

**MAUI PLANNING COMMISSION
MINUTES - REGULAR MEETING
May 22, 2007**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chair Johanna Amorin at approximately 9:09 a.m., Tuesday, May 22, 2007, in the Planning Department Conference Room, Wailuku, Maui, Hawaii.

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

Ms. Johanna Amorin: ... May 22nd will now come to order. At this time we will take public testimony on any agenda item that we have scheduled today. Any individuals who is here who wishes to speak on any of the agenda items? Public testimony will also be taken when the agenda item is taken up by the Maui Planning Commission today. Maximum time limits on individual testimony will be for three minutes – conclusion will be 30 seconds. A person testifying at this time will not be allowed to testify again when the agenda item comes up before the Commission unless new or additional information will be offered. Do we have any individuals in the audience that wish to come up to speak on any of the agenda items we have scheduled today? Seeing none, public testimony is closed. Corporate Counsel.

Mr. James Giroux: Do you want – our first item on the agenda is a settlement agreement between Rick Amour and Dale Castleton, and the County of Maui, and I believe Trisha will be presenting the settlement.

B. SETTLEMENT

1. **Corporation Counsel will present a settlement agreement with a recommendation for action by the Commission pursuant to Section 12-202-23(d)(3) of the Maui Planning Commission's Special Management Area Use Permit Rules arising out of a contested case between RICK ARMOUR/ DALE CASTLETON and the COUNTY OF MAUI PLANNING DEPARTMENT regarding Notices of Violation issued for alleged Special Management Area infractions for properties situated at 55 Auhana Road, TMK: 3-9-017:023, Kihei, Island of Maui. (T. Kapuaala)**

- * **An Executive Session may be called by the Commission in order discuss their duties, powers, and liabilities as it relates to the subject settlement agreement.**

Ms. Trisha Kapua`ala: Aloha. Good morning. I'm Trisha Kapua`ala from the Zoning

Administration and Enforcement Division. What you have before you is pretty straight forward. Mr. Armour came to the Zoning Administration as requested by you. This is a violation that occurred in 2000-and – what year was this? – 2001. And we had a contested case hearing and implied the maximum fine which is \$10,000 pursuant to HRS, Chapter 205A. So Mr. Armour has agreed to pay this fine. Because of his initiative to pay this fine, we waived all but \$10 of the daily fines. We do have to keep a daily fine, although it can be a nominal fine. And pursuant to your rules for the Special Management Area, you are the final authority to approve or deny this. Should you approve, we'll take it to Mayor Tavares for signature, and this will finalize the agreement. I'm available for any questions. We also have Mr. Jay Arakawa here. He's the zoning inspector that took – inspected – and followed up with this case.

Ms. Amorin: Commissioner Starr.

Mr. Jonathan Starr: I remember there was several issues with this property.

Ms. Kapua`ala: Yes Sir.

Mr. Starr: Was this solely – there were grading, archaeological and then the coqui frogs issues – was this really just to the grading, or is it also the other – do the others come into it?

Ms. Kapua`ala: Yes Sir, it relates directly to the grading and grubbing. In the process, they did find some human remains, and it did go before the Cultural Resource Commission. There's no coqui frog issue. It's the neighboring property that has that issue. That was the concern when we issued the notice of violation.

Mr. Dan Shupack: Actually, just to clarify, there was a coqui frog issue on this parcel as well as on the neighboring parcel. But that's going to be talked about in the next agenda item.

Ms. Kapua`ala: Thank you Dan.

Mr. Shupack: That relates to this parcel.

Ms. Kapua`ala: Thank you.

Ms. Amorin: Commissioner Iaconetti.

Mr. William Iaconetti: Yes. What was the thinking about changing the daily civil fine of \$1,000 to \$10? How did we come to that conclusion?

Ms. Kapua`ala: Did we conclude \$1,000?

Mr. Giroux: 10 – I believe.

Ms. Kapua`ala: Is it 10?

Mr. Giroux: The final?

Mr. Iaconetti: I'll read it, if you'd like.

Ms. Amarin: Go ahead Dr. Iaconetti.

Mr. Iaconetti: "You're ordered to pay an initial civil fine in the amount of \$10,000, and a daily civil fine in the amount of \$1,000 per day." As I understood what you just said earlier, you've decided to limit that to \$10. And I was asking, what was the thinking behind that? Where did that come from?

Ms. Kapua`ala: We just kept it as a nominal fine. At first, we were going to waive the daily in entirety, however, the HRS 205A prevents us from doing that. We must fine some daily fine, whether it be a \$10 fine, \$1,000 fine. The daily, as you can imagine, has totaled a significant amount of money in the millions of dollars for just violations.

Mr. Iaconetti: Over two million?

Ms. Kapua`ala: Yes. Since this violation occurred such a long time ago, we decided on \$10, and we didn't know the feeling of the Commission. We're just kind of going at this coming to a happy medium hoping that this is what the Commission likes.

Mr. Iaconetti: And your group has the prerogative of changing it from a \$1,000 to \$10?

Ms. Kapua`ala: When coming to this agreement, we can agree to whatever, but you are the final action – the final authority – I should say.

Ms. Amarin: Commissioner Starr.

Mr. Starr: It seems very strange to me that someone who was, you know, not only repeat, but an on-going offender should be let off so lightly. I'd like to know if there are cases where the fines, as per the ordinance, have been levied on other offenders, such as this.

Ms. Kapua`ala: No. We are very – we are in our infancy with enforcing SMA rules and violations. We have several more that are in the works that you will be seeing in the future. This is just a second agreement that you've seen in your history. And, I mean, this is by far the largest fine that we're collecting. And not to say, it will be the largest ever, but there's more that's coming.

Mr. Starr: Now, am I correct in thinking that it's not actually you who would be lowering the fines from a \$1,000 a day, to \$10 or whatever it is, but it would be us? You're just recommending.

Ms. Kapua`ala: Yes Sir.

Mr. Starr: We would be the body that would be giving them a slap on the wrist instead of a real fine.

Ms. Kapua`ala: Yes Sir. The Planning Director has a lot to say in this process. I mean, he gives us a general direction. So, yes Sir, you are the final authority.

Ms. Amarin: Commissioner Guard.

Mr. John Guard: Thank you. Did the previous fine get collected? You're saying that this maybe the largest one collected?

Ms. Kapua`ala: The previous fines –

Mr. Guard: The previous attempt.

Ms. Kapua`ala: The previous fine was collected.

Mr. Guard: Okay.

Ms. Kapua`ala: And this is the second. There's currently two more in the works for larger fines.

Mr. Guard: So, I guess following up with Commissioner Starr, the agreement is made with the County of Maui. It's not between the Planning Commission and owners, right?

Ms. Kapua`ala: That's correct.

Mr. Guard: So I guess it's more of us approving this agreement that's in place, and being the second largest, if not one of the few fines even collected by the County of Maui?

Ms. Kapua`ala: Yes, Sir. For SMA's, yes. Yes, Sir. And of course, Mayor Tavares could not agree as well, and throw it back to us – the drawing board – and send it back to you.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah, what would be the amount fined if say 25% of the ordinance fine was

levied?

Ms. Kapua`ala: I'm sorry Sir, could you repeat your question?

Mr. Starr: Say that the amount, you know, the amount that was to be levied against them were to be, you know – just to pick a number out of the air – 25% of what the ordinance calls for – how much would that be? You know, as compared to what you're recommending?

Ms. Kapua`ala: Oh, gosh. It would be a significant amount. I mean, we're talking in the 100's of thousands.

Mr. Starr: Yeah, how much?

Ms. Kapua`ala: I don't know. I would have to calculate that, and I could come back to you in a few minutes.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: I'd like to get a little clarification here. I originally heard that the Planning Commission has the final authority here as far as whether we accept this or not. Or is it the Mayor who has the final authority – the Council – who has the final authority?

Mr. Giroux: It's very complicated the way that these types of violations are resolved. But ultimately, if you look at the Charter, there's two very fine lines that are drawn in the Charter. And one is that the Planning Commission is the final authority on SMA areas. But also the Charter says that any contract has to be entered in to by the Mayor. So you will make the final decision as far as the terms of the settlement, but in order for it to be a legally enforceable settlement, the Mayor then has to sign it. That's going to be the party of signature, and that's how this –. Once that is done, it would be deemed resolved.

Mr. Iaconetti: So regardless, actually, of what we decide as a Commission, the Mayor can either accept it or make her own arrangements?

Mr. Giroux: No, no, no. If she does not sign it, basically, you would be notified, and then, you know, then it would – we'd have to go all the way back down to the Planning Department, and they'd have to review it, and see what needs to be tweaked or whatever. It's – for these types of arrangements, I think it's important for the Commission to realize that the Department, I mean, these rules have been in place since 1994, and it's only now that these types of things are being processed. And the Department is getting – the process is getting better, stronger, faster. And I think for these types of settlements that are kind of been out there, I think it's important to look at the totality of how it's resolved –

the resolution. But, as far as, you know, I mean, for seeably seeing that the Mayor would not sign it after it's gone through Zoning Enforcement, the Planning Director, the negotiated process, the Planning Commission's review – I would hope to not see that, you know, that process. I mean, I think, it is incumbent upon the County to – if something is resolvable, to try to resolve it in a fair enough fashion.

Ms. Amarin: Commissioner Starr.

Mr. Starr: I'm a little bit confused here about what we're being asked to do. It says in the agenda that we're being asked to approve a settlement agreement. Now I don't have a copy of any settlement agreement. Do I?

Mr. Iaconetti: Yeah.

Mr. Starr: That's the full agreement? And is there a recommendation sheet that we usually get, as far as what the recommendation from –

Ms. Kapua`ala: This is in itself is a recommendation for you to approve.

Mr. Starr: The entire?

Ms. Kapua`ala: Or, it's not a recommendation for approval or denial. It's a recommendation for your deliberation – for your own deliberation.

Ms. Amarin: Trish –

Mr. Giroux: If you look –

Ms. Kapua`ala: Yes?

Mr. Giroux: If you look at the final page, the execution page, on four, you'll see an approval recommended by the Director of Planning.

Mr. Starr: Okay.

Ms. Amarin: Trish, to better understand this agreement, what is the reasoning behind the time, from 2001 to 2006? – on or before October 13, 2006, the owner came before the Planning Department to remedy this outstanding violation – why did it take five years? To know this reasoning behind this maybe, you know, we can better understand this negotiation.

Ms. Kapua`ala: Yes Ma'am. Jay Arakawa was here in 2001. He can maybe explain to you

what happened – why this was dropped. I know the attorney that was handling at that time seemed to have not followed through, nor did our Department. The reason why Mr. Armour came to us in 2006 is, I believe, with the next agenda item. He wanted to develop these parcels, and it was the – the question was raised,” well what happens to these old violations?” The answer is he needs to remedy it. He needs to correct the violation and pay the fine. And that’s pretty much the history as to the years that passed in between. I can’t say. Mr. Arakawa can explain to you what happened in 2001, if you’d like.

Ms. Amarin: Yes. We’d love to hear from Mr. Arakawa.

Ms. Kapua`ala: Thank you.

Mr. Jay Arakawa: Good morning. Initially, the owner of the property was Paul Lavine. I think it was Paul Lavine and Diamond Resort, and Mr. Castleton was the leasee of the property. During that time, all of this things occurred – the grading and stuff like that. I think during – I think it was the Apana’s administration, John Min was trying to resolve – reach a settlement with, I think Sandy Langa was the attorney for Castleton at the time – and for Lavine. During that time, Mr. Lavine died, so I think Mr. Castleton attempted to purchase the property. And he eventually did get the property. And we still trying to work out an agreement but, I think pretty much on – kind of fell apart. I don’t know what really happened. There was some kind of agreement on the table, then both sides kept negotiating but never did reach a settlement. And then everything began coming up again when, I guess, Mr. Castleton got Mr. Armour on board to be part of the development or something like that. And then, here we are trying to resolve the issue now.

Ms. Amarin: Dr. Iaconetti.

Mr. Iaconetti: I’m sorry. I know who you are, but I didn’t understand what your position was in this. Are you part of the County?

Mr. Arakawa: I’m just an inspector.

Mr. Iaconetti: You’re an inspector?

Mr. Arakawa: Right.

Mr. Iaconetti: From the –?

Mr. Arakawa: Zoning Inspector for Planning.

Mr. Iaconetti: Thank you. Madame Chair there a note at the bottom of the first page of our agenda that “an Executive Session maybe called by the Commission in order to discuss

their duties, powers and liabilities, as it relates to the subject settlement agreement.” I would like to call for the Executive Session.

Mr. Bruce U`u: Second.

Ms. Amorin: Do we have a consensus?

Mr. Guard: I would like to ask Jay this one question before that because –

Ms. Amorin: Commissioner Guard.

Mr. Guard: If you were there, you were there to inspect the violation back in 2001?

Mr. Arakawa: Right. Yeah.

Mr. Guard: How extensive was – was it all trenching or digging up holes to put plants in or were they actually grading the entire lot?

Mr. Arakawa: They initially was to clear the lot. There were – if I recall right, he took out about eight cars, abandoned vehicles from the property. But there was also grading – I think there was a grading violation issued by DSA. I’m not sure what happened to that.

Mr. Guard: So on three acres, was it like one acre was cleared or –?

Mr. Arakawa: Yeah.

Mr. Guard: Almost half of it?

Mr. Arakawa: I would say, maybe a third.

Mr. Guard: Okay.

Ms. Amorin: Commissioner Starr.

Mr. Starr: I have a question before we go into Executive Session. I think this is more toward Corporation Counsel, but it’s something I feel should be asked in opened session. Now if I were to break a law, whatever it is, you know, if I were to run someone over with my car or steal something or whatever and break a law then I would have to pay the penalties embodied in our law and ordinance. I wouldn’t have an opportunity to negotiate six years later a settlement agreement where I would have say in what my punishment would be. It would be the government or entity, in that case it would be, you know, the court or a judge or jury deciding what the penalty should be, and I would have to do it. Now here,

it's – you have a situation where someone broke a law, was caught, was not – didn't go along with what they were asked to do. But instead of having an enforcement of the law as written out in the ordinance, what occurs is years later when they need a permit to do something else, there's a settlement where both sides negotiate a slap on wrist fee. Why is this? How come it's not, you know, it comes down to a resolution agreement instead of the public entity levying a solution?

Mr. Giroux: I don't know how much time you want to take up with that question, but I can assure you that, you know, if you want to make an analogy to criminal law, you know, right now, just in the last two weeks, we had a case in the circuit court where somebody had actually plead guilty to murder. 15 years later had – comes back and there's a technical defect in the case. And they start the trial over, and they find out that the State has lost evidence, people have disappeared, the case has gotten weaker, and the resolution was – and the Prosecutor felt a fair resolution was to bring down the murder charge down to something, maybe to a reckless endangerment since the person already spent 15 years in jail and resolve it that way. When you're dealing with enforcement, you always have to look at the factors surrounding it. Although you want to resolve it as quickly as you can, if it doesn't resolve, whether it's because of the offender or because of the State, it is incumbent upon the parties to try to get a resolution. And maybe, sometimes, it's not all about the facts because you are settling. One side is settling and the other side is settling. That's called compromise. That's bringing something to a resolution by bringing all of the parties together that all parties can live with. Sometimes the State may have problems that it needs to work out. Sometimes the parties, especially in land use situations, figuring out who's the parties sometimes can be complicated because you're processing against the corporation. So, as far as that type of processes, all factors have been looked at or need to be looked at, in order to say, "is this a fair resolution?" It might not be the optimum resolution. It might not be what we want to see in the future. But for this case, and this case only, is this a fair resolution of the case? And I think when you're looking at a body such as this, often times what you need to do is look back at what is the purpose of 205A and also what are the ecological effects and remedies and mitigations that have taken place in order to see that the ecological state of not only the property, but surrounding properties are not compromised? So, you know, without going into a long dissertation about settlement and compromise, I think those are the minimum factors that need to be looked at, in order to assessing whether something is a fair settlement, for both parties, for the State and for the offender.

Mr. Starr: I have a question for the good inspector here. And my experience is people in your Department do a good job, and that fault doesn't lie with the attempt to deal with offenses. But in the past, you know, when you did find that there were offenders in these areas, it was just let slipped, and years would go by. Now, to your knowledge, in current or recent – say since the beginning of the year – in those cases where people have violated this ordinance and other similar ordinances relating to grading, archaeological and so on,

are they being dealt with, you know, per the ordinance? Are fines being levied or are they still being let slipped the way this one was?

Mr. Arakawa: I think what the public doesn't understand is as far as enforcement, Planning Department, we're looking more for compliance. We're not out there to, you know, hammer everybody just to get the money and stuff like, or make them pay for whatever they done wrong. We're just kind of looking to have them bring whatever the violation is to compliance, and then, the fines will follow if there's no initiative on the violator's part. And from the beginning of the year, we have fined people, and you know, it's more or less the last resort. You know, we give them all the opportunities, so when the fines are issued, you know, they have no bullets to back come with. I mean, they've been given a chance. And most of them do comply though. I mean, especially SMA. You look at \$10,000 and that's a whole lot of money.

Mr. Starr: And I think that's correct. I think if someone's doing something wrong and it's brought to their attention and they fix it, they shouldn't be necessarily be punished. But if someone – I – it's disturbing to me when someone who, you know, keeps continuing doing it, doesn't actually have to pay the penalty. Because then there's no incentive for those who actually do it right, and you have no leverage.

Mr. Arakawa: No. Not really, but I think you need to understand too that it's not always on the offender's part because a lot of times, you know, through government, you know, things fall through the cracks. And even though they make a good faith effort, you know, sometimes things don't get done. So, I think, what the Department does, they look at the whole situation, and a whole overview. If the person made a good faith attempt, and the delays were on the Department's part, then we have to take that into consideration.

Ms. Amorin: Thank you Mr. Arakawa. At this time, we have a consensus? Commissioner Hiranaga.

Mr. Kent Hiranaga: Just a question for the Chair. Will Mr. Armour be making a presentation at some point? No, I'm just asking if he will?

Ms. Amorin: Not right now.

Mr. Hiranaga: At some point.

Ms. Amorin: He's on the agenda item following.

Mr. Hiranaga: I meant on the resolution agreement – regarding the resolution agreement – is he going to be making a statement?

Ms. Amorin: He can.

Mr. Hiranaga: I was just asking.

Ms. Amorin: Commission, do you want to hear from Mr. Armour, the owner?

Mr. Hiranaga: Yeah.

Ms. Amorin: Please. Mr. Amour.

Mr. Rick Amour: Yes. How do you do? Good morning. My name is Rick Amour. I am the current owner of the property, and all though I have been involved in the property since 2004, I was not an owner at the time of the violations. But I am very aware of the past history, and it's a very complicated issue. It's not as black and white as it might sound. The original violation was issued to a Mr. Paul Lavine, who immediately started negotiating with the County on resolving this issue. He in the process died, and the issue went resolved for a period of time. There was a lot of discussion that was done with Corporation Counsel at that time. Now this goes back to 2001 and 2002. And there was settlements in the works, but they were not able to be completed prior to him dying.

At the same time, we have – actually I can only speak for myself – since I've been involved in this property, we have tried to resolve and have resolved every issue that has come up. By far, I think, the biggest violation that occurred on this grading is that there was some bone fragmentation discovered, and that's what kind of keyed off the whole violation process. Since we've been involved in that property, we've taken the bone fragmentation, worked with SHPD and have come up with a treatment plan to re-enter those to the property. We have also redesigned our original project to go around other finds that were found in a very extensive archaeological survey. We have applied for and received an after-the-fact grading permit and paid all after-the-fact grading violations. We have in fact applied for and received an after-the-fact SMA permit, and paid all the violations on that.

So, I think that the – it's evident that we are trying to correct some problems that were made in the past. We're doing everything we can to do the right thing, and I think that we've done an excellent job so far. It's a very complicated issue and why things didn't happen from 2001 to 2004, I don't have the direct answer. But certainly, the original property owner dying in the middle has some implications. So I think that the tone that there was nothing done during that time is not correct. I think we have been diligently trying to work on this. This agreement, the resolution agreement, has been going back and forth with Corporation Counsel for the last five months. We've been trying to work this out so that both parties are satisfied. The Planning Department – Trisha has been very involved in all of this as well. So we have an agreement now that as was mentioned earlier is a compromise. This is an agreement that is a win-win situation that I think the Planning

Department is happy with the agreement, we're happy with the agreement and we have an opportunity to resolve this, and I think that's what the issue is. Any questions?

Ms. Amorin: Commission U`u.

Mr. Bruce U`u: Good morning Mr. Armour. What was your relationship with Mr. Lavine?

Mr. Armour: I had no relationship.

Mr. U`u: No ties?

Mr. Armour: No. I never met the man.

Mr. U`u: You bought this property knowing of what was the outcome or what was happening?

Mr. Armour: I bought the property knowing the past history. To the extent, to be quite honest with you, I did not.

Mr. U`u: Because you put us in quite a predicament, and the reason I'm saying is, a lot happened on that property – frogs, bones, permits – I mean that's like a package D – all of the above.

Mr. Armour: Absolutely. And as you're going to find out in the future presentation, we have completely eradicated the frog issue. In other words, every issue that's come up on that property, we've gone forward and taken the right steps to correct it.

Mr. U`u: Yeah, but, you're part of the problem, so you needed to correct them. I don't think you was doing us a big favor in correcting your own problem. And that's how I feel. Good job though, you did correct the problem. But you can't come here and act like you did us a great favor for doing things – after-the-fact permits, the bones, the frogs – you're not doing me a favor. You're doing yourself a good deed by complying with the mess you got yourself into to knowing that you bought the property.

Mr. Armour: I see it as solving – some of the problems that were solved, were certainly for the good of the community, in my opinion.

Mr. U`u: Oh yeah. As a start of your company though at times.

Ms. Amorin: Any more questions?

Mr. Armour: Any other questions?

Mr. Hiranaga: So Mr. Armour, you were aware that there was this violation on the property when you purchased it?

Mr. Armour: I was aware that there was a violation. Yes.

Mr. Hiranaga: This was by hearsay or in the title report?

Mr. Armour: No, it did not come up in the title report. It was more by hearsay. That's correct. These violations did not show up in the title report.

Mr. Hiranaga: Okay. I guess, and this is really not a question, but it's a statement – you know, the violation is basically grubbing property within the SMA area without a Minor SMA permit. They moved approximately a 100 cubic yards of earth, and I think what made this fairly significant is that some archaeological bones were discovered and disturbed. So, I think if these bones had not been discovered or disturbed, this issue may not have been as egregious as portrayed.

He stated that he's been working with the County of Maui to resolve this, and it's a matter of – . A violation did occur and that's a \$10,000 fine. But when you're working with the County to resolve the matter, I don't think the fines should be accumulating during that period of time, as you work in good faith with the County to resolve the issue. Because then you're running against the ticking time clock and you want timely responses from the County. And if the County is not providing a timely response, then who's at fault for this accruing fine? I mean, once you say – you go to the County and say, "Yes, I'm sorry. I'd like to resolve this." I think the fines should stop at that point. But, the infraction occurred by the previous owner, so I'm not sure if Mr. Armour should be penalized for what Mr. Lavine did or did not do. Although, he did say that he also was in negotiation to solve it. Personally, I feel a \$10,000 fine for the infraction is warranted and the judgement of the Planning Department \$10 fee for the accruing daily fines is sufficient and you know, I'll defer it to the Planning Department's judgement. They're the ones that's been working with this party for years to resolve this. I mean, this is not a criminal matter, this is a civil matter.

Ms. Amorin: Danny.

Mr. Shupack: I'd just like to add that the scope of the violation, the settlement agreement, is just for the grading. It doesn't have to do with the archaeological discovery or the coqui frogs. That's more of the scope of the next agenda item. So this is just basically covering grading illegally in the SMA area without a permit. And it is correct that he did come in for an after-the-fact SMA for which he paid \$1,500 fine. In addition to the \$10,000, he did also go in for an after-the-fact grading permit which was subject to after-the-fact fines through Public Works Department.

Ms. Amarin: Thank you Danny.

Mr. Hiranaga: Another question.

Ms. Amarin: Hiranaga.

Mr. Hiranaga: This is for the staff. Does the presence of coqui frogs on SMA land, is that a violation of some type of ordinance?

Ms. Amarin: Director?

Mr. Jeff Hunt: Not that I'm aware of.

Mr. Hiranaga: Okay. I'm just wondering why? So he's not being fined for the presence of coqui frogs?

Mr. Hunt: Trisha would probably know more about this than me. She's shaking her head "no."

Ms. Kapua`ala: The fine is issued for the failure to obtain an SMA permit and review. If he had applied for the SMA back then, he would have gotten it, and the issues would have remedied through that process. Because he failed to apply, the fine was implied.

Mr. Hiranaga: It's actually a Minor SMA permit?

Ms. Kapua`ala: Yes Sir.

Mr. Hiranaga: And it's not Mr. Armour, it's Mr. Lavine that failed to apply for the Minor.

Ms. Kapua`ala: Yes Sir. Mr. Castleton was the contractor at that time, and he was directly fined as well as the landowner, which is the Lavine Trust. Mr. Castleton has since then become an owner.

Mr. Hiranaga: Thank you.

Ms. Kapua`ala: Yes Sir.

Ms. Amarin: Anymore questions? The call –

Mr. Hunt: Can I make one comment?

Ms. Amarin: Director.

Mr. Hunt: Mr. Hiranaga, in regards to the daily fine accruing, as mentioned earlier, we're not in the business of trying to generate a lot of fines and money, but it does seem to help in negotiation to keep people interested in reaching a settlement and compliance to have that daily fine accruing. Once we get to a settlement, then we enter into negotiations to bring it down to a reasonable level.

Mr. Hiranaga: Thank you.

Ms. Kapua`ala: To add to that, the rules does say that any submission of SMA permit or appeal to the Planning Commission or the Board of Variance and Appeals does not say any fines. It does not stop it at all.

Ms. Amarin: Commissioners do you – we have a consensus on the floor for an Executive Session – you still want to –? Okay, at this time, the Chair calls an Executive Session. We need to vacate the room. To the audience, you may be out the doors ... (inaudible - changing of tapes)...

(The Maui Planning Commission entered into an Executive Session at approximately 9:51 a.m.. The Maui Planning Commission reconvened their Regular Commission Meeting at approximately 10:12 a.m.)

Ms. Amarin: Commissioners anymore questions on this particular agenda item? Do we have a motion to approve the agreement?

Mr. U`u: Motion approve as recommended by the Planning Department.

Ms. Amarin: Do we have a second?

Mr. Guard: Second.

Ms. Amarin: It has been moved and seconded Commissioner Guard to approve this agreement. Do we have any discussion? Director.

Mr. Hunt: I would just like to ask the Commission to comment on this settlement and to give us direction for future settlements so that we can follow the wishes of the Commission.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah. In this case, you know, my vote on this will certainly be with reservations because although I feel that it's best to get this out of the Department's hair, sort of speak, you know, and let them move on to other things, I really feel that in future cases, as the process for enforcement improves, then, so too should the penalty paid for each offenders.

And you know charging less, you know, 1% or less of what the penalty really should be is almost an embarrassment. You know, I do think though perhaps that we're raising the bar here to a certain extent with the \$10,000 fine. But I think that frankly, you know, in a situation where, you know, million dollar project is staying in the wings and that's driving a settlement, that it should be – you know, when someone knowingly violates the SMA, there should be more penalties in the future and I would like to see the Department moving toward greater enforcement, but it has to be done in a fair and equal manner to all people. You can't just do it once, and not do it for other people.

Ms. Amorin: Commissioner Hiranaga. Did you have any comments? Commissioner Guard.

Mr. Guard: Thank you. To follow up on Commissioner Starr's – just for future, I guess, applicants or potential perpetrators to realize that this one was from a 2001 violation and that people that may be attempting to violate some of our SMA laws may think twice. And I hope our zoning enforcement agency has our blessing to try to remedy a lot of these violations to give Mr. Abbott and Mr. Arakawa more support in rectifying some of the problems that we saw last week and that are occurring right now.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: I endorsed the direction that the administration is heading towards enforcement and compliance. I feel that the fine should match the crime and that we don't get carried away. But, you know, I'll defer to the judgement of the Planning Department because they are the ones that would be dealing with occurrence in depth. You know, it's my understanding that any type of vertical construction in an SMA area above four feet requires an Minor SMA permit. So people who have built six foot high walls on their property – I mean how many people in the SMA area filed Minor SMA permit when they built a six-foot high boundary wall on their property? So, let's make the fine match the crime, and let's not get carried away. But, you know, I'll defer to the judgement of the Planning Department.

Ms. Amorin: Thank you. Anymore comments Commissioners? Commissioner Starr.

Mr. Starr: I just want to say that I do consider it a serious crime simply because bones were disturbed and even at that point the process was not initiated. And that, I think, is, you know, part of the violation of the – knowing violation of the SMA – the grading, disturbing the burials, and you know, still not immediately trying to put it to right. It's something that's very serious and we should not make light of it. And I do think a \$10,000 fine is, you know, it is substantial. It's not nothing.

Ms. Amorin: Thank you. Commissioners your pleasure. How many – those in favor?

Commission Members: “Aye.”

Mr. Starr: Do we have a motion?

Ms. Amorin: A motion by Commissioner U`u, second by Commission Guard. All those in favor, again?

Commission Members: “Aye.”

Ms. Amorin: Oppose? The Chair will vote in favor. And then my comments also, I will support this. There has been a serious concern about non-compliance of this project. The damage has been done. I’m sure that the present owner is well aware of the path and looks to comply with serious (phonetics) for the future of this project . . . (Inaudible - changing of tapes) . . .

It was moved by Commissioner Bruce U`u, seconded by Commissioner John Guard, then

VOTED: To approve the agreement as recommended by the Planning Department.

(Assenting: Commissioner B. U`u, J. Guard, K. Hiranaga, J. Starr and J. Amorin

Dissenting: Commissioner W. Iaconetti

Excused: Commissioner W. Hedani, J. Pawsat)

C. UNFINISHED BUSINESS

- 1. MR. RICK ARMOUR requesting a Special Management Area Use Permit for the Kalama Hills Subdivision in order to develop the existing vacant lot into a 12-lot single-family residential subdivision in the R-2 Residential District at 55 Auhana Street, TMK: 3-9-017: 023, Kihei, Island of Maui. (SM1 2005/0042) (D. Shupack) (Public hearing was conducted on September 12, 2006.)**

Mr. Hunt: The next item involves Mr. Rick Armour requesting a Special Management Area Use Permit for the Kalama Hills Subdivision in order to develop the existing vacant lot into a 12-lot single-family residential subdivision in the R-2 Residential District at 55 Auhana – Auhana – pardon me – Street, TMK: 3-9-017: 023, Kihei, Island of Maui. The permit number is SM1 2005/0042. The project planner from the Planning Department is Dan Shupack.

Mr. Shupack: Thank you Director Hunt, and morning Madame Chair, Commissioners. We have a little bit of background of this project. It did go before you last September – except for Mr. Hiranaga wasn't present and I guess you got a copy of the report. Sorry I didn't get you a full copy of that earlier. It was my mistake. But I'll give you – I'll just kind of go through a quick run through of the project and just to refresh your memory. The applicant proposes a 12-lot single-family residential subdivision on the parcel which was just discussed. It's a 3.24 acre lot at 55 Auhana Road, TMK: 3-9-017: parcel 23 in Kihei. As you can see on the map – hopefully you can – it's a little difficult – but it's at the intersection of Auhana Road – just east of the intersection of Auhana Road and South Kihei Road, about – South Kihei Road. The parcel is located right about there. Sorry, shaky hand. But other developments – Island Surf building at the intersection of South Kihei Road and Auhana Road – subject parcel – up here is Kalama Village. Over here is Kalama Park, and then Cove Beach Park is down here. The ocean.

You'll probably see this a lot better. The applicant proposes this 12-lot subdivision. Zoning is R-2 on the lot, for the lots. The lots range from 7,600 square feet to approximately 11,300 square feet. The proposed action also includes development of a subdivision access roadway, with a cul-de-sac, curb gutter sidewalk, a four-foot wide sidewalk along the east side, concrete wheel chair ramps will be provided – appropriate locations for ADA standards. Other improvements include preservation sites for human burials previously discovered on the site, as well as drainage, water, sewer, and electrical distribution systems. And additionally there will be landscaping installed as well as a miniature kind of park area.

The following completion of the subdivision improvements, the individual lots will be sold in fee, and that will include the house pad as well as preliminary house plans. And there's four models which are proposed – the models – and these were approved by UDRB last year. I guess just to note, one of the models includes a potential for an attached ohana unit. This would be available on four of the proposed 12-lots. And just – just to, I guess, kind of refresh about the archaeological preservation, we talked about it during the settlement agreement. There were remains found on the property – 2001 – in which was kind of the key up tip off that there's burials on the property. During that initial grading, eight human burials were discovered – which actually the site, as it turns out, was a site of a historic area cemetery after an archaeological inventory survey was preformed, and prepared in October 2005. It was determined that there were nine historic institute burial features, and the displaced remains a three people which were designated as site 4962. A total of 18 individuals have been identified on the subject property. Based on documentation as well as ownership records, it's believe the burials were Asian-Chinese decent. A burial treatment plan was put together and sent to the SHPD for approval. And I guess it should be noted, it wasn't required to go to the Island Burial Council because they were not native remains, they were Chinese decent. That's the preservation site in the middle which there will be access provided to visitor through here. And that burial plan was

accepted by SHPD.

At the previous Commission meeting in September, the Commission voted to defer based on pending resolution of five items – five items which were mentioned. One was, to resolve all violations on the subject property to the satisfaction of the Director of Planning for SMA violation, and the Director of Public Works for grading violations. By the previous action of the Commission accepting the agreement, that pretty much resolves item #1. The grading violation has been previously resolved through the granting of an after-the-fact grading permit.

Two, that the coqui frog population on the subject parcel be reduced to the satisfaction of the Maui Invasive Species Committee. And the applicant has been working with Maui – with MISC – over the last few months to aggressively attack the coqui frog problem. And actually, I believe, is – yeah – Ms. Teya Penniman from MISC is here today, in case you have any questions about that. But, Exhibit #6 in the letter, she basically comments on the progress which has been very successful in almost completely eradicating the coqui frog problem in the area. So that's a good development.

Third item the Commission brought up was regarding traffic. It was regarding whether the applicant was willing to participate in a voluntary traffic impact though the County or voluntary frontage improvements on Auhana Road, including but not limited to a bike path from the proposed development to South Kihei Road. And they met with the Department of Public Works and came up with a fair-share traffic mitigation formula based on the frontage subject property and the length of roadway from South Kihei Road to Piilani Highway based on the cost or the amount of the improvements that will need to be done along that stretch of road frontage to come up with a mitigation cost. And they will pay this – they've agreed to pay this fee prior to final subdivision approval.

Fourth, that the applicant provide in-lieu monetary contributions to the Department of Education or individually local public schools in order to mitigate any potential impacts on schools by the proposed development. I believe Commission U`u brought up – mentioned going to specifically putting the monies towards Kihei – I'm sorry – Maui High School. It was, recently, at that time, had a fire and they needed some money for repairs. So the applicant has proposed to donating a total of \$24,000 which will be made payable to the Department of Education for Maui High School repairs. It will be done as each building permit is issued for each individual house – \$2,000 for each house unit. You know, there's 12-lots times \$2,000 – so upon the issuance of each building unit, \$2,000 will be donated to Maui High School for repairs – for a total of \$24,000.

And the final item was regarding the drainage system that the design of the subdivision drainage system would allow for infiltration capacity that is 10% to 20% greater than the estimated net increase of a 50-year storm run off of the proposed subdivision, as calculated

in the preliminary drainage report. The applicant has since meet with their engineer, Otomo Engineering, and confirmed that their drainage system will be designed to handle this 20% increase in retention capacity. And that will be addressed in the final drainage report and drainage construction plans that will be submitted for review and approval to the Department of Public Works, and will be filed with the Planning Department prior to final subdivision approval. I believe the engineer is present as well, if you have any questions about their drainage plan. That concludes the Department's report.

Ms. Amorin: Thank you Danny. Can we hear from the applicant?

Mr. Mich Hirano: Good morning Chair Amorin and Commissioners. My name is Mich Hirano, with Munekiyo & Hiraga, and our firm has been working with the applicant for the SMA use permit. Since the September 12, 2006 Planning Commission public hearing on the Kalama Hills Subdivision application, the applicant has worked diligently to address the five issues raised by the Commission. These matters have been satisfactorily resolved and addressed as presented to the Commission by Staff Planner Dan Shupack.

The Kalama Hills project will provide a 12-lot single-family residential subdivision in central Kihei. The project is compatible with the surrounding land uses. Just to refresh the Commission's memory, the surrounding land use involves multi-family land uses to the north; to the west is business designated uses, and South Kihei and beyond to the west is the Parks and Recreation Kalama Park; and to the east and north of the project is single-family residential properties. The applicant held a meeting with those adjacent neighbors and during that site meeting with the neighbors, I think, the neighbors had expressed concerns about the present state of the property which there was a lot of trespass through the property and went on the, you know, the other single-family neighborhood. They were concerned about their safety. So I think development of this property would not only benefit the neighborhood by providing homes for local Kihei residents who want to be in the central area, but it would also develop the property and reduce the existing vandalism, I think, that's currently on the property, and would probably bring a sense of safety to the neighborhood because of the development.

The project, in closing, I would just like to mention that the project will provide an opportunity for local residents to live in the central Kihei area. It's very close to services and parks and recreational facilities so it's an ideal location for a single-family neighborhood. In closing, on behalf of the applicant, I would just like to thank the Planning Staff and the Director, Jeff Hunt, and Corporation Counsel and Public Works and the Development Services Administration for their efforts and their cooperation in resolving the past violations that occurred on the property, and as well, to satisfactorily resolve the five issues that were raised at the last public hearing on the project. The applicant, Rick Armour, project team members, Maggie Sutrov, who's the project architect, and Stacy Otomo who's the civil engineer on the project are also in attendance to answer any

questions that the Commissioners may have. And as well, Teya Penniman from MISC is also available. And she made her time available to attend this hearing to answer any questions that the Commissioners may have on the coqui frog. So thank you very much.

Ms. Amorin: Thank you Mich. Commissioners any questions? Commissioner Iaconetti.

Mr. Iaconetti: Mich, what is the estimated cost of each of the units? And what is the estimated costs of the entire development?

Mr. Hirano: The estimated cost of the units, although, you know, with the marketing, it hasn't gone under construction yet, but I think Mr. Armour was looking at approximately \$700,000, in that range. But, of course, upon final construction, I think, you know, that may have to be reviewed, but that's the target that he's sort of looking at right now. I think the target market for the residential subdivision are basically local Kihei residents who like the area, who want to upgrade and provide an upgraded opportunity for them. So that's the market that Mr. Armour will be building towards.

Mr. Iaconetti: And the total cost of the whole development?

Mr. Hirano: I think it was around \$2.5 million -. Around \$4 million total cost of the development with the homes.

Mr. Iaconetti: I have one more question.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: To Ms. Penniman.

Mr. Hirano: Yes. Would you like to hear from -?

Ms. Amorin: Yes, thank you.

Mr. Iaconetti: I -

Ms. Amorin: Please state your name.

Ms. Teya Penniman: I am Teya Penniman. I'm the manager of the Maui Invasive Species Committee.

Mr. Iaconetti: There's a statement in your letter that's in our packet - "100's of coqui frogs were seen leaving the vegetation" - does that mean that they went elsewhere?

Ms. Penniman: No, that was during one of our initial control operations. The property was so densely infested that when we first began spraying citric acid, which is our approved control method, it was so densely infested that many of the frogs were leaving the potted plants and the vegetation that was there, and they were subsequently controlled.

Mr. Iaconetti: They were just going out into the community?

Ms. Penniman: There's – with any of our control operations, there's always the potential of some spread into neighboring properties, and that's why we don't work on a TMK basis, we work on a population – on an infestation basis. So we are working to ensure that if there are frogs on neighboring properties, that those are being controlled as well.

Mr. Iaconetti: Thank you.

Ms. Amarin: Thank you. Commissioner Starr.

Mr. Starr: What's the situation with the frogs on the other property that's also owned by the applicant that's – it's still in the nursery use which was the original vector.

Ms. Penniman: Which would be not Mr. Armour, but the other property owner, Mr. Castleton. As I mentioned, when we do work to control an infestation, we don't pay attention to where the property lines are drawn. And so we've actively controlling it – both of those sites – and we've had very good success at both properties, and full cooperation from all of the landowners. It's been, I believe, since – say March – that property – yeah. We haven't heard a frog at the other property since March, which of course is only several months from now. But that was one frog that we were hearing as oppose to, the literally, thousands of frogs that were present initially. So we're very pleased with the progress to date.

Ms. Amarin: Ms. Penniman.

Ms. Penniman: Yes.

Ms. Amarin: So are you saying that the surrounding properties are not really affected by this one property having the coqui frogs on – they're all pretty much controlled?

Ms. Penniman: Frogs can move into any habitat, any home, any property that has a vegetation to support it. The reason it was so densely – they were so densely concentrated there is because it was a nursery and it was actively irrigated. So it was an ideal habitat for a dense concentration of frogs. There may well be some frogs in some of the outlying, or the neighboring properties, and I think there probably are, but we're actively controlled in that area as well.

Ms. Amarin: And also this property – this property, as far as your expertise, responsible for the infestation of this coqui frogs to have been brought into Kihei area in the first place?

Ms. Penniman: Were they responsible for it?

Ms. Amarin: I mean, that's where the start of the coqui frog infestation took place, on this one property, not in any other property in the Kihei area – as far as you know?

Ms. Penniman: You know, it's really hard to say where an initial place – where an initial infestation is. It probably wasn't the first place on Maui. In Kihei, certainly, that was a population center. You know, it's not like, they were in the nursery business. It probably came from infested plant materials from the Big Island, which is where most nurseries on Maui get their products from. That's where the wholesale market is, and they import from the Big Island. So initial infestation probably came from bringing plants in from the Big Island.

Ms. Amarin: But as far as you processing Kihei, did you process any other properties in the Kihei area, other than this one?

Ms. Penniman: Yes. There are other infested properties in the Kihei area.

Ms. Amarin: Not surrounding this one property?

Ms. Penniman: No. Not surrounding that other property. I mean, there may – as I said before – there may be some properties adjacent to it that have some coqui frogs that may have spread from that initial infestation. But there are also other properties in Kihei as there are across all of Maui that get infested probably because they buy plants that has infested – that has frogs in it to begin with.

Ms. Amarin: Thank you. Commissioners any other questions? Commissioner Hiranaga.

Mr. Hiranaga: I don't have a question for you. I have other questions. Thank you.

Ms. Penniman: Okay. Thank you.

Mr. Hiranaga: Since I wasn't present at the previous meeting, this may be a question for staff. You said that the 18 human remains discovered were of Chinese decent. How do you determine that they're not of Chinese-Hawaiian decent?

Mr. Hirano: Commissioner Hiranaga, Lisa Rotunna-Hazuka who is the archaeologist on the property, or on the project, is available, so I'll let her respond to that.

Mr. Hiranaga: Sure. An additional question – once you determined that it to be of Chinese decent, who determines the preservation plan or the determination of how the remains should be handled?

Ms. Lisa Rotunna-Hazuka: Lisa Rotunna-Hazuka, archaeologist for Mr. Armour. First of all, these are historic remains so we did have call for material. We had artifacts that were indicative of Chinese – the skeletal remains, the stature, their very characteristic traits – the cranium that can tell you Polynesian versus Chinese. We presented our data to SHPD. Originally we were working with the native – with the Burial Council who deals with the native Hawaiian burials. But as we did more research and more testings, we concluded that they were of Chinese decent.

For the Chinese burials, it goes to SHPD, the Cultural Historian there. They have the jurisdiction over non-native Hawaiian burials, and we are working with them. Basically what happened is the property was redesigned. It was originally a 14 –

Ms. Amorin: You need to take the mic with you.

Ms. Rotunno-Hazuka: The original proposal was a 14 single-family residences, and the access road went through an existing access road into the property. It was in this area where the current access road was, is where the burial site is. So upon our discovery, the road was relocated and they had to diminish the size of the lots or the quantity of the lots because the burial site kept growing. All of the burials that were in NC2, meaning that they were in their original position, are on the property. They're represented by these red circles, and there were remains that were transported off the property during the grading. Those are going to returned and re-entered into this burial preservation areas. And then there were other remains that were at SHPD that were collected during the grading, as well, so that's how we have 18 individuals represented.

Mr. Hiranaga: You mentioned the word "historic." How do you determine "historic?" Because there's another term right?

Ms. Rotunna-Hazuka: Yes. Pre-contact. Historic – pre-contact does not have any metal, any type of artifacts – plastic, metal – nor are there coffin remains. The wood of the coffin would still be left, and the nails that are applied to the coffin. In pre-contact burials which would be the native-Hawaiian burials, they're buried in a flexed, like a fetal position, and most of the historic burials are generally prone in an extended position.

Mr. Hiranaga: And when do they become historic?

Ms. Rotunna-Hazuka: Right after Cooke – 1770's.

Mr. Hiranaga: No, but, like, from 1900 and before or –?

Ms. Rotunna-Hazuka: So historic –

Mr. Hiranaga: 1920 or –

Ms. Rotunna-Hazuka: Pre-contact is before Cooke's arrival, and historic is from –. 50 years is our limit. Anything that's 50 years older, we have to document. Like World War II structures now, we're now having to document them. So 50 years is the –

Mr. Hiranaga: Okay. Thank you.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yes. Since there were coffin remains, is that the reason you felt that there – it was an actual graveyard? And what are the boundary areas that you believe were the areas of the graveyard, and how do you know it's not more extensive than that?

Ms. Rotunna-Hazuka: As far as the extent, both horizontally and vertically, we did a lot of testing. We did approximately – we did 23 backhoe trenches outside of the burial site area. This is a knoll. This is about the highest point on the property. We also did – we do the test units like you see – we did a six by six foot test unit, and we did 32 of those in this area. So what we do is we work from what the known, the burials that we have, and then we work out. So we're fairly confident with this delineation and it is a cemetery. We believe it is a cemetery. There may be isolated finds out here, and areas that were not backhoe tested. But we will be doing monitoring with one archaeological monitor per piece of equipment.

Mr. Starr: What is the difference between the way these burials will be handled and the way they would have been handled had they had been of Hawaiian decent?

Ms. Rotunna-Hazuka: Actually we are handling them like we would with Native Hawaiian burials because all of the burials are being preserved in place. Mr. Armour would have the opportunity to perhaps re-locate. If you noticed you have these circles here, and you have these circles here, and then there's a wide space in between. So we have 10 known concentration. These burials, he could have opted for re-location into this first concentration, and then made the boundaries smaller, but we needed to make sure there were not more burials in this central area. I believe it is being handled the way it would be if we went to the Burial Council. We're doing a lot of the same measures, as we're doing a low rock wall along the entire perimeter. There will be access, if there are any lineal descendants – descendant's claims that are made – and we'll mark the known burials on the surface. So it's fairly the way we would do a native Hawaiian burial site.

Mr. Starr: For cemeteries like this from historical times, is it typical that they be unmarked, or do you think that likely that they were at one time marked and someone just kind of plowed under?

Ms. Rotunna-Hazuka: They were marked at one time. I put a notice in the paper once the burials were found. We put in a burial notice. I had two responses from lineal descendants of the property. The property was originally two brothers – Au Chunna Akina and Auhana Akina – and these people remembered taking care of the graveyard and they said that there was either rocks delineating the burial or there was some wooden crosses. Like I said, though now, there was a road going through there, so at what time the surface markers were removed, I don't know. It's way before the current owner, and even Diamond Resort had the property. It would be prior to that time. But the descendants did not know whom was buried there. That's one of the things that we try to find out is whom was buried there? Who's likely a descendant today that's present that would have some say in how the burials, the cemetery, would be preserved.

Mr. Starr: So let me just be clear, so at some point, an owner of the property or someone who was renting it or whatever, bulldozed the cemetery?

Ms. Rotunna-Hazuka: Prior to – yes – at some point – no, it wasn't bulldozed, but the road was going over it. So whether they –

Mr. Starr: Well, it might have been hand tools or whatever.

Ms. Rotunna-Hazuka: Yeah, but I don't think that they went through and wiped out the surface markers. I think over time, the markers were removed and then this road was built over it. Whether it was dozed, I'm not sure, but yes, it was, maybe 30 to 40 years ago. These people today, the respondents, are 50 and they remember as children taking care of the graveyard.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: Just a follow up to Commission Starr's question. Could that road have been created by the people that were maintaining the graveyard, cemetery, or had it just fallen into disrepair that it appeared nobody was really maintaining the cemetery?

Ms. Rotunna-Hazuka: No one was maintaining the cemetery. No one knew that the cemetery was there until the grading happened, and then the remains were –

Ms. Amorin: Anymore questions Commissioners? Director.

Mr. Hunt: Mich, I have question for you.

Mr. Hirano: Yes Director Hunt.

Mr. Hunt: Has the subdivision received preliminary approval?

Mr. Hirano: Yes.

Mr. Hunt: And what date was that on?

Mr. Hirano: February 27, 2006.

Mr. Hunt: So that was prior to the recent housing ordinance?

Mr. Hirano: Yes.

Mr. Hunt: Okay. Thank you.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: Couple of more questions – why are only four attached ohana is being allowed? I'm just curious because R-2 Zoning allows 500 square foot cottage, and you've got the minimum 7,500 square foot lot size. Was that a developer's decision or is that input of the Commission or the staff?

Mr. Hirano: I think that is primarily a developer's decision. In the models that are offered, there are some larger lots within the subdivision, and the developer felt, or Mr. Armour felt that it was appropriate to have ohana units on those lots. I think, he basically wanted to develop this a single-family residential property, and made the ohana as attached so that they would look like a single-family residence, as oppose to having ohana within the property. So it was a developer's decision to just keep the, I guess, the quality and the standard of the property as a single-family residential property.

Mr. Hiranaga: Follow up question.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: So has there been any site design to somehow prevent or discourage the occupants of the ohana from parking on the street because looking at your design here, I'm not sure which ones have ohana but we wouldn't want the occupants of the ohana being forced to park on the street.

Mr. Hirano: The project architect is here – Maggie – I would just like to maybe have her respond to that, but there is ample parking. This is a unit that has an ohana, and there is

parking. And there is a two car garage and as well, within the driveway, there is as you can see, at this property, there's parking. So the design of the property and the siding of the house and lot has been taken into account so that those with ohana units would have parking in the driveway. Maggie could just elaborate. Maggie Sutrov is the project architect.

Ms. Maggie Sutrov: I'm Maggie Sutrov. I'm a consultant for Maui Architectural Group. Well, I should let you know that – thank you – I should let you know that the ohana are – we're required to provide parking for ohana. So where there are ohana, there's also off-street parking. Did you want me to point out to them on the plan?

Mr. Hiranaga: You could. I just wanted to make sure – I didn't realize that was a requirement.

Ms. Sutrov: Yeah. It's a requirement. So –. Any other questions?

Mr. Hiranaga: No.

Ms. Amarin: Thank you. If there's no other questions –. Commissioner Guard.

Mr. Guard: Thank you. Following up to Planning Director's question, item #27 discusses an agreement with Department of Housing and Human Concerns, have you gone any further with that?

Mr. Hirano: Yes, Commissioner Guard. We've met with – the applicant, Mr. Armour and myself, had met with JoAnn Ridaio who is the Executive Assistant to the Mayor on Affordable Housing. And she had set out the housing requirements as per the guidelines that were proposed at the time that the application was made. And that has been worked out with her and the applicant will be submitting an agreement for execution on that basis.

Mr. Guard: What does that entail?

Mr. Hirano: The cost is approximately \$73,000 towards affordable housing for the project. It will be going towards South Maui Resource Center, as originally proposed.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: Just one more last question. How is the \$24,000 contribution to Maui High School – how was the dollar amount determined?

Mr. Hirano: \$2,000 per unit. It was just a figure that the applicant, Mr. Armour, felt was appropriate, and then in discussion, we met with the area Superintendent Ken Nomura on

it, and he felt that, that would go towards replacing some equipment within the Maui High School. There is no set formula for this figure. It's a figure that has been used in the past for projects that we worked on in Wailea for the SMA application – voluntary contributions were in that order, so it was appropriate.

Mr. Hiranaga: Public schools are under the State's domain, so there are no requirements – County requirements – for contribution by –

Mr. Hirano: Right now it's a voluntary contribution. I understand now the State Legislature has actually passed an impact fee for the Department of Education on State Facilities. And the State has been using a formula that they've developed – this is the Department of Education – on school impact fees. But they haven't been collecting them within the SMA. It's not an SMA entitlement fee trigger, but they have been collecting them in Change in Zoning applications, District Boundary Amendment applications, Project District and Planned Development applications. But because of the SMA requirement, and they felt that the impact fees had been collected at the time that the project went in for a Change in Zoning, and that was really the appropriate entitlement for the impact fee.

Ms. Amorin: Thank you. Before we take up public testimony on this agenda item, Chair will call for a recess for five minutes.

(The Maui Planning Commission recessed at 11:00 a.m., and reconvened at 11:13 a.m.)

Ms. Amorin: At this time, we'll call for public testimony on the Rick Armour agenda item. Any individual in the audience wishes to come up to speak on this agenda item? Seeing none, public testimony is now closed. Staff – Dan?

Mr. Shupack: Recommendations?

Ms. Amorin: Recommendation.

Mr. Shupack: The Planning Department, based upon the facts presented to the Commission and in the Department's report as well as the Addendum Report, finds the proposed action will not have a significant adverse environmental ecological effect, provided mitigative measures are incorporated into the project. The proposed action essentially meets the objective policies and guidelines of the SMA Rules and the proposed action is consistent with County Zoning, the Kihei-Makena Community Plan. The Department recommends approval based upon the following conditions. And there was 30 conditions – two were added since the previous, since the public hearing, based upon the applicant's representations in response to the deferral. I'll just go over some of the more significant project specific conditions.

#16, that archaeological monitoring shall be conducted for any ground altering activities, and that's based on the monitoring plan that's drawn up by Lisa. And that a copy of the approved burial treatment and preservation plan will be filed with the Planning Department prior to grading permits. And there were some conditions recommended by the Urban Design Review Board for kind of protecting the burial area – that's #18 through #20. Also, the (phonetics) recommended that the landscaped area bounded by lot, parcel #5, the proposed subdivision right-of-way on lot #12 shall remain under private ownership shall be maintained by the homeowner's association.

Ms. Amarin: You need to take the mic there.

Mr. Shupack: Sorry.

Ms. Amarin: Thank you.

Mr. Shupack: And then condition #22 addresses the drainage report which is designed to handle 20% increase in retention capacity, above the estimated net increase of a 50-year, one-hour storm runoff for the proposed subdivision. And this will be – this final drainage report will be filed with the Department, prior to grading permits.

Condition #24, which was added, states that the applicant will contribute a fair share traffic impact fee based upon a formula agreed upon the applicant and the Department of Public Works. This requirement shall be satisfied with the DPWEM prior to final subdivision approval.

Condition #25 was also added, and that's the DOE condition – \$24,000 contribution payable in \$2,000 increments with the issuance of each building permit. And the agreement will be filed with the Planning Department prior to final subdivision approval.

Condition #28 is about restricting the ohana for the four lots – #5, #6, #7, and #10 – and that will be set forth in unilateral agreement.

And then finally, condition #30, which has mostly been complied with already. We left it in just until we get kind of a written confirmation from MISC that the coqui frogs eradication is complete. That concludes it.

Ms. Amarin: Thank you Dan. Commissioners, any follow up questions to the applicant or staff? Commissioner Iaconetti.

Mr. Iaconetti: I didn't see a fire or police statement in here – perhaps it was taken up before – but are the roadways adequate to accept emergency fire equipment?

Mr. Hirano: I'd like to call Stacy Otomo, the civil engineer, to just address that for Commissioner Iaconetti.

Mr. Stacy Otomo: Good morning Madame Chair, members of the Commission – Stacy Otomo. The roadways do meet current public work's standards, meaning that, they'll be 48 feet right-of-ways, and the cul-de-sac at the end has a 50 foot radius which is currently what's required.

Mr. Iaconetti: Thank you.

Ms. Amorin: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: I have a concern about the four attached ohana located on lots #5, #6, #7, and #10, being located on the cul-de-sac. And I believe it's County ordinance that the radius of the cul-de-sac is a no-parking zone to allow emergency vehicles to turn around. But it's been my experience that whenever I encounter a cul-de-sac street, people tend to still park in the cul-de-sac, even though there are no-parking – no parking signs up, and I don't know how you're going to be able to control from not parking in that cul-de-sac. As a minimum, I'd like to see type of . . . (inaudible - changing of tapes) . . . Within the CC&R's of the association, they've enforced a no parking law in the cul-de-sac area. Because I just can't see how people living in those ohana will not be tempted to park in the cul-de-sac.

Mr. Hirano: I think that's a point well taken, and that can be incorporated into the CC&R's. If you'd like to make it an additional condition, I think the applicant would be amenable to that – as condition #31.

Ms. Amorin: Commissioners, you want to impose the condition? Staff, you want to take the language?

Mr. Shupack: I'll work on it real quick – basically that no parking will be allowed in the subdivision cul-de-sac, and that it will be enforced in the CC&R's for the subdivision.

Ms. Amorin: Commission Hiranaga.

Mr. Hiranaga: I guess, maybe, policed by the association.

Mr. Shupack: Enforced by the –

Mr. Hiranaga: Appropriate actions would taken to enforce the no-parking area.

Ms. Amorin: Dan, could you repeat the language?

Mr. Shupack: That no parking would be allowed in the subdivision cul-de-sac – appropriate action would be taken to enforce – I guess – enforce this restriction by the homeowner's association. And, actually, to add in that, it would be incorporated into the CC&R's for the subdivisions. So no parking will be allowed in the cul-de-sac – this will be incorporated in to the subdivision's CC&R's and appropriate action will be taken by the homeowner's association to enforce this regulation.

Ms. Amorin: Commission Hiranaga, does that satisfy you?

Mr. Hiranaga: I assuming staff will polish that a little bit later?

Mr. Shupack: Yes.

Mr. Hiranaga: Yes. Given more time on this.

Mr. Shupack: Yes.

Mr. Hiranaga: It's hard to be put under the gun to come up with language, in essence.

Ms. Amorin: Thank you. Commission Starr.

Mr. Starr: Yeah, I'd like staff to explain with great clarity why this applicant is not complying with the workforce housing ordinance?

Mr. Shupack: The – they have actually – they actually are – they've met with the current Department of Housing Human Concern's chairman, and – or the head of the Department, and they are –. Because they received their preliminary subdivision approval prior to the new workforce housing agreement, they're subject to, I guess, they're kind of grandfathered in, under the old agreement where they can meet with the DHHC and come up with an in-lieu fee that meets the satisfaction of the Chairman of the DHHC, which is what they're doing. And it's been added as a condition that they come up with a – condition #27 – prior to final subdivision approval, applicant shall enter into an affordable housing agreement which DHHC set forth the detailed terms and conditions of compliance with the Maui County Administrative Affordable Housing Guidelines.

Mr. Starr: If this application is not approved by the Commission, would that mean that they would at some point have to – if they still want to proceed, come back with a new application, which at that time would be subject to the Workforce Housing Ordinance which everyone else has to do?

Mr. Shupack: I guess it would – well, they already received the preliminary subdivision approval, so, I guess it depends upon, you know, the terms of the preliminary subdivision

approval – you know, how long that's valid for – I guess, you know, if that were to come – that were to lapse somehow, they had to re-start the process perhaps. Maybe Public Works could address that.

Mr. Mike Miyamoto: Madame Chair. They have their preliminary subdivision plan approval. The next thing for them is construction plan. If this Commission chooses to hold them up, they can ask for an extension of that deadline, and they have just cause because their SMA is what's holding them up. How long – how many extensions we can give them at this point? I'd have to check with the Director to see how – you know, if we can continue to give them – how long of an extension. But typically, they get a year after their construction plans are approved to complete and move forward to it's final subdivision approval.

Mr. Starr: I have a lot of difficulty supporting this for a number of reasons. And you know, I don't know if the current owners who are the ones who are definitely culpable for all of it or just part of it. But, you know, it's just between the plowing under of the graveyard, and the frogs and now not meeting the affordable workforce housing ordinance. And, it's just – it's something I don't feel in balance – is what we need to be doing in the shoreline area, which is definitely an entitlement that they're before us – asking for.

Ms. Amorin: Thank you Commissioner. Any other comments or –? Commissioner Guard.

Mr. Guard: Maybe this would be for staff. What's the difference between the old figure and what would be the new figure for the workforce housing?

Mr. Shupack: I need to – for that question to – Department of Housing and Human Concerns. Unfortunately, I don't believe that they're present today. I don't know exactly what the negotiated sum is or, you know, what they're working out for this subdivision.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: I'd like to understand more of the workforce – the new policy. And if there's no objection, we could recess for lunch and then when we reconvene have someone from the Housing and Human Concern's present to answer that question. I have no objection to that.

Ms. Amorin: Applicant also has something to say. Mich.

Mr. Hirano: The workforce – the reason – you know there is a provision within the workforce housing agreement that allows for certain exemptions, and those are for applications that have received preliminary subdivision approval prior to the passing of the ordinance which was in, I believe, December 2006. So that's why this particular application, which was submitted in 2005, has that exemption. The existing workforce

housing agreement, the percentage for projects were the selling prices under \$750,000 or 3/4 of a million dollars, which is approximately 40% of affordable housing requirement. Anything beyond that is 50%.

Mr. Hiranaga: I'm sorry, did you say average price? Sale price?

Mr. Hirano: Average sales price, I think, was \$750,000. It would be 40% of the affordable housing requirements.

Mr. Hiranaga: That sale price is –

Mr. Hunt: I believe it's 50% for \$600,000 and over.

Mr. Hirano: Oh, \$600,000 and over — 50% – I'm sorry.

Mr. Hiranaga: So the applicant makes the determination of the price – the selling price – to meet that requirement. So he could say \$599,000.

Mr. Hirano: But this is all, again, through – that's the ordinance, and then there are certain requirements in terms of how those will be applied – the rules will applied. Those rules have not been fully developed yet, but I'm sure that there will be tests for how you determine price.

Mr. Hiranaga: I withdraw my suggestion to recess for lunch to wait for someone from Housing and Human Concerns clear this. He satisfied my curiosity.

Ms. Amorin: Okay. Commissioner Guard.

Mr. Guard: And so that was how you came up with the 6,000 a unit figure, from the previous policy?

Mr. Hirano: The previous policy when this application was being reviewed, at that time, it was a guideline that the Department of Housing and Human Concern's was using and it was 15%. And the formula was 10% of the 120% income range. So in this particular case when we met with JoAnn Ridaao, the – we used the 2007 County of Maui guidelines at 6%, the affordable housing level for a 120% of medium family income, for a three-bedroom home, was \$382,000. And so it was 10% of that value, and at 15% which was added, rounded up to two homes, so it was about 20% of the project.

Ms. Amorin: Thank you. Commission Hiranaga wants to recess for lunch.

Mr. Hiranaga: I withdrew that suggestion because Mich answered my question.

Ms. Amarin: Okay. Thank you. Commissioners your pleasure. We have a motion on the floor? Commissioner Starr.

Mr. Starr: Move to deny.

Ms. Amarin: Do I have a second? Motion died.

It was moved by Commissioner Jonathan Starr to deny the project – motion failed on the floor.

Ms. Amarin: Commissioner U`u.

Mr. U`u: Motion to approve with conditions.

Ms. Amarin: I have a motion on the floor to approve with conditions. Do I have a second? Motion died. Commissioner Hiranaga.

It was moved by Commissioner Bruce U`u to approve with conditions – motion failed on the floor.

Mr. Hiranaga: It was a belated second. I was attempting to reach for my mic.

Ms. Amarin: Okay, we have motion on the floor to approve with conditions, seconded by Commissioner Hiranaga. Any discussions? Commissioner Iaconetti.

Mr. Iaconetti: Would the applicant consider abiding by the present workforce rules as they now stand in order to get over that hurdle?

Mr. Hirano: I'd like to ask Mr. Armour to respond to that.

Ms. Amarin: Thank you Mich. Mr. Armour.

Mr. Armour: Yes. When this whole project began – it started in 2005 – and we went through our whole review process and had a number of meetings with the Department of Housing and Human Concerns. Based on their response back to us is how we formulated the cost of our project and the success of our project. So based on that, we have proceeded forward on this project. I think that it's a little unfair now to be asked to change those decisions that were used to help us to evaluate the whole project. We clearly intend to follow the original response that we go back from the Department of Housing and Human Concerns, and that's what we based our entire project on.

Mr. Iaconetti: So the answer is “no?”

Mr. Armour: At this time, to fulfill that, yeah.

Ms. Amarin: Anymore questions Commissioners? Commissioner Guard.

Mr. Guard: Thank you. You mentioned that this project is geared toward owner occupants or families ideally living there. Was there any discussion of, I guess, memorializing that proposal that we want to have families from Maui living – upgrading into these homes? Because the problem is that they could be out-bid by people hoping to just own a home for their retirement. Correct?

Mr. Armour: Yeah, it's correct. There would be now way to be 100%, but that really hasn't been the intent on this project. We have a long list of potential clients, much more than the 12-lots than we have. Everyone one of them is an existing Kihei resident at the moment, and hoping to upgrade their lifestyle into an area like this. That's why the ohana situation – this whole project is designed as a residence based project. We have a cul-de-sac – very little impact on traffic. We're walking distances to the beach, at the same time, we're off the beach so we're not associated with the traffic there. So the quality of the project has been protected throughout. It's also by word of mouth attracted many people that are interested in moving. Everyone one of them is a resident in that area. So, I think to answer your question, our intent is to bring existing residents in there and not potential new buyers to the Island.

Mr. Guard: I for one, and I know it's come before us, in the past, people tell us that's their intent and then it doesn't happen. So we have to – we listen – take everything with a grain of salt. And I'm sure that's part of it on the affordable housing. We've had other projects that were approved eons ago and have no little or no impact on affordable housing. And I think it's safe to say that the previous attempt at the affordable bill wasn't working, or they wouldn't have tried to fix last year. I think that would be the consensus of the general public. So, yeah, I think, the project itself, it's in-fill, it would meet the demand, it's a great area to live, and I have friends that already live up the street, if they could afford it, I'm sure they'll try to hop on that list. I'm just afraid that people from all over the place would also want to be on that list and be willing to spend \$25,000 or \$50,000 more than a local working family would be able to afford.

Mr. Armour: Well that certainly not our intent. I don't know how we could protect that idea, but I'd be open to a suggestion if there was a way.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: I have a suggestion. You could put in a covenant within the deed that the

buyer must occupy the house for at least five years prior to resell. If the owner sells the property prior to the five years, 50% of the property, of the profit, will be remitted to the County, as a penalty for the sale.

Mr. Armour: Any maybe even possibly be contributed to the affordable housing.

Mr. Hiranaga: Something like that because some people would, all good intent, would buy it, saying we're going to occupy for five years, but you know personal situations occur – partner dies, partner gets divorce, you loose you job, you're force to sell – so it allows them to sell, not for a loss, but they can't realize the entire gain in the sale of the property. And it would basically discourage speculative buyers – the five year occupancy. And then lose a portion of the gain if they do sale. I don't know if Corporation Counsel has an opinion on that suggestion.

Ms. Amarin: Corporation Counsel, comments?

Mr. Hiranaga: Just to continue. I know that some private developers have done that.

Mr. Giroux: Yeah. I don't know – what you've formulated, you know, might work, but I don't know if you want to incorporate into a government mandated condition because then it – the rules change. You know a private landowner can do a lot to restrict the deed on the property that he conveys. But the government, when they tried to do, it becomes an encroachment into private property rights. You know, I mean, if that was something that was proposed to us, and then in your condition said that the developer will do all means necessary to ensure that local buyers are, you know – because that's the representation he's making to us. So, our conditions can say that any representations made to us shall be followed, or something to that extent. But I don't think you want to be mandating the crafted end result that you just proposed. I don't think you want to be saying that in your condition. I think the condition should be left that representations of how the property will remained, you know – I don't know if you even want to go that far – but representation made by the developer shall be followed – something to that effect.

Mr. Hiranaga: So my suggestion was not to the Commissioner, but it was to the developer that he might suggest a condition like that to make it more palatable for some of the Commissioner to approve the project. He may want to volunteer or something like that.

Mr. Giroux: If they hear you. I don't know.

Mr. Hunt: And would that apply to all the lots or a hand full of lots or –?

Mr. Hiranaga: It's up to the developer.

Mr. Armour: Well, I think that's a consideration. I think the point is well taken, and it's certainly is something that would have to be thought out thoroughly. But it's something that I would certainly would consider. I'm not sure exactly what the guidelines would be, but we would have to work on that.

Ms. Amorin: Okay, Commissioner, you want to take our lunch break and have them –?

Mr. Iaconetti: Let's finish with Mr. Hiranaga's suggestion.

Ms. Amorin: Commissioner Hiranaga.

Mr. Iaconetti: No, I was going to respond to his suggestion.

Ms. Amorin: Okay. Commissioner Iaconetti.

Mr. Iaconetti: Who would be in charge of making sure that they follow that rule?

Mr. Hiranaga: My experience is that it would be within the deed. The deed that's conveyed to you as you purchase the property.

Mr. Iaconetti: And let us assume that somebody doesn't follow it. Who would – what happens?

Mr. Hiranaga: I think, I believe – well, you're assuming an escrow company would handle the transaction so they would enforce it. But property could be sold without an escrow company so there would be difficulty. I mean there's ways to get around it.

Mr. Iaconetti: I think my suggestion before, asking the applicant to fulfill the present requirements for workforce and affordable housing that the County has – realizing that all of this started before and that he doesn't really have do it. But I'd like to see it as one of the conditions that he fulfil the present requirements for workforce housing and affordable housing. And that's a motion.

Mr. Starr: Would the motion be to alter the current condition that, you know, to state that – in that case, I second that.

Mr. Iaconetti: Yes.

Ms. Amorin: Staff, we have an imposed condition on the floor.

Mr. Hunt: Could I get some clarification?

Ms. Amarin: Director.

Mr. Hunt: Dr. Iaconetti, are you talking about compliance with providing the number of lots, or compliance with the deed restrictions that go with those lots under the new ordinance.

Mr. Iaconetti: Both. If we have an ordinance, I guess, enforced now, I would suggest that we do both.

Ms. Amarin: Discussion on the motion. Commissioner Starr.

Mr. Starr: Yeah. I think that's a good idea. And I as I understand it what we'd be talking about would be the condition #27 – would be changed to reading that the applicant shall comply with all provisions of the workforce housing ordinance as though the final subdivision approval were being granted at the current time – at the date of the vote – today.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: I have concern – Commissioner Iaconetti says there's an ordinance in place and it must be enforced. And that ordinance provides exemptions and one of the exemptions is that if you have preliminary approval prior to the enactment of the ordinance, you are exempted. So if you want the ordinance applied, then he's exempted. That's how the ordinance is crafted. Now you're changing the ordinance.

Mr. Iaconetti: Unless we put it in as one of the conditions.

Mr. Hiranaga: Right. You're changing the ordinance. You said "enforce the ordinance."

Mr. Iaconetti: No I'm adding to the condition.

Mr. Hiranaga: I just wanted to express my concern.

Mr. Shupack: I don't know, maybe, we could get James, Corporation Counsel – I mean – this is something that, you know, it's controlled by the current affordable housing agreement, as Commissioner Hiranaga said. And, you know, it's under the auspices of the Department of Housing and Human Concerns, and by modifying that condition, are we – is it possible that we're – you know, in fact, changing the ordinance, you know, based on Commission's wishes?

Ms. Amarin: Corporation Counsel.

Mr. Giroux: It was always my hope and dream to get you guys out of the housing industry. When Council came up with this housing ordinance, I thought, finally, you know, we're going to get you guys out of this hot seat here. Because now all we all have to do is tell the applicants to follow the ordinance. You know, I really want to stress, I really want to get you guys away from ad-hoc exactions. I mean, you guys are a private – you know, you guys are citizens' – you're volunteering your time, you know. And the Council finally took a step to address this policy for housing. You know, they – they're the ones who crafted this ordinance, and they're the ones who looked at what exceptions needed or didn't need to be included into the law, you know. On one hand I'm hearing why aren't we following the law, and then on the other hand, we have a law and we're saying let's not follow it. And I'm not getting a clear picture here Doctor.

Mr. Iaconetti: Because it isn't clear.

Mr. Giroux: What I'm trying to – trying to get to the point – where we can look at 205A and do the analysis that we need to do without sticking our necks out because that's the Council's job. They're the ones who decide what over riding policies are for the County of Maui. And by passing the housing ordinance, they've made it clear that they understand what the situation is and they passed the law for it to be remedied. And I really am hesitant to give you any advice of going around it or above it because we now have a law and it's been passed, it's been enacted, and we have it enforced. So, by telling the applicant to follow the law I think is the best thing that we can do, you know. To try to make end around that, I think we're taking the purview outside, away from, the Council, and it maybe overstepping.

Ms. Amorin: Commissioner Guard.

Mr. Guard: Yeah, I have a question. This might be back to Corporation Counsel. We get this green sheet of paper and we're asked to review these projects a week in advance or for a certain period before we come into this room, and then in the final minutes before staff gives us the recommendation, I read this, and I feel like they're complying with the new workforce housing policy. And then at the last minute it comes out that, oh no they're going with the old policy. So something like, I guess, it would be a lot easier if we knew, even a draft of the terms and conditions before it comes somewhat of a shock. To me, that instead of, I look at the board thinking there's going to be six affordable houses, and when in fact it's not. And so that's difficult to them, okay, hey look, we need to vote on this. When we're asked to review the material for a week prior to meeting, and then this, that's a huge change from six units to \$6,000 per unit. And to be like, okay Doc, let's vote on it. You can't exact, but we come in here thinking that this is in compliance with the new policy. It doesn't say what policy. It says the policy dated from the '70's or '60's, not the 2006 version. So, I guess that to me is – this is the one thing that's left in my gut on – it's hard to deal with this project on, and we need to vote on it immediately.

Mr. Giroux: Well, if that's a concern, there's always the ability for you to actually try to see what the agreement is. You know, if that's something that's a concern.

Ms. Amorin: Director.

Mr. Hunt: John, the reason we craft those conditions that way is we are trying, as James said earlier, get you guys away from acting as the Housing Department. And the concern that it's not clear to you, that's a legitimate concern and we can work on that. But we don't want to put in a condition that based on the Housing's ordinance, they will supply so many lots or so much money or an exemption. The ordinance is complex to administer and it should be up to the housing department to administer it.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, I take extreme umbridge to the comments by Corporation Counsel, you know, in this case. And it – they're here before us for an entitlement, you know, on the SMA, and we're here really as representatives of the community. And, you know, the Council has spoken, the people have spoken that they want large expensive house development to contribute to helping to solve the crisis in housing for these workers and working families of Maui. And, you know, I for one, you know, even – first of all, I don't think it's sticking our necks out to do the right thing. And I for one am willing to stick my neck out to try to do the right thing in terms of affordable housing. And to say that we should be afraid to be the advocate for the community and the working people because theoretically someone possibly could think of suing us if we did it, that doesn't float my boat. You know, I feel that this is what we're here for. We're here to make that statement that projects like this should support the workforce housing ordinance, even if there's a loop hole that they can sneak through.

Mr. Giroux: Jon, I want to address that. I'm here as everybody's attorney, and I'm giving legal advice that I think is creditable and viable. So, I mean, you can take umbridge to it because you maybe in a different financial situation or whatever than other people. So, you know, what I want to make clear is is that the advice I'm giving is based on trying to protect the body as far as trying to make sure that you do understand what the scope of your duties are and what the possibilities are if you do go above and beyond or outside of that scope. So I just want to make it clear that's the purpose of my job – my purpose is to do that. And I'm not a police officer. If you want to go over and above me, I'm just sitting here as an officer of this County. So, if you do want to do that, that's fine. But, you know, you do have to deal with the consequence of that vote or that action. And it may or may not be with the support of Corporation Counsel.

Mr. Starr: Well, you know, I understand what you're saying, which is "be afraid." I remember our President said that, right after 9-11. You should be very afraid. Well, I don't

buy that, and I'm going to quote your boss, okay? Brian Moto. The first time I was appointed a body such as this – it was a Hana Advisory Committee to the Maui Planning Commission, and he gave us, at that time, it was, I don't know, maybe 10 years ago, our initiation speech. And it really stuck in my mind because I thought it was really good. And he said "that as Commissioners you should be bold. If you should air, you should air on the side of doing what your conscience tells you and what you believe. And you should never buckle down to either peer pressure or the feeling that it's more important to look good than to do the right thing." And I try to follow that, and think – I've discussed this with your boss recently and he said he still holds by those words, that Commissioners should do what they feel is right. And I understand that there is an argument for being mice instead of men, but I don't buy it.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: Just for clarification, I guess in the future, when we have these recommendations, if the workforce housing ordinance applies, would the Department then replace the words, "Maui County Administrative Affordable Housing Guidelines," with "Workforce Housing Ordinance?" So we know this project falls under the jurisdiction of the workforce housing ordinance.

Mr. Hunt: Rather than committing to specific wording, we will commit to making conditions more clear in the future.

Mr. Hiranaga: So that we know whether it's the old policy or new policy.

Mr. Hunt: Correct.

Mr. Hiranaga: And, I guess, just a comment for myself. If a private individual decides to sue me personally over a matter with the Planning Commission, and the County refuses to indemnify me that would definitely sink my boat.

Ms. Amarin: Any more comments Commissioners? We have a motion on the floor by Dr. Iaconetti, seconded by Jonathan Starr imposed –

Mr. Hiranaga: ...(Inaudible)...

Ms. Amarin: I beg your pardon?

Mr. Hiranaga: They have a condition.

Ms. Amarin: For a condition. All those in favor?

Commission Members: “Aye.”

Ms. Amarin: How many? Can I have a hands showing those approve in favor? I have two. Motion dies. Oppose? Any oppose. Motion dies.

It was moved by Commissioner William Iaconetti, seconded by Commissioner Jonathan Starr to amend the main motion to impose a condition – motion failed on the floor.

Mr. Hunt: Let the record show there were three negative votes. If somebody does not vote then that goes as an affirmative vote, so that’s why I was asking for the negative vote.

Ms. Amarin: Thank you Director. Commissioner Guard.

Mr. Guard: I feel like we’re stuck in the middle. I don’t know about the new workforce housing policy to be implemented on to this. But going to my prior comment on just that it came up more of a shock that they weren’t participating in it. I don’t know if we need just some time to digest that along with lunch, if it’s ready now.

Ms. Amarin: Seems like the applicant – does the applicant have something to say?

Mr. Armour: Well, I just think that I just want to reconfirm that we have dealt with the Department of Housing and Human Concerns and our intentions are to meet their requirements, fully. And that’s who we are negotiating with to solve this problem. And we’re willing to continue to work to with that Department. It seems unfair that I can design a whole project and then at the end of the project, be told that we have different restrictions. I’ll have no choice but to redesign the entire project because it doesn’t meet the guidelines. Or I have the option of raising the price structure to where it’s not going to be the project that we wanted. So I’m just restating the fact that we’re trying to follow the ordinance as it’s written, and we were fulfilling our end of the agreement completely. Thank you.

Ms. Amarin: Thank you.

Mr. U`u: No I’d just like to comment that we’re not getting no where here. It’s obvious that we don’t have five votes, so instead of wasting time, what do we do next?

Mr. Starr: Well let’s take a vote.

Mr. U`u: Okay, we’ll take a vote.

Mr. Starr: ...(Inaudible)...

Mr. Guard: She did.

Mr. Starr: No, on the main motion.

Ms. Amorin: Do I have a motion on the floor?

Mr. U`u: Motion to approve.

Ms. Amorin: Do we have a second?

Mr. Starr: We already have that vote.

Ms. Amorin: Motion was on the floor and the motion dies.

Mr. Starr: No.

Mr. Giroux: No, you haven't called for the question --.

Mr. Starr: Call the question on the main motion.

Mr. Giroux: What we did is we disposed of the amendment, so now we're back to the main motion.

Mr. Hunt: Okay. I have a question. I think the main motion should be repeated for clarity.

Mr. U`u: Motion to approve with conditions, as recommended by the Planning Department.

Mr. Hunt: And the second was from –

Ms. Amorin: Commissioner Hiranaga. Discussion? Commissioner Guard.

Mr. Guard: So, this is for Corporation Counsel. So when they discuss potentially trying to keep this for owner occupants, is there any – there's no recourse, correct Director? And then second, I guess, the problem with the workforce housing is they probably get stuck in the same conversation of, this is the letter of the law, you're willing to risk your job and career on trying to impose greater fees than whatever the previous workforce housing policy had been. Even though going in, under the new administration that voted for the new workforce housing policy. Right? They're going in with their hands tied behind their back.

Ms. Amorin: Corporation Counsel.

Mr. Giroux: You know, I can not – I don't advise Housing. I'm not the attorney and I

probably can't speak for the attorney who does. But, they're probably have to look at that consideration of, you know, how do they conform to the law?

Mr. Guard: And then the other part about once its discussed here, that's what we're lead to believe that this is for owner occupancy. And it's really not for this project, it's just items that have happened in the past that because of history, we have to either document it as a condition instead of being able to go with people's good faith, like we would love to be able to do. And for the applicant to know that that I'm not singling this project out. It's just that it's happened time and time again, people come in here saying they're going to do something and they don't. We're going to build a four-foot wall, we go down to the project, and it's a six foot wall. And we saw that last week, so just so everyone knows that's where I think we have to become a little more careful with how with tip toe through these issues without putting it on the paper.

Ms. Amorin: Director.

Mr. Hunt: James, earlier, you said you were okay with covenants as long as the applicant volunteered them?

Mr. Giroux: Yeah, the private owner, I mean, can put whatever restrictions on their deeds they want as long as it doesn't go past public policy. I mean, as far as to absolutely restrict any type of conveyance.

Mr. Hunt: So if the applicant agreed to abide by the Housing ordinance's covenants in order to address Mr. Guard's concern.

Mr. Guard: My concern was not to have 50% of the units. It's just what came up today, right? That's what I discussed – from six of those units being workforce housing, it came under the old policy. If there is some meeting in the middle, or even – he discussed saying that we'd love to be able to sell it to owner occupants under Commissioner Hiranaga's discussion with him prior to that. And then Corporation Counsel directed us that we should not get into the government restrictions. So from there, I think, we're just stuck right now without – if the applicant wants to propose something else or if some of the Commission feels that they can more forward with the item #27 as it states.

Ms. Amorin: We have the applicant, Mr. Armour.

Mr. Armour: I would be agreeable to writing into the CC&R's or even in the deed a restriction of a non-sales for a period of time. So I'd be willing to add that into each of the lot's deeds.

Mr. Hunt: To all of the lot deeds?

Mr. Armour: To all of the lot deeds. Correct.

Mr. Hunt: Would you be okay with that restriction reflecting what the Housing Department would require if you were subject to the existing ordinance?

Mr. Armour: I would be agreeable to that, yes.

Mr. Hunt: And would that would be a good compromise for the Commission?

Mr. Hiranaga: Could you briefly summarize what those –?

Mr. Hunt: I don't know them by heart. But in order to comply with the housing ordinance, there's covenants that are put on those properties to assure they're – that they meet the intent of the ordinance rather than crafting our own.

Mr. Hiranaga: Period of occupancy?

Mr. Hunt: I believe so.

Mr. Hiranaga: And penalty –

Mr. Hunt: We could research that at lunch and get back to you.

Mr. Iaconetti: Who polices it?

Mr. Hunt: The Housing Department would.

Mr. Iaconetti: In what manner?

Mr. Hunt: I don't know the specifics.

Mr. Iaconetti: I think it would be a very difficult thing to police no matter who's trying to do it.

Mr. Hunt: Well –

Mr. Hirano: If it's a voluntary condition that goes into the agreement, it will be in the preliminary compliance report. And then upon final subdivision approval, our built out of the project, there will be a final compliance report. And all the conditions will be addressed in that final compliance report that they've been complied with. Otherwise, they won't get their final approval. So I think that's the way in which at least the Department will be notified that it is incorporated into the CC&R's during the preliminary compliance report.

And that in the final compliance report that that condition has been at least adhered to by the CC&R's and deed restrictions. So it would be – the Department will be enforcing it through review of the compliance reports for the SMA use permit.

Ms. Amarin: Chair recognizes Commissioner Starr, followed by Commissioner Guard, followed by Commissioner Iaconetti. Commissioner Starr.

Mr. Starr: I'm a little unclear. Was that the applicant was willing to comply with all of the provisions of the workforce housing ordinance or just those relating to resale? I think the Director made a suggestion.

Ms. Amarin: Director.

Mr. Hunt: The workforce housing ordinance has a provision where you have to supply so many lots or there's a fee in-lieu or whatever, but those lot are then, if they are designated a workforce housing lot, they are subject to a covenant that is intended to assure that they stay affordable or meet the intent of the ordinance. And so I guess I was just offering as an – and I don't know it by heart, so maybe we want to break for lunch and research it further – but I was just trying to find a compromise. It seems like we have a split here. The idea being that we would apply the covenant to all of those lots, but he would not be required to supply the 50% of the lots. It's just a covenant.

Mr. Starr: So in other words, they're not actually complying the really useful part of the ordinance, just the –

Mr. Hunt: Well, the covenants are designed for lots up to 160% of the AMI. Then there's the covenants that assures that those lots remain in that target group. So these may be similarly situated financially, I guess, is all I'm looking. So, in effect, these lots would be subject to that criteria. But we wouldn't require him to set aside 50% of either these lots or build them on another site.

Ms. Amarin: Commissioner Guard.

Mr. Guard: I feel that's a great compromise and maybe over lunch, the applicant could work on that and make sure they can give up 100% going to owner occupancy so we(inaudible – changing of tapes)... to take that condition back out. It may – on the resale side, or on the original sales, it's going to limit it to people that are going to live there. And so that is going probably just take a few people out of the picture who don't want to get involved with the potential litigation, and there are probably are methods that we could use to discourage speculation. It would be a great place for families. I mean, the houses has great floor plan. You can walk right there to the beach. The place was packed on Sunday at the beach, so I know they're doing it because there's not much parking. And hopefully

these people are moving out of smaller houses that the next first time buyer could get. If he's willing to impose that upon himself to say that he's trying to sell to people who want to live there, I think that's a noble step forward.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: I just have difficulty with trying to determine who is going to police this – the Department of Housing and Human Concerns – are they suppose to police it? The Planning Commission doesn't really have an investigative arm of note or an enforcement arm of note, and I doubt very much that the Department of Housing and Human Concerns have one. So, my question remains, who's going to police this?

Ms. Amorin: Director, you have comment?

Mr. Hunt: The Department of Housing would police it just as they would police any of the subdivision or any application that comes in that is subject to the new ordinance.

Ms. Amorin: Commissioner Hiranaga, followed by Commissioner Guard.

Mr. Hiranaga: I just want clarification on this proposed condition that it relates only to the resale issue not qualifying by income, strata – whatever we're proposing to be applied from the workforce housing ordinance, I just want to be clear on what is being proposed.

Mr. Hunt: I would suggest that we break for lunch and you direct staff to do some research and come back regarding this issue.

Mr. Hiranaga: And they would, I guess, would need to work with the applicant because we don't want really make that a condition of the application, do we? It should be volunteered by the applicant – it might be a safer route.

Ms. Amorin: Thank you. Before we break, Commissioner Guard.

Mr. Guard: Maybe Corporation Counsel or for staff, that there is like an owner occupant, either an addendum or an affidavit that the original purchaser would sign for something like that. This area is going to be prone to people wanting to move in. It happened prior – another SMA subdivision that was intended for owner-occupants, and people visiting Maui saw that they could buy a home instead of buying a condominium unit. And they bought them and the market ran up, and those properties went from the mid-\$200's to the \$700's. And the developers intent of providing owner occupant homes were lost when people just saw the benefits of what they could get with the home. So maybe just this simple statement. It may not scare off everyone, and it maybe difficult to police, but ideally, if we can fill six to nine of these units with people that are going to live there for two years or

longer, it's a step in the right direction.

Ms. Amorin: At this time, the Chair will call for a lunch. We'll reconvene at 1:15 p.m..

(The Maui Planning Commission recessed at 12:18 p.m., and reconvened at 1:18 p.m.)

Ms. Amorin: . . .(inaudible). . . is back in session. Director.

Mr. Hunt: Over lunch, we reviewed the affordable housing, or it's actually called the residential workforce housing policy, to get some ideas on some tools we can address the housing issue even though the development is exempted from those rules because of the preliminary subdivision approval. There are some provisions in there about deed restrictions and owner occupancy, et cetera, and so with the applicant, we crafted a draft amendment to condition #27. Now, I'll wait until everyone has a copy.

The intent of the amended condition would be to assure that the units, at least initially, are owner occupied and therefore, in theory, would be serving a resident by definition, and that's for a certain period of a time, in this case, the ordinance – pardon me – the condition reads two years. And then there's a penalty that if that is not – pardon me – if it is sold within that two year period, then there's a 50% amount of the purchase price be paid to the County affordable housing account. If you're willing to go down this road further, we would suggest that the term, the last word, "account" be changed to "fund," because that's the exact wording in the residential workforce housing policy, "affordable housing fund."

Ms. Amorin: The applicant – Mich.

Mr. Hirano: Thank you Chair Amorin. The applicant puts forward this proposal as a applicant proposed an amendment to the condition. I think that in terms of just background, in terms of what was considered in developing the parameters of the amendment – you know – it was brought to the attention of the applicant that, in terms of the financing for these projects, a deed restriction is enormous undertaking for the purchaser because the financing may be affected by it. And therefore, as a result of that, the applicant felt that a two year period for holding it meets the objective of deterring speculation. And the owner occupancy requirement, as well, deters the speculation and rental component of these particular units.

Applying these to 50% of the units as well, would give the applicants some flexibility because many of the potential purchasers may not be able to finance the project with the deed restrictions. So it gives the applicant some flexibility about imposing this. And the 50% deed restrictions is in terms of the guidelines of the workforce housing policy, or the workforce housing ordinance, where it applies to 50% of the units above \$600,000.

The third part of it is of course, you know, within in this holding period, then if the units are sold within this holding period then a portion of that, 50% or ½ of that, then will go towards the affordable housing fund. And that way the fund will be replenished and it will be supplemented by the sale of the unit within the holding period. The applicant feels that is fair, in that a two year period for people – you know – circumstances change so drastically within a two year period that to hold it any longer would be a real burden on the purchaser because, you know, lives change and circumstances change within that period of time. But I think the applicant feels comfortable that he could commit to the two-year period. He also feels that it is an undertaking that he feels meets the spirit and the intent of the comments that were provided during Commissioner's deliberation on the project, in relation to affordable or the workforce housing. So thank you.

Ms. Amarin: Thank you Mich. Commissioners any comments? Questions? Do we have a motion on the floor. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: So this proposed amendment does not preclude the previous condition or does it replace the previous condition?

Mr. Hirano: Commissioner Hiranaga, no, it will be incorporated. It would be added on to the condition #27, and I think that that was another concern that was raised by Commissioner Iaconetti regarding administration of it and monitoring of it. So it that it would be part of the affordable housing agreement that will be entered into with the Department of Housing and Human Concerns. So they will actually monitor and make sure that the terms of these conditions are adhered to.

Mr. Hiranaga: So they still have to comply with the affordable housing guidelines?

Mr. Hirano: Yes.

Mr. Hiranaga: As far as that monetary payment?

Mr. Hirano: Yes. That's right. Yes.

Ms. Amarin: Staff, do you have any comments on this change? Anything you want to say about this or shall we –?

Mr. Shupack: Well, we met with the applicant prior to the meeting and we agreed with the language that they proposed, you know, it satisfies the intent of the Commission.

Ms. Amarin: Thank you Dan. Commissioners, do we have a consensus to accept this amendment? All those in favor?

Commission Members: “Aye.”

Ms. Amarin: Okay. Commissioner Starr.

Mr. Starr: “Nay.”

Ms. Amarin: We have a consensus.

Mr. Starr: You don’t have a consensus.

Ms. Amarin: To accept the change to the amendment.

Mr. Starr: A consensus means that everyone agrees.

Ms. Amarin: Okay, how many? Can I have a show of hands?

Mr. Hiranaga: Isn’t this suppose to be a motion to amend the condition?

Mr. Hunt: I think that may be proper.

Ms. Amarin: Do we have a motion on the floor to accept the change of this?

Mr. U`u: I’ll make a motion.

Mr. Guard: Second.

Ms. Amarin: Okay. Any discussion?

Mr. Hunt: Just for the record, you should note that Commissioner U`u made that motion, and Commissioner Guard seconded it.

Ms. Amarin: Okay, we have a motion on the floor by Commissioner U`u, seconded by Commissioner Guard to accept the amendment to condition #27. All those in favor?

Commission Members: “Aye.”

Ms. Amarin: Any oppose?

Mr. Starr: “Nay.”

Mr. Giroux: The Chair will have to vote.

Ms. Amorin: The Chair is in favor. We have one oppose. Motion carries.

It was moved by Commissioner Bruce U`u, seconded by Commissioner John Guard, then

VOTED: To accept the amendment to Condition #27 as discussed by the Commission.

(Assenting: Commissioner J. Amorin, B. U`u, J. Guard, K. Hiranaga, W. Iaconetti

Dissenting: Commissioner J. Starr

Excused: Commissioner W. Hedani, J. Pawsat)

Ms. Amorin: We're back to the main motion. Do we have a motion to approve?

Mr. U`u: I'll make a motion to approve.

Ms. Amorin: Any further discussion?

Mr. Hiranaga: And the motion has amended.

Ms. Amorin: Okay. Commissioner Starr.

Mr. Starr: I don't think this amendment makes any difference. I think it's just for show, and it doesn't make me feel any better about this process.

Ms. Amorin: Thank you for your comments Commissioner Starr. Getting back to the motion, and with the approval of this amendment to condition #27, any other discussion? All those in favor?

Commission Members: "Aye."

Ms. Amorin: Any oppose?

Mr. Starr: "Nay."

Ms. Amorin: The Chair votes in favor. Motion is carried. Thank you.

It was moved by Commissioner Bruce U`u, seconded by Commissioner Kent Hiranaga, then

VOTED: To approve the project as amended.

**(Assenting: Commissioner J. Amarin, B. U`u, J. Guard, K. Hiranaga,
W. Iaconetti**

Dissenting: Commissioner J. Starr

Excused: Commissioner W. Hedani, J. Pawsat)

Mr. Hirano: Thank you very much Commissioners. Thank you.

The Commission may take action on the request.

- 2. MR. JAMES McCALL of DESIGN VISION ARCHITECTS requesting a Special Management Area Use Permit in order to construct the Hale Pama Condominiums, a 4-story, 6-unit condominium and related improvements at 2145 South Kihei Road, TMK: 3-9-016: 021, Kihei, Island of Maui. (SM1 2003/0001) (L. Callentine) (Public hearing conducted on April 25, 2006.)**

Revised plans show that the number of units has been reduced from six to four.

The Commission may take action on this request.

Ms. Amarin: Director.

Mr. Hunt: The next item concerns Mr. James McCall of Design Vision Architects requesting a Special Management Area Use Permit in order to construct the Hale Pama Condominium, a four-story, six-unit condominium and related improvements at 2145 South Kihei Road. TMK: 3-9-016: lot 021, Kihei, Island of Maui. The permit number is SM1 2003/0001. And the Department's planner for this project is Livit Callentine.

Ms. Livit Callentine: Good afternoon Commissioners? Am I on? Okay. No? Here we go. Okay. While our equipment is initiating here, I wanted to let you know that there was a mistake in the agenda. We think it happened when it was revised by someone else using an older version. So what you should be seeing is – it is a – the project is a four-story, four-unit condominium, not a six-unit condominium. When you heard it on April 25, 2006, it was a six-unit condominium. It's been reduced in number of units.

Sorry about that little delay. So this is the Hale Pama Condominium project and it had previously been reviewed under SM1 2003/0001. Like I said earlier, it is a four-story, four-unit condominium project with related improvements at 2145 South Kihei Road. That's at

the intersection of South Kihei Road and Walaka Street.

On April 25, 2006, the Commission deferred action on the project because concerns about six items, and those were that the impervious – the impact of impervious surfaces, a view analysis, density of the structure, provision of guests' parking on the project and what is the benefit to the community especially as it's regards to water use, and the impact on schools and whether the applicant would be willing to make a voluntary contribution.

The applicant responded. The applicant responded to these concerns in Exhibit E in your Staff Report. They say that pervious surfaces will be provided in all parking areas and they will provide a view analysis if required. But their belief is that because they've reduced the density of the project and the number of units, they did not – they ere not inclined to submit a view analysis with this project. But if you require so, they will be willing to do so. And they are now providing – because – they're still providing 12 parking stalls. So rather than – they're now exceeding their parking requirement by four parking stalls which they will dedicate to guests parking. And they are willing to pay a school impact fee if it's required, but keep in mind that it's not required by the Department of Education for anything under 50 units.

As a comparison of the two plans – so the one you saw April 25, 2006 and today's rendition, you'll see that the height has been reduced by two feet, to 42 feet. That the number of stories have remained the same. Although the applicant described in the amendment application that the fourth story was a mezzanine, a ½ story, it does not meet the County Code's definition of a mezzanine. So for our purposes, we continue to describe it as four story building. The floor area has been reduced by approximately 30%, from 9,000 to 6,000 square feet. And the fourth floor area, as you can see, has been reduced by about 75%, down to 558 square feet.

The previous design, you'll see the facade shows a full fourth floor. Each of the second, third – the parking is actually on the first floor under the building, and the top three floors are the housing units. And, so just notice that design that it's all the way across – it's a full fourth story. The revised design shows a modified fourth story with a bit of curve to the roof line. I don't believe there have been any changes to the second and third floor as regards to the facade, or elevation. So the top, fourth floor, is now two family rooms separated by a wall and accessed by the unit below. So the tops, the fourth floors, actually part of the third floor units. Did I make that clear? The fourth floor consists of two rooms, and each of those rooms in connected to one of the units right below it with a circular stair case.

The project is now a vacant land. And the land use designations are: State Land Use is Urban; the Kihei-Makena Community Plan is Multi-family; the County Zoning is A-2 Apartment; it's in the C-flood zone designation; and it's, of course, in the Special Management Area. If you can see the black arrow that is pointing to the site right here,

with the little cross patches on it – and so that's your aerial photograph. It's surrounded by Kihei Villas to the north, which is two-stories. To the east, a two-story apartment, Aloha Apartments, a 10,000 square foot parcel of vacant and Kalama Terraces which is a three-story building. In the south, it's bounded by a two-story apartment complex and another four story – and a four-story building, the Maui Vista. And to the west, a, just under 40,000 square feet parcel of vacant land.

This a panoramic view of the subject parcel. Down on the lower right hand corner of the slide I believe is the – would be where South Kihei Road would be here, and this is Walaka over here. So this is looking at the property across Walaka Street, at the intersection with South Kihei Road. And another photograph of the intersection of South Kihei and Walaka. This is on the sidewalk, looking south, the subject parcel – sorry – the subject parcel would be over to the left of the sidewalk. And another view from across South Kihei Road, the parcel being up at the tip of the arrow. This is a view from the property, looking north-west. And a view from the property, looking south-west. This is from the property, looking south-west. Another view from the south-west, looking at the property. This is the Maui Vista project. Kalama Terraces, a three-story, and to the east. Okay, this is – this site plan which admittedly is a little bit out of scale for what you can actually see, but you will find that in your packet as part of Exhibit # – it should be towards the back – part of Exhibit F – behind the minutes to the last meeting.

And this is the landscaping plan. So what they've done now is make it a four-unit project, and each of the – you can see on this slide – that each of the units is – the units range in size from about 1,000 square feet to just under 1,800 – just over 1,700 square feet. And as you saw on the plan, it will include a pool and a spa and a barbeque area with a water feature or possibly two water features, trash and recycling will be provided for, and each unit will be air-conditioned, and there will be solar water heating. So the length of the project – this is – obviously, it's a triangular shaped parcel, and it's a triangular shaped process – project – but the longest length is 90 feet, and the width is just under 60 feet, and the height 42.

The first level is concrete piers, second to fourth level is wood framed stucco. And although I haven't see a design, a drawing for it, it's indicated that there will be use of fabric sunshades on the second through the fourth level. I'm sure the applicant will be able to correct that if that's not accurate.

This is just some of the project's specifications. Again, with the floor area ratio being –. The total area is 6,184 square feet. And I'm going to just draw your attention to the total parking spaces provided at the bottom of the slide are 12. I think the next slide will explain a little bit better. The requirements of Chapter 19.12, which is the A-2 Apartment District, and what the revised project does provide. So the requirements, the meet easily with the lot area. They have just over the minimum lot size. The minimum lot width, they exceed.

The building height, the Code does not specify a building height for four-stories. They just say “four-stories.” So, but, they also say the maximum for a one and two story is 15 feet per story, so extrapolating from that, we could say that the four-story would be able to go up to 50 feet in height. They have the requirements for yard spacing on all sides, and the 25% of lot coverage and that is below the . . . (inaudible - changing of tapes). . . The floor area that is there 60% and it could go up to 90% in A-2 zone. This is a front elevation, a rear elevation, and the left side elevation. And because the applicant submitted this, I’m going to show you the color is not coming out on this slide at all. But this is a preliminary signage design, and I don’t know if there’s been any amendment to that preliminary signage design yet or not.

So analysis from the Planning Department’s stand point, we believe that this project complies with all of the standards that is required to comply with. And, also that it has met the request for revisions that the Planning Commission requested on April 25, 2006. And the Department does recommend approval of the project with – actually – there’s actually nine and possibly 10 project specific conditions that I will – that I hope will get into when you begin to ask questions of me. So that concludes the staff report.

Ms. Amorin: Commissioners, any questions? Commissioner Starr.

Mr. Starr: Yeah. First of all, I want to say I think that our concerns last time were met, so I feel much better about this. But I just want to ask, yeah – Livit, one question, which is, you know, I haven’t gone and done a side analysis from behind it, nor do I really want to ask the applicant to wait and stop and do that. But have you actually seen if there’s anything behind it that’s going to be really adversely blocked, in your opinion?

Ms. Callentine: I have been to the site, yes, quite a number of times, and – you know, I can’t actually ask – I don’t think I can say absolutely no one will be impacted by – as far as view goes. But, but, my recollection is impec. If I looked back at some of the photographs, I can probably show you that the project that is immediately mauka of this proposed project doesn’t currently enjoy views on the first few levels. I’m not really sure. I think that the slide –. This is the slide that I think shows you what is immediately mauka of the project. It is this wall and this two-story building, and then here is another vacant lot. I’m actually not sure if this parcel right behind is part of this. This is vacant here. What is the name of this project right here?

Mr. Hiranaga: Is that Pua Place we’re looking at?

Ms. Callentine: I’m sorry?

Mr. Hiranaga: Pua Place?

Ms. Callentine: Pua? Oh, you mean the Pua Place project?

Mr. Hiranaga: No, the street. Is that Pua Place?

Ms. Callentine: No. The street right – this street right here you're talking about? Which street are you talking about?

Mr. Hiranaga: No, the one right where your arrow – that white arrow –

Mr. Starr: Walaka.

Ms. Callentine: No. The arrow is actually crossing South Kihei Road. I don't know how to get that to get off the –. Hit escape.

Mr. Starr. That's Walaka.

Ms. Callentine: Right. This is South Kihei Road and this is Walaka – yes, Walaka – right over here.

Mr. Hiranga: Oh, I see. So they're –. Madame Chair, can I ask a question?

Ms. Amarin: Commissioner.

Mr. Hiranaga: So those two cars are sitting on the project site?

Ms. Callentine: Yes.

Mr. Hiranaga: So that building with the red roof would be mauka of the project site?

Ms. Callentine: Yes.

Mr. Hiranga: Thank you.

Ms. Callentine: You're welcome.

Ms. Amarin: Commissioner, anymore questions to staff? The applicant wish to say anything about his project?

Mr. Hiranaga: Excuse me. May I have another question just for staff?

Ms. Amarin: Yes, Commissioner Hiranaga.

Mr. Hiranaga: I was looking at your slides and you had the square footage per unit, were those correct? Because it seems odd, like you have the three-bedroom unit with a 1,000 square feet, and a two-bedroom unit is larger. So I was just wondering if your square footage were accurate.

Ms. Callentine: Is this the slide you're referring to?

Mr. Hiranaga: Right. I was just – it seems odd that the one-bedroom unit was 1,300 square feet, three-bedroom unit is a 1,000 square feet.

Ms. Callentine: Can I ask the applicant to address that?

Mr. Hiranaga: Sure.

Mr. James McCall: Madame Chairperson, my name is James McCall and I'm the project architect. And yes, the square footages are correct. Adam is specifically working with me on the layout and the design of these for his use own use, so some of them might look unusual but that's his desire.

Mr. Hiranaga: Okay. Thank you.

Ms. Amorin: Commissioner Starr.

Mr. Starr: For the applicant, I was really glad to see that you're putting solar hot water in this and it's been often been difficult to try and encourage a lot of people building multi-family in Kihei to do it. And it's hard for me to understand why, and I just wanted to get your thinking because you're one of the few people who is doing the right thing.

Mr. Adam Sparks: Well I'm frankly surprised that it's not part of the law, that, here we're one of the sunniest place in the country, I think that's something you might want to make a recommendation to County Council if it's in your position to do that. But, yeah, sure, you want to be as green as possible and we're going to try to do that. And I just want to highlight, although, I think you've just heard from planning staff, we're about 40% under what the lot allows in terms of the bulk of it, so we did come way down. And we have 50% additional parking than what's required too because that was a concern expressed by this Commission previously about guest parking, so we're trying to do as best as we can. And we're trying to make a very handsome looking building because some of the buildings around us are not that attractive. So we're trying to improve the quality of that area of South Kihei Road.

Mr. Starr: Also, I noticed that some of the parking area is going to be pervious surface, and I really applaud that. I'm wondering what kind of system you're using for that.

Mr. Sparks: Well that's something I think the project architect –

Mr. McCall: We're planning on using pervious concrete in most areas, and something similar to grass crete in others.

Ms. Amarin: Dr. Iaconetti.

Mr. Iaconetti: I'm glad to see you move the trash area. I'm a little confused as how you get to it from the street.

Ms. Amarin: Adam Sparks.

Mr. McCall: The container is pulled out.

Mr. Iaconetti: On to South Kihei Road.

Mr. McCall: No, on to Walaka.

Mr. Iaconetti: You did move the trash area away from the pool area, did you not?

Mr. McCall: The trash area is on Walaka, outside the pool area.

Mr. Iaconetti: What I'm looking at here is what?

Mr. McCall: You have one on South Kihei Road.

Mr. Iaconetti: I recall – my concern was the fact that the trash area is immediately adjacent to the pool and the only way that inhabitants would be able to dump their trash is to walk across the pool area. Is that right or wrong?

Mr. McCall: Behind the pool area?

Mr. Iaconetti: Yeah?

Mr. McCall: Yes.

Mr. Iaconetti: But, they'd have to walk around the pool area.

Mr. McCall: Yes. Yes, they'll be walking essentially behind the pool area.

Mr. Iaconetti: With their trash.

Mr. McCall: That's correct.

Mr. Iaconetti: That wouldn't appeal to me if I were living there, and spending much time around the pool. I thought we were going to try and move that away from the pool area.

Mr. McCall: There is no other place that's accepted by Public Works. This went on for almost a year, and this is the spot. There is no other area they would accept.

Mr. Iaconetti: Thank you.

Mr. McCall: Thank you.

Ms. Amarin: With that, could we see a diagram up there? Can you point to where the location of the trash receptacle area was to where it is now?

Ms. Callentine: Yes Madame Chair. It was going to be, or initially over in this corner of the driveway of the underground parking. But there was a big problem with that because the refuse trucks would not be able to drive and turn inside. And that would necessitate backing up onto South Kihei Road with a refuse truck, which didn't seem acceptable. So it is now located right over here in this corner, and my guess is that the applicant – I'm sorry, the occupants would come down the stairs and go through here to put their trash in here. I suppose alternatively, they could come out the front door and walk around this way.

Ms. Amarin: So there is a wall shielding the trash area? How high is the wall? Six feet.

Ms. Callentine: The applicant indicated the wall is six feet high.

Ms. Amarin: Thank you. Any other questions Commissioners?

Ms. Callentine: If I could actually make one other point that I think is important considering the interests currently in units being converted to vacation rental use. The apartment district specifically prohibits that and states that "buildings and structures within the apartment district shall be occupied on a long-term residential basis."

Ms. Amarin: Commissioner Guard.

Mr. Guard: I may have just over looked it. Was there any update to the drainage plan? It's just a pervious concrete and how much does that take on?

Ms. Callentine: The applicant did not submit an additional. That was not a requirement to submit additional, but I'll let him address that.

Ms. Amarin: Adam Sparks.

Mr. McCall: This is James McCall. The technology with pervious concrete at this point has become so high that it can essentially take almost levels of rainfall for an extended period. So I think even in a flash flood condition, it would receive the vast majority of the water.

Mr. Guard: So are there any dry wells under the concrete at all or it's just going to go back to the normal?

Mr. McCall: I think the crusher waste and the gravel underneath will receive adequately and we'll work with Stacy Otomo.

Mr. Guard: And he felt that would work? Commissioner Starr may know more about it than we did.

Mr. Starr: No, I'd love to see it when it's in and in the pouring rain. I'm glad you're doing it.

Mr. McCall: Thank you.

Ms. Amarin: At this time, the Chair will call for public testimony on this agenda item. Do we have any individual in the audience that wishes to speak on this agenda item? Seeing none, public testimony is closed. Commissioner, any follow up on this project to staff, applicant? Commissioner Starr.

Mr. Starr: Actually, I have motion after we've gotten the conditions. I think that Commissioner U`u.

Ms. Amarin: Commissioner U`u.

Mr. U`u: I just want to ask the applicant one thing.

Ms. Amarin: Commissioner U`u.

Mr. U`u: I want to ask the applicant one thing. What was the cost difference from your concrete to your new surface you're doing, if you don't mind me asking?

Mr. McCall: Cost difference?

Mr. U`u: What would be the cost difference – pervious, asphalt or your concrete? Or how much work or cost-wise, how effective is it as far as if we implement it in any future projects that comes before us?

Mr. Sparks: I am using it on all of my present projects and I don't really know much about it in terms of longevity. I know the cost is somewhat additional. I haven't started working with Ameron to see what they're doing, but it's something for me that's new. But in reading the literatures, it's extremely effective. I think the labors identical. The material is somewhat more. And as I get more information, I'd be happy to share it with anyone.

Mr. U`u: All right.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Could we ask that some – whatever data sheets you have readily available you'll share with Planning so that when we have this question come up again, we can –

Mr. Sparks: I'll refer it to her.

Mr. Starr: And we'll think kindly of you at that time.

Mr. Sparks: I'd be happy to do so.

Ms. Amorin: Thank you. Commissioners, do we have a motion on the floor?

Mr. Starr: I think we need the staff's recommendation.

Ms. Amorin: Thank you. Staff.

Ms. Callentine: Madame Chair and Commissioner, the standards conditions #1 through #14 would apply on this project. First of all, the Planning Department, based on the facts presented to in the Department's Report, finds that the proposed action will not have a significant adverse environmental or ecological effect. And that the proposed action is consistent with County and zoning and the community plan, and therefore, we recommend approval of the permit subject to the following conditions. The 14 standard conditions that I don't think, unless someone indicates, I don't need to read those to you. There are in your packet before you, there are 22 conditions, eight project specific conditions. And I want to point out a couple of things. In fact many of these conditions are really sort of standard, project specific conditions, so you're familiar them as well.

#15 regarding infrastructure. #16 regarding a cash contribution in-lieu of land for parks and playgrounds. #17 is the pollutant discharge elimination system permit. #18 is pertaining to disposal of back wash water from the pool's filters. Then #19 requires the applicant provide an archaeological monitoring plan and approval from SHPD, that is the State Historic Preservation Division, prior to any issuance of any grading permit. #20 is that because of this location on South Kihei Road, and access in and out of the project, Department of

Public Works advised that access – that there should be no left-turns out of the project. And it should be right turns in, no left turns into or out of the project – right turns only. That trees that are planted on South Kihei Road should not hinder the site distance for drivers on Walaka Street, turning right or left onto South Kihei. #22, that frontage improvements on Walaka be constructed to County's standards, such as curbs, gutters, sidewalks, landscaping, drainage improvements. Now there is not a condition in here about traffic impact fees, nor is there is one in here about schools. But the applicant has indicated, as far as the school's contribution that they are willing make should it be required. So I would like to add that condition.

First of all, relating to the traffic, the wording of the condition for traffic would be that "the applicant shall contribute a fair share traffic impact fee based upon a formula agreed upon by the applicant and the Department of Public Works and Environmental Management. Said requirements shall be satisfied with the Department of Public Works and Environmental Management prior to" – now the condition I'm reading was relating to subdivision, so this should actually be I think prior to issuance of a building permit. If I could get Public Works to comment on that. At what point in time would they be working out the fair share traffic impact fee?

Ms. Amorin: Mike.

Mr. Miyamoto: I guess to be consistent with the previous project that we had – with the Kalama Hills project, in that comment, it says, the final subdivision approval. But I'll have to check with the Long Range Planning because I'm not sure what the current proposed ordinance says with the traffic impact assessment fees. I think it calls it at building permits. Jeff? Director?

Ms. Callentine: I think it's prior to issuance of building permit.

Mr. Giroux: Yeah. I believe State Law says building permit.

Mr. Miyamoto: Okay so then this – the condition that she read, she took from the previous one for Kalama Hills to add that.

Ms. Callentine: Yeah.

Mr. Miyamoto: So the previous project has it as subdivision – final subdivision approval.

Ms. Callentine: Right.

Mr. Miyamoto: But for this, we can put it in as prior to building permits.

Ms. Callentine: So that's my recommendation for that one. Any questions on that? Okay. So then for the schools – actually I don't have the wording – wait, I think I do have it. I take that back. You know what, I'm going to refer back to – let's go back for second to the traffic impact fees. At the hearing in April 2006, Ms. Ann Cua suggested wording for that condition is as follow: "That the applicant shall provide its fair share of traffic impact fees toward local and regional roadway improvements prior to issuance of a Certificate of Occupancy for the project. Said fee shall be established and implemented in accordance with Chapter 14.68, Maui County Code, adopted by the Council." So that is what I would actually say – "prior to issuance of Certificate of Occupancy for the project" – rather than building permit.

Now Commissioner it's up to you if you want to add a condition about the Department of Education and a school fee. You had asked about it at the last hearing. And it is not included in my staff recommendation because this project is only four-units. And that's so small in comparison to the number that Department of Education looks at, that I did not recommend it.

Ms. Amorin: Commissioners, any comments on that? Commissioner Starr.

Mr. Starr: I'm ready with the motion, which is to approve with the conditions as just lead out to us by staff.

Mr. U'u: I'll second that.

Mr. Hiranaga: Was that final condition agreed to or not?

Ms. Callentine: Do you mean as amended?

Mr. Starr: Yeah, as amended.

Ms. Callentine: With condition #23 regarding the traffic impact fee.

Mr. Starr: Yeah.

Mr. Hiranaga: And not including the school impact?

Ms. Callentine: Correct.

Mr. Starr: No, I think trying to with Board of Education for four units is going to be (phonetics).

Ms. Amorin: Okay, we have a motion on the floor to approve with changes per staff by

Commissioner Starr, seconded by Commissioner U`u. Any other discussion?
Commissioner Guard.

Mr. Guard: I've been asked to recuse myself from this vote.

Ms. Amorin: Thank you. Commissioner Starr.

Mr. Starr: Just that the applicant did come before us once we deferred because we had some concerns. I think they've answered so – and I think they've even made the project better since.

Ms. Amorin: Thank you. All those in favor.

Commission Members: "Aye."

Ms. Amorin: Any oppose? One recused. The Chair is in favor. Motion carried.

Ms. Callentine: Thank you Commissioners.

**It was moved by Commissioner Jonathan Starr, seconded by
Commissioner Bruce U`u, then**

VOTED: To approve the project with conditions as discussed.

**(Assenting: Commissioner J. Amorin, W. Iaconetti, K. Hiranaga,
J. Starr and B. U`u**

Recused: Commissioner J. Guard

Excused: Commissioner W. Hedani, J. Pawsat)

Ms. Amorin: Director. Chair calls for a five minute recess.

*(The Maui Planning Commission recessed at 2:07 p.m., and reconvened at
2:15 p.m.)*

- 3. MR. RYAN CHURCHILL of MAUI LAND & PINEAPPLE COMPANY requesting a Special Management Area Use Permit and a Phase 2 Project District Approval for the Kapalua Central Resort Project and related improvements, the development of a central village which will include a residential/ commercial mixed use component with common amenities, multi-family residential units, administrative facilities, a 15-lot large lot subdivision, and the realignment of Office Road at TMK: 4-2-**

**004: 024 (portion), Kapalua, Lahaina, Island of Maui. (SM1 2006/0029)
(PH2 2006/0006) (A. Cua)(Matter was deferred from the April 24, 2007
meeting.)**

- a. Letter dated May 10, 2007 from MR. RYAN CHURCHILL of MAUI
LAND & PINEAPPLE COMPANY requesting the matter be
deferred until further notice.**

The Maui Planning Commission may take action on this request.

Ms. Amorin: . . . (inaudible) . . . is back in session. Ann.

Ms. Ann Cua: Madame Chair, members of the Commission. The third item on your agenda under unfinished business is the request by Ryan Churchill of Maui Land & Pineapple Company requesting a Special Management Area Use Permit and a Phase 2 Project District approval for the Kapalua Central Resort Project. This matter was deferred from the April 24th meeting. I understand there was some confusion/concerns at the last meetings, and I wasn't here to be able to address you. We did put this matter on the agenda. I've prepared a memo but I did want to address you personally to kind of take you through what has happened so you can understand how we got to this point.

First of all – and this is probably more information than I think all of you need. I prepared this for our entire Commission including our new Commissioner as well. But if you recall, we had a public hearing on April 16th in Lahaina, at the Lahaina Civic Center. At that meeting, I figure about maybe eight individuals testified on this project. But as most of you remembered it was kind of interesting the testimony how it kind of went all over the place, but I figure around eight people testified. The Commission closed the public hearing that evening, and voted to defer action until April 24th.

Well what happened after that – around April 20th I received a call from Commissioner Hiranaga – I think it was through our Department's secretary requesting that we contact the applicant and have them make sure that their traffic consultant was at the next meeting because he had some specific questions for the traffic consultant. So when we did that on that very day which was just a few days before the meeting, the applicant had gotten back to us and indicated that their traffic consultant was not going to be in town. And then in addition to that, Bob McNatt was going to be out of the country. So, they put in a request to have the project deferred and you did defer the item on April – you did defer the item onto the May 8th meeting. Okay what happened at that point is that – when you deferred the matter to the May 8th meeting, we as the staff people always have to check with Clayton as to, you know, what is the agenda like? Because we know that you want to be out of here by 5:00 p.m., and so we try our best. It doesn't always happen, but we try and make

sure that the items that we put on, would be able to get you out of here at a reasonable time. But when we looked at the May 8th agenda, it was already pretty heavy. And so we had informed the applicant that we were going to place it on the 22nd agenda. So that was pretty much our error. The applicant was pretty much told that this is what we needed to do because we had all of these other matters. When looking back, what we really should have done was placed it on the May 8th agenda. Whoever showed up, showed up, and then you could have, you know, decided at that point what to do.

So anyway, we placed it on today's agenda, and we did receive a letter from the applicant that's attached to the packet I sent you dated May 10th that they are asking that you defer you the matter today. They have been working the Housing Division to try and resolve exactly what their requirement is going to be. If you recall from the report that was presented to you at the public hearing, we had a last minute letter from the Housing Division. You know, the applicant was proceeding based on a bi-lateral agreement that they executed with the County in 2004 for Lahaina Project District I, which this project is in. So, you know, we're trying to get clarity from the Housing Division with the applicant, exactly what their requirements are going to be. The applicant did a letter to the Housing Division and we're still trying to get word on exactly what their requirement is going to be. So our recommendation for today, from the Department to you, is that we defer this matter. We didn't check with the applicant when we did this and I thought three months because I didn't know how long it was going to take to resolve it. They feel that's way too long. You probably feel that's way too long. So, I think we're – we're thinking that maybe a month should be sufficient, and maybe if we could put it on the – what is the 2nd meeting in June, Carolyn? – June 26th, I believe. Second meeting in June – June 26.

I think you're aware that once we start getting into July – I think the second meeting of July – I'm not sure if the Director has talked to you about that. But we're looking in the Summer to have some of the General Plans documents come before you. And that is going to, I think, dominate our agenda. So we're trying to work with that and get you what you need – or projects that are ready to go before that second July meeting. So, I think this June 26th date would go along with that, and give us some time in case you need to hear it then, and then still defer it. It would still give us time before we anticipate the General Plan documents coming before you. Any questions?

Ms. Amorin: Commissioner Starr.

Mr. Starr: At the public hearing in Lahaina, the applicant responded to a question from the Commission regarding the affordable housing saying that they were planning to comply with the workforce housing ordinance in every regard – you know, and we left it at that. From what it sounds like, they're looking to possibly not comply with it? Is that what I'm hearing?

Ms. Cua: I believe what they're trying to do and I don't want to speak for them is they have a legal document – they're trying to get clarification is my understanding. And because they have – they did enter into a legal agreement with the County of Maui in 2004. So they have one binding legal document, and then they have a new policy that became in effect. And so, you know, they're trying to determine where will this policy, where will this agreement fall in relation to the workforce housing agreement? Where will the bi-lateral agreement fall in relation to the workforce housing agreement for all of their projects in Lahaina Project District I, not only this project.

Mr. Starr: I would like to see that in our packet we do have an excerpt from the minutes of the meeting where the – you know – which is excerpted from the minutes, where the applicant said that they are willing and intending to comply with the workforce housing because I know I for one would look with a very jaundice eye at any attempt to renege on that commitment that was made to this Commission.

Ms. Cua: And again I think compliance with the agreement, I mean, with the workforce housing policy, what you have to understand is that there's certain exemptions that apply that still allows you to be in compliance. And so again, I think, they're just trying to figure out and determine what is going to apply to this project and what will apply to other projects that they want to do in the Lahaina Project District I which is a pretty old project district. And they recently, like I said in 2004, entered into this agreement with the County.

Mr. Starr: But still they had offered to voluntarily comply when asked. So, you know, I would think that that has real bearing on the situation. I just wanted to be sure that we have a written record of that before us that the meeting.

Ms. Cua: Yeah. Well, the minutes would reflect what they said, and I do recall what they said as well.

Mr. Starr: Thank you.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: Just some clarification – is this going to necessitate opening it up to public discussion again, or is that out and completed?

Ms. Cua: When you say "this" you mean anytime it's on? Okay. The public hearing, as I mentioned, has been closed. The official public hearing is closed. But as you know, anytime you have a meeting, and you have matters on the agenda – unless we're in a contested case hearing, that's a separate procedure – but like today, if there were people to – in the audience – that wanted to testify, you would take testimony. As you did when you heard this the last time where you deferred action, there were two people that were

there at the meeting that testified. So although the public hearing – thank's Randy – although the public hearing is officially closed, you do take public testimony on any agenda item. So it does not preclude the public. I did get a call this morning, just so you know, from a member of the public questioning about this project. I did – because she said she didn't think she would be able to make it. I did indicate that the applicant was requesting a deferral. We didn't know how the Commission was going to vote, but that I would let her know.

Ms. Amorin: Commissioner Starr.

Mr. Starr: And, you know, in the event that the applicant changes anything from the way it was presented in Lahaina, you know, and that includes a commitment to abide by the workforce housing then I feel it will essential for us to have another public hearing in Lahaina again on this. If everything is consistent with the commitments made then I don't think its necessary. But in my opinion, if anything is changed, then we should definitely go back to Lahaina.

Ms. Cua: I don't know. I'm not sure legally or procedurally how that would work. We could discuss that with our attorney.

Ms. Amorin: Anymore questions Commissioners?

Mr. Starr: Move to defer till when?

Ms. Cua: We recommended the June 26th – a month from now.

Mr. Starr: June 26th.

Ms. Amorin: Director can you confirm that date?

Ms. Cua: I can confirm that date.

Mr. Hunt: Confirm it for?

Ms. Cua: That there will be a space available on it.

Ms. Amorin: Yeah. June 26th.

Ms. Cua: We'll make sure it gets on that agenda.

Ms. Amorin: Okay. Thank you.

Mr. U`u: Second.

Ms. Amarin: Okay, it has been motion to defer until June 26, Planning Commission meeting. Anymore discussion? Seeing none.

Mr. Iaconetti: Did Mr. McNatt have anything to say about this? Or is he happy?

Ms. Amarin: Bob McNatt, you want to say anything on the project?

Ms. Cua: He agreed to the June 26th deferral.

Ms. Amarin: Okay, all those in favor?

Commission Members: "Aye."

Ms. Amarin: Any oppose? Motion carried.

**It was moved by Commissioner Jonathan Starr, seconded by
Commissioner Bruce U`u, then**

**VOTED: To defer the project to the June 26, 2007 Maui Planning
Commission meeting**

**(Assenting: Commissioner W. Iaconetti, K. Hiranaga, J. Guard, B. U`u
and J. Starr.**

Excused: W. Hedani and J. Pawsat)

D. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

Ms. Amarin: Director.

Mr. Hunt: The next item is in regards to the Director's Report, and the first item under the Director's Report is the Planning Commission Projects and Issues. And this is where the Planning Department follows up on concerns or issues or questions that the Planning Commission has asked or directed toward staff. And the first one we wanted to talked about was the whole situation on deferrals. There was a number of questions regarding the process that lead up to the deferral that you folk just discussed. And it started a trigger just an internal staff discussion that we thought we'd come back to you folks on and answer some of your questions.

In terms of deferral, in the past, there's been a rather a loose policy of either deferring to a certain meeting or deferring just in general, and we could continue on with that. The positives about that is if just deferred to in general then that gives a lot more liberty on when to reschedule it. And as Ann mentioned earlier, sometimes it's difficult to determine when is the appropriate agenda because it may be full. And sometimes it's difficult to determine how much time is necessary to address the issues that it's being deferred for. So there are positives to just deferring to a date uncertain.

Another option would be to always defer to a certain date. And the positives involved with that is that it gives the public a lot more of an opportunity to show up at a meeting and testify. So that if you don't – the idea being that – if we just defer in general, then the public can kind of loose track of it. I mean, granted we do do notices in the paper and things like, but it's a lot cleaner and from a public input process, it's a lot more assured that they would be – have the ability to testify – the opportunity to testify if we say at a meeting today we're going to defer to June 22nd. If there's somebody in the audience, they can make it on their calendar or whatever and it's part of the record. So there's pros and cons to both approach and we thought we'd throw it out to you guys. At this point, did we make an actual recommendation?

Ms. Cua: We did. And maybe – would you mind if I added a little bit to that?

Mr. Hunt: No, please do. Help me out.

Ms. Cua: Jeff asked me to prepare something because with what's happened with a couple of projects, we felt that – you know, when we looked at it, we haven't really been consistent, I think as a Commission and as a Department. But it wasn't intentional, it was that – you know – and we wanted you to be aware of different situations. And there's basically three ways things get deferred. You recommend it gets deferred for whatever reasons. The applicant may have an emergency. They may need to say they need a deferral. Or something may come up from the Department that we find out a few days before, and we may come to you and say, we thought this was resolved but it's not, and we're requesting a deferral. So that's the three kind of scenarios. The challenge about what you finally decide to in terms of deferrals and what we are recommending because we think it's the best thing to do is that you defer to a date certain. But what you need to realize with that and we're trying to keep the public in mind when we do this – the only disadvantage I see about that is that, you know, if it's a big item and so we would put it on the agenda, and so it's going to bring out 50 or 100 people and something happens ahead of time that, you know, necessitates the project being deferred. People can still testify as I mentioned. They can come and testify but you might – the public might be very frustrated because they thought something was really going to happen. So, you know, we went around back and forth on that issue, but we still came back to that it's probably better that you defer to a date certain, and we do the best we can. Again, the challenge for us and

what you need to realize is this may mean that your meeting agendas would be longer because now we wouldn't necessarily be able to do before. Like, you know, sometimes you tell people go ahead and we're not satisfied with this design, we want you to redesign. So we would say you defer the matter until they redesign the project. When they're ready, they come to the Planning Department, and we get them on the next agenda. Well now, we're going to have try and estimate here on the day – well applicant how long do you think you'll take? – Clayton may need to give us a list so we kind of have a heads up. It's all in his head, but it's not in our heads. So we may not be able to tell you. So we're going to need to be more informed on what's coming up on the agenda so we can better advise you. So we can try this, you know, see how it works.

Ms. Amorin: Commissioner Guard.

Mr. Guard: Two points on that. The one we had just deferred was almost a year later, correct? So did we know the agenda for today a year ago? And then, so on something like that, that if they need to make changes, maybe that – or major changes or it's going to longer than six months, I guess. And then second item of our agendas being lengthened isn't the Chair has some control of how she sets the agenda as well, right? To kind of control or limit the impact on our lives that the agendas have.

Ms. Cua: Well the Chair doesn't usually see the agendas ahead of time and decides okay, we'll put these on. We hear what you tell us. And if you say, you're going lose quorum at 5:00 p.m.. We don't want to be here longer than 5:00 p.m. because I recall Commissioner use to stay till 9:00 p.m.. You know that's how it use to be in the past. And they said, you know what, we have lives. We're doing this for free. We have lives. And so we will not stay beyond 5:00 p.m., and so based on that, we try really hard. But, you know for yourself, it doesn't always happen. Sometimes one project can take three hours. So we can never anticipate that in advance. We can try to anticipate it, and we do, but it's never a for sure thing. I don't know. I don't know what the full answer would be.

Ms. Amorin: Commissioner Starr followed by Commissioner Hiranaga.

Mr. Starr: I feel like several things happened regarding deferrals. I feel that for many issues which are not major projects and not ones that are really controversial, it's probably best if a way could be left for the Director and staff to, you know, to have the freedom to schedule it, you know, when it comes back when it works. But when it comes to something that's controversial or major, then I feel it's right to go to a date certain. I'll give an example that occurred in a different commission – it was actually a Water Board issue – but, there was a project, you know, an applicant wanted to get put through and, you know, they deferred it until, you know, two of the Commissioner left the Board, and someone else got appointed. So the votes on the Board changed and that was, you know, an example of a manipulation by an applicant which I didn't feel was a right thing to be allowed to do. I've

also, in that Body, one time, there was 200 people came out on an issue, and the applicant deferred it. And we had a room full of people and no target for their anger, so the Board became the target. And it wasn't really the right thing to do. So my feeling is when, you know – and I mean the Director and staff know when something is controversial or something is a major – in those cases, you know, I think we ought to go to a date certain. But I think for, you know, for minor matter or for matters that are going to be redesigned, that we leave it up to them. That would be my preference.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: I guess this is a question for Corporation Counsel. Does not the Chair also have the ability to have a say as to what is placed on the agenda, and it's not the sole discretion of the Planning Department? Whether a matter should be heard now or later, or sooner than later?

Mr. Giroux: I think, you know, as far as matters of order, the Chair has, you know, control. But as far as matters of staffing, the Department – when something comes into the Department, they have to look at, you know, what are the deadlines they're under? . . . (inaudible – changing of tapes). . . the matters that are on the agenda. So I think that what's been happening is that they've been trying to limit your agenda so you don't stay forever. But they've been trying to at least put enough on so that they're also meeting the deadlines that are set. Because a lot applications have, you know, it has to be heard, like, within 120 days by the deeming of completeness or things like that. So, those things, the Chair wouldn't be privy to, the Department would. And the Department would be putting those types of things on the agenda. But once something is going, I think, you know, you can have a motion. You can have a motion if you wanted to defer it, and it would be up to the Chair to accept a motion to defer.

Mr. Hiranaga: So the Chair has no say as to what is placed on the agenda?

Mr. Giroux: I don't think the Department confers with her.

Ms. Cua: We don't have a regularly scheduled meetings, you know, with the Chair.

Mr. Hiranaga: On a Board I was a member was, I believe the Chair was advised as to what would be recommended to be placed on the agenda. And the Chair determined what would be placed on the agenda, and what would not. I don't know that's within those rules and practices of that specific board.

Mr. Giroux: Yeah, you're dealing with a lot entitlements, you know, so what – don't think the Chair would ever have the power to say, "oh, no, that's not going – that permits not going." You know what I mean? I don't the law would allow that type of ad-hoc decision making.

Mr. Hiranaga: I guess as far as, you know, date certain or deferring to an unknown date, you could leave it to the Chair's discretion.

Ms. Cua: See, but at that point it's going to be before you. It's going to be before this –

Mr. Hiranaga: So it would have to be incorporated into the motion?

Ms. Cua: Yeah, you would have to decide.

Mr. Hiranaga: Say in the motion.

Ms. Cua: Yeah.

Mr. Giroux: Yeah. What would probably be better – I mean because – what's going to happen is that if something is deferred too long, the issue of "was there adequate public notice?" Because, you know, like an SMA permit, you're suppose to – there's a lot of notice requirements to have – you know from the applicant, from the Department – all of these notices that – you know once you get a deferral, all of that tends to kind of disappear. All you have is your agenda. You know, and you start getting into shaky ground when you start deferring. That's why if all of the notices go out and people show up to that meeting, it's only fair that anybody who showed up to that meeting would know when the next hearing would be.

Mr. Hiranaga: I just see a bunch of deferrals piling up.

Ms. Cua: Yeah.

Mr. Hiranaga: And then people coming and saying, "I'm sorry. It's deferred because the applicant is not ready." It will just be accumulating.

Mr. Giroux: Yeah. And I don't think that's a situation you want to be looking at. The bottom line is that, you know, the applicants have the burden of (phonetics), you know, they have the burden of production. And if they're not going to be, you know, in good faith putting forward their project, you know, it is up to you. You can say, we're not going to defer it for a year, we're only going to defer it for a month. And when you come back in a month, we want to see what you're at. Or you can basically say, we're going to file it. You know, if they say, oh, you know what, we're going to revamp this whole project, and when it comes back, we're going to have all kinds of different kinds of stuffs. You know it's up to you to say, well in that case, you know what, we're going to file this project because obviously the one in your application isn't the one we're going to be looking at when we make a decision. So possibly there is a necessity for that project to go back to the drawing

board, get re-noticed and come back. But that's something that you have to, you know, thoroughly discuss and agree to on the record.

Ms. Cua: I think what I'm hearing is that – now you understand the dilemma we were in, you know, because a lot of this directly affects the public. And you don't want 50 people coming in here if there's an emergency, you know, if there's a situation where you're going to defer. Sometimes that's not going to be helped, but sometimes it could be avoided. What I'm hearing so far from the members is a little of that discomfort, and, so maybe it's going business as we did it before and we're going to have to take it on a case by case. And if you feel that it's a big enough project where you want to defer it to a date certain, that's your choice. If you feel that you want them to go and redesign and then contact the Department when they're done, that again that will be your choice. But we won't have a one-size fits all for everybody. That's what I'm hearing.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: Is there a limit as to how long something can be deferred before you have to go through the whole routine again? For instance, if this Town Center gets deferred for another two or three months, is there a limit as to when the rules are that they have to go through an entire hearing again?

Ms. Cua: No.

Mr. Hunt: If the information starts to become dated, as a Commission, you could say, "well, we're uncomfortable with this information."

Ms. Cua: Sometimes that happens at the Council's meeting where we may get something in the Department in 2006. You deal with it – 2007 – and we've had applications that have been at Council for years. And so when they final took the matter up, they said, well, you know, we need and updated traffic report, things like that.

Ms. Amorin: Commissioner Starr.

Mr. Starr: How about a situation, you know, where a hypothetical applicant has a project that's controversial and in their opinion they think that certain members of the Commission are likely to vote for, certain members might be likely vote against it, so they defer it to, you know, as for deferring, to defer it to the next meeting. They come in and they see and which members are in attendance, and say, "we don't like the odds, let's defer it." And then they come back in two weeks and check again, and say, you know, we'll defer it – we'll ask for another deferral. And then they come back again, and then this time, you know, some different member shows up, and they say, okay, we'll go for it now. Which is, you know, kind of manipulatory, and it does occur. I know that some bodies kind of do put a, you

know, a limit on how far they can be pushed in terms of deferrals not based on a real reason, but on kind of elective deferrals on the part of an applicant where, you know, they just keep pushing it off and on – off and on. So I really don't really know the mechanism and I don't think it's in our rules, but I think it probably should be.

Ms. Cua: I could – in the 24 years that I've been with the Department, I personally do not recall a situation where an applicant tried to manipulate an agenda in that manner. Normally when they ask for a deferral, they saying why they want the deferral. You know, they're saying, our consultant is not going to be here, an emergency has come out, or we're working out an issue with the Department. We normally – the Commission has to ultimately say whether they want to acknowledge the deferral or not. And normally the Commission just doesn't defer for no reason. So I don't know of that occurring.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: Who has the final authority, I guess, to defer something from the agenda?

Ms. Cua: You do.

Mr. Iaconetti: So that if – as occurred a few weeks ago, people arrived here to testify on a project and at that time it was said that it would be deferred as a result of – I thought – the applicant's request. Today, you tell me it wasn't the applicant's request. It was something the Commission – a Commissioner asked for.

Ms. Cua: No. There's two things that happened there. I believe when those people came to the meeting – was that on May 8th?

Mr. Iaconetti: I think so.

Mr. Starr: Yeah.

Ms. Cua: Yeah, that was the Department's decision. And again, I said what we've really should have done was we should have placed it on that meeting agenda. But, you know, those people did get to testify.

Mr. Iaconetti: If we have the final decision as to whether an item is deferred or not, I would like to go a little stronger for deferring to a date determined, and not leave it wide open. Because as this was people arrived to testify and they didn't have the right to do so. We didn't defer it. I think that's wrong. I think that if you have a date – I think the decision as to whether or not to defer something from the agenda should be ours.

Ms. Cua: Right.

Mr. Iaconetti: And not the Department's.

Ms. Amarin: You know, I just want to throw in my own comments. Whether the applicant defer or the Commission defers, it's hard for us to put a certain date when the next meeting will take place for that agenda item. And giving a fine example for today, recommendation was three months from now. The applicant came and he stayed all day pretty much to listen to what was going to take place and to make certain that his date of June 26 was adhered to. And as a Planning Commissioner, I've been here – this is my fifth year – and pretty much it wasn't the Commissioner's responsibility to make certain a date on any deferrals because we do not know and understand the length of time required by the applicant to put everything together before coming before us again. But, you know, my only suggestion is when we do have a deferral, maybe at that time, the Planning Department should step forward to understand what needs to be taken place and you put the date certain on the next meeting for that agenda item. But as far as me being a Planning Commissioner Chair – I've been a Chair for other organizations, but there was a huge membership involved. And then I was part of the Board of Directors which we knew the agenda – we have old business, new business –so we're in tuned to what's going to place at the meetings. But, you know, this being a public forum with all of this applications that come forth to us, there is no control for the Chair. But what I find that's very important to me is the Commission. The Commissioners here are my importance. When I hear their voice, I want them to speak because the deliberation is so important for the final approval or deferral or whatever. So that is my stand and how I feel. But you know, my fifth year, and it's tough, you know, to make decisions, but I'm so glad to hear all of these Commission speak up. Commission Starr.

Mr. Starr: Yeah, I'd like to hear from Corporation Counsel, what the notice of requirements regarding our agenda are?

Mr. Giroux: As far as something that – if all of the other public notice requirements have been met, with our agenda it's just following sunshine law.

Mr. Starr: When does it have to be filed?

Mr. Giroux: Six days.

Mr. Starr: Say we have today's meeting.

Ms. Cua: Six days.

Mr. Giroux: Right. It's got to be six days prior to the meeting.

Mr. Starr: Okay, now, there's been – I've had several people comment to me in the general

public regarding the fact that they feel that they're not getting notice of what's on our agendas. And this week – I don't know if anyone else noticed, but we were actually called to – in the newspaper that said – actually Maui Time wrote quite prominently that they don't know what's on the agenda for today's Planning Commission meeting. And they put several question marks on it, which I guess was a little bit of a jab saying they feel that they're late. Now I received my agenda either on Thursday or Friday before the meeting – last week, I received it on Friday. I really don't think that's good enough. I really feel that we, Commissioners as well as the public, should have the agenda six days in advance at a minimum as called for by law. Now, I think the public has been nice enough not to call us into question but I really think we're flirting with, at a minimum, embarrassment here, if we're not already embarrassed by having it published. So I'd like to see if there's a way we can make sure we get the agendas – if it's six days, then we, Commissioners get it six days and that it be made available to those members of the public, and the media want it six days in advance.

Ms. Cua: The agendas are posted. The agenda are posted six days.

Mr. Starr: I don't care about when it's posted. I'm talking about receiving by the Commissioners, receiving by the newspaper and media. And you know the sunshine law – it's one thing you know to meet the absolute letter of it at two minutes before the deadline, get it published with the State OEQC. But the real spirit of it is that the public has access to this information in a timely fashion. So I think that the public, as well as the Commission members, so we have time to prepare, should be getting our agenda six days in advance.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: I'm looking at the packet that I received for this meeting and it's post marked May 15th. So –

Ms. Cua: Seven days before.

Mr. Hiranaga: It took three days for you to receive?

Mr. Starr: Yeah, I'm in Wailuku.

Mr. Iaconetti: I'm in Lahaina, and it takes longer than that because they mail it and then it goes to Honolulu, and then it comes back to Lahaina.

Mr. Hiranaga: I live in Paia. I think I got mines on the 16th.

Mr. U`u: You can always drive up and get it.

Mr. Starr: I had a call on Thursday and I went and looked and I didn't have it. And I didn't get it till Friday.

Mr. Guard: There are issues with the postoffice.

Ms. Amorin: They'll guarantee you'll get it within 10 days.

Mr. Guard: The last one, it came to me the day of the meeting.

Mr. Starr: It wasn't on-line either.

Ms. Cua: It's on-line.

Mr. Guard: It is.

Mr. Starr: When was it on-line?

Mr. Guard: The agenda is.

Mr. Starr: When was it posted on-line?

Ms. Carolyn Takayama-Corden: The 15th.

Mr. Starr: It was posted on Department's website?

Ms. Takayama-Corden: Yeah. . .(inaudible) . . .

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: As I see it here, we've got two things here. One of them is the setting up of an agenda, and the second thing is to who has the right to defer from that agenda? And I've been told twice now that the Planning Commission has the right to defer. Is that correct?

Ms. Cua: That's correct.

Mr. Iaconetti: So I don't see where the problem is. If we're the individuals that say we will defer this, there's no problem. I mean if its been agendaed and then somebody want to defer, that's our decision, not anybody else.

Ms. Cua: Right. And I think what the Chair was saying – I didn't mean to imply that it would solely be your decision. I mean, obviously when we take – when there's a matter before

you and we get to a point where you're going to be granting a deferral, obviously you're going need to rely on us as to, you know – us and the applicant possibly because sometimes it's going to involve, you know, the applicant getting information back to the Commission. It's going to involve the Department's availability to place this project on the agenda. It's going to involve the applicant's team or just the applicant itself. You know, maybe they work in the day time – maybe they're off only on certain days, they'd have to adjust that. So it's going to be coordination, I think, with everybody. And that's why we were back to then it really should be on a case by case basis because you have to decide anyway.

Ms. Amorin: So the important thing is to get it rescheduled before the close of that meeting day – any deferrals.

Ms. Cua: Right. But I think from what I heard, there may be instances where you say, you know, applicant, you will defer it. You let the Planning Department know, you know, when you're done with your plans, and the Planning Department will schedule it on the next available agenda. I did hear that that is something you still wanted to be able to consider.

Ms. Amorin: Commission Guard, followed by Commissioner Starr.

Mr. Guard: So I think we're agreeing for the most part that we'll try to set a date in good faith whenever we can. And something like happened today where they made fairly major changes to their project, it came back a year later – if they know it's going to be a month or two months or three months, and then after that, there might just have to be some circumstances where it will be left open ended if they know it's not going to be in the next month or so.

Mr. Starr: In our deferral motion we can choose at that time, either to defer it to a date certain or to the pleasure of the staff.

Mr. Guard: But it's recommended that we try to get the date certain.

Ms. Cua: Yeah.

Mr. Starr: Okay.

Mr. Hunt: Well, and it's up to your discretion. I mean there was some talk earlier, maybe with controversial, large projects, we really focus on a date, and if it's not so controversial and not so large.

Mr. U`u: Right. I agree.

Mr. Starr: Move along.

Ms. Cua: Okay. Thank you.

Mr. Guard: I have a –

Ms. Amorin: Commissioner Guard.

Mr. Guard: Just for everyone while we're on – this will be quick. Just – are we on D, Planning Commission Project and Issues?

Mr. Hunt: Correct.

Mr. Guard: I have – this came to my mind from our meeting last week, if this would be a good time bring something up that I might like staff to try to work on. You ready?

Mr. Hunt: Sure.

Mr. Guard: Okay. We were down at the beach and it seems some of our criteria that we use especially on the ocean front setbacks. We're discussing that that – a shoreline setback is based on the average mean high tide for a set period of time – that's what Thorne was telling – every year. So if you wait – and Thorne was saying that right now has been fairly low-high tides. Then when we take into account flood zones, taking a 100 year flood inundation level, correct? Like much larger –. So the FEMA guidelines are a little different. And then on our drainage, we discussed a 50 year flood level. So it was kind – it seemed like maybe our shoreline setbacks should be based on a greater number than taking a low-high tide year or decade. That maybe we should be looking the 100 year high tide level for the benefit of the public and for the person trying to build his house, that if it's going to be too close to shore. Is that numbers we can be looking at and have Thorne review? We were down at Palauea, and if the high tide is fairly low that year and they pull a permit, they maybe five to ten feet closer than they would be had they'd gone in on a super high tide, high full moon, high wave activity year, the shoreline setback maybe up in those kiawe trees. And that's going to benefit everyone, I would think – to have a matrix looking at all those on why that one is an average annual report versus a 50 year drainage summary and a 100 year flood zone for FEMA.

Mr. Hunt: We can look into that idea. I'm not sure there is data going back a 100 years, but let me talk to Thorne and see what kind of average we can do rather than a snap shot that you seem to be worried about. And we can get back and give you some options.

Mr. Guard: And then, from that, last week, I don't know if there's any follow up to – there's the gentleman who'd been doing his landscaping and quite a bit of top soil in the bottom

of the gulch – that the next time it rains, it's going to be in the ocean. And from what we've discussed today, on the first subdivision, the cost of remedy – I mean, maybe send to send him a letter to say, hey you better get this top soil out of the bay, or we're going to send you a bill to remedy the situation if it goes into the – on to a reef. I mean, on that day, the water was fairly clear. And I think Thorne noticed that he had a six foot wall instead of a four foot wall. And that's exactly what we were talking about, that the fines are not going to be there for these guys. And on Palauea Bay, they had their naupaka growing all the way down to the tide level – to the high tide. It was down the bank to the flat spot of the beach.

Mr. Starr: Can you send your inspector down to do a run down along there?

Mr. Hunt: Is there an allege violation?

Mr. Starr: Yes.

Mr. Hunt: Is that the issue?

Mr. Starr: Several.

Mr. Guard: Well, I think the dirt – I mean I'd rather – and how we're saying, we'd rather seek compliance than the fine. I'd rather see the dirt removed than an actual fine in place because if flooded out and now it's in the bay.

Mr. Starr: With silk fences – don't go down to the ground.

Mr. Guard: I mean that contractor had some violations

Mr. Starr:(inaudible – multiple speakers)...

Mr. U`u: WMP.

Mr. Guard: You could take the planners down there for a class to see what violations – how many violations can they find?

Mr. U`u: And you might as take OSHA.

Mr. Hunt: Is there a project name or an address or a –

Mr. Guard: I think Thorne knows.

Mr. Starr: Next to Mau Head.

Mr. Hunt: Thorne knows. Okay.

Mr. Guard: Colleen was there too.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Okay, I have another issue, and I think Mike will like this here.

Mr. U`u: I doubt it.

Mr. Starr: I was contacted by the Kaupo Community Association, who told me that they were contacted by someone in the Mayor's Office that Manawainui Gulch out in East Maui, that the County – after they do the initial scaling and rock mitigation, the County is taking up – putting up the mesh netting, and they want to know what the community thinks before they go ahead with that project. Now, you know, I've no problem with the scaling and rock mitigation. But as far as I'm concerned, if they're going to put wire netting there, or at Lelekea then I would want to see an EA, you know, which I'm sure will kick into an EIS. And I'd like to see an SMA because it will certainly have a very major impact in a very sensitive and a very historical and scenic location. And I kind of wonder where the County gets off looking to do that without going through the process that the private individuals have to. And while we're on the subject, the netting on the Pali going to Lahaina, where's the SMA and EA or EIS for that. Or was there an Exemption issued and if there was, I'd like to see it. Thank you.

Ms. Amorin: Thank you. Director.

Mr. Hunt: The other items that I had was last meeting, Commissioner Starr asked about the sand issue that was actually a follow up. And I talked with Thorne Abbott recently and he's in the myths of preparing a response to that. So, you should be – or I should be available, hopefully, by the next meeting.

Mr. Starr: Thank you.

Mr. Hunt: And then there was a question regarding Tony Roma's ADA, and I haven't had a chance to explore that.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: I have a question as to what I as a Commissioner or what I as a citizen should be doing. I have asked for at least a month, if not two months, to have someone go out and inspect the pictures that Maui Land & Pineapple has up on their very nice green board area along the road. I finally did get a response from the Zoning people, I guess

that's who he was, telling me that these large pictures – they're either six by eight or eight by ten – that are screwed into this wall with nothing there other than the picture – but obviously, advertising what's going to be on the other side of the fence eventually. I was told that they went out there, looked at it, and they said these are murals. My interpretation of a mural is like Sato's mural at the gym. Or what's his name? Wyland's murals on a lot of the toilets along the beach where he paints – that's a mural. This is a picture of what you can expect to have your unit look like and what your unit is going to be looking at as you look out the window of your unit.

Mr. Starr: Advertising.

Mr. Iaconetti: This is advertising. It is not a mural. And who has the final say as to what – whether these are mural or ads? And if they're ads, they shouldn't be there. It's against the Code.

Mr. Hunt: I'll talk to the Zoning Division and we'll review that issue.

Mr. Iaconetti: It was the Zoning Division. They told me "no," they're murals.

Mr. Hunt: In answer to your questions, "who has the final say?" The Zoning Division answers to me and I will talk to them about this issue and we'll discuss it further.

Mr. Iaconetti: Good. And one final question. I, as a citizen or as a member of the Commission, how far should I go in finding things that I think are against Code that are going on? I get the impression that they just assume I'd shut up, and not say anything about a lot of this. Fine. That's what I'm suppose to be doing, I will shut up. But on the other hand, as a citizen, I think I've got a right to complain about some of this stuff. And I know I'm putting more work on your Department, but there should – there should be an investigative arm of your Department, and I don't think there is one. And there should be an enforcement arm of your Department, and again, I don't think there is one. And I think we need one. If we really going to do what we're suppose to be doing, I think we ought to have some investigation of some of the stuff that's going on whether it's permitted or not, whether the permits are up on the board somewhere that's by where they're building or whatever they're doing, which is suppose to be the way it's done. Or should we just ignore it, and go along with our Hawaiian attitude, which is all right with me if that's what we're suppose to be doing.

Mr. Hunt: The Zoning and Enforcement Division is responsible for enforcement of the Zoning Regulations, which in turn requires investigations. So the Planning Department does have a division that does conduct investigations and does conduct enforcement. Just as a matter of fact, the amount issues out there is over-whelming for the amount of staff that we have. That's not to say that the citizens or anyone shouldn't be complaining. And

if, you know, I encourage you to complain and let us know if there's issues that are out there. If the service that you're getting is with an attitude that you're bothering me, you let me know, and we'll try and take care of that. But, I think it's important that the citizen of the County realize that there – we've got five enforcement officers for all three Islands. Out of those five enforcement officers, right now, one is vacant, one is half-time because they do farm plans, and one is on full-time disability. So that leaves us two-and-a-half inspectors for all three Islands for every conceivable zoning violation that we get. And this year, I believe, we're paced to do 1,200.

Mr. Iaconetti: So you can accept volunteers.

Mr. Hunt: So again, I don't discourage anyone. I encourage people to come forward, but it's a matter of numbers. And we're struggling with it too. I mean, I feel your frustration. We share that frustration. But again, I wouldn't – just because you're frustrated don't stop complaining.

Mr. Iaconetti: Just a little story – about 50 yards down from where I live, right across, right mauka of Lower Honoapiilani Road, and certainly within the SMA area is – was this development that's going on. A home was demolished, destroyed and the individual that apparently that bought the property decided that he was going to build it up with either three or five homes on it, and proceeded to do a lot of excavating to put in the sewer and water lines. Now, I started asking questions about did you have a permit to do this – not of that individual – but people in the Department, and they said they'd look into it. Well, the next weekend, mysteriously, the permit was on my driveway. How it got there, I have no idea, but I'm awfully suspicious that's somebody was telling me, hey we've got a permit here. But that thing should have been on a board somewhere saying that this is have been a permitted project. And it wasn't and that's why I asked about it. But there was a lot of excavation going on. There was dirt flying all over the place. And somebody got wind of the fact that I was asking about it and mysteriously, they gave me a copy of the permit.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah. I agree with everything Doc says except in ancient Hawaiian times, I believe that Zoning Enforcement was under the Kapu system and that violators were treated rather harshly.

Mr. U`u: Yes. Rock to the head.

Mr. Iaconetti: It's in SMA. It wasn't in here, I would have seen it.

Mr. Hunt: If it's a Minor, or Exempted or – not all SMA permits come before the Commission.

Mr. Guard: But Doc reads through his little – his sheet here, which show it right?

Mr. Iaconetti: Yeah.

Mr. U`u: Good job Doc.

Mr. Guard: Let's go get them.

Mr. U`u: Go get them tiger.

Mr. Iaconetti: I want a little direction. If I'm out of line, say so, and I'll stop looking.

Mr. Starr: No.

Mr. Iaconetti: It bothers me when I see someone in Zoning –

Mr. Hunt: The Department doesn't think you're out of line. We support you. You might in your own mind, just prioritize things, realizing that there's only so much – so many inspectors very so many violations.

Mr. Iaconetti: Well, I'll be happy to volunteer on some of them.

Ms. Amarin: Commissioner U`u.

Mr. U`u: I still want Doc to be the WMPA Committee though.

Mr. Iaconetti: I have one question. We haven't gotten to the SMA Minor Permits - E? Have we?

Mr. Hunt: I'm done with the Director's Report.

Mr. U`u: Thank you.

Mr. Iaconetti: Where is this Weinburg Foundation Commercial Office in Lahaina? Where is that?

Mr. Guard: Old Lahaina Center.

Mr. Iaconetti: Is it?

Mr. Hunt: I believe it's on the corner of Dickenson and Wainee, but let me confirm that.

Mr. Iaconetti: It would be nice if we had a little more information about it. I saw the thing on there.

Mr. Hunt: Do you have a permit number on that one?

Mr. Iaconetti: SMX – would that be it?

Mr. Hunt: Yes.

Mr. Iaconetti: 2006/0420.

2. Scheduling of the public hearing meeting on the following applications in the South Maui Community Plan region due to the project district application:

MS. TAMARA HORCAJO, Director, DEPARTMENT OF PARKS AND RECREATION requesting a Special Management Area Use Permit and a Phase 2 Project District Approval for the South Maui Community Park Project for a regional park and related improvements including a 1096-seat gymnasium, three soccer fields, two softball fields, one football field, five tennis courts, pavilion and amphitheater, 3 tot lots, 3 comfort stations, accessory building for park maintenance equipment, and on and off-site improvements at TMK: 2-2-002: 042. Kihei, Island of Maui. (SM1 2006/0028) (PH2 2006/0005) (D. Shupack)

The Commission may select a date and time for the special meeting in South Maui.

Mr. Hunt: The next item is scheduling of the public hearing meeting on the following applications in the South Maui Community Plan region due to the project district application. And the first item is Ms. Tamara Horcajo, Director, Department of Parks and Receptions, requesting a Special Management Area Use Permit and a Phase 2 Project District Approval for the South Maui Community Park Project for a regional park and related improvements including a 1,096 gymnasium, three soccer fields, two softball field, one football field, five tennis courts, pavilion and amphitheater, three tot lots, three comfort stations, accessory building for park maintenance equipment and on and off site improvements at TMK: 2-2-2: lot 42, Kihei. The application are SM1 2006/0028, PH2 2006/0005 and Dan Shupack is the project planner.

Ms. Amorin: Dan.

Mr. Shupack: This, of course, is the item we did the site visit on, last week, so it's pretty fresh in your mind. So, basically, as a Project District, the meeting has to take place in the Community Plan region which would be Kihei. The applicant, actually, the representative, the project team which is Chris Hart & Partners. They couldn't be here, but they gave me some dates – some preferred dates and dates that they won't be available. So, maybe – I don't know how you guys want to do it. You want to throw out dates.

Mr. Guard: Preferred.

Mr. Shupack: The preferred dates are July 9th, 10th or 11th, or July 23rd, 24th or 25th. And I believe that's right around – the July meetings are what?

Ms. Takayama-Corden: . . . (Inaudible) . . .

Mr. Shupack: So the Planning Commission dates are the 10th and the 24th, so I guess they're suggesting to do them on the day before or the day after the regular meetings.

Mr. Starr: Madame Chair.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Is there way that we could hold our regular meeting in Kihei and then break and then do the public hearing for this in the evening and that way people in Kihei, if they're interested, could attend the regular meeting as well. And maybe try to schedule a bunch of Kihei stuff for that day. I guess that's to our Director.

Ms. Amorin: Dan or Director. Any comments on us scheduling like this?

Mr. Hunt: So the site visit, the same day as the –

Mr. Starr: Well, it's not a site visit.

Mr. Hunt: I'm sorry. The public hearing – we can do this public hearing any time during the agenda. If you want to push it later so that's in the evening. Is that what you're asking?

Mr. Starr: What I would suggest would be if we could get, say, you know, the Community Center, and maybe meet down there, you know, have a regular meeting there, you know during the day. And have a bunch of Kihei stuff at that meeting, and then break, you know, for an hour or an hour and a half, get some dinner, and then come back and have the public hearing, you know, six to eight or something like that on that same day.

Mr. Hunt: Perhaps not at the Community Center, but the timing, we can do that.

Mr. Starr: Yeah. Could I request that we look into something like that, where we can do a bunch of Kihei issues in one day for people over there – make it convenient to them, and then the hearing, you know, afterwards or something.

Mr. Hunt: We can try and get Kihei issues on here, but as we said earlier, the reason why staff sets the agenda is because it's based on projects coming through the pipeline and getting complete and getting ready hearing and staff being ready. So we'll keep that in mind. But really, the items that come up on the agenda are driven by time.

Mr. Starr: I think there's some stuff in Kihei coming up maybe.

Mr. Hunt: We can try. If there's some flexibility, we'll try and get it on the Kihei. And it's a good idea.

Mr. Starr: We could probably use a multi-purpose room at the Community Center. We don't think we need – or maybe at the pool, or somewhere, or a school.

Mr. Hunt: I understand your idea. I think it's a good idea.

Ms. Amorin: Commissioner Guard.

Mr. Guard: It's good idea for the Kihei public, but I guess, it is helpful to have staff here and we've been able to call people down here and there from different departments. If they were needed, that might be the only hold up. Versus – and then for me, I'd be here from the 9th through the 11th, put probably not the second batch of dates.

Mr. Starr: Could we try for the 10th then?

Mr. U`u: Let's do it the 10th.

Mr. Starr: Or proxy. We can – where's your proxy.

Ms. Amorin: So the Director will get back to us on this?

Mr. Shupack: It's possible.

Mr. Guard: . . .(inaudible). . .

Mr. Shupack: It's possible. We might not be able to make the 45-day notification on that.

Mr. Guard: I may be back.

Mr. Shupack: Okay. Because the project team is not going to be available, I guess the following week, like the 12th to the 17th.

Mr. Starr: So the 24th then?

Mr. Shupack: Yeah, I guess we can shoot for the 24th.

Ms. Amorin: There's a Planning Commission meeting on the 24th.

Mr. Starr: Yeah.

Mr. Shupack: Second regular meeting in July.

Mr. Hunt: Isn't that a standard Commission date on the 24th?

Mr. Shupack: Yeah, if we wanted to do the special meeting, or the regular meeting in Kihei – and as Commissioner Starr suggested, we could do something like that. I don't know, maybe we should have a backup plan, maybe, in case that doesn't work out, and we have an alternate date for a special meeting.

Mr. Starr: Or we could meet here and then drive over there for that?

Mr. Shupack: Yeah.

Mr. Starr: I'd rather not do the night before and then the meeting.

Mr. Guard: Well, that shouldn't be as controversial as Kapalua's public hearing. It would be short drive.

Mr. Hunt: So, we'll try and get the regularly scheduled meeting there that day.

Ms. Amorin: Okay, moving right along.

Mr. Hunt: Is that feasible, our Secretary?

Ms. Takayama-Corden: I might end up in the school with no air-conditioning.

Mr. Guard: If that's the case, we could here and then drive out in the afternoon.

Ms. Takayama-Corden: Yeah. . . (inaudible). . .

Mr. Iaconetti: And sweat here first.

Mr. Guard: Sweat here – in the summer.

Mr. Hunt: So maybe do the standard agenda here and then go to Kihei for –.

Mr. Starr: Or do it at a school or something. I mean try. If not, we'll do it here.

Mr. Guard: AC.

Mr. Starr: Yeah, the one school has AC.

Mr. Guard: Kamalii.

Ms. Takayama-Corden: . . .(inaudible). . . for the summer, and they may have summer school. . .(inaudible). . . they have summer programs.

Mr. Starr: What I'm saying, is try, and if it doesn't come out.

Ms. Takayama-Corden: I will.

Mr. Hunt: So, we'll look for the 23rd then for that one.

Mr. Starr: 24th.

Mr. Shupack: 24th.

Mr. Hunt: Excuse me.

Ms. Amorin: 24th.

Mr. Hunt: 24th.

Ms. Amorin: Okay.

3. Designation of the Hana Advisory Committee to conduct the public hearing on the following application:

ROGER K. WILLIAMS, Trustee and RUTH W. WILLIAMS, Trustee et al. requesting a Change in Zoning from the Interim District to the Rural -1.0 District in order to build a 5th dwelling at the front portion of the lot at 6756 Hana Highway at TMK: 1-4-010: 022, Kipahulu, Island of Maui. (CIZ 2007/0007) (P. Fasi)

The Commission may act to designate the Hana Advisory Committee to conduct the public hearing on the zoning request.

Mr. Hunt: Item #3, Designation of the Hana Advisory Committee to conduct the public hearing on the following application. Roger K. Williams, Trustee, and Ruth W. Williams, Trustee et al., requesting a Change in Zoning from the Interim District to Rural, one acre district, in order to build a fifth dwelling on the front portion of the lot at 6756 Hana Highway, TMK: 1-4-10: lot 22, Kipahulu, Island of Maui. The Change in Zoning number is 2007/0007, and Paul Fasi is the planner, but he's not here. The Commission – you may act the designate the Hana Advisory Committee to conduct the public hearing.

Mr. Starr: Move to do so designate.

Mr. U`u: Second.

Ms. Amarin: Okay, we have a motion by Commissioner Starr, seconded by Commissioner U`u. All those in favor?

Commission Members: "Aye."

Ms. Amarin: Motion carried.

It was moved by Commissioner Jonathan Starr, seconded by Commissioner Bruce U`u, then unanimously

VOTED: To designate the Hana Advisory Commission to conduct a public hearing on said application.

(Assenting: Commissioner K. Hiranaga, W. Iaconetti, J. Starr, Bruce U`u, and John Guard

Excused: Commissioner W. Hedani and J. Pawsat)

- 4. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission at the May 9, 2007 meeting.**
- 5. EA/EIS Report**

Mr. Hunt: Next item is Planning Department's follow up report on matters raised by the Planning Commission, and I think we've already did that. I tried to do that under the Director's Report. Any comments on the EA/EIS report?

Mr. U`u: Good job.

Mr. Guard: Good job.

6. SMA Minor Permit Report

Mr. Hunt: SMA Minor Permit Report. Was that what Dr. Iaconetti had that one question? Okay. Any others on that one?

7. SMA Exemptions Report

Mr. Hunt: SMA Exemptions Report. That's actually – Dr. Iaconetti was an exemption, technically.

E. NEXT REGULAR MEETING DATE: June 12, 2007

Mr. Hunt: And the next regular meeting is June 12th. Anybody not going to be here?

Mr. Guard: I will not be here.

Ms. Amorin: Okay.

Mr. U'u: I will not be here.

Mr. Hunt: So two will not be here?

Mr. U'u: Since they're not going to be here, I'm not going to be here either. Just kidding.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: What is the – what is the hold up putting our 9th person on this Commission?

Mr. Guard: No one wants it.

Mr. Hunt: I'm not sure.

Mr. Iaconetti: They have all kinds of applicants.

Mr. Hunt: I don't know.

Mr. U'u: Nobody wants to sit next to me.

Mr. Iaconetti: I can see that, but –. You know, I mean, people are going to be taking off for

one reason or another and if we don't have enough people. . . (inaudible) I don't know what the hold up. I know there's got . . . (inaudible - changing of tape). . .

Mr. Hunt: I can try and contact the Mayor's Office, and diplomatically do something . . . (inaudible) . . .

Mr. Guard: Are, like, they listening to that and Budget – is that part of it – or multiple issues?

Mr. Hunt: This – this meeting is audio televised.

Mr. Iaconetti: Televised?

Mr. Hunt: Audio linked.

Ms. Amarin: Commissioner Starr.

Mr. Starr: I may have to miss the next meeting. It's kind of – my mom's condition. . . (inaudible) . . . I'll let staff know, as soon as I know. But I may need to go there.

Mr. Hunt: It's important for this next meeting that you let us know if you're not going to be here because we may not have quorum.

Ms. Amarin: So we have three.

Mr. Guard: I will not going to be here.

Mr. Hunt: We've got two definite and one maybe.

Ms. Amarin: We have three definite, yeah?

Mr. Starr: I'd say 50-50. It depends on her condition.

Mr. Hunt: One, two, three, and then we would need Joan and Wayne, definitely then.

F. ADJOURNMENT

Ms. Amarin: Good job everybody. Meeting adjourned.

There being no further business brought forward to the Commission, the Maui Planning Commission meeting was adjourned at approximately 4:46 p.m..

Respectfully transmitted by,

For LEILANI A. RAMORAN,
Secretary to Boards and Commissions I,
CAROLYN TAKAYAMA-CORDEN,
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE:

PRESENT:

Johanna Amorin, Chair
Kent Hiranaga
John Guard IV
Bruce U`u
William Iaconetti
Jonathan Starr

EXCUSED:

Wayne Hedani, Vice-Chair
Joan Pawsat

OTHERS:

Jeffrey Hunt, AICP, Director, Planning Department (arrived at 9:15 a.m.)
Trisha Kapua`ala, Staff Planner, Planning Department, ZAED
Jay Arakawa, Zoning Inspector, Planning Department, ZAED
Dan Shupack, Staff Planner, Planning Department
Ann Cua, Staff Planner
Livit Callentine, Staff Planner
James Giroux, Deputy, Corporation Counsel
Mike Miyamoto, Public Works Department (arrived at 9:15 a.m.)