

(Approved: 06/25/07)

**CULTURAL RESOURCES COMMISSION  
REGULAR MEETING  
APRIL 5, 2007**

**A. CALL TO ORDER**

The regular meeting of the Cultural Resources Commission (Commission) was called to order by Chairperson, Samuel Kalalau, III, at approximately 9:07 a.m., Thursday, April 5, 2007, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Mr. Samuel Kalalau: Good morning, Commissioners. Also, good morning to everyone in the -- in this room. Thank you for coming to our meeting. We're going to begin our meeting now. Will this Maui County Cultural Resources Commission, April 5, 2007, please come to order.

First of all, we're going to cover some agenda items first. Today is also the election day for the new chairman and vice-chair on this Cultural Resources Commission. So, Commissioners, we'll now open the floor for -- we'll start with the vice-chair first. Nominations are now open for vice-chair. Do I hear any nominations?

**B. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR THE 2007-2008 BOARD YEAR**

Ms. Nani Watanabe: I vote for Dorothy. I nominate Dorothy.

Mr. Kalalau: Okay, is there anymore nominations?

Mr. Keeaumoku Kapu: Second.

Mr. Kalalau: Okay, it has been moved and second. Discussion? No further discussions. Dorothy, you're the lone candidate. Thank you. Thank you for serving again.

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

**It has been nominated by Ms. Watanabe, seconded by Mr. Kapu, then unanimously**

**VOTED: that Commissioner Dorothy Pyle serve as Vice-Chair for the 2007-2008 year.**

Mr. Kalalau: Thank you, Dorothy. The floor is now open for Chair for the Maui County Cultural Resources Commission.

Ms. Dorothy Pyle: Well, I would like to nominate Sam Kalalau. He has done a great job for the last few years so thank you very much.

Mr. Kapu: Second.

Mr. Kalalau: It has been moved and second. Discussions?

Mr. Lon Welchel: Discussion.

Mr. Kalalau: Yes?

Mr. Welchel: I think that was a good choice.

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

**It has been nominated by Ms. Pyle, seconded by Mr. Kapu, then unanimously**

**VOTED: that Commission Samuel Kalalau, III, serve as Chair for the 2007-2008 year.**

Mr. Kalalau: Thank you, Commissioners. We gotta be ready for next year because 2008 I'll be finishing my last term. This is my last term, anyway, right here. Thank you very much. The next item is approval of our minutes. Do we have any comments, corrections?

**C. APPROVAL OF MINUTES OF THE FEBRUARY 1, 2007 AND MARCH 1, 2007 MEETINGS**

Ms. Pyle: I move we approve the minutes as submitted.

Mr. Welchel: Second.

Mr. Kalalau: It has been moved and second. Any discussions on the minutes? Dorothy, are you, in your motion, are you including the --

Ms. Pyle: Both, February and March.

Mr. Kalalau: Okay, thank you.

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

**It has been moved by Ms. Pyle, seconded by Mr. Whelchel, then unanimously**

**VOTED: to approve the February 1, 2007 and March 1, 2007 minutes as submitted.**

Mr. Kalalau: Motion carried. Okay, before we go to our first agenda item, is there anyone in the public that needs to testify on any agenda item because you have a time problem? We're going to open the floor for you to testify before we go into our agenda item. But if you do come up and speak, please state your name and what agenda item. And if you decide to come back later on when the agenda item comes up, if there's any line, you're going to have to wait in line and if you testify again, it's not going to be on the same material that you testified earlier. And, also, because we all live here on Maui and we gotta live together, let's be pono with each other when we come up here and testify. Thank you.

We also want to recognize one of our County Councilmember, Joanne Johnson.

Okay, the chair will now open the floor for those of you who have a time problem and can't be here for the agenda item that will be coming up. If you do come forward, please state your name and what item you're going to testify on. Okay, I see that we have none, our first agenda item is --

Mr. Stanley Solamillo read Item D.1.a. into the record.

**D. PERMIT REVIEW**

**1. HISTORIC DISTRICT APPLICATIONS -**

- a. **MS. PATTY NISHIYAMA on behalf of NA KUPUNA O MAUI requesting approval for the use of Banyan Tree Park, located at TMK (2) 4-6-001:009 in Historic District No. 1, Lahaina, Maui. The CRC may approve the request and provide recommendations. Public testimony will be accepted. (R. Loudermilk)**

Ms. Robyn Loudermilk: Good morning, Commissioners. Before you today we have a request, by Na Kupuna, to have their own Historic District Commission Approval for the He U'i Craft Fair. I'd like to note that there was no departmental report and, at this time, the department really does not have a recommendation. We need to do some fact-finding. What we have before you is a one-page letter requesting the Historic District Approval. In talking with Auntie Patty, she had indicated that some space would be provided with them

in the courthouse, which was news to Lahaina Restoration Foundation, as well as wanting to go back to original calendar established with the original approval.

Mr. Kalalau: Okay, is that letter that -- it's part of this packet here?

Ms. Loudermilk: Part of the packet was documents from the 1999 discussion regarding the issue and so the Historic District Commission Permit. The issues regarding the use of the Banyan Tree have not changed. Really, no. Really, it's just been thrown upon me, to be honest. Generally, the issues have to do with who has the uses, exclusive uses or not of the Banyan Tree. The sale of products in public. Apparently, if you're going to be selling in the Banyan Tree, sales transactions have to occur off-site. It's been in the courthouse either through Lahaina Town Action Committee with Na Kupuna, and the Lahaina Arts Society for their own events that they have. In contacting Lahaina Town Action Committee, they were not aware of this request at all.

So I think today would be really good to hear the mana`o from the people here and then for this department to go back and talk with the different stakeholders, identify any revised policies that may have emerged in 2004, and provide a recommendation by the June meeting. But I think the testimony that we have today will greatly help the department and this Commission to: one, revisit the issues; two, hear the reasons for the request; and, three, have this Commission advise the department how you want us to go in the future.

Though it's a simple request, it affects a lot of different issues relating to the Banyan Tree. First of all, we'd have to rescind the approval that was given to Lahaina Town Action Committee in 1999 because they were the ones that received the approval for Na Kapuna to hold the He U'i Craft Fairs and be the judges and jury to allow the crafter's in on their weekends. Two, Lahaina Restoration Foundation handles the main lease of the Lahaina Courthouse. There are two tenants. Unknown if there's provisions for subleasing or additional tenants to go in and whether the final decision is with Lahaina Restoration Foundation or with this body in consultation with Lahaina Restoration Foundation as we need to revisit the lease agreements. And then, thirdly, the issue of the health of the Banyan Tree has emerged again, and that will continue to be an issue and that will go back to Na Kapunu's request for the original calendar. I'm not too sure what the original calendar was. I do know that, as of 2004, some parameters were put in place with the Parks Department and we should seek their input to see if those parameters have been met. Though Parks Department does do the scheduling, in consultation with the Parks Department, the number of events and the uses are really governed by this body. And, lastly, I would just would like to have the Commission and the department have additional time to gather all the facts, in just associated with the request, and based upon that and the input from the affected members, be able to make a pono recommendation. At this time, I'm hearing stuff left and right; off the record, on the record. I'd like to have the opportunity for this to be filtered and for us to be re-reminded of the reasons for the events under the

Banyan Tree, the reasons for the policies and the rules that have emerged, and then have us be able to go forward.

So that pretty much concludes by remarks. We do have Ms. Patty Nishiyama and Na Kupuna here. So I'm available for any questions at this time or comments.

Mr. Kalalau: Questions, Commissioners? Okay.

Ms. Pyle: Robyn, the fact that this came upon you very suddenly right now makes it very difficult for you to give us any background, and we totally understand that. I'm still -- I'm totally confused. Is it that, correct me if I'm mistaken, but what I hear is that the kupuna group is unhappy with the current method by which all of this process, since 1999, has been done, and they are asking that the permit for the use of the Banyan Tree be removed from the Lahaina Town Action Committee and given to them.

Ms. Loudermilk: Actually, that's not even clear to me. All I have is the request is that they want to have their own Historic District Approval to run the He U'i Craft Fair.

Ms. Pyle: And that is in opposition to how it's being run currently?

Ms. Loudermilk: Currently, the approval to run the He U'i was given to Lahaina Town Action Committee on behalf --

Ms. Pyle: This is in '99?

Ms. Loudermilk: In '99 -- on behalf of Na Kupuna. Na Kupuna would be, for lack of a better term, the jurors of who would be included in the craft fairs when it's their weekend. The reason for the Lahaina -- my understanding is that the reason for the Lahaina Town Action Committee being the lead is that there can be no cash transactions under the Banyan Tree, and there are two entities in the courthouse that have space and can conduct the cash transactions. At that time, the Na Kupuna, along with the Lahaina Town Action Committee, the Action Committee had space, they would handle the cash transactions. That's my understanding of the permit. I have no --

Ms. Pyle: Further information.

Ms. Loudermilk: Further information. Thank you.

Ms. Pyle: Now, perhaps, and this is just for clarification --

Ms. Loudermilk: Sure.

Ms. Pyle: Everybody, because we all are, you know, 1999 was quite a long time ago for the members of this Commission to really remember what happened, the Na Kupuna have a special set aside times that they -- they may have their fair. It's not every weekend; it's not every holiday.

Ms. Loudermilk: Correct.

Ms. Pyle: So there are other groups that actually use the Banyan Tree also?

Ms. Loudermilk: Yes, there are two.

Ms. Pyle: And they also work through the Lahaina Town Action Committee?

Ms. Loudermilk: No.

Ms. Pyle: No. So they are not involved in any sales?

Ms. Loudermilk: That is not true.

Ms. Pyle: Where do they do their cash --

Ms. Loudermilk: The Lahaina Arts Society has had space there since 1976. They also have space --

Ms. Pyle: Space in the courthouse.

Ms. Loudermilk: In the courthouse so they do do the cash transactions. The other entity that does also hold events is the Lahaina Town Action Committee itself. They have a number of special events throughout -- throughout the year.

Ms. Pyle: Is it your understanding, in anyway, that part of the issue here is the actual time allowed for various groups to use the Banyan Tree?

Ms. Loudermilk: That may be one of several issues when, I believe, when Aunty Patty refer to establishing the original calendar and that the calendar has always been established by the CRC. My --

Ms. Pyle: The CRC didn't exist ...(inaudible)...

Ms. Loudermilk: No, no, from, I guess, from '99 till now, because prior to 1999, my understanding was that it was Lahaina Arts Society was the only entity that had approval for continuous events and that if they were going to be other events in Lahaina or Historic

District or Banyan Tree, the CRC would handle that on a case-by-case basis per event, and then it was within the 1999 approval that there was an addition of the He U`i Arts Craft Festival --

Ms. Pyle: On a regular basis.

Ms. Loudermilk: On a regular basis along with the Lahaina Arts Society. And that in 2004, there was further modification to the schedule based upon recommendations from the Arborist Committee that the Banyan Tree needed a rest, at least one weekend out of the month, and --

Ms. Pyle: So by reference to the original calendar, is that the reference back to 1999?

Ms. Loudermilk: I have no idea.

Ms. Pyle: Okay. Alright. So these are questions --

Ms. Loudermilk: These are all the questions, yeah.

Ms. Pyle: Thank you so much.

Ms. Loudermilk: Yeah.

Mr. Kalalau: Robyn, and from your point, you're pretty much asking for more time?

Ms. Loudermilk: Yes. Yes, but I would like to hear today's testimony. I think it would be very beneficial for all of us; one, as part of the fact finding, it's -- with the information I have before you, I could make a recommendation, that recommendation could be for denial, but I don't think that would be fair to anybody just because of the lack of information, and then I -- or I could also recommend approval but in that we'd have to re-agenda and say, well, we gotta get rid of the other administrative approval for Lahaina Town Action Committee, who was not Karee Carlucci folks who were not even aware that this request was in, so I would like to have the different players have equal opportunity and time to provide that, whether it's before you, before me, through formal consultation or letters, I think the use of the Banyan Tree really does warrant the additional time to make sure that this Commission is comfortable with the facts associated with this particular item and have the information necessary to make a decision that they feel is pono for everybody involved.

Mr. Kalalau: Okay, Kalei?

Mr. Kalei Moikeha: So, Robyn, are you saying that the CRC, I wanna just make sure I heard correctly --

Ms. Loudermilk: Yeah.

Mr. Moikeha: That we set the schedule?

Ms. Loudermilk: That is what I had been told by the Parks Department.

Mr. Moikeha: So the Parks Department gives out the permit -- I mean they control it though, right?

Ms. Loudermilk: No, they would say no. No, no, no, I mean this is part of the issues. What the Parks Department would say is that uses -- uses get approved by this body.

Mr. Moikeha: Okay.

Ms. Loudermilk: And for the Banyan Tree, in consultation with the Parks Department, a schedule of days or uses are provided to them but the Parks Department is the ones who actually work with the various entities for them to get plugged in. So in talking with Parks Department, they would -- they have told me flat out, so I'd like to get it in a letter, they have no control over the Banyan Tree and the issuance of who gets to use it. Who gets to use it is under the purview of the CRC and Parks is just an administrator to ensure the scheduling. So, you know, that would be something to get clarified as well. Yeah.

Mr. Kalalau: Okay, Keeaumoku.

Mr. Kapu: Yeah, I like know who controls the lease for the Banyan Tree now?

Ms. Loudermilk: That is unclear. My understanding that it may be the Lahaina Restoration Foundation but, in house, we don't have a copy of the lease.

Mr. Kapu: Oh.

Ms. Loudermilk: Yeah, I just -- you know, so that's just what the department is dealing with. Based upon information found, originally Lahaina Restoration Foundation was to have control of both of the courthouse and the Banyan Tree. But, again, I can't answer that question for you today, and I apologize, but that's part of the dilemma that the department is facing at this point in time.

Mr. Kapu: Okay, Dorothy.

Ms. Pyle: It just has -- it just has been my past experience from my first go-around on the CRC that what you have stated is how things have operated. There has been many, many discussions, many, many different changes in who gets to use the space under the Banyan

Tree at what times. And for a long time, in the 1990's, it was very, very contentious because there were varying groups that wanted to have the time, then people would come for permits, and then there would be others saying you can't have it, we have it. There was lots of things going back and forth. I believe, I was not on the CRC in 1999, but I believe that that was an attempt to try to settle who is in charge, who -- and it was a group effort to come together to try to get everyone to work together and, seemingly, it has worked for a while and now, for whatever reason that we're not quite clear about, there seems to be something wrong.

Ms. Loudermilk: That would be an accurate assessment.

Mr. Kalalau: Okay, anymore questions for Robyn?

Mr. Perry Artates: Not any questions, but, you know, this document here it was dated 1999, doesn't it kind of explain that every -- they should have a fair share of days and times and holidays?

Ms. Pyle: You're right.

Mr. Artates: I mean with -- with the bodies that like such as the Fine Arts and Crafts ...(inaudible)...

Ms. Loudermilk: Again, that may come back to what is meant by original calendar and scheduling, who, though the CRC has the calendar and the days, how does that actually get worked out in light of special events that this body also approves at the Banyan Tree, that could cut into the -- the number of days that the other entities -- and I don't think we're saying that other entities cannot be allowed to use the Banyan Tree in of itself, that I think it's not exclusive to Lahaina Town Action Committee or to the Lahaina Arts Society; it's more in the details with how operations occur in the Historic District, how they have historically have occurred under the Banyan Tree, and one of the main issues is cash sales. Cash sales cannot occur under the Banyan Tree. It only occurred under a very unusual circumstance when the courthouse was being renovated. Other than that, should there be other locations for the transactions to take place, I think this body can consider other permittees; however, it is within the 25-day calendar in lieu of other approvals already given, and I think those are the finer details that -- that really need to be worked out to be written down, black and white, everybody, all the parties can see it and agree that these are the facts associated with where we're at now. So, yeah, I just wanna -- the calendar, yeah, it may go back to the term "the calendar." And, in terms of the discussions, I don't think there was any intent to prohibit potential other users. It would just have to be within the guidelines that had already been established; no cash transactions under the Banyan Tree, it needs to occur within the x-number of calendar days that the CRC has previously approved. And if -- and until the department and body is provided with information to clarify

how has that been working, then I think that could help us to formulate proposed solutions, you know, what's working now, what's not; what needs to be tweaked; what is the pleasure of this particular Commission with the -- with the stakeholders that are involved.

Mr. Artates: So, Robyn, do you feel that -- that this other stakeholders was not aware of this meeting today?

Ms. Loudermilk: They -- I had called last week and, after the agenda came out, they were not aware. Lahaina Town Action Committee was not aware, or at least the executive director. Lahaina Arts Society, the gallery manager and the president was not aware. Lahaina Restoration was aware that a request may be coming in. They had -- they're only concerns was that, well, if they're going to have -- if Lahaina Arts Society is going to give them space in the courthouse, that changes the lease agreement and whether that can be done or not, and what is meant by providing space for Na Kapuna in the courthouse. And then Parks Department, oh, again, okay, and Arborist Committee, they were not aware, the different -- now that doesn't mean that maybe other members of their organization may not have been ma`a to this, but I did the courtesy calls to the executive directors and the Parks people and they were not aware that a formal request had been made and would be put on this agenda.

Mr. Artates: So I think so, Mr. Chair, we should entertain the public testimony to follow-up on what is the bodies here representing.

Mr. Kalalau: Okay. Do you guys have any questions for Robyn?

Mr. Kapu: I get one more question. I like know where Na Kupuna, basically, is at at this moment. Are they still part of the Banyan Tree with Lahaina Town Action Committee?

Ms. Loudermilk: I do not know. Maybe that's a question we can ask them today.

Mr. Kalalau: Okay, if no further questions, Stan, you got anything to say? Okay, if not, we'll now open the floor for public testimony and, on the agenda, I guess, Patty Nishiyama, you're the applicant. Will you please come forward.

Ms. Patty Nishiyama: Aloha. Aloha kakahiaka. Aloha, Cultural Resources Commissioners. My name is Patricia Nishiyama, aka Aunty Patty Nishiyama. I'm an kako`o to Na Kupuna O Maui and also a kupuna.

Na Kupuna O Maui was first originated 12 years ago under the leadership of Dennis "Bumpy" Kanahale. Many has passed on but many has taken their place. I also represent Na Kupuna by being on the advisory board of Kaanapali 2020, Wainee Development, North Beach Advisory Council, and also sit as a representative member of Na Kupuna O Maui

to the Native Hawaiian Legal Corporation, and advisory counsel to OHA Trustee Boyd Mossman, and many more representing our kupuna.

In the early spring of 1999, this is how this whole thing came about as how it originated to become He U'i Cultural Arts and Crafts. I saw -- we came off the boat from Molokai and we walked through the Banyan Tree and there was Lahaina Arts Society. Theo Morrison was walking around and then I saw her and I asked her, "Oh, how can we, Na Kupuna O Maui, have Hawaiian arts festival under the Banyan Tree?" And so Theo said that she would gladly help us. Yes, Lahaina Town Action can help you hold the Hawaiian arts festival under the Banyan Tree. Several meetings with Theo, followed-up in details, a partnership were worked out. It was decided that Lahaina Action Committee would cover all administration -- administrative duties, such as cashiering, insurance, accounting, permits, and so on, Na Kupuna's musician, planning special events, and overall coordination of the outdoor site. A percentage was given, 12 percent went to Lahaina Town Action, 7 percent -- seven-and-a-half percent went to Na Kupuna O Maui.

In order to hold this cultural arts festival, a permit was needed from the County of Maui Cultural Resources Commission, and Lahaina Arts Society was the only one there that had the permit. So we came before you in 1999, the Cultural Resources Commission, and we asked the Commission to let us be a part -- let us do our promotion and present our culture under the Banyan Tree to perpetuate our culture also. We had a hard time, of course, because the merchants was not very happy. Lahaina Arts Society was not very happy also. But we did mend it and we became -- and then we worked together. But knowingly that Theo was to take care of our administration activities, like cashiering and paying for everything, so that's why she had that 12 percent, and then the other percentage went to our Hawaiian Language until -- and we supported the Hawaiian language in West Maui. And, also, because there was so much hakaka going on, we did not help put our monies, the percentage, into the parent's checking account. We kupuna decided to pay for everything upright to the kumu's or to the school. So we -- that's how we took care of matters for our Hawaiian language. And also our monies went to help for the hula halau's. Whatever monies we had, we helped the homeless, from Waihee to the harbor. We did a lot for our community. And we also helped the -- we have also a health plan for the kupuna that we also help.

So when we first started this He U'i under the Banyan Tree, we had 65 events. Today, we were down -- we are down to 40. So that was huge cut from 1999 to 2007. So whatever percentage we had, we would -- we accommodated as much as we could to help.

So there was a -- there was a Hawaiian group that was there and during the -- for like about six months or so, and they occupied the Banyan Tree, and so they occupied the Banyan Tree and just, you know, it wasn't right that this Hawaiian group could take cash and everything, and we talked about it among ourselves and Lahaina Town Action was

supposed to take care of that problem but they -- it seems like it never -- it was never taken cared because every month they were still there, you know, doing illegal things, but to them it's legal, you know, and that's how they assert their rights, but the thing is that we asked Lahaina Town Action, that's Karee, the new administrator, what has been done to take care of this problem? She says, "Oh, it seems like nothing is being taken cared of because Parks has never -- the policemen come down, and they just talk story, and they leave it alone, and they leave." So but Karee Carlucci, she's the administrator, says that, well, aunty, I guess we need to take a stand on our own, so how about bringing 40 vendors forward, because actually 25 is the limit of vendors, yeah. She says, "Forty, bring in 40." So I went to the kupuna and I told them that Karee says to bring 40 to the next He U'i event under the Banyan Tree, and so but the kupuna says, "How about if we go all the way and do cash like how the other Hawaiian group does?" So that's how it all started.

So when we did that, we had the policemen on our heads. They came and harassed us and everything. And, you know, and that was it. Next thing you know it, I had a letter saying you are terminated from the Banyan Tree.

So -- and here we are today coming before you to ask to be on our own, which was rightfully ours since 1999. That was our event. And more so, in fact, I went to Karee to ask her if we could be on our own because we have plans, we have given a lease for the Pioneer Mill office and so, from that time in my office, we have plans for a preschool for Punanaleo -- not Punanaleo, but Hawaiian Language Preschool that is in the making right now in the Pioneer Mill office. And so when I went to her to ask her if we could be on our own, she said, "No. I will fight you because I need your percentage." So I just let it be, you know. And I walked away. And so but, in the meantime, I went around asking everybody, telling all the key people, Joanne Johnson, Keoki Freeland, many of them, McKalvey, who created Lahaina Town Action, Mrs. McKalvey, that we wanted to be on our own and if they could support us, and they all said yes. But when I went to the executive, she said no because she needs our percentage.

So, anyway, this is how it all started and that's why we were terminated from the Banyan Tree. And that's it.

Mr. Kalalau: Okay, thank you.

Ms. Nishiyama: And here we are wanting it back because we need to take care of our business.

Mr. Kalalau: Okay, thank you, Aunty Patty. Commissioners, questions? Okay, Dorothy.

Ms. Pyle: I just have some just kind of little pieces of information. When you say that you were terminated, who terminated you?

Ms. Nishiyama: Lahaina Town Action.

Ms. Pyle: Okay, so that is not the County that has done that?

Ms. Nishiyama: No.

Ms. Pyle: It has not come from the Planning Department or anything --

Ms. Nishiyama: No.

Ms. Pyle: Or the Parks Department? Okay.

Ms. Nishiyama: No. In fact, the Parks Department recommended me to come to you.

Ms. Pyle: Makes sense.

Ms. Nishiyama: To make -- to go back under the Banyan Tree.

Ms. Pyle: Why, from 1999, when you say that you had 65 events in 1999, why did it go down to 40?

Ms. Nishiyama: Because, eventually, Lahaina Town Action has been, you know, my father would put it, cockroach, but the Hawaiian's would say, "aihue."

Ms. Pyle: So there were other conflicting events that wanted ...(inaudible)...

Ms. Nishiyama: There were but then we, with Theo Morrison, we worked things out, you see. So we did work things out even though my vendors felt that they weren't under the tree, they came to us, but because they were there as our vendor to perpetuate our culture, it didn't matter to us which group they were with just as long as our culture has been promoted.

Ms. Pyle: Right. I understand.

Ms. Nishiyama: Yeah.

Ms. Pyle: Did the decline from 65 to 40 perhaps have something to do with the Arborist Committee recommending --

Ms. Nishiyama: Yes, two days a week that --

Ms. Pyle: That there needed to be a little less ...(inaudible)...

Ms. Nishiyama: Yes.

Ms. Pyle: So that had an impact also?

Ms. Nishiyama: Ahuh.

Ms. Pyle: Okay. One last question. You mentioned that there was another Hawaiian group that would come only on the weekends that you were there?

Ms. Nishiyama: No, the weekends that the tree was the day of rest that the Parks has closed it down.

Ms. Pyle: They would only come then?

Ms. Nishiyama: On the --

Ms. Pyle: So they really were not necessarily conflicting with your weekends?

Ms. Nishiyama: No, they weren't conflicting with our weekends but the way it was done, it was not maika`i.

Ms. Pyle: And they did not have a permit?

Ms. Nishiyama: No.

Ms. Pyle: Thank you. That clarifies lots of things for me, thank you.

Ms. Nishiyama: Yes.

Mr. Kalalau: Anymore questions? You know, just reading some of the applications from the I guess this is the Lahaina Town Action Committee, and just listening to what you said about the police coming and it seems like the committee was upset or the foundation was upset so they kicked you guys out from under their umbrella. Are you guys a nonprofit organization?

Ms. Nishiyama: Yes, we are. Aloha First, a 501(c)(3).

Mr. Kalalau: Okay. Anymore questions?

Mr. Kapu: Yeah. Yeah, I get one question. So, basically, your reactions responded on the fact that there was this other association, a Hawaiian group that were there selling under

the Banyan Tree? Was -- did they fall under an umbrella, possibly, the Lahaina Town Action Committee or maybe somebody else?

Ms. Nishiyama: No. No one. They were on their own asserting their rights.

Mr. Kapu: Can I have maybe little bit clarity as pertaining to what, basically, stirred this for you with Lahaina Town Action Committee to create this? I guess because you mentioned actually going down there with 40 vendors and creating sort of like a, I don't know, an uprising or protest.

Ms. Nishiyama: It was a protest. Yes, it was. It was a protest because the other Hawaiian group wasn't pono what they were doing under the Banyan Tree. I mean I love our people, I love our Hawaiian people, but when they do things that reflects Na Kupuna in our district, that is not pono. Bad reflections is not pono. And that's why we took it upon ourself because the Parks and Recreation did not do anything, see.

Mr. Kapu: Who is responsible of regulating the Banyan Tree area in despite of the Parks' enforcement? Is there somebody that regulates what happens under the Banyan Tree besides the County because, apparently, somebody else has control of the lease?

Ms. Nishiyama: I think Keoki supposed to be the lease owner of the -- Keoki Freeland from Lahaina Restoration because I went to him, and I called him, and I talked to him about having a space in the courthouse and he says as long as you have your paperwork together, we will -- and you have your 501(c)(3), and you have your insurance and everything all ready to go, we will find you a space in there because I wanted to use one of the rooms that is a storeroom that is used by Lahaina Town Action. I didn't ask for monthly, everyday use. I asked for just the weekends that we would be under the tree, and that would be like maybe three times a month and sometimes two times a month because before we used to have the third and the fourth weekend of the month, now we have two times a month or once a month, you know. And then Keoki says, "Well, we do have another space might be coming up by Lahaina Arts Society underneath the basement," that's the jail, okay. So if they give it up, then we can go there. I said, "Okay, fine." But Lahaina Arts Society came to us in a meeting and said that they will help us so we can get back into business by giving us a space in their gallery to run our business. But, now, that president resigned so we're, you know, nowhere right now with Lahaina Arts Society. But there is room in that area that we could utilize and that is the storage, it's actually a meeting room, but Lahaina Town Action uses it for storage.

Mr. Kapu: Okay, I guess I probably going repeat myself in the question that I asked earlier.

Ms. Nishiyama: Okay.

Mr. Kapu: When you are in operation under the Banyan Tree, does Lahaina Town Action Committee basically -- is there a condition that has to do with He U`i Festivals a part of Lahaina Town Action Committee to accommodate He U`i or Na Kupuna? Do they accommodate with you -- accommodate you with the payment in --

Ms. Nishiyama: The 12 percent that we give them, they pay for everything that is supposed to be under He U`i Na Kupuna O Maui.

Mr. Kapu: Okay. Okay, so now let me get back to the Hawaiian group because there's a condition that was set under the Banyan Tree based upon what could be done under that Banyan Tree and all sales have to be not under the Banyan Tree but, apparently, you were saying that this group came in and was basically collecting money under the Banyan Tree, yeah?

Ms. Nishiyama: Yes, they were.

Mr. Kapu: They're collecting money under the Banyan Tree so where did the permission come from? Did they just set up?

Ms. Nishiyama: They just set up. I guess they went to -- they made their -- they probably made their -- you know, if you go occupy, I guess you just go over there and serve your papers, your Hawaiian papers and say, "Here it is. We're going to go and occupy." I mean that's how they do, yeah?

Mr. Kapu: And you mentioned something about the Maui Police Department?

Ms. Nishiyama: That Karee -- the last enforcement that I asked Karee what happened when the police department was there, she said all they did was come and talk with them and left.

Mr. Kapu: Was there any follow-up report that went, basically, maybe the County went -- Police Department went to the County for some kind of follow-up on the jurisdiction?

Ms. Nishiyama: I don't know. All I know, they came after us when we did it. They exploited us, the kupuna's, to show them an example because right after that they sent a letter to cease and desist, that's what the County said to us, Parks.

Mr. Kapu: Okay, mahalo, aunty.

Mr. Kalalau: Question, Kalei?

Mr. Moikeha: Mr. Chair, just point of clarification. I think I'm just trying to understand who has jurisdiction. When I listen to the things that have been said, and then even Keeaumoku brought up about who has the lease and things like that, the question I got is if we are in charge of scheduling and calendaring, they gotta come to us. I mean they gotta come to us, whoever goes there. So, to me, the question is it seems like the Parks has relinquished that to the CRC, you know, saying you guys go see the CRC. It seems like do we have jurisdiction? I mean she's probably coming to the right bodies, but I'm asking does the Lahaina Town Action Committee have it? Who has it? I mean even the Lahaina Town Action Committee, apparently, gotta come to us to schedule any event. It seems that way. And if that is correct, then she's at the right body and we have -- we can say you can or cannot, I guess. We going schedule.

Mr. Kalalau: Okay, Dorothy?

Ms. Pyle: You're right and -- right about a lot of things, but the issue that I think is really driving this is that there is a particular group of Hawaiians that have decided that they don't need to follow the rules, and their understanding is that because of their position, the rules that the County makes, whether they're from the CRC, the Parks Department, or from the Police Department, don't apply to them. And so the kupuna and Lahaina Town Action Committee, it appears to me, have tried very hard for the last eight years to work together in spite of the fact that the days have declined because they're giving the tree a rest and that they have been, essentially, and I use this word understanding what you'll all think, invaded by a group that doesn't follow the rules. And so for the kupuna, they now are finding that they've asked the Lahaina Town Action Committee to help them; they've asked the Lahaina Town Action Committee to try to solve this problem. The Lahaina Town Action Committee, for whatever reasons, hasn't been able to solve this problem because they are dealing with an entity that doesn't follow the rules.

Mr. Moikeha: But the clarification I got from Aunty Patty, it seems like she said they were terminated. It's nothing to do with the Hawaiian group. She's saying that they were terminated. My point is who terminated them and who has the right to terminate them?

Ms. Pyle: The reason that they were terminated was because they broke the -- the lease.

Mr. Kapu: Under the umbrella. Under the umbrella.

Ms. Pyle: Not the lease, they broke the rules that they are supposed to abide by --

Mr. Moikeha: Because they were selling?

Ms. Pyle: Because they were selling.

Mr. Moikeha: But why -- who gives them the right to terminate their lease, is what I'm saying. If they gotta come to the CRC --

Ms. Pyle: The Lahaina Town Action Committee has the permission from us.

Mr. Moikeha: That's what I'm asking, the jurisdiction.

Ms. Pyle: They have the permission from the CRC --

Mr. Moikeha: Okay.

Ms. Pyle: To schedule the events. Consequently, the kupuna and Lahaina Town Action Committee and the Lahaina Arts Society worked together to schedule the dates.

Mr. Moikeha: Okay.

Ms. Pyle: So it's kind of like perhaps the Lahaina Restoration Foundation has the lease on the land but the actual control of the days is in the -- has been, according to this 1999 paper, in the hands of the Lahaina Town Action Committee. So they have said cause they broke the rules, they can't do it anymore.

Mr. Moikeha: If I'm understanding correctly what Aunty Patty is asking, you want back in?

Ms. Nishiyama: Yes.

Mr. Moikeha: Okay.

Mr. Kalalau: She wants back in under their own instead of under the Lahaina umbrella.

Ms. Pyle: But that does not resolve the issue of the non-compliance group of people coming back over and over again.

Mr. Moikeha: But I don't think that's the issue. The issue is we gotta get her back in.

Ms. Pyle: Well, there's several issues.

Mr. Moikeha: Yeah, we'll take care of that issue, but I think we gotta take care of this right now.

Mr. Kalalau: Okay, we have -- if we can wrap it up with Aunty Patty and then if you got more, we'll call you back up, okay?

Ms. Pyle: Thanks.

Mr. Kalalau: Thank you. Our next speaker is Purdy Silva. Olivia? Okay. I bypassed your first name.

Ms. Silva: Aloha kakahiaka to all the Commissioners. I am here to read a testimony written by Jay Kuulei Aloha Palakiko.

To whom it may concern:

This letter is a letter in support for the Na Kupuna O Maui organization. A group dedicated to the preservation and perpetuation of the Hawaiian culture and language and its uniqueness, especially in the Malu o Lele Lahaina. I have come to know their desire to help this preservation and perpetuation as I was previously a teacher at Kula Kaiapuni ma -- I'm sorry, kinda got twisted -- Nahienaena in upper Lahaina for two years. Kula Kaiapuni ma Nahienaena is the Hawaiian Language Immersion School. This type of school is dedicated to education, educating the children of Hawaii, not only to the median of Hawaiian language, but also it's dedicated to teaching concepts including modern ones through a Hawaiian perspective. The Kula Kaiapuni ma Nahienaena it teaches strong deliveries in the idea of keeping the culture alive through the keiki o ka `aina, children of the land. It is important that we instill a sense of pride of belonging and awareness of who we are and instill these important concepts in the education of these children.

Na Kupuna O Maui has helped in this effort as they have been often donators of money and/or supplies to the school. Much of the money was acquired by Na Kupuna O Maui was done so under the Banyan Tree. They have always been willing to provide and their help was still truly appreciated.

For this reason, I support the return of this kupuna group to the Banyan Tree where they will continue to raise funds in order to continue to help our children. In old Hawaii, taking care of children extended far beyond the mother and father of the child. Many times, the kupuna or grandparents of the child took upon them the kuleana or the responsibility to help provide. This idea has not changed through the passing of time. For this kupuna group, they do take upon themselves the kuleana to continue helping to provide for our keiki's. Please help them to continue to do so. It is with great hope that you consider this letter of support in making any further discussion as related to Na Kupuna O Maui. Please allow them to continue in order that

our keiki may have all the opportunities and provisions to succeed. Aloha mai.

Mr. Kalalau: Any questions anybody? Thank you. Our next is Robin Richie.

Ms. Robin Ritchie: Hi. Good morning. My name is Robin Richie. I was the head cashier in the courthouse retail visitors center for three years. I worked for Lahaina Town Action Committee, and I was there on craft fair weekends, and I was usually the only manager on duty. Part of the reason Lahaina Town Action Committee was very willing to act as cashier was their retail sales in the visitors center would double on those event days. Some craft fair events had permits and were able to collect funds outside not using the courthouse; some of those events were run by Aloha Festivals. At times, Aloha Festivals would ask for our services and pay a percentage to Lahaina Town Action Committee for acting as cashiers and balancing all the funds and credit cards.

Lahaina Restoration maintained the Banyan Tree Park during the maintenance, the cleaning, the leave removal everyday, you know, the garbage. Lahaina Restoration Foundation also maintained and rented out the courthouse building. When I was there, they did have a empty room available for meetings and it was called the community relations room and that was available to organizations or people that needed it for a meeting place at no charge.

The -- my understanding, when we were having the events, was that the Parks Department monitored the event under the tree. They would -- they had the ability to check for food permits to make sure that the vendors, if there was food, had secured the permits. They also counted and confirmed the number of vendors because when Lahaina Town Action or Lahaina Arts Society would apply to the CRC, part of their parameters were you are only allowed 40 vendors, or, at this event, we're allowing you to have 80 vendors. So the Parks Department was the one who could show up on the weekend and check the number of vendors and make sure that they were not over their approved number.

Lahaina Town Action Committee severed their relations with Na Kupuna, in writing, on February 11 of this year, and I have seen the letter. Lahaina Town Action Committee are still advertising their link with Na Kupuna. I have printed handouts for the CRC that, right up till two days ago or actually last night, they still have Na Kupuna listed on their website as being linked to them.

I have to go to the bathroom, but if you -- if you have any questions, I'm very, very happy to answer them right now.

Mr. Kalalau: Okay, you know what we're going to do, we're going to take a short break and reconvene in maybe three minutes, four minutes -- four minutes, let's make it four minutes.

Ms. Ritchie: Perfect. Okay, and would you like the handouts now so that you can see --

Mr. Kalalau: Okay, up to you.

Ms. Ritchie: Okay, great.

*(A recess was called at 10:11 a.m., and the meeting was reconvened at 10:18 a.m.)*

Mr. Kalalau: Okay, just for the public information, the next three speakers will be William Waiolu, Joanne Johnson, Dennis Kanahale, and Nelson Armitage, okay, in that order. We'll also like, because we get a whole bunch of people testifying up here, we'll give you four minutes and if you have more to say, you can come up at the end when we go through everybody. Okay, so the next speaker will be William.

Mr. Kapu: E kala mai, Mr. Chair.

Mr. Kalalau: Yes?

Mr. Kapu: I would like to have an opportunity to question the last one that was up here before.

Mr. Kalalau: Oh, okay, Robin Ritchie?

Ms. Ritchie: Any questions?

Mr. Kapu: Yeah. I'm trying to recap in my mind, based upon the things that you had mentioned earlier before the bathroom break, and one of those items talked about you were the manager and the cashier at the time for Lahaina Town Action Committee?

Ms. Ritchie: Yes, for three years.

Mr. Kapu: Okay. What did you mean by the doubling up on sales in there based upon having all these other craft vendors in there?

Ms. Ritchie: One of the advantages to Lahaina Town Action for being the administrator of an event was they run a, and they still run, a Lahaina Visitors Center and within the visitors center, there is retail merchandise, and during the days when there was an event, because the customers had to come into the courthouse and into the visitors center to pay for their craft fair items, it was more exposure for the retail portion of the visitors center. So on a day when there was a craft fair, the personal sales just for the visitors center merchandise would double. So it increased the income for Lahaina Town Action Committee.

Mr. Kapu: So does Lahaina Town Action Committee also have a -- like a store inside the courthouse besides their office?

Ms. Ritchie: Yeah, they have a retail store on the main floor in the visitors center and a retail store also upstairs attached to the museum, plus they have a website with a retail.

Mr. Kapu: Would you know, in your capacity, of an agreement or a lease that you had?

Ms. Ritchie: For that the lease would have been negotiated with Lahaina Restoration Foundation and it's still in place.

Mr. Kapu: So you're like subleasing for that?

Ms. Ritchie: Lahaina Town Action Committee leased from Lahaina Restoration and I was an employee of Lahaina Town Action Committee.

Mr. Kapu: Okay, for now.

Mr. Kalalau: Okay, Kalei?

Mr. Moikeha: So when a transaction is made under the Banyan Tree, so the person buys -- I mean they pick up something, what do they do? They have -- walking through that, they have something that says they're going to buy this, they walk to you, and then they come back and pick up?

Ms. Ritchie: Right, the vendors outside were instructed, for most events, that they were not to collect their own payment. Some events they did -- were permitted to collect their funds. But when I was cashiering, it would be an event where they needed a cashier located within the courthouse to comply with the permit. So if you wanted to buy this pen, you were told: Here's your receipt. Please go inside to the courthouse to the visitors center or to the museum store and you can pay them for the item. When you come back outside with your receipt stamped as paid, then we hand you the item. The artist would hand out the item.

Mr. Moikeha: So you said some events but none of the Na Kupuna events were they allowed to accept cash?

Ms. Ritchie: Right.

Mr. Moikeha: You said -- but you did say some events, but it wasn't them, per se, or certain events was?

Ms. Ritchie: Right. The application was explained to me that the affiliation for Lahaina Town Action to be able to get a permit was that they needed like a -- almost like a co-sponsor or that it would probably be granted a permit if they were affiliated with a Hawaiian group, so they chose Na Kupuna and came forward to the CRC to apply for a permit application for a craft fair as co- -- what would you say?

Mr. Moikeha: Co-sponsor, like --

Ms. Ritchie: Co-sponsored a commitment of Lahaina Town Action Committee with Na Kupuna.

Mr. Moikeha: And some of those events they were able to collect under the tree or not ...(inaudible)...

Ms. Ritchie: No, the only event I saw when I was there, which was three years, that had a permit to handle their own cash was one of the Aloha Festivals with their craft fair.

Mr. Moikeha: Okay.

Ms. Ritchie: And then it did evolve where, when I was there, the Aloha Festivals chose to hire Lahaina Town Action Committee to use me, my staff, as the cashiers and the office did the administration.

Mr. Moikeha: And so that twelve-and-a-half percent you folks would receive, what exactly did you folks use it for?

Ms. Ritchie: I don't know the percentages. In fact, they were actually verbally presented to me incorrectly. I thought that the profits from each craft fair weekend went half-half, which half to Lahaina Town Action Committee, who I worked for, and half to Na Kupuna. It ends up that isn't how it turned out. No, but verbally that's what it was told to me by my boss at that time.

Mr. Moikeha: So Lahaina Town Action Committee, just a point of clarification also then, what do you folks use your money for?

Ms. Ritchie: I -- their mission statement, I think I printed it out maybe, but Lahaina Town Action Committee, when I worked for them, they did community events, that was their focus, and then they would apply for grants for specific maybe historical labeling, they would get a special grant for greeting the cruise ships, anything specific they had people in place that were professionals at writing for grants.

Mr. Moikeha: Okay.

Ms. Ritchie: And then, like the visitors center, when I left, their retail sales were \$475,000, and so the profits from that went back into Lahaina Town Action Committee.

Mr. Moikeha: Okay, I'm not sure if you are the person that could even answer this either but --

Ms. Ritchie: Maybe not.

Mr. Moikeha: If you folks did so well with them, I don't know why -- why couldn't you guys just talk to them and say you need to cease and desist collecting money under there and just continue?

Ms. Ritchie: I --

Mr. Moikeha: I mean I -- I guess you're not the person --

Ms. Ritchie: I've been -- I have not been an employee for Lahaina Town Action Committee for a couple of years so I'm not the one on that.

Mr. Moikeha: Okay.

Ms. Ritchie: Yeah, other than I did read that current letter of February 11 where Lahaina Town Action severed their relationship with Na Kupuna.

Mr. Moikeha: So just in your humble opinion then, having served there and worked there, it would have been a great idea though, right, to keep them? You guys made --

Ms. Ritchie: Absolutely.

Mr. Moikeha: Oh, okay.

Ms. Ritchie: Because I think that a lot of Lahaina Town Action's approval for the event was the fact that they had affiliated with Na Kupuna.

Mr. Moikeha: Thank you.

Ms. Ritchie: Yeah.

Mr. Kalalau: Okay, Nani?

Ms. Watanabe: Hi. I'm Nani. So the 12 percent is determined upon the total sales made by the Na Kupuna when they had their craft fairs, or any vendor?

Ms. Ritchie: When I was there, the way that it worked was they would get the permit, and let's say they were approved for 40 vendors.

Ms. Watanabe: Okay.

Ms. Ritchie: The 40 vendors, at the end of the day, we would have all the receipts for each vendor, and the vendor's rent was 20 percent of their sales, so the 20 percent was then divided between Lahaina Town Action Committee and Na Kupuna. The percents I was told wasn't accurate. So you'd have to, I don't know if that matters, but you'd have to see it in writing, but the sales, average sales, maybe 18,000 to 20,000 in a day, and the events were usually two days, so 20 percent of that would become rent, which is income, and then less expenses, whatever they may be. You'd have to ask -- what does that equal? That equals what, maybe almost 8 to 10,000 per weekend of rent, and then you'd have to ask Aunty Patty how much of that she received. She'd be able to confirm because she would be the one getting the check cause the checks were made out to I think it was Hawaii First, which is Aunty Patty's group.

Ms. Watanabe: Mahalo.

Mr. Kapu: Okay, last question. So you mentioned rent, which means do they set up the Banyan Tree for the crafters? Lahaina Town Action Committee set up the venue and also provide the services for payment inside the courthouse?

Ms. Ritchie: You'd have to reconfirm it with Aunty Patty because, you know, basically I was inside with the cashier part, but there was, usually at craft fairs, the crafter's bring their own tables, their own umbrellas, following the guidelines, written guidelines. But, at the events, there was usually a small stage and music and, again, Aunty Patty being the only one here from the event, she'd be able to tell who organized that.

Mr. Kalalau: Okay, thank you. Our next speaker, William, followed by Joanne Johnson and Dennis Kanahele.

Mr. William Waiohu: Aloha kakou. (*The majority of Mr. Waiohu's testimony was given in the Hawaiian language.*) . . . I live at Lahaina long time. Today I'm 65 years old. Being with Na Kupuna from 1993 till now. You know, get plenty pilikia. . . . You cannot kick us guys out because we never make anything wrong. We was with Lahaina Town Action, that was maika'i when Theo time. . . . That's why I give the meaning so you guys have the meaning. You guys can read all that. I don't have to explain about that. But only thing I kinda huhu . . . That's why today I come I speak my language and try to translate that in English because many times I come here, I speak my language, the chairperson come up: Eh, Willie, I no can use your testimony because you talk Hawaiian. Like you guys get a lot of Hawaiian over here, you guys know what I talking about. . . . Do this to the Na Kupuna O Maui. If not for us, where are they? They no more nothing because of us, the Na Kupuna. Aloha no.

Mr. Kalalau: Mahalo. Anybody, questions for William? Okay, no more questions. Mahalo. Joanne Johnson.

Ms. Joanne Johnson: Aloha. Thank you so much for hearing Na Kupuna and listening to the issues. My name is Joanne Johnson. I'll be testifying on my own behalf today. I'm just going to read the first part of my testimony but if you have any questions, I know about the lease, I know about many of the things going on because I was the former Parks Committee Chair and I was here at that first meeting, so I know the issue historically, institutionally, whether that's good or bad, I just know the history.

Dear Commission Chair and Members:

I wish to support the application that's been submitted by Na Kupuna O Maui for their He U'i Hawaiian Cultural Arts and Crafts events under the Lahaina Banyan Tree. Na Kupuna O Maui was asked to submit their application by the Maui County Parks Department and, therefore, they are forwarding their request to you for consideration.

My reasons for supporting this application are as follows:

I was present at the original hearing when the permit was first issued to Lahaina Town Action Committee and they were acting solely at the request or invitation of Na Kupuna O Maui;

2. The applicant, Na Kupuna O Maui, under Aloha First, is a 501(c)(3) so, therefore, that is what's permissible under County rules for nonprofits;
3. Na Kupuna O Maui conceived and created the He U'i event and it was actually the late Aunty Pua Lindsey who named the event;
4. Na Kupuna O Maui is in the process of restoring the historic Pioneer Mill Building and by having the application in their name, they will be better able to direct their funds toward this worthy project and the programs it will eventually house;
5. The Lahaina Town Action Committee advised that they would no longer be working with Na Kupuna O Maui, and this was in the letter that was referred to by Ms. Ritchie, and, therefore, left the organization, Na Kupuna, with no choice but to seek its own permit;
6. Na Kupuna O Maui is a native Hawaiian group and, as such, has rights that apply to ceded lands and access to those lands, which should be respected;
7. Na Kupuna O Maui should also be allowed a small space in the building as a courtesy so that they can collect monies inside the courthouse to be in compliance with County Park rules.

Please issue their permit as requested and distribute the dates that were previously awarded to Lahaina Town Action Committee appropriately.

And on one final note, I did meet with Lahaina Town Action Committee and I did inform them that the Parks Department, and this was weeks ago, that the Parks Department had sent a formal request, through me, you know, which I transmitted to Aunty Patty Nishiyama, that they should seek their own permit. I tried to at least make some attempt so that there

would be peace and things would be pono under the tree but because of the letter having been sent by Lahaina Town Action Committee, which terminated the relationship, basically, Parks Department said: Well, you know, we have this, so unless there's some other way that we can deal with this, you know, they should come and seek their own permit.

The other thing that I was also told at the meeting, because I did inform Ms. Carlucci, I believe Mr. Curtis was there, and also Kent Stewart, as representatives of the Lahaina Town Action Committee, I did inform them that I had been really concerned because Parks Department had raised the issue about the 501(c)(4) designation that they are not a 501(c)(3), Lahaina Town Action Committee was not. So, at that meeting, I was informed by Ms. Carlucci that they were a 501(c)(3). I believe Corporation Counsel, and perhaps Robyn, need to find out which is correct because we ordinarily do not -- I mean 501(c)(4) is a lobbying organization; yes, they do wonderful work; I'm not quarreling with Lahaina Town Action Committee, but this is something that's under your purview and you should get the proper answers to that.

As far as the lease goes, the lease only applies to the courthouse itself. There is a contract, which Parks actually has, for Lahaina Restoration Foundation that they take care of the courthouse maintenance and they also take care of the grounds because Parks Department does control the grounds, at least in that area, but it was a request for proposal, Lahaina Restoration Foundation has that. The lease for the building has expired. It is no longer in effect but what, unfortunately, happens in County is it's continued on a month-to-month so, you know, we basically have -- Corporation Counsel will tell you where that is, and, at last, I believe it was going through Corporation Counsel's office for their review and approval.

Mr. Kalalau: Thank you very much. Questions?

Mr. Kapu: Yeah, I get one question. You mentioned about the 501(c)(4)?

Ms. Johnson: Yes.

Mr. Kapu: Can you explain that based upon the difference between a 501(c)(3) and a (c)(4)?

Ms. Johnson: Well, it's basically a chapter under Internal Revenue Code but, basically, what ends up happening, a 501(c)(3) is a nonprofit organization. It's limits are very strict.

They can collect money but it is deductible for tax purposes. One of the things with the 501(c)(4), which is why most of the people for Lahaina Town Action Committee, I often wondered, well, how come everybody has to work, you know, can't you just give a donation, but because of the structure of the 501(c)(4), it has that different tax structure so they actually have to have more an employment relationship. But the 501(c)(4) also is a lobbying organization. The merchants actually, through economic development, there are grants that are given for a number of things, events related that Lahaina Town Action Committee is very good at doing, I would not dispute that they've done some very good things, but I also believe that that constraint where, you know, we basically have, you know, the separation rule, as far as I know from the County's perspective, and that is why Parks, I believe, raised that issue.

Mr. Kapu: So the condition of the County's regulations is based on a 501(c)(4) operating -- or 501(c)(3)?

Ms. Johnson: Based on a 501(c)(3), from my understanding, that is the way we do all of our grants and that it is the way that we do all of our nonprofit work. If it's different, Corporation Counsel can tell you, but my understanding has always been you have to be a nonprofit. In fact, the concession laws, God bless certain of our State Legislators, I just was successful in amending the State Concession Laws with the help of the State so that now nonprofits may have a lease that goes beyond the 15 years, whereas before we were constrained by that so please call the Governor and have her sign it.

Mr. Kapu: Not to jump out of the question, but I just like just -- my curiosity just overwhelms me now that you mentioned this, but I'm not trying to jump out of the topic, but I just -- this is just, personally, for me. What is that? The whale foundation, that's one 501(c)(3) or one 501(c)(4)?

Ms. Johnson: Pacific Whale Foundation, I believe, has their nonprofit status.

Mr. Kapu: (c)(3)?

Mr. Kalalau: 501(c)(3).

Mr. Kapu: I just wondering how come they get six boats and two da kine that's why.

Ms. Johnson: Well, they have a nonprofit arm to their for-profit business.

Mr. Kalalau: Okay, anymore questions? Kalei?

Mr. Moikeha: Would you mind repeating your item number one?

Ms. Johnson: Item number one is: I was present at the original hearing when the permit was first issued to Lahaina Town Action Committee and they were acting solely at the request or invitation of Na Kupuna O Maui. You will see in the minutes that it was their request, Na Kupuna's request that they come forward and assist them, so Lahaina Town Action Committee would not have the permit for it not for the fact that Na Kupuna asked. You were invited. You need to pay respect.

Mr. Moikeha: That's what I needed clarification on. Okay, thank you.

Mr. Artates: Mr. Chair?

Mr. Kalalau: Question?

Mr. Artates: So at that time, Joanne, it seems like this document that was produced, again, in 1999, so the only entity that existed as a 501(c)(3) was Na Kupuna then?

Ms. Johnson: Well, they didn't have -- see, Na Kupuna had Aloha First but they did not have the expertise; therefore, before Lahaina Town Action Committee was in the building and an offer had been made to Aunty Patty for assistance, like we'll come collect the money, you know, it -- actually, you know, Ms. Morrison, up until the time that she left, I usually heard the complaints if there were any, and I mean I've been sitting on the Council cause even before when this came, I wasn't on the County Council then, so, for me, they always worked it out. It was always worked out. And I asked Ms. Carlucci, personally, I said: How come, you know, we can't work this out? And I guess because the letter was already sent, it was too late. And I just want to clarify one thing about the police. Captain Hirata, from Lahaina station, did tell me, after the letter came to Parks Department, Parks Department then made the request to verify that there was money changing hands underneath the Banyan Tree in violation of Park rules. So they did come. But it was not -- it was indirectly at Lahaina Town Action Committee's request, but it was directly at the request of Parks Department. So, you know, it was the letter that triggered the whole thing.

Mr. Artates: So, under the 501(c)(4), is it possible that the Lahaina Town Action Committee could leverage for grants to sustain their entity?

Ms. Johnson: I believe that they can but because I'm not familiar with all the Internal Revenue regulations, it has to do, principally, with the deductibility. Like if you make a contribution, you know, can you deduct it legally? Cause under IRS rules, and, you know, Corp. Counsel can show you just from the IRS handbook or the code book, he can show you what the difference is, what you're permitted to do, but the biggest difference is that, in a 501(c)(4), they have lobbying ability, which you can lobby to change laws, you can lobby for whatever you want, you know, in the political realm.

Mr. Artates: And just a follow-up is that it seems that if the applicant, at that time, was in behalf or for Na Kupuna O Maui, which I assume they had a 501(c)(3) status, would be able -- the Lahaina Town Action Committee would be able to leverage, under the box grants, to suspicious even administration cost, consultant fees within that 501(c)(3). So my point is that, you know, it's -- it's kind of not fair that they would terminate Na Kupuna O Maui, whereas, it seems the leverage came from this particular 501(c)(3) to expand their nonprofit entity ...(inaudible)...

Ms. Johnson: Can I correct one thing that you said. They were not, at the time, a 501(c)(3). I still don't know if -- you're going to have to ask Corporation Counsel to have them produce the letter ruling from IRS. They were only a 501(c)(4) and that issue was raised at the time by members of, you know, the testifier's. They said: How can a 501(c)(4) get this permit? So that was a question. But, for whatever reason, the members of the Cultural Resources Commission, at that time, because Na Kupuna was requesting it, everything appeared to have been worked out. So that, I'm not an attorney, you know, I just know, from day one, that question was raised but they did not have 501(c)(3), only 501(c)(4). That was always my understanding. Now, Lahaina Restoration, they are 501(c)(3).

Mr. Kalalau: Okay, Kalei, you got a question?

Mr. Moikeha: Well, I have a question to Corp. Counsel.

Mr. Kalalau: Okay.

Mr. Moikeha: Lahaina Town Action Committee, are they in, according to County rules and regulations, are they in compliance with the 501(c)(4)?

Mr. James Giroux: Yeah, I mean we would have to look at those documents. I mean that's something that Robyn brought up is that all of these things are being brought up and we are not privy to all of the facts that should probably be on the table, I mean the types of grants, leases, organizational documents, all of those things. If they're going to be called into question and we need to review everything, then that's what we're going to need to do in order to clarify everybody's role in this, and, ultimately, figure out what this board's jurisdiction is too. I mean we're being asked to approve a permit but we need to understand what the permitting process is. I mean somebody's getting the squeeze; we know that; we need to get to the bottom of it.

Mr. Moikeha: But we can concur that an organization with 501(c)(4) is in compliance?

Mr. Giroux: I would have to look at what, you know, what are they receiving from the County and what those rules state as to why or how they can. If it's between a lease and a grant, it is complicated because a lease, if it meets a certain criteria, has to be looked at as a grant and once it slips into a grant, then you have to follow the grant rules, and so it is complicated, so that's something Robyn and I will need to look at, collect those documents, and then work through it step-by-step.

Mr. Moikeha: Thank you.

Mr. Kalalau: Okay, Dorothy?

Ms. Pyle: Hi, Joanne.

Ms. Johnson: Thank you.

Ms. Pyle: I have a question that I'm not sure that you can answer or help us with. One of the things that keeps coming up or that I keep -- we keep referring to is the schedule, the calendar, and that there are a couple of weekends that are the Lahaina Arts Society, and then there are these other weekends, and then there's a few days off so the tree can breath and so on. It seems like, and this has been ongoing for as many years as I can remember, the relationship between the Parks Department and the Cultural Resources Commission

is very unclear. And so one of your recommendations, I think, was something about that the CRC should divi out the days and --

Ms. Johnson: Yeah, that's -- that's --

Ms. Pyle: And I'm -- that's a little difficult because we meet once a month and we have an agenda, as you can see, and who of us would be the ones who would be making these decisions? So I -- that needs to be clarified somehow and maybe you can help us, from the Council point of view with the Parks Department and CRC, to figure out who's responsible.

Ms. Johnson: Well, one of the strange things that doesn't exist, and James will tell you, we don't have administrative rules so, you know, that's an additional complication. Administrative rules are basically what layout all the parameters for how this should work. Because there was originally only one permit holder, which was Lahaina Arts Society cause they had kokua, you know, that building and, you know, I mean it probably would have fallen down a long time ago had it not been for some of their initial efforts, basically, the other complication is that the land and the courthouse were executive ordered from the State but it's ceded land, so that is another complication. There have been other people to challenge Parks Department and I think they're reluctance in actually going forward with administrative rules is because this is by executive order, it's on ceded land, where does their authority even rest?

Ms. Pyle: Right.

Ms. Johnson: They're unclear. Plus, if you got through administrative rules, then does that open it up to request for proposals so that anybody that falls under Parks administrative rules, anybody can bid on having a space under that tree, and then you have like the lottery up at the civic center, which is a whole other, you know, issue. So I know I'm not answering your question but I think what it -- what your question is is really key to this whole thing and I think even if some parameters were to be laid out. I realize Tamara Horcajo is a brand new Parks Director so I mean she's coming into this kind of cold too. She was trying to gather enough information. I feel sorry for her because this problem it, apparently, was not a problem up until the -- I guess the issue of the Hawaiian sovereignty group, you know, and I understand Aunty Patty, I under the Hawaiian rights issues, I understand the ceded lands, so this clouded everything even worse because then it seems like we have a lawless society and, yet, who is more entitled to be under the tree, yes, Lahaina Arts Society saved the building, but then you look at the Hawaiian people, they've

loss so much already, so you look at what their rights are and are we really infringing upon their rights and imposing, you know, our will on what rightfully should be theirs. I think we are guests. I'm a guest. So I --

Ms. Pyle: I jokingly suggested mediation.

Ms. Johnson: Yeah, and mediation I'm not sure because I tried at this point. I think that there's a broken disconnect, disrespect. I tried. I don't know if that's possible but I want there to be peace. I think that if there's a way that, you know, even the event dates. I did not know that Lahaina Town Action Committee was making that much money from their little, you know, shop, but I mean I don't say that they haven't done good things. They've done really good things. But everybody needs to get along. Lahaina Town's really small and our Parks Department, I don't want to force this on them, but the date issue, I think if you could give them guidance, they actually -- and Tamara Horcajo said: Oh, we really should not be giving out all the dates so far in advance because they have certain rules that they're not supposed to award these dates way out, you know, because by their own other rules for permits. So that's another issue that has to be looked at. But I would say if you can give some guidance, specifically, that would help them and maybe next time when this issue comes forward, then Tamara would have the benefit of your input.

Mr. Kalalau: Okay, thank you. Keeaumoku?

Mr. Kapu: Yeah, I think we had it in front of us many times based upon looking for a Historic District Officer for, basically, Lahaina and especially the Banyan Tree area. I can see couple people in the audience over there that actually would serve as good Historic District Officers, but I not going throw those names out right now, but I think the major concern is, you know, our recommendations go upon the Planning Department to make whatever needs to justify based upon the use of public County domain areas and we have to understand the fact that there's unclarity based upon jurisdiction of those types of areas cause you mentioned the fact that the Banyan Tree area was executive order over to the County?

Ms. Johnson: County of Maui, yes.

Mr. Kapu: Yeah, so, you know, I really compassionate about those types of issues and that's we always come to these kinda problematic situations a lot of time based upon that jurisdictional fact, but then I concur about what you said based upon just the word "na

kupuna,” the word, “ahupua`u,” the word -- any word that is Hawaiian that they basically would be using as a profitable tool, yeah, without consent from the kanaka maoli no ke aina, yeah, to basically -- probably but we’re dealing with one situation that has a lot to do with jurisdiction and I would like to see some kind of clarity based upon what type of jurisdiction we’re looking at. You know what I mean? Whether or not we go to the County or do we go to the State because of the historic district guidelines in those areas and because what I looking at is Na Kupuna, once again, the kanaka’s getting kicked to the curb again all because of the corporate -- this is my personal opinion, but something to think about because although you’re representing yourself, the question has come in front of the Cultural Resources Commission many times based upon a Historic District Officer. My recommendation is to make sure this Historic District Officer understands traditional management system and is kanaka maoli. Mahalo.

Mr. Kalalau: Okay, I guess I get the last say over here, and I’m going to come from this point. Councilwoman Joanne Johnson, there’s the vacant position for the planning worker in Lahaina, maybe you can help the people by pushing to have that position filled.

Ms. Johnson: Yeah, and actually when Planning came before us, our biggest challenge with the County right now is that our County employees are getting pilfered for private development so they can serve either as engineers, cultural advisors, whatever, and that has created a lot of pressure on the County of Maui because, in private enterprise, a planner, which Robyn will tell you, they make way more money in private enterprise so that’s our challenge. But I totally support a Historic District Officer and if you find one, I will do everything in my power to see that the Personnel Services gets their name set down, you know, although I can’t tell administration what to do. I can ask questions.

Ms. Pyle: Yes, we understand.

Mr. Kalalau: Okay, thank you very much.

Ms. Johnson: Thank you very much.

Mr. Kalalau: Okay, the next speaker is Dennis Kanahale, followed by Nelson Armitage, and Patty Midland.

Mr. Dennis Kanahale: Hi. Aloha. Good morning. You know what, I wanted to pass this out. My name is Dennis “Bumpy” Kanahale and I’m also the Executive Director for Aloha

First. Our mission, Aloha First, is to better the economic, social, and cultural conditions of native Hawaiians through education. Basically, it's more of an educational nonprofit organizations. We have many projects that we've been involved with; one of which is with Na Kupuna O Maui, and that started, we received our 501(c)(3), letter of determination in 1996, August of 1996, and so they're legitimate. They were legitimate all the way through. Aunty Patty came talk to me about wanting to do He U`i Cultural Arts Festival and this letter will give you an idea of, and this letter is from Theo Morrison, basically, on what -- what and what was going on back then. Everything that has been given to Na Kupuna regarding the financials and stuff has all stayed in Maui. Everything was used to help the kupuna, to help projects, different projects, educational fundraisers. And I'm here in support of granting them that permit and I no like get away from why we're here, why Na Kupuna is here. I know get plenty reasons why not to and look for more information, but me I think you guys can exercise your authority and do it because that is what you're here for and we see where it goes from there. But if everybody is pointing a finger why you gotta go to CRC, CRC, well do it and really take the bull by the horns and make it happen.

As far as, you know, I went on the website for the Lahaina Town Action Committee. Is there something such as a 401(c)(4)? Do you know? Okay, cause that's what they are, a 401(c)(4), not 501(c)(4), and this is from their website, so I just wanted to make that clear as well, and then that started from closure of the Front Street bridge as a standing committee of West Maui Taxpayers Association, that's how they had that at the beginning, Lahaina Town Action Committee.

So, again, I'm here to, you know, support Na Kupuna in getting their permit, lease, whatever it takes for them to get back in there. It's unfair that Lahaina Town Action Committee can go do their thing out there while our kupuna is sitting on the side waiting for their turn to go back in there and just do business as they were, you know, for the last eight year -- seven, eight years, nine years, and you've heard testimony from some of our kupuna.

I've been an advisor to Na Kupuna O Maui for over 12, 13 years, and a lot of our kupuna has passed on: Aunty Pua Lindsey; Aunty Alice Kuloloio; Aunty Nani Saffrey; Uncle Bill Kalani, and just many more; Aunty Thelma, and, you know, I've always been behind the scenes on this stuff because it was always the people of this island and especially in their respective communities to take the lead on, you know, projects such as this. I really, really hope that you make a decision today. And, also, if you not going make one decision on that, maybe put a temporary moratorium on Lahaina Town Action Committee's further business as usual in that place cause it's unfair, just unfair.

With that said, I wanted to also straighten out something about what you had. You know in 1993, specifically in November 28, Congress signed into effect U.S. Public Law 103-150, the apology law, or the apology bill, which basically admitted to their crime of the overthrow, the illegal overthrow, and so entities, organizations, nations, kingdoms, reinstated governments, they going be exercising their rights all over the place. I know, I used to be one of them. I just figure that under duress and by force, maybe I can work within the system to see how it pans out. So when aunty was talking about that issue, she came to me and she said: "Well, you know, the reinstated government is down there doing their thing." I said, "Well, aunty, they have the right, you know." You know it depends which law you like believe in: the illegal one now, or the illegal one back in 1993. So, to make that clear, you know, aunty is not shooting down what's going on with nations and kingdoms and people that take that kind of stand, she not shooting down their efforts; it was that instant that when someone came in to exercise their right, a Hawaiian government, and then all of a sudden she went back to the people that she thought supposed to handle the issue and they never did. Their thing was: Well, you know, the cops never did anything and all that. So I guess get all kind of people not taking responsibility for what they're supposed to do. And, with that, she was left with like looking like the bad guy in some sense against, you know, the very people that believe in independence and a free nation for Hawaii. But then at the same time, these guys turned around and she went and protested to do almost the same thing then, boom, and everything went clamp down on them. In fact, she called me when they were -- when the cop was ready to arrest her. I know I was pretty pissed about that because, you know, that's our kupuna. But you cannot treat our kupuna that way, they're living treasures. Living treasures. And, all of sudden, now they're on the side, you know, they have an opportunity now. They've just gotten the lease for the Old Pioneer Building now called "Na Kupuna O Maui Resource Center," and I think they've matured from back in 1996 till today to administer and to do the job that they needed that Lahaina Town Action Committee took on and, you know, thank them for bringing them this far. Too bad that, you know, things were done and said that -- that made us have to come over here and say, "Well, we wanna go on our own." And that's what it's all about. It's not about who's right or wrong at this point because we going find all the pilau, you know. Like I said, you have a letter here from the ex-executive director and take this into consideration too that I just heard that the current executive director will be leaving Lahaina Town Action Committee as well so that, you know, what's going on on that side?

But I just wanna just leave you with that and that, you know, I hope this Commission can get them back in there and grant them the permit that they came to this hearing today. Mahalo. Mahalo.

Mr. Kalalau: Thank you. Okay, question, Keeaumoku?

Mr. Kapu: Yeah, you mentioned you've been working with Na Kupuna O Maui for like 13 years, yeah. Just straight out question. It was mentioned before that the reason why LAC was involved because Na Kupuna O Maui was a nonprofit organization and they, bottom line, they weren't exactly functionable on the I guess how to operate as a nonprofit organization, yeah?

Mr. Kanahele: Yeah.

Mr. Kapu: Would you feel that Na Kupuna O Maui with whatever comes from this is adequate or functional or able to basically provide that services as a nonprofit organization?

Mr. Kanahele: Yeah, they are and even more so that they have the people that's surrounding them that more than willing and able to -- to help make that happen. You know, like everything else, you gotta get used to the whole way that things operate and I think Aunty Patty is, you know, she blow my mind cause she's learned a lot all these years and, you know, she's into everything and we lucky to have her, I mean, you know, from one end of Maui to the other end, we're really lucky. But, yeah, I believe Na Kupuna O Maui is ready and I believe that, you know, in certain areas we going need help with, people going come forward and, you know, offer their expertise.

Mr. Kapu: Mahalo.

Mr. Kalalau: Question, Perry?

Mr. Artates: Bumpy, so we would understand that during that duration of when they exercised to use Na Kupuna O Maui, your entity umbrellaed Na Kupuna O Maui as a 501(c)(3)?

Mr. Kanahele: Yeah.

Mr. Artates: Okay.

Mr. Kanahele: Yeah.

Mr. Artates: So my understanding would be they were an umbrella of an existing nonprofit group already?

Mr. Kanahele: That's right.

Mr. Artates: So, again, I gotta understand that LAC utilized a nonprofit 501(c)(3) back in '99 to exercise monies, such as grants, to operate under the Lahaina Town Action Committee, whether it's administrative cost or anything like that, so I mean I just only make that clear they were existing under your entity as a nonprofit organization.

Mr. Kanahele: Yeah. No, that had to be cause aunty said she needed it to qualify for any kind of permit with the city so -- I mean it's real -- the whole thing is real simple actually. It was just a usurpation eventually of another organization eventually getting tired of aunty them and the kupuna.

Mr. Artates: Well, I've seen past practice that people umbrellaed under an existing nonprofit already so --

Mr. Kanahele: And we do have many other projects now. We have a health and wellness, it's called "Malama First" that Aloha First is also involved on a donation basis, and then we have Puoloa Waimanalo Village, we have 45 acres, a lease with the State of Hawaii for 45 acres of land, 55-year lease, ceded land, and we could have acquired 212 acres here in Ukumehame when Aunty Thelma was alive and Aunty Patty. We went down to look at the place and it wasn't, you know, there wasn't really anything or, you know, the makua's to help aunty them at that time, so I never signed any agreement, and then the administration changed over, and now you guys got a road coming through there. So but Aloha First and is an umbrella for a lot of different projects.

Mr. Artates: Thank you.

Mr. Kanahele: Okay.

Mr. Kalalau: Okay, thank you, Bumpy.

Mr. Kanahele: Yeah, thanks. Aloha.

Mr. Kalalau: Following Nelson Armitage is Patty Nilyann.

Mr. Nelson Armitage: Good morning, Mr. Chair, council. My name is Nelson Armitage. I am with the Reinstated Hawaiian Government. A bunch of good words came out today, you know, prior to the hearings, everybody's testimony, you know, you got "pono," "off the record," "on the records," the most important one is "confusion," yeah, "groups," "fact-findings," "disapprovals," "approvals," you got "no control over the Banyan Tree," "Parks," "cash," you got, let's see, "validation," "authority," let's see, "time limits," like for today's meeting. Personally, I believe time limits there should never be a time when it comes to input from the general public at all. It's unlimited. But that's your guys rules. They can always be changed. Your laws. There is a law, I know for a fact, that was passed by Dain Kane's committee, when he was city council, about clear titles in the State of Hawaii, especially on Maui, that the County will not give out any TMK's to uncleared titles, so that gives you a flag warning here on just that one issue, okay? "Cockroaching." All of these words, to me, I believe Freeman has at least for a year, a dollar a year at the courthouse. "Tax." "Ho`okupu." You know, "clouding." All these words add up to one word what Bruddah William said earlier, "pilikia." Pilikia. I got couple words for the -- I glad council is here today. If you can, please, on the next meeting, produce your clear titles to the courthouse, your TMK or whatever, that legal transfer of the parcel that you posses authority over cause impersonating authority on another government is not a good thing to do. I just giving you clarification. You can talk to Moto if you need to, okay?

The next one is the rules. What rules are we playing by today? The only thing I know is that the Hawaiian's been playing basketball with football rules for -- since 1893, okay? Public Law 103-150 is not an apology bill. An apology bill is -- an apology is simply defined if I step on your foot, I am sorry, yeah? A resolution is a form of law that a lot of us, sitting here today, don't understand. Now, the rule that I see that Aunty Patty them is trying to seek is great, but if you follow under and you apply under what they call a bilateral movement toward the County or the State's obligation, then you are bound by those rules. That's the rule. But if you know how to establish your protocol and understand how to use Public Law 103-150, that takes you out of the realm of what the Reinstated Hawaiian Government exercises under the Banyan Tree, Hookipa Park, around the State from north point of Kauai to south point of Big Island. We are educating those who need to understand the political jurisdiction. I know the County doesn't have jurisdiction on any island cause I'm older than the County and the State. All of a sudden, it popped out of the trees and a lot of us Hawaiians, who sit here today, from the heart, believe in truth and justice cause our ancestors has set this path. Unfortunately, the defacto government is not honorable, and that's the reality. We have to come these board committees and by being bipartisan, meaning that you don't understand what you need to do, that's why we're here today because you cannot govern yourselves outside the box or the parameters of the rule.

So the rule is simple. Are you an American Hawaiian? That's cool . . . *(Hawaiian phrase)* . . . Or are you going to stand forth and strong on the kanaka maoli line? Because that's our true identity. We have been impersonated. Our lands and our resources have been prostituted for over 114 years. I'm sorry but that's the reality. If you know history, that's what's happening. I'm here just to set the record straight that there is a system out there, a process. Everything is processing. That's why you got council here. Processing. Well, we're trying to process and educate our kanaka's about their inherent right. Unfortunately, we've been infiltrated by the defacto government, which Kau Inoa, OHA, who's funding the nonprofit groups because to keep the illusion away of independence. I give you a great example. None of us here today can go to Iraq and participate in their political affairs. Correct? Cause we're not a national citizen of that country. How come everybody can in Hawaii? You gotta ask yourself that simple question. How come everybody can participate in OHA or Kau Inoa's process? And American has a great way of putting clandestine on everything. And, unfortunately, we got those who get paid by the system to keep these programs rolling, and they should be held accountable for their misappropriations. So -- so does Corp. Counsel has an obligation to hold up the integrity of law and separate apples and oranges from the reality. It doesn't matter if you're green or blue. The point is simple. What rule are you going to play by today? I like what a lot of people said today, but the reality comes down to: Who are you? What are you going to do besides stand here and talk about a nonprofit organization who absolutely rules kingdom property, yeah, because Public Law 103-150, Article 29, clearly states, "Without the consent over the national lands from the Hawaiian people to the United States of America was never conveyed," and we're not talking national lands, I'm talking about your Federal, State, and County. If you don't own it, who owns it? You guys need to understand the rules of what we're going to say. I know Robyn kinda has her hands full, but she's gotta make a decision too, as well as Corp. Counsel. They gotta make the clear call. So if you're going to suppress and oppress a national's right, then you should be held accountable for your -- your absolute suppression. I talked to the Council. You know, when Reinstated Hawaiian Government started its process, we stood on authority; we never stand on a 501(c)(3) authority; we never stand on I think we can programs. We stood on absolute law so that way, when we do exercise these vigils or methods, the first thing we do is talk to your mayors, your chief of police, your governors, and your Senate, your Federal Senators, to let them know that we are now engaging the exercise of proper authority of the law that you gave you us, not the apology now. There's a difference. A big difference from an apology. So that's the reason why we get to go and do what we wanna do and we're not disrespecting anybody in their district. If notice, we go into the district to educate them to ask them to step forward and take responsibility and obligation of your only inherent right.

So if we offended anybody by walking into their districts, e ho`omanawanui, I sorry, but that's not our intent, and we do not ask the County or the State for any permits simply because we can validate our authority that was granted to us. Unfortunately, the

responsibility of our State's agencies are not fulfilling their obligation. That is the downfall of the confusion that's here today. Okay? So if anybody got any questions of -- you know, I be real honest. It's a broad issue, guys. Huge. If you like talk about nonprofit groups, that's just one segment out of the big picture here. Now you like talk about lands, that's another issue. You like talk about air space, water, I mean it's a broad issue. If Kaho'olawe was never conveyed over to the State, then what is Larry Lingle, excuse, kala mai, Linda Lingle stepping in as a nation to accept the land that they don't even have title to. The hypocrisy continues. Hypocrisy is a very strong word and it's sad to see that, you know, we got great citizens coming to this country. We are open mind of being honorable and fair. Unfortunately, the deception of buying stolen goods is another issue and the County supports this, yeah, by giving out TMK's, the processing of your titles, and on and on. But, in reality, the royal patents were never conveyed. And so, like I said, it's a broad issue.

But, today, we're just talking about jurisdiction so my question is: Please, go find the title so the next hearing bring the title to this next hearing. I need to see that you have clear titles to those, you know, that property of the Banyan Tree so that you have the right to give out these 501(c)(3) to this person who you going put in charge to now administer the programs. But I believe that's false impersonation, okay? And I can stand here and tell you straight up. So please produce that on your next meeting in that short request so that we can -- then from there, I think the next step is we can solve a lot of these problems, you know, It's called "solutions." And the Reinstated Hawaiian Government, let's get this straight for the record, we're not here to kick out nobody or hurt anybody. The only people being hurt is our kupuna's, our makua's, and our opio's, and our future ones to come. But for those who continue to suppress and oppress those rights, should be punished like any criminal cause if you seen the movie *The Holocaust*, you'd understand the issue, okay?

Mr. Kalalau: Okay, questions?

Mr. Kapu: Yeah, I get one question. You know I've been to a lot of places and heard of a lot of talk about, basically, jurisdiction and enforcement and all these types of things, and it always bothers me to know whether or not that's the kanaka maoli that is living in the society that we are forced to live in, whether or not we're doing whatever is right based upon the benefit of our kupuna's or makua's as well as our kamali'i, I just sort of slowly approaching to the area that sort of concerns me over here based upon my duties as a commissioner whether or not I'm compliant to my judiciary duties based upon what our kuleana is placed on, one question: You mentioned that you went through all enforcement agencies, State, County level, DLNR, and that was for -- what was that about? Permissive use or just a notice?

Mr. Armitage: Actually, it's part of -- well, it was part of education. It works in all -- in all fashion. What it is is a process of educating enforcement as well as your State and County directors and leaders as to the law, yeah, that resolution, Public Law 103-150, that pointing out the facts of the law and rules that we have sole obligation and a commitment of putting back this country for its second time, not first time, second time, and a lot of people have a, I would say, a bad way of accepting the reality but cause they weren't victimized, especially the non-kanaka. They weren't the victims to this worse than hypocrisy. So when we do this, we absolutely educate enforcement, your delegates as to the proper use of the law and with their response is that: Wow. They're kinda confused. They seek Corp. Counsel's advise and, you know, it's like if you got a bad Corp. Counsel that's giving you good advice, you gotta change 'em, right? So I think Corp. Counsel, Mr. Moto, has been absolutely not been straight up with the new incoming mayor cause the last past two administration has been very honorable of understanding the law and the rule because if you going violate Federal law, then you should be held accountable at your capacity of your oppression or suppression of anybody's right to discriminate against.

Mr. Kapu: Okay, okay. Mahalo. Ho, I gotta watch what I ask for. But clearly -- clearly there was notice basically sent? Cause I looking at this as, okay, I know where the pilikia came from, yeah, based upon these two nonprofit organizations or the 501(c)(4) versus the (501)(c)(3), then all of a sudden, the Reinstated comes inside there, then, boom, the 501(c)(3) is saying, "If they can, we can." That's where I getting this from. Am I right?

Mr. Armitage: You can but, remember, if you're signatory to that bipartisan program, then you're tied to it, I'm sorry, and the Reinstated Hawaiian Government is not tied to any political authority because we have the right to reinstate our political authority the same way Iraq has, the same way Kosovo did, the same Kuwait had done, and on and on, these countries that have reinstated their authority prior to the '90's. There's over 60 countries that reinstated their proper authority with the help of Daniel Inouye.

Mr. Kapu: Okay, okay. So --

Mr. Armitage: Okay, I sorry, but this one big one, you know what I mean?

Mr. Kapu: Yeah, I know.

Mr. Armitage: I just trying to give you as much bullets as can so, you know --

Mr. Kapu: Mahalo for that.

Mr. Armitage: It helps you --

Mr. Kapu: I feel like I back in school. But there was a time, and it was mentioned by Aunty Patty Nishiyama, based upon enforcement coming upon you at the Banyan Tree. Just my curiosity, what was the conversation about?

Mr. Armitage: That was funny. Well, first of all, like I said, before we go out and exercise these proper authorities is that we sit down with the directors and mayors and give them, you know, a proper courtesy of what we doing, and what had transpired out of that activity, at that point in December of last year I think it was, that somebody said that we're extorting our vendors. Extorting the artists and on and on. Well, so the Police Department came down and, you know, did the investigation and ho`omanawanui go do what you need to do because we're not the Pirates of the Carribbean or the Pacific, you know, I think you sitting in your office some place Jack Sparrow, so, unfortunately, that was the outcome and the bottom line came out to be that all of the vendors were surprised about their conduct, misconduct, I should say, and they were in supportive of what we are doing and today, till today's date, they want us back under the Banyan Tree but, unfortunately, you know, it's a due process and we don't wanna hurt, step on nobody's toes so we going do this on a diplomacy side. Just look at what Iran had just done ...(inaudible)... So diplomacy does work; piracy does not.

Mr. Kapu: Mahalo.

Mr. Armitage: Okay, bruddah.

Mr. Kalalau: Okay, Perry.

Mr. Artates: Okay, Nelson, you know the reason why we're -- we're here just today is just for this item requesting, you know, Na Kupuna O Maui's approval, yeah, to use under the Banyan Tree. You know, hearing all the public testimony and what you have, we really appreciate it educating us on what your entity is all about. My question is: Would you honor and support if Na Kupuna goes and have -- and has this approval to utilize the Banyan Tree?

Mr. Armitage: I'll be read honest. Of course. That's our kupuna. But what rule we going play by? I don't know. It's up to them. But my support is with them, yeah.

Mr. Kalalau: Okay, thank you. No further questions? Thank you very much.

Mr. Armitage: Thank you, Mr. Chair.

Mr. Kalalau: Our next speaker is Mike Carlucci, followed by Crystal Alboro, and Willie Kahaialii.

Mr. Mike Carlucci: Aloha, council members. My intent was to provide some input to this but, in all honesty, I find I have more questions than I have answers. I have as much confusion as a lot of other people do. So, having said that, I would like to provide support to Na Kupuna O Maui and reserve further comments until later on. Thank you very much.

Mr. Kalalau: Thank you. Crystal?

Ms. Crystal Alboro: Aloha kakahiaka. Crystal Alboro, ku`u inoa. I'm here today as a cultural practitioner. Please allow me a minute to oli you a mahalo. . . . (*Hawaiian oli*) . . . You've seen me before, each time I've come before you, this Commission, with a request. Mahalo seems so insignificant. This oli mahalo is for all of your time, your passions, and your commitment to culture, including all that it represents. For me, this culture represents respect and responsibility. Respect and responsibility for the kupuna, makua, and the keiki opio, and beyond that, to our total community. So, again, mahalo for all of your deliberations and your considerations of my previous requests, of which I have come for Aloha Festivals for a cash waiver and you approved, and which I have come for Na Kamehameha Pa`u Parade and which you have always approved, and last year, my last appearance, for the 175<sup>th</sup> Lahainaluna event for which was approved by this Commission.

Now, today, regarding this permit review, I'd like to ask you to please reconsider this item again at a later and future date of April 2008. May I please suggest sites, specifically, for the type of use being considered as traditional practices in the Historic District of Lahaina. The type of use being considered as traditional practices by both Na Kupuna O Maui and the Reinstated Government. These are just possible alternative sites with a cultural forbearance. Number one, Piko of Moku`ula, very significance importance to malama. Our Friends of Moku`ula constantly looking for funding sources. Number two, Malu`u o Lele Cultural Center, the first Lele, not Lahaina, Lele Cultural Center. Both the

fundamental, historical use and the current use, government, unoccupied, okay. Again, West Maui Cultural Council in need of funding source. Third, Pakala, also known as canoe hale at Kamehameha Iki. Master crafters already in place. The Hui O Wa`a is procuring a lease. They too need funding sources. All of these sites are in Lahaina Town. Our town is not just Banyan Tree Park, and we've begun to make that correction that it is known as Keawaiki, the ancient name. It was Keawaiki before William Smith planted that Banyan Tree and then led the overthrow of our government.

Hopefully, you don't have any further questions for me, so I'd like to mahalo the Commissioners and staff. I wish you all a happy and safe Easter weekend. I'd like to add a few things, if I have a moment, based on what I have heard previously.

I, too, was here in 1999. I have been a volunteer at Lahaina Town Action since 1998. Never got paid. Strictly volunteer. I was there when Na Kupuna asked for assistance to bring their art festival. I was the one who assisted Theo Morrison in putting it together, being a liaison to Na Kupuna. I've done whatever Na Kupuna has asked; I still honor them today, deeply and passionately. What occurred over the past, 2004 specifically, was again reassessed based on, so to speak, poor management. That's why we were called in. The art and craft fair had been turned to a flea market. I was one of those who testified, yes, we need better control for what was happening under the tree.

In 2006, when we had asked Na Kupuna, on several occasions, to come to the director's meeting of Lahaina Town Action, we needed accountability because, yes, we were giving out big bucks, and if we had been doing what the permit said we would do in 1999, we would still have a preschool today in Lahaina and we would not be bussing our kids to Kalama Intermediate for Hawaiian language. Our goal and our hope, in 1999, with this funding source, was to bring Hawaiian language back to the rightful place, Lahainaluna, where it was opened as a Hawaiian speaking school; where, today, it's a nationwide boarding school, no one can be denied if they wish to have a Hawaiian language curriculum; there's no reason why we can't finish our job bringing Lahainaluna back to its original mother tongue.

Because of, again, accountability of where these funds went is why we called upon Na Kupuna on several occasions to come to table and meet with Lahaina Town Action. On three specific agendas you will see she declined to appear. So with my love for Aunty Patty and for my understanding that we, yes, we're all here to unify our Hawaiian people, kanaka maoli, I'd like to ask that you reconsider and revisit this request at a later date at such time that all of the facts have been presented. Mahalo.

Mr. Kalalau: Questions anybody? One question, Crystal.

Ms. Alboro: Sure.

Mr. Kalalau: In the meantime, if they don't get reinstated back to use the park or whenever the calendar date is for Na Kupuna O Maui to use, and if we do reconsider bringing this up in a later date, would they be allowed to go back in the park from now until the later date?

Ms. Alboro: Actually, Commissioner, we didn't wanna do that, but based on, again, the 501(c)(3) status, there's accountability questions, and 18 months we asked, that's a little long that we're not getting our answers. So we had to do something because we are accountable as the permit holder. Again, I've been there since 1998 as a volunteer; in 2006, January, I was named as the Director of Lahaina Town Action Committee. So we have responsibilities to our bigger community, and God bless Na Kupuna. All we're asking for is accountability. If the money was going the way it was said to go in 1999, we would have three Hawaiian language schools in Lahaina today based on the amount of money that Aloha First has cashed.

Mr. Kalalau: Okay, thank you. Another question is: You know, I see the importance what you're saying about the cultural use and cultural activities down there in Lahaina. Do you folks have any kind of organization that is working on a Lahaina general plan for cultural use and cultural activities so that, you know, because now the County's going through its GPAC, you know, the community plans?

Ms. Alboro: Right.

Mr. Kalalau: You know, it's important that I think every town has something put together like that because or else we gonna be battling for spots from all the individual organization going say, "I like this one; I like that one. I'm going to do my activity here. I'm going to do my activity there." You know, I really strongly believe that, you know, the communities need to come together and kinda have something going forward in this new community plan that the County's putting together so that, you know, a lot of these issues can be addressed and -- or can be addressed in the future.

Ms. Alboro: Thank you. Yes, it's important to note, again, West Maui Cultural Council has always been in formation. Lahaina Town Action's mission statement specifically includes cultural as part of their mission. And, lastly, we have our Puwalu now that we have these

groups that we can go to for leadership. And, you know, again, it's just getting out the, similar to what Mr. Armitage said, is, you know, awareness of what knowledge is out there and how we gather together to lokahi and use that knowledge to further our, you know, for the futures before us, the mo`opuna. And, again, I too honor Na Kupuna as living treasures but, at the same time, we do have respect and responsibility for all levels of our citizens.

Mr. Kalalau: Thank you. Anymore questions?

Mr. Kapu: West Maui Cultural Council. Who is that?

Ms. Alboro: West Maui Cultural Council, the past President is Mary Helen Lindsey. Their new Executive Director is Theo Morrison. The building is empty. It has a certified kitchen. I mean, you know, it's, you know, unoccupied for the Reinstated Government.

Mr. Kapu: When were they formed? If you would know, when were they formed?

Ms. Alboro: I'm sorry, I can't answer to that. Mary Helen Lindsey was one of the key founders and they were the landlords for the Na Kupuna -- kupuna day care center at the time.

Mr. Kalalau: Anymore questions? If not, thank you, Crystal.

Ms. Alboro: Mahalo.

Mr. Kalalau: Following Willie, we have Kenny Hultquist and June Steele.

Mr. Willie Kahaialii: Aloha. Kala mai my back, okay. I no like disrespect kupuna over here. Willie Kahaialii. I had other issues that was going to come up and -- but I just became somebody's galoot. I don't know who this guy is but he said that he wanted me to hand this out to you and that he used to work with Aunty Pat and was something to do about this membership renewal and he was never a member and that's how they extorted money from him or something like that so whoever I gotta give this to, I don't know.

Ms. Pyle: We don't know either.

Mr. Kahaialii: But, you know, eh, check this out. Everybody. Everybody in the house, all tense here, take one second right now just to breath through the nose, exhale through the mouth. One more time. Exhale. One more. Whoa, now we all calm. I am now the new member of Hui O Wa`a Kaulua. I`m the President of the Pakala over there, and my purpose over here was to talk about Hui O Wa`a Kaulua but being that it`s all about Na Kupuna, we gotta, you know, I had a whole different speech and, all of a sudden, everything just went into one -- I was like, wow, what I going talk about now? Anyway, let`s talk about Na Kupuna O Maui. Na Kupuna was -- I was part of Na Kupuna by way of relationship to Aunty Thelma. She was my momma. And, you know, as an advisory to a lot of people, yeah, people always came to her for that and I was so respective of her because she held such a great position, yeah. For somebody like me to come up and talk, yeah, hard cause I no do this kind stuff unless I get one guitar then I can entertain you, you know. But the issue is at hand, yeah, kupuna, look at this, look at this kupuna. Why was there police after them is the question? What kind of criminals do we look like over here is the question? Okay? I mean we gotta get serious. I mean if the committee, this committee can help them out -- that fast. Done. Get other issues: 501(c)(3); (c)(4). I don`t know what -- what that is. If it was guitar cord, I can guarantee you I know what you`re talking about. Lease here; lease there; who has the lease. A lease is missing. Not even mentioned. And the people responsible for the loss lease, eh, where they stay? Not over here. Na Kupuna is here. So, you know, my olelo is just this: I guess we already know what we need to get done and you can do it. Yeah? Mahalo. Anybody?

Mr. Kalalau: Questions anybody?

Mr. Kahaialii: Questions? No?

Mr. Kalalau: Mahalo.

Mr. Kahaialii: God bless.

Mr. Pyle: Next time bring your guitar.

Mr. Kalalau: Okay, Kenny? Kenny Hultquist. After Kenny is June Steele and Ewalani Shim after her.

Mr. Kenny Hultquist: Yeah, hi. The last thing I thought I`d be doing today is following Willie K. As you all know, he`s a hard act to follow. My name`s Kenny Hultquist. I`ve been

a self-employed artist since 1994. I own a video production company and I'm a field producer for AKAKU, Maui Community Television. I've lived about a block-and-a-half away from the Banyan Tree since 1996. I have not been a member of Lahaina Arts Society for about the past five years but I was an artist member and I displayed and sold my paper art in Banyan Tree Park for more than ten years. I also served on the Lahaina Arts Society Board of Trustees for three terms, and I was a Trustee when the CRC approved the LAC, what was called then, the Hawaiian Arts and Crafts and Maui Flowers Event, and that was in July of '99, as you guys know.

At that meeting, I testified against the approval for the Lahaina Town Action Committee to administer the event. One of my quotes from the minutes is, "I don't understand why the Hawaiian community hasn't initiated this request on their own. Why do they need a downtown merchants organization to write a letter to the CRC and ask for the Banyan Tree on weekends?" I wanted the Hawaiians to run the show themselves back then but, like we've heard today, they didn't think they were ready and that's why the Lahaina Town Action Committee. That day, Theo Morrison was the Executive Director and she got up and presented her case first and she said that she wanted a real cultural event that was based on Hawaiian art. A whole bunch of people testified, of course, after that. On Page 9, a kupuna said, "I feel very strongly that the items should be made and presented by Hawaiians with something that is truly Hawaiian. I feel that we should have our arts and crafts under the Banyan Tree for our Hawaiian people." Page 11, "My concern is where are the Hawaiian artists? No adequate venue to showcase our heritage. Is it too much to ask that we keep to Hawaiian crafter's and artists?" Page 18, Erik Fredericksen, who was on the CRC at that time, he said, "I think having the Hawaiiana focus a couple of times month would certainly be a big positive. Also, we want people to be educated with the Hawaiian medicines for healing and all those arts and crafts of our people. Tourist expect authenticity in our culture and come to learn about our culture. To continue the preservation of our culture, it's very important. I feel the locals would be like to be alone to put out cultural things, expose only Hawaiian. It should be Hawaiian people putting out their culture." On Page 39, "It would be a wonderful thing to have just Hawaiian two weeks, for Heaven's sakes, what's the problem?"

There's some more quotes and I'm going to read from that just a little bit later but He U'i Cultural Arts Festival Rule No. 1 states, "All work will be juried by the selection committee of Na Kupuna O Maui. The work will be juried on craftsmanship, authenticity, and adherence to the standards of Hawaiian cultural arts and crafts." Rule No. 2 was, "All work must be handmade by the artist who must be present at the booth." The original application from LAC made it perfectly clear that the reason they were asking the CRC for two weekends a month was to have an authentic Hawaiian arts and crafts fair in the Historic District. What that means, to me, is that native Hawaiians could make whatever

they want. If they want to do native Hawaiian artifacts and arts and crafts, that would be perfectly acceptable of course, but they could do pottery, fused glass, jewelry, paint painting, string beads, whatever they wanted. They would be allowed to sell anything that they make themselves. The non-Hawaiians, I think, just what this means is that they should be limited to making traditional Hawaiian arts and crafts, like wood or bone carving, or gourd making, or feather art, or basket weaving, or kapa, or anything else that would be considered to be traditional Hawaiian. So, basically, what that -- basically, what I'm saying is the Hawaiians could do whatever they want but non-Hawaiians should stick to just doing Hawaiian arts and crafts and not the other stuff like typical of what the Arts Society guys do.

One of the problems that I see happening here today is that there's a lot of confusion about who -- who is running the fair. Back in '99, Jackie Carlin asked: Is the craft fair opened to other crafter's as well as kupuna's? And Theo Morrison said, "Na Kupuna O Maui is jurying it. We are just supplying the administrative support. It is their event." So, right there, she is saying that we're just collecting the money and giving them their 20 percent and they don't have anything else to do, so Na Kupuna was running it. Jackie asked, "I was asking if it was only kupuna's. I notice there's a screening." One kupuna said, "No, they're open to all ages, not just kupuna." And Jackie asked, "It's only for Hawaiian crafters?" And kupuna said, "Yes." Bear with me for a second here. Theo Morrison also said, at that time, "It's one of our goals is to support the re-emergence of Hawaiian culture in Lahaina.

In summary, my feeling was then and still is that the CRC should give their approval and blessings to allow Na Kupuna O Maui to use the ali'i room or some other room in the courthouse to collect the sales proceeds for their artists. Whether they have the ali'i room or they use the -- something that the Arts Society is going to let them use or whatever. I also feel that this Commission would be wise to defer this item for at least a month or two and conduct an onsite visit to each of the art fairs. You can talk story with the artist as they are displaying and selling in Banyan Tree Park so that you can better understand what is going on in the Historic District of Lahaina and it would allow you to make a more objective and equitable decision. I think if you guys look at the conditions that were put down, there was 20 conditions that were put forth like about a month after you guys approved, the Lahaina Town Action Committee cannot fire Na Kupuna. If they fire Na Kupuna, that means nobody can be under the tree with Lahaina Arts Society there -- cut and dry. They cannot. That would be -- what they would be saying is that actually kind of firing themselves, you know, in essence.

So you guys got your work cut out for you on this one. There's probably around 50 questions that you need answered. You guys are the high makamaka in this whole thing.

You get input from the Parks Department. You get input from Corporation Counsel. You get input from the arborist. You get input from all over the place. But you guys are the ones that decide, in the end, what happens, and I know you guys were talking about how do you divide up the weekends. Well, that doesn't have anything to do with you guys. Once you say Na Kupuna gets it and the Arts Society gets it and whoever else gets it, then those three or two come together and they decide how they're going to divide it up. And part of the problem that you guys created was, first of all, limiting the artists to 25 and taking away that one weekend really cut down on what can happen under the tree. I know people are worried about the health of the tree but, really, that tree is healthy and it wouldn't matter if people were there everyday of the week, it's not going to hurt the tree, right? So, I think you guys should bring that weekend back so there's more -- there's more -- there's a bigger pie to slice up, you know, and everybody would be a little bit happier. So if you have any questions, I'd be happy to answer anything.

***(Commissioner Pyle was excused from the meeting at 11:55 a.m.)***

Mr. Kalalau: Thank you. Questions? I know I've been reading through this thing too and, basically, they're saying that Na Kupuna O Maui has the say on what goes on during that activity and stuff, and then they get fired. Anyways, any questions for Kenny? Okay, if not, our next speaker is June Steele, and followed by Ewalani Shim and Jace Hobbs.

Ms. June Steele: Hi. My name is June Pauhana Steele and I am mere grain of sand. There are two things in life that are certain: death and taxes. It's not important how we live -- how we die, excuse me, but how we live. How we live; how we go about making our money greatly affects us in everything; even how we sleep. How do we wanna be remembered? What will our deed say about us? Certain things have precedence over others and, to me, it should be our kupuna and our keiki. We need to malama them above other things. They deserve a place and respect. If our kupuna is thrown about or terminated as if they are affordable or disposable, what does this say? It is wrong to open up Lahaina and its historic sites to tourists and its commercialism and say "no" to our kupuna. What does this instill in our keiki? What does this show our keiki? This is merely posturing about power and money. We cannot keep saying "yes" to the cruise ships and all their kukai, broken up the reef, and say "no" to our kupuna. This is wrong.

The mission statement of Lahaina Town Action Committee, which I believe you do have a copy, thank you to whoever it was that gave them, reads: *To promote, preserves and encourages the historical, cultural, social, commercial, and environmental vitality of Lahaina.* The actions of Lahaina Town Action Committee are quite contrary to their mission statement.

I am asking for Na Kupuna to have the space they want. I am asking that they be granted what they deserve. I ask you: What will we be remembered for? For what we give? Or what we take? What will we most be remembered for?

Na Kupuna is our bridge, our refuge, our pride, and our roots that go deep. Na Kupuna should not be treated like weeds. Na Kupuna should be restored and not thrown into the wind, not put outside and be looking in. Look at what's presented to you. Please, review it carefully. What is more important? The house? Or what's inside the house? That is what I ask you. Mahalo.

Mr. Kalalau: Thank you. Any questions anybody? No questions? Okay, the next speaker is Ewalani, followed by Jace Hobbs.

Ms. Ewalani Shim: Aloha. Aloha mai kakou. My name is Ewalani Shim. I am the President for Na Kupuna O Lokelani, and also an alu like kupuna, and also the mayor -- mayor of -- kupuna council on the Mayor's council. I am a member of Na Kupuna O Maui since 1993 and that's a long time, and I'm going to read this testimony by Dee Sissy M.N. Rogers.

I'm writing this letter in support of the Na Kupuna O Maui. I'm born and raised of the aina and have been taught by my kupuna. Aloha keikahi'i keikahi'e ola`a kahoi`ihi. It is most unfortunate that Na Kupuna O Maui has been revoked of their privilege in commencing business under the Banyan Tree in Lahaina. They have been a tremendous support group and blessing for the Hawaiian Language Immersion Program here in West Maui. They have supported the late Punanaleo O Lahaina in means of financial aid, classroom materials, excursion trips, and much, much more.

Today, they -- they continue to do the same for the Hawaiian Language Immersion Program at Nahienaena. Keeping in mind with what I have mentioned - I have a problem with my eye sight - keeping in mind what they have --

Well, I'm going to say something. This Punanaleo O Lahaina, my niece and nephew have been in this class for a long time and, my brother's children, and Na Kupuna has supported this Hawaiian class for the little children, and I was really proud, and I'm proud to be a Na Kupuna because I'm a fighter, and the Banyan Tree is my playground. I was raised in

Lahaina, went to Kamehameha III School, climbed on that Banyan Tree, and every May Day, we had programs under that Banyan Tree, so there's a lot of memories about the Banyan Tree, and I was so happy that we could go under there and have something to make money for our children. Our Hawaiian children is very important. I'm a grad from Lahainaluna and we didn't have olelo classes there. We didn't have teachers to teach us Hawaiian language. And so Auntie Patty is doing a very good job and I'm -- I'm sure she's getting this building where she can have a class for olelo to teach our children the language. And we were -- we couldn't learn the language, and I'm really proud of Auntie Patty, and I'm hoping that -- that this money that we earn under the Banyan Tree that we can help more children to learn our language and have a building and she's looking in getting a building to put these children in and put some teachers there to teach our children. So I hope you all support us, Na Kupuna, for the Banyan Tree. Mahalo.

Mr. Kalalau: Mahalo.

Ms. Shim: Any questions?

Mr. Kalalau: Thank you. Okay, Jace Hobbs. If not, we'll have Uilani Kapu, followed by Curt Stevens.

Ms. Uilani Kapu: Aloha kakou. Uilani Kapu, Volunteer Executive Director of Hui O Wa`a Kaulua. As we've all heard, Na Kupuna O Maui has a nonprofit status of a 501(c)(3). Lahaina Town Action Committee came before you and helped them get the Banyan Tree because they were a nonprofit four. So without Na Kupuna, the CRC would not have allowed this to happen under the Banyan Tree, He U'i. So, without them, you know, Auntie Pua Lindsey and Auntie Thelma Kahaialii were the founders and He U'i would have not happened without them. The reason this is before you is because you are the caretakers, the County, of the Banyan Tree and courthouse. This application is for the Banyan Tree. Na Kupuna O Maui is asking you, Cultural Resources, to give them a permit. I spoke with Lahaina Restoration Foundation, who are the caretakers of the courthouse, and they'd like to give them an office but the only thing that's stopping them and preventing them to happen is the lease that you folks have them under. So if you folks change their lease and what the wordings are for Lahaina Restoration Foundation to open up an office space for Na Kupuna so they may have a space for themselves to collect their own monies and abide by your law that was stipulated for the Banyan Tree of not having money transactions and that way there wouldn't be a middle man of Lahaina Town Action Committee and Na Kupuna. Na Kupuna will have all funding for themselves.

Lahaina Town Action Committee has two visitors centers. I think one should go to Na Kupuna O Maui.

As stated by Crystal, she has given you folks other areas. As a Volunteer Executive Director for Pakala Park, Hui O Wa`a Kaulua, yes, we are in the process of getting the lease with the County, who are the caretakers of that park because it is the kingdom's park. With that lease, as Hui O Wa`a Kaulua would acquire, maybe we would think about having craft fairs there but, right now, that park is not designated for a craft fair area. It's not a craft fair site. So, by Park rules, you cannot use that area for that purpose. Under the Banyan Tree, like I stated, if you folks change Lahaina Restoration Foundation's lease, they can accommodate Na Kupuna and everybody would be happy.

I spoke with Karee Carlucci, as Joanne Johnson was speaking, because the concerns came up about nonprofit's, 501(c)(3) and everything, she told me that they have just acquired a nonprofit 501(c)(3) this year, which kind of -- it really stuck me because it was like they had it planned to kick Na Kupuna O Maui out but they had to find a 501(c)(3) in order to back up their lease with you folks and that was a stab in the back to the kupuna, which I felt -- their nonprofit 501(c)(3) is called Lahaina Cultural Heritage, which has a board of four, which Karee is the President, Danielle Atay is the Vice-President; she mentioned Dana as Secretary, and another Treasurer. And she also told me, in ending of May, she will be stepping down as their Executive Director of Lahaina Town Action Committee in order to take care of the nonprofit. All of this that -- I had a lot of questions cause I've been hearing everything, and I wanted the answers. When I come up, at least I could help you folks in some way to make it easier, 2008 is a long time for the kupuna to be waiting for a permit. They deserve this permit now because they have been operating under that Banyan Tree for a long time. A lot of people like to see them there. A lot of people look forward to them. And I'm asking you folks, Cultural Resources Commission, to please grant that to them this year and, as Robyn has stated, by April -- I mean June or May, June? So that's what I'm asking for you folks to do. Mahalo.

Mr. Kalalau: Yes, questions?

Ms. Watanabe: Hi, Ui. In the present time, who is running the visitors center right now? You stated that there's two visitors centers?

Ms. Kapu: There are two visitors centers: one on the bottom, and then one, as Robyn has stated, upstairs next to their museum. Lahaina Town Action Committee operates both of those. So if they were to give up one, you know, why do they need two? And, as Robyn

as stated, they've doubled their monies as vendors are outside cause they would have to go into make their payments.

Ms. Watanabe: Okay, mahalo.

Mr. Kalalau: Anymore questions?

Mr. Kapu: I get one. The Lahaina Cultural Heritage. What was the names again? Karee Carlucci, Danielle Atay --

Ms. Kapu: I don't know Dana's last name, and she told me the treasurer but I didn't catch the treasurer's name, but there's just four of them that sit on that board right now and that was established early this year. So for Na Kupuna to be receiving a letter in February 11, that kinda threw me that they would do that.

Mr. Kalalau: Anymore questions? Okay, thank you, Uilani.

Ms. Kapu: Mahalo.

Mr. Kalalau: We had one more speaker, Curt Stevens. Actually, he was the guy that forwarded the business card, and if there's anyone in the public that haven't been on the sign up list and wants to testify, you can come forward now. State your name.

Ms. Makalapua Kanuha: Aloha. For the record, my name is Makalapua Kanuha, and I am actually one of the board members for Hui O Wa`a Kaulua, and thank you very much for allowing us to be here. But I've been doing some work with Aunty Patty and Na Kupuna O Maui, and they have been such a very positive group in Lahaina, and I am in support of having them reinstated. I cannot believe we even asking for permission for them to go back to their rightful place cause, if it wasn't for that other entity or if it wasn't for them, the other entity wouldn't be able to be there so, now, here we are. It's like almost madness. But I am in support in having Na Kupuna O Maui back under the Banyan Tree. And the kupuna, Aunty Patty knows that I do a lot in our community and she, at one time said, "Whoa, Makalapua, you look like, you know, one truck went run you over." And because there's a lot of things that I do, so she had offered to have me come to Malama First, they have a office that is located on Dickinson Street in Lahaina Town, and what they do there is they our kupuna, as for myself, they put me on the chi machine, it helped me to allow my

organs to be balanced. So, as kupuna, she is setting an example to malama myself, which is a makua. But I just cannot believe that they are asking to be reinstated. And, if possible though, if a decision could, I don't know what the time span is, Robyn, I'm sorry, but you know I like to see the decision made like right now, and it's just the way I am though because, out of all the facts that I'm hearing right now, and for Keeaumoku, I think it's, from what I understand, the treasurer for that group that's been made because I was actually in part of the first meeting that I attended with Lahaina Town Action Committee and this is for organizing Festival of Canoes, and in that meeting, Festival of Canoes, which is, you know, it's a cultural event, in that meeting, the only kanaka maoli Hawaii that was in that meeting was myself and Reena Yap. So I think Reena Yap is the treasurer for that commission group. But I had to remove myself because I know they got granted 50,000 from the HTA for the festival and my kuleana, as going out, I guess they heard how much I generated last year for Aloha Festivals, I am actually, for the record, no longer involved with Aloha Festivals this year, but they wanted me to generate revenue for the Festival of Canoes within a month and a half to match because if you get the grants, you need to like generate revenues in order to get the grants. So I just had to resign. But my concern was if you're going to be a part in a organization making decisions for so-called cultural events, you need people on that board that know what they doing and what they saying. It is not proper to have our kalaiwa`a, which is our master carvers, to work on two big wa`a and you split all of these master carvers and say, "One group go here; one group go --" who is the master of the master carvers? I am not going to tell one master carver that he is not -- you gotta go listen to that one. Culturally, that is not correct. So when I had seen all these things, you know, my kupuna kahiko is watching what I'm going to do, so I needed to remove myself because of those kind of decisions. Now, if you know, culturally, they need to be close to the ocean when they doing things like this. They put all of their mana, all of their spiritual into the canoe, it brings it -- it gives it life. They need the ocean. You cannot have them all the way across the highway and then they gotta come all the way back down and jump in the ocean. That is a`ale pono.

So, today, I know I just went way off but, anyway, my decision is to please, I am asking that a decision be made for our kupuna because we need to know where we came from and they are the key holders in order for us to know where we going. So mahalo. Mahalo kakou. I think that's enough for me to say.

Mr. Kalalau: Mahalo. Thank you. Questions? Keeaumoku?

Mr. Kapu: This Lahaina Cultural Heritage, do you know when about they were formed?

Ms. Kanuha: Oh no, I had actually no knowledge of that. In our first meeting, Karee Carlucci did say that she was resigning from Lahaina Town Action Committee but they didn't wanna have any further discussions among the panel of people that was there. So I have no knowledge when it was formed.

Mr. Kapu: Okay, it has a lot to do with the HTA grant. Was the HTA grant also acceptable to Lahaina Action Committee in the past because they were the ones that was steering the Festival of Canoes originally, yeah? So was Lahaina Action Committee the one that Hawaiian Tourism Authority granted money to for the event to support the event?

Ms. Kanuha: From what I understand, that's what I had received and what she had said, but I just wanna say that I was just a part of -- I only went to one meeting and that's the meeting that I attended and I am actually not involved with Lahaina Town Action Committee. They just -- Karee Carlucci had approached me cause she had caught wind that I generated \$61,000 for Aloha Festivals for our community events so she wanted to know if I could come and help them to generate sponsorship. I probably could, but it was like time span was way too short.

Mr. Kapu: And you also mentioned that now Lahaina Cultural Heritage will be receiving the \$50,000 from HTA?

Ms. Kanuha: No.

Mr. Kapu: No?

Ms. Kanuha: No. That was said -- the 50,000 is for Lahaina Town Action Committee for the Festival of Canoes, from my understanding. But how they're going to disperse that, I don't know.

Mr. Kapu: So who's putting on the Festival of Canoes event?

Ms. Kanuha: I would like to believe that it is Lahaina Town Action Committee because that's the only meeting that I had was with them.

Mr. Kapu: Okay.

Ms. Kanuha: Well, with the executive director, who is Karee Carlucci, and Danielle Atay, Reena Yap, and Dana.

Mr. Kalalau: Okay, anymore questions?

Mr. Kapu: Okay, thank you.

Mr. Kalalau: If not, mahalo, Makalapua.

Ms. Kanuha: Mahalo.

Mr. Kalalau: Anyone in the public that wants to come testify? Okay.

Mr. Kaipō Kekona: Aloha. My name is Kaipō Kekona. I'm a board member of Hui O Wa`a Kaulua down at Pakala Park, and, so as far as that goes, yeah, we -- we are a nonprofit organization, a Hawaiian organization, and we're doing what we can for better our place and provide for our future and our culture. I wouldn't say we're practitioners. I would say we are traditionalists. And I'm also Site Coordinator for Festival of Canoes and, yeah, things are kinda choppy right now but, prior to this meeting today, I had a conversation with Karee Carlucci on the phone this morning and she had cleared a little things up with me because I wasn't too certain as far as how the festival was going to be going at it this year but she's resigning from Lahaina Action Committee, I just clearing this up for you guys, I don't know if it's important or not, but they went form this Hawaiian heritage thing just in order to keep a hold of the Festival of Canoes and to fit the 103 or whatever 503 nonprofit situation under the Banyan Tree so I guess, in one way, they just covering up or keep holding on to what they like and getting rid of what they don't want. So I guess Na Kupuna was the first victims and it kinda looks like they're turning on their own little thing because they gave away the rest -- Lahaina Action Committee, they kinda throw that on the side, she went resign from that, but before she went resign, they made that other Hawaiian heritage little nonprofit and then, I guess with Lahaina Town Action Committee's approval, they made this Hawaiian heritage thing like with the umbrella theory type of stuff and they going be in charge of the Festival of Canoes every year. This is a tenth year annual, like I said, things was choppy so they not going celebrate their ten-year annual this year and they wanna push it for next year. This year's going to be a real simple Festival of Canoes. We actually got a -- not going to have one of the usual, like Tevioni and his wife Afatia, but the rest of the carvers will be there and the festival going continue just under a different

name, I guess, the Hawaiian Heritage Association, whatever. So that's just clearing that up for you guys.

And, to me, it's plain to see that Na Kupuna was first in line so I don't know what -- they shouldn't have any -- be any problem with getting them back there because it's theirs to begin with and to have anybody -- I don't know, as far as protocol, anybody above the status of kupuna, yeah, so for anybody else under the status of kupuna to go make hakaka or pilikia with the kupuna, they big time violation of protocol so like -- like I said, us we not -- we not practitioners cause we no practice, yeah, we traditionalists and, to me, when guys make problems with my kupuna, piss off, brah; like throw rock; like bite. Piss off. So give 'em back before more things get out of hand, huh. Thank you.

Mr. Kalalau: Thank you.

Mr. Kapu: I get one question.

Mr. Kalalau: Question?

Mr. Kapu: No, no, no, not for Kaipo.

Mr. Kalalau: Okay.

Mr. Kapu: I get one question for Corporation Counsel. Okay, based upon the things that we heard on this other Heritage Cultural Committee or whatever that was formed by whoever, based upon Na Kupuna's arguments, my question to you is: Is there a possible breach of contract based upon Na Kupuna O Maui being X'd from Lahaina Town Action Committee? Because what we see here is, okay, now if Lahaina Town Action Committee all of sudden formed another Heritage Cultural just to accommodate the 501(c)(3), yeah, because of the conditions that was set on the County, give me some information.

Mr. Giroux: I think we need to -- to restructure the premise, I mean if you don't mind me rephrasing the question. I think I see where you're going but I think one of your questions, and you can correct me if I'm wrong, is that if Na Kupuna is no longer involved in the original -- the original permit, would that cause some kind of breach or violation within that permit? Is that an accurate question? Are you asking about the original permit to use the Banyan Tree that was given by this board to Lahaina Town Action Committee?

Mr. Kapu: Yeah. I think. Yes.

Mr. Giroux: I mean I think that's a good place to start.

Mr. Kapu: Yes.

Mr. Giroux: Okay, well, and then the next question, if that is not determinative of the final action, is then is this board allowed to go on and give another permit to Na Kupuna?

Mr. Kapu: No. To allow another entity, such as the Lahaina Cultural Heritage, a newly formed entity created through the existing Lahaina Town Action Committee, is that just?

Mr. Giroux: Well I --

Mr. Kapu: Because the conditions were set based upon what Na Kupuna O Maui was all about, yeah.

Mr. Giroux: Yeah, I think one --

Mr. Loudermilk: Can I try clarify? The action today is basically having to do with, and the discussion, the permit that was issued in 1999, and part of the representations regarding that permit was that it -- the cultural fairs would be run through Na Kupuna, they were the entity, and that they would be the ones that would actually select and jury who would be in the craft fairs, not the Lahaina Town Action Committee. The only role for Lahaina Town Action Committee had to do with money transactions, nothing else. So, one, the question is: Now that Lahaina Town Action Committee, through this letter, basically fired Na Kupuna, who can actually do the He U'i Craft Fair if Na Kupuna is no longer involved? Just in terms -- and then we have this new entity. The permit, right now, is with Na Kupuna, it is not with the new entity.

Mr. Giroux: Well, actually, Robyn, the permit as it exist now is with Lahaina Action Committee so --

Ms. Loudermilk: In conjunction with Na Kupuna. Na Kupuna would be running the show.

Mr. Giroux: Right, and that was my -- one of my first concerns was we -- what I wanted to see was what was the -- the permit that we had issued because I mean that would clear up -- what I have is just the application, the 1999 application and recommendation. If the vote, at the 1999 meeting, was just to adopt this, then I -- I would have better answers, but I believe that somebody mentioned that there was another permit later that put on 21 conditions?

Ms. Loudermilk: No, that would be correct and without having those signed documents, we're still conjecturing the specifics of the relationship between the Lahaina Town Action Committee and Na Kupuna in the approval. That would be an accurate assessment.

Mr. Giroux: I mean are we done with public testimony?

Mr. Kalalau: No.

Mr. Giroux: I don't know when it would be a proper time but --

Mr. Kalalau: Okay, no, we can address that but we're not through with public testimony, so is there anyone in the crowd that need -- that has not signed up and wants to testify on this item? Please come forward. Okay, we see that we have none, the floor is now closed for -- yeah, she's the applicant, right?

Ms. Nishiyama: No, I'm testifying for Liko Rogers, he's the kumu for Kulakai Aupuni Princess Nahienaena and he couldn't be here.

Mr. Kalalau: Liko Rogers?

Ms. Nishiyama: Rogers, yes. I'm sorry. Okay.

Aloha mai kakou. My name is Liko Rogers. I am currently teaching in the Hawaiian Language Immersion Program in West Maui at Princess Nahienaena Elementary School. I have been teaching Hawaiian Language Immersion in Lahaina for nine years, since it returned to the community in 1998. Before teaching in Lahaina for nine years -- I mean, excuse me. Before teaching at Princess Nahienaena, my sister, Kealohilani and I opened

the Punanaleo O Lahaina, which was Hawaiian Language Immersion Preschool in Lahaina, until its unfortunate closure 2005. I taught at that preschool for five years and now I am in fourth year at the elementary school. I'm writing this letter in support of Na Kupuna O Maui, an organization that has supported Hawaiian Language Immersion in West Maui from its conception.

As a Hawaiian Language Immersion educator, as well as a cultural practitioner, I feel that it is of utmost importance that Na Kupuna O Maui has their right to commence in their business under the Banyan Tree in Lahaina reinstated. It is my feeling that they should be allowed to continue these actions without the burden of another organization controlling their actions. The revenue that Na Kupuna O Maui generates under the Banyan Tree has helped our Hawaiian Immersion Language Program in many ways. If Na Kupuna O Maui is not allowed to continue their business as usual, I fear that the ability to support our program will be destructively diminished.

As I stated earlier, Na Kupuna has supported Hawaiian Language Immersion from the beginning here, in West Maui, in many ways. They have purchased new computers for the classroom; Na Kupuna has been -- has given funds to help purchase classroom materials; they have given money to support field trips taken by Hawaiian Immersion School students; Na Kupuna has even given scholarship to families to help them pay their tuition for Hawaiian Immersion Preschool. Na Kupuna O Maui is in fact, right now, in the process of working on operating a new Hawaiian Language Immersion Preschool in West Maui where they already have a site. If Na Kupuna O Maui does not have the funds to open the preschool, this could be a detriment to the perpetuation of the entire Hawaiian Language Immersion Program here in West Maui.

Since the preschool's closure in 2005, enrollment in the program at the elementary level has significantly decreased. Na Kupuna O Maui has been looking to establish a new Hawaiian Language Immersion Preschool to take its place. The reason the preschool is so important is because it's a feeder for the elementary. The children who graduate from the preschool are to go on and continue in elementary. No preschool means a very small enrollment in elementary, which threatens the very existence of our program.

In conclusion, I implore that you empower to reinstate Na Kupuna O Maui right to gather and to do business under the Banyan Tree in Lahaina. They have been a vital part of Hawaiian language restoration in our community and they must be allowed their venue to continue to do so. Mahalo nui loa for your consideration. Liko Rogers.

So, I need to clarify something also. Who is Crystal Alboro? Crystal Alboro has no relationship between Na Kupuna. It was Theo Morrison and Na Kupuna. When we had to give accountability, everything went to Theo Morrison. So, this is what I'm saying. Who is Crystal Alboro? The kupuna and I worked hard for He U'i to create this. We did everything. So accountability was done before between Theo Morrison and Na Kupuna O Maui. And, also, there was only one time they asked me to come and talk and to their meeting when they had the new executive on board. Thank you. That's all I need to clarify. I could go on and say liar, liar, but no. Thank you.

Mr. Kalalau: Okay, anyone else from the public?

Mr. (?): . . . *Hawaiian language* . . . Just hearing everything that's been going on, like a lot of stuff, I just like to say it's sad, you know, it's sad to see that our kupuna gotta come here and deal with this kinda rhetoric or political thing or corporation whatever, when they should be at home where they like be enjoying themselves and with each other and the things that they wanna do, and I just feel that by them getting kicked out or whatever you guys wanna look at it as this a`ole pono and, as people say, you know, without our kupuna we would not be here today. They are our living, walking treasures and to help kokua us guys or especially like me, a young -- young kane of this community, and I just feel that you guys should support them cause I support them. Make them happy. It's our kupuna, and they mean a lot to everybody and our people and our -- and just everything. Mahalo.

Mr. Kalalau: Okay, thank you. Okay, is there anybody who haven't spoken from the public that, at this time, would like to come forward? If not, we see none, we will close this portion of the public testimony and bring the applicant back up because we have two concerns, we're going to have to break for lunch, and we will be losing some commissioners. Robyn, you wanna --

Ms. Loudermilk: I guess my question would be: What would be the pleasure of this Commission to direct me in this particular matter? And I believe what Suzie is passing out is written testimony that was received by the department this morning via fax to be part of the record.

Mr. Kalalau: We're going to have Corporation Counsel address some concerns.

Ms. Loudermilk: Two questions?

Mr. Kalalau: Yes.

Ms. Loudermilk: Okay.

Mr. Giroux: I guess with the facts I have before me, I can give a little guidance, hopefully, as far as the powers of -- of this board. Under Chapter 19.52.090E, it pretty much, under that, is the whole reason that somebody would come before -- before this board, and I'm just going to read this into the record. It says:

It is unlawful for any person to carry on or solicit business in any location, on any street, highway, or sidewalk. The same is also unlawful in any location, in any park, or open space that is owned or maintained by the government -- by a government agency without the approval of the cultural resources commission and the responsible agency having administrative authority over the park or open space.

So, the Banyan Tree, whatever title, it is maintained by a government agency at this time, which is the County. So, if there's commercial activity going on, they have to come before the -- before the Cultural Resources Commission to get approval. Now, I think the second part is the responsible agency having administrative authority over the park or open space would, at this time, be Parks and Recreation. The Parks and Recreation entered into a lease with the Lahaina Restoration Foundation for the courthouse and, within that lease, this was executed, I believe, May 23, 2005 and should be good up to March 2009, within that lease, the Banyan Tree Park, on Page 6 of that lease, it states that, it's Subparagraph 16, Banyan Tree Park, and what we're looking at is the Banyan Tree and the area around it, Subsection A, Management, Use and Control, it says:

The lessor, which is the County, through its Department of Parks and Recreation, shall retain the management use and control of the Banyan Tree Park and adjacent areas, not herein leased, including the right and authority to allow and permit other organizations or third parties the exclusive or non-exclusive use thereof.

So, under that, whether or not there was another permit outstanding, Na Kupuna is coming before you as an independent user that is allowed underneath the lease to ask for approvals from the Parks and the Parks will not do that until we give it a cultural review and approval. So if the body wants, at this time, with the information that it has, it can review the proposed use in the terms of a review of a cultural analysis. And upon that, as long as that is approved or disapproved, then the Parks and Recreation will then have to figure out a scheduling or some type of --

Mr. Kalalau: Calendar.

Mr. Giroux: Yeah, calendar as far as a management of the area because you're looking at the code saying that there's a responsible administrative authority. What we are is more of a cultural authority. And I know that within the parameters of, you know, the extent of use, that is -- if you want to put in your analysis or in your approval the times or amounts or those types of things, I think that it is important for you to state so in your permit, but it is up to the Parks, amongst all people who are able to use it, to actually figure out when -- when those people are to be able to fit it in as far as the availability. So, if that helps at all.

Mr. Kalalau: Question?

Mr. Kapu: Yeah. Okay, that's only with the use of the -- under the Banyan Tree outside of the courthouse, right, the County has jurisdiction because the lease, basically, is controlled by somebody else? But in order for Na Kupuna to, because the application basically says approval for the use of the Banyan Tree Park, in order to be compliant with the regulations that is specified through the County Parks, no cash under the Banyan Tree or in public areas that means, and hearing from the testimony, that there could possibly be an area inside the courthouse that might be privy to -- for Na Kupuna. So you're looking at the management part, right? And all we -- all we are, basically, is to give recommendations for the use of the -- under the Banyan Tree and if everything was to be set in place with Na Kupuna and, you know, on an other entity to provide themselves a place in there, all we giving recommendations to is just the outside, not the inside? Okay.

Mr. Kalalau: But then because the -- the chapter states cash revenues, you know, so it still going to need one place inside to collect -- to collect the cash anyways, that's where we're getting the problem.

Ms. Loudermilk: Yeah, I guess my question would be: If the courthouse isn't available and the Commission approves, whether it's today or in the future, I think Na Kupuna should tell this Commission where those transactions will be taking place so that it will not be taking place under the Banyan Tree, and should it not be able -- should, for whatever reason beyond this Commission's control, that the lease cannot -- it'll take maybe a year to change the lease so that they get the space, where Na Kupuna would have, you know, we'd have to find out where the cash transaction would be. And I'm just throwing that out because it is a possibility, maybe it'll only be two or three months, but there will be a gap there and unless you're going to allow the cash sales underneath the Banyan Tree, that -- that does need to be addressed. You can issue them the use, but then they'll be cited without this, this factor being addressed and how kupuna would like to address that.

Mr. Kalalau: Okay, one thing though, we haven't heard from the Lahaina Restoration committee, you know, Lahaina Restoration Foundation.

Ms. Loudermilk: On purpose.

Mr. Kalalau: Yes, I believe because they have the lease on the courthouse and I would believe that if anybody that have some positive say into this, I believe it would be from the Restoration Foundation whether there is a possibility for a space that can be used there for the cash transactions. We have Mr. Keoki Freeland in the house.

Mr. Kapu: Mr. Chair, can I actually --

Mr. Kalalau: Freeland.

Mr. Keoki Freeland: Good morning. Yeah, Keoki Freeland. Yeah, Lahaina Restoration Foundation, just understand, that we have the lease on the courthouse. We have no control of the park at all. From what I understand, all the use that takes place under the park, like the events and whatnot, if there are sales and whatnot, the sales have to be consummated within the courthouse. Our lease doesn't have anything to say relative to that part. What our lease says is who can occupy the courthouse, and it's very definite on the occupancy. Arts Society can have a gift gallery. Lahaina Town Action Committee have an office space, visitors center. Lahaina Restoration has a museum. And then there's a community meeting room. And that's specific as far as what I'm told can go in the building. So if Na Kupuna would like an office space, my lease needs to be changed it says to allow

them to come in. I have no objection to that, but I am bound with what my lease says. So, anyway, question relative to that?

Mr. Kapu: I think my question would not address anything he said but my question would be: There were events that were in past that we talked about and that was Aloha Festivals, they were allowed to sell under the Banyan Tree cash. Was that through the advisement of the Cultural Resources Commission on a special event kind of thing to allow Aloha Festivals to accept money under that Banyan Tree with the conditions that was set by the County? Because I think there was about couple people gave testimony to other associations being allowed to sell under the Banyan Tree.

Mr. Giroux: Let me try to -- yeah, that was puzzling to me when I was trying to analyze this as why -- why the money have to be in the courthouse. The only thing I could find was looking at -- at the report where Ordinance No. 804, Bill No. 26 was adopted in 1974, and effective in 1975, which prohibits peddling throughout the County of Maui. I guess, at some interpretation was that this was, if it was an ongoing activity, it would be looked at as a type of peddling, I guess, and whereas if it was a single event and there was a transaction, it wouldn't be. I don't have any type of analysis or anything for you there, and I don't have any written opinion regarding that.

Mr. Kapu: But through the recommendation, through the Cultural Resources Commission, through the Parks Department, would allow a nonprofit organization that is stable that right to sell under certain conditions so they don't have to be listed as peddlers, you know, under the Banyan Tree?

Mr. Kalalau: You know, I think the same thing goes with other parks when, you know, baseball teams do fundraising and stuff. It's basically, I think, agreeable under the permit because it's a permitted event, it's not a peddling event. I think because you have a valid permit, it probably gives you some kind leeway to where you can do the cash transactions. I mean it happens throughout Maui County parks, you know, people have fundraisers all over the place. I can see if it's not a permitted thing where the County don't know anything about it or the community don't know anything about it, then it becomes an illegal event, but most of the events down in Lahaina is permitted because you have organizations in Lahaina have -- do cash -- cash sales and then everybody else have to do their cash sales in the old courthouse. You know, I believe it's because it's permitted activities, but I don't know what's the County laws in saying -- what versus permitted event or a non-permitted event on a County property.

Ms. Watanabe: Mr. Chair, I think, you know, it gets so confusing because, on the other hand I guess, on a one time event, I guess it's allowed to use it on cash basis. I mean it seems like when you apply and this is a one time event and so the -- the proceeds are allowed on a cash basis. But if it's an ongoing event, there is no cash exchange that is allowed, right?

Mr. Giroux: You know, I'm not clear at this point. I can't find anywhere where that rule is coming from and I don't know if it's coming from a condition, or from the Parks Department, or from the ordinance. I'm not sure.

Ms. Watanabe: I think that's where the, I'm sorry, that's where the confusion is and I think on that part I think it needs to be clarified, you know, and I think there's no answer on that and that's why there's a mass confusion.

Mr. Kalalau: True, whether it's an ongoing activity or a just once-a-year activity. Yes, Keeaumoku?

Mr. Kapu: I'm sure glad the kind not here at this moment in time, Reinstated, because I think he would give us one whole drill all over again but, you know, anytime a permit application goes in for like a huge event, we look at the permit and it says, okay, the amount of people that is going to impact the tree, what are the conditions, what are the conditions are going to be set based upon the impact, and we look at it, okay, we gotta provide toilets and all these kinds of things, yeah, waste control, like garbage cans gotta be set out into place and all these kinds of things, and I know with the management of the courthouse certain conditions were made I guess because of the 20 percent was made just so they could take care of the maintenance and all those kinds of things. I don't know. But I just throwing this out there that that might be the reasons as to why the 20 percent, yeah, was to go to either Lahaina Town Action Committee to help out with those maintenance and stuff like that. So whatever the permitting process is have to do with the County to allow this Na Kupuna, Na Kupuna O Maui an opportunity to sell under the Banyan Tree to raise money for our kamali'i and our cultural revitalization efforts. I think maybe looking at the -- I don't know, that's the County Planning side or the Parks side to look at. We gotta provide for these kinda things. We definitely have to provide for these kinda things and if we going be pushed to an area to make sure we get all our t's crossed and our i's dotted, we're missing out on the host and, I don't know, I'm trying to think of words that's moving in there for a motion but --

Mr. Kalalau: Kalei?

Mr. Moikeha: I'm not sure what I missed but the question I got then, anytime an event is under the Banyan Tree, the only place you can collect money is in the courthouse?

Mr. Kapu: Unclear.

Mr. Moikeha: Oh, that's unclear? Okay. And I kinda understand. I'm not sure as far as I know -- is there a question also about whether or not we should allow them to just collect cash under the Banyan Tree too, or did we kinda talk about that too or --

Mr. Kapu: We have allowed it, I think, with the use of Aloha Festivals?

Mr. Kalalau: Aloha Festivals.

Mr. Moikeha: And so it's something that I guess Na Kupuna would -- would like to entertain also to -- they would collect their own money under the tree, that's possible -- that's a possibility, yeah?

Mr. Kalalau: That's a possibility but then again, like I said, it's a ongoing thing versus a one time thing.

Ms. Watanabe: That's right.

Mr. Moikeha: Right, right. But the thing I got too, I guess the question I would pose to Na Kupuna, I mean if a vendor comes in, does the vendor then collect -- keep all the money, or does part have to go to Na Kupuna? I mean I can understand the great thing about going to only person, then you can collect all the receipts, came from this vendor, you know how much was spent, how much was collected; versus, I going collect my own money, I gotta pay 20 percent, but of that hundred dollars, I only going say I made -- you know, I mean the control, to me, if I was Na Kupuna, I'd want the control too of the finances, and I see what they want, they want their own control, but if you allow the vendors to just do their own thing too, then, you know, I mean that's just a comment. I don't know.

Mr. Kapu: So Na Kupuna would, basically, act as the nonprofit to allow the craft fairs to continue on a cost basis might be the 20 percent to help Na Kupuna pay for, I guess, the

set-up, the sound system, possibly the garbage disposal to sort of help with the Banyan Tree area and also the courthouse.

Ms. Watanabe: Question: And so that money is paid to -- is actually -- that is paid by the Lahaina Town Action Committee, you know, the set-up, the clean-up?

Mr. Kalalau: Keoki, you know if it was set-up like that to where --

Mr. Freeland: We have nothing to do with the park.

Mr. Kalalau: When the vendors go under there and they're underneath the Lahaina Action Committee does the Lahaina Action Committee set up all their booths for them and their -- no?

Ms. Watanabe: I just -- I guess just to share with you the activity that I do on Lanai, as a whole, is each vendor pays for a spot and the money that we collect from the vendor, we take that money, and that defrays our expense, so that is -- that money goes to paying the set-up crew, the clean-up crew, everything that is entailed to actually put on an event. But I think, in this one, it's like if I'm a vendor and I'm going to pay for a space and I'm going to -- and where is my money, you know, I mean I'm going to make a profit but where is my money going to go and who actually is responsible for that part. I think the transaction of who is -- you know, money is going here but nobody has, actually, right now being accountable, like we are responsible, here is -- here is what the cost is, I mean I don't see anything in concrete actually.

Mr. Kalalau: Okay, Kalei, you get question?

Mr. Moikeha: I think what councilwoman meant -- Councilwoman Johnson said also is that the lease that is to the -- I think the Lahaina Town Action is only for the courthouse and its grounds, not the Banyan Tree. I think that's what she stated. I had it written. That's what she said. It's only for the courthouse and its ground area, not the Banyan Tree.

Mr. Freeland: Well, Lahaina Town Action is a sub-lessee to us in the courthouse.

Mr. Kalalau: Oh, courthouse, yeah.

Mr. Moikeha: So you folks have --

Mr. Freeland: The lease.

Mr. Moikeha: For the --

Mr. Freeland: Courthouse.

Mr. Moikeha: But not the Banyan Tree?

Ms. Watanabe: But not the Banyan Tree.

Mr. Artates: Excuse me, but we're allowing the collection of the finances be allowed in the courthouse, correct?

Mr. Kapu: Right.

Mr. Artates: But we're still not clear where the monies can be collected, or is it designated just at the courthouse?

Mr. Kalalau: It has been, you know, it's like public law, he was reading the thing that --

Mr. Giroux: I think the courthouse was just because it was the closest, most convenient, and it was also related to the art gallery, I mean as far as a location. But I don't think there's anything that's saying that if, you know, I mean if there's a facility close by --

Mr. Artates: You can.

Mr. Giroux: Yeah, I mean I don't -- I don't see that. I think the only reason why we're getting into this no cash involved is because of the peddling law and I don't know if Parks has another rule out there that is limiting the, you know, the display of cash.

Mr. Kapu: I would like to ask maybe the Parks Department or Planning Department, as a request, to look into past events, like maybe especially concentrating on the Banyan Tree area, as to whether or not these things were allowed in the past of collecting money under the Banyan Tree, Aloha Festivals, there might have been some other special events; basically, give us some kind of information, but I would like to expedite or entertain a motion immediately to allow Na Kupuna O Maui to -- to actually have the opportunity to use that Banyan Tree for their He U`i Festivals, and I don't know the logistics of whether or not they going be called peddlers or not peddlers but then, at the same time, there's that question out there that other associations were allowed to use that and sell under the Banyan Tree. But I would like to entertain a motion to allow Na Kupuna and He U`i Festivals back under the Banyan Tree so they can continue their craft and educational, cultural, awakening program.

Mr. Kalalau: Okay, wait. Nani, you know have a question for -- okay.

Ms. Watanabe: Yes. Yes. Mr. Freeland, what would actually -- how would the kupuna be able to actually if they're requesting for a space in the courthouse to utilize? What --

Mr. Freeland: Well, as I said, my lease only permits me to open up for certain spaces. I did miss one. I didn't -- I forgot to mention. And the one space is the office space for the Historic District Officer, which presently doesn't exist yet, and I'll talk to you about that later, but, yeah, so, as I mentioned, the Arts Society, Lahaina Town Action, office space, museum, visitor center, gallery, public meeting room, and the Historic District Officer's space is what says in my lease that I have to provide. It doesn't allow me to provide for anybody else.

Mr. Watanabe: Okay, and then I -- there was testimony that there's two visitors center --

Mr. Freeland: There's one visitor center and one gift shop, right, run by Lahaina Town Action Committee.

Mr. Giroux: Keoki, your lease is the lease and management agreement?

Mr. Freeland: That's correct.

Mr. Giroux: And that's the one that was extended May 2005 to 2009?

Mr. Freeland: That's correct.

Mr. Giroux: The one -- because I'm looking at it, as far as, I mean I'm looking at this on the fly so I just wanna --

Mr. Freeland: Yeah, I think the part you're looking for is that I'm supposed to follow the guidelines of the Old Lahaina Courthouse Task Force Recommendations.

Mr. Giroux: The 1995 --

Mr. Freeland: Task Force Recommendations, and the recommendations is what I just cited what can go in there.

Mr. Giroux: I mean cause I'm seeing office/administration --

Mr. Freeland: Right.

Mr. Giroux: And it just says "a preference to be given to tenants," I mean it --

Mr. Freeland: Right. Right. Lahaina Town Action Committee has an office space. Arts Society has an office space.

Mr. Giroux: And I guess if you're going to sublease, you're going to have to ask the Department of Finance --

Mr. Freeland: That's correct.

Mr. Giroux: For --

Mr. Kalalau: An amendment, huh?

Mr. Giroux: Well, I mean would you be amenable to sending a letter asking them to review the lease at least to see if -- if that is a restriction or not?

Mr. Freeland: I guess so.

Mr. Giroux: I mean if there is space within the courthouse itself.

Mr. Freeland: Yeah. No, there is space. There was also another thing that came about, this was actually before my time, and -- and I can't even remember the person's name, Theo Morrison was the one that was telling me about it, was some craft fair person wanted to conduct sales underneath the Banyan Tree but wasn't allowed because it didn't have space or wasn't granted any, but Arts Society or Lahaina Town Action didn't wanna work with them, so they couldn't get a space in the courthouse and, therefore, they weren't permitted to come under here. So the question is: If you allow one person another space, do you have to allow for everybody else? It's just a question. I don't know the answer to that. I'm just throwing it out there.

Mr. Kalalau: And so who manages the visitor center?

Mr. Freeland: Lahaina Town Action Committee.

Mr. Kalalau: Keeaumoku, you had another question?

Mr. Kapu: Yeah. Well, basically, the request that is in front of us, approval for the use the Banyan Tree Park, that's what I'm going off of, yeah. I mean if we're just going to look at, okay, or what are the uses based on, it's based on being allowed to sell under the Banyan Tree, I guess; we're not talking about the courthouse; we're not talking about whether or not -- I think we need to expedite this or the Parks Department or whatever department, the Planning Department. If there's a permit to -- just the permit -- was the permit given? And did everybody comply with the permit, and why is Na Kupuna in front of the Cultural Resources Commission if there's a permit to request for the use the Banyan Tree Park? So if we're looking at the point as to where we going -- the courthouse is a -- is a unsketchy little situation, then, you know what then, we're looking at, maybe in the next two, three months, if we lucky, probably even a year, to even figure out whether or not the County is going to look at the lease that Lahaina Restoration Foundation has to even put addendums or changes inside there to allow another venue but then, you know, I no think Na Kupuna wants to be put on -- put on hold to figure out whether or not they going be allowed to

practice or provide for their constituents, you know, and they only asking for the use of the Banyan Tree from us.

Mr. Kalalau: Okay. Lon?

Mr. Whelchel: The lease for the Banyan Tree is well stated and they're going to need to have a money processing space, that should be added to the staff recommendations. Could the money processing space be a little armored car or a temporary building sitting out there by itself and not have to go to the courthouse?

Mr. Kalalau: I don't know. That's a good -- have a armored car parked out there ...(inaudible)...

Mr. Whelchel: But isn't that -- isn't that secondary to the motion? And we have a motion on the table now, is that right?

Mr. Kalalau: Keeaumoku's motion. Okay, you know, I mean what I'm thinking about is, you know, obviously the support was heavily for the kupuna's but, in the meantime, is, you know, if -- if we do recommend that they can go back there and sell, how is the cash transactions going to be handled?

Mr. Kapu: I think our job as the Cultural Resources Commission is to look at the application to allow them, yeah or no, and it's the Parks' responsibility to figure out how they going get that done, yeah, with Corporation Counsel's help of course. So would you like me to entertain the motion again?

Mr. Kalalau: Okay, we got anymore questions for Keoki? If not, thank you, Keoki. Robyn, do you have anything else more to add or -- or does Commissioners have any other questions for the Planning Department? Okay.

Mr. Moikeha: I got one. A real simple one for Robyn. So then, based on what you've heard today, I mean I don't know if you can, but what would be a recommendation?

Ms. Loudermilk: I would have no recommendation. I would not be confident. I wanna verify all the facts. And no disrespect to -- to any of the members cause a lot of the

information brought up today I had no idea that a letter was sent to Na Kupuna terminating them. Eh, that's big news to me. That could affect the permit that was approved. But I don't have that information. You know, so that's the -- that's the dilemma that I am in. It's not that I am not supportive of the general principle that other people have the opportunity to -- for the uses in the Banyan Tree and I'm not opposed to having cash sales underneath, but I don't have -- I need to check to see what the legal precedence was between this one time event and these other events cause we do -- you know, the testimony has indicated that there does not appear to be consistency in certain things we thought were consistent, and, yeah, so I really have -- I would not want to put the department in that position. Now, it is up to the CRC. They can make their own recommendation. That is the purview of the body and direct us otherwise. But as for the department, I just really do not feel comfortable if you're going to ask me what kind conditions to put on cause that crux of the -- that the crux of the issue. And, again, I don't think we have a problem with the CRC allowing other vendors to use the Banyan Tree. I don't think it's exclusive in the leasing or the management that it is to those two entities. It's just figuring out these finer -- finer details that, you know, I apologize, but me and Stan, we just couldn't find any documents. We were putting -- getting the documents now together and, unfortunately, that's -- that's something that should not have happened in this department. The documents and everything should have been readily available to us so we wouldn't be put in this situation. We know about what's the 2004 recommendations and the conditions, how they were put together, the minutes, and, you know, that if the department had those documents readily available, I could provide it to you guys, but we don't. You know, so I say that reluctantly, you know, because in terms of the bigger picture, I don't think the department has a problem with that at all, the use, who can use the use. It's the details in terms of what really are the agreed upon conditions with the lease and the permits because the issuance of one permit would require a modification of another one, and this is -- and, again, we don't wanna necessarily preclude that, we could have up to x-number, but the ramifications, like Keoki said, in terms of, you know, maybe it doesn't have to -- the transactions do not have to occur in the courthouse, maybe for Na Kupuna it could be in their office space or within a certain area in Lahaina. I'm not sure. Maybe the manapua truck, you know, if they get good plate lunch, hey, double -- you know, even better. But, you know, it's --

Mr. Moikeha: Do we know anything about the permit system? I mean if we say we go with the motion that's on the floor --

Ms. Loudermilk: Yeah.

Mr. Moikeha: And we agree, is it going to take two, three, four, five months? I mean, and at that time, are the ramifications going to be set, the recommendations and stuff will be set

at that time? I mean there's no use in -- I mean I understand what you're saying. If we go with the motion, it's going to take six months anyway, I mean -- good luck, but go ahead.

Ms. Loudermilk: Just as is without any conditions or standard language or policy for the use of the Banyan Tree, as a person who would be trying to assist in the implementation, I can see there being some problems, not knowing what all of them are, but let's say if -- if the department has a x-period of time, one or two weeks, to find those signed documents and if Na Kupuna agrees to abide by those standard operating procedures, that would be -- that would be very helpful. And if they can meet it, then, okay, they should be able to go, and the devil is going to be in the details with the scheduling with Parks and with Lahaina Town Action Committee.

Mr. Moikeha: So what you're saying then anytime a permit goes in, recommendations have to be made, or should be made, or -- I mean you don't just turn in permit for use, I mean the whole recommendation has to be done like --

Ms. Loudermilk: That is preferable --

Mr. Moikeha: Okay.

Ms. Loudermilk: So that, you know, as low-key as we try to be, this decision is going to be quasi-judicial, appealable, findings of fact, conclusion in law, and --

Mr. Giroux: I think, Kalei, one of the, I guess, problems, in the past, when we've given permits, we've tried to make them so detailed and micro-managed as we could because the Parks Department didn't have any rules and that's what we were -- we were trying to take on that role. I mean, personally, I don't think that is our role. There is an administrative agency that's supposed to be helping us. We're the ones trying to help them when we're giving these permits but, so the community doesn't lose out, we are putting a lot of details into the permits, and then we're giving it to the Parks, and then they're following our detailed instructions and -- but, like Robyn said, if we're so detailed in our instructions and then somebody comes in and ask for another use and it's not compatible with what we said before, then it creates internal conflicts and those conflicts should really be fettered out by the administrating authority, which Parks.

Mr. Moikeha: And so, in essence of what Robyn is saying also then, as far as we don't even have the old lease that's -- or the permit or both?

Mr. Giroux: Well, I know somebody came in, within the last year-and-a-half --

Ms. Loudermilk: Yeah.

Mr. Giroux: And there was 21 conditions?

Ms. Loudermilk: Yeah, you know, I --

Mr. Moikeha: I bet even Na Kupuna doesn't even know what they can or cannot do.

Mr. Kalalau: Right, 21 conditions.

Ms. Loudermilk: Probably. Yeah, and if, you know, I believe the last time a comprehensive review with all the players were done was back in the ending of 2004 and that I believe there were a couple of signed policy documents that we did not have on file, readily available, but if we can get them within a -- a certain period of time and if Na Kupuna is willing to abide by those for now, I think the department would feel much more comfortable and if specific changes need to be made, then there is -- we can always -- we can always come back, in that sense. But in terms of the larger -- the larger bigger questions, you know, this body wants that -- those answered, that would take additional time. If it's the will of this body to consider a motion to either deny or approve with this -- the latest policy document signed by the department, then we would do our best to -- to make sure that this goes forward, but I think it has to be within, you know, a certain time frame and -- yeah.

Mr. Kapu: Okay.

Ms. Loudermilk: Now, that's two Diet Coke's okay, 32 ounce.

Mr. Kapu: So I guess I -- I guess I gotta reiterate my motion, and I need help with this one, to allow Na Kupuna O Maui the use of the Banyan Tree be it go through the process, and I don't know how long that going be expedited from the Planning Department?

Ms. Loudermilk: Yeah, the -- it would be a -- based upon the most recent signed Banyan Tree usage policy document -- come on, we're bureaucrats, I couldn't get that into an

acronym -- you know, based upon the latest signed document, which I believe is in 2004, which sets the current conditions or, for lack of a better term, conditions, what can or cannot be done under the Banyan Tree, including liability insurance, those types of things. Mr. Giroux?

Mr. Giroux: Robyn, if we took a break and just try to get the last permit that we issued for the Banyan Tree, and I don't know if it was for the Arts Society or the Lahaina Action, but I believe it was the last permit that was issued that had almost 21 conditions set.

Ms. Loudermilk: Five minutes?

Mr. Giroux: Oh, I don't know. It's up to the chair.

Ms. Loudermilk: Mr. Chair, I mean it's the purview of the -- this --

Mr. Kalalau: Okay. Yes. So we'll recess for five minutes.

*(A recess was called at 1:25 p.m., and the meeting was reconvened at 1:40 p.m.)*

Mr. Kalalau: We will reconvene with this meeting. We have a very important announcement to make. Because we're losing two more Commissioners, we will be I guess amending this agenda and, you know, we apologize for the people who are on our agenda that -- because we will be losing two Commissioners, we won't be able to address your agenda items; therefore, we're moving to reschedule your items for the next -- the next meeting. And now we're going to continue with Item 1.

Ms. Loudermilk: What items are those? I might have -- it might be my items.

Mr. Solamillo: They're yours.

Mr. Kalalau: They're yours. Yeah, they're yours.

Ms. Loudermilk: Oh, okay. So anything after this agenda item?

Mr. Kalalau: Sato's and --

Mr. Solamillo: Taketa-Gomez.

Mr. Kalalau: Yoshizawa and -- yeah, we need a motion. We need a motion. Yeah, we're just going to defer the rest of the agenda. Motion?

Mr. Artates: Mr. Chair, I make a motion that we defer all of the items in order after this item to a -- to our next meeting.

Mr. Whelchel: Second.

Mr. Kalalau: Okay, it's been moved and second. Any discussion? No discussion. Discussion?

Mr. Moikeha: I understand. It's just that there's people who have been waiting. I don't know, but I would, you know -- if it's going to go to a vote, I'm going to say nay, I just going let you know that ...(inaudible)...

Mr. Kalalau: Okay, waht --

Mr. Moikeha: Just in support of those that have been here.

Mr. Kalalau: Okay, yeah, I know I apologize for that too. It's because, you know, we're going to lose two Commissioners. One have to catch a plane real soon, I hope he makes it. It's because of the lack of quorum. We cannot take any action on the other -- the rest of the agenda items. Okay. Okay, anymore discussion?

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

**It has been moved by Mr. Artates, seconded by Mr. Whelchel, then**

**VOTED: defer all of the items in order after this item to the next meeting.**  
**(Assenting: P. Artates; L. Whelchel; K. Kapu; N. Watanabe;**  
**S. Kalalau)**  
**(Dissenting: K. Moikeha)**  
**(Excused: D. Pyle; V. Marquez)**

Mr. Kalalau: Okay, we have majority; one nay. Okay, Robyn?

Ms. Loudermilk: The -- I believe the motion that was being discussed had to do with approving the use and that the request from -- for the department was to provide some proposed recommendations. Is that an accurate assessment of where we're at? Okay.

Mr. Whelchel: Close enough.

Ms. Loudermilk: The -- there are a number of proposed conditions that the department would recommend:

The first condition would be that art fairs in the Banyan Tree be limited to 25 booths.

The second condition would be that all arts and crafts sold at Banyan Tree Park be handmade in Maui County and sold by the artist and/or an immediate member of the artist's family.

The next proposed condition would be that the Cultural Resources Commission shall have the right to review and approve all criteria used to determine who may participate in an organization's art fair at the Banyan Tree Park.

The next condition will be that applicants for art fairs obtain the approval of the Department of Parks and Recreation for the use of Banyan Tree Park prior to the day of the event. The Parks Department shall have the authority to require additional restrictive provisions and regulations to protect the Banyan Tree.

The next condition is that there shall be no structure in Banyan Tree Park for the collection of money. As proposed, all sales transactions shall be conducted inside the Lahaina Courthouse Building. And we do realize that this one we'll be having discussion on. We're just proposing it at this point in time and can always be amended.

Next condition is that all organizations using Banyan Tree Park shall abide by the rules and regulations established by the Maui County Arborist Committee, as noted in Item 6 of the committee's July 21, 2004 letter, and these are: A) No climbing on the tree; B) No swinging from the roots of the tree; C) No motorized vehicles allowed in the park; D) No nailing or stapling is permitted on the tree; E) Foreign matters should never be applied to the surface of the tree, for example, paint or oil; F) No pruning or physical injury to the tree; G) Toxic materials, such as herbicides or oil, should not be applied under the canopy of the tree without the guidance of the Maui County Arborist; H) That all structures be of a temporary nature and installed no earlier than the day of the event. Booths shall be no larger than ten-by-ten feet and shall be removed at the close of each day of the event.

Next condition: That no staking shall occur within Banyan Tree Park.

Next condition: That no signs shall be displayed advertising any portion of the event except those that are permitted by Historic District Sign Permit.

Next condition: That all music in Banyan Tree Park be restricted to live performances. Music shall not be allowed to create deleterious effect, including sound levels that may create a nuisance to nearby merchants, building occupants, or the general public. No pre-recorded music is to be played at an event.

Next condition: That the appropriate building permits be obtained from the Department of Public Works and Environmental Management, if applicable.

Next condition: That the Banyan Tree Park shall be cleaned of all trash immediately following the event.

Next condition: That the Banyan Tree Park permit holders shall carry liability insurance for the event for a minimum of one million dollars and shall name the County of Maui as an additional insured.

And I believe the last condition, and James can -- you can assist me if I've missed any, would be that all -- that the -- compliance with all applicable -- other applicable governmental requirements.

So that would -- those would be the department's proposed recommendations.

Mr. Giroux: Robyn, the only other suggestion I had was that some kind of time limit come so we can at least review. I know I think in the --

Ms. Loudermilk: Okay. Okay.

Mr. Giroux: In the past, this needs to be corrected, but you know these open-ended permits that run for 10, 20 years is not going to work because I think there needs to be some sort of review.

Ms. Loudermilk: Sure. Shall we, at this point in time, maybe a period of one year and then have the applicant come back and we'll review and see how things are going? If the applicant would be amenable for a one-year period and then coming back for a renewal and review. Okay. And that would conclude the department's recommendations at this time.

Mr. Kalalau: Kalei, question?

Mr. Moikeha: I know that Na Kupuna said that they had 40 -- 40 booths or 40 vendors? No? Twenty-five? Twenty-five is fine? Just double-checking.

Ms. Loudermilk: Events. Number of events, not booths. Events, not the booths.

Mr. Kalalau: Okay.

Ms. Loudermilk: That concludes our portion.

Mr. Kapu: Okay, so on the -- that's the recommendations from the County, yeah?

Ms. Loudermilk: Those would be the recommended conditions should a motion be made to grant Historic District Approval to Na Kupuna for the He U'i Craft Fair.

Mr. Kapu: Okay, that condition that talks about all sales have to be done in the courthouse?

Ms. Loudermilk: Yeah, that one.

Mr. Kapu: What condition is that?

Ms. Loudermilk: I am not too sure the number at this particular -- let me try to see if I can --

Mr. Kapu: Number five.

Mr. Kalalau: Number five.

Ms. Loudermilk: Thank you.

Mr. Kapu: So I guess we're looking at whether or not Keoki Freeland would entertain any idea of allowing Na Kupuna O Maui the use of the current community room? I mean --

Ms. Loudermilk: Or, in the meantime, we can ask Na Kupuna, should this be granted, where would be a reasonable -- reasonable place that --

Mr. Kapu: Okay.

Ms. Loudermilk: The discussion is, because of the cash transactions, that it'd be preferable, if they can't get the courthouse, to have some sort of booth on -- somewhere on site.

Mr. Kalalau: What was that again? One more time. Because of --

Ms Loudermilk: The way the condition is proposed is that the cash transactions have to occur in the courthouse. Now should they not be able to get space in the courthouse, either in a timely fashion or it's going to take a long period of time, and if the goal of this Commission is to allow them to continue with as minimal of interruption, what they're proposing is having a ticket booth on -- on the park site, and how do you folks feel about that?

Mr. Artates: Would this committee be in violation of anything that --

Mr. Kalalau: The plan? The general plan for that park? Putting up one structure, you know.

Mr. Artates: We'd be violating that cause we cannot be held accountable ...(inaudible)...

Mr. Kalalau: Yeah, it's not -- it's not only the -- that plan for that park area to design a special booth in the park area, it's also the liability too.

Ms. Loudermilk: Yeah.

Mr. Kalalau: You know, they're saying some of these guys generate \$10,000 a day, it's so easy somebody come there and rob them, and -- you know, or just put a table in the building to where -- put a table in the gift shop or --

Ms. Watanabe: Just a corner table.

Ms. Nishiyama: You know, when you go into the courthouse, there's ...(inaudible)... one space over here on the side ...(inaudible)... there's a space on the side and that's where we were going to put our table that the last time we were there but what's her name kicked us out from there. There is space that we could put a table and two chairs, and it's not blocking anybody. It's right against the wall.

Mr. Artates: Yet that gotta be --

Mr. Kalalau: That's another lease.

Mr. Artates: That would be under the historical foundation, right? I mean the -- Keoki them?

Mr. Kalalau: The master lease, yeah.

Ms. Nishiyama: Oh, it's a master lease.

Mr. Kalalau: The master lease is going to be from -- you guys going to have to lease from the Restoration Foundation that little area there.

Mr. Kapu: What about until such time that the community resources room in the courthouse, it's a community -- it's a community room right? So whatever the Lahaina Restoration Foundation's lease agreement is, what is -- what is the use of the room, the community room, for such time until, I don't know, I guess maybe the lease can be worked with the County, the change, to allow Na Kupuna O Maui a place for transaction?

Ms. Nishiyama: And it's not like everyday, you know, like I said. We have a calendar that gives us two days -- I mean three days a month, and that's what I told Keoki. It was not like everyday. Right now, that I -- I mean I know Lahaina Town Action is using it for all their boxes and everything, but they do have a community table there, and so, you know, it's only when we are under the Banyan Tree.

Mr. Moikeha: So are you on weekdays or weekends or --

Ms. Nishiyama: There was a calendar that we did every year. Lahaina Town Action and Lahaina Arts Society makes a calendar. First Lahaina Town Action puts in their calendar, and then Parks do their calendar for closing down the two days.

Mr. Moikeha: No, but it is weekdays also?

Ms. Nishiyama: It's all -- sometimes it's weekdays.

Mr. Moikeha: I'm just trying to see that if -- because that's probably a Monday through Friday job that they're looking for, is what I'm saying. Weekends would be open, you know, but --

Ms. Nishiyama: Yeah.

Mr. Moikeha: I'm just -- I was just trying --

Ms. Nishiyama: Yeah, and we do have that calendar and that's the calendar that we have been trying to be in harmony with Lahaina Arts Society so --

Ms. Loudermilk: That could be a possibility, whatever the procedures the Lahaina Restoration Foundation has for anybody, any other community group to use the room that that could be an option.

Mr. Kapu: Okay, so we're only looking at the recommendations that was -- that comes from the Planning Department and, I guess, Na Kupuna would have to expedite looking into the use of the courthouse with Lahaina Restoration?

Ms. Loudermilk: As well as the County of Maui. However, in the meantime, they can -- they can still, as any other community organization, contact the Lahaina Restoration Foundation to see about scheduling of that room for those particular days. Now it may or may not be available, but if the community room is available and to be scheduled.

Ms. Nishiyama: And plus the community room has its own access, you know, from the side. People don't have to go from the front, so it has its own door.

Ms. Loudermilk: So that -- I mean that could be an option, as is now, and if that, for some reason, doesn't work out, we can come back to this Commission. And I'm just saying that not knowing what the scheduling requirements or anything, but you know it's brought up as a community room. I know the Planning Department has used it in the past for some meetings. And if it is open to public and organizations, as long as no one particular group is monopolizing it 24/7, I think that could be a reasonable accommodation at this point in time. So we wouldn't necessarily have to change the particular language of the proposed condition of being inside the courthouse, at this point in time. It'll just --

Mr. Artates: Pending the availability of the room?

Ms. Loudermilk: Yeah, the availability of the room in the meantime while the lease gets re-looked at for additional -- additional tenants with the County.

Mr. Artates: And that would be the responsibility of Na Kupuna O Maui?

Ms. Loudermilk: Yes, it would be the responsibility of Na Kupuna O Maui for the scheduling. Yes.

Mr. Kapu: Okay. The motion.

Mr. Kalalau: Okay, yeah, your motion, because we had this -- this recommendations here, you're going to include them in your motion? Okay. Any second?

Mr. Whelchel: Second.

Mr. Kalalau: Okay, it has been moved and second. Any discussions? Robyn, have you kinda jotted down that motion, the entire motion?

Ms. Loudermilk: Yes, in the appropriate legalese language the -- Commissioner Keeaumoku Kapu moves to approve the proposed Hawaii District -- you know, Historic District Commission Approval to Na Kupuna to hold their craft fairs under the Banyan Tree based upon the -- including the recommendations of the Maui Planning Department as discussed amongst the CRC members and clarified.

Mr. Kalalau: Okay. Anymore discussions?

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

**It has been moved by Mr. Kapu, seconded by Mr. Whelchel, then unanimously**

**VOTED: to approve the proposed Historic District Application for Na Kupuna to hold their craft fairs under the Banyan Tree based upon and including the recommendations of the Maui Planning Department as discussed amongst the CRC members and clarified.**

Mr. Kalalau: Thank you, Commissioners, very much.

Ms. Loudermilk: Okay, motion passed.

Mr. Kalalau: Being that the rest of the agenda has been deferred for our next meeting, will someone make a motion to adjourn this meeting.

Mr. Kapu: I make the motion to adjourn the meeting.

Ms. Watanabe: I second.

Mr. Kalalau: Okay, meeting is now adjourned.

**There being no further business brought before the Commission, the meeting was adjourned at 2:03 p.m.**

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards & Commissions I

**RECORD OF ATTENDANCE**

Samuel Kalalau, III - Chairperson

Dorothy Pyle - Vice-Chairperson (Excused from meeting at 11:55 a.m.)

Keeaumoku Kapu

Lon Whelchel

Perry Artates

Kalei Moikeha

Nani Watanabe

**Excused**

Veronica Marquez

**Others**

Stanley Solamillo, Cultural Resources Planner

Robyn Loudermilk, Staff Planner

James Giroux, Deputy Corporation Counsel