

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MARCH 10, 2020**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Lawrence Carnicelli at approximately 9:04 a.m., Tuesday, March 10, 2020, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Carnicelli: Good morning, everyone, the Maui Planning Commission meeting of March 10, 2020 is now in session. My name is Lawrence Carnicelli, I am the Chair. Also, with us today is Vice-Chair Tackett.

Mr. Tackett: Morning Chair.

Mr. Carnicelli: Good morning. Commissioner Castro.

Mr. Castro: Good morning, Chair.

Mr. Carnicelli: Good morning. Commissioner La Costa.

Ms. La Costa: Aloha, Chair

Mr. Carnicelli: Aloha. Commissioner Robinson.

Mr. Robinson: Good morning, Chair.

Mr. Carnicelli: Good morning. Commissioner Pali.

Ms. Pali: Aloha kakahiaka Chair.

Mr. Carnicelli: Good morning. Commissioner Thompson.

Mr. Thompson: Good morning.

Mr. Carnicelli: Good morning. And Commissioner Freitas.

Mr. Freitas: Aloha.

Mr. Carnicelli: Aloha. Let's see is, not absent, but excused is Commissioner Gomes. Just a little bit of housekeeping before we get started just so everybody knows. I see some new faces here. We do things a little bit differently than County Council here. We take testimony after each item. So, if you're here for an item what we'll do is we'll have the Department do a little quick presentation on the item, the applicant will then do a presentation and then we will take testimony after that...each item. So, just so you guys kinda understand how it works, what it does is it gives you guys an opportunity to see exactly what it is and what you will be testifying on, and in this we will also be swearing you in, asking if you would be truthful and there will be an opportunity for the applicant to cross-examine you if they do choose. So, with that being said, Director.

Ms. McLean: Thank you, Chair. The first item on the agenda is a request from Leilani Pulmano of H2R, LLC for this Commission's review and comments on a Draft Environmental Assessment in support of the Special Management Area Use Permit for the proposed H-2 Residential Project, consisting of 53 condominium residential lots, beach parking, rock walls, and related infrastructure improvements, located on approximately 28 acres of land along Makena Alanui Road in the H-M Hotel District and the PK-Golf Course District, TMK's: (2) 2-1-005:085 and 120 (portion) in Makena. Ann Cua is the project planner.

B. NEW BUSINESS

- 1. LEILANI PULMANO, H2R, LLC, requesting review and comments on the Draft Environmental Assessment (DEA) in support of the Special Management Area Use Permit for the proposed H-2 Residential Project, consisting of 53 condominium residential lots, beach parking, rock walls, and related infrastructure improvements, located on approximately 28 acres of land along Makena Alanui Road in the H-M Hotel District and the PK-Golf Course District, TMK's: (2) 2-1-005:085 and 120 (portion), Makena, Island of Maui (EA 2020/0001) (SM1 2019/0008) (A.Cua)**

The Maui Planning Commission is the approving agency.

Links to the Draft Environmental Assessment:

Volume I

http://oeqc2.doh.hawaii.gov/Doc_Library/2020-02-23-MA-DEA-H-2-Residential-Project-at-Makena-Vol-I.pdf

Volume II, Part 1

http://oeqc2.doh.hawaii.gov/Doc_Library/2020-02-23-MA-DEA-H-2-Residential-Project-at-Makena-Vol-II-part-1.pdf

Volume II, Part 2

http://oeqc2.doh.hawaii.gov/Doc_Library/2020-02-23-MA-DEA-H-2-Residential-Project-at-Makena-Vol-II-part-2.pdf

(Item B.1 begins at 00:01:30 of the audio recording.)

Ms. Ann Cua: Good morning, Chair. Good morning, Commission.

Mr. Carnicelli: Good morning, Ann.

Ms. Cua: As mentioned, we are here today to get your comments on the Draft Environmental Assessment for the H2 Residential Project. The Draft EA was submitted to the Planning Department on December 17, 2019, and we distributed it to you at your last meeting on February 25th, we gave you all flash drives.

The Draft Environmental Assessment is the supporting document to a Special Management Area Use Permit applicant, SM1 2019/0008 which also was received by the Department on December 17, 2019.

Very, very briefly, the applicant is proposing the development of the H2 Residential Project consisting of 53 condo residential lots as explained by the Director with related improvements. Each future lot will be able to construct a single-family dwelling unit and related accessory uses and structures in accordance with the approved design guidelines. The residential project improvements will be located entirely within the Parcel 85 and the work within Parcel 120 will be limited to only sewer line improvements and archaeological preservation activities.

The trigger here today for the Draft Environmental Assessment is the use of County lands. They are doing roadway, electrical power pole relocation improvements along Makena Alanui Road and Makena Keoneoio Road.

In terms of procedural matters, the Draft Environmental Assessment was published in the OEQC Bulletin on February 23, 2020, so we are now in the review period time. The 30-day public comment period ends on March 24, 2020. So, what's happening is the applications have been transmitted, the Draft Environmental Assessment and the SMA application have been transmitted to governmental agencies. We're conducting our agency and commission meetings at this point on the Draft EA so the SMA application went to the Urban Design Review Board last week Tuesday, you're reviewing the Draft EA today, and on April 2nd, the Cultural Resources Commission will be reviewing the Draft Environmental Assessment as well.

We have received four letters thus far. Three of them were emailed to you by Carolyn and the last letter I passed out today, I received it yesterday afternoon, so you have four letters, you should have four letters in your possession this morning.

The Department has reviewed the Draft Environmental Assessment document and finds that pursuant to the Department of Health, Office of Quality Control, the document meets the requirement for a Draft EA. So, today the action by the Commission is the Department is requesting concurrence on the Commission filing of the Draft EA and anticipated Finding of No Significant Impact, and the applicant is requesting comments from this Commission, and also the...is requesting that the Commission would be the approving agency. So, at this point in time, I'd like to turn it over to the applicant who is going to go through the project with you.

Mr. Carnicelli: Thank you, Ann.

Ms. Leilani Pulmano: Good morning, Chair and good morning, Commissioners.

Mr. Carnicelli: Good morning.

Ms. Pulmano: My name is Leilani Pulmano of Pacific Rim Land, and we're the managing partners for H2R, LLC which is the entity for the H2 Residential Project. With me today is Ryan Churchill and Darren Okamoto. And as a matter of background, we purchased the property in October 2018, and we are not part...partners with the Makena Golf and Beach Club. We also have our consultants that helped prepare the technical studies as part of our Draft Environmental Assessment. The consultant team was chosen based on their extensive knowledge of the Makena area and they'll be here to assessment me with answering questions.

The purpose of today's meeting, again as Ann had said is to receive comments from the Commission on the Draft Environmental Assessment. The presentation will start with a project description and details on the project plan. I'll walk through some of our sustainability features, show the view analysis, provide a brief summary of the Draft Environmental Assessment and end the presentation talking about next steps.

So, to orient you to the property, this is here is the ocean. This is Makena Alanui Road, Makena Keoneoio Road or Old Makena Road is better known as, and this is the old Maui Prince Hotel location and the golf course. So, our property...the property is a 28-acre property. It's mainly vacant with the exception of a existing beach parking lot, the Kai Kanani parking lot, and a construction staging area for Maluaka.

Although originally planned for a 500-room hotel H2R is proposing 53 residential lots where the lots will be sold to future individual lot owners and they will construct their single-family homes. Improvements to the roadways include sidewalks and bike lanes, in addition, there are five pedestrian and bicycle paths that will provide connectivity to the project. Let me see if I can point that out here. There's one here, one here, one here, one here and one here. As part of the development, ...(inaudible)...will reach out to the adjacent parcel for preservation of the archaeological sites and a sewer line extension that straddles the property, and these are just located here and here.

So, a few items I want to highlight. There are six preservation sites in sort of the light-yellow colors, and these six sites are habitation and agriculture sites. The retention basins as you see here in the dark...in the lighter dark green are designed to accommodate a hundred percent of the pre and post development runoff. Rock walls will line the project along Makena Alanui Road and Old Makena Road.

This slide shows the relationship from the existing beach parking lot here to the relocated beach parking area which is about 150 feet north closer to the beach and the beach parking will stay open during construction.

This shows our plant palette which draws upon native coastal plants. We have some wiliwili trees on property and during our outreach to the Po'o of the Aha Moku Council and testifiers and testifiers at last week's Urban Design Review Board, they asked that the existing wiliwili trees be saved, and based on their request we're preparing a map showing where the trees are located and from my site visit last week it looks like the trees are located near the archaeological habitation sites at the northeast corner of the property, and I'm just gonna point in this area here, and so we'll work to incorporate the wiliwili trees within our design. Also, native nursery will be collecting the seeds to help propagate the seedlings. Another comment

that we had from a Aha Moku member was to add Ualoa to the plant list and you'll see that here.

In terms of land use designations, the property is within the State Land Use District Urban Designation and within in the Urban Growth Boundary for the Maui Island Plan. The property is designated community plan hotel and County zoning H-M which allows for resort residential uses. It is within the SMA and outside of the 3.2 feet sea level rise exposure area. As I mentioned, work in Parcel 120 is limited to the preservation of the archaeological sites and a sewer line. For Parcel 120, the community plan designation and zoning is Park Golf Course. The entitlement process involves a Chapter 343 Environmental Assessment. The trigger is the use of County lands because of the improvements to Makena Alanui and Old Makena roads. The property is within the SMA and requires a SMA Major and this means you'll see us two more times. The next time will be for the Final EA and the third time will be for the SMA.

The property did receive approval for a change in zoning to HM-Hotel in 2008, and I believe Ann passed out our latest compliance report that was just done this past January. The Council imposed 44 conditions of zoning covering broad topics such as density, height restrictions, noise, lighting, screening restrictions, education, affordable housing, transportation, civil defense, historic, cultural, natural resources, water, energy, and architecture along with other topics. So, it's in your Appendix B1 and Ann did pass that out earlier this morning.

A sustainable report was completed by Green Building Hawaii and these are our sustainable design principles. Some of the major features of our plan is preservation of the archaeological sites, requiring the homes to attain LEED Silver, requiring the homes to have PV solar, the use of non-potable water, management of storm water to retain a hundred percent of the pre and post development runoff exceeding county standards, and providing an ongoing fund to help community projects and nonprofit organizations to benefit the Makena community.

As we go through the view analysis, there's a map, sorry it's hard to see, the view reference map on the corner here will orient you to the different locations. We picked these locations based on what we felt were the most significant views from the public perspective. As a reminder, we'll be selling the lots to future homeowners, so in order to prepare the view analysis we had house plans prepared that's consistent in terms of massing and size within the Makena area and based on the design guidelines.

So, View 1 which is located here, so the top photo's going to be the existing view and the bottom photo is the proposed view once the project is completed. So, View 1 is at the top of the project driving towards Big Beach. There's an existing dust fence as you see here for work that's going on, on the Makena Resort project. You can see some rooftops looking toward the puu when you look here.

View 2, in the middle of the project, is in the middle of the project along Makena Alanui Road. You can see the homes being more defined in the view.

View 3 is at the corner of the two roads at Makena Alanui and Old Makena Road and you can see the proposed landscape with the homes in the background there.

View 4 is at the other corner as you walk from the beach access path looking mauka. This area will have a drainage basin and significant landscaping. You can see some homes along the golf path behind the trees and the shrubs.

As mentioned, the project triggers an EA because of the work in the county roadways and we're here today to get your comments on the Draft EA. Again, as a reminder we'll be here two more times before you on the Final EA and the SMA. So, the purpose of the EA is to disclose potential impacts and determine if there are findings of significant adverse impacts. Environmental, cultural, infrastructure, socio economic resources are analyzed and proposed mitigation measures are recommended. Additionally, the EA disclosed conformity to State and County rules, regulations and plans. Early consultation letters were sent to 43 organizations and individuals and the Draft EA meets the new HRS, Chapter 343 and OEQC requirements. The next few slides are brief summaries of the Draft EA findings.

The biological resource survey indicated that there will be no significant adverse impacts to critical habitats of rare, endangered or threatened species. There are mitigation measures to avoid impacts to Hawaiian Hoary bats, migratory seabirds, and native water birds.

The traffic assessment report showed that there's no significant adverse impacts to traffic.

The drainage is designed to retain the full pre and post development runoff resulting in a net decrease of potential runoff and exceeds the County standards. The drainage analysis shows no significant adverse impacts to downstream properties. The property is not a shoreline property, regardless a marine water quality report was completed showing no significant adverse impacts to marine resources and marine water quality are anticipated.

The analysis for public services indicated no significant adverse impacts to police, fire, medical, solid waste, and educational facilities. The proposed project is anticipated to generate economic benefits to the County and the State, and for the County, the real property tax revenues are estimated to be at least 1.5 million annually. Additionally, we'll have a Makena community fund that will provide funding to projects and nonprofits that benefit the Makena community.

SHPD approved the AIS reports. It's a bit unusual that the Draft EA includes this SHPD approved reports. The reason why we have these approved reports is that the property has had several starts, but have not gone through the process of actually submitting an SMA application, and because of those starts, there have been technical studies that have been completed including the AIS reports. This has been extremely helpful for our project because we were able to incorporate SHPD comments into the project design as you see today. The six habitation and agriculture sites will be preserved and the preservation plan was also approved by SHPD. Access is allowed and will continue to be allowed for cultural practices to the habitation and agricultural sites. As part of SHPD's approval archaeological monitoring will be required during construction. The archaeological monitoring plan was also approved by SHPD. The CIA indicated that there would be no significant adverse impacts on cultural resources.

We've been conducting community outreach since last year and we've meet with Makena Homeowners Association, South Maui Advisory Committee, Maluaka Homeowners Association,

Kihei Community Association Planning Committee, and individual members of the Aha Moku Council for the area, and we have had several stakeholder meetings with individuals focusing on people who live in the area.

In terms of milestones, the Draft EA was published on February 24th, I'm sorry, 23rd, and the Urban Design Review Board provided comments and recommended approval last week. Today, we're receiving your comments and the Draft EA comment period ends on March 24th. On April 2nd, we'll be receiving comments from the Cultural Resource Commission and based on these comments we'll prepare the Final EA which will be reviewed by you folks again, and we again, will be before you for the decision on the SMA.

So again, just to finish the purpose of today's meeting is to get your comments on the Draft EA, and thank you, we'll be here to answer any questions as well as our consultants.

Mr. Carnicelli: Thank you, Leilani. So, I guess at this point in time what we'll do is we'll open up the floor for public testimony on this item. P Dee, could you grab the sheet for me please? Also, one thing that I did not mention is that you guys will have...I will swear you in, ask you to be truthful. It's not a contested case?

Mr. Hopper: Making comments.

Mr. Carnicelli: Okay, so since this is...this is basically just comments on the EA alone, that's all we're doing, is we're just making comments, we're not approving anything today. So, therefore, I won't be swearing in, but hopefully you're still truthful, but you get three minutes, and three minutes only, okay. And it's just like not three minutes and a half because we want to just be fair to everyone. It's not that we don't want to hear what you have to say, but if you go three and half and somebody else went three, that person that actually complied is not fair to them. Anyways, the first testifier is Daniel Kanahale. Please state your name for the record.

Mr. Daniel Kanahale: Aloha kakou, Chair, Commissioners. My name is Daniel Kanahale. I'm testifying as an individual. I live in this moku, the moku of Honuauia where the H2 project located. I also serve as a commissioner on the Cultural Resource Commission. When I testified before the Urban Design Review Board last week, they recommended that this project be brought before the Cultural Resources Commission for review 'cause we exist as an advisory body to agencies like yourself to assist you in your historic preservation duties, and so I'm very happy to hear that it's been scheduled for April 2nd, thank you Ann to be...to come before the Cultural Resource Commission.

Makena, the area known as Makena has other, other more traditional names, has always been a special place for locals and visitors because of it's an area of quiet and natural beauty and historic interest. In fact, those was the...that was the language used in the first civic plan, 19 civic plan for South Maui, and that Makena would remain a place of quiet natural beauty and historic interest. And so, whenever there's a development in that area it attracts a lot of attention because a lot of people love that area, it's considered one of the crown jewels of Maui. And this property that you're looking at today has a lot of cultural resources, cultural resources being defined as the physical remains of an ethnic culture that's still on the site, and one...(inaudible)...may include flora, fauna, aquatic and geological resources. And cultural

resources are more often than not finite nonrenewable and once destroyed they're gone forever so that's why its very important to take a very close look at any projects in the Makena area and this project certainly has cultural sites, it has an aupuni wall which is an old government wall, other cultural sites, and it does have flora like wiliwili trees which were the upper story trees in the dry lowland Hawaiian forest which is one of the most endangered ecosystems in the country, top 20 and probably the most endangered here on Maui because there's so little of it. So, because of that, I would like to also request that there be a site visit of interested and knowledgeable persons to the site.

Finally, I would like the commissioners to look closely at Condition 18 of the 44 conditions of zoning which require a comprehensive preservation and mitigation plan be reviewed and approved by SHPD and the Office of Hawaiian Affairs. I could not find any evidence that the Office of Hawaiian Affairs had approved the preservation and mitigation plan, and I think it's extremely important that this agency has the opportunity to approve it and it's part of the conditions of zoning anyway.

Mr. Carnicelli: Thank you, Daniel. Any questions from the Commissioners? Daniel, I have one. Just did you have a chance to look at the SHPD letter?

Mr. Kanahale: State Historic Pres...no, I haven't read all the documents.

Mr. Carnicelli: Okay, fair enough. Thank you, though. Commissioner La Costa.

Ms. La Costa: Mr. Kanahale, please?

Mr. Kanahale: Oh, sorry.

Ms. La Costa: You mentioned that the site is one of the 20—

Mr. Kanahale: I was talking about the native Hawaiian low dryland forest which dominated the leeward sides of the island and part of Central Maui and there's probably less than five percent of that left. There are remnant areas in the Makena region. So wiliwili trees were one of the upper story trees of that lowland, right. It's an endemic tree and so this property has remnants, dryland forest remnants 'cause it has wiliwili trees on the property so that means the dryland habitat still exists, it's still there and evidence of that is the fact that you have wiliwili trees still growing on there and so, yes, some folks would like to see the wiliwili trees protected and preserved and not destroyed because they're an important part of that. They're representative of the ecosystem that once dominated the region and is still there. The habitat is still there, but they're just remnants of the native plants that still exist.

Ms. La Costa: You mentioned that it was one of the 20 most endangered in America. From where did that data come, please?

Mr. Kanahale: In the United States, the top 20.

Ms. La Costa: From where did that data come, please?

Mr. Kanahele: I'll be happy to look it up for you and give you that information, but I've seen that, I've seen that and probably one of the most endangered here in...on the island of Maui. And I'm sure there are other testifiers that will come behind me that follow me that are aware of this information and may be able to give you specifics as to where you can find that.

Ms. La Costa: Thank you. Appreciate it.

Mr. Kanahele: You're welcome.

Mr. Carnicelli: Thank you, Daniel. I'm gonna actually...Mr. Hopper if you would please?

Mr. Hopper: Yeah, we had this issue on one of last EAs, just to be clear today the commission's being asked for its comments on the Draft Environmental Assessment and there's public testimony as part of that. While the public can testify, they also have the ability to submit their comments directly to the project, the project owners and those...the consultants providing the environmental assessment. So, just to be clear, providing testimony to the commission while it's helpful, it's not the same thing as providing comments directly to the applicant and their consultants on the environmental assessment and there's an opportunity for testifiers to do that as well because the commission at the end of the day I think is going to have its own set of comments and may base some of that on the testimony, but to be clear those are two separate processes and there's a process for providing comments on the environmental assessment just so everybody knows.

Mr. Carnicelli: Thank you, Mr. Hopper. Justin Kaiwi.

Mr. Justin Kekiwi: Aloha mai kakou

Mr. Carnicelli: Good morning.

Mr. Kekiwi: This is Justin Kekiwi.

Mr. Carnicelli: Kekiwi. Kekiwi, sorry.

Mr. Kekiwi: All good. All right, mahalo nui for your guy's time and this opportunity. Straight to the point, I don't agree with the findings of no significant findings in this EA. I challenge that. First evidence is the...they did studies they found, they even seen it visually and with their tests the Opeapea, the Hawaiian bat. There's plants there of the tree tobacco that is host plant for the Blackburn's Sphinx moth endangered as well. In that ground get seed banks of Awikiwiki which is an endangered species as well, the deers always eat it as they come up, so all of that threatened. There's a...this thing is in a flight path, we have a wetland right next to it that's in preservation, the Aeo, Uau, Nene, they all use this area as a flight path. The lights, these structures is gonna disrupt that. So endangered species is one major adverse effect that they need to address better. And also, on the beach you get Monk Seal, Honuhea that come up and nest there. You increase the pollution, you take away that opportunity to these animals to be there.

The next one, AIS is outdated, it's inadequate. They did a bunch of different AISs from different people at different times that's segmenting the process. They need to do one, good one and compile it into one AIS and consult with the lineals and locals of Honuauia. I'm Ilikoko to that aina. The aina, the kanak from my Papa Poepoe. We grew up on that aina riding horse, eating the panini. We used to go pick the wiliwili seeds for make lei for the kupuna. So, cultural practices had been done there and the threat of that to my keiki is, is happening from this development.

County water, they saying what, County going provide water from where, Na Wai Eha? These guys have been fighting for years for water rights, for stream flow and that is, that is a huge impact to the kalo farmers. They need the water and I don't understand how these developments trump that. That's wrong.

What else we get, we get the sewage treatment plant. They don't have sewer set up so they gotta create their own system. They're gonna treat their water and then they're gonna spray it back on the aina, non-potable water, that's gonna leach into the ocean causing damage to the reef. If you cannot drink um, how come the fish and the aina can? I don't think that's proper especially in the SMA so close to the ocean. Big, big problem was the neighboring parcels got approved with the EA, they should of done an EIS, Makena Hotel. For some reason, they got away with doing an EA, now these guys can come in and say, well we like do one EA too, there's huge impacts to the aina.

Affordable housing is a major crisis right now and we need this to be hundred percent affordable. Hawaiians, local community want to live there, so please address all these concerns. I have all of this in written testimony. I'll give it to you guys and huge adverse impacts. Mahalo.

Mr. Carnicelli: Thank you, Justin. Any questions for the testifier? Seeing none, thank you Justin. Sam Garcia. Oh, I also forgot to tell everybody that Commissioner La Costa put some disinfectant wipes in the podium over there so those of you that wish to use that and take advantage of those you're more than welcome to that.

Mr. Sam Garcia: Good morning, Commissioners.

Mr. Carnicelli: Good morning.

Mr. Garcia: And Director. I'm Sam Garcia. I'm a native Maui, grew up about a block away from here. Our family has property in Makena and we've lived there for over 50 years. I'm also the president of the Makena Homeowners Association and in April of last year we received a letter from the managers of the project asking to speak to our association which they did. They brought all of the plans forward. We had many questions for them primarily drainage, the impact on the ocean, and what they intended to do with the wastewater, those things, and all of those questions were answered to our satisfaction. At that time, they didn't know what they were doing one hundred percent with the drainage. So, Ed Chang in his wisdom asked that they could get back to him which they have done. So, we did not take a formal vote, but no one in the association was opposed to it. We're just glad it's not a hotel and we're very glad.

As an individual, speaking apart from the association, they're our neighbor. We live very, very close, less than a quarter mile from them and we studied their plans and we have no problem with that they are doing. And I walked the project with Leilani, one of the managers last week and I'm really impressed with what they're doing in so far as preserving the archaeology there, so I can't understand why they have to preserve a cistern but they are. In any instance, they do have a lot of respect for the archaeology, and that's, that's it. Thank you very much for your time.

Mr. Carnicelli: Thank you, Sam. Any questions for the testifier? Seeing none, thank you. That's all that's signed up, but I'm sure there's probably at least one other person that wants to come and testify. Please come forward. Good morning, please identify yourself.

Ms. Lucienne de Naie: Good morning, my name's Lucienne de Naie.

Mr. Carnicelli: Good morning, Lucienne. You have up to three minutes.

Ms. de Naie: Thank you. I got a chance about ten years ago to work on a project for the Office of Hawaiian Affairs about this area called Project Kaeo and was able thanks to a grant written by Maile Luuwai to research and write a book this various area. And so, it's very near and dear to my heart. I've been taken to this land by Maile Luuwai and the late Ed Lindsey. They were very concerned about cultural sites that weren't being properly documented. Those concerns are still being shared. The map you see up there of the sites that are being preserved leaves out several of the sites that are not being preserved. There was a letter written by various Hawaiian practitioners in 2008 to the State Historic Preservation Division asking that these additional sites be preserved. SHPD asked the owners if they would. They were told that they just weren't as significant as other places. These folks were never consulted on the significance of the site. So, we have fast forward 12 years. We have known people who could have been consulted on significance which is actually you know, a requirement under, under AIS rules.

The preservation Plan, OHA has commented to you folks that they are supposed to actually approve this plan as a condition of zoning. It was never sent to them. In 2009, it was approved by State Historic. It should have gone to OHA first for their comments and approval and then gone to State Historic, but it did not. You'll probably be told today that this is just a formality and OHA is just gonna be approving it now, but they have deep concerns. They've been communicating with beneficiaries and beneficiaries have been communicating with them, and they ask that this EA be withdrawn and this could be one of your comments, and they be allowed time to submit proper review and approval, get it to their approval. Several of the things they are concerned is it's mentioned that access will be provided for cultural users. In the preservation plan which I've read they limit access to those who are approved by State Historic or the Burial Council. Well, there was no provision in our state law that a cultural practitioner needs to be approved by anyone. You know, Mr. Kekiwi should be able to go and it's a gated community. There is not an actually a cultural landscape. Those are individual landscape features. There should be continuous flow of land that does not belong in other people's lots for cultural preservation in order to have like a really authentic area that could also help provide some habitat for the native bats and other creatures 'cause right now there would be no impacts because the trees that the roost in will be cut down after the pupping season, so the habitat will be eliminated virtually when the buildings are built. Thank you for your considerations. You

should send this back for more review, otherwise 14 days and it's just that's the end of the review period.

Mr. Carnicelli: Thank you, Lucienne. Commissioner Freitas.

Mr. Freitas: Sorry, I missed your name.

Ms. De Naie: Oh, my name is Lucienne de Naie.

Mr. Freitas: Thank you.

Mr. Carnicelli: Any other questions? Thank you, Lucienne. Would anybody else like to come forward?

Ms. Clare Apana: Excuse me, I've lost my voice.

Mr. Carnicelli: Good morning.

Ms. Apana: Good morning.

Mr. Carnicelli: Please state your name for the record.

Ms. Apana: Clare Apana.

Mr. Carnicelli: Thanks, Clare. You have up to three minutes.

Ms. Apana: Thank you. I was at the Urban Design meeting last week, and I was very surprised to hear the developer seem not to know what the 44 conditions were and asked Mr. Kanahale if he brought a list of them, and I'm making this point because it really upsets me that the public has to work so hard and people come up and make up stories and later I met with Tamara Paltin on separate matters and she asked me if I was coming to her meeting tomorrow, and I said, oh but they don't even know what the 44 conditions are, and she said, no, no, they've been calling me for a long time. So, then I spoke about the aupuni wall. I did send a letter and comments in, in 2008, and at the time I saw the wall, you know, it perhaps to people it doesn't look like anything, but when I heard the story of it, it meant something...it greatly touched me and I wrote the letter to SHPD because it is the history of our people. It's the history of public works in action, in the kingdom, a king that wanted to protect the farm lands of the people who lived down in that area in Makena from all the way Kihei to Keoneoio from the cattle. And maybe it looks like nothing to you, but it so signifies how we kanaka maole are being taken off the land. If you remove...you leave a little piece, you remove the rest, you know, you don't make it into much but a couple sites here and there it is exactly that, a couple sites. There you go Hawaiians, there you were, that's who you are. I want to tell you that I wrote to OHA because I heard something that they were sent a letter for comments and Ann Cua said she sent it the week...the end of the week before, and I said, that's really odd, a week before this meeting, OHA gets asked for comments. So, I wrote them and today I got another response from them. They said, no they had just gotten the letter last week, and this today, I'm looking at my email and see a letter from the archaeologist of OHA and he says that

he's asking for the SMA and this EA to be pulled back because they have not had a chance to look at the new preservation plan. I tried to read the whole preservation plan this morning and frankly I just didn't...I just gave up in frustration, I said, you know, I'm just gonna go, I can't be prepared, I can read a whole preservation plan in just an hour, and I don't know if you have it. Do you have it?

Mr. Carnicelli: Thank you, Clare.

Ms. Apana: You know, OHA sent it to me. I would like you to pull this back because the comment period, the time is ticking. You don't have a full plan. You don't have a full application.

Mr. Carnicelli: Thank you, Clare.

Ms. Apana: So, thank you very much.

Mr. Carnicelli: Thank you. Any questions for the testifier?

Mr. Robinson: I have one, Chair.

Mr. Carnicelli: Commissioner Robinson.

Mr. Robinson: Hello Ms. Apana. Do you have the...do you know which person said that they didn't know the conditions?

Ms. Apana: It was Leilani. Well, she said, Mr. Kanahale did you bring a copy of it? And I went, whoa, she doesn't know what the conditions are.

Mr. Robinson: Okay. All right, well I'm glad she's here so she can speak to that. Thank you.

Ms. Apana: Thank you very much.

Mr. Carnicelli: Thank you. Any other questions? Thank you, Clare. Anybody else wishing to come forward and testify on this item? Good morning.

Mr. Dick Mayer: Good morning. My name is Dick Mayer. What you're being asked to do is comment on this draft—

Mr. Carnicelli: You know, Dick put the mic a little bit closer to you so we can hear you, it's a little bit quiet is all, thank you.

Mr. Robinson: Good morning, Dick.

Mr. Carnicelli: Good morning.

Mr. Mayer: Start again?

Mr. Carnicelli: Yeah, start again. Here we go.

Mr. Mayer: What you're being asked to do is comment on this Draft EA. And what I'm saying, the Draft EA is the inappropriate document that you should be looking at this stage. You should be looking at a Draft EIS and that is because a EA assumes that there are no significant impacts. They tried to state that there are no significant, but there are many and I'd like to name some of the impacts and if they were list these impacts that would mean that they would have to mitigate them in the EIS to show how they're going to mitigate them. Let me give some examples and one of the first things I would like to comment is with regard to cumulative impacts. There are many, many impacts and they try to discount the fact that the, in the Makena area and the resort, and they say this is only the applicant when in fact the directions for cumulative impacts state that regardless of whatever, what agency or persons undertakes such other actions, in other words, because Makena Resort is doing certain things like developing a whole large community out there. They've totally ignored them in their comments and yet they're supposed to incorporate them into their Draft EA because it's cumulative of all the people involved.

Let me go through some specific things. With regard to traffic, they did a study, they listed many projects that are going on in South Maui, but they left out some big ones. They left out all the market housing in Wailea 670, roughly a thousand. They left out all the development in Makena Resort itself, the hundreds and hundreds and maybe over a thousand eventually in the Makena Resort area, those were left out of their traffic study and it will have enormous impacts on all of the intersections that they looked at as well as the whole traffic situation on Piilani Highway. They're expected to do a traffic management plan, you don't have that do you? And that was to take care of all the workers who work in that area and that leads me to another item, going through these quickly because I have only the three minutes.

Parking, they're supposed to put in 60 new parking places. There is already a parking area and they're supposed to put 60 additional parking spots in there, but they're not. In fact, if I counted it correctly, that parking lot that they indicated on their project doesn't even have 60 spots on it coupled with the fact that elsewhere in their document they say that there'll be 27 workers added to the workforce to take care of all the landscaping and other things going in the project those people will come at 7:30 in the morning to go to work and probably take up half of the parking lots...parking spaces in that parking lot. There's no other indication where else they would park. That denies the public that ability to park in that area.

Transient accommodations are prohibited but they do not indicate how they're going to prohibit those from taking place by putting covenants in there or whatever the provisions they are in the document...in the housing units that they're selling.

They talk about views and they made these nice...gave you some nice pictures and the one you see there with all the trees, the very tall trees elsewhere in the documents they show pictures of those trees, those are big trees which will block the mauka views towards Haleakala which are required in the Kihei Community Plan.

Mr. Carnicelli: Thank you, Dick. However, I got a question for you.

Mr. Mayer: Yes.

Mr. Carnicelli: Briefly, can you go through the rest of those?

Mr. Mayer: Yes, I will.

Mr. Carnicelli: Okay.

Mr. Mayer: Very quickly. Ambulance services. They talk about medical and mention there's a hospital as we all know 15, 20 miles away but they don't talk about the emergency medical care. This is a community with elderly people. They make a big point of that by saying that there'll be very few school children, but they don't discuss the fact that they...these people needs and what happens if a Kihei...an ambulance from Kihei comes there and is gone from Kihei taking somebody to the hospital it's gonna leave a vacuum with the Kihei area in medical services. That's a impact that should be discussed and an EIS would fully discuss those kind of issues.

Mr. Carnicelli: How many more you got?

Mr. Mayer: One more.

Mr. Carnicelli: Okay.

Mr. Mayer: The water source, they say they're gonna bet 47,000 gallons of potable water from the county water system. They don't indicate what the impact will be on other developments if they do that, and secondly, they neglect the fact that each of those lots will be watering its own area, all those 53 lots, the common areas will be irrigated by non-potable water, but the house lots will be irrigated by water and they don't add that water amount in. That's gonna greatly increase the number from 47,000 gallons to a much higher amount which they neglect to do. There are many others I could probably go through, but let me stop there.

Mr. Carnicelli: I'm sure you do. Any other questions for the testifier? So, Dick before you go, I just want to say the last time you came up to testify, you and I had a little bit of a frick and frack back and forth, I called you the next day, we had a little bit of...(inaudible)...but I just publicly wanted to say, I apologize.

Mr. Mayer: Thank you, and I did accept your apology and I appreciate it very much.

Mr. Carnicelli: Yes, so I just want to say that publicly as well.

Mr. Mayer: Very good.

Mr. Carnicelli: Okay.

Mr. Mayer: ...But this one last sentence and it's only a short sentence and that is I hope you ask them to do a full-on EIS and do not allow them to get by with just an EA with no impacts.

Mr. Carnicelli: Thank you, Dick.

Mr. Mayer: Thank you.

Mr. Carnicelli: Would anybody else like to come forward and testify on this particular item?
Good morning.

Mr. Ashford Delima: Aloha kakou, Chair, Commissioners. My name is Ashford Kaleiolani Delima. I was raised in this area by Oneloa and I attended church at Keawalai ever since I was baptized there. So, I know the family that lived on this particular area that's gonna be developed. Although they say they going have lots and whoever buys the lots has permission to put their own home, I think that's good for that part, but is it affordable for the local people and that's my concern. And getting back to the area that's gonna be developed, I know the Poepoe family that lived there. I went to schools with the kids at Ulupalakua and the Palinapa family and the ...(inaudible)...who is relative to Justin Kekiwi and my family, my mom was raised in Kanahena and my dad was raised in the old Ulupalakua so I know that that whole area from mauka to makai and even the ocean.

And a lot of people talked about the land, how the development gonna affect the land and also the ocean. I testimony this before I was on the ocean ever since I was three years old and I know all the papa, I know all the puka, where all the important akules, and we did fish from South Kihei to Nuu, so I know all that area. And we still have a house right in Makena, Makena Bay and we are very proud of that house been there for four generations. And the papa right in that area which is the reef it's dead, and we're gonna add this development to it. I say, aole. That's not pono. And I'm the president of Hooponopono O Makena and it's a organization that please do things right for Makena. So, by this development going forward, it's not gonna improve the ocean. ...(inaudible)...in Kihei already have staph infection and there was a scientist taking samples from Makena Bay, he had staph infection, and luckily when I go into the ocean, I guess my immunity is strong enough to fight it off, but how many other people has not report about staph infection that is my concern. So, I'll end by saying please malama the aina, hooponopono Makena and do things right for the aina, the kai and kala in Haleakala. Make sure everything is visible. Thank you.

Mr. Carnicelli: Thank you. Commissioner Freitas.

Mr. Freitas: Morning, Mr. Delima. Earlier the applicants had shown on a screen different organizations and associations in the area that were invited to the discussions was your Hooponopono O Makena invited or addressed to participate?

Mr. Delima: Yes, I was, I was in a conference with the developer and there were a lot of things that I've seen that I don't like and the thing is, what I see and what I knew was there before is not gonna be the same. They say they're gonna take care of wiliwili trees, they're gonna take care of the overall plant, but how much of that gonna be destroyed, that's what I'm concerned about. Thank you.

Mr. Carnicelli: Thank you. Any other questions? Thank you, Mr. Delima. Would anybody else like to come forward and testify on this item? Going once, going twice, I don't see Albert in the back wanting to be last, going three times. Okay, so if there are no objections we're going to go

ahead and close public testimony at this particular time. So public testimony is now closed. The next step is we'll go ahead and do Q&A and comments from the commission. So, is I don't know if Leilani you're gonna come forward and yield question or not?

Ms. Pulmano: I'll try my best.

Mr. Carnicelli: Okay. So, we'll start with questions. You know, I'm just gonna ask the first question. The first question being you've heard a lot of concerns from the community in the testimony, I'd like for you to please you know, address those the best you can. I don't know if you were taking a little list there or what you got, but I would like for you I think we need to address some of these concerns.

Ms. Pulmano: Okay, let me just walk through some of them that I recall. So, regarding the wiliwili trees, I spoke to that in my presentation. We are mapping the wiliwili trees and we'll work to incorporate it into the design. The wiliwili trees that I had seen on site when I was there are in a location that we'll be able to preserve, and as I mentioned native nursery is gonna start collecting those seed and propagate those for replanting of that.

I don't know if you want me to go on or do you want me to stop at sections so you can—

Mr. Carnicelli: You know what, then is let's do this, we'll just go ahead and take questions from the Commission. I will start with Commissioner La Costa and we'll just do it that way then.

Ms. La Costa: Thank you, Chair. So, you talked about moving the parking lot. Mr. Mayer brought up that the parking numbers would be lessened and the workers would take some of them. How are you going to address to be sure that the public is able to park at Makena?

Ms. Pulmano: The parking is going to be increased to 57 stalls, so we have 50 right now and we're hoping to increase it to 57 stalls. In terms of making sure that the beach parking is adequate for actual beach users, we will have to police that, and frankly in all honestly, I think that's the only way that that can be ensured.

Ms. La Costa: How are you going to police it please?

Ms. Pulmano: With our...with a security personnel.

Ms. La Costa: Okay. My second question is, Condition No. 25, the developer shall comply with the county's residential workforce housing policy as provided in Chapter 2.96. It says, status of compliance H2R will comply with the provisions of the aforementioned condition. Estimated time of compliance it will continue for the duration of the project. Please explain to me what you're going to do to comply with 2.96.

Ms. Pulmano: So, the compliance requirements for affordable housing for the 53 lots is 14 affordable housing units. The previous developers had partnered with Hale Mahaolu and DHHL and they provided 11 affordable housing units previously. So, we will have to comply by provided three more affordable units for the project, and we will follow 2.96.

Mr. Carnicelli: Thank you. Commissioner Castro do you have any questions for the applicant at this time or the Department?

Mr. Castro: No, none at this time.

Mr. Carnicelli: Okay. Commissioner Tackett.

Mr. Tackett: None at this time.

Mr. Carnicelli: Okay, Commissioner Robinson.

Mr. Robinson: Aloha, Leilani. First thing, I want to make a comment and this is to something that after years and years of doing this, it irritates me to my core is when I have a EA that I'm supposed to read through and when it has questions that you guys have to answer you guys say refer back to Section 2, Paragraph 3, so I gotta go hunt back or I guess with the disk, I mean I gotta then scroll back, I think that's a disservice to us. I think it's so easy to cut and paste and put another stuff back and forth and I hope in the future all planners and all people that are involved in that they help us see the data by just putting it in again, putting it in ten times if the question's asked ten times—

Mr. Carnicelli: And the Director and I talked about that before meeting. Things that we're gonna—

Mr. Robinson: Yeah, I mean, I don't know how many times I've talked about this.

Mr. Carnicelli: We'll agendize it and then actually address it.

Mr. Robinson: Yeah, it's still, it's still coming up. Thank you, is I want to give you a chance to respond to Mrs. Apana's accusation that...about the conditions in the meeting that you had with the public, would you like to address that?

Ms. Pulmano: Sure. So, what we didn't have was the actual, the actual report of our 44 conditions at the time of Urban Design Review. We had...I had the Appendix with me, but I didn't have copies for the Urban Design Review Board to pass out like we did today on the 44 conditions.

Mr. Robinson: I'm sorry, so you had a meeting without the information for the meeting is that? I mean, I guess if you're gonna call in people from the community to have a meeting, data is kind of a thing that –

Ms. Pulmano: I agreed. Urban Design Review Board as I saw it was their purview about the design...was about the design guidelines. I was not expecting them to ask about the conditions.

Mr. Robinson: The conditions.

Ms. Pulmano: The conditions, yes.

Mr. Robinson: I see what you're saying. So, so it wasn't an outreach to the community. It was another meeting that you happen to attend with the community.

Ms. Pulmano: Correct. They provided public testimony at that time.

Mr. Robinson: Okay, thank you. Thank you for that clarification.

Mr. Carnicelli: Commissioner Pali.

Ms. Pali: Hi, thank you. Just a couple questions. I know that you addressed the certain areas that you're going to preserve, but one of the testifiers mentioned that there were other sites potentially that were not on the list, so, to be fair we see something like this and we go that's really neat like you're doing your best effort, and then we hear that there's potentially many more sites. What's your comment on that?

Ms. Pulmano: I can give you an overview of the sites that we found. So, we found 13 sites, and they ranged from the modern period, historic period, prehistoric periods. Most of those sites were habitation sites including the modern period site and agricultural sites. So, those 13 sites were very indicative of the sites that are being preserved.

Ms. Pali: So, what you're saying is since these spots you're choosing to preserve, preserve some of the things that will not be preserved then you're kinda trading off?

Ms. Pulmano: It's, it's a good way to put it, but yeah, I can see your point on that.

Ms. Pali: So, we'll spare 20 of you, but ten of you are gonna die per se.

Ms. Pulmano: The six sites that are...that were chosen to be preserved was also contemplated with SHPD, and those sites are actually pretty intact sites, the other sites were not as intact as the sites that are being preserved.

Ms. Pali: What is your position on an updated EIS or getting a current EIS?

Ms. Pulmano: I hear what the testifiers are saying and as I said before, we've done...there have been a lot of studies in this area mainly because there have been a lot of projects that were sorta started and then not started, so because of those years of actually studying this, you know, from a basis of a permitting Chapter 343 standpoint, we do have a lot of reports that show no significant adverse impacts, and maybe I'm not the best person to respond to that. I'll our permitting expert do that and that's Munekiyo and Hiraga.

Ms. Pali: Okay.

Ms. Pulmano: To talk about EA, EIS processes.

Mr. Mark Roy: Hi, good morning, Chair.

Mr. Carnicelli: Good morning.

Mr. Roy: Members of the Commission. My name is Mark Roy with Munekiyo Hiraga. We're the planning consultant working on the Environmental Assessment that's before you today. So, firstly, I just wanted to maybe express appreciation for people taking time out of their day today to come the Commission and provide testimony. That's really the intent of where we are in the process right now. We're preparing an environmental assessment as Leilani mentioned that complies with the state's Chapter 343, Hawaii Revised Statute requirements which is the legislation that provides for the process by which you go through an environmental assessment process. So, we've put this document together in accordance with the requirements that are set forth by Chapter 343.

Also, very recently within the past year or so, the state has also updated their own environmental review rules which provide more detail to how you go about going through an environmental assessment process. Those rules were recently adopted and so, this document given the timing of this project at this point has been prepared in accordance with those, with those new environmental assessment rules.

So, in terms of where we are in the process—

Ms. Pali: Actually, do you mind if I stop you?

Mr. Roy: Sure.

Ms. Pali: I appreciate you educating us, I do.

Mr. Roy: Yeah.

Ms. Pali: But for the sake of time if that's okay, since it's my question, can I just jump to a couple specific questions?

Mr. Roy: Absolutely.

Ms. Pali: That way we can just move on with the other people's comments if they have them.

Mr. Roy: Sure.

Ms. Pali: One of the testifiers mentioned that the current report before us, the draft, doesn't specifically address traffic, that you left out particular projects in Makena area and also the Kihei area. He also addressed the fact that if there was emergency service needed that was left out as well, and he had a lot of other things to say. Since you know the process so well, would you believe that these could have been missed in this particular report or were they addressed or are you saying that this report didn't need them to be addressed, and since right now no one's requiring you to have an EIS, that you don't have to necessarily address them?

Mr. Roy: There was a full range of studies prepared for the environmental assessment. One of those was a traffic impact analysis report. We have the traffic consultant here today.

Ms. Pali: ...(inaudible)...question. Okay.

Mr. Roy: We can certainly address specific questions, but one of the requirements as the testifier noted was that an environmental assessment looks into secondary cumulative impacts. We do have that assessment within the environmental assessment itself and the traffic consultant also, and he can provide more details, but they do look at other planned projects in the area when they are putting together their analysis of the potential traffic impacts.

Ms. Pali: So, I guess, a question that you may be able to answer then is if you felt that the rules maybe have what we call, pukas, holes in them and even though we don't require you at the time to do them, are you guys willing to still do them for the benefit of the community for us having all the information we need to move forward?

Mr. Roy: Yeah, in terms of process, we're kind of midway through the environmental assessment process right now. We're not here today to request acceptance of the environmental assessment. We're really midway through and the intent is to ask for comments from the commission. The document's also being reviewed by the public and various agencies at this point, so if the commission has comments, we will graciously receive the comments.

Ms. Pali: So, let me rephrase mine in a comment if you don't mind 'cause I don't really feel like I'm getting answers from you, I'm getting generic answers and I think that that's what the public is saying that this draft could be a lot of generic answers and they're not getting specific answers met. So, if you would like us to support this project moving forward, my comment to you, are you willing today to do the work that's necessary and provide the actual answers that we need so we can either support or deny or at least move forward one way or the other. So, my comment is that there's a lot of pukas. So, how can you guys help us fill those pukas. Thank you.

Mr. Carnicelli: Commissioner Thompson. Or unless, Leilani do you want to address Commissioner Pali's comment please?

Ms. Pulmano: We actually do believe that the report is pretty comprehensive. We've done an extensive study as I was mentioning. A lot of the items that the testifiers has brought up are shown in our report, and has the mitigation measures as part of the report.

Ms. Pali: So, you're saying that the specific examples about maybe forgetting to include in the water report certain developments on the horizon. Are you saying that those were included and he was mistaken?

Ms. Pulmano: Yes.

Ms. Pali: Okay.

Ms. Pulmano: Yes, for the traffic report.

Ms. Pali: I actually said, water. There's two issues, water and traffic.

Ms. Pulmano: So, for water we are using Department of Water Supply's water and we are part of the allocation for the Department of Water Supply's Central Maui water—

Ms. Pali: And you included that they would be needing that same water to take care of their lawns and their landscapes which you know will be lush.

Ms. Pulmano: Correct.

Ms. Pali: Okay.

Ms. Pulmano: Right.

Ms. Pali: So, you're, you're basically saying that potentially the testifier was incorrect.

Ms. Pulmano: That's correct.

Ms. Pali: Okay, thank you. I appreciate that.

Mr. Carnicelli: Commissioner Thompson.

Mr. Thompson: Leilani, could I get—

Mr. Carnicelli: Don't go away, this is your, this is your time right now.

Ms. Pulmano: Excuse me, I'm sorry about that.

Mr. Thompson: I just had a question about the parking and is there street parking with inside the community there, the development.

Ms. Pulmano: There is.

Mr. Thompson: So, the landscapers and babysitters or whoever, they can all come in there and park in front of the place?

Ms. Pulmano: Yes, there will be some little pocket pop outs on the street that they'll be able to park, for their guests as well as people who visiting their homes.

Mr. Thompson: Excellent. And the other lots that's ...does that face over by kinda like Big Beach, is that where the public parking lot, the 50-space one is?

Ms. Pulmano: It's by Maluaka Beach.

Mr. Thompson: Okay.

Ms. Pulmano: So, closer to the south side of where the old Prince Hotel was.

Mr. Thompson: Okay, and is that ever closed off? It's going to open day and night?

Ms. Pulmano: Well, actually the beach parking lots get closed up at night. That's sort of a park regulations, they do close the beach parking at night.

Mr. Thompson: Okay, thank you.

Ms. Pulmano: I'm sorry, I just wanted to add, during construction, the beach parking will stay open. That will be the first part of the project that's going to be open. 'Cause I know there have been some concerns that beach parkers are not going to be able to access the beach parking when we're in construction.

Mr. Thompson: Okay, thank you.

Mr. Carnicelli: Commissioner Freitas.

Mr. Freitas: Leilani, is this a gated community? Is there going to be a gate/

Ms. Pulmano: There will be a gate.

Mr. Freitas: And you're selling lots. Will...I saw a restriction on no short-term rentals, but is there going to be restriction on the quality of the house which will create a value that is much higher than the majority of the residents that live here. In our General Plan for our County says, we need to expand housing opportunities for residents. Who you selling this to? Who is this development for? Is it for the residents?

Ms. Pulmano: So, this area it's been contemplated resort residential development. It's community planned, Hotel as well as zoning, Hotel. So, I suppose in the structure of the community plans, the Maui Island Plan, this area has been sort of designated as resort residential or resort areas.

Mr. Freitas: The agricultural survey that was done that you folks took as saying it's complete and you folks can move on, when was that...the last one done?

Ms. Pulmano: in 2008. The archaeological?

Mr. Freitas: Yeah.

Ms. Pulmano: Yes, yes, 2008.

Mr. Freitas: And then you went to our current SHPD and asked them and they said everything's good no changes or did they go back on and take one more look. I heard someone say, they went and walked with someone. I don't know who that person they walked with, what their credentials were.

Ms. Pulmano: So, that was just a community member that we were meeting with that wanted to walk the site. We've been, you know, meeting with many different people who've actually walked the site as well. The testifier was correct in saying that OHA needs to review and

approve their preservation plan. That's correct, we still need to do that. And in this process, in the draft environmental assessment process, it goes out to different agencies including SHPD, so they will re-review the AIS plans as well and provide us comments to that.

Mr. Freitas: Okay.

Ms. Pulmano: And including OHA.

Mr. Freitas: And then one more thing about the water 'cause I agree with Mr. Kekiwi, to take the water from Na Wai Eha you need 50,000 gallons per day, 27,000 you're getting from nonpotable, so the difference is coming from the stream, the streams Na Wai Eha.

Ms. Pulmano: So, we are getting...we already have a water meter on property. And so, as part of that water meter review or that installation, the department has already allocated or has an allocation of water, so they're...we take up a part of that allocation. You know, I'm not sure how better to explain it, so let's say the department has 100,000 gallons of water to allocate—

Mr. Freitas: Yeah.

Ms. Pulmano: --and that's part of their Na Wai Eha water source, we are part of that 100,000 already because we have a water meter.

Mr. Freitas: Okay.

Ms. Pulmano: Thank you.

Mr. Carnicelli: Thanks. I'll go next. So, do you...is your archaeologist here?

Ms. Pulmano: She is.

Mr. Carnicelli: Would you bring her forward please?

Ms. Pulmano: Sure. This is Lisa of Archaeological Services Hawaii and Nico of Atlas Archaeology.

Mr. Carnicelli: Okay.

Mr. Nico Fuentes: ...that's contracted –

Mr. Carnicelli: You're gonna have to speak into the mic.

Mr. Fuentes: I'm the one that's contracted by the client, as the archaeologist onsite right now, operating as...she has a lot of knowledge of the area.

Mr. Carnicelli: Got it. So, I want to ask more just kind of a procedural thing and this is something that's kind of a curiosity for me when we go through this because oftentimes we get, you know, an archaeological report, we get a monitoring plan, everything like that and then

people will come forward, people that know the area, practitioners, whatnot and they'll say, oh well, there's this other thing over here too that's not part of that, and as I understand it, there's like grades to it, right? Like okay, this is significant...(inaudible)...and at some point, in time SHPD says or the state says or whoever it is says, these things are no longer significant, we don't need to save those anymore, but there's people coming around and it's like no, we should save everything. So, how does that work? Like that's the part I think that sometimes creates a rift in the community by saying, someone, somewhere, there's a rule/law that says, this is no longer significant. Please explain that to us.

Mr. Fuentes: The significance is a...the way it's established is by another term that we use it's call integrity. So, for instance, if you have a particular structure that it had...it has a significance, the integrity is the physical remnants of it. Is it still there or has it been dismantled in the past, has it started to decompose, is it no longer in its original form, is it no longer the thing it once was. After that's established then the state will come and they would say, it has this level of significance and that's what's happened in the past. So, many of the sites that are there currently under preservation they have buffers around them currently, they will be maintained that way in perpetuity. Those maintain all their integrity or much of it. The ones that were previously observed as far back as the '80s, '90s in previous reports those have degraded to a point where they're no longer...they lack that integrity, they're no longer there. And so, I believe, my belief is that when people refer to those sites, they're referring to something that is no longer present.

Ms. Lisa Rotunno Hazuka: I just wanted to add a comment too, that every project area what happens is you assess the type of sites that are there. So, for this project area there is like Leilani said, historic, modern, and precontact. And there were seven precontact sites identified on the project area. The five best, the five most substantial were preserved and then one of the remnant of a historic wall that's possibly a part of the aupuni wall was preserved. So, in any project area, most of the archaeologists will assess what's there, what's been preserved in the area 'cause you wanna try to get the different site types, the different timelines, you know, ranching, World War II era, all those things are important for our history, and so that's kind of how the process goes. Does that answer your question?

Mr. Carnicelli: I get a better understanding. Anything older than 50 years old?

Ms. Rotunno Hazuka: Yeah, everything older than 50 years old is documented by us particularly if it still has some significance and integrity like Nico said.

Mr. Carnicelli: So, then I guess, where I'm going with this is, oftentimes people say it needs to be updated, you know, this particular one is from 2008, that's 12 years ago. So, when you guys do this, you're gonna find something new, is there something that okay, wasn't 50 years old and now it's 50 years old, like what is the...why do we do updates?

Mr. Fuentes: So, you're correct in that at this particular situation what we have is...let's say we're out there in 2008, the sites that we're talking about were historic, prehistoric, things that would be now perceived as historic that weren't at that time would lack significance. In other words, some of these sites that were documented previously were modern refuges, right. So,

eventually that modern refuge pit that's got plate lunches, modern bottles eventually will become historic.

Mr. Carnicelli: Styrofoam becomes historic.

Mr. Fuentes: At some point. There's probably some people in this room just had a plate. So...but what I'm saying is while it might be there, it would lack significance and the state is the one who assists us in determining significance.

Mr. Carnicelli: Okay, state is ultimately who makes the call then, SHPD.

Ms. Rotunno Hazuka: And another comment is, the Bishop Museum was in this area back in the day. As Leilani said, there was three different firms in the project area. We believe that the archaeological inventory surveys done by the three firms were very comprehensive and have found all of the sites particularly the major sites. If any thing's old it would be certain processes that SHPD now requires. Different formatting that they want now, they want you to refer to rules and what have you. But as far as the physical findings on the ground we believe everybody did a very good job to find those.

Mr. Carnicelli: Thank you. So, one last is so when it comes then to, you know is, you know, a couple testifiers talked about the bat, the moths, flight patterns, things like that, does that also fall under your purview?

Ms. Rotunno Hazuka: No.

Mr. Carnicelli: Okay. Then I need that person to come forward.

Mr. Tackett: I got a question.

Mr. Carnicelli: Oh, wait, wait, wait. Before you go, Commissioner Tackett actually has a question while you're here.

Mr. Tackett: So, you guys said, you had five that you're going with. You had a portion of one that you're, you're also gonna save and then there's one that didn't make the cut. Could you elaborate what the...on what that one that prehistoric that didn't make the cut was?

Ms. Rotunno Hazuka: So, there were three prehistoric sites that were somewhat similar, it was a modified outcrop and it was modified to the effect where there was a type of a U-shape enclosure, an L-shape enclosure. And the testing that we did on two out of the three, the one that was preserved turned out to be the oldest, the one that came up with the oldest date and it was more substantial. It had better attributes than the other two, so that's how we decided.

Mr. Tackett: I think, I think the question was what the one that...wasn't there five? Six, you had six...seven.

Mr. Carnicelli: You identified seven and you only preserved six was that what it was?

Mr. Tackett: You provided five and a quarter—

Ms. Rotunno Hazuka: Actually, five of the seven that were precontact. So, the other two, what I was trying to say was similar to one that's being preserved. The other two were just little modified outcrops. Those did not make the cut.

Mr. Tackett And what is your, what is your opinion on what those were?

Ms. Rotunno Hazuka: Temporary habitation with some agricultural is what they...yeah, both of the inventory surveys thought that those were.

Mr. Tackett: Thank you.

Mr. Carnicelli: Wait, before you go is Commissioner Robinson while you're here, we're gonna ask you a question.

Mr. Robinson: Hello, you've been doing this a while?

Ms. Rotunno Hazuka: Yes.

Mr. Robinson: So, the question I have is, there was three different, three different people on this project?

Ms. Rotunno Hazuka: Yes.

Mr. Robinson: Did you guys all have the same findings or was there any variants between the three of you?

Ms. Rotunno Hazuka: No, you know what they were pretty consistent. There was as discussed, the modern habitation, Poepoe family that had been there for a long time, and all three found temporary habitation as far as precontact traditional as well as permanent habitation sites.

Mr. Robinson: Is, is, were you folks involved, involved with the properties adjacent to this as well as it flows through like in the past?

Ms. Rotunno Hazuka: Yes, the—

Mr. Robinson Yeah, so, so as, as we have the...and this is just for me to try to understand because we also have hear say right? So, from when we have recognized, recognized findings and then as the projects go through, is there a percentage of do we, do we find five percent as the project goes through, do we usually find less than five percent, because, because you know, it's tough terrain.

Ms. Rotunno Hazuka: Right.

Mr. Robinson: And you can't really, really walk it all. You know we have drones now that can help, so there's never a time where people can actually unless it's a flat land, you know, make sure every site is. Can you help up in just a general sense, doesn't have to be specific, but in a general sense, do we usually find one or two more or is it, is it, is it, very rare?

Ms. Rotunno Hazuka: Well, for this area it's been walked over so much. It is tough terrain but it's not inaccessible, what we would call inaccessible. So, I think it's been covered fairly well. The thing about the a`a flows is I tell you, once you look at it day after day then you may start to see three more rocks that are aligned and then you're not sure if you should record that. But as far as substantial sites, all of those we believe have been found and the goal is, when you have surface sites is to try to get 100 percent of the surface sites. There's times like when you're Haiku or Hana side when it's dense vegetation and if you can't clear everything then often you won't find all of the surface sites, so that's the goal, that's what we're supposed to obtain as archaeologists is to try to find all of the surface sites.

Mr. Robinson: So, I'm hearing is because you've there a lot, it's a lot easier for you to identify something that's an anomaly instead of somebody to come in, kinda like when you're you know, like when I'm diving for squid, I can see a rock that's turned.

Ms. Rotunno Hazuka: Yeah, right, right.

Mr. Robinson: Something like that.

Ms. Rotunno Hazuka: Yeah, and I think there's a lot of sites out there like we talked about that are substantial enough where laypeople are like oh, yeah, I see that, I know that. Sometimes we'll have like a little puka and we think it might have been modified, we're not sure, but we'll say, looks like it's been modified, but it's just a little puka in the flow.

Mr. Robinson: Thank you. Thank you, Chair.

Mr. Carnicelli: Thank you. Anybody else have questions for them before we bring the other person up? Okay, thank you very much. Who, who as far as the endangered species? Who's going to speak to that, please come forward.

Ms. Pulmano: It's Bob Hobdy.

Mr. Bob Hobdy: Aloha, my name is Bob Hobdy. I do the environmental studies on the flora and fauna.

Mr. Carnicelli: Aloha, Bob. So, I just...I'm gonna kinda cut straight to a couple of questions here. We have testimony from Colin McCormick. Mr. Kekiwi gave some testimony as well. We have the Hawaiian Hoary, the Hawaiian Silt, the Sphinx Moth, and of course, they've already talked about the wiliwili, but impacts to those particular things and maybe others that I'm not naming and what are we doing to mitigate these things?

Mr. Hobdy: Okay.

Mr. Carnicelli: ...get the impacts I guess I should say.

Mr. Hobdy: I'll start with the bat, the Hawaiian bat, has been recorded a number of times in the Makena area. It seems to be prevalent in that area. They are nocturnal, they are attracted to flying insects at night and so they, they come to areas where those are prevalent as well. Those oftentimes are wetland situations. There are a number of wetlands in this area around the...mostly to the south of this, there's some little wetlands along the coastline by Makena State Park and Oneuli Beach, and then there's some water features on the old golf course attract insects and so, they operate around those areas. Bats are very mobile, they're wide ranging. They're found in all kinds of habitats in Hawaii. They are under estimated most of the time because they are nocturnal and they don't make any sounds that we can hear, so anyway they've been found in that area and the Fish and Wildlife Service, the federal agency is the agency that –

Mr. Carnicelli: I'm sorry to cut you off here Bob, but let me, let me ask a direct question.

Mr. Hobdy: Yeah.

Mr. Carnicelli: Let me ask you a direct question. What are going to be the impacts to the bat and what if any mitigation is being done to protect them. Those two questions.

Mr. Hobdy: I think there's not a lot of real danger. The Fish and Wildlife Service requires that trees larger than 15 feet in height shouldn't be removed during the time when they're breeding and raising their young 'cause they're unable to fly at that point. And there's kiawe trees all over the place out there. The adults aren't impacted, they can fly elsewhere and they will go to the wetland areas, so this particular site has no wetlands on it. I think following the guidelines that the Fish and Wildlife Service, they shouldn't have a problem.

Mr. Carnicelli: Okay, so then if we went to the Hawaiian Stilt and the Sphinx Moth, same questions.

Mr. Hobdy: Okay, the Hawaiian Stilt is a obligant wetland species. They only come, hang around wetland areas and again, there's none of these wetland areas on this property and there's three or four ponds that are to the south where they do hang out. They're also widely mobile. They fly all over the place looking for water habitat and that's where they feed and where they breed and there's none of that habitat on this property. So, I feel that the, the danger to them is minimal. At best, they would be flying over the site, but not ever using the habitat there. So...

Mr. Carnicelli: And did...I can't find it right now, but did the Fish and Wildlife make comment on these in their letter, I mean, it's a thousand pages, I'm trying to scroll through right now, but it's in here.

Mr. Hobdy: The Fish and Wildlife Service has guidelines for every endangered species and they, they review applications and then they come back with their comments, so it's there.

Mr. Carnicelli: Okay, great. Thank you, Bob. Commissioner La Costa has a question for you.

Mr. Hobdy: Sure.

Ms. La Costa: No, actually I was gonna tell you that I found something on Page 38 if you want to check that out.

Mr. Carnicelli: Thirty-eight. Which 38 though that's the question, so...

Ms. La Costa: Section 1.

Mr. Carnicelli: Section 1, 38, okay.

Ms. La Costa: Yeah, of 273.

Mr. Carnicelli: Thank you. So, that's all I...that's the only questions I have for you right now, Bob. I'm gonna bring Leilani back up please.

Ms. La Costa: But I did have a question.

Mr. Carnicelli: Oh, you do have. Oh, sorry, Commissioner La Costa does have a question for you Bob.

Ms. La Costa: Thank you. Do you also address the Monk Seal?

Mr. Hobdy: The Monk Seal with reference to this property is not really an issue because they come up on beaches.

Ms. La Costa: Right. What about the runoff or anything from the project, will that affect Monk Seal habitats and their breeding?

Mr. Carnicelli: I think we'll have the bring the runoff person up for that question.

Mr. Hobdy: Yeah, yeah, yeah.

Ms. La Costa: Okay.

Mr. Carnicelli: So, thank you Bob, appreciate it.

Mr. Hobdy: I didn't know if you wanted to ask about the Sphinx Moth.

Mr. Carnicelli: I'm assuming that you're gonna give us the Fish and Wildlife comments on that as well then.

Mr. Hobdy: Yes.

Mr. Carnicelli: Okay, so we'll go their way.

Mr. Hobdy: Yeah.

Mr. Carnicelli: Awesome. Thank you. So, Leilani, beach parking. How many stalls are there now?

Ms. Pulmano: Fifty.

Mr. Carnicelli: Fifty, 5-0.

Ms. Pulmano: Five zero.

Mr. Carnicelli: And then you're moving it.

Ms. Pulmano: We are.

Mr. Carnicelli: How many after we're done.

Ms. Pulmano: Fifty-seven.

Mr. Carnicelli: Fifty-seven. So, we're adding seven.

Ms. Pulmano: We are.

Mr. Carnicelli: One of the testifiers said that there supposed to be 60 new?

Ms. Pulmano: So, as part of the change in zoning that occurred in 2008, we are a small portion of the whole big change in zoning project. And so, we are sort of playing in the sandbox with what we call Big Makena and we're all very friendly right now, so, we're hoping between both of us that we'll be able to fulfill those conditions.

Mr. Carnicelli: Okay. Parking for workers on street is that what it's gonna be?

Ms. Pulmano: Parking for workers that come in—

Mr. Carnicelli: The landscapers, you know, the pool guy...

Ms. Pulmano: So, in our project plans we have a little bulb outs on the street and so there's parking on street, these bulb out locations as well as the single-family homes they're required to provide two parking stalls for their personal cars and then still be able to provide two more stalls within their property for visitors.

Mr. Carnicelli: Private roads?

Ms. Pulmano: Yes, they are all private roads.

Mr. Carnicelli: Overnight on street parking?

Ms. Pulmano: No overnight on street parking.

Mr. Carnicelli: Okay. Lighting standards.

Ms. Pulmano: Strict lighting standards in our design guidelines and mainly it's to help with the migratory birds and it will be shielded and downlighting as well as following the County Lighting Ordinance especially in that area.

Mr. Carnicelli: Yeah, we just got the CIZ compliance report, so I didn't know if that was one of the conditions, one of the 44 conditions or not.

Ms. Pulmano: It is, actually.

Mr. Carnicelli: It is, okay. I haven't had a chance to, as we're doing this, to go through there. So, members, here's what I think we'll do is I've asked my questions. We can do another round of quick questions if you want just for clarification and then the reason why we're here is to actually give comment, right? And so, we want to be able to say like okay, here's our comments on the, you know, on the EA. So, if there's any other need for clarification before we make comments, let's go ahead and do that now. So, we'll go ahead and start with you Commissioner Freitas.

Mr. Freitas: Real quick one. Your water meter was installed when?

Ms. Pulmano: We had actually, I'm sorry we don't know for sure, but it's been installed several years now.

Mr. Freitas: Within the last ten years.

Ms. Pulmano: Probably within the last ten years.

Mr. Freitas: Okay, thanks.

Mr. Carnicelli: Commissioner Thompson, any other clarifying questions? Commissioner Pali.

Ms. Pali: No thank you.

Mr. Carnicelli: Commissioner Robinson.

Mr. Robinson: Back to the parking. Correct me if I'm wrong, but I heard that 27 employees you said would be working this project is that just a estimate of different people hiring different contractors or is the HOA is going to have a set landscaping crew?

Ms. Pulmano: So, as part of the EA you have to do a fiscal economic report, and that's what they estimate the full-time employee to be once the project is fully built out.

Mr. Robinson: So, is there any plans to have a contractor to do the common areas or is that—

Ms. Pulmano: Definitely.

Mr. Robinson: And so, if they are, are they gonna have a locker, a facility in this project area or they're going to have to located outside the project area?

Ms. Pulmano: Good question. We haven't thought that far in that, we can certainly look at providing a space for that. Thank you.

Mr. Robinson: Can you help me with where the parking is now and where the parking is going to go for the beach.

Ms. Pulmano: Sure. So, this slide depicts in this red area here is the existing parking.

Mr. Robinson: Leilani, do you have anything bigger than that or is that's all we got?

Ms. Pulmano: I'm sorry, that's—

Mr. Robinson: That's all we got, okay.

Ms. Pulmano: --what we have, yeah.

Mr. Robinson: Go ahead, sorry.

Ms. Pulmano: And it's going to be moving 150 feet to the north.

Mr. Robinson: So, the parking lot to the north isn't that...that's not a current parking lot.

Ms. Pulmano: No.

Mr. Robinson: That's the, that's the restroom and beach area?

Ms. Pulmano: Actually no. So, there's actually parking on Old Makena Road.

Mr. Robinson: Do you have an actual now photo?

Ms. Pulmano: Yes.

Mr. Robinson: --besides this?

Ms. Pulmano: Oh, a photograph of—maybe we can go to Google Earth.

Mr. Robinson: Okay, and, and, so, what it is, is the whole Makena project has to add 60, but your guys share of it is seven. Is that, is that how I'm understanding it?

Ms. Pulmano: Well, actually we have an agreement between Big Makena and us, and our agreement is that we would provide 17 parking stalls out of the 60.

Mr. Carnicelli: So, I'm just going to just in here.

Ms. Pulmano: Sure.

Mr. Carnicelli: If we go to Condition 31 of the CIZ, "The developer shall construct a minimum of 60 new parking stalls at Makena Beach including at least ten..." Anyways, triggered upon the permit of any SMA.

Ms. Pulmano: Correct.

Mr. Carnicelli: So, this is going to trigger that.

Ms. Pulmano: That's correct.

Mr. Carnicelli: The public beach 60 upon this SMA.

Ms. Pulmano: Right. You're—

Mr. Carnicelli: So, you're going to have to coordinate with Big Makena to give us the other –

Ms. Pulmano: Forty-three.

Mr. Carnicelli: Forty-three.

Ms. Pulmano: Correct.

Mr. Carnicelli: Upon approval of an SMA which you will have to come back here to get?

Ms. Pulmano: Correct.

Mr. Carnicelli: Okay, so we're aware of that then, so it's not like there's some...okay.

Ms. Pulmano: No, there's not a disconnect. We, we fully understand that.

Mr. Carnicelli: And Big Makena understands that?

Ms. Pulmano: Yes, they do.

Mr. Carnicelli: Okay. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. You have mentioned, and I've also gone through these many, many pages. You mentioned about the benefits for the Makena community, this project. Who do you consider the Makena community per se and what kind of benefits would this project provide 'cause I didn't see specifics in here that would determine whether EA or EIS might be applicable?

Ms. Pulmano: So, the community...community funds that I talked about is a fund that upon resales of the homes, a percentage of that resales goes in to this Makena community fund. And, organizations and nonprofits that are working towards the betterment of Makena community in the Makena area... I guess there are lots of different projects like restoration of the wetlands work that's going on in the state park that can help fund those types of projects.

Mr. Carnicelli: Commissioner Castro.

Mr. Castro: No questions.

Mr. Carnicelli: Thank you. Commissioner Tackett.

Mr. Tackett: No questions.

Mr. Carnicelli: Okay, so I think what we're gonna do, is before we kinda deliberate and come up with a recommendation, let's take quick five-minute break, and we'll take our little recess here. So, we will back at let's say ten minutes to 11:00.

A recess was called at approximately 10:45 a.m., and the meeting was reconvened at approximately 10:57 a.m.

Mr. Carnicelli: Aloha everyone, the Maui Planning Commission of what is March 10th is now back in session. You know what, Ann, I'm gonna have you lead this. Is essentially where we are is we're gonna go to comments from the Commission and if you could lay this out for us, please.

Ms. Cua: Thank you, Chair. Before we get into your comments, I just wanted to make one comment based public testimony. I believe there was a comment that indicated that OHA had made a statement that the environmental assessment should be either withdrawn or taken back. The Department has not received any email or call from OHA indicated that. Like I mentioned initially, we got the application in December of 2019, and we sent it out basically two months later. So, we sent it out February 20, 2020 and we're still waiting for comments. We've received comments only from three agencies so far, so it's, it's definitely out there. So, I just wanted to make that correction because I had not heard anything to that effect from OHA.

Mr. Carnicelli: Thank you. So—

Ms. Cua: So, at this point, I guess we're prepared to take your comments.

Mr. Carnicelli: Okay, and if you could just lay out again, is how the ball's gonna bounce just so everybody's kinda clear that we're not making a decision here today.

Ms. Cua: Correct.

Mr. Carnicelli: And kinda what we're what we're...why are we here?

Ms. Cua: So, again, you've reviewed...you are here to review the draft environmental assessment. Today, we're taking your comments. Once we get your comments, we will prepare a letter on your behalf that will be given to the applicant. Like all the other letters, I mentioned we have four letters that we received from the public today. The applicant may have received and will be receiving probably more letters from the public. We are also receiving agency comments at this point in time and we're gonna continue to receive them. We receive comments from the Urban Design Review Board, we're going to receive comments from the Cultural Resources Commission, all of these comments will need to be addressed by the applicant. Those will all be incorporated into a draft final environmental assessment that will come before you again at another meeting so that will be your second meeting and at that time, you will either accept the document or not and then if that passes then we will go to the SMA permit which will be scheduled with you for a public hearing and so that would be the third possible meeting that you would have on this project.

Mr. Carnicelli: Great. Thank you, Ann. So, Commissioner Robinson, I'm gonna start with you. Do you have comments that you would like to provide to Ann and the applicant on the EA please?

Mr. Robinson: Hi Ann, thanks. I guess general comment is there's a lot of conditions on this project and I've...I can't remember seeing this many conditions. I think that tells you two things, one that, that the developer's doing a lot to follow the conditions, and two, that it's in a sensitive area it have to do it. I think, I think because it's just comments, I think what we've heard today, I think it's, I think expanding on the endangered species instead of just having we're gonna put the lights down low, and we're not gonna cut a tree 15 feet. I think only seeing one bat, you know, again, this isn't the final, but I'm just saying that's a, I think I hear that as a concern. I think the parking I understand it now that you've talked to me, but I think a capsulized photo of the, of the parking and just that certain area, I think that would be very helpful. And I'll stop at three for this round, and then, my third is, maybe a better conceptual from the applicant if we could. I saw there was kind of a tree picture taking with a home and put it in it. You know, I'm not going to be here so I don't recommend that we have a site visit like we did with the other properties, but if we're gonna, if we're charge of visibility, if we're in charge of keeping site plains and stuff like that I think if they could look at...and it could be a drawing but just something that can do it that way that might be, might be helpful.

Ms. Cua: Could I ask you a question on one of your comments?

Mr. Robinson: Yes.

Ms. Cua: When you asked about the parking and the photo of the parking, are you meaning like I showed you the existing, the existing two parking areas versus the area where one of the existing parking areas is going to move to the north a 150 feet. You want all that area kinda –

Mr. Robinson: Yes. I think if it's a full page, an exhibit on its own instead of an arrow pointing to it, you know, because once it goes to, it goes to public and people are gonna pull it up, I think that's gonna help you know, you know, help us not having to have more...you know, less ambiguity I think the better.

Ms. Cua: And could I Chair just one clarification on your asking for a better conceptualized I believe that's view analysis, right?

Mr. Robinson: Yes.

Ms. Cua: That's what you're referring to?

Mr. Robinson: The site view, yes.

Ms. Cua: Okay.

Mr. Robinson: It's, it's I've, I know when we dealt with the other Makena properties one, we were too late, but we thought the, we thought the architecture was square and boxy and very not appealing, that was too late through our process, but we did, we were able to work with the second part of it to where they got a little bit more, I guess not localized but more tropicalized, you know, structure and backdrops and you know, woods and things like that. I haven't seen...you know, we're not part of that conceptual there, but you know, or what the, what the CC&Rs are gonna be for people building in this area, you know, but, but if we could get a view plain to kind of do it and do it that way, you know, but the sights, it's I know for other commissioners is what we did do on the other project is we asked to maintain sights. You know, people are able to build, the zoning is the zoning, the code the code and they can do it, but we can you know ask to maintain trees at a certain heights, you know for the moths it can't be below 15 feet and stuff, but the homes are gonna be 35, 40 feet whatever it is, that's something that you guys might want to be able to address, you know try to find the...we found those pukas with the project, and try to get some ocean on a one mile drive instead of just none, you know, compared to if you go to prior to this project and the projects that were approved prior it's all the trees all overgrown, they're all 35 feet and you can't see any ocean on the whole way to Wailea and so you know, it's sort of unfair for people have to follow different rules, but just because we made a mistake before doesn't mean that we have to keep on allowing and not seeing the view plains and so I think if there's a conceptual and with that in mind they can, you know, maybe plan out where they're going to do it, it would be better than just those two pictures we saw. Thank you Chair.

Mr. Carnicelli: Thank you, Commissioner Robinson. So, yeah, that's a SMA condition. You know, when they come back for the SMA that is absolutely one of the conditions of the SMA is the view plains, so I'm just saying is while we're here in the EA process start addressing it now 'cause like Commissioner Robinson said, it's all grown out with kiawe so it's like oh, there's no view so we're not ruining the view, and I'm not buying it, right. So, it's just have that kind of in our back pocket for if it actually gets to the point where it comes for an SMA. Just also piggyback to clarification at least for me on the parking. Conceptual, what is, what's gonna be, clarification. Also, those other 43 spots, I want to know where they are. I don't want it to be, you know, is there's trigger for 60, right they're doing 17 of them, Big Makena is doing 43. I want to be able to understand where we're getting our other 60 when the SMA triggers them.

Mr. Robinson: It's there already.

Ms. Cua: Yeah.

Mr. Carnicelli: Oh, seven sorry. Or whatever the number is, but whatever Big Makena is doing I want that to be part of it. Like I want to know, all right, it's not like we're gonna get to the SMA and we're gonna punt it till then. Just make it a part of it.

Ms. Cua: Yeah, I think the whole breakdown of what was there before and then the zoning condition came, and yeah, there is a story about—

Mr. Carnicelli: Let the record show that Leilani is nodding, she understands what I'm talking about. If nobody else in the room does, at least she does.

Ms. Cua: I do as well.

Mr. Carnicelli: Commissioner Pali.

Ms. Pali: So, my comments would be to address specific concerns either that we have or were raised by the community, and then answer the specific solution. I think I'm just feeling like a lot of generic answers are being written down, and so for instance as an example, the parking. Sometimes you have to, we're zoning in on a specific area which is this particular development, but sometimes you have to zone out to give us some out information and zone back in. So, for an example, you know, someone raised the zoning out question that the 60 needed to new and we didn't really have that information originally so initially it seems alarming, but then when we zoom back in to say, oh well, they're a small fish in a bigger pond and the whole pond that's their requirement. I think it's helpful that the developers kinda give us that information ahead of time instead of having to hear it on the outside so we can sort of validate the comments. It's really helpful for us to get more of the story. So, I think the comment would be just be more specific as possible.

Also, with the sites, it's great to know that you're preserving five sites. I think it would be really helpful that maybe noted and I didn't see it noted that originally there was 13, was that on maybe a letter that missed or something, so it would just be nice to say, hey we did initially find 13, and we're preserving five and this is why because if more specific items can be identified going forward it would cause less confusion as we move towards the final, so I would just be, my comment would be just really just give us the full picture as you know it and that would help us.

The other thing I'd like to recommend is I think I understand you're working with OHA or you're waiting for them to review so obviously we'd like to see that response and come in before final. And I also would like to consider a third point would be, the very first testifier I can't remember who he was, but he said he sat on a few different advisory committees and he felt like, and what sounds like you're going to in April meet with them, so I would say just continue to work with the local nonprofit cultural resources and people from the community for their input. You guys can validate more what is legitimate and what's not legitimate, but then you know, sharing those efforts with us on the final. Those are my three comments.

Mr. Carnicelli: Commissioner Thompson.

Mr. Thompson: Actually, I have one in question. How big are the lots average? Square foot of the lots?

Ms. Pulmano: They range from about 7,500 square feet to our largest lot is about 23,000 square feet.

Mr. Thompson: What would the proposed price per lot, probably not that far yet.

Ms. Pulmano: It will be market priced housing.

Mr. Thompson: Is there a estimate?

Ms. Pulmano: We don't have a estimate but I would assume that the lots would be over a million dollars.

Mr. Thompson: Okay, thank you that's very helpful and much better than 500-room hotel.

Mr. Carnicelli: Commissioner Freitas comments on the EA for Ann and Leilani.

Mr. Freitas: Yeah, my comments are I agree with Commissioner Pali that something are kind of general on the answers. I also agree with Mr. Mayer that an EIS should have been done first. I think we would get more of those questions answered but not only for us but for the community to come in here and look at it and they can come and share their thoughts. I think that just skipping to this EA it's not the right thing to do.

Mr. Carnicelli: Thank you. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. I will echo Commissioner Freitas comments because I also have that down. The EIS were done and then compiled but that's been 12 years ago. Now, I don't know what you were doing 12 years ago but things were a whole lot different then and I think that it needs to be an EIS instead of an EA because there are so many things have changed and as Commissioner Freitas said, the community also will have a lot more information. There were too many nebulous things in this that I ran out of room after about eight pages. And my last comment is that I want to know more about what's gonna happen for workforce housing and not just a number and leave it at that, and whether this is my purview or not, I don't want to have credits bought, I want actual housing built. Thank you.

Ms. Cua: If I could just comment real quick on that. I think you mentioned that the EIS was done, an EIS was done 12 years ago, I think the comments today that were talked about what was done like in 2008 was the archaeological work, there wasn't an EIS that's been done for the area.

Ms. La Costa: I beg your pardon, I was, I wrote it down.

Mr. Carnicelli: AIS.

Ms. Cua: AIS was done, not an EIS.

Mr. Carnicelli: Commissioner Castro.

Mr. Castro: Thank you, Chair. I just hope that you folks take into consideration all the testimony that you heard today. One of the ones that kind of bothers me is about the traffic. Having EMS come all the way from Kihei where you know, if somehow there was an opportunity to provide some kind of substation out there so it's more readily accessible you know, to the needs of the community out in that area.

Ms. Cua: An emergency substation.

Mr. Castro: Yes.

Mr. Carnicelli: Anything else?

Mr. Castro: No, that's all.

Mr. Carnicelli: Okay, Commissioner Tackett.

Mr. Tackett: I think everything was covered pretty well. Thank you.

Mr. Carnicelli: Thanks. So, my comments are gonna be I think one of the things that I would like to see is on some of the stuff when it comes to the ongoing effects, you know, when we start talking about the bat and their flight patterns and everything like that is not to just punt to Fish and Wildlife. I'd like to see at least you know, like how, what we're doing to mitigate rather than just going like okay, there's no significant impact, there's some even if it's not significant, there's going to be some, so what are we doing to mitigate those things. In that I think I'd like to see a tightening of the lighting standards or at least you know, really clear on that. I'll talk slower 'cause I know you guys are scribbling really fast. OHA whatever they come back with again, I'd like to see some sort of you know, not just addressing them but if there could be some kind of a mitigation to something that they come with. To the comment that Commissioner Robinson said as far as just...I'd like to just see what the Urban Design Review Board has to say about it fitting in with the neighborhood. I would like to see some sort of a plan or something put in place for access for practitioners since it's going to be a gated community, I want to know how that's gonna be handled since it's gonna be private roads behind a gate. To what Commissioner Pali said, the archaeological sites that say didn't make the "cut" is maybe just a little bit more clarification even if it's just you know, SHPD is the one that said it, but at least some more clarification on the items that aren't being preserved. As we said before, beach parking. Clarification on how vacation rentals will not be allowed. Clarification on traffic as to the entitled properties that don't have...that aren't built out when it comes to traffic, you know like Dick brought up Wailea 670 or you know like full of...all of Makena. I know neither one of those have full entitlements but he wants the traffic study to include those, I just want clarification as to why they're not included. I understand that but I just think as far as for the EA just to have that as part of it. Yeah, go head Leilani. I mean, I understand it, I just want I think for the greater public to understand that.

Ms. Pulmano: I just want to clarify the traffic report did include those projects that Mr. Mayer had...

Mr. Carnicelli: Oh, so there we go.

Ms. Pulmano: It's just a portion it's not the full buildout because there's a certain timeline that our project hits, and there are intermixing of those timelines so it does include those projects that he had mentioned.

Mr. Carnicelli: Oh, okay. Thank you, Leilani. Like we mentioned earlier, I'd like to as part of the, you know, the environmental assessment even though I know it's, it's an SMA thing is the views, I know that that's a big part of the SMA, but I just think that that's a big deal especially out in Makena, it's always been a big deal out in Makena for me. I want my daughter to ride her bike and be able to see the ocean. I'd like the applicant to reach out to Hooponopono O Makena. I can't even read my own scribbling. Okay, that's it for now. I think that's a lot.

Mr. Robinson: I just have...I want...you know this is a...this zoning was part of a bigger project and so a lot of these things that...all these conditions were negotiated a long, long time ago. I do want to give credit for the, for the DOE for this developer you know, it started off at two thousand with eleven hundred, twelve hundred dollars and now it's up to five, six thousand. You know there's different things that I like they're doing. What I have a question for you Ann is I notice that a couple of projects that we approved like the hotel down there I don't remember seeing a contribution that they had to do for Piilani Highway. Are they...like the Residence Inn, do they have the same condition?

Ms. Cua: Okay, you've seen two projects, the Maui Prince Hotel that got torn down and renovated and then the project to the north of that M7, S5.

Mr. Robinson: Right.

Ms. Cua: Both of those projects were not subject to the change in zoning that was done way back when so they don't have these conditions on them.

Mr. Robinson: Okay.

Ms. Cua: And when we came forward to you with both of those projects, we let you guys know that.

Mr. Robinson: What about the Residence Inn? I mean, that's a new project as well.

Ms. Cua: Right, but that's not part of this.

Mr. Robinson: But I mean Piilani Highway, everybody is using the same road, so I'm saying so how come, how come some projects have to contribute and some projects don't.

Ms. Cua: So, my comment was not that they don't have to either...all of them have to do their pro rata share as required by Department of Transportation for infrastructure improvements including roadways.

Mr. Robinson: Okay, so they are part of it then even though –

Ms. Cua: But what my point I wanted to make is that those two other Makena projects that came before you are not subject to these 44 conditions, that's an important distinction but that's not to say that they did not have comments. They did have comments from Department of Transportation that they're working on their own that they're going to have to provide their own requirements as determined by Department of Transportation, State Department of Transportation, but they're not part of this 44 conditions.

Mr. Robinson: So, I have a follow up question to the conditions is when the, when the hotel was being shut down is there was a promise that these people were gonna have jobs and I don't hear anything about it. ...(inaudible)...but I have heard nothing about those people that were gonna be promised jobs or relocation when the hotel was gonna reopen. So, are those just disappeared and that's part of a developer's...prior developers or owners, you know, promise that is never kept. Was a condition anywhere where they were gonna allow these people to reapply for the hotel or is that a union thing.

Ms. Cua: So, I...I mean, I was the planner on that project but I have a terrible memory. I don't believe it a condition but it was representation made to the commission, and I don't know what the status is of where they're at, you know, I don't know if they've been talking with through the unions about the labor. I honestly don't know about that, I'm sorry, but we could find out.

Mr. Carnicelli: Commissioner Pali any other comments?

Ms. Pali: No, just in case it was misunderstood my first request was that all items not just the beach parking, it also was in relation to each of the individual, you know, birds and animals, you know, every section is revisited with very specific, unique, here's the condition, here's all of what we found, here is our resolution to each one individually specifically. So, I just want to make sure that that was heard. Your conditions adding were mimicking the same thing, so I just want to make sure that we're on the same page, that that kind of covers every single condition so we can have a broader view of an overall and then a zooming in of specifically to the lot.

Mr. Carnicelli: Commissioner Thompson, anything? Commissioner Freitas.

Mr. Freitas: All right, I did mention it earlier, I'm not sure if anybody took notes on this, expand housing opportunities for residents. I still would like to see how this development will benefit the local residents. Second, the water, again is an issue. Our goals as a county, our county's future is to promote sustainable land use and growth management. Taking water from Na Wai Eha after the farmers have been asking for water for over a decade and to find out that a water meter was put in less than ten years ago, that's not promoting. Show us in you folks' assessment or whatever kind of survey you folks do that that that is being done.

Mr. Carnicelli: Commissioner La Costa.

Ms. La Costa: Nothing for me.

Mr. Carnicelli: You're good. Commissioner Castro.

Mr. Castro: No questions.

Mr. Carnicelli: Commissioner Tackett.

Mr. Tackett: Nothing at this time.

Mr. Carnicelli: Okay. Ann or Leilani do you guys have anything that you would like to add at this point or comments you'd like to make?

Ms. Cua: I don't, but I think you'd want me to go over my scribbles.

Mr. Carnicelli: Sure, you want to clarify. Let' do some clarification.

Ms. Cua: You mind if I run and get my glasses.

Mr. Carnicelli: You need your own glasses to read your writing.

Ms. Pulmano: While she's getting her glasses, can I just ask a clarifying question. I was taking notes too, so Commissioner Freitas and Commissioner La Costa, you mentioned that you wanted an EIS, do you mean an updated AIS.

Mr. Freitas: No, EIS.

Ms. Pulmano: Okay, thank you.

Mr. Freitas: I'm taking Mr. Mayer's suggestion and I think he's right and I agree with him and he had more issues that he could have shared but he didn't but the ones he did was enough for the thing to be done, yeah.

Mr. Carnicelli: Do you want to clarify how we get there?

Ms. Cua: So, actually now that you said that, I do have a question.

Mr. Carnicelli: There you go.

Ms. Cua: And I had a question as both of you had mentioned about the EIS. So that is a comment from two of the commissioners, but one of things that you will need to do today as specified on Page 2 of the Department's memorandum, is you know, the Department is requesting concurrence by the commission on filing the draft EA and anticipated finding of no significant impact, so that's something that the commission as a whole will need to rule on, correct?

Mr. Hopper: It's not on your agenda today, and today the only thing are comments--

Ms. Cua: That's true. That's true.

Mr. Hopper: --that you want to have. At a future meeting if there is a draft EA the commission can vote to say, this does not appear to meet the requirements for an environmental assessment, you're required to do an environmental impact statement. They would say we're not going to grant the FONSI. If you're asking for a specific vote and concurrence on this item, I do think that needs to be on...put on the agenda and as a specific action item.

Ms. Cua: Right, no, I'm sorry, today is we're just getting your comments, that's correct.

Mr. Hopper: Yeah, yeah, so I think that when...what would happen...I mean, if your comments are going to be you need to do an EIS then you can provide those comments, but the action to require an EIS would be by the commission at the time that it reviews the final draft EA and the commission could after reviewing that and following the rules say, you don't meet the requirements for providing only an EA, you have to do an EIS based on the statutory requirements and the rules. If right now the comments are going to be A. It looks like you will have trouble getting an EA, but you know that's gonna be something the commission determines at a meeting and would be a contested case hearing I would believe, you know, that's something that can be forwarded to the commission or to the developer as a comment at this stage, I believe.

Ms. Cua: Well, the Department has, I mean the Department has filed the draft EA with OEQC. That has been done already.

Mr. Hopper: Right, and then this commission is going to have to determine if it's going to issue a Finding of No Significant Impact or not and it can determine no, we disagree, we believe that you are required to do an EIS.

Ms. Cua: Right.

Mr. Hopper: That's part of the rules. But that would be agendized as part of the meeting. I mean, the developer can decide that we want to do an EIS instead as I understand it if they believe upon the review there may be significant impacts and that pursuant to the rules, they would be required to do an EIS, but at this stage, the commission's asked to comment on the current EA, the commission's providing the comments and when it comes back to the commission for its decision it can make a decision based on the rules whether an EIS is required or not.

Mr. Robinson: EA, EIS big topic. I think, commissioners I think we gotta really not pass these EAs so easily to where we have a solid you know environmental assessment. EIS takes a...it's a long process, it's a arduous process and I've seen where people use the EIS to justify everything and then it just kind of, everything kinda goes through instead of us having time to look at it. So, I mean, I don't think EIS is a bad things but there are pros and cons. I think what we have in front of us with the EA if we do our diligence, if we make sure that the community's input is heard and I think sometimes we can get, we can get quicker results like hopefully we'll

have like with the Grand Wailea and different groups because we can ask them to change things now so that they can develop now instead of having a three-to-five-year plan and then get the assessment and things around. There's different ways to look at things and I think a lot of things if we want to...if there's damage being done, we want to stop it now. So, I've...again, I'm not...I don't think, I don't think EIS is a bad thing but what we have now let's be diligent in what we do every single time and make sure that those will be the safeguards until then. And hopefully with the changes that we have and little bit more flexibility we have with this EA because we're involved with that process, I think we can you know, make a solid impact. Thank you, Chair.

Mr. Carnicelli: You got your glasses?

Ms. Cua: On top of my contacts. Okay, as Commission Pali mentioned, you know, she started off with a very broad comment and then a lot of you commented more specifically but it's still kind of covered under the umbrella of her comment, so if you could bear with me. So, the first comment was that they expand on the endangered species discussion. The second area was parking that there should be a clearer depiction probably maybe through photos and discussion of the parking area, the specific parking that is existing, also the parking area that's the new parking area that's gonna be created to move the existing 50-stall parking a 150 feet north. As part of that parking discussion, they should discuss the numbers, the numbers that get us to the 60 stalls and how that whole parking number process evolved. I think that will all come under one parking category. You feel they need a better conceptual view analysis. Number 4, Number 4 is the broad where you want them address concerns raised at this meeting and provide more specificity on each of the issues that were raised. One of these which is comment Number 5, were the archaeological sites. You want them to discuss the full picture not only the six sites that are going to be preserved but you want the story basically on, you know, I think they mentioned 13 potential sites and how it, how it, you know, got down to what was actually agreed to by SHPD to be preserved. Comment Number 6, you want them to continue to work with the local community for their input. Number 7, there's comment that an EIS should have been done first as opposed to this EA. Eight, you want them to discuss more about the workforce housing and you want them...there was an expanded comment on that not only to discuss it, but that you don't want, if possible, them to use credits. You want them to actually build the housing. Number 9, okay, so these are gonna be consolidated you know, when I actually type them out, but again, somebody else commented about that all the testimony that was given at today's meeting be considered specifically traffic, emergency vehicle access, the discussion possibly of having an emergency substation as part of the site. Number 10, on the flora and fauna, you want further discussion on impacts and what is being done to mitigate these impacts. You want, and as part of that as well, you want them to be clearer on the lighting standards that will help hopefully to mitigate impacts. Comment Number 11 dealt with OHA. I think the comment was when they receive OHA's comments you want them to respond to it and be able to mitigate it, and you know, just as a general practice any comments that are received from agencies the applicant normally responds to each of those comments individually back to the agency so that will be addressed but I'll still include that as a comment. There was a comment about the Urban Design Review Board's comments that you want to see that which you will see that and those will actually be addressed. There was a comment about the houses being able to fit in with the neighborhood. If I could sidetrack a little bit, one of the, one of the comments from the Urban Design Review Board asked them to look at their site plan again and

look at the views and because they're proposed design guidelines that includes in some areas one-story structures and in some areas two-story structures, they asked them to look at that in the context of the site plan and see maybe where they can utilize one-story versus two stories to help. So, I think that, that helps with where you, I think where you were going with that, so they'll be addressing that. Oh, an important one that was also mentioned by the Urban Design Review Board is access for cultural practitioners to the archaeological sites, how will this be handled. You know, here's another comment on the archaeological sites that I will...well, I guess I can actually take this off...oh no, no, this will be part of the overall, you want clarification on those that didn't make the cut. So that's the whole issue that we talked about. Another one was clarification on how vacation rentals will not be allowed, a discussion of that. There was a comment that you want them to reach out to Hooponopono Makena, I believe they said they did and I believe the testifiers said they did, but I'm gonna still leave that as a comment and they can address that. And the last—

Mr. Carnicelli: Ann, you can take that out there, I didn't...for whatever reason, I thought Mr. Delima said that he hadn't been or...but, either way that's fine.

Ms. Cua: Leilani's saying...I'll leave it in because Leilani's saying she'll meet with them again.

Mr. Carnicelli: Okay.

Ms. Cua: And the last thing I have was on the water issue, you just want that discussed further in terms of the other entities that are needing to pull from that resource. So that is what I have, and please, you know, understand that will consolidate the comment and refine them, but that's gist of what I heard.

Mr. Freitas: I didn't hear you say anything about the residents being able to live here. Expanding housing opportunity for residents.

Ms. Cua: Oh, so on the...

Ms. Pali: I think your Number 8, workforce housing.

Ms. Cua: Yeah, know more about workforce housing, okay, don't want credits, you want the homes, and then so you want to know...

Mr. Freitas: How does this assessment affect expanding housing opportunities for residents. How is this million-dollar a lot gonna benefit our local residents.

Ms. Cua: Okay. All right, I've added that.

Mr. Carnicelli: Leilani, you pretty much got the same thing?

Ms. Pulmano: Yes.

Mr. Carnicelli: Sure, come forward. Thank you, Ann.

Ms. Pulmano: The beach parking that you wanted to get an understanding of how we're gonna comply to this, the condition, the change in zoning condition for the 60 stalls and where that other 43 stalls, parking stalls that's owned by Big Makena will be.

Mr. Carnicelli: Correct, 'cause you know like we said, is the one condition triggers it at the SMA level but we're already talking about it, so, you know, let's just conceptually let's see how the whole, yeah, bigger thing is gonna work.

Ms. Pulmano: Okay.

Mr. Carnicelli: Awesome. Thank you, Ann. Thank you, Leilani. Mr. Hopper.

Mr. Hopper: What normally happens I think is that the commission would vote to adopt these as its comments and send them forward. My only concern is one of the comments seems to be you should have done an EIS. Now a commission would generally vote on that issue at its next meeting, and so, I don't know if you want the comment to be members expressed concern that an EIS was not done initially or something like that, but I don't think that at this point based on the agenda there could be a determination of some sort that an EIS is required. I think that the comment could be...so, I'm not sure what you want to do with that as a comment. You can adopt whatever you like, but you know, if you adopt it as a commission comment that's a...that's something that I think normally you would vote on at a...when that's proposed to you as a actual decision. So, you may wanna consider that comment. I think there's probably a variety of ways to phrase it to state maybe they should address why they did not do an EIS originally or something like that, but I don't think it can be vote to make a determination that an EIS should be done at this stage.

Mr. Carnicelli: Right, and just for clarification, we can actually when the final EA comes, we can say, no, we're not issuing a FONSI and we do want an EIS, so that is still, you know, in line with what it is that we have control over. Okay, so Mr. Hopper's nodding yes.

Mr. Hopper: That's correct and there's a list of rules that say, here's what an EA is, here's what an EIS is, when one is required and when the other is not, and the commission would rely on that to make a determination eventually whether to issue a finding of no significant impact with the EA or to do not do that and say an EIS is required.

Mr. Carnicelli: Got it. And I think the other part too, is maybe Director you can address this as well is, the difference between and EA and an EIS. You know, it's like the difference between an EA and EIS and then any additional comments from you please.

Ms. McLean: Just on the procedural matter as Mike said, when this comes back to the commission in another few months, several months with the Final EA you can reject it at that time and say that an EIS needs to be prepared or as Mike was also suggesting, if you feel pretty confident that that's where this could go then we could agendize it at the next meeting for you to actually make a vote one way or the other, and if you, at that time vote that an EIS is needed then that's the direction it will go, if you vote and say that an EIS isn't needed at least at that point then the EA process can continue with the comments that you gave today. So, it's, it's really giving the Department direction on do you want that to decide on at the next meeting or

not. And if you decide not to, then you still have that opportunity when the draft or excuse me, when the Final EA comes to you.

Mr. Hopper: Yeah, I do think that that's correct that if you want to put it on another agenda, I think there are some options under the new rules that allow sort of an early consultation to determine whether or not an EIS should be prepared at this stage which I think is an option the commission could put it on its agenda to do. In addition to the comments, so that's an option.

Mr. Carnicelli: Thank you. Commissioner Robinson.

Mr. Robinson: Chair, what I heard from my commissioners is that more of an opinion and an opportunity for the applicant to express why they don't think a EIS is valid in this point, and so, you know, if the thinking is that, you know, to try to show, to try show why a EA should be instead of EIS as a comment, as another question to answer to, is that, is that, not allowable as comments?

Ms. McLean: That can be done in the Final EA, I mean, that can be a commission comment and then the applicant will need to address that in the Final EA.

Mr. Robinson: Is that something that guys are comfortable addressing Leilani?

Mr. Carnicelli: Or I guess my question then is, is because it was brought up by Commissioner Freitas and Commissioner La Costa is you know, are you guys comfortable with the comment being okay, in the Final EA we would need to have some kind of an understanding as to why an EA is okay, and EIS or an EA is not okay and an EIS is or vice versa. I'm saying is that could be our comment is part of the Final EA is we want that to be addressed as to why there is not an EIS, I mean.

Mr. Freitas: Yes, but I would still like to entertain the option of doing an EIS.

Mr. Carnicelli: Right, and like I said, that is, 'cause we have to...is the FONSI is a Finding of No Significant Impact, that's what a FONSI is, right, and so we issue that FONSI.

Mr. Freitas: Okay.

Mr. Carnicelli: So, if at some point in time when it comes before us, I think 'cause right now what it is, we have a draft EA, we are then giving comments on this draft EA. They're going to take all of our comments, do whatever they do, then they're going to come back with a Final EA and ask for a FONSI, so at that point in time we can say, no FONSI, go do an EIS.

Ms. La Costa: I'm fine with those changes and the comments that it is. My query is why an EA versus an EIS.

Mr. Carnicelli: Okay, so maybe change that comment to that Ann.

Ms. Cua: Why an EA instead of an EIS.

Mr. Carnicelli: Right. Are you okay, with that? Okay, so Commissioner Freitas is okay with that too, so, Leilani you had a comment?

Ms. Pulmano: I did. In the EA itself there is a section called, Significant Criteria Assessment, and I'm sorry, you guys only have it as part of a jump drive but that is part of the discussion in a draft EA is to review all of your technical reports and there is, correct me if I'm wrong, nine criteria in the terms of significance, so I'm sorry, more than that...(inaudible)...saying. And each of those sets of criteria, helps sort of determine if an EA or EIS is required, and so, this EA has gone through those significant criteria assessments and hopefully somebody behind me is letting me know how much criteria there is, 13, 13, and if you look at Page 156 of the EA, it goes through those significant criteria. And if those significant criteria sort of determined that there is significance then we would have to have done an EIS, and so, we feel that the EA has presented all of the technical studies and show that there is no significant adverse impacts according to the rules.

Mr. Carnicelli: The rules, the criteria. Okay, thank you.

Ms. Pulmano: Thank you.

Mr. Carnicelli: One other just I guess, don't make this as part of the, you know, numbers of whatever it is, as Commissioner Robinson said at the very beginning, trying to scroll because I get, it's a thousand pages so we get it this way, right? So, if there's a way with which you can create links or files or something like that because you don't read this Page 1, Page, 2, Page...you know, you jump back and forth, right. Oh, it refers to Index this, comes back. Either don't refer to see Index or actually put the actual thing like Commissioner Robinson said or just make it easy for us to jump around because there's times, it's like okay, I gotta go find Appendix Z, and I go find Appendix Z, and then I remember I forgot what page I was on, oh, I was on Page 43, I gotta go. Just to the best you can try to make this easy for us to ping pong around in the PDF. That's just, you know, just a side comment it can help us, so anything else either Ann or Leilani. Director, you okay.

Ms. McLean: I think there should be a motion to accept the comments that Ann repeated them.

Mr. Carnicelli: So, I'll entertain a motion.

Ms. La Costa: Just a moment please, did you say, Page 156 Leilani. Is that Section 1 or 2, Volume 1 or 2?

Ms. Pulmano: One.

Ms. La Costa: Thank you. I so move.

Mr. Carnicelli: Okay. Move to accept the comments as repeated by Ann into the record. Seconded by Commissioner Thompson. Any discussion that? Commissioner Pali.

Ms. Pali: Not to beat the dead horse but with clarification on just being more specific in the answers because if you've already addressed on Page 156, Volume 1 about the 13 reasons

and why you don't feel you need an EIS, I would like to be able to come that same conclusion but with very generic answers I cannot. So, just help us, help you and try to be more specific in the areas.

Mr. Carnicelli: Any other comments on the motion? Seeing none, all those in favor of what is it, I guess I'm going to let the...Director, you can repeat the motion.

Ms. McLean: Motion is to submit the comments as stated by the commission and as repeated by Staff.

Mr. Carnicelli: All those in favor? Unanimous. That is seven.

It was moved by Ms. La Costa, seconded by Mr. Thompson, then

VOTED: To Submit the Comments as Stated by the Commission and as Repeated by Staff.

**(Assenting – P. D. La Costa, D. Thompson, K. Freitas, K. Pali,
K. Robinson, C. Tackett, S. Castro)
(Excused – T. Gomes)**

Mr. Carnicelli: So, thank you very much. The other thing too, just as Mr. Hopper than mentioned those of you that testified today us, you testified to us. If you want to submit something to the applicant, you can do that as well directly. So, thank you very much Ann, thank you very much Leilani. Jared, I'm gonna take like a quick three-minute break to help you set up for the next item. Okay, all right, we're in recess for three minutes.

A recess was called at approximately 11:48 a.m., and the meeting was reconvened at approximately 11:54 a.m.

Mr. Carnicelli: Good afternoon, everyone, the Maui Planning Commission meeting of March 10, 2020 is now back in session. Director.

Ms. McLean: Thank you, Chair. You have one public hearing item today and that is a request from Bradley Dressler and Ann Pawsat Dressler for a Short-Term Rental Home Permit in order to operate Beach Paradise, a six-bedroom STRH located on a .433-acre oceanfront lot in the A-1, Apartment District. The property is located at 1290 Uluniu Road in Kihei at TMK: 2 9-008:005-0002, and Jared Burkett is the project planner.

C. PUBLIC HEARINGS (Action to be taken after each public hearing.)

- 1. BRADLEY DRESSLER and ANNE PAWSAT-DRESSLER requesting a Short Term Rental Home Permit in order to operate Beach Paradise, a six bedroom STRH located on a .433 acre oceanfront lot in the A-1 Apartment District. The property is located at 1290 Uluniu Road, Kihei, Island of Maui, TMK (2) 3-9-008:005-0002. (STKM T2019/0003) (J. Burkett)**

The matter is being brought before the Maui Planning Commission for review because there are at least two permitted short-term rental home operations located within 500 feet of the subject property.

Mr. Jared Burkett: Aloha.

Mr. Carnicelli: Good morning, Jared.

Mr. Burkett: Good morning. The owner-applicants, Bradley Dressler and Anne Dressler are requesting a short-term rental permit to vacation rent six bedrooms in their oceanfront home. They previously had a permit, but the permit expired and so they are here to obtain a permit once again. There are two other short-term rental homes within 500 feet of the property which is the trigger for this application to come before you for your consideration instead of an administrative approval. There are no reports filed with the Police Department for this property. There are two requests for service filed on the property. They were submitted as Exhibit 6 for your reference in the staff report, and there are also three support letters and no protest letters. The support letters were not put into the staff report, but you received them by email through the secretary to the commission so you should have those. The applicant's consultant has a presentation. He will give and then the owners, well owner, Ann Dressler is here for answering any questions you may have. So, Tom Croly would like to come up and give a presentation.

Mr. Carnicelli: Thank you.

Mr. Tom Croly: Aloha, Commission. Tom Croly for the applicant. She will do her own presentation, but I just wanted to say that I prepared the original application for her back in 2013, and I prepared the application for this one that's before you and I just want to give you a little bit of history that might help. This property has been condominiumized so there's two single family homes on this particular lot. Another property two doors away also was condominiumized and there were two single family homes on that lot. At one time, each of them held one permit that allowed those two homes to be used separately. The law was later amended that allowed each individual condominium owner of the property to have their own permit. So, when the Dresslers failed to renew their permit in a timely manner, their next-door neighbor or their condo mate filed his application which was granted administratively for that. The other guys who had the two, one of those owners since has sold his house, so his half of the permit if you will went away, and of course, the law now says that the new owner can't apply for a permit for a period of five years. So, the other owner has one permit, their condo mate has one permit and now the Dresslers are the odd man out if you will, in that section of four folks that now have to come before you for their approval. And again, that we're essentially if you approve this permit, we had four houses that were short-term rentals, one of them has gone away, if you approve this permit, we're down to three in this particular area. Anne Dressler's here and she has a very short presentation for you to help you in your decision.

Mr. Carnicelli: Thank you, Mr. Croly.

Ms. Anne Dressler: Good morning, Chair, Commissioners.

Mr. Carnicelli: Good morning.

Ms. Dressler: There's a lot this morning, so I will try to be thorough but fast.

Mr. Carnicelli: Just state your name for the record.

Ms. Dressler: Oh, I'm sorry, Anne Dressler. I'm sorry, I meant to do that.

Mr. Carnicelli: That's okay, thank you.

Ms. Dressler: Okay, so yes, my name is Anne Dressler and I'm here on behalf of my family and we are the owners of 1290 Uluniu, and it's our application that's before you. Let's get started. So, our Maui home is a part of our family. It very much is, this might sound silly, but our address is 1290, 12 is my husband's luck number, 9 is my lucky number, and we just thought it was ...(inaudible)...it also two blocks from the very first house I rented in 2004, and now we have a family. So, we have three little boys, and we actually live here five months of the year. My boys go to school here, we're up at Maui Montessori, and we get to do our Maui life. We go do keiki soccer, swim team at the Kihei pool, ...(inaudible)...karate, mommy gets to do some yoga, but so our goal is actually to move here. So, we want to move here permanently in about eight to ten years before the oldest gets to high school, so we can't do that yet because of work that's kind of keeping us tied to the mainland. We also have two older boys in their early 20's that kind of keeps us tied to the mainland a little, but that is our plan. This is where we want to be.

So, I have just six primary points here. So, our proposed use of the property is consistent with the neighborhood. We are primarily commercial and vacation rental condo, and a lot of people are like us that they come and use their properties for several months and then just used for the off time. And then our property is, is pretty special in that it's, it's fenced in the front and the pool is in the front and there's really good green shrubbery that keeps it private both for our neighbors and for our guests. As we mentioned, we did have a permit in 2013, and it was going really great until I didn't renew it. And I don't have a good excuse for that other than I was pregnant and had a one-year-old and I'm one of those lucky people that when they're pregnant I throw up all day long, and I kinda drown in it and so I missed it. And at the time, we canceled all the future reservations, we refunded everybody's money it was a terrible mistake and we've been paying for it ever since. But here we are, we are renewing and we actually have four letters of support, not three but there's four of them and I think that speaks well of us for...I mean, I try to be a good neighbor so hopefully couple of them think so.

And then, the last point is simply that when we're here on island, it's...those five months are fine, there's no security concerns. It's just a little bit of a concern for us when the house lays empty for the other seven months. So, I feel like if there's somebody in the property it's just better.

So, here is an aerial, okay, I got my pointer going. Okay, so that's our house right there, to the north that's two letters of support, that's the Walkers. The Walkers have actually been here, they've had that property for over 80 years, they were there before Uluniu was even paved and that's kind of my reason for our property, I want to be here forever, I want my kids to be there. The property directly north of us, that one is her son, and their wife, and both of them wrote

letters of support. To the south, that's our condominiumized mate and that's Bryce ...(inaudible)..., across the street that's Nicky and Mallory, they wrote a letter of support, and then you can kind of see here this is the commercial part that I was talking about, that's...this is the makai side of Azeka, there's the post office, you know, Nalu's is right there, Ace, there's Times, and then we've got all the vacation rental condos, so this is Hale Kai right here, Aloha Villas, Kihei Garden Estates, and like I said before it's just everyone has a very similar use so, it's special though that we get to kinda have a sense of community because people really get to know each other because we're here a lot, and then we just have a, you know, couple visitors when we're not. But it's a wonderful street, it's a very nice sense of community.

Okay, so this is my family. I just want to introduce you really quick. We're in a dinosaur phase, so this is five-year-old, three-year-old, and my one-year-old. This Graysen, Chappy and Bebop we call him, they are big boys. So, when we move back, I'm bringing a basketball team with me, and that's no joke because one of our older boys is 6'7". But then here we got, shakas with Santa, that's at Christmas time, there's also Kihei soccer, this us out in the outrigger. Graysen is finding a new use for the ama, but we do want to raise our children here. I love that I'm seeing them create a love and respect for the ocean, that's something that's very important to me, and I...even my three-year-old here is already starting to surf and you know, I just...it's important that we start now, kind of be in our roots in Maui with a family and then you know, make our full-time dream in a couple years. And thank you for your time and attention. That's all I have. Please consider us for approval.

Mr. Carnicelli: Thank you very much. So, at this point in time, I'm gonna go ahead and open up the floor for public testimony. If there's anyone that would like to come forward and testify on t his particular agenda item, please do so now. Going once, going twice. If there are no objections we'll go ahead and close public testimony, and I guess questions from the Commission. Commissioner La Costa.

Ms. La Costa: Ms. Dressler, I like to thank you for doing honest and forthright and the pono thing for stopping when your permit expired and appreciate you reapplying. Thank you.

Ms. Dressler: Thank you.

Mr. Carnicelli: Thanks. Commissioner Castro any questions or comments?

Mr. Castro: Not at this time.

Mr. Carnicelli: Okay, Commissioner Tackett.

Mr. Tackett: Not at this time.

Mr. Carnicelli: Commissioner Robinson.

Mr. Robinson: Do you still have the same property manager?

Ms. Dressler: Richard Clayton, yes.

Mr. Robinson: So, the property manager that's in charge to make sure your permit doesn't expire and the County loses tax money, you're still employing them? I'm serious.

Ms. Dressler: Yeah, oh no I'm—

Mr. Robinson: We're here today for because the application—

Ms. Dressler: I never considered that. I took personal responsibility for it, and it's a very good point.

Mr. Robinson: Thank you.

Mr. Carnicelli: Commissioner Pali.

Ms. Pali: Can you just help me with the date, ...(Inaudible)...dates or this could be for the planner. What was the actual date of the expired license that will help me give reference and if it was in here, I apologize.

Mr. Burkett: ...(inaudible)...

Ms. Pali: Yeah, I couldn't...I didn't see it, sorry.

Mr. Robinson and Ms. Pali speaking off the mic to each other...(inaudible)...

Mr. Carnicelli: Jared or Mr. Croly do you want to address that.

Mr. Burkett: They state that they got their permit in 2013 and it expired in 2016.

Mr. Carnicelli: Three-year permit.

Ms. Pali: Okay, got it. So, these RFSs then were before even the original permit.

Mr. Burkett: right.

Mr. Carnicelli: Before they even owned it, I believe.

Mr. Burkett: They purchased the property in 2012.

Mr. Carnicelli: Yeah, it was before they even owned it.

Ms. Pali: That's what I wanted to know. Thank you.

Mr. Carnicelli: Okay. Commissioner Thompson any questions? Commissioner Freitas any questions?

Mr. Freitas: No.

Mr. Carnicelli: No. Going once, going twice any comments, questions, Commissioners. Seeing none, Jared would you please give us the recommendation from the Department.

Mr. Burkett: The Department has determined that the short-term rental home meets all of the criteria or potential rental home meets all the criteria to be eligible for approval for the requested permit. The Department recommends that the Commission approve the short-term rental home permit until March 31, 2023 for a three-year duration with the standard conditions outlined in the Department's report and recommendation, and again, if the Commission chooses to approve the permit, we recommend that the Commission adopt the report and recommendation as its findings of fact, conclusions of law and decision and order and to authorize the Planning Director to transmit that on behalf of the Planning Commission.

Mr. Carnicelli: Thank you very much. At this time, I'll entertain a motion.

Mr. Freitas: Motion to approve.

Mr. Carnicelli: Commissioner Freitas, motion to approve as recommended by staff, seconded by Commissioner La Costa. Anybody like to speak to the motion?

Mr. Freitas: I would like to say that there's four letters for the approval and none against. They've been through this before and I didn't see any problems prior that they had those three years and for that reason, I think it's okay to approve it.

Mr. Carnicelli: Thank you very much. Commissioner Robinson.

Mr. Robinson: Hi, I think three years is kind of a long time to not run without a permit, but am I reading correctly that they paid their taxes on all their rentals in those three years?

Ms. McLean: When they previously—

Mr. Robinson: Rented it out.

Ms. McLean: --held a permit, I, we have no reason to believe that they did not.

Mr. Robinson: No, no, no but between 2016 and 2019, Mr. Foley—

Ms. McLean: Croly.

Mr. Carnicelli: Mr. Croly.

Mr. Robinson: Croly.

Mr. Croly: The applicants shut down completely and have not been in operation since their permit has expired.

Mr. Robinson: 2016?

Mr. Croly: Yes, yes.

Mr. Robinson: Thank you Chair.

Mr. Carnicelli: No problem. Anybody else like to speak to the motion? Seeing none, Director.

Ms. McLean: The motion is to approve the Short-Term Rental Home Permit subject to the conditions in the staff recommendation.

Mr. Carnicelli: All those in favor, please raise your hand. That is six ayes. Those opposed, one. Six to one, motion passes. So, congratulations Ms. Dressler, you can reopen for business.

Ms. Dressler: Thank you.

Mr. Carnicelli: Not a problem.

It was moved by Mr. Freitas, seconded by Ms. La Costa, then

VOTED: To Approve the Short-Term Rental Home Permit as Recommended by the Department.

**(Assenting – K. Freitas, P. D. La Costa, D. Thompson, K. Pali,
C. Tackett, S. Castro)**

(Dissenting – K. Robinson)

(Excused – T. Gomes)

Mr. Carnicelli: So, Jared, I believe you are next on the agenda as well, correct? Okay, so Director.

Ms. McLean: Thank you Chair. Next on the agenda is Adoption of a written Decision and Order. These are proposed Findings of Fact, Conclusions of Law, and Decision and Order denying the request for a State Land Use Commission Special Permit by Michael and Mi Ra Finnegan to operate Hale O Ka Pua B&B, a two-bedroom bed and breakfast located in the State Agricultural District at 2350 Aina Mahiai Place at TMK: 4-4-020:036 in Lahaina.

The action on the application was taken by the Commission following a public hearing on November 12, 2019 and then just recently at the February 25, 2020 meeting the matter was deferred. Also on the agenda is the applicant's Statement of Exceptions and Objections to the proposed Findings of Fact, Conclusions of Law, and Decision and Order and as well, distributed today received only by the Department yesterday is the applicant's Motion to Vacate the Hearing.

D. ADOPTION OF WRITTEN DECISION AND ORDER

1. **Proposed Findings of Fact, Conclusions of Law, and Decision and Order denying the request for a State Land Use Commission Special Permit (SUP2) by MICHAEL and MI RA FINNEGAN to operate Hale O Ka Pua B&B, a two-bedroom bed and breakfast located in the State Agricultural District located at 2350 Aina Mahiai Place, TMK: (2) 4-4-020:036, Lahaina, Island of Maui. (SUP2 2019/0008) (J. Burkett) (Action on the application was taken by the Commission following public hearing at the November 12, 2019 meeting.) (Matter was deferred from the February 25, 2020 meeting)**
 - a. **MICHAEL C. CARROLL, Attorney of BAYS LUNG ROSE & HOLMA on behalf of MICHAEL and MI RA FINNEGAN submitting Petitioner Michael and Mi Ra Finnegan's Statement of Exceptions and Objections to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order Denying a State Land Use Commission Special Permit for Hale O Ka Pua Bed and Breakfast located in the State Agricultural District located at 2350 Aina Mahiai Place, TMK: (2) 4-4-020:036, Lahaina, Island of Maui. (SUP2 2019/0008)**

The Commission may take action to adopt, adopt with modifications, or take some other action regarding the proposed Findings of Fact, Conclusions of Law, and Decision and Order

Mr. Hopper: Do you want to recognize the counsel and see if he has any comments?

Mr. Carnicelli: Okay Aloha, Mr. Carroll.

Mr. Michael Carroll: Good afternoon, Chair.

Mr. Carnicelli: Good afternoon. I will, I guess let you start.

Mr. Carroll: Okay, thank you very much.

Mr. Carnicelli: Not a problem.

Mr. Carroll: Good afternoon, Chair and Members of the Commission. Thank you for giving me the opportunity to speak. I do wish to talk about two issues again similar as I did last week. We also have before the Commission a Motion to Vacate the Hearing today and we're hopeful that the court or excuse me, the Commission will take that under advisement and consider that. What we are asking today is that the Commission not take any action today and there's essentially two reasons, one is a procedural issue and one is a ...(inaudible)...one.

First, the notice of hearing was not adequate and like the last hearing, the Commission cannot take action on this agenda item without violating its own rules. Second, there was no evidence presented at the hearing to overcome the Planning Department's recommendation to approve this permit just like the permit we just saw there's no reason why this permit was not approved.

On point one, there's no question that today's hearing today is a hearing, administrative hearing. It falls within the definition of an agency hearing under the Commission's own rules and that's a hearing held immediately prior to judicial review. The Commission is making a final decision on the legal rights and duties of the petitioner. It's deciding to whether to "take action to adopt, modify the Decision and Order or take other action." There is no matter what you choose to call it, this is a hearing and we're entitled to follow the rules...all the parties are obligated to follow the rules.

Lastly, it fits all the indices of the hearing. The Commission provided notice albeit we're contesting that's sufficient, the Commission is allowing the petitioner to provide arguments to the Commission for consideration, and lastly, the Commission is going to make a decision that affects the Commission...or the petitioner's rights. It clearly falls within the definition of hearing under the Administrative Rules and all the case law that has interpreted it.

The statute that says what the time period is for notice is clear and unequivocal. This is HRS 91-9.5, and this is what it says, it says, "all parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least 15 days before the hearing." There's no exceptions to that. That is clear and unequivocal language and there's also no question here that the notice provided to the petitioner was not within 15 days or was less than 15 days no question.

Another issue with respect to the notice, there's another requirement that the proposed Decision and Order is required to be served on the petitioner ten days prior to enable the petitioner to provide exceptions. That's what the rules say. This same rule applies if this was a Land Use Commission proceeding, if it was 15...if it was more than 15 acres. The, the purpose of this rule is very clear. It's to give the parties an opportunity to present their objections. It's also an opportunity for the Commission to consider these objections. We are planning on filing objections and exceptions. We filed initial ones with the limited time we had. We intend to file these exceptions and we intend to do that by the deadline. The deadline is March 11, that's tomorrow. I want to point out that the notice was also dated February 25th, but curiously it was not sent to us until February 26th which I think is also an admission that the notice here was not efficient.

Lastly, I just want to comment on the proposed decision. This is not a case where the petitioner has done anything illegal or anything wrong. He's met all the requirements. He's never violated any of the rules. He's never rented it on a short-term basis. He's a resident of the County of Maui. The Planning Commission made expressed findings that the petition meets all the requirements of the special permit. The Planning Department made recommendations or made findings that the bed and breakfast does not conflict with any agricultural uses in the property or surrounding area. The Planning Department made recommendations and findings that it will not impact the farm plan. The Planning Department made recommendations that the applicant meets all the requirements of the Special Use Permit. There was no evidence presented to contradict any of that. There was no evidence or statements of fact in the proposed decision and order that contradict that, and I think on this record, I think it's very clear that the decision and order is inadequate on its face to support a denial, and I don't believe it's proper or prudent for the Commission to take action on this item.

Lastly, Michael Finnegan is present today. He's available to ask any questions and I think what we're ultimately asking here is the Commission doesn't need to take action today, we're just simply asking that the Commission not take action today. I'm happy to answer any questions, but that's in essence our position in the case. So, appreciate to...well, happy to answer any questions.

Mr. Carnicelli: Thank you Mr. Carroll. Mr. Hopper.

Mr. Hopper: I just have a few questions also just as an initial matter I do not acknowledge that this is a hearing under HRS, the Hawaii Revised Statutes. I believe it's a commission meeting to decide whether to adopt its staff report. The applicant was given an opportunity to speak but I would not acknowledge that it's a hearing under HRS section referenced.

So just a few questions. First, if the Commission does not take action today is it your position that it would be beyond the 120-day deadline for decision making such that the permit would be automatically approved?

Mr. Carroll: Yes, and we would be happy to work with the Department to address any issues or concerns that they have. The Department has already issued recommendations. I've been involved in matters in the past where we have worked with the Department and that's, that's been allowed.

Mr. Hopper: Okay, so your position...so you're asking for no action but then you would say if the Commission doesn't take action today it could not adopt the Decision and Order denying the permit because after today, the permit would be deemed automatically granted anyway, correct. So, asking no action today is not just a deferral to a future meeting date, it's actually to not take any action such that the permit would be automatically approved under the rules, correct?

Mr. Carroll: That's correct.

Mr. Hopper: Okay. Another issue, just for my information how was your...a Motion to Vacate Hearing when was it, how was it filed and when was it filed?

Mr. Carroll: It was mailed yesterday and it was also, an electronic copy was provided to the Department.

Mr. Hopper: So, it was, it was sent, sent in the mail yesterday?

Mr. Carroll: Yes.

Mr. Hopper: Okay. And for the record, when did you and...or your client get a record or get a copy of the proposed Findings of Fact and Conclusions of Law? I don't mean have it served by certified mail, I mean become aware of it and its contents?

Mr. Carroll: I, I believe it was a few days before the last hearing. It's definitely less than ten days. It was, it was maybe a day or so before...I apologize I don't have that date on the top of

mind though my recollection was that we found out that it was on the agenda and I looked on the agenda and saw the hyperlink that's how I found out about it.

Mr. Hopper: And then there was a—

Mr. Carroll: And we filed the initial brief.

Mr. Hopper: Yeah, there were objections filed on the 24th of February, correct?

Mr. Carroll: That's correct. But I do wish to put on the record that it was mailed to the petitioner but it was not received until after the hearing.

Mr. Hopper: After the 25th.

Mr. Carroll: Yes.

Mr. Hopper: But you did have presumably notice of the contents of the...because you filed objections on the 24th so you had it at least by the 24th, correct?

Mr. Carroll: That's correct.

Mr. Hopper: So, the Commission deferred action on the 25th, and then, from then until now you're saying...okay, I just wanted to get clear on the record that you received the, the notice or the document, the proposed findings on the 24th. I mean again, I, I...we can go over this in executive session but I would disagree with the arguments made with respect to the generally the requirement of ten days or the requirement of 15 days certified mail for this is a contested case hearing under the law, but I wanted to get that clear.

And then, you had also stated that there in I think both the motion today and the one on the 24th that there were Sunshine Law violations could you please expand on that?

Mr. Carroll: I'll withdraw that point for purposes of today's hearing. I mainly included that for to preserve our rights. I think the main violation would be the points that I raised today.

Mr. Hopper: Okay, 'cause I was confused by that. Okay, we can...I don't know if you've got questions. I would, I would maybe advise an executive session on this one to continue what we had discussed at the last meeting as far as action, but you know, I think that at this point this is mainly a review of the proposal from the Commission's staff. This is not a hearing officer proposed findings, conclusions and D&O. It's from your staff to consider whether to adopt the form of the order. So, we can continue in executive session or if you've got questions that's up to you, but I'd bring it back to the Chair if there's nothing more from the, from the applicant.

Mr. Carnicelli: Do you have anything else to add at this point in time Mr. Carroll?

Mr. Carroll: No, I don't. Thank you very much.

Mr. Carnicelli: Okay, thank you. So, if I could get clear why we're here is to either accept or not the Findings of Fact, Conclusions of Law and the D&O?

Mr. Hopper: Correct. The Commission already voted and they voted to deny. This is to adopt the form of the Decision and Order as prepared by staff not proposed by any party, but prepared staff in order to complete the, the process.

Mr. Carnicelli: So, I guess my question is, is does Commissioners do you have enough information to be able to make a decision on that or do you...would you feel more comfortable going into executive session?

Ms. La Costa: I would prefer to go in executive session please.

Mr. Carnicelli: Is that a motion?

Ms. La Costa: I so move.

Mr. Carnicelli: We have a motion to go into executive session. Is there a second? Seconded by Commissioner Thompson. Would anybody like to speak to the motion? Okay then...

Mr. Hopper: Can I—

Mr. Carnicelli: Yeah, Corporation Counsel.

Mr. Hopper: Just one clarifying question to the applicant. At the, at the hearing on the...you were present on the...you were both, you and your client present of the hearing on the 25th, correct?

Mr. Carroll: That's correct.

Mr. Hopper: And at that time, you were made aware that the Commission was deferring action until March 10th, correct?

Mr. Carroll: That's correct.

Mr. Hopper: Okay, thank you. Sorry.

Mr. Carnicelli: That's okay. Okay, clarification.

Ms. McLean: And Chair may I clarify the motion to go into executive session is to confer with counsel on the Commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5(a)(4).

Mr. Carnicelli: Correct. All those in favor of that motion? That is one, two, three, four, five, six. Opposed? One. The motion passes.

It was moved by Ms. La Costa, seconded by Mr. Thompson, then

VOTED: To Go into Executive Session.

**(Assenting – P. D. La Costa, D. Thompson, K. Freitas, K. Pali,
C. Tackett, S. Castro)**

(Dissenting – K. Robinson)

(Excused – T. Gomes)

Mr. Carnicelli: So, we will put the regular session into recess and then be back after executive session.

The regular meeting was then recessed, and the Commission went into executive session at 12:24 p.m. The executive session was adjourned at 12:51 p.m., and the regular meeting was then reconvened at 12:54 p.m.

Mr. Carnicelli: Good afternoon, the Maui Planning Commission of March 10, 2020 is now back in session. So, Commissioners I guess where we are right now on the agenda is the Findings of Facts, Conclusions of Law, and Decision and Order. We can accept that, we can reject it or we can modify it.

Mr. Hopper: Can I make a comment?

Mr. Carnicelli: Mr. Hopper.

Mr. Hopper: If you do end up adopting this, I would recommend one small modification to clarify the effective date of the Decision and Order is today, March 10, 2020 rather than the date of mailing. So, the effective date would be today and you could add that at the...on the last sentence of the Decision and Order on Page 7.

Mr. Carnicelli: Do I have a motion to that effect to change it?

Ms. La Costa: I so move.

Mr. Hopper: First you'd have to move to adopt.

Mr. Carnicelli: Oh, you want me to move to adopt and then we'll amend it after?

Mr. Hopper: Sorry...

Mr. Carnicelli: Or if that's what we're gonna do or deny...Mr. Hopper.

Mr. Hopper: A procedural note, I think the Commission would acknowledge receipt of the motions and at this time will not be taking action on them, so if that's something the Commission would want to do as well, they can.

Ms. McLean: If the Commission chooses to adopt the Findings of Fact, you should say on the record that you have reviewed the applicant's Statement of Exceptions and Objections and that you're choosing not to vote on the Motion to Vacate the Hearing.

Mr. Carnicelli: Okay.

Mr. Hopper: This is being...you have read the objections and I think the Commission has had the opportunity to read objections but just to acknowledge that and if you do move to adopt the decision and order you could do that with the modification, without it not adopt it.

Mr. Carnicelli: Okay. So, do I have a motion at this point? I guess somebody want to make a motion?

Mr. Tackett: I thought we had a motion.

Ms. La Costa: I move that the Commission having reviewed the Exceptions and Objections that we adopt the D&O with the modification of the date of March 10, 2020.

Mr. Carnicelli: Moved by Commissioner La Costa. Do I have a second? Seconded by Commissioner Tackett. Speaking to the motion. I would just would add that also taking in the Exceptions and Objections but also that the Motion to Vacate the hearing to also say that that has also been reviewed. Anybody else would like to speak to the motion? Okay, seeing none, Director.

Ms. McLean: The motion is to adopt the written Decision and Order with one amendment on Page 7, to add the effective date of the D&O being today, March 10, 2020.

Mr. Carnicelli: All those in favor please raise your hand. That is one, two, three, four, five. Opposed?

Mr. Robinson: Choose to abstain, Chair.

Mr. Carnicelli: Commissioner Thompson opposing, and Commissioner Robinson abstaining so that is five one. The motion passes.

It was moved by Ms. La Costa, seconded by Mr. Tackett, then

VOTED: That the Commission Having Reviewed the Applicant's Statement of Exceptions and Objections and Motion to Vacate to Adopt the Decision and Order with the Amendment on Page 7 to Add the Effective Date of March 10, 2020 to the Decision and Order.

**(Assenting – P. D. La Costa, C. Tackett, K. Freitas, K. Pali,
K. Robinson - Abstained, S. Castro)**

(Dissenting – D. Thompson)

(Excused – T. Gomes)

Mr. Carnicelli: I'm sure we'll see you again Mr. Carroll and Mr. Finnegan. Thank you for sticking in there all day. Director, next on the agenda.

E. DIRECTOR'S REPORT

Ms. McLean: Next on the agenda we have the Director's Report. I'd first like to note I believe this was distributed to the Commission on the Grand Wailea matter just there's some status notes that mediation was not successful and then there's the disclosure...also, the disclosure document from the hearing officer. So that's just a status update for the Commission.

1. SMA Minor Permit Report

This is for notification and review purposes. No action is anticipated.

2. SMA Exemptions Report

This is for notification and review purposes. No action is anticipated.

Ms. McLean: We have the SMA Minor and Exemptions Reports. Are there any questions from the Commission on those?

Ms. La Costa: The Wind and Sea Residence in Paia what was the SMA requirement for that one please?

Ms. McLean: That is an exemption, I don't know, but I can find out and get back to you.

Ms. La Costa: Thank you.

3. Discussion of Future Maui Planning Commission Agendas

a. March 24, 2020 agenda items

Ms. McLean: And then next we have discussion of future agenda items.

Mr. Robinson: I didn't see a copy of that.

Ms. McLean: It's getting distributed now.

Ms. La Costa: ...(inaudible-not speaking into mic)...just now or toss it?

Mr. Hopper: You can hang on it, the Commission has it on file. You may want to hold onto it because –

Mr. Carnicelli: So, let's stay on topic here which is...yeah, that's okay.

Ms. McLean: At the next meeting there's one public hearing item which is a director-initiated community plan amendment and change in zoning and review of a settlement agreement.

Mr. Carnicelli: And I actually...I don't see on here, we should have a reso thanking Commissioner Robinson for his service 'cause I believe that is his last meeting, correct?

Mr. Robinson: ...(inaudible)...

Mr. Carnicelli: Well, we discussed before you got here whether you're actually gonna get thank yous or not, but Carolyn, if you could add that please, a memorandum recognizing Commissioner Robinson that would be great.

Mr. Robinson: So, C is that Department of Housing and they're gonna come and talk to us?

Ms. McLean: Yes, that was your folks requested.

Mr. Robinson: Awesome. Thank you.

Ms. McLean: Our parting gift to you Commissioner Robinson.

Mr. Robinson: Thank you.

Ms. Pali: And they're gonna include the credits, yeah. They just did one for Council a couple weeks ago. I found it interesting 'cause we throw around the word, credits a lot, but there's a big difference between the State credit and the County credit.

Ms. McLean: Right.

Ms. Pali: And it was to my shock to find out that the County credits just kinda got started a few years back so it made a lot of sense after...

Mr. Carnicelli: Right, and whether it's the Director or Deputy Director giving that they'll be able to clarify that too, so...

Ms. Pali: Are we rolling the request, I think I've asked several times agendaizing the attendance.

Ms. McLean: That would be an amendment to your rules and so we've posted the public hearing notice for that. That has to be posted 30 days in advance so that should be at one of your April meetings.

Mr. Carnicelli: And then also just, before you guys leave make sure you sign the D&O. Okay, any other, anything else? Okay, thank you very much everyone. This meeting is adjourned.

F. NEXT REGULAR MEETING DATE: MARCH 24, 2020

G. ADJOURNMENT

The meeting was adjourned at 1:00 p.m.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli, Chair
Stephen Castro
Kawika Freitas
P Denise La Costa
Kellie Pali
Keaka Robinson
Christian Tackett, Vice Chair
Dale Thompson

Excused

Tina Gomes

Others

Michele McLean, Director, Department of Planning
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Jordan Molina, Deputy Director, Department of Public Works