

**MAUI PLANNING COMMISSION
REGULAR MEETING
AUGUST 14, 2007**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Mr. Wayne Hedani, Vice-Chair, at approximately 9:02 a.m., Tuesday, August 14, 2007, in the Planning Department Conference Room, Wailuku, Maui, Hawaii.

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

Mr. Wayne Hedani: . . . Commission meeting is – of August 14th will come to order. At this time we'd like to open the floor up for public testimony on any agenda item in order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered by the Planning Commission. Public testimony will also be taken when the agenda item is taken up by the Commission. Maximum time limits on individual testimony is three minutes. 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. At this time we have one person that's signed up on our public testimony list. Pat Curel of Haiku.

The following people testified at the beginning of the meeting:

Mr. Pat Curel - Item D-2, Mr. Ron Serle, DBA, CIZ

Ms. Robyn Nishida-Nakao - Item D-1, Maui Land & Pineapple, SMA, PD1, PD2

Their testimony can be found under the item on which they testified on.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at that this time? Seeing none. Public testimony is closed. Deputy Director.

B. PUBLIC HEARING (Action to be taken after each public hearing item.)

- 1. MS. MARY OMWAKE of the UNITY CHURCH OF MAUI requesting a County Special Use Permit in order to operate church offices, to hold small gatherings such as memorial services, classes, workshops, seminars, and meetings in a single family dwelling in the Residential District at 483 High Street, TMK: 3-5-009: 007, Wailuku, Island of Maui. (CUP 2005/0009) (L. Callentine)**

Ms. Colleen Suyama: The first public hearing is Ms. Mary Omwake of the United Church of Maui requesting a County Special Use Permit in order to operate church offices to hold small gatherings such as memorial services, classes, workshops, seminars and meetings in a single-family dwelling in the residential district at 483 High Street. Livit Callentine is the planner and she'll make the presentation.

Ms. Livit Callentine: Good morning Commissioners. As Colleen noted this is for the Unity Church of Maui. The applicant is Ms. Mary Omwake. I don't believe that Mary is in the audience today, but there are representatives from the Church here today. So as this permit is a request for a resumption of a permit that was granted in 1998, and it was renewed in 1999. So it was granted for one-year – it was renewed in 1999, and it was allowed to lapse into 2004. So in 2005, we received a new application and we've had it scheduled several times previously. But due to difficulties completing the noticing requirements, the application has not been before you until now. But that's what's causing the difference between when they applied in November 2005 and August of 2007.

The Land Use designations on this particular parcel are Urban for State Land Use, the Community Plan designates it as public/quasi-public, County zoning is R3-Residential, and it's not in the Special Management Area. It's in a flood zone C, an area of minimal flooding. The County Zoning, R-3, is what requires the Special Use Permit. And in R-3, Churches together with accessory buildings are declared as special uses within County residential districts. The application was transmitted out to government agencies for comments. And the two most significant comments that arose were, #1, that it was discovered that when the Church applied originally for their Special Use Permit, they didn't get a building permit to request a change in use from residential to church. And so they have now filed those applications for a change in zone, and will be granted a Certificate of Occupancy, we anticipate, once they are granted a new Special Use Permit.

The Fire Department had a similar concern and it was in regards to capacity of the building, and the number of occupants that the building could support. And the Fire Department has commented in Exhibit #12, that they recommended that no church services be held at the site due to over capacity of the current occupant load and lack of parking facilities. And then the Department, the Planning Department, was also in conversation with the Department of Fire and Public Safety after this comment was submitted. And the maximum occupancy load was determined to be seven – one occupant per seven square feet, and that would be according to the size of the building – 198 persons in the sanctuary at any one time.

The application is in compliance with the General Plan, with the Community Plan and will be with Zoning if this Special Use Permit is granted. The letter – sorry – the Department did actually received four letters concerning this application, and two of them were in support of the application. And I will note they were sent at different times, but from the same neighbors. And those are shown in Exhibit #27 and #28. And the two letters that were sent by two neighbors who were not in favor of allowing the applicant to hold church services were really concerned about the lack of parking available on site because I believe there are 44 permanent parking spaces available on the site. And so – it was a parking issue which the applicant has proposed to address with a shuttle service to the County

parking lot and back. During the day, they do have a van which they are able to utilize. So the other concern was the traffic that is created going in and out of the site. And if there's parking on the road, it blocks the sight distance from the neighbors trying to enter and exit their driveways.

The Church did install, at the request of the Highway DOT, a mirror so that when people are exiting their lot, they can see traffic coming from either direction. And since the – these letter were received in October 2006 and December 2006 – the two letters from neighbors who were concerned about the impacts to the neighborhood. And since they've received additional noticing in the past two months, I haven't heard back from them again. So I don't know if they're in the audience and wishing to testify at this time. But I haven't been notified of anyone who wishes to testify at this point. So, the Department believes the project is not expected to create any adverse impacts as long as the applicant does maintain very vigorously the shuttle service, should it become necessary.

And I think I need to point out that the application did come in to hold church services in the sanctuary. However, the applicant then removed that request. They amended that request, and now they are not going to hold Sunday Church services at the project. What they're going to do is hold small classes, meetings – they have their church offices in the building – and they'll hold memorial services and the like, but not a full church service at this time. So that concludes my report. And if you have any questions, I'm available and there are members of the church here.

Mr. Hedani: Questions for staff? Commissioner Iaconetti.

Mr. Iaconetti: Is it anticipated that they plan to utilize the facility for church services?

Ms. Callentine: I will have to defer to the applicant on that question Mr. Iaconetti.

Mr. Iaconetti: Also noted that they plan on allowing other churches to use the facilities. Are the other churches planning on using the facility for church services?

Ms. Callentine: That was an earlier request. That was an amendment which was withdrawn. So, they have – as far as I know – but, again, I think we should get that confirmed by the applicant today. So far as I know and have been informed, they are not planning to lease the facilities to another church for Sunday services.

Mr. Iaconetti: If I may, one last question?

Ms. Callentine: Sure.

Mr. Iaconetti: I don't know who I would direct this to, and I don't know that it is the

prerogative of this Commission, but if they rent out the space, do they – it is still tax-free because it's a church. Is that correct?

Ms. Callentine: I am not the expert on taxes.

Mr. Iaconetti: Okay. I'm sorry.

Ms. Callentine: No, that's okay.

Mr. Hedani: Commissioner Starr.

Mr. Jonathan Starr: I got a little confused reading the documentation. It seems that there was a Special Use Permit in place, but that it was let expire. Was that an accident and would, you know, this process would have simply been an extension had that been kept in place?

Ms. Callentine: Absolutely. That is what happened.

Mr. Hedani: Does the applicant have a presentation?

Ms. Callentine: I don't believe the applicant has a presentation. They're available to answer questions.

Mr. Hedani: Okay. Are there any other questions from the Commission at this point?

Mr. Starr: To the applicant.

Mr. Hedani: For the applicant or anybody? Commissioner Starr.

Mr. Starr: Yeah.

Ms. Callentine: Do you want the applicant to come up?

Mr. Starr: Yes.

Mr. Richard Welch: Hi. I'm Richard Welch. I'm President of the Board of Unity Church of Maui.

Mr. Starr: Hi Richard. I'm a little confused because there's been so much, you know, back and forth and change, and frankly it's a little disturbing for me that so much, you know, paper and staff time went into it, and so was a lot of headache.

Mr. Welch: You do have an idea of what we've been going through for 20 months.

Mr. Starr: I'm sorry that happened, but it seems that where we're at with this now is that there's – it's not going to be used for church services, but –

Mr. Welch: That is correct.

Mr. Starr: And similar uses like classes – maybe Sunday school or something like that. Could you explain what the uses are and could you give real definitive answer as far as, you know, services and what the uses would be by you or any other party?

Mr. Welch: Correct. We're now presently holding our Sunday services at the 7th Day Adventist Church over on Puunene Avenue. We will not be holding regular services at this church. We have our offices in this building at this particular time. And the classes that we hold are those that are related to our church. Rarely ever do those classes get more than 45 people in them. And that doesn't happen all that often. Most of the time the classes hold about 10 to 12 people. The other thing about us renting it out for other churches to have services there, that is not on – that's not a plan of ours. So we merely would like to be able to utilize our building in the capacity that we are now presently utilizing it, and that is for offices and for classes. And if we have a memorial service that would probably be the largest group of people that we would have. We do use – we rent an officer to come handle the traffic situation if this occurs. And we do have our shuttle. And we do utilize other parking areas.

Mr. Starr: I noticed in the testimony there was a concern from someone else in the neighborhood that, you know, on at least one occasion cars were parked in their yard. What steps will be taken to make sure that when you have an event that –

Mr. Welch: The very same – the same situation – we will have a rent-a-person out there – one of your officer or security person – to make sure the parking stays exactly where it's suppose to be.

Mr. Starr: And that's part of the duties of that person?

Mr. Welch: Yes it is.

Mr. Hedani: Any other questions for Mr. Welch? Mr. Welch, have you folks communicated with the neighbors, you know, in the area that have filed the complaint, or, you know, letters to the Commission regarding the problems that they've encountered in the past, and how do you intend to address that?

Mr. Welch: The only people that we had any problems with we've seemed to have talked

to and they seemed to be okayed with it. And they did not re-respond at the second mailing of our moving forward with this permit request. So I feel that they do not have any objections.

Mr. Hedani: So, well –. Let me restate the question.

Mr. Welch: Okay.

Mr. Hedani: What were the objections and how do you intend to respond?

Mr. Welch: Just didn't want the noise in the neighborhood on a Sunday morning. That was the main concern – was the parking situation and the movement about, you know, at our property on a Sunday morning – which we're no longer having those Sunday services.

Mr. Hedani: I see.

Mr. Welch: So that was their only complaint. We've never had any real complaints from anyone about any other things other than that one particular time that cars got parked in somebody else's lawn area. And that was an oversight on our part.

Mr. Hedani: You have current Certificate of Occupancy?

Mr. Welch: No we do not. We can not get our current Certificate of Occupancy. I have all the paperwork done except the Planning Department held us up because they would not give us this until we either completed our Special Use Permit or went back to R-3 zoning. So I'm ready to get it the day we get the Special Use Permit.

Mr. Hedani: Okay. Any other questions from the Commission? Commissioner Hiranaga.

Mr. Kent Hiranaga: How often would you say that the drainage basin and the front yard becomes unusable because of rain?

Mr. Welch: Actually, I don't know that that's ever happened. We've parked out there even when it's been raining. Like years ago, at one point in time, we had a little bit of mud out there, but not basically I don't recall that happening anytime within the last two years.

Mr. Hiranaga: And what percentage of your 40 parking stalls are paved and what percentage is grassed?

Mr. Welch: I would approximately 50% is paved.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Any other questions for the applicant? Seeing none. Thank you very Mr. Welch.

Mr. Welch: Thank you.

a) Public Hearing

Mr. Hedani: Are there any members of the public that would like to offer testimony on this item at this time? If so, please step to the microphone. Seeing none, the public hearing is closed. Staff recommendation.

b) Action

Ms. Callentine: Commissioners, the Department of Planning finds that the proposed project does meet the following criteria for granting a County Special Use Permit. The proposed project, or proposed request, meets the intent of the County General Plan and the objectives and policies of the Wailuku-Kahului Community Plan. The request is consistent with the Community Plan Land Use map of the County. It also meets the intent and purpose of the residential district for Special Uses. The proposed development is not anticipated to adversely effect any public or private schools, parks, playgrounds or other public facilities; nor to adversely impact social, cultural, economic, environmental or ecological qualities of the area. That the need for – the public shall be protected from the dilatory effects of the proposed uses by the aforementioned methods of parking and shuttle. That the need for public service demands created by the proposed use if any shall be fulfilled.

And so we recommend that you approve the County Special Use Permit subject to standard conditions for County Special Uses. I'll just point that in specific, we are asking – since this has been a successful permit in the past and had been renewed for five-years and didn't have any complaints during that five-year period – we do request that the permit is granted until August 31, 2012. And that time-extension are allowed if filed at least 90-days prior to that expiration date. I won't read the rest of the standard conditions unless Commissioners request it. Project specific conditions are that the Sunday worship services shall not be held at the subject property without first obtaining written permission from the Maui Planning Commission. So they will have to come back to you for that if they want to change it. And should attendance at any event be anticipated to exceed 40 persons, the applicant shall provide monitoring and shuttle services to the County parking lot in Wailuku in order to minimize the impact on the surrounding residential neighborhood. And that maximum occupancy as determined by the Department of Fire and Public Safety shall not be exceeded at any time. The permit will be enforced pursuant to the conditions of Chapter 19.530, Section 030, of the Maui County Code as amended in 1980; and the Rules for Administrative Procedures and Civil Fines for Violations of Title 12, 14, 16, 19 and 20

of the Code. In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopts the Planning Department's Report and Recommendation prepared for the August 14th hearing, and authorize the Planning Director to transmit said findings of facts conclusions of law, decision and order on behalf of the Planning Commission.

Mr. Hedani: Commission members. Commissioner Starr.

Mr. Starr: Mr. Chair, I move for approval as per the recommendations of staff.

Mr. Hedani: Motion for approval by Commissioner Starr. Is there a second?

Mr. Bruce U`u: Second.

Mr. Hedani: Seconded by Commissioner U`u. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'm curious regarding condition #9. I believe the applicant said that no Sunday worship services are proposed or planned.

Ms. Callentine: Correct.

Mr. Hiranaga: So why would you have this condition that they could have Sunday worship services with first obtaining written permission from the Maui Planning Commission?

Ms. Callentine: Well it is written in the negative –. It doesn't say that they can have Sunday services. It says if they intend –. Well, I mean, they are a church. It's feasible that at some point in time they might want to hold church. So this is just saying if you ever want to try to do that again, you must come back before the Planning Commission.

Mr. Hiranaga: Is that applicant's request that this condition be placed or is it the staff's?

Ms. Callentine: Staff's.

Mr. Hiranaga: So why not –

Ms. Callentine: Just to make it crystal clear.

Mr. Hiranaga: Why not just say that "Sunday worship services shall not be held at the subject property" – period. If that's what's being proposed by the applicant. Because that seems to be the biggest concern of all the Department's and the neighbors is the Sunday worship. So if the applicant has no objections, I would think that you should just state that there will be no Sunday worship services there, period.

Ms. Callentine: You're going to speak.

Mr. Hedani: Could you identify yourself for our record?

Mr. John Tyler: I'm John Tyler and I'm the Treasurer of the Church. And an answer to your question, we have no plans to hold Sunday services now. I'm not sure why it was worded the way it was worded. If you wanted to make that change, we would have no objections because we have no present plans to use it as a church provided that does not prejudice us if we should later decide that we would like the church services if we can come back in to you and ask for this permission then we don't have any objections to taking it out now. I don't know what the future is going to hold for us. That's my only concern when you say "there shall be no church services here period." Does that preclude us from ever applying for a permission to hold church services?

Mr. Hiranaga: I guess maybe staff could explain what would be required to change the condition within the Special Use Permit.

Ms. Suyama: In either way of the wording of the condition, it will require the church to come back to the Commission regardless. So they would come for an amendment to the County Special Use Permit to include Sunday worship as a permitted use.

Mr. Hedani: So it would not be permitted until such time as you come back to the Commission?

Mr. Tyler: That's understood.

Mr. Hedani: Thank you Mr. Tyler. Any additional discussion?

Mr. Hiranaga: I'm wondering if –

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm wondering if staff would amend their recommendation.

Ms. Callentine: If the Commission desires that. Yes, we will.

Mr. Hedani: The Commission can amend it.

Mr. Hiranaga: I guess because I'm very familiar with that area – High Street and I actually know Dave Fukuoka. We grew up together on the same street, and so his concern is Sunday worship services. He's surrounded by churches on both sides of his property and it seems like the applicant has no objections. And so I find a little odd that staff would insert

this condition. It would, to me, feel – give the neighbors in that area a better feeling if you could just eliminate condition #9.

Mr. Hedani: You want to propose an amendment Kent?

Mr. Hiranaga: Yeah, I'd like to propose an amendment to delete condition #9.

Mr. Hedani: To delete it completely?

Mr. Hiranaga: Yes.

Ms. Suyama: Could I comment before you do that? If you delete the condition, that mean –

Mr. Hedani: Deputy Director Suyama.

Ms. Suyama: I'm sorry. What it would mean is that you're not really stating to the applicant that there shall be no Sunday services on this property. You're relying strictly on the representations in the report. And I think by putting it down that there shall not be any Sunday service, it's very clear that the intent of the Commission.

Mr. Hiranaga: Okay, then I'd like to propose that the language for condition #9 states that "Sunday worship services shall not be held at the subject property" period.

Mr. Iaconetti: Second.

Mr. Hedani: Okay, moved by Commissioner Hiranaga, and seconded by Commissioner Iaconetti to amend condition #9. Discussion? Commissioner Iaconetti.

Mr. Iaconetti: Kent, would you object to saying that neither this religious group or any other religious group can hold Sunday services on this property? In other words, if there was – I know the applicant has said they don't intend to rent it out to any other religious group, but if another religious group decides to utilize the facility, I would like to see a statement saying that they too will not utilize it.

Mr. Hedani: The statement as it's amended right now says that Sunday services will not be held on the property, and it's not specific to anybody.

Mr. Iaconetti: For anybody? Fine.

Mr. Hedani: Any further discussion on the amendment? Okay. Seeing none. All those in favor of the amendment, signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay? Carried. Any further discussion on the main motion? Seeing none. All those in favor of the motion to approve as amended, signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay? Carried. Thank you. Deputy Director.

It was moved by Mr. Kent Hiranaga, seconded by Mr. William Iaconetti, then unanimously

VOTED: To amend Condition # 9 to state that "Sunday worship services shall not be held at the subject property."

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

**VOTED: To approve the Planning Department's report and recommendations with the amendment to Condition #9 as noted.
(Assenting - J. Starr, B. U`u, K. Hiranaga, J. Guard, W. Iaconetti, J. Pawsat)
(Excused - J. Amarin)**

C. COMMUNICATIONS

- 1. MR. JAMES "MAC" LOWSON of LOKO MAUI, LLC requesting an amendment of an off-site parking approval to amend Condition No. 2 requiring recordation of Condition No. 1 for 53 parking stalls on the off-site parking lot located at 155 Dickenson Street, TMK: 4-5-009: 014, Lahaina, Island of Maui. (OSP 2002/0005) (L. Callentine)**

The Commission may action on the request.

Ms. Suyama: The next matter in the Commission's agenda is Communication items. It's Mr. James "Mac" Lowson of Loko Maui, LLC requesting an amendment of an off-site parking approval to amend condition #2 requiring recordation of condition #1 for 53-parking stalls on the off-site parking lot located at 155 Dickenson Street, Lahaina, Maui, and Livit Callentine will make the presentation.

Ms. Callentine: Excuse me. This application has come about because the – because the

conditions of the off-site parking require that the lot that is providing the stalls, the parking stalls, is willing to record against their title a permanent granting of those stalls to the other party. When it's a situation where an owner owns two properties within 400 feet of each other, they can easily do that. In this case, the providing property owner has been unwilling or unable to provide that – no, unwilling to record against his title – and against his property. So this is coming back before you to amend that one specific condition.

The Planning Commission granted a Special Use Permit in 2002, and an off-site parking application to move the project, to provide the parking at 120 Dickenson Street. That was later amended from 120 Dickenson Street to 155 Dickenson Street to satisfy the off-site parking requirements. In January of 2007, this request was filed after the applicant had make a really good faith effort, we feel, but was unsuccessful in recording condition #1 for 53-parking stalls at 155 Dickenson Street. So Commissioners, this is – you're focusing on this one particular item, but the Department would request that you keep in mind that this may come up again and would like you to look at the overall over the applicable –. The decision you make today will hopefully be one in which we can apply to other situations.

Mr. Hedani: I'm confused Livit.

Ms. Callentine: Okay. I haven't said enough clearly.

Mr. Hedani: Clarify the smoke in the room for me and tell me again what it is that we're considering here.

Ms. Callentine: Okay, what we're considering is the way that –

Mr. Hedani: It's a removal of a condition on their permit?

Ms. Callentine: It's an amendment to a condition. Condition #1 –. I'm sorry. It's not –

Ms. Suyama: Maybe I can clarify.

Ms. Callentine: Thank you.

Ms. Suyama: What it is, is that the applicant could not get the recordation of the lease, the unilateral agreement, because the property owner was not willing to sign the agreement. So they've come back to tell the Planning Commission, "because I'm unable to get the recordation of the agreement to the property that's in question, I want an amendment to that condition." At first they said they wanted the unilateral agreement condition to be deleted. However, the Department said well if we deleted the condition, what is the alternative for the County to ensure that parking is maintained for this particular use? So there was an internal discussion within the Department, and what we came up with is that

we can forego the lease provided there are other provisions that will enable us as a Department to make sure that the applicant complies with, you know, the requirement for off-street parking. And for that reason, there were additional conditions that were requested by the Planning Department in their recommendation. And basically what we're saying is yeah, if you can't get the unilateral recorded, you can provide, as long as you provide documentation that whatever your lease agreement with the parking provider includes the Planning Department to be notified if that lease is ever terminated by the applicant. The other thing is that, one of the things we're saying is that well how is the patrons of the project know that there's off-site parking lot that they can park in. So we asked that there be a sign erected at the place of business telling their patrons or directing their patrons to this particular lot for parking purposes, as well as, making provisions that they fulfill this condition within a time limit. So those are the things that came out as part of the discussion, you know, within the Department.

Mr. Hedani: Thank you. Questions for staff? Commissioner Starr.

Mr. Starr: The Special Use Permit, how long does that run for?

Ms. Callentine: They don't have a Special Use Permit. They have an off-site parking approval, and the initial one ran until – actually – it didn't have –. The last one was approved November 2005. It does not appear to have had a time certain on it that it would be – it need to be renewed by nor have we recommended that. So there's not a time limit on this.

Mr. Starr: Is there –. I mean, I have a concern about this because the reason where in cases like this making sure that there's good parking provided is so that the operation of this business doesn't take parking out of, away from other businesses, and the people who live around there, and it's a right thing to do. Now, you know, if they're not able to guarantee parking for longer than five years – and I mean, without seeing the lease, I don't know if it's solid for five years or not or if there's other reasons why they could walk away from lease as soon as we sign off on it – then it would make sense that the approval that it is based on this, which has been operating though unfulfilled for the last several years, be cancellable if they're – you know at the expiration of their lease or upon cancellation of the lease. And so what is a mechanism that would automatically cancel it out after the five year term unless, you know, or sooner if they lose those parking spots?

Ms. Callentine: Mr. Starr, the Department does share your concern. That was my initial worry about it, and concern was how do we enforce it if we don't have it recorded. Just so you know, if you want to refer to it, Exhibit #11 and #12 are the cover letter which is a parking analysis at 155 Dickenson Street, and a lease, a sub-lease. It is a sub-lease at 155 Dickenson Street. This goes until October 15th. I'm sorry. This is a five-year term starting October 15th, 2005, so it goes till 2010.

So the mechanism that we propose to use is if you look on page #4 of the report and then 4 and 5 of the report is in – is – the conditions – I apologize for the confusion with the condition numbers. The condition numbers in the recommendation are different than the condition numbers in the previous approval because we added two additional conditions. So condition #1 says that 155 Dickenson will provide 53 parking stalls to the 744 Front Street project. And then condition #2 says the parking approval will be valid until October 15, 2010 subject to further extensions. And provided that a renewed executed lease agreement is submitted to the Department prior to the expiration of the approval. And that the lease agreement shall include a provision that the Department of Planning shall be notified of the termination of the agreement if it were to occur. (*Inaudible . . . Changing of tapes*) . . . that lease agreement in the file.

If off-street parking is still necessary, then the applicant will amend its off-site parking approval to accommodate a new off-site parking lot should that become necessary. The condition that was of most concern because the applicant was unable to fulfill it was condition #1 of the off-site parking approval. I'm sorry, let me just make sure, so that I'm not telling you something – yes, of the off-site parking approval, it was condition #2. That's where I made a mistake on your report. It's condition #2 which was requiring that condition #1 run with both parcels and be set forth in a unilateral agreement approved by the County of Maui and be recorded by the Bureau of Conveyances. So with condition #2, we now have provided condition #4 in the report today. And that is – the only change is that we have added a sentence after one copy of the recorded unilateral agreement shall be filed each with the Director of Planning and Director of Public Works. Okay, that is the way it read before. We're going to leave that in and add "in the event that a unilateral agreement cannot be recorded on 155 Dickenson Street, the applicant shall submit to the Department of Planning an annual compliance report at least 90-days prior to the anniversary of the approval of the subject request."

So that is the mechanism Mr. Starr that we have prepared and suggested, and that the Commission consider.

Mr. Hedani: Okay, does the applicant have any presentation or comments at this time?

Mr. Peter Horovitz: My name is Peter Horovitz. I'm the attorney for the applicant. Here, also, is Mac Lawson and Neal Coach who are the members and managers of the applicant. Just a little bit more background. When this originally was approved back in 2002 for one parking lot, the condition was that this unilateral agreement that we have off-site parking be recorded only against my client's property. In 2005, when they came before you and asked to change the parking lot location, that request was granted but a condition was added that a unilateral agreement be recorded not only against my client's property, but also against the off-site parking property. And there in lies the problem. What we bumped against is State Law which says that there's only two reasons why you can ever record

something against someone else's property, and that's if State Law requires it or allows it, or if you have the landowner's permission – the ultimate landowners. Because we're on a sublease, we've got a few layers to go through to get to the owner. Well there's no State Law that permits us to just go ahead and record a lien against someone else's property. And the landowner who's a couple steps removed from us, we couldn't secure their permission. And this is a serious issue. I've been doing a fair bit of litigation recently, getting rid of lien on people's property, and the monetary fines and other penalties that are associated with that are pretty serious, so we're not going to do it. But I do want to make clear that in all other respects we have complied with the requirement from day one. We've always had 53-off-site parking spaces. We have the sign on our building telling people where they are. We recorded the unilateral agreement against our property as soon as we could get an agreement with the County, that by recording it we weren't fully fulfilling that one condition, which is just to show our good faith again. And we had tried to secure permission and we weren't able to do it. It's in our interest as well as the County's to try to make these agreements stick. We're paying for the spaces. We don't want them to be double booked, and as much as you guys do. So if you have any questions, I'd be happy to answer them. But I do still want to make them clear that we had the spaces from day one.

Mr. Hedani: Commissioners, any questions for the applicant? Commissioner Hiranaga.

Mr. Hiranaga: I'm not sure if this is really a question for the applicant, but on the original approval in September 2002, off-site parking approval condition #1 states that the 53 off-site parking stalls shall be clearly marked to indicate that they are leased by 744 Front Street. I just wanted to confirm that the 53 stalls are clearly marked on the parking lot.

Mr. Horovitz: I believe that condition was – I'm not sure if that condition was removed in 2005 because the stalls used to be used for the Planet Hollywood, and think they're marked – Mac, do you know if they're marked for – ?

Mr. James Lowson: It's not marked for us.

Mr. Horovitz: I believed in 2005 that was removed. I can double check.

Ms. Callentine: Staff is unaware that that condition was removed.

Mr. Hiranaga: My concern again is, you know, double-leasing, triple-leasing spaces. And what's the point of having a four foot square signage telling people to park down the street if that lot, those spaces, are not clearly identified for the use of a specific property. Because then the owner of the parking lot can just basically let anybody park in those stalls. And I expressed that same concern when Tony Roma's came in for an off-site parking approval. Apparently, the County staff didn't see appropriate that these stalls be clearly

marked for Tony Roma's, but I do note that there is a condition in the original letter of approval. You know, I think it's very important that these 53-stalls be clearly marked for 744 Front Street.

Mr. Hedani: Is there a representative of the parking – I mean, Republic Parking – here today?

Mr. Horovitz: Not that I'm aware of. No.

Mr. Hedani: No. Okay. Is there a representative of the land owner here today?

Mr. Horovitz: Mac Lowson and Neal Coach is.

Mr. Hedani: I'm sorry. The land owner.

Mr. Horovitz: The ultimate land owner?

Mr. Hedani: Yeah, the land owner of the parcel that we're talking about with the 53-stalls.

Mr. Horovitz: No. Not that I'm aware of.

Mr. Hedani: Okay. Any other questions? Commissioner Starr.

Mr. Starr: Yeah, is there a provision in your lease with the parking guy to mark these stalls for your use and sole use?

Mr. Horovitz: I don't believe there's a specific condition in our lease. They've been quite amenable to our request as they are necessary to comply with the Planning Commission's requirements. So if that's a condition, we'll do it.

Mr. Hedani: Any other discussion?

Mr. Starr: I'm ready to move with a motion.

Mr. Hedani: Thank you very much.

Mr. Horovitz: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I –

Mr. Hedani: I'm sorry, do we have take public testimony on this?

Ms. Callentine: No. This is a communication item.

Mr. James Giroux: Yeah, it's on the agenda.

Mr. Hedani: Well, are there any members of the public that would like to offer testimony on this item at this time? If so, step to the microphone and state your name. Okay, seeing none, public hearing is closed. Staff recommendation.

Ms. Callentine: The proposed off-street parking location is approximately 280 feet away from the nearest point of the 744 Front Street lot, and therefore, is within the required 400-foot specified in Section 19.36, Chapter 19.36, of the Maui County Code. Our recommendation is that 53-parking stalls located at 155 Dickenson Street, TMK: 4-6-009:014 shall be used to provide 53 parking stalls, a portion of the parking requirement for the 744 Front Street renovation project. That the off-site parking approval shall be valid until October 15, 2010, subject to further extensions by the Planning Director, provided that a renewed executed lease agreement is submitted to the Department of Planning at least 90-days prior to the expiration of the approval. Three, that the lease agreement for the off-site parking shall be included – shall include a provision that the Department of Planning be notified of the termination of the agreement. A copy of the lease agreement with this stipulation shall be filed with the Department of Planning within 30-days of this approval. If off-site parking is still necessary, the applicant shall amend its off-site parking approval to accommodate a new off-site parking lot. That condition #1 – this is #4 now – that condition #1 shall run both of the TMK's and shall be set forth in a unilateral agreement as approved as to form and legality by the County of Maui which requires the use of 53-parking stalls for 744 Front Street, and shall be recorded with the Bureau of Conveyances within 60-days of the date of receipt of the off-site parking approval. One copy shall be filed with the Department of Planning, and the Department of Public Works. And as we went over before, in the event that a unilateral agreement can not be recorded on 155 Dickenson Street, this applicant will return to the Department of Planning an annual – sorry, will submit to the Department of Planning an annual compliance report at least 90-days prior to the anniversary of the approval of the request. Failure to fulfill the conditions of approval within 90-days of the date of approval of the Maui Planning Commission, by the Maui Planning Commission, shall automatically terminate said approval. Six, that signage limited to four square feet shall be posted at the 744 Front Street parking lot, directing customers to additional parking at the off-site parking lot at 155 Dickenson. And finally, that full compliance with all applicable government requirements shall be rendered. In consideration of the foregoing, the Planning Department recommends that the Commission adopt the Report and Recommendation prepared for this meeting as its Findings of Fact, Conclusion of Law, and Decision and Order; and authorize the Director of Planning to transmit said decision and order on behalf of the Commission. And in regards to your

question about whether you want the – you want to amend condition #1, it seems like that would be the one you'd want to amend to require that they mark the stalls, they number them, and they amend the lease to say it is for stalls numbered x through x.

Mr. Hedani: Questions for staff? Commissioner Starr.

Mr. Starr: I have a motion if that's in order Mr. Chair.

Mr. Hedani: Sure.

Mr. Starr: Okay, I move to approve with conditions as recommended with additional wording inserted per Commissioner Hiranaga, or Planner Livit, added to #1 which shall state after . . . (inaudible) . . . "these stalls shall be marked reserved for the sole use of" and insert the name of the operating entity that they're reserved for.

Mr. Hedani: That's the longest motion I've ever heard Commissioner Starr.

Mr. Iaconetti: Seconded.

Mr. Hedani: Motioned by Commissioner Starr with an amendment, seconded by Commissioner Iaconetti. Discussion?

Mr. Starr: I'm sure Livit can fine tune it a bit.

Mr. Hedani: Does everybody understand what we're voting on here? Commissioner Iaconetti.

Mr. Iaconetti: This is just a general question and wonder if this is the place to ask, but how does the County deal with valet parking? There are establishments on west Maui that utilize valet parking. Does that fulfil their parking requirements?

Ms. Suyama: In terms of –

Mr. Hedani: Deputy Director Suyama.

Ms. Suyama: In terms of the projects, it doesn't matter whether they have valet parking. What the County looks at is does the parking lot have enough stalls for the establishment? In other words, the hotel development or whatever, do they have enough stalls? If they want to provide valet parking to make it more convenient for their patrons in which they will park and retrieve your car for you, that's okay, that's fine.

Mr. Iaconetti: But it doesn't get around the problem?

Ms. Suyama: No. It doesn't diminish the amount of parking that you're required to provide by ordinance.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm assuming Corporation Counsel is in agreement with condition #4.

Mr. Giroux: Yeah, I did have discussions with the Department about condition #4 as far as, you know, if you can not record that unilateral then it becomes an enforcement issue. And I think the reporting requirement does fulfil the intent and purpose, even more than a unilateral would. I think the reporting requirement is probably the most prudent way to go forward, and to make sure that a lease still is place, and that they person, or the applicant, is still in compliance with all of their conditions. As far as the marking – I know because I advise also the Board of Variances, this is widely debated – you know, whether actually marking stalls actually is a deterrent to the community as a whole because while they sit, marked and reserved, you're taking away from all the other establishments that could be using at any given time. Because those stalls may not be used all the time. So I think it's just something that you should be aware of too that by solving this marked stall situation, it might actually create another situation where people who just want to cruise in Lahaina Town aren't going to have a place to park.

Mr. Hiranaga: May I comment?

Mr. Giroux: Like I said, it's widely debated, so –

Mr. Hiranaga: Marking stalls and enforcing who parks in the stalls are, I believe, two separate issues, but I think it's prudent to mark the stalls and whether people are going to 744 Front Street or not is a separate issue. I know enforcement or tracking where they go or following them would not be feasible, but I think it's still prudent to mark them. And I'd like the applicant to provide some type of proof to the staff that they have complied with that – be it photos.

Mr. Hedani: Any other discussion on the motion? Ann.

Ms. Ann Cua: I just wanted to add something to the discussion because I've been involved with parking in Lahaina for many years. The language that you're anticipating adopting right now, we used to use before. Our conditions on off-site parking has evolved over time as we learn more, as we see the impacts of the conditions, and we use to require that the stalls be marked. And the reason why the Commission actually stopped was because – for that reason that James talked about – is that if those stalls are marked for use by 744 Front Street, let's say, somebody may have – you know, people going to 744 Front Street may have walked there, they may have parked some place else, and what it does

in fact is it deters anybody else from parking in those stalls. And somebody going to 744 Front Street may have parked somewhere else. And so what are we doing for the overall parking situation in Lahaina? And that was the dilemma that we faced at one point in time, and the Commission had decided, with the Department, that you know, we wouldn't be putting that particular language for the last couple of years or few years – we haven't put that language. But we did use to do that years ago. So I just throw that out as, you know, history for you. And you know, you want to give the Department further direction and we can go back to doing that. We can, but this is what we had found that marking those stalls did.

Mr. Hedani: Okay, any other questions or –? Commissioner Hiranaga.

Mr. Hiranaga: I guess my comment is – these are paid parking stalls right? They're not free parking. You have to enter the parking lot and pay a fee to park there. Correct?

Ms. Cua: Usually. Usually. It depends on what parking lot they're using, but for the most part. Yes.

Mr. Hiranaga: It's Republic Parking. I guess my comment would be if you feel these stalls are going to not be used then you should reduce the number of stall requirements for off-site parking. That would be my – but to me, I believe they need to be marked because why have stalls that the applicant is paying for if other people are parking in it, and they can't go to 744 Front Street? People who regularly go to 744 Front Street will realize that there is reserved parking there and that they can always go to this parking lot and they'll find parking for 744 Front Street.

Ms. Cua: Well we found that to be the case when you have a business that has some parking on site. And, you know, this business does have some parking on-site. And I think for this business we had required them to put a sign – it was something recommended by one of our inspectors – to put a sign that says additional parking at “yada-yada.” But many of – I'm talking more in general with this issue instead of specifically – but what we found with other businesses that didn't have any parking on site is that people wouldn't necessarily drive to business and see a sign to park at a certain lot. So they may not know, the common person going to that place may not know, or will not know, where the parking is. So it's not that the business shouldn't have x-amount of parking stalls. The problem was that people knowing where those parking stalls are. And the only way they're going to know is if they go in and there's some stalls and there's a sign that says that we have additional stalls somewhere else. That was our point.

Mr. Hedani: Any other discussion? Commissioner Guard.

Mr. John Guard: Thank you. What did we do with the – the Tony Roma's we decided not

to mark the stalls because there was going to be kind of set time establishment and there's going to be day time crowds and night time crowds so those stalls would theoretically sit empty all day, only to be filled up for a few hours at night. Was that our thought process on not marking Tony Roma's?

Mr. Hedani: Colleen?

Ms. Suyama: I believe that was it. I mean, that they're only open, I believe, was at night. So if it was reserved for Tony Roma's those stalls would be left empty.

Mr. Hedani: Commissioner Pawsat.

Ms. Pawsat: Yeah, I still am just having a hard time understanding why we care if someone can find a parking spot or not. You know, if someone goes to 744 Front Street and they can't find a parking spot, I don't really care. You know, they can – you know that's not my loss, that's the business owner's loss. So I mean, it's kind of backward logic. I mean, they know that if they don't have parking spots. If they don't want them, that's up to them. Or if they want to work out some arrangement, but –. You know, no other city – I mean, you take New York for instance, no one worries about whether or not anyone has any parking. You get there, you get there. You don't, you don't. And I think it's kind of a waste of time to enforce these parking rules particularly in a time when we're trying to reduce – at least I thought – traffic in general. But that's really all I have to say about this obsession with parking.

Mr. Hedani: Any other discussion? That was refreshing. Commissioner Starr.

Mr. Starr: I share some of that feeling. However, in this case, I feel that the applicant is trying to, you know – and is kind of being forced to side step the requirements of recording the parking – that they have created parking which is, you know, at this point at least, it's kind of a leveled playing field where businesses need to provide parking. And since they're trying to get away from doing things as other businesses have done it in the past – and I believe that Tony Roma had actually recorded theirs – per standard practice. We're deviating from the standard practice and that was why I felt in this case, I wanted to be sure that these parking spaces really did exist and that there wasn't, you know – I'm not sure if anyone seen the movie, but producers – I mean you can sell the same parking spot 20 times if no one ever says which parking spaces they are. So I kind of feel they should be marked, in case, to make sure that they're really there and remain there, as long as other businesses have to comply, and to comply with the proper process.

Mr. Hedani: Okay. Any other discussion? I have a question for Livit. In your condition #4 you're requiring them to record something against the Bureau of Conveyances. The reason the applicant is before us is because they want to remove a condition that forces them to

record something with the Bureau of Conveyances that they cannot secure. How does that work?

Ms. Callentine: What we felt was we wanted a condition that we could then, in the future, apply to other projects as well. And we didn't want to remove this portion of the standard condition if it could be complied with, but –

Mr. Hedani: But they've already told you that they cannot comply.

Ms. Callentine: Well, that's why we added this sentence, and this really did get crafted – by Colleen was involved, and myself, and Ann – to add the last sentence “in the event that a unilateral agreement cannot be recorded on 155 Dickenson Street, then there will be an annual compliance report.” So, Commissioners, you can say no. We want to just eliminate this condition all together, but the Department didn't feel that it was prudent to go that extreme.

Mr. Hedani: I guess the question that I have is that if in the original case we're requiring them to do something that they couldn't legally do, why are we requiring them to do that again when they're asking us not.

Ms. Callentine: They can legally do it if the owner of the parcel that's providing the off-site parking agrees. So, and one of my questions when I first looked at this application was well hasn't this come up before? I mean, you know, we've been granting off-site parking approvals well before my time here and has the Commission or the Department ever grappled with this question before. And I think Deputy Colleen Suyama might want to address that.

Ms. Suyama: Can I respond?

Mr. Hedani: Please. Colleen.

Ms. Suyama: Okay. To make it simple because we're dealing with an existing condition. This proposed condition #4 maybe appropriate for a more newer off-site parking agreement. I would suggest that instead of this whole condition that we limit it to “the applicant shall submit to the Department of Planning an annual compliance report at least 90-days prior to the anniversary of the approval of the subject request.” In other words, they do annual compliance reports to the Department for our review to ensure that they are in compliance with the conditions.

Mr. Hedani: Eliminating the balance of condition #4?

Ms. Suyama: Yes.

Mr. Hedani: That's your recommendation?

Ms. Suyama: That would be my recommendation.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I would be happy to do that, but I would also – in – so that it can be a standard thing to use when it cannot be recorded, that the wording for marking the stalls be moved from condition #1 to part of this, you know, to part of the new condition #4 so that it then becomes a stand alone piece that can be inserted when the Department has this situation. I'd be happy to make an amendment to that effect but I want to put that out for discussion first.

Mr. Hedani: Hold that thought. Does the applicant have a comment or –? I'm just wondering whether or not you're accomplishing what you're requesting us to accomplish in this whole deal.

Mr. Horovitz: Our initial request – the purpose – the reason we're here is we can't record unilateral agreement against someone else's property.

Mr. Hedani: Right.

Mr. Horovitz: So we need to find a solution that meets the County's need of insuring that we actually have a lease that as was said we're not going to get the approval and tear up the lease tomorrow and stop sending the rent checks. So the yearly certification that's fine. We have no problem with that. We've been bouncing that idea around a lot. The marking of the stalls is a touchy one I think. And back in 2002, you're correct, the condition did say mark the stalls, and I think there's some stuff in the history of this that shows that a lot of the stalls were marked for Planet Hollywood back in 1994, and probably still have some of that paint on. Back in 2005 when we came before the Commission, that condition was not or was removed. I'm not certain of the discussion about that. I'm getting the sense that it was the talk of let's look at this an overall thing for Lahaina. But it was not in the approvals. The approval simply said that we had 53-spaces, nothing about marking them. And I tend to agree with the Department on this in that, you know, what's our broader purpose? Our broader purpose here is to not just ensure that we, as little our Front Street building have parking for us. But we're trying to figure out a policy for the overall Lahaina. And if I've got people from my building, you know, going to one lot or, you know, who would normally park or going to some other lot and seeing all of these reserved signs and driving around for 25 minutes trying to find the correct lot, it's not serving the purpose of reducing traffic or reducing congestion.

Mr. Hedani: Okay. Do you have a problem with condition #4 as it's worded now?

Mr. Horovitz: As it's worded now, I've no problem with it because it gives us the option. It says if we can't get it recorded, then we provide yearly certification. Well I can tell you today, we can't get it recorded. So we're going to give you a yearly certification.

Mr. Hedani: Okay. And the option exists that if the owner changes their minds, and records it then you don't have to do the annual certification.

Mr. Horovitz: If the owner changes it's mind – and that's – and then we'll do that. I'm not optimistic in that regards so I think you'll be getting a series of letters from us over the years. But the marking – you know, the reserved – you know, clearly blocking off the stalls for any other use is problematic. This is mainly for restaurants as well so we do have a lunch service and a dinner service, and I don't want to take those stalls out of commission for other times of the day.

Mr. Hedani: Thank you. You know there's 10 other people that are renting that one stall right?

Mr. Horovitz: What's awkward about that?

Mr. Hedani: Thank you very much. Any other discussion on the motion at this point? You all understand what the motion is? Commissioner Hiranaga?

Mr. Hiranaga: Did Commissioner Starr amend his motion?

Mr. Starr: No. I didn't.

Mr. Hiranaga: That was for discussion only?

Mr. Starr: Yeah.

Mr. Hedani: So the motion is for approval of the staff's recommendation with the change that would include marking the stalls as per your recommendation. And I hope you can pull that off of the minutes because I can't restate it at this point.

Ms. Callentine: For clarification, I'm not clear that the Commission is –. I'm not clear that the Commission is consensual agreement on that so I hope that you'll clarify that for staff. I was hearing –

Mr. Hedani: We're going to have it clarified as soon as they vote. Commissioner Guard.

Mr. Guard: There was no vote on amending the motion.

Mr. Starr: No.

Mr. Hedani: Right. No. The motion was made with an amendment included in it.

Mr. Starr: It added the wording that the stalls be marked that they're for the use –

Ms. Callentine: Reserved for.

Mr. Hedani: Okay. Are we clear on what we're voting on then? Commissioner Guard.

Mr. Guard: I just don't want to keep waffling back and forth because with Tony Roma's we switched our minds and now we're trying to switch back again. And it's the same type of use on Front Street to have reserved stalls, I guess. If it got so busy at 744 Front Street, it might be wise of them to send an employee out there to pit bull the area to say, hey these are our stalls. But if not, I think, it is better for the whole Front Street experience that – I don't, the last time I went to Front Street and only went in to one spot – you're going to limit yourself, so I think we should stay out of that business.

Mr. Hedani: Are you offering an amendment to the motion as it stand?

Mr. Guard: No, just a comment.

Mr. Hedani: Comment. Okay. Any further discussion? Commissioner U`u.

Mr. U`u: Comment. You get x-amount number of facilities, restaurants, and you get x-amount of parking lots and it still doesn't change. Unless you make a new establishment or a new parking lot. So we still get that same area to the same parking lot regardless of what you do. Whether you make it – force people to put signs or not, the fact remains the same, you get x-number of parking lots in Lahaina, with the same establishments over time. And the only thing could change is make a new parking, would adverse effect for the betterment. Or if you add new establishments, it would be a detriment to the parking lot. So you're still back to square one. You get the same amount of parking lots regardless of what conditions you put on for any stalls. And going come down to enforcement. Who going out there and enforce it? So, you know, we juggling the ball here. But it's fun.

Mr. Hedani: Are you ready for the question?

Mr. Starr: Yes Sir.

Mr. Hedani: I think we beat this one into the ground. All those in favor of the motion to approve as amended, signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay.

Commission Members: "Nay."

Mr. Hedani: All those in favor of the motion, signify by raising your right hand.

Commission Members: (Hands raised.)

Mr. Hedani: Three. All those oppose, same sign.

Commission Members: (Hands raised.)

Mr. Hedani: Three. Motion is lost. What's your pleasure.

It was moved by Mr. Jonathan Starr, seconded by Mr. William Iaconetti, and

The motion to approve the staff's recommendations with the amendment as noted, failed.

Ms. Callentine: Mr. Chair, if I could interject. I think the applicant has some additional information they would like to provide and I am also not sure that they are in agreement with – that they will agree to this condition of marking the stalls.

Mr. Hedani: I think we're just – I think we're just wrestling with the issue of marking the stalls or not.

Ms. Callentine: Right.

Mr. Hedani: If the applicant has some comments on that, we'd appreciate it. Go ahead. If you could just state your name for the record.

Mr. Horovitz: Peter Horovitz again. Mr. Lawson just informed me that the Republic Parking who we rent from has apparently already told him that they'll block by putting a big reserve sign there. I think what might be possible is putting a sign up there, similar to the one we already have on our building, saying that here's your off-site for 744 Front Street. That might be a good solution but again, I don't want to just be back before in two months saying well we tried to comply with that one, we couldn't do it. If they've already told us, then that's where we are.

Mr. Hedani: Okay, so we're about to impose a condition. We're about to impose a

condition on you that you wouldn't be able to fulfil again.

Mr. Horovitz: Probably not.

Mr. Hedani: Okay. Thank you.

Mr. Horovitz: Thank you.

Mr. Hedani: Discussion? Commissioner Hiranaga.

Mr. Hiranaga: Could I have the applicant repeat what he just said. He says the leaser of the parking is not willing to mark the stalls?

Mr. Horovitz: As far as I understand what I was just told to me is that this conversation has come up before and that putting the word "reserved" – is the buzz word – saying, marking all the stalls, saying reserved for 744 Front Street, like done for Planet Hollywood a decade plus ago is going to create a problem. I think putting up a sign in the lot saying, you know, identifying that this is where your off-site parking is just so a tourist coming and says we've got parking off-site that away. They don't know the streets. It will be directing them a little bit better – maybe that's a fair compromise.

Mr. Hedani: Discussion? What's your pleasure. Commissioner Hiranaga.

Mr. Hiranaga: I guess my issue is Republic Parking is a – it's a gated parking, you have to pay to enter it. I'm sure they're not going to stop people from entering or question them where they're planning to go before they allow them to use these 53-stalls. If they've got an empty stall, they're going to let you in, you could pay the daily rate or hourly rate. I think that, and I wouldn't consider 744 Front Street a small store. It's a fairly large store, in comparison to other stores on Front Street. And when you have a large establishment like that, you're impacting the neighboring retailers because they are small stores and they don't have parking. You're drawing people there and you're impacting the ability for people to use the other stores. So I think that's why there is this parking requirement. But personally I think it's a facade to have these guys pay for parking and not mark it properly. They don't care, they just want their C.O. and it's unfortunate that that's how it is. It's a pet peeve for me. Thank you.

Mr. Hedani: We're stuck in neutral gang. What do you want to do? Does the applicant have another comment. State your name for the record.

Mr. Leal Coach: Good morning Leal Coach. I'm one of the owners of the building. Just a couple things. One, yes, the building is big building. We're one of the only folks on Front Street that actually constructed new parking. We've got a whole parking lot behind our

building. All the other businesses coming in and everything, do not have on-site parking. We do have 29 to 30 stalls, whatever it is, 32-stalls that we put in to facilitate the operation. We were also required to have off-site parking, which we're doing. Some of the heartache that you're kind of going back and forth over is how to justify and get away from "old days of phantom parking." We spent a lot of time going through with the Department to try to do that. Your safeguards are that an applicant coming in for off-site parking has to go to the Planning Department and show this is the lot that we are going to be using for our off-site. Planning has x-businesses allocated. In our case, 53-slots. If someone comes in and says they're going to allocate 250, the Department of Planning would say, that lot cannot hold that much. You cannot double book or double park that. So the safeguard is within your own process that you've been working through that any applicant coming in would have to submit where that parking lot is, how far away from the existing business, and their responsibility is to say how many other businesses are allocated within that lot. Will it sustain the additional thing? So I think you have your safeguards in place as you work through this process. So I would highly encourage you to sort of stay with the recommendations as they are, and not get into the reserved parking kind of stuff. And we did step up and put in additional on-site parking where nobody else has here, especially Tony Roma's and what have you. Thank you. I just wanted to throw that.

Mr. Hedani: Questions for Mr. Coach? No questions. Thank you very much. Livit, do we know for a fact in the case of the Republic Parking lot how many lease agreements they have for their stalls?

Ms. Callentine: I don't have copies of the lease.

Mr. Hedani: Well they have 88 stalls. They have 53 in this particular case, that's leased for this particular case. Do we know if they commitments for the balance other 33? Or for the other 100 that they've leased out?

Ms. Callentine: What has been submitted to the Department – if you open your report to Exhibit #8, that shows you the parking lot configuration at 155 Dickenson Street. And this configuration shows that – let's see I haven't added it up – there are essentially 88 parking stalls. And it looks like all of those, beyond the 53 –

Mr. Hedani: Have no commitments.

Ms. Callentine: Actually, you know what, I need to ask the applicant this because when this parking diagram says the Lahaina Store, what is that referring to? That's what you're –

Mr. Mac Lowson: I'm Mac Lowson. The Department requested that we indicated which stalls we were going to be leasing. So this map shows the actual stalls that we've agreed with Republic Parking that we are going to have. That allows the Department to check on

the balance of the stalls to make sure if any additional stalls are leased to somebody else, it will have to be those.

Mr. Hedani: Thank you.

Ms. Callentine: So I just wanted the applicant to clarify that the reference on the parking diagram to the Lahaina Store indeed meant the 744 Front Street project.

Mr. Hedani: Okay. Livit, the question was, do we know if there are other lease agreements relative to the balance of the stalls in the lot?

Ms. Callentine: Stalls that are not leased for off-site parking, there are 34-stalls in the parking lot that are not leased to anyone else according to Republic Parking's letter dated October 7, 2005.

Mr. Hedani: So they are not leased to anyone else?

Ms. Callentine: Not according to this letter.

Mr. Hedani: Okay, ladies and gentlemen are you ready for a motion? Commissioner Hiranaga.

Mr. Hiranaga: I guess I differ with the staff's interpretation of that letter, October 7, 2005. It says no other stalls have been leased for the purposes of County off-site parking requirements. It could be leased for private use. So your statement saying they have not been leased, I guess, used to be –

Ms. Callentine: How would you suggest that if other than and having this letter that received?

Mr. Hiranaga: The Commissioner's question was are there any other leases on the parking lot, and you said there are none.

Ms. Callentine: Well I said that this letter says there are none.

Mr. Hiranaga: For County purposes.

Ms. Callentine: The sentence before that reads "I want to reiterate the fact that the only stalls at 155 Dickenson that we have leased are to local Maui LLC."

Mr. Hedani: Any other discussion Commissioners? What's your pleasure? Commissioner U`u.

Mr. U`u: I want to make a motion to approve as recommended by the Department.

Ms. Pawsat: Second.

Mr. Hedani: Motion to approve, seconded by Commissioner Pawsat. Discussion? We're tried? All those in favor, signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay.

Commission Members: Nay.

Mr. Hedani: All those in favor, signify by raising your right hands.

Commission Members: (Hands raised.)

Mr. Hedani: One, two, three, four. Oppose – same sign.

Commissioner Members: (Hands raised.)

Mr. Hedani: One, two. Chair votes with the majority, so it's approved as recommended.

It was moved by Mr. Bruce U`u, seconded by Ms. Joan Pawsat, then

**VOTED: To approve the Department's Report and Recommendations as presented.
(Assenting -W. Hedani, J. Pawsat, B. U`u, J. Guard, W. Iaconetti)
(Dissenting - K. Hiranaga, J. Starr)
(Excused - J. Amarin)**

Ms. Callentine: So that means that condition #1 has not be amended?

Mr. Guard: Correct.

Mr. Hedani: The motion was to approve as recommended by the Department.

Ms. Callentine: Okay. Thank you.

Mr. Hedani: Let's take a 10 minute recess.

Ms. Callentine: As amended.

Mr. Starr: No.

Mr. Iaconetti: No.

(The Maui Planning Commission recessed at 10:34 a.m., and reconvened at 10:43 a.m.)

- 2. A&B KANE, LLC requesting an amendment to Condition No. 1 of a Special Management Area Use Permit to extend the time period to initiate construction of the project by two years or until June 30, 2009 for the Kane Street Commercial Mixed-use Project (aka Aina o Kane) on approximately 3.86 acres of land at TMK: 3-7-005: 003, 011, & 023, Kahului, Island of Maui. (SM1 2005/0004) (J. Buika)**

The Commission may take action on the request.

Ms. Suyama: . . . requesting an amendment to condition #1 of a Special Management Area Use Permit to extend the time period to initiate construction of the project by two-years or until June 30, 2009 for this Kane Street commercial mixed-use project on approximately of 3.86 acres of land at Kahului, Maui. And James Buika from our office will do the presentation.

Mr. James Buika: Good morning Chairman Hedani, Commissioners, Corporation Counsel. I haven't met all of you, yet, formally, so I'd like to introduce myself again. Jim Buika, Planner, with the Planning Department. I look forward to working with all of you, and we all appreciate your hard work and your dedication and commitment to the people of Maui County.

Regarding the proposed Kane Street SMA permit amendment, I will summarize just very briefly the application, the proposed project, and the preliminary compliance report that is part of your report, just very briefly. Regarding the application, procedurally on June 14, 2005, the Maui Planning Commission granted the SMA Permit for the Kane Street Commercial Mixed-Use Development with 29 standard and site specific conditions. The Planning Commission approval letter is included as Exhibit #1. Condition #1 of the approval states that construction of the proposed shall be initiated by June 30, 2007. On April 13, 2007, the applicant requested an SMA Use Permit Amendment to extend the time period to initiate construction for a period of two-years or until June 30, 2009. Thus, the applicant provided a timely request for extending the permit. The reason for the time extension is straight forward. The applicant, A&B Kane is the process of obtaining the required permits to begin construction – was not able to obtain all the required permits by

the date of condition #1, June 30, 2007. The plans and permit applications for all the buildings were submitted in September 2006, and A&B Kane is still waiting for some comments from reviewing agencies.

As far as the description of the proposed action, the project is located on approximately 3.86 acres situated in Central Kahului, between the Queen Kaahumanu Shopping Center and the Kahului Shopping Center, bounded by Kane Street, Vevau and School Streets. And the proposed project site is adjacent to the newly constructed Kahului Street Town Center Housing Project. The Kane Street Project is a mixed-use project of commercial and multi-family residential developments. It will consist of five buildings. There will be 103 residential units, and approximately ½ will anticipated to be affordable units. The project will include one entirely residential building, consisting 34 two-bedroom multi-family units, then the other four buildings are all mixed-use. The first ground floor will be 21,819 square feet of commercial retail space, and all of the upper floors will be 69 two-and three-bedroom multi-family units. I won't mention the "p-word" but there are ample parking stalls with the project - 299, actually.

With respect to the permit time-extension, the Planning Department received the preliminary compliance report on June 8th, and approved the report on July 12th. The preliminary compliance report is attached as Exhibit #3. And A& B Kane will comply with all conditions of the original SMA Permit. And there are no changes proposed to the project's plans as approved by the Commission. To conclude, I will summarize, just in the preliminary compliance report, there are several outstanding conditions to met prior to initiation of construction. Condition #16 is SHPD approval for the archaeological monitoring report. Condition #21 is a requirement for the national pollutant discharge elimination system permit. Condition #25 is final approval of the final traffic impact analysis report. And then conditions #28 and #29 are requirements to address the Public Works and Environmental Management comments prior to issuance of the building permits. And #29 is addressing Department of Transportation's comments prior to issuance of the building permit. So that concludes my report. If you have any question before I provide the Department's recommendation?

Mr. Hedani: Question for the staff? Commissioner Iaconetti.

Mr. Iaconetti: This does not require a public discussion?

Mr. Hedani: We'll open it up for public testimony later.

Mr. Iaconetti: The reason for the question is I think we've all read the recommendations and I'd like to move approval.

Mr. Hedani: Okay. We should wait for the recommendation first. Any questions for staff?

I have a question. Do we have any indication why after they submitted in 2006, what happened during the one-year time frame? Do we know what the hang up is on the project?

Mr. Buika: They are just waiting some agency reviews. They're working with the various agencies on some of the requirements in the condition to make sure they are met. So it's just a matter of due process. I think the applicant has been doing diligence here, attempting to get the permits. They just did not get the permits by June 30, 2007, the end of condition #1.

Mr. Hedani: So it's in the bowels of the elephant then?

Mr. Buika: Yes, I do have representatives of the applicant if you want.

Mr. Hedani: Do they have any comment to offer?

Mr. Buika: If you have any status on the . . . (inaudible) . . . no. That's correct. We've communicated and I think it's pretty straight forward.

Mr. Hedani: Okay. If there's no further questions. Staff recommendation.

Mr. Buika: In conclusion –

Mr. Hedani: I'm sorry. Before you give a recommendation. Are there any members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Commissioner Starr.

Mr. Starr: I think what Doc was getting at – I don't think we really need to have all of the recommendations read to us.

Mr. Guard: Just the one condition.

Mr. Hedani: Just the one recommendation.

Mr. Buika: Yeah. That's all I was going to.

Mr. Hedani: Go ahead.

Mr. Buika: Sure. The Maui Planning Department recommends approval of the request to amend condition #1 of the SMA Permit for the Kane Street Commercial Mixed-Use project to extend the time period to initiate construction of the project, subject to the following amended condition and new standard condition. And you'll see condition #1, all we are

proposing to do is change one word in the original condition #1, in the first sentence and third sentence. The first sentence will read, "that construction of the proposed project shall be initiated by June 30, 2009." And then changing the third sentence to word, to add in the word additional – "fairly to comply with this additional two year time period will automatically terminate the Special Management Area Use permit approval unless a time-extension is requested no later than 90-days prior to the expiration of said two-year period." So it would be that one condition, #1.

Mr. Hedani: Thank you.

Mr. Buika: And to conclude my remarks – in conclusion of the foregoing, the Planning Department recommends that the Maui Planning Commission adopts the Planning Department's Report and Recommendation prepared for this meeting as its findings of fact, conclusions of law and decisions of order, and authorize the Director of Planning to transmit said decision and order on behalf of the Planning Commission.

Mr. Hedani: Thank you.

Mr. Iaconetti: So move.

Mr. Hedani: Moved by Commissioner Iaconetti to approve.

Mr. Starr: Second.

Mr. Hedani: Seconded by Commissioner Starr. Discussion? Commissioner Pawsat.

Ms. Pawsat: I'm going to recuse myself – I just worked on this project, so –.

Mr. Hedani: Okay. Recusal by Commissioner Pawsat. All those in favor for the project, of the motion, signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay. Carried. Thank you.

It was moved by Mr. William Iaconetti, seconded by Mr. Jonathan Starr, then unanimously

**VOTED: To approve the Department's Report and Recommendations as presented.
(Assenting - B. U`u, J. Guard, W. Iaconetti, J. Starr, K. Hiranaga)**

(Recused - J. Pawsat)
(Excused - J. Amarin)

D. UNFINISHED BUSINESS

- 1. MAUI LAND & PINEAPPLE COMPANY, INC. requesting a Special Management Area Use Permit and Step 1 and Step 2 Planned Development Approvals for the proposed Improvements at Kapalua Site 6-0 including approximately 58 workforce housing apartment units with a community center, three (3) new light industrial buildings for warehousing, offices, utilities, and resort maintenance with accessory storage and maintenance buildings, parking, landscaping, and other infrastructural improvements on approximately 6.37 acres of land off Lower Honoapiilani Road in the Kapalua Resort at TMK; 4-2-004: por. of 024, Kapalua, Island of Maui. (SM1 2006/0022) (PD1 2006/0002) (PD2 2006/0002) (A. Cua) (Public hearing conducted on February 13, 2007)**

ISAAC HALL, attorney for the KAPALUA GOLF VILLAS submitting a Petition to Intervene dated January 30, 2007 on the above mentioned Permit requests. (Intervention granted at the February 13, 2007 meeting.)

A settlement has been reached between the parties.

The Commission may take action on the permit requests.

Mr. Hedani: Deputy Director.

Ms. Suyama: The next item is unfinished business, D1. It's Maui Land & Pineapple Inc. requesting a Special Management Area Use Permit, and Step 1 and Step 2 Planned Development approvals for the proposed improvements at Kapalua Site 6-0, including approximately 58 workforce housing apartment units with a community center, three new light-industrial building for warehousing, offices, utilities, and resort maintenance, with accessory storage and maintenance buildings, parking, landscaping and other infrastructure improvements on approximately 6.37 acres of land off Lower Honoapiilani Road, in the Kapalua Resort, Kapalua, Maui, Lahaina. This also included petitions to intervene that was filed by Isaac Hall on behalf of the Kapalua Golf Villas. Ann Cua of the Planning Department will make the presentation.

Ms. Cua: Good morning Mr. Chair, members of the Commission. At your regular meeting on February 13, 2007, the Commission conducted a public hearing on the Special

Management Area Use Permit and Planned Development Step 1 and 2 Applications for the Kapalua 6-0 project. At this meeting the Commission also granted a Petition to Intervene by the Kapalua Golf Villa AOA. Based on that you selected a mediator and hearing officer, and a mediation session was conducted by mediator Paul Horikawa on April 12, 2007. The mediation process was successful and a settlement agreement was reached by the parties and is dated June 11, 2007, and that's attached as Exhibit #1 to your report. Based on the settlement agreement, a number of things occurred and the applicant is going to go through the plans in a minute. But essentially what happened the amount of units were reduced from 58 to 42 so a loss of 16 units. And there height changes for some of the buildings. Some of you may recall that some of the buildings were three and four stories high, and now the buildings are two stories. And we're going to go through that in detail. And the finish floor elevations have been reduced as well. So with that, I'll turn it over to Leilani, or Ryan, sorry. Ryan and Leilani will go through the changes that the applicant is actually proposing now to the project as a result of the settlement agreement. And then I'll come back on and take you through some of the additional documents and letters that we've received since the last meeting.

Mr. Ryan Churchill: Just give us a minute, we'll get this up and going here. Morning Chair and members of the Planning Commission. My name is Ryan Churchill. I'm with Maui Land & Pineapple Company, here to talk about Site 6-0 Project today. With us, as part of our project team, we have Pete Pascual from Wilson Okamoto to answer any questions about traffic, Kelly Carlson from our architect, Kober Hansen Mitchell; and Stacy Otomo from the Civil Engineering side, with us today.

First hearing on this project was back in February as Ann mentioned, and ended up being a contested case. And we were able to settle through mediation with the Golf Villas Association. So part of this presentation, today, I'll highlight some of the settlement changes because of the settlement and the changes that occurred from the last presentation in February. Your unit count for the residential apartment units was reduced from 58 to 42 units, so 16 units were reduced. The apartment buildings which were previously three and four story buildings are now all two-story buildings. And the retail warehouse building, the height of that building was reduced by three feet. And lastly a big change was adding increased landscaping along the perimeter of the boundary and specifically along the Bay Golf Course.

Here's, to get you oriented, a project location map. Here's Office Road coming down into Kapalua. Here's the Bay Golf Course, Lower Honoapiilani Highway here, and here's the project area, about 6.3 acres hence the name that goes back 30 years ago, Site 6-0, that goes with that six acres. Some of our goals for the project is one, to provide 42 much needed affordable housing rentals near people's place of work in Kapalua, provide new facilities for our resort employees and warehousing facilities, and do it all with an eco-effective of design.

Here's a site plan slightly revised – a foot prints of a few of the buildings based from the last meeting. So these buildings here changes slightly. These buildings primarily stayed the same up above here. Here's a detailed site plan and I'll go through the buildings for you here so you can get oriented for the project. Here's the driveway coming in, here. Buildings #1, #2 and #3, in this area, are the apartment buildings. There's 14 units in each building, and each building is two-stories – very similar –actually one and two are identical buildings. There's one bedroom and two bedroom units in them. And as we talked about before, there's previously three, four, and three story buildings, now they're all two story buildings. And because of that, there's no more three bedroom units in it. It's all one's and two's in the apartment buildings. Here we have laundry and mail in that building. And here, building #5, is a community center building for the residents there. There will be a little kitchen area and an area to hang and have functions in that space. As you go up the hill, there's a bench, kind of in the property, right through there, about 12 feet, and there's kind of an old cut there. There will be retaining wall there and that will separate the two areas. And building #6 is retail warehouse building for our retail functions. Building #7 is our resort villa maintenance building. Going across to building #8, over here, is where our utilities and landscaping warehouse. And building #9, our most mauka building, is an existing building for our golf course maintenance, that's there now. That building will remain.

Our landscaping plan – some of the changes we've made here is we've thickened the landscaping along this corridor here primarily to shield the head lights from vehicles driving up. So that would be shining it up towards the neighboring residences across the golf course, and to help screen some of the buildings in this area here. Additionally, we have fencing going around the perimeter of the property here and then across this section here.

Now I'm going through some of the elevations of all of the buildings actually, and we're going to share what it is like old, and what it is now. This is a main elevation looking from if your back on the Bay Course, looking across. So it's if you're standing here looking at the buildings. You can see the old, we had three and four story apartment buildings here, and there's the community center, and a retail warehouse building here. New plans – warehouse building is now three feet less in height here. And you see the apartment buildings are all two-stories now. And as I mentioned, we've added the landscaping shielding it, so a much different view plain. And this was part of the main the main focus of our settlement with the Golf Villas owners.

I'll go through each building quickly and the elevations. This is all in your packet too if you want to reference that. Building #1, east elevation here – so here's building #1, #2, #3 again – so building #1, this is the mauka elevation of the building. Again, 14 units in it – one and two bedroom units in the building. Here's the west elevation, or the makai elevation of the building. It's important to note on here the revised height is now less than 26 feet for these buildings. Up here, you can't really see it. It's washed out. But there's a line which is the maximum height of the building which is 48 feet from existing grade. So

you see we're much less than the maximum height, and that was a big change from before where the four story building was up pretty close to the maximum height.

Building #2 – here's the east elevation, the mauka elevation – with the mail and the laundry building in front of it here. West elevation or makai elevation of building #2. And building #3 is perpendicular to building #1 and #2, so this is the north elevation or an inward focused elevation of the building. And the south elevation of the building there. The community center building which is, again, right here. Here's the north elevation of that building. Again, this is a small place for people to gather and have parties and functions there for the residence. And the west elevation of that building. The laundry and mail kiosk building is here, and again, this is right in front of building #2, right there. Going up the hill, as you head up the hill, first building you then hit is the retail warehouse building right here. And here is the east elevation or the mauka elevation of that building there. There will be office functions on the up-stairs portion, and downstairs will primarily be warehousing type functions for the retail. A north elevation which is facing back towards the golf course here. And this is the west or makai elevation of the building. From this stand point, the building is three-stories in height, but this bottom floor area here is covered parking for the apartment renters there. And so they have covered parking there and storage closest in the back of it. So that would be right there. So there's parking out here, but there's also parking underneath here that renters could come in and pull in there. Again this building was lower three feet in elevation through our settlement agreement.

Going up the hill, here's our utilities building, which is here, with the north elevation. It's primarily for a storage and warehousing of our utilities department which is a few large generators they store for back up purposes during power failure. Our facilities building – south elevation – that's this building here; and the west elevation of that building. And here's the existing golf maintenance building, the most mauka building elevation of that. We will be doing some minor improvements to this building – adding an awning on it to help protect from the weather out there.

Now we'll go through a few shots of view analysis from the neighboring properties to give you a perspective of the project. This is an apartment building here, and that would be right about here. And there's some existing single-family homes here. And so that's what shown here in section, where you have existing single family home, approximately 80 feet to the apartment building, and about a 12 foot increase in grade there. After meeting with one of the homeowners there initially in our design phase, we actually moved this building back about 10 feet and added landscaping to address their concerns there. And also now that the buildings are two stories instead of four, it's much lower, so it will be a less impact on them also. This shows a view analysis from – if you look up in the key here from that single-family home, looking up – prior plans – here are the four story building. It's picking it up here. The new plans, a two-story – you'll barely see any roof line there. Here's what the proposed driveway along Lower Honoapiilani Road would look like and a shot of that

as you enter the project here. A view from the Golf Villas – a little tough to see – but in the old plans, you could see the four story, three-story buildings popping up here. New plans, two story buildings are well below that now in this projection. Again, Pineapple Hills Estates – the old – the new – we white washed the building here. You can kind of see it through, through all the trees from the neighboring Pineapple Hill Estates.

Workforce Housing – this project, for the apartments, all 42 apartments will affordable apartments, and it will follow the workforce housing pricing guidelines for the rent on those. Traffic study – as part of this – as part of the time from the last hearing till now, we've updated our traffic impact analysis report, and I'll have Pete Pascual from Wilson Okamoto come up and describe – summarize – the report for you.

Mr. Pete Pascual: Good morning. For the record, Pete Pascual from Wilson Okamoto. I'm a traffic engineer on this project. I also should note that I sit on the State Commission on Transportation and that my comments today, may or not necessarily reflect those of that Commission.

This table on the screen shows the existing – the first row which says existing on-site enter, exit, total – the 15, 18, 33 vehicles are existing vehicles that come in and out of the driveway during the a.m. peak hour. These vehicles are generated from existing uses right now on the project site. The plan is to relocate some other uses within Kapalua Resort onto the site, and that's the second row of numbers you see there, off-site. So they're really internal traffic to Kapalua that will redistributed to this area. Based on the 42 residential units, the third column that says "new residential" shows the trip generation based on those units. As you can see, the enter volume is only four with an exit volume of 20 during the morning peak hour, for a total 24. And below that, it shows you the total during the a.m. peak hour period which occurs between 7:00 and 8:00 a.m.. That shows 39 entering total – that's with the existing traffic combined with the relocated off-site uses on to the project site, and the new residential. Likewise, on the exit side, it's 41 vehicles per hour during the peak hour in the morning, with a total of 80. Now this is based on a 42 units. The traffic study that was prepared initially prior to the first meeting was based on 58 units. So this is an updated table to the previous traffic study.

During the p.m. peak hour, likewise, the numbers are very low. On-site you see 13 entering, and 10 exiting. Now, let me just clarify the on-site numbers. Those numbers are actual field data that was taken at the driveway. The off-site numbers are the ones that are also based on the relocated uses because those uses are known at this point as well as the existing uses. So the only row there that is calculated as the new residential units since obviously the new residential units are not there. But they were based on industry standard rates for trip generation as well as it was verified or validated by existing uses similar to this type of uses within the Kapalua area, or, I should say the Lahaina area.

To summarize and just go to over this very quickly. The p.m. peak which occurs between 3:30 and 4:30 p.m., the last row shows a total 35 entering, 41 existing, 76 total, both directions. I think the intent of this table is really to show the magnitude of trip generation which is actually very low for traffic analysis purposes. The intent of this graphic is to show the project driveway intersection at Lower Honoapiilani Road – what the traffic volumes on Lower Honoapiilani Road looks like. These are based on existing counts that was taken for a period of five-years – not continuously five-years, but in several, three or four times a year to account for seasonal variations within the resort area for the duration of five years. As you can see, the thru traffic volume on Lower Honoapiilani Road is relatively low, at 60 vehicles in the morning heading south bound – that south bound is going left to right on the graphic – with 150 heading south bound during the p.m. peak hour. Since this is a two lane highway, I guess the intent of this is to show that it's not a capacity issue on Lower Honoapiilani Road. But as many of you know who drive the area, it's more an issue of safety. This is along a curvature of the roadway. Speed limit is posted at 20 miles per hour, and there are some site distance limitations associated with the driving location. So because of that, the applicant is currently working with Public Works, Department of Public Works, to try and address the site distance issues at this intersection. I'll now turn it over back to Ryan.

Mr. Churchill: Quickly on the infrastructure side – water, both potable and non-potable water will be provided by Kapalua Water Company. Waste Water will connect – the Kapalua Waste Water – the Company which eventually hits the County pump station and is pumped into the County system.

Drainage – existing drainage conditions – this is all flowing down hill so water sheet flows across the site. It kinds of runs off into the neighboring property and then into the golf course on both sides there. We plan to do as part of the infrastructure for this project is to pick up that water through a drainage system, pipe it over here to the golf course, and then do some improvements to the driving range area there to create a detention basin to handle that storm water in this area here. If you remember when we went out on our site visit – I can't remember how long ago that was – nine months ago or so – there's that big grass, the low portion of the driving range in this area here.

A summary drainage – the project will result in a net increase in run-off of about 17,000 cubic feet during the 50 year storm, and so we've planned 25,000 cubic feet of storage in that driving range area to more than accommodate that. In fact, a 47% more storage than required by County Code, and I believe the 25,000 cubic feet will also accommodate a 100 year storm.

We plan to seek a LEED Certification for the project, and we've already submitted our application for what's called a Certified Campus. I believe this would be the first affordable housing LEED Certified on Maui. And part of the goals of that certification, you see some

of the bullets here, will result in a 25% less energy use than the Code, 30% less water use non-potable water for irrigation, recycling 20% of the construction waste, using 10% of recycled content through the new products in the project, use of low VOC emitting products and use of day lighting in the building. A couple of examples of that, day lighting is pretty straight forward. We're bringing in sky-lights to bring day-light in primarily to the retail warehouse building and other warehouse buildings which are then tied into variable lighting sensors that adjust the light in the building, up and down, based on how much sunlight is coming in. And you see here, it's being more and more used these days is the solar tubes to bring day light into the buildings.

Solar water, we plan to utilize solar water heating for the apartment units, and it will be roof top units, and that will help lower electrical costs to our affordable renters in the project there.

In summary, this project will provide a much needed affordable rentals in West Maui and near place of work. It will provide new facilities for our resort employees and we'll be able to relocate those from other spots in the resort here. And we hope to do all this with an eco-effective designs. That concludes our presentation. I'll turn it back over Ann and our team is available for questions later this morning.

Mr. Hedani: Thank you. Ann.

Ms. Cua: Mr. Chair, members of the Commission, I just wanted to update you on a couple of things. You know, the applicant took you through the figures of their updated traffic report. That report was submitted to the Department of Public Works, and we did receive comments back from the Department of Public Works dated July 2, 2007 indicating that they've reviewed the updated traffic assessment and they have no additional comments to offer. With regards to water, I'm not sure if you recall this, but back in February of 2007, I think there was some concern expressed by this Commission because the applicant had indicated that they were intending to provide water service – domestic water and fire protection – from their Kapalua Water Company, but they did have an alternative, an alternative proposal which was basically to connect to the existing 12-inch water line along Lower Honoapiilani Highway. So basically, you know, they did anticipate exploring the possibility of getting County water.

Since then, the applicant met with the Water Department on April 3, 2007, and they've confirmed discussions with that meeting that Kapalua Water Company will be providing potable and non-potable water to Site 6-0. And Kapalua Water Company has confirmed that the private system has capacity and the necessary infrastructure to adequately serve the proposed Site 6-0 project. So that alternative they discussed with you initially of using County water is no longer going to be pursued by the applicant.

The final agency issue that I wanted to discuss with you was the Department of Education, and I think that most of you are familiar with the criteria whereby the Department of Education requires fair-share contribution. When this project came in to the Department at 58 units – although the SMA Permit in and of itself did not trigger DOE's imposing a standard fair-share contribution condition, the Planned Development Applications did. However, with the reduction in units from 58 to 42, 42 is below the minimum number of units the DOE establishes for a required fair-share contribution. That number is 49. So, the applicant had already entered into an agreement with the Department of Education dated January 2007 for a fair-share contribution of \$16,310 for this project. They've met with the DOE since then. DOE is going to be voiding their January 2007 agreement. However the applicant would still like to make that same contribution. They have met with the Hawaii 3-R's Program. I think you're all familiar with that program here, and they are willing to make that same \$16,310 contribution to the Hawaii 3-R's Program. They've informed the Department of Education about that, and the Department of Education has no objection to that.

We did receive, since the preparation of this report, a total nine letter in support of the project. Two I want to mention. The first is from Yuki Lei Sugimura who is the neighbor island coordinator of the Hawaii 3-R's Program. Basically it's a letter to the Planning Department, but it's basically thanking Maui Land & Pine for their \$16,317 contribution which is going to be earmarked for Lahaina Intermediate School. The second letter is a letter from Isaac Hall written on behalf of the intervener, Kapalua Golf Villas AOA, and basically the letter says that by the terms of the settlement agreement, the applicant was required to amend its application in conformity with the settlement agreement. On June 28, 2007, the applicant duly amended its application in conformity with the settlement agreement, and the intervener is therefore now supporting the applicant's amended applications.

Lastly, today, we received, and I distributed it to you at the start of this meeting, a notice of withdraw of the Petition to Intervene from intervener Kapalua Golf Villas AOA, and their Counsel Isaac Hall is here today, and I believe he will be addressing you. This concludes my presentation at this point. I'll have you take your public testimony and then I'll come back with our recommendation.

Mr. Hedani: Okay. Are there any members of the public that would like to offer testimony on this item at this time? Is so, please step to the microphone and state your name. Seeing none. Go ahead.

Mr. Wes Nohara: Good morning Chair Hedani and fellow Commissioners. My name is Wes Nohara. I am a life-time resident of Maui, and an employee of Maui Land & Pine. I was born and raised in West Maui, and worked for Maui Pine for 38 years. Today I'd like to testify in favor of Maui Land & Pine's request for an SMA Permit to develop Site 6-0. My

support is based on the need for affordable housing and our Company's track record to provide affordable housing for employees and the community at large. It would not be difficult to convince this group here this morning the tremendous need for affordable housing here on Maui. Within our Company alone, there's a waiting list of 259 employee who have signed up for housing assistance. Many of our workers would not be able to afford their own home without this type of support. Since 1965, Maui Land & Pine has produced over 500 affordable homes for our employees and the community, of which 389 units were for our own employees. My parents lived in Honolua and through Napili Hau was made available house in the early 1970's. I myself is a beneficiary of Maui Land & Pine's tremendous support for employee housing. Many of our employees would not be able to afford homes if not for some our projects such as in Haliimaile, Honokeana, Puukoa and Kapua`ala`ala Village. The average seniority of employees who got homes on a bargaining unit basis was 15 years, and these people waited a long time to be made available to buy a home. Much of our efforts to date has been focused on affordable fee-simple homes, but we also recognize that there is a tremendous need for rental homes. And we feel that this is something that this project will provide a much needed rental base. So whether it is fee-simple or rental, the need for housing is tremendous. Our Company has a tremendous record to provide affordable housing effectively. And with that, I ask for your support for this project. Thank you.

Mr. Hedani: Any questions for the testifier? Seeing none. Thank you very much. I have a list of people that have signed up for testimony. We already heard from Pat Curel. Robin Nakao? Annabelle Sinclair?

Ms. Annabelle Sinclair: Good morning Commissioners, my name is Annabelle Sinclair. I'm the resident manager at the Weinberg Court Apartments which is an affordable rental housing complex in Lahaina. Basically I'm here to – I believe there were some issues raised by the Golf Villas about affordable housing being a place where, you know, there's a lot of crimes, you know, there's issues like that. And I just wanted to make sure that everyone realize that is definitely not the case. I live on the property in which I manage and everyone who lives there is extremely hardworking. They're part of the community. They want to better their situation and this is what affordable housing does. It gives them a situation to maybe save money, or even have a better quality of life. They can afford now to maybe go on vacation. Have a few of those little life's luxury that they wouldn't be able to afford if they were spending all their money on rent which is the case for many market homes. So, I definitely support and advocate the project that Maui Land & Pine is putting towards and I think that supporting it is a great thing for West Maui. And I thank you very much.

Mr. Hedani: Any questions for the testifier? Seeing none. Thank you very much. Greg Hansen.

Mr. Greg Hansen: Good morning Commissioners. Thank you very much for giving me the opportunity to talk to you today. My name is Greg Hansen. I do work for Maui Land & Pineapple Company. I get a little apprehensive now testifying for affordable housing because it seems that in between each testimony my rent goes up \$100 and that's exactly what happened this time since I was testifying in front of you last February. I did have to find another place to live. And I live and work on West Maui, but I was starting to consider moving Up-Country because the rents tend to be \$100 or \$200 less. Then I was thinking, okay I'm going to have to spend many hours in the car all week. And then there was the price of gas, and it just didn't seem feasible and I didn't want to be another one of those cars on the road from Central to West Maui everyday. It's been a struggle for anyone who has rented in West Maui and who tries to find a place there. And there's been discussion – and I'll reiterate what Wes said – a lot of people have said we really don't need affordable rentals, we need affordable homes that people can buy. And of course, some day I'd love to own a home, but the prospect of trying to save money for a down payment when you're renting in the current housing climate is pretty much impossible. I feel like I make a fairly decent living and yet I'm still living from paycheck to paycheck. So this project, I think, really exemplifies everything that we need to be doing, especially in West Maui but on the Island as a whole. And have community where . . .(Inaudible. Changing of tapes) and this project is going to be tied into a walking trail and for me, a great day is any day I don't have to get behind the wheel of my truck. And if I could ride a bike or walk to work, that would automatically start my day off great – not having to get into the car. I think that during the first meeting when we heard the concerns of the Golf Villa owners, I think it's great that the Company worked very hard with the people in the community that live around that area to address their concerns and to actually come up with a plan that is workable for everybody. The LEED Certification, I think, is wonderful, and I think these are the type of projects that we really need to go ahead with and support whole heartedly. That's pretty much all I have to say. Thanks for your time.

Mr. Hedani: Thank you very much. Any questions for Greg? Commissioner Pawsat. Greg, Commissioner Pawsat has a question.

Ms. Pawsat: You work for Maui Land & Pine?

Mr. Hansen: Yes I do. I've been there for about four years. Right now I'm a GIS Analyst. I started out in their conservation department.

Ms. Pawsat: And they don't pay you enough to buy your own home?

Mr. Hansen: I'd have to be, right now, in West Maui, I probably would have to be making well into the six figures to afford my own home.

Ms. Pawsat: But don't you think there's something sort of illogical about the fact that you

guys support Maui Land & Pine building this for you but then at the same time – like I don't understand that they're so concerned about their workers, why they don't just pay you more money as opposed to building housing for you?

Mr. Hansen: Well I'm not –

Ms. Pawsat: Then you're giving the money back to them essentially.

Mr. Hansen: I'm not an economist but I doubt in the present housing situation that the Company can stay in business if they had to pay their employees – the amount of money that would take for them to afford housing there. I mean, the housing crisis wasn't really brought about my Maui Land & Pine. There was a lot of people. My landlord is, you know – I hope he's not watching this on Akaku – but he lives in San Diego. My rent is going off-island to him every month, and the rent just keeps going up. I really don't know how to answer that question. Some people say well why should we support a project where it's going to be housing for just their employees? But to me, I say, well, okay we've got 42 units becoming available for employees. Well those employees are living someplace now, and as they qualify for these homes and are able to move into these new apartments, that's still 42 units someplace else on the Island that then becomes available. It seems to, in my opinion, it comes out in the wash.

Mr. Hedani: Any other questions for the testifier? Seeing none. Thank you very much. Next person to testify is Karen Summers.

Ms. Karen Summers: Good afternoon. My name is Karen Summers, and I'm an employee at Maui Land & Pineapple also. But I am also a member of the Employee Wellness Committee, and that's why I'm here speaking on behalf of them today. Over the last couple of years, the Company has really started to focus on employee wellness and creating a cultural wellness because they do see the benefits whether it's initially now or the long term. As part of this Committee what we tried to do is provide resources and tools for employees to improve their quality of life. And that's why I'm here today is to support the Site 6-0 project because I do believe that employees living close to work their quality of life will improve. Not only will this project provide the much needed affordable housing as we've already discussed but it will create a healthy lifestyle for Kapalua employees. Living close to work will encourage people to walk rather than to drive. Living close to work will provide more time for family activities, to exercise, to prepare healthy meals. And living close to work will reduce stress. And just by eliminating the cost of gas, or traffic, or the stress of road closures does increase one's overall well being.

Everything I've just described are really small lifestyle changes, but they have huge long-term health and wellness benefits. For myself, and I'm for a lot of people here, I'm sure everyone wants more time to exercise, more time to spend time with their families, and

more time just to feel better – initially for today, but also in the long term it will prevent disease in the future. I'm bringing up the word wellness and that word has been tossed around a lot as a great marketing word – as for every high paid spa or destination – so I don't want you to dismiss wellness. Wellness to me is a lifestyle and a process. And wellness is a balance between your home and your work, your family, your financial ability, your situation. And so living close to work will give people more time to spend time with their family or go out and exercise. And each one of these things that they are feeling better in one area it will effect their overall quality of life. Thank you.

Mr. Hedani: Any questions for the testifier? Commissioner Starr.

Mr. Starr: Yes. First of all, thank you for the testimony. It was a good testimony and I agree with you on a lot of points. I just wanted to satisfy some curiosity I had. You work for Maui Land & Pine. Are you on payroll when you come here today?

Ms. Summers: They did allow me to come today. Everything –

Mr. Starr: So they're paying you to come to testify?

Ms. Summers: They did allow me.

Mr. Starr: Thank you.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Thank you. Do you plan on living in this Site 6-0 Project?

Ms. Summers: If I do qualify, definitely. Right now, we do rent. My husband and I, we are in a unique situation, and we've had to bring in a renter to help us support our own rent. So if we do qualify that is definitely something that we want to live in.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Are you fortunate enough where you and your husband have children?

Ms. Summers: No. The roommate makes it hard.

Mr. Iaconetti: If you did or fortunate enough to get into this area, and if you had children, would you be concerned at all about where these children would be walking to get on a bus to go school?

Ms. Summers: Absolutely not. What I think this project will create is a sense of community.

And not only would – within my family support community living, walking – but I think everyone else within the community will have that same attitude. It's more community than anything if you're talking about the fear of affordable housing or the amount of people there or the traffic. I see it as a total opposite that, you know, people are going to be all working for a common goal, all with the same, you know – no one is going to be vacationing there. Everyone is working hard, living hard, enjoying their family, and enjoying the weekends. And I think it's going to be more community rather than any type of fear – or where they're walking, I think there's going to be some fantastic trails set up that will make everything, life a lot easier.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: You're aware of the fact that there are no sidewalks there?

Ms. Summers: Uh-huh.

Mr. Iaconetti: And you're aware of the fact that the bus stop is a considerable distance from the end of that "driveway?" And that doesn't concern you about safety as to where children are going to stand to get on the bus or go across the street to the beach?

Ms. Summers: I think I would have the same concerns if I was living in Kahana than I was living at Site 6-0. There's concerns everywhere. You need to protect your children. You need to walk your children. Whether or not there are sidewalks or not, you need to protect your children.

Mr. Hedani: Any other questions for the testifier? Thank you. We have one other person that signed up to testify, Sharon Vigor, however, I believe that's on the Serle Subdivision. Did you have any comments for this particular agenda item? Seeing none. Are there any other members of the public that would like to offer testimony at this time? Mr. Hall.

Mr. Isaac Hall: Good morning Mr. Chairperson and members of the Maui Planning Commission. My name is Isaac Hall. I represent the interveners, Kapalua Golf Villas AOA. We filed a petition to intervene which was granted. And through the settlement process, agreed to a settlement agreement which called for the amendment of the applications. As Ann said, the application was duly amended and therefore we now support the application and have withdrawn our petition to intervene. I do want to clarify – I just heard one testifier say we had raised the issue in the petition about fear of criminal activity, but that was not in our petition to intervene. We had raised planning issues. In any event, we've now withdrawn the petition to intervene as said. Thank you.

Mr. Hedani: Any questions for the testifier? Commissioner Iaconetti.

Mr. Iaconetti: Mr. Hall, there was a gentleman from the establishment that you were representing in the intervention that had considerable concerns about the fact that this was a one-way “driveway” that exited and entered this project. And that he was also an ex-fireman from the Bay Area, from Oakland, where they had that terrific fire where several people were killed because of the fact that there was just this one road and the people trying to get out of their living quarters, they were blocking the ability of fire people to get up there and help put out the fire. He had a lot of concern about that. I didn’t see that represented at all in your agreement. Did he move or what happened?

Mr. Hall: That was an issue raised in the Petition to Intervene – I agree with you on that. And I think, in the settlement agreement, what we did say was that the reduction in height and the reduction in the number of units would have an effect in reducing other impacts like traffic. But to speak to what you’re saying, specifically, when you are in a settlement process, you have to prioritize and pick and choose, and we settled based on the issues we settled on. We couldn’t address every issue that we raised in the Petition to Intervene, so we were satisfied. And I agree with you, that issue was raised, and I think we now have settled and that isn’t one of the issues that we settled on. And I think if the Commissioners are concerned about that, that’s up to the Commissioners. But as far as the AOA is concerned, the AOA approved the settlement that we reached, and we now support the project.

Mr. Iaconetti: So Mr. Hall, you feel then that the blocking of the lights on the property that you were representing is more important than the safety?

Mr. Hall: I’m not saying that. I’m not saying that. But –

Mr. Iaconetti: Apparently, it wasn’t brought up or if it was, it was not discussed or settled.

Mr. Hall: I wouldn’t – I wouldn’t say that. I say you’re rules require us to participate in a settlement. Settlements are a give and take process. We participated in the settlement. We saved you the time and expense of a contested case. We did that in good faith, and we entered into the settlement agreement. The AOA approved the settlement agreement. Based on the settlement agreement, we support the application. It’s a pretty normal process. I wouldn’t prioritize anything.

Mr. Hedani: Any other questions?

Mr. Iaconetti: . . . (Inaudible). . .

Mr. Hall: What?

Mr. Iaconetti: I say, I guess we differ because I think the safety of the people living up there

is a little higher priority than flashing lights . . . (inaudible). . .

Mr. Hall: Nothing prohibits you from – you have a different mandate – nothing prohibits you from doing anything you need to do.

Mr. Hedani: Are there any other questions for the testifier? Seeing none. Thank you very much Mr. Hall.

Mr. Hall: Thank you.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Seeing none. The public testimony is closed. Staff recommendation.

The following testimony was received at the beginning of the meeting:

Ms. Robyn Nishida-Nakao: Good morning Vice Chair Hedani and members of the Planning Commission. My name is Robyn Nishida-Nakao and I'm the Development Coordinator for Hale Mahaolu. Hale Mahaolu is a private, non-profit corporation that provides affordable rental housing and support services for our community for the last 40-years.

I'm here to provide brief testimony as it relates to your agenda item #1, under unfinished business, Maui Land and Pineapple Company's Site 6-0 development, a planned 42-unit, affordable workforce housing project. And I'm here to talk about the need for affordable housing on the west side. Briefly, the County of Maui's 2005 - 2009 consolidated plan cites the Hawaii Housing Policy Study update of 2003 which estimates that Maui County alone will need approximately 3,870 units of affordable housing within the plan's five-year period. For households with income below 30% median income and up to 120% of median income.

The County of Maui's 2005 - 2009 consolidate plan also points out that the supply for housing for rent has – housing for rental has declined and specifically states that the rental housing market has tighten considerably contributing to the high rental rates. Hale Mahaolu operates two affordable housing sites on the west side. One, Hale Mahaolu owns. It's called Lahaina Surf – 112 unit rental housing site. And yeah, there is one that we manage for the County of Maui – Komo Hana Hale – a 20-unit site. Both of these sites are affordable rental housing properties for low income families. Both sites have a waiting list with approximately 630 applicants, with a waiting period of approximately two-years, and that's an estimate. Based on our experiences, we believe that all types of affordable housing, rental housing, is needed in Maui County, and this is to keep up with the rising demand for more affordable housing units. Thanks.

Mr. Hedani: Are you in support of the time-extension for that request?

Ms. Nishida-Nakao: The time-extension? I would be in support of –

Mr. Hedani: I'm sorry, you're testifying in favor of Site 6-0?

Ms. Nishida-Nakao: Yes, I'm testifying in favor of – yes – the affordable housing need. And as it's planned right now, it's affordable housing, so yes.

Mr. Hedani: Thank you. Any other questions from the Commission? Mr. Iaconetti.

Mr. William Iaconetti: How current is your waiting list?

Ms. Nishida-Nakao: Our waiting list, we up-date ever six months or so. We send letters out to all of our applicants to find out they're interested in remaining on our wait list, so we do keep it up regularly. And people are always applying so we're always adding to that wait list.

Mr. Iaconetti: How current is your list of available affordable housing?

Ms. Nishida-Nakao: Affordable, vacant units?

Mr. Iaconetti: Yeah.

Ms. Nishida-Nakao: We're 100% occupied. So, basically, keep the wait list and as units become available then we'll process people and pull people off our wait list.

Mr. Iaconetti: At the present time you're 100% occupied.

Ms. Nishida-Nakao: Yes.

Mr. Hedani: I have a question.

Ms. Nishida-Nakao: Sure.

Mr. Hedani: You mentioned that there's 3,870 units forecasted over the next five-years. Over the next five-years, given the situation that we've in right now, how many units do you expect to be built in that time?

Ms. Nishida-Nakao: I wouldn't know. I know Hale Mahaolu's plan development, but I wouldn't know throughout the County, how much units are planned to be developed to meet this need. I just know that the State did the study in 2003, and up-dated it and said this is the projected need for Maui County for five-years.

Mr. Hedani: What is Hale Mahaolu's plan over the next five-years?

Ms. Nishida-Nakao: Actually, Hale Mahaolu's plan is to – we're right now focusing in South Maui. We're hoping to do some west side apartments if we're able to partner up with a developer or another partner.

Mr. Hedani: So over the next five-years, what do you project?

Ms. Nishida-Nakao: For Hale Mahaolu? I'd say that the next five-years we will probably be able to develop between 80 units – 80 to 100 – most of it being in South Maui though.

Mr. Hedani: 100 units out of the 3,870 that we need?

Ms. Nishida-Nakao: Yes.

Mr. Hedani: Okay. Thank you. Any other questions from the Commission? Commissioner Pawsat.

Ms. Joan Pawsat: You don't need to be an employee of Maui Land & Pine to occupy these projects, do you?

Ms. Nishida-Nakao: That Hale Mahaolu operates?

Ms. Pawsat: Or the one – the Kapalua Site 6-0.

Ms. Nishida-Nakao: I would need to defer that to Maui Land & Pine.

Mr. Hedani: Any other questions for the testifier? Seeing none. Thank you very much.

This concludes the testimony received at the beginning of the meeting.

Mr. Starr: Before staff's recommendation, we would like to ask some questions of the applicant.

Mr. Hedani: Questions of the applicant?

Mr. Starr: Yes.

Mr. Hedani: Mr. Churchill. Commissioner Starr.

Mr. Starr: Yeah. First of all, you know, I would like to be clear on record that the fact that there was a settlement agreement with the entity that had sought to intervene. In a way

it takes away from us our responsibility to do our duty regarding the SMA issue. That there were certain issues that were raised by a neighbor and those have been put to rest, and I do appreciate that has happened. But I don't feel that takes away from us our responsibility. But having said that, first of all, I have some comments and questions.

First of all, the good, and I want to comment on the drainage, and just express an appreciation for the 25,000 foot of retainage and the fact that you're retaining 50% more than necessary. And I think that sets a good standard and good example, and it shows that you are really community spirited in trying to maintain the quality of the near shore waters by reducing an tainted run-off. And if it does satisfy the 100 year storm then you'll really be helping the reefs for that. So thank you for that.

And also regarding the LEED Certification, that's another raising the bar, and I'm really happy to see organizations, such as Maui Land & Pine, really showing themselves to be quality members of the community and good citizens by following the LEEDS which is really the only guideline we have for trying to reduce the impact and thread lightly in doing projects. So thank you again for going after the LEED Certification. And I have a question on that because there's been a lot confusion about, you know, what someone actually has to go through to do this. And I think that it's, you know, the confusion, and the fact that is seems difficult to simply because it's still a – no one has been doing it here – though it has been very widely used on the West Coast and in Florida and in other parts of the U. S.. So I'm curious, just for our knowledge base, what you happen to go through to do it? Whether you had to go to an outside consultant, whether you're doing it in house, and if you have some idea – Harry doesn't believe in global warming so –. Anyway, if you have any idea of how much it's raising your base line cost. And once again, thank you for doing it.

Mr. Churchill: This is – and we've been looking at for a bunch of our projects and this is the first project that we are doing at. And we have hired an outside consultant, our architect, and I'll have Kelly Carlson come up and kind of explain the process. But there is a cost to it. There's the cost of the outside consultants. There's a cost of managing it, and the straight forward, construction costs. That, you know, we're still working with various contractors to try and pinpoint what the impact may be on it. And to be honest, this is sort of a test case for us and we go through it. And hopefully we can get a higher rating, get a silver rating, and better understand the process, better understand the cost to it, and then apply it to our other project going forward. But I'll turn it over to Kelly and she'll kind of talk about he process and the LEED rating on it.

Ms. Kelly Carlson: My name is Kelly Carlson and I'm from Kober Hansen Mitchell. Excuse me, I left my voice on Oahu this morning, but the LEED issue has been a very important and we've been following this through from the beginning. The process has been quite in depth. We started with all of our consultants on board. It's been a mechanical issue. It's been an electrical issue – landscape, as well as, drainage, and you've seen some of those

come through here. The effects of the LEED are not only on the building, and not only on the inhabitants of the building, living in a healthier place, having a better design place, having a place that isn't hit by the sun, or heated too much, or you know, comfortable living environment, but it's also an education of the firm who's chosen to do it. So the Maui Land & Pine is taking the initiative and informed themselves and educated themselves to have a better knowledge in just doing any building that they chose to do in the future. Do you have an specific questions on the LEED points that we'll be pursuing or the issues?

Mr. Starr: Are you a LEED person?

Ms. Carlson: I am LEED accredited.

Mr. Starr: Oh, great.

Ms. Carlson: Thank you.

Mr. Starr: I'm glad you're on the team then.

Ms. Carlson: Thank you.

Mr. Starr: I'm just glad it's happening. And I hope that, you know, maybe one of things that I was hoping that we might do is have a presentation on LEED at a future date for the Commission and also for members of the public who are interested, and I'm hoping that maybe you can come forward and help us learn about it. I know at the HPAC – yeah, the Hawaii Conference of Planning Official is coming up on the Big Island; and next weekend there's a seminar on LEEDs so it would an opportunity for some of us to get educated.

Ms. Carlson: That's great. I'd be happy to be part of that.

Mr. Hedani: Is there any other questions for the applicant at this point?

Mr. Starr: I have a couple more. I'll be happy to –

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Actually a question for Wes Nohara.

Mr. Nohara: Good morning.

Mr. Iaconetti: Good morning Wes. I know you've been involved with Maui Land & Pineapple for a long time, and part of it has been in the growing of pine and the fertilizing and taking care of the pests that are on the fields. At one time, Maui Land & Pineapple was

using chemicals that have since been banned. As I understand it, these chemicals were stored in this area. Is that correct?

Mr. Nohara: No I believe not. Our main facility was at Honolua Village where the main Kahakaloa Center is. This particular Site 6-0 used to be use as a sewage injection plant for Kapalua at one time. But as far as I know, pineapple chemicals were never stored there.

Mr. Iaconetti: Never had been?

Mr. Nohara: To the best of my knowledge, never had been. That area used to be grown in pineapple and prior to that it was mangoes, but as far as actual facilities for pineapple operations, I'm not aware of that.

Mr. Iaconetti: I can recall from the past word that that was an area where these chemicals were stored, stock piled, but I obviously have no way of proving it. But in the event that it had been, do you have any idea how long that material remains in the ground that is a detriment to any development over it?

Mr. Nohara: My understanding would be depending what material we're talking about. Some chemicals work on half-life and some deteriorate a lot faster. So without knowing which material we're talking about, no, I wouldn't be able to.

Mr. Iaconetti: Thank you.

Mr. Hedani: Thank you very much. Any other questions for the applicant at this point? Commissioner Hiranaga.

Mr. Hiranaga: I wasn't present at the initial presentation, so I just have a couple of questions. So the waiting list for your employees, how is it determined as to who will be able to occupy these affordable units, or workforce units?

Mr. Churchill: We have a waiting list which we manage through our Pulelehua website which is the number that is referred as 250 or so. In the past, we've done it by seniority but that's undecided going forward. There may be a lottery type and not seniority. You know, we have a bunch of projects coming on line here in the next couple of years. We have a 158 unit project above Napili Shopping Center that will have about 100 affordable units, for sale, fee-simple units there. And so we're trying to work with our employees and see where some employees maybe wanting to own a home versus rent, and we don't want to disqualify someone if they've selected to rent when they could have a home a year later or so. So we're still working through that, but it will either by seniority or by lottery type process.

Mr. Hiranaga: When you say seniority, is that employment seniority or seniority on the waiting list?

Mr. Churchill: Employment seniority – years of service.

Mr. Hiranaga: And my other question was you mentioned the elimination of the three-bedroom units, how does that – I'm sure you had some reason for coming up with the mix of one-bedroom, two-bedroom, three-bedroom. So your decision to remove the three bedroom units was that just based on the need to reduce the living area or was it–? How did you determine just to eliminate the three-bedrooms?

Mr. Churchill: It's primarily to preserve the unit count. To have as many units as possible to reach out to as many people. When we agreed to reduce the units from 58 to 42. If we kept a bunch of three-bedrooms, we'd be in the 30's. So we felt for the rental market, the one's and two bedrooms are appropriate for that market, and that's the target we're going after.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Any other questions for the applicant? Commissioner Pawsat.

Ms. Pawsat: Yeah, can you explain in more detail why these are rental units as oppose to fee-simple or, you know, just buying the units out right?

Mr. Churchill: There's a big demand for rental units in West Maui. You know, not everyone is in a position to want to own their own home.

Ms. Pawsat: They don't want to own or they can't afford to own? I mean, you know . . . (inaudible) . . .

Mr. Churchill: Some can't qualify to own. Some don't want to own.

Ms. Pawsat: Will you explain, "some don't want to own."

Mr. Hedani: Commissioner Pawsat, can you allow him to finish the answer to his question before you ask another question?

Ms. Pawsat: He wasn't understanding my question.

Mr. Hedani: I beg your pardon?

Ms. Pawsat: He wasn't understanding my question properly that's why I was re-clarifying.

Mr. Hedani: I see.

Mr. Churchill: We have a lot – you know in the resort business – you have a lot, we'll call them employees that come and go in the golf business specifically. So they're coming here – they're here for three or four years – your PGA golf pro's. And I don't think, you know, a 25-year old person recently out of college wants to own their own home, so a rental market is appropriate for them and to get them into that.

Ms. Pawsat: But you just said you'll be having a lottery for that, or maybe for that, or high on priority, so how would a 25-year golf pro coming here to work for your work into that equation at all?

Mr. Churchill: Exactly with the lottery. So their chance is the same as a 30-year employee.

Mr. Hedani: Any other questions? Commissioner Starr.

Mr. Starr: What project is this being used to offset affordable housing requirements?

Mr. Churchill: It's still undecided. It could be a portion of Kapalua Mauka, or a portion of the Central Resort Project.

Mr. Starr: I have a question for our legal counsel. I'd like to keep him on his toes. According to affordable housing ordinances of the County – and I don't know if State law is involved – is it allowable for an entity to provide affordable housing to meet a requirement and then to parcel it out solely to their employees especially using criteria such as seniority of service with the Company?

Mr. Giroux: I don't think that issue has been tested. You know, right now, we've just developed our affordable housing, you know, policy. We haven't seen that yet, but I think historically affordable housing, you know, in the past has always been labeled as employee housing. So don't think that it would be an aberration for them to do that. But like I said, we haven't seen that tested in the Courts at all.

Mr. Starr: Good. Could I ask you to take a look and see if there's anything anywhere that would effect it, you know, for future?

Mr. Giroux: Yeah, I can keep that on the radar.

Mr. Starr: Because it does kind of seem it should be out on the public domain if it's been created as part of a process created under County government.

Mr. Hedani: Okay, are there any other further questions for the applicant at this time?

Commissioner Iaconetti.

Mr. Iaconetti: I have a real problem with the safety of this place, let alone the single road going up to it, and the fire problems. Do you anticipate putting a sidewalk or anything along that Lower Honoapiilani Road – in that area? The road coming down to – the road coming down to Lower Honoapiilani Road is a totally blind intersection. Coming out of that road or driveway as you call it, you cannot see what is coming, going south or west on the Lower Honoapiilani Road. You can't see it. I assume that there are going to be children living up there. I assume that they are going to be going to school. This is a real problem of safety.

Mr. Churchill: To address your question on the sidewalk. If you come this way, coming to the north, we plan improvements for a sidewalk up on Maui Land & Pine property, coming through here through an existing row of trees and then connecting the resort's trail system there, with the sidewalk going that way. So for employees/workers wanting to come to the resort, they can utilize that. You know, long term, the County's plans as you all know, have been working to improve Lower Honoapiilani Road through here, with sidewalks and improvements. When you come out and you take a left here, you know, there is improvements along a portion here, and the school bus stop is – I think, about right here. Correct me if I'm wrong. I think it's about right here – so kids would come out, walk, cross the street, and where it's safer to cross not at a blind turn, to the bus stop down here.

Mr. Hedani: Ryan, is there a sidewalk that leads from the project to the highway?

Mr. Churchill: Yes, there will be a whole sidewalk coming down along here. And I think it's back on our landscape plan, coming along the road through here and that's where it connect to this sidewalk coming back up into the resort.

Mr. Hedani: And that would be protected from golf balls by netting?

Mr. Churchill: Yes, the netting is right here right now, and the netting is actually being moved so it's a few more feet inside. The netting is kind of falling apart so when renovate that netting, we'll be moving it inside there.

Mr. Hedani: Okay. Commissioner Starr.

Mr. Starr: Yeah. First I'd like to call the traffic consultant to come up because I question the figures. We have a project with 42 multi-bedroom residential units. You know, at the end of a long driveway, frankly, anyone who tries to walk out of there is going to get whacked. You say that in peak time there is going to be 19 of 20 vehicles coming in or out from these 42 residential units. I don't believe that. I'm wondering, you know – in – it's an unfortunate fact of life here on Maui that most families use two or three cars to get to work. And I'm wondering how you feel that each of these units is going to generate less than half of one

trip in or out during peak hours?

Mr. Pascual: Yes, the traffic generation rates that we used to determine – I don't have the graphic on this one.

Mr. Starr: I think it was 19.

Mr. Hedani: Pete can you state your name for the record?

Mr. Pascual: I'm sorry. Pete Pascual from Wilson Okamoto, traffic engineer. The traffic generation rates that we used to develop these numbers are based on industry standard numbers. And a lot of times, as you may know, a project may not follow national standards for whatever reason. A good example is Costco. Costco in Hawaii just generates so much traffic compared to a Costco say in Nebraska. And it's dependent on, in that case, depending on square footage. In this case, depending on a number of units. So, because there's so much variation between the national standards and local standards – or rates I should say – then we tested these rates against existing uses now that are similar to this type of project. Not only on Maui, but we have a whole slew of data from all the Islands throughout the whole State that tells us that the rates are actually, locally, little bit lower than national standards. Therefore, for the study, we use the national standards which is taking a conservative approach, assuming that more traffic would be generated by the project than if you would base it on local standards. So an answer to your question, this is really a conservative approach from a traffic analysis stand point. We didn't make up the numbers thinking that one unit would generate one vehicle, that therefore, 42 units, we would have 42 units coming in and out. Or go beyond that and say, well, it's a two-family – a two person work family, then two vehicles will be coming out of one unit, so, therefore, for a 42 units, you have 84 vehicles. That's really not the case. We base it again on existing uses similar to this, and that's the rates that we came up with to validate the national standards.

Mr. Starr: I still don't buy it. My own experience says there's a lot more. But I'm not going to get into that argument. I still think the County should be hiring the traffic consultants and that would be the solution.

Mr. Hedani: Commissioner Iaconetti.

Mr. Starr: Anyway, I would like to ask further questions if I may?

Mr. Hedani: Commissioner Iaconetti.

Mr. Starr: Go ahead and then I'll come.

Mr. Iaconetti: Defer to –

Mr. Hedani: Commissioner Starr.

Mr. Starr: I have feeling perhaps we might have been ready to ask the same question, but when we went and did the site inspection and looked at this long, long, flagged cul-de-sac and the way it empties out into, right into the curve, it really felt like this was going to be a very dangerous situation, that not only will cars be hitting each other, but any pedestrian that has a misfortune of trying to talk out, or bicyclist, and I'm wondering if you looked at that, you know, since you're the traffic consultant, in terms of the safety issue of this entry, narrow entry way with that site lines on a curve as far as the safety? Since you're the traffic consultant, I assume you're the person who gets sued when there are fatale accident? Or do you have any comments?

Mr. Pascual: Yes, and I appreciate your question Commissioner Starr. I did look at the site distance issue at that intersection. As you may know – you mentioned that you visited the site or may drive that site on occasions – there is a horizontal curve along the roadway and this is a two-lane road way. This is Lower Honoapiilani Road I'm talking about. The project driveway, or project road, or whatever you want to call it, intersects the Lower H-Road, or Lower Honoapiilani Road along this road along this curve, at the center of this curve. There is an existing site distance deficiency on that roadway, as from the driveway. As people come out of that driveway, there is, as you may know, visibility issues. You can't really see the vehicle pulling out of the driveway if you're heading south along Lower Honoapiilani Road. Nor can the driver coming out of the project driveway see a vehicle coming, heading south, looking to the right. In other words, in technical terms, vehicles are within what we call a site triangle at the intersection.

What we had proposed is that rather than – and it will be difficult to change the horizontal alignment of a road within an existing setting like now. You know we've got residents and we've got buildings and everything already established in that area. What we had proposed is to slow down traffic. In other words, implement traffic calming measures or devices along the roadway. When you slow down traffic, you reduce the required site distance, making it much visible for other vehicles within a shorter distance as oppose to maintaining the original speed limit. And these traffic calming devices can be in the form of a speed table which will reduce traffic, promote pedestrian movement, or speed humps and things like that.

Mr. Starr: Is that in our package that traffic calming?

Mr. Pascual: Well, since it's a County road, we're currently working with Public Works to identify what is an appropriate type of traffic calming devices to slow traffic. Hence, make the site distance availability sufficient at that intersection.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: The applicant keeps referring to that land that is just north of that driveway as being golf course. And actually it is an old driving range and putting area. Is there some reason why since that's Maui Land & Pineapple land, is there some reason why they can't divert that driveway or road to another spot on Lower Honoapiilani Road to make it a much safer intersection?

Mr. Pascual: I would have to defer it to Maui Land & Pine.

Mr. Churchill: It's not feasible. You can look at the map and see the area there. You don't see the slope there also, but it's just not feasible. I mean, you can move it to the north, but I don't think that's going to help the situation.

Mr. Iaconetti: It will make a better intersection if you diverted it to the north. And why isn't it feasible? I mean, the road and the rest of the land there is not leveled, but it's darn near level.

Mr. Churchill: I think, you're going in a big hole there, and the hole goes back up towards the putting course you referenced.

Mr. Iaconetti: Again, for safety purposes, that intersection is an extremely dangerous one. There are people who try to cross there to get to the beach, and they can't do it. And I also wonder if the County would allow them to put speed bumps on that road. They have never allowed us to do that before. Would the County allow speed bumps on that road?

Mr. Hedani: Mike?

Mr. Michael Miyamoto: Mr. Chair, the traffic calming measure hasn't been determined at this time, but speed humps or bumps as you're saying, may not be appropriate for this classification of roadway, whereas speed tables maybe something that's more appropriate. And there are other options at looking improving the site distance, whether it be through, like they're saying, whether it be through additional signing or clearing of the intersection. But we are working with the applicant trying to resolve how to improve the safety of this intersection.

Mr. Hedani: So Mike, the answer to the question is that the approval for the permit wouldn't be granted until the site distance issue is solved, or until the safety issue is addressed in some manner?

Mr. Miyamoto: You mean regarding speed tables or —?

Mr. Hedani: Regarding mitigative measures for safety at that intersection?

Mr. Miyamoto: Once, you know, as the project progresses, we'll look into it. As we get into more detail, we'll do a lot more data collection, you know, running speeds, pedestrians and things of that nature that all effect the decision on whether a speed table is appropriate in this location.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah. Although I'd like to see the project move forward, I for one cannot support it until I see that this issue of the safety of that intersection is going to be addressed and how it's going to be addressed. And I see two issues here. One, that there is no –

Mr. Hedani: Commissioner Starr, do you have a question for the applicant?

Mr. Starr: Yes I do. I'm asking it Chair, if you allow me. To – is regard – the first area is regards to pedestrian safety and we understand that there's a possibility that a sidewalk maybe extended I guess to the north from where the driveway meets the road. And if there is a sidewalk going north, that will alleviate it in that direction, but I would still feel that there's a necessity to have a sidewalk that heads the other way, and at least goes as far as the school bus stop so that there's definitely a way that children can walk out of here to the school bus stop without having to walk on an already dangerous road. You know, it might be possible – if it's not possible to guarantee that it be put along the road, then perhaps even a pedestrian path leading out around the other way would be possible. And also, I'd want to see, you know, a guarantee of a safe crossing so that people could walk down toward the beach.

The second issue regards to traffic calming because as it is now there's going to be accidents and I don't feel that I want to be partied to being responsible for that. And so, I would want to know what the applicant is willing to do to ensure that before the thing gets built that those areas of public safety are definitely going to be dealt with in a proactive manner.

Mr. Hedani: Ryan.

Mr. Churchill: Yes, we will deal with them in a proactive manner. Looking at the pictures and talking with our team there, there is sidewalk going south, where we connect –.

Mr. Starr: Could you show us on the –?

Mr. Churchill: It's easier.

Mr. Starr: Why don't you show us on the big map?

Mr. Churchill: There is sidewalk going this way, across here, and there's sidewalk here to the bus stop, but you'd have to cross the street. For example, you're going to the bus stop, you cross the street, but there is sidewalk the whole way.

Mr. Starr: There –

Mr. Churchill: The picture is right here if you want to –. Sidewalk here, sidewalk there, and the bus stop is right down there.

Mr. Starr: Is this the driveway?

Mr. Churchill: Correct.

Mr. Starr: Okay. Is this sidewalk continuous down here? It looks like it kind of goes –.

Mr. Churchill: It ends. It ends about here. That's where you'd have to cross to the other side where the sidewalk is.

Mr. Starr: Are you talking about the mauka sidewalk?

Mr. Churchill: The sidewalk on the mauka side, and then where it ends – you know on the makai side and there's the sidewalk there that's fronting those condominiums.

Mr. Hedani: So the response is that there's a continuous sidewalk with the exception of a crossing of the street all the way to the bus stop.

Mr. Churchill: Correct.

Mr. Hedani: Okay.

Mr. Churchill: And then we'll be connecting a sidewalk to the north.

Mr. Hedani: Any other questions for the applicant? Commissioner Iaconetti.

Mr. Iaconetti: Well --

Mr. Hedani: Before we continue, let me ask a question. Do you folks want to continue discuss on this item at this point? It's 12:15 p.m. – you want to take a break for lunch and come back and ask questions? Or do you want to try to conclude this particular issue?

Mr. Iaconetti: If you're asking me, let's take a break for lunch.

Mr. Hedani: Okay. If there's no objection from other Commissioners. What we'll do is we'll go ahead and recess at this time for our lunch and come back at 1:15 p.m.

(The Maui Planning Commission recessed at 12:18 p.m. and reconvened at 1:16 p.m.)

Mr. Hedani: . . . (inaudible). . .to address the Commission. Okay, Mr. Churchill.

Mr. Churchill: Okay, Ryan Churchill with Maui Land & Pineapple Company. To address some of Commissioners Starr's and Iaconetti's concerns, I'd like to walk through on some of the things we'd like to do along Lower Honoapiilani Road here.

In discussing with our traffic engineer about this area and you know we've met with Public Works on this in the past, and what we'd like to do and we think we have the support of the neighboring residents, is on this side, the north side of our intersection, put in a speed table which also acts as a raised cross walk and that would help bring pedestrians along the sidewalk that's existing to cross the sidewalk on the makai side there and slow traffic down. And then on the south side of the turn, install a speed bump there, because of the turn, we don't believe it's safe to have crosswalk right on the turn there, and so it would be speed bump to slow down traffic there. And so those two devices along with appropriate signage, I think would help alleviate the traffic situation there.

And, written up a voluntary condition for your consideration on that, to sort of word that and I'll just read it here: "that as represented by the applicant, Maui Land & Pineapple Company will design, construct and pay for traffic calming measures along Lower Honoapiilani Road, and the project driveway to the satisfaction of the Department of Public Works. This may include speed humps, speed tables and appropriate signage." And I just wanted to offer that for discussion.

Mr. Hedani: Thank you. Any comments? Discussion? Mr. Iaconetti.

Mr. Iaconetti: When the children are picked up to go to school, they're on the makai side of the street. There's no sidewalk until you get pass the Napili Kai.

Mr. Hedani: Doc, can you use the microphone?

Mr. Iaconetti: Until you get pass the Napili Kai parking area there. Are you going to be putting a sidewalk there because that's where the kids will be picking up the bus?

Mr. Churchill: There's a sidewalk there.

Mr. Iaconetti: Not right around that turn there isn't.

Mr. Churchill: On the Lahaina side of the turn, as we showed in the pictures there. And so that's where you come across from the mauka side, hit the raised cross walk, go to the makai side and go down to where the bus stop is.

Mr. Hedani: Question is will you connect to the sidewalk, Ryan?

Mr. Churchill: Yes, that's the intent – is that children can connect, sidewalk to sidewalk.

Mr. Iaconetti: By going to cross the road.

Mr. Churchill: Across the road there.

Mr. Starr: And that's where the crosswalk is?

Mr. Churchill: Uh-huh. Would you like me to present the picture to you again?

Mr. Iaconetti: The picture that I got in my head is not the – there's no sidewalk along there.

Mr. Churchill: . . . (Inaudible) . . .

Mr. Iaconetti: And the kids are going to be walking on those sidewalks to get to the sidewalk?

Mr. Churchill: No. We'll be conducting improvements along that entry. The entry is not going to stay the same. The roads are going to change. There's going to be a sidewalk along the roadway there.

Mr. Iaconetti: And then when they're dropped off, going home, they're going to be on the right, on the that side of the street, and this all is going to be sidewalk here?

Mr. Churchill: To go back into the neighborhood.

Mr. Guard: When they get dropped off, they'll be able to see across the street . . . (inaudible). . .

Mr. Iaconetti: Between the cars that go around them.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, in the proposed voluntary condition, will the applicant be willing to put

wording in that they will assure continuity of sidewalk, at least between the bus stop and the project?

Mr. Churchill: Sure. Yeah, that's connect -- Yeah with the crossing there -- with the raised crosswalk.

Mr. Starr: Yeah.

Mr. Churchill: And so that's the -- sidewalk to crosswalk, raised crosswalk to sidewalk.

Mr. Starr: Okay. Could you add some wording to that? I know that would satisfy -- I think that would satisfy me.

Mr. Iaconetti: Provided we get the County's Public Works Department to say "yes, you can put the speed bumps in."

Mr. Churchill: I'd just add to that, in addition to what I just read before, and say, "in addition, a sidewalk will be constructed to maintain connectivity from the project to the bus stop location."

Mr. Hedani: And in your absence we added a condition. Okay, any other questions for the applicant or discussion? Commissioner Iaconetti.

Mr. Iaconetti: With the advent of these other buildings that will be servicing your development, the Kapalua development, there will be a lot of trucks or cars or carts or something going in and out of that area. I don't know whether or not the traffic engineer included that in his calculations, but these people are going to be taking linens, towels, and that sort of things from where they are located up there on the hill to the development at Kapalua. They're going to have to go down that road, and on that highway to get to Kapalua's development.

Mr. Churchill: This is -- there won't be housekeeping facilities here. This is maintenance, primarily maintenance department. The maintenance department and the golf departments, they're existing now. The golf will stay where they are, and they primarily go out to the golf course so the employees arrive, hop into their tractor and head out to the golf course typically. Maintenance is there now. They're moving into a new building from the same site. And yes, they'll leave in a service vehicle -- a truck, not a little cart, but a truck -- and they service various maintenance needs throughout the resort. But those two are existing uses that are there now. New use -- primary new use -- is the retail warehouse and that's truck delivery, so it's not, again, not carts going in and out. The carts that you see now will be coming from the facility that will be built as part of the central resort project that we talked about a couple of months ago. So that's up there right next to where the units

are and the Villas are.

Mr. Hedani: Thank you very much. Okay, are there any other questions for the applicant? Discussion? Commissioner Guard.

Mr. Guard: On one of your maps, do you show that fire, either an escape or in time of emergency, overflow spot that might reference what the gentleman had discussed in February or whenever our previous meeting was?

Mr. Churchill: There were catastrophic fire, you know, in this area here and residents couldn't get out for whatever reason. You know, there is a route straight to the golf course that vehicles and people could escape to. And so there is an alternative. It doesn't lead you to a public highway, but it takes you out in the golf course which could be a safe zone, you know, with a large grass area.

Mr. Hedani: Any other questions? Ryan, on the reduction from 58 to 42 affordable units, where does the Company plan to make up the 16 units that are lost?

Mr. Churchill: We'll likely make them up in our West Maui Village Project which is the project mauka of the Napili Shopping Center.

Mr. Hedani: Okay. Any other questions for the applicant? Thank you. Ann.

Ms. Cua: Mr. Chair, members of the Commission, the proposal complies with the applicable standards for a Step 1 and Step 2 Planned Development Approval. In addition, the project does comply with the applicable standards of the Special Management Area. The Planning Department, based on the facts presented in the Department Report dated February 13, 2007 and updated Report dated August 14, 2007, finds that the proposed action will not have a significant adverse environmental or ecological effect provided mitigative measures are incorporated into the project. In addition, the project meets the objectives, policies, and guidelines of the Special Management Area Rules. And the project is consistent with County zoning and the West Maui Community Plan. As such, the Department is recommending approval of the Step 1 and 2 Planned Development Application. In addition, we're recommending approval of the Special Management Area Use Permit subject to a number of conditions. Conditions #1 through #14 are your standard conditions, and I want to note that in condition #4, we've included the date of the most recent plans that we before you today which also reflects the settlement agreement. Those plans are dated June 20, 2007.

In terms of project specific conditions, I won't go through all of them. I do want to highlight a few. #18, the applicant shall be responsible for any park dedication requirements as determined by the Department of Parks and Recreation prior to issuance of a building

permit. #23, that as represented by the applicant, a voluntary contribution of \$16,317 shall be made to the Hawaii 3-R's Program to mitigate impacts of the project on the public educational system. #24, that no parking signs shall be installed along Lower Honoapiilani Road to the satisfaction of Public Works – that was recommended by the Department of Public Works. #25, that access to the Napili 23 drainage basin dam and overflow structure shall continue to be allowed to the County of Maui for maintenance purposes – again, recommended by Public Works. #26, that a sidewalk shall be provided along the project driveway to access Lower Honoapiilani Road. #27, that the golf course maintenance buildings where chemical will be stored shall be fenced and landscaped in order to assure the safety of residence of the workforce housing units. #28, that the safe drinking water branch of the Department of Health be consulted regarding the final determination of the source of domestic water for the project, and that was recommended by the Department of Health. And then, we would be proposing condition #29, which is the voluntary condition proposed by the applicant. As represented by the applicant, Maui Land & Pine will design, construct and pay for traffic calming measures along the project driveway and Lower Honoapiilani Road to the satisfaction of the Department of Public Works. This may include speed humps, speed tables, and appropriate signage. In addition, Maui Land & Pine will assure continuous sidewalks/crosswalks from the project site to the bus stop on the makai side of the Lower Honoapiilani Road. You know, we can massage that language a little bit, but that's essentially what I got from you.

Mr. Hedani: Any discussion? Commissioner Starr.

Mr. Starr: Yeah, actually, a point of information. I understand we're dealing with two separate issues and I assume that we should probably do that with two separate motions, and I just want to be sure the motion regarding the Step 1 and Step 2 Planned Development – are we the final authority in this?

Ms. Cua: Yes. You're the final authority for all three permits.

Mr. Starr: Okay. And the Step 1 and Step 2 that is something where you're not recommending that there be conditions on those, but there will be – these conditions are recommended for the SMA?

Ms. Cua: Correct.

Mr. Starr: Okay. I'm ready to make a motion, Mr. Chair, unless someone else wants the pleasure.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: I probably shouldn't say anything until the motion is made, but I intend to vote

against this development. I am very concerned about the safety of the driveway, "road", whatever, that connects with Lower Honoapiilani Road. I'm concerned with the safety of the people working there as well as their children. And although we have received some assurance from Maui Land & Pineapple about the absence of any chemical contamination of this land where they intend to build the development, I can recall going to meetings there where that area was involved with some very poisonous chemicals that continued to be used until they were totally exhausted, which was far after the government had said you can't use them anymore. I, again, until I'm shown that there is a real safe entry and exit of this place, that the kids that are going across the road there, et cetera, are going to be safe, and that this land is not contaminated with these poisonous chemicals, I intend to vote against the motion if that's what Mr. Starr is about approve.

Mr. Hedani: Okay, we have not motion on the floor yet. Commissioner Starr.

Mr. Starr: I do want to state that I still have some concerns about the traffic safety but I think that, you know, the applicant is trying to address it, and I kind of have some faith that they'll do their best. But I would like to hear from Mike regarding whether we can get some assurance from the County regarding the traffic calming and sidewalks as proposed by the applicant.

Mr. Hedani: Mr. Miyamoto.

Mr. Miyamoto: Chair, when you refer to sidewalks are you speaking along their driveway?

Mr. Starr: Uh –

Mr. Miyamoto: Or along the frontage as they each have a limited frontage on.

Mr. Starr: What we've asked for and what the applicant has expressed willingness to do is to pay and install sidewalks that will be continuous from the project to the school bus stop with a cross walk with a raised speed table – so it will have a cross walk on it where the school kids and other people would have to cross Honoapiilani Highway. And I just wanted to be sure that's going to be doable and that the County will not only allow but encourage it to happen.

Mr. Miyamoto: We'll work with the applicant. Right now, without collecting data to make sure it's a safe location, that it doesn't affect any roadway drainage in that particular location, we'll look to make sure that it does meet our safety criteria and it doesn't affect roadway drainage in any way.

Mr. Starr: I mean if it does, can you move it to some where –

Mr. Miyamoto: Yeah. That's the intent. We don't want to just plop it somewhere. We want to make sure that we put in a good location so that we don't have negative impacts by installing it.

Mr. Starr: And regarding the second issue, and I do share Doc's concern with that, but I have no knowledge about it on the west side, but I know that there were locations in East Maui where there was stock piles of DVCP and other nemocide chemicals and at a certain point when, you know – even when the use finally stopped and you know they were allowed to continue in Hawaii for seven years after they were outlawed in the rest of the United States under a special act of Congress on the request for the Pineapple institute. If anyone is interested in more history of this, I was partied to a lawsuit that went into it in great detail. I'm not going to do that now, but in any case, there is anecdote evidence that some of the sites in East Maui, the workers not with the permission of the Company but on their own, when they were told to stop using it, dumped many, many drums of the stuff into the ground and that helped create a plume which is effecting our aquifers. So perhaps an intelligent thing to do would be to create a condition and request that there be a soil test there to make sure that – since there will be kids living and playing there that – you know, if it is in deed in the soil, there will be remediation. Let me refer to Doc if that's something that would help calm some of his concerns.

Mr. Iaconetti: I would certainly help. Yeah.

Mr. Hedani: Okay, we currently have no recommendation or a motion on the floor for consideration. What your pleasure? Commissioner Starr.

Mr. Starr: I'm happy to make a motion – two motions, but before can I ask one more thing of the applicant on whether they would be willing to have some soil test done and remediation if it's called for by soil tests.

Mr. Churchill: We have no problem with that.

Mr. Starr: Good – something be penned up. And with that being said, the first motion I'd like to make is to approve the Step 1 and 2 Planned Development applications.

Mr. Hedani: You're saying approval of Step 1?

Mr. Starr: Yeah, the Step 1 and 2.

Mr. Hedani: One and two?

Mr. Starr: Yeah.

Mr. Hedani: Okay.

Mr. Starr: Would the Chair prefer to separate 1 and 2 out?

Mr. Hedani: No.

Mr. Starr: Okay.

Mr. Hedani: I would prefer to combine all three.

Mr. Starr: I don't think we can combine all three because there's conditions on the SMA. So my suggestion is –

Mr. Hedani: Ann, is that preferred route? Two separate votes on this particular issue?

Ms. Cua: I don't believe it's necessary, but you can. You can take an action on the Planned Developments, and then you can take action the SMA. It's your choice.

Mr. Hedani: Okay. We have a motion on the floor for approval of Steps 1 and 2. Is there a second?

Mr. U`u: Second.

Mr. Hedani: Seconded by Commissioner U`u. Is there discussion? Commissioner Pawsat.

Ms. Pawsat: Yeah, I'm kind of on the fence about this whole project just because this whole, you know, for the life of me, I can't understand why someone would want their employer to be also their landlord. But you know there's a book that's called *Workman's Paradise*. I think it was written by some woman name Crawford, but it kind of goes over this sorted history of workforce housing and it's pretty manipulative history. But, my main problem is this landlord sort of employer basically puts a muse around I think people's rights to freedom of speech. And I'm basing that on the fact that, you know, how else can I account for the fact that only time I hear criticism about this Company is from retired employees who finally got their Hawaiian homelands after 30-years. But on the other hand, you know, if someone wants to be hamster within this sort of Maui Land & Pine gerbil trail, you know, that's their rights I suppose. But, I think, I mean obviously no one is against affordable housing, but I don't think the Island should get into a habit of mixing that with workforce housing. I think, we shouldn't be dependent upon these supposedly benevolent entities to provide housing for people.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Another comment – the trucks, et cetera, that would be driving to this development, if this is passed, I'd like to see that they are forced to utilize Maui Land & Pineapple roads and not the Lower Honoapiilani Highway, or Road rather, to get to the development that they're building. That Lower Honoapiilani Road has been devastated on many occasions as a result of heavy construction trucks going back and forth. And they were in agreement to do this for their Kapalua development and I hope they would consider doing the same thing for this development. They have been somewhat successful in keeping these heavy trucks off that road. But they're there, and if I had the time – I do have the inclination – but if I had the time and running automobile on the side of the road, I'd follow these trucks because there's nothing else that's being built out there. And these are big, big construction trucks that are going the main road, and the County just paid for and fixed up that road, and I'm sure by the time they're through, that road is going to be a mess again. And so if they want to mess up a road, I hope they'll mess up their own road and not the County's road.

Mr. Hedani: You're talking about construction vehicles?

Mr. Iaconetti: Yeah.

Mr. Hedani: Okay. Any other discussion? You ready for the question? All those in favor of the motion to grant the approval for Step 1 and Step 2, signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay?

Commissioners Pawsat and Iaconetti: Nay.

Mr. Hedani: All those in favor, signify by raising your right hand.

Commission Members: (Hands raised)

Mr. Hedani: Four. Oppose – same sign. Okay, the Chair votes in favor. The vote is five to two in favor. The motion passes. The floor is open for discussion on the SMA Permit. Commissioner Starr.

It was moved by Mr. Jonathan Starr, seconded by Mr. Bruce U`u, then

**VOTED: To approve the Step 1 and Step 2 Planned Development applications.
(Assenting -W. Hedani, B. U`u, J. Starr, J. Guard and K. Hiranaga)**

(Dissenting - J. Pawsat, W. Iaconetti)
(Excused - J. Amarin)

Mr. Starr: Yeah, do we have wording for an additional –?

Ms. Cua: I crafted some language, “that the applicants conduct soil testing at the project site prior to initiation of construction. The results of the soil tests shall be included with the project’s preliminary compliance report. Should remediation be required, the applicant shall implement required measure prior to initiation of construction.”

Mr. Hedani: What’s your pleasure? Commissioner Hiranaga.

Mr. Hiranaga: Question – what determines the need for remediation? Is it EPA standards?

Ms. Cua: I guess depending on what the soil tests – what the conclusions of the tests are, yeah, I would believe it would have to comply with any EPA standards.

Mr. Hiranaga: Would you like to include –

Mr. Starr: Phase 1. Call it a phase 1.

Mr. Hiranaga: Well, some type of standard. I mean, something has to determine whether a remediation is required or not.

Mr. Starr: I think of it – you know, if they use a process where they do – what is it JB, a phase 1 – and then if it’s necessary that kicks it to a phase 2. I mean there’s a standard for that.

Mr. Hiranaga: Environmental Assessment Phase 1.

Mr. Starr: Yeah.

Mr. Guard: It’s not an EA.

Mr. Starr: There it is.

Ms. Cua: So is that what they’re conducting, an environmental site assessment?

Mr. Hedani: Commissioner Guard?

Mr. Guard: Has the applicant done one of these on that site anyway, to make sure that’s a safe site for residences?

Mr. Churchill: Yes, we've done a phase 1 and a phase 2 for this site. There's no DVPC in the soil. There is one spot – they've asked us and part of the phase 2, we did additional soil testing – there's one spot above the golf maintenance building they want us to do additional testing on. But that's, you know, completed and done and we'll be going back and doing some additional testing above the #9 building there.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Out of curiosity, how many samples do they take and how deep do they go when they're grabbing these samples? Is it like trenches or just core samples?

Mr. Churchill: The phase 1, ESA is more of the oral narrative and they look at the history of the area and find out, you know, spots that may have stored chemicals in the past. And the phase 2 goes into the testing. The exact numbers of spots I'm not sure. I would have to go back and look at the report.

Mr. Hedani: Commissioner Guard.

Mr. Guard: This leads me to another question – more of the future part of it – on your drainage system – this maybe for the applicant or for your engineer – do you have filters in place in your catch basins around the maintenance sheds so that by-product or if you have some petroleum or fertilizer product that washes into the drains that that's not going to run off without being filtered through like some of these other applicants that we've seen in the past that have been using these filtered guards.

Mr. Churchill: We've done that on our other projects and we'll be doing that, at least, around the maintenance area. I'm not sure in the apartment area.

Mr. Guard: Same one that they could be removed after so many rainfalls.

Mr. Churchill: Stainless screen with the sponge type filter in it.

Mr. Guard: Okay.

Mr. Starr: I believe LEEDS will cover that.

Mr. Guard: What's that?

Mr. Starr: I believe – that's part of LEEDS. When LEEDS is there, we don't have to worry about it.

Mr. Hedani: Okay. We don't have a motion on the floor at this point.

Mr. Starr: I'll make it if no one else wants.

Mr. Guard: So we're making a motion regarding the environmental, the ESA?

Mr. Hedani: We don't have a motion.

Mr. Guard: We don't have a main motion.

Mr. Hedani: Commissioner Starr.

Mr. Starr: First of all, regarding the wording that ESA documents be provided and if remediation be necessary that it be done. How's that?

Ms. Cua: Yeah, that it shall be done prior to initiation of construction.

Mr. Starr: Since it's already been done, it's not an issue.

Ms. Cua: You wanted to delete that?

Mr. Starr: Well, no.

Ms. Cua: I think they haven't completed yet. They've done the phase 1 and 2, but there's still additional testing.

Mr. Hedani: Jonathan?

Mr. Starr: Yeah?

Mr. Hedani: We don't have a main motion on the floor to approve.

Mr. Starr: Yeah, I'm about to make the motion. I just want to be sure that the conditions are in place so that we're all –

Ms. Cua: So are we still okay with that same language? I mean, even knowing that they've started the process – they haven't completed the process. I think the language is still okay.

Mr. Starr: Yeah. But use the terms –

Ms. Cua: Environmental Site Assessment.

Mr. Starr: Okay. So I'd like to move that we approve the SMA Use Permit subject to 31 conditions which are in the – which Ann has.

Ms. Cua: I'm sorry, 30.

Mr. Starr: 30. Sorry.

Mr. Hedani: As per the Staff's Report.

Mr. Starr: Yeah.

Mr. Hedani: Is there a second?

Mr. Guard: Second.

Mr. Hedani: Seconded by Commissioner Guard. Discussion? Commissioner U`u.

Mr. U`u: I'd like to follow up on what Doc said earlier. If they could utilize their own roads if possible by all means or use the upper highway so it's not impacted on the lower portion of it.

Mr. Hedani: We're talking about construction vehicles for Site 6-0.

Mr. U`u: Construction vehicles – yes.

Mr. Hedani: Commissioner Guard.

Mr. Guard: So that would be an additional condition on there? Or what's the potential construction plan that the applicant has? To go through Kapalua or to go pass Napili Kai up to the nearest point to the upper highway?

Mr. Churchill: For the location of this project we assume they'd use the lower road coming down Napili Hau area there, so it's not a preference that they come all the way around through Kapalua then back up because of the distance, but that's up to the Commission.

Mr. Hedani: Can the site be accessed directly from the top?

Mr. Churchill: Through the golf course? No.

Mr. Hedani: Okay. Discussion.

Mr. Iaconetti: Was that an amendment that they use their own roads?

Mr. Guard: That was not an amendment. I believe #29 and #30 discusses the sidewalk and then the ESA, so there isn't anything discussing truck traffic right now.

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

Mr. Iaconetti: Yeah, well, I'd like to add the amendment that they utilize their own roads.

Mr. Hedani: I move –

Mr. Iaconetti: I think he already moved, didn't you?

Mr. U`u: Discussion.

Mr. Hedani: That was discussion.

Mr. Iaconetti: I move that Maui Land & Pineapple utilize their private road structure from Honoapiilani Highway down Office Road to achieve the present project that we're discussing, and keep their trucks off of Lower Honoapiilani Highway, or Road. Is that clear?

Mr. Hedani: So that would be condition #31. Is there a second?

Mr. Starr: I'll second it.

Mr. Hedani: Seconded by Commissioner Starr. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: Just clarification – are you saying the Maui Land & Pineapple vehicles during construction or for eternity?

Mr. Hedani: We're talking about construction vehicles.

Mr. Hiranaga: I just wanted clarification.

Mr. Iaconetti: Yeah. There's no way of doing it for eternity. Just like we're telling everybody they're going to drive 20 miles per hour on that because nobody does.

Mr. Hedani: Any other discussion on the amendment? If not, all those in favor of the amendment, signify by saying "aye."

Commission Member: "Aye."

Mr. Hedani: Oppose, nay? Carried. Any further discussion on the main motion to approve? Subject to the additional conditions.

It was moved by Mr. William Iaconetti, seconded by Mr. Jonathan Starr, then unanimously

**VOTED: To amend the main motion to include Condition #31 which requires Maui Land & Pineapple Company construction trucks to utilize their private roadways, and remain off of Lower Honoapiilani Road, when traveling to and from the project site.
(Assenting - W. Iaconetti, J. Starr, B. U`u, K. Hiranaga, J. Guard, J. Pawsat)
(Excused - J. Amarin)**

Mr. Starr: 31 now.

Mr. Hedani: 31 conditions. No further discussion? All those in favor signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay.

Mr. Iaconetti: Nay.

Mr. Hedani: Carried. Thank you.

It was moved by Mr. Jonathan Starr, seconded by Mr. John Guard, then

**VOTED: To approve the Department's Report and Recommendations of the Special Management Area Use Permit, with the added condition, #31, as noted.
(Assenting - B. U`u, J. Guard, K. Hiranaga, J. Starr, W. Hedani)
(Dissenting - J. Pawsat, W. Iaconetti)
(Excused - J. Amarin)**

Ms. Cua: Thank you.

Mr. Hedani: We'll take a 10 minute recess.

Mr. Churchill: Thank you for working with us on this.

Mr. Hedani: And thank you for saving the Department of Education from itself.

Mr. Churchill: It's critical that those money stayed in West Maui and it didn't go off in the deep end, so that the 3-R's Program will work out great.

(The Maui Planning Commission recessed at 1:51 p.m. and reconvened at 1:59 p.m.)

2. **MR. RON SERLE requesting a State Land Use District Boundary Reclassification from the State Agricultural District to the State Rural District and a Change in Zoning from Interim District to RU-0.5 Rural District for the Serle Subdivision on approximately 5.258 acres of land at TMK: 2-7-002: 156 (formerly a portion of TMK: 2-7-002: 043), Haiku, Island of Maui. (DBA 2006/0002) (CIZ 2006/0005) (J. Dack) (Public hearing conducted on July 10, 2007.)**
 - a. **July 26, 2007 Letter from Christopher L. Hart of Chris Hart and Partners requesting that the item be deferred to a regular meeting in September 2007.**

The Commission may take action to defer the matters or may take action on the land use requests.

Ms. Suyama: The next order of business is the minutes of the June 12, 2007 meeting.

Mr. Iaconetti: Excuse me?

Mr. Guard: No.

Mr. Hedani: We're at item D-2.

Ms. Suyama: I'm sorry. I'm one step ahead. The second item is #D-2 which is Mr. Ron Serle requesting a State Land Use District Boundary reclassification from the State Agricultural District to the State Rural District, and a Change in Zoning from Interim District to RU 0.5, Rural District, for the Serle Subdivision on approximately 5.258 acres of land at Haiku, Maui, and Ann's going to take the place of Mr. Dack who went home ill today.

Mr. Hedani: Ann, can you hold?

Ms. Cua: Sure.

Mr. Hedani: On our last vote that we took. Although it was voice vote, we had Commissioners Hiranaga, Guard, U`u, and Starr voting in favor of the motion. We had Commissioners Pawsat and Iaconetti voting against the motion on the voice vote and the Chair voted in favor of that motion, so the motion still passes just for the record.

Ms. Cua: Thank you for the clarification.

Mr. Hedani: Please continue.

Ms. Cua: Very briefly, this matter, the Serle Subdivision came before you at your July 10th meeting, and at that meeting you deferred action to today's meeting to allow the applicant time to go and talk with the neighbors and try to work out their concerns. We received a letter on July 26th from the applicant's representative, Chris Hart, asking for a deferral of this matter until sometime in September. They feel they need additional time to continue discussions with the neighbors.

Mr. Hedani: Is there a motion for deferral? Commissioner Starr.

Mr. Starr: Move to defer.

Mr. U`u: Second.

Mr. Hedani: Seconded by Commissioner U`u. Discussion?

Mr. Guard: I don't know if you have any members of the public that were here to say anything or not.

Ms. Cua: Yeah.

Mr. Hedani: Are there any members of the public that would like to offer testimony at this time? If so, please step to the microphone and state your name for the record.

Mr. Edwin Ferreira: Mr. Chair, Commissioners, good afternoon. My name is Edwin Ferreira. I testified on July 10th, submitting, I believe around 25 signatures from all of the immediate neighbors surrounding the proposed subdivision, and they are opposing the building of that subdivision mainly because the entire area, on the makai side that Puamalei Road down where we live and where the subdivision is, is agriculture. Totally agriculture. Above the triangle, going up Kokomo, Puamalei and Kapakalua Road, from when I was a little kid, they were rural lots in there. That's always been there. So we are still, 100% against the re-zoning from agriculture to rural. I would like to say that I did receive a call from Mr. Hart on July 24th wanting to talk to me about the subdivision. They wanted to go over a few things and when I asked him what he wanted to discuss, he basically wanted to discuss the same thing that was discussed at the meeting, which was the community plan. I told him unless he has something that he was directed to by all of you, he and the owner, to try meet with us to come up with some kind of compromise, I wasn't interested in listening to anything further that he had to say, and I concluded that.

Now I did not know that this was going to be deferred until late last night. I received a call from another one of the land owners that Mr. Hart had called to set up a meeting with. And he said we're having a meeting tomorrow meeting with the Commissioner. And he said that's been deferred. You know, I drive up from up-country all the way down to appear before you not knowing in effect whether the meeting itself has been deferred. I was just wondering, and I'll put this before you, is there any way that we can be notified of I can be notified so I can notify the rest of my neighbors that wanted to come down to testify today? At least call me, let me know that something has been deferred. If there's a possibility of that, I'd really appreciate it. But anyway, as far as I'm concerned, at this meeting, I still represent all of the neighbors and our vote is "no" at this time. I do have some things that I'd like to hand out to all of you – just take a look at it. I do have signatures. I didn't bring it all because late last night, and again, I wasn't sure whether it was going to be deferred or not, so I didn't bring everything that I wanted to bring. But I did bring the pictures of that flooded area that seemed to have escaped Mr. Hart's memory.

Mr. Hedani: Deputy Director Suyama has a response to the question about notification.

Ms. Suyama: Mr. Ferreira, if you would Ann Cua your name, address and phone number, a contact number, we can make sure that when it comes back on the agenda that you get notified.

Mr. Ferreira: Thank you very much. I really appreciate that. Thank you.

Ms. Cua: Mr. Chair, I only thing I do think we need to add that is that for example, let's say he was notified of this meeting, if you look at the agenda, it doesn't tell you that – I'm sorry – it sure does. Well sometimes, we have agendas that don't say there's been a request for deferral. So I just don't want to think that just because you get an agenda you may know that something may be deferred, and I think that's important here. It's maybe. We don't know it's deferred until they vote. We know that there's a request for a deferral, but until they vote that it will be deferred, we don't know.

Mr. Ferreira: Okay.

Ms. Cua: But we can put you on the mailing list.

Mr. Ferreira: I appreciate that. Thank you Ann.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: This is the second time this problem has occurred in the last two months. If you recall the first time, there were a number of people that came all the way over from the west side only to find out that the subject had been deferred and without any notification.

And now, this gentleman has come down from up-country without any notification. The fact that you've got his phone number is helpful to him, but it isn't helpful to the rest of the community. Who asked for the deferral to begin with?

Mr. Hedani: The applicant.

Mr. Iaconetti: And why are we –

Mr. Hedani: Yeah, it was published in the agenda.

Mr. Iaconetti: Yeah, so why are we allowing the deferral again? That is a prerogative of this Commission as to whether or not it gets deferred.

Mr. Hedani: That's correct.

Mr. Iaconetti: And I don't think that the applicant is in a position to ask for a deferral especially at this late point. They asked for the deferral to begin with. They asked for a deferral to this date, and we're here and a person is here to testify, and all of a sudden they're told they want a deferral again. And I don't think that's fair to the public. I don't think it's fair to the Commission. And I don't know why we should defer it a second time.

Mr. Hedani: Any other discussion? Commissioner Hiranaga.

Mr. Hiranaga: I just wanted to reiterate.

Mr. Hedani: I'm sorry. Did we have questions for the testifier at this point because we still have one additional person, I think, that wants to testify.

Mr. Hiranaga: Well, I guess it relates to his question about being notified. I just wanted to reiterate that until the Board takes action to defer, I mean, they could still take action to address it, and deny their request to defer.

Mr. Ferreira: I understand. Thank you.

Mr. Hiranaga: So, they give you notification that it may be deferred and it's not, then you won't be here so it's kind of –

Mr. Ferreira: That's why I appeared not knowing what was going on.

Mr. Hiranaga: Right. Thank you.

Mr. Ferreira: But, thank you.

Mr. Hedani: Any other questions for the testifier? If not thank you. . . . (inaudible. Changing of tapes). . . . that also signed up to testify on this agenda item. Sharon.

Ms. Sharon Viger: Aloha, my name is Sharon Viger. I am the property owner adjacent on the Kapakalua side to this 10 acre parcel. I am definitely against it. The impact is going to make on Puamalei Road is pretty intense. I'm sure you got this map last time, but Mr. Serle is planning on putting 10 houses on the lower five acres, and he has two, two-plus acres on the top portion. Realistically if you put house and cottage, we're talking about 24 dwellings. On Puamalei Road alone, there's maybe 16 homes. That's how big and intense this development is to Puamalei Road. I was not here on July 10th due to a conflict with work. I'm happy to be here today. I plan to be here next month.

I bought my property three years ago and it has three zonings: interim, rural and ag. I have 2-½ acres, two water meters, two houses. I hope to come before you sometime soon to divide my land into three or two. So I'm against them because of the intensity. I understand there are needs to develop for Mr. Serle. I don't understand his concept that he's going to be financially bankrupt if this doesn't go through. We can compare statements in our bank accounts and see who really needs to develop or divide other than him. But again I am against it. I will definitely be back. And any help from the Planning Department will be great. Mahalo.

Mr. Hedani: Thank you. Any questions for the testifier. Seeing none. Thank you very much. Are there any other members of the public that would like to offer testimony, please step to the microphone and identify yourself.

Mr. Richard Gordon: Mr. Chairman, Commissioners, I'm Richard Gordon. I'm one of the neighbors, and I want to make a statement against deferral. They've had a month and to my knowledge only two people were contacted by telephone, and I believe Mr. Hart made his case in probably 15 minutes for the two people. If you run that out to the number of neighbors, he could have contacted everybody in three hours. He had 31 days to do it, three hours of work, I don't see any need to give another month. I think everything has been put on the table. Everybody knows what the issues are, and I hope that you Commissioners see it fit not pass the deferral.

Mr. Hedani: Thank you. Any questions for the testifier? Commissioner Iaconetti.

Mr. Iaconetti: I'm sorry. No, I have a question for staff.

The following testimony was received at the beginning of the meeting:

Mr. Pat Curel: Hi my name is Pat Curel. Can I ask one question before I start? And that is, is an entitlement created when the Community Plan is published or is it created after the

decision is made to re-zone the property? Because I read an article in the Maui News yesterday, a letter to the editor, and I was unclear about whether the actual entitlement is created once your decision is made or once its put into the Community Plan.

Mr. Hedani: I have no idea. That's a legal question that you're asking. Go ahead with your public testimony.

Mr. Curel: My public testimony is this – I don't live adjacent or near this property, but this is regarding #D2, Mr. Ron Serle Subdivision, requesting RU.5 Rural Zoning. But I do live in Haiku and I've lived there for 20-years. And I live in an area that's near Hanzawa Store which we're confronting the same kind of issue. But we worked out an agreement where the owner said we'll only ask for one acre zoning, RU1 instead of RU-1/2.. And we went through a big debate about this for months. And the conclusion was a one acre rural lot doesn't impact the agricultural area in the same manner as a 1/2 acre. A 1/2 acre RU lot ends up being like basically downtown because you end up with two houses, each house on 10,000 acres, septic system, roads, et cetera. But the bottom line is it ends up being a residential area much like Pukalani. And Haiku is not a residential area in that sense, it's full of Ag lots. But when you put these 1/2 acre lots next to the Ag lots, the overall affect is to residentialize that area. And then the agricultural people get complaints about the noise or the smell from cows, et cetera. In our area, we have a number of one-acre Ag lots, and we've learned that the one-acre lots don't really impact us in the same way. It says in the Community Plan for West Kuiaha that all the zoning should be RU1. So I've talked to people and they say, "Oh no, we can't do that. That's not good land use." So here's my point – I think it's good land use for Haiku. The reason is nobody is saying those one-acre lots could not be re-subdivided 20 years down the road – just like the area I grew up in, we had double lots. And 20 years later, 30 years later, people divided those double lots into single-lots – residential lots. So it doesn't stop a person from ever being able to re-subdivide it. But what it does is it minimizes the impact to the agricultural lots surrounding it.

So here's my thesis – based on what the County did before, where they said, you can't just have a 20-acre subdivision of Ag lots. With 10 two-acre lots, it has to be a couple of two acres, a couple of five and maybe one 10. Here's my thesis, if the rural lot is going to touch an agricultural lot, anywhere, the minimum size is one acre. If there's a rural lot inside that – in other words, this is the Ag lot, this lot must be one acre, this one could be 1/2 acre, so you have a sliding scale – the impact to the Ag lot is diminished by the presence of a one-acre lot. And now you have perhaps a core of three or two 1/2-acre lots, surrounded one acre lots, surrounded by the Ag. That's my thesis.

Mr. Hedani: That's three minutes. Any additional comments or questions from the Commission? No questions. Thank you very much Mr. Curel.

This concludes the testimony received at the beginning of the meeting.

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony? Chris do you want to make a comment?

Mr. Chris Hart: Thank you Mr. Chairman. Actually, when we met the last time, in July, it was my understanding that we were going to not specifically defer to this meeting that, that it was going to be a date in August. And that's why in my letter, I indicated that I would like a month's delay to the month of September. We basically have met as far as the owners are concerned, and developed the strategy to essentially begin to contact the neighbors. We did start that process with Mr. Ferreira and we did with one additional neighbor. And, you know, basically Mr. Serle just returned from vacation and, you know, I know that's not really what you would probably consider a creditable excuse. But in a context of having scheduled his vacation, you know, during the month of July and August, I, you know, felt it would be good to submit a letter to ask for a deferral. So if it's not within the Commission's purview to grant deferral, you know, we are here today, and we are prepared to make a presentation to the Commission if the Commission so desires.

Mr. Hedani: Thank you. Any questions for Mr. Hart? Okay, seeing none, thank you very much. Any further discussion on the motion to defer? Commissioner Starr.

Mr. Starr: Well, first of all, there is no motion to defer.

Mr. Hedani: There is a motion to defer by yourself and seconded by Mr. U`u – unless I'm in a separate time zone or time warp here.

Mr. Starr: No there's no motion to defer.

Mr. Hedani: Would you like to withdraw your motion to defer?

Mr. Starr: It wasn't legal because we hadn't had public hearing. If I need to, I'll do.

Mr. Hedani: Would you like to withdraw your motion?

Mr. Starr: I withdraw.

Mr. Hedani: In that case, is there –? A second withdraw. We have no motion on the floor. What's your pleasure gentleman? Commissioner Iaconetti.

Mr. Iaconetti: I have a question for staff – do you have a list of topics that are to come before the Commission? Do you compile a list or do you just –?

Mr. Hedani: You're talking about an agenda ahead of time?

Mr. Iaconetti: Right.

Ms. Suyama: The agenda is usually prepared by our division head for the Current Division based upon the projects that are being reviewed, and the staff planner's ability to get it onto the agenda. In other words, while they're reviewing the applications, the planners would indicate to the current division head, these applications are ready to go before the Commission. They make the decision that they're ready to proceed, and the division head schedules in terms of having the appropriate paperwork done, like, getting the notices out to the newspapers for publication, notices to the applicants. Once that's done, the agenda is pretty much set.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Thank you. How many projects do you have waiting to get on the agenda?

Ms. Suyama: I'm not really sure. I wouldn't be able to give you the exact number.

Mr. Iaconetti: Why?

Ms. Suyama: Well, most planners are handling maybe about, between, any where from 20 to 40 projects at any given time. So it depends on when the projects are ready. And some of them are public hearing projects that we know in advance because we need to do hearing notices 30-days in advance of the meeting. So we know those 30-days in advance. The communication items, because there are no notice requirements, like individual notice, those can be as, you know, as soon just before the agenda is prepared by the staff.

Mr. Hedani: Doc. Doc, the video is not picking up your audio so you need to move your microphone a little closer.

Mr. Iaconetti: So if I were to suggest that this request be placed at the end of the list, what would that mean actually?

Ms. Suyama: It would mean that normally we would place unfinished business at the end of your agenda, so it will come towards the end of your agenda as an unfinished business.

Mr. Hedani: I think the Doc is saying the end of the list of people applying for appearance before the Commission.

Mr. Iaconetti: Right. I mean you have a lot of projects that have been "thought to be complete and ready."

Ms. Suyama: I would question whether we have the authority to do that because you're suppose to at least guarantee an applicant, you know, a timely processing. And the end of the list will never come around because we always have applications coming into the Department every month.

Mr. Hedani: Any other discussion on the motion? Commissioner Starr.

Mr. Starr: I don't believe there's a motion, but I would like to make one.

Mr. Hedani: Right. You withdrew motion. I'm sorry. Commissioner Starr.

Mr. Starr: I move to deny.

Ms. Pawsat: I second.

Mr. Hedani: Motion to deny by Commissioner Starr, seconded by Commissioner Pawsat.

Mr. Starr: I just clarification exactly what we're denying.

Ms. Cua: Yeah.

Mr. Starr: Because there's two – specifically two items and I'm asking if we can deal with them both together.

Mr. Hedani: The motion – the item on the agenda is a request for a State Land Use District Boundary reclassification from Ag District to State Rural District and a Change in Zoning from interim district to RU-0.5 for the Serle Subdivision.

Mr. Starr: Are we the deciding body on both of these?

Mr. Guard: No.

Ms. Cua: No.

Mr. Starr: Okay, that's what I'm saying.

Mr. Guard: Discussion?

Mr. Hedani: Commissioner Guard.

Mr. Guard: I wasn't really prepared to start the vote for this or not because in the past we've followed this before – people have been deferring, so to now not bringing in my paperwork

to start to deny it when this says we're going to defer it to a meeting in September. I apologize for the neighborhood to come down, but I had this in front of me for a few days – this agenda item, and it's on the internet so people could've seen that it was going to be deferred. And that maybe one thing you can request to have those agenda items emailed to you as well. Right? I believe so that automatically you'll get an email for an of the Council Committees, Planning Commission.

Ms. Cua: No, not for Planning Commission.

Mr. Guard: Not for Planning Commission?

Ms. Cua: No.

Mr. Guard: But it is available a few days in advance?

Ms. Carolyn Takayama-Corden: It's on line.

Mr. Guard: It is on line.

Mr. Hedani: Okay. Clarification – Commissioner Starr, your motion to deny is a motion to deny deferral? Or is it a motion to deny the reclassification?

Mr. Starr: It's a motion to deny, I believe it's the recommendation to reclassify and the change – and to deny the change in zoning.

Mr. Hedani: Okay, have we made a recommendation?

Ms. Cua: To tell you the truth, I'm not even sure if the Department made its recommendation. I know you've conducted the public hearing on July 10th. Again, I'm just kind of pitch hitting for the planner who's not here, but I'm not sure how far you got on that day. I don't believe the Department got to its recommendations, so there hasn't even been a recommendation by the Department.

Mr. Starr: I understand that, but I don't think we need – we necessarily need to have a recommendation before we act. You know, usually when there's conditions involved it's preferred.

Mr. Hedani: I generally prefer to get a recommendation before I vote either approve or deny because if I vote to deny and I go against the County's recommendation, it's at that point that I'm on my own when the lawsuit comes. Right? And it's my nickle, not the County's. Commissioner Hiranaga.

Mr. Hiranaga: Unfortunately, I didn't bring my packet with me also, but I do recall we were given recommendations because we did vote on motions. I made a motion to approve the request for the Community Plan Amendment, without the zoning, just the Community Plan, which I believe failed. So I think we had gotten to a voting stage in the presentation, but, again, you're not the planner so it's –

Ms. Cua: Yeah.

Mr. Hedani: So point of clarification, your motion is to deny the request?

Mr. Starr: Yes.

Mr. Hedani: And the second understands that?

Ms. Pawsat: "Uh-huh."

Mr. Hedani: Okay. The request to defer?

Mr. Starr: No.

Ms. Pawsat: No just deny, flat out.

Mr. Hedani: To deny the application.

Mr. Starr: On both counts.

Ms. Cua: I have a question for Corporation Counsel – do we need to deal with the request to defer before we deal with the application?

Mr. Giroux: I was hoping that issue would be taken up because I think, you know, although you're not the ultimate say on it – just in the spirit of fair play is – the applicant is not present, and the County's Staff person is, you know – Jeff's not here. So it's just – because this recommendation goes up to Council and when they look at it, they really do look for guidance from this body as far as having, you know, a thorough review, discussion. And I think that at this meeting, it was thought there was going to be further discussion and input from the community as far as what types of meeting took place, and what changes to plan or you know – so I just want to put that out there. But procedurally, you should take up the matter of the deferral first, and then go on to the subsequent matter.

Mr. Hedani: Commissioner Guard.

Mr. Guard: If anyone in the general public is like me who thought this was going to be

deferred, now we have an issue of potentially we're going against this agenda to now vote on something that we said in here that weren't going to deal with. So I'm uncomfortable to make a vote regarding sunshine law that there might be people in the community that did see this agenda and expected it to not be on this item like it has been for all of these other projects in the past. And, I mean, it's another issue of the waffling on what the Planning Commission does, that if we're going to try get some consistency to now put a vote on here when no one thought it was going to happen. I don't agree with being a party to that.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I would prefer that it be deferred maybe one more time finally. But rather than have this application come back as an appeal, or whatever, it's better to just take care of it with proper notice, proper participation and then have the decision made so that we don't have to deal with this further down in the future. That's my opinion.

Mr. Hedani: Any other additional discussion? Commissioner Pawsat?

Ms. Pawsat: I just do think it's offensive that Mr. Serle himself didn't even attend this meeting. You know, we have, for our doing, I mean, this community has done exactly what they should do as far as if they don't like this project. And, you know, they didn't – the whole agreement was to defer for a month and they were going to make their best effort, you know, go in and mediate with their neighbors, and they couldn't even make more than two phone calls. And, you know, the last time Chris Hart was in here, he started complaining and found offensive that one man could stop a development. And it's not one man stopping a development, it's all the neighbors who are against it. And it's actually more offensive that one man can come in and go against all the neighbors and develop it against that. You know? And then Ron comes in here and we're suppose to go "boo-hoo" because he's going broke or losing money. You know? He can sue me. I'm broke. I don't care. But it's offensive to this Committee that he doesn't show up, and it's offensive to the community members that do show. And, you know, it's just a joke, really.

Mr. Hedani: Additional discussion? Are you ready for the question? The question is a motion to deny the Land Use request.

Mr. Starr: Recommend denial.

Mr. Hedani: A recommendation to deny the Land Use request.

Mr. Giroux: . . . (Inaudible) . . .

Mr. Hedani: . . . (Inaudible) . . .

Mr. Giroux: There should be a thumbs up or thumbs down on the deferral.

Mr. Starr: You want to make a motion James?

Mr. Hedani: Corporation Counsel requests that we make a decision on the deferral first before we vote on this motion.

Mr. Starr: Corporation Counsel isn't in a position to make a motion.

Mr. Hedani: He's (inaudible). . .

Mr. Starr: Corporation Counsel can vote against if he wants.

Mr. Hedani: Jim, do you have a comment?

Mr. Giroux: Well, just procedurally, there's a letter on the agenda, and I think procedurally, you should discuss that first and then get to the subsequent matter. It's like taking care of a motion precedent. There's a request to defer – if you don't want to defer it, just do a motion to deny the deferral.

Mr. Starr: I mean, someone can write a letter requesting that we put cows on the moon, but where –

Mr. Giroux: Yeah, but, this is the applicant. So, I think that in all fairness it should be disposed of first.

Mr. Hedani: That would be – right – a disposal of item #2A. Does the Commission have a preference? Commissioner Hiranaga.

Mr. Hiranaga: Upon advice of Counsel, I would prefer to handle it that way – dispose of #2A first.

Mr. Hedani: Do you have a motion?

Mr. Hiranaga: No I don't. No, I don't.

Mr. Guard: We already have one motion there to vote on – rescind it, right?

Mr. Hedani: Commissioner U`u.

Mr. U`u: I understand where the Commissioners coming from as far as Mr. Serle not being present, but in all fairness, I too wasn't ready. I don't think this is the best project in the

world right now. But we've got to be fair to both sides. I think we've got to give them just time and approach us again to make things right. And if he fails in that approach, and then you could request denial. And I too wasn't – I wasn't ready, like I said, but we've got to give him a fair shot, and if he can hash it out with his neighbors to make things "pono," it's a good thing. And if he cannot, it's on him to prove it to us. So I'd like to make a motion to defer action.

Mr. Hedani: Is there a second?

Mr. Starr: There's a motion on the floor. I don't believe a second motion can be made.

Mr. Guard: Call for the denial vote.

Mr. Starr: Vote against – no problem.

Mr. Giroux: I believe a motion to defer is a motion precedent. It can be taken care of before the –

Mr. Hedani: It's because of the schedule on the agenda?

Mr. Giroux: It's just a motion to defer can be disposed of prior to subsequent matter.

Mr. Hedani: Okay. Parliamentary procedure. Okay, what we're going to do is vote on the motion to defer which was moved by Commissioner U`u and seconded by –

Mr. Guard: Second.

Mr. Hedani: Commissioner Guard. Discussion?

Mr. Starr: Yeah, what's the requirement regarding that motion to deny? Does it require –?

Mr. Hedani: We're going to vote on the motion to deny immediately after the motion to defer because the motion to defer is precedent deciding that.

Mr. Starr: Point of order, what is the requirements from Robert's Rules for the motion to deny? Could you read that from the –

Mr. Giroux: The motion to deny will be put on the table until the motion to defer is because the motion to defer is the positive – because if it's deferred, then we're going to go on to another meeting.

Mr. Starr: Okay. What are the requirements for the motion to defer? Does that require a

super majority?

Mr. Giroux: No.

Mr. Hedani: Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I would like to suggest an amendment that this deferral request be granted only this one time and not another request in the future.

Mr. Hedani: Just from the Chair's standpoint because it was scheduled for deferral at this particular – on this particular agenda, I'm not prepared to vote on the issue itself. And from that perspective, I would lean toward deferring so that we can review the entire project again and see whether or not things can be worked out with the neighbors. Commissioner Iaconetti.

Mr. Iaconetti: Are we deferring to a date definite or just deferring?

Mr. Hedani: Director Suyama?

Ms. Suyama: I believe the proper process is if it's deferred with no date definite, it's normally put on the next agenda, which in this case would be August 28, 2007.

Mr. Iaconetti: So can we assume that it will be on the next agenda?

Ms. Suyama: Normally that's how we operate in the office is that if there's not a date definite, we will then put it on the next agenda of the Commission, unless the body wants to define what date.

Mr. Hedani: The request on the agenda, Colleen, was for a deferral to a meeting in September.

Ms. Suyama: Right. So, I think to be clear for the Commission, that they should say that's the date that they wish to include – that the deferral is September – you know, I think the 5th and the –

Ms. Cua: I have the calendar. According to my calendar, the 11th and 25th are the two meeting dates in September.

Mr. Hedani: So say defer to the 25th September to give them 30-days to meet with the neighbors and whatever. Is that acceptable? Okay, do we all understand what we're doing at this point? We're voting on a motion to defer until September 25th.

Ms. Cua: 25th.

Mr. Starr: And the other motion remains on the floor?

Mr. Hedani: The other motion remains on the floor until this vote is taken. Okay, all those in favor of deferring until September 25th, signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay. Carried.

It was moved by Mr. Bruce U`u, seconded by Mr. John Guard, then unanimously

**VOTED: To defer the matter to the September 25, 2007 agenda.
(Assenting - B. U`u, J. Guard, W. Iaconetti, J. Starr, J. Pawsat,
K. Hiranaga)
(Excused - J. Amarin)**

Mr. Hedani: The motion to deny – it's been moved at this point, right?

Mr. Giroux: It's on the table, so at the next meeting it can be reviewed.

Mr. Hedani: So, the motion to deny remains on the table until our meeting of September 25th. Okay? I think I'm fairly clear. Director Suyama.

The motion which was made by Mr. Jonathan Starr and seconded by Ms. Joan Pawsat to deny the applicant's request for a reclassification and change in zoning will remain on the table until the September 25, 2007 meeting.

E. MINUTES OF THE JUNE 12, 2007 MEETING

Ms. Suyama: The next item is E, which is the minutes of the June 12, 2007 meeting.

Mr. Iaconetti: I move for approval.

Mr. Guard: Second.

Mr. Hedani: Moved by Commissioner Iaconetti, seconded by Commissioner Guard. All those in favor, signify by saying aye.

Commission Members: "Aye."

Mr. Hedani: Oppose, nay. Carried. Thank you.

It was moved by Mr. William Iaconetti, seconded by Mr. John Guard, then unanimously

VOTED: To approved the June 12, 2007 minutes as presented.

F. DIRECTOR'S REPORT

- 1. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission at the July 24, 2007 meeting.**
 - a. Clarification on the transfer of permits for the Makena Resort as discussed at the July 24, 2007 meeting.**
 - b. Brief update on the Ukumehame Subdivision regarding grading along the highway. (T. Abbott)**
 - c. Schofield SMX No. 2007/0123 - what and where is it? (T. Abbott)**
 - d. Can Commissioner Hedani be patched via phone into the Policy Plan review? (J. Summers)**
- 2. Planning Commission Projects/Issues**
- 3. EA/EIS Report**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report**

Ms. Suyama: The next item is F, Director's Report. The first item is the Planning Department's follow report on matters raised by the Maui Planning Commission at the July 24, 2007 meeting. One was clarification of the transfer of permits to the Makena Resort, as discussed at the July 24, 2007 meeting. And Ms. Cua can address any questions that the Commission had.

Mr. Hedani: Ann. I don't even remember what the question was.

Ms. Cua: My understanding is that at the last meeting, I presented to you a request for transferring permit holders for some of the projects that were issued permits in Makena Resort. And towards the end of the agenda when I was not here, you were advised of an action the Department did to transfer some permits. And you questioned why would some come to us and some didn't come to us. And basically what happened is the conditions of the permits because they're from – we have some from like the '80's to the 2007 – the conditions have been worded very differently over the years. Some of the conditions regarding transfer requires the Planning Commission's approval, and some do not. So the ones that did not require the Planning Commission approval, we did those administratively.

The one that required the Planning Commission approval, we brought those before you. So that's the difference.

Mr. Hedani: Okay, any additional questions for Ann? If not, thank you very much.

Ms. Cua: Okay.

Mr. Hedani: Colleen.

Ms. Suyama: Item B and C dealing with the Ukumehame Subdivision and the Schofield SMX, Jeff – there was a memorandum dated August 13, 2007 that has been circulated to the Commission talking about, you know, addressing your questions. One, dealing with the Ukumehame Subdivision is that questions were raised about some grading work that was occurring on the mauka side of the highway. And according to the memorandum, the applicant of the project is required to build an acceleration/deceleration lane for the Ukumehame Subdivision. And the second was that Maui Electric Company requires a 50 foot right of way to install and relocate power lines mauka from the existing highway. And both MECo and the County Parks Department granted the developer right of entry in order to perform the work. But these are work that was part of the original Ukumehame SMA Subdivision request.

Mr. Hedani: Any additional comments or questions on that issue? Commissioner Iaconetti:

Mr. Iaconetti: When did that development come before the Commission?

Ms. Suyama: I'm not –

Mr. Hedani: Doc, can you use your mic please?

Mr. Iaconetti: That means I'm going to have to swallow it.

Mr. Hedani: You've got to be like the rock singer, they put it right up.

Mr. Iaconetti: When did that item come before the Commission?

Ms. Suyama: I believe it was sometime in 2006 when Mike Foley was still the Director.

Mr. Iaconetti: It must of been when I –

Mr. Hedani: I remember voting on that particular subdivision.

Mr. Iaconetti: Do you really?

Mr. Hedani: Yeah. Commissioner Starr?

Mr. Starr: I want to know if best management practices are being utilized and monitored because driving by there, it sure looks like there's a whole lot of dirt being moved and it's not being contained. And say, you know, we get 10 inches of rain tonight from the passing by storm, is that all going to end up on the reef or are they using silk fences and all of the best management stuff because I sure don't see it?

Mr. Iaconetti: The only part that isn't on the reef is on my car – driving past it. It is so dirty that you can't see your way through it.

Mr. Hedani: As a comment just for the Department's certification – because of the hurricane conditions, the wind conditions, two areas – and Ukumehame was one where there was a dust storm going towards the ocean from the project site. And because agriculture is not being preformed on the balance of the lands that were vacated in West Maui and were berm during the fire, we have top soil now being blown into the ocean at – not at Ukumehame and cut mountain near Laniupoko which was really bad yesterday.

Mr. Starr: Who is monitoring that project?

Ms. Suyama: When it comes to actual – once the construction permits are issued, it's the Department of Public Work's Inspectors that monitor – unfortunately Mr. Miyamoto is not here – because it involving grading permits, as well as utility upgrades. Public Works send out their inspectors that suppose to be monitoring.

Mr. Starr: Can I file a complaint right now.

Mr. Hedani: Maybe we can make a request to them to go ahead and follow up on inspections for that area.

Mr. Starr: Yeah, but I mean, right away.

Mr. Hedani: Schofield?

Mr. Starr: No, I have something else on the same thing which is I assume that what we're going to see now is Maui Electric installing the Jolly Green giants along there. And once again, they're really going to spoil the view of the sky line. And I want to know why if they're installing a new power line if they're not keeping the same kind of wooden poles that they had before that process is not coming before us because I believe it should come before us. It's in the SMA.

Ms. Suyama: Do you have – what particular area are you talking about?

Mr. Starr: You just told us what the clearing is for the new power line right-of-way.

Ms. Suyama: It's a power line to provide service to the subdivision.

Mr. Starr: Right, and are they going to utilize those big, steel poles? And, you know, no matter what it is, why isn't it before us?

Ms. Suyama: My understanding is that it was part of the original subdivision request and the portion that's being relocated, my understanding, it's an underground system. It's not a pole system.

Mr. Hedani: So it's not the large, metal pole.

Mr. Starr: If it's an underground system, I have no problem with it, but can we find out? And if it is the big, steel, green poles then I'd like to know and I'd like to examine whether it should be before us.

Ms. Suyama: Okay. I'll have the staff planner that was responsible for these SMA's respond.

Mr. Starr: Thank you.

Mr. Hedani: I think that's appropriate because Ukumehame Canyon, actually, is a very scenic plane too.

Mr. Starr: I mean, I hope it's underground. It will be good.

Mr. Hedani: I know there was some talk about a wind farm, but that's not what was approved. It was an agricultural subdivision that was approved in that location. Item F-1-C. I'm sorry.

Mr. Guard: I have one question on the previous one. This one might be for staff – that right of way that's going up, is the park that the County now owns or that was dedicated, is that next to the Ukumehame area or is it more towards Lahaina? I thought this parcel on – a trade off or getting to do the development, there's going to be some park land – so is there now going to be this bigger highway to cross to get to the ocean side?

Ms. Suyama: What it is that the lands that were – are transferred to the County goes more mauka than the existing highway. And in at some point in time, the Pali to Puamana Plan will be coming back to the Commission. And in the proposed Pali to Puamana Plan they talk about relocating the by-pass. However, the exact location of where ever that by-pass, has still not been determined. But, you know, the County owns at least that portion of the

land that goes to Olowalu. So if there's a need for relocation, at least the lands are within a government agency's prerogative. It's no longer under private ownership. And that was one the purposes of doing the Pali to Puamana is to preserve open space park lands, as well as, obtaining lands for our future alignment of the highway.

Mr. Guard: It just seems like they should've made their entrance a little higher up for such an intensive use on those right and left turn lanes. But, I guess, neither here or there now.

Mr. Hedani: They're going to have to do it again at the point the highway gets relocated. So the actual County acquisition was from the beach all the way up to the future alignment of the by-pass.

Ms. Suyama: Where the proposed – as the Pali to Puamana plan had indicated where the proposed alignment had been relocated, that's now owned by the County of Maui.

Mr. Hedani: And I think the plan eventually would be to convert the existing highway to something less intensive than it's current use.

Ms. Suyama: You know, a total of 100 acres was bought by the County in that land exchange.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Does the County now own the beach frontage in that area?

Ms. Suyama: I believe –

Mr. Iaconetti: Or a strip of land mauka?

Ms. Suyama: I believe the way the land exchange was is the County owns everything below the highway as well as some of the lands that's mauka of the highway, a total of 100 acres is owned by the County of Maui.

Mr. Hedani: Deputy Director.

Ms. Suyama: The second item the Commission had request was clarification about an SMX application that was filed – the Schofield Project. The applicant obtained a Special Management Area exemption to remodel a private residence on the shoreline property. The applicant subsequently remodeled the home according to the plan. However, the applicant also did additional work. They cleared all vegetation from between the house and the shoreline which is not described in the scope of work of the application documents. And the house is separated from the shoreline by a steep hill that contains three terrace

walls and steps to the shoreline area. The top wall was expanded, fill was added to various locations, and concrete slabs were poured in the area between the lowest and next to lowest retaining walls. The lowest retaining wall is also a non-conforming seawall possibly being built prior to 1970. The seawall and concrete slabs encroach about 15 to 20 feet onto State property. No permits were obtained for the work in the shoreline area. Enforcement action was initiated and site visits conducted. Consequently an after-the-fact permit was applied and through collaboration with the Department, corrective measures were taken to restore the shoreline area to the most appropriate state given environmental considerations. Corrective measure including planting of drought tolerant native species in barren areas, removal of irrigation lines, replacement of permanent chairs and seats with portable chairs, and hand removal of the concrete slabs poured in the setback above the seawall were removed, and a fine of approximately of 50% of the cost of the work in the shoreline has been agreed, in principal, by the applicant which is about \$14,000. And after the fee application fee of \$1,000 will be required. At this time, paperwork correspondence and evidence of compliance are being finalized between the applicant, the applicant's representative and the Department. A final determination letter describing the events history, corrective actions, and the Department's recommended outcome will be provided to the Commission for review once resolution of several the above outstanding issues has been achieved.

Mr. Hedani: Any questions? Commissioner Iaconetti.

Mr. Iaconetti: 50% of the cost to remove what they put there, is that it?

Ms. Suyama: It's 50% of the assessed value of the improvements. So it's basically mostly landscaping things that were done, so it's 50% of that cost for them to have put the improvements in, is what we charged. That's how the after-the-fact fee is described in the County ordinance.

Mr. Iaconetti: Are these improvements now going to be permanent or are they being destroyed?

Ms. Suyama: We're asking for removal for some of these.

Mr. Iaconetti: And the cost to remove it is going to be covered by whom?

Ms. Suyama: By the applicant.

Mr. Iaconetti: Total?

Ms. Suyama: Totally.

Mr. Hedani: Plus the fine.

Ms. Suyama: Plus the fine.

Mr. Hedani: I have no idea what Item D is.

Mr. Guard: Where was this? Where was the Schofield property?

Ms. Suyama: I'm not really sure where this property was located. I'm just reading from the staff planner who prepared this. Fortunately he's not here to address the issue.

Mr. Hedani: Planning Commission project issues.

Mr. Starr: I have a question regarding D. Not necessarily regarding Chair Hedani, but did we receive the Policy Plan document?

Mr. Hedani: I just got mine in the mail yesterday.

Mr. Guard: Is that what this is?

Mr. Hedani: Yeah.

Mr. Starr: Okay.

Mr. Hedani: Except mines doesn't have any labels. All the tabs are empty.

Mr. Guard: They all fell out.

Ms. Pawsat: Yeah.

Mr. Hedani: They fell out. I didn't check the box.

Mr. U`u: Mines was typed in.

Mr. Starr: And do we have a date for that – for the review?

Ms. Suyama: I believe –

Mr. Hedani: Apparently it's the first week of September because that's when I'm going to be gone.

Ms. Suyama: I'm sorry. It's September 25th.

Mr. Hedani: September 25th. I'll be back by then.

Mr. Starr: You want to be patched in "what-a-ma-call-it?"

Mr. Hedani: I'm going to be in Florida and I'm not going to have any inclination to review any policy plan, let me tell you.

Mr. Iaconetti: Probably in a cave.

Ms. Suyama: In terms of Planning Commission projects, today, was circulated to you, the draft final environmental assessment for the West Maui Hospital Medical Facility and this would be scheduled, I believe, for your next meeting, for final adoption.

Mr. Starr: I have a couple of things under that heading item.

Mr. Guard: Me too.

Mr. Hedani: Commissioner Starr.

Mr. Starr: One is that I've been horribly remise in scheduling our site inspection of the sewage facilities.

Mr. U`u: Oh, boy.

Mr. Starr: And now things in my life have calm down a bit –

Mr. Hedani: You're going to drag us through the sewer.

Mr. Starr: We're going to take the sewage tour – the Maui sewage tour. And once again, I know Joan was a hardy soul. And I forget, JB were you going go? Or Bruce? Who was going along?

Mr. Guard: I can go probably.

Mr. Starr: JB. Okay. So I just wanted to mention that I'm going to be scheduling, and anyone, other Commissioners if they want.

Mr. Hedani: I've already done two sewage treatment plant tours.

Mr. Starr: You're a pro.

Mr. Hedani: We use to own one.

Mr. Starr: And one other is that I'm going to ask Long Range to – I had a meeting which I reported back to the Commission on with Commissioner U`u some time ago. It was good. I want to get an update. I was hoping the two of us can go.

Mr. U`u: I would love it.

Mr. Starr: Okay. Good.

Mr. Hedani: EA/EIS report.

Mr. Hiranaga: Mr. Chair?

Mr. Guard: Wait, wait. I have project issues.

Mr. Hiranaga: Going back a little bit.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I was looking at this memorandum from Director Hunt regarding the Maui County General Plan Advisory or this draft Countywide Policy Plan, and it says that public hearings shall start August 28th. Is that the beginning, the earliest we can start or is that the date we'll start?

Ms. Suyama: The public hearings are being scheduled for all three Planning Commissions. And I believe the Maui Planning Commission is the last one scheduled on the September 25th. I believe they start the Molokai General Plan update is scheduled for August 22nd – when they're starting.

Mr. Hiranaga: Can you look at this letter? I'm not sure if I'm misreading it. The middle section.

Mr. Hedani: Maui public hearing August 28th – we might not be here.

Ms. Suyama: Oh. Okay. I'm going to have to go back to the Long Range Division and verify all of the hearing dates.

Mr. Starr: I think that was like a drop dead date where like that when the clock starts ticking.

Ms. Suyama: So it maybe your next meeting is the public hearing.

Mr. Guard: Or the start of it.

Mr. Hedani: If you could clarify and send us an email so we know whether we have two weeks or six weeks to read this.

Ms. Suyama: I'll have an email sent to each Commission Member verifying the public hearing dates to make sure.

Mr. Starr: I have one more question on that – did copies go – of this compile – did those go to GPAC numbers?

Mr. Guard: They made it.

Mr. Starr: No they didn't.

Mr. Hedani: Colleen.

Mr. Starr: Did copies of the book which – as I understand it, that was the copulation by the Long Range Division with input from the GPAC – did that go to the GPAC members? In other words, have they seen the completed document?

Ms. Suyama: I think they have seen the copulation of the document because I know DeGray Vanderbilt from Molokai who's on the Moloka'i GPAC did get copies. And for Moloka'i, you know, they were making arrangements, as a free, with the Moloka'i press to print out the actual policy document. But, I can verify and if it hasn't been done, I'll direct the Long Range Division to make sure that each GPAC member gets a copy.

Mr. Starr: Yeah, because I have a concern that GPAC members may not have seen what finally came out of it, and they come back and say, you know, not be happy with it or whatever. You know, I don't want us to be the forum for that.

Mr. Hedani: So, our August 28th meeting might be general business for the first half of the meeting, and policy plan for the second half?

Ms. Suyama: Just for clarification, Carolyn was good enough that public hearing notice. It is your hearing for the – Policy Plan is scheduled for August 28, 2007.

Mr. Hedani: What time?

Ms. Suyama: At 9:00 a.m. in the morning. And probably this would be – there's one other item that's scheduled on that agenda and that's a shoreline setback variance proposed by Ellair Hawaii. It's for the Maui Palms Hotel. The demolition of that one structure.

Mr. Starr: Again? Oh, we did the EA.

Ms. Suyama: You did the EA. We'll probably would put the Ellair one first depending, you know, just to get that, because that's a shorter item than the policy plan. But, it is, both scheduled at 9:00 a.m.

Mr. Guard: Serle's is on there too, right?

Ms. Suyama: No, Serle is on September 25th.

Mr. Guard: September 25th. Okay.

Mr. Hedani: Any other questions –

Mr. Guard: I have three comments.

Mr. Hedani: – Planning Commissions projects and issues? Commissioner Guard.

Mr. Guard: On a, like the issue we just did on Site 6-0 where they do a step 1 and 2 at the same time for a planned development. Does the project have to come back for step 3 with their final construction drawing showing that it's close to what they presented?

Ms. Suyama: Yes they do. The Commission has approving authority on all three steps. So step 3 will come back to the Commission for review.

Mr. Guard: Did we do a step 3 on Wailea Gateway Center?

Ms. Suyama: This is the one that's on the corner of –

Mr. Guard: Yeah, they're like we're going to look at maybe changing some of our – like looking at a few ideas to maybe down – lessen the impact of the loss of vehicle.

Ms. Suyama: They haven't come in yet for step 3 that I know of.

Mr. Guard: Okay. I just heard they had building permits already. I'd seen an email saying there are – had permits. . . (Inaudible. Changing of tapes). . . And then the other two – this is either rumor but maybe something we should be looking at because of this Ukumehame Subdivision and some of the large Ag lots that either from the Mayor or from Planning Department was looking at anything over 20 acres or x-number of lots that that would become a Planning Commission issue as well – for all of these like large parcels of Ag land. Is anything in the works similar to that?

Ms. Suyama: I know the Department is in discussion with the Council's Planning Committee regarding the possibility of a review process for Ag lots. As to what the threshold would be,

you know, the acreage and how large the subdivisions would be, that hasn't been determined yet. But, in the Community Plans there are some language that talks about public review of agriculture subdivision. And the Department is looking into it. We haven't proposed any legislation yet. That still needs to be drafted.

Mr. Guard: I hope they would be expedited it as well because there's a lot of large Ag lots subdivision going up that kind of go under the radar – that I think the general public has no idea what could be coming in any of their neighborhood.

And then the last one – I was recently on the Big Island, and all of their properties that are going for Boundary Amendments, large subdivisions, changes in zoning, they have – I mean, not to say billboards – but probably the maximum size signage. If not, a little bigger. I mean, wide signs, letting the public know as you drive by, this is what this property is going to be doing. And we talked about since that October meeting when we think we'll discussed it, and I'm glad today was a short meeting, and I think that would really take the burden off of us because people have no idea what's happening out there. I mean, sorry to say, not everyone reads the Maui News. I love it, but some people want to read either an Oahu paper or a mainland paper to get more of a broader news cast out there – that I think that would really help the general public know. They may live right next to a property and not know it's going to be developed. But you see a sign there, and start seeing all these signs pop up – the community as a whole may see how much is out there. I mean for you to say that every staff planner has 20 to 40 projects at any given time – if all those signs are up at the same time, the community as a whole may know what kind of impacts are in store for their island. And I don't know if that's something that we need to take up as a project as a Commission, but I would like more community input. And I think any way possible that when people bring in an application for their 45-day notice, they should have to go put up a sign up on their property in a highly visible area, take some photos of it so the staff planner has it their records – just that any person possible would be able to come in and comment on it.

Mr. Hedani: Sounds like legislation.

Mr. Guard: I don't know. Well there's things that can be expedited if the Planning – it's just like you were talking about earlier – I mean, Site 6-0, it used to be try to take care of just your drainage, and now guys are going 50% over that. I think if there was a condition to say, hey, instead of just putting it in the newspaper, let's get it out on the property that's going to be affected, and every neighbor there has probably a better chance of seeing it when they're driving by all these signs. And they are everywhere on the Big Island, and I think it's a step in the right direction.

Mr. Hedani: We can find out at the HCPO Conference.

Mr. Guard: I don't think it can even wait till then. I mean, you're talking about something that I think – if it's up to us or if it's something to expedite through the Council – I think it's something that needs to happen.

Ms. Suyama: There's two things that need to be done. One is for the SMA, you need to amend the SMA Rules to make a provision in the notice requirements that you want a sign on the site.

Mr. Guard: Okay.

Ms. Suyama: Upon application.

Mr. Starr: Can we do that?

Ms. Suyama: I can direct the staff to prepare the legislation. The other part is you have to change the Title 19, which is 19.510 that talks about the procedures for Land Use applications to make that provision within the Code. Both will take time to do.

Mr. Guard: How much time?

Mr. Starr: Can Council do that? Or does State have to do it?

Ms. Suyama: It's still both ways, it will still require you to have public hearings. The public needs to –. One would be the SMA Rule change would mean the Planning Commission would have jurisdiction and they would amend the rules to make that provision. The other way is the Commission would hold the hearings on the changes/amendments to Title 19, but the Council would have the final authority to grant that change in the Rules.

Mr. Hedani: Can we research that with the Big Island that already has that and find out how they implemented it?

Mr. Guard: How long of a process is this? Like, it goes to Council and then we have post hearings for that, so you're still looking at six months to a year?

Ms. Suyama: You're talking about one/two years to go to Council.

Mr. Guard: So as a Planning Department, couldn't you recommend that people do this?

Mr. Hedani: You could draft the legislation.

Ms. Suyama: I think –

Mr. Guard: Not even a draft legislation – as a project, say, hey, you know what, this is a controversial thing, we think you should let as many people know about it as possible. I think you'd have a lot bigger impact – say you go down to a beach that everyone – oh, it's kiawe trees, we think it's park – next thing you know, it's bulldozed down for hotels that I think if there was signage right there – sorry to say, the community as a whole – there's some ignorance out there.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I like that idea. I think it's great. I feel a little uncomfortable really discussing so much detail about it, but what I would like to request is that it be put on the agenda as an agenda item. I think August 28th maybe a little busy, but the one following August 28th. And in the mean time staff can look into what will be required and we can discuss that at that meeting, and maybe put something forward. I think that's one of the first ways we serve as advocates rather than just react at it.

Mr. Hedani: So you start with the first steps.

Mr. Guard: Yeah. And I have one more issue.

Mr. Hedani: Commissioner, go ahead.

Mr. Guard: Last one. I had a problem with, and I apologize to the Planning Department, but I didn't really like reading that letter from Mr. Fukuoka saying that the Planning Department had made a good faith effort to notify all of the neighbors. Because a lot of that information from Planning Department, we are relying on. And to say that all of the neighbors were notified, when two neighbors were notified, I guess there's a sense of mistrust that's created that we're reading recommendations from Planning when the very basics of the rules that exists today. I want to know that the Planning Department is on the side of the neighborhood as well as the applicant to say, look, you don't follow the rules – to say that they tried and in good faith it happens. Because I live in the SMA and I don't know if I'm ever getting items that I should have been getting for this change in – or the Special Use Permit. And that – and I mean, I read that, and it's just concerning to think that that could be happening that no they gave it their best shot, so they missed a few neighbors, that's not so bad. Because we're relying on the Department's recommendation that all these people did everything, all their ducks are on a row, and then they'll find out in a letter from a neighbor just by chance that two or three of the neighbors with in 500-feet didn't get notice. I think it makes all of us look very bad to not to follow this strict protocol that we feel that's all we have to rely on.

Ms. Suyama: There are provisions in Title 19 which governs the County Special Use Permit, and one of it talks about the notice requirements. You have to give individual notice

to all the neighbors within 500-feet. That's one requirement. You also have to print in the newspapers, for three consecutive weeks, a notice with a map showing that this project is coming for public hearing, before the Commission. And Code states that if you do all of these things, you've done a good faith effort because they recognize that sometimes there's individual letter of notices are not included for whatever reason. And in the past, there was these problems. One person would come up and say that I did not get notice and therefore the process was flawed. So the Council made these changes to the Code, and said as long as you made a good faith effort, you have given reasonable notice to the public.

Mr. Hedani: What was the problem?

Mr. Guard: Just in that letter he said that that was what he was told by Planning Department. And it since was scheduled to another meeting later. I wasn't here for that first one - for that Unity Church. But to read that letter, it was like, what else is happening that we're being told as happening, that's not happening?

Ms. Suyama: Right?

Mr. Guard: There was one – there was one incident that I didn't like where an affordable housing agreement was drafted and we were told that has been in the file, like they've had this, and then I found out after the fact, that it has only been signed days before when they knew the workforce housing policy should've been followed. And it was a real slap in the face for me to have a project approved that should've followed a much stricter guideline for providing affordable homes for the general public.

Ms. Suyama: Just to note, in terms of Unity Church, there were several times that they were scheduled and we un-scheduled them because they didn't do proper notice.

Mr. Guard: Okay.

Ms. Suyama: So, you know, the Department does check.

Mr. Guard: Okay. All right.. I appreciate that response.

Mr. Hedani: It the applicant's responsibility?

Mr. Suyama: It's the applicant's responsibility to do the notice, and when we find that there's been a problem, like especially they haven't noticed within the precise time limit or the notice letter were wrong or they haven't done the done notice to flag in the newspaper, we will then, you know, stop the public hearing, notify the applicant, and notify them that they have to re-notify again at their costs, not at the County's cost. And we also charge

them other fee to pay for our notice requirement if we've already done our notice.

Mr. Guard: Okay.

Mr. Hedani: And in that case, I guess, the decision can also be challenged if they haven't properly noticed anything.

Ms. Suyama: Yeah. One of things that we tell planners is that we make sure the procedural requirements have been met.

Mr. Hedani: Joan you have questions?

Ms. Pawsat: Yeah, I agree – it's the same jurors. Can't the Planning Department write some sort of a letter in the newspaper or something to say –. I would guess most people don't know the agenda is on the website and things like that. I didn't know that there was a requirement for – they place an ad for three weeks continuously? Yeah, I didn't know that either so, you know, and half of these projects, honestly, even I have the agenda, I don't even know what they are until I show up really. That's the other thing, you know, because they just kind of list TMK's and it's kind of vague. And you know, then all of sudden, it's just this big thing.

Mr. Hedani: Any other items for Planning Commission project issue? Commissioner Starr.

Mr. Starr: Yeah, I recently had a misfortune ago snorkeling in Palauea. And for one thing, the water was filled with – floating right below the surface there's a lot of algae balls – kind of green brown algae balls.

Mr. Guard: . . . (Inaudible) . . .

Mr. Starr: What? Actually while I was there, there was a family that I thought they were turds, you know, but they're actually a big algae farm happening over there. But, the big house that's under construction – the one furthest south one right before the lots that are not yet developed – since we were there a few months ago, they've pushed the – it's not naupaka, but whatever the stuff they're growing – all the way down so it was impossible to walk along the beach between the waves and the greenery. And they had even formed a big arch, you know, on like trellis, right on the beach. You know, when you go into their place, you can kind of walk through the arch into their place – a big arch and this – I don't think it's naupaka, but I'm not sure what it is. So I don't think it's cool and I'd like to make a complaint on that.

And, the second, is that someone's public – that the County is going to install wire mesh on the rocks at Manawainui, on the back road where they've been doing the rock clearing.

And you know, that's certainly in SMA and conservation and all that, and I really feel that before something is done that will change, you know, forever alter the view and really scenic place, that they process – that there be processed. And I really – I've heard from some residence out there that they'll go through the County and not happen. So I much rather do the process.

Ms. Suyama: I'll relay your concerns to Public Works.

Mr. Starr: Okay.

Mr. Hedani: Is that an SMA item at that point?

Ms. Suyama: I don't know where the SMA boundary is whether it's Manawainui Gulch that's in SMA.

Mr. Starr: Unless there's an inclusion or something.

Mr. Hedani: In following up on that. In the case of Moloka`i, their entire SMA area goes to the top of the mountain. How did they?

Ms. Suyama: No it doesn't.

Mr. Hedani: The entire Island is in the SMA area I was told.

Ms. Suyama: No. They have asked – they have asked that they wanted their SMA boundaries to be amended to include the whole Island. But the current boundaries does not. It has, you know, only certain areas just like Maui. We have been advised by Office of Planning, there is a process that needs to be followed in order to amend the boundaries. And one of that process, by the State – State Office of Planning – and one of the things is when the boundaries are amended, the maps and everything are sent, and the rule changes s are sent to Office of Planning, and they need to approve it also, you know, besides the Commission.

Mr. Hedani: I misunderstood then. Molokai is not, then?

Ms. Suyama: Molokai is not the entire island. There is – neither is Lana`i. There are boundaries – in some areas like Lana`i because the City is more on the middle of the island, most of their SMA boundaries follow the minimum 300-feet that was determined by the State – except for Manele, where much of Manele was placed into the SMA boundaries.

Mr. Hedani: We're glutton for punishment so we might want to expand that area.

Commissioner Iaconetti.

Mr. Iaconetti: I've got three things. First of all, the signage that John's talking about is kind of like a good idea. But I think he's got to go through the Outdoor Circle because they've got all kinds of thing of rules.

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

Mr. Iaconetti: Yeah, but I think they better be told because of what –

Mr. Hedani: They have an anti-billboard thing.

Mr. Guard: It's not a billboard.

Mr. Hedani: You're talking about project signs.

Ms. Suyama: There are provisions in the Code already for project signs. Because there was anticipation that if this was ever implemented, there is a provision in the Code that limits the size of the sign and how long that you can have it up there.

Mr. Hedani: (Inaudible). . . we're requiring the sign.

Mr. Guard: They'll learn to look for those signs.

Mr. Starr: I'd keep them small.

Mr. Iaconetti: Secondly, on the second yellow sheet, page 1 of 1, Kahoolawe Island Reserve Commission – what's that?

Ms. Suyama: On the second sheet?

Mr. Iaconetti: Second yellow sheet. No, in the middle of that.

Mr. Starr: Yeah, is that on Maui or is that on Kahoolawe?

Mr. Iaconetti: Well, that's us and Kahoolawe.

Mr. Starr: We're Kahoolawe's Commission also.

Mr. Guard: Two, three, nine is in Kihei right?

Ms. Suyama: Right. This is something that they – probably it says addition to

accommodate vessels in Kihei. So probably they have a boat and it's a storage area for the boat. I can follow up though.

Mr. Starr: Is it pier, a dock?

Mr. Iaconetti: I didn't think you could do that. And one last thing – Kent was nice enough to bring me up to the proper depth to find out about this development that's across the street from our place that I've assigned to get more information on. And the gentleman up there, who happen to be classmate of my son so I got more information than I thought I'd get. But at any rate, what happened was, the reason why – it is in the SMA area, and he couldn't figure out why it never appeared on our sheets here and started stepping back, and it currently fell through the crack. They applied at the right date so they got approval before it ever went through this. And so we never heard about it. Now I don't know how that's happened. How often does that happen, but it happened. And, secondly, that same development is creating a real problem with the neighbor who happen to be my neighbors. They are complaining about dust practices is not being carried out. You've got dust all over the place – in the house – everywhere. They are apparently are doing some either pounding or blasting which is disrupting the foundations of their houses, and we feel, I still don't understand why it is not – why it is an SMA that doesn't come to this body because they have expended, I'm sure more that \$125,000 to develop the water, sewage, sideway, et cetera, to get that done. And I think that is the rule that over \$125,000, it suppose to come to this Commission for approval.

Ms. Suyama: The only way it does not come to the Commission, is as part of the assessment process, it's determined that proposed development is exempted. It's an exemption. There are several exemption classes that are identified in HRS 205A and if it qualifies as one of those exemptions, regardless of what the costs of the property is, of the improvement, that exemption is then filed saying that we've cleared the coastal zone management rules. But, usually, in order to do that assessment, the planner would have to make an assessment report identifying that it does not have impact on cultural resources. It does not have impact on environmental impact. It doesn't have impact on et cetera, et cetera, in order for them to make that assessment. So there's a report that's attached to the SMA Minor – you know the exemption letter. And it's based upon that, then it is granted the exemption. I'm not sure what case you're talking about.

Mr. Hedani: What are the categories?

Ms. Suyama: Right, the categories. But the other thing is that it depends on how much information is disclosed in the application. A lot of times, applicants, especially homeowners, will not disclose everything that they're proposing to do. You know, they're just saying I'm going to be doing this and then that's it. They don't tell us that there's more than just building the house.

Mr. Iaconetti: This is a three lot subdivision, and they're probably going to sell each lot separately.

Mr. Hedani: What are the exemption categories?

Ms. Suyama: If you give me the name I'll –

Mr. Iaconetti: I've done this four times – I've given you the address, the name of the individual – I don't have it with me.

Ms. Suyama: Okay. Who did you –

Mr. Iaconetti: But I don't understand why you can't look this up and find out they're properly permitted – why it hasn't come to the Commission for approval?

Ms. Suyama: What concerns me if this is a three-lot subdivision and they're doing utility upgrade, it shouldn't have been exempted if it's over \$125,000. That's one of my concerns.

Mr. Guard: But they've been kicked out before right? I mean the other subdivisions have gotten away with an exemption, and then after the fact, people realize there's going to be more than \$125,000.

Ms. Suyama: Well, no, the only way –

Mr. Guard: And then they had to come back.

Ms. Suyama: The only way a three lot subdivision can be exempted is that there is no associated construction. That is the only way. So in other words, you're just doing the paper subdivision. But if they're doing subdivision improvements, those subdivision improvements should've been reviewed by the Department. It may have been when they came in they said they were not doing any construction related improvements. And if that's the case, then their application is faulty.

Mr. Iaconetti: I've presented this each time for the last three months, and I've given everybody the information. I do not have it with me, but I've given them their address, private developing the project's name, and –

Ms. Suyama: I'll follow up if it was with Jeff or Clayton.

Mr. Iaconetti: Clayton. Clayton, I gave once.

Ms. Suyama: Okay, I'll follow up with Clayton.

Mr. Iaconetti: You should be getting phone calls from some of the neighbors because I'm telling them to call the Planning Department.

Ms. Suyama: Call Clayton Yoshida.

Mr. Hedani: Let me ask you a question Colleen. There's a five lot subdivision and they're doing utility off-site improvements that are less than \$125,000, can they get away with an exemption for the off-site improvements that's less than \$125,000?

Ms. Suyama: Normally no. Unless – the only way you can get the off-site improvements is if it's in the existing right-of-way and it's all underground improvements.

Mr. Hedani: Yeah, it's all underground improvements.

Ms. Suyama: Right. There may be a possibility. We would review it on an individual basis that they could get an exemption. As long as they're not increasing the capacity of the system. In other words, if you're putting new water lines, it's not where your changing a four inch water to a six inch water line.

Mr. Hedani: There's no water line and they're putting in water lines. Or there's no sewer lines and they're putting in sewer lines.

Ms. Suyama: You know, the only other time that it gets exempted if it's a normal laterals that you use to connect the systems, and it's underground.

Mr. Hedani: Okay. Maybe I can discuss that with you individually. Commissioner Starr.

Mr. Starr: Yeah, I've got several of them, and I'm going to go through them very, very quickly – of course, I don't expect an answer right now. Page 6 of 25, Maui Beach Resort of which cross Lahaina. Page 9 of 25, Makena Resort Waste Water System improvements, Makena. That's Department of Parks and Recreation. Page 9 of 25, is that injection wells? What are they doing over there? On page 22 of 25, Dairy Road sign, welcome sign Kahului, by A&B Properties. What's that about? Page 24 of 25, Ke Hau O Hana Hale and related improvements, Makena. I'm just curious what that is. Is that a . . . (inaudible)? What is that? And then the others were already mentioned.

Mr. Hedani: Any other questions?

Ms. Suyama: You just need to know what those projects are?

Mr. Starr: Yeah. I'm just curious.

Ms. Suyama: Okay.

G. NEXT REGULAR MEETING DATE: August 28, 2007

H. ADJOURNMENT

Mr. Hedani: Any other questions on the SMA Minor/Exemptions report? If not, next meeting is August 28th. Thank you very much. We're done.

There being no further business brought forward to the Commission, the Maui Planning Commission meeting was adjourned at approximately 3:22 p.m.

Submitted by,

CAROLYN TAKAYAMA-CORDEN,
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE:

PRESENT:

Wayne Hedani, Vice-Chair
Kent Hiranaga
OJohn Guard IV
Bruce U`u
William Iaconetti
Jonathan Starr
Joan Pawsat

EXCUSED:

Johanna Amorin, Chair

OTHERS:

Colleen Suyama, Deputy Planning Director
Ann Cua, Staff Planner
Livit Callentine, Staff Planner
James Buika, Staff Planner
Michael Miyamoto, Deputy, Department of Public Works
James Giroux, Deputy Corporation Counsel