

**CULTURAL RESOURCES COMMISSION
REGULAR MEETING
NOVEMBER 4, 2004**

A. CALL TO ORDER

The regular meeting of the Cultural Resources Commission (Commission) was called to order by Chair Lori Sablas at 9:10 a.m., Thursday, November 4, 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. Call the meeting to order. I'd like to open the meeting today with public testimony on any agenda items for those who need to be accommodated at the present time. You have the choice of testifying now or waiting until the agenda item comes up. So we do have a sign up sheet, right there, if you're interested to sign up. Anyone would like to give any public testimony? Yes? Have you signed up? Okay, come up, please, and identify yourself, and we do have a limit of three minutes, and we'd like to have you identify yourself and the agenda item that you're talking on.

Ms. Bobby Best: I am Bobby Best and I'm the Branch Manager at Lahaina Public Library, and it's great to be able to get back to work. So I just want to say that working in a place that was threatened to become a big bathroom itself, there was an idea that they would convert the library into a big bathroom for the visitors and a visitors center, whose idea has died, but it shows that there's a real need in Lahaina Town for adequate facilities that are adequately designated and marked where everybody can find them and up to date, I mean it's an old town, so we really appreciate the progress that's been made and we hope that there's no backward movement on this plan. Thank you.

Ms. Sablas: Thank you very much. Any questions? Ma'am, please, we have a question from one of the commissioners.

Mr. Samuel Kalalau: Hi, Bobby, I'm Commissioner Kalalau. Are you in support of having the comfort station there? I mean --

Ms. Best: Yes, I've seen the plans and we're all for it.

Mr. Kalalau: Okay, thank you.

Ms. Best: Thank you.

Ms. Sablas: Thank you. Okay, no other public testimony at this moment? I'd like to move on, please, to the agenda Item B., Approval of Minutes of the October 7 Meeting.

B. APPROVAL OF MINUTES OF THE OCTOBER 7, 2004 MEETING

Ms. Barbara Long: Question. Just wondered, here on Page 81, it notes that we were in agreement that someone would send Councilman Hokama a thank you note on the parking issue and I just wondered if that was done.

Ms. Dawn Duensing: I will double check.

Ms. Long: Thank you. Could I have a copy of same if it was, please, or even if it wasn't. Thank you.

Ms. Duensing: I'll have to -- I'm sure it was done.

Ms. Sablas: Any other comments, questions on our minutes? If not, can I have a motion for approval?

Mr. Solomon Kaopuiki: Madam Chair, is this for the last meeting?

Ms. Sablas: Yes, the October 7 meeting. Yes, you have a question?

Mr. Kaopuiki: I got, Page 4, I got -- I look at this word, second paragraph, "context." Is there such a word as "context?" I looked in the dictionary, I couldn't find it.

Ms. Sablas: What --

Mr. Kaopuiki: On the second paragraph, the last line.

Mr. Kalalau: Some context as to what is being proposed.

Mr. Kaopuiki: It is? Okay.

Ms. Sablas: Yeah. Thank you for --

Mr. Kaopuiki: The dictionary was, the one I look at, ancient stuff.

Ms. Sablas: I think, yeah, you gotta get the auana version, yeah?

Mr. Kaopuiki: When Captain Cook came that's why.

Ms. Sablas: That was the kahiko version, Uncle. Okay, thank you. Any other comments? Any other comments? If not --

Ms. Long: Move to approve.

Ms. Sablas: Second?

Mr. Kalalau: Second.

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

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

VOTED: to approve the minutes of the October 7, 2004 meeting.

Ms. Sablas: Mahalo. Okay, let's move on to Item C, Permit Review, Historic District Applications.

C. PERMIT REVIEW

1. HISTORIC DISTRICT APPLICATIONS

- a. MAUI SURF & SAND HALF MARATHON. Mr. Les Wright requesting Historic District Approval to run a portion of the new half marathon race through the Lahaina Historic Districts and use Kamehameha Iki Park on January 16, 2005. This is a new event. The CRC will approve or deny this application. Public testimony will be accepted. (D. Duensing)**

Ms. Sablas: Good morning, sir.

Mr. Les Wright: Good morning, how are you?

Ms. Sablas: Fine, thank you.

Mr. Wright: Thanks for having me. What can I tell you about the Maui Surf and --

Ms. Sablas: Well, we'd like to have you identify yourself just for our record, please.

Mr. Wright: Okay, my name is Les Wright, Race Director for the new Maui Surf & Sand Half Marathon, also the Race Director for the Lake Tahoe Marathon, and this is a new event here that we're starting with my partner, Janet Anderson, who's the Race Director for the Vancouver Marathon, and we've done a lot of work on it and we're ready to roll on it pending your approval.

Ms. Sablas: Could you give us little background being this is a new event?

Mr. Wright: Okay, the event will start up in, it's a half marathon, which is 13.1 miles, it'll start up in Kapalua and finish in downtown Lahaina near 505 Front Street, and I'm afraid to say the name of the park without butchering it, but Kamehameha Iki Park -- now one of you tell me how to say it correctly.

Ms. Lisa Rotunno-Hazuka: Kamehameha Iki Park.

Mr. Wright: Kamehameha Iki? Kamehameha Iki. Thank you. And so right now we're planning on starting at the Napili Park, which is a part way up the hill there near Office Road. The race would be run up towards Office Road, and then run towards the ocean down the hill, down by the Ritz-Carlton, then it would turn south and run southward down to -- along the Lower Honoapiilani Road to Napili Park, by the Napili Plaza, go back up to the upper road, and then along the upper road, upper highway, all the way down into Lahaina, finishing to downtown, all the way through town. It starts 6:30 in the morning. It would take about three hours for the very last walker to finish. The slower people would have to move over onto the sidewalk towards the end. The first finisher would finish in about an hour and four minutes, from the start, hour and four minutes, or hour and five minutes; somewhere around there. We'll have aid stations along the highway to give out water and refreshment drinks and snacks for the runners. We'll have medical attention on the road. The aid stations will be every two miles apart. The highway, itself, will be coned. The runners will be mostly running in the -- on the shoulder, on the side of the road in the wide lane. There is one contingency is that we may change the start line to the pineapple fields, about two miles north of Office Road, and we would start up there, and we got approval from the pineapple company. We'd run south and go into Fleming Beach and run through the Ritz-Carlton property, and then back up onto the Lower Honoapiilani Road. That is pending us measuring the course. We're afraid that our course, as we have it designed now, may be short and we need -- we have to have it certified. I have a certifying measurer coming over next week who will get on a bicycle and he has a meter on the bicycle and he does the course a couple of times to get a precise measurement, exact, in case there's a world record set there, and if it is short, then we'd like to move it up to the pineapple field, which is about two miles or a mile-and-a-half north of Fleming Beach. And, what else. Any other questions that you may have for me?

Ms. Sablas: Questions from commissioners?

Ms. Long: Sorry if I missed it, and I commend you for encouraging running in our community, what day of the week is this?

Mr. Wright: This is on Sunday. It's a three-day weekend; Martin Luther King weekend.

Ms. Long: Which would be on a Monday?

Mr. Wright: Monday would be Martin Luther King, yes. The race is on Sunday, January 16.

Ms. Long: Thank you.

Mr. Kalalau: Okay, yeah, how are you coming along with your non-profit status?

Mr. Wright: We are a non-profit status. The Lake Tahoe Marathon is a sponsoring agent. We're a 501(c)3 and this year the Lake Tahoe Marathon would be the sponsoring entity and, in the future, we will develop our own 501(c)3 for the Maui Surf & Sand.

Mr. Kalalau: Okay, my other question is, on your map of your race course, you mentioned that you were going to change the starting -- you mentioned that you were going to change the starting line further on up in the pineapple fields, you know on this map here, can you locate where the change is going to be? Right here's the starting line. Okay, okay. No, that's okay, you know, we could probably get that map sometime later on.

Mr. Wright: Okay. Okay.

Mr. Kalalau: Yeah, that was my concern.

Mr. Wright: Okay.

Mr. Kalalau: Okay, thank you.

Mr. Wright: It'll make a prettier course, actually, to go further north. Any other questions?

Mr. Lon Whelchel: Yes, do you have ambulance service along this line somewhere to pick up people that don't quite make it? If I was running, they would need to pick me up.

Mr. Wright: We'll have the Fire Departments on notice and, you know, I don't specifically know whether we'll have an ambulance there on the course or not, but we'll have medical aid on the course so I'm sure -- yeah. Yes?

Ms. Long: How about media coverage?

Mr. Wright: Well we have -- I've hired, actually, my P.R. lady for the Lake Tahoe Marathon has volunteered to be our media person, she's very good, and she will be sending out newspaper articles for the newspapers and radio stations and -- to let people know about the marathon and also to encourage people to enter our event.

Ms. Long: Okay, to travel writers and that sort of thing?

Mr. Wright: Yeah, she's a professional public relations person.

Ms. Long: Okay. Okay, so that there'll be a little more publicity for Lahaina. And second question is are you giving anything to the race entrants that promotes the history and culture of Lahaina?

Mr. Wright: We're giving a medallion to all the finishers, it's tropical fish is the design, that's a secret but I guess I just let that out of the bag.

Ms. Long: I won't tell.

Mr. Wright: Okay, and we're giving a t-shirt with that design on it. But, specifically, I don't think we have planned on that.

Ms. Long: I'd like to suggest something like that, and Keoki Freeland is away for a couple of weeks, he is the Director of Lahaina Restoration Foundation, and they have some excellent historic Lahaina material and I would request that you give a packet to every race entrant, and if they charge you for these things, I don't think they -- how many entrants you're gonna have?

Mr. Wright: We hope to have 500 this first year.

Ms. Long: Well, they may want a small contribution to offset that. I'd like you to do that.

Mr. Wright: Now, tell me that again that --

Ms. Long: Lahaina Restoration Foundation whose offices are behind the Baldwin home and Keoki Freeland, the Executive Director, should be back from his trip in two weeks, so if you would please contact him.

Mr. Wright: And you'd like us to put something in our race packets that we give out to the runners?

Ms. Long: Absolutely do so that --

Mr. Wright: That's easy to do.

Ms. Long: They'll understand what they may be looking at as they run by.

Mr. Wright: That's a good idea.

Ms. Long: Thank you.

Mr. Wright: Very good idea. Anything else? Any --

Ms. Sablas: So you're hoping to attract runners from all national --

Mr. Wright: Right. We have about 170 entered right now over the Internet, and most of them through the Internet, and now they're starting to come in. This is the time that people are entering and this is the entry list, and you can see this entry list any time you want by going to our website and clicking on registration and then just click on, don't put any name in, don't put your name in there, just click enter and the whole list will pop up, and it's very informative. It tells you where all the folks are from. We have many, many from Canada and all around the United States, very few from Hawaii actually, so most of these are out of towners, visitors who are coming over for the event, and some folks have commented, "Oh, we're already going to be here," you know, and they saw it in *Runners World Magazine* or one of the magazines we advertise in and so they're going to do our event. Running is a big industry. At Lake Tahoe, our event, we draw 3,000 runners and 99 percent of them are visitors. In Lake Tahoe itself, we only have about 25,000 people to draw from locally, and we're less than one percent local participants from Lake Tahoe, everybody else is coming from 50 miles or more to Lake Tahoe to do this so --

Ms. Sablas: And how many years have you been running this event at Lake Tahoe?

Mr. Wright: We just finished our ninth last month.

Ms. Sablas: Ninth year.

Mr. Wright: LakeTahoeMarathon.com. It's a multi-event. We have a marathon; half marathon; 10k; 5k; we have a triple marathon, three marathons in three days; we have marathon relays; we do a three-day triathlon, which bike racing, swimming, and kayaking as well.

Ms. Sablas: Yeah, I can see it will bring a positive economic benefits to the community and especially January, mid-January, it's about the shoulder time so that should help boost the local economy. I support Commission Long's recommendation to you to include the packet

on the historic part. With Lahaina Restoration Foundation, they do more post-contact, but there is also a Maui Nui organization that does pre-contact, and that --

Mr. Wright: I'm sorry, Maui, what it is?

Ms. Sablas: Maui Nui. Mr. Wright, I would suggest, I mean you're coming into a community so I think you have a lot of homework to do to get to know this community. We commend you --

Mr. Wright: Right. I have a condo. I have a place in Maui.

Ms. Sablas: Yeah, but what I'm saying is to get -- educate yourself about our community in Lahaina and it would be good for you to meet with folks like Mr. Keoki Freeland and meet with the folks at Maui Nui because they do a pre-contact wonderful historic tour that would be -- if you're going to be attracting runners from all over the country, and you do say part of your goal is to connect to the community's Hawaiian culture, that you address that by including that in your promotional packet. Any other questions? Yes, ma'am?

Ms. Long: Yeah, I'd like to understand a little bit more about how the traffic pattern in Lahaina, during those three hours, will allow for emergency vehicles and for just normal traffic.

Mr. Wright: One lane will be open at all times. The lane going north will be open, the lane coming south will be closed and rerouted onto the back side street, and it'll be from 6:30 in the morning till 9:30, but in actuality it'll be from 7:30 to 9:30 because the first runner won't get to town until --

Ms. Long: Yeah but will that conflict at all with church going cause there are couple of churches along the way there?

Mr. Wright: Something to look into.

Ms. Long: Have you --

Mr. Wright: Okay, this is David Smith, he's one of our volunteers for the marathon, and this is my wife, Corine Wright, over here by the way.

Ms. Long: Okay.

Mr. Wright: Other questions?

Ms. Long: Not at this time.

Mr. Kalalau: I have a question. You know on your registration form here, do you -- do you have places on Maui where people could walk up and register?

Mr. Wright: We're going to have an expo at the Lahaina Civic Center where people can go and register.

Mr. Kalalau: Okay, and also I just wanted one clarification on, you know, for the Maui Luau, is it the more number of children or just children under 12 are 54, or one child is 80, or --

Mr. Wright: Are you looking at the price structure?

Mr. Kalalau: Yeah, yeah, just on the entrance form, right here, you know on the bottom, because you have two prices there; \$80 and \$54.

Mr. Wright: Okay, that's the last minute entry fee.

Mr. Kalalau: Oh, I see. I see.

Mr. Wright: Oh, wait, no, I'm sorry, that is not, that's -- the \$80 is the Old Lahaina Luau. Is that what you're talking about?

Mr. Kalalau: Yes. Yes.

Mr. Wright: Okay, and, yeah, it's \$54 for children 12 and under.

Mr. Kalalau: Okay, and the 80 would be?

Mr. Wright: For adults.

Mr. Kalalau: For adults. Okay. Also do you have a -- like a kama`aina register fee?

Mr. Wright: We don't. We don't. We're going to lose money on this anyway so we're just - to start with, probably should have put a kama`aina rate in here at the beginning, to begin with, but we didn't.

Mr. Kalalau: Okay, thank you.

Ms. Sablas: Okay, well, I'll just have public testimony on this agenda item at the time and then we can have staff do the analysis later on. Thank you. Oh, sure.

Mr. David Smith: Well, my name is David "Smitty" Smith. I'm from Lahaina; been there 13 years. One thing I wanted to say is I think this is going to be a real good thing for the

Lahaina area. As he said, as of two weeks ago, they had 150 sign ups from the Mainland. With respect to what Barbara suggested earlier, they have taken in some cultural things involved in the race, for example they're working on for entertainment some dancers, hula dancers, for the time preceding the award ceremony; they're planning -- working on a Hawaiian gentleman to start the race with a Hawaiian prayer, and also with the horn, I mean a shell to start the race. I mean they're taking certain things about our culture into consideration to put this thing on.

What other thought did I have. Oh, about -- about people being able to go to church; this is Sunday morning; that's a good point. It's all pretty well covered. The secondary street in Lahaina will guarantee access to all the Lahaina, it's called Maria Lanakila, the Catholic Church there; that secondary street also will guarantee parking and everything for the Methodist Church, which is a large church on Front Street, but there's a Baker Street that runs right into that, so that covers that. There's one other church that's down at the end of the race, past the end, but there's a big parking lot there and it won't -- it shouldn't interfere with anything for that one.

Ms. Sablas: That's the Holy --

Mr. Smith: Yes, it's Holy something.

Ms. Sablas: It's very -- it's adjacent to the park and, yeah.

Mr. Smith: And then across the street from there, I'm not sure, there's a large parking lot, I don't know how many cars that parking lot facilitates, but it's -- and then there's the Maui Medical Group parking lot right there too that's very close. But it's about -- it's about -- about a block and a half of parking lot right there that should accommodate the churchgoers as well as anybody else that needs to. I think that, on most Sunday mornings, that parking lot's pretty vacant actually.

Ms. Sablas: What other community support is this race getting? Are you aware of any other community support?

Mr. Smith: Oh, yes. I mean we have a great deal. First, we've attempted to -- there's -- we're attempting, like in the -- now I've volunteered for four or five Maui Marathons now, so I have some experience at these aid stations that are put along the way where we contact, for an ambulance, if we need one, we have cell phones and we call them right away, or if there's a medical problem, they come to us. If I try answering your question, what did you say?

Ms. Sablas: My question was what other community support are you aware of for this event?

Mr. Smith: Okay, there's, oh, there's a plan in progress to contact all the schools, like in the Maui Marathon, these aid stations are run by schools, like one's Lahaina elementary, I mean Lahaina Intermediate, another one's Lahainaluna High School, another one is Seabury Hall, and they compete with enthusiasm for the race, you know, and it gets a lot of kids involved. It's our hope to have about a 150 volunteers to put this race on. We still need the County's support and County's, you know, Police support, and cones, and whatnot like that, but it's a big deal and a lot of people are involved. And if we get 500 people here, and it turns into an, you know, international event, as time goes on, I think it'd be extremely beneficial to Maui and Lahaina.

Ms. Long: It's just such a busy season.

Mr. Smith: And I'm sorry, I'm not a very good talker but I'm --

Ms. Duensing: Thank you, Madam Chair. I'd like to ask a question that just came to my attention --

Mr. Smith: Sure.

Ms. Duensing: As the person who has gone through and worked with the Police Department and other agencies, you mentioned the Maui Medical Group parking lot, are there other private parking lots that you're planning on --

Mr. Smith: Oh, there's a monster one.

Ms. Duensing: Okay, have you obtained permission from the property owners?

Mr. Smith: I haven't, personally. No, they're open parking lots to the public right there.

Ms. Duensing: But they are still private parking lots, correct?

Mr. Smith: Probably. They don't even charge for parking.

Ms. Duensing: Thank you.

Ms. Sablas: Okay. Yes?

Ms. Long: Have you made any provision to notify churchgoers the week before?

Mr. Smith: No. That's a good point and I can make sure that that gets done.

Ms. Long: Please do.

Mr. Smith: Yes.

Ms. Long: Cause you're going to have people circling the block.

Mr. Smith: Is there anything else I can help with?

Ms. Long: Can't think of anything right now.

Mr. Wright: All the schools have already been notified with letters requesting aid -- requesting help with volunteering and we have ...(inaudible)... but we have aid stations all ...(inaudible)...

Ms. Sablas: Thank you, sir. Okay, we're ready for staff analysis at this time.

Ms. Duensing: Thank you, Madam Chair. The applicant has been working with me for a number of months, as you see this application was initially filed in March of 2004, and because it is a new event, I tried to be very meticulous and very thorough in making sure that all the basis are covered.

I think that Mr. Wright has given you a good overview of what this race is all about, and in assisting with planning for this event, this is a new annual foot race, it is another activity that contributes to the growing popularity of Maui and Lahaina as a venue for race events. Other annual events take place on Front Street and have been well received and as they get more popular, I think Maui Marathon after more than 25 years, they begin to draw large crowds to Front Street. We do need to consider that there are positive as well as negative impacts for this use. These impacts may affect the local merchants, residents, and traffic circulation patterns.

Various County and State agencies were asked to review this event, including the Maui Department of Finance because the parking lot located across from Kamehameha Iki Park is the County parking lot. The Maui County Police Department was asked for their advice on safety and traffic issues. I spoke to several officers. This one lane closure is generally, you know, seen as a way to mitigate the traffic impacts. The Department of Parks and Recreation, of course, is involved because they were talking about using Napili Park as the starting point for the race, and because the race will end at Kamehameha Iki Park they need permits for that as well, and that's also why the CRC is involved with this because Kamehameha Iki Park is in the Historic District. The Maui County Department of Fire and Public Safety was very pleased in their review of this event. They believed that traffic, or not traffic, but safety issues had been well addressed. The State of Hawaii Department of Health had no comment.

In the analysis, the proposed event will take place in the Maui County Historic Districts No. 1 and 2 as well as the Lahaina National Historic Landmark District, and Title 19 does address the purpose of County Historic Districts and part of this is to promote the economic, culture, and general welfare of the people of the County and to create attractions for visitors and residents alike.

The proposed Maui Surf & Sand Half Marathon is an attempt to bring positive economic benefit to the Lahaina community while also providing for its participants, visitors, and residents a connection to the community's Hawaiian culture. And in that, I was reviewing the race proposals for the luau and Hawaiian entertainment; they have assured me that it is not going to be, you know, any ordinary kind of entertainment at their awards events but it will be Hawaiian based and I have put this into my staff recommendations for the conditions.

The County General Plan encourages the development of a wide range of recreational, cultural, and traditional opportunities for all of Maui's population, and it encourages the use of public lands to expand and enhance outdoor recreation and cultural opportunities, which this event does.

Marathons and other races are becoming increasingly popular on Maui. The use of a public roadway and the Historic District for a foot race is not unprecedented, however, public safety concerns must be considered; the Historic District must also be protected. The applicant has requested a permit from the Police Department for the use of Front Street. The applicant has also requested the use of the park from the Department of Parks and Recreation. Outside of the Historic District, the applicant has been working with the Maui District Office of the State Department of Transportation.

In conclusion, the project supports specific objectives and policies of the General Plan by supporting recreational opportunities for local residents should they wish to participate. The project also contributes to Lahaina's economic development by attracting visitors. And trying it to -- tie it to the reason why you folks are here for cultural resources, I see that this proposed activity is routed through the central core of the Lahaina Historic District and National Landmark Historic District together with Hawaiian entertainment at Kamehameha Iki Park as well as trying to expose them to other forms of entertainment will expose residents and visitors to Lahaina's cultural heritage. By routing runners through the Historic District, it is expected that they will return to visit the community and learn about its history.

So, in conclusion, the Planning Department does recommend approval of the request subject to the conditions.

Ms. Sablas: Do I have any questions before the recommendations?

Ms. Long: Yeah, I just wonder, Dawn, if you think it's appropriate to include in the conditions that they do distribute cultural and historical packets.

Ms. Duensing: It's already been noted and I've noted a few other things listening to your discussion with the applicant.

Ms. Long: Okay.

Ms. Sablas: Okay, shall we move on then? Recommendations.

Ms. Duensing: Thank you, Madam Chair. The Planning Department does recommend approval of the request subject to the following conditions: No. 1, that a plan showing the final placement of traffic cones and the proposed aid stations shall be submitted to the Maui Police Department for review and approval; 2, that the applicant shall coordinate the event with the Maui Police Department and implement appropriate traffic controls as required by the Maui Police Department; No. 3, that the applicant shall obtain the proper permits for the use of the State highway right-of-way and coordinate the event with the State of Hawaii Department of Transportation, and that is for generally what's going on outside of the Historic District, but that's standard language; No. 4, that the applicant shall obtain permission to use the County parking lot located on Prison Street for their shuttle bus service; No. 5, that the applicant obtain the proper permits from the County of Maui Department of Parks and Recreation for the use of Napili and Kamehameha Iki Parks; No. 6, that all trash, cups, sponges, tables, containers, and porta potties used during the event shall be removed from the Lahaina Historic District's Kamehameha Iki Park by 1 p.m. on January 16, 2004, that is the day of the event; No. 7, that no staking shall be used for tents erected at Kamehameha Iki Park; No. 8, that entertainment at Kamehameha Iki Park reflect the Hawaiian culture, and I think it would be appropriate at this point that we also insert the language that the applicant include in the registration, or whatever kind of information packets, they have information about the Historic Districts cultural events or cultural attractions, and I'll work on the language.

Ms. Sablas: And that would be from the Lahaina Restoration Foundation?

Ms. Duensing: Yeah, or --

Ms. Sablas: And Maui Nei?

Ms. Duensing: Maui Nui you said.

Ms. Sablas: I meant Maui Nei, I'm sorry.

Ms. Duensing: Okay, and I'll clarify that language when I'm working on this. Another thing that I would like to add in here is that, you know, the public, and I'm sure that the Department of Transportation has public notice, but did you want something for the churchgoers too that a letter be sent to the affected churches in the Lahaina Historic District?

Ms. Long: Yeah.

Ms. Duensing: So that would Condition No. 9 then. And I think that because they are talking about private parking lots, they should also obtain permission, even though these places may be closed at that time, to use this because it private property and there are legitimate security and liability issues there, so that would be Condition No. 10 would be permission for other private parking lots. And then Condition No. 9 would become Condition No. 11, that the applicant and its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by this subject Historic District Approval and shall defend, indemnify, and hold the County of Maui harmless from and against any loss, liability, claim, or demand arising out of this permit. And, finally, No. 10 will become No. 12, and this standard language that full compliance with all other applicable governmental requirements shall be rendered.

Ms. Sablas: Okay --

Ms. Rotunno-Hazuka: Will we have a chance to re-review this next year or can we have the -- I mean I'm definitely for this race and I want to make sure everything goes smoothly, so, next year, will we be able to have the opportunity to re-review? Or once we give permission --

Ms. Duensing: Yeah, generally what happens is unless there's any changes in the future, the way we've been permitting like the Maui Marathon and other groups is unless there aren't changes, a major change, they don't come to the Commission; we handle it administratively. Because this is a new event, you could request that they come before you one time, or submit a written report after the event, or something like that, but what we could do is, you know, still do the administrative approval if it's just going to be done the same way from one year to the next, but you could ask for some kind of a report back.

Ms. Sablas: You think you'd want to add that as a condition?

Ms. Rotunno-Hazuka: Yeah, that would be good, just something that if there happens to be any adverse effect or impacts to the Historic District that we would become aware of those and then maybe, in the future, we can help.

Ms. Duensing: I think it would appropriate to ask the applicant if, you know, there's somebody here on Maui that would be able to come back to the Commission and answer questions and report on that day's events.

Mr. Wright: I neglected to mention that Patrice Carlton is on our race committee. Patrice works in the Lahaina Gallery in Lahaina. She's in close contact with us. And I wouldn't mind having one or two of you on our race committee to help us with this historical aspects. So, Barbara, Lisa, I'll be getting your phone numbers later.

Ms. Long: Good luck.

Mr. Kaopuiki: Dawn, you know that --

Ms. Sablas: You have a question, Uncle? Can you speak in the mike please.

Mr. Kaopuiki: I used to do a lot of volunteer work picking up rubbish but I don't see anything in there about setting up containers; otherwise, everything -- if we get containers, the rubbish can, or something, it'll help, easier to clean up, but I don't see -- maybe it should be published in the papers that --

Ms. Duensing: I think they have -- they have stations established along the way, Uncle Sol, even outside of the Historic District. And the way I wrote my report, because we're only concerned with the Historic District, is, you know, they do have, under No. 6, and then if you look at the maps, they have --

Mr. Kaopuiki: Okay.

Ms. Duensing: That set up, and then they also have a station set at Mala Wharf, as you're coming into the Historic District, so that they would cover that end of it as well.

Mr. Kaopuiki: When you're a volunteer worker, you look at that, you turn around and you go home.

Ms. Sablas: Okay, if there's -- are we ready for the motion?

Ms. Duensing: So do you want the additional report back then --

Ms. Sablas: I'm sorry.

Ms. Duensing: As an additional recommendation?

Ms. Long: Yeah.

Ms. Rotunno-Hazuka: Yeah.

Ms. Sablas: Because it's a new event. And you're okay with that. It's a new event so we'll just add that to come back and report and, you know, we're hoping everything's going to go well but we just want to protect our cultural resources in the Historic District.

Ms. Duensing: And I'll just put language in that they should report back to the CRC on its February or March agenda.

Ms. Sablas: Yes. Yes.

Ms. Duensing: So that we have time limit.

Ms. Sablas: Good. Okay, with that addition, are we ready to make a motion?

Mr. Whelchel: I make a motion that we approve the Maui Surf & Sand Half Marathon application to run a portion of the new half marathon race through the Lahaina Historic District and use Kamehameha Iki Park on January 16, 2005 subject to the conditions of the staff.

Ms. Sablas: As discussed.

Ms. Rotunno-Hazuka: Second.

Ms. Sablas: Mahalo.

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

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

VOTED: to approve the Maui Surf & Sand Half Marathon application to run a portion of the new half marathon race through the Lahaina Historic District and use Kamehameha Iki Park on January 16, 2005 subject to the conditions of the staff.

Ms. Sablas: Unanimous. Good luck, Mr. Wright. Thank you very much. Aloha.

Ms. Long: Could we have a quick break? I'm freezing.

Ms. Sablas: Okay, we've got a request to have a short five-minute break.

Ms. Long: Five minutes. I just want to go get a sweater.

(A recess was called at 9:50 a.m., and reconvened at 9:55 a.m.)

Ms. Sablas: Okay, I'd like to reconvene by going to Agenda Item No. 2, Advisory Review, Item a.

2. ADVISORY REVIEW

- a. **MR. PETER YOUNG, DLNR, LAHAINA SMALL BOAT HARBOR IMPROVEMENTS.** The CRC considered this matter in September and provided comments. The DLNR will present preliminary plans for the Lahaina Small Boat Harbor comfort station (1200 square feet) as part of the pre-consultation process for the Environmental Assessment. The CRC will review plans and may provide further advice. It will not be taking action on any permits at this time. Public testimony will be accepted. (D. Duensing)

Ms. Sablas: If it's okay with the public, I'd like to have the applicant just review the -- review the permit process and then we'll have -- I mean, I'm sorry, review this and then we'll have the public -- open for public testimony. Okay.

Mr. Mich Hirano: Good morning, Chairperson Sablas and commissioners. My name is Mich Hirano with Munekiyo and Hiraga. Our firm is assisting the Department of Land and Natural Resources with the permit approval process and the preparation of the Environmental Assessment for the Lahaina Small Boat Harbor comfort station. This meeting, as Chairperson Sablas mentioned, is the follow-up to our September 2 presentation wherein we provided the Commission with an update of the comfort station improvements. During this meeting, we received comments from the Cultural Resources Commission on the proposed plans, specifically, matters relating to the historic design guidelines, and a site specific location of relationships of the comfort station to the existing historic and cultural resources in the area was requested, as well, the Cultural Resources Commission asked the Department of Land and Natural Resources to provide information regarding views of the proposed comfort station improvements from offshore looking towards the harbor.

Subsequent to the September meeting, DLNR gathered information that was requested as well as modify the comfort station plans based on the historic design guidelines. Our firm sent out a letter requesting early consultation on October 6, 2004, and enclosed with this

letter was the comfort station floor plan, building elevations, and an overall site plan showing the site in relation to existing historic and cultural features.

What our purpose here today is to review the comfort station plans and receive early comments on the -- for preparation of the Environmental Assessment from the Cultural Resources Commission. We'd like to present the existing site plan showing cultural and historic resources in the vicinity of the comfort station. We would also review the comfort station replacement plans and, for this purpose, we would like to present the new site plan, floor plan, and building elevations. We would present a view of the comfort station from offshore looking towards the shoreline as requested, and we also have a rendering of the proposed comfort station from the courthouse perspective.

In attendance, from the Department of Land and Natural Resources are Richard Rice, head of Boating and Ocean Recreation, and Eric Yuasa, project engineer, and Carty Chang, boating engineer; Rodney Lee from Mitsunaga and Associates, project architects, will also present the architectural plans. So, at this time, I would like to ask Eric Yuasa to just review some of the site specific historic resources in the area and some of the basic plans for the comfort station.

Mr. Eric Yuasa: Thank you, Mich. Madam Chairperson and commissioners, my name is Eric Yuasa. I'm the project manager for the Lahaina Small Boat Harbor comfort station project, and based on our meeting with the Cultural Resources Commission on September 2, we had gone back to our drawing boards and made some changes to the plans and have included site plans, and the handout that you have before you, on, it's identified as Sheet 1e, is the existing site plan. Okay, looking from right to left, this is the existing courthouse building, and the flagpole fronting the courthouse with the canons next to the flagpole, and this is the small boat harbor facility, the various finger piers and loading docks; this is the existing boat ramp, and what's shown shaded on your drawing is the existing comfort station. The existing comfort station is 375 square feet, and it is 15 feet by 25 feet. The proposed comfort station that we have shown in the shaded, actually, dash lines, the proposed comfort station is 1200 square feet, and it's roughly 30 feet by 40 feet. Also shown on this plan is the existing seawall that's on the makai side, the makai wall, and the seawall continues along, I think this is Canal Street. The seawall, we believe, was constructed in the 1920's. But also on the mauka side, there's another wall that encloses the comfort station site. This wall was constructed in the 1980's when the comfort station was reconstructed. Okay, if you can turn to the next sheet, again, looking from right to left, this is the existing courthouse. The flagpole is in front of the courthouse with the canons in front of the -- well, adjacent to the flagpole.

Okay, what we're trying to do is we're trying to -- we're trying to blend this comfort station, the proposed comfort station into the surrounding area, but also what we did was we wanted to make it more open, so we proposed to remove the mauka wall and also the wall

on the north side of the comfort station just to give it a more open feeling, and we're going to utilize the existing openings in the seawall so we're not going to touch the -- the seawall. So, right now, we propose to have three openings, well, utilize three openings in the seawall. The one on the lefthand side is for the accessible ramp and the other two would be stairway access from the lower harbor area.

Another feature that we're trying to incorporate into this plan is we're trying to utilize, whenever possible, native vegetation and existing trees. We're going to leave the existing kamani tree where it is, we're not going to touch it, and also the existing banyan tree, and we propose to plant loulu palms on the lefthand side of the comfort station, and retain the existing palm trees, and relocate one of the palm trees to this location.

Okay, can you turn to the next sheet. The next sheet, in the upper right-hand corner, there's a floor plan of the proposed comfort station. We have incorporated five sinks for the women side, and twelve toilets for the women side. And on the men side, we have four sinks, two urinals, and four toilets. And, as I said before, the comfort station is 30 feet by 40 feet, 1200 square feet. I would like to call the architect, Rodney Lee, to talk about some of the architecture features that have been incorporated into the proposed comfort station.

Mr. Rodney Lee: Good morning everyone. My name is Rodney Lee. I'm the project architect with Mitsunaga and Associates. We've been involved with the design of the comfort station and what you see here is the latest version of it based on comments from previous designs. As you can see, our intent is to comply with the Lahaina Design Guidelines. All the material that we're proposing are natural materials, for example wood shingles; wood posts and beams; wood siding, vertical wood siding on the outside; there would be a cladding for CMU walls on the interior for maintenance purposes, but, from the exterior, everything would look very natural. The roof pitch is 6 and 12, which was lower than a previous design; that was also based on comments that we got. So the character is a very open structure and it's designed to fit in with the setting there. It has, basically, the same form as the existing comfort station except it's larger. It has the same roof pitch, but the materials are a lot more compatible with the design guidelines. As Eric mentioned, we plan to open up this site more so that it relates better to the surroundings, taking out the walls on two sides, and then improving the lawn area in front of it with new sidewalks and new planting, keeping existing trees. We're also looking at providing two accessible stalls to the east side of the building and incorporating an access aisle for loading and unloading of people from the vans or cars there. That's pretty much it. Any questions?

Ms. Sablas: Rodney, what's that outline there, you know in that roof lining?

Mr. Lee: Oh, okay, that dash outline shows the existing comfort station there --

Ms. Sablas: Okay.

Mr. Lee: Just to give you a comparison of the size and height, yeah, it's about four feet, roughly four feet higher than the existing comfort station and, as Eric mentioned, it's about, well the existing comfort station is about a third, one-third the size of the proposed building.

Ms. Sablas: Okay, we have questions from the commissioners.

Ms. Rotunno-Hazuka: What is -- when you said the vans can pull up and for people -- what was the purpose of that? Where would those people --

Mr. Lee: Well this is accessible parking stalls for handicap users, yeah.

Ms. Rotunno-Hazuka: Oh, okay, handicap.

Ms. Duensing: Madam Chair, if I could make a comment to the commissioner's question, the handicap parking made a significant improvement. It was suggested that they take out the pull-in parking that would have encroached into the open area and use instead what was along the street there, so I think that's a major improvement because we keep the parking on the street instead of encroaching into the open space that's known as Courthouse Park.

Ms. Sablas: Commissioner Long?

Ms. Long: Could you tell me about the outdoor lighting since this will be open 24-7.

Mr. Lee: We're going to incorporate lighting into the building. Right now, it's still a detail that we're going to have to develop and look at, but lighting will be -- if it's standards, it'll be similar to the lighting, the street lighting along Front Street; if it's in the building, we're going to try and recess it into the ceilings so that, you know, you won't see, you know, a modern fixture out there that doesn't match the building.

Ms. Long: Okay, I think what I'm thinking of is security and intensity of light and that kind of thing. Is this going to go -- this will go where now? To the Planning Commission?

Ms. Duensing: No, right here.

Ms. Long: No, it's right here so there's no SMA?

Ms. Duensing: Yeah.

Ms. Long: There's an -- okay, excuse me a moment.

Ms. Duensing: The CRC has the permitting authority in the Historic District so this gets permitted right here. What you're doing now is pre-consultation, but you're the authority in the Historic District, not the Planning Commission.

Ms. Long: Okay, so this doesn't go to Urban Design Review or the Arborist or anybody else?

Ms. Duensing: No. No. This Commission is it.

Ms. Long: So any concerns with lighting, trees, parking, access, impact, all that is here?

Ms. Duensing: Yeah, and there was a major site visit between the DLNR engineers, between Mr. Lee, the SHPD engineers, Melissa Kirkendall, and myself, and I think we covered everything. We don't necessarily agree on which tree should go and which tree should stay, but we talked about lighting. Mr. Lee accompanied me with the SHPD architects on a tour up and down Front Street to look at the Front Street standards as well as other types of recessed lighting and everything so that we can be compliant with the Historic District rules.

Ms. Long: Okay, and then what would the procedure be for the EA? Who is the approving agency or who gets to read that and --

Ms. Duensing: I think Eric can probably answer that better than I.

Mr. Yuasa: The approving agency would be the State Department of Land and Natural Resources.

Ms. Rotunno-Hazuka: Oh, DLNR?

Ms. Long: Okay.

Ms. Duensing: Not the Planning Department.

Ms. Long: Not the Maui Planning Department. So, okay, so then who gets to -- when -- at what point then does Planning and the CRC get to comment because we're obviously --

Ms. Rotunno-Hazuka: Now.

Ms. Duensing: I just passed out the --

Ms. Long: No, because we're haven't seen it.

Ms. Duensing: Well I just passed out the Department's initial response letter on the Preliminary EA.

Ms. Long: Okay, so this is part of the consultation with regard to preparing the EA. This is part of what you guys have to go through. But once the EA is done, I'm assuming that we will have an opportunity also to comment on that.

Mr. Hirano: Yes, Commissioner Long, this -- Department of Land and Natural Resources is the accepting authority for the Environmental Assessment. When the Environmental Assessment is finalized, the Final Environmental Assessment is published, at that point, if it's a FONSI, then it would come back for entitlement purposes, it'll be a Historic District Approval as well as a SMA Approval for the project, so we'll have the Special Management Area Use Permit as well as a Historic District Approval.

Ms. Long: Okay, I'm a little perplexed and -- because the CRC is the authority in the Historic District, I'm just trying to think -- could I ask counsel to comment on that, please. What's the rule for --

Mr. James Giroux: I haven't been exactly working on this project so, I mean, right now, as far as, you know, what the step by step by step that we're going to need to go through. All I can tell you is that there are going to be further reviews down the line because, basically, this is a very early stage of this project so they're just trying to get comments together and so that they can make sure that this can go to the next stage.

Ms. Rotunno-Hazuka: Barbara, are you worried that if we are the agency with the authority that then we're essentially passing it on to DLNR?

Ms. Long: We get trumped. We get trumped by DLNR.

Ms. Rotunno-Hazuka: That's her concern.

Ms. Long: And I'm thinking of what happened with the Maui Pine Pukalani Triangle application that was challenged as to who was the accepting authority and the challenge was successful, so I want some definition on this.

Mr. Giroux: The law as it is, is as far as who the accepting authority is, it's the final body that actually has the last discretionary permit so --

Ms. Long: That's us.

Mr. Giroux: I'd have to do some research on that just to iron that out but that's the law.

Ms. Rotunno-Hazuka: Okay.

Ms. Long: Yeah. It seems to me, yeah, and I'm perfectly willing to go through this today because this is part of the process, but --

Mr. Hirano: I think we can provide Corporation Counsel with some information on that as well. We had discussed this matter about accepting authorities with the County. The County had delegated and had accepted the Department of Land and Natural Resources as the accepting authority for the particular Environmental Assessment.

Ms. Long: Nobody asked me.

Ms. Rotunno-Hazuka: Yeah but the County meaning who? The County meaning who?

Ms. Sablas: The County. Is it the Planning Department?

Mr. Hirano: County being the County Administration, the Mayor's office and Department of Transportation.

Ms. Long: So what you're saying is that the Mayor's office designated DLNR rather than the County Cultural Resources Commission as the accepting authority?

Mr. Hirano: That is correct. The Department of Land and Natural Resources is the proponent, it's the proponent as well as the accepting authority.

Ms. Rotunno-Hazuka: So, but aren't they the applicant?

Mr. Hirano: They're the applicant.

Ms. Rotunno-Hazuka: And then they're going to accept their own --

Mr. Hirano: Yes. Yes. When the applicant is a State agency, they are also the accepting authority. It's in the rules.

Ms. Rotunno-Hazuka: Okay.

Mr. Hirano: Corporation Counsel can verify that.

Mr. Giroux: Yeah, we can do an opinion or something like if the CRC wants some kind of an opinion in that area.

Ms. Long: I do. Yeah. That's in what? 340? 343? Which I did not ...(inaudible)...

Ms. Rotunno-Hazuka: When -- for September, did our comments have anything to do with the footprint and are we gonna discuss this now or do we need to let them -- I thought we were replacing. I thought we were just kind of replacing this instead of increasing the comfort station but --

Mr. Hirano: Yes, the existing comfort station will be demolished and then the new comfort station will be built.

Ms. Rotunno-Hazuka: Oh no, I'm sorry, Mich, I meant I thought we were doing something similar but, in actuality, we're increasing it --

Mr. Hirano: Yes.

Ms. Rotunno-Hazuka: Like three times the size.

Mr. Hirano: That's correct.

Ms. Rotunno-Hazuka: Did we have comments on that before as far as size?

Ms. Duensing: Your comment letter that you had in September, I passed that out to you, it was discussed in your minutes, but it was not in the comment letter that you requested to be written.

Mayor Alan Arakawa: If I may, please. When we were looking at this project, this project is -- has been in existence for discussion for at least as long as I've been in elected office. When I first came into Council in '94, this was already an old project, and what we're looking at is modernizing the restroom facility because it's quite filthy, it is old, it needs to be replaced, and we're trying to be able to determine what to replace it with. Now we could very well go in and put in an undersized restroom facility that will not meet the needs of the area, and understand that we're also having to deal with the cruise ship industry now coming in, and the usage of restroom facilities in the area absolutely has been discussed and there's a need for restroom facilities.

Now, in this particular area, I've had it in my Parks Committee when I was the Chair, we discussed this thing for two years and, again, this has been discussed for well over a decade and we're at the point now where we're finally getting the State to move and create a restroom facility. We don't want to go back to a restroom facility that's going to be inadequate.

In planning the area, we've also had discussions, at some point, of moving the restroom facility in front of the library. We've had discussions about putting a restroom facility in other areas within Lahaina proper, and we've also had discussions about the old

courthouse room, the restroom facilities that are there being inadequate. We have to discuss and have discussed the underground piping that's necessary to be able to expand facilities in the area, and this particular restroom facility, where it is, being expanded, makes the most sense because we don't have to go dig up all the roots of the banyan tree to be able to put in new piping and increase the size of the sewer system and it has -- if we're going to be doing a project, it makes sense to do it right.

Now whether I like it or not, we do have cruise ships coming into Lahaina regularly. There are many that are scheduled to be coming into Lahaina. The ferry system, which wasn't there when this facility was created, currently uses Lahaina Harbor, and we can expect that if we look 5, 10, 20 years from now, this facility will still be the main servicing facility in this area because we don't build these restrooms everyday. Let's look at this thing from a practical basis and what we really need is to plan a facility for what we're going to be using it for, not only for yesterday, or ten years ago, but let's actually look at what the needs are today, tomorrow, and into the future and how we can best assimilate something that'll work for the Lahaina community.

The reason that we are expanding the size of this restroom facility is because I have asked the State to look at an expanded facility that makes sense to use as a combination restroom facility for the park users, for the ferry system, people that are coming off the cruise ships. By choice, the department originally wanted to just go in, take out the restroom facility that they had, and replace it with the same size restroom facility that they currently have that would have been very minimal problems, but it doesn't make sense, so that's why we're looking at an expanded restroom facility.

Looking at the location, because we've had discussions about not wanting to put it in front of the library, putting right across the corner right across from Pioneer Inn, right in that intersection doesn't make sense because it'll take away from the entire park; it'll be in the way. Looking at the existing area with the restroom facility now, expanding the size there, now remember that is a strip of land between the roadway, or two roadways, okay, we're not expanding that size of the land, we're just building it in the same footprint area, the land area, just making it more accessible, a little bit larger. The proportion of restroom for women to men, because I have to wait for my wife and I have listened to women complain about having to wait in long lines for restroom facilities, it just makes sense two to one ratio or some proportion thereof, and that's an, hopefully, a perceived improvement over the normal thought process of making them even. By choice, the department would have gone in even, okay.

Keeping the existing parking for the handicap, right in front, not eliminating those parking stalls, now pretend that you were coming out of your car and you were in a wheelchair and you wanted to go to the restroom facility, you don't wanna have to travel a long way to get to the restroom. You wanna have it as convenient as possible by leaving the handicap

accessible stall right in front of the restroom for someone coming out of their vehicle in a wheelchair can just roll right into this area, but, again, remember we're dealing now with rules that also require accessibility for handicap wheelchairs. You can't go in with the real narrow walkways that we had before ten, twenty years ago. So in order to make this more practical, we had to look at a little bit bigger size and, again, we don't wanna go back to dingy; we want to have something that will reflect the needs in Lahaina. We're trying to upgrade the whole Lahaina community.

Keeping the cultural aspect, when you're looking at a 1200 square foot building, basically, you're looking at what would normally be a house, okay, between 1000 and 1200 feet. Now this is not a real big building in retrospect to being a public use building but it will serve the purpose of what we need to be able to accomplish servicing the amount of people that are coming off of those cruise ships and the ferry. Now people going to Lanai using that ferry, that's happening every day, many times during the day, and the owners for Pioneer Inn and the shop owners, they'll tell you they get constant requests for using restroom facilities; that's one of the -- it happens to be one of the basic needs people need 24 hours a day whenever they happen to be around. So this is a practical application of a facility that needs to be done. It's not out of character.

The process that we're going through, as was pointed out, you have the final say on the approval. All of the EA's and everything else, all of that stuff that is going to be done, ultimately, you get to review. The final, the discussion right now as to how to manipulate the design, get all the stuff, that's preliminary, we're talking about that, but, ultimately, you get to say if the project is going to go or not go. So all the intermediate agencies that get to review and get to do that, I would not spend a whole lot of time worrying about it because if you don't like what is discussed, you, ultimately, have the final say. So everything, ultimately, has to go through this body for you to be able to look at and to evaluate, and I think that, you know, it's a responsibility that you need to look at. But one thing I will ask you, out of consideration, so many times people in the public keep saying that government works very, very slowly that we never get anything done. We're trying very hard to force the State to take an action to actually complete out a project that was started over a decade ago. This particular administration that we're working with is trying to do that. They're very frustrated because they've been getting mixed message. We're telling them, "Build it. Do it right." And take into consideration all of the design standards, take into the consideration all the rules that they have to follow, they're trying to do that. Help us work this thing through so it makes sense. This is not a them against us type of position; this is how do we get something created for the people in Lahaina that makes sense, and that's what I'm hoping that you will take that perspective of and, you know, if you wanna look at all the particulars for the EA or any of the other stuff, you can very well look at it and, as it's being designed, participate and look at all of that stuff. There's going to be tons of hearings. But, ultimately, you make a decision on it, so how much you participate in that process and want to have input, that's fine too. But for a project like a restroom, the EA is going to be fairly

simple; looking at what is there, what are the cultural things, you can go ahead and look at it. The reason that we put it back to DLNR is because that's what we were told by the Planning Department where it's supposed to be and according to the rules. To me it doesn't matter whether you're the final approval agent or DLNR is the final approval agent. It really doesn't matter because you, ultimately, get to make the decision. And if you want to be involved in looking at all the particulars of it, you're going to be doing it anyway. Okay, so if you have any other questions, I'll be glad to work with it.

Ms. Rotunno-Hazuka: Well, I'm not sure as much as a question but what worries me is, you know, the cruise ships, if we're doing this for the cruise ships, I mean, first of all, I mean it's a crowded harbor, we already know that, why can't the people go to the bathroom before they get off the cruise ships? I mean trying to accommodate them is worrisome.

Mayor Arakawa: Lisa, it's easy to say why don't people go to the bathroom before they get off the cruise ship.

Ms. Rotunno-Hazuka: Right. But they don't.

Mayor Arakawa: I have to find bathrooms for the women in my life, my daughter, my wife almost all the time for various reasons women go to the bathroom, and they tend to wanna go quite often, so that's been one of the particular problems that I've had to deal with whenever I'm going anyplace. Now, we're trying to make this convenient, it's not built for the cruise ships, per se, it's going to service the cruise ships; it's going to service the ferry; it's built so that a lot of the businesses in that area aren't going to be pestered time and time again with requests to use restroom facilities cause that's what's happening right now. The actual need in the community is what we're trying to meet and we're trying to sort of plan ahead in anticipation that the cruise ships are going to be there and the ferry system is real, it's being utilized and, again, you know, when this restroom facility was first built years ago, none of that was part of the consideration, so we have to expand it for something will work right now. If you really think, you go down there and you look at the requests and needs in that area for a restroom, if you don't think this is -- if you think this is too big, all you gotta do is go down there and find out how many people actually request uses of the restrooms. I go down to Lahaina about once a week and I've looked at this -- this particular project for over a decade and all of my information, all the things that I have been told lead me to believe that we need a restroom at least this size; actually, I think it's small, but we gotta sort of keep it within reason.

Ms. Sablas: Mayor, while I have -- while we have you up there, I'm going to, you know ...(inaudible)...

Mayor Arakawa: Go for it.

Ms. Sablas: One of the contentions about the restroom that we have now it's always dirty so what, as the top guy, what steps are you taking to maintain that in the --

Mayor Arakawa: We're having discussions with the State about that also contracting to work with it. Now it's something that we're going to have to have a lot of discussion as to how to maintain it. Now one of my pet peeves is dirty restrooms. I mean you go this one, you go to Maalaea, you go to a lot of the State restrooms, they're filthy. So we might have to work with the State to be able to somehow maintain this on a more routine basis, and there are proposals for the County even to take over the harbor facilities there and work it, and we're really contemplating it because, in our opinion, you know we can't do much worse than the State has done in the past, but I will tell you that this group has really been working a lot harder than people in the past. Before we couldn't even get information or get anybody to sit down with us to discuss it. Now, at least, you're looking at a plan; you're looking at proposals; it's been like hitting your head against a wall for over a decade trying to get movement and we're finally getting movement. I don't want it to be stopped and lose the funding cause it took a lot of work to get the State to put the funding in to actually do the work, and if you guys have ever tried getting something out of the State, and I know they're going to get mad at me for saying this, but if you guys have ever tried, this is really hard, you know, getting motion, getting all this concentrated effort to actually get it to this point. It took a lot of work on our part just to get it going.

And I will, just for your information, point out, you know, there were 20 million dollars of Federal funds for harbor improvements that Senator Inouye got several years back and most of that money almost lapsed because nothing was being done from the engineering side to utilize and tie up that money. We actually lost about 10 million of that to Alaska because nothing was being done. So when I came in as the Mayor, we went to these guys and we said, "Hey, let's not lose the money. Let's start working on the projects." So the harbor improvements at Manele, the harbor improvements on Kaunakakai, these harbor improvements; we're working together to try and utilize the funding that we have. If we don't do it, we lapse the funding; we lose the money. It's the people on Maui are going to be the ones that suffer. We're the ones that have been using those dirty restrooms all these years and having to make due. So I want to see the improvements put in while we have the momentum to do it and that's why we're pushing so hard. And we'll do what we have to do, Lori, to make sure that they're maintain even if we gotta contract it to work in conjunction with the State; that's why this is a partnership this time.

Ms. Sablas: Cause that would be a key we, you know, I agree it needs to be increased and I agree -- I can't agree with you more as far as the community problem in Lahaina and that's the lack of public restroom, so my concern is if we have a bigger facility, you know, that we maintain it cause that's going to be a real key to keep it clean.

Mayor Arakawa: Yeah, and just, you know, a little bit of background. When we were looking at this, there were three communities that really needed public restrooms: Lahaina was one; Makawao was one; Paia was the other, and we're finally getting motion in one of these communities to actually create a full-on restroom area. Lahaina -- I mean Makawao and Paia are still behind, but we were able to create a parking lot in Paia, and we're trying to do the restrooms in the other two areas, but we need your help to get this thing through and actually get it built. Ten years from now I don't want to be looking back and say, "Hey, you know, we had a chance but we got these dingy restrooms that we're stuck with," because it's not going to make any sense and we're not helping the public.

Ms. Sablas: Thank you very, very much, Mayor. Any other questions?

Ms. Long: No.

Mr. Yuasa: Madam Chair, I would like to share some more pictures that we created based on comments received at the September 2 meeting. One of the requests was for a view from the breakwater. This photo was taken standing on the breakwater looking towards the existing restroom facility. Okay, right now, just to explain, you have it in your handout too but it's in black and white so it's not as clear, right now, to orient you, this is the courthouse and this is the existing boat ramp, this line represents the top of the existing harbor walkway, and the white line above it represents the existing ground that the proposed comfort station will be built on, and the line right above that is the top of the existing rock seawall. Also shown in, well, the smaller -- the smaller structure represents the existing comfort station that's shown, actually, it's shown in front of the banyan tree but, in actuality, it'll be located behind the existing banyan tree. One of the concerns that we had, well, the community brought up was the visual impacts from the ocean. So in consultation with the State Historic Preservation Division, we've decided to leave the existing banyan tree in place, so that'll basically cover up or obscure the majority of the proposed comfort station. The bigger structure is the proposed comfort station outline.

Ms. Sablas: Before you remove that, you know, I saw the roof line, I'm sorry, and I'm just looking visually, and you said it's going to be, the top is going to be what type of material again for the proposal? Shakes? Wood shakes?

Mr. Yuasa: Yeah, wood shakes or wood shingles.

Ms. Sablas: I just, you know, again, I'm a visual person, would it -- I don't know if it makes sense to match it with the roof with the courthouse.

Ms. Long: No.

Ms. Sablas: It doesn't?

Ms. Yuasa: No.

Ms. Sablas: Okay. Yeah, it should be different. Okay. It should be green?

Ms. Long: Green would be nice.

Ms. Sablas: Yeah. Okay. I'm not an architect. I just thought visually.

Ms. Duensing: One of the things at the site visit was there was a lot of discussion on the roof and somebody mentioned green, then, you know, we also talked about the longevity of shake roofs because they're not always so good, they're not fire resistant in all cases, and one of the options would have been toe-tongue roof of green but not a standing seam roof because that would not comply with --

Ms. Long: Corrugated.

Ms. Duensing: Right.

Ms. Sablas: The corrugated toe-tongue?

Ms. Duensing: Yeah.

Ms. Long: Yeah.

Ms. Duensing: And that wasn't warmly welcomed.

Ms. Long: Shakes is not compatible with the design guidelines.

Ms. Duensing: It's -- shake is compatible with residential design but not with the commercial design.

Ms. Long: Yeah.

Ms. Duensing: Yeah, so --

Ms. Rotunno-Hazuka: What is?

Ms. Duensing: Well most of the -- the roofs, I mean you look at the courthouse and that's, you know, that's a substantial structure, it's not -- what's the word I'm looking for -- it's not representative of typical Lahaina architecture but what most typical Lahaina roofs are is what you don't want to see because they're behind false fronts, so you usually see tar or --

Ms. Long: Yeah, but this is residential scale. What's the green roof? That's the school beyond that, right?

Ms. Duensing: Yeah, but that's asphalt shingles. You don't want green asphalt shingles.

Ms. Long: No, but I'd want a similar color --

Ms. Sablas: The color, yeah.

Ms. Long: So when you look at it it doesn't jump out at you.

Ms. Duensing: Then it should be metal.

Ms. Long: Yeah, I would think the corrugated, if you could match the color, would be much less conspicuous. Though how that would hold up right on the ocean, I don't know.

Mr. Yuasa: Okay, right now we're still in consultation with the architects from the State Historic Preservation Division. One option would be to use a cement type product that looks like wood shingles that has really good fire resistance and it lasts a long time in this corrosive environment. I believe it's known as a hardy shake; that would be a -- and it comes in various colors, I mean that could -- we could work that out with the CRC, come up with the right color that would blend into the surroundings.

Ms. Sablas: There's a new material also for roofing that looks like pili grass but it's --

Mr. Kalalau: It's a synthetic type ...(inaudible)...

Ms. Sablas: Synthetic, yes, yeah, it comes out of Florida, the product, that it's supposed to long -- has longevity.

Mr. Yuasa: I'm not aware of that product, but we can do some research on that too. Another view that the Cultural Resources Commission wanted us to come up with is this view is from the courthouse, this is Wharf Street, and you're looking towards the proposed comfort station. Okay, we had our consultant, Mitsunaga and Associates, they hired an artist to render in how the proposed comfort station would look as viewed from the courthouse, and maybe I can move it closer because I know it's hard to see, the renderer did a good job.

Ms. Long: It's very, very nice, but where are those loulu palms that were going in there?

Ms. Sablas: It's supposed to be in the back by the school.

Mr. Yuasa: It's supposed to be in the back on the south side.

Ms. Long: It's in the back, okay, so that in front you're going to have -- very nicely rendered. Yeah, so there's a palm and a palm, and kamani, palm --

Mr. Yuasa: I can go over the landscape plan if you would like. Okay, the landscape plan, as I said earlier, we're trying to utilize native and endemic vegetation, whenever possible, and existing trees that are on the site right now. We're going to leave the existing kamani tree in place, as well as the banyan tree, and three of the palms that are presently at the site. We're going to relocate one of the palms to this area right here, and for hedging, we plan to use naupaka or some similar type plants, and in the back, we'd install three loulu palms, and the rest would be grass.

Ms. Duensing: Is there going to be irrigation to make sure that the landscaping stays in good condition rather than resulting in what it looks like now?

Mr. Yuasa: We would incorporate irrigation.

Ms. Sablas: To address the plants, you know, Lahaina has been known for its grove of ulu trees, if that -- at least consideration be given to introduce that in the Front Street if we have an opportunity because that's what historically Lahaina was known for, it has a grove of wonderful ulu trees, so just a suggestion.

Mr. Yuasa: Okay, we'll pass it on to our landscape architect. That concludes our presentation for today and we're -- we'll be available for questions.

Ms. Sablas: Questions?

Mr. Kalalau: My concern is for the daytime recreation people like the surfers and stuff. I see that you guys have no showers.

Ms. Long: Thank you, Sam.

Mr. Yuasa: Okay, we've met with various organizations, I guess surfer organizations, and one thing that they requested was --

Ms. Sablas: The Mayor can address that.

Mr. Yuasa: They wanted a -- they didn't really request a shower but they said that a hose be located in the pier facility.

Mayor Arakawa: Let me address that. Okay, we separated that issue, Sam. Now I didn't want this thing to get too wrapped up because there's a whole different discussion that's going to go on about additional pier and about in front of the library a shower, the surfer shower, surfer steps, and all that; that's another ten year old project, but I didn't want the two to get mixed together, so where the restrooms are is not appropriate for a surfer shower, it's on the opposite side of the park. Now this is close to the school, the surfing area comes out on the other side of the library, so this is two separate areas. As far as that surfer shower, I'm very sure that we're going to have a lot of discussion about that when we discuss the second pier or that area in front cause that's much more sensitive, but, for the purpose of the restroom facility, I didn't want to get into that discussion so we separated the two. I know where you want to go with it; can't have everything in one project cause otherwise you kill the project cause it's too complicated; that's why I wanted to separate it out. You do know what I'm talking about where the surfers come out, yeah?

Mr. Kalalau: Right. Right. Yeah, on the other side .

Mayor Arakawa: It's way on the other side so there was a discussion, at one time, about right where they come out, putting in a shower right there as well as a surfer step so they can come up the wall, okay, and there's discussion now about putting in a pier where the Carthaginian is, a second pier, and whether or not to put in a building on that pier or not, we're not supporting the building, but that whole area would be redesigned and that's where the shower area would be if we put it in, okay. Right where the restroom is, that's actually not a good area for a shower because you don't want to get the ground wet unless you're going to actually have a full-on area for showering and changing and all of that. This is designed as a restroom, not as a shower changing area for swimmers. A lot different.

Mr. Kalalau: Yeah, I understand, but I think then we should not call it a comfort station.

Mayor Arakawa: Yeah, well, the original idea, okay, let me just take this one step away from where this is. When you travel on the Mainland, almost every place along the major highways, you find, periodically, comfort station rest stop areas so people can actually go out, stretch, relieve themselves, get information, and all -- and there's actually a lot of amenities that goes with it. I feel very strongly that, you know, here on Maui we need to develop some of those because people traveling in the various communities don't have that ability, but to tie in with this particular restroom tourist information, to be able to tie in all the other things like a small little nick-knack shop, comfort station with the showers and the ability to change, those are in a lot of the Mainland ones, depending on where you go, but I thought that that would be too out of whack with what Lahaina is in this particular area, so that's one of the reasons why we wouldn't want to go in with all the extravagant things in this station. By choice, I'd put it all in there, but I know that you guys would never approve it.

Ms. Long: I'm ambivalent about this, but I have a very sentimental attachment to, not only the original restroom there, but to the original shower there. In 1968, when I came over here with my husband and three children, we lived on the beach and that was where we showered, and I'm wondering, I certainly don't think people will do that now, you don't -- you don't have that opportunity, unfortunately, but there is a place on the south wall, not on the north wall of the building, which is not open for public access, only for the janitorial access where there could be coming out of the wall of that building a cold water shower that in the event that what happens by the library with the pier and the surfer steps and showers and all takes a while, perhaps this could be a temporary feature, but I'd like to put in a plug for a shower just for old time sake.

Mayor Arakawa: Just to get in the discussion on it because I'm a little bit leery of putting a shower here. We're also dealing with a lot of the homeless situation and we've had, in the past, people actually sleeping in these areas when the bush was really high and it was -- it can become a problem if you create too many of those amenities like showers, you're going to end up with a lot of the homeless coming into this area as well. Now we built the Hale O Wainee and some of these facilities to try and move the population out. We can put a shower in this area but there's going to be a secondary effect that's going to occur, and I'm not sure that that's what would be desirable for this area. Now in the area toward the school, between this and 505, you're going to find that, you know, there was a homeless community that was living there, then we went through great efforts to move away from that area. If we put in all the amenities for them here, we might be bringing them back and causing a problem. Now I'm not adverse to putting a shower in, but it depends on how large you want this facility to get with all the amenities, okay, and remember there are those secondary effects that we consider and I do have major concerns about that because we've taken a long time to move that population away from this particular area and so there's not a major concern right now, but it is a constantly moving problem. The minute you move them away from one area, we have to consider where they're going to move to because people have to live someplace, and if we make this place too easy, too accessible with too many of the amenities, we might run into that problem. It is but --

Ms. Rotunno-Hazuka: Yeah but the first thing I thought of though was because we had such a big facility, I bet a lot of the homeless people were gonna wanna hang out there. They also will bathe in the sink. I've seen it so --

Mayor Arakawa: That's a possibility but that's -- that's why opening up the area, removing a lot of the shrub under --

Ms. Rotunno-Hazuka: Yeah, that's a good ...(inaudible)...

Mayor Arakawa: You know, the heavy underbrush that was there, it was part of the program to clean it up, open it up so it's more visible, so it's not as easy to hide and put stuff.

Mr. Rotunno-Hazuka: Right.

Mayor Arakawa: On the front side by the harbor, also clean that area up is something that's going to have to be done also. So it's a whole package that has to be done, but if, you know, if you were to insist on a shower, I'm sure that somehow it could be worked in, but just consider that we might be creating another nuisance.

Ms. Rotunno-Hazuka: Another problem. Okay.

Ms. Long: I understand that.

Mr. Kalalau: But, you know in the meantime, since we're planning for the future, can we install infrastructure on the south side of that building in case, two years from now, the homeless all goes into the homeless shelter, I mean, you know, if we just plug in this infrastructure for the future, I mean it'll save money down the road in the future?

Mr. Yuasa: Yes, I think we can consider that in our design.

Ms. Long: It would water the palm trees.

Mr. Whelchel: Lahaina and the Lahaina Harbor is going to grow and this is an excellent plan. Have you put together a master plan to show future growth so that if you did expand it, expand this facility, you'd have space to expand into? Right now, you'd expand into that parking or into the front, but would that be adaptable to your existing facility or the proposed facility?

Mr. Yuasa: I need to consult with my architect.

Mr. Lee: Right now it's not.

Mr. Whelchel: If you haven't, I'd suggest that you look into a master plan showing where you could expand in the future and set up your -- that floor plan so that you could go back to back with new toilets.

Mr. Lee: If you're talking about expansion, you're looking at making the building grow this way.

Mr. Whelchel: That's taking --

Mr. Lee: So you're going to be --

Mr. Whelchel: That's expanding the front then?

Mr. Lee: Yeah, it's pretty much set up for the maximum amount of fixtures right now. So if you want more fixtures, you would be looking at growing it towards the lawn area.

Ms. Long: Put it at the other end of town.

Mr. Lee: So how big do you want it?

Mr. Kaopuiki: I guess --

Ms. Long: I have a couple specific questions.

Ms. Sablas: Okay, sure, go for it.

Ms. Long: The Mayor has said that the existing sewer line, which I assume goes somehow to Front Street, has capacity to handle this expanded facility. Can you comment on that please?

Mr. Lee: We have to verify that; that'll be part of our design process, but the infrastructure is there because it's an existing restroom facility, but to service this many more fixtures, we would have to verify the infrastructure.

Ms. Long: Okay, so that's definitely something that I'd want to know about. I imagine it could go down the street. But I also know how invasive banyan tree roots are and I'm curious about, not only the one you're going to leave there, which is probably pretty far from where a sewer line would go, but the big banyan tree and what impacts that might have.

Mr. Lee: Yeah, right now, I don't know where the sewer lines are routed or waterlines so that'll be part of our investigation in the next design phases.

Mayor Arakawa: Okay, Barbara, my understanding this -- where is this? The sewer line runs pretty much right along the road in this area, so the banyan tree is over here --

Ms. Long: Yeah.

Mayor Arakawa: Okay, that's back up here, so if we had to resize the sewer line, at least you're not digging up all the roots of the banyan tree, you're not cutting into the tree.

Ms. Long: Right.

Mayor Arakawa: If the restroom facility was over here where it was proposed, you'd be going right through the middle of all that, you'd be ripping up all the roots and everything else. If you try and improve it where the courthouse is, you're going right down the middle of the tree. So you're going to have the least impact in this area by coming the furthest away. Now if you look at, and I don't mean to, I don't want to go into the real long-term planning for the area, but just consider that there's a possibility of actually moving the school to some other area.

Ms. Long: Yes.

Mayor Arakawa: I know we've been having a lot of discussion, there's a lot of desire to actually move the school, so when we start looking at long-term planning, they're not involved in the long-term planning of the community, they're really looking at what we have right now in the facility and utilizing the space. But let's -- if this whole thing comes open, then we're talking, this will be in the middle of the park or in the middle of this open area, and it would be very much appropriate, then you could expand out back this way. But, for right now, they can't even conceive that because we have to discuss, as a community in the general plan, the possibility of moving that school, and I know that if we get -- if we took a vote in Lahaina right now about moving that school, we'd probably get about a 3 to 1, 4 to 1 ratio to move the school to a more appropriate location cause it's just crammed in there and it's -- there's too many things that are wrong with that location. But, again, we're taking a project that we want to force through the system and these guys are trying to help us at least get the restroom going. By the time we get all these other stuff done, you know, we'll have had ten years of utilization of this restroom facility at least. So, it'll take a while and given the planning process, and judging the way the Department of Education runs and creating new facilities, my great grandchildren may be looking at the possibility of constructing, so that's why, you know, the planning is very important, but, for us, at least addressing the current problems and looking somewhat in the future and addressing the real need that has been created because of the cruise ship industry and the ferry industry, those are real problems that exist today and they're only going to expand.

The planning in this area, like I said earlier, you know we pretty much maximized the road here, the road there, the area in between, so originally there -- you guys were talking about putting in the handicap parking and cutting into this area, and because there was also discussion that this may be too big a facility, this made more sense right along the roadways, just move the building down a little bit and open up the area rather than do walkway completely around the building and try and create it that way, so that's how we made the improvement in the design and created more space.

Ms. Long: Would a five-minute parking stall make sense there?

Mayor Arakawa: Not if you're handicapped.

Ms. Long: No. No. No, but I'm thinking of the typical visitor who is frantically looking for a place to go.

Mayor Arakawa: It might make sense but, at the same time, you know, we don't have any five-minute parking stalls in our normal parking area and then to police it would be very difficult. The handicap is where we mostly get concerned about. This entire area, parking in this entire area is the pits, and trying to move the buses away from here altogether, creating the parking lot, we're actually talking about up by the mill, creating move parking up there, or trying to move all of this around, that's a lot greater picture than what we're talking about today. But, during the planning process, you're going to see that we're looking at a lot of movement all over the place because the design of this area really needs to be looked at because the circulation is really poor and even to the possibility of creating a shuttle system throughout Lahaina for the employees, getting their parking off by the mill someplace, or up higher so we open up some of this area; all of that has to come into the discussion, and that's sort of what we're working on as a greater plan. This will take care of a lot of the concerns we have that's currently occurring in this area and, yeah, you know, the -- if you wanted to make this bigger, if this body really wanted to make it bigger, I could go for making it bigger, but my understanding was that there was a concern about it getting too large.

Ms. Duensing: Yeah.

Ms. Long: Yes.

Ms. Rotunno-Hazuka: Yeah, definitely.

Mayor Arakawa: So because you were saying it was too large, we sort of settled on this design without all the bells and whistles. If you guys wanted to do this three times the size, we could really do something over there that would be fantastic, but that, again, you know, my gut feeling, listening to what the conversation was coming out of this group, would be unacceptable so we didn't go there, okay. So if you're asking this group why no showers, why none of this stuff, because we didn't wanna do the bells and whistles. We can put them in, and I wanna stress, they want to be able to work with us to put in and create this facility the way we want to, so all of the things you're asking him about, roof design and all, when we're talking, they're saying, "Come up with an idea. Tell us how you want it. Let's get it to where it's working." So they're willing to work to get it where we need it. We just have to make up our minds and stick with what we decide. So if we're going to say we want to have tile shingle in the area, tile shingle, then they'll put it in. If you wanna put in, I wouldn't want toe-tongue roofing, but they do have plastic roofing that looks something like galvanize -- there's all kinds of ways to design it and I think that the State would be willing to work with us on the design of the roof, the actual type. There is no real specific

definition that they have to go by except trying to find something that fits and that's what they're trying to do so we can work with it.

I know that when we start looking at design of roofing and we're going to have to really work with Dawn and make sure that it's not something that's so obtrusive that we don't wanna live with it, and I know that we don't want to have something that stands out from the shoreline or from the water so it's a beacon out there; trying to blend it in with the greenery seems to work; being able to move the palm trees to the back, you know. If you look at the palm trees that are there right now, they're scraggly, and as far as the plants, moving them from one side to the other side, making those kinds of adjustments, doesn't take away from the character of the area. It's a practical adjustment that really does make sense. We actually went down and looked at it and tried to pace it off and tried to look at it. If you went down there yourselves and you looked at that, you would see that the palm trees that are there are not going to -- moving those are not going to take away from that area; replanting new trees and creating a better scenery actually will work better for the area, so they're willing to work with us on this kind of area, but don't get too far off into the planning of the entire area because the whole general plan concept that we have to come up with will take care of a lot of what you're going to be thinking about in the planning area; that's well beyond what the State is looking at.

Ms. Rotunno-Hazuka: I have a question about the archeology. Can your archeologist come up here so we can -- or do you guys know the answers?

Mr. Hirano: I think, at this time, we're just looking at the scoping of what should be covered in the EA rather than talking about the substantive findings. We have not received any information that we have reviewed so -- but you can express those comments in terms of how the environmental impact or Environmental Assessment investigation should proceed, then I think it would be appropriate at this time to hear that.

Ms. Rotunno-Hazuka: Well, yeah, I mean I would think testing or I thought testing had been done which --

Mr. Hirano: There was a site visit with State Historic Preservation and State Historic Preservation had requested subsurface testing be done.

Ms. Rotunno-Hazuka: Right.

Mr. Hirano: So that was carried out. There is investigation on that; that will be included in the EA.

Ms. Rotunno-Hazuka: Okay. And then, hopefully, monitoring because of the burials that are at the school site.

Mr. Hirano: I think that, again, in discussion with State Historic Preservation, yes, that probably will be appropriate too.

Ms. Rotunno-Hazuka: Okay.

Ms. Sablas: Okay, question?

Ms. Long: I believe that when we discussed this before I made a point of saying let's be really thorough in analysis of alternative sites. This seems like a good solution, to me, but I'm thinking that, as Lon says, if we're thinking of the future, we're going to need more public comfort stations and I'm wondering why something can't be incorporated into the construction of the new pier that, you know, I don't even wanna talk about it now but I would like to see it addressed in the EA.

Mr. Hirano: There will be a section on site alternatives and selection of alternatives in the EA so that will be covered.

Ms. Long: Okay.

Mr. Hirano: With respect the small boat harbor future plans, I think that's a topic of another study as well.

Ms. Long: Yeah.

Mr. Hirano: So, you know, we should try and separate the issues with that.

Ms. Long: Okay. Thank you.

Mayor Arakawa: Barbara, with respect to the working in the pier area, one of the areas that the Transportation Department is looking at is harbor improvements for Lahaina and Maalaea. In Maalaea, the proposed improvements would include new restroom facilities, new -- a lot of new stuff putting in. With Lahaina, when we actually come through and do the studies for the harbor itself, then a lot of those studies will be incorporated within the discussion, okay. Again, you know, we're taking that ferry money that was left there to lapse and we're trying to make it work for us right now, so we have an opportunity, we've got a gift that's pretty much been sitting out there, and we don't want it to run away, so we're trying to take it in stages; at the same time, we're very cognizant of the fact that there's some very deep feelings as to how a second pier or that other area has to be worked within the scope of what this committee needs to work with and that's why we sort of separated it out, but all of that can be taken into consideration when we actually start looking at how we would design the Lahaina area, and I would also caution that, you know, the funding part is very critical so because there's a lot of discussion on Lahaina, we're

looking at the Maalaea one first, next year; this year, we're working on the Lanai and Molokai areas, but we don't want to have the discussion go on so long that all the funding disappears and then you can't build what you wanna build. Now millions of dollars don't just drop out of the sky every day and that's what we're looking at, millions of dollars worth of projects and I do want to expedite, as much as possible, the discussion. We need to get to good decisions, but they can't be, you know, delayed to the point of making everything not feasible or not workable.

Ms. Long: If expedited, what's your best possible guess on when we can crack the champagne over this thing?

Mayor Arakawa: I've been trying to tell these guys last year, but when do you guys think?

Ms. Long: What could we make happen?

Mr. Yuasa: Okay, right now, we're still in the planning phase and we still need to go to the Federal Transit Administration to get design and construction money. Right now we're looking at completing the Environmental Assessment by April 2005. And, after that, we'll go to FTA and apply for a grant for the construction money for the comfort station, and the money will probably be available in September 2005; then we start the design and, typically, the design would take another six to eight months.

Ms. Rotunno-Hazuka: Why would you start the design then? It depends on the money you get?

Mr. Yuasa: Yeah, right now, like I said, we're in the planning phase, so the money is only for conceptual design and the Environmental Assessment and whatever permits are related to the project.

Ms. Rotunno-Hazuka: Okay.

Ms. Long: So design is another nine months.

Mayor Arakawa: So understand, what I'm saying is we're trying to get this thing through and this is just one of a very long process that's already over a decade old.

Ms. Rotunno-Hazuka: Right.

Mayor Arakawa: Okay, so that's why --

Ms. Long: So 2006? In your second term?

Mayor Arakawa: But if we don't start something now, it'll be in my grandchildren's second term.

Ms. Long: Unbelievable.

Mayor Arakawa: That's why when we say government moves so slowly, you have to understand how frustrating it is to try and get something done because all of this has to be done in stages and it all takes forever, okay, and we're trying to get it done -- it's just like affordable house, you know, everybody says, "well create the affordable housing." It doesn't happen overnight. It's taken us over a year and a half just to get people to talk about it to be willing to go through a permit process. So these kinds of things take forever. And this is an early stage, this is why I cautioned you earlier on, don't get tied up in the process and say, well, you're going to get ignored because you're going to have a lot of time to go through this and look at all the stuff that's there cause it takes forever to get anything through.

Ms. Rotunno-Hazuka: Okay.

Mayor Arakawa: Okay.

Ms. Sablas: Lon?

Mr. Whelchel: The site plan looks good. Knowing that maybe the school will be moving maybe down in the Mayor's children's time, at least they can expand --

Ms. Sablas: Grandchildren.

Ms. Long: Grandchildren.

Ms. Duensing: Great-grandchildren.

Ms. Sablas: Great-grandchildren.

Mr. Whelchel: The plan is we should expedite it but we have a little -- we have a little control or say-so on the aesthetics. On the plans it shows shingle roofing, wood lattice, vertical wood lap and siding, and those are natural materials. It was mentioned that hardy shingles is a synthetic material, it'll last longer, and it will, it won't burn, it won't deteriorate and if you're going to do hardy shingles, we could do hardy board siding which is made out of the same stuff. Now where do you stop?

Ms. Duensing: Do you really want my comment?

Ms. Sablas: Probably not.

Ms. Duensing: No, he hit the nail on the head. I mean when they came in with the first design, it was all synthetic and we said, "No, that doesn't fit the design guidelines," and so, yeah, you guys have come full circle. Good observation.

Mr. Whelchel: So what do we do? Go back to natural materials with synthetic shingles?

Ms. Duensing: But that was brought up by Thomas Limits, State Historic Preservation Division, and I disagree with him on that. He says that it would be only one exception but I don't see how we can let government do it and then expect the merchants to go to the trouble and the cost of doing the design guidelines right.

Ms. Long: Here-here.

Ms. Duensing: Yeah, I did say that I had some concerns because of maintenance and, you know, wood shingles don't last so long, as Commissioner Long pointed out, and I said, "well, yeah, it's more appropriate for residential architecture." Yeah, there's some concerns there.

Mr. Whelchel: So if we build them out of destructible materials, wood shingles, wood siding, hundred years from now, when the land is available where the schools are, it would be easier for them to just -- to tear the building down and move it if it's already deteriorating.

Ms. Long: What an attitude.

Mr. Whelchel: That way you can get it out of the courthouse area.

Ms. Long: So we're looking at April.

Ms. Duensing: I mean I agree with Commissioner Long on I think that the corrugated roofing is fine, it's very representative of the plantation era in Lahaina, which is what the design guidelines were written to emulate --

Ms. Rotunno-Hazuka: So let's do it.

Ms. Duensing: That would be my preferred alternative and my suggestion and I think --

Mr. Kaopuiki: Madam Chair, I suggest we concentrate on that stuff and all the other stuff that coming about in the future, we let somebody worry about them so we don't get baldhead worrying about them. We take care of this thing first.

Ms. Sablas: Just move on. Yeah. Thank you. Yeah, I mean we need to move this project. It's really been -- so are you comfortable --

Ms. Rotunno-Hazuka: So we'll put our comments on --

Ms. Sablas: Yeah, so I'm going to open it for public testimony at this time cause there have been people who have been patiently sitting, I think, in the audience, so thank you. It's now your moment to shine. Hi, Joan.

Ms. Joan McKelvey: My name is Joan McKelvey. Madam Chair, commissioners, I have been in business in Lahaina Town for 34 years and almost half of that time, we have been without an adequate bathroom. It's been one of the problems. I mean people after people will say, "You mean you don't have a public restroom?" And we hear it constantly. My business now is located in the Pioneer Inn shops and I volunteered, this year, to set up a little information booth on the lanai of the Pioneer Inn because they were just absolutely inundated with questions at the reception desk and I could write a book on some of the questions that I'm asked. However, three to one, three to one is "where is the nearest bathroom?" Now I did a little survey myself and this is -- certainly it was a boat day but we also had the ferries coming in and I did a survey and the question, "Where is the bathroom?" was asked of me over 80 times in an hour and that'll give you an idea of the demand for a public restroom that is clean, is big enough to accommodate the people that need, and I think the design is excellent. As I look at it, I think it blends, of course, mind you, the landscaping will take time to come in, and, from a size point of view, I think it is totally adequate certainly for now and for the future. So I do, do urge you to let us get it moving, you know, not another ten years. I want to be alive for that champagne, Barbara. Mahalo.

Ms. Sablas: Thank you, Joan. Next we have Becky Lennon.

Ms. Becky Lennon: Good morning, Madam Chairman and commissioners. I'm Becky Lennon, and my husband is the General Manager and I'm the Controller of the Pioneer Inn in Lahaina, so we have seen this process over a number of years. We've lived on the island six years, so we're still malahini, but we've watched the harbor area go from being barren under the banyan tree, being cracked concrete, the sidewalk down at the harbor. Thanks to the County, Lahaina Restoration Foundation, and Lahaina Town Action Committee, it is actually starting to become a lovely park area again, and the bathroom is the next step. I can tell you that on a non-cruise ship day, every person that comes off the Lahaina Princess Dinner Cruise, all of the dinner cruises that go out, they have bathrooms, they have heads on every one of those boats; they all come into the Pioneer Inn to go to bathroom on a daily basis. Five Lanai ferries a day, three Molokai ferries a day all come in because the one woman stall and the one men stall that are located in the courthouse open from 9 a.m. till 5 p.m. don't serve any of our residents or visitors on a daily basis. So

we support this project strongly; we'd like to see a move on. We were recipients of Mr. Hirano's design; we've reviewed it; we approve it; we think it looks great. The one thing that I would mention, it was brought out here today, the lighting. It needs to be open as the design has specified and it needs to be very well lit like the mauka side of Banyan Tree Park so that we won't have people doing drugs, hanging out in that area. Mahalo.

Ms. Sablas: Thank you very much, Becky. And Bobbie already testified so these are the people I have on the sign-up sheet. Are there anyone who would like to testify who didn't sign up? Okay, if not, let's go to staff.

Ms. Duensing: No, I don't have anything but I would like you guys to summarize what your comments will be so that we can get the letter done and out as soon as possible, please.

Ms. Sablas: Okay. Lisa, you would like to start on it?

Ms. Rotunno-Hazuka: Yeah, well I guess Lon talked with the historic materials, the corrugated roofing, yes, was that what -- well lit, it's gotta be very well lit, we don't wanna have the problems again. I don't even think we asked that it be kept clean; I think we demand it needs to be cleaned. And I think it is appropriate to ask for a shower.

Mr. Kalalau: I know we had a lot of support from people of Lahaina, the business people had supported this project, other people have supported this project. We all know it's a well needed project in the area. I like the plans and I would support this total concept here; hopefully, that -- the problem that we might face here is the historical what kinda material that would be appropriate for the construction of the entire building. I know we're going to have more time to discuss that in the different time frame of this project but, right now, I feel in strong support of this plan that they're presenting here today.

Ms. Sablas: Thank you very much.

Ms. Rotunno-Hazuka: I just wanted to add the monitoring and the --

Ms. Sablas: The archeological, yes.

Ms. Rotunno-Hazuka: The archeological monitoring.

Ms. Sablas: Did we get everything done, Barb?

Ms. Long: Couple of comments. First, I want to thank the applicant and the community and Dawn and the Mayor for expediting something that Lahaina has obviously needed for years. As a landowner on Front Street, our bathrooms too get really heavy use. We've had people bathing in our sinks. And I support the shower. My take on this is that there

are a couple of concerns: One is the visual impact on what is the historic core of Lahaina, and I thank the applicant very much for the really good photographs and depictions of the size and scale and height and also the potential landscaping, it makes me feel a little less threatened by the size of the structure, and it sounds like we won't know until 2005 or 2006, when the final design drawings are done, what the materials are going to be, and I will probably be long gone from this Commission and some of you will too, so, hopefully, Dawn will still be here and that --

Ms. Duensing: The Lahaina Design Guidelines will always be here, Barbara. They do need to comply with that because those are the rules for Lahaina.

Ms. Long: But we haven't yet adopted the new ones.

Ms. Duensing: But even if you use the old ones, they're still appropriate.

Ms. Long: Okay.

Ms. Duensing: I have no doubt about that.

Ms. Long: Okay. Okay.

Ms. Duensing: I'm confident of that and I think the DLNR understands that; I know Mr. Mayor understands that; Rodney understands it; I think everybody understands that.

Ms. Long: Well, we're talking couple years down the line here. I just wanna ensure that it looks as good as we think it's going to. Maintenance is a horrendous issue and, in that Environmental Assessment, I hope that that will be addressed from a financial point of view, who's going to be responsible day to day, long term, repairs, upkeep, the whole thing cause that is key. And while parking is not really connected with this, I just wanna mention that it is a concern in that area. I want to make sure that the parking ordinance is complied with as far as expansion of structures and that kinda thing and that's all. The community has grave concerns about the lack of parking in the harbor area; that's -- I just want to see some attention in the EA to that. Okay?

Ms. Sablas: I just wanted to note, as a matter of record, that all of the written and public testimonies that we have received on this project have all been favorable, none negative, and I too would like to go on record in strong support of this much needed project. I was born and raised in Lahaina and I too am very familiar with all of that, the problems we have there. I think the -- I commend you all for all your efforts, especially you, Mayor, for -- it takes a long time, I understand, and, you know, maybe we, you know, let's just see if we can get it done before, when is it? April '06? I think we need it before then so, I mean, the sooner the better, and you've got my support.

Ms. Duensing: Madam Chair, if I may, I just wanted to maybe bring up one other point that I think was discussed and should possibly be included in your comments would be the landscaping.

Ms. Long: Oh, right.

Ms. Sablas: Oh, yes.

Ms. Long: Right, and lighting.

Ms. Sablas: We had lighting already. We did.

Ms. Duensing: And may I mention one additional concern that was discussed at the site visit with the landscaping and that was with the banyan tree that's on the historic seawall. There was some debate and discussion too as whether that should come or go and commissioners should take this into consideration in the future as plans come about, and that is at the -- there was some debate as to whether that banyan tree is undermining the historic seawall and so that should be considered and I think, if it is undermining the historic seawall, it should be replaced or dealt with at this time. This is the perfect opportunity to do that --

Ms. Long: Yeah.

Ms. Duensing: Because I know in my research of Lahaina that that -- that wall probably dates to the 1920's and it's not like the other ones that were constructed later, so that should be given proper consideration and attention as well.

Ms. Sablas: Okay.

Ms. Long: Yep.

Mr. Whelchel: There are new lighting guidelines and rules, regulations that are going to determine what they can do with their lighting. We don't really have to be too concerned because the County's gonna ...(inaudible)...

Ms. Duensing: Well the lighting is in the design guidelines. With the signs, you're also in the Historic District. The Front Street Improvement Plan that dates to the '90's, you know, they address that as well. So lighting and signage should both -- both follow that as an example.

Ms. Long: Yep.

Ms. Sablas: Okay, we have about ten items that we have as far as recommendations from this group so will you be -- you'll get a letter from Planning to confirm everything that we talked about. Any last comments from the applicant?

Mr. Yuasa: We wanna thank Madam Chair and the Cultural Resources Commission for allowing us to share our project with you and, hopefully, we look forward to your favorable support of the project.

Ms. Sablas: Thank you very much.

Mr. Yuasa: Thank you.

Mayor Arakawa: And I too would like to thank all of you for the consideration. This project, I think, is something that we, as a community, need to really get behind and get some of these things done. Government just runs too slow and we gotta somehow find a way to get things done, from a practical aspect, and your efforts in expediting this and helping us work through it will really be a tremendous benefit for the community so thank you very much.

Ms. Sablas: Well we appreciate you taking the time to address the concerns we had and, you know, having addressed the concerns, I feel very comfortable to support it fully, so thank you.

Mayor Arakawa: And any concerns you guys have, you know, this is the time to express it because we can work on it, and I think there's a willingness to try and cooperatively work through all the concerns because we wanna have a good product and we're trying to work, you know, everything you guys commented on last time, we talked about it and we tried to make those improvements so you see the handicap stall where it is. We're trying to work with it. And I know that if we put our best minds forward, we can have some really positive impact and that's where we all wanna go. So, again, thank you very much for your efforts.

Ms. Long: Since we're going to be stuck with the existing comfort station for a year and a half, can we -- can anything be done to make it more beautiful or more functional or more attractive or more cleaner?

Ms. Sablas: Clean?

Mayor Arakawa: Unfortunately, the historic site, your group, will not allow me to use dynamite. The whole thing needs to come down and needs to be redone; it's just old. The whole thing is bad. We're just going to try and get these guys to work a lot faster to get it done.

Ms. Sablas: Yeah, but does it need --

Ms. Long: Doesn't it need to be painted? I mean what would make it clean?

Ms. Sablas: Clean. It needs to be cleaned.

Mayor Arakawa: Even cleaning it though, they've got -- they hire somebody to clean it, but the thing is so old and so rundown, it's very difficult even to clean it and that's --

Ms. Rotunno-Hazuka: Paint it and make it look good.

Mayor Arakawa: Well, we'll talk about --

Ms. Sablas: So, in other words, the faster we move the project, the better.

Mayor Arakawa: Yeah.

Ms. Long: Have we got any leverage here? Can we get them to do something?

Mayor Arakawa: We'll talk about it.

Ms. Long: Please?

Ms. Sablas: Yeah, thank you. Okay, thank you everybody for spending quality time on a quality project, so thank you very much. Do we need a break or we okay to move on?

Mr. Kaopuiki: Take a break.

Ms. Sablas: We'll take a short break.

(A recess was called at 11:30 a.m., and reconvened at 11:50 a.m.)

3. DEMOLITION PERMITS - NONE

D. COMMUNICATIONS

- 1. COMMISSIONER KAPU REQUESTING CRC CONSIDERATION OF SHPD LETTER DATED JUNE 10, 2004. This item was deferred from August 5, 2004 meeting; the SHPD letter was included with your August agenda. The CRC will discuss the letter and determine an appropriate course of**

action. The Commission may provide advisory review on this matter. Public testimony will be accepted.

Ms. Sablas: Okay, I'd like to have a motion to amend the agenda -- well, not amend, but just to defer Item D.1.

Ms. Long: So moved.

Ms. Sablas: Second?

Mr. Kalalau: Second.

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

It has been moved by Ms. Long, seconded by Mr. Kalalau, then unanimously (Ms. Rotunno-Hazuka was not present during vote)

VOTED: to defer Item D.1.

Ms. Sablas: Let's move on to Communications, Item No. 2.

2. MR. UWE SCHULZ requesting the Commission's consideration of whether it is appropriate for Cheeseburger in Paradise to use a public sidewalk for a waiting area for its clientele. The Commission may provide advisory review. Public testimony will be accepted.

Ms. Sablas: Do we have any members of the public here? Do we read his letter at this time?

Ms. Duensing: Madam Chair, Mr. Schulz could not stay today. He didn't realize that the agenda was going to be so long. He apologized for not being able to stay. I did talk to him though. He did submit this in writing. I think it would be appropriate to read it into the record, and he said that he does not expect the Commission to defer action but he would like them to take care of it because he realizes that Cheeseburger in Paradise went to the trouble to show up on very short notice.

Ms. Sablas: You want me to read or you read? Okay, let me read the letter from Uwe Schulz from Lahaina, reference Cheeseburger in Paradise, Front Street. This restaurant is using the sidewalk next to the seawall as a waiting area for guests. Up to 30 people are crowding the sidewalk. This is causing the walking public to step into the street in order to

pass. No other restaurant in Lahaina is using a public sidewalk as a waiting area. Another issue is the day by day garbage storage on the sidewalk. It smells, it's greasy, and it has stained the concrete; it also makes the sidewalk slippery. Respectfully, Uwe Schulz. So this is what the item of discussion is on so we have representation of Cheeseburger in Paradise, if you'd like to identify yourself, please, and address the issues brought up.

Mr. Jonathan Lai: Good morning, Madam Chairperson and members of this Commission. My name is Jonathan Lai, I'm an attorney at Watanabe, Ing, Kawashima and Komeji, and we represent Cheeseburger in Paradise. With me here is Mr. Michael Conte, he's the Chief Operating Officer for Cheeseburger in Paradise, and we would like the opportunity to respond to this, I guess, written, I guess, complaint by Mr. Schulz. We have to mention the fact that we didn't hear any complaints from Mr. Schulz beforehand. My understanding is that this was an oral complaint, initially, and then only today he moralized in writing. But, nonetheless, we would like to have the opportunity to explain or address or respond to this particular letter.

Ms. Sablas: Thank you.

Mr. Michael Conte: Madam Chair and commissioners, my name is Michael Conte. Yeah, I'd like to definitely talk about a number of these issues. We have at the restaurant two areas, two bars, one up and one down, for people who come and wanna wait for lunch or dinner or even breakfast. There are a number of people that don't wanna come in and wait. They wanna walk up and down Front Street and shop, and so we notify them that they, you know, their tables will be ready in 20 to 30 minutes and they're free to come back and check.

The seawall is an interesting area. There's people who gather there to watch the sunset. There's people who gather there just to look out at the ocean and the harbor, and they have nothing to do with our restaurant whatsoever. They're just tourist that gather in that particular area. I drive by the restaurant from time to time and I see the crowd by the seawall and I get excited and I walk in my restaurant and it's empty. So they're certainly not waiting for us. But we do have places within the restaurant for people to wait while their tables are being ready.

As to the garbage issue, there was a problem about a year ago. We solved that problem by -- we have three people, full-time, that all they do is take the garbage from the restaurant to our area that we have for our dumpsters, which are about three or four blocks away from the restaurant. There's no garbage on the street ever or kept in the restaurant. When we realized that we were producing more garbage than we thought we were, we, you know, took remedial action immediately and hired people just to handle the garbage load that comes out of that restaurant. We serve, off-season, probably 800 to 1000 people a day.

When we're in season, we're serving almost 1500 people a day, so we do generate a lot of garbage but it's moved on a constant basis.

The sidewalk issue, if we looked at the sidewalks in Lahaina, they're all dark, dirty, and kinda grungy, but in front of every single restaurant up and down that street, it's, to my knowledge, really --

Ms. Sablas: Excuse me? I mean you mentioned, what was your -- how many you serve on a peak season?

Mr. Conte: Peak season, maybe as high as 12 to 1500 people a day.

Ms. Sablas: And how many seats do you have in your restaurant?

Mr. Conte: We have a hundred and -- you know, I really don't know. About a 150 to 160 seats.

Ms. Sablas: I'm sorry, 150 --

Mr. Conte: To 160.

Ms. Sablas: To 160 seats. And that's upstairs and downstairs?

Mr. Conte: Upstairs and downstairs.

Ms. Sablas: Including the bar stools and things like that?

Mr. Conte: Not including the bars.

Ms. Sablas: This is just restaurant seating?

Mr. Conte: That is the restaurant seating.

Ms. Sablas: It's a busy restaurant.

Mr. Conte: It's a very busy restaurant. We've been here for 15 years and we've been that busy for 15 years.

Ms. Sablas: Because, I have to say, I have noticed, I, you know, I do drive there regularly and I have noticed a long waiting line, I have noticed the crowd waiting there, I have noticed people actually having to go on the traffic to get around if they're walking through, so I, personally, have noticed that. I cannot say how often, but I've notice that, recognized that

has been, and recognize that you are the only restaurant that I'm aware of that constantly has a line. It's good for you, but I think it's a problem that needs to be addressed and that's why you're here.

Mr. Conte: Bubba Gump's also has a line constantly at the other end of the street. Constant line. They do more business than we do. Kimo's has a line. They also do more business than we do. So we're not the only ones that have lines and we're not only ones that are servicing -- we're not the only restaurant on that street that's busy. I mean the two big ones are Bubba Gump's, Kimo's, and ourselves. We're the big three restaurants on the street. We mitigate our lines as best we can by having people come into the restaurant and sit at the bar; others that do not want to, we encourage them to shop on the street and come back in 30 minutes.

The seawall area is something that you really need to take a look at; that's not always our restaurant that's against that seawall; that is a major tourist area where the people gather there.

Ms. Sablas: I understand but, personally, sir, I can just tell you, this is my own observation that I have noticed it. I have not noticed lines at Kimo's. I have not noticed lines at Bubba Gump's. You know, this is like if I'm going through the area, and I've walked the area also, so -- and I'm not disputing you, I'm just saying that, personally, I've just observed at your restaurant so I just wanted to add that. Yes?

Ms. Long: Garbage is a major problem in Lahaina. I understand that. Where are your dumpsters?

Mr. Conte: They're two blocks over. We run our garbage out all day long.

Ms. Long: To?

Mr. Conte: I have a full-time person and that's all they do.

Ms. Long: Okay. Which direction do they go?

Mr. Conte: They're two blocks away from the ocean that they have to run them up.

Ms. Long: Up Lahainaluna Road?

Mr. Conte: Yeah, up Lahainaluna Road.

Ms. Long: So you have people actually taking garbage cans. Are they on wheels?

Mr. Conte: Not -- yes, they're on wheels. They roll them over there.

Ms. Long: Are they regular cans or are they special --

Mr. Conte: They're plastic bags, double-lined plastic bags that they roll them over to the garbage dumps.

Ms. Long: In a kinda container with wheels?

Mr. Conte: Yeah. We're no different than anybody else on the street. We're all doing the same thing. None of us have any room for dumpsters on our properties.

Ms. Long: Yeah, that's -- that's a --

Mr. Conte: That's a major problem. Parking and garbage.

Ms. Long: Have you ever -- have you, okay, we have, you know, the building next to the Omni Theater and, periodically, and we don't have a restaurant in the building anymore, thank God, but, periodically, it does get cruddy and I have PWC come in and steam clean the sidewalks, it cost all of \$60. Have you ever done that?

Mr. Conte: We've asked -- we can steam clean our sidewalks and our neighbor's sidewalks and we were told we can't do that.

Ms. Long: By whom?

Mr. Conte: By the authorities of -- in Lahaina.

Ms. Long: That makes no sense at all.

Ms. Sablas: And who would that be?

Mr. Conte: I can check with my people. I don't -- I don't get involved in the day-to-day running but that was a report given back to me.

Ms. Long: We had them come in at like six in the morning, before there's foot traffic, they steam clean, it took them half and hour, and the sidewalks were spotless.

Mr. Conte: We'll be more than happy to do that.

Ms. Long: And I would absolutely recommend it.

Mr. Conte: We'll be more than happy to do that.

Ms. Long: And whoever tells you you can't do it, would you have them call me?

Mr. Conte: Okay.

Ms. Long: Thank you.

Ms. Duensing: Or if you have problem with a County official, can you let me know?

Mr. Conte: We had a problem the other day with County who came by and said, "The sidewalk is wet. Your sidewalk cannot be wet." My manager had to point out, to the Health Department, "Excuse me, it just rained. Not only is our sidewalk wet, but it's wet across the street; it's wet in the street; it's wet everywhere." There is a big thing about a wet sidewalk. So that you'll all know, last December, we shut that restaurant down and did the complete infrastructure of that restaurant, all new plumbing lines, all new everything that we made sure that we're not leaking any --

Ms. Sablas: You came before our Commission so we're aware of that.

Mr. Conte: Yeah, you know, and we're going through another major renovation again this December. I've got a meeting tomorrow morning with the County over the grease trap, of getting land, you know, the County giving us the permission to go into the street, put the grease trap in, and then --

Ms. Long: On public property.

Mr. Conte: We dedicate everything back to the County. So we're, as a business in Lahaina and a 15 year old business, so that you all know, we're putting money back into this business to keep our business up and to meet all the new codes and to keep our plumbing and everything fit and up to standard, and we want to be a good neighbor; we don't want to be a bad neighbor.

Ms. Sablas: So as the chief operating officer then, Mr. Conte, is there somehow, I mean you could address, I mean it is nice to be popular and busy, I know your restaurant, the cheeseburgers are great and that's why it's, you know, always there, but are there -- have you -- I mean did you -- are there ways -- is it because people -- you don't have enough room in there that you cannot, you know, a large enough waiting room?

Mr. Conte: I'm not sure that lines that you're talking about against the seawall are just ...(inaudible)...

Ms. Sablas: No, I'm talking right in front of your restaurant. I have not experiencing them at the seawall. I'm talking right in front of your restaurant and I actually have seen -- I, myself, crossed that, when there's people on the line, there is, right there, I did that. I had to go on the street because people are standing to get into your restaurant.

Mr. Conte: We could have our people to have the people mill in different places. I mean that's the only thing we can do to mitigate it.

Ms. Sablas: Yeah.

Mr. Conte: We can tell people they can come inside and sit at the bar; if they choose not to, I can't, you know, it's hard as a business person, we can't hold those people prisoners and say, "You can't stay on the sidewalk and you cannot shop up and down the street, you have to stay inside this building." Yeah, it's a very difficult thing ...(inaudible)... and my personnel trying to control a crowd. What we can do is ask them not to mill in front of the restaurant.

Ms. Sablas: Well, in your waiting area, like if people were standing, what would be the average waiting time? Twenty minutes to half an hour?

Mr. Conte: It depends on the time it takes. About 15 minutes.

Ms. Sablas: Depends on the turnover of the table?

Mr. Conte: We turn our tables pretty quickly. A 15 to 20 minute wait.

Ms. Sablas: And that's what you advise your people that it's a 15 to 20 minute wait?

Mr. Conte: Yes. They can either come inside or, if they choose not to, we encourage them to walk up and down the street and shop, or, you know, see the other stores in the area.

Ms. Long: I can see where families with kids might not want to wait in a bar. How big is your waiting area?

Mr. Conte: It's just our two bar areas; that's it. It's a tiny building.

Ms. Long: So, right, I understand that. So then you don't have like half a dozen chairs where people could sit if they don't want to be at the bar?

Mr. Conte: No, I do not have half a dozen chairs so people could sit.

Ms. Sablas: So you don't have waiting chairs in your restaurant for waiting areas? Not even a single one?

Mr. Conte: There's no room in the restaurant for that. There's no room in that restaurant for anything right now.

Ms. Sablas: There could be if you took away some of the sitting tables, perhaps.

Mr. Conte: Okay, then, you know, we take away -- you're taking away tables and now you're taking away dollars and then, you know --

Ms. Sablas: But I'm talking about --

Mr. Conte: I mean all of these things -- and then we put some people unemployed. I don't know. I mean --

Ms. Sablas: I'm just trying to see how -- because it is -- I can see that could be an issue with people and I'm, you know, I'm not against you or anything, I'm trying to see how we can resolve it and, you know, I can't say off-hand that many restaurants have waiting areas but I think that would help if you had a seating area that people can at least wait in while their being waited or because it really is, I mean I hope you see where if you have people waiting out in the street on the -- and this is usually just peak period and I think, you know, during the time now, when it's the off-season, you don't -- that's not a problem, but when you tell me you have from 1200 to 1500 people with 150 to 160 seats, that's very obvious you're going to have lines.

Mr. Conte: Yeah, but that's -- that's in a complete day; that's not at any one period of time so those people are split in the morning, noon, and night; it's not that you have a thousand people standing at any one period of time.

Ms. Sablas: Well, I know that, it's any given day, but even then, given the, you know, from the number of seats you have with the number of packs that you serve during that -- what is your restaurant time again? From what time to what time?

Mr. Conte: It opens at 8 a.m. to about 10 o'clock at night.

Ms. Sablas: For instance, like Halloween, I'm sure everybody had all lines crazy, huh?

Mr. Conte: Yeah. Halloween, we'd just -- we'd love to just shut down on Halloween.

Ms. Long: One more thing on the garbage. You say it's in a plastic bag inside a wheeled container. Is it covered?

Mr. Conte: It's covered on the way to and it's covered when it goes into the dumpster both.

Ms. Long: Okay, cause I, you know, I have smelled it. You have that kinda doorway in the middle where I'm assuming they bring it down the stairs?

Mr. Conte: Right.

Ms. Long: Which has gotta be interesting with the thump, thump, thump down the stairs on that thing.

Mr. Conte: Well the garbage is carried down the stairs; it's not wheeled down the stairs.

Ms. Long: Well whatever but that -- that area has a certain aroma to it as does Kimo's and as does the Fish House because they have a similar situation where there's like a staging area for really stinky stuff and some of it, inevitably, oozes or spills or something. I don't know if this is a Department of Health concern; if it's a Police concern about people congregating on sidewalks; I don't know even if it's our concern.

Ms. Sablas: Yeah.

Ms. Long: But I would hope that instead of excuses that you, as one of the older and nicest restaurants in that neck of the woods, would consider that someone has concerns about it, that there could be a problem, and that you would attempt to deal with the problem rather than coming in here and saying, "Well they do it and they do it," so, you know.

Mr. Conte: Well, I understand that but sometimes you feel like you're having a finger pointed just at you and when there are other restaurants on that street that have the exact same problem.

Ms. Long: Well, that's the same complaint we get on sign issues and, you know, be a ...(inaudible)... step up to the plate, and deal with it.

Mr. Conte: Oh, we're going to step up to the plate and we'll deal with it as best we can, and I have no problem with that, and so that you'll know, since last December when we did all of the repairs on the building, if you go by that area now, you don't have that smell. We solved that problem and that was why we put a full-time person moving stuff in and out of there.

Ms. Long: Great. I'll go by and give you the sniff test.

Mr. Conte: Okay, good.

Ms. Rotunno-Hazuka: Many.

Ms. Long: Yeah, many.

Mr. Whelchel: If you can get pass the sniff test, look at the waiting line, if we take out a couple of tables and create waiting, we'll have more people waiting, wouldn't we?

Ms. Sablas: But then you would take away the safety factor I think and, Barbara is right, it maybe -- it might be, you know, a Police thing, but it is a safety factor when you have to be forced to walk into the street or say, "excuse me." I'm sorry, I just happen to have experienced that myself, personally, so I have not, you know, having to just ...(inaudible)...

Mr. Conte: What I'm going to do is we'll check into it with my staff and find out where --

Ms. Sablas: Yeah.

Mr. Conte: If we are having a problem with that, that we will make sure that we're not holding people in that particular area.

Ms. Sablas: Well even having a -- yeah, cause you have to have a manager on duty, a manager who's cognizant of that ...(inaudible)...

Mr. Conte: I have six managers on duty all day long.

Ms. Sablas: Okay, but have them be there and be aware. If there's a line and either just ...(inaudible)... to the crowd to spread out.

Mr. Conte: Right. Exactly.

Ms. Sablas: The concern is so people can pass and people can be able to -- I mean it's going to be for your benefit too. You wouldn't want to be sued when somebody gets hurt there, I mean because of that, so I think it might -- you know, think about it that --

Mr. Conte: We'll have our managers be much more aware and watch the front of the building more.

Ms. Sablas: Yeah. And then Barbara's garbage part, you're okay with that?

Ms. Long: If that's -- if it doesn't smell anymore, I'm a happy camper.

Mr. Conte: Yeah, no, we've really -- that was real problem over there that we saw too and then we -- that whole floor area, it's an old building, it's a very old building; we picked all

that out; put all new beams in there that were rotted. A lot of the odor was from rotten beams underneath the building.

Ms. Long: No, I can believe that.

Mr. Conte: Oh, it was horrible underneath there, so that's all been -- that's all been addressed and taken care of and, again, we're still not through with all the renovations. We're finishing up as soon as this meeting tomorrow. We'll know when we can put our grease trap into place and once that's done, then we're going to, you know, redo the entire building, from the outside, strip it down to the bare wood again and bring it back up and paint it. It's been painted for 15 years over and over and so now it needs to come back down and be brought up, and new siding where it needs new siding, so our idea is to keep that building looking fresh and stained the way it's looked for 15 years since we've owned it to keep it fresh and all restructured and all the infrastructure inside redone on it.

Ms. Sablas: The problems of success is what I see you have. Anybody else have questions or comments?

Ms. Duensing: I just have a question as to how the Commission would like to respond to Mr. Schulz. Would you like to respond via a letter or shall I just make a verbal report to him?

Ms. Long: What would you like to do, Dawn?

Ms. Duensing: I'd like to make a verbal report. I have enough paperwork to generate for this government already.

Ms. Rotunno-Hazuka: Yeah, but do a verbal and, you know, people might go by and they're going to check into the problem and if we go by and we see --

Ms. Duensing: And we do have the minutes as an established written record so if it's okay, I'll just call Mr. Schulz and note what items were discussed and that the C.O.O. was here to respond to the issues, blah, blah, blah.

Ms. Rotunno-Hazuka: Okay.

Ms. Sablas: And we appreciate your responsibility for being here and answering our questions, really, that means a lot as far as responsible business people in Lahaina, waiting all this time, so --

Mr. Conte: Alright. That's okay. Thank you very much. We appreciate it.

Ms. Sablas: Thank you very much.

Mr. Lai: We need, Commissioner Long, we may have to need your phone number in case we have problems with ...(inaudible)...

Ms. Long: Oh, I'm sure --

Ms. Duensing: You can call me.

Ms. Long: Call Dawn will get the message --

Ms. Duensing: Yeah, do call me if you have any problems with that.

Ms. Sablas: Yeah.

Ms. Long: Yeah.

Ms. Duensing: Thank you, Jonathan.

Ms. Long: I wanna know who's saying that.

Ms. Sablas: Yeah.

Ms. Duensing: Yeah, me too.

Mr. Conte: I'm going to find out yet.

Ms. Long: Please.

Mr. Conte: We'd love to get that ...(inaudible)...

Ms. Sablas: Oh, that'd be neat.

Mr. Conte: So we want to do that. Thank you.

Ms. Long: Good idea.

Ms. Sablas: Thank you.

Ms. Rotunno-Hazuka: I have to go.

Ms. Long: Just don't do it high noon; that's all.

E. UNFINISHED BUSINESS - none

F. NEW BUSINESS - none

G. SIGN ENFORCEMENT PROGRAM IN THE LAHAINA HISTORIC DISTRICTS

Ms. Sablas: Okay, I know you needed to be excused in five minutes, so Unfinished Business, none; New Business, none; Sign Enforcement Program in the Lahaina Historic Districts. You wanna give a quick update what we've done with our meeting the last one with -- is this the time we talk about it?

Ms. Long: That's more parking.

Ms. Sablas: Parking?

Ms. Long: Yeah.

Ms. Sablas: Okay, move on then to Director's Report.

H. DIRECTOR'S REPORT

- 1. Molokai Member's resignation from CRC.**
- 2. Banyan Tree policy update by Corp. Counsel and Director.**
- 3. December 2, 2004 meeting agenda.**
- 4. 2005 Meeting Schedule**
- 5. Administrative Permit Reports**
 - a. Demolition Permits**
 - b. Historic District Approvals Report**

Ms. Duensing: Okay, thank you, Madam Chair. First thing to bring to your attention is the Molokai member submitted a letter of resignation from the CRC. It came to me for some strange reason. I called the Mayor's office and they hadn't seen it, so I forwarded it up to the Mayor's office and spoke to Dave DeLeon and he asked me, "What do you suggest we do about this problem?" And I suggested he called Commissioner Pa and talk to him. Some of you remember that we discussed that when the vacancy came with Commissioner Pa's resignation, and I mentioned that to Dave DeLeon and I said, "I'm not going there again," but that's my suggestion to you, perhaps he can give you some names. So I haven't heard back. I don't know how they're proceeding on this. The letter --

Ms. Sablas: So is this with the -- Dave then? This action to get this position filled? Is it Dave DeLeon's responsibility?

Ms. Duensing: Yes, he's working on it, yeah.

Ms. Long: So does that --

Ms. Sablas: Can I suggest that we write a letter because this is something we've been talking about and I think -- I'd like to have, on record, a letter from this Commission to him that we are quite concerned that this position has been vacant for awhile, that we have discussed this item at length, and to have someone appointed and not even come to meeting and resign, makes me wonder how much time they put in as far as finding a right applicant. And we've said it before, we are all putting a lot of our time here, if we do not have dedicated commissioners who can make it so we have a quorum, you know, it's not fair to the rest of the commissioners, so I feel very strongly on this that they get on the ball, whoever is responsible, from the government, to, you know --

Ms. Rotunno-Hazuka: Yeah.

Ms. Sablas: To get it done.

Ms. Rotunno-Hazuka: I know that we did some work on Molokai and we had a person that did a cultural assessment and I'm gonna, I mean I didn't do it, my partner did that, and I'm wondering if maybe that person would be an option. She was -- I think it was a woman and she did a cultural impact statement for him so they may be -- obviously they should know something about the culture, they're doing a cultural impact statement.

Ms. Sablas: You know when you think about Molokai --

Ms. Duensing: Lisa, is this a Molokai resident?

Ms. Rotunno-Hazuka: Yes.

Ms. Duensing: If you have a suggestion, could you please make them -- tell them to call Dave DeLeon?

Ms. Rotunno-Hazuka: I am. I'm going to call him. Okay.

Ms. Duensing: Because I know that one of the concerns, and I've had several discussions with him on this, is the need to get professional representation on the Commission.

Ms. Rotunno-Hazuka: Right.

Ms. Duensing: So if you have anybody with some experience, that would be --

Ms. Long: Some credentials.

Ms. Sablas: What's Dave's number?

Ms. Duensing: I can get it to you, Lisa.

Ms. Rotunno-Hazuka: Okay.

Ms. Long: Call the Mayor's office.

Ms. Rotunno-Hazuka: Okay.

Ms. Long: The Mayor's --

Ms. Duensing: I have his extension. I'll get it to you.

Ms. Rotunno-Hazuka: Okay.

Ms. Sablas: But I just would like an action from this Commission to write a formal letter to -
-

Ms. Rotunno-Hazuka: Qualified.

Ms. Long: And then reminding them that they have the 30-day thing or whatever it is has started again. Don't they have 30 days following a resignation?

Ms. Duensing: I'll have to check on that. I don't know.

Ms. Long: I believe so.

Ms. Duensing: Okay, I'll have to check the rules for that.

Ms. Long: Whatever it is. Yeah.

Ms. Sablas: But it's been about seven months that we've had -- we haven't had a commissioner, since about March I think.

Ms. Long: Well they appointed this woman and then she didn't show up for three meetings and there is a charter --

Ms. Duensing: Why don't you just read the letter into the record, Lori. I just gave it to you.

Ms. Sablas: The letter, okay, "Please accept my apologies in not being able to fulfill my role as a member of the Maui County Cultural Resources Commission. My absences from meetings are for reasons beyond my control due to work and being understaffed and I do not anticipate conditions getting better soon. Again, I apologize and hope to have an opportunity to serve in the future. Mahalo for your time and consideration. Sincerely yours, Camellia Hamakua-Napoleon."

But my concern here is that we've appointed someone without actually not doing their homework. It's like when you hire someone, you should ask the question, are you going to be able to make the meetings -- very basic. And if the answer is no, then why do we consider a commissioner. So I just think it's serious, you know, I take my responsibility serious and I just would like to be able to see that we have representation from all of our districts as should be and I don't think that we should just let these kind of things slide.

Ms. Long: A vacancy, on a commission or board, due to death, resignation, or removal, shall be filled as follows: within 30 days of the occurrence. The Mayor shall submit to the Council the name of the Mayor's nominee to fill the vacancy that's --

Ms. Rotunno-Hazuka: Yeah, but I know like on the Burial Council, they've got years of people ...(inaudible)...

Ms. Long: Article 13, Section 13-17.

Ms. Rotunno-Hazuka: May I be excused?

Ms. Sablas: Sure, Lisa. Thank you. Thank you for being here for that important part. But do we need a motion on this letter? Real quick.

Ms. Duensing: You need it before Lisa leaves.

Ms. Sablas: Okay, can someone make a motion that we send a letter to Dave DeLeon?

Mr. Kalalau: I so move.

Ms. Long: Second.

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

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

VOTED: to send a letter to Dave DeLeon regarding the Molokai member vacancy.

(Ms. Rotunno-Hazuka left the meeting at 12:15 p.m.)

Ms. Sablas: Move on to Item No. 2, Banyan Tree Policy update. Mr. James.

Mr. Giroux: I asked to look over the draft finding of facts and conclusions of law, and with talking it over with other attorneys in the office and looking at kinda what -- where our crossroads were, I think, from our analysis, we're looking at that in order to make these fully enforceable and make sure that, you know, that there's no confusion about these in the future. What we're going to do is, basically, take this body's deliberations and comments and try to incorporate them into a administrative rules for this body, and, basically, this body has rule making powers, and what we're going to do is, basically, create a section within your rules, you know, there's procedures and things like that, and, basically, try to carve out a section within our rules specifically dealing with permitting banyan tree use when we're dealing with either craft fairs or commercial activity and that, hopefully, will either circumvent or create more controversy but at least we will have a very firm standing on where we are with our rules. We can always go back and refer to them. And what this, I don't want this Commission to look at -- at all your work as being all for nothing because what it is is it, basically, did a very good job at formulating what we need to put into these rules. And so what I'm going to be doing is looking at the draft, and conclusion of law, and maybe some of the discussions in trying to put in into the form that we use to create rules and, basically, put in everything I possibly can to try to cover the basis that is causing all of this controversy regarding the banyan tree.

Now the process is going to be is what I'm going to do is I'm going to create a draft and I'm going to come before this Commission again distributing that and, again, you guys can have a chance to look at the rules and say, well, that doesn't make sense; that's not what we wanted; that's not going to solve the problem; that's not going to work. You know, because that's what we want to do. We want to formulate rules that are going to, basically, make things easier in the future to solve these problems, so what you're going to do is you're going to have a look at my draft, tell me that, you know, this isn't -- this isn't where we wanna go or, yeah, this is great. Once we get to that stage, then we give it to the public and they will then come in and comment on these rules and tell us what, you know, what they think of these rules. After that, then we will then have followed the proper process for enacting these rules and then we can then vote on actually accepting these rules and putting them into power and then it will have a power of rule.

And, you know, I don't -- this is just -- I'm not making this up. This is, basically, the process that every board and commission goes through in order to enact these rules because they are affecting the rights of the public and so this process, although cumbersome and long and, you know, boy, we're going to have to deal with this some more, is going to, in the future, hopefully, eliminate a lot of these problems because the use of the banyan tree is not going to get any easier, and without rules and guidance for this Commission, we're not

going to be able to solve this problem in an ad hoc way. We're going to need to fall back on the rules and say, these are our rules; these are how we're going to make our decisions regarding the banyan tree, and, therefore, that's how we're going forward. And in the law, when commissions get into trouble, the trouble is is that due process isn't followed and what the failure of due process is is the failure to make decisions based on rational and, you know, decisions based on data and those kinds of things. And what we wanna do is we wanna, basically, protect this Commission because what happens, every time we give out a permit, is that we create a sort of an entitlement and that person then believes that they have some sort of property right and if we wanna go back and say, well, you know, we're taking it away now, well then that creates -- that can create litigation; that can create, you know, an accusation of failure to follow due process; that can create a big, you know -- and we need to know that when we make our decisions that they're going to be based on rules that we can rely on, which means that rules that we've discussed, we've formulated, we've given it to the public to look at, and we're going to then act on them. And that once we make those rules, this body also has the power to then amend those rules but then we follow the same process of formulating an amendment, giving it to the public for discussion, and it comes back; that process. So that's where we're at and the next thing is that I'm going to go back and try to formulate some rules for you guys, okay?

Ms. Duensing: James, what's the time frame for those -- for getting a draft that the Commission can look at? What are we looking at?

Mr. Giroux: I think if -- if I have a couple of months, I can get you something that we can -- we can look at and start tearing into. The thing is is that it's -- it's a matter of drafting and the better -- the more time we take into to doing a good job of drafting, the easier it is -- it's going to be in reformulating or looking at where the problems are and before we give it to the public for comment.

Ms. Sablas: So what happens in the meantime?

Mr. Giroux: Well, in the meantime, what's happening is we've got permits out there, okay. The law looks at this Commission's actions, and I touched about it -- I touched on it a little bit in my memo, is that there's legislative powers and there's quasi-judicial powers that this body has. When you have a case before you and you are making a decision based on that person's rights, then it becomes a quasi-judicial determination. Now the decisions you make determining that one person's rights, as long as he has the ability to respond and the ability to be heard and the ability to, basically, present evidence to you, the decisions you make on that person and those conditions become binding on that person or that one group. You cannot then bind other people outside of that hearing to that decision but, in this case, inevitably, there's going -- I mean there's only one banyan tree so when you make a judgement on one person, other people are going to have to compromise. But, as far as -- as far as we know right now, and I'm coming into this, you know, a little late and

I've tried to review everything I can get my hands on, but what I can see is that we did have one party come before this Commission in the context of a permit review or application, so whatever this body did in formulating its decision on that permit, whatever conditions it made, and from my opinion is that that is, you know, that's good, I mean that it's there, it's on that person, that person had a right to, you know, respond and therefore. So as far as a challenge from the enforcement of that, it's just like any other permit. We dealt with a permit today. That person came in and asked for a permit. He's in front of you; we had the right to make conditions on that permit; those -- that -- those conditions are enforceable on that person or that group. The problem is is that we're getting into an area where we're giving people permits which, because of their nature I guess, don't have these solid time lines, or ending points, or review periods, and that's one thing we wanted to address in our rule making is that once we give a body a permit, does that -- do they ever have to come before us again? You know, those are the kind of questions that would be clarified with a rule, a rule that said this permit -- the permit will only be used -- useful for a year; upon the lapse of that, the person will have to come in for a, you know, a request to renew or, you know, 90 days prior. You know, there's all kinds of things that we can formulate to put on to make these things clearer; clearer for the public; clearer for us to eliminate problems.

Ms. Long: Excuse me, but I need to clarify some things in my own mind before you go any further, and I know about quasi-judicial determinations. But, to my knowledge, the rules that this body came up with about Banyan Tree Park were not permits. The permits are issued by the Parks Department. Am I right?

Mr. Giroux: Well, they're conditions that we're putting on permits.

Ms. Long: No.

Mr. Giroux: If we don't put those --

Ms. Long: No they're not. They're rules just as the County has rules for the use of public sidewalks, or further use of whatever. And while, yes, granting the marathon permission may be quasi-judicial because it's a yes or no answer, we did not give yes or no answers in the case of Banyan Tree Park; that's already predetermined by the requirements of the Board of Land and Natural Resources and by the Parks Department. And I'm thinking that by incorporating the Banyan Tree Park rules into Sub-Chapter 3, our advisory and review function or wherever you want to do it to Title MC-12, is going to open us up to contested cases and all kinds of things that I do not believe, rightfully, belong here. And, with all due respect, I don't think that our advisory capacity in proposing rules for the use of the banyan tree --

Ms. Duensing: It's not advisory.

Ms. Long: But we're not the permitting agency. We are not allowed to say who gets to use the park.

Ms. Duensing: But you're allowed to say what the conditions are; that's not advisory.

Ms. Long: We're allowed to say what the conditions are, but isn't that something --

Mr. Giroux: When a person comes before you and you say, we don't like what you're doing. We don't -- you're not -- we don't --

Ms. Long: But we're not the ones that put Na Kupuna on probation.

Mr. Giroux: No, but --

Ms. Long: That was done by the Parks Department. That never even came to us. So we don't -- we were -- we don't have permitting authority in parks. Do we?

Mr. Giroux: But the thing is is that they can't get a permit without coming to you.

Ms. Long: That's true.

Mr. Giroux: And if you deny the person the ability to even come before you, then --

Ms. Long: That's a different thing --

Mr. Giroux: Right, but then that's part of ...(inaudible)...

Ms. Long: Then putting conditions on something because the quasi-judicial applies more to the can you do it or can't you do it than it does to the conditions that are applied.

Mr. Giroux: But it has to be done in the context of a hearing, and a public notice, the right to put evidence before this body. You're all sitting here as finders of facts. When you're finding facts based on one particular person's rights, then you become quasi-judicial, you become like judges, and all of the standards that are adhered to in the judicial system as far as impartiality --

Ms. Long: Then does that apply also to sign guidelines? Why are they not --

Mr. Giroux: I don't wanna go into that.

Ms. Long: See that's --

Mr. Giroux: But I wanted this body to know that, sooner or later, we're going to have to make rules because if we start just making rules in an ad hoc basis, people are going to just start suing us because they're frustrated and they don't know where to go; how does this system work; what do they need to do to get a permit; what can they expect when they come here. If we cannot give that to them, then -- then, as far as all your concern about contested cases, we're going to be spending time defending lawsuits instead of doing our function as being a board or a commission. And that's, if you read 91, that section, you'll understand that this is for, not for us, it's for the public. And if they're offended, then their recourse is to take up a lawsuit, and then there is judicial review in circuit court. So we need to set up a process so the people can come before us, we can make the decisions, and if there's a review process, this body can decide: are we going to give the appeal to another board, or are we going to give the appeal to another department, or is the appeal from here going to go straight to the courts. So it's just a matter of we need to set up our end of the deal so that the public is aware of what their rights are and so we can then, in an orderly fashion, go forward and do what we think we need to do in order to protect the cultural resources that -- in order to, you know, do what we need to do, what we think the powers of this board are.

Ms. Long: If we have adopted standards, and I'm looking at 12-531-13, which is where I would assume that rules would logically fit, and other guidelines, we have a number of those. We have design guidelines; we have sign design guidelines; oh, we have the Secretary of the Interiors. They are not -- they're appended to, but they are not part of our rules. I am concerned that by incorporating --

Mr. Giroux: Well, they are because they've been adopted. They are part of our rules because they've been adopted and they -- they've -- it's --

Ms. Long: That's true.

Mr. Giroux: I'm assuming that they've gone public scrutiny and voting and they've been adopted, and that process, the same process we're trying to go through now, is what this body of work went through. We're not creating anything different.

Ms. Sablas: So that's what you're suggesting we do with the banyan tree rules, go through this process?

Mr. Giroux: Yes, go through the process, make it official.

Ms. Sablas: But didn't we say it's going to be for a year? Didn't we say that?

Ms. Long: We were going to review them in a year.

Ms. Sablas: We're going to review it in a year. We said that. It was made --

Ms. Long: Yeah, so why -- why write something in concrete?

Ms. Sablas: Because we wanted to see how it worked and then we were willing to take a look at it in a year's time to see if adjustments were needed. I think that was part of our discussion.

Ms. Long: Plus we had exceptions to the rules for special events and food booths and that kinda thing. I'm -- I know where you're going.

Mr. Giroux: Well, I'm not going to beat this. It's going to be this board's decision. This is an opinion and I'm not going to raise my voice and yell at you and tell you, oh you're going to get sued; it's not my job.

Ms. Duensing: May I ask a related question, James?

Mr. Giroux: Let me finish this. The board needs to know this. As an attorney, I am only counsel. Your decision, and you guys can vote on it, if you want to live with what you have, you can, but you, as a body, have to make that decision. What I'm telling you is, legally, I believe we need to formulate these into rules. Now, the consequence is going to lay on this body if you decide that it doesn't need to do that and that's -- that's the only decision that needs to be made. So you can deliberate, you can get a consensus, and you can make an action. All this does is give you a firm background of what our -- my position is as your attorney. Now if you think that this analysis has gone array and eschewed and whatever and you're going to reject it, that's the power you have, but the problem is, is what I'm telling you in the future, is if people start suing us, they're going to look back and say, this is what they're going to sue us about, that we didn't enact rules when we should have enacted rules, and this body acted without the proper authority as far as having rules set out so -- and that --

Ms. Sablas: You mentioned earlier that if we were to do it and say it's an annual thing, it's like conditions that we place, rules or conditions, but we were going to review it in a year, does that nullify us from this because we didn't say it's going to be forever, we said that this is something we're going to be looking at after a year?

Mr. Giroux: The issue is, is not what we call it, the issue is is what would a reviewing body look at what we've done, they're going to give it the smell test. Does it smell? And I wrote that in my opinion. You know, what is the effect of what we've done? We've called it a policy. Well, what are rules? Rules are policies. What, you know, they're not -- whatever we call these, it's not -- that's not the determining factor; it's what the result and consequence is; that's what's going to determine whether or not it's a rule. And doing my

research, I mean there's about eight or nine pretty good cases out there where people have, basically, contested internal, you know, "internal policies" of certain boards and commissions or certain decisions and the question is, is it a rule? And, basically, the courts will do their analysis, just like I've done the analysis in this report, and say, well, based on, you know, these certain factors, we believe that this is a rule and it should go through the proper enacting procedures. So then that board or commission has to go back and enact the rule. And then there's cases where a decision is made internally within a commission or a board and somebody's affected by it and they come before the judicial, you know, they sue, they go in front of the judicial review, and the judge says, well, you know, it's not really a rule; it fits in one of these exceptions. Well the thing is is I don't, under my analysis, I don't see what we've done fitting into an exception and --

Mr. Kaopuiki: So, in that case, if that individual has a complaint, does he go back to the department, your department, and present why he objects with that?

Mr. Giroux: If the individual thinks that his rights have been violated, there's several different ways that a person can go about redressing that. If the body has rules regarding what an appeal would be, who the appealing body would be, and if that continues to be an administrative body, then that person, most likely, will not have the right to go into circuit court. However, if there's no rules regarding it and there's no other way that that person could redress that, then the second, in our case, the Second Circuit Court would be the body to --

Mr. Kaopuiki: Yes, I can see that, right, right.

Mr. Giroux: Yeah, to redress the harm.

Mr. Kaopuiki: But the one I stay -- if he goes back to your department and don't you folks, in any way, work it out with him and if he's not satisfied, then he'll go to court?

Mr. Giroux: In the sense that a person might file an informal complaint, as oppose to a formal complaint, because we are Corporation Counsel, you're talking -- when you say, "my department," you mean Corporation Counsel?

Mr. Kaopuiki: Right. Right.

Mr. Giroux: There may be negotiations --

Mr. Kaopuiki: Yes.

Mr. Giroux: Between the Corporation Counsel and that party.

Mr. Kaopuiki: Right.

Mr. Giroux: However, in the sense of an administrative situation, it makes for a difficult bargaining situation. You understand what I'm saying?

Mr. Kaopuiki: Yeah, yeah. Right. Yes.

Mr. Giroux: In the criminal sense, you know, you have plea agreements, right? In the civil sense, it sometimes it's just about how much money in a personal injury. In an administrative sense, when somebody is saying that their due process has been violated, it's kind of hard to negotiate a compromise. We either gotta have a process or we can't -- or we don't have a process, and that's, basically, the remedy is telling the body that supposedly violated this right to then go and make rules to remedy that.

Mr. Kaopuiki: I see.

Mr. Giroux: So the remedy, a lot of times, is just that the body has to go back and either do more fact finding or the body has to go back and do -- formulate rules based on facts, rational facts, those kinds of things.

Mr. Kaopuiki: Okay.

Ms. Long: Could we -- could we look -- okay, first of all, our rules had nothing to do with whether a person can hold an event in Banyan Tree Park or not. Our rules had to do with the way the park is used. So how, because we have not denied anyone their rights or given them anything, but only told them how land is to be used, would they be able to contest? Does it meet the criteria?

Mr. Giroux: It's gonna ultimately have to come down to some factual basis. I mean as far as what, okay, who the party is, is one fact that we need to know; the second one is --

Ms. Long: Right, Lahaina Arts Society is not happy because they wanna have 50 booths. Now can you logically see a way that they would even meet the criteria of a contested case?

Mr. Giroux: Where the contest comes --

Ms. Long: Yeah.

Mr. Giroux: Is when we're either at the point where we're denying somebody's use or where we're saying that we need to then either take away a permit, or, you know, we're finding a violation, or, you know, that sort of thing.

Ms. Long: But see these things and my whole point here is saying that these, as far as I was concerned, Parks Department was looking to us to provide them, and to the Arborist Committee, to provide them with logical rules and regulations that dealt with the particular physical and historic conditions of that particular park and that they're the ones who hand out these rules as just as they have handed out the Arborist Committee's rules for not nailing things into the tree for years. It just doesn't allow the flexibility that we thought we needed in the beginning to see if these -- if these things were going to be feasible and work, and it doesn't deal with, to me, the actuality of what's going on.

Mr. Kaopuiki: Isn't that, Barbara, isn't that supposed to be you're throwing that and, as a judge, to have these people give you an answer?

Ms. Long: Have what people give an answer?

Mr. Kaopuiki: Whoever the one you --

Ms. Long: Like Lahaina Arts Society?

Mr. Kaopuiki: Yeah.

Ms. Long: But we're not telling them, no, you can't use this. If that were the case, I mean and I'm drawing on my experience on the Planning Commission in these quasi-judicial things where we would either deny or whatever, there were always conditions, always, but the fact of rules was to help Parks Department because they have rules too when people go up and use the civic center, there's all kinds of rules, where are they codified? I mean this is the same thing to me.

Mr. Kaopuiki: Some member at that --

Ms. Long: I just don't wanna be part of the bureaucracy.

Mr. Kalalau: Welcome. You are.

Mr. Giroux: Welcome.

Ms. Long: Yeah, to a certain extent, yeah, but I wanna maintain the --

Mr. Kaopuiki: Throw it out there and let them decide.

Ms. Long: I wanna maintain flexibility so that if they come in here to us and say, gee, we need permission to do this, we don't have to go and amend our rules to let them do it, and knowing those guys, if --

Mr. Kaopuiki: Junkenpo is the best thing.

Ms. Long: Yeah, if you come up with the draft, we will most likely have a contested case scenario.

Mr. Giroux: Over the draft?

Ms. Long: Yeah.

Mr. Giroux: Well, see, the thing is is because we're in the middle of -- the middle of formulating the rules, it's not -- it's not a contested case. They have a right to, the public has a right to come in and comment on these rules and, at that stage, they can suggest to us, they can offer, you know, evidence that they think that might sway us to change the wording, you know, so when you say, "contested case," I mean usually when people talk about contested case --

Ms. Long: Okay, so we'll be -- we'll be in the middle of an appeal or a something because we will say, we made up these rules, we like them, we won't change them right now, so we're going to incorporate them in our rules, but when we adopted these initially, we said we would revisit them in a year, so, you know, it's --

Mr. Giroux: The bottom line is we're calling them rules.

Ms. Sablas: Can't we call them conditions?

Ms. Duensing: No, we call them policy.

Ms. Long: We call them policy.

Mr. Giroux: No, but you notice that in enacting language --

Ms. Long: Park's policy.

Mr. Giroux: That these policies are always being referred in our vocabulary as rules.

Ms. Long: Well, it's not.

Mr. Giroux: And so when we use semantics and we say, well, they're just recommendations, or they're just ideas, or they're just -- whatever word we put on them doesn't change the beast, "the rose is a rose is a rose," Shakespeare, you know, by any other name. Are we going to change what they aren't?

Ms. Sablas: So you're saying all the conditions ...(inaudible)... are rules?

Mr. Giroux: If we -- if we want them to be. You know, we need to make that decision because, otherwise, if you just use -- say that they're policies and we go on this path, in the future, somebody says, I don't like your policies and I think they're rules that were enacted illegally, and --

Ms. Long: Can we say they're advisory recommendations to the Parks Department?

Ms. Duensing: No, because they're not.

Ms. Long: They're not?

Ms. Duensing: They're conditions. And, you know, I --

Ms. Long: They're conditions?

Mr. Giroux: We put them on. We put them on.

Ms. Duensing: I have a couple points.

Ms. Long: Go ahead.

Ms. Duensing: By codifying them and making them into rules, the ultimate goal of this Commission, in my experience, having served on it for five previous years, was to eventually get all the activities out of Banyan Tree Park, and if we make rules for its use, and if what we've done this time is to give them one weekend a year off in the use of the park, how are we going to keep cutting that back if the rules say that now it's one weekend? Do we have to then go in amend our rules to try to get back two weekends and to eventually get them out of the park?

Mr. Giroux: Yeah, you know, I'm gonna --

Ms. Duensing: How can we come back and revisit it in a year if it is a rule?

Ms. Sablas: Why can't we be just hardball and just say that it's a historic park, we're going to just eliminate all activities under there?

Ms. Duensing: Well that's what we tried to do but the Mayor ...(inaudible)...

Mr. Giroux: You know what I'm going to do is, basically, just ask this Commission because I think we're getting close to conversations that probably should be taken up in an executive

session here. We're dealing with liabilities, we're dealing with this, that, and the other thing, and I think that, you know, we probably should take this up, if the Commission is either going to act on this or not act on this, we can have a conversation in executive, you know, and that takes a two-thirds of the vote to get into --

Ms. Long: Yeah, but there's only five of us here today.

Mr. Giroux: So this is the opinion: This can be put back on the agenda; this could be tossed around; kicked around; dragged through the mud; whatever, but --

Ms. Duensing: Let's just come back and look at it in a year.

Mr. Giroux: Yeah, so -- but you have to be aware that it is a legal opinion from your counsel and it has to be given the weight that you feel is due, and that's the bottom line. The Commission is the ultimate power and authority and the decision-making body, and so as long as you discuss it, come up with a consensus and take the appropriate action, then that's where this goes. We don't need to spend another three hours.

Ms. Sablas: Okay, I have a question then if we don't act on what you're proposing and don't come up with rules, in the meantime, if they're breaking the conditions that we had placed at the previous meetings, what actions do we have as the County?

Mr. Giroux: Like I said, if these have been enacted in a quasi-judicial manner, they're still enforceable on that party so we have an enforcement, you know, what's our --

Ms. Sablas: But the answer is we don't have any?

Mr. Giroux: No, what --

Ms. Long: But Parks is enforcing.

Mr. Giroux: We have, in the Planning Department, an enforcement arm, right? I mean --

Ms. Duensing: Well, there's the problem. Since it's in a public park, they would be in charge of enforcing, you know, it's that dual jurisdiction again.

Mr. Giroux: Yeah, so whoever is doing the enforcement would look at these conditions as enforceable and if there's a violation, then it's their job to then --

Ms. Duensing: And Parks is currently giving permits based on the policy conditions that were generated at the August and September meetings.

Ms. Long: And it's my understanding that because Na Kupuna was there on a -- an off Sunday and actually collected money that Parks, and this I got from John Buck, has put them on probation, which probably means that they will not get a permit in the future if they do that again. So, yeah, I don't think this body or Planning should be enforcing what goes on in our County parks.

Mr. Giroux: Well that's where the --

Ms. Duensing: It's a zoning issue though because the Cultural Resources Commission is putting out the conditions.

Mr. Kalalau: Say we adopt something --

Ms. Long: But so are the arborists. The arborists are involved too.

Mr. Kalalau: Right. Right. But say if we adopt all their rules, so-called "rules," and we say, this body says that, you know, we agree with their rules and, like the Parks and the arborist department, and how would those rules be effective to us if we adopt them into our system that you wanna put here?

Mr. Giroux: You know what we would have to do is look at what are those rules and how were those rules enacted and, you know, we don't wanna be making rules that are duplicate either --

Mr. Kalalalua: Right.

Mr. Giroux: And that's part of the drafting process is when the public comes in and says, you know, this is a dumb rule, you know, you -- the Parks already made this rule and you guys are making the same rule but it's different; that's why the public is invited to comment on these because it's a process. It's a part of bringing these things to the surface, having discussion, having comment, having, you know, proper input so that that's, basically, the finish project -- product is something that everybody can live by and agree to follow.

Ms. Long: I think we're not quite ready to do it yet cause we wanted to see how it worked over a year, and it took I don't know how long to get the sign design guidelines, and years to get the design guidelines, so my vote here, if there's going to be one, would be to -- to wait and to maybe, not wait a year, but to meet with Parks in six months and say how's it going, and what do you think, and do you guys want to adopt these rules, should we adopt these rules, how are we going to do this; cause they're not just our rules, they were the Arborist Committee's.

Mr. Giroux: Here's a suggestion that I've seen other commissions do is what they do is they have a joint workshop, and it's put on the agenda, and we invite somebody from Parks and Recreation who's got the authority to, basically, give us feedback and say, look, we're at a juncture, this is the problem, we think we need to formulate rules, can you guys, you know, can we at least start a dialogue. Planning Commission has done that with the Water Board. You know, when there's a logical overstep or cross-step between boards and commissions, there's always that power to call a meeting, that's a joint meeting, and put it in the agenda for discussion and the public is welcome to also give input at that time also so, you know, I mean --

Ms. Duensing: It's going to be a marathon.

Mr. Giroux: You know, so it's part of the process and it's the options that the boards and the commissions have.

Mr. Kalalau: If we do something like that with one joint meeting, I, personally, feel that it shouldn't be -- I think it should be in a closed session first before we decide to open it up to the public.

Mr. Giroux: Well, see that's the thing about the Sunshine Law. See now we can have closed sessions on very limited issues, like I said, if it involves liability, if it involves things that involve personal matters amongst the members, you know, there's three or four, you know, very narrowly interpreted exceptions, so we do need to follow the Sunshine Law about having meetings and public hearings -- public meetings, public hearings.

Ms. Long: Unfortunately. Wouldn't you say though that most of those policies are derived from concern for the tree? The main ones about the historic thing are that they -- there should be no actual sales or exchange of money under the tree; that's already a rule somewhere; it's in the law.

Mr. Giroux: Is it?

Ms. Long: Yeah.

Ms. Sablas: Yeah, that there's no transaction.

Ms. Long: It is. Chapter 19 or somewhere, isn't there something about no money on sidewalks and --

Mr. Giroux: Well, that's this section.

Ms. Duensing: That's permitting it. That's why you guys look at it because it's a commercial transaction in a public place.

Mr. Giroux: That's 19.52.100.

Ms. Long: Okay, now my point was that most of the points that I can think of, like no gasoline, no fires, the no staking, all that stuff had to do with the health of the tree. Why should it be in our rules? We're not tree authorities. We're not the ones who are going to go out and look at that tree and say, my God, all the leaves fell off, we've gotta do something about this.

Mr. Kalalau: And then the tree guys are going to say that we gave that organization the approval.

Ms. Long: So I'm just --

Ms. Duensing: Rewrite Title 19 that there shall be no selling in public places, and we'll get the Council to pass it, and it'll just end the discussion once and for all. It's not that farfetched.

Mr. Giroux: That's another option, changing -- I mean, basically, I mean, yeah, our options and viable options, short-term options, long-term options, they're all things that this Commission has to struggle with so --

Ms. Duensing: Well there's one other thing that we talked about, James, in this regard and that was the idea that the overall policy was discussed, then Na Kupuna's permit was discussed, Lahaina Arts Society, this is just one option, is getting Lahaina Arts Society in there to discuss the conditions of their permit, according the policy that was adopted in August and September, and then they get their opportunity to, you know, have their permit reviewed just like Na Kupuna did. Is that a partial solution to improving this situation? I mean they at least then have their day before this board but they're not likely to get what they want.

Mr. Giroux: Again, this would probably be more properly taken up in an executive session --

Ms. Duensing: Okay.

Mr. Giroux: As far as, you know, because we are treading on what is due process, what would be this Commission's liability, you know.

Ms. Duensing: I was just looking for options as how to deal with it, yeah.

Mr. Giroux: Yeah. No, I understand but, again --

Ms. Long: I'd like to discuss this again with all the commissioners here: with Perry, and Lisa, and Keeaumoku, and our Molokai person, and -- and, meanwhile, I will talk to my lawyer friends and see.

Mr. Giroux: I thought you didn't like lawyers?

Ms. Long: I love lawyers. I just love lawyers. I think lawyers think in a very wonderful way and I like the logic and the whole thing, and that's where I'm coming from is the logic of all this and is this really our kuleana to decide what's best for the tree, and maybe that whole thing should have been thrown at the Arborist Committee and not at the -- not at us. I don't know.

Ms. Duensing: But that's not what Title 19 says, Barbara.

Ms. Long: But did we actually talk about the impact on the Historic District?

Ms. Duensing: It was in my report. Is it an appropriate activity?

Ms. Long: How do you measure that? How do you determine that?

Ms. Duensing: Well, that was one of things that I said in the decision and order draft is that there was very little regard paid to cultural resources. All we heard was testimony on economics.

Ms. Long: Right.

Mr. Kalalau: Yeah.

Ms. Duensing: Plus Ernie and a couple of his pals saying what about the tree?

Ms. Long: Yeah. Yeah.

Ms. Duensing: And that was part of my analysis of the D and O.

Ms. Long: But you get into such a philosophical discussion that we would be here endlessly.

Ms. Duensing: There is no philosophical discussion about it cause it's always about money.

Ms. Long: Or about the First Amendment.

Ms. Duensing: Otherwise, they wouldn't be there.

Ms. Long: Or about the First Amendment and they're going say it's our right to have this thing.

Ms. Duensing: No, it doesn't have anything to do with the First Amendment; it's all about money, otherwise, they wouldn't ask for the permit to be there.

Ms. Long: That's true and, frankly, Lahaina is there because of money. It was a good harbor, so that's money.

Ms. Duensing: No, it's not a good harbor.

Ms. Long: Well the whalers hooked up there -- whatever.

Ms. Duensing: They needed a pier to ...(inaudible)...

Ms. Long: Yeah.

Mr. Kalalau: It's a trade import.

Ms. Long: Yeah. It's an interesting call. I would love to have this discussion with more commissioners.

Mr. Kalalau: Yeah.

Mr. Giroux: That's also an option.

Ms. Duensing: Well, in that light, maybe you should move on because you've been discussing it for an hour and fifteen minutes now.

Ms. Sablas: Okay, so we're just going to be putting it down on the agenda again for --

Ms. Duensing: Should this be on the agenda for the, well, we're discussing the December 2 meeting agenda, should this be on the agenda for an executive session with full Commission? Is that what you would suggest, James?

Mr. Giroux: We could. I mean it's, like I said, it -- what has to be discussed is the narrow confines of, you know, the liability and we gotta be within the exceptions of the -- so the public has to have notice that we are having these discussions, I think, that we should

review the -- well I was just talking about, as far as what our agenda will look like when we -- you can consult with me too as far as what we label it.

Ms. Duensing: Yeah, we can consult with that on the December agenda. Other items for the December --

Mr. Giroux: Yeah, because you can put it on the agenda, it's just that in order to go into session, two-thirds of the body must vote affirmatively, so you can put it on --

Ms. Duensing: Which is why this whole discussion --

Mr. Giroux: Yeah, so --

Ms. Duensing: Okay, on the December agenda, I'm going to have at least one permit, probably, from Lahaina Town Action Committee. I need to talk to Theo about this first. I ran into some snags on something that they requested.

I am working with the new administrator over at SHPD to expedite finally getting our CLG funding. I spoke with her this morning. You know they approved everything but, you know, now we've gotta go through the whole contract stuff and everything, so she said she's going to be working with the Attorney General's office to see if we can't get that going quicker so that we can actually start spending the money and not be so rushed at the end.

Ms. Long: That would be good.

Ms. Duensing: And if there's a possibility if we can get this expedited between the County and the State, maybe we could arrange, I think we would have a light December agenda, maybe we could arrange for Tonia Moi's presentation on the Secretary of the Interior Standards, if she has time free, so I will investigate whether that's a possibility.

This banyan tree item I'll talk to James about that. Another thing that was put in your packets was this letter from Kaanapali Development on the Pioneer Mill thing and I'd like to put that back on the agenda. I need to talk to the consultants because it doesn't seem as if they're making a whole lot of progress on this.

Mr. Whelchel: It's all negative.

Ms. Duensing: So that'll be on the agenda --

Ms. Long: Good.

Ms. Duensing: As time permits or either in December, I'm talking kinda December-January items, whatever we can get. I submitted the paperwork for the Naniloa Overpass, the Naniloa Drive Bridge National Register Nomination to SHPD and hoping that we get on December's agenda, but I guess they have this extraordinarily long review period, so it might be on the January agenda, so those are the items that we're working on that I know about at this time.

Mr. Giroux: As far as D.1., are we going to have an opportunity to have the State archeologist comment on the letter and plan?

Ms. Duensing: What I did with that item is Melissa really doesn't have the time to come to deal with this and this is kind of a cut and dry of how the State operates kind of issue so -
-

Mr. Giroux: Well I think we just need clarity to either get finality on this cause -- I mean this has been on the agenda for --

Ms. Duensing: Exactly, and I was ready, I worked with Melissa really hard this month to get her to go through stuff, she excerpted things from the preservation plan, made comments on it, we had a lengthy discussion about it, but Mr. Kapu wasn't here, so that's why the Commission deferred it. So we are ready to go on that, yeah, and I have a handout, you know, waiting right here to address the Commission about that and handle it, and, you know, it's basically going to be an explanation of how the SHPD works in preserving archeological sites. There is nothing fishy about it. It's just a matter of, you know, here's the guy that requested it and if he's not here, we talk about it without --

Mr. Giroux: Okay.

Ms. Duensing: Yeah, I'm ready to go on that more than ...(inaudible)...

Mr. Giroux: I didn't mean to imply anything.

Ms. Duensing: Okay, so those are the agenda items for the next couple months as I see them and, you know, there may be other permits coming up for review. I don't know. I don't think so. The 2005 meeting schedule was attached in your packets by Suzie. And I don't think there were any administrative permit reports for this month, right, Suzie? Yeah, so that's about it.

And on that letter from or to Councilmember Hokama, I'm sure I did that. I think it gets routed to the Mayor's office, back down to the Council, so usually after that, I get the copy of it after the Mayor's got his signature on it but I don't recall seeing that so I need to follow up on that.

Ms. Long: Shoot me something because, you know, there was a follow-up meeting and Lori should report on that one cause we met with --

Ms. Duensing: I wasn't aware of that.

Ms. Long: Kalbert Young.

Ms. Sablas: Kalbert Young.

Ms. Long: Yeah, you were. Kal Young, Keith Regan. Yeah.

Ms. Sablas: Cause that was a follow up --

Ms. Duensing: The one at Foley's office.

Ms. Long: No.

Ms. Duensing: No, nobody told be about a follow-up meeting. You guys talked about it but nobody told me when it was or that you did it.

Ms. Long: My mind is blank. When did we do it? Two weeks ago? It was Keoki, Lori, and me.

Ms. Sablas: Cause we were seated there and we said, "I thought Dawn was supposed to be here." I remember asking.

Ms. Duensing: Nobody told me about it. I felt disappointed.

Ms. Long: Okay, when we were in the meeting with Mike, I forget who it was said, well, you better go talk to the new Finance Director and bring him up to speed on this.

Ms. Duensing: Right, I remember that; that's why I said, you guys talked about it but you didn't tell me if you had a meeting.

Ms. Long: Well we had a meeting.

Ms. Duensing: Okay, but you're getting off the agenda now.

Ms. Long: Okay.

Ms. Duensing: So don't go there.

I. COMMISSIONER'S ANNOUNCEMENTS

Ms. Long: This is Commissioner's Announcements. We had a meeting and I will call you and tell you or Lori will tell you about the meeting afterward.

Mr. Giroux: In the future, I mean if there are meetings amongst the members, just make sure it's clear that the members first vote on --

Ms. Duensing: They did.

Mr. Giroux: And then --

Ms. Long: Yep.

Ms. Duensing: They did.

Mr. Giroux: That the parties, when they come back, give a full report, and then that's just part of the Sunshine Law, so just be aware that there is another thing so --

Ms. Duensing: They did it right in this case.

Mr. Giroux: Good. Good. Okay.

Ms. Long: Okay, so we'll deal with that. That's it? No announcements.

Ms. Sablas: Okay, no announcements.

Ms. Duensing: You had a meeting.

Ms. Sablas: We did have our meeting on October 20 and we apologize. I thought you were included.

Ms. Long: I could have sworn I talked to you about that.

Ms. Sablas: But it was positive --

Ms. Long: Very.

Ms. Sablas: And it is on the agenda and I don't know because this is one of our process was to try to keep it moving and I think our, if I may, report it as Commissioner's Announcements here on Item I., that we did have a meeting on November 20 with Kalbert Young, the Director of Finance, and Keith Regan, and Corp. Counsel and our objective was

to be able to let them know about our plan and how, you know, as Finance Director, how we do we go about it and get your support, and we got support from all -- from the Finance Director, it was very encouraging, he wanted more information, I think, and Keoki was going to follow-up and send --

Ms. Long: He did. I got a copy of that letter.

Ms. Sablas: Send him more specific information on the revenue projections --

Ms. Long: And expenses.

Ms. Sablas: Right. Being the finance person, he wanted to make sure that the figures that we were proposing were not -- I mean were as true to form as can be and we have explained that what we were proposing, from Keoki's experience, was really on the conservative side and Keoki has the experience of what you can collect from parking in Lahaina perhaps more than anybody else. So I think -- and then I think, yeah, I did recall seeing a follow-up letter from him.

Ms. Duensing: Well now that letter makes more sense because I had no idea why Keoki was writing that letter to the Finance Director and I'm like, well, this is nice.

Ms. Long: Oh you got one, yeah.

Ms. Duensing: Now it makes sense.

Ms. Sablas: So our next step, again, he was very supportive and he did advise us that the Mayor had appointed his assistant, Don Couch, to work on this and usually I always ask at a meeting what's our next step and what was --

Ms. Long: Traci Villarosa was going to draft an ordinance having to do with paid parking in Lahaina and a special fund that would go to historic preservation support in Lahaina and, what was it? Six weeks? Something like six weeks he talked about and then we all said, well we will pester you and make sure that it happens in six weeks. I'm pretty sure. I have to go look at my notes.

Ms. Duensing: That's curious, paid parking comment, because I've got this guy who sells parking meters and he keeps calling me cause he's got a parking meter program all set up for us so the County can make some bucks.

Ms. Long: They're historic, right?

Ms. Duensing: Yeah, that's kinda my point. So, anyway --

Mr. Kalalau: The old ones.

Ms. Long: They're made of wood.

Ms. Duensing: Can you guys tell me that you're not interested so I can tell him I asked and now he'll go --

Ms. Long: We're not interested.

Ms. Sablas: We're not interested.

Ms. Duensing: Thank you ...(inaudible)...

Ms. Sablas: And we probably will keep reporting on Commissioner's Announcement item as far as the progress on this because we don't, you know, we wanna be able to see it moving along so our apologies. Okay, nothing else to discuss? Meeting is adjourned.

J. NEXT MEETING DATE: DECEMBER 2, 2004

K. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 1:15 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions I

RECORD OF ATTENDANCE

Present

Lori Sablas, Chairperson
Lon Whelchel
Barbara Long
Solomon Kaopuiki
Lisa Rotunno-Hazuka (Excused at 12:15 p.m.)

Samuel Kalalau, III

Excused

Keeaumoku Kapu, Vice-Chairperson
Perry Artates

Others

Dawn Duensing, Planning Staff
James Giroux, Deputy Corporation Counsel