuka: "Post-contact (1778) era activities"?

Ms. Duensing: And "activities" yeah.

Ms. Cua: Okay.

Ms. Long: Okay.

Ms. Rotunno-Hazuka: Thank you.

Ms. Cua: Now, the only other comment that I have that I'm not sure what to do with is about this independent archaeologist. Are you comfortable -- because I understand that you were comfortable with it, so we don't need to say anything about it, right?

Ms. Sablas: Yes.

Ms. Cua: Okay. Great. Thank you.

Ms. Sablas: Ann, I thought we said that we're going to write the comments to the Planning Committee earlier because the Land -- it's past that?

Ms. Cua: Right, Wayne Nishiki, the Chairman of the Planning and Land Use Committee. I did say that it passed the Planning Committee, but it hasn't gone up to full Council yet. So when I checked with Council staff, they said the appropriate body to write it to is Chair Wayne Nishiki and the Planning and Land Use Committee. So just those two comments.

Ms. Duensing: Can I bring one other thing to your attention? I discussed this with Ann earlier, and maybe, Lisa, you'd care to comment on this, and this is regarding no. 14 with human burials or any historic sites with being discovered. Is it typical protocol when you

discover a human burial, you notify SHPD and the Burial Council? The CRC has no authority over that whatsoever and --

Ms. Rotunno-Hazuka: Yeah, if the burial is found during monitoring or inadvertently, it goes Burial Sites Program.

Ms. Duensing: Right.

Ms. Rotunno-Hazuka: If it's found during inventory, then it's Maui/Lana`i Islands Burial Council.

Ms. Duensing: Right. So my point being is that the CRC should not be in there.

Ms. Long: Should be deleted, yeah.

Ms. Rotunno-Hazuka: Well, yeah, but then they go on and list these other things.

Mr. Kapu: Cultural sites.

Ms. Rotunno-Hazuka: Yeah, they're kind of combining two different -- this is almost --

Ms. Duensing: I don't know. This is a weird --

Ms. Rotunno-Hazuka: This is like the stamp that's on the plans for contractors.

Ms. Duensing: Yeah, except that typically, it goes to SHPD. It does not come to CRC. That's my point.

Ms. Rotunno-Hazuka: Yeah. Yeah.

Ms. Duensing: And I think that's stepping over boundaries that the CRC doesn't have anything to do with.

Ms. Cua: So would you like to recommend that in condition 14, they take out CRC?

Ms. Rotunno-Hazuka: Well, I mean, it's still -- it's just informing us of additional finds. It's not like they'd have to come to us every time. We could be cc'd.

Ms. Long: Let's leave it in.

Ms. Rotunno-Hazuka: I don't know.

Ms. Long: Leave it in.

Ms. Rotunno-Hazuka: I mean, it is a jumbled statement. You're right.

Ms. Duensing: Yeah, it's just not conforming to way things are usually done.

Ms. Rotunno-Hazuka: Yeah, with the burial...(inaudible).... Okay.

Ms. Duensing: And I think that State law covers how you do those things, I guess that's my point, and I think the County Council really needs to do that.

Ms. Rotunno-Hazuka: Okay.

Mr. Kapu: Let me make one comment to that. You're dealing with the Burial Councils -- you know, they're under State jurisdiction, yeah? So once they make a declaratory ruling as pertaining to what's going to happen to those sites, later on, there might be a precaution within our jurisdiction. So I don't think we should take anything out, to delete us from putting some input in here. I feel strongly about that. That we're another entity that could basically make a difference. Having the State Burial Council, the Maui Burial Council be the deciding factor and then later on we find out that this same project going be after the internment, or whatever it is, do the same project had an opportunity to come to us, we lost that opportunity, so I say we leave it as it is.

Ms. Sablas: Okay, are we ready to call for the vote?

Ms. Long: I have a question.

Ms. Sablas: No.

Ms. Long: Sorry guys. The very last Item D on Page 5, "Submit to SHPD a scope of work," this is for the archeologist, "detailing propose inventory work on areas that have not been developed to date regardless," would we then be advised by SHPD that the -- as the work, I mean, as the work goes along and as the archeological inventorying goes, and I don't know how long that's going to take to be done, do we -- do we automatically get involved in that? Does it -- I don't know. What I'm -- I'm just asking are we going to know about this when --

Mr. Sinoto: Well, that particular condition is, I think, that's the one separate condition that's not part of the CRMP, it's part of the current inventory survey requirements that the department requires because now when you do an inventory survey you have to submit a scope for approval and I think that's what that's talking about, it's not for this whole total acreage that's being considered right now under the zoning change or anything; it's should

new development be proposed in an area that has not been surveyed before, we need to submit an inventory survey scope of work for approval by DLNR, so my question back to you is do you normally review those? It would have only started in January of this year for all inventory surveys that are done in the County of Maui. Do you review the scopes? If you don't, then they won't send it to you for review.

Ms. Long: Are there many areas that have not been inventoried?

Mr. Sinoto: No, very little within this project area.

Ms. Long: But what is SHPD's procedure in this thing? You're saying you haven't received any --

Ms. Rotunno-Hazuka: We haven't been doing any. I mean my company hasn't been doing any --

Ms. Long: Anywhere?

Ms. Rotunno-Hazuka: Scope of work for inventory. I know they included it in the new rules and regs but, basically, it's trying to tell Melissa what we plan on doing when we go out there to do the inventory survey.

Ms. Duensing: I think it's important to remember that SHPD is there for a reason and they have the professionals, they are the archeologists, and they're the ones that put out the scope of work, review it, and make sure that it's properly done, and that's why they're there.

Ms. Long: And we would -- we would see it then if there's a development application?

Ms. Rotunno-Hazuka: I think we'll get them in those cc's.

Mr. Kapu: The memorandums. Yeah. Yeah.

Ms. Rotunno-Hazuka: If one comes up because she would have to comment. If a firm gave her a scope of work and she had to write a letter, then we're going to be cc'd on it in that group.

Ms. Long: Okay, I'd just be curious that that was more a question about what happens with SHPD then with this particular -- could you, you know, kinda find out about that some day and let us know?

Ms. Rotunno-Hazuka: Yeah, I will. I'll find out if who's doing it.

Ms. Long: If we're cc'd on it, then great. Okay do we need a vote?

Ms. Sablas: Ready for the question?

Ms. Long: Yes.

Ms. Rotunno-Hazuka: Go ahead.

Ms. Sablas: Who's going to be --

Ms. Long: Okay, you need a motion?

Ms. Sablas: Yes.

Ms. Long: Okay, I will move that the comments to Councilmember Wayne Nishiki and the County Council regarding the proposed conditions -- what do we call these? The proposed conditions for Makena Resort Change in Zoning, be -- sorry about that. Lost that one. We would like to recommend the following changes to Condition No. 15, and then if you want to read what we've got.

Mr. Akama: Pardon me, Commissioner Long, why don't we just make reference to what Ann has already read to us --

Ms. Sablas: Ann had said.

Ms. Long: Yeah, okay.

Mr. Akama: And I think that would be much easier unless you have some disagreement with that.

Ms. Long: No, okay.

Ms. Sablas: No.

Ms. Rotunno-Hazuka: Okay. Second.

Ms. Sablas: It's moved and seconded.

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

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

VOTED: that a letter be written to Councilmember Wayne Nishiki and the County Council recommending that changes, as referenced by Ann Cua, be made to proposed condition no. 15 for the Makena Resort Change in Zoning.

Ms. Sablas: Okay, motion carried. Thank you very, very much.

Ms. Long: Ann, could I please see a draft of that letter as well? Can you fax it to me? Thank you.

Ms. Sablas: Okay, I'd like move forward to item no. --

Ms. Long: Wait. Wait, let me clean up.

Ms. Sablas: Oh, oh, I'm sorry. Ann, what is that on? Oh, wonderful. Thank you.

Ms. Long: Perfect.

Ms. Sablas: Thank you very much.

Ms. Long: Thank you, Makena Resort.

Ms. Sablas: Thank you, Makena Resort. Mahalo. Thank you.

Ms. Long: Okay, let's, Commissioners, we're going to be moving back to Item No. 2, Lahaina Small Boat Harbor. Dawn?

2. LAHAINA SMALL BOAT HARBOR: Dawn Duensing informs Commissioners about DLNR's proposed improvements to the Lahaina Small Boat Harbor. The Commission may consider whether to make recommendations and take action on this matter. Public testimony will be accepted.

Ms. Duensing: Okay, this was something that was brought to your attention in previous -- mentioned in the meetings and I just want to, basically, give you a brief overview on what's being proposed for the Lahaina Boat Harbor, which is, as you know, in Lahaina Historic District No. 1 and also in the Lahaina National Landmark District, and I have copied for you a couple letters regarding this, for your information. I've been in on several meetings with the DLNR, which has the authority over the boat harbor, and also their consultants, which is Munekiyo & Hiraga, and they also -- I think they had a public meeting too, and I wasn't able to attend that, but, anyway, the State has gotten, I think, it's money to the tune of ten

million dollars to make proposed improvements in our small boat facilities and this is being done under the aspects of it will improve ferry, inter-island ferry services, especially here on Maui, so it's between Molokai, Lanai, and Maui, so they're looking at four sites, basically: Kaunakakai, they're going to do some improvements; Manele Bay; Lahaina is one, and they also mentioned, one time, possibly doing some improvements in Maalaea.

What we're concerned with, however, is the Lahaina Small Boat Harbor because the ferry that comes in and out, the idea that it's overused, and there's too much traffic, and how can they improve it. So they came to the first meeting and started with the idea of, number one, they need to improve the comfort station. The public restroom facilities there, as you probably all know, are in pretty bad shape and I think everybody was in unanimous agreement that, yes, we should improve that. And then the other thing was to construct a new pier for the ferry that comes over from Lanai, and what they want to do, and I don't have any -- I don't think I have any of the maps, maybe I do, I can pass it around -- but, basically, what they want to do is construct another pier adjacent to the current pier that the ferry lands at, if you're all familiar with it, and they're going to use Federal money for this so this means that with the National Historic Preservation Act they have to do Section 106 consultation, so they know they have to deal with the Cultural Resources Commission, they know they have to deal with SHPD. You have, for your review, a letter that SHPD sent to DLNR because, basically, if they construct this new pier, it's going to be right adjacent to the remains of the Red Brick Palace, the birthing stone is out there, the Landmark District extends into the water, it doesn't just end at the shoreline, so this is a tremendous impact on the historical integrity of the historic district by, you know, putting on something that would, you know, go right into that nice open space behind the library, it'll affect the view plane. They, originally, started with the idea of constructing a building on this new pier, and I hope we've discouraged them from doing that, and so, you know, they owe a lot of money, they want to rush this through, and get the EA, or the EIS, I guess, it's an environmental impact statement done by early next year so that they can get everything approved and spend their money.

So I'm not sure how much more I can tell you but I see it as a real problem for the historic district, and I don't know how far, you know, things are going to go. One of the things that was mentioned at the last meeting that I attended with them was it would be probably better if they were going to construct an extra pier, to not have it abut the library lawn area, but to run it off the existing pier so that you have some separation from the historic area and this new construction. So they're willing to work and try to, you know, come up with ...(inaudible)... you know, it's going to be an impact any way you look at it, so I don't know how far you can go towards mitigating the impact on the historic district, but they are well aware that they need to come to the CRC, and I just wanted to bring this to your attention cause it'll probably be sooner rather than later.

Ms. Long: Okay. Did they -- did they do an environmental assessment or did they go right to the EIS?

Ms. Duensing: No, we told them --

Ms. Long: They decided ...(inaudible)...

Ms. Duensing: Yeah, there's no way they can get away with just an EA on this. I said that at the first meeting and so that's the way they'll be going.

Ms. Long: Okay, and obviously we'll be asked to comment on that.

Ms. Duensing: And they've also -- I think a number of the community organizations out in Lahaina are aware of what's going on with it too.

Ms. Sablas: After staff report, if you don't mind, I'd like to ask for public testimony. The public has been waiting since way in the morning and then we can deliberate later on.

Ms. Long: Sure.

Ms. Sablas: So thank you those who have been in audience for being so patient to bear with us as we discuss important issues that concern Maui. So now we're taking public testimony on the issue of the Lahaina Small Boat Harbor. Keoki? Thank you very much for being back there patiently.

Mr. Keoki Freeland: Madam Chairman, members of the Commission, I'm Keoki Freeland speaking for the Lahaina Restoration Foundation. I'd just like to mention that since the initial proposal that I attended during the stakeholders meeting back in March, the Department of Land and Natural Resources Harbors Division has reduced their plans considerably, which is, in my opinion, going the right way.

Initially, they were planning to build two piers: one they call the "Ferry Pier," which was going to be 145 feet wide, I mean 145 feet long, some 60 feet wide, and it would be a two-story structure where the second story was going to be virtually the Pioneer Inn sitting on top of it; that was the design, and they were also going to put a multipurpose pier in the Kaanapali side of that and that one was only going to be 90 feet long but it would be a smaller pier.

Since that time they came back to us and modified their proposal, much to what you just heard, to a single pier and that one would still be 145 feet long, 60 feet wide, but it would be only a single-story structure and to look much like what you saw the old Lahaina wharf look like, just a roof on it, not the two-story monster that they were talking about, but access

to it would be also from the present pier instead of building a walkway along the seawall.

Now we have some concerns that we'd like to share with you folks and our major concern is for boats to access this one single pier, they're still going to have to dredge, and our concern is what affect would this dredging have on the historical sites that are in the near vicinity of the pier? Mainly the ha`ula stone, the seawall, the makai side of Kamehameha's Palace, and the old Lahaina lighthouse? Now, when I mentioned it to them, they said, "We're not going to get close to the wall and whatnot and no problem." But then I mentioned to them, you know, "Have you ever seen that place when the surf is really up?" And I just want to share that with you folks.

The reef outside Lahaina there goes from the harbor all the way to Mala Wharf, so when the surf is really big, it's coming over the reef and the water cannot go back out because there's no exit. The only place it can go out is the harbor channel. So you stand there and you watch how the water is roaring out there, I mean the buoy marker is just ...(inaudible)... down as the water is rushing out. So if you're going to dredge, you're not just making a puka in the ocean for the boats to come by, we're concerned about this rushing water, what is it going to do? Is it going to fill up immediately and make the dredging completely useless? Or is it going to continue to undermine and take the historical sites in jeopardy? That's our major concern. They, in my opinion, haven't really looked at that. They seem to be under this sense of urgency that they gotta get all the permits done otherwise the Federal money is going to lapse and, in our opinion, that's really secondary. They need to take a look at that dredging.

As was mentioned earlier, the National Trust for Historic Preservation is going to review this, but all in that stakeholder meeting, there was no mention of that initially, this has come about since then. And, really, in our second meeting when they came to see us, there was another gentleman there that I had never seen before and I mentioned about the National Trust of Historic Preservation and because Federal money is involved in this and whatnot, and he turned around to the other people from DLNR and said, "We're going to have to do a 106," and like -- it seemed like they didn't even realize they were supposed to do that. Now whether they're acting or not, I don't know, but at least you folks know what our concerns are that we want, well, I wanted to make sure that you folks have a chance to review it because it's within the Lahaina Historic District but, definitely, the National Trust for Historic Preservation should review it because it's within the Landmark. So both of those concerns seem to be working through at the present time, but I'd like for them to really pay close attention to what effect the dredging will do.

There doesn't seem to be, another point we're concerned about, much fact given to the fact of if you're going to build these piers, you might get more traffic, not might, you will get more traffic in the harbor area, and what are they going to do about the traffic problem?

They don't seem to have any plans for that. So those are our basic concerns. Maybe you can interpret it which way we're leaning towards, but we think you folks are the body and the National Trust are the ones that should make the final decision.

Ms. Sablas: Keoki, you mentioned that you had a meeting of stakeholders back in March, who were in attendance as stakeholders?

Mr. Freeland: I'll try to remember. We all kinda got a invitation to come to this meeting but --

Ms. Sablas: Invitation by whom?

Mr. Freeland: DLNR Harbors Division and it was held at the intermediate school, and it was, okay, it was a bunch of Harbors people, Lahaina Restoration, LahainaTown Action Committee, Patty Nishiyama was there, Stuart Kahan -- just trying to remember who was there, but it was by invitation, it was not open to the general public, so that's why they call it the stakeholders meeting.

Ms. Sablas: So ...(inaudible)... I guess, was that the first time they brought up this proposal at that stakeholders meeting?

Mr. Freeland: It's not really the first time I heard of it, it's the first time I saw an official plan. The first I really heard of it was probably a year-and-a-half before that. I happened to be down the harbor and there were some engineers down there looking at the harbor and whatnot, and I said, you know, they introduced themselves to me and they said, "We have plans. We're going to do this and do that." I said, "Really?" I said, "You realize you're in the historic district and you actually need to get special approval to do changes in the historic district?" And they looked at me with a blank face. And right at that time too, if you remember, in the *Lahaina News*, there was a plan that came out in the *Lahaina Newspaper* about building a new pier, that was about the time when these engineers were there, and then everything went quiet for a year-and-a-half, nothing happened, until this stakeholder meeting came about, and now you get this sense of, you know, "come on folks, approve that because we gotta get the plans approved or we're going to lose the money," and ...(inaudible)...

Ms. Sablas: I had a question because you mentioned today a lot of the people was proactive here instead of -- I'm sorry, reactive instead of proactive, and if you say that it's in March and they had had plans for this extensive building, then I need to ask staff here from Planning, I mean, when were you, you know, involved in this process so that they're, you know, I mean it's a State project, but it's still in the historic district, so how can an entity get this far without having the local community involved? Question for staff.

Ms. Duensing: Well, I'm looking at my records and, you know, I kinda got called into this in March, and I think I saw Keoki the next week and I told him, and I faxed him a bunch of the documents that I had, and when I went to the initial meeting, I told them which Lahaina groups that need to get involved with that and then that's when they put the stakeholders meeting together. But Keoki is right, the real thing here is rush to get this done so that they can encumber those funds and get things built. They are in a real hurry. They want that EIS to be done, I think, by April 2005 and that's really quick.

Mr. Freeland: In my opinion, they knew about this thing a long time ago. I think they purposely have waited till this last minute for this strategy of hurry up, don't slow them down.

Ms. Duensing: But the couple meetings I have been involved in, I mean I told them at the very first one that Section 106 was absolutely mandatory, they could not get out of that because there's Federal funding involved, and that's why I had copies of the letters given to you, and I've also spoken to Sara Collins at State Historic Preservation Division and they are very concerned about this, and I think this is kind of curious because, as you know, they're within DLNR and, you know, I've told these boat guys, you know, "You gotta talk to them," and Sara's so concerned about it that that was the reason why this letter has been sent out because they want the advisory council to be involved with this as well.

Mr. Freeland: But, during that stakeholder meeting, I did testify that we'd like to see the Cultural Resources Commission review it as well as the National Trust for Historic Preservation. But, right after that, the Mayor's advisory committee met, I think it was a week after that, so I went and testified over there, not the Mayor, the Governor's advisory committee, so that officially the Governor would have our concerns as well. Now we, Lahaina Restoration Foundation, have also written letters to our Congressman about our concerns so -- but, as you can see, we're very concern, mainly if they're going to have to dredge and if they're going to dredge, I don't think any boat can approach the pier unless it's a little rowboat.

Ms. Sablas: So, for clarification purposes, then I take it that CRC was not included in that stakeholders invitation?

Mr. Freeland: No, they were not.

Ms. Sablas: Okay.

Mr. Freeland: Although, Dawn did attend the meeting.

Ms. Duensing: Yeah, they're including the Planning staff in it. I mean it's not -- they are not leaving the CRC out, and when they have invited me to meetings, I told them that, you

know, the CRC still has to be consulted and so does SHPD, they're aware of it, and, you know, I have, as your historic preservation specialist, I have told them what the problems are with, you know, this project and how it will impact the Lahaina Historic District, I mean that is the central core of the landmark district and it goes way beyond dredging because that is going to have a tremendous impact on the seawall as a historic site, the lighthouse, the remains of Kamehameha's Brick Palace, the Hau`ola Stone, you know, the view plane from the library, the view plane from Pioneer Inn, there's a lot of it wrapped up in there. I mean, yeah, it just goes on and on, you know, it's a tremendous impact on the central core of the Lahaina Historic District.

Ms. Sablas: Are there any other questions for Keoki?

Ms. Long: Just one. Keoki, were you involved at all in their attempt in the 1970's to do the same thing?

Mr. Freeland: No, I was not. I was not here at that time.

Ms. Long: Okay.

Ms. Sablas: I remember that.

Ms. Long: Yeah, we were living kind of in Lahaina at that time and, yeah, there were these plans to expand the boat harbor and do all that stuff and it failed because of the impact. I dredged out of my files this map and the National Historic Landmark goes one mile out in the ocean because, not only are the sites that Dawn mentioned important, the context is important of how the landmark is surrounded by --

Ms. Duensing: Well, I did say it goes out into the sea, it doesn't stop at the shore.

Ms. Long: Yeah, by appropriate -- exactly.

Ms. Sablas: I'd like to keep the questions to the testifier and then we can deliberate later.

Ms. Long: Okay.

Ms. Sablas: Any questions of Keoki? Okay, thank you, Keoki. Members of public, it's open for testimony on the Lahaina Boat Harbor. If you'd like to come up and please identify yourself.

Ms. Uilani Kapu: Aloha. I'm Uilani Kapu, President of Kuleana Kuikahi. Just for the record, our organization has met with them also and is very against the harbor being -- the pier being built because of it's historical significance, because it will bring in more traffic to the

harbor, and, what Keoki said, the dredging is a no-no, and I just wanted to get that down for the record because we weren't involved in the stockholders meeting, but we did request for them to come and see us and just to bring it to Kuleana Kuikahi because we're involved in a lot of cultural activity on the west side, and we just wanted it to be noted.

Ms. Sablas: And so they did come and make a presentation to your group? Is that what you're saying?

Ms. Kapu: To some of us, yes, that were present.

Ms. Sablas: Okay, and pretty much what Keoki had mentioned, the same type of presentation with the plans?

Ms. Kapu: No, ours was brief because there weren't a lot of members there.

Ms. Sablas: Okay.

Ms. Kapu: But they did give us the last map that they just printed out on the one harbor that they're going to do, but because of it's historical significance, everybody was against it, so I just wanted to put that in note.

Ms. Sablas: Mahalo.

Ms. Kapu: Mahalo.

Ms. Sablas: Anyone else?

Ms. Nishiyama: Aloha, here I am again. So anyway, yes, we were there for the first scoping meeting at Lahaina Intermediate School, and my mana`o was that that area was kapu, the kupunas said a`ole and it's kapu. And we have been meeting with them and we're still in kukakuka session with DLNR. It's not over yet. Thank you.

Ms. Sablas: Mahalo.

Mr. Kapu: I get one question for you, Aunty. Aunty, I get one question, if I may? There was a gentleman, I forget his name, but he was sent out to do a cultural inventory assessment. Did he ever approach you?

Ms. Nishiyama: Yes, he has. I forget his name too, e kala mai, and he was sent to -- I don't know, he's on independent contract, I'm pretty sure, yeah. He's an independent contract and he's really there for our culture and the impact of everything, so he has shared his mana`o with us, with uncle and the aunties, and he really push his way in and saying

that this is how the kupuna -- what -- how the kupuna feels about the impact of the ocean, the tide, the water, how it's going to turn and ha`ule the stone or, you know, and the seaweed and the fishes that come up in the front. He's really, really good, but I can't remember his name, excuse me. He's affiliated with Pacific Legacy. He was very maika`i.

Ms. Sablas: Any questions from commissioners?

Mr. Kaopuiki: Madam Chair?

Ms. Sablas: Yes? Oh, Uncle, you're so quiet. I was wondering where the voice came from.

Mr. Kaopuiki: I guess this question is for Keoki. Why wasn't Mala Wharf considered?

Ms. Nishiyama: Why wasn't what?

Mr. Kaopuiki: Mala Wharf.

Ms. Nishiyama: Considered?

Mr. Kaopuiki: Yes.

Ms. Nishiyama: Oh, uncle, you should see what it is now.

Ms. Sablas: Dawn can answer. Keoki is not here.

Ms. Duensing: I asked them why they didn't consider other locations because if you look at the overall long-range plan for the Lahaina area, you're supposed to get rid of the school, right, and you could, you know, do something like this there, but we've been talking about getting rid of the school and putting in a better area for three years and that's not going to happen, and I mentioned Mala Wharf, and they just threw up there up their hands and said, "the burials," and that's all they would say.

Ms. Nishiyama: Oh, no, it's not only the burials.

Ms. Duensing: They don't -- they don't --

Ms. Nishiyama: It's the local fishermen that's been there forever, from the beginning, who worked so hard to create that place.

Ms. Duensing: Yeah.

Ms. Nishiyama: They were taken out from Lahaina Harbor, pushed out, to go to Mala Wharf, and they created that whole place for the local fishermen so --

Ms. Duensing: But, I mean, the Mala Wharf is an even bigger can of worms then --

Ms. Nishiyama: Oh yes.

Ms. Duensing: The Lahaina ferry is because of the burials, the fishermen, the wharf falling down, I mean they just -- they know better than that.

Ms. Nishiyama: Yeah, it's a big kuleana, Uncle.

Mr. Kaopuiki: I was just thinking about a water way, now you talk about that burial again, yeah, okay.

Ms. Duensing: Yeah. Yeah.

Ms. Nishiyama: Oh, yeah, the burial is huge over there. There's so much desecration, it's unbelievable.

Ms. Sablas: Okay, thank you, Aunty Patty. Anymore -- anymore public testimony on the Lahaina Boat Harbor? Since ...(inaudible)...

Mr. Freeland: The question you were asking about the guy, his name is Solomon Kailihewa, the one works for Paul Cleghorn and they're doing cultural impact assessment on the harbor and, basically, I got just this report from him yesterday afternoon, and he hasn't officially sent it out, but, basically, they're recommending no dredging be done.

Ms. Kapu: Mahalo. The reason I had brought that up is because there's a lot of cultural practitioners in the area that was approached by this one individual too, Friends of Moku`ula was also included in the inventory assessment, I was also included. I was wondering just by asking the question whether or not they did a follow up with Na Kupuna, and they did a follow up with other people besides ourselves so mahalo. Thank you for that.

Ms. Sablas: Okay, if there are no other members of the public to -- for public testimony? Bradah ...(inaudible)... kinda talking your own conversation disturbs over here, yeah, sorry. Okay, I'm going to close the public testimony then and then we, as commissioners, will have some further discussion. Public testimony is closed. Thank you. Okay, commissioners, again, we can make recommendations and this recommendation would be to the DLNR. Commissioner Long?

Ms. Long: Couple of things. Does anyone know how far they have gotten on this comfort station? Are they in the process of applying for a permit for that or is it tied to the new pier?

Ms. Dawn: What they're trying to do is separate the monies for the comfort station from the pier and that kinda turned into a rather silly exercise in futility also because somebody said, "well, they didn't like the comfort station where it was," so they came up with alternative locations, such as next to the courthouse. So I think we've got them straightened out on this that you, you know, need to keep it in the existing place. And I think there's a general agreement in Lahaina that that is sorely needed. So they know that they have to abide by the County's design guidelines in the historic district, they're aware of that, and I think that's probably proceeding with the design phase.

Ms. Long: And I'm assuming we'll get to look at it.

Ms. Dawn: You should be, yeah.

Ms. Long: Yeah, okay.

Ms. Dawn: Because, actually, the letter from the Mayor's office and from Mike Foley specifically address that.

Ms. Long: I -- the word "concern" is a little strong, but the Mayor's letter, in the third paragraph, reads that, you know, basically, if you eliminate some controversial features from the proposed project, blah, blah, "... my staff has advised me that the project is likely to have more support without the building and finger pier." Could we please communicate with the Mayor that because it is a National Historic Landmark, that according to Section 106, I think to build something down there has to be shown that it's a necessity, or I don't know what the rules are, but I just felt that this was kind of leading them on maybe a little bit and maybe --

Ms. Rotunno-Hazuka: Yeah.

Ms. Long: Inappropriately so. When something comes from the Mayor, you kinda think --

Ms. Rotunno-Hazuka: Yeah, when he says --

Ms. Long: Well, he says if you do this, you know, well, maybe we'll support it, and we are the guys, right?

Ms. Rotunno-Hazuka: Yeah.

Ms. Long: So what's the next step, Dawn? What's going to happen?

Ms. Duensing: My recommendation would be you could be very proactive and write to DLNR a letter and tell them of your concerns. I think this is a perfect opportunity to reach out to them since they haven't quite reached out to you even though they've reached out to me. I think that -- I think it's going to be really hard to mitigate the impact of this project and that's putting it as diplomatically as I can. I think Keoki's point about just rushing into it is -- it's an important one and I hate to watch agencies go rushing into things just because there's that Federal dollar to be had, I mean that's why we get bad projects out in Kaupo. You know Section 106 says that, you know, certain parties have to be consulted and you've been informed, so if you want to take the opportunity to tell them what you think, it might be a good time to do it. Get to them sooner rather than later.

Ms. Long: Absolutely. Why don't you do that?

Ms. Duensing: What would you like me to tell them? What I've already told them?

Ms. Rotunno-Hazuka: Yeah, I mean start with like this letter stating or, I mean, first of all, we are the body, I don't know if we're the body over the Mayor, but --

Ms. Duensing: Well, actually, you guys are the body. The CRC has the authority because this is in the Lahaina Historic District No. 1 so, yeah, this time you guys aren't the advisory.

Ms. Rotunno-Hazuka: Right.

Mr. Kapu: Well let's start with the fact that, you know, out of all the advisement that came from the public and the cultural inventory assessment, based upon rejecting or based upon not allowing this -- that place to be dredged because it's going to create an impact and, you know, the families and organizations that these guys got to, they didn't get anywhere with them, where the people just, basically, revolted, using that clears, basically, enough to say, "Okay, we need to send a letter denying this." I mean Federal, that's my problem with Federal money, yeah, where does the Federal money come from? Yeah?

Ms. Long: Well, I'm angry that they're forging ahead with an EIS, which is no insignificant expense --

Ms. Rotunno-Hazuka: Right.

Ms. Long: When this -- they haven't even remembered what happened in the 1970's when they wanted to expand the Lahaina Boat Harbor and it was soundly defeated because it violated the whole status of the National Historic Landmark. Why are they spending taxpayer money on something that -- instead of coming to us first?

Ms. Duensing: Because they have it.

Ms. Long: It's my money, darnit.

Ms. Duensing: I know that.

Ms. Rotunno-Hazuka: Well, maybe you should say that.

Ms. Long: I don't think they should go a step forward until they come in here.

Ms. Sablas: Commissioner Lon, what's your feeling on this one?

Mr. Whelchel: To things, one is parking and the other is -- what is the other one?

Ms. Long: Impact on the landmark.

Mr. Whelchel: Oh, the dredging. If we don't see dredging conjures, we can't see what the elevations of the existing bottom of the ocean, under the slips, then how would -- no one can tell how it's going to need to be dredged. You might find that the dredging is just another natural currents. If they dredge it, it might go along with the system, and you might see that it won't, maybe the rest of it will wash out. We can't tell until we have plans. And anytime that you submit plans to the County for a building permit, your toilets is a building, you have to provide extra parking spaces, and Lahaina is behind the eight-ball when it comes to parking spaces. There are just none to be had. How are they going to handle that?

Ms. Long: They'll build another pier.

Mr. Whelchel: And Lahaina does need more spaces for boats, but they're not getting any. They need to take that whole thing, the new slip, put it somewhere else.

Ms. Sablas: So you'd like to have that added to the letter that --

Mr. Whelchel: No, I'm just making a comment.

Ms. Sablas: Okay, that's just a comment. Okay. Do we have --

Ms. Rotunno-Hazuka: Well, I think along with what Lon said, they may -- they should explore alternative sites if there's a need.

Ms. Sablas: Okay, so that would be to explore alternative sites.

Ms. Rotunno-Hazuka: Outside of the historic district.

Ms. Sablas: Outside of the historic district. Good. Good point. Okay, Commissioner Sam, anything to add to that?

Mr. Kalalau: In the meantime though, for the comfort station, how are we going to deal with that because I believe that that comfort station needs to be remodeled or replaced or expanded? I mean this plan right here shows that it's going to be expanded, I think that's the more important thing right now besides the -- having a new harbor.

Ms. Sablas: So the question is how far along is that plan for the comfort station?

Ms. Duensing: I think the way I would handle that is that, you know, they should come to the CRC with the plans for this and discuss it at their earliest convenience because I think that because it is necessary and it has community support, it is proceeding, so we could just put in something to that effect.

Ms. Sablas: So that's about the third or fourth item to add to the letter. Good point. Perry?

Mr. Artates: I wanna know if this comfort station is going to tie into locking the Federal money, you know what I'm saying? Is this part of the project for this comfort station?

Ms. Duensing: No, that's what I was saying is they're trying to separate it so that they can -- because they know that the other -- the other part of the project is problematic so they're trying to separate the funding for these two things so that at least one will be done if the other one runs into trouble. That's the way I understand it. It could have changed though.

Mr. Kalalau: Well, we're hoping.

Mr. Artates: Do you know any idea the time frame of this release of funds or ...(inaudible)...

Ms. Duensing: That's why they're looking to April early next year, yeah, they're, you know, they're down to less than a year now.

Mr. Artates: But, you know, my take on this is if they're a no-no already because if this place is a historical preservation area for them to even think of doing an extension of a finger for the dredging because of historical points.

Mr. Kapu: It may escalate into a lot of other things like Hawaiian customary rights and stuff like that, yeah. Just recently in the newspaper they wrote about DLNR possibly sectioning off the surf site, putting gates in the area so the surfers don't come within the harbor -- harbor area, so that's another thing that, you know, I just want to bring up because it infringes upon certain rights of the people there.

Ms. Sablas: Uncle Sol, do you have anything to add? Okay, would you like to recap then what we're going to be recommending to DLNR, Dawn?

Ms. Duensing: Well, I'd like to add one point too is that, I think, first and foremost, that this project will be a major impact on the National Historic Landmark and Historic District No. 1 and that is going to be difficult to mitigate. I think we should remind them that Section 106 consultation is required. The CRC would like to be involved even though they've been told that already. Point 3, there should, you know, some language to the effect that there should be no dredging, which is basically going to kill the project, because dredging will be a tremendous impact to cultural resources. The following point is that --

Ms. Sablas: Should we, when you say, "dredging," really make, you know, the historic area because it goes 1.5 miles or do you just want to say, "there should be no dredging?"

Ms. Duensing: Yeah, just no dredging.

Ms. Sablas: Just no dredging, okay.

Ms. Duensing: I can remind them though that the landmark district extends into the ocean.

Ms. Sablas: Okay.

Ms. Duensing: Organizations consulted do not support this project; maybe we can list some of them.

Ms. Sablas: Well, definitely from today is the --

Ms. Duensing: Right. Right.

Ms. Sablas: Lahaina Restoration Foundation and --

Ms. Duensing: I'll just mention today's public testimony. Recommend that they explore alternative sites outside the historic district. Another point, as far as the comfort station, is bring in the plans for CRC to review as soon as possible. And then the last point, we should also make them aware of customary Hawaiian rights that may be impacted in this area, and they've been told also that it's the royal surf grounds so they're aware of that as well. So that's seven points.

Ms. Long: That might do it.

Ms. Duensing: ...(inaudible)... start anyway.

Ms. Sablas: Do I have a motion? Oh, I'm sorry.

Mr. Kapu: No, no, let's finish the motion first. I'm just --

Ms. Long: I'll move to approve the letter as described by Dawn to DLNR with regard to the proposed Lahaina Harbor improvements.

Mr. Kapu: Second.

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

It has been moved by Ms. Long, seconded by Mr. Kapu, then unanimously

VOTED: to approve the letter, as described by Dawn Duensing, to DLNR with regard to the proposed Lahaina Harbor improvements.

Ms. Sablas: Motion carried. Thank you very much. Discussion?

Mr. Kapu: Yeah, I just wanted to make one comment, maybe Keoki Freeland can answer this, was the pier ever dredged in the past right where the Carthaginian area is along side the seawall?

Mr. Freeland: Yes, it was. As a matter of fact, the harbor entrance was dredged kinda periodically until the Carthaginian was put there and what happened when the Carthaginian was put where it is, is that because of the shape of its haul, when you get this backwash, like I mentioned earlier when the surf is up, it hits against the haul and redirects the water straight out the channel, and it's been sluicing out the channel ever since. And I asked the harbor guys at that stakeholder meeting, "When was the channel dredged last?" Cause, you know, there was a bunch of years I didn't live on Maui when I was working on other plantations, and everybody said, "It's been well over ten years and it's because the Carthaginian is where it is." But what they dredged to put the Carthaginian there is real minimal. They just dredged enough just so the haul could fit right there. And it doesn't impact what we're concerned about now. Because where they're talking about putting the pier is on the Kaanapali side of the Carthaginian and they would have to dredge kinda like a channel come, you know, to the other pier coming in like this so that the boats can be on both sides of the pier. So they would dredge a considerable amount of area and with the Carthaginian not there, that's what we're concerned about.

I have a couple of possible answers on your questions that you were talking amongst yourselves earlier and one is the bathroom facility. The legislature has, you know, approved money for that facility and so this harbor pier stuff is not going to tie it up and that's what Roz Baker --

Ms. Sablas: Because it would be State funded, not Federal funded.

Mr. Freeland: Yeah, right. Now this is what Roz Baker told us at our meeting last month of the chamber on the west side, she said that money is being -- has been approved by the legislature, so it's not tied up with this pier stuff.

Ms. Duensing: Although I think they are still using Federal money for that, correct?

Mr. Freeland: Probably, yeah.

Ms. Duensing: I think it's matching funds to some degree.

Mr. Freeland: Yeah, right.

Ms. Sablas: But the concern was that it wouldn't be that -- some condition, you know.

Mr. Freeland: Yeah. Yeah. She assured us that it was not tied in with the pier, that the toilet facilities would go through.

Ms. Duensing: And I remember the guys at DLNR saying that they were separating the funding because of the problems in one project and the relative ease of getting the other project going through. It's going to be the most expensive toilet block on Maui, probably in the State.

Ms. Long: Wonderful.

Ms. Rotunno-Hazuka: Thank you.

Ms. Sablas: Thank you very much. Okay, we're ready to move on on the agenda items, please, then we can finish up the meeting. Okay, let's go to item number four, Update on the Status of CLG Grant, Dawn?

- 4. UPDATE ON THE STATUS OF CLG GRANT: Dawn Duensing will provide Commissioners with a status report on the FY 2004-2005 grant request to the SHPD. This grant was discussed by the CRC at its May 6, 2004 meeting. The grant has been submitted and cannot be amended, however, public testimony will be accepted.**

Ms. Duensing: Okay, well, I put this on because I said I would continue to update you on it. It was submitted. I haven't heard from the DLNR. I just got back yesterday so I will try to contact them to see what's happening.

Ms. Rotunno-Hazuka: Okay.

Ms. Long: Okay.

Ms. Sablas: Thank you, item number five.

5. **June 29, 2004 letter from Council Public Works and Traffic Committee Chair Michael J. Molina regarding a Proposed Bill Amending Section 16.26.106, Maui County Code, Pertaining to the Uniform Building Code and Plan Review Waiver (PWT-27). The Commission may consider whether to comment or respond to the June 29, 2004 letter. Public testimony will be accepted.**

Ms. Duensing: Thank you, Madam Chair, this is in regards to my absence at your last meeting when the Public Works Committee was considering the CRC's requested amendment to the County Code that would eliminate the historic districts from the plan review waiver process and, as you know, I was there and discussed this at length with the Council members on that committee and -- did you guys get two letters or just one letter?

Ms. Sablas: One letter.

Ms. Duensing: Okay, cause I just saw this this morning and I haven't really had a -- a big opportunity to look at it, but Mike Molina, is Chair of the Public Works and Traffic Committee, does want these things to be addressed by the CRC. First of all, he asked if there were other alternatives that we discussed prior to recommending the deletion of historic districts from the plan review waiver process and, as a commissioner at that time, I don't remember that we did discuss any because this seemed like the most straightforward way to address the problem. And then the second question: What is the CRC's understanding of its role on the design review process? And this is kind of because I think Dawn was a little bit confused that day when I got asked the question because Riki Hokama asked a question about, "Well, why are you reviewing design plans in the historic district because I don't see it anywhere in 2.88?" And I asked Cindy Young, who was Corp. Counsel there, to help me and she didn't really have anything to say either, and the dumb answer should have been, "It's in our rules," right? And, well, anyway, so I think that's why this question is there because Cindy and I didn't have the appropriate answer for the question at that time. But, obviously, you guys, I think everybody understands what your role in the design review process is and it doesn't really have anything to do with the plan review waiver, as I see it but -- Does the CRC have any additional recommendations for enhancing the design review process? And I'm not really sure why he's asking that either but, anyway, if you want to discuss that, we can get a letter back to him.

And then there's also a letter from him on June 30 directed to Mike Foley and it's very similar to this other letter asking for an explanation of the CRC's role on the design review process and outline the Department of Planning's policy on design review for projects within the historical districts. He wants to know the process for flagging or disclosing to other departments whether a plan review waiver project is located within a historical district, and this really involves you guys because if we're going to amend the County Code, we have to figure out some way to alert the people who take building permit applications, "No, you can't do this because the property's located in a historic district." It's a Planning Department problem but, you know, it directly affects the plan review waiver. And then it also asks for Foley's suggestions and recommendations for improving the plan review waiver process.

So I just wanted to let you know that this kind of came in tandem with the other letter addressed to the Commission.

Ms. Rotunno-Hazuka: So what are we trying to do here?

Ms. Duensing: Yeah, I'm kinda stumped with this one too because having been a commissioner, and now kinda being your average public bureaucrat, I don't, as an average public bureaucrat understand what the big deal is because I see it as a problem from the historic district management standpoint that needs to be fixed and the easiest way to do it is saying that we can't have plan review waivers in the districts, and it just seems really simple to me, and I don't know why it isn't to them or what other way we could do it. Because if there's another way to do it, for instance saying everything has to go to CRC, well that kind of eliminates the plan review waiver process then anyway, doesn't it?

Ms. Rotunno-Hazuka: Because you get a plan review waiver meaning somebody that we wouldn't review the plan because of a certain ...(inaudible)...

Ms. Duensing: Right, what happens is when an applicant goes in and says they're using the plan review waiver, the architect certify that he's going to follow all County codes and requirements, blah, blah, blah, which would, you know, guarantee, supposedly, that he is going to follow the historic district design guidelines, but it hasn't happened in a couple cases.

Ms. Rotunno-Hazuka: Right. Right.

Ms. Duensing: So that's why we want it eliminated because this poor gentleman had to redo his whole house because his architect didn't follow the design guidelines. So, in other words, our point as commissioners at that time was that, well, the architect obviously can't guarantee that he's going to follow the rules so we should just review this option for them, and they look at it as, well, most architects do a good job so this doesn't happen but -- so

it's kinda like a catch-22 because the County Code also says that if the architects or engineers don't follow the rules, they get reported and everything except this architect left the State so, you know, there's no recourse to take action against him.

Ms. Rotunno-Hazuka: Is this going to increase our workload?

Ms. Duensing: No. No, not really because if the architect's doing his job, it can administratively be reviewed by rules or if he wants a deviation, he shouldn't get the plan review waiver anyway. So it doesn't have anything to do with the workload. But what Public Works is concerned with is how are we going to flag these things, and I mean my whole thing when I said, "Let's get this amendment going," cause I was the commissioner that said let's do this, was that if we protect our shoreline properties, why can't we protect our historic districts in the same way because shoreline properties are exempted from the plan review waiver process and I think historic sites should be as well.

Mr. Whelchel: I agree. All architects are not equal.

Ms. Duensing: I agree.

Mr. Whelchel: You have some -- and the only way you could continue plan review waiver in the historic district is to have a list of qualified architects that have a track record that's good in the past, have no -- don't add newcomers because you don't know -- what if an architect took an old building, like Jim Niess did, and drew up the plans for remodeling and decided, "well, this building is of no value, we're going to tear it down." And then they tear it down and renovate and it was really workable, they could have salvaged it. There's no way to recover that. You can recover a new home if you do something wrong, you have them tear it down and build it over, but if you demolish historic stuff, it's lost forever. I wouldn't do plan review waiver except under a list --

Ms. Rotunno-Hazuka: Strict list.

Mr. Whelchel: Strict list to stick with.

Ms. Long: How can they be flagged because if you can just flag either the -- it would be ridiculous to flag the individual TMK's, but within the TMK, there's plats and zones and that kind of thing, are any of those -- can you just limit that? I doubt it.

Ms. Duensing: Well the problem is is that the County's data base is all there but, apparently, there's mistakes in it, you know there's loopholes like there's -- when you look at the sheet on it, it might -- supposed to be saying Historic District No. 1, but somebody might not have ...(inaudible)... inputted it but that's a Planning Department problem --

Ms. Long: Yeah.

Ms. Duensing: Of figuring out how to do it.

Ms. Long: We shouldn't have to tell them.

Ms. Duensing: What Mike Molina is asking you guys for is there any other way to guarantee or to assure the plan review process can work other than just making it unavailable in the historic district; that's really what he's asking.

Ms. Rotunno-Hazuka: Okay.

Ms. Sablas: ...(inaudible)... the answer?

Ms. Rotunno-Hazuka: No.

Ms. Duensing: I agree with -- I guess Lon is providing one possible solution.

Mr. Whelchel: One, it'll work; the other one is no.

Ms. Duensing: Yeah.

Ms. Long: Let's give them two alternatives. No or a list.

Ms. Duensing: No, or a certified list of architects, yeah. But even at that -- even at that --

Ms. Long: Even at that.

Ms. Duensing: How do you trust, you know, what -- it's such a subjective thing. You still have to trust that the architect is really going by the book and following it.

Ms. Long: Yeah.

Ms. Duensing: Cause, you know, sometimes things come in here and we argue over it too.

Ms. Rotunno-Hazuka: Yeah, cause we don't know.

Ms. Long: Dawn, is this correct, what the letters says, ". . . when plans are not in conformance with design guidelines set forth in the County Code?" Those design guidelines are in a different document, am I right? Or is that considered County Code?

Ms. Duensing: Okay, "Administration officials advised the Committee that the Department of Planning performs design review of all projects within historical districts and the Maui County Cultural Resources Commission conducts design review only when plans are not in conformance with design guidelines set forth in the County Code." Yeah, and that's where that rule is.

Ms. Long: Okay, but is it the County Code or is it the Lahaina Design Guidelines? Mike needs to --

Ms. Duensing: The design guidelines are separate from the County Code, yeah.

Ms. Long: Right, and we review historic buildings in the historic district with that.

Ms. Duensing: Right, but I think --

Ms. Long: I think the Committee needs to understand that there's a separate set of guidelines, we're not just looking at the County Code.

Ms. Kalalau: Yeah, maybe they only looked at their codes and didn't look at the ...(inaudible)...

Ms. Duensing: No, this is what I'm saying was my mistake is when I said that I reviewed certain things administratively; they said, well, Riki Hokama said, "Well, how can you do that because Chapter 2.88 says that the Cultural Resources Commission shall review all plans in the historic district?" And at that time I couldn't answer the question and I should have referred to the rules. Okay, so, yeah, it's not in the County Code. We should let him know that the design guidelines are established for the historic district and then somewhere in our rules ...(inaudible)...

Ms. Long: Send them a copy.

Ms. Duensing: Yeah, and, you know, I emailed him the next day because I was really bugged by this when I went back to my desk and I looked, but they still put it in the letter, yeah.

Ms. Sablas: But, just for record, I think we'll attach it to the letter.

Ms. Duensing: Yeah. The design guidelines or the rules?

Ms. Long: The design and the rules, everything, so that they'll understand why we're doing this. It's important. They're concerned about fairness. They're concerned that one of their constituents is going to say, "Why are they picking on me? Why do I have to jump through

these hoops when these other guys can just do it plan waiver?" So that they have to be convinced --

Ms. Rotunno-Hazuka: They didn't fill out their SMA, that's how they could do it.

Ms. Duensing: Well, you know, the other thing that was happening as a result of this is Jo Anne Johnson was putting forth an amendment to just ban the whole thing.

Ms. Long: Well, yeah.

Ms. Duensing: So, it's not just us that are asking for this, it's kind of become now a bigger issue.

Ms. Long: Yeah, it's been abused.

Ms. Duensing: Cause it was really abused, I guess, in the past few years and now it's not being used very often at all so then some of them asked, "Well why have it?"

Ms. Long: Well this is an opportunity to let that Committee know what the specific concerns are in Lahaina. If they look at that guideline, the design guideline book, they'll understand where we're coming from. Okay, so you're going to just respond ...(inaudible)...

Ms. Duensing: You want me to just respond to his points number one, two, and three? I'll make something up as to what you guys understand on the design review process cause I think you all do understand that that's your --

Ms. Rotunno-Hazuka: That is our role.

Ms. Duensing: Major duties here. As Lisa, I think, pointed at one other meeting, you are the historical district caretakers and that's where you have your ultimate authority is in the design review process. And then as far as the alternatives for the plan review waiver process, either delete it or have a list of qualified architects that could only benefit from using this process, and that's what our architect recommends. Okay? And then I'll work on the other letter from Mike Foley cause that was my big goof.

Ms. Rotunno-Hazuka: Your only one of the year though.

Ms. Duensing: Oh, thank you.

Ms. Sablas: So you've made your quota for the year.

Ms. Duensing: I was just, you know, I felt like I was just put on the spot and I was like, "dah."

Ms. Rotunno-Hazuka: And then you say something that's totally off the wall.

Ms. Duensing: But Cindy was supposed to be able to help me.

E. NEW BUSINESS

Ms. Rotunno-Hazuka: I know. Okay, now what do we have? New Business.

Ms. Sablas: Okay, New Business.

Ms. Duensing: None.

Ms. Sablas: None, good. Item F, Unfinished --

F. UNFINISHED BUSINESS

Ms. Duensing: The only item of Unfinished Business, well, we have two now with what we heard this morning, the -- what did we hear this morning? The first item on your agenda.

Ms. Rotunno-Hazuka: Oh, the Lahaina --

Mr. Kapu: Honu.

Ms. Duensing: The Honu.

Ms. Long: The DUKW

Mr. Kalalau: But that is going to be rescheduled, yeah?

Ms. Duensing: Okay, so that, right, that's going to be rescheduled for next month probably and then the other item of Unfinished Business will be the Banyan Tree on next month's agenda.

Ms. Sablas: Okay.

Ms. Duensing: Okay?

Mr. Kalalau: And then --

Ms. Rotunno-Hazuka: And we should make sure that attorney knows when he's supposed to be present next time.

Ms. Duensing: Yeah, we were going to talk to each other next week. So those two items of Unfinished Business will probably be on the August agenda.

G. SIGN ENFORCEMENT PROGRAM IN THE LAHAINA HISTORIC DISTRICTS

Ms. Sablas: Okay, Sign Enforcement Program in the Lahaina Historic Districts. Did we hire somebody since last month I hope?

Ms. Duensing: No.

Mr. Kalalau: Aaron said they don't have applicants.

Ms. Rotunno-Hazuka: Imagine that.

Ms. Sablas: I can't believe that. I've talked to people, they said they haven't seen anything in the paper about it. They're people who are interested in the job and they didn't see anything in the paper.

Ms. Rotunno-Hazuka: They should go to MCC or something.

Mr. Kapu: Did they ever consider the recommendations that we gave them as pertaining to hiring some kind of association or something, like a non-profit or one hui?

Ms. Long: That's too much creative thinking.

Mr. Kapu: Students?

Ms. Duensing: You still have to have a County --

Ms. Rotunno-Hazuka: You know people that are interested in applying?

Ms. Sablas: Yeah, and they said they weren't aware that there was a position open.

Ms. Long: Dawn, perhaps you could request dates when they placed ads for that job.

Ms. Duensing: Anybody can look on the web, it should be on there.

Ms. Long: If I had a web, I would.

Ms. Rotunno-Hazuka: Did they look in the paper for it?

Mr. Kalalau: Yeah, *Maui News* usually post ...(inaudible)...

Ms. Duensing: I think they could call them.

Ms. Sablas: I mean the point is that it's been about -- since March - March, April, May, June, this is July, four months go by, a position -- it's been -- it's a big thing for us to get the budget approved, we got it in the budget. Now it's four months cause nobody can, you know, that's --

Ms. Long: And Val is not here, maybe she could do a paragraph in the *Maui News*, "The County is looking for sign enforcement and zoning inspectors and" --

Ms. Duensing: Well, you'd have to say zoning inspectors because sign enforcement would be one of their duties.

Mr. Kalalau: Yeah.

Ms. Rotunno-Hazuka: Yeah.

Mr. Kalalau: That's the problem, you know ...(inaudible)...

Ms. Duensing: Yeah, and it is pretty -- pretty lousy pay.

Mr. Kalalau: And it makes a big difference -- it makes a big difference when you say it's for zoning and/or a building inspector, or something like that because I know the guys that want to apply for that position, they're not qualified for that title, you know, it's just a title thing where --

Ms. Rotunno-Hazuka: Yeah, they don't want to go look at signs.

Ms. Long: Yeah, that's the darn problem, but could we --

Ms. Duensing: I'll check the job listings.

Ms. Long: Yeah, could we maybe get a little publicity? Shine a little light on it?

Ms. Sablas: Yeah, I mean I'd hate to see another month that go by again and then we don't have, you know, status quo. Okay, maybe we can make an announcement at the Lahaina meeting. No, I'm just kidding.

Ms. Duensing: Suzie said there was -- it was on a schedule that they were interviewing some folks this week.

Ms. Long: Oh, yeah?

Ms. Duensing: That's what she said so --

Ms. Rotunno-Hazuka: Okay.

Ms. Duensing: We'll see.

Ms. Sablas: But maybe at the next meeting, Dawn, if you can, you know, when we have sign enforcement program in Lahaina, being that it's in Lahaina, give us, you know, do some research and give us some update so we have specifics. Okay? So we can go on to Director's Report?

H. DIRECTOR'S REPORT

- 1. August 5, 2004 meeting agenda.**
- 2. Administrative Permit Reports**
 - a. Demolition Permits**
 - b. Historic District Approvals Report**

Ms. Duensing: August 5, 2004 meeting agenda, this is scheduled to be held in Lahaina; we've already discussed it, it'll be at the civic center. Items on the agenda will be the Banyan Tree, the Pioneer Mill demolition, and probably the DUKW tours, and I think that should keep everybody really busy for most of that day, so I don't think there's much more to discuss.

Ms. Long: Dawn, I understand that the Arborist Committee meeting next week, you're invited to that one, they're going to talk about --

Ms. Duensing: No that I've heard of.

Ms. Long: Sue Kiang told me you were.

Ms. Duensing: I didn't see anything yet and I have checked all my messages.

Ms. Long: Wow. Okay, I'm glad I mentioned it.

Ms. Duensing: Okay, I'll find out about it then.

Ms. Long: Please do. I think, well, it's next Wednesday and they're going to be talking -- they had previously discussed just the weekend use --

Ms. Duensing: Right.

Ms. Long: But they're going to be talking about a more annual -- an overall, you know, restrictions, limits, specific things, driving on, and all that.

Ms. Duensing: Okay. All right, I'll contact Sue.

Ms. Rotunno-Hazuka: Just one of the points that people brought up at that meeting about the Banyan Tree was that they were saying that over the years or in different places it's always been a spot where people had a market place, so I was just curious if that was accurate historical information?

Ms. Duensing: I have no idea.

Ms. Rotunno-Hazuka: Well maybe these arborists can say because if it is, then historically it shouldn't be a problem to have activity under the Banyan Tree, it's just whether it --

Ms. Duensing: My recollection was them talking about how those trees are used in India as historical market places --

Ms. Rotunno-Hazuka: Right.

Ms. Duensing: But not in Lahaina.

Ms. Rotunno-Hazuka: No, I know, I mean it's more that if it's not appropriate in a historic district, okay, but not that it's the death of the tree because of the activity. You know what I'm --

Ms. Duensing: Yeah.

Ms. Rotunno-Hazuka: Because that was one of the points they were trying to make.

Ms. Duensing: Okay, I'll ask them.

Ms. Rotunno-Hazuka: Sorry.

Ms. Sablas: On the DUKW tour, a reminder that we're going to ask them for a video presentation. If that's -- is that still --

Ms. Long: If they just have that thing parked some place where we can look at it --

Ms. Sablas: At least, yeah, and maybe have someone at least go over the tour and what -- what -- well, we'll do that, they'll be there anyway.

Ms. Long: And do they blow the horn as they go through town? What do they do?

Ms. Duensing: Well I was told that they go through town narrating as they go along and it was a better tour than the last one cause the last duck that drove through Lahaina went, "quack-quack," and this one doesn't quack.

Ms. Long: But they narrate it on a loud speaker?

Ms. Duensing: This is true. Yeah, I think so.

Ms. Long: But no quacking?

Ms. Duensing: No quacking.

Ms. Sablas: Administrative Permit Reports?

Ms. Duensing: You have those administrative reports attached in your agenda packet.

Ms. Long: That was very nice to see that. Is this a new thing?

Ms. Duensing: No, it's been done in the past but there haven't been a whole lot of permits and such.

Ms. Long: Wherever it is in here, yeah, I was happy to get it.

I. COMMISSIONER'S ANNOUNCEMENTS

Ms. Sablas: Commissioner's Announcements? This is something new, right, the first time we have that?

Ms. Duensing: Well, it's -- we added "Commissioner's" Announcements, instead of just generic "Announcements" which would invite Tom, Dick, or Harry to jump up and start talking.

Ms. Rotunno-Hazuka: Like us, you mean?

Ms. Duensing: The announcements were put in there cause there was one time when Commissioner Pa wanted to share some stuff that was going on on Molokai and somebody suggested that this would be a good opportunity to, you know, inform each other about the things going on.

Ms. Sablas: Is this that opportune time then to ask about the -- what happened to the Molokai appointee?

Ms. Duensing: No, cause that's not really an announcement, but I'll see if I can find out.

Mr. Kapu: Is this one of those moments where you can bring up certain things that was sent from State Historic Preservation in the memorandums?

Ms. Duensing: No, we should post that on the next agenda.

Mr. Kapu: Okay.

Ms. Sablas: Okay.

Ms. Duensing: Like I said, this is just things like if Uncle Sol comes and says about, you know, their tree places that they have and, you know, something's blooming or, you know, that kind of thing in their nature reserve, right? How is it going over there on Lanai?

Mr. Kalalau: Good, huh?

Mr. Kaopuiki: Crazy.

Ms. Duensing: Okay, crazy, that's his announcement.

Ms. Sablas: Okay, we know of the next meeting and ready for adjournment.

J. NEXT MEETING DATE: August 5, 2004

K. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 3:25 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA

Secretary to Boards & Commissions I

RECORD OF ATTENDANCE

Present

Lori Sablas, Chair
Keeaumoki Kapu, Vice-Chair
Lon Whelchel
Barbara Long
Perry Artates
Samuel Kalalau, III
Lisa Rotunno-Hazuka
Solomon Kaopuiki (Arrived - 9:20 a.m.)

Others

Dawn Duensing, Planning Staff
Ann Cua, Planning Staff
Dudley Akama, Deputy Corporation Counsel