

**MAUI PLANNING COMMISSION  
MINUTES – REGULAR MEETING  
APRIL 10, 2007**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Mr. Wayne Hedani, at approximately 9:07 a.m., Tuesday, April 10, 2007, in the Planning Department Conference Room, Wailuku, Maui, Hawaii.

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

**B. INTRODUCTION OF NEW MEMBER - JOAN PAWSAT**

Mr. Wayne Hedani: ... making the meeting for April 10<sup>th</sup> to come to order. I would like to welcome everybody and I hope you had a nice weekend. At this time, we're not going to be taking public testimony according to our agenda until 1:00 p.m. because we have a long orientation scheduled ahead of us for this morning. But, I'd like to introduce our new member, Joan Pawsat. Joan, would you like to say a few words? Pull the microphone up to you.

Ms. Joan Pawsat: Just hello and good morning.

Mr. Hedani: So shy and demure new commissioner.

Mr. Jeffrey Hunt: Chairman, if I can make a quick comment. Technically, we don't have the paper works for Joan, and I don't believe you've been sworn in.

Ms. Pawsat: No I haven't done it yet.

Mr. Hunt: So, technically, you're not a part of the Commission yet. You're welcome to observe, but, until we receive the paper works and you've been sworn in, you're not part of the Commission at this point.

Mr. Hedani: In that case, you'd be our honored invited guest, sitting with the Commission.

**C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2007-2008 YEAR**

Mr. Hedani: Election of Chairperson and Vice-Chairperson for 2007-2008. I'd like to open the floor up for nomination for Chairperson at this time. Commissioner Guard.

Mr. John Guard: Wayne Hedani.

Mr. Hedani: Wayne Hedani has been nominated. Any other nominations?  
Commissioner U`u.

Mr. Bruce U`u: I'll recommend Johanna Amarin.

Mr. Hedani: Johanna Amarin. Are there any other nominations for Chair? Okay, seeing none, all those in favor of –. I'm sorry, Johanna, would you like to say a few words?

Ms. Johanna Amarin: Mahalo Chair and good morning Planning Commissioners. This is my last year, my fifth year, and being the senior, I said, "okay, I would love to have the support and actually be considered as Chair," only because I'm a senior. I do have background chairing organizations and I would love to have your support. It's only because it's my last year and I think I want to go out with some flavor. It's going to be a very intense year. The body will have to work hard, but I thought maybe Wayne can take a break because he's certainly going to come back. But, thank you for your consideration.

Mr. Hedani: My only comment is as of our last meeting in March, I managed to embroil you all in a middle of a lawsuit. So with that being said, all those in favor of Wayne Hedani, please signify by saying "aye."

Commission Members: "Aye."

Mr. Hedani: Oppose? I'm sorry, all those in favor of Johanna Amarin, signify by saying "aye."

Commission Members: "Aye."

Mr. Hedani: All those in favor of Wayne Hedani, please raise your right hands. Three. All those in favor of Johanna Amarin, raise your right hand. Same count, three. We're going to be here all day. We'll need five votes to proceed.

Mr. U`u: We need more Planning Commissioners.

Mr. Hedani: What I would like to do under this circumstance is I'd like to withdraw my nomination for Chairman and move on from there. Are there any objections from the Commission? Seeing none, all those in favor of the nomination of Johanna Amarin, signify by raising your right hand.

Commission Members: (Hand raised.)

Mr. Hedani: One, two, three, four, five. Thank you very much. You're confirmed. I'll turn the Commission over.

Ms. Amarin: Before I begin, I just want to say “thank you” for the support from the body and also the Planning Department. And I do want to recognize the people behind the scenes especially Carolyn for her full-hearted support to all the Commissioners whenever they need. And being that April is the first year, that starts the new year for the Commissioners, we do have some changes. And I want to also recognize, since January, our new Director, Jeff Hunt. Mahalo. Today is Tuesday, April 10<sup>th</sup>, the Planning Commission meeting is now in session.

At this time, the floor opens up a nomination for Vice-Chair. Do we have any nominations?  
Bruce.

Mr. U`u: I nominate Wayne Hedani.

Ms. Amarin: Okay, do we have any more nomination for Vice-Chair? Seeing none, it's unanimous. Wayne Hedani, you're Vice-Chair. Thank you.

Our agenda, starting a new year, with a workshop orientation. At this time, I'll turn it over to our Director, Jeff Hunt.

**VOTED: Commissioner Johanna Amarin as Chair, and  
Commissioner Wayne Hedani as Vice-Chair for year 2007 -  
2008.**

#### **D. ORIENTATION WORKSHOP**

Mr. Hunt: Good morning. The Planning Department believes it's beneficial to everyone including the new Commissioners to review a number of policies and procedures, and methods and practices, so we offer this orientation for you. It's rather lengthy, but a lot of the issues are important and it should move along. We're trying to keep it concise and there's a number of different speakers so that we get some variety and different perspectives. With that, I'll turn it over to Ann Cua.

Ms. Ann Cua: Good morning Madame Chair, members of the Commission. We have a number of our staff people in the Planning Department that will be taking you through this orientation today. We're going to start off with Allan DeLima from our office talking about sexual harassment. And then we're going to have Robyn Loudermilk go into the Planning frame work. Representing the Planning Department's Long Range Division are Simone Bosco and Erin. They'll be talking about the General Plan update. And then we have Jeff Dack, from our office, he'll be talking about Title 19 and Zoning, and you deal a lot with that in your role as a Commissioner. And then Thorne Abbott is going to talk about the coastal zone management program. And this year, we've added to our orientation for

you, a presentation by Zoe Norcross, and she's going to be talking about sea level rise and the future of our shorelines. She's made presentations to you before, but we thought it would be a good idea to have her a part of the overall orientation for this Commission. I'm going to take you through the environmental assessment process in Chapter 343. And then Francis Cerizo will talk about our flood hazard district. And then we'll end with your attorney, James Giroux, talking to you about various legal issues that you're faced as Commissioners. So with that, I'd like to turn it over to Allan DeLima and he'll take you through our sexual harassment policy.

1. **County Policy Against Sexual Harassment**
2. **The Sunshine Law**
3. **Ex parte Communications**
4. **Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
5. **Ethics**
6. **Powers and Duties**
7. **Rules of Practice and Procedures**
8. **Land Use Regulatory Framework in Maui County**
9. **Zoning**
10. **Special Management Area Rules**
11. **Shoreline Area Rules**
12. **Country Town Business Design Guidelines - Paia-Haiku, Makawao-Pukalani-Kula, and Hana Community**
13. **Chapter 343, HRS, The EA/EIS Process**
14. **Work of the Long Range Planning Division - General Plan and Community Plan Updates**
15. **Flood Hazard District Ordinance**
16. **Recent U.S. Supreme Court decisions on takings issues.**
17. **Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
18. **Hawaii Supreme Court Decision regarding the Topliss case (SMA)**
19. **Meeting Schedule**
20. **Presentation by Sea Grant Agent Zoe Norcross-Nuu on Sea Level Rise**

Mr. Allan DeLima: Just a second folks while we work out the technical difficulties on this.

Okay, here we go. As mentioned, my name is Allan DeLima. I'm the Administrative Assistant for the Planning Department. I spent most of the last decade in emergency management, and I feel on a lot firmer ground talking to you about tsunamis and hurricanes. So this is a little bit of a change of pace for me. But this is a mostly brief presentation, and we'll take you through it pretty quickly.

We'll resolve our technical issue. This is what happens when I get too fancy and the presentation has animation and everything else. There we go. You missed the big intro screen which had all the symbolic little attachments to it, but this is a copy of the actual County of Maui sexual harassment policy which you all will find in your binders. And it's written in very plain English so you're all encouraged to read it when you have the opportunity. And during this presentation, I'll only be touching on the highlights.

The definition of sexual harassment. Sexual harassment means, "un-welcomed sexual advances, requests for sexual favors and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to another officer, employee or a private individual." Pretty clear cut.

And this is a list of the actions that you should refrain from: Making un-welcomed sexual advances or request for sexual favors; making remarks of a sexual nature; using gender based or sexually abusive language and sexual innuendos; visually displaying materials of a sexual nature; physical contact of a sexual nature; and our typical catch all phrase, any other similar actions.

Now the County of Maui has a zero tolerance policy in regards to sexual harassment in the work place. And this policy is applicable to you, as board and commission members, as well as it is for employees of the County of Maui. The process for filing a complaint is that any individual who feels that they have been subjected to sexual harassment should immediately make a complaint to his or her supervisor. Now for you as board and commission members, it's a little different. You will take your complaint to your Chairperson. And of course, in this case, if your Chairperson happens to be the alleged offender, the report should be filed with your County's Equal Employment Opportunity Officer, which in this case is the Managing Director, Sherri Morrison. But you do have some other options as far as filing your complaint. Basically, a chain of command infrastructure, and you may take the complaint to the Planning Director, the Planning Deputy Director, the Board and Commission Chairperson, the Managing Director again who is our Equal Employment Opportunity Officer, and you also have the opportunity to take it to the Hawaii Civil Rights Commission, the Federal Equal Employment Opportunity Commission. Of course, you are encouraged to bring your complaint in-house so that we may deal with it before we take it to actual outside agencies.

Now your complaint maybe in two different formats. An informal complaint is either a verbal or written but unsigned complaint, and a formal complaint is both a written and a signed allegation. You may at any point change from an informal complaint to a formal complaint should you so choose. The Investigation process – the investigation will be conducted in an unbiased, fair and discrete manner. There will be all the appropriate safeguards to maintain confidentiality and protection from embarrassment that the law allows. There are certain parties by act of law that has to be made (phonetics) to the

information. But again your confidentiality will always be of the utmost concern.

Now after an investigation is completed, an individual who is found to be an offender will receive the appropriate warning or discipline. And any disciplinary action prior to its implementation is going to be reviewed by the Director of Personnel Services and approved by the County's EEO Officer. And there shall be no retaliation or discrimination against an individual who has made the complaint, anybody who participated in the investigation process or anybody who has served as a witness. Retaliation is a separate, well, retaliation is another violation in itself. And that's really all the highlights folks, and if you have any questions, I'd be more than happy to address them for you. And should you have a chance to read the policy and any questions should come up at a later time, please feel to contact me. And if I don't have the answer, I'll make sure I find it for you. Thank you for your attention. I believe next, Robyn Loudermilk is up.

Ms. Cua: I'm not Robyn, but I just wanted to make a comment that I forgot to mention initially. Because the presentations together ends up being quite long, we're going to ask that you hold all your questions until the end. The staff planners will stay around. But, we just think that if we get into questions and answers for each segment, we may not finish your training. And we know that you have a 1:00 p.m. hearing today. Even though we don't get to questions, we can always do questions at another time. But we want you to get all of the information by 1:00 p.m. today, and maybe even give you a lunch break. We just need a little bit of time to switch our presentation. The challenging thing about doing a presentation to you that it involves three division and our attorney, is that, you know, everybody has their own presentation separately, and so we need to do some "switch-a-roo" here. And then we have a little challenge in our computer.

Ms. Robyn Loudermilk: Good morning Commissioners. I'd like to start off today's presentation with the framework, the Planning framework, that this body, and the Department, and the County of Maui works within. First of all, we have a number of resources that provide input to the Commission. First of all, we have the Urban Design Review Board, and that is a County body which reviews project designs and provides recommendations. A number of projects that go before the Urban Design Review Board are located in our Special Management Area or Special Design District. So this is a body that provides input on matters of designs in those areas.

Secondly, we have the Arborist Committee. You may not be aware, but there is an Arborist Committee. But, Department staff interacts with them on a regular basis. Part of our duties are insuring that the appropriate type and the number of trees within proposed subdivision, public right-a-ways, and parks. The Arborist Committee is the lead committee for the nomination of exceptional trees for protection. For example, it would be the Banyan Tree in Lahaina. It's one of the exceptional trees in Maui County. And lastly, the Arborist Committee can provide recommendations to this body when an applicant wants to deviate

from the Arborist standards. For example, the number of trees required for subdivision or types of trees within right-of-ways. And all of this is based upon a County planting plan that was put together by the Arborist Committee that describes Maui County in these areas.

The third resource which you're more familiar with is the Hana Advisory Committee. The Hana Advisory Committee reviews applications in the Hana Community plan region. The public hearing is conducted out in Hana, usually at the Old School Cafeteria or in Keanae. And it's at these meetings that the Committee, Hana Advisory Committee, provides recommendations to this body, and this body will take the final vote.

We have the Cultural Resources Commission. The Cultural Resources Commission provides recommendations on SMA or other permit district. Cultural Resources Commission is the final decision making authority within the historic zoning districts in Maui County. At this point in time, we have three historic districts. Historic districts one and two are located in Lahaina, and historic district three is located right across the street from us. Now historic district zoning is part of the Title 19 zoning, which normally comes before this body. However, the uses and approvals within the historic zoning districts, that authority has been delegated to the Cultural Resources Commission. Additionally, the Cultural Resources Commission provides similar overview on project's design and review, similar to the Urban Design Review Board, mainly within Lahaina. The historic districts #1 and #2, there are design guidelines as well as sign guidelines that property owners and applicants are required to meet.

The applications we transmit to other State and County agencies, for them to provide recommendations. For example, the Federal agencies we would send to the Army Corp. of Engineers for them to review and verify flood zone and flood hazard information, as well as the Natural Resources Conservation Service in relation to drainage and agriculture. State agencies would be the State Department of Education, the State Department of Transportation, as well as, possibly the Land Use Commission; and then County agencies. And what these resources do is they remind us of the various statutory and code requirements under purview for which action that comes before this Committee must also comply with.

I'm going to go through the Planning framework from a regulatory perspective, and I'd just like to note that this particular chart is color coated. So if we see white on the screen, it's for the State. Items in blue are County. And items in an orange/yellow are specific to the Maui Planning Commission. Providing us with our framework is the State Constitution. The Constitution does set the basic framework for the government in the State of Hawaii, outlining how operations do occur. The State Constitution was first adopted by the people of Hawaii at an election held on November 7, 1950. Under the Constitution, we have the Hawaii Revised Statutes, and these are the laws that are passed by the State Legislature and put together codified into a series of books.

In 1978, in an effort to improve the Planning process in Hawaii, the Legislature adopted the Hawaii State Plan, which is Chapter 226. This Planning document is a policy planning document that identifies goals, objectives, policies and priorities from the State of Hawaii. The State plan also provides priorities and the allocation of resources at the State level. Now there has been changes to the State plan since it was enacted. In the late 1980's, early 1990's, the provision for functional plans was deleted. The functional plans were related to State agencies and helped further refined the goals, objectives and policies, and the allocation of resources in conjunction with the State plans. But that is no longer in effect. You noticed in our reports to you, we do have a section regarding relationships to the Hawaii State plan. Technically, every action that occurs in the State of Hawaii needs to comply with the State plan. However, we realized that in order to get this plan adopted, there were, we have competing interest and we have policies, goals and objectives that may override one another, and that's when the analysis comes in terms of the public's benefits. This is sort of a motherhood and apple pie document. And sometimes it can be a bit challenging to extract that the public benefit, but we try our best. The other thing that the State plan does, it does provide a basis for the formulation and adoption of general and community plans within the State of Hawaii. This is the enabling legislation for that.

Our General Plan is codified under Chapter 2.80B, Maui County Code. There's recent changes that Simone Bosco will talk in terms of how the General Plan is being updated and being implemented. But basically, the General Plan provides for the framework for Maui County. There are nine community plans that are part of this General Plan, and that six of the General Plan regions are located on the Island of Maui, and are under your purview and jurisdiction. And these community plans are as follow: Kihei-Makena, Wailuku-Kahului, Paia-Haiku, Makawao-Pukalani-Kula area, West Maui, and Hana. As indicated earlier, on March 4, 2004, the County adopted Bill 84 which establishes the new process for the updating of this General Plan. And the discussion on that will occur at a later date. While the General Plan is being updated, we do have requests that come before this Commission for changes to the existing General and Community Plan, and that comes under this Commission for review and recommendation to the Maui County Council. We also have up there, the Charter of 2002. This is the County Charter. What the County Charter does is it identifies that any revisions to the General Plan and other land use ordinances can be proposed by the Council as well as the Planning Director. And those proposals initiated by the Council or the Planning Director are also reviewed by this particular Commission if they fall into one of these six community plan regions.

Next I'd like to go through the State Land Use Commission, also known as the State Land Use Law, Chapter 205. What the State Land Use law did in 1961 was to classify all lands in the State of Hawaii into – initially it was only one of three categories – urban, agriculture and conservation. The addition of the rural occurred at a later date, in approximately 1964. What the State Land Use law also does is define the permissible uses within each of these four zoning districts. For example, lands classified as urban, sole jurisdiction in terms of



permitted uses are with the respective County. Lands in the agriculture and rural district, there is shared jurisdiction. Permissible uses are allowed by both the County and the State Land Use Commission. For uses that are not outright permitted in the State agriculture or rural district, there is a special permit process and review that occurs with the respective Commission. And if lands are designated conservation, sole jurisdiction on the use of those lands are with the Department of Land and Natural Resources. There are two types of actions that occur at the Commission level related to this Chapter. The first is the District Boundary Amendment. A District Boundary Amendment is basically a petition to reclassify lands from one district to another. And what we have up here is an example a type of map that was – would be part of your packet. For example if the land is going to be classified from the agricultural district to the urban district, or from rural to agricultural.

Regarding the Special Use Permit, there are five criteria that the Department, the respective Commission and the Land Use Commission review, to determine that a use that is not permitted in that State agricultural and rural district, are deemed to be unusual and reasonable, thus to be allowed. The first criteria are uses not contrary to the objectives of Chapter 205, which is the State Land Use law, as well as, 205A, and that's the Coastal Zone Management Act. Secondly, the use would not adversely affect surrounding property. Thirdly, the use would not unreasonably burden public agencies to provide, basically, a number of infrastructure. Fourth, that since the adoption of the State Land Use law in 1961, unusual conditions, trends and needs have arisen since these district boundaries have been established. And lastly, the land upon which the proposed use is sought is unsuited for the uses permitted within the district. As indicated that there are some areas of joint jurisdiction in terms of processing. For example, for a District Boundary Amendment, if the acreage involved is 15 acres or larger, that petition is reviewed and approved by the State Land Use Commission. If the quasi judicial proceedings in which if lands are located in the County of Maui, the Maui Planning Department is a mandatory party to that proceeding. Another mandatory party to that proceeding other than the applicant is the Office of Planning, and they provide the State's position.

The other area is the Special Use Permit. If the acreage is 15 acres or greater, the Maui Planning Commission will conduct a public hearing and transmit recommendations to the Land Use Commission, and it is the Land Use Commission who gives the final approval for the special permit. Should the acreage requirements be less than 15 acres, for District Boundary Amendment, and if it's located on the Island of Maui, the Maui Planning Commission will conduct a public hearing and transmit the recommendations to the Maui County Council. Also on this particular case, if the District Boundary Amendment which is less than 15 acres, is located in the Hana Community Plan region, the public hearing is delegated to the Hana Advisory Commission. Same thing with the Special Use Permit, 15 acres or less, the Maui Planning Commission, should the property be located on the Island of Maui, will be the final authority. Also with the caveat that if the property is located in the Hana Community Plan region that the public hearing would be held in Hana.

Next I'd like to go to Title 19, Maui County Code, which is known as the zoning code. The authorization for zoning to the County is under Chapter 46, Hawaii Revised Statutes. And under Chapter 46 the Counties are allowed to create planning and traffic commissions. Zoning for the County of Maui was first established on August 1, 1968, which established the interim zoning regulations, which is known as 19.02. And this was done pending the adoption of the comprehensive zoning ordinance in 1960. And the comprehensive zoning ordinances – what comes before and is under the purview of the respective Planning Commission, that's why we have the Change in Zoning, the Conditional Permits, the Planned Development, Project District – so under the comprehensive zoning code provides the framework for the utilization of land in Maui County.

Lastly we have a number of environmental reviews that come before this Commission. The first one I'd like to mention is the Coastal Zone Management Act, Chapter 205A. And Chapter 205A does one of several things. It directs the implementation of the coastal zone management law. The coastal zone management law also includes the establishment of a special management areas and rules to implement the special management areas, as well as, the establishment of shoreline setback, and rules and regulations on how the shoreline setbacks are regulated. In December of 1975, the Maui Planning Commission adopted the interim Special Management Area Rules and Regulations and maps. These were later adopted as final in 1979. So the boundaries that you have before you were a result of the adoption in 1979. We know these Special Management Area Rules as Chapter 12-202, and the Shoreline Setback Rules as Chapter 12-203. And the reviews that come before this Commission have to do with uses in the special management area that require Major Permits. As Thorne will go over there are a number of permits related to the Special Management Area. And then this body also reviews a report of Minor Permits or Emergency Permits and Exemptions that have granted by the Maui Planning Department. The other review that comes before this Commission is Shoreline Setback Variances, and Thorne will go into more detail on that.

And then lastly, I'd like to go over the Environmental Impact Statements, also known as Chapter 343. As part of the Chapter 343 process, the Planning Commission has been designated the authority in Maui County to review Environmental Assessments and Environmental Impact Statements for General Plan and Community Plan Amendments, as well as, Shorelines Setback Variances that occur on the Island of Maui. Ann will go over more specifics on the implementation of the Environmental Impact Statement law. But basically what this body does is that it reviews Environmental Assessment documents to make determinations, as well as, Environmental Impact Statement documents to make determinations.

Triggers identified on this screen that may require this type of review have to do, one, with the Shoreline Setback rules. If they require a variance, you need to go to the Chapter 343 process. Another trigger shown on this slide is Community Plan Amendment. Community

Plan Amendments that are not part of a comprehensive review by the County are required to go through this Chapter 343 process. And then lastly, prior before we go to the General Plan update, some of the types of reviews that you may do that are not listed here because they vary (phonetics) and have not been changed since initially adopted in 1961 have to do with determination of front lot lines as part of Chapter 12, Subdivisions, location of driveways and boundaries. And the only reason why I'm aware of this is that we just recently been – we've received some of these application that will be coming before you in the future. And just to let you know that, yes, they're not covered here, but you will be reviewing them and you are the final decision making authority on those types of things. Very different than the usual course of action. So that's just a heads up. And that completes the general framework in which we operate, and I'd like to turn the presentation over now to Simone Bosco of the Long Range Division, and she'll talk to you about the General Plan update.

Ms. Simone Bosco: Good morning Planning Commissioners, we're going to be taking a moment to set up. Thank you Robyn for the introduction.

While Thorne is setting up, I'm going to hand out a schedule of the General Plan review, and it's just a one page schedule to refer to later, after the meeting, in your own leisure time. Okay? Thanks.

Thank you very much for allowing me the opportunity to provide an overview of the General Plan update and the other projects that the Long Range Division of the Planning Department is working on. I'd like to start with giving you a very brief overview of the General Plan update. I want to note here that we will be coming back later on in the summer to give you a much more comprehensive detailed review of the General Plan update, to prepare you when you will be receiving and reviewing documents from our Division to forward to the County Council. Okay?

All General Plans typically have these characteristics in common. They are comprehensive. Typical elements include natural resources, land use transportation, water, housing and infrastructure. They usually address the social, economic, environmental and physical environment. And there's a very important community driven process as well. In our case, we've conducted a number of Island wide events to engage the public in the process. And we do have a report which summarize the results of those events, and a lot of these documents, by the way, can be found the County website. Okay, I'll come back to that in a minute. General Plans also provide a framework for preparing more specific plans and for making decisions on land use and Capital Improvement Projects. They provide a unified statement of policies in maps and text. In our case, we have Bill 84 and also the recent Bill 53, which provides a framework for the updating the General Plan and also the Community Plans.

Bill 84 defines the legal, status, content and process to developing the Countywide Policy Plan, Maui Island Plan and Community Plan. This General Plan will be different from the existing General Plan in several ways. In 2004, the County Council enacted 2.80B which established a new framework. It redefined the structure of the General Plan to emphasize regional Island-wide planning. Bill 84 and Bill 53 called for a new ordinance – oh, called for an Island wide directed growth strategy and for setting priorities for budgeting and implementation. Maui County Code 2.80B also set up the General Plan Advisory Committee for each Island, and for the Island of Maui, you have the Maui General Plan Advisory Committee which has 25 members on it.

The next slide shows the change in the structure of the General Plan. The existing 1990 General Plan is a ...(inaudible)... First, the Community – hold on – let me back up a little bit. The Community Plans constitute another element of the General Plan. The Community Plans in our County include maps and provide policy that is specific to each region or subregion. As you look around Hawaii and around the United States, you see many types of General Plans. Sometimes they're a set of documents as in our County and also in the City and County of Honolulu. They also have a set of documents. Other Islands such as Kauai have only one document. This single document, if it's all within one document, contains land use maps and the full range of policies.

Now let's look at the existing structure for our General Plan which we've entitled General Plan 2030. It includes the elements of the old plan as well as an important new element in Island Plan for Maui. The Maui Island Plan is intended to establish the framework for a more detailed community planning. The Island Plan will contain maps as well as text policies. Through the Island Plan, the County can look at the needs and growth of all six regions, all six community plans, together and make strategic decisions regarding future growth. Also one more change, the existing 1990 General Plan document has now – it has a new name. It's now called the County wide Policy Plan, and in form and content, it will remain similar to the 1990 document. So you can kind of see the framework here. It's kind of like a tree. The Countywide Policy Plan is on top. It has no maps. It's very broad language, a very broad policy language, which directs, directs you to the Island Plans. And then from that point on, the Community Plans will be updated. All of these document compromise the General Plan. I just want to make that clear. It's not just one document. It's all of them. And we are in the process of updating all now.

The Countywide Policy Plan plays an important role in the overall planning framework. It provides an over all working policy plan for all the Islands. It provides a vision. It provides core, principles or themes; a list of broad goals, objectives and policies; and it creates a structure to develop the Island and community plans following the policy plan.

As far as the Maui Island Plan, you can again, you can look at all six regions, all six community plan regions together and you can make a strategic decision regarding future

growth. And when I say “you,” I do mean this Commission. You will have an opportunity to take a look at these, the Maui Island Plan, and make decisions and recommendations for that Plan. Again, it’s an Island wide directed growth strategy that you’ll find in the Maui Island Plan. You’ll find maps of urban and rural development areas, priorities for developing regional facilities and services, and a financial sound implementation program which sets priorities.

A little bit about the General Plan Advisory Committees. Again, we have advisory committees on all three Islands, and their role is to comment, advise, and provide recommendations to the Planning Director regarding the proposed revisions prepared and recommended by this Department, by the Planning Director. And that is set forth in 2.80B.040B, Bill 84.

What are the Planning Commission roles? What is your role? Your role will be to take the recommendations from the Planning Director and also from the General Plan Advisory Committee, and to review them, to provide recommendations, findings, and also to propose revision on both the Countywide Policy Plan, the Maui Island Plan, and then eventually the Community Plan updates, to the Maui County Council regarding what we’ve brought forward to you. Okay? And again, later on, in the summer time, we’re going to be giving you a much more detailed comprehensive review and several workshops to prepare for that process. The project sequence for the General Plan update is in two phases. We’re currently in phase one, the Countywide Policy Plan, and also we’re very much involved with drafting the Maui Island Plan. The GPAC’s are currently reviewing the Countywide Policy Plan, and later on down the line, we’ll be getting into phase two, which is the update of the Molokai Community Plan and Lanai Community Plan. The schedule for the Maui Island Plan is for the GPAC’s to finalize their review in the summer, and through January 2008, we’ll be finalizing the document, the Maui Island Plan document. And then from February 2008 to July 2008, the Maui Planning Commission will review the Maui Island Plan. Council will review from August 2008.

Back to the Countywide Policy Plan which right now we’re looking at in the GPAC’s. This is kind of a flow chart of where we are in the process. We took the draft policy plan, the Division took a draft policy plan, brought it to the General Plan Advisory Committees, which is the second column there, and they’re currently reviewing it. But all three GPAC’s are currently reviewing it, including the Maui Island GPAC. And then we’re taking all of the recommendations and suggestions and findings of the GPAC’s, compiling them and then we will begin to bring them to the Planning Commissions, all three Planning Commissions. After the Planning Commissions have completed their review, which is a 120 days – they have a 120 days from the receipt of the plan, from the first public hearing that the Commission has, they have a 120 days to complete their review. The Planning Department will take the Commission’s recommendations and findings, compile them and then forward them onto the County Council for review. The County Council has one year to review the

documents, the County wide Policy Plan document.

And this is a slide that shows the GPAC time frame. And no later than 120 days after the GPAC's hold their first public hearing which has already occurred, and after their receipt of the County wide Policy Plan, the GPAC's will forward their recommendations to the Planning Director. And that kind of recaps – re-summarizes what I just said earlier. The beginning date for Maui was January 24<sup>th</sup>. That's when they received our draft plan and today is the 77<sup>th</sup> day of the 120 day review period for the GPAC, the Maui Island GPAC. The other GPAC's have a different start date, but for your purposes, this is where they are in the process – a little bit over half way through.

And just to conclude, the other projects that the Division is working on, include the Pali to Puamana Parkway Project. Mainly we're involved with the environmental documents. The project is basically seeking to realign the Honoapiilani Highway mauka of it's existing location and provide an eight mile corridor of parks and open spaces. Also we're involved with the land use designation database which is basically taking the dead sea scroll maps that we've been working with for so long, the hard copies of our community plan maps and the zoning maps, and digitizing them. So there's a lot involved with that project. It involves looking at consistency between the State Land Use districts and the County zoning and also the community plan boundaries. So we're digitizing all of our maps and we also have a development mitigation fee project which seeks to establish impact fees for services and facilities such Water, Police, Parks, Waste Water, Fire and Schools. And recently, we forwarded a traffic impact fee ordinance up to Council, and that establishes impact fees Island wide, for the Island of Maui, for roadway improvements. And that's it. I hope that was helpful. Thank you for you time. Did you get all? There's going to be a test later. All right, thank you very much. I'm going to be bringing Jeffrey Dack up, next, to discuss zoning. Jeffrey.

Mr. Jeffrey Dack: Good morning. Today I will be covering the zoning portion of the overall Planning framework. As Robyn mentioned earlier, Chapter 46 of the Hawaii Revised Statutes, is the enabling legislation for the County to zone lands. Zoning, in all Counties, is accomplished within the framework of a long range comprehensive plan, as which was just addressed, which is prepared or being prepared to guide the overall future of the County. Zoning is one of many tools available to the County to put the General Plan into effect in an orderly manner. Zoning is found in Title 19 of the Maui County Code. There are two parts to Title 19 as was mentioned by Robyn. The first part is Article 1 which contains the interim zoning provisions, and the second part, Article 2, is the comprehensive zoning provisions.

Interim zoning was adopted in 1958, as mentioned. It was created for the purpose of providing interim regulations pending the formal adoption of a comprehensive zoning and map. Although it was created as a temporary measure, we still have the interim zoning in

place today. And comprehensive zoning was adopted in 1960. It was created to regulate the utilization of land in a manner that encourages orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the revised Charter of the County, and the General Plan and Community Plans of the County. Comprehensive zoning includes a number of zoning districts which most of you are familiar with, such as the residential and apartment districts, commercial and industrial districts, and public/quasi-public and park districts. Each of these zoning districts list permitted uses and standards that regulate development. There are various mechanisms in place to administer comprehensive zoning in which you as Commissioners will have direct involvement. Today I will be discussing a number of permits which you will be reviewing in your time as Commissioners. For a number of these permits you have the authority to grant or deny, while for other permits, you serve as review body, making recommendations to the Maui County Council. As we go through these permits, you'll see acronyms which are used to identify various permits. You'll become much more familiar with these acronyms during your tenure as Commissioners.

The Change in Zoning, or CIZ, process is found in Chapter 19.510 of the Maui County Code. It allows for the change in zoning from one zoning district to another. For example, if an individual purchases a property that is zoned residential and they intend to operate a business on the property, they are required to legally establish the use before they can operate. If the Community Plan for that region designates the site for business use, the applicant is able to file an application to change the zoning from residential to business. The Planning Commission conducts their public hearing on the application and makes a recommendation to the County Council. The Council is the final authority on changes in zoning. The map you see in this slide is a typical land zoning map for a property that is being re-zoned. The map contains such information as its location, land area, the tax map key number, the existing and proposed zoning for the property.

The Conditional Permit, or CP, is found in Chapter 19.40 of the Maui County Code. The intent of the Conditional Permit is to provide the opportunity to consider establishing uses that are not specifically permitted within a particular zone where the proposed use is similar, related or compatible to those permitted uses. As Planning Commissioners, you'll conduct a public hearing on the application and make a recommendation to the County Council. The Council is then the final authority on Conditional Permits. The project in this slide is the West Maui Federal Credit Union, which was granted a Conditional Permit to convert a single-family residence into a business within the single-family residential district. Both the Planning Commission and the Council found that the business use within an existing single-family residence was compatible with the residential zoning district and would not be detrimental to the surrounding neighborhood.

The County Special Use Permit, or CUP, is found in Section 19.510 of the Maui County Code. A County Special Use Permit allows for certain special uses in a particular zoning

district. The use proposed must comply with a specific criteria established for the permit. This slide illustrates a church that was approved by the Maui Planning Commission as a County Special Use in the residential district. Churches are not listed as a permitted use in the residential district, but they are listed as a Special Use. A public hearing with the Planning Commission is required to establish County Special Use. The Planning Commission is the final authority on County Special Use Permits.

The Planned Development, or PD, process is found in Chapter 19.32 of the Maui County Code. The Planned Development is a mechanism that allows reduction of minimum lot areas, greater building densities, and allows mixed land uses in order to encourage desirable design and land use patterns within existing natural environments. Planned Developments are able to achieve overall unit densities while maintaining common open space, recreational and community facilities. Planned Developments involve a three-step process. All steps require review and approval by the Commission. The first step is a review of the planned development concept plan. The second step involves the review of a sketch plan of the development, including drainage, streets, utilities, grading, landscaping, open spaces, land uses, et cetera. And the third step involves the review of construction plans. A public hearing is not required for any of the three steps in this Planned Development process. This site plan, in this slide, illustrates the Puamana Planned Development, in Lahaina, which was approved by the Maui Planning Commission in the early 1970's.

The Project District, or PH process, as its referred to, is found in Chapter 19.45 of the Maui County Code. The intent of Project Districts are to provide for a flexible and creative planning approach rather than specific land use designations. The typical Project District will have multiple land uses such as residential, commercial, open space and public/quasi-public. Project Districts involves a three-phase process. The first phase establishes land uses and standards for the Project District through an ordinance. The Planning Commission is required to conduct a public hearing in the affected community plan region. For example, if the proposed project district is in Lahaina, the Planning Commission must hold a public hearing in West Maui. The Commission makes a recommendation to the County Council, and the Council is the final authority on the Phase I Project District process. The Phase 2 Project District process involves approval of a preliminary site plan for the Project District. The site plan must conform to the standards of development contained in the Project District ordinance. As in Phase 1, the Planning Commission is required to conduct a public hearing in the affected community plan region. The Commission is the final authority to grant Phase 2 Project District approval of the preliminary site plan. The Phase 3 Project District process involves the review of the final site for the project. The Planning Department reviews the final site plan for consistency with their preliminary site plan approved by the Planning Commission. If the Department finds consistency, the Planning Director grants approval of the final site plan. The map in this slide is the Maui Land project district map which was adopted as part of the Phase 2



Project District approval. You can see multiple land uses with the project district.

Regulations on Bed and Breakfast homes, or B&B's, are found in Chapter 19.64 of the Maui County Code. This process allows small, local businesses the opportunity to provide visitor accommodations in a residential neighborhood provided that the character of the residential neighborhoods are retained. There are three types of B&B's. Type 1 permits are limited to one to two bedrooms. The Planning Director is the final authority to approve Type 1 B&B permits. Type 2 permits are limited to three to four bedrooms. A public hearing is required and you are the final authority to approve Type 2 B&B permits. Type 3 are limited to five to six bedrooms. The Maui Planning Commission conducts a public hearing and makes a recommendation to the County Council. The Council is the final authority to approve Type 3 B&B permits.

The Country Town Business District found in Chapter 19.15 of the Maui County Code, establishes development standards for business in the rural communities. Examples of Country Town Business Districts on the Island of Maui are Makawao town, Paia town and Hana town. The Maui Planning Commission approved design guidelines for these country town business areas. The Planning Department administers these design guidelines and grants approval of projects within these districts. The Department at times refers projects within the country town business district to the Maui Urban Design Review Board to obtain recommendations from the Board before granting design approval.

Provision for Off-Site Parking are found in Chapter 19.36 of the Maui County Code. As Commissioners you have the authority to grant off-site parking approval to allow required parking for a project to be provided on another lot within 500 feet. No public hearing is required for this action.

Accessory Uses are identified in various zoning districts within the County Code. If use is not identified as an accessory use, it may be considered for approval by the Commission. No public hearing is required for this action.

This concludes the zoning presentation. Next will a presentation on Coastal Zone Management in Maui County, including the Shoreline Rules. This will be presented by Thorne Abbott.

Ms. Cua: Madame Chair, members of the Commission. Just a couple of points. We hope we're not overwhelming you too much. For you new Commissioners, we're inundating you with lots of information today. Don't be overwhelmed. As you serve your time as Commissioner, these concepts/terms will become much more familiar to you. At this point, we'd like to take a break because I think we all need a little break. So maybe let's take a 10 minute break. Let's take a break and come back at 10:30 a.m.

*(The Maui Planning Commission recessed at approximately 10:17 a.m., and reconvened at approximately 10:35 a.m.)*

Ms. Amorin: – Tuesday, April 10<sup>th</sup> will resume. Thank you.

Mr. Thorne Abbott: Good morning Madame Chair and Commissions. Aloha. My name is Thorne Abbott. I'm the Coastal Resources and Shoreline Planner, and it's a great privilege to serve this Commission in this capacity, and also the citizen of Maui County. I'd like to share with you today about our Special Management Area and Shoreline Setback Rules. You can see here, on this illustration, Maui Island; and shown in pink, highlighted in pink is the Special Management Area. Generally it runs from the State highway makai to the shoreline. Under the State Constitution, there's a Hawaii Coastal Zone Management Act, Hawaii Revised Statutes Chapter 205A, and that gives the authority to this Commission to create Special Management Area rules, Chapter 12-202 and Shoreline Setback Rules, Chapter 12-203. And through those is what you review Special Management Area Major permits and Shoreline Setback Variances.

Now, one thing to make clear, the Hawaii Coastal Zone Management Act has designed all lands and waters in the State as part of the Coastal Zone, and the law regulates all activities within the coastal zone. So the whole Island is actually regulated under HRS 205A, the Hawaii Coastal Zone Management Act, and the laws regulates any "development," as defined in the law for the whole Island. Now the lead agency for that is the Office of Planning, and they provide consistency determinations for any agency action. So they determine if an agency's action is consistent with the law. However, the Commission, through home rule, regulate all development within special management areas by issuing conditional permits. Again, the SMA area is shown in yellow, so that's your area of regulatory authority. These boundaries were, as Robyn mentioned, initially adopted in 1975, and finally adopted in 1979, and subsequently approved by the State and the Federal Governments.

The law has about 10 different objectives and goals which you're intended to follow. You're intended to provide coastal recreational opportunities to the public. You're to protect, preserve and restore Hawaiian and American cultural resources. For marine resources, you want to conserve aquatic natural resources for sustainable development. For coastal hazards, you want to reduce risks to new structures and enhance public safety. You want to protect, preserve and restore our coast views, open space and scenery. You want to enhance public beach access; and minimize beach loss due to erosion and site hardening. For coastal eco-systems, we want to minimize adverse impacts and protect those eco-systems. For economic uses, you want to provide and co-locate coastal dependent facilities while minimizing negative impacts. And you want to stream line the permitting process and enhance public awareness. And under public participation, we want to stimulate public awareness, education and participation.

There's several forms of decisions that comes under this Special Management Area Rules. The first is an SMA Major. That's what this Commission reviews. It's a project that's greater than \$125,000. There's a public hearing. All owners within 500 feet are notified by certified mail of that public hearing. And you can impose conditions to avoid, minimize or mitigate any adverse impact of coastal resources. There's also SMA Minors, SM2's, and those are for projects under \$125,000. There's no public hearing involved but we can impose conditions to avoid, mitigate or minimize any adverse impacts. And those decisions are made by the Director and reported to the Commission. There's also Emergency Permits, when there's eminent or a substantial harm to public welfare, or if we have to prevent substantial physical harms to persons or property. The Director can give an oral approval, but he must submit a written report to the Commission upon the final determination of that permit. The permit expires in 180 days, and again, it can have conditions to avoid, mitigate or minimize any adverse impact. Finally, you can also have an Exemption, and SM5, and that's something that's not a development as defined in the State law. So, for example, single-family residence that has no adverse impacts on things like drainages, view plains, archaeology; and it also has so no cumulative impact from that project. And finally, you can deny a project if it's inconsistent with State Land Use, General Plan, Community Plan and/or Zoning Land Use designations, or if there is an adverse impact on coastal resources.

There's specific decision making criteria in your rules – no adverse, environmental or ecological effect based on 12 criteria listed in the SMA rules. The project has to be consistent with State Land Use, General Plan, Community Plan and Zoning designations. The effects of the project have to be minimized in light of a compelling public interest such public safety or welfare, and it has to be consistent with the SMA guidelines. Those guidelines include providing an adequate access to publically owned beaches, recreational areas, wildlife and nature reserves; adequately and properly located public recreational areas; control, manage and minimize impacts of pollution; minimize adverse effects to water resources and scenic and recreational amenities; and minimize the risks of any proposed structures failing as a result of coastal hazards. And that's why we have shoreline setbacks and FEMA requirements.

There's various approval criteria as well. You can impose reasonable terms and conditions. However, you have to seek to minimize, where reasonable, dredging, filling, altering of any coastal areas; reductions in beach size; impediments to public access and coastal recreation; any loss to coastal view plains; adverse effects to water quality, fisheries, wildlife and habitat; and any loss of existing and potential agricultural uses.

Now we are doing some program enhancements currently. For example, we have federally mandated performance standards that are going to focus on outcomes rather than out-puts which has historically been the case. You've heard before, from previous Directors, that this Department processes well over 1,000 SMA permit requests a year. We're also going

to start looking at the outcomes of reviewing those different permits, not just the numbers of permits, but the actual outcome of those permits. There's also a study in process to stream line and improve the effectiveness and efficiency of the SMA process. They're developing a brochure for the public to explain the process and have a chart, a flow chart, so they can understand what's going to be involved in reviewing their application. And we're looking at improving view plain analysis using enhanced protocols and tested methodologies.

With that, I'll switch over to the Shoreline Setback Rules. Maui has 53 miles of sandy shorelines, and we lost 25% of those in about a decade. The remaining shorelines that we have sandy beach areas are about a quarter narrower, all within a decade. A study done by UH found that about 66% of that was the result of manmade influence primarily placing structures on top of sand dunes or impounding sand, or building sea walls and impounding sands from lateral transport. I think of Maui in 2050 and this is not the kind of thing I'd prefer to see and I'm certain the that Commission doesn't want to see this either.

Mr. Hedani: Where is this?

Mr. Abbott: That's Dubai actually. In recognition – you know, no one is going to spend \$400 on a hotel room that's next to a sea wall, and, you know, on the weekends I want to go the beach, you know, mothers want to take their kids to the beach and it's a matter of not just our economics because without good beaches, we don't have solid tourism. And it certainly contributes to that, as well as other beauties in Maui. But it's also a quality of life issue for all of us here. In recognition of this huge loss of beaches in a very short period of time from inappropriate site development, this Commission did something very innovated on October 28, 2003 and passed a new shoreline rules that regulates the use and activities of land within the shoreline area to protect health, safety and welfare of the public by providing minimum protection from coastal natural hazards. These rules ensure public use and enjoyment of the shorelines resources are preserved and protected for future generations and that's done by developing a shoreline setback. How far away your structure has to be from the ocean? There's two methods of doing that. The first is called an annual erosion hazard rate and the second is the average lot depth method.

Now you see here on the right an unstablized situation. The land has been lost, but the beach is preserved. And this comes from coastal erosion. It's a natural process where the shoreline retreats over a long period of time from sea level rise, wind and water and wave action. And while the shoreline is retreating the beach width is maintained from sand which naturally is released from sand dunes and other sand reservoirs up and down the beach. On the left side, you have a stabilized beach, a stabilized situation where the beach is lost, but you protect the land. The land is preserved. And that's beach erosion. And that loss of sandy beach width is the reservoirs of sand are depleted, sand (phonetics) are hindered, or sand reservoirs are compounded by manmade hardening structures, either like sea walls

or revetments, or even a building sitting on top of a sand dune with slab on grade. So kind of have a choice, you can protect the land or you can keep the beach. It's a pretty simple math.

The Commission is contracted with Chip Fletcher of the School of Ocean and Earth Science Technology at the University of Hawaii. Chip and his staff looked at historic erosion rates and historic shoreline positions over the last 100 years, from 1912. Now they laid out transects for our 53 miles of sandy shorelines, and these transects are located every 20 meters, or about every 66 feet. And then they came up with an erosion rate which you can see these red bars or red histogram on the left hand side here, that's the actual erosion rate at each transect. Now a lot of places use erosion rate based setbacks. It's nothing new. It's not new science. Mississippi uses it. Florida uses it. Parts of California, Michigan, they use it on the Great Lakes. Even my home State of Pennsylvania uses it on Lake Erie. However, the erosion rates are established, say maybe one foot a year for not just a parcel or segment of the beach, but for maybe a mile of a beach or 10 miles of beach, or 20 miles of beach. It's extremely rare to have something so specific as being parcel specific. Every 66 feet, that's practically every parcel on Island that has a sandy shoreline has it's own erosion rate, and that is very, very innovated.

So you look at the erosion rates. You can look these up on our website, [mauicounty.gov](http://mauicounty.gov). Look for the coastal zone management program, and you can pull up the erosion rate maps. It shows, it describes the beach. It describes what's been going on at that beach, itself, in the last 100 years. It lists the shoreline positions and then this red bar, histogram, lists the erosion rate at each site. We also want to add a buffer for things like storm surge, high storm events, sea level rise. And so we came up with an equation which is the annual erosion hazard rate. It's equal to 50 times it by the erosion rate at that site, plus the buffer of 25 feet. Well, why 50? Well, FEMA lists that the minimum average life span of a wood framed building is 50 years, so that's why we use the 50 year number. The idea is that in 50 years from now, your house will be located appropriately so you'll have a beach in front of it. We also have another method called the average lot depth method which is you take the left side of a parcel, your right side of a parcel and a center line of a parcel. You add those three up, you divide by three, and you come out with an average lot depth.

If your lot is less 100 foot deep, the set back is 25 foot. For a lot that's 100 to 160 feet deep, the set back is 40 feet. And with the lots over 160 feet deep, the setback is 25% of the lot, up to a 150 feet. Now, why, if we don't have an established erosion rate at that site, why should you should move mauka? Well the reason is, is it's just common sense. If you have the room to move mauka, do so please. We do have waves, for example, if your lot was say 99 feet, we do have waves that are more than 20 feet high here. So you wouldn't want to be too close to the ocean because just the magnitude of the wave could impact your building. So if you have the room, move mauka. It's the safe thing to do. On average, we have about 1.1 foot of erosion throughout the Island, not just on sandy

shoreline, per year.

Now this is a nice well text book example. Some of you have seen this before. Excuse me. This is the whale sanctuary down in Kihei, and you'll see right here – this is the makai side, this the mauka side, there's South Kihei Road there – right here is a revetment, and on the edge of that revetment is a red line. That red line is the State certified shoreline, and that serves three purposes. First, the State says that's the jurisdictional boundary between the County, which is on this side, and the State, which is on that side. The second thing it does is it determines if there's an encroachment. And it's very frequent now we have modern survey techniques like GIS and GPS and that kind of thing. It's very common that the older sea walls are built on the State's property. And like anyone else, if you build on your neighbor's property, they probably want you to either remove that encroachment or buy an easement for it. The State's the same way. And then finally, it serves as the baseline to measure your setback from.

Now, in this case, we have four transects – those are the gold lines – and you just connect the dots. So that's the gold line up here. But we also – that's the erosion base setbacks – we also have the average lot depth setback and that's parallel to the shoreline. So this pink line is lateral to the shoreline. That's based on the average lot depth. Parallel also means perpendicular. So we have a blue line which is the average lot depth that's drawn perpendicularly because this is a concaved shoreline. So what is the shoreline setback in this unusual circumstance where you have two or three lines that cross each other? Well it's the more mauka segments of those lines as shown here in green. Do that one more time. That provides the most conservative protection for the applicant and their property and their structures.

There's several permit decisions that can come out of the Department and Commission. The first is a shoreline setback determination. That determines the location of the setback. It determines that the setback is properly calculated. It's valid for one year. And it requires a State certified shoreline survey and they're also only valid for one year. You can get a shoreline setback approval. That requires compliance with Chapter 343, which Ann will speak about, the Environmental Assessment Policy. And it's for things that are explicitly permitted in the rules. There's actually explicit defined activities that are allowed in the shoreline setback area. We also have Shoreline Setback Approval with conditions that requires Chapter 343 compliance. It's something that the Director determines to be a minor structure or activity. It's permissible within the shoreline setback area such as repair of legal sea wall, or portable moveable walkways. And we can impose conditions to avoid, mitigate or minimize any adverse impacts on that.

This Commission determines, makes decisions on shoreline setback variances that requires Chapter 343 compliance. It's a public hearing. All abutting land owners are notified and it requires a State Certified Shoreline Survey. And you can also deny a permit

application. For example, someone cannot prove the wall is non-conforming or the structure is non conforming. In other words, it's an illegal sea wall or it was illegally built structure. Or if it hardens the shoreline, it prevents sand transport, you can deny it. Or if blocks public access to beaches or recreation. Or if encroaches on State owned lands and they have to buy an easement. Once that easement is purchased and that's resolved, then they can come back to the Commission and a decision can be made.

What's permissible? Well, minor structures under \$125,000 that meet specific criteria. That is they don't adversely effect beach processes; they don't artificially fix the shoreline; they don't interfere with public access; and they don't block public view. Any new structures should be elevated on pilings or columns above base flood elevation. The County has to be held harmless, so we don't have any liabilities. And it can't harden the shoreline. For example, structures or activities that were approved since 1990 – 1989 are permissible; agricultural and aqua-cultural activities since that time; public boating, water sport recreational facilities; beach nourishment and restoration projects; existing non-conforming structures that were built before the implementation of these new rules, legally; repairs of legal structures up to 50% – so long as they don't enlarge, expand or intensify the use of the structure.

You can also repair non-conforming structures. That is you had a house in the 1920's that's well within the shoreline setback. You can repair that building, continuously, with no financial limitation, so as long as you don't enlarge it, expand it, or intensify it's use, and so long it was not damaged by coastal erosion.

You can also approve variances. There's criteria for that. For example, cultivation of crops or aqua-culture; landscaping; moving of sand within a beach or dune system; drainage improvements and maintenance; publicly owned boating; water sport facilities; public facility repairs, improvements or utilities; private facilities or improvements that are clearly in the public interest. For example, we recently had the Wailea Renaissance, I believe, in Makena, who wanted to take a building that was in the shoreline setback area. They wanted to demolish that and remove it, and build a new building mauka, outside of the shoreline setback area. A lot of the hotels have recognized this is a very powerful tool for their planning, as they renovate their hotels and modernize because they can locate so they're going to have a beach in 50 years. And that's pretty important when you're building a multi-million dollar hotel. That would be an example of a private facility improvement that was clearly in the public interest. It opened up that shoreline setback area by taking that building out.

You can also protect a legally habitable structure or public infrastructure. And you can do private facilities or improvements so long as they don't adversely affect beach processes; they don't artificially fix the shoreline and it would result in a hardship if that approval wasn't granted. There are some mandatory conditions. You have to maintain safe lateral access

to and along the shoreline for public use or adequately compensate for its loss, for example, buying an easement from the State. You have to minimize the risk of adverse impacts on beach processes. You have to minimize risks of structures failing. You minimize impacts on public views. And you have to comply with flood hazard, erosion control and sedimentation rules. So I think if you've heard me, I've said, "protect, preserve, mitigate, minimize." This is an area where we want to be very, very, very sensitive to because it's very dynamic and it's one of our most treasured resources on Island.

We are doing some enhancements relative to the shoreline rules – the developing of brochures to explain the shoreline permitting process. We have developed a website for reviewing how you do your setback calculations. Zoe Norcross is working on the beach management plan update. That's practically finished. We're looking at possibly establishing or resolving revolving coastal conservation and beach nourishment fund, possibly a beach mitigation bank. And there's some rule amendments that's going to come your way to clarify the rules and enhance the public's understanding. With that, I thank you very much for your time. And I believe Zoe Norcross will be next. No, Ann Cua will be next, and she'll share with you about environmental assessments. Mahalo.

Ms. Cua: Good morning, again, Madame Chair, members of the Commission. I'm going to talk to you today about the Environmental Assessment process, Chapter 343, and as Commissioners, you are involved in this process in reviewing these environmental documents. Chapter 343 was adopted in 1974, and it encourages the conservation of natural resources and enhancements of quality of life. Chapter 343 is the statutory basis for developing and processing of environmental assessments and environmental impact statements, which will be referred to in my presentation as EA's and EIS's. Many development projects, as you know, requires the preparation of environmental assessments and environmental impact statements. Before these development projects are approved, consideration must be given to environmental, social and economically consequences. The Chapter 343 process assures the public the right to participate. The agency charged with administering Chapter 343 is the Office of Environmental Quality Control, or OEQC as I will refer to them in my presentation, and publication of EA's and EIS's documents are found in the environmental notice.

How does Chapter 343 apply to our projects? First of all, not all projects require EA's or EIS's. The law has established nine triggers which requires compliance to Chapter 343, and in a few minutes, we'll go over these triggers. The triggers apply to two types of actions. Those proposed by an agency or those proposed by a private applicant. There are also 10 exempted classes. These exemptions are actions with minimal or no significant effect on the environment. The exception is that – the exceptions are not applicable when the community or cumulative of impacts of planned action, in the same place over time, is significant and when a normally insignificant action may impact a particular sensitive area. The County of Maui has a comprehensive list of exemptions for all departments, and



recently, this year, in January of 2007, a more recent version was adopted. So now we have a new list incorporating additional exemption items that we use throughout the entire County.

So now the nine triggers. First of all, the use of State or County lands or funds – and you deal with this a lot, you see a lot of these – use within the shoreline area; use within the historic sites as designated in the National Hawaii register; amendment of a County General Plan; proposed waste water facilities, waste to energy facilities, land fill, oil refinery, power generating facilities; use of conservation district lands; reclassification of conservation district lands; helicopter facilities; and the Waikiki area of Oahu.

The Chapter 343 process begins with pre-consultation activities. Prior to preparing a draft EA, it's important to consult with the minimal agencies and the community regarding the proposed activity. In the pre-consultation activity, the scope of development is detailed and potential impacts are identified. If in pre-consultation, no significant impacts are anticipated, a draft EA is prepared. And Environmental Assessment is an informational document prepared by the proposing agency or the private applicant, and used to evaluate the possible environmental affects of a proposed action, and determined if an EIS is required.

The Draft EA which includes anticipated impacts is filed with OEQC. OEQC publishes the notice of the Draft EA, and the 30-day public day comment period begins. As Planning Commissioners, you will review many draft EA's. You're also involved in the pre-consultation activities at times as well. All comments received during the comment period are responded to and all comment letters and applicant and agency responses are included in the final EA document. The Planning Commission also reviews the final EA documents. If the final EA anticipates no significant impacts, a FONSI or Finding of No Significant Impact is made. The FONSI determination is filed with OEQC and a 30-day challenge period begins. Once the 30-day challenge period ends, permit processing can continue.

If through the pre-consultation process significant impacts are anticipated, an Environmental Impact Statement is prepared. And EIS assesses the proposed the project through research, discussion and review. It must, at a minimum, identify environmental concerns, obtain various relevant data, conduct necessary studies, receive public input, evaluate alternatives and propose measures for minimizing adverse impacts.

An EIS prep notice is issued and 30-day public comment period begins. A draft EIS is then prepared and filed with OEQC, and OEQC publishes the notice of the draft EIS. Once filed, a 45-day public comment period begins, and all comments, as with the Environmental Assessment documents, all comments received during the comment period are responded to, and both the comment letters and the agency and applicant responses are included in the final EIS document.

The final EIS document is filed with OEQC, and if acceptable, a 60-day challenge period begins. Once the 60-day challenge period is complete and no appeal has been filed, permit processing can continue. If the final EIS document is not acceptable, there is a 60-day window, whereby, an appeal may be filed.

EA's and EIS's are very similar in structure, as we've gone over. However, the EIS is a much more detailed disclosure document, including a detailed analysis of alternatives and mitigation measures. Both documents must address impacts on the surrounding environment caused by a proposed development. Both documents must also consider mitigative measures which are actions used to prevent, lessen or counter act potential impacts. Both EA's and EIS's must also identify alternatives for the proposed actions. In the photos to the right, we see examples of what impacts development may have on wild life and the environment. The top photo shows potential to sea life with manmade debris. And the bottom photo shows the impacts of sedimentation of coastal waters with inadequate land management methods.

An Environmental Assessment must cover every phase of the proposed action. It must also consider all types of impacts. There are four basic types of impacts: primary and secondary impacts, regional and site specific impacts, cumulative impacts, and short and long term impacts; and these I will go into detail a little bit later.

In order to determine whether a proposed action will have an impact on the environment, potential impacts are evaluated in relation to significance criteria. It's important to note that there may be unresolved issues in evaluating a potential impact, such as traffic on the Pali.

The first impacts we'll discuss are primary and secondary impacts. Primary impacts are effects caused by the proposed action and occur at the same time and place. This slide illustrates that construction of a proposed subdivision in forested land, may have a primary impact on wildlife in the area. Secondary impacts are effects caused by the proposed action and are later in time or farther removed in distance, but still, reasonably foreseeable. This parking lot shows a secondary impact associated with the construction of the parking lot. A parking lot may increase the potential for petroleum residue in storm water runoff which could ultimately affect shoreline and marine resources.

Other impacts caused by development include regional and site specific impacts. Regional impacts are effects caused by the proposed action on a larger scale regional basis. An example of a regional impact is a new proposed project district in a community plan region. This action would require the review of regional impacts. This slide shows a number of proposed projects in the West Maui Community Plan region. When a new development is proposed, it must take into consideration other proposed land uses and developments in the area. Site specific impacts are effects caused by the proposed action in a localized, smaller area. An example of a site specific impact is a limited building addition to an

existing structure. This will likely require a review of site specific impacts only. Reviewing a proposed action relative to the regional or site specific impacts will often time depend on the type of proposed action and will often be determined by experience.

Primary, secondary, cumulative, regional and site specific impacts can have both long term and short-term effects. Short impacts occur immediately and long term impacts occur over a given period of time. For example, a new golf course, a primary impact of the golf course would be the impact of water usage. The short term impact is water usage during construction. The long term impact is water usage for continued maintenance.

Cumulative impact is the impact on the environment resulting from incremental impacts of the action, when added to either past, present and reasonable foreseeable future actions, regardless of what agency or person undertakes such other actions. An example of a direct cumulative impact, as you see in this slide, is traffic. When reviewing the potential impacts of a proposed action, and action may have a significant impact on the environment if it meets any of the following significant criteria: involved in an irrevocable commitment to loss or destruction of any natural or cultural resources; curtails the range of the beneficial uses of the environment; conflicts with the State's long term environmental policies or goals and guidelines; substantially effects the economic or social welfare of the community or State; substantially effects the public health; involves substantial secondary impacts such as population changes or effects on public facilities; involves a substantial degradation of environmental quality, is individually limited, but cumulatively has considerable effects upon the environment or involves a commitment for larger actions; substantially effects a rare, threatened or endangered species or its habitat, detrimentally effects air or water quality or ambient noise levels, effects or is likely to suffer damage by being located in an environmentally sensitive area; substantially effects scenic vistas and view plains identified in the County or State plans or studies, or requires substantial energy consumption.

In the significance criteria that we just went over, we noticed that most of the criteria is qualified as a significant effect if the action involves the following key words: irrevokable, destruction, conflicts, substantial, considerable and detrimental. You heard those words over and over again. The question then becomes how do you measure substantial, detrimental, considerable? In some cases, an impact can be quantified numerically such as air quality measured in parts per million, traffic measured by level of service or noise measured by decibels. There are also areas that are not so easily quantified and may have to be reviewed on a case by case basis – qualitative – an example the view corridors of our ocean or mountain vistas. In this situation and considering the immediate surroundings of a proposed action, it may be desirable to re-site a building or reduce the height of a multi-story structure as to create or preserve a new view corridor, or an existing view corridor.

Mitigative measures – mitigative measures are plans to prevent, lessen or counter act potential impacts. There may be one mitigative measure, a series of measures such as

BMP's for erosion control, turn lanes for level of service, or preservation plans that could be used or applied in order to counteract a potential impact. Often, mitigative measures are identified by agency comments, and you see that all the time, such as installation of a traffic light, turning lanes, best management practices to reduce runoff, or a preservation plan to protect historic resources. Mitigation measures can often prevent a potential impact from qualifying as a significant impact. This could be sufficient enough so as not requiring the preparation of an environmental impact statement because the proposed mitigation measures have reduced the level of significance.

As I mentioned earlier, EA's and EIS's must contain an analysis of alternatives. Each alternative should provide a summary of potential impacts and a mitigative measure proposed to lessen the impact. And alternative analysis could include or should include impacts input from the community. Often times the community members maybe aware of concerns and impacts that make a particular alternative more or less desirable. An alternative analysis can also identify beneficial uses of the property, not originally considered. For example, redesigning a site plan to reserve or lessen impact on scenic vistas. The preferred alternative should be the alternative with the least detrimental effect on the environment, but as you know, that is not always the case. When identifying and describing and discussing alternative methods for a proposed action, one should consider the following things: different sites or location – this might include another site on the same property or a completely different property. Less intensity or density – for example, a multi-family project poses a significant impact to traffic and by moving to a less intensive use, like a single-family development, the impacts maybe mitigated. Redesign – redesign a site plan so as to preserve those areas where endangered plants or habitats are identified or where cultural resources have been identified. And finally, no project, and this as you know is usually a very unpopular alternative. But in an area that is already developed, instead of intensifying the project, and alternative maybe to remodel the buildings or convert existing vacant buildings to other uses.

That concludes my portion of the presentation. At this time, I turn it over to Zoe and she'll talk about sea level rise, and the future of our shorelines.

Ms. Zoe Norcross-Nu`u: I'm not very good at sitting down when I talk, but I'll try. Okay, well, I guess I should take this me. Thank you. Good morning Commissioners. Thank you for having me here today. It's an honor to present to you. I'm going to be talking today a little bit about rising sea levels on Maui, some of the impacts and implications that it may have. Some of you, I know, have heard a similar presentation before, but rest assured I've got quite a bit of new information to share with you. There's been a lot of developments in the last 12 months.

I'd like to begin by congratulating the Maui Planning Commission, the Maui Planning Department and the Maui County Administration for adopting what maybe some of the

most progressive coastal zone management rules in the State of Hawaii. I'd also like to thank the Planning Department's Zoning Administration Enforcement Division for doing such a good job enforcing the rules because without them the rules wouldn't have very much significance.

So what's the roles assigned to planning and what can I do for you today? Science provides a basis for management tools that exercise avoidance. Scientists can create tools that land use planners that can use to look into the future and determine which areas are going to be most at risks to certain hazards such as coastal erosions and sea level rise, inundation and flooding. Now avoiding natural hazards and sensitive environments is the most efficient and economical approach to mitigating impacts and achieving conservation. Basically, if don't have to deal with your hazard because you're not situated there, it's going to be much, much cheaper and also more beneficial to the environment in the long run.

Scientific (phonetics) has recently been accused of underselling the potential danger that climate change poses. In general, generally speaking, scientists tend to be cautious, conservative, and even questioning their own results, and indeed that's one of the characteristics of a good scientists. But lately people have been asking, well if there is a reasonable possibility, the worst case scenario might play itself out, what's going to be the cost to us for not preparing for that? Good question.

Now I'll get into just a brief background on Maui's beaches, a little bit of coastal erosion processes before I start talking about sea level rise. First of all, we have discovered that most of Maui's are currently eroding, and the average rate of erosion for Maui's beaches is about one foot per year, based on the last 100 years of data. There's two main types of erosions. There's long term and short term erosion. Short term erosion is usually seasonal erosions based on seasonal wave patterns, like the north swells that we get in the winter time, pushes the sand to the south end of the beaches, and vice-versa. Sand goes and comes. The other type of erosion that we have is long term or chronic erosion, and that's where over time, the sands is coming back a little bit less. So actually most beaches on Maui are dealing with both types of erosions, long-term and short-term. So the sand fluctuates and moves up and down the beach seasonally, but over the long term, each time it comes back, it's coming back just a little bit less. And Baldwin Beach is a classic example of that. The beach goes and comes every year, but each year when it comes back it gets a little bit closer to that restroom, a little bit closer to the lifeguard tower. They have to continuously shift the lifeguard mauka, even though the sand does go and come back every year.

There's three main factors that can be attributed to causing coastal erosions. I'm going to be focusing the third factor, but the first two are human impacts to sand sustainability and wave and currents moving sand. The first slide here I have about human impacts to sand sustainability describes how sea walls that are built, obviously man made structures, can

lead to erosion. On the left hand side, you have a scenario – you have scenario here where there's long term erosions taking place and you have an original beach width which under normal sea level rise and erosional conditions, will maintain its width but it will shift mauka. So you can see that the beach sand here had shifted off shore and the sand that was in the dune has become the new beach.

Under this situation here, a seawall has been built, probably to protect a coastal structure located back here, and the sand that's behind the sea wall is now trapped. And so once the sand that's on the beach moves off shore, the sand that is trapped behind the wall is now longer able to be released to feed a new beach. And I know many of you have heard this before, but it's a good review. This photograph just illustrates that example, where on the left, you have a shoreline that's been harden and on the right, the shoreline has not been harden. You can see that on the right, the shoreline has experienced retreat, that has moved mauka. But they've maintained the beach which is accessible to the public. On this side, the beach is gone, but the land has been protected.

I give a lot of presentations to school groups, high school kids, elementary school kids, and one of the things I always emphasize to them is that one of the most difficult decisions for the planners and land use managers and government administrations to make is to balance the public resources with the private owner's rights. Because here we have a situation where the public beach has been loss, but the private property has been protected. It's extremely difficult to have a situation where you can protect both successfully and relatively simply. So you can either successfully and easily protect the developments by building a sea wall or you can successfully protect the beach by allowing the erosion to continue. There's very few situations where you can easily have both without some kind of ongoing large significant expense such as beach replenishment.

A few years ago, a student intern with the Maui Planning Department did a shoreline structure inventory and found that of 56 sandy or formerly sandy miles of Maui Shoreline, about 15 miles have been harden and there was a total of 371 structures. That number hasn't increased too much since that time, but it just goes to illustrate how heavily we have relied to armoring in the past to protect our coastal properties.

I don't have enough time to go into this situation too much. All I want to do is use it to describe to you how quickly massive volume of sand can be moved completely naturally. On the upper right hand corner, this is Kaanapali Beach to Kaanapali Alii Hotel in March of 2003. The beach was a couple 100 feet wide. By July of that year, actually June, the beach was completely gone in the same location. But by November it had recovered completely to the same width you see here. The recovery took place on a matter of a week or two, and to be perfectly honest, there's no way that humans could move that much sand, that quickly, even with the best technology available. So Mother Nature, when she decides to do something, and to move sand around, she does it on a huge scale. And the forces

are extremely strong that moved that sand back down to this end of this beach, and we could never replicate that if we tried.

The University of Hawaii made erosion maps for all of Maui's sandy areas, sandy shorelines, a few years ago. And there's a total of about 30 maps, and they're all available on the County's website. And these are the maps on which now Maui shoreline setback rules are based, thanks to the Maui Planning Commission. And this particular Maui map shows the erosion rates of Baldwin Park. The red bars indicate the erosion rates and shows that the highest erosion rate, here, is toward the center of this map at about 5 ½ feet per year. This is actually the highest recorded rate on the Island of Maui, as the making of these maps, a few years ago.

To take a closer look at this area where the reef is just off shore and see how much sand has been lost in the last century. You can see that where the shoreline use to be here in 1912, this is how much sand has been lost. Now part of that, granted, has been due to human activities such as sand mining, but a lot of it is also a completely natural process.

Now, I'm going to start talking about sea level rise, and the first thing that many people want to understand is how global warming affects sea level rise? Because sea level rise fluctuates quite naturally throughout history. It's a very natural process for sea level to rise and fall based on global temperatures and other situations. But recently as we all know, global warming has accelerated due to anti pre-genic and human made causes. And how does this affecting sea level rise? Well, there's really two ways that global warming affects sea level rise. The first is thermal expansion of ocean water. So as the ocean water heats up, it actually expands, take up more volume in the ocean basin and causes sea level rise. And currently today, this is probably one of the main factors that right now is causing accelerated sea level rise. The other way that it causes sea level rise is the addition of fresh water from melting glaciers and ice sheets. Basically ice masses that are currently situated on land, when they melt, the add water to basins, you get sea level rise.

Melting of sea ice, for example, the ice that's up in the Arctic is not contributing to sea level rise because it's already in the water and doesn't increase the actual volume of water in the ocean basins. Many of you have probably heard of the IPCC report that was released in February, and actually, there was another one released just recently, a second report. What IPCC? IPCC is the Intergovernmental Panel on Climate Change and consists of over 2,500 experts reviewers, over 850 contributing authors and 450 lead authors and these are all experts on climate change, world wide that have come together to try to create a consensus opinion on where we're going with climate changes and sea level rise. They recently concluded that there's a greater than 90% chance that global warming today is due to anti pre-genic green house gases. That's something that probably a lot of you think is quite obvious but in fact it needed to be scientifically proven before they could they could state that for a fact. And so now they're 90% sure that is going to be the case.

Now this report predicts a range of 7 to 23 inches of sea level rise by the 2100. However, the IPCC report released in February '07 does not take the melting of ice sheets into consideration. And I'll explain what this means in a few minutes, but they do recognize that, in this report, that this maybe a significant short coming of their data. Further, they were forced to stop looking at new data over a year ago, and unfortunately many of break through in modeling ice sheet melting has happened since that time. This was because in order to get the report, they had to stop somewhere. And if they just kept looking at new data, they probably wouldn't have been able to get the report out.

Richard Ali is one of the IPCC authors and he was in Honolulu a couple of weeks ago, giving some presentation. And he stated the IPCC output is not good enough about what Hawaii is going to do. In fact, he – after his presentation and in discussions with the scientists at UH Manoa, he said he figures that what they predicted in the report for sea level rise by 2100, we should actually be looking at here for about 2050. He said that between 2050 and 2100, the acceleration that's going to take place is going to be on a much larger scale. He said that for the next 50 years, we're going to see gradual increases, but starting from 50 years to a 100 years from now, the increases that we're going to see are going to be much, much more significant.

Okay, what's an ice sheet and ice shelf. I'd mentioned that this was not that, that ice sheet melting was not taken into consideration by their report. Ice shelves are masses of ice that are sitting actually on the ocean. And in Antarctica where this image is taken, they actually serve to buttress or block the ice sheets which are the large masses of ice and glaciers that are over land from moving and flowing in to the ocean like glaciers do. And once the ice sheets start to melt and collapse like this one did in 2002 – this is a big chunk of the Larson ice sheet – that you can see in a one month period pretty much dissolved. Once that happens, the ice sheets are free to flow into the ocean like glaciers and we're currently losing about 152 cubic kilometer per year of ice and water off the Antarctic continent. So once again, the ice shelves melt, we have a significant contribution to sea level rise from the ice sheets as they melt and contribute water to the oceans.

Green lands is covered by a massive ice sheet. And you can see between 1992 and 2002, the colored area represents the area of seasonal melt. The seasonal melt area has significantly expanded. So based on this imagine and the last image I just showed you, it's clearer that these ice sheet are going to be having a significant contribution to sea level rise. Keep in mind, this significant contribution has not been taken into consideration in the IPCC's report.

What are some of the other effects that we will feel from accelerating sea level rise? Sea level rise has almost doubled in the last 10 years. Just within the last 10 years, it's gone from about 1 ½ millimeters a year to three millimeters a year. That's a pretty short period of time to have such a significant increase because prior to that time, it was relatively



constant. It was accelerating but very gradually. It is likely we will see a one meter rise or three foot rise by the year 2100.

Some of the effect is that coastal erosion will get much worse. The water table will rise. Water table rising has got a number of implications, one of which is aquifer contamination. As sea level rises you'll have increasing amounts of salt water that will intrude in the fresh water aquifer such as Lao Aquifer. Rising water tables will cause new wetlands to form. So areas that are low line that may occasionally get water retention now will potentially turn into new wetlands. We have to expect that coastal lands will become submerged. That's just a natural part of sea level rising. Storm drains will back out. So whereas, right now, the water flows underground, off the roads into storm drains and out to sea, the ocean will start to back flood the storm drains, and when we get heavy rain fall, the water will have no where to go.

Drainage infrastructure will stop working in low line areas. Now that includes sewage leech fields. So right now, leech fields are designed to leech the water that's been sometimes treated, into the ground. But if the ground water has risen to a point where the leech field or the under water drainage pipes are surrounded by water, clearly they're not going to function as they were designed to function.

What about our beaches? Well for every unit of vertical sea level rise that we get, we get between a 100 to 150 horizontal units of erosion. So if we had a three-foot rise in sea level, which may happen within the next 50 years, it might be the next 100 years, beaches will receive approximately 450 feet. That's a significant amount of retreat. And this is a number that is used world wide. It's kind of a scientific basis that's been shown every where. And actually, I've calculated how it works on Maui, and Maui's number is closer to about a 125 times based on existing data. So the question everybody wants to know, is how much is sea level is going to rise and how fast is it going to rise? Well a couple of results, the scientific publications that came out in the last year, a scientist named Ron (phonetics) concluded that a rise in sea level of 1 ½ to 4 ½ feet could happen by 2100 based on the relationship of historic atmospheric temperatures pre-industrial to sea levels. Another scientist by the name of (phonetic) predicted the possibility of a 20 foot rise by 2100, fueled by the melt from the green land and Antarctic ice sheets. (Phonetics) is one of the first to actually be able to model that in a relatively reliable way that other scientists are approving of. It was published in the Journal Science which means it underwent quite bit of peer review.

James Hansen who's a NASI climatologist has said that if we get two to three degree Celsius of warming, we will start to see sea level rise on the order of three feet every 20 years. Now the IPCC report which is so far very accurately predicted global warming, while sea level rise is a bit of a challenge, global warming has been more easy to predict. They predicted that we could have between 1 ½ and about 5 ½ degree Celsius of warming this

century.

What would one meter sea level rise look like for Maui? This will be a little bit hard to see especially if anybody is color blind. The red areas are the areas that could potentially become inundated under one meter of sea level rise. Just for those of you who can't see, the hardest two areas look like probably Kahului, Spreckelsville, North Kihei, Maalaea, Ukumehame, Oluwalu, Lahaina, Kaanapali. For the most part, East Maui will be relatively much less affected. There's very much less low line areas in East Maui. Let's take a closer look at Kahului. Here's the Hana Highway, Haleakala Highway coming down here, joining up – this is Dairy Road here – here's K-Mart. Now, granted this map doesn't have a high degree of accuracy because it was based on US Geological Survey Digital elevation models. What we need to do, and this another of the scientific tools that I was referring to that scientists can make, is create some high accuracy inundation maps that we can see exactly which areas are going to be threatened by erosion based on – sorry, by sea level rise inundation – based on the various scenarios of sea level rise that are being presented to us. So this one meter sea level rise based on this rough map, you can see that there's some pretty critical infrastructure that might face some problems. For instance, Kahului Wastewater Treatment Facility which is right here, the power plant is here, the harbor is here, and all this area is industrial, commercial areas. So, let's hope that this map is inaccurate. But, we're working right now on processing the LYDAR data, or hopefully processing the LYDAR data that we then use to create high accuracy inundation maps.

With one meter sea level rise, we're going to lose a lot of our beaches. Now this is an interesting one, I don't know how many of you have been aware of this but Mapunapuna on Oahu is one mile inland. Okay, it's not right next to the ocean. This water that's here is salt water, and there's ocean fishes swimming in it. How did the water get here, this far in land? It moves up the storm drains. Particularly when there's heavy rain fall, they have a lot of problems there, because the storm drains are completely back up and the water has no where to go. But even sometimes under beautiful sunny clear sky, no rainfall, but we just have an unusually high tide, Mapunapuna gets back up with salt water from the ocean. We're going to start seeing this too. We'll probably start – one of the first place we might see it is Kihei and Kahului, right there at Kaahumanu Avenue.

Okay, so what questions should be asking? This is one of my last slides. The first question that we should be asking is should sea level rise be considered when citing and engineering coastal development? Well I'm going to leave that up to you. Should major infrastructure, such as for instance Kahului Wastewater Treatment Facility, be relocated and re-engineered – and/or re-engineered? How will changes in runoff in drainage effect Maui? What are we going to do about those situations where we start seeing low line areas standing ponding water? How are we going to manage that? How will rising sea level effect ground water resources? Is this something that's going to even further complicate our water issues that we already have? And how will Maui manage it's beaches? Right

now, obviously, our economy is very dependent on having healthy beaches for our tourist. So with the type of erosion that we're going to be seeing, it's going to be really important to allow the beaches to have room to recede. They need room to migrate mauka. They need room to erode in order for them to be able to stay healthy. Unless we plan on spending millions and millions of dollars on beach replenishment which is just not practical in every single location.

So to finish off, I'd just like to state that we cannot realistically stop the advancing notions and keep shorelines where they're located today. Shorelines are going to migrate mauka. One of my students at Baldwin, yesterday, said well "what if we just build a big wall around Maui?" Well that might hold back the ocean waves, but we're still going to see problems with ground water, seeping underneath and coming up and flooding low line areas. So as the water table rises, there's nothing any wall can do to hold back the flooding that's going to take place. We need to expect and plan for the loss of low line coastal lands. And in case anybody is interested also, I've recently co-authored a document entitled *Purchasing Coastal Real Estate in Hawaii*. It's free and it has a lot of really great information on general coastal processes. I'll leave the stack over here, in case you'd like one, pick one up. Mahalo, and I believe Francis is next.

Mr. Abbott: Can I recommend we take a break until we set up for the next?

Ms. Amarin: Okay.

Mr. Abbott: Only five minutes though.

Ms. Amarin: We'll have an intermission. Thank you.

*(The Maui Planning Commission recessed at 11:39 a.m., and reconvened at approximately 11:48 a.m.)*

Mr. Francis Cerizo: Good morning Commission Chair and Commissioners. My name is Francis Cerizo. I work with the Zoning Enforcement Division of the Planning Department, and I'm doing the presentation on flood hazard districts. Commissioners, in 2005, we had the Katrina Hurricane. Can you remember those news casts where we had massive destruction of property, but more importantly, destroying of many of the lives of people that lived there? It was considered the New Orleans flood of 2005. A \$100 billion of damages so far, and nearly 150,000 properties either totally damaged or destroyed. A little closer at home, in 1992, we had the Iniki Hurricane on Kauai. That caused \$2.8 billion of damages, and nearly 90% of the properties or houses or structures on that property was damaged. In numbers, nearly 14,000 properties was either damaged or destroyed.

Today's presentation is the County's mitigative actions that we will – that we are part-taking

in to build a more flood resistant community. And I'll be going through our ordinance, the flood hazard district ordinance, and the flood maps and the standards that we use, and the regulation of that area, our participation in the community rating system, and finally what is your role in developing a more flood resistant community?

Our ordinance was adopted in 1981. It's purpose, to protect life and property, and also reduction in public cost or flood control, recuse and relief efforts. In the early 60's and 70's, the United States experienced a lot of flood damages. Whole communities would be destroyed, the Federal government would come in, help restore, rebuild, but many of the efforts were built in despair or what happened was that they would rebuild it in the same place, 10 years later, totally destroyed again, or even sooner. So, the National Flood Insurance Program was created where if we're going to give money out to rebuild, we're going to build it in a way we can protect life and property and also reduce costs by having new regulations to control development in the flood zones.

There's two types of flood zones we have on the Island. One is the a-zone which is riverine flooding, and that's what we see here is Iao Stream which is just 1/2 mile down the road. And along the coast, we have coastal flooding, which is the v-zone. The flood way section is the section where it encompasses the entire 100-year flood inundation limits. So that's where, when we have a stream, it floods not only the stream itself, but the banks. So, there's a certain amount of encroachment that's allowed in this flood plain area where the impact is minimal. And when you take out that area where you can fill, you have the flood way. So flood ways in the Iao Stream as you can see, the major flow will occur in the stream itself, and then there's some areas where it's allowed to fill, it will have a minimal impact on the flood inundation limits for the 100-year flood.

Many times, there will be development requests in the flood zone. And in the past, they have allowed certain developments in the flood plain where you would fill in the banks after improving the stream. They would improve the stream area to have the capacity to pass the entire flood safely, thereby opening up the area that's adjacent to the flood stream, the flooded stream, for development. This is done through a conditional letter of map revision, and once the development is completed, a final letter of map revision is issued. And that's what we have done here, in a low mar.

Flood zones is riverine flooding caused by rainwater falling on the slopes of Maui and being channelized down streams in some areas, after being channelized for some time, it opens up – like Kihei – and it just floods out Kihei. The development standards in that area is basically to elevate the structures to the base point elevations, design the structures to withstand the forces of the stream flows, and also protect utilities. One of the other impacts that we have besides ... (inaudible)... I'm sure many of us, or many of you have experienced some kind of delay in getting or commuting to Lahaina or Kihei when there's a fire or an accident. This can also happen in cases of severe flooding. It happened near

Ukumehame one year where the road was totally washed away, as in the left, and it isolated West Maui for some time.

The other flooding is due to coastal flooding. We have experienced in the last few weeks that the tsunami's in Indonesia and a few years ago in the Indian Ocean. Coastal flooding is caused by tsunamis, one type of generator. The other type is hurricanes, or even some other conditions, like on the right side, it was more to climatic conditions where we had a storm system coming in, and unusual high tide, and the photo on the right is Suda Store. You can see the sky is clear, storm is not here yet, but it's flooded to almost to the store level.

Coastal flooding stand is very similar to riverine stand, but it's just a higher grade. We – on the left side is the v-zone or the coastal flooding, and the right side is the riverine type of flooding. The other type of flooding that it also, on the a-zone side, is the tsunami run up where the velocity is not as high. So the difference between the two is that on the right side riverine or coastal run up, you would build the building up to the top of the floor. Your elevation would have to meet that elevation, your flood proofing elevation. In v-zones, you go down the lowest horizontal cross member. One of the other condition that you need to do in the v-zone is to account for those flood portions due to drag. I'm not sure if you remembered the great tsunami that hit Hilo, but it was not the water that came in that did most of the damage. It was the receding water that dragged out houses and cars, and ripped out the telephone poles. And that, you could remember seeing that in the Indian tsunami.

One of the programs that we have is the community rating system. This system is a program that was initiated by the National Flood Insurance Program. In addition to the standard flood requirements, the County has opted to require higher regulatory standards, and what it does is it's similar to the fire rating system. If you do more to protect your buildings, protect your structures, they give you a certain rating, a fire rating. This is called a community rating system, a flood rating, whereby, it reduces flood premiums. Right now, we're at a class eight. We're looking at class seven. If we accomplish the class seven, we'll be saving nearly a half a \$1 million per year for all the flood premium owners in the County.

So we know we're going to be flooded. Every few years, we get hit. The tsunamis, the hurricanes, it's just a matter of time. Right now FEMA is developing a new study on the impact of hurricanes on our flood plains. So, what is your role in developing a new, well, a better flood resisting community? One of them is the regulation or the designation, as you review the community plans, as you look at re-zoning, this area that we look upon as open space. Basically, it says there, it's inappropriate for development, and these areas are flood plains, tsunami areas, drainage areas. So, when we look at the community plans, there will be many areas that should be designated, and that is something that you'll be

looking at. If the area is flooded, if we have 20 feet of water coming through, if the tsunamis is two stories high, those areas should be considered as open space. It's inappropriate, and some areas, there's existing houses and existing properties, but in other areas where it's all open space, or there's no development, those areas should be considered in your review for the community plan, the General Plan. Those areas that are going to be designated open space.

Sometimes we have zoning changes from open space to something else. So when we do that, we should take a look at that again. You know, do we want the development to be where it's going to be subject to flooding? And so those are some of the things that you need to look at in your reviews of these projects that will be in the open space or in the open space. We had a, in our community plan, on the left side, we had an area that's open space. On the upper right, this is due to coastal flooding. This area here was due to riverine flooding. And we can see that, that area there is an open space and that's something that should be in the areas where you have these types of features.

The other area is the SMA area. This is a map of the SMA areas on the Island of Maui. And the SMA Rules requires us to evaluate the effects whenever we are in the flood plain, in the tsunami areas or any flood prone areas, shoreline areas also. So what kind of questions do you, when there's a project in this area, what kind of questions do you ask? Or what should we be providing, as a staff? Or what should the developers provide? They should be looking at the impacts. What impacts does it have? There's times when a development comes in and the development pressure is great because people want to live in Kihei. So right now a lot the areas that are in the flood plains, and some times when you get into an area where there's streams, you know, if they're filled in houses, they're filled in with fill, what are the impacts? One of the ways of finding out the impacts is actually going through – we go through a conditional letter map of revision. We look at the impacts on the flood map, and that's usually required whenever you work in the flood zone. But sometimes, projects are outside of the flood map limits and that's something that we should, as staff and also as Commissioners, look at those impacts. So, this is an example of a house that was built up to the current flood standards. It was one of the more recent houses that was built in 1995. This is in the Pensacola, Florida. And as you noticed, this was the only house standing in this whole mile stretch of beach. So if you build all houses like this, we have a chance. So that ends my presentation. Is there any questions? Seeing none, thank you very much. James is our next presenter. Thank you.

Mr. James Giroux: That's a hard act to follow, Francis. Hi, I'm James Giroux. I'm with Corporation Counsel. I passed out three pamphlets. Basically, if you look at your agenda, I'm going to be trying to cover items #2, 3, 4, 5, 6 and 7, and 16, 17 and 18. The – one of your packets is "Information Packet for New Board and Commission Members," and that basically takes up agenda item #4. That will include a lot of information that is also included in the other packet, which is "Orientation for Board Members and Commission

Members.” And this packet is mostly full of good advice on ethics that I will also touch on in my presentation. And the last one, the big thick one, is your “Open Meetings and a Guide to the Sunshine Law,” and that’s going to be talking about our open meetings and our sunshine law.

So, most of you have heard me already kind of give dissertations on various aspects of this, but I just want to highlight this for the new members. As far as what we’re looking at when we use these terms, the sunshine law is coming from Hawaii Rules of Revised Statutes, or what we call the HRS, Chapter 92. And basically the premise behind that, or the policy, is that we want, or the State Legislature, wants the government to be as open as possible. And what that means is that when we have our meetings that the community is fully aware of what we’re going to talk about, and what kind of decisions that we might make. So, every time we have a meeting, the public is always welcome. They’re notified by what’s going to be on our agendas by us publishing our agendas.

The sunshine law is fully incorporated into your rules of the Planning Commission. Within your rules, it tells us that we will be following the sunshine law, and the State law requires it. One of the caviat that I want to just make clear about the sunshine is that when you’re a member of a Board or Commission, such as this, is that you cannot meet in private with two or more members to talk about board business. And so to break it down even simpler, if you’re going to be meeting with another board member that that’s okay. You can talk stories, but you cannot be talking about board business. You cannot be trying to encourage a position or talking about making a vote or anything like that. That’s one thing that, you know, that can get people into trouble, is that, you know, trying to circumvent the spirit of open discussion about board business. And as far as one of the things I have to let you know is that if you violate, you knowingly violate the sunshine law, one of the consequences is that, one of the decisions that are made, if it’s found out that it was made in private or at secret meeting or something like that, is that decision could be made voidable. Somebody could challenge that decision made in open because there was a decision made in private and that decision that you make could be voidable. The other thing is that a knowing violation could also end up in a misdemeanor. It would be, you know, pursued by the Attorney General. So that’s just the caviat that I have to say while I got your guys attention.

I encourage you reading this packet because it really breaks it down into simple forms, simple questions about what is a meeting? What’s the extent of the exceptions? The narrow exceptions to the sunshine law and such. I think most of the board members have experienced thus going into an executive session, basically when somebody, well, when you have to talk to your attorney about your powers, duties, and liabilities, your rules state that basically, I got to let the Chair know that I think it’s probably something that we should do. She’ll give it to you as a vote, and if 2/3 of you vote to go into executive session, then we can go into executive session as long as it’s on the record it states exactly the purpose

of it. And while we're in executive session, we need to stay on point because if you stray then if somebody later challenges it, whatever we say in that executive session could be made public later. So it's very important that when we do go into executive session that you know exactly what we're talking about and that we stay on topic. And I'm going to encourage this body not to vote while we're in executive session. We'll discuss and then we can go back onto the record, and if we need to take some kind of action that it's on the record.

As far as any other exceptions, I think, the other one is that, well it's not an exception, but when we go on field trips or site visits that, that is also considered. It has to follow all of the rules of an agendaed meeting, and all the rules that are contained in HRS 92.

The other thing I want to touch on are your powers and duties. Basically, we've got the Maui Planning Commission Rules and we've got the Maui SMA Rules. I want to touch on the Maui Planning Commission Rules. As far as making it clear that within our rules that we have rules concerning quorum. You're a nine member body, so under 12-201-15, it says, "a majority of all members to which the Commission is entitled shall constitute a quorum to transact business in the concurrence of a majority of all members to which the Commission is entitled shall be necessary to take any action." So if only five of you show up, we can start the meeting. But if we're going to take action, if only four people vote in the affirmative, that means there's no action. And that item will most likely be just deferred to the next meeting, unless there's other motions subsequent to the motion that fails. That's just one important matter that I want to bring up because there's often confusion regarding, you know, do we have quorum, and then did we take action.

And another important section is in voting, and I'll just read that. It says, "all members shall, all matters shall be determined by an affirmative vote, of the majority of all the members to which the Commission is entitled. Whenever the Commission is ready to vote on any question, the Chairperson shall state the question, put the question to a vote, and announce the results to the Commission. The clerk shall call the roll, the roll call vote is taken. Unless a present member is disqualified from voting, pursuant to Section 12-201-25 herein, their silence or refusal to vote shall be recorded as an affirmative vote." Section 12-201-25 is basically our conflict section, and that's what I'm going to go into next. It's about our ethics and conflicts.

Within this packet, we have a clear discussion about ethics. You are governed by our Charter, Article 10, which basically sets out our ethics code that we, as a board, must follow. And basically, I just want to highlight possible conflicts regarding business transactions, activities, financial interests and projects. According to the rules, if you see one of those projects come up, you have to let us know right away. And you have to stay out of the vote – don't vote. Also, a caviat is about receiving gifts. You cannot receive any gifts where it's going to be reasonably inferred that the gift is meant to influence your vote.



So that's a caution. And the last thing is that there's a – you have to – this board because of the matters that we review, you have to file a disclosure statement. Okay? If there's any questions that come up regarding, you know, possible conflicts, possible financial interests –. If the question even arises, you can call me, and I can discuss it with you further. If talking to me, it doesn't clear up anything, you can do formal request to the Board of Ethics, and they will give you a formal opinion on whether or not you should vote or not when the matter comes up.

There's a few cases that come up a lot – Supreme Court Cases – dealing with Constitutional law. One of the, basically, one of the phrases you'll hear is "takings," because we're dealing with a lot of regulations and things like that. Basically, it's a really complicated area but if you break it down to – if the government is actually going to take property or if it's going to regulate property so much that the owner would feel that they're using all use, reasonable use. Or if you're actually taking something from them like an exaction, you know, you're asking them for money or another piece of land, or something like that. And basically we have two seminal cases, and we call it the Noland-Doland test. Basically if you're getting into the area where you're asking for things from the developer that there's got to be a rationale nexus that basically is connected to a legitimate government interest. And that the development impacts such that you want the developer to mitigate that impact, but that mitigation has to – there's got to be a proportionality. Meaning that, there's got to be, not only a connection, the development will do this. It will, you know, cause this detriment, but that detriment, if you're going to ask for the developer to mitigate it, has to be proportionate to that project. So that project only pays for its fair share of the detriment that it causes. You know we call it the proportionality test, things like that.

Lately we have been seeing that the Council has been picking up the ball and helping you guys out by trying to take the guess work out of this because they're trying to pass the traffic impact fee, to pass the housing ordinance. And I know, there's been a lot of frustration because a lot of these impact affects State processings and, you know, we don't see the State picking up the ball too readily. But, you know, you'll hear in the future about these types of things about, you know, what kind of analysis you have to do in order to keep out of, you know, the courts.

Another couple of cases coming out of Special Management Area law, we have, what we're calling the PASH case, the Public Access to Shoreline. And that case basically it makes it an affirmative duty of this body to protect native Hawaiian, traditional Native Hawaiian rights, as far as when you're reviewing a project, you have to take that into consideration, and you cannot leave the mitigation to the developer. If you see that it is impinging, you have to construct a condition that will preserve those rights.

The topliss case, you guys heard my dissertation the other week on that. That's the case

where there was the traffic and the Planning Commission basically denied the SMA permit because of the traffic conditions. And what the Supreme Court said was, "well, what you first need to do is you need to look to see – if you're going to say it's the traffic, you've got to look to see if there's an ecological effect." And then you've got to frame a type of mitigation. And if doing that, you cannot avoid the harm, then you can look at possibly looking at denying the permit. But without doing that processes, they're going to look at that decision as being arbitrary. Okay? That's the highlight in a nut shell and I guess when the time comes, I'll give further dissertation, but I just wanted to give you guys the tools. And you can always ask me questions off the record if you just want to chat about these. I mean, we've got the sunshine law, we've got the ethics, and we've got different case law that comes down that affects the decisions that you have to make.

One more thing that with a lot of decisions that you make, it's under Chapter 91, what's called our Contested Case Procedures. And as a body you're called upon to be in a quasi judiciary role and so what that means is that the courts also expect you to also follow that code of conduct of impartiality. And staying away from any inference or appearance of impropriety. So we just encourage you to put on your black robes and remind yourselves that, you know, although you are private citizens, you are being given a responsibility and a duty to be impartial and to be thorough fact finders.

Mr. Jonathan Starr: I have a rather pertinent question, if I may?

Mr. Giroux: Yes.

Mr. Starr: Is it, and I believe you said it is, is it wrong for one Commission member in private to approach another Commission member and ask them to vote a certain way on something that's going to come before the Commission?

Mr. Giroux: Yeah, you cannot be fishing for votes in that sense. The sunshine law discourages that type of communication amongst Board Members. You can call a Board Member up and say, "hey, were we suppose to meet a 6:00 at the so-and-so?" You know, "Where's the meeting going to be?" Or, you know, those types of questions. There's not a total ban on communication. It's just that you can't be discussing the board business in such a way that you're making a position before finding all the facts.

Mr. Starr: I would like to disclosure then that week the new Chair called me on the telephone, and said that she wanted to be Chair and asked me to vote for her, and said that the previous Chair didn't want it, and asked me to vote, to commit to vote for her. And I said I would take it into consideration, but I would like to.

Mr. Giroux: Well, that's one of the exceptions, is structurally within the, as far as picking members that, that is allowable.

Mr. Starr: I still didn't think it was right. Thank you.

Mr. Giroux: Actually, I think it is in your packet.

Mr. Hiranaga: Can you clarify on page #14, what are the types of permitted interactions allowed by the Statutes. Under the category two members.

Mr. Giroux: Okay, it says "two members may discuss board business outside of a meeting as long as no commitment to vote is made or sought. Never the less, it would be contrary to the sunshine law for a board member to discuss the same board business with more than one other member through a series of one-on-one meetings." I think I discussed the first part.

Mr. Hiranaga: You said that two members could discuss, but it's actually three or more members.

Mr. Giroux: There's an absolute with the three or more, but with just two, you cannot seek a vote. And again, we just talked about an exception is that, when you're looking at structural, picking officers and stuff things like that. So the second half is the absolute that you cannot have – if you have three, absolutely do not talk about board business whatsoever. If you have two, they're saying, sure you can discuss it, but you cannot be seeking a vote or commitment.

Mr. Hiranaga: Okay, thank you.

Mr. William Iaconetti: Jim, may I?

Ms. Amorin: Yes, go ahead.

Mr. Iaconetti: There's frequently a question when a developer wants to develop something and it is going to cause a problem, but it isn't fair to put all of the blame for something on that one developer, that developers before that, before his development, created part of the problem, so you can't put the blame the developer that is now asking for an okay. Now I can be a little more specific if you will. Most recently --

Mr. Giroux: I don't know if we want to get into specific cases because we haven't agendaed the cases and if we start talking about that case and it brings up legal issues that might arise in the future. We want to avoid that type.

Mr. Iaconetti: All right. Without being specific then, the frequent reason for denying a development is because you can't put the entire problem on the person now asking for development, for a development. Traffic is a frequent contributor to this, and previous

developments have lend, have caused problems with traffic, but when you come to a specific development, you can't deny a development because you can't expect that developer to take the entire blame for increasing the traffic when all of those developments prior to that have lend, have given their problems to the traffic. So this has always bothered me and I don't understand how you can stop this.

Ms. Amarin: Excuse me. Thank you for comments Commissioner Iaconetti, but it was just brought to my attention that we need keep on our schedule only because at 1:00, we're going to have public testimony and then we can follow up with concerns regarding the workshop. That means we have a short lunch.

Mr. Iaconetti: That means we were not expected to ask questions after all of this?

Ms. Amarin: No the questions can be asked, but then after public testimony that takes place at 1:00 p.m.. And all the questions can be asked.

Mr. Iaconetti: Public testimony on what has been presented all morning?

Ms. Amarin: No this was a workshop, orientation workshop, that has taken place. But public testimony will take place regarding the rest of our agenda. We do have a project.

Mr. Iaconetti: This is not any specific thing on the agenda. I'm asking a question of our attorney on things he has mentioned in his presentation.

Ms. Amarin: Okay, I'll let him answer your question.

Mr. Iaconetti: Thank you.

Ms. Amarin: You're welcome.

Ms. Colleen Suyama: Maybe I can clarify. It's not public testimony. Because we had anticipated that the workshop would have ended around 12:00. We have scheduled a public hearing, which is an advertised hearing for 1:00 p.m., so the Commission needs to be back by 1:00 p.m. to deal with that matter that was scheduled at 1:00 p.m., and as well as any public testimony maybe resulting from that matter. And then, go back to the agenda.

Mr. Iaconetti: Well, unfortunately, then, none of us were allowed to ask question of any of the presenters. Now, we're saying we can't do it because we have a –

Ms. Suyama: There's another alternative. You can open up the hearing at 1:00 p.m., recess it until you continue your workshop and then reconvene the public hearing at that

time after the workshop. That's another option that the Commission has.

Ms. Amarin: Commission what's your pleasure. Jeff, not unless you want to give him a good answer. Go ahead.

Mr. Giroux: You said Jeff.

Ms. Amarin: James.

Mr. Giroux: No, you know, yeah, you have to look at the systemic problem, and I think one of the – well, one of the many challenges that the Board has is that when it's looking at projects, it's looking at it in different stages of the development. You have, you know, through your presentation, you had examples of zoning, zoning changes, you've had projects that come through for community plan changes, you've had projects that come through special use permit, conditional permits, and then you have your SMA permits. And each one of those has its own unique things that you have to look at. And I think Doctor, your frustration is that when you're seeing cases or you're seeing applications coming in, at the SMA level, you're looking at a project that has – it's necessary that it has consistency, which means that it has gotten its State Land Use, you know, designation, it's gotten its zoning, and it's gotten its community plan designation. So the government entities should be planning around that, and then when it's coming to you, when you're, look at is that the SMA level, where looking at 205A criteria and trying to find whether that project, as planned, is going to have an ecological effect on the shoreline and that's where the difficulty in the analysis is. So the Supreme Courts didn't say that traffic is not an issue, it just said that you need to do the analysis as far as what is it about that traffic that is causing some type of ecological effect. When you're having the development actually moving further and further away from the shoreline area, I think that's where we're having more and more difficulties because you're looking at it systemic. You know, you're looking at a project at the end of the road, and then you're looking down the road and seeing, you know, further effects. But you're also seeing 100's of other developments in between that project and the other one. So, I mean, I see your frustration, but all I can tell you is that you have do the analysis and if the developer is not giving you the information you want, then ask for it.

Ms. Amarin: Dr. Iaconetti, are you satisfied with the answer?

Mr. Iaconetti: No, but that's all right.

Ms. Amarin: Okay. Thank you. At this time, we will conclude our orientation workshop. Planning Department and all representatives, thank you very much for the update and the knowledge that we have learned today. So we will be breaking for lunch, and we, Commission, we need to be back at 1:00 p.m. We have a short lunch. Thank you.

*(The Maui Planning Commission recessed at 12:30 p.m., and reconvened at approximately 1:03 p.m.)*

Ms. Amorin: Meeting is back in session. Today is Tuesday, April 10, 2007. We had left off to take a break for lunch and we had just concluded with our orientation workshop with the Planning Department and other representatives. But at this time, I will open it up for questions, and to the 1:00 p.m. project that's on our agenda, that will be recessed until we conclude this questions and answers to this morning's workshop orientation. I thank you very much. For the Commissioners, any questions regarding any of the subjects that had presented themselves this morning? Commissioner Iaconetti.

Mr. Iaconetti: I realized I've asked this question before, but I'm still not satisfied with the answer that I've gotten in the past. One of the triggers that generates the EIS is shoreline material. I have a hard time understanding why this Commission had nothing to say about the Super Ferry development since it's obviously shoreline, it's obviously has impact and yet we had nothing to say about it. Was it ever brought up here? And I would like to understand, if I could, why that is?

Ms. Amorin: Colleen you have any answers to Dr. Iaconetti's question?

Ms. Colleen Suyama: My understanding is that the Super Ferry because it's using a harbor facility and there are no improvements in terms of – it's going to be under the jurisdiction of the Planning Commission, that a trigger for an EIS is determined by the Department of Transportation. And they determined that an EIS was not required for the Super Ferry. There is a provision in terms of the Coastal Zone Management Law that makes an exclusion for harbor facilities, and the harbor facilities are under the jurisdiction of the State of Hawaii, Office of Planning. So when it comes to the Coastal Zone Management Law, a program, the Office of Planning is the one that makes the determination whether there is sufficient information or impacts that would require them to go to a review process. But it's done all at the State level. It does not come to the County. We've had this situation, in numerous situations, where harbor facilities – you know, sometimes, the Harbors Division comes in and they decide, okay, I want to go to the County, get an SMA permit. When there's opposition to what they want to do, then they retreat. They take their permits back and say that we have this exclusion in the State Law. And that's happened with Maalaea when they wanted to expand Maalaea Harbor. And because of that, the County really has no jurisdiction as whether an EIS is required or an SMA permit is required.

Mr. Iaconetti: Even though the impact on the environment of the County is obvious.

Ms. Suyama: That's correct because we have no jurisdiction over it. It's all strictly with the State of Hawaii. And that's why, I believe, the County of Maui, when the EIS issues, you know we got sued, DOT got sued about not filing an EIS statement, and I think the County

started to enter into that suit also. I'm not sure what the status is of that.

Ms. Amorin: Thank you. Any other questions? Commissioner Starr.

Mr. Jonathan Starr: Yes, I've actually got a number of questions here, and I'll start at the beginning – actually it will be kind of chronological on how it was presented to us. The first one is regarding the PD 1 and 2, and PH 1 and 2, the step approvals in a Planned Development and a Project District. And I want to have a better understanding of what the Step 1 and Step 2 are, and why they're obviously separate items, and why the Department feels that this body, when reviewing them, should handle them simultaneously as a package where it seems that we're suppose to be holding separate hearings on the two.

Ms. Cua: I can respond to that even though I didn't present that this time. Let's look at Project District, first of all, a three-step process. As mentioned, the first step is the ordinance, the creation of the ordinance. You make a recommendation. It goes to the County Council. The Phase 2 process, or Step 2 process, is the preliminary site plan where you're looking at conformance to the zoning ordinance. And then Step 3 is basically the review of the construction plans.

As you know the County, for years now, has encouraged combined processing of Land Use applications provided that you meet the required submittals. And that's why you see applications for Community Plan Amendment, Change in Zoning, Project District Phase 1. You don't see too often where people at that same time would file the SMA permit. A lot of times, they may file that later. But we encourage concurrent processing because there's public hearings required for each application, but there is no reason to hold them all separately. The facts are the same. The applications are the same. Appropriate analysis is done for each permit in the application.

In the Planned Development process, again, separate process by Code, and on that, there is no public hearing, per say. But, we do bring the applications to the Planning Commission. We have allowed concurrent processing of the Phase 1 – a Step 1 and 2 applications – and then we bring the Step 3 back to you, and that's basically again the construction drawings.

Mr. Starr: Is this concurrent processing – is this kind of a national recommended trend? Because one other way of looking at it is that the public is getting short changed in terms of oversight.

Ms. Cua: I don't know if it's a national trend. I know it does occur in other jurisdictions. Again, in terms of stream lining the whole permit process, that's what the County has done for years.

Mr. Starr: Interim zoning where – are there – what are the areas that are still interim zoned? And is it a natural process for them all to be comprehensive? Get comprehensive zoning – it just hasn't happen yet or is there a reason for interim to be a final resting place for some of these areas?

Ms. Cua: It was never intended for interim to be final resting place. From its inception, it was always intended for comprehensive zoning to occur, and that is still the intent, and we're working towards that. It just hasn't happened. There are interim zoning in upcountry. Pretty much, in a large part of the Island – upcountry – I believe in Kihei area – Hana – interim zoning exists in a number of areas. But the intent is for it to be replaced with comprehensive zoning.

Mr. Starr: Where does it exists then? And what kind of land use areas?

Ms. Suyama: It exists County wide. Interim zoning district exists County wide. We have zoning maps only for particular areas of the County. So anything that's outside of those zoning areas are generally in the interim zoning, except for agriculture and rural. Because when the agricultural and rural district ordinances were adopted, it basically gave a blanket zoning to ag and rural. But all your conservation districts is in the interim zone. There's a lot urban areas in like our rural community, like Hana, Upcountry, Makawao, Kula, that are still in the interim district. There were several efforts that the Department had tried to get rid of interim zoning. We started with Hana, Paia, Haiku, Kula, Upcountry. What happened in that effort is that once the plans, the maps, went up to the Council, the Council determined that "no, we don't want to comprehensively zone everything." So there were pockets of zonings that were done. So there are some zoning maps. We took care of some of the situation, but there's still interim zoning districts within the County.

Mr. Starr: Is there like a separate set of rules for interim, like there is for rural?

Ms. Cua: Yes.

Ms. Suyama: There is. There is a separate section of Title 19 that talks particularly about interim zoning district. What is allowed? What the standards are? And the variance procedures that applies to the interim district.

Ms. Cua: And if I could just add to that, real briefly, if you try and go for a subdivision on interim zoned land, you are required to obtain a change in zoning. So, you do see some of these applications that come before you for Change in Zoning, from interim to, you know, whatever. And a lot of those is a result of, you know, people trying to get a subdivision because you're not able to get that unless you have consistency with zoning and community plan.



Mr. Starr: Next question – it is okay if I finish these Madame Chair? I have two more.

Ms. Amarin: Commissioners, do you have questions? Other Commissioners? Go ahead.

Mr. Starr: The GPAC. I was surprised, today, to find that it was running on two separate tracks, and I just want some clarification that we're going to see kind of the general wording coming up in about in May. And we'll see the rest and we'll have hearings and act on that and pass it on. And then, the other part of it will come several months later, and there won't be any time, we're looking at both of them together, or that the Council will be looking at them both as one unit. Is that correct?

Ms. Cua: I'll have to have Simone answer that question. I'm not very familiar with, you know, the General Plan process and stuff. Simone.

Ms. Bosco: Looks like I stepped in right at the right time. What can I do for you?

Mr. Starr: The GPAC process.

Ms. Bosco: Yes.

Mr. Starr: I was surprised, today, to learn that it seems to be running on two tracks. And I just want some clarification that we – what I think I heard is that we'll see kind of the general wording in May. And then we're going to have hearings and act on that. And then, several months later, we'll get the actual meat and potatoes – the maps and the actually areas and stuff – and we'll act on that separately. But at no point, we'll actually have the whole thing as one entity, and the same with the Council.

Ms. Bosco: Okay. Good question. Let me clarify. In May and this summer, we're going to be giving the Commission workshops on the entire process that you'll need to go through for the entire General Plan. Following the workshops, the very first document that you'll be reviewing will be the Countywide Policy Plan. That does not have maps. That is a very broad policy document, which sets the frame work for the Island Plans and the Community Plans. Following the review of the Countywide Policy Plan, you'll be transmitting your recommendations up to Council. Okay? Then, there will be a second phase, and that will be for the Maui Island Plan. That's a separate document, and that's much later. Okay, that's some time next year. All right? After you review the Maui Island Plan and submit your recommendations up to Council, we'll begin with the Community Plan updates for the six community plans of Maui.

Mr. Starr: And the general wording is an entire – is the same County wide. It's not different for Molokai –

Ms. Bosco: Countywide is for the entire County. It's a document that will apply to all of the Islands. Okay? And you'll have a chance to review it, as well as, Lana'i Planning Commission and Moloka'i Planning Commission. All of your comments will come together in a final report to the County Council – all of the Commission comments.

Mr. Starr: I'd like to request that Commissioners be given the meeting notices for the GPAC. I know, I for one, would like to occasionally sit in on one, so I try to get an update.

Ms. Bosco: Very good. Is that the wish of the Commission?

Ms. Amorin: Yes. Thank you.

Ms. Bosco: Okay. Very good.

Mr. Starr: Next question. I didn't – in the presentation there was no mention of the Minor SMA's, SUP's, CUP's. There was just that the Commissioners were responsible for SMA's, SUP's, and CUP's, but we don't – the only thing we see as far as the Minor's is a record that the Director is handling it. What's the basis for that?

Ms. Cua: Because that's what your rules provide. We did talk about County Special Use Permits. We did have a slide on that. We showed an example. I'm sorry. It was actually a church. You do review County Special Use Permit. It's a public hearing. We do a complete report, recommendation. On Minor action, SMA Minor permits, we provide you a list of what the Department had acted on, and you ask questions on those items. We bring back the answers to you. That's all provided for in your rules actually.

Mr. Starr: What's the definition between Major and Minor in our rules?

Ms. Cua: The threshold basically is \$125,000. But just because the project is \$125,000, it doesn't mean it's automatically a Minor Permit. If we determined that there are significant impacts, that can be bumped up to a Major Permit, even though it is less than \$125,000.

Mr. Starr: Okay. And could you clarify a bit more on EA exemptions? I know you mentioned what they are. What constitute them?

Ms. Cua: There's a list. I didn't provide the list, but in part of the whole environmental process, like we have triggers, like we had nine triggers we talked about. If you qualify as a trigger and you have to comply with this process, or you have to go through this process, one thing we look at is can this action be an exempted class of action. And there's a list of, I believe, 10 exemptions. And something like a single, new, small facility that maybe commercially, if it's limited to x-amount of square feet, you could be considered exempted. So we have to find clearly that the proposed action that we're reviewing falls under one of

those exempted classes of action. If it does, we can exempt it from the Chapter 343 process. If it does not, it goes through the process and prepares either an environmental assessment or an environmental impact statement.

Mr. Starr: Thank you Madame Chair.

Ms. Amorin: Commissioner Guard.

Mr. Guard: Thank you Chair. This one maybe for Thorne in discussing the SMA on the shoreline, and a few of these go under either SMA exemptions or minors because we haven't seen them come in front of us as much. On the North Shore, there's a lot of the neighborhoods have changed. And there use to be a lot of, on paper, the look like small walking easements, from the highway or from some of these cul-de-sacs to the ocean. And now a lot of them have been built out with newer and larger homes. And a lot of these old walkways have either been replaced with rock walls or heavy vegetation. So I don't know when they come in for an application to either demolish and rebuild a new home, who's in charge of trying to keep that lateral access, but not lateral, but access to the shoreline for the general public for properties who had it for generations?

Mr. Abbott: That would probably fall on my shoulders typically. When we review a permit, we look for things like lateral access and whether there's walls or hedges or other kinds of impediments, both the lateral access and a perpendicular access. Unfortunately, unless it was a dedicated trail and there was an easement at one time given to the County or it was somehow dedicated to the County in some fashion for the public, it's hard to enforce on a private landowner. Folks used to cross your backyard, and your Aunt Betty next door could always cross with the kids, but now somebody else moves in and doesn't want Aunt Betty crossing their property because she might fall, slip, have an accident and they get sued. However, historic access has actually do have some contraction on some occasions. And of course, there's also PASH access which James spoke about earlier, for customary and traditional purposes of gathering. Generally speaking, we try to encourage as much public access as possible, especially where it's historic access, and we try to limit any kind of impediments to that access.

Mr. Guard: So once it's gone, it's gone. Theoretically?

Mr. Abbott: Theoretically, once it's gone –

Mr. Guard: The permit is issued. Someone is living in the home. And there's a long stretches of shoreline that are fairly difficult walk along rocks, but there are little pockets of bays that are previously popular swimming areas that you can no longer get to.

Mr. Abbott: Lateral access is guaranteed. Perpendicular access may be different.

Mr. Guard: Well, it's still difficult – to bold or hop for a lot of people to carry a cooler down.

Mr. Abbott: I agree.

Ms. Amorin: Thank you.

Mr. Abbott: Other questions?

Ms. Amorin: Any more questions? Commissioner Hiranaga.

Mr. Kent Hiranaga: Actually this is more of a question for Corporation Counsel I believe. I remember reading in the paper about concerns of Council Members sitting in committee meetings that they were not members of, and that might be a violation of the Sunshine Law. Does Corporation Counsel have any concerns about Planning Commission Members sitting in on GPAC meetings, as an investigation?

Mr. Giroux: Well, GPAC meetings, they're open to the public, and, you know, it's not really a permit, per say. But, I can check with my supervisor and get back to you to see if that's something that they're concerned about. Because I know that Council Members have been attending the GPAC meetings. I would – I'd hate to see a double standard used for Commissioners.

Mr. Hiranaga: But wasn't there a question about Council Members sitting in on Committees – Council Committees meetings that they were not members of. Was that ever resolved?

Mr. Giroux: Yeah, OIP did find that that was concerning because – the split hairs – the Committees were of less than quorum, I believe. And so what it was is that when it was agendaed, it was agendaed as a Committee, not as a Council or Committee of the Whole. So it was misleading in that sense, I guess, to the public, that the whole – that more, I guess, Council Members would be there than would be on the agenda itself.

Mr. Hiranaga: So it would create a quorum even though they're not listed on the agenda? Their presence as Council Members created a quorum?

Mr. Giroux: I don't know if it created a quorum, but what it would do is it would be misleading to the public as to what was happening at that meeting.

Mr. Hiranaga: Okay. Thank you. If you could get back to us at your convenience.

Ms. Amorin: Commissioner U`u.

Mr. U`u: This might be for Thorne also, or Ann. Question – single-family homes, does it fall

under a Minor, irregardless of a price?

Mr. Abbott: No. No, Hawaii Coastal Zone Management Law, HRS 205A, allows that there are certain things that are defined as development and certain things that are not development. So, there's actually kind of a three tiered process. You come in with a single-family residence. It doesn't matter how expensive it is, whether it's under a \$125,000 or over \$125,000. A single-family residence meets the definition of not development. Therefore, it's exempted. So it's exempted from the rules. So we set it aside, and we say, "This is exempted. However, we're also going to take it to that second tier and check to see if there's any adverse environmental impacts." So we check things like archaeology, historic impacts, drainage, view plains, those kinds of things. If we find that there's no adverse environmental impact or that those impacts are mitigated – say that they're going to do excavations, but they have a monitoring plan by a professional archaeologist that mitigates any adverse impacts of me finding some cultural remnants – we'll bump them to the third tier. And that is, do you have any cumulative impacts from this single-family residence? And if you pass that third tier, then you're formally exempted, and that exemption is reported to you on your Commission reports.

Mr. U`u: I know some houses, you know, in the Kuau area, there's no view plains what-so-ever now. And I know we have some say in some of the hotels, and some of us do push hard for view plains, which is a right, I think, we have. But it seems that we have no control over the view plains over the single-family homes.

Mr. Abbott: You actually do have control in the sense that you are mandated to protect, preserve and where desirable and where possible restore views to the ocean, to and along the shoreline.

Mr. U`u: How is that possible? We don't have the plans to look at.

Mr. Abbott: That's something we do in-house, in the Planning Department, especially for shoreline properties. And the former administration was very strong on protecting a 40% view plain. The idea of being, as you drive down a public road, you should be able to have a little snitch of view of the ocean and then house – ocean, house – ocean, house – kind of like a picket fence. But that can't be done in every situation. There are other mitigating circumstances, like vegetation or tall trees. But it's something that we work with the proposer and the applicant to tweak their site plan, if you will, to come up with protecting views that are already there, or even expanding the views that might be there. At least protecting them to the extent possible. Unfortunately, that's a fairly subjective item. Now, what's a good view? What's a bad view? What's 60-40? So we are coming up with and proposing some new view plain analysis using some tools that some of the other State's jurisdictions have used and found very successful. We're looking at Alaska, and looking at Maine, and looking at some examples from California, to kind of take the subjectivity out

of it and make it more objective. So that those view plains would be considered in a very objective fashion, and reported to you, as well.

Mr. U`u: So there's no trigger to a – say you've got a house that's building for a full (phonetics) regardless if it's a single-family, there's no trigger that will bring it before us?

Mr. Abbott: No, the trigger would be if you had an adverse environmental impacts.

Mr. U`u: Well, we talked about view plains. I mean, that's adverse.

Mr. Abbott: Then it would be brought for you. There's several situations where it will be brought before you. First off, an adverse impact that could not be mitigated. Second, a cumulative impact that could not be mitigated. And third, if it was not consistent with its land use designation. So in any of those three cases, it would be brought to you. The other kinds of permits that can be brought to you is when the Director would say, "we believe this is an exempted activity," and the applicant may not agree with that, and he would contest it. He'll appeal the Director's decision. Or conversely, the Director says it's a Major, and the applicant says, "No, it should be an exemption," and then we start a contested case process. That eventually would come to this Commission to review the settlement agreement, presuming one was reached. Does that clarify Bruce?

Mr. U`u: Some what.

Mr. Abbott: Okay. You're not exempted until you meet all the criteria of showing you're a single family house without any adverse impacts and without any cumulative impacts. If you can pass those three tiers, then you're exempted. But you're not automatically exempted. You have to show you're exempted first.

Ms. Amorin: Commission Iaconetti.

Mr. Iaconetti: Is there an investigative and enforcement unit of the Planning Department?

Mr. Abbott: Yes. Zoning Administration and Enforcement Division, under Aaron Shinmoto.

Mr. Iaconetti: Is the only way that you investigate a building or proposed building is if someone actually called in and complained?

Mr. Abbott: Where compliance driven. So if someone posts an RFS either through the website or through a phone call or by letter, then the enforcement officers investigate and respond to that request for service – that is what RFS stands for – and it takes and initiates action from there. We also have when it's a permit that requires certain conditions. We have preliminary and final compliance reports that go along with that, and the enforcement

officers also check on those. So they may go out to an actual building site to see if you've complied all the conditions in your permit prior to issuing a Certificate of Occupancy. I'd also – I'm sure Colleen would have some comments as well to add, perhaps.

Ms. Suyama: Generally enforcement is by complaint driven, but there's also been instances where planners because they went out to a site inspection, they found non-compliance. We usually try to work with the applicant. But in certain cases where it's a long term, non-compliance to be solved, we have sent in the request for service to our enforcement division to follow up with enforcement.

Mr. Iaconetti: So the only way then that the Planning Department becomes involved is if, one, there's a complaint by someone, or, two, if no one complains and someone proceed to build, then there's no stopping them if they have not applied for and received the necessary permits. If you don't have an investigative unit that goes out, and it's only complaints that –

Ms. Suyama: It's generally complaint driven. But there has been instances if an inspector does see something that's obviously a violation, they will investigate. I mean, but, it's generally complaint driven. That's the normal way that, you know, things come to the attention of the Department.

Mr. Iaconetti: If there is a complaint, is this what, in writing or just a statement?

Ms. Suyama: I could be as simple as a phone call coming into the Department. We do ask who is the complainant and a contact information because if the violation goes beyond just a notice of violation – if we proceed further, we may need to call the person that complained as a witness to the event. Normally, the complainant is kept anonymous. We don't give that information out to the public, as to who was the person that complained on the violation.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah, I want to follow up on the question that Commissioner U'u was talking about. And I'm bringing up an actual item that's before us today on the list of PD approved SMA Minor project on Maui. And this is relating to a permit, I guess, it was approved by the Department for a Nelson property wall. And I'm not sure where that is, but I think that's up by Sugar Beach. And I was curious to know if that's also going to be maintaining the 40 - 60 view plain to the ocean or what's happening with that?

Mr. Abbott: I'm glad you brought that up Jonathan. That would be the Nelson property that is located at the intersection of South Kihei Road and – what's the Highway there Colleen – in Maalaea?

Ms. Suyama: It's still North Kihei Road.

Mr. Abbott: North Kihei Road. So right at the little elbow of an intersection. And that area is actually being redeveloped, and the owner had applied for a Change of Zoning. One of the conditions of that Change of Zoning is they provide public beach access, a dedicated beach access. That had gone to Council. Council had approved that, but there was still concerns from the Council about parking. So there's has to be some kind of off-site parking, which I believe will be across the street. DOT is remodeling that intersection so there is some kind of flex and even flow of what was going on during all this. In the mean time, they build a wall without a permit. They said they didn't know they needed a permit. And it's true you don't need a permit for a wall that's less – a fence that's less than six foot tall or a wall that, I believe, is less than four feet tall. However, you do need a Special Management Area Assessment. And so we assessed it, and fortunately, the wall was only four foot high so you could look over it when you're driving your car. And there's two gates, and those gates will be left open. A condition of the permit approval, I believe, is that the gates will be 50% or greater flow through, so that when you drive by, you can have a little snap shot to capture the ocean, as well as, looking over the wall. So we kind of implemented the view plain issue there.

Mr. Starr: You can't look over it.

Mr. Abbott: Over a four foot wall, yeah. When you're walking along the street, you can certainly see it.

Mr. Starr: I didn't know if this was a permit for a 12-foot wall.

Mr. Abbott: No. And it was after the fact, so we weren't real happy about that. But, it does meet our criteria. The Community Plan also restricts front walls to four feet so we can see over, see the ocean. Thank you.

Ms. Amorin: Any more questions Commissioners? Thank you Thorne. And to the Planning Department, thank you. At this time, I'm going to open up – get right back on our agenda and open it up for public testimony. For those individuals who cannot be present at the meeting when the agenda is considered by the Planning Commission, public testimony will be taken at this time. There's a maximum time limit that's placed on it for three minutes. And those testifier will not be allowed to testify again when the agenda item comes up before the Commission unless new or additional information would be offered. I do have a list here with a few names on it. I'd like to call Bud Pikrone. State your name please.

**Public testimony will be taken at 1:00 p.m. on any remaining agenda item in order to accommodate those individuals who cannot be present at the meeting when the agenda item(s) is (are) considered by the Maui Planning Commission. Public**



**testimony will also be taken when the agenda item is taken up by the Maui Planning Commission. Maximum time limits on individual testimony may be established by the Planning Commission. 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.**

**E. PUBLIC HEARING (Action to be taken after each public hearing.) (To begin no earlier than 1:00 p.m.)**

Mr. Bud Pikrone: Bud Pikrone. I'll defer until the project is –

Ms. Amorin: Okay Bud. Next on my list is Ed Lane.

Mr. Ed Lane: Likewise, I'd like defer until we talk about the project.

Ms. Amorin: Thank you. Third on my list is MJ Yardley.

Ms. MJ Yardley: Good afternoon. Similar to Mr. Pikrone, I'll defer to the end of the presentation.

Ms. Amorin: Thank you. At this time, I'll turn it over to Colleen to start. Do we have any other members or people in house who wants to come forth on any agenda item we have today? Seeing none, I will pass this over to our Assistant Director Colleen.

- 1. MR. CLYDE MURASHIGE of WAILEA MF-7, LLC requesting a Special Management Area Use Permit for the proposed Kai Malu at Wailea MF-7 Multi-Family Residential Project consisting of 75 multi-family units configured in 15 buildings, a common recreational building and swimming pool, grading, landscaping, and related infrastructure improvements at TMK: 2-1-008: 116, Kai Malu Drive, Wailea, Island of Maui. (SM1 2006/0038) (P. Fasi)**

**F. COMMUNICATIONS**

- 1. MR. CLYDE MURASHIGE of WAILEA MF-7, LLC requesting a Step 1 Planned Development Approval and a Step 2 Planned Development Approval for the proposed Kai Malu at Wailea MF-7 Multi-Family Residential Project consisting of 75 multi-family units configured in 15 buildings, a common recreational building and swimming pool, grading, landscaping, and related infrastructure improvements at TMK: 2-1-008: 116, Kai Malu Drive, Wailea, Island of Maui. (PD1 2006/0001) (PD2**

**2006/0001) (P. Fasi)**

**The Maui Planning Commission may take action on these requests.**

Ms. Suyama: The first public hearing for today is Mr. Clyde Murashige, of Wailea MF-7 LLC, requesting a Special Management Area Use Permit for the proposed Kai Malu at Wailea MF-7 multi-family residential project consisting of 75 multi-family units configured in 15 buildings, a common recreational building and swimming pool, grading, landscaping and related infrastructure improvements at TMK 2-1-008:parcel 116, Wailea, Maui. Paul Fasi will make the presentation.

Mr. Paul Fasi: Good afternoon Commissioners. In order to save time, I'm going to present this project in terms of how it relates to County Code, and I'll leave the project description and details up to the applicant and their power point presentation. This matter arises from an application for a Step 1 and Step 2 Planned Development Approval and Special Management Area Use Permit filed on November 30, 2006. The applications were filed pursuant to Chapter 19.32, Planned Development, of the Maui County Code, and a Special Management Area Rules of the Maui Planning Commission by Munekiyo & Hiraga, Inc., on behalf of Wailea MF-7, LLC – they are they applicant – filed on 13 acres of land in the State Urban District situated in Wailea, Kihei, Island and County of Maui, identified as TMK: 2-1-008:116 – this is the property. The applicant is requesting a Step 1 and Step 2 Planned Development Approval and a Special Management Area Use Permit in order to develop the proposed 75 multi-family residential units, retaining walls, and 15 separate structures including detached garages, common recreational buildings, swimming pools, grading, landscaping and related infrastructure improvements.

The applicable regulations for this project, the Planned Development Step 1 approvals standards for reviewing a Step 1 Planned Development application are found in Title 19 of the Zoning Chapter 19.32, Planned Development Standards of Development. Planned Development Step 2 approvals are pursuant to Section – also Section 19.32.020B of the Maui County Code. The Special Management Area standards for reviewing this particular application are found under Hawaii Revised Statutes 205A-26, Sections 12-202-10 and 12-202-11 of Chapter 202, Special Management Area Rules of the Maui Planning Commission. All procedural matters on this project have been met. A description of the property is it covers an area of 13 acres. It's currently undeveloped and primarily occupied by sparse growth of kiawe trees and shrub vegetation. The property is part of the Wailea Resort Master Plan Development and is situated in an area of existing urban development. The State Land Use designations: State Land Use District is Urban; the Kihei-Makena Community Plan is Multi-family, Open space; County zoning is B-2, Duplex, Open Space; and it is in the Special Management Area.

As I mentioned earlier, it is comprised of 75 multi-family residential units in 15 buildings,

included will be an internal road, covered and opened parking stalls. There are 158 parking stalls included. The site grading, landscaping and related infrastructure developments are also proposed. The proposed development is estimated to cost at approximately \$55 million. The project is anticipated to commence in late 2007. It will be developed in a single phase. I would also like to point out that I passed out prior to the start of the meeting, a comment letter from the Department of Housing and Human Concerns, since this project will trigger the affordable housing requirement. Although, not definitive, in terms of numbers, regarding the Department of Housing and Human Concern's comment letter, the applicant will have to address it directly with them at such time.

As of April 10<sup>th</sup>, today, the Planning Department has received five letters of testimony. On March 19, 2007, a member of the public reviewed the application in the Planning Department. If there are no further questions for the Planning Department, I'm going to turn it over to the applicant to get into the project specific details. Thank you.

Mr. Mich Hirano: Good afternoon Chair Amorin and Planning Commissioners. My name is Mich Hirano with Munekiyo & Hiraga, and our firm is assisting the applicant, A&B Wailea – I'm sorry – Wailea MF-7 LLC with the applications before you this afternoon. The Planned Development Step 1 and Step 2, and as well as, a Special Management Use Permit application. We've prepared a brief power point presentation to provide the Commissioners with an overview of the project, and I would like to just now turn our attention to the power point. And if we could have the lights please.

I have to go back to the first slide then. The Kai Malu Wailea Project is a 75 unit, multi-family development. The project site is situated south of Okolani in the Wailea Resort. This is Piilani Highway at the top of the screen. Okolani Drive is on the left-hand side of the project site, which is to the north. This is Wailea Ala Nui Drive, which is a north-south collector road in the Wailea Resort. South Kihei Road is at the bottom of the screen. The project site is surrounded by the Wailea Blue Golf Course to the south and to the south-east. The Kai Malu multi-family residential development to the south. This is a 150 unit multi-family development. To the north and east of the site is the Wailea Pualani Estates, the single-family residential subdivision, and the Wailea Kialoa Homesites Subdivision, which is a 102-lot single-family residential subdivision.

The location of the project is Okolani Drive and Kai Malu Drive in the Wailea Resort. Kai Malu Drive is a private roadway. Okolani Drive is a County roadway. Again, surrounding land uses: to the south and east is the Kai Malu 150 multi-family condominium development and the Wailea Blue golf course; to the west is Wailea Ala Nui Drive; and to the north, Okolani Drive, and beyond, Wailea Kialoa and the Pualani single family residential subdivisions. This is a photograph of a west bound approach. Okolani Drive, just before the project site. This is the project site in the mid-ground of the photograph. Again, the Pualani and Kialoa Subdivisions are to the right, and the project site is at the mid-point of

the screen.

Going west bound on Okolani Drive. This is Kai Malu Drive, the private roadway which is off of Kai Malu, which is off of Okolani Drive, and this provides access to the site. This is the project site. And again, what you see is the open space area, in this particular area with the mature trees and landscaping and fairly dense foliage. The Kialoa Subdivision is off to the right, and Okolani Drive goes west bound. This is at the top of the project site, looking across Okolani Drive to the single family residences at the Pualani Subdivision. This is Okolani Drive. Kai Malu Drive is going into the project. And as you can see, along Okolani Drive of the neighboring subdivision, there's a very mature landscaping and all the homes are screened from Okolani Drive. And this is Haleakala in the background.

This photograph is at the Okolani Drive, Wailea Ala Nui intersection. We're kind of looking south-east. Again, this is the open space area at the bottom of the project site. The project site is behind the existing vegetation and landscaping which is east of Wailea Ala Nui Drive. This photograph is taken north-bound on Wailea Ala Nui Drive. The Wailea Blue golf course fairway is to the right of the screen, and I'd like to point out the heavy vegetation that is along Wailea Ala Nui Drive. As you approach the site, and as well, the mature landscaping, monkey pod trees along Wailea Ala Nui Drive, and the project site is in the mid-ground, right there. This is a site plan of the project. This is Okolani Drive at the top of the screen. Wailea Ala Nui Drive on the left hand side of the screen. This is Kai Malu Drive which provides access to the project site. The project site is accessed by a drive into the project and these are the footprints of the buildings. There are 15 buildings. There's an interior roadway, two retention basins – a storm water detention basin at this location and another storm water detention basin at this portion of the site. There's a project retaining wall along the project perimeter of the buildings. And this is the open space area that runs along Okolani Drive. And this is an archaeological preservation area. There was an archaeological site that was discovered during the archaeological survey, and there's a 30 foot buffer around the archaeological site to protect the resource.

Just a little bit of the site information. Again, the location is at Kai Malu Drive and Okolani Drive in Wailea. The Community Plan designation is multi-family and open space. The zoning for the project site is B-2, duplex and open space. The B-2 area covers approximately 9.64 acres and the open space that was on the part of the project area that fronts Okolani Drive is 3.35 acres. The total acreage of the site is 12.9 acres. The maximum permitted height in this particular district is 45 feet, as established by the Kihei-Makena Community Plan. Maximum number of units according to the zoning that can be developed on the site 84 units. The neighboring uses are residential and golf course. The existing use is undeveloped and open space. And the proposed use is 75 units in a multi-family residential subdivision.

These are photographs of the project sites. We're standing just off of Kai Malu Drive, on

the eastern portion of the site, looking south-west. These are the construction trailers for the Kai Malu site that's along Kai Malu Drive. The Kai Malu project is in this particular location and the project is in the, sort of, foreground. And as you can see, it's undeveloped, shrub vegetation, kiawe and koa trees.

This is a north-west view of the project site. The site slopes in an east to west direction. But elevations are approximately 282 feet at the top of the site on the eastern portion of the site, and 180 – sorry – 228 feet at the top of the site, and down to about 120 feet above sea level at the western portion of the site. The overall slope of the site is approximately 8% to 10%. Again, this is looking at the site. At the bottom of the site on the western boundary of the project site, and looking south-eastward, as you can see there's a ridge in the middle of the site. These are the Kai Malu project in this particular portion of the site, and the open space area on the left-hand side of the screen.

In terms of the project elements, again, there's 75-units that are arranged in 15 buildings. And the arrangement have been such to reduce the overall footprint of the building upon the site. Each building is three-stories, with five units in each building. There's an ancillary recreational building and pool. There are 158 covered and opened parking stalls. There's an archaeological preservation area within the site, an open space drainage way within the site, site landscaping. There are two on-site drainage detention basins. There's related infrastructure improvements and access will be provided off of Kai Malu Drive.

This is a floor plan of the building. This is the first floor and second floor. There will be two side-by-side units on the first floor. The area of the residential units are approximately 1,500 square feet and there will be covered lanais of approximately 300 square feet. There will be four covered garages attached to the building. Each garage will have approximately 50 square feet of storage space. These are two-bedroom units, side-by-side. On the second floor, again, approximately the same floor plan, 1,500-square feet each. This is the roof of the garage that you see on the second story floor plan. And for the third story, it's a similar unit on the third floor. This unit is stepped back from the sides of the bottom floors. The overall area of the third floor is approximately 2,200 square feet and 400 square feet of lanai. Three bedrooms for the third floor unit.

This is the elevation, lanai elevation and the stair elevation to the project. I'd just like to point out that, you know, the designs of the buildings have been developed to reduce the massing of the building. And the roofs have been established on the first floor of the garage, then it steps up to a second floor roof line. And then the third floor is set back, and, again, there's a roof line on the third floor. So, the vertical, I guess, height of the building, is again, broken up by horizontal elements, design elements of the building. Again, the building is well vegetated and landscaped to screen the building, as well as, to provide shade for the building. These are other elevations of the building. There's an elevator shaft on this piece right here.

This is the floor plan of the recreational building. This recreational building is approximately 2,200 square feet. It has a multi-purpose room, a small exercise room, small kitchen, a garden courtyard, lobby area, there's a storage area, as well as, two offices for the homeowners to use – for the homeowner's association – and there's an equipment room. Again, this is the entry elevation to the recreational building. It's a single-story building. The design elements are similar to that of the residential buildings. Again, landscaping around the building, to screen the building, and to provide shade. This is the overall landscape plan and the features I'd just like to point out are the matured landscaping trees along Okolani Drive, as well as, the mature landscaping within the open space drainage way, and as well as, landscaping along the Wailea Ala Nui Roadway. These landscapes – these trees have been actually located based on topographical survey of the site. And so we wanted to be fairly accurate as to where the landscaping and the screening will be provided from the roadways on to the project site.

In terms of landscape objectives, the landscaping plan has been developed to provide foundation planting around the buildings and to blend them into the surrounding landscape. The landscaping, it serves a two-fold function around the buildings. They provide shade to the buildings to keep the buildings cool, and the also screen the buildings from adjacent neighbors and from public roadways. The design of the outdoor spaces have been incorporated and have been used as an extension of the indoor spaces to get the sense of space and extending the indoor environment to the outdoor environment. The use of the plant palettes that are sensitive to water conservation and the use of native plants throughout the landscape design, as well as, the use of organic fertilizers and pesticides and herbicides will be applied on the landscaping. These will be more readily absorbed into the ground and will be less harmful to the ground water and provide a better water quality in terms of the run-off and ground infiltration.

In terms of the landscape irrigation objectives, they've been developed to minimize the amount of landscaping irrigation required. Utilizing irrigation systems which provides efficient water coverage and minimize water usage and runoffs. Guidelines that have been developed to incorporate drip irrigation systems that provide deep root zone irrigation of trees and shrubs, and to group plant materials according to the water consumption needs.

A number of exercises have been carried out to mitigate the visual impacts of the project on neighboring properties. The applicant and their representatives have met with the neighboring homeowner's associations and individuals of those associations. The project has been designed to minimize visual impacts. The mauka roads, the mauka grades have been lowered to reduce the building heights. The visual impacts are mitigated by the existing dense material landscaping along the open space drainage way and by project landscaping.

This is a partial elevation. At the top of the project site, this is building #1. This is looking

at it from Okolani Drive, southbound or with the south view. This is the Kai Malu Road, private driveway, on the left-hand side of the screen. Perhaps you may recall from the earlier slide that we had of the project site in relation to Kai Malu Drive, it was probably at this point leveled with Kai Malu Drive. The development of the site and the buildings – actually this area will be graded down about nine feet from Kai Malu's existing grade. And that would lower the overall building height by approximately nine feet, so that views will be maintained from Okolani Drive. This is the photograph that we showed earlier, going westbound on Okolani Drive, and this is the project site. As you can see, the ground is approximately at grade with Kai Malu Drive. This is a rendering of that particular development and that building #1 from that same perspective. And the building has been lowered in order to maintain the ocean views from Okolani Drive. We did another perspective along Wailea Ala Nui Drive. This is looking southbound along Wailea Ala Nui Drive. The Okolani Drive intersection is further on the left-hand side of the screen. This is the open space drainage way, as it is at the Wailea Ala Nui Drive roadway, and this is the rendering of the buildings from that same perspective. As you can see the buildings are kind of set back from the – set behind the canopy of the existing vegetation monkey pod trees along Wailea Ala Nui Drive, as well as, the buildings are screened by existing vegetation and will be screened by future landscaping around the project area.

Considerations along Okolani Drive – I think there were two major aspects of that. The mature landscaping on both sides of the roadway. Screened a lot of the existing buildings within the residential subdivision of Kialoa and Pualani, and we'll also screen the project site. The open spaced drainage way and mature landscaping screens the project buildings from Okolani Drive and from the adjacent residential subdivisions to the north. This is a photograph from the top of the project site. Kapili Street, looking mauka or eastward, the project site is over on the right-hand side of the screen. And as you can see there's heavy vegetation along the open space drainage way. The landscaping, as well, is very mature along the Pualani Subdivision. Heavy landscaping screening the existing single family residences along Okolani Drive. This is looking makai or towards the ocean in the west direction from Kapili Street. This is the open space drainage way, and this is the existing landscaping. This existing landscaping will be maintained and retained with the development of the Kila O Wailea Project. This is further west of – from Kapili Street, about three-quarters of the way down, Okolani Drive looking across to the project site. Again, very mature landscaping, canopy of trees and heavy dense landscaping behind that canopy from Okolani Drive looking on to the project site. And this is, again, at the bottom of the screen, on the left-hand side, you'll see looking makai, toward westward, you'll see that again the open space drainage way, landscaping, mature canopy of existing trees on both sides of Okolani Drive.

This is a perspective from the Kai Malu Subdivision. This is just right in front of the recreational building. This is their infinity pool. The infinity edge pool to the right-hand side of the screen. What we would like to note from this particular perspective is that the project

buildings, the Kila O Wailea buildings will actually be to the right of this existing tree. And so all these other views will be maintained, and the roof of building #11 will be approximately four-feet below the top of the existing top of the tree that is in the mid-ground of this photograph. So the project building from Kai Malu is basically just in this portion of the view way.

Overall traffic mitigation – we'd just like to point out a few things about traffic. A&B Wailea will be participating in a fair share agreement with the State Department of Transportation for the widening of Piilani Highway to four-lanes, from Kilohana Drive to Wailea Ike Drive. The Company is in negotiations right now, working out the agreement, and as well, the timing and the requirements for the "four-laning." Kai Malu, the project, the multi-family project to the south of the Kilo O Wailea project – due to their traffic mitigation requirements when they came forward for their Special Management Use Permit last year, they will be installing a traffic signal at Piilani Highway and Okolani Drive and Mapu Place intersection, which will improve the levels of service in that intersection. All traffic improvements within the Wailea, to mitigate project related impacts, will be carried out by Wailea, A&B Wailea or their partners, at no cost to the State or County. And upon meeting with the Department, the Public Works and Environmental Management, it has been determined that no additional traffic mitigation will be required to mitigate traffic for this particular project.

Conservation measures that have been incorporated into the project – heat pumps for water heating in the residential units. There will be a photo voltaic system for electrical demand in the community recreational facility. There have been as well, passive energy design features in the buildings, deeper roof overhangs to provide shade for the buildings, natural ventilation, double-glazed windows, and roof and wall insulations to retain the coolness within the buildings. There will be low flow toilets and fixtures.

In terms of storm water management, the County Code requires that project generator run-offs be retained on site. The grading and drainage systems for the project will be designed to meet the County's standards. In addition, the project drainage system will be – will reduce the existing run-off by 1/3 of its storm water run-off rate. And the drainage system will also be equipped with pollution control devices. And I'd just like to sort of point out some of the features of that pollution control device and the –. It's called the water quality detention basin. This design of this basin has been incorporated into other projects in Hawaii and it has proven to be very effective in maintaining water quality. There will be two such water quality detention basins on the site. And basically how they work is that this is the intake, so water is collected from the drainage system from the roadways, in drain inlets, and they are collected and they are conveyed into the drainage detention basin. The drainage detention basin is designed so that the water sits in the basin. And as the water sits in the basin, the sediments that are in the water, when the water gets still, they fall and they fall through the ground or falls to the bottom of the detention basin. Then the cleaner water is absorbed through the outlet, and this outlet monitors the release of the storm water



from the site. And there's, as well, a graveled bed – a graveled filter where the water can seep through the gravel and into the outlet pipe. That way all of the sediments are retained within the detention basin. And there's a cleaner and a better quality of water going into the storm water run-off.

Water quality, will it be improve? In both ways. One, by the reduction of run-offs from the site so there will be less runoff after the site is developed, then, before the pre-site conditions. And the water quality will be improved by the drainage detentions pollution control devices. So thank you for your attention to our presentation. The applicant, just to summerize, is Wailea MF-7 LLC. The architects are Shimokawa Architects and WCIT Architects; Landscape Architects, PBR Hawaii; Project Engineer, Sato & Associates; Planners, Munekiyo & Hiraga. And representatives of these companies, as well as, of the applicant are available to answer any questions the Commissioners may have. Thank you.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Thank you Madame Chair. First of all, I would like to express appreciation for the care that has been put into the – retaining – increasing the retainage and also the detention basins. It looks like a good plan. Now, a few questions. First of all, could you show on your power point where the other two archaeological sites are and I'm curious why the recommendation from OHA that they also be protected has not been followed.

Mr. Hirano: The other archaeological sites were basically rock formations, walls that were not in very good conditions and were not very reflective in characteristics of (phonetics) shelters. And because of that, they felt that, you know, they were significant under criterion D only that they would add to the overall informational requirements on archaeology. But they weren't significant beyond that, and the information that was retained during the archaeological inventory survey was sufficient for recordation of the features that were found. The exact location of those, the archaeological preservation area, is approximately in this area. And I believe the features were just in and around in this particular area, more in the gulch areas. The other wall features were in the middle of site, as well, and in through here. But the archaeological preservation site was in this gulch area. But because they were basically rock mounds that were not very well defined and had lost their historic integrity.

Mr. Starr: Why are you not using solar hot water. I mean that's become part of our standard conditions and I really can't believe that you're going to need to use electricity to heat water for a project such as this in this day and age.

Mr. Hirano: I'm going to ask Clyde Murashige from A&B Wailea to answer that for you.

Mr. Clyde Murashige: Thank you, Madame Chair and Members of the Commission.

Commissioner Starr, the Wailea Resort requires either the use of solar panels for water heating or the use of heat pumps. Typically because we're in a multi-level building of stacked slats, the heat pumps in which each unit will work better. The solar panels, in our experience over the last 20 - 25 years, have shown that it works better for single-family unit. So, the feeling was that heat pumps would be a more practical use, at least for the individual units. But as Mich said earlier, the photo voltaic panels will be used to generate electricity for the community recreation area and the common areas.

Mr. Starr: It sounds like window dressing to me. You know, I'm really...(phonetics)... of developers trying to save \$500 or \$1,000 per unit in a million dollar condo by not putting in solar hot water. Even if Wailea allows it, it's still counted in our standard conditions, and I'm sure it will be, at least, recommended in this case. I know ...(inaudible)... solar hot water in Wailea, but it's wrong. There's no reason not to start ...(inaudible)... Is there anyway that you could consider using solar hot water on this project?

Mr. Murashige: I think certain applications within the project we can look at.

Mr. Starr: How about heating water for the ...(inaudible)...?

*(Due to technical difficulties with the recording equipment, portions of the minutes were inaudible, as noted above.)*

Mr. Murashige: Solar panels incorporated with the PV, I think, on the commercial, I mean, the rec. center to provide hot water for that facility is one thing that we can look at. Regarding solar panels on the actual buildings, I think, we need to look at that. But, I think, like I said, our experience has been that the heat pumps work pretty efficiently.

Mr. Starr: Well, I think you're building a dinosaur then. I see our Water Department is doing it. I have a question for our water master here. I was President of Palms of Wailea Phase I AOA for a number of years. It's like a caddy corner. And it's an approximate similar size property. And the irrigation demand for that was consistently above a 100,000 gallons a day. And that's a similar topography, and also there was a lot of grading when it was done, there was not much top soil for the no-sprinklers on all the time. I see you're saying that this is only going to – by your calculations, the irrigation for this whole property is going to be about 22,000 gallons per day, and that just seems very low from my experience both at the Palms and also looking at figures in the Wailea area. I'd like you to justify those numbers. I'm looking on page 25 to 43 of the presentation.

Mr. Murashige: I don't think is something that the Department developed.

Mr. Starr: It says ....(inaudible)...

Mr. Murashige: This is just based on our standards and it hasn't been computed specifically for this project. So you're right, it could be much higher.

Mr. Starr: Do you have any standards broken down by areas, you know, for Wailea, in that area now, or are you just using one, Island wide or County wide?

Mr. Murashige: I think we have one standard, but there is certainly consideration for that area because you're right irrigation demand in South Maui is much higher than North.

Mr. Starr: Okay, thank you. I want to be sure, that when this project is done, it's done right and not the way Palms of Wailea was done. And my understanding of the problem there was that, you know, there was a lot of – there was a lot of cut and very little top soil just to save money by the contractor. And so they had to run the sprinklers all the time, and most of that water is not going to the plants. I appreciate that you're trying to use low maintenance plants. I want to be sure that the landscape specs are such that they will also be a fit in.

Mr. Hirano: There are, as well, we just want to point out that the site is approximately 12.9 acres, and 3.4 acres of that is in the existing open space area. But I would like Ray Higa who is the landscape architect to just talk about the water demand.

Mr. Ray Higa: Hi, I'm Ray Higa from PBR Hawaii, landscape architect. Basically what we're going to try and do is propose a native plants that take up, you know, less water, as well as, drip irrigation system. So, you know, a lot of the open space that's existing there is not going to be irrigated, just more of the proposed and what's in graded in that area.

Mr. Starr: How about the – it's not going to be all planted out and grassed?

Mr. Higa: No. Not the entire area.

Mr. Starr: Good, it sounds like you're doing the right thing then.

Mr. Higa: Okay.

Ms. Amorin: Commissioner Guard.

Mr. Guard: Thank you. I have a question on the archaeological preservation area. If we're going to be cutting down nine feet, is it going to be stepping back up to the actual archaeological preservation area?

Mr. Hirano: No, the nine feet cut is actually just at the top of the site around the first building. Where the archaeological preservation area won't be –

Mr. Guard: It's already packed? Okay, it's already that much lower.

Mr. Hirano: Yeah. And there's a buffer area around the 30 foot area.

Mr. Guard: – the 30-foot area –.

Mr. Hirano: So there won't be a big difference in the grade.

Mr. Guard: By the time you get to that site, you'll lose the nine-feet?

Mr. Hirano: Yes.

Mr. Guard: I have a question.

Ms. Amorin: Commissioner Guard.

Mr. Guard: Thank you. I guess as a follow up to Jonathan's – on the – there's a flat roof above the third story of the entry for the top level unit, is that correct? Flat roof for mechanical equipment?

Mr. Hirano: Yes.

Mr. Guard: Is that (phonetics) to be putting any kind of photo voltaic system even, possibly not for water, but just for net metering project that are bigger and bigger, in residential and commercial?

Mr. Hirano: Colin Shimokawa is the project architect, and he can respond to that.

Mr. Colin Shimokawa: The area above the stairway and the elevator is a flat roof and we're hoping to put all of our mechanical equipment under.

Mr. Guard: Oh, on top of that.

Mr. Shimokawa: Yeah.

Mr. Guard: Okay, thank you.

Ms. Amorin: Commissioner U`u.

Mr. U`u: I'd just like to comment on the view plains and it seems like you guys took some serious consideration into maintaining the view plains. So good work on that part.

Mr. Hirano: Thank you very much.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Mich, are there properties that area mauka of the site that would have the view plains affected?

Mr. Hirano: Mauka of the site, from the north, there's the Pualani Subdivision, and I believe that, again, they will be looking over the site. And they can't really see from the existing open space to the buildings. But if they're looking, if they do see anything, would be building #1 as well, but they'd be looking probably through the open space vegetation and drainage wise.

Mr. Hedani: So from their perspective they would still retain an ocean view over building #1?

Mr. Hirano: In some cases, quite a few of those, as you can see though, to the north, these are the buildings to the north of the site, the Pualani, so, you know, they're not really heavy. Their views are really more, I think, west and not south to over the site.

Mr. Hedani: What about to the east of the project?

Mr. Hirano: To the east, looking this way from Kialoa. Looking across Okolani Drive from Kialoa Subdivision, there will be some – they will be looking basically through, again, the drainage way, the open spaced drainage way for the most part.

Mr. Hedani: So their view have been preserved and they've been consulted?

Mr. Hirano: They've been heavily consulted. Clyde, do you to discuss that?

Mr. Murashige: Commissioner Hedani, the view is actually looking south which are not too ocean oriented view, or actually cross low views. For the most part, a lot of the views are already, you're looking at open space gulches as Mich has said, sort of landscaping or trees within that gulch. And there's a separation of about 250 to 270 feet from the edge Okolani Drive to the first building of which the gulch is between. We've pretty much kept at or below that 45 foot height limitation which includes building and pad elevations. As you get makai, you know, basically people will be able to look over the units, looking towards the ocean. The topography of the site is Kila O Wailea site. The current topography is actually higher than Okolani Drive already. So when you put a building on there as your starting point, there are going to be some pop ups of the buildings scattered throughout the site.

Ms. Amarin: I would like to call on your traffic consultant. Is he available?

Mr. Murashige: Traffic consultant is not here, but we'd be happy to try and answer questions in regards to the traffic.

Ms. Amarin: For the road widening on Okolani and also on Piilani Highway, it's been targeted from Kilohana to Okolani down toward the end of Piilani Highway – my concern is, is that going to be the only widening of four-lanes? What about going all the way up towards north side? So what would take place first? Traffic is such a major concern.

Mr. Murashige: Our understanding is that because we've already got four lanes from Kilohana Drive going north along Piilani Highway, that the focus of which A&B Wailea along with Wailea 670 Makena are in agreement with the State DOT that we will widen especially from Kilohana Drive to Wailea Ike Drive from two lanes to four lanes. So that would be primary focus on Piilani Highway.

Ms. Amarin: And also it's a little bit confusing for me to read this material – and when is the target date, I think – I see 2007 or 2012. When will this traffic plan start?

Mr. Murashige: In part it has started. The 2007 phase year, the intent was to left-hand turn dedicated lane on Kilohana Drive on to Piilani Highway. That has been completed. So there is a, at that intersection, you can make a full left turn without sharing the lane going up to Maui Meadows when turning right. The other thing, as the report indicated earlier, our presentation indicated earlier, that there's going to be a traffic light installed at Okolani Drive and Piilani Highway. That's scheduled to be done by the end of this year. A lot of the – the report indicates that there was a four-lane widening that should occur between Kilohana Drive and Okolani – now that was predicated upon Wailea 670 and Makena bringing on units in the year 2007. So that's obviously not going to happen. So the next target date here is to have the four lanes in by 2012.

Ms. Amarin: Also how is the public – probably going to announce through the applicant when this will take place? Or is this DOT's responsibility?

Mr. Murashige: It basically is being coordinated by DOT, but in terms of funding the project, it will be privately funded.

Ms. Amarin: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: Yes, thank you. Returning to view plains, you indicated that you will be reducing the existing grade at the corner of Okolani and Kai Malu by nine feet. So at the top of building #1, will that be the highest point in the project, which would be about 36 feet above the roadway?

Mr. Murashige: The building – building #1 and the building adjacent to that, going along Kai Malu Drive, will have about the same peak elevation. I think the one further in may be a couple feet higher. But as you progress down Kai Malu Drive, that's going to be the tallest building.

Mr. Hiranaga: Your information does not specify the total height of the building, but are you planning to build out to the maximum 45 feet?

Mr. Murashige: No, actually, the – and I think I'll let the architect, Colin Shimokawa, add to this, but the actual building, from building pad to the top of the roof to the ridge line, is 36 feet. We have a 45 foot envelope. In some cases we are going below that 45 feet envelope. In a couple cases, we actually go up to the 45 because of the sloping site. We need to fill and put in retaining walls. So we're not exceeding any of the 45 foot height limits. So in essence, we're taking this 36 foot high building and we're working within the envelope and in most cases we're below the envelope.

Mr. Hiranaga: Which is 35 feet above existing or finish grade?

Mr. Murashige: Right.

Mr. Hiranaga: So the building height is 36-feet?

Mr. Murashige: Yes.

Mr. Hiranaga: I guess one comment and not necessarily for this project, but for myself when I see the presentation and there's renderings of impacts to view corridors, I would find it helpful if the applicant could provide scaled depictions of super imposing their proposed development on existing pictures so that we know exactly what impacts those buildings will have versus architectural renderings or saying it will be four feet below this existing kiawe tree. My past experience on another board, Kamehameha Schools came in for a height variance and they provided scaled depictions of the buildings (phonetics) would not impact the view plains from Kula Highway. It made it easier for the board members to grant the variance because they actually had scaled drawings and some type of rendered, computer renderings showing the actual heights of the buildings and the terracing out, it was removing traffic impacts. Especially when buildings are elevated two stories high, it be helpful for me in the future.

Mr. Hirano: Just on the view plains, I would like to just add that there are no buildings to the east of the project site. It's vacant land. There's a golf course across Kai Malu Drive, so there's no impacts on view from that angle. We did take views and to respond Commissioner Hiranaga's concerns, you know, I think we're – there are impacts that are to proceed. We did take that shots of the photograph from Kai Malu, at the recreation

building, and there are references to the height of the building because there's an existing tree which acts as story pole. And the height of the building is actually going to be four-feet below that, and to the right of that. So in terms of, you know, super imposing the building, we didn't super impose the building, but I think we really felt that this photograph provided some frames of reference from the site onto the sea level Wailea site, both existing, I guess, reference points. And one of the major reference points is this tree right here. The project is going to be to the right of this tree, and four feet below. So I think that it serves the same purpose as what Commissioner Hiranaga was requesting, and that is to look at it from a photograph, having a physical point of reference on the landscape and you know, discussing the height of the building in relation to existing features.

Ms. Suyama: I think, Mich, what the Commissioner is requesting is that to make it easier for them understand view plains is that it would be easier if there's a building montage imposed onto the photos. So that they don't have to kind of think of where the building is, they actually see the building on the drawing of the building.

Mr. Hirano: We did that for this particular view, which is from the Okolani Drive. And we did this on Wailea Ala Nui Drive. So we did it here. This is, you know, the photo montage from the existing photograph project building, and then from Wailea Ala Nui Drive, this is the existing view plains. These are the existing trees and then the project is set behind those from Kai Malu – from Wailea Ala Nui. So, we did this on both, you know, as you said from the public roadways around the site.

Ms. Amorin: Mich, all of the existing trees will remain?

Mr. Hirano: Yes. These are on the Wailea Ala Nui roadway right-a-way, I believe, and they will remain.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: On the subject of view plains, I know that it's quite a ways to move from Piilani Highway, are there any view from Piilani Highway over this area that would be impeded?

Mr. Hirano: No.

Mr. Hedani: So there's no impact from Piilani Highway?

Mr. Hirano: No impacts from Piilani Highway. Yes.

Mr. Hedani: Okay. The only other question that I have was on the historic sites. There were three historic sites that were listed by OHA that apparently are not scheduled for retention.



Mr. Hirano: That's right.

Mr. Hedani: Can you point out the locations of those sites in relation to the actual building pads that are proposed? Let me ask the question in a different way. Can they be preserved without impacting the development plan?

Mr. Murashige: Commissioner Hedani. The most recent location of the site, actually two sites, are right in this area here, right on a – right where the site really slopes and there's a ridge line. Now in the archaeological assessment of the project that was submitted to SHPD and approved by them, they felt that information collection was enough for those two sites, but they recommended preservation of the one site that's actually within the gulch on the face gulch.

Mr. Hedani: Can you point out the three sites, Clyde?

Mr. Murashige: There's one site right about here, and there another right about here, and then, third is actually very close to the major preservation site so it's almost like within the buffer area. But again we need to reiterate that the site are, as per SHPD recommendation approval of the monitoring plan, information gathering was conducted and they felt there was no need to preserve the site.

Mr. Hedani: My only concern is if I had to gamble, I would go with OHA rather than SHPD. Is there a way of moving the roadways such that those can still be preserved because they seem to imply in their letter it can be done without impeding the development plan.

Mr. Murashige: I think the – when you look at those sites, and this site itself, is an extremely site to design because of the sloping. Not only does it have a down slope but it has a cross slope and it has certain rock ridges which we tried to retain as much as possible. I think it will be extremely difficult. I'm not sure if OHA actually took a look at the site plan in terms of road alignments. We do have issues in trying to maintain the slope of the road for fire protection. Like I said, it's an awful difficult site, an awfully challenging one.

Mr. Hedani: What would be the site that was in the middle of the road? What number was that?

Mr. Murashige: I think 5679. The one thing to remember is that typical of Wailea, the site is referred to as a temporary rehabilitation site, and essentially Wailea was an area where it was really a transit between mauka and makai. There was really no habitation, per say, in the area. And these were just like temporary shelters. Essentially rocks structures that were put up and left.

Ms. Amorin: Chair recognizes Commissioner Guard.

Mr. Guard: Thank you. Any update on affordable housing components for the project?

Mr. Murashige: We recognize that this project is subject to the affordable housing ordinance passed by the Council in December. We are in the process of looking at a site in Kihei, to meet our off-site, to do off-site requirements for that project. And we also understand that as part of that ordinance, we have to deliver concurrently one unit, one affordable for one project unit. So we intend to comply with all provisions of that ordinance.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: I just wanted to offer my comments on the architecture. I thought the project was extremely well designed from an architectural standpoint and would complement the area.

Mr. Murashige: Thank you.

Ms. Amorin: Any more questions Commissioners? Thank you applicant.

Mr. Hirano: Thank you very much for your comments Commissioners.

Ms. Amorin: At this time we'll open up the floor for public hearing. Any people out there who has something to say on this particular agenda item, please come forward.

**a. Public Hearing**

Mr. Pikrone: Aloha. Good afternoon Commission. My name is Bud Pikrone. I'm the General Manager of the Wailea Community Association. This project was presented beginning of last year to our design community. Pretty much we saw everything that you're seeing here, and we have given it our preliminary approval based on the fact that it meets the standards of Wailea. It fits very well. As we commented the design, the care taken in preserving views, discussing those views, discussing the project with the community and the neighbors. It's gone very well and we believe this project is an asset to the community and we will continue to work with the developer through the project. Thank you.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yes Chair. Bud, I would like to know if there's anything in the current Wailea design guidelines that would preclude the use of solar hot water on this project?

Mr. Pikrone: Well solar – solar or heat pumps, we've given the option because as was mentioned there are a number of different design criteria that may favor one or the other. And so we do look at the project as to how best one or the other would work. We also

have, as was mentioned here, photo voltaic is beginning to be introduced into the community. Many homes in, single-family homes in, Wailea use some photo voltaic, but mainly they use the solar for their heating. And we're seeing that being used very commonly. The multi-family are going to the heat pumps or they can use a combination. For instance, for recreation centers pools they'll use solar for those. So it's kind of what can be used thus to suit a project and work within a project.

Mr. Starr: You know at one time, in the design guidelines, developers were precluded from being able to use solar hot water in Wailea. And I was involved in the beginning of the process to get that changed from it being outlawed to it being encouraged. And I just wanted to be sure that, you know, say in this case that they're not using it, it's not because the association has a problem.

Mr. Pikrone: Oh, no. The association encourages it. The association encourages the use of any energy – energy conservation materials – anything. We really, and we are constantly updating our guidelines to provide better resources for developers and builders. As with our landscaping, conversation on water, we have amended our landscaping criteria to help with limiting the number of trees or types of landscaping and encouraging other types of landscaping to cut down on water.

Mr. Starr: Thank you. The organization has come a long way.

Mr. Pikrone: Any other questions? Thank you.

Ms. Amorin: Thank you. Ed Lane.

Mr. Lane: Thank you. I'm Ed Lane and I'm representing myself as a residential, near neighbor of this project, and also two other families, the (phonetics) and the (phonetics,) who live directly north in Kialoa and looks out at this project. And I would like to start by thanking Alexander and Baldwin for meeting with us on several different occasions and providing us with a lot of technical and information regarding the project. But there are three things that we would like to ask the planners to investigate and address. One, is the height of the building. The residential nature of the neighborhood all around there is – will be dramatically altered by this. There are no three-story buildings in the area. By the appearance of a three story building, this would be 45-feet above the existing grade in the midst of a quiet low rise residential area. Just by comparison, these structures are about twice the size, twice the height of the Great Wall of China. So this is not a small project, and that's an accurate figure. We ask humbly that this project be redesigned as a two-story project with the same number of units and the same square footage as proposed so that the financial return to Alexander and Baldwin would be identical. It is our opinion that three-story buildings, three-story buildings would never have been planned in this area, in the middle of a residential area at the beginning of the Wailea development. Wailea's

reputation became desirable because of low-rise, low-density nature. It is now being considered in 2007, it's being okay, as part of the clean up type project, with not enough thought to the existing residences of Wailea.

The second thing, to demonstrate the impact of three-story buildings in this area, it's confusing and not entirely accurate to look at the photo montage. We would ask, request, that the Planning Department would have an on-site inspection with height folds directed on the building site, at least three or four of the highest building site. So that you could actually visualize this impact of this on the neighborhood. This would be a simple and inexpensive procedure. We believe it would cause the Planning Department to change their minds and think this should be a two-story project.

The third item, we appreciate Alexander and Baldwin's pledge to retain the green belt area, without removing trees, or the naturally existing under brush and bushes. This pledge, we would ask to be put in writing for the neighbors.

Ms. Amorin: Mr. Lane, your three minutes is up. Can you conclude in 30 seconds?

Mr. Lane: Yes I can. We appreciate the right of Alexander and Baldwin to make a profit to develop this and the architectural design is beautiful. We think by giving the project a new review, perhaps they can realize the same or greater profits and at the same time profits the neighborhood. Thank you very much.

Ms. Amorin: Thank you. MJ Yardley.

Ms. Yardley: Good afternoon. Aloha. My name MJ Yardley. I have owned property in Wailea for 10 years and have been a residence in Wailea for the last seven. And most recently now residing in Kai Malu which is immediately adjacent to this project. I too would like to thank Clyde and Alexander and Baldwin for making the presentation for Kai Malu. It was very informative. All of the residents that attended, I think, had very positive reactions to the proposal. I think we are probably more quite significantly affected with regards to the view plains, and one of things that we were most pleased about instead of a rec center, is that our largest view plains is between the two large trees on the left side. And they've assured us that view plain will not be affected in the least. I think mainly some views if you look at the mountain, but still there was no real negative reaction from Kai Malu residents during this presentation.

In addition, we were all extremely pleased, and me in particular, with the architectural design as well. It was very pleasing. It flows with our development which we'll be looking at all the number of building along there on that hillside. It had similar roof lines as us. It had similar materials as us and we appreciated the fact that it stepped up and it won't be one big block and massive building. In addition, we appreciate the open space along

Okolani. And in particular, the fact that they are putting storage. They considered the needs of the residents of storage. There's parking spaces being covered, or garages, so we don't have massive open parking lots or similar, some residents, multi-use residents in Wailea.

In addition, the fact that they were considering conservation for the water, the filtering of the basins, and using natural plants as well as drip lines which I think should be encouraged more versus the pop up sprinklers which uses so much more water. And in particular, one feature that I found especially for the future is that, and I spoke on behalf of Kai Malu as well for this very reason, is the idea of retirement and affordability. I know Wailea is not your average home and price range, but on the other hand, this is a project that allows people who have invested and lived here and appreciated land value within Maui and particularly more in Wailea, to afford an upgrade because it isn't a multi-million dollar sale price. I don't think from what we've been told. You're not talking about some of these project where they start at \$4 or \$5 million. And the fact that they have put elevators in for the second and third floor. It makes it ideal for retirement. So that if you're in a project that you can no longer accommodate because of stairs, this offer gives you the opportunity. So in that respect, I felt that their presentation and the issues were very positive. Thank you for your time.

Ms. Amarin: Thank you very much. Commissioners, do you want to follow up with any questions to our applicant? Okay, let me take a step back. Do we anyone else in the audience that wish to speak on this particular agenda item? Seeing none, public testimony on this agenda item is closed. Chair recognizes Commissioner Hedani.

Mr. Hedani: I'd like to ask if the architecture could comment on the possibility of reduction of height of the building, where they're talking about two-stories versus three-stories. And what impacts that that would have to the design.

Ms. Amarin: Will the applicant please come forward?

Mr. Shimokawa: We did look at the site in a number of different way and we did start off looking at the project as a two-story building. And it was extremely difficult to maintain a certain density that was required with a two-story building, and that's why we went to a three-story building. If anything, it offers more open space between the units, and we think it turned out a lot better.

Mr. Hedani: Just a question would be what would be the net density loss if you went from three to two-stories?

Mr. Murashige: I think when we – because of the slopes of the site, when we first laid it out realizing that 84-units was maximum, looking at the two-story lay out, we were kind of in

the range of 60 to 65 units. But when you actually start looking at the site plans because of that loss of that extra floor not being able to put another unit on top, we basically lose a lot of the open space on the site. It looks like a real significant massing of the site. You know, I think, part of the other thing to remember on this is when the zoning was established in 1973 by the County and this duplex two zoning was established, it was already 45 feet. There's a couple of other projects in the resort that have that. And in fact, the Grand Champions, there's a couple of the buildings at three stories, which is a condo project. And the buildings are about, I think, they're about three or four feet higher than our pad to ceiling elevations. The other thing is that we always point out is that within the apartment district zoning, height limit is 35 feet; and in this case it's 45 and our buildings are going to 36. I think, by reducing the massing as Colin said, we were able to get a much more – almost like a subtle site plan which provided more of the open space amenities geared toward the resort.

Mr. Hedani: I guess the question, as a follow up Chair, I guess the question is in the case, you know, like single-story or two-story structures, I think the County criteria is something like 32 feet, if I'm not mistaken for two-story structures. You folks are at 36 versus 32, I guess, in the proposed buildings, right?

Mr. Shimokawa: Although, like I've said, I guess in the apartment district, you can two-stories, 35 feet.

Mr. Hedani: 35 feet. Okay. I guess the question that I will have is there a way of reducing the 36 feet without screwing up the project immensely? Changing roof pitch or something that would address the concern of the residence?

Mr. Shimokawa: I don't believe so.

Mr. Hedani: You don't believe so.

Mr. Shimokawa: I don't believe so. And we could change the roof forms to a flat roof which I think would be detrimental to the aesthetics.

Mr. Hedani: That's a radical I'd say. But adjusting roof pitch wouldn't be able to save two feet off of the project or something like that?

Mr. Shimokawa: I don't believe so.

Ms. Suyama: Can I clarify something for the Commission because you're talking about height limits. In the residential district which allows two-story residential units. The height limitation is 30-feet in the residential district. So you're talking about this 36 foot high building being six-feet higher than what would have been permitted on a two-story single-

family unit.

Mr. Hedani: Except that's not what this property is zoned for.

Ms. Suyama: Right. This project is actually duplex zoning which allows them, you know

—

Mr. Hedani: 45 feet.

Ms. Suyama: 45 feet. If they want to go up to 45 feet. However, you know, at least they've taken the initiative to at least to bring the building down from 45 to 36 feet.

Ms. Amarin: Chair recognizes Commissioner Iaconetti.

Mr. Iaconetti: Thank you. Not being totally acquainted with this area, I'm wondering if the suggested site pole, suggestion made by one of the testifier, would, could be considered with the rest of the Commissioners the amenable to it.

Ms. Amarin: Chair recognizes Commissioner Guard. You had your hand up earlier.

Mr. Guard: Yes. I have a follow up on the height issue. Clyde had mentioned Grand Champions went up and down from two-stories to a few three-stories. There's a potential of just dropping the two top level units on buildings #1, #2, or #3, or to have a stacked effect going into the interior of the project.

Mr. Murashige: We looked at that whole area off of Kai Malu Drive, where we're going down the nine-feet off of the roadway and then starting the 36 from there. And in fact, there's an existing kiawe tree, a large one there, that we actually had surveyed and it topped off, and the top ridge of the building #1 will be four-feet below that. So essentially as you come down Okolani Drive as was indicated in the previous tutorial, you are seeing different pieces through existing tree lines. And on top of that, the entry to Kai Malu Drive will be heavily landscaped as part of the Kai Malu project. In fact, both sides, they'll have coconut trees, Plumeria trees as well as under carries on the planting. So that's buildings #1 and #2, essentially, as you come down your roadway, it's going to be screened pretty heavily not only on the project site, but from Kai Malu Drive.

Ms. Amarin: Commissioner Starr.

Mr. Starr: From what I can tell from the photos and their descriptions, the buildings are going to be just high enough to hide any view of the ocean. You know, this is something we've been through several times over the past year and I know we had expressed, and I know Commissioner Shepherd quite a few times, and several of us have expressed that

we should always have, you know, a visual aid as far as, you know, seeing how they would look. And some projects did, in fact, some A&B projects have come before us with pictures that showed how the buildings would actually look. And since we don't have that here, I would support what I believe Dr. Iaconetti was suggesting was that they (phonetics) fold the project and then we go look at it. And I would assume that would require a deferral. I don't think it comes back before us again.

Ms. Amorin: Let's hear from Paul Fasi.

Mr. Fasi: I did a site visit on this site to look at the view plain and the impact that it would have. The existing foliage on that property, there's many, many kiawe trees way beyond 45 feet. And the fact that this site has a pretty significant drop off and slope to it would alleviate a lot of those roof lines. Of course, you know, you will have some popping up, but I don't believe that the 45-foot height limitation is going to have drastic impact on anyone's view plains. Because there's a lot of trees there that are like 50 feet. I mean, they're tall. And if they're going to maintain the trees on site, the trees will be higher than the roof lines.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: Madame Chair, I guess, before we start looking at reducing the number of stories or a roof design, I just wanted to bring up the point again, I think it would assist myself if the applicant prepared, I guess, the correct word is "montage." Thereby removing the mystery of what views would be impacted and what would not, and if they could provide views from the trees, people that registered concerns with the Commission that their Kialoa residents view plains would be impacted. If in fact, the existing trees there would be above the roof lines, then there's no guessing. We wouldn't have to be talking about removing the third story or reducing roof pitch, and this would, to me, make it a lot easier to make a decision to see super imposed buildings to scale now and later, and see what's actually impacts it. I think that would be more effective than having poles set up. You would be looking from the road, you wouldn't be elevated from the residences. That would be my preference.

Ms. Amorin: Does the applicant have a response?

Mr. Murashige: Sure. I would like to just go back to one slide that's actually a photograph with the rendering of building #1 in place. Actually, let me step back here. I'm sorry. This is one of our site analysis study that is looking from the Kialoa Subdivision, the buildings or the units/homes that are facing right on Okolani Drive. The two buildings in the back are actually buildings #14 and #15 and they're the closest to Okolani Drive. They're about 260 feet away. And as you can see, actually the buildings, the top of buildings are actually below a lot of trees or vegetations.



So actually, this photo rendered in at the same scale showing building #1 and you can see looking as you drive down Okolani, and this is actually taken at a height in your car, that you still will have the ocean view over building #1.

Mr. Hiranaga: Question Madame Chair.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: When you said the rendering, is that drawn to scale or is that to the architect's discretion?

Mr. Murashige: It's done to scale. Actually, it's rendered off of this photograph – the view – first photograph.

Mr. Hiranaga: I guess my point is this is if the applicant would have provided that along the entire roadway frontage, it would eliminate a lot of the concerns, if any. I mean, from the previous display you showed, the tree line is quite a bit above the roof line, so there won't be any impact as far as what you showed us.

Ms. Amorin: Commissioner U`u.

Mr. U`u: I agree with some of the Commissioners about a rendering or drawing. For me, what would be concern, what would draw a red flag for me is when you ask for a height variance. And in this case, you know, you guys not. You know, so, I don't see it as a red flag. I know the – I guess, Wailea is in favor of it. I know you can't please everybody all the time, but if you're going please most of the people most of the time, that's good for me. I like the fact that you guys going back to affordable housing. You guys going be giving to the schools. I really think it's a good project. I think we need affordable homes, and sadly, this is one of the ways we do it, you know. Not sadly, but it's the only way, I guess, or one of the ways. And I know you guys giving to the parks a million dollars, and that's a lot of money. I think we need it there, but overall it's a good project. And like I said, you guys following the procedure set forth by certain agencies and you guys coming within the guidelines. So, I'm pleased with the project is what I'm trying to say.

Mr. Murashige: Thank you.

Ms. Amorin: Thank you applicant. Any more questions Commissioners? I'll turn it over to Paul Fasi for your recommendations.

Mr. Fasi: The application complies with the applicable standards for Planned Development Step 1 and Step 2, and Special Management Area Use Permit requirements. The recommendations of the Maui Planning Department recommends approval of this

application. There are 14 standard conditions. They are standard. I will not repeat them. There are seven project specific conditions, none of any note. The applicant will comply to all County governmental regulations, i.e.: the affordable housing requirement and the contributions to the traffic. Thank you.

Ms. Amorin: Thank you Paul. Commissioner Hedani.

Mr. Hedani: Question for staff. On the recommendation, you don't think site 5678 and 5677 are worthy of preservation?

Mr. Fasi: We rely heavily upon SHPD's recommendations and thereby they kind of set the guidelines for the Planning Department. We do not make the decisions, you know, within the Planning Department, we just follow their guidelines. But, we're comfortable with their recommendation on this. And the fact that OHA seems to be comfortable with the fact that the information necessary was gathered from those two sites is all that was required. But I understand your concern. If it was of a more notable site and SHPD had any concerns, the Planning Department would certainly bring that to your attention.

Ms. Amorin: Commissioner Guard.

Mr. Guard: Sorry, you said OHA was comfortable with the outcome? That's my main issue.

Mr. Fasi: They're concurring with the SHPD's assessment.

Mr. Guard: Okay, they're okay with –

Mr. Fasi: Yes.

Mr. Guard: Wiping it out?

Mr. Fasi: Well –.

Mr. Guard: I mean, other than that, the rest of the project is great. I like the stacking of the roof line. It takes away from the massing, and the landscaping. It seems like there could possibly be a way without a site visit. We don't know that. But if we could reroute, it looks like you could save one more spot on the plan by kind of circumventing one more spot, changing the roadway. To save one more would a noble cause. Some of them said they've probably got inundated with "riffery" and World War II, it sounds like.

Mr. Fasi: The primary preservation spot, I know, has some petroglyph down there so that would be considered pretty significant.

Mr. Guard: So that's the one that's being saved?

Mr. Fasi: Oh, yes.

Mr. Guard: Yeah.

Mr. Fasi: Definitely.

Mr. Guard: And so the others, where the c-shaped, little structures that said that most of it was probably used –

Mr. Fasi: The Planning Department –

Mr. Guard: As World War II practice sites as well.

Mr. Fasi: That's correct.

Mr. Guard: That helped –

Mr. Fasi: We're not archaeologists, so we don't second guess the archaeologist.

Mr. Guard: The hire archaeologist right?

Mr. Fasi: We don't.

Mr. Guard: Well, I mean, the applicant and OHA was okay with the final outcome?

Mr. Fasi: I would agree with that.

Mr. Guard: Okay.

Ms. Amorin: Any more questions? Thank you Paul. Commissioner Hedani.

Mr. Hedani: Question for the applicant.

Ms. Amorin: Applicant?

Mr. Hedani: And It probably goes to either Mich or Clyde. I can see where if, you know, site 5679 affects your roadway and affects the fire access that, that would be a significant problem. But if we were to expand the preservation area or figure out a way to preserve sites 5678 and 5677, would that make the development of the project impossible?

Mr. Hirano: I'll let Clyde answer that.

Mr. Murashige: Commissioner Hedani, we, looking at location of both of the sites, we probably would like to address it at Step 3 and see what we can do. Not to say that we can, but let us look at the site plan and come back as part of Step 3 and address that.

Ms. Amarin: Thank you. Mich, did you have –?

Mr. Hirano: I was wondering if it would be possible to not preserve those, say in two, but to rearrange them on site and have maybe an interpretation about what that feature is. Basically, they're – if you look at the sites, they're rock mounds – rock mounds and so they can be relocated if it was in the roadway and then put into maybe with a plaque.

Mr. Hedani: I think the site –. Sorry, Madame Chair.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: I think the site that was in the roadway was 5679. It was kind of like pointed out in the middle of the roadway. And I think that, that one is going to be pretty much impossible to preserve unless you go through (phonetics) elevations with moving the entire roadway. And if it's effecting grades for fire access, then I think that, that's not something that you're going to be able to preserve forever. But the other two sites look like they were in kind of like landscaping areas outside of the footprint of the building themselves.

Mr. Hirano: As Clyde said maybe during Step 3 we could come back and just see how much of it can be preserved.

Mr. Hedani: Okay.

Ms. Amarin: Thank you. The Chair recognizes Colleen. She has a condition to impose.

Ms. Suyama: Well, I was going to suggest so that you know that during Step 3 you come back with some kind – either telling the Commission, “yes, we were able to do some preservation or no.” It's a very broad condition that the applicant shall make every effort to try and preserve site 5677 and site 5678 so we understand that we it comes for Step 3 approval, then you would address it with the Commission.

Mr. Hirano: Okay.

Mr. Murashige: That sounds good.

Mr. Hirano: Yes.

Ms. Amorin: Thank you. Any more questions? Commissioner Guard.

Mr. Guard: On this, with the presentation, does that reflect once we go into what we're approving the discussion of drip irrigation, organic fertilizers, the – what was the other – the drainage taking on 33% more than what's there now? Is that addressed in here? Cause past – I'm just concerned that past people, if you're all of sudden, 33% is too expensive to do that the go back to what typical standard policy is or organic fertilizers are too expensive today, so we're going to go to Miracle-Gro.

Mr. Fasi: The recommendations, standard condition #4, is "that the final construction shall be in accordance with preliminary architectural plans."

Mr. Guard: All right.

Ms. Suyama: I think the one that's more important to your – condition #11, which is "that the applicant shall develop the property in substantial compliance with the representations made to the Commission."

Mr. Guard: Okay.

Ms. Suyama: "In obtaining the Special Management Permit."

Mr. Guard: How much bite does that have? Not necessarily for this one. I'm not blaming anyone, but in general?

Ms. Suyama: In general because of the representations, when we look at the final plan, we usually try to see, you know, how they complied with whatever they said they did, unless there's a specific condition.

Mr. Guard: Like for CO – to say you're not taking on that much (phonetics).

Ms. Suyama: And in this case because you're reviewing the Step 3, you have a final review process in which whatever representations were made the applicant, you can also confirm.

Mr. Guard: Okay. Thank you.

**b. Action**

Ms. Amorin: Thank you. Do we have a motion of the floor?

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

Ms. Amarin: Okay. Do we have a second?

Mr. Hedani: Second.

Mr. Starr: Madame Chair?

Ms. Amarin: Jonathan Starr.

Mr. Starr: Vote to amend that condition #12, to remove the words “and or water heat pumps,” so that it shall read, “that appropriate energy conservation measure shall be incorporated into the project including solar water heaters.”

Ms. Amarin: Do we have a consensus on this or do we have any concerns from Paul Fasi on this?

Mr. Fasi: Well, let me add that –. I did call Maui Electric because I had the same concern that Commissioner Starr had, and I didn’t see any solar on there. And what MECo told was the reason that they don’t put solar in a lot of multi-family units is because in certain neighborhoods, the nature of the residency, is that a lot of people are away. And if the water is not cycling through the system, it has a tendency to over heat the system and it will break. That’s the explanation I got from MECo.

Ms. Amarin: Okay, going back to Commission Starr’s motion. Do I have a second on the floor? Seeing no second, the motion doesn’t go.

**Commissioner Jonathan Starr motioned to amend the main motion, to delete the words, “water heat pumps,” in Condition #12, so that the condition will read, “that appropriate energy conservation measures shall be incorporated into the project including solar water heaters.” – Amended motion failed on the floor.**

Ms. Amarin: Going back to the motion to approve and seconded. Hedani, you have a question?

Mr. Hedani: The question that I have is that the motion is to motion to approve subject to an analysis of the preservation of sites 5677 and 5678 on Step 3. Is that what we’re voting on?

Ms. Suyama: The condition number – the inclusion and condition #22 – “that the applicant shall make every effort to try and preserve site 5677 and 5678.”

Mr. Hedani: And they’ll come back to us at Step 3?

Ms. Suyama: At Step 3.

Mr. Hedani: Okay.

Mr. Guard: One more question.

Ms. Amarin: Commissioner Guard.

Mr. Guard: Thank you. So, I guess this is for Paul. Under condition #11, would that include the discussion of solar water, hot water, for the rec building along with the photo voltaic system? It kind of came up in discussion with Clyde and Mich. I mean, is that something that we can bring back at Step 3 at least? I guess, best effort is goal, energy conserving.

Mr. Fasi: Condition #11?

Mr. Guard: Yeah, if that would be included in that. Is that something you're going to be able to look at? I guess, switch it over to Clyde?

Mr. Murashige: Regarding the rec center, we would be looking at that as part of the Step 3.

Ms. Amarin: Commissioner Starr.

Mr. Starr: You know that comment that we heard from MECo. That's one of the stupidest, non-sense things I've heard in a while. You know, I've been installing solar hot water for a long time – I've been using it – and any modern system uses something called the Delta T which basically circulates the water when it gets above a certain temperature. So, you know, to hear that Maui Electric is recommending against it for multi-family makes no sense at all. So I would like, you know, if that's indeed what we've got, I would like to have that in writing to the Commission so that we can go deal with it. So, I'd like to ask Paul, would you get that in writing from Maui Electric, please?

Mr. Fasi: Sure.

Mr. Starr: Thank you.

Ms. Amarin: Any more discussion? We have a motion on the floor to accept with changes from Commissioner U'u, seconded by Commissioner Hedani. All those in favor.

Commission Members: "Aye."

Ms. Amarin: Any oppose? It's been moved and approved. Thanks.

Mr. Murashige: Thank you very much Commissioners.

Mr. Hirano: Thank you Commissioners.

**It was moved by Commissioner Bruce U`u, seconded by Commissioner Wayne Hedani, then**

**VOTED: To approve the project with the noted changes as discussed.**

Ms. Amorin: Planning Commission is in recess for five minutes.

*(The Maui Planning Commission recessed at approximately 3:22 p.m., and reconvened at approximately 3:32 p.m.)*

Ms. Amorin: – April 10, 2007 is back in session. Colleen.

- 2. MR. E. THOMAS LEWICKE requesting an amendment to a Special Management Area Use Permit to delete Condition No. 6 regarding naming the County of Maui as additional insured for the construction of a second main dwelling on approximately 0.94 acres of land within the R-3 Residential District at 917 S. Kihei Road, TMK: 3-9-034: 027, Kihei, Island of Maui. (SM1 2006/0009) (L. Callentine)**

**The Maui Planning Commission may take action on this request.**

Ms. Suyama: Under Communications. The first communication item was dealt with a public hearing, and that was the Step 1 and Step 2 approval for the Wailea MF-7. The second matter is Mr. E. Thomas Lewicke requesting an amendment to the Special Management Area Permit. Mr. Lewicke is no longer here at the meeting, and for that reason, the Department recommends that you defer this action.

Mr. Iaconetti: So move.

Mr. Hedani: Second.

Ms. Amorin: Moved and seconded to defer item #2 on our agenda. All those in favor?

Commission Members: "Aye."

Ms. Amorin: Any oppose?



**It was moved by Commissioner William Iaconetti, seconded by Commissioner Wayne Hedani, then**

**VOTED: To defer the project.**

**G. LITIGATION (To be reviewed at approximately 2:00 p.m.)**

- 1. Complaint, Summons on Civil No. 07-1-0110(1) filed in the Second Circuit Court on March 22, 2007 in the case of WEST MAUI PRESERVATION ASSOCIATION, a domestic non-profit corporation, and JAMES FOSTER vs. MAUI PLANNING COMMISSION, MAUI BEACH RESORT, LP, a foreign limited partnership, and COUNTY OF MAUI on the March 13, 2007 action by the Maui Planning Commission to grant Step 3 Planned Development Approval for the Honua Kai project on Lot 4, Kaanapali North Beach Subdivision, TMK: 4-4-014:006 and 008 and 4-4-001:010, Kaanapali, Island of Maui. (C. Suyama) (To be taken up at the approximately 2:00 pm.)**

**The Plaintiffs are seeking the voiding of actions taken at the March 13, 2007 meeting inconsistent with Hawaii Revised Statutes 92-7 and an award of reasonable attorney's fees and costs from the courts.**

**\*An Executive Session may be called by the Commission pursuant to the provisions of Chapter 92, Hawaii Revised Statutes in order to discuss with the Commission's attorney their duties, powers, and liabilities as it relates to the subject litigation.**

Ms. Suyama: Item G is litigation, and this is result of a complaint that was filed against the Maui Planning Commission, the Maui Beach Resort LLP, and the Maui Planning Department. Because this is a lawsuit that was filed against the Commission, we recommend that the Commission go into Executive Session.

Mr. Starr: So moved.

Mr. Iaconetti: Second.

Ms. Amorin: It's been moved and seconded and we'll be going to an Executive Session, so we need to clear this room. Thank you.

**It was moved by Commissioner Jonathan Starr, seconded by Commissioner William Iaconetti to go into an Executive Session.**

*(The Maui Planning Commission commenced the Executive Session at approximately 3:33 p.m., and reconvened the regular meeting at approximately 3:49 p.m.)*

## **H. OBJECTIONS**

1. a. **LANCE D. COLLINS, attorney for the WEST MAUI PRESERVATION ASSOCIATION, INC. filing Notice of Objections Upon the Application for Amendment dated December 6, 2006 regarding the proposed shared fire lane request and the deletion of the additional fire lane between North Park and the northernmost wing of the Honua Kai project pertaining to the Special Management Area Use Permit and Step 2 Planned Development Approval for the Honua Kai project and related improvements at TMK: 4-4-014:006 and 008 and 4-4-001: 010, Kaanapali, North Beach, Lahaina, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (C. Suyama)**
- b. **B. MARTIN LUNA of CARLSMITH BALL, LLP , attorney for INTRAWEST filing a Motion dated December 13, 2006 Opposing Notice of Objections upon the Application for Amendment by the WEST MAUI PRESERVATION ASSOCIATION, INC. dated December 6, 2006**
- c. **Letter of Withdrawal of the SMA amendment request by Intrawest.**

**The Commission may act to dispose of these objections.**

Ms. Amorin: Colleen?

Ms. Suyama: The next matter is H-Objections. There were a number of objections that were filed. The first one is Lance D. Collins, attorney for West Maui Preservation Association, filing a notice of objection upon the applications for amendment dated December 6, 2006 regarding the proposed shared fire lane request and deletion of the additional fire lane between north park and the northern most wing of the Honua Kai Project pertaining to the Special Management Area Use Permit and Step 2 Planned Development Approval for the Honua Kai Project and related improvements, at Tax Map Key 4-4-014:06, 08, and 4-4-001: parcel 10, Kaanapali, North Beach.

There also is a objections that were filed by B. Martin Luna, of CarlSmith Ball, LLP, attorney for Intrawest filing a motion dated December 13, 2006 opposing notice of objections upon the application for amendment by the West Maui Preservation Association, dated December 6, 2006.

And there's also the letter of withdraw of the SMA permit amendment request by Intrawest. The Commission may act to dispose of these objections. The parties, I believe, are here, Mr. Collins and Mr. Luna present.

Ms. Amorin: The Chair calls Lance D. Collins.

Mr. Lance D. Collins: Good afternoon Madame Chair and Commissioners. My name is Lance Collins. I'm the attorney that represents the West Maui Preservation Association. There is a series of correspondences that occurred between the Department and myself in respect to these objections. We had noted that your rules do not provide the clerk with the power to dispose of essentially motions which are moot. And so we had said that we weren't entirely sure that it was legal just to sort of all the clerk to withdraw them, and we also said it maybe appropriate for the Commission in engage in rule making to allow the clerk in these instances, as this one, to essentially withdraw these kinds of motions that are essentially moot because the applicant has asked that the application itself be withdrawn. So we obviously have nothing to add except that we're more than happy to work with the Department, if you folks want, in developing some kind of language that would give the clerk, the Department, the power to delegate the power to do that, if that's what the Commission would like to do. Thank you.

Ms. Amorin: Thank you.

Mr. Giroux: Lance, in a situation like this, a simple letter notifying the Department that you do understand that there was a withdraw of their original motion to amend would have been sufficient to – we could have put it on our calendar and then not had any public hearing whatsoever. It would just be a communication, and we would have known that both parties are agreeable. I guess there's a lot of waste of attorney's time here because your times are billable and you're wasting our time by discussing this – this doesn't need to be on here. If there's letters going between the parties, there could have been a letter to us, just saying, "I understand that the SMA has been withdrawn. I am in receipt of the letter. I am okay with withdrawing my intervention." And that as a communication, we would understand that.

Mr. Collins: Oh, yeah, I'm sorry, but communication was with the Department. The parties didn't have very much direct communications actually. We had said that we weren't entirely sure procedurally this would suppose to go, and we've got no further correspondence after that letter for the Department. That was on March 20<sup>th</sup>. Yes, so that may have been

appropriate. We were not apprised of that possibility and we had sort of left it to the Department to suggest what they thought the proper form was. And apparently, they thought putting this on the agenda today was –. But that's fine. We're amenable whatever.

Ms. Amarin: Thank you. B. Martin Luna.

Mr. B. Martin Luna: Madame Chair, members of the Commission. We had thought that the withdraw and the acceptance of the withdraw by Department was sufficient as has been the practice for the last 25 years. Mr. Collins may be correct in that the rules may not have specific provisions that say that the Department has the authority, but that's what has been the practice for the last 25 years. So I was surprised to know that they objected to our – seemed to have objected our withdraw, and we're happy that they've come out and said that they're not objecting now. So, with that, we're, hopefully the Commission will just go ahead and file the – our request to withdraw the application. Thank you.

Ms. Amarin: Thank you. Colleen. At this time the Chair will entertain anyone in the audience, if they have any public testimony on this particular agenda item, to please come forward. Seeing none, public testimony is closed. Colleen.

Ms. Suyama: The recommendation of the Department is that the Commission files these motions as well as the application for withdraw.

Mr. Hedani: So move.

Mr. U`u: Second.

Ms. Amarin: Moved and seconded to withdraw the motions for the (phonetics) to Lance Collins and B. Luna Martin. All those in favor?

Mr. Hedani: The motion to file right?

Ms. Suyama: Motion to file.

Ms. Amarin: The motion file. I stand corrected. Thank you.

Mr. Starr: Which item is that, specifically?.

Ms. Amarin: Lance D. Collins attorney for the West Maui Preservation Association filing notice of objection upon the application for amendment dated December 6, 2006. And B. Martin Luna of Carlsmith Ball, LLP, attorney Intrawest, filing a motion dated December 13, opposing notice.

Mr. Starr: Is it just #1A and B, or is it all #2 and #3?

Ms. Suyama: No, it's only 1A, B and C, which is the motions and the withdraw.

Ms. Amorin: All those in favor?

Commission Members: "Aye."

Ms. Amorin: It's been carried.

**It was moved by Commissioner Wayne Hedani, seconded by Commissioner Bruce U`u, then unanimously**

**VOTED: To file the motions and the application for withdraw.**

- 2. LANCE D. COLLINS, attorney for the WEST MAUI PRESERVATION ASSOCIATION, INC. filing Notice of Objections upon the Application for Amendment dated March 15, 2007 to the Step 3 Planned Development Approval to INTRAWEST regarding the Honua Kai Project on Lot 4 at TMK: 4-4-014: 006 and 008 and 4-4-001: 010, Kaanapali, North Beach, Lahaina, Island of Maui. (PD3 2006/0003) (C. Suyama)**

**The Commission may act to dispose of these objections.**

- 3. LANCE D. COLLINS, attorney for the WEST MAUI PRESERVATION ASSOCIATION, INC. filing Notice of Objections upon the Application for Approval dated March 15, 2007 on the Intrawest Step 3 Approval for the Honua Kai Project on Lot 4, Kaanapali North Beach Subdivision at TMK: 4-4-014:006 and 008 and 4-4-001:010, Kaanapali, North Beach, Lahaina, Island of Maui. (PD3 2006/0003) (C. Suyama)**

**The Commission may act to dispose of these objections.**

Ms. Suyama: The second item on your agenda is Lance D. Collins, Attorney for the West Maui Preservation Association, filing notice of object upon the application for amendment dated March 15, 2007, to the Step 3 Planned Development Approval to Intrawest, regarding the Honua Kai project on Lot #4, at TMK: 4-4-014:06, 08, and 4-4-01: parcel 10, Kaanapali, North Beach. This is the matter that is under litigation between Mr. Collins, West Preservation Association and the Commission.

Ms. Amorin: Lance D. Collins, to the podium. On this matter, you have any statements or

presentation to make?

Mr. Collins: Madame Chair, Lance Collins, I'm the attorney for West Maui Preservation Association. This is our notice of objection upon the application for approval for the IntraWest Step 3. This notice of objection is essentially a motion to intervene in the matter. My clients, or my client, is in the position that the Commission has not taken valid action on this application, and therefore, the motion to intervene would be timely. Because of the wording in this agenda, the Commission may act to dispose of these objections, we were not under the assumption that the Commission today would be treating this as a motion to intervene, but we're present today to answer any questions.

Ms. Amorin: Corporation Counsel.

Mr. Giroux: Lance, when was this filed?

Mr. Collins: March 15<sup>th</sup>.

Mr. Giroux: March 15<sup>th</sup>, right? Now, you didn't label this as motion to intervene though. You stated it as a – just as an objection.

Mr. Collins: If you read – if you read the pleading, it is brought under the rules for intervention. The Commission rules do not have as the Hawaii Rules of Civil Procedure that the incaptioning of a pleading be required to state any kind of particular order, and it does embrace the substance of our intervention that we were giving notice, that we objected the application for approval of the Step 3.

Mr. Giroux: Lance, you filed this under 12-201-40, is that your –?

Mr. Collins: Excuse me for a moment.

Mr. Starr: I think it says 12-201-39 on the document.

Mr. Collins: 12-201-39.

Mr. Giroux: Okay. Lance, I'm just going to refer you to 12-201-40 that's right after that. It says, "petitions to intervene shall be in conformity with Section 12-201-20 herein and shall be filed with Commission and served upon them within no less than 10 days before the first public hearing date. Untimely petitions will not be permitted except for good cause, but in no event will intervention be permitted after the Commission has taken the final vote on the matter before it." Is your position that we haven't taken a final vote on the Step 3?

Mr. Collins: WMPA's position is that the application has not appeared on a Maui Planning

Commission agenda yet, so therefore, there's not been an initial public hearing on the matter, and so no final vote could be taken.

Mr. Giroux: Well, our position is that it's been agendaed properly and we took action, and that your motion to intervene is after we took final action.

Ms. Amarin: Thank you Lance.

Mr. Collins: Thank you.

Ms. Amarin: Do I have a motion on the floor to dispose of these objections?

Mr. Hedani: I have a question for Counsel. What would be the appropriate motion in this particular case? A motion to file?

Mr. Giroux: I would feel comfortable if somebody just seconded my recommendation to you, and that could be memorialized in a letter as far as that's being our position, as far as this letter. We are being asked because our rules do say that any petitions to intervene have to be acted on. So I would suggest that there be a motion and that we establish some documentation that says that we did act on this if it's being posed to us, although as an objection, but being called a motion to intervene.

Ms. Amarin: Is it clear? Commissioner Starr.

Mr. Starr: I would be reluctant to act, to vote, to act to dismiss until the other issue in the courts is taken cared of because this seems to be based on the court case. At least that's from what we've just heard from the petitioner.

Mr. Giroux: Well, just to put on the record, under 12-201-45, it says "all petition to intervene shall be heard and ruled upon prior to the Commission taking final action on the application." So, with those two rules, I mean, being that we heard it on March 13<sup>th</sup>, and that this letter was sent March 15<sup>th</sup>, it's clearly after the time that this Commission took action.

Mr. Hedani: So the appropriate motion would be a motion to second you said?

Ms. Suyama: I think –

Mr. Hedani: Or a motion to accept Counsel's recommendation?

Mr. Giroux: Yeah, either way. I mean, some action that shows that you guys did look at it, and that you did look at the merits of the intervention.

Ms. Suyama: Could I maybe summerize it? What it is, is that, what you're requesting is that it's a motion to deny because he's saying it's a petition to intervene, the petition to intervene because based upon the Commission rules, it was filed after the final action of the Commission, and not before.

Mr. Hedani: I so move.

Mr. U`u: I second.

Ms. Amarin: It have been moved and seconded to – for this motion to deny these objections. All those in favor?

Commission Members: "Aye."

Ms. Amarin: Any oppose?

Mr. Starr: Oppose.

Ms. Amarin: Our record say one oppose. It carries. Thank you.

**It was moved by Commissioner Wayne Hedani, and seconded by Commissioner Bruce U`u, then**

**VOTED: To deny the petition to intervene.  
(Assenting: Commissioner W. Hedani, B. U`u, K. Hiranaga, J. Guard,  
and W. Iaconetti  
Dissenting: Commissioner J. Starr)**

4. a. **LANCE D. COLLINS, attorney for the WEST MAUI PRESERVATION ASSOCIATION, INC. filing Notice of Objections dated March 15, 2007 upon the Application for SMA Assessment by STARWOOD for the construction of a temporary stockpile site at TMK: 4-4-014: 005, Kaanapali North Beach, Lahaina, Island of Maui. (D. Shupack)**
- b. **JOHN RAPACZ, attorney for STARWOOD filing a Memo in Opposition dated March 29, 2007 to the West Maui Preservation Association's Notice of Objections to the SMA Assessment submitted by STARWOOD for the construction of a temporary stockpile site at TMK: 4-4-04:005, Kaanapali, Island of Maui.**



**The Commission may act to dispose of these objections.**

Ms. Suyama: Item #3 – I'm sorry – Item #4. Item #4A, is Lance D. Collins, attorney for the West Maui Preservation Association filing notice of objections dated March 15, 2007, upon the application for SMA Assessment by Starwood for the construction of a temporary stockpile site at TMK: 4-4-014:parcel 5.

There's also a second motion, John Rapacz, attorney for Starwood, filing a motion in opposition, dated March 29, 2007 to the West Maui Preservation Association notice of objections to the SMA Assessment submitted by Starwood for the construction of a temporary stockpiling site at TMK 4-4-04:parcel 5. This is a matter that deals with Lot #3 which is the Starwood property of the North Beach subdivision.

Ms. Amarin: Lance Collins.

Mr. Collins: Madame Chair, Commissioners, Lance Collins, attorney for West Maui Preservation Association. I think that there was a bit of confusion with respect to this matter. As was stated in Mr. Rapacz's memo in opposition that the matter is not appropriate procedurally. Some follow up letters from the Department to us has indicated such as well. I think the initial problem was that we were not informed of some Department actions. That we sort of missed one of the correspondence in the chain of correspondences, so we misunderstood where this was going. So my understanding is that this is going to be disposed of today by the Commission since it's technically outside of the Commission's jurisdiction, at least under the rule it was brought under. And so we have no objections to that, and I don't think Mr. Rapacz does either, but that's all.

Ms. Amarin: Thank you. Corporation Counsel.

Mr. Giroux: Move to file it.

Mr. Iaconetti: Should we hear from Mr. Rapacz?

Ms. Amarin: John Rapacz.

Mr. John Rapacz: Thank you Madame Chair and Commissioners. We would ask the Commission to deny the petition for the reasons set forth in the Planning Department's letter of March 27<sup>th</sup>, and that is essentially, that it's filed after the granting of the SMA Minor and the petition is not appropriate.

Ms. Amarin: Thank you John Rapacz. Commissioner Starr.

Mr. Starr: I thought we had just heard from Counsel recommending that we file, would that

be acceptable too?

Mr. Rapacz: Yes, that's fine as well. Thank you.

Ms. Amarin: Thank you. We have a motion on the floor?

Mr. U`u: Motion to file.

Mr. Hedani: Second.

Mr. Starr: Should we hear from the public, if the public wants?

Ms. Amarin: Yes. Do we have anyone in the audience that wishes to speak on this agenda item? Seeing none, public testimony is closed. Thank you. It's been motioned and seconded to deny. All those in favor.

Mr. Starr: No. To file.

Ms. Amarin: To file, I'm sorry. All those in favor?

Commission Members: "Aye."

Ms. Amarin: It's carried. Thank you.

Mr. Starr: Just for clarification, that's item #4.

Ms. Amarin: Yes.

Mr. Hedani: Johanna.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: You need to call for the votes opposed.

Ms. Amarin: Okay, all those in favor?

Commission Members: "Aye."

Ms. Amarin: Any oppose? It's unanimous. Thank you.

**It was moved by Commissioner Bruce U`u, seconded by Commissioner Wayne Hedani, then unanimously**

**VOTED: To file the motions of objections and the application for withdraw.**

**I. MINUTES OF THE MARCH 13, 2007 MEETING**

Ms. Amarin: Colleen.

Ms. Suyama: The next matter is the minutes of the March 13, 2007 meeting.

Mr. Hedani: Move to approve.

Mr. Iaconetti: Second.

Ms. Amarin: It's been moved to approve and second to accept the minutes of the March 13<sup>th</sup> meeting. All those in favor?

Commission Members: "Aye."

Ms. Amarin: Any oppose? Commissioner U`u.

Mr. U`u: I think Mr. Luna wanted to bring up something.

Ms. Amarin: Okay. So, regarding the March 13<sup>th</sup> meeting minutes that we have, it's been approved. All those in favor?

Commission Members: "Aye."

Ms. Amarin: Any oppose? It's carried. The Chair recognizes Mr. Luna Martin.

**It was moved by Commissioner Wayne Hedani, seconded by Commissioner William Iaconetti, then**

**VOTED: To approve the minutes of March 13, 2007 as presented.**

Mr. Luna: Thank you. I just wanted a point of clarification. The action taken by the Commission regarding Collins' objections on the application or his intent to intervene, was that both items #2 and # 3 together that the Commission considered and took action on?

Ms. Amarin: Thank you for that question. Let's make sure. Colleen. Corporation Counsel.

Mr. Giroux: I'm trying to look at the TMK's to -. Is there any reason that there's two?

Ms. Suyama: I don't know why there's two. I didn't do the agenda.

Mr. Iaconetti: This is confusing.

Mr. Hedani: I think it was –

Ms. Suyama: I think it –

Mr. Hedani: A motion to file for #1A, B and C; and motion to deny on #2.

Ms. Suyama: I think items #2 and #3 are the same items. So for clarifications, maybe the Commission would just want to restate their motion that it includes items #2 and #3 which deals with the notice of objections of the Step 3 Planned Development for Intrawest.

Mr. Hedani: So move.

Mr. U`u: Second.

Ms. Amarin: There's been a correction and it's been motioned and seconded to include #2 and #3 on this application for amendments. Thank you. Is that clear?

Mr. Hedani: That's on the motion to deny.

Ms. Amarin: For a motion to deny.

Mr. Iaconetti: Should we hear from Mr. Collins?

Ms. Amarin: Lance Collins, do you have anything to say on this subject?

Mr. Collins: ....(Inaudible)....

Ms. Amarin: Thank you Mr. Collins. Colleen.

Ms. Suyama: Next is the Director's Report.

Mr. Iaconetti: Wait, we've got to vote on that last motion.

Ms. Suyama: Oh, you've got to vote on it.

Ms. Amarin: It's my first day. I'm glad I have all this great support. Okay, it's been moved and seconded, and all those in favor?

Commission Members: "Aye."

Ms. Amarin: Any opposition?

Mr. Starr: Oppose.

Ms. Amarin: One oppose. It's been carried. Thank you. Colleen.

**It was moved by Commissioner Wayne Hedani, and seconded by Commissioner Bruce U`u, then**

**VOTED: To deny the petition to intervene to include items #H2 and #H3 of the agendaed items.**

**(Assenting: Commissioners W. Hedani, B. U`u, K. Hiranaga, J. Guard, and W. laconetti**

**Dissenting: Commissioner J. Starr)**

**J. DIRECTOR'S REPORT**

**1. Planning Commission Projects/Issues**

- 2. Pursuant to the provisions of Section 12-202-16 of the Maui Planning Commission's Rules, notification for the Planning Commission's Review of the issuance of a Special Management Area Emergency Permit by letter dated March 19, 2007 for the following:**

**MR. BRAD MICKELSON, General Manager- AOA of THE WHALER ON KAAPALI BEACH for the emergency parking garage repairs and reallocation of existing tennis courts to accommodate temporary parking at The Whaler, 2481 Kaanapali Parkway, TMK: 4-4-008: 002, Kaanapali, Island of Maui. (SM3 2006/0003) ( T. Abbott)**

**The Maui Planning Commission may review this matter.**

Ms. Suyama: The next item is the Director's Report. I don't believe we have any projects or issues to come before the Commission. And pursuant to your rules, there was one emergency permit that was issues, and that was to a Mr. Brad Mickelson who's the General Manager of the Whalers on Kaanapali Beach, for an emergency parking garage repairs and reallocation of existing tennis courts to accommodate temporary parking at the Whalers, at 2481 Kaanapali Parkway, TMK: 4-4-008:parcel 2, Kaanapali, Maui. Mr. Mickelson is in the audience.

Ms. Amarin: Mr. Brad Mickelson.

Mr. Hedani: Madame Chair.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: I'd like to recuse myself from this particular agenda item because my organization is currently involved in litigation with the Whalers.

Ms. Amarin. Okay. Thank you Commissioner Hedani. Chair calls Brad Mickelson, General Manager.

Mr. Brad Mickelson: Madame Chair. Aloha. Everyone else, aloha. Like yourself, this is the first time for me as well, and really, I'm not so sure exactly. I'm available for questions because this is somewhat backwards in the emergency planning.

Ms. Amarin: Could you state your name just to make sure? State your name first.

Mr. Mickelson: Brad Mickelson, General Manager for the Whalers on Kaanapali Beach. Thank you. I guess really we had some – just to bring you some history, we had some pieces of our garage that nearly hit some individuals that were inside the parking garage, and we have been somewhat plagued with parking garage for years. And in a condominium association, somewhat of a small government inside of the local community, it's very difficult to move forward with some of the voting was just fixed with owners. And so, under the emergency guidelines, we requested a permit to temporarily turn our tennis courts into a parking lot so that it would facilitate these types of repairs. And with the approval of the Director, we moved forward and did that. And we're rapidly reaching the end of the repairs, and our intentions are to follow the restriction or requirements set by the Planning Department. And return those tennis courts back to tennis use, in stages up until the – I believe August 23<sup>rd</sup> when they all go back into use. And so, that's currently where we are. With the emergency guidelines this project went immediately from verbal approval back in Thanksgiving, into construction.

Ms. Amarin: Commissioners, do we have any questions? Commissioner Iaconetti.

Mr. Iaconetti: This was okayed by the Planning Director? Is that what happened?

Mr. Mickelson: Yes, sir.

Mr. Iaconetti: Although you recused yourself Wayne, do you have any comments which is legal apparently?

Mr. Hedani: No, our lawsuit has nothing to do with the emergency repairs for the parking garage, and we take no objection to that.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Is it possible to get the tennis courts back up quicker?

Mr. Mickelson: Well, we're still undergoing the concrete repairs to the major structure which would be the large beams and columns and we're closing off sections of the garage at a time to accommodate that. We also needed to close off, not permanently, but for a longer period of time, a section where cars actually drive on top of the garage in a porte-cochere drop off location. The structure had been severely comprised in that location, and so we've basically installed a forest of shoring to support that portion of the structure to allow vehicular traffic up above. I think the time lines that was set through by the Planning Department was in coordination with us in meetings, and they're going to be tight time lines. So it will be tough to pull it any further forward.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: For my clarification, is the porte-cochere being opened or closed at this point?

Mr. Mickelson: The porte-cochere is open now since we have installed the shoring for the structural engineers plans, and the structural engineers have come out and inspected the installation and shoring as well. And so the... (inaudible)... with the porte-cochere was the commercial vehicle load on top of it. So we have tried to impose an operational procedure that keeps commercial traffic off of it. It is okay up to the 18,000 pounds gross vehicle weight currently, but it's a very difficult thing to enforce or police because every now and then you'll kind a Coke delivery truck or a water bottle delivery truck that does up there. And so the reality that we're faced with is when we finalize the design for the permanent repair solution to that area, we will increase its traffic rating to be able to receive fire truck load, which is some what the heaviest load out there on the street right now, and the heaviest loads we see. And the last thing we wanted to do was impede the fire trucks from being able to fight a fire and tell them, "hey, you can't park up there." So that's our intentions in the future.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: In the mean time do large trucks, like fire trucks, have any access to the building?

Mr. Mickelson: Yes. Absolutely.

Mr. Iaconetti: Where?

Mr. Mickelson: Well, it's a flag lot design. Our property is a flag lot shape, and the driveway comes up the inside of the flag lot curve. And the porte-cochere is just a little curve off of that flag lot corner. All of the fire fighting apparatus is in locations out of that location. So essentially they have access. We do also have a fully fire sprinklered building and fully functional fire alarm system that was upgraded in 2001. So we have somewhat of redundancy in our fire alarm system.

Mr. Iaconetti: Thank you.

Ms. Amarin: Any more questions Commissioners? Thank you very much for sharing the information to the Commissioners and also to the community. Thank you.

Mr. Mickelson: Thank you Ma'am.

Mr. Iaconetti: Does this require a motion of approval then?

Ms. Amarin: No, it does not. Thank you. Colleen.

**4. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission on the March 27, 2007 meeting.**

Ms. Suyama: Clayton's coming down to talk about the scheduling for the site inspection to Makena. Since he's not here right now, can we just go to the follow up report that we submitted the memorandum? To follow up on some of the issues that the Commission had at the last meeting. If there any questions?

Mr. U'u: Good job.

Mr. Iaconetti: I have a question regarding the Tony Roma renovations.

Ms. Suyama: Okay.

Mr. Iaconetti: I know I asked about the parking, at least that's what they were talking about at our last meeting. My concern is the fact that access to the restaurant, on the second floor, is by two stairwells, one of which is going to be improved with a lift system for people that are in wheelchairs. There are many people that are not in wheelchairs that will have difficult time going up the second floor. The second concern I have is the fact that this is a all-wooden building in the middle of a all-wooden town, with a restaurant on the second floor. I realize there are other restaurants on the second floor. I wasn't involved with any of that approvals. But I'm questioning the safety of a second floor restaurant, in a wooden



building, with the only access being a stairwell, or at least two stairwells. I think that should come under the purview of the Planning Commission. I realize that this is a Fire Department decision, but we either approve it or don't approve it. And I have a hard time approving the situation as they listed, or as they told us. I know it's been approved without ever having to come to the Commission.

Ms. Amorin: Colleen, do you have any information on that?

Ms. Suyama: The only thing that I can say in response is that we did approve the application – the minor permit. We generally will rely on the building division and Fire Department when it comes to safety and access. It's not something that our Department has the technical skills to look at. It's usually done at the building permit portion.

Mr. Iaconetti: For our protection, could we get something in writing from the Fire Department?

Ms. Amorin: Commissioners any more questions regarding this item? Seeing none. Colleen.

Mr. Iaconetti: I didn't hear an answer to my last question.

Ms. Suyama: Right. I'll write a letter to the Fire Department asking them to review the Kishi Building, the Tony Roma's restaurant, to provide confirmation that it meets fire code and safety requirements.

Mr. Iaconetti: And disability access.

Ms. Suyama: That's not going to come – the ADA requirements come from a – there's a Federal Office that we have write to. So I'll make a similar letter.

Mr. Iaconetti: So that we get a written statement that they are approving this.

Ms. Suyama: Right. And here's Clayton to talk about the site inspection.

**3. Scheduling of the Site Inspection on the Schloemer Residence EA, SM1 and SSV in Makena, Island of Maui. The Commission reviewed the Draft EA at its March 13, 2007 meeting. The Commission may select a date and time for the site inspection.**

Mr. Clayton Yoshida: Good afternoon Madame Chair and Commissioners. I believe when the Commission was reviewing the draft EA for the Schloemer Residence, they had requested that we take a site inspection. This matter will appear before the Commission

at least two more times. One for the final environmental assessment pending the Commission's decision on that, the shoreline setback variance. The Commission already has a site inspection and meeting scheduled for next week Monday, April 16<sup>th</sup>, and then we have our regular Commission meeting on April 24<sup>th</sup>. So, probably, you're pretty much booked up for the month of April. So possibly we can look at maybe during the month of May. I know the Commission has expressed some desire not to have a site inspection or special meetings on the same week as regular commission meetings. I don't know if that's still the desire of the Commission.

Ms. Amorin: We did have a consideration only because of our former Commissioner Bissen being in Hana, but I'll leave it up to the Commissioners. Commissioner Guard.

Mr. Guard: Thanks. My thought was that the site inspections not so bad. It's only when public hearings the night before was the original – when discussed it the last time – so I don't think a one or two hour site inspection would have the same concern as a possible four or five hour public hearing meeting in Lahaina, and be back here at nine in the morning, the following day. So I'm okay with any day of the week usually.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Where it's convenient, I prefer not to miss two days of work in a row. But if we need to, you know, it's doable. But, the one thing I'd like to do, if we're going to do a site inspection over there, there's got to be something else that's coming up that we can look at as well. I much rather look at several projects. If not, let's go look at the sewage treatment plant in Kihei, or something, so we'll learn something. We'll get a little something more out of the day than just one.

Ms. Amorin: There was a concern with the project that came before us today – that's in the Wailea area.

Mr. Starr: That horse is out of the barn though. I mean, I'd be happy to look at it, but I'd rather look at the one that's going to come before us next month or the month after. Is there something?

Ms. Amorin: Commissioner Hiranaga.

Mr. Yoshida: Well, the Commission is reviewing the – well, the Department is initiating those land use changes for the lots a Palauea Beach. Since we're in the same general vicinity as Schloemer, as we are with Palauea Beach, I don't know if the Commission necessarily want to take a look at those.

Mr. Starr: Can we leave it open for the – pick a day and leave it open to staff to see what

else they can wrap into it as well. Anything else that's going to come before us, maybe they can figure something else out before – in time to agenda it.

Ms. Suyama: The other one I know that there's a South Maui Community Park that's going to be coming before this Commission.

Mr. Starr: Oh, yeah, let's look at that.

Ms. Amarin: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Although I've not experienced a site inspection. On a previous board, the Planners provided video coverage of the applicant's site and I'm just wondering if that would suffice versus a site visit?

Mr. Starr: No for me.

Mr. Iaconetti: Not to me.

Ms. Amarin: You need to take your first one, and then you can draw into conclusion with that.

Mr. Hiranaga: I am. Next week, April 16<sup>th</sup>.

Mr. Hedani: How about if they promise to feed you.

Ms. Amarin: Commissioner Guard.

Mr. Guard: I think it would be pretty valuable for everyone to see what's happening down at Palauea Bay. It blew me away this past weekend – as called Easter Beach day.

Ms. Amarin: Clayton, you have anything more to say?

Mr. Yoshida: Well, I guess your regular meetings in the month of May are May 8<sup>th</sup> and May 22<sup>nd</sup>.

Mr. Starr: How about April 30? Or May 1?

Ms. Amarin: I won't be available. I'll be on a trip.

Mr. Starr: How about 14<sup>th</sup> of May?

Ms. Amarin: Before you is May 14<sup>th</sup>, Monday.

Mr. Starr: Or Tuesday.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: You know for what it's worth, I concur with Commissioner Hiranaga. If there are ways to technologically solve something, either through applicant presentation or through staff presentation of video taping, photo montages of things so that we can actually see stuff that's non-existent there. In the future, not this one, but in the future, I would suggest that we give serious consideration to that. I'm open, as far as whatever day you want to pick.

Ms. Amorin: Personally, you know, you hear okay we'll have two meetings a month, and then we have special meeting and sometimes it gets very overwhelming. And so if the Planning Department can, with the comments of the Commissioners today, to try to avoid some of the site visits. But of course, if it's very necessary, you have our support.

Mr. Hiranaga: Madame Chair.

Ms. Amorin: Commission Hedani.

Mr. Hiranaga: No Hiranaga.

Ms. Amorin: I'm sorry – Hiranaga.

Mr. Hiranaga: It might have been beneficial if the planner during the initial application of the Draft EA had provided a video tape. And then subsequently he felt a site visit was still warranted then we could do a site visit. But that might eliminate some of the site visits in the future.

Ms. Amorin: Colleen your comments?

Ms. Suyama: I'll bring it back to the planners and we can discuss as to how we can incorporate it into our presentation.

Mr. Yoshida: So does it look like it's May 14<sup>th</sup>?

Mr. Iaconetti: Sounds like a great day.

Mr. Starr: Yeah.

Ms. Amorin: Okay, we're all in favor of May 14<sup>th</sup>. Commissioner Guard.

Mr. Yoshida: At 1:00 p.m.

Mr. Guard: I have a question possibly for staff then. What would be the process of having applicants say concurrently when they have to post that they're coming in front of the Planning Commission. Is it 30 days or 45 days notice to either put something on the site that they're going to be doing work, saying that this is what we're doing, to notify the public, they can actually go see what they're doing. Similar to the presentation they give to us in here to put a montage there to say, "hey, this is what's proposed." Similar to the story pole other countries do it quite a bit. Because if you can't come on a Tuesday, there's no way you know what's happening unless you watch Akaku, but by that time the votes been made. Right? So just a possibly to have, maybe you could get a little more public awareness out there if the applicant had to do something like that. Like at Kai Malu, they could have a sign right there saying, "hey we're going – we're proposing three story units right here." Because the general public, they don't know a lot of what goes on in this room.

Mr. Yoshida: I think the Department's revision of the application portion of Title 19, there are requesting that the applicant post a sign on the property say, "subject property is – has come in for a zoning change, from x to y."

Mr. Starr: I have an idea. How about the developer have to stand there with a sandwich board.

Mr. Guard: Follow up question then.

Ms. Amarin: Commissioner Guard.

Mr. Guard: When – how long would that take to actually become part of the process, like protocol?

Mr. Yoshida: If it's an amendment to Title 19, we have to take it to the three Planning Commissions and it has to go through the County Council.

Mr. Guard: Hopefully we can expedite something like that.

Mr. Starr: It's a good idea.

Mr. Yoshida: I mean, you could change your rules.

Ms. Suyama: Right, in conjunction with that, you would have to change your rules, in terms of how you deal with the SMA permits and shoreline setback rules because then it would be an application, a procedural requirement that you want in there.

Mr. Guard: It would help with the general public, just knowledge of what's going on. People that go to the beach or drive and up down these roads and next thing they know, they see black fences going up, and letters of the editor are blaming us for letting all this stuff happen. When they could have known if they drove by. They may know more about it than we do if it's in their neighborhood, and they see a sign then they may have some insight to the project.

Ms. Amorin: Commissioner Starr.

Mr. Starr: I know that this is a good idea. There's also several other things that we've discussed especially, as far as I'm concerned that are equally important regarding the consultants, how and who they report to. So perhaps we can look ahead toward possibly in May or June, having a period of time for a workshop on ideas on how we can improve the process and we can put in motion. Because it probably will take a year or so to get it approve, but at least we can start the process by having maybe a half day workshop. I would suggest in late May or June to discuss ideas that we can improve the process.

Ms. Amorin: Clayton, we have a date, do we have a time?

Mr. Yoshida: I believe May 14<sup>th</sup> at 1:00 p.m.. I guess on the next agenda, we can put on, you know, either the Palauea Beach or the South Maui Regional Park site inspection. We could couple it with this site as well. So you would have several sites to visit on the same afternoon. That would be more productive.

Ms. Amorin: Okay, so the time will be given at the other meeting, regarding putting more on the agenda to site see. Thank you Clayton. May 14<sup>th</sup> at 1:00 p.m. Moving right along. Colleen.

- 5. EA/EIS Report**
- 6. SMA Minor Permit Report**
- 7. SMA Exemptions Report**

Ms. Suyama: The last item, well, not the last item, but items #5, #6 and #7 is the bi-monthly reports that we give you dealing with what was filed as EA/EIS reports, the SMA Minor Permit Report and the SMA Exemption Report. If you have any questions for the Department? Seeing none, I would recommend that you just accept – make a motion to accept the report.

Mr. Hedani: So move.

Mr. Starr: Second.

Ms. Amarin: Motioned by Commissioner Iaconetti.

Mr. Iaconetti: I didn't make the motion.

Ms. Amarin: Motioned by Commissioner Hedani and seconded by Commissioner Starr to approve. All those in favor?

Commission Members: "Aye."

Mr. Iaconetti: Question.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: Are you still going to get the written statements from the Fire Department?

Ms. Suyama: Yes I am.

Mr. Iaconetti: I thought I'd bring that up.

Mr. Starr: I believe the motion was to accept.

Ms. Amarin: Yes. Thank you.

**It was moved by Commissioner Wayne Hedani, seconded by Commissioner Jonathan Starr to accept the EA/EIS Report, SMA Minor Permit Report, and SMA Exemption Report as presented.**

- 8. April 16, 2007 Kapalua Site Inspections meeting at 1 p.m. at the Village Clubhouse on Office for the following pending applications:**
  - a. Kapalua Coastal Trail SM1 (T. Abbott)**
  - b. Kapalua Ritz Carlton Renovations SM1 and PD2 (A. Cua)**
  - c. Kapalua Central Resort SM1 and PD2 (A. Cua)**
  
- 9. April 16, 2007 Maui Planning Commission Special Meeting at the Lahaina Civic Center beginning at 6 p.m. or soon thereafter on the following applications:**
  - a. Kapalua Ritz Carlton Renovations SM1 and PD2 (A. Cua)**
  - b. Kapalua Central Resort SM1 and PD2 (A. Cua)**

Ms. Suyama: The next two items is your April 16<sup>th</sup> meeting. One is the Kapalua Site

inspection that will begin at 1:00 p.m. at the Village Clubhouse on Office Road. And in that site inspection, you're going to be looking at the Kapalua Coastal Trail, the Kapalua Ritz Carlton Renovations and the Kapalua Central Resort. And later that evening at 6:00 p.m. you'll have the public hearing on the Kapalua Ritz Carlton renovation and the Kapalua Central Resort...(inaudible)...

Ms. Amarin: This is a dinner meeting right?

Ms. Suyama: Yes it is.

Ms. Amarin: Commissioner Starr.

Mr. Starr: I was just going to ask about dinner.

Ms. Suyama: The Department will be making arrangements for dinner, unless you folks have a particular place you want to go.

Ms. Amarin: Commissioner Starr do you have a particular location?

Mr. Starr: Mala.

Mr. Iaconetti: The Banyan.

Ms. Amarin: Mala?

Mr. Starr: Yes.

Mr. Iaconetti: May I suggest the Banyan at the Ritz Carlton. It's a very nice restaurant.

Mr. U`u: I think we should eat at Sansei's, central.

Ms. Suyama: Just remember, there is a thing that when we do provide meals for the Commission, it's limited to \$12. I just wanted to tell you that.

Mr. Iaconetti: Can you give a list of places where you can get dinner for \$12.

Mr. Starr: Aloha Mixed Plate.

Mr. U`u: Aloha Mixed Plate is good. That's a good one.

Mr. Starr: 12 bucks.



Mr. Iaconetti: We have to make reservations two weeks in advance too.

Ms. Suyama: We'll find a place for the Commission to eat. We'll provide dinner.

Mr. U`u: All the Department Head got one raise, and we still at \$12?

Mr. Guard: One last question before we finish.

Ms. Amarin: Commissioner Guard.

Mr. Guard: For staff. Colleen, can planners could encourage applicants to put up signs or story poles without it being part of Title 19, correct?

Ms. Suyama: We could put it in our letter when we notify them that if they could consider putting an on-site sign that identifies the project.

Mr. Guard: And would it be to contact staff if they have any concerns or if they wanted to learn more about – so instead of just –

Ms. Suyama: So it would be like a voluntary thing for them.

Mr. Starr: Great idea.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: Couple of things. What happened to Kahoolawe. It's still out there. Are we going?

Ms. Suyama: I don't know. Clayton do you anything about the Kahoolawe?

Mr. Yoshida: I believe the Director was still examining the matter. Hasn't made his position known to the staff yet.

Ms. Amarin: Thank you Clayton. #2 question.

Mr. Iaconetti: Actually, I've got three question. The #2 question is almost a month ago I asked if there could be some investigation of the large pictures that Kapalua, the old Kapalua Hotel has – has anyone actually gone out there to see them? Because I don't seem to get any information back.

Ms. Suyama: What I'll do is – it was referred to our Zoning and Enforcement Division.

Mr. Iaconetti: Yeah, but then what?

Ms. Suyama: They supposedly sent an inspector which is Sonny Huh from our office. So when I get back, I'll ask Sonny to call you.

Mr. Iaconetti: Thank you.

Ms. Amorin: Any more questions Commissioners?

Mr. Iaconetti: Yeah. I've got one more.

Ms. Amorin: Yes, Commissioner Iaconetti.

Mr. Iaconetti: I understand that there are at least three, maybe four, openings for planners.

Ms. Suyama: We have more than four openings – that's correct.

Mr. Iaconetti: I also understand that there's no West Maui Planner.

Ms. Suyama: That's correct.

Mr. Iaconetti: I also understand that there's a very well qualified individual who has asked for the job. Can I find out why he has (phonetics)?

Ms. Suyama: We are – my understanding is that the West Maui Planner is in the Current Division. They have been interviewing candidates that comes from the Personnel Office. They still, I think, need to contact one more person that's on the list. When we hire someone, it comes from Personnel, the qualified candidates for interview for these positions. And I believe the Current Division is doing the interviews now. And what they do is based upon the interviews they rank the candidates and they will select who they feel should be the appropriate person for the position.

Mr. Iaconetti: Everyone that's applied has been interviewed?

Ms. Suyama: I'm not sure. I don't think everyone, but everybody's that's on the list is interviewed.

Mr. Iaconetti: How is the list made up?

Ms. Suyama: The list is made up by the Personnel Department. They establish the qualifications, the minimum qualifications, of each candidate. They rank the candidates and they give us five names at a time. So we get to interview the top five candidates at any

given time.

Mr. Iaconetti: Without making this public, could I find out if a certain individual is among those that have applied and yet you are evaluating?

Ms. Suyama: I'm not sure. You might have to talk to the Personnel Department. What I'd suggest with your question, maybe you should talk to Jeff Hunt as the Director.

**K. NEXT REGULAR MEETING DATE: APRIL 24, 2007**

**L. ADJOURNMENT**

Ms. Amarin: Commissioner Starr.

Mr. Starr: I want to thank Wayne Hedani for the hard work and the good job he did as Chair. I also want to apologize for all of the times I gave him a hard time.

Mr. Hedani: I appreciate the hard time.

Mr. Starr: You did great. Thank you.

Ms. Amarin: I also would like to say thank you to our previous Chair, Wayne Hedani. But, you know, he can voice the project so well also, and he'll be coming back soon. But thank you Wayne, from all of us. And on behalf of the Commission, I thank you for all your comments, Commissioners. And also for Akaku, thank you for bringing the Maui Planning Commission to the public. Thank you very much. So with all of this, meeting stands 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  
Wayne Hedani, Vice-Chair  
Kent Hiranaga  
John Guard IV  
Bruce U`u  
William Iaconetti  
Jonathan Starr

**OTHERS:**

Jeffrey S. Hunt, AICP, Director, Planning Department  
Colleen Suyama, Deputy, Planning Department  
Clayton Yoshida, AICP, Planning Program Administrator, Planning Department  
Ann Cua, Staff Planner  
Allan DeLima, Administrative Assistant, Planning Department  
Robyn Loudermilk, Staff Planner  
Simone Bosco, Staff Planner  
Erin Wade, Staff Planner  
Jeffrey Dack, Staff Planner  
Thorne Abbott, Staff Planner  
Zoe Norcross-Nu`u  
Francis Cerizo, Staff Planner  
James Giroux, Deputy, Corporation Counsel  
Mike Miyamoto