

**MAUI PLANNING COMMISSION
REGULAR MEETING
SEPTEMBER 25, 2007**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Wayne Hedani at 9:08 a.m., Tuesday, September 25, 2007, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Wayne Hedani: Public testimony will be taken at the start of the meeting 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 Planning 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.

Okay, we have a lot of people that have signed up on our public testimony sign-up sheet. And what I'd like to do is go through the list at this point, and see if there's anyone that would like to open up with testimony at this time.

Mr. Hedani: Richard Smith? Mr. Bagoyo, you don't look like Mr. Smith.

Mr. Vincent Bagoyo: Mr. Chairman, thank you so much. If we could just wait until our items will be up for—

Mr. Hedani: Okay. This is all of the members that are signed up for Valley Isle Fellowship?

Mr. Bagoyo: Yeah, I believe there's about seven or eight.

Mr. Hedani: Okay.

Mr. Bagoyo: Thank you so much.

Mr. Hedani: Thank you.

The following persons testified at the beginning of the meeting:

Mr. Michael Senna - Item B-3, Valley Isle Christian Fellowship, DBA, CIZ
Mr. Leonardo Secada - Item B-3, Valley Isle Christian Fellowship, DBA, CIZ

Mr. Soon Leong Kuy - Item B-3, Valley Isle Christian Fellowship, DBA, CIZ
Mr. Herman Romero - Item D-3, Ron Serle, SMA
Ms. Margaret DeCoite - Item D-3, Ron Serle, SMA
Mr. Jordan Santos - Item D-3, Ron Serle, SMA
Mr. Charles DeCoite - Item D-3, Ron Serle, SMA
Ms. Kathy Rose - Item D-3, Ron Serle, SMA

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

Mr. Hedani: Thank you. Are there other members of the public that would like to offer testimony on any agenda item at this time? If not, we're going to go ahead and close public testimony and move on to the agenda items of record. Commissioner Starr?

Mr. Jonathan Starr: Yeah, Mr. Chair, I'd like to move that we amend the agenda, and move Item B-3 relating to the Valley Isle Christian Fellowship up to the top of the agenda since there a lot of people here for that item. And if we can work to their convenience, I think it would be in everyone's favor.

Mr. Hedani: Motion to reorder the agenda to take Item B-3. First, is there a second? Motion dies for lack of a second.

Mr. Bruce U'u: Can I ask a question?

Mr. Hedani: Sure, go ahead.

Mr. U`u: What is your timeframe like?

Mr. Joseph Alueta: Fifteen minutes, maybe. I mean, it's pretty – it's something you guys requested and is part of our– I'll explain it. I didn't even bother doing a report for it. I was hoping to just wing it and talk it through.

Mr. Hedani: Okay. Director?

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

- 1. MR. JEFFREY S. HUNT. Planning Director transmitting proposed amendments to Chapter 12-202 of the Maui Planning Commission's Special Management Area Rules. The amendments will allow for the administrative approval of Special Management Area Use Permit time extensions under specified criteria. (J. Alueta)**

Ms. Suyama read the notice of public hearing into the record.

Mr. Alueta: Good morning, Chairman Hedani and Commissioners. Again, this is a rule change to your special management area rules. This amendment came out of – the impetus on three things: one is the General Plan and community plan which talks about simplifying the permit process and government regulations; two, the desire by the Commission to streamline the process so they do not see what we consider rudimentary requests before this Board, so you have more time to take up more pressing matters; and three was the Zucker Report, which again talked about trying to streamline the permit process, and simplify the process where we can to ease the workload for both the Commission as well as staff.

This ordinance would basically take amendments for time stipulations which would be for either the extension of – to initiate construction or to complete construction for SMA permits. It's not just you ask for it and you get it. There is a set program on – if you look on your page 4 of it, the bottom section of 202-4, the rule amendments, there is criteria and submittal requirements, again. Top of page 5, 202-5, again, the criteria in which the Director needs to go through and staff needs to analyze whether or not to grant a time extension for any one of those time stipulations. In the past, the Commission has already granted the ability by the Director in some cases to transfer the permits administratively also, and this is just following that same line.

a. Public Hearing

Mr. Hedani: Any questions for staff? Seeing none, are there any members of the public that would like to offer testimony on this agenda item? If so, please step to the microphone and state your name. Seeing none, the public hearing is closed.
Recommendation?

b. Action

Mr. Alueta: We're recommending that you approve the amendments as presented in the document before you.

Mr. Hedani: Commissioners, what's your pleasure?

Mr. U`u: Motion to approve.

Mr. Hedani: Motion to approve by Commissioner U`u.

Mr. William Iaconetti: Second.

Mr. Hedani: Seconded by Commissioner Iaconetti. Is there any discussion? Mr. Starr?

Mr. Starr: Yeah, I'll be voting against this. I really think that since the SMA permits are within the purview of the Commission, then it should stay within the purview of the Commission. And extensions are an important part of that. We've seen examples where permits have been extended for, you know, 20 years like, at Turtle Bay on Oahu. And, you know, although I really do trust the Director that we have now not to abuse it, I don't know what the condition will be in the future. And so I for one feel that this power should remain with the Commission, and the Commission should not so easily give up our duties and our powers.

Mr. Hedani: Is there any other discussion? Commissioner Hiranaga?

Mr. Kent Hiranaga: Reading the proposed draft, I note there is a two-year limit on the extension.

Mr. Alueta: Correct, and as well as an analysis. And to address Commissioner Starr's concerns, it's still within the power for the Commission if they have a hot topic to specifically request that time extensions be placed on their agenda to be reviewed, because it says – you know, if it's not restricted by a condition, a specific condition within the permit itself. So if you have a permit that is a hot topic that you don't want to have administratively done by the Director, you can specifically restrict his powers and duties with regards to granting of time extensions.

Mr. Hedani: Any other discussion? Commissioner Starr?

Mr. Starr: Yeah, if there was a process by which the fact that it was going to come before the Director were brought to the attention of the Commission in such a way that we had the say of whether we would permit the Director to make that call, then I would be happy to go along with it, but as it is, I don't see that happening unless a Commission member were to go through the rather onerous task of keeping track of the timing of all the projects. So I don't really see a mechanism other than, you know, the after-the-fact thing that it would end up being added somewhere in the middle of the, you know, the list we get every month, which is very hard to figure out what's current and what's old. So I'm still not convinced.

Mr. Alueta: Okay. Just for your clarification, the Director does – although after it happens, the Director does notify the Commission, provide you with a copy of the letter, that granting of the time extension. This rule change in no way impedes the Director from forwarding the request to the Commission for your review. So once again, you have – there's two options: either at the time of the initial granting of the permit, you can prohibit the Director from granting time extensions; and two, the Director on his or her own accord could determine that this is a sensitive issue that needs the Commission's review and approval rather than being done administratively. So there is some safety mechanisms as well as the criteria in which the Director must review and make a

determination that one, no changes have occurred previous – since the last granting, an analysis of any changes that occurred within the SMA area since the granting of the permit that may cause the permit holder's developments to have a substantial adverse environmental or ecological effect. So basically, there needs to be submitted an analysis by the applicant saying that, you know, in the two years, someone hasn't come along and built some major development since then that changes their previous analysis.

Mr. Hedani: As a matter of course, the Director, once he grants an extension like that, Joe, he prepares – a copy is transmitted to the Commission for their information?

Mr. Alueta: That is correct, at the next meeting.

Mr. Hedani: Right. Okay. Any other discussion? Ready for the question? All those in favor, signify by raising your right hand. Opposed, same sign.

It was moved by Mr. Iaconetti, seconded by Mr. U`u, then

**VOTED: To approve the Planning Department's report and recommendations.
(Assenting - B. U`u, W. Iaconetti, J. Pawsat, K. Hiranaga)
(Dissenting - J. Starr)
(Excused - J. Amarin, J. Guard)**

Mr. Hedani: **Motion dies.** Next item on the agenda? Commissioner Hiranaga?

Mr. Hiranaga: Well, there's no action taken on this, right?

Mr. Hedani: The recommendation was for approval of the amendment to the rules.

Mr. Hiranaga: Right, but there was no action because there's no affirmative vote either way, so why are you moving to the next agenda item?

Mr. Hedani: Run that by me again?

Mr. Hiranaga: There were four ayes and two nays, so there's no action.

Mr. Hedani: Yeah, I did not vote. There were three ayes and two nays, so the motion died.

Mr. Hiranaga: Right, so isn't there – don't we discuss the matter more? You're moving–

Mr. Hedani: Well – oh, okay. Do you have a motion?

Mr. Hiranaga: I guess I have – no, I have some discussion.

Mr. Hedani: Okay, proceed.

Mr. Hiranaga: I guess I have some – well, I guess Commissioner Starr's comments have some merit, and I think maybe we need to look at this a little closer.

Mr. Starr: Let's fix it.

Mr. Hiranaga: Yeah. After-the-fact notification—I don't know if that's adequate. I know that the majority of the requests for time extensions are administrative, but there are some that may not be. And I don't know how you're going to notify us so we can decide which is significant or not. I know you're trying to relieve us of some of the rudimentary extension requests, but I just think maybe this needs to be looked at a little closer.

Mr. Hedani: Any other action on this agenda item? Commissioner Starr?

Mr. Starr: Yes, I want to ask Planner Alueta if there's a simple wording that he could add to the language of this that would give the Commission members notice that before the Director acts, and if the Commission members don't, you know, don't respond say, don't make a motion at the subsequent meeting or something, then the Director can act. Is there a way you could do that right now, or should we take it back?

Mr. Alueta: Again, the – you could add that, you know, some type of report be inserted of all the time extension requests and amendments to time stipulations, a list of that be placed on the – attached to your agenda not for discussion, but attached to your packet for the next meeting, and I guess and on your agenda to discuss it. And if there's no action taken by the Commission, the Director can proceed pursuant to the sections outlined in the rules.

I guess from our standpoint we felt, you know, that if there was a hot topic, you would either restrict the Director's actions within the initial permit, or if there was some kind of significant controversy that came in after-the-fact, the Director would have that ability. And I think that – I don't know, from my standpoint, I'd like to see you give it a chance. And if there is significant trouble with it, you're going to find out, and the rules can be amended post haste. It's not that difficult to bring it back forward to you, but I just think that there's two opportunities in which any controversial items would be brought back before you: one would be by your own accord by restricting the Director's authority; and then two, by the Director's accord that says, hey, this is a hot topic, and I'm not about to get my name in the paper again.

Ms. Suyama: Can I suggest something just to move this along?

Mr. Hedani: Deputy Director?

Ms. Suyama: We don't have any problems of notifying the Commission when there are requests for time extensions filed with the Department. And I would suggest that maybe the thing that could be changed in the rule is that on page 5, it says:

The Director shall notify the Commission, at the Commission's next regularly scheduled meeting of any permit time extensions, receipt of which shall be acknowledged by the Commission. Such notification shall include, but not be limited to, the information provided to the Department by the permit holder. Unless the majority of the Commission has not requested to review the matter, the Director shall complete the time extension request and forward a copy to the Commission.

In other words, you get notified. If there is no majority of the Commission taking action saying that they want to review the time extension, the Director before the next meeting will then proceed with the time extension saying that you have agreed the Director should be the reviewing body. If you take a motion by the Commission that says that no, you want to review this action, then it would be taken to the Commission for final authority. Would that suffice?

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr?

Mr. Starr: Yeah, I would be happy with that, and I don't think that's an onerous process. It's basically the same process. It's just happening before the approval.

Mr. Hedani: Is that a motion?

Mr. Starr: Yeah, I move to amend – no, I make a motion to approve with the change and language as amended, as suggested by the Deputy Director which will give the Commission a notice before the act.

Mr. Hedani: Is there a second?

Mr. U`u: Second.

Mr. Hedani: Seconded by Commissioner U`u. Discussion? Ready for the question? All those in favor, signify by saying aye. Opposed, nay.

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

VOTED: To approve the Planning Department's recommendation of the proposed amendments with an additional amendment as suggested by the Planning Deputy Director.

(Assenting - J. Starr, B. U`u, W. Iaconetti, J. Pawsat, K. Hiranaga)

(Excused - J. Amarin, J. Guard)

Mr. Hedani: **Carried.** Thank you.

Mr. Alueta: Thank you.

Mr. Hedani: Director?

- 2. MR. JEFFREY HUNT, Planning Director transmitting proposed amendments to Chapter 203: Shoreline Area Rules of the Maui Planning Commission. The proposed amendments allow for actions of the demolition of structures within the shoreline setback area under specified criteria without requiring a shoreline setback variance.**

Ms. Suyama read the notice of public hearing into the record.

Mr. Thorne Abbott: Thank you. Thorne Abbott with the Maui Planning Department. It's wonderful to see so many people here enthused about shoreline rules. I always get excited about that. I'll try to be very brief on these because it looks like a full agenda.

What are the basic changes? There's changes in the definitions: 12-203-4, changes in the section on permissible structures in the shoreline setback; changes in how we process a request for a shoreline setback determination for approval; and changes in the variance criteria.

Under definitions, we have – currently, we have a clause called “adversely affect beach processes.” And if you look through that very carefully, it really currently applies only to parcels with an established erosion rate, but it's revised to include all shoreline parcels. For example, 12-203-12(a)(8) allows the Director discretionary approval for minor structures that do not “adversely affect beach processes,” but this currently would only apply to areas that actually have an erosion rate such as North, South, and West Maui. For example, if you just have an average lot depth and if it's set back, you can't adversely affect the beach processes because that term implicitly involves erosion. So

for example, if you want to put up a safety fence down at Hana Airport, you couldn't do it because of the term "adversely affect beach processes."

In your erosion hazard rate, we also corrected that. The North Shore was flown in 2002 and expires this year. West and South Shore were flown in 1997. So the new data is dependent on Council providing funding. So technically, if new data is not obtained this year, which it won't be, the erosion rate setback method for the whole island will be null and void, because currently what it says is – under definition of annual erosion hazard rate is that new data will be flown every ten years. Well, ten years is up. So we changed it to say "as funding is provided."

An irregularly shaped lot is a new definition which was added in relation to the changes we made back in December 26 of 2006 regarding what do you do with a triangular lot or a flag-shaped lot. How do you figure the setback out for that?

Minor structure—minor structure right now says "shall" and it lists a bunch of things under "shall." Well, that also limits it to just those things as opposed to using "may," and then giving some examples and some performance standards. It also doesn't say what's excluded so James and I put in what's excluded. For example, in-ground swimming pools should not be in the setback area because they are just as much a hardening structure as a building or a seawall.

Commissioner Starr, you'll remember overlay. We – and Commissioner Hiranaga, we challenged and conversed about that quite a bit when we passed the rules back in December of 2006. And so this is where you have two or three setback lines from two or three different methods of calculating it, and they're "overlaid." So basically what it says is if you end up with two or more lines, it's the more mauka segments of each line.

Qualified demolition—you just went through the Maui Palms Hotel. This little slice of the hotel sits in the shoreline setback area. As a result, they had to go through a draft EA, a final EA, shoreline setback variance, and an SMA major. That took an awful lot of your time for people wanting to do the right thing moving out of harm's way. So now that's going to be in the definitions, add a permissible activity approved by the Director. The Director cannot force anyone to take those down. It's only if the applicant comes in and wants to relocate, or remove something out of the shoreline setback area. It also has quite a bit of criteria that they have to meet such as not affecting beach or sand resource, or transport mechanisms, protection of shoreline access, protection of view planes, safety considerations, it has to meet with FEMA flood codes, also Maui County Code for erosion control, and SHPD restrictions on cultural resources and historic resources.

Finally, shoreline area—I bet if we ask everyone behind me here, what's the shoreline area, everybody thinks of the beach. That's what I think of when I think of shoreline

area. That's the laymen's term, but actually, HRS 205A, define the shoreline area as actually the shoreline setback area. So our rules should really be revised to say "shoreline setback area," and make that more apparent to people when they're using our rules.

Okay, permissible structures and activities within shoreline area—currently it reads "Permissible structures and activities within the shoreline" and we're recommending "setback area and coastal erosion hazard zone." Well, that means that it applies only to properties with an established erosion rate on an average lot depth setback. If you have a seawall, you don't have an established erosion rate, which would mean you don't have a setback, which means this section as far as what's permitted in the setback doesn't apply. Further, it only applies to a setback area that's established by the erosion rate. In other words, it doesn't really apply to lots with an average lot depth setback. The phrase also implies there's two different restricted areas: the shoreline area and the coastal erosion hazard zone. The coastal erosion hazard zone is part of the shoreline setback area. So throughout the rules, we've amended this in a number of places to simply read "shoreline setback area" and removed the area and limitation created by saying "shoreline area and coastal erosion hazard zone."

Repairs—this is one I got a lot of discussion with Mr. Hart's office and some of the other – Frampton and Ward, some of the other consultants. Currently it says "a structure that is legally permitted." Well, if you built in 1952, it was legally permitted. It just didn't have any rules back then. Likewise, Corp. Counsel and I wrestled with this quite a long time. So what is legally permitted? I think what the authors meant, and if you look at some of the notes, they really meant to say something that has a government approval, a piece of paper. I got a permit from the Maui Planning Commission. That's legally permitted. Everything else is nonconforming. That old seawall from 1952, 1942, that's nonconforming. This clarifies which is which by removing "legally permitted" and stating basically I received a written government approval.

Also, Section 6 is repairs to nonconforming structures. And right now it says "things that have been damaged by fire or accidental means, a natural catastrophe," but we skipped insects. We have a lot of termite-damage here. And it's pretty likely especially, over in Lahaina, you might have to rebuild an old nonconforming structure in the shoreline setback area based on insects. Well, right now, you couldn't do what without a variance. So we've corrected that.

Removal and relocation—I mentioned qualified demolition, so we've added that.

This is a sticky wicket—emergency protection. Currently, Section C says, "notwithstanding any provision of the chapter to the contrary," which I only think attorneys understands what that means, because I don't. Anyhow, it says what you're allowed to do within 25 and 40-foot of the shoreline is provide emergency, temporary

protection of property, and legally approved structures. Okay, well, first off, we don't protect land. We protect imminently threatened structures, habitable structures. We protect houses, hotels, condos. We don't protect land especially, if it's dune land. Dune land is meant to erode. It's a natural process. What this allows is for you to build a seawall to protect the sand dune. That doesn't make any sense. Likewise, legally approved structures—one could argue that that seawall from 1922 is a legally approved structure because it was legal at the time it was done. So we replaced that with

Emergency protection of an imminently threatened, legally habitable structure or infrastructure at imminent risk of failure which would substantially affect public health or safety provided that

- 1) the protection is temporary and removed within 180 calendar days.

I might mention that your SMA emergency permit is valid for 180 days. So it makes sense that this permit is in conjunction and coordination with the SMA permit. You'd end up having two permits with two different timelines on them. It doesn't make sense. The protection receives approval in accordance with the emergency permit section of the SMA rules, and given the significance of the emergency, the protection is the best management alternative in relation to beach shoreline coastal resource conservation. It's worth mentioning that if you look in your variance process, this is the same criteria provided in your variance process for emergency protection of structures. It's much more workable.

Lastly on Section C, "notwithstanding any provision of this chapter to the contrary, " basically means no matter what we just said, throw it out the window. We just listed a bunch of things you can do in the shoreline setback area, but now chuck those out because within 25-foot or 40-foot of the shoreline, depending on your lot depth, we're going to have very severe restrictions. Now that makes sense. As you get closer to the ocean, you want to be more restrictive, but it's very, very hard to enforce that because today maybe your setback's 25 feet, but let's say we're at Baldwin Beach. Last week we lost a couple feet. Now we're ten feet away. So how are you going to enforce that? And it makes it very confusing for the public. What can I do in my 150-foot setback, as opposed to my 40-foot setback, as opposed to my 25-foot setback? So what this clause does is corrects that and makes the restrictions uniform over the whole setback area. The other thing is in Section C, it lists minor structures, but those minor structures are different than the minor structures that are listed in the definition of the rules. So we correct that by making them concurrent.

And fourth, technically speaking, beach nourishment occurs within 25-foot of the shoreline. So according to this, since it's not listed in minor structures or activities, the way it is now, you can't really approve beach nourishment in the shoreline setback area. That doesn't make any sense either. The definition of minor structure is also amended

to include those structures listed in Section C.

The rules can be real confusing. For example, 12-203-13, "Request for a determination of structures and activities in the shoreline area and coastal erosion hazard zone," as you'll see what was published is that in 12-203-13, the title reads "Request for a determination of structures and activities in the shoreline area and coastal erosion hazard zone,"—boy, is that a mouthful—whereas 12-203-13(a) was published to read "All proposed structures and activities in the shoreline setback area [and coastal erosion hazard zone]. So in other words it would read, "All proposed structures and activities in the shoreline setback area." Even the title wasn't properly published. It was published with the incorrect information. So I'm recommending you revise the title to be the same as 12-203-13(a) which was published. Is that confusing enough? Okay.

And last, but not least, this is your variance process—very simple, very straightforward. A says you can grant a variance for about ten different things. B says that you gotta make sure the applicant's gonna be deprived of reasonable use of their land. C says before granting that hardship variance, you better make sure it's not an economic hardship. It's not an unreasonable use of his land or her land. And then D, it says that hardship can't be basically, self-created by the applicant. And then finally E says you can grant a variance, but you gotta put some conditions on it.

So let's look at those conditions. This is when you're granting a variance to somebody that's gonna build something in the setback area. One, they have to maintain safe lateral access or compensate for its loss. Two, they have to minimize adverse risks on beach processes. Three, they have to minimize risks of structures failing, becoming loose rocks or rubble on public property. This is very interesting. See that "and" up there? It's in red. And four:

To minimize adverse impacts on public views to and along the shoreline. [For the purposes of this section only, adversely impacts on public views means the adverse impact on public views and open space resources caused by new building structures exceeding a one-story or a 30-foot height limitation;] and....

Five, has to comply with Maui County Code and FEMA restrictions.

Now, you notice there's two ands in there. That's kind of telling. There's usually not two ands unless somebody inserted something at the last minute when you're writing rules. So what does that mean? Well, it means that a new two-story building causes an adverse impact on a public view. Well, that's not necessarily true. An antenna is a two-story building. It doesn't necessarily have an adverse impact on public views. Also this says that any new building that's greater than 30 feet causes an adverse impact on public views. Its converse is also true. It suggests that a new one-story building that's

less than 30 feet does not have an adverse impact on public views. So keeping that in mind, would it be appropriate to approve a variance for a home with only six-foot sideyard setbacks that meets code, is 29-foot high, is painted neon red on Palauea Beach? Of course not, but that's what this says. So I'd strongly encourage you to make a floor amendment and correct that.

So in summary, thank you for your patience, and attention, and interest. These only took three years to get to you. It corrects the definitions, the terms like "shoreline area" and puts them in laymen's terms. Adds new definitions for irregularly-shaped lot, overlay, and qualified demolition. Provides the Director with discretion to approve removal of structures in the shoreline setback area so people don't have to go through variances. It clearly describes which structures in the setback can be repaired. And allows for emergency protection of homes and infrastructure, but eliminates the protection of eroding land. It makes the rules clearer by removing conjunctions, and insuring the restrictions apply uniformly over the entire setback area. And it removes what might be considered a loophole in the variance process.

I thank you very, very much for your time. And I welcome any comments or considerations.

Mr. Hedani: Any questions for staff? Commissioner Starr?

Mr. Starr: Yeah, first of all, I'd like to say that it seems to be a very good drafting. I'm a little confused about the last – one of the last statements which was regarding the views. Would the new language fix that – kind of fix that loophole? Or do we need an amendment to that?

Mr. Abbott: You would need – yeah, you would need to take a floor amendment that basically what that – what I'm recommending or what the Department's recommending is you just delete that for this section only, "adversely impacts views means," because the phrase, if you look back, you see it says no. 4, "to minimize adverse impacts on public views to, from, and along the shoreline." Well, that should really be up to your discretion. That should be up to your discussion. You shouldn't have a definition stuck in here that limits you, in my opinion. So I would recommend – see how it's bracketed? I'd recommend you make a motion, if you find this appropriate, to just delete this section that's bracketed.

Mr. Hedani: Is that part of the staff recommendation?

Mr. Abbott: That is correct.

Mr. Hedani: Okay. Has it been reviewed by the Director?

Mr. Abbott: By the Director?

Mr. Hedani: Has the recommendations been reviewed by the Director?

Mr. Abbott: I don't know if Jeff has had the time to review all my recommendations, but I do know that Corp. Counsel and I have worked quite closely on this. And all but the floor amendment I just mentioned has been approved by Corp. Counsel. I'll defer to the Planning Director, Deputy Director, to comment on whether the Director has or the Department has any thoughts on this.

Ms. Suyama: From my understanding, I wasn't aware of the floor amendments that were happening today dealing with the criteria for the approval of a variance. And I doubt that Mr. Hunt had also looked at it. So for now, I would suggest that that portion be left out of the rule change until the Director as well as other members of the Department have the opportunity to review it. The only floor amendment that I really think is more of a titling amendment is the one dealing with the request for a determination of structures because it's just putting in the term "shoreline setback area" and deleting "coastal erosion hazard zone," and that is in compartment with all the other changes that we are doing with the rules.

Mr. Abbott: Alternatively, if it's something the Commission wants us to bring back, that particular section on the variance process, I'd welcome any comments to that.

Mr. Hedani: Any other discussion? Questions? Commissioner Hiranaga?

Mr. Hiranaga: On this definition of shoreline setback area, which is page 203-5-

Mr. Abbott: Yes, sir?

Mr. Hiranaga: Could you explain this section where it says "a portion of the structure extends seaward of the shoreline," and the entire structure shall be considered in the shoreline?

Mr. Abbott: Correct. That comes from HRS 205A. And basically what it says is let's say you have an unlawful structure that's encroaching on the State's property on the beach, then the entire structure is treated as one unit. So basically from a regulatory standpoint, you're not dealing with just the infraction. You're dealing with the entire structure.

Mr. Hiranaga: So it has to be an illegal structure?

Mr. Abbott: Yes, an unlawful structure, right.

Mr. Hiranaga: What if it was lawful at one time, and became unlawful because of erosion?

Mr. Abbott: It wouldn't become unlawful. It would become nonconforming. And then it'd be treated – the entire structure be treated as nonconforming.

The – I don't mean to stick my foot in my mouth, but out on Front Street, all the, you know, Bubba Gump's that leans over the – those are all nonconforming, because you can't just deal with the part of the house that's hanging over the ocean of this building. You have to deal with the whole building as one unit.

Mr. Hiranaga: Thank you.

Mr. Abbott: Sure.

a. Public Hearing

Mr. Hedani: Any other questions for staff? Okay, seeing none, the Chair will open up the floor to public testimony. Are there any members of the public that would like to offer testimony on this agenda item? If so, please step to the microphone. Seeing none, the public hearing is closed. Action–recommendation from staff?

b. Action

Mr. Abbott: Recommend that the Commission accept the recommendations of the Department, the published rules as they were published with an additional floor amendment to revise the title of 12-203-13; and to comment or take a motion on correcting the variance criteria under 12-203-15(e)(3) and (e)(4). Where materials were bracketed as shown in the presentation, those would be deleted.

Mr. Hedani: Commissioners? Commissioner Starr?

Mr. Starr: Yeah, I move to approve the recommendation as stated.

Mr. Hedani: Is there a second?

Mr. U`u: I second.

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

Mr. Iaconetti: I find this a little strange in that the Planning Director has not had the opportunity to go over all of this material that's coming from the Planning Department. I can't see anything that would possibly be changed if he did, but as the Planning

Director, it seems to me he should be aware of these changes that are being promoted. And I would like to see him go over it and get a recommendation from the Planning Director, which is his job.

Mr. Abbott: May I comment on that?

M. Hedani: Please.

Mr. Abbott: Dr. Iaconetti, the Director signed the authorization to send this to Corporation Counsel aside from the two floor amendments. Everything else was reviewed by the Director, and approved, sent to Corp. Counsel for their review, but the two floor amendments were not. Now, the one, 12-203-13, the title, that was actually just, you know, when I looked at the publication in the newspaper I said, oh, darn, we got it wrong. That's not correct. And the other was one I just recently found.

Mr. Hedani: Thorne, can you insure that if this measure is passed by the Commission that it be – all of the items, including the floor amendments would be reviewed by the Director before they're transmitted to the Council?

Mr. Abbott: They're not transmitted to the Council.

Mr. Hedani: This is the final authority?

Mr. Abbott: You're the final authority. They're your rules.

Mr. Hedani: Okay, but you will insure that the Director will review all of the floor amendments?

Mr. Abbott: Absolutely.

Ms. Suyama: Can I make a comment?

Mr. Hedani: Deputy Director?

Ms. Suyama: The Department's recommendation is to adopt the rules as was published except for the first floor amendment which was just a titling error. We would support that.

To me, the other matter dealing with the floor amendment should be further reviewed by the Department before this Commission adopts it, because it did not go through the same internal reviews that the other amendments went through. And the Director was not aware of these floor amendments. And I'm not sure if the Corporation Counsel was also aware of the floor amendments proposed by Mr. Abbott. And for that reason, that

would be the Department's recommendation: approve the rules with only the first floor amendment. And the other matter, we will review it again internally within the Department and bring it back to the Commission.

Mr. Abbott: That would be a prudent recommendation.

Mr. Hedani: Further discussion? Commissioner Starr?

Mr. Starr: Yeah, I'd just like to clarify that the first amendment relating to the titling was included with the motion. And it was also my understanding that that has been reviewed by the Director and Corp. Counsel. Frankly, I also feel very strongly that the second issue should be taken up, but I understand a reluctance to take it up today. So I just want to be sure that it's reviewed for clarity and language, because I think it's something we can all agree with the intent and brought back to us in a form ready to approve.

Mr. Abbott: I'd be glad to do that.

Mr. Hedani: Is that an amendment?

Mr. Starr: I don't think it's necessary.

Mr. Hedani: You have a motion to approve as originally proposed including the two—

Mr. Starr: No, with the one.

Mr. Hedani: No, with the two. That was your motion. So the question is, are you amending your motion to delete the second floor amendment?

Mr. Starr: Okay, my understanding as was read was just there was just one amendment listed in the recommendation, in the final recommendation.

Mr. Abbott: Shall I revise the recommendation and restate it, sir?

Mr. Hedani: Why don't you—? Is there a consent from the second? This is changing the main motion basically, to restate it.

Mr. U`u: I withdraw my second.

Mr. Hedani: Okay, the second withdraws his second.

Mr. Starr: Yeah, let me withdraw the motion and let's get a restatement of the recommendation.

Mr. Abbott: My apologies for the confusion. And per the Deputy Director's recommendation, the department's recommendation is to approve as published with an additional floor amendment for the title 12-203-13 to read as shown.

Mr. Starr: It's not a floor amendment, though. That's with the additional—?

Mr. Abbott: That's the recommendation.

Mr. Starr: So my motion is—

Mr. Hedani: Commissioner Starr?

Mr. Starr: Yeah, my motion is to approve the recommended changes with the one addition of wording regarding – a clarification regarding the titling.

Mr. Hedani: Is there a second?

Mr. U`u: Question?

Mr. Hedani: Is there a second?

Mr. U`u: Second.

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

Mr. U`u: Is that in line, Deputy Director?

Ms. Suyama: That is in line with the Department's recommendation.

Mr. Hedani: Further discussion? Ready for the question? All those in favor, signify by saying aye. Opposed, nay.

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

VOTED: To approve the proposed amendments to Chapter 203 as published with an additional floor amendment to the titling of §12-203-13 to read as follows:

All proposed structures and activities in the shoreline setback area.

(Assenting - J. Starr, B. U`u, W. Iaconetti, J. Pawsat,

K. Hiranaga)
(Excused - J. Amorin, J. Guard)

Mr. Hedani: **Carried.** Thank you.

Mr. Abbott: Thank you very much for your time.

Mr. Hedani: Deputy Director?

3. **MR. RICHARD C. SMITH, Senior Pastor of the VALLEY ISLE CHRISTIAN FELLOWSHIP requesting a State Land Use District Boundary Reclassification from the State Agricultural District to the State Urban District and a Change in Zoning from the County Agricultural District to the P-1 Public-Quasi-Public District for the Valley Isle Fellowship Church Worship Multi-Purpose Building Facility on approximately 14.99 acres of land located on Honoapiilani Highway, TMK: 3-5-002: portion of 001, Wailuku, Island of Maui. (DBA 2006/0004) (CIZ 2006/0011) (R. Loudermilk)**

Ms. Suyama then read the notice of public hearing into the record.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr?

Mr. Starr: Yeah, before the process begins, I'd just like to request from the department: I'll have a question regarding something in the package for the Water Department when we get to that part of it, so if the Director or the Deputy are available, I'd love to be able to ask that question if they could pop down when convenient.

Mr. Hedani: On this subject?

Mr. Starr: Yes, sir.

Mr. Hedani: Carolyn, can you place a call? Thank you. Robyn?

Ms. Robyn Loudermilk: Good morning, members of the Commission. Today we have two actions before you: a district boundary amendment and a change in zoning. I'd like to turn over the presentation to Mr. Vince Bagoyo. He is assisting the church in this process. And then he has members of the church and the congregation that will supplement his power point testimony. And then I will come back up to conclude the report. Vince?

Mr. Bagoyo: Thank you so much, Robyn, Mr. Chair, and members of the Maui Planning Commission. My name is Vince Bagoyo, and I'm a member of Valley Isle Fellowship, and also helped the church in preparing the two applications that are before you this morning for your considerations. And I'm going to be making a brief presentations on the applications, and I'll be available for questions after the presentations.

First, I just want to thank the Planning Department for their guidance and assistance throughout this process specifically, Robyn and Clayton who have helped us along the way. And thank you so much.

I know that we have some members here from the church. They're very excited about testifying this morning, but for expediency purposes, we have asked them to kind of contain their emotions. And they will be testifying – just a few of the members that kind of reflective of how they feel about this application.

Valley Isle Fellowship is located at 473 at South High Street in Wailuku. Our Senior Pastor is Richard Smith. Our Pastor of evangelism and student ministry is Gary Hamrick, and our Pastor of our small group ministry is Daren Sarmiento. I believe they're all here this morning to respond to any questions that you may have after the presentation.

We are formally the Wailuku Baptist Church founded in 1952 over 50 years ago. And in 1999, Wailuku Baptist and Rejoice Church merged to become the Valley Isle Fellowship. We are a nonprofit 501C3 organization.

We are affiliated with various Baptist associations throughout United States. First, we are a member of the Maui County Baptist Association made up of about eight churches throughout the County, including Lanai and Molokai. We are also affiliated with the Hawaii Baptist Convention made up of over 100 churches in Hawaii, Guam, and American Samoa. And finally, we are a member of the Southern Baptist Convention made up of over 44,000 churches with a membership of over 17 million. We also have missionaries and churches in over 140 countries around the world.

Our mission is to love God, to love His Church, and to love His world. And VIF exists...(inaudible)...to Jesus Christ, magnify His Name, and to enable followers to mature in faith.

Valley Isle Fellowship is a very active church and we are involved in many community events. I just wanted to highlight a few of those programs offered at the church. We have three worship services for the whole family each Sunday. Two are held at the Wailuku Elementary School cafeteria in the morning. And one in the evening service at our current campus. And it's normally attended between 150 to over 200 people during the morning service.

We have a very active youth and children's ministry, as well as a collegiate ministry at the Maui Community College campus. This is a fairly new ministry that we have started at the college campus. We have a very active mission work on Maui and on Lanai. And also we have provided assistance to the homeless families at the Kahului Harbor, Kanaha, and Waiehu Beach Parks. And finally, we also provide assistance to our church families such as home repairs; marriage, and family, and financial counseling.

These following photos is just to kind of give you a glimpse of the activities that we have at church. This is our normal Sunday morning worship service. And of course, that's our Pastor just clapping his hands and leading our church. Again, we have a total of over 200 current members at church. We also provide vacation bible school for the entire family, and it's normally held during the summer.

Once again, we do have a very active ministry at the MCC campus called the Critical Mass. And I believe they meet twice a week and normally attended by approximately between 20 to 30 students. This is a fairly new ministry.

We are an active partner with the Wailuku Elementary School, and this is just some of the projects that we are involved with the school.

We have helped build Lanai Baptist Church's expansion on the Island of Lanai. These are our members who have traveled to Lanai on many occasions to help our – the church on Lanai, the Baptist church.

We have been involved in the community workday program. And again, this is our ministry at the Kahului Harbor community with our homeless families.

One of the ministries that we have is to help others repair their homes, and sometimes do some landscaping and so forth.

The project site is located at tax map key: 3-5-2: portion of parcel 12. And it's located along the Honoapiilani Highway at Waikapu immediately adjacent to the Spencer residential affordable housing project. The total land area is approximately, 14.9 acres. That's before you this morning. The shaded property is the property that's before you this morning. It's about 14.9 acres. It's – the western boundary of the property is the highway, the Honoapiilani Highway, and the eastern boundary of the property is Waiale Road. And this is the direct access to the Spencer affordable housing project. And on the north boundary of the property is the proposed Emmanuel Lutheran Church proposed school site. The proposed access, direct access, to the project site is a 40-foot right-of-way from Waiale Road.

These are just some of the views of the site. This is from the – this is the road that goes to the Spencer property called the Kokoloiu Street. This is looking west from Waiale

Road. And of course in the background is the West Maui Mountains, and that's the Wailuku Heights. Again, this is a view from Waiale Road looking north towards Wailuku Town. This is a view from Waiale Road looking south towards Waikapu Town. And again, that's the Spencer affordable housing project. This is a view looking east along the Kokoloiu Street, and that's the street that accesses to this Spencer project.

This is a view from the Hp Highway looking north towards Wailuku town. And this is looking east across the highway. And of course the background there is the harbor, and that's the East Maui Mountains. This is a view from the Hp Highway looking south towards Wailuku Town. Once again, that's the Spencer project.

The proposed project that are before you this morning and the applications that are before you for your consideration is a multi purpose worship center, a hospitality center, and ancillary building facilities for our church ministry.

The existing land use designation currently is County-zoned agriculture. State land use designation is agriculture, and Maui County community plan district—public/quasi-public district.

What's before you is a request for a land use approval for a change in zoning from ag to public/quasi-public, and a State land use district urban boundary amendment. And those two requests are consistent with the approved Wailuku-Kahului Community Plan and the General Plan.

Just in closing, I just wanted to read a testimony, and he's not here today, and I wanted to enter this into the record. And this is kind of a reflective of the testimony, written testimony, that were presented to you this morning from our members. And I just wanted to enter this into the record because it's kind of a reflective of the compassion, and the passion, and the feelings of our members.

Dear Planning Commission members:

Thank you for the opportunity to speak in support of Valley Isle Fellowship applications for a change in zoning and State land use boundary reclass. My name is Daren Olaso. I live at 1485 Kilinoe Place in Waikapu. I have been a member of Valley Isle Fellowship for over seven years. And I'm writing on behalf of my family.

It's actually kind of emotional because it's my neighbor and I know the family quite well.

At Valley Isle Fellowship, we are taught to love God, to love His Church and to love His world.

Excuse me.

Ms. Loudermilk: I'll step in for Vince.

At Valley Isle Fellowship, we are taught to love God, love His Church, and love His world. This love is shown in very practical ways through the ministries and people at the church. My family has shown our love to our church family and to our community by participating in and supporting various worship ministries, to encourage spiritual growth, and by providing needed assistance such as meals. My three children have benefitted from the church-sponsored youth activities. Not only has the youth ministry taken my children off the streets, but many of these activities have been used as an outreach to the community teaching our children the value of loving service to others.

What really made me understand and appreciate the impact that the love of Valley Isle Fellowship shows was when that love was poured upon my family in 2001 when my mother's brain aneurism ruptured resulting in numerous strokes, resulting in loss of short and long term memory. Valley Isle Fellowship showed their love by paying for plane fares to Oahu, and then to Hilo to help me support my family. When my wife underwent chemotherapy in 2003, had a kidney transplant in 2005, and then subsequent complications from the transplant surgery, Valley Isle Fellowship showed and has continued their love by providing prayer support, counseling, preparing meals for my family, cleaning our house, mowing our lawn, watching our children, and helping us move to a new house.

I know Valley Isle Fellowship exists to show the love of God, and I believe by changing the zoning on this land will allow our church to build permanent facilities that will be used to further God's love to our island community.

We thank you for your time and humbly ask for your approval of Valley Isle Fellowship's change in zoning request.

Sincerely, Daren Olaso.

Mr. Bagoyo: She did a great job. Thank you, Robyn. Once again, thank you very much. That concludes the presentation, Mr. Chair and members of the Commission.

Mr. Hedani: Are there questions from the Commission? Commissioner Starr?

Mr. Starr: Yeah, first of all, thanks for coming before us with a good project. I have some questions about what – about the land. Is the entire 14-acre parcel owned by the Valley Isle Fellowship? And what are the intended uses of the rest of the property because I see there's a roundabout with roads stubbed out? What's going to be—?

Mr. Bagoyo: Yeah, thank you, Commissioner Starr. The land area is about 14.9 acres. We actually own a total of 25, little over 25 acres that the church bought from Wailuku Sugar over three years ago. And the bottom portion of the property which is the Lot B2— The subject property that's before you is Lot B1. And the Lot B2 is still on ag, and we are keeping it in ag because we still have not decided as to what the ultimate project will be. And we're in the kind of a brainstorming session as to what that property would be used in the future.

The 14.9 acres—one of the activities that we feel is very important would be some recreational activities for our children. That's why you see a lot of open spaces. And also, we're going to try to contain all the drainage as reported in our report onsite. That will require about 41,000 square feet of retention basins that will capture the drainage that's going to come from the proposed development.

Mr. Hedani: Additional questions for the applicant? Mr. Starr?

Mr. Starr: Yeah, are you planning other hard facilities there for other – you know, are you gonna sell portions of it to other entities, or lease, or you're gonna use it all for the church-related activities?

Mr. Bagoyo: Yeah, the 14.9 acres is all gonna be related activities of the church ministries.

Mr. Hedani: Vince, has the property been subdivided into two parcels?

Mr. Bagoyo: No, we have not because we cannot file the subdivision unless it's consistent with the zoning.

Mr. Hedani: I see. So you're in that process?

Mr. Bagoyo: Yes.

Mr. Hedani: Additional questions for the applicant? Commissioner Starr?

Mr. Starr: Yeah, I have a question. I see the Deputy Water Director is here. And I have a question relating to the application for the Deputy Director. Can I do that now so he can go, or do you want me to hold that—?

Mr. Hedani: Why don't we complete the questions for the applicant at this point?

Ms. Loudermilk: Or do you want me...(inaudible)...?

Mr. Hedani: Right. Why don't we cover that as part of the staff coverage of the recommendation?

Mr. Starr: Okay. I have one other question for Vince.

Mr. Hedani: Commissioner Hiranaga?

Mr. Hiranaga: As a follow up to Commissioner Hedani's question regarding the 25 acres being subdivided, so it has not been subdivided or it has been?

Mr. Bagoyo: It has not. We have identified the proposed lot as B2 in our proposed subdivision. We cannot file a subdivision if there's any inconsistency with the zoning change for the zoning. And so we are prepared to file that subdivision.

Mr. Hiranaga: So the inconsistency is the public/quasi-public versus ag?

Mr. Bagoyo: That's correct.

Mr. Hiranaga: And, I guess, reading the staff report, there was a comment that the Land Use Commission expressed strong concerns for the proposed lot size of 14.99 acres which puts it below the 15 acres which takes it out of their jurisdiction. And I wanted to know if you'd like to comment regarding that concern.

Mr. Bagoyo: I think that's a valid concern. And we actually had – our Senior Pastor and I had a productive meeting with Mr. Anthony Ching who is the Executive Director of the State Land Use Commission. And we explained to Mr. Ching our situation. And one of the things that we want to do immediately is really to build our church so that we can expand our ministry. And for expediency purposes, we wanted to make sure that we could come to the County for the 14.9 acres, and hopefully that we'll be able to submit when we have a plan for the bottom portion. And we've assured Mr. Ching that we will be working closely with him if he needs to be involved, but we're cognizant of the fact of his concerns. And we had a very good meeting with him and he understands our dilemma.

Mr. Hedani: Commissioner Hiranaga?

Mr. Hiranaga: So why is the land use district boundary amendment request not for the entire 25 acres because how would you be able to subdivide if the ten-acre lot is still ag, public/quasi-public ag? How are you going to subdivide? Wouldn't the entire 25 acres

need to be consistent?

Mr. Bagoyo: I think one of the issues was, shall we go to the State Land Use Commission for the entire 25 acres? And I have – as I noted before, we are not – well, one of our immediate needs is for our church, and so we'll be able to build our church facility. Once we have a specific proposal for the bottom portion, then we will present it to the appropriate agency, and that probably would include the State Land Use Commission. And we're going to keep it as one parcel until we have a consistency at this point.

Mr. Hiranaga: This is like just step one.

Mr. Bagoyo: Step one, that's correct.

Mr. Hedani: Commissioner Starr?

Mr. Starr: Yeah, this is just relating to the change from the package to the drawings showing the access coming off of Waiko Road, but I still see a stub-out pointing toward Honoapiilani Highway. Is there an intention at a later time to come to get an entrance on Honoapiilani Highway?

Mr. Bagoyo: Actually the original road proposal by Mr. Spencer is actually this road originally was going to access to Hp Highway, but he built this road to – and approximately here. Initially, we wanted to access to this 64 right-of-way, Commissioner Starr, so that it will be closer to our proposed project, and will have an easy access by the residents here of the Spencer project. But we had a meeting with Mr. Spencer, and he is going to keep this as a private road. And so we needed to find an area where we can actually have an access to our property. So we discussed with Mr. Spencer if we can access – if he has any problem with using Waiale Road. And he has indicated that that is acceptable to him. This Waiale Road is still a private road. And it's scheduled to be turned over to the County once improvements are in place. That's my understanding. I had a meeting Mr. Mike Miyamoto from the Public Works and this is still a private road owned by Mr. Jesse Spencer. And I believe that's going to be turned over to the County. However, this road will remain private.

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

Mr. Hiranaga: Reading in this packet, it indicated that that access road off of Waiale would be a County road?

Mr. Bagoyo: This road will ultimately be turned over to the County.

Mr. Hiranaga: Not the access road?

Mr. Bagoyo: No. This is the access to the property. We own this bottom portion of the property as well.

Mr. Hiranaga: Thank you.

Mr. Hedani: Commissioner Starr?

Mr. Starr: Yeah, once again, is there any intention of having an access off of Honoapiilani Highway?

Mr. Bagoyo: I have discussed with Mr. Freddy Cajugal who is the State Highway Engineer, and he was not in favor of that. So there will be no direct access from the highway.

Mr. Starr: Okay. Would you have a problem if I were to request a condition that access not be from Honoapiilani Highway?

Mr. Bagoyo: No, that would be acceptable to us, Commissioner Starr. Thank you.

Mr. Hedani: Any other questions for the applicant? Seeing none, thank you very much, Vince.

Mr. Bagoyo: Thank you, Mr. Chair.

Mr. Hedani: At this time we'd like to open—

Ms. Loudermilk: (Inaudible)

Mr. Hedani: Hello?

Ms. Loudermilk: (Inaudible)

Mr. Hedani: Oh, the presentation isn't finished? I'm sorry. Go ahead.

Mr. Richard Smith: Mr. Chairman, and Planning Commission members, my name is Richard Smith. And I reside at 473B South High Street here in Wailuku, Hawaii. I enjoy the privilege of serving as the Senior Pastor of Valley Isle Fellowship. And I thank you for the opportunity to speak on behalf of our request this morning.

On the surface, Valley Isle Fellowship might sound similar to many other good churches in that we experience worship, Sunday school, prayer meetings, activities for preschoolers, children, youth, and all ages of adults. And it's true that we do stay very busy. We are a busy church, but we aren't about being busy. We're about loving God,

loving His Church, and loving the world, His world. The point is, is that love makes a difference. And Valley Isle Fellowship is making a substantive difference in the lives of an ever-growing number of people here on the Island of Maui and literally around the world.

Mr. Bagoyo attends one of our two services, and so his figures were a little low. And that's important to us when we represent our church. It's not 150 to 200. It's 250 to 300 that we have an active membership and involvement in our church right now. But it's all about loving God and loving His people.

Our church family is as diverse as the Island of Maui is diverse. Our membership includes Japanese, Filipino, Korean, Hawaiian, Portuguese, African American, Mexican American, and even a few Caucasians. And we are Maui. And if Valley Isle Fellowship were just a place to go and to do religion or religious things, then we wouldn't be asking this Commission for permission to build a facility. We'd use that money for ourselves, for our homes, for a new car, for education, or for perhaps, recreation or vacations. We'd use it for things like new carpet in our homes, or an addition to our homes, or an ohana. But Valley Isle Fellowship is really committed to changing the lives not only of its own church family, but the people and culture of our island.

In the past two and a half years, Valley Isle Fellowship, the people of Valley Isle Fellowship, have given over \$590,000 to pay for this land that you're looking at this morning. Now, the debt is \$675,000, and we will have that debt paid in full by Thanksgiving of this year. I say that to say that we are people that really love other people, and that we put our money where our mouth is. That we are a giving, loving church family.

It's been said that Hawaii is the Ice Capitol of the Pacific, and that 85% of the crime on this island is due either directly or indirectly to drugs. Crime on this island is such that we have to export our inmates to the Mainland. And we believe that the solution of this problem isn't found in building more prisons, but in fact, is found in a personal relationship with Jesus Christ. We believe that God wants to use His church to help people find hope, and to find a reason and a purpose for living.

We believe that God wants to use His church, including Valley Isle Fellowship and the many other Christ-centered churches on this island to make a difference. We are – have involved over 200 volunteers from our church family in a project to help clean up the Maui harbor community. This happened about a year and a half ago. And we provided over 250 meals, and over a hundred shelter kits, cooking kits, first aid kits, health and hygiene kits, blankets, and bibles. We've repeatedly taken meals to the homeless. We have assisted families in finding homes, jobs, and a changed life.

Valley Isle Fellowship is a church with an ever-growing world vision. We've sent

numerous teams to Lanai to help that church in a construction project. We have sent teams to Mexico to build homes for the homeless. We've sent teams to Thailand to share hope with the local people and those visiting from Asia. We've sent teams to the Gulf Coast of Mississippi to assist with cleanup following Katrina. We've provided funds to finish the church building in a rural part of Cambodia and a motor scooter for its Pastor to get around on. We've provided tens of thousands of dollars for disaster relief, including the victims of the Indonesian tsunami and the victims of Katrina.

We have been a good neighbor and friends to Wailuku Elementary School where we meet. And we've done that by investing thousands of dollars in their facility and that benefit your children and ours every day at the school there. We've installed a video projection system, an electric screen, ceiling and wall fans. We've painted the school cafeteria. We've worked on the grounds of the school numerous times, including this past week. We helped them sanding the steel rails and poles all over the campus in preparation for painting. We provided them with a classroom at our church to meet the needs of a special needs student at Wailuku Elementary for almost a year.

We're a church that really loves Maui and that loves the people of Maui. We long to continue to serve them, and we long to serve them in a growing capacity as we move onto and build a new facility on this land. You can help us make that ministry a reality by approving the proposal before you today. And we want to thank you for caring enough to make a difference, a positive difference, on our island.

Mr. Hedani: Thank you, Mr. Smith. Robyn?

Ms. Loudermilk: Yeah, thank you, Commissioners. I just want to highlight certain areas in the report that Vince didn't cover.

Ms. Loudermilk then presented a summary of the Maui Planning Department's Report.

Mr. Hedani: Questions for staff? Robyn, I had one question. I guess it's because the application is for a district boundary reclassification and not for a building permit at this time that you didn't have your standard conditions that are normally attached to projects that are coming before us?

Ms. Loudermilk: Correct.

Mr. Hedani: Okay. Commissioner Starr?

Mr. Starr: Yeah, is the intention to move the worship services from the school and the High Street facility into the new worship facility, multi purpose facility, that's going to be built?

Ms. Loudermilk: That's my understanding.

Mr. Starr: Okay. And the second question is, in the change in zoning, are we able to condition it regarding access and not – that the access will not be off of Honoapiilani Highway? Is that something we can do?

Ms. Loudermilk: I believe that's something that can be considered, yeah.

Mr. Hedani: Any other questions for staff? Commissioner Starr?

Mr. Starr: Yeah, this is specifically for Water Department.

Mr. Hedani: Okay. Since we have Mr. Yamashige, Deputy Director Yamashige here, fire away.

Mr. Starr: Okay. And I understand that the questions that I have for him are not – are probably preliminary for this project because it'll be a while before they'll be in a position to go for water meters. So I don't think that this discussion should be looked at as a threat to this project, which is not intended that way, but I do have a question regarding the letter from – I guess it was from Mr. Tengan in 2006 where it talks about source availability for the Central Maui System.

Mr. Hedani: State your question, Commissioner Starr.

Mr. Starr: The Department will not issue reservations for future meters until new sources are brought online. Although the Department continues to issue meters for those ready to receive service at this time, the water for this project may not be available until new sources are online....

Etc.–their standard wording. And I've seen in the paper two days ago on Sunday about our Water Director says the need to conserve is growing more urgent, and that in Central Maui the – you know, the community is being asked to cut back on water use. And my first question is, is the department still issuing meters in Central Maui even with a drought that haven't been declared?

Mr. Eric Yamashige: The simple answer is yes.

Mr. Starr: Has there been a discussion on this because in previous—?

Mr. Hedani: Commissioner Starr, can you use the microphone?

Mr. Starr: Yeah, has there been a discussion regarding this policy because I served on

the Board of Water Supply for quite a few years, and whenever we had a declaration of drought, the first action that was taken was that there was a cessation of new connections and issuance of meters. And this is going against that policy. I know there have been many discussions where it was considered not fair to the existing user base to force them to cut back at a time when new meters are being issued. And I'm wondering if there is discussion, ongoing, regarding the fairness of this in light. And my feeling is that the department should really consider the cessation of new connections until the drought is over or new sources are brought online.

Mr. Hedani: So the question was, are you ceasing the issuance of meters during a drought period?

Mr. Starr: Yeah. And would you please make sure that that discussion is taking place because we're out of water in Central Maui, and we should not make the existing people suffer.

Mr. Yamashige: Okay. First of all, you're right that this project will probably be a few years down the road, and we are looking at additional development of sources. To your second question, yes, we are having discussions on the stopping of the issuance of meters. We have not reached that point yet, but we are having that discussion daily.

Mr. Starr: Okay. Thank you.

Mr. Hedani: Any other questions for staff? Okay? We're done with the presentation? Okay, at this time we'd like to open up for a public hearing.

a. Public Hearing

The following testimonies were given at the beginning of the meeting.

Mr. Michael Senna: Yes, good morning. My name is Michael Senna.

Mr. Hedani: Proceed.

Mr. Senna: You want me to proceed with my testimony right now?

Mr. Hedani: Please.

Mr. Senna: Okay. Great. Thank you. Dear Madame and Council, my name is Michael Senna, once again. I'm a member of Valley Isle Fellowship, a proud humble member. And basically, I would like to ask that you would please allow the rezoning to take place. Valley Isle Fellowship for me personally has given meaning to my life, meaning to my daughter's life, meaning to my wife's life in the sense that the church has blessed us

through Christianity. And we have made a proclamation that we would like to return that to the community of Maui as a whole. So I just stand here before you today just simply that if you could please allow the rezoning to proceed. And I can promise you, I can definitely promise you that of the development that we're asking to be rezoned, that'll be the best investment that we could make in that part of Wailuku for the community, and for Maui, and for the State as a whole. So in closing, I want to thank you very much for your consideration. And once again, just – if you could just please rezone the property. Thank you very much.

Mr. Hedani: Thank you very much, Michael. Any questions for the testifier? Seeing none, thank you very much. Are there other members of the public that would like to offer testimony at this time? Please step to the microphone and identify yourself.

Mr. Leonardo Secada: Good morning, Chairperson and members of the Committee. My name is Leonardo Secada. I live in 59 Ikea Way in Wailuku. And I'm over here testifying on behalf of my family in favor of my church, Valley Isle Fellowship.

I've been a member of this church of the past six years, an active member for over five years. I'm a father of four boys from ages ranging from 23 to 6 years old. And I'm here to tell you that my church, Valley Isle Fellowship, has made a lot of difference in my children, okay, as far as spiritually and human values to include even the little one who is six years old. He knows about how to behave. He knows about the value of life. He knows about God. He knows about sharing, and all those little things that we take it for granted does not happen in everyday life anyplace else but in the church. So I'm here to ask you to please approve the rezoning because we need this kind of environment. We need this kind of entity. We need this kind of people in our community over here in Wailuku to improve our way of life, to improve our values as a family that you know very well it has been forgotten for the past few years. We need to reincorporate that values as a family because family is all about ohana. We need you to ask you humbly to please change the rezoning in favor of the Valley Isle Fellowship. Thank you so much for your time to share that.

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

Mr. Secada: Thank you.

Mr. Hedani: Are there any other members that would like to offer testimony at this time? Please step to the microphone and identify yourself.

Mr. Soon Leong Kuy: Madame Chair, ladies and gentlemen, thank you so much for giving me the opportunity to testify for Valley Isle Fellowship.

Mr. Hedani: Can you state your name, please?

Mr. Kuy: My name is Soon Leong Kuy. I'm a member of the Valley Isle Fellowship. Coming from a Country where here's so much hatred against the Chinese people, it is such a relief to be accepted by Valley Isle Fellowship. Valley Isle Fellowship guides us to grow, to mature spiritually, and educate our children to become good citizens of the community. You know, I have ten grandchildren and two great-grandchildren.

The Valley Isle Fellowship also reach out to the outside world. Every third Thursday, we going to Hale Makua, to Kula San, and also to the homeless people. And we share with them about our Lord, and also get them what they need. They need paper towels, and bathroom tissues, and so on. The Valley Isle Fellowship has been a great blessing to me, and I'm sure it will also be a great blessing for the surrounding people in the neighborhood.

The Valley Isle Fellowship also has a youth program which educate the young people to fellowship and leadership. They take'em off the streets, reduce the crime rate, and they can be a good testimony and good influence to their peers and the different schools. And our youth of today will be our leaders of tomorrow. That's why we'll greatly appreciate that you will grant the Valley Isle Fellowship the necessary zoning changes so we can start building and be a better service to the community. Mahalo a nui loa.

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

This concludes testimonies given at the beginning of the meeting.

Mr. Hedani: I do have 11 people that have signed up to testify although I believe some of them have been covered. I'll just read off the names. If you wish to testify or if your testimony has already been covered by the joint testimony, please signify so. Richard C. Smith testified. Richard C. Drayson, please step to the microphone.

Mr. Richard Drayson: Good morning, Mr. Chair and members of the Maui Planning Commission. My name is Richard Drayson. I live at 456 South Alu Road here in Wailuku. I've been in this community of Maui for more than 35 years. I've joined Valley Isle Fellowship about five years ago. I'm speaking on behalf of myself.

During my association with this church, my faith in Jesus Christ has grown. I know that He loves me. He loves my family. And by the Word of God, I know that He wants me to love Him back, and His community, and His church. I have a clearer idea about God's personality now. I have seen how this church reaches out to the young people of high school and college age, and teaches them differences between right and wrong, and to be helpful to those who cannot help themselves without expecting anything in return.

Our women's groups, men's groups, and separately, community groups meet every week to encourage and support each member's efforts to lead meaningful and productive lives. Our senior members minister to other seniors in the community. My own sense of ethical behavior in business has been strongly reinforced by being part of this church. We're a growing church and I believe that the purpose – proposed multi use facility will provide the community of Maui with a valuable positive enforce for improvement, and one that will sustain a high quality of life for our citizens. Thank you for your consideration, and I hope that you approve of this request from Valley Isle Fellowship.

Mr. Hedani: Thank you very much, Mr. Drayson. Any other questions for the testifier? Seeing none, thank you. Paul Yamamura?

Mr. Paul Yamamura: Mr. Chair, Commission members, good morning. My name is Paul Yamamura. My wife, two children, and I have all been born and reared on Maui. I grew up in Kula, and my wife grew up in Haliimaile. We have a home in Kahului and have lived there since 1975. We are both members of Valley Isle Fellowship. I will be speaking for the zoning change.

I would like to tell you of two local men who have come to Valley Isle Fellowship. Both men had been in trouble with the law, and both were homeless with fractured and non-supportive families. They were two men with broken lives, broken relationships, no jobs, and bleak futures. Valley Isle Fellowship took them in. The church provided a place for them to live, and various members of the church provided employment opportunities allowing them to support themselves. Members of the church reached out to them and through interacting with them, developed friendship and trust. Their acceptance by the church helped them to rebuild their lives, boost their self esteem, and rediscovered their self worth. Through the ministry of Valley Isle Fellowship, these men received Jesus Christ as their personal Savior. We are witnesses of their changed lives. They have helped the church in a number of ways. They have done yard work, general maintenance and repair of the church buildings, have set up the Wailuku Elementary School cafeteria for worship service on Sunday mornings, as well as help with Sunday School, and the praise team, and the men's singing team. One of them had even gone on a mission trip to Thailand. Both became players and not just spectators at Valley Isle Fellowship. One of them got married and started taking classes at MCC. The other one has a permanent full-time job. As a result of the support of Valley Isle Fellowship, both have become productive citizens of Maui.

These two men are reflective of our society here on Maui and our Country in general. There are so many failed marriages, broken lives, families, and relationships, addiction problems, increase in crime rate, and the list goes on and on. Our government cannot solve these problems. Communities need churches. Our mission statement at Valley Isle Fellowship is love God, love the church, and love the world. Jesus said this, "It is

not the healthy who need a doctor but the sick.” Our desire at Valley Isle Fellowship is to be a place where the “sick” can be made whole and that our church will be a positive asset, influence, and resource in the community. We urge you to vote yes for the zoning change. Thank you.

Mr. Hedani: Thank you very much, Mr. Yamamura. Any questions for the testifier? Seeing none, thank you. Ken Sakai?

Mr. Sakai: Good morning, Mr. Chair, and members of the Commission. My name is Ken Sakai. I’ve lived on Maui all of my life. And I’ve been part of Valley Isle Fellowship for the past eight years. And I speak on behalf of myself and my family. It’ll take a lot longer than three minutes to share how Valley Isle Fellowship has impacted my life, and to me, the life of our community.

Gone are the days that when plantation life kept communities together. I remember as a young child that if I went up to part of the camp over at H’poko, by the time I got back, if I got in trouble, my parents would already know what I had been into because they knew – everybody was an uncle and an auntie. And you know, our government has taken over many of these assistance, but for the most part, apart from the family, came from the community at large in those days. Churches and schools were the hub of the communities as we knew it back then. Although times have changed, the family in our community continues to face challenges that have been brought forth in earlier testimonies, and I won’t go too much into it.

However, we do know that our government, our social security, is coming to a crisis. We can’t provide all of the services that are needed. Our educational system needs help. Our elderly need help. The homeless population appears to be growing immensely and they need help. Valley Isle Fellowship and its staff has risen to the task to address some of these affirmation needs.

From a social worker’s standpoint—I am a social worker for the Department of Education—this church has provided meals to the hungry, strong shoulders to lean on when encouragement is needed, counseling for the troubled, respite care for parents and caregivers, educational and maintenance support to the school, lawn cleaning in the community, transportation services, Christian education, a temporary workspace for a student that Pastor Smith had mentioned, a space for DOE trainings, a space providing homeschool testing to take place. We have encouraged our school teachers by providing back-to-school refreshments, provided tarps for the homeless, and have given out clothes for the needy. Work teams have gone to Lanai. And ministry teams as has been mentioned have already gone to Mexico and Thailand. Our children have grown up with these positive influences and are contributing members in our church and community. And I’m speaking for my children.

The church has helped me to grow individually as a person, a father, and an active participant in our community. I'm more vigilant in recognizing the needy, and the gaps and services that are not available to many our community. It has assisted in creating a closer relationship to my wife and my children. It has also provided my family with the Christian morals and beliefs that has enabled us to be better citizens within our community.

Mr. Hedani: Ken, three minutes.

Mr. Sakai: I'm wrapping up. This land and a larger church facility will enable our ministries to continue to grow. I ask for your consideration in approving the zoning request.

Mr. Hedani: Thank you. Questions for the testifier? Seeing none. Wandajeanne Blando?

Ms. Wandajeanne Blando: I am many and this is my husband. We are part of the family of Valley Isle Fellowship. Thank you for considering our time and proposal here.

To expedite, I'm going to share what they were going to say. My oldest—she says that “Valley Isle Fellowship has strengthened her and given her support to share her hope especially, with those at school.” My second—she says that “I love church, music, activities, and the love that they give me the way they always love me just the way I am. I feel so special.” My third—“The church will explode because they are so happy, loud, and everyone's awake. When I was young, they all cared for me.” Our fourth—“I love this church so much because of the nice people in this church. It makes me feel special, proud, and fun with bible stories.” And this is Victoria's picture showing herself being happy in church. “I love praising Him and singing to Him. I love Him. He shows me to be happy at church.”

And for me personally, I'm obviously a mother of five daughters. My husband and I, we worked with the college and career. We have in the past. We're especially working now with the youth. And we try to instill in them hope, love, faith, encouragement. We believe that they are our future. Presently, my husband and I volunteer teaching these kids on a weekly basis: Sundays and Wednesdays. Obviously, our culture's problems with drugs, violence, suicide, premarital sex, and teenage pregnancy are all issues that we try to address with the teens that come our way. And we share hope and the message of hope. Our land down the street will be a safe place for these kids, a chance to grow for the young and the old alike. We try to have the older people mixed in with our children.

Our children that we are raising in our family are to be well rounded, kind, helpful, and they are to be contributing. They are looking forward to the church that's going to be

down on the land that we're asking you folks to rezone. And we're personally making a commitment to pray for rain.

Mr. Hedani: Thank you. Any other questions for the testifier? All of her? Thank you very much.

Ms. Blando: And we do want you guys to come visit us.

Mr. Hedani: Okay. The next person to testify is Lynn Kam.

Ms. Lynn Kam: Good morning, Chairman Hedani and Planning Commission members. Thank you for the opportunity to speak in support of Valley Isle Fellowship's application for change in zoning.

My name is Lynn Kam and I live on Kaulona Street in Makawao. My family and I have been members of Valley Isle Fellowship since the inception of the church in 1999. We strongly believe that building a new facility at the proposed site will have a positive impact in the community. Our family has personally benefitted from the ministries and the people in this church. Many of the people have become trusted friends much like an extended family. This has been a tremendous blessing since our families are on Oahu. Our son is now a high school freshman. And as parents, we do our best to raise our children, to spend quality time with them, and to provide them with a little more than we had. Yet I daresay, it's tougher to be a young person today than it was when we were growing up. Who of us wouldn't welcome a little bit of help when it comes to keeping our children safe and encouraging them to make right choices?

During his younger years, our son has had the benefit of having a number of uncles in the church who have been such great role models for him. He would be so excited when several uncles spent time with him giving basketball tips, and even playing a little one-on-one at the church hoop. Oh, what a thrill it was when they even attended some of his games just to cheer him on. How encouraged he was when many of them attended his school play. On another more serious occasion, another uncle spent hours with him at a youth camp listening, praying, and helping him with some of his life concerns. This incident served as one of the major turning points in our son's life.

I want our community to experience that kind of care and concern. The kind that cannot help but powerfully impact and change lives. Our lives have been personally touched through the ministries of this church, and we feel a great responsibility for the lives of those in our community. Thank you for your time.

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

Mr. Reid Kawabata: Good morning, Commissioners. My name is Reid Kawabata and I live in Waikapu. Oh, after listening to these other people, I hope I can finish this.

I'm here this morning to ask the Commission to approve the change in zoning to let Valley Isle build its church on the proposed site. My family's fairly new to the church, but I witnessed the amazing love and positive influences this church has to offer our community.

A few years ago, before we became members, we were at one of our neighborhood block parties and the subject of one of our conversations was the homeless people living at the harbor. I suggested that as a group we could do something for them, but at that time, one of our neighbors, Jennifer Bagoyo, you know, mentioned that her church was committed to assisting the families down at the harbor. And from then, I've seen firsthand how this church family opened up and built relationships with the families.

And during the first couple visits to the harbor, as a church, you know, the families down there, they kind of shied away, but as relationships, and trusts, and genuine love and concern was developed between Valley Isle and the homeless families, the families began to open up. And it was amazing. I mean, some of the people there were saved, and some of them are now members in our church.

Another key benefit that Valley Isle Fellowship has to offer I think is the way that they focus on Maui's youth. This is important especially to my wife and I as we do have two daughters: ages 9 and 14. And simply believe that we as parents and as a community need to provide our youth a solid foundation as they will represent Maui's future. Our youth are highly vulnerable to peer pressure and external temptation. And Valley Isle Fellowship teaches them Christian and family values to help them remain grounded and able to make the right life choices on their own. This is one of the most important life skills that we can teach our children and empower them to make the right choices based on moral values and enable them a successful future.

So, Commission, as the future of Maui is in our and your hands, I ask you once again to please approve the rezoning of this land to the Valley Isle Fellowship's vision of building a church and extending resources to our youth so the community may be fulfilled. Thank you.

Mr. Hedani: Thank you very much. Any questions from the Commission? Seeing none, Jayne Kinoshita?

Ms. Jayne Kinoshita: Good morning, Chair Hedani, and the members of the Maui Planning Commission. My name is Jayne Kinoshita and I am a member of the Valley Isle Fellowship. I live in the Waiolani Subdivision in Waikapu.

I'm here to testify in support of Valley Isle Fellowship's request for rezoning because VIF truly wants to make a difference in the community. I'd like to read a letter from Beverly Stanich. She is the principal of Wailuku Elementary School.

This letter is in support of Valley Isle Fellowship's request for rezoning of a parcel of land from agricultural designation in order to construct a church on the property. We support their request based upon a relationship that our school has had with them for several years. They currently utilize our school cafeteria for worship services. They have been instrumental in supporting the students, teachers, staff, and parents in our school communities for many years. They have upgraded the school facility by providing a sound system and fans that our students and staff utilize during assemblies and meal services. They have participated in school-sponsored campus beautification activities and have initiated additional cleanups in preparation for the opening of school or special events. They have donated time, volunteer work, and expertise that has helped enrich the educational experience for students and staff at our school.

When the church first began operating in the cafeteria, Pastor Richard continually checked that our neighbors were satisfied with plans to minimize the impact of traffic and noise when services were in session. On those rare occasions where concern arose, they immediately responded to resolve them successfully. This positive experience with the leadership and members of Valley Isle Fellowship leads us to support them in this request for a place to build and grow their new church building so they can continue to serve the people of Maui. We support their request for rezoning, and appreciate your consideration of their application for that purpose. Thank you.

Mr. Hedani: Thank you very much. Any questions from the Commission? Seeing none, Mr. Ed Ferreira? Mr. David Hau? Oh, that's for the Serle's subdivision. Sorry. Richard Yamasaki?

Mr. Richard Yamasaki: Good morning, Mr. Chairman, and members of the Planning Commission. My name is Richard Yamasaki and I live at 295 Kaulawahine Street in Kahului. My wife Elaine and I have been members of Valley Isle Fellowship for over four years. And we can say without hesitation that our move to Valley Isle Fellowship has been one of experiencing God and His will to be where He wants us to be.

The makeup of the members and friends of Valley Isle Fellowship is a good cross section of the ethnic groups, families, age groups, and interest groups. We have experienced the warm and hospitable fellowship, as well as the participation in work projects.

In our senior years, we have had the opportunity to participate in senior activities and projects that keeps us busy. And there is no age requirement for participating in these senior activities. As we have observed the many ministries of – at Valley Isle Fellowship, you cannot help but feel that there is no end to serving the Lord and answering His call as needed. Our request for changes at this hearing will no doubt enhance and enrich the mission and objectives of Valley Isle Fellowship. We entrust the Commission with the right decision as requested.

Lastly, let me thank you, the members of the Commission, for allowing us to provide input. Your task of hearing and rendering a decision is not really appreciated by the general public. In most cases, we only hear the negative side. But you can rest assured that all of your efforts in serving on the Commission is greatly appreciated by the church. Thank you.

Mr. Hedani: Thank you very much. Are there any questions from the Commission? Seeing none, thank you, Richard. Are there any members of – any other members of the public that would like to offer testimony at this time? Seeing none, the public hearing is closed. Robyn?

b. Action

Ms. Loudermilk: Okay, Commissioners, I also would like to note that this morning we passed out 27 letters of support for the project.

Our recommendation – first I'd like to– The State Land Use District Boundary Amendment–Maui Planning Department recommends that the Commission recommend to the Council approval of the State Land Use District Boundary Amendment from agricultural to urban. Secondly for the change in zoning, the Maui Planning Department recommends that the Commission recommends to the Council approval of the change in zoning from agricultural to P-1 Public/quasi-public subject a total of six conditions. We have five right now and I would like to add on the proposed condition no. 6 which would be, "That vehicular access to Honoapiilani Highway shall be prohibited." And that concludes the department's recommendation for the two items. And in considering of the foregoing, the department recommends that the Commission adopt our report prepared for today's meeting as its findings of fact, conclusion of law, decision and order; and authorize the Planning Director to transmit said recommendations to the Council. And that concludes the recommendations.

Mr. Hedani: Commissioners?

Mr. Iaconetti: So moved.

Mr. Hedani: Moved by Commissioner Iaconetti. Seconded by Commissioner U`u.

Discussion? All those in favor, signify by saying aye. Opposed, nay.

It was moved by Mr. Iaconetti, seconded by Mr. U`u, then

It was moved by Mr. Iaconetti, seconded by Mr. U`u, then

VOTED: To adopt the Planning Department's report and recommendations.
(Assenting - W. Iaconetti, B. U`u, J. Pawsat, K. Hiranaga, J. Starr)
(Excused - J. Amorin, J. Guard)

Mr. Hedani: **Carried.** Thank you.

Ms. Loudermilk: Thank you.

Mr. Hedani: I might also comment that that was – you know, for the number of people that were this morning, that was very articulate testimony that we heard this morning. Thank you very much. We're gonna take a ten-minute break.

(A recess was then taken at 11:13 a.m., and the meeting reconvened at 11:25 a.m.)

Mr. Hedani: The next item on the agenda is item no. 4.

4. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting A Bill for an Ordinance Amending Title 19, Maui County Code, Relating to the Maui County Cultural Resources Commission

Mr. Hedani read the notice of public hearing into the record.

Mr. Hedani: Do we have a staff member presenting this item?

Mr. U`u: I'll do it.

Mr. Hedani: Commissioner U`u has volunteered to do it. Okay, my understanding is that we have basically a housekeeping item under Item B-4 which changes the name to the Maui County Cultural Resources Commission instead of the Historic Commission. And you have a copy of the proposed ordinance and bill before you. Is there a discussion? Commissioner Starr?

Mr. Starr: Yeah, Mr. Chair, I read through the proposed rules and since there's no Historic Commission, but there is the Cultural Resources Commission, it seems to make

a lot of sense. So I'm in favor of moving ahead with it even though it looks like we can't really follow our normal procedure, but maybe after public testimony, I'd be willing to make a motion.

Mr. Hedani: Okay. Any other discussion?

a. Public Hearing

Mr. Hedani: Okay. At this point, we'd like to open it up for public hearing. Are there any members of the public that would like to offer testimony on this item? Seeing none, public hearing is closed.

b. Action

Mr. Hedani: Action?

Mr. Starr: I almost beat you to it, Joe.

Mr. Alueta: Okay.

Mr. Hedani: The world belongs to those who show up.

Mr. Alueta: I thought Colleen was gonna – so we – but – as again, this is just administrative changes to – from Historic Commission to the Cultural Resources Commission just renaming it within two sections of the code. The – as you know, the Cultural Resources Commission is a board that does exist in the County Code, but in some sections when they changed from Historic to Cultural Resources, they failed to go through Title 19 and rename that Historic Commission to the Cultural Resources Commission.

Mr. Hedani: Thank you, Mr. Alueta. Commissioners, what's your pleasure?
Commissioner Starr?

Mr. Starr: Move to recommend approval. I don't think we're the actionable body. I believe we're recommending.

Mr. Hedani: Right.

Mr. Alueta: Correct.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Iaconetti. Discussion? All those in favor, signify by saying aye. Opposed, nay.

It was moved by Mr. Starr, seconded by Mr. Iaconetti, then

VOTED: to recommend approval.
(Assenting - J. Starr, W. Iaconetti, B. U'u, J. Pawsat,
K. Hiranaga.)
(Excused - J. Amorin, J. Guard)

Mr. Hedani: **Carried.** Thank you.

Mr. Alueta: Thank you.

Ms. Suyama: The next item is Communication No. 1.

C. COMMUNICATIONS

- 1. WV SUB, LLC c/o GENERAL GROWTH PROPERTIES requesting an amendment to Condition No. 5 of the Special Management Area Use Permit for the Whaler's Village Parking Structure and other improvements regarding the width of the public access easement for property situated at TMK: 4-4-008: 001, Kaanapali, Island of Maui. (86/SMA-19) (R. Loudermilk) (Previously scheduled for the September 11, 2007 meeting.)**

Ms. Suyama read the agenda item into the record.

Mr. Hedani: Before we proceed, the applicant is a member of Kaanapali Operations Association so the Chair will be recusing himself from voting on this item. Thank you.

Ms. Loudermilk then presented a summary of the Maui Planning Department's Report and Recommendation.

Mr. Hedani: Is Mr. Kobayashi or Mrs. Acuiro gonna be presenting anything, or just to answer questions?

Ms. Loudermilk: No, just to answer questions.

Mr. Hedani: Okay. Clarify for me again, Robyn, what we're doing. Amending Condition No. 5 in order to—?

Ms. Loudermilk: In order to allow the County of Maui to accept the easement, the four-foot easement, and then that would fulfill—

Mr. Hedani: Condition No. 5?

Ms. Loudermilk: Condition No. 5 of a special management area permit granted 21 years ago.

Mr. Hedani: So this would be a recommendation to the Council to accept the easement?

Ms. Loudermilk: No, this would be a recommendation – this would be a recommendation – no, final action.

Mr. Hedani: The Commission has final—?

Ms. Loudermilk: The Commission has final action. Then we will go back up to Council and Council will then act on the total package. This is one of several easements on the property—the Whaler's Village—that pursuant to this particular condition gets – the easements get turned over to the County of Maui. However, the property owner will maintain their portion. It will fulfill a condition. The applicant wants to turn the easements over to Maui County since there's a – they don't have an eight-foot wide easement.

Mr. Hedani: They can only give away the property that they own and not the property that's next to them, in other words.

Ms. Loudermilk: Correct.

Mr. Hedani: Okay.

Ms. Loudermilk: On the surface it appears to be a housekeeping measure; however, it is something that the applicant wants to fulfill the condition. Based upon several site visits with staff, Land Use Committee Chair, and Planning Director, we felt that what was there is sufficient, is being utilized. And we'll just wait and see what direction we get for the Westin property because it's unclear. As in the exhibits, the Westin was also required to do a four-foot easement, but it's not clear whether that gets turned over to the County.

Mr. Hedani: Okay. Thank you. Commissioner Starr?

Mr. Starr: Yeah, I see a good access over there now—one of the few that really does work. And I'm very reluctant to reduce the width of it because my feeling is if this happens and then it does get decreased, you know, because something's built on it, then we're dependent on the Westin. Whereas I wanna see what's there and kind of the spacious feel with it—there's nothing built right up to it—maintained.

Ms. Loudermilk: Yeah, the—

Mr. Hedani: The width of the easement is eight feet, right?

Ms. Loudermilk: The width of the two easements—

Mr. Hedani: Combined is eight feet?

Ms. Loudermilk: Combined are eight feet. That will not change. What will change is for the Westin, County will not own the easement, but it is a condition of their special management area. It's been land-courted in perpetuity. On the Whaler's Village side, their four feet will then – amongst other easements, will then be accepted by the County. There is no intent to decrease anything that is there already. We are vehemently opposed.

Mr. Hedani: So this is a dedication of the easement to the County?

Ms. Loudermilk: Dedication of the easement to the County. Instead of having a total of 12 feet – because technically, the way the condition reads is Whaler's is eight feet, and Westin is four feet. Through the research, the department determined that the intent was for one eight-foot to be established at that point.

Mr. Hedani: Okay. Commissioner Iaconetti?

Mr. Iaconetti: I have a question that is quite tangent to the request that they're making, but I'm concerned about the parking down there. Would it be inappropriate to ask a question at this time?

Ms. Loudermilk: Parking where? In the structure? In the—?

Mr. Iaconetti: On either side of the easement, there are several parking stalls that are on the Whaler's side, and there are several stalls that are on the Westin side.

Ms. Loudermilk: Yeah, and they're—

Mr. Iaconetti: These are all reserved. And I'm wondering under – how they got to be reserved if they're supposed to be available to the public.

Ms. Loudermilk: Maybe I can initially answer that. When I went out, I counted how many stalls were available to the public. There's a mixture of beach parking and private parking. And they do have the required number of stalls for the beach parking.

Mr. Iaconetti: Why are all those other stalls reserved for the various entities?

Ms. Loudermilk: They were not required to provide those stalls for beach public parking.

Mr. Iaconetti: On either of the Westin side of the right-of-way or the Whaler's side?

Ms. Loudermilk: Both sides, they do have beach access parking. I counted them.

Mr. Iaconetti: Well, I've been over the years have tried to park down there several times. And they're— I mean—

Ms. Loudermilk: They're full. Granted, by 9 o'clock, they're full. However, they do have the required amount of public beach parking stalls that are indicated in the conditions on both the Westin permit and the Whaler's permit. That was one of the first things I went to go check because part of what's being turned over to the County is the public access, public beach access parking stalls. And they're there where they said they'd be located.

Mr. Iaconetti: How do they determine that there are adequate number of parking stalls for beach access?

Ms. Loudermilk: That was done back in 1986. That was the number that came up.

Mr. Hedani: What is the total, Robyn, number of stalls that are available at that location?

Ms. Loudermilk: For beach parking?

Mr. Hedani: Right.

Ms. Loudermilk: For beach parking on the Westin side, it's approximately— Let's go back to our exhibits. For the Whaler's Village, they do have the 20 clearly marked beach access parking stalls. That was the condition — that was Condition No. 4.

Mr. Hedani: So the Whaler's Village is 20?

Ms. Loudermilk: The Whaler's Village is 20. And that was specified in the condition of approval for Whaler's Village.

Mr. Hedani: Okay. Commissioner Starr?

Mr. Starr: Yeah, I wanna talk about that parking as well. It happened in the last week. I was down there several times. And I was down there first at night. I stopped by after dinner at about 10:30, and about two-thirds of the beach parking stalls were filled and it looked like they were rental cars. And then I was back there to go to the beach snorkeling at about seven o'clock the next morning. And most of those cars were still there. And the rest of the spots were filled with — just about all of them were filled with

contractors' trucks, and that kind of continued throughout most of the day. You know, and kind of as the rental cars pulled out more and more, pickup trucks pulled in, and also a lot of vehicles for people who appeared to working in the Whaler's. And, you know, although – I don't – I wonder who is policing that parking to make sure that it's actually for beach-users, and it's not just utilized for people at – using the Westin, and for workers at Whaler's. And then especially, you know, there was a tree-trimming guy, and he had four spots. This was two days ago over the weekend. He had four spots. There was – I think it was Lahaina Plumbing. And they had – it looked about half a dozen trucks. They must've been doing a job down there. And they were all in beach parking slots. Who –? How can we stop that?

Ms. Loudermilk: If you look back to the minutes back in '85, '86, they had the same type of deliberations. It's pretty much self-enforcing. However, on the Whaler's Village side, they do have 24-hour security to check on overnight parking on their side of the property. I cannot speak to Westin because Westin has a total of 30 public stalls. The – it is up to each of the property owners. There's signage up there indicating the rules. There is nothing in any of the conditions that really can assist in the policing. It's – people are honest or not honest.

Mr. Starr: Maybe there's some mechanism to be found. I compare that with what happens in Wailea where the Wailea Association has a security. And they really police the parking, and they do a good job with that. Can I ask the Chair a question as a resource? Is there a mechanism down there that can function to police those parking?

Mr. Hedani: I'm sure if you walk with the management of Whaler's Village, they can have their private security concentrate more on enforcement of beach access use as opposed to –

Mr. Starr: Can we ask them what they're willing to do here since they were...(inaudible)...?

Ms. Loudermilk: Sure, but if you're looking for a condition, I'm not too sure we can get one, but we can get oral assurances.

Mr. Hedani: Corrine, you wanna add something?

Ms. Corrine Acuiro: Hi. Good morning. Corrine Acuiro with General Growth Properties. You know, actually I was brought onto the property in January of '06. And I as well, you know, did notice the abuse of the beach access parking stalls. What we've done and we continually do is, we do have 24-hour security. And we try to police it as best as we can. And we have taken steps where we've towed cars away. And then, we get into the situation where it's a cat and mouse game. And, you know, we're doing our best. We send out memos to merchants. We send out to the vendors. We send out, you

know, memos to employees of the center. And they're one of the abusers. Instead of parking in the employee parking, they're parking in beach access stalls. So, you know, we try to do our best, and I believe at one time, there was a security guard. If you look at that – in that area, there's a parking booth. So I believe at one time, there was security there, but it posed a problem with people saying that they were – and they were beginning to get violent with the worker there because they would say that they're going to the beach, and they were truly not. They would walk to the beach, right? And then stay there for about five, ten minutes, and then go to their car, or go to their place of employment, or go shopping. Another abuser are the shoppers, you know, of Whaler's Village. So, you know, we try to do what we can. Parking is free. We have validated parking, free parking at the parking structure, so we welcome suggestions from you on how we can better provide and ease up the parking. And we do have security guards out there, and they stand out there for a better part of the morning because that's when they start the abuse, and then at night. And then there's the periods of the shift changes. We do it that way. So if you can give us suggestions, we would welcome that.

Mr. Hedani: Commissioner Starr?

Mr. Starr: I'd like to see some kind of commitment made for an ongoing program. And I really think that you have a better knowledge of how to structure that and make it work than we do in trying to impose something. So, I mean, what I would like to see would be a commitment on your organization's behalf to create an enforcement plan to send us a copy of what you're gonna do, along with your word that you're going to—

Ms. Acuiro: We'll be glad to do that.

Mr. Starr: To follow it. And I think that would satisfy me that, you know, that it'll stay as a—

Ms. Acuiro: We'll be glad to do that. We'll put something together for you.

Mr. Hedani: One suggestion, Corrine, that I might offer is to have all of the employees of the shopping center register their vehicles with the shopping center so that they're issued a sticker, and you know who the employees are, and they're allocated to the Whaler's Village parking as opposed to the—

Ms. Acuiro: Actually, we are in the process of doing that because presently what we do have is they have a parking card. And another abuse that's taking place is employees are to park on the third level of the parking structure, but they're parking throughout. And we'd like to keep those stalls open for our shoppers. So we are in the process of completing our employee vehicle registration program. So we will put that in place. And then in lieu of hanging the tag to show that you're an employee, we're going to go

with the decal because that's something more permanent. The tag, you know, you can just take it off your rear view window, right? And claim not to be there for employment. So we will have it. And then if they are on property, and if they are parked at the beach access stalls for – during their personal time and enjoyment, then, you know, we can rightfully note that.

Mr. Hedani: Commissioner Starr?

Mr. Starr: Yeah, who validates–? This is new that beach-users can get – validate the parking. Who–? I mean, do you ask a fish or bring an opihi? Like – what's the process?

Ms. Acuiro: We don't validate for the beach access stalls. We validate for the parking structure.

Mr. Hedani: You validate for customers.

Ms. Acuiro: Right, for customers.

Mr. Starr: Now, it says in here under the condition:

That 20 clearly marked public beach access parking stalls shall be dedicated at the southern entrance...commercial center, and that beach goers shall also have the opportunity to utilize the parking structure with validation.

So that seems to tell me that beach-users can utilize the parking structure with validation.

Mr. Hedani: As long as they are customers of Whaler's Village.

Mr. Starr: You mean you have to spend money to – for – to get validated even though conditions states that beach-users will be able to use it?

Mr. Hedani: I think they're saying over and above the 20 stalls, they can still park in the parking structure as long as they're a customer of Whaler's Village.

Mr. Starr: It sure reads to me that they can be validated.

Mr. Hedani: Otherwise, they'll be having 230 public beach access stalls.

Mr. Starr: That's what's written here, though.

Mr. Hedani: That's actually an accurate statement, though, right, Corrine?

Ms. Acuiro: Correct.

Mr. Hedani: With validation, they can park in the parking structure.

Mr. Starr: But as a beach-user, how do they obtain validation?

Mr. Hedani: You buy your Pepsi at the ABC Store.

Mr. Starr: I don't think you – if it's – can I ask Corp. Counsel to take a read of this because I don't think that that is what's here? I think it's a very clear condition that beach-users– We're looking at – under Brief History of Application, item no. 3 in the italics. How do you read that? I certainly read it that beach-users can utilize that parking structure and get validation to utilize it. Page 4, above Analysis, a couple of paragraphs above Analysis.

Mr. Hedani: Corp. Counsel?

Mr. James Giroux: So, Commissioner Starr, you're asking whether or not the validation requirement requires you to also go shopping if you're gonna go to the beach? Is that–?

Mr. Starr: Yeah, yeah. It doesn't state you have to buy something. It says if you're a beach-user, you can utilize it and get validation.

Mr. Giroux: I don't know. I'd have to look at the discussions that went into that in order to formulate that. And also, I would have to also discuss this with the Zoning and Enforcement as far as whether or not this is part of a condition of an SMA permit.

Mr. Starr: Can I request you do that?

Mr. Giroux: Yeah, that's fine. I can do that.

Mr. Starr: Okay. And perhaps, you know, we could also get the written response from Whaler's on that.

Mr. Hedani: Commissioner Iaconetti?

Mr. Iaconetti: Concerning validation, is there a monetary amount that must be spent in order to get validated?

Ms. Acuiro: Each merchant decides the minimum purchase amount. And then, you

know, so with that purchase, then they have three hours of free parking.

Mr. Iaconetti: But you're not going – the exit that you go through, is not the merchant. It's a parking attendant.

Ms. Acuiro: Correct.

Mr. Iaconetti: And so he determines whether or not you've spent enough money in order to be validated.

Ms. Loudermilk: I'd just like to ask how this have to do with the four-foot wide easement.

Mr. Iaconetti: Well, I prefaced my statement by saying I – this was a tangent. And I asked if it was inappropriate to bring it up. And apparently, it wasn't since we've been having this discussion.

Mr. Hedani: Yeah, to clarify the question on validation, the validation is a stamp that's given by the merchant that stamps the ticket. If they determine that for whatever reason that they're a customer of the store, they'll stamp the ticket. They take the ticket to the parking attendant, and with the validation, they'll allow you to–

Mr. Iaconetti: Let me give you an incident. This was a friend of mine who went in, utilized the parking place, and had a validation. And when he went to go out, they said, no, you have to spend at least \$25 before this validation is effective. Now, who determines that?

Ms. Loudermilk: (Inaudible)

Ms. Acuiro: No, that – each merchant determines – you know, it's not a set 25-dollar amount.

Mr. Iaconetti: Well, it was in this instance.

Ms. Acuiro: I can't attest to it or – because there are merchants that even if you do not spend any money, they will validate your ticket. If you visit our Whaler's Village Museum, they will validate your ticket for free without spending any money. If you go to our customer service booth, which is manned by the Marriott operators, they will validate your ticket. So there are ways to obtain free validation at the center whether you're a beach-goer or you're a shopper that doesn't spend any money. So–

Mr. Hiranaga: Mr. Chair? Mr. Chair?

Mr. Hedani: Commissioner Hiranaga?

Mr. Hiranaga: We seem to have a full agenda today, and I think regarding parking, since it's an SMA condition, if an individual feels the condition is not being fulfilled, they should file a complaint with the Planning Department, Zoning and Enforcement, and allow them to administer that.

Mr. Hedani: Okay. Let's go ahead and try to get the discussion back on the easement on the four-foot whether the easement— Commissioner Starr?

Mr. Starr: Okay. First of all, I am making a complaint because I don't think it's being fulfilled. So I hope that solves what Commissioner Hiranaga—

Mr. Hedani: In this particular case, I think what we're talking about is the requirement that was imposed by the County was for the provision of 20 beach access stalls which have been clearly marked and provided and – as a condition. And what the applicant had stated, I guess, in that comment was that in addition to those 20 stalls, additional stalls could be accessed through the parking structure.

Mr. Starr: Yeah, well, all I'm doing is looking at the wording of the condition in terms of no. 3. And what I'd like to get also from the applicant is a statement of their policy. And if there's a stall where a beach-goer can go and take their ticket and get validation without spending money, then I would be satisfied with that whether it's through the museum or somewhere else. But I would just want to get a written statement of that policy, and then that will satisfy me in this regard, you know, along with the research that Corp. Counsel is going to do.

Ms. Acuiro: As I stated, we will provide you with all of that.

Mr. Starr: Okay.

Ms. Acuiro: Any more questions?

Mr. Starr: I do have one on the—

Mr. Hedani: Commissioner Starr?

Mr. Starr: Okay. As – I'm – the access is – you know, it's a good access now. My thinking is that if it's allowed to be narrowed, then we may see it get narrowed. And how – we're being asked to narrow it from eight – what is it? Eight feet to four feet.

Ms. Loudermilk: We're combining two access easements for eight feet based upon conditions that were put on two separate SMAs adjacent. The way it's read – we read it now would be we'd have to have a 12-foot wide easement, and we don't think that's practicable. We think the existing easement there is working. Just happens that half

the four feet – half of it belongs to Whaler's Village. Their condition clearly states it has to be turned over to the County. The Westin property clearly states they need to have a four-foot access easement, but it does not have to be turned over to the County, but they still have to maintain that portion of the easement in perpetuity.

Mr. Starr: Whose property is the as-built–?

Mr. Hedani: It's 50% on the Whaler's Village side and 50% on the Westin side.

Ms. Loudermilk: It's 50/50, four feet/four feet.

Mr. Hedani: In drafting the condition, their intent was for an eight-foot easement straddling the property line, but that's not how it came out. How came it was an eight-foot easement on the Whaler's Village side, which is not what the reality is.

Mr. Starr: So like that activity booth is in the – that is currently in the easement?

Ms. Loudermilk: No, it's not even identified as the easement at this point in time. The potential could be. It could be. We're not diminishing the eight feet. We're in a situation where we have two–

Mr. Hedani: Four-foot easements.

Ms. Loudermilk: Two four-foot easements based upon two separate special management area permits on properties adjacent to each other. And that the four-foot is on the Westin side, and there's four-foot on the Whaler's side. Combined, that is eight feet. There will be no change to the width of the access. It will continue to be maintained by both sides in perpetuity. It's just through the wording of the condition for the Whaler's Village that it was explicit that the access easement as well as the 20 public parking stalls be dedicated to the County of Maui. That same language is not on the conditions for the Westin Village – Westin Hotel, excuse me.

Mr. Starr: So the Westin can just get rid of – take their four feet back?

Ms. Loudermilk: No, they can't. They can't.

Mr. Hedani: It's dedicated in perpetuity.

Ms. Loudermilk: It's dedicated in perpetuity in Land Court. Though the County may not own it, it's dedicated. It's noted on the tax map keys and everything that it is an access easement. It has its own separate number. There'll be no change to the width.

Mr. Hedani: Are there any other questions for the applicant or staff? For the

Commission's information, the Vice-Chair will be leaving at two o'clock this afternoon after we take a lunch break and reconvene at one o'clock on the General Plan issues because I need to catch a flight. And you'll have to elect a Chair Pro Tem for the balance of the meeting. Any further discussion? What's your pleasure? Commissioner Starr?

Mr. Starr: Move to recommend approval as per the—

Mr. Hedani: Is there a second?

Mr. Iaconetti: Second.

Mr. Hedani: Seconded by Commissioner Iaconetti, moved by Commissioner Starr. Discussion? Commissioner Starr?

Mr. Starr: Yeah, I'm slightly reluctantly going along with it because I understand staff feels it's important to do, but I do look forward to getting the report—

Ms. Loudermilk: Yeah, the documents, yes.

Mr. Starr: The documents I requested.

Ms. Loudermilk: Yes, yes.

Mr. Hedani: Any other discussion?

Mr. Iaconetti: I would just like to comment that in reading the minutes of these previous meetings, 21 years ago they commented on how bad the traffic was. And it hasn't gotten any better despite of the fact that they've added a lane.

Mr. Hedani: Any further discussion? If not, ready for the question? All those in favor, signify by saying aye. Opposed, nay.

It was moved by Mr. Starr, seconded by Mr. Iaconetti, then

VOTED: to approve the Planning Department's report and recommendation.
(Assenting - J. Starr, W. Iaconetti, B. U'u, J. Pawsat, K. Hiranaga)
(Excused - J. Amarin, J. Guard)
(Recusing - W. Hedani)

Mr. Hedani: **Carried.** Thank you.

Ms. Loudermilk: Thank you. And so we will get – once we get the information, we'll forward it to the Commission.

Mr. Giroux: Robyn, can you send a communications to our office requesting the—?

Ms. Loudermilk: Sure, sure.

Mr. Hedani: Director, welcome to the meeting.

Mr. Jeffrey Hunt: I assume you want to continue on?

Mr. Hedani: What's your pleasure?

Mr. Iaconetti: Yes.

Mr. Hedani: Commissioner Starr?

Mr. Starr: I think we should – why don't we take testimony, and then break, so we can free the public up?

Mr. Hedani: Why don't we try to finish up Communications Item No. 2?

Mr. Starr: Okay.

- 2. CHRIS HART & PARTNERS on behalf of MR. MIKE DEZAHD requesting an amendment to Condition No. 1 of a Special Management Area Use Permit to expand the time period for two years or until August 31, 2009, to initiate construction of the Kihei Hanalei Condominiums on approximately 0.24 acres of land at TMK: 3-9-005: 019, Kihei, Island of Maui. (SM1 2004/0037) (J. Buika) (Previously scheduled for the September 11, 2007 meeting.)**

Mr. Hunt read the agenda item into the record.

Mr. Jim Buika then presented a summary of the Maui Planning Department's Report and Recommendation.

Mr. Hedani: Commissioner Iaconetti?

Mr. Iaconetti: Since there is no public hearing on this item, I was wondering if we could

not dispense of it and approve or – could I move to approve at this point?

Mr. Hedani: Motion to approve. Is there a second? Seconded by Commissioner U`u. Discussion? Commissioner Hiranaga?

Mr. Hiranaga: In the staff report on page 7, it says the applicant will be executing a contract in September of '07. Has that occurred?

Mr. Buika: It has not occurred yet, but they do have three bids from local contractors right now, and they are deciding. So it may happen by the end of the September. If not, most likely within a month. So they are definitely moving forward with the project. And I could give you more details if you wanted. Some of Chris Hart's firm is here who can answer that, but they are moving forward.

Mr. Hedani: Commissioner Hiranaga?

Mr. Hiranaga: Just a side comment, I was looking at the recommendation, and the last sentence, is that a standard line, "The Planning Director shall review and approve a time-extension request but may forward said request to the Planning Commission for review and approval?" Does that infer that the Planning Director can review and approve a time extension without forwarding it to the Planning Commission? Is that a standard line? I never really paid attention to it.

Mr. Hedani: Based on what we approved this morning, I would say so. We just approved that process.

Mr. Hiranaga: I know, but is this a new verbiage, or has this always been the standard version?

Mr. Buika: No, this has always been there.

Mr. Hiranaga: So the Director does not have to forward time extension requests? He can make a determination on his own?

Mr. Giroux: That's dependent on the actual permit itself. So if the Commission puts it in there, then that's how it is.

Mr. Hedani: So this is—?

Mr. Giroux: This is the – the conditions are the Commission's conditions as far as how they want the time extension triggered.

Mr. Hiranaga: So am I reading this correct that the Planning Director could—?

Ms. Loudermilk: The rules do not allow for it. We have a disconnect here. We still keep that as a standard condition in the hopes that'll be delegated to us, but the rules do not allow us to do this. That's the honest answer.

Mr. Hedani: In this case, Robyn, the Commission that approved the original permit attached that condition which stated that the Director could do--?

Ms. Loudermilk: Yes.

Mr. Hedani: Right. So they delegated that to the Director for this particular project.

Ms. Loudermilk: They did, but the rules don't allow for it.

Mr. Hedani: Well, now they do.

Ms. Loudermilk: Now they do. Yeah, we've been working on this rule change for a number of years.

Mr. Hedani: Commissioner Hiranaga, do you have another question?

Mr. Hiranaga: No. I just -- looking at that, it didn't make sense.

Mr. Hedani: Any other discussion? We're gonna open it up for public testimony. If there are any members of the public that have testimony to offer on this item, please step to the microphone. Seeing none, public testimony is closed. Are you ready for the question? All those in favor, signify by saying aye. Oppose, nay.

Mr. Starr: Nay.

Mr. Hedani: We have four ayes, one nay. The Chair votes in favor.

It was moved by Mr. Iaconetti, seconded by Mr. U`u, then

VOTED: to approve the Planning Department's report and recommendation.
(Assenting - W. Iaconetti, B. U`u, J. Pawsat, K. Hiranaga, W. Hedani)
(Dissenting - J. Starr)
(Excused - J. Amarin, J. Guard)

Mr. Hedani: **Motion carries.** Thank you. For the record, the dissent was from Commissioner Starr.

Okay, break for lunch? Let's go ahead and break for lunch. We'll reconvene at one o'clock, 45 minutes.

(A lunch recess was taken at 1:15 p.m. and the meeting reconvened at 1:53 p.m.)

Mr. Hedani: ...reconvened. The next item on the agenda is Item D-1. Director?

D. UNFINISHED BUSINESS

1. **GLENN M. KOSAKA , attorney for Primewest CAPITAL (HAWAII), INC. submitting a Petition to Intervene dated August 24, 2007 on the application of MR. RYAN CHURCHILL of MAUI LAND AND PINEAPPLE COMPANY requesting a Special Management Area Use Permit for the Kapalua Coastal Trail Project and related improvements at TMK: 4-2-004: 004, 010, 012, 014, 015, 016, 017, 024, 025, 032, 034, 037, and 043; and TMK: 4-2-005: 041, 042, and 049, Kapalua, Lahaina, Island of Maui. (SM1 2006/0026) (T. Abbott) (Deferred from the Commission's September 11, 2007.)**
 - a. **GREG GARNEAU, attorney for MAUI LAND AND PINEAPPLE COMPANY submitting a Memorandum dated August 27, 2007 in opposition to the Petitions to Intervene including that of Primewest CAPITAL (HAWAII), INC. on the Special Management Area Use Permit for the Kapalua Coastal Trail.**

The Commission may take action on this request. If any of the Petitions to Intervene are granted for the Kapalua Coastal Trail item, the Commission may select a Mediator and a Hearings Officer.

Mr. Hunt read the agenda item into the record.

Mr. Abbott: Aloha, Commissioners. Thank you very much for seeing this on your agenda today. I know it's very busy. I have a very, very brief presentation that responds to some questions that were asked previously. Commission Hiranaga had asked about proximity of this location to the SMA, the hiking trail, to the intervenor. Commissioner Starr had asked about the contested case process specifically, criteria for approval or denial of an intervention. And finally, there were some questions about what constitutes ten days.

With that, we'll talk about the publically accessible walking/hiking trail shown here. 2. – ti's a total of 3.4 – 3.5 miles. 2.3 is proposed. 1.2 already exists. As you see here,

there's a number of different shoreline recreational resources. This trail is intended to connect those together.

Now, public notice was sent to all landowners within 500 feet. You can see circled in red it says "Petitions to Intervene shall be filed by August 24, 2007." The question came up: how did that number – how did we compute that number? If you look at your process and procedure rules, 12-201-18, Computation of time, I could read through the entire thing, but it says:

In computing in any period of time under the rules herein by notice or by any order of regulation of the Commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal state holiday in which the event period runs until the end of the next day....

So as you can see here, I have listed the ten days. The 3rd was a holiday. The 11th was the Commission meeting—September 11th right after no. 10 marked there. The act would've been the act of filing. The last day being on the Friday, the 24th of August. That's how we came up with ten days. Not to suggest we aren't open for human error, but that's how I had interpreted the rules to state.

Contested case procedures—I know you're familiar with this, but just to refresh memories, and also to inform the public, 12-201-20(a), the date on which the documents are received shall be regarded as the date of the filing. That would've been by the 24th of August. 12-201-20(c), an original and fifteen copies shall be filed. 21(d), service of papers shall be made by first-class, certified mail or other legal means. 21(e), service is complete when deposited in the U.S. mail, properly addressed and stamped. 40(a), filed with the Commission and served upon the applicant no later than ten days before the hearing date. 40(b), a petition to intervene shall be accompanied by a filing fee. 41(b), all persons who have a property interest in land subject to Commission action. That would be mean in this case within the SMA, you reside on the land, or can demonstrate they will be so directly and immediately affected that their interest is clearly distinguishable from the general public. The Commission may deny an intervention when the intervening parties' interest is substantially the same as the party already admitted. The admission of additional parties will render the proceedings inefficient or unmanageable, or the intervention will not aid in the development of a full record and will overly broaden the issues. Also, if the party doesn't have standing, or the party didn't file a timely submission, or the party does not reside on land subject to Commission action, unless there's a clear adverse impact that is different than the public's.

Plantation Estates AOA originally filed an intervention. They stated that in their intervention that they were exposed to claims for liability for injuries. A Mr. and Mrs.

Caputo also filed an intervention because of negative effects of the trail upon shoreline runoff, safety, and public health. Maui Land and Pine formed a letter of agreement with those two potential intervenors. And as a result, they dropped the Trail Segments 19 through 22 which is located makai of the Plantation Estates Road and also of the Caputos. They moved the trail as far makai on the property adjacent to Caputo but still on Maui Land and Pine property. They added a hogwire fence with vegetation as a buffer between the trail and private properties. And they added two private gates for Plantation Estate homeowners to access the public trail.

Now, it's somewhat noteworthy that HRS 520-4 says the landowner's not liable for injury when a person crosses private property to access a public recreational area. Now, I'm not an attorney. I'm just reiterating the facts, the laws, as I read them.

So two petitioners intervened, they withdrew based on a letter of agreement, and basically, getting a fence, a buffer, and some private access.

Primewest, however, is still outstanding. You reviewed this at your last meeting. They stated the trail caused adverse significant – adverse audio and visual impacts to the intervenor. The trail will cause loss of open space. The trail will cause economic harm to the intervenor. And during testimony at your last meeting, the intervenor expressed concerns of adverse impacts of the trail to a drainage system at the site. The intervenor filed on 9/24 with the department with 15 copies. They paid a fee on Monday, 9/27, at the department after the date of filing. And the applicant was served by U.S. postal service I believe on the 27th, on Monday.

Just to review some HRS policies, under Recreational resources, 1(b) where it's supposed to provide adequate, accessible, and recreational opportunities in the coastal zone management area. Under Scenic and open spaces resources, 3(b), we're supposed to ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural land forms and existing public views to and along the shoreline. And finally, 3(c), preserve and maintain where desirable, and improve and restore shoreline open space and scenic resources.

So here's the whole trail, and circled in yellow is the intervenor's properties. This is a TMK map. You can see Primewest. This Parcel No. 31 where the SMA goes on part of his property. The Caputos', Parcel 30, now, they dropped their intervention through a letter of agreement. They just barely touch the SMA. And then, Plantation Estate AOA's Parcel 57 and 94 which were the actual drives.

Here's an aerial view of it. You can see Plantation Club Drive up in the corner here. It comes down this way. This is Mr. Caputo's property. And this is Primewest property here and here. Now, the star represents a drainage system. And the trail is shown in

blue as it follows just mauka of the road, but within the SMA. This is driving down the road going towards Hanaloa Bay. Plantation Estates, the entry is here. This is the intervenor's location. This is just going down a little further down the road. The drainage basin is located in here. And here is the intervenor's residence. There's also a residence on the other side of the road. This is the – looking directly across from the drainage basin. This is the intervenor's property. Now, there's the State road, and then the trail is on this side, so the makai side of the State road on Maui Land and Pine property. They apparently have leased this. What the people that are inhabiting this area – you know, reside there. They're not the property owners. They lease it from Primewest. This is looking at the drainage system which is on the makai side just directly across from the parcel you just saw. Now, the parcel you just saw is here. The road is here. The trail will be here across the top of the drainage. This black line is a general reflection of the interface between Primewest land and Maui Land and Pine's. This is a drainage basin in here. And then this is a structural element of that drainage basin which you can see there's two large pipes here. And these run up to the Plantation Club Drive where there's two large drainage grates that discharge water to here. This is another aerial view. This is for view shed considerations. So here's Primewest, the trail. That's the view from the trail. And you can see this is quite near the drainage system, but very close to the road. This is looking makai right at the drainage system. This is looking up at Primewest further down the trail looking up, further down the trail yet, and finally, this is from the overlook. You can see a number of cars pull out here and use the overlook. This is Caputo's. And then this is the intervenor's property right here. And there's a car in here for spacial consideration.

So in relation to Primewest, these are the TMK boundaries. You can see the trails in blue. We have a graphic here that shows pretty much the scale of a person that would be walking. The elevation difference is 50 feet. The distance from the trail to the residence is 152 feet. And it's about 15 meters from the actual property line between these two. One more look at that. Again, 15 meters or about 45 feet from the property line, 50 meters from the house or about 152 feet, and 50 feet of the elevational change.

So I hope this addresses the question regarding proximity. It gives you a better sense of the site and the location. With that, I'll take any questions you might have and that is the staff report.

Mr. Hedani: Questions for staff? Seeing none, thank you very much.

Mr. Abbott: Thank you very much for your time. Oh, and this is a view from the trail. I'm sorry, it's the proposed the trail, if it were approved. I believe this is – so you can see the island down here just off Caputo's property.

Mr. Hedani: Does the – Glenn Kosaka, attorney for Primewest, do you have anything to offer at this point?

Mr. Glenn Kosaka: I believe what the Commission asked both parties to do is to provide some more specific information, some better visuals of the distance from the trail to the properties, Primewest properties. I appreciate the slide show here, but you saw the distances...(inaudible)...above, but I really think this is misleading, because there are actually two properties. Fifteen meters from the property there, 50 feet elevation, yeah, that's on the upper side, but on the makai side, big difference. And I'm going to pass around some photographs. Okay? Which should give the Commission a lot better idea as to what the distances are. I took these pictures myself. It's from our office expert or me, so it's not very good, but it'll show what needs to be shown.

There are seven photographs. Okay? And I'd like to point some things out. The one in the back marked "1" and "2," they're joined together. Okay? Let me go through this from the beginning. One and two shows – this is taken from the mauka shoulder towards Honolua Bay. The trail would be somewhere on the right, and the house on the left is where the Kaaihuis live. Okay? Now, that's this picture here. I'm sorry I don't have slides, but this – I'm passing around the exact same thing I have here. You can see on Photographs 1 and 2, got a car in the roadway. That's Honoapiilani Highway. The car on the roadway offers some ideas to scale.

Now, what Mr. Abbott just showed you was the Primewest residence from Mr. Noval. Similar on the right, they say 50 feet elevation difference. And the property line is 15 meters from the Maui Pine property. Okay. And I'm not sure exactly where the trail is, but Mr. Abbott did say very close to the road, so we're looking pretty close to where the road is proposed – the trail is proposed to be.

The second double picture, "No. 3" and "4" in the back is from the makai shoulder view towards Honolua Bay also. And the trail would be on the right – to the right, and the Kaaihui home is at the left. Obviously, you can tell already that the Kaaihui home is not gonna be anywhere near 50 meters from the trail.

Photograph No. 5, also from the makai shoulder shows the view towards Lahaina. The Kaaihui home at the right, and the trail would be somewhere to the left. Photograph No. 6 from the mauka shoulder—all of this is written on the back of the pictures, by the way—towards Honolua Bay, Kaaihui home at the left, the trail would be to the right. No. 7, from the makai shoulder view towards Honolua Bay, Kaaihui home at the left.

I can tell you from my own inspection that that road, Honoapiilani Highway there, the traveled portion of the road is maybe 20 feet across. If you include the paved shoulders, maybe 25 feet. Now if as Mr. Abbott indicated, that trail is going to be close to the road, let's look at the Kaaihui boundary, the Primewest property, to the makai side. You can see from I think Photographs 7, 5 – that's 5, 6, and 7, how close the Kaaihui residence is actually to the highway—maybe 20 feet. So we're looking at a distance of perhaps 50 feet to the trail, I don't know, somewhere in that area since Mr.

Abbott indicated that the trail is going to – is planned to be close to the road.

The standard which the Commission is asked to apply to this petition is to determine whether a landowner will be so directly and adversely impacted that – by the project that he has – his interests are different from that of the general public. Except for Maui Pine which might own land on both sides of the trail, it seems to me that the Primewest situation is perhaps unique. You got land on the mauka side of the Maui Pine property over which the trail is gonna run, and land on the makai side next to the road, which is actually – the house there is actually closer to where the trail is proposed to be than the main house on top.

Now, I think it was emphasized by the planner that the residence belonging to Primewest or used by Primewest principal is actually the one on the top which borders 45 feet away – 15 meters away, 50 feet above. Fine, but Primewest also owns the makai property, makai of the road.

Now, since this matter was brought up, I will tell you why I think he called it a lease. It's just a lease, but it's an extremely favorable lease. The reason that Primewest owns the makai property is a partition action by the family of the late John Kaaihui. The three sisters wanted the property sold. John wanted to live there, have his family live there at least until his daughter graduated from high school. Knowing this, and Mr. Noval, the principal of Primewest, knew that. And because he had the wherewithal to purchase the property, he did. He paid on the partition sale. And is allowing the Kaaihuis to remain there at a very, very, very favorable lease arrangement, if you want to call that. It's basically almost free. And while the Kaahuis did receive the one-fourth share that was Mr. Kaaihui's in the property. Now, I say this only to indicate why it is that Primewest owns that property, and why I keep talking about it as a Kaaihui residence, the family has lived there for decades. Okay? What I'm trying to say is that if Primewest had not purchased the makai property, the Kaaihuis would not be living there today. So I believe Primewest should be admitted as an intervenor as a matter of right because its interests are markedly different from that of the general public. And in fact, I think it's unique. I have not heard of anybody else who has property on both sides traveling this trail.

Secondly, the rules of the Planning Commission indicate that interventions should be freely granted unless it's gonna be cumbersome, unless somebody else has the same interest, etc., which I don't think you find here.

Thirdly, to my knowledge, the billboard—that's Honolua Store—indicating – showing the trail as though it's a done deal even though they're only applying for it here now, I believe it's still there. I can be corrected if I'm wrong, but I don't think so. In other words, the applicant has assumed that this Body and anybody else that needs to in the County or the State has approved of the trail, and is showing it on advertisements right

there in front of Honolua Store for all to see even before you act on it. I believe that it's in the record what my personal beliefs were about Maui Pineapple Company. I won't go into that. However, here we have an applicant who I don't know through negligence or disdain presumes to advertise this trail prior to its approval, and who may have a petition for intervention who has properties on both sides of the trail. And whether it's Mr. Noval, Primewest, or the Kaaihui Family, the makai property is very close to the trail, and they're gonna hear whoever goes by. And they gonna have a lot of foot traffic going by their home in the future. I believe that this Commission should grant Primewest's petition to intervene. Thank you. I'm open to any questions if—

Mr. Hedani: Thank you, Mr. Kosaka. Questions from the Commission? Commissioner U`u?

Mr. U`u: Is anybody present from the Kaaihui Ohana?

Mr. Kosaka: No, I didn't ask them to come because I thought that, you know, it would kinda disturb them, and I that could indicate how close their house was because that's what the Commission— See, the meeting was two weeks ago, Mr. U`u. And they asked us to show just how close it is. And so I was trying to show that it's maybe — the house is maybe 50 feet from the trail.

Mr. U`u: So who's filing the intervention: Primewest or the Kaaihuis?

Mr. Kosaka: Primewest. Primewest.

Mr. U`u: Okay. So I've been hearing—

Mr. Kosaka: Because it's the property owner.

Mr. U`u: No, I understand that, but you make it seem like — are they opposed to it also: Kaaihui?

Mr. Kosaka: Certainly. Mrs. Kaaihui told me and I indicated it before that she had to kick people out from across the street who was trying to camp there one night about two o'clock in the morning from — across where the trail was gonna be.

Mr. U`u: So you're telling me that they're gonna hear people walking by the trail?

Mr. Kosaka: Well, they not just going be walking. They gonna be quiet? They going make some noises, I'm sure.

Mr. U`u: That's gonna affect—?

Mr. Kosaka: Well, you know, see, if you look at the situation—

Mr. U`u: This is what I'm looking at. You told me about people own property. It's different. They own two sides, you know, the property owners. I see a lot of conceptual plans coming up, your point no. 3 where the billboard at Honolua Trail. We see a bunch of conceptual plans prior to it even being approved. And I'm not against that at all.

Mr. Kosaka: Well, they showed – what they showed, they advertised 80 miles, is what they said. Okay? Eighty miles of trails or something like that. This particular trail is only 3.5. Now although in writing they talked about 80 miles, the photograph at the back of the billboard is only of this trail, seems to me, as far as I can tell.

Mr. U`u: So what do you guys want? You guys wanted the trail to be lost? Rerouted?

Mr. Kosaka: Well, I don't know that it needs to be rerouted. I think that we have to be particular, and be careful about the details, the particulars, of where this trail runs, for instance, in-between the properties, and how, you know, measures can be taken to minimize the disturbance to any resident.

Mr. U`u: Rubber slippers.

Mr. Kosaka: Maybe. That's a good idea.

Mr. U`u: Rubber slippers.

Mr. Kosaka: There you go.

Mr. U`u: My thinking is when the attorneys get involved like we had the last time, and they come up screaming about chemicals and fertilizers, and what happens is we lose out on affordable, living units which happened, and it was all in the name of views. So I have some regards to attorneys being involved, because at times, it is a black eye for the community and no benefit to the community. That's just my take.

Mr. Kosaka: I understand that.

Mr. U`u: Yeah? I think you understand that.

Mr. Kosaka: Sure.

Mr. U`u: "Swimming with sharks," they call that. Yeah?

Mr. Kosaka: Yeah, but I think this is a different situation.

Mr. U`u: Yeah, possibly. They all say that, though. Every attorney says that.

Mr. Kosaka: I don't see anything in this application—

Mr. U`u: You and everybody else.

Mr. Kosaka: That talks about affordable housing.

Mr. Hedani: Commissioner Iaconetti?

Mr. Iaconetti: Mr. Kosaka, you made a comment that had Primewest not purchased Kaaihui's property that they would not be living there at this time.

Mr. Kosaka: That's correct.

Mr. Iaconetti: Can you explain that?

Mr. Kosaka: Okay. There were five children, as I understand it. One of whom said she didn't want anything to do with it. The other four each got a one-fourth interest: three sisters and Mr. John Kaaihui. John had been living there for years. And the three sisters got a lawyer, I guess Mr. U`u can appreciate this too, got a lawyer and sued John Kaaihui for partition of the land. Now, this is in the court. A partition is a proceeding where you say, okay, if you can divide it up in-kind, you divide it up in-kind. Had it been \$20 there and four people, the court would've said okay, five bucks each, you're outta here. Okay? But this is land which cannot be subdivided. So the only solution is to sell it. And John did not have the money to buy his sisters out. And the court was ordering they be sold. So Mr. — Primewest basically was almost like a lender, but it ended up owning it because it had to either have a huge mortgage on it, or it could own it outright, and it was okay with John, you know, to have Primewest own it as long as he could live there. And he was living there until he tragically died in a diving accident one night last year.

Mr. Hedani: Commissioner Iaconetti?

Mr. Iaconetti: In the event that the remaining Kaaihuis decide that they don't want to live there anymore for any one of the number of reasons, what would Primewest expect to do with that property?

Mr. Kosaka: Primewest expects to hold it. It's beachfront property. It has access to the ocean even from where he is, currently.

Mr. Iaconetti: But by owning it, you mean you'd sell it out for some home?

Mr. Kosaka: No, own it. Keep it.

Mr. Iaconetti: For what purpose?

Mr. Kosaka: Because he doesn't need to sell it. And it is at the ocean. And he – I believe, part of the arrangement with the Kaaihuis was that they were gonna let him go through their property to launch, you know, boats, small ones. He wants to keep it for that purpose.

Mr. Iaconetti: But Primewest would not expect to do any development there?

Mr. Kosaka: No, no. There is no idea of development. Honestly, the whole idea was to allow the Kaaihuis to remain there.

Mr. Iaconetti: I'm very familiar with this property and with the Kaaihuis. They're old patients of mine. And it is a beautiful piece of property. And I have a hard time believing that Primewest wouldn't want to develop it in some way.

Mr. Kosaka: No. I think, for instance, Primewest is also interested in other pieces of property not for speculation, but like to build a riding arena. Okay? He has four daughters. All of them ride and one of them is a world class barrel racer. It's not to sell. Primewest does not need to sell the property. It is bought to keep it.

Mr. Hedani: Commissioner U`u?

Mr. U`u: How long is the lease for to the Kaaihui Ohana?

Mr. Kosaka: Well, it's probably – it's five or ten years, depends on what the Kaaihuis gonna do. And this is to allow – John Kaaihui specifically told me that he wanted his daughter to grow up on the property. The ten years would allow her to do it.

Mr. U`u: So how long?

Mr. Kosaka: Five or ten years.

Mr. U`u: Five or – that's a big difference. That's twice–

Mr. Kosaka: No, no, no. It's initially for five, but they can go for five more is what it is. So, you know–

Mr. U`u: So are they involved in the intervention? Or was it Primewest?

Mr. Kosaka: Primewest has done it for itself and really on their behalf because they're

the residents. He wants to make sure they're okay.

Mr. U`u: Who's okay?

Mr. Kosaka: The Kaaihuis.

Mr. U`u: Are they okay?

Mr. Kosaka: Yeah.

Mr. U`u: Okay, good. It's a good thing.

Mr. Hedani: Any other questions for the testifier? Commissioner Hiranaga?

Mr. Hiranaga: So did the – did you make any negotiations with the Maui Pine regarding issues of relief? Was there any attempt to negotiate?

Mr. Kosaka: I believe there was. Okay? I'm pretty sure there was, but I was not involved directly in those negotiations. I only came on at the time it was realized that somebody had to file an intervention. That's why I was asked to do it. The negotiations took place mainly I think between the Primewest principal and Maui Pine. And I was not party to those negotiations, although, I'm, you know, trying to recreate exactly where the parties were in the negotiations with a view to discussing this with the applicant, but I don't have all the information I need yet.

Mr. Hiranaga: So in the past two weeks, there's not been any attempt to contact MLP to—

Mr. Kosaka: There has been communication between MLP's attorney and myself.

Mr. Hiranaga: But you've not been able to come to an agreement?

Mr. Kosaka: Not to an agreement, no, not yet.

Mr. Hiranaga: But you have specific requests or demands?

Mr. Kosaka: Yes.

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

Ms. Joan Pawsat: Can you explain to me perhaps the difference between foot traffic and cars that go through all the time? I mean, people are allowed to pull off on the side of the road. I mean, this is a thruway. You keep mentioning that it's unique 'cause

there's property on both sides, but there's still a road in the middle. I mean, there's still public access.

Mr. Kosaka: Yes, that's true. The road is not very wide, though. It's a little road. I've seen subdivision roads that are wider than that.

Ms. Pawsat: But it's the one road that's there, right?

Mr. Kosaka: That's it. That's it.

Ms. Pawsat: Yeah, so— But basically, it's basically, you want the predominance of your one individual, Primewest, to have — his benefit should outweigh obviously, the greater community than one person's interest.

Mr. Kosaka: I don't—

Ms. Pawsat: Because you can't really speak on behalf of the Hui. I don't think that really is your place.

Mr. Kosaka: Of who?

Ms. Pawsat: The people who live there now.

Mr. Kosaka: Well, technically, they're his tenant.

Ms. Pawsat: Well, yeah, but I don't think you're entitled to speak on — you're speaking on behalf of Primewest.

Mr. Kosaka: Well, let's assume that the Kaaihuis move out next week. He would have to put somebody else there maybe.

Ms. Pawsat: It's really difficult to ascertain your motivations, and it really gets blurred coming through an attorney, so maybe you should just stop the conversation.

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

Mr. Kosaka: Thank you.

Mr. Hedani: Greg Garneau, Maui Land and Pine?

Mr. Greg Garneau: Good afternoon. Thank you, Chair and members of the Commission. I just wanna go over real quickly what we talked about last time in regards

to the standard for granting a petition to intervene.

The SMA permit application that's before you includes all of the lands where the trail would traverse. And there's 16 TMKs that are involved in the application, including land within the SMA and some that's outside of it that was included. The land outside of it is that portion that's on the mauka side in the area of the Primewest property. Mr. Noval's parcels themselves are not subject to your action because the trail's not located on those parcels. The trail does not cross his makai parcel and it does not cross his mauka parcel. It will be on MLP land in that area.

He stated that as the owner of the Parcel 31 which is directly adjacent to the Kapalua Trail that he has the right to intervene on that basis. That's not exactly true. Their mauka parcel borders MLP land with the trail located the furthest possible away from Mr. Noval's land and all the lots of Plantation Estates. In fact, as I mentioned last time for those of you who weren't here, it's located along the roadway in the area where you normally would expect there to be a walking trail or a sidewalk. That's where it is in this area. Mr. Noval also had stated he's the owner of the parcel on the makai side which is Parcel 19. And that parcel, the trail doesn't traverse that either. The trail's on the opposite side of the highway.

So when we look at the Maui Planning Commission Rule 12-201-41(b) that talks about intervention as a right, it's Mr. Noval's burden to show first that he's a person with a property interest in land subject to Commission action. Now, it's our position that he has not demonstrated an interest in the land subject to Commission action, and that land subject to Commission action is not all the land in the general area, or even all the land within the SMA. It's the land that's designated in the permit application. And therefore, does not – met this...(inaudible)....

So then we continue down with the definition. It says that he's a person who lawfully resides on said land. Well, the testimony we just had from Mr. Kosaka is that the Kaaihui Family live on the makai side and not Mr. Noval. I don't believe there's been any testimony. We've been referring to the residents on the mauka side as Mr. Noval's – or Primewest residents, but I don't believe there's been anything in the petition that establishes that he lives there, when he lives there, how often he's there.

And so then we get to the third part which Mr. Kosaka focused on. It says:

...or can they demonstrate that he will be so directly and immediately affected by the matter before the Commission that his interest in the proceeding is clearly distinguishable from the general public....

So it's this one I think that I would ask you to spend the most time on. Mr. Noval has petitioned – says that he's affected by the application for the trail in three ways. First,

he talks about there being significant adverse visual impacts. Well, we all know that views are protected in an SMA application process under Hawaii Revised Statutes 205A-26(3)(D). And that says:

The authority shall seek to minimize where reasonable any development which would substantially interfere with or detract from the line of site toward the sea from the State highway nearest the coast....

So the State law, what it does, and that's what you're being asked to apply, it protects the public's views, not the private views from the lands that are from the highway. So Primewest land on the mauka side, those views are not protected by the SMA process. There may be some other process, you know, the court process or others, but not this process. On the makai side, the trail on the mauka side is not gonna affect the views at all because it doesn't intersect anywhere. So in terms of significant adverse visual impact, there's no relief that this is Body can give Mr. Noval for what he's asking for.

The second thing they talk about in their petition was significant adverse noise impacts. Again, there's a rule on that. It's Maui Planning Commission Rule 12-202-12(e)(2)(i). And it gives the power to the Director of Planning to evaluate whether the proposed action will detrimentally affect ambient noise levels. To do that, an environmental assessment was done and no significant impacts were found. The Director concluded that the potential noise impacts were temporary and could be mitigated. And the Director imposed mitigation measures for construction area noise. So that environmental assessment, as you know, was already accepted by this Body. And at the time, neither Primewest or Mr. Noval intervened or made any attempt to challenge that. And so as part of the SMA permit process now, noise is not a coastal resource that is regulated under 205A. He would've had to have brought that part of his claim earlier. In any event, it does sort of stretch the imagination to think that the noise impacts would be any greater for pedestrians walking on the trail than for all the trucks and – I know Commission Iaconetti has talked about all the traffic out in the area that's already there anyway.

The third thing is economic harm which was alleged. The economic harm to Primewest, if any, associated with locating an access trail along the highway is again, not an interest that's protected by the SMA law. The objectives of the Coastal Zone Management Act at 205-2(b)(1) are to provide coastal recreation opportunities accessible to the public. And the policies are to provide recreational opportunities in the coastal zone management area. Therefore, in Hawaii, what our State legislature has done is they've already done this balancing between the private interest of the landowners not to be bothered by people walking around or near their property, and the public interest of the general public to be able to access this shoreline and along it. So the trail that's being proposed is actually one that meets the needs of the legislature that

– objectives and polices the SMA is being sought. So if there were any issues that related to economic harm again, that's not for the Planning Commission to decide. That could possibly give rise to a taking claim, or a court action, a legislative remedy with the State, but not here, because you're being asked to impose the policies and objectives of the State law.

So then we get to what other issues are at stake. It is true that we've had some, you know, discussions between MLP and Mr. Noval, and it hasn't been resolved. But I will say that those discussions evolved around issues that are really private issues that relate to easements, and access, and landscaping, and so forth that are not really part of this process either. They are things that either the parties will be able to work out, or if Mr. Noval believes he is entitled to some sort of access or easement, then he would have to go to court to enforce that. So they're unrelated as well.

So at this point, our position is that as it's been alleged in the petition, as been told to you today, Primewest and Mr. Noval have no interest that's separate and apart from the general public. And so they do not have the right to intervene as a right. And when you talk about leave to intervene, they won't add anything to this process except for delay. And you've had an opportunity to hear from them today and we think that's sufficient for these purposes.

Mr. Hedani: Thank you, Mr. Garneau. Any questions for Mr. Garneau from the Commission? Seeing none, thank you very much. Oh, Commissioner Hiranaga, can you use the microphone?

Mr. Hiranaga: I'm not sure if it's a question for you but for the applicant.

Mr. Garneau: Okay.

Mr. Hiranaga: So the trail will abut the State road right-of-way? Is that correct?

Mr. Garneau: It will be as close as possible. I believe it's within – is it five meters?

Ms. Yarrow Flower: (Inaudible)

Mr. Hedani: You have to identify yourself for the record and speak into the microphone.

Ms. Flower: Yarrow Flower, development coordinator, with Maui Land and Pineapple Company. The trail is currently programmed to go as close to the road as possible in the area that we're discussing so as to respect the privacy of the owners in Plantation Estates. We will keep the trail a minimum of five feet away from the highway for safety reasons.

Mr. Hiranaga: Will there be any type of improvement that defines the boundary line between the State highway right-of-way and MLP's private property like you gonna have a curb or a hedge?

Ms. Flower: No, it'll be a green space. It's currently in that area mostly like molasses grass, invasive species, that type of a thing. We'll maintain a buffer zone, if you will, between the trail and the traffic, but we're not looking at any kind of concrete curb. It's a natural surface trail in that area.

Mr. Hiranaga: And could you define "natural surface?"

Ms. Flower: That would be soil or aggregate.

Mr. Hiranaga: Loose aggregate?

Ms. Flower: No, it'd be compacted aggregate. Generally, we'd only use compacted aggregate in an area where you get a real sticky soil. So if it's a lower elevation, we'll use the compacted aggregate, but it will still allow water to percolate through.

Mr. Hedani: Commission Iaconetti?

Mr. Iaconetti: Would Maui Land and Pineapple consider some sort of an obstruction so that people walking on that trail wouldn't achieve beach access to the property that's makai of the road?

Ms. Flower: That's something that we could consider. Currently, the Kaaihuis there have several large pit bulls which do that very effectively. Beach access through the Kaaihui property is not currently a problem, to my knowledge.

Mr. Iaconetti: Because people can't park on the road there. But if people are walking on that trail, they might be interested in achieving the beach. It's not a very long distance from the road to the beach. And I've got my own feelings about pit bulls, but I don't think we ought to consider them an obstruction.

Ms. Flower: It's certainly something that we would consider, yes, if it was a problem.

Mr. Hedani: Any other questions for the testifier? Seeing none, thank you very much, Mr. Garneau. Is there a staff recommendation on this, Director?

Mr. Hunt: Thorne, would you like to give a recommendation?

Mr. Abbott: Yes, if it's that an appropriate manner of progression, according to Corporation Counsel.

Mr. Hedani: Are there any members of the public that would like to offer testimony on this agenda item? Okay, seeing none, the public testimony is closed. Thorne?

Mr. Abbott: Okay.

Mr. Hunt: Mr. Chairman, could I have Ann Cua address the Commission, if that's okay?

Mr. Hedani: Sure.

Ms. Ann Cua: Could we just take a short recess so I can just check with Thorne real quick? I'm sorry. Two minutes.

Mr. Hedani: Two-minute recess.

(A recess was then taken at 1:51 p.m. and the meeting reconvened at 1:53 p.m.)

Mr. Hedani: ...Mr. U'u to come back from the restroom very quickly. Director?

Mr. Hunt: After conferring with our legal counsel, staff has no recommendation to make on this matter.

Mr. Hedani: Staff punts. We're on our own, gang. Commissioner Starr?

Mr. Starr: Okay, I have a recommendation. I'll start. How the party – his interests really aren't different from the public's because there is quite a large buffer between the property and the trail. The trail is, in essence, a sidewalk on an existing road. And to say that, you know, a non-adjointing property owner really is impacted by having a, you know, a place where the public can walk, it just doesn't seem to have a nexus. And with that in mind, I don't see the basis for the intervention under the criteria as laid out to us. So my motion would be to dismiss the application for intervention.

Mr. Hedani: Motion to deny intervention.

Mr. Starr: Yeah, deny the–

Mr. Hedani: Is there a second?

Ms. Pawsat: I'll second.

Mr. Hedani: Seconded by Commissioner Pawsat. Discussion?

Mr. Iaconetti: I wonder if – may I?

Mr. Hedani: Commissioner Iaconetti?

Mr. Iaconetti: I wonder if you can clearly justify the reason for denying the intervention. On what basis?

Mr. Starr: Well, speaking for—

Mr. Hedani: Commissioner Starr?

Mr. Starr: Yeah, speaking for the motion, I don't see how the applicant's — I don't see how the applicant's interests are differentiated from those from the general public the way they would be, say, if the property were adjacent to where the trail were going to be, or where, you know, even at the same level as the trail. The house is quite a ways above it. The other property's below. Just — there just doesn't seem to be a nexus of connectivity between where the trail is and the parcel that leads me to feel that they have a unique interest in being able to intervene. You know, it seems that their interest lies more in having that area kind of be more of a private playground and not wanting to let other, you know, people into that area even though they only own certain parts, certain portions of it, which are not adjacent to the trail in question. And they, you know, they are along a public road right-of-way and entirely surrounded by Maui Land and Pine land.

Mr. Hedani: Commissioner U`u, we have a motion on the floor to deny the intervention by Commissioner Starr, seconded by Commissioner Pawsat, and we're in discussion. Any further discussion? Commissioner Pawsat?

Ms. Pawsat: Yeah, I just agree with the fact that there's a public road there, and considering the fact that Lahaina's not so rural anymore, I think most of these areas have public sidewalks adjacent to the roads, and it's just, surprise, surprise, the infrastructure is not caught up.

Mr. Hedani: Commissioner U`u?

Mr. U`u: I'd just like to add a comment that I think the intervenor's petition is weak, flat-out weak.

Mr. Hedani: Any further discussion? You ready for the question? If there is no further discussion, all those in favor of the motion to deny the intervention, signify by saying aye. Opposed, nay.

It was moved by Mr. Starr, seconded by Ms. Pawsat, then

VOTED: to deny the intervention.

**(Assenting - J. Starr, J. Pawsat, W. Iaconetti, B. U'u,
K. Hiranaga.)**
(Excused - J. Amarin, J. Guard)

Mr. Hedani: **Carried.** Thank you. **The intervention is denied.** Director? Corp. Counsel?

Mr. Giroux: Could the applicant's attorney prepare the order as far as denying the petition?

Mr. Hedani: Gary?

Mr. Giroux: Greg.

Mr. Hedani: Oh, Greg, sorry.

Mr. Giroux: Could we have you prepare the order?

Mr. Garneau: Yes, I'd be happy to.

Mr. Hedani: Thank you.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr?

Mr. Starr: Just a point of order: what's the Chair's pleasure in how we're gonna proceed here? I know you're gonna have to take off. I also know we should be getting on to the policy plan, but we also have a room full of people on various issues. So what are we gonna do?

Mr. Hedani: We have two people that have indicated an interest in testifying: Mary Naylor and Nicki Strange. Strong? Stong? Sorry, Stang. Butchered that one pretty good. And we also have Jim Smith, was it? Jim Smith interested in testifying on the General Plan. We need to elect a Chair Pro Tem also, which actually I'd like to do in the next two minutes, and have you decide what you wanna do after that.

Mr. Starr: Before we do that, do we need to defer the rest of this item? Or was the only item--?

Mr. Hedani: You can do that. You can do that as well.

Mr. Starr: Because we still have the item before us without the – stripped of the intervention.

Mr. Hedani: That's correct. So would you like to do the election first?

Mr. Starr: Sure.

Mr. Hedani: Nominations for Chair Pro Tem? Commissioner Hiranaga?

Mr. Hiranaga: Based on seniority of service, I'd like to nominate Dr. Iaconetti.

Mr. Starr: I second.

Mr. Hedani: Moved and seconded to elect Dr. Iaconetti as Chair Pro Tem. Any discussion? Any other nominations? All those in favor, signify by saying aye. Opposed, nay.

It was moved by Mr. Hiranaga, seconded by Mr. Starr, then

**VOTED: To elect Commissioner Iaconetti as Chair Pro Tem.
(Assenting - K. Hiranaga J. Starr, B. U'u, W. Iaconetti,
J. Pawsat)
(Excused - J. Amorin, J. Guard)**

Mr. Hedani: **Carried.**

Mr. Iaconetti: What do you call this: railroad?

Mr. Hedani: Dr. Iaconetti, I yield the Chair to you.

(Mr. Hedani was excused from the meeting at 2:00 p.m.)

Mr. Iaconetti: I hope all will understand that this is my first attempt at Chairing this Commission, and please be patient.

Mr. Hunt: The Commission has two Unfinished Business items before you. The Commission has also provided direction to staff that we should allocate a block of time in the afternoons to deal with the Countywide policy plan. So it's up to the Commission on what you want to do. The first order of Unfinished Business involves the Kapalua Coastal Trail which you just heard an intervention on. Since the intervention was denied, we could continue with that item. Following that, there's a subdivision application involving some entitlement changes. We could hear that also. Or we could

simply go into the policy plan at this time. There's also some people who have indicated they wanted to provide testimony. So you could get the testimony, and then go into the policy plan. You could get the testimony, and continue on with the Unfinished Business. It's up to the Commission.

Mr. Iaconetti: I would personally like to finish the Maui Land and Pineapple business, D-2, since they've been doing this for months, and since the intervention has been denied, I'd like to get that completed. So we will start D-2.

Mr. Hunt: You wanna ask for a consensus?

Mr. Iaconetti: Is there a consensus to approve the Maui Land and Pineapple—

Mr. Hunt: To hear it.

Mr. Iaconetti: Oh, alright. Okay.

Mr. Hunt: Let me help you out, Doctor, is that okay?

Mr. Iaconetti: Sure.

Mr. Hunt: Is there—? If there's no objections from the Commission, we'll continue on with Item D-2. And so I heard no objection.

Mr. Starr: Could I just ask a process question regarding if we don't get through the policy plan stuff today, is there any harm to that? I mean, can we – is there another way we can fit it in or schedule a special for that? Or put it – bump it down the road?

Mr. Hunt: We'd either – you'd have several options. You could stay later. We could add it on to – if we don't finish it today or address it today, we'll have to add it to another meeting, and either extend that meeting. A third option would be to hold a special meeting especially, if we start getting behind in our schedule.

Mr. Starr: I'll have to leave at 5:00 p.m. So we'll lose quorum. But we shouldn't – I'm happy – I'm fine to proceed.

Mr. Iaconetti: Good.

Mr. Starr: You know, I just don't know where we'll catch up somehow.

Mr. Iaconetti: Well then, do we have agreement that we'll proceed with Item D-2, and the coastal trail project?

Mr. Hunt: Then what about the people who want to testify on the Serle? Do you wanna hear them today since they've showed up?

Mr. U`u: I would have to leave at 4:00 today, but I would like to hear the vote, the coastal trail, and Ron Serle, 'cause I know some of the people been here from the morning waiting. And I think if need be that we have a special hearing, take it on our part, since we're the volunteers, and tackle your GPAC.

Mr. Hunt: Tackle the policy plan?

Mr. U`u: Tackle the policy plan.

Mr. Hunt: We'd love you to tackle the GPAC.

Mr. U`u: I think it's been tackled by itself.

Mr. Hunt: Just for the record, that was all in fun.

Mr. Iaconetti: Yes?

Mr. Hiranaga: Regarding Item D-3, I will be recusing myself from the voting on this matter at this time.

Mr. Iaconetti: Yeah, that'll leave us without a quorum.

Mr. Hiranaga: Just from the voting. I mean, you can still – you can allow them to testify.

Mr. Hunt: How about if we do D-2, and then allow people to testify for Serle, and take it from there, unless there's objections?

- 2. MR. RYAN CHURCHILL of MAUI LAND AND PINEAPPLE COMPANY requesting a Special Management Area Use Permit for the Kapalua Coastal Trail Project and related improvements at TMK: 4-2-004: 004, 010, 012, 014, 015, 016, 017, 024, 025, 032, 034, 037, and 043; and TMK: 4-2-005: 041, 042, and 049, Kapalua, Lahaina, Island of Maui. (SM1 2006/0026) (T. Abbott) (Applicant has subsequently deleted TMK 4-2-004: 043 and TMK: 4-2-005: 049 from the request.) (Public Hearing conducted on September 11, 2007 and matter deferred. Commissioners: Please bring your materials with you.)**

Because there were no objections stated, Mr. Hunt then read the agenda item into the record.

Mr. Starr: Mr. Chair, could I have a really short recess while they're setting up because you're gonna lose quorum when I go to the head. I'll run.

Mr. Iaconetti: Alright. We'll have a short three-minute, two-minute recess.

(A recess was then taken at 2:06 p.m. and the meeting reconvened at 2:08 p.m.)

Mr. Iaconetti: We'll hear from the Planning Department now concerning the Kapalua Coastal Plan – Trail.

Mr. Abbott: Thank you very much, Chairperson Dr. Iaconetti. And I recall you mentioning you hope that this gets built before you are no longer on the Commission, but now you're Chair, so I think we'll see through it. Thank you very much.

Mr. Abbott then presented a summary of the Maui Planning Department's Recommendation report.

Mr. Iaconetti: Thank you. Are there any questions of the Planning Department? Hearing none, what is your—?

Mr. Starr: Mr. Chair, I just don't know if we need to – well, I always think it's good for them – to take public testimony, if there's any to be offered. And after that, I'll be happy to make a motion.

Mr. Iaconetti: Good. Is there anyone here that would like to speak on this? Yes? Please state your name.

Mr. Nicki Karen Stang: Hi, Commissioners. My name is Nicki Karen Stang. I am a member of Save Honolua Coalition Board, but I'm offering this information to you today as a Napili Bay resident, a regular bay swimmer, and an occasional surfer.

In looking at the – my main concern—I just want to cut right to the point, not take up a lot of your time—is really the final sections of this trail: Sections 25 through 29. I do believe that the Kapalua Coastal Trail has significant merit within the Kapalua Bay Resort area. However, I am concerned that the trail section going from Mokuleia Bay to Honolua Bay will be primarily used as a new and easy access to Honolua Bay for cars that are parked alongside the road. And this would – this could nearly double the daily visitors to this area. And we all know it's a diminishing marine life conservation district. The Coastal Zone Management Act, in the Coastal Ecosystem Section states an objective to protect valuable coastal ecosystems including reefs from disruption and minimize adverse impacts on all coastal ecosystems. Policy A, "Exercise an overall conservation ethic and practice stewardship in the protection, use, and development of marine and coastal resources."

Now, the parking space numbers in the final environmental assessment did not mention the current roadside parking in this area which is significant, and particularly when you put that in the context of a Federal marine environment. Honolua Bay has suffered an alarming decline in coral cover. In just the last ten years, it's gone from 42% to 9%. And there's at least two different studies that have cautioned that recreational overuse of Honolua Bay is a threat to the health of the reef there. The coral reef assessment and monitoring program cites that human use patterns may also negatively impact the reef area which can explain the observed decreases in coral coverage there. Also, the U.S. Coral Reef Task Force, Local Action Strategy, cites that in the Honolua ahupua`a, besides land-based pollution, priority threats to the coral ecosystem are recreational overuse, alien and invasive alga species, and illegal fishing. They further – they provide a recommendation that a study of the carrying capacity of Honolua Bay is proposed to provide recommended restrictions on the use of the bay that can be translated into infrastructure measures to restrict access such as the size of the parking lot and other facilities.

I'm sure a lot of you have been to the area. You know there is extensive roadside parking just right around the Honolua Bay area. It can be as many as a hundred cars in a day. That can translate to a maximum of 700 people going to the bay. And when you put in this trail section that goes from Mokuleia, the next bay over, over to Honolua, it's two-tenths of a mile. So I went out there. I actually, like, counted out the potential parking areas out there, and it's potentially 90 cars within that two-tenths of a mile parking area. So what is the reality of people parking along the roadway and using the coastal trail just as an access point to Honolua? Ninety cars, doing some simple math, if each car is carrying about on average two and a half people, and say the turnover is two and half rotations in a day, that could be as many as 560 additional people to this area.

The other impacts to the environment in this area are uninformed visitors trampling the reef. There's human waste issues. There's trash issues and there's potential disruption of archaeological sites. I also envision the potential for additional runoff and erosion from the proposed stairway that's going down the cliff side, and suggest that one of the existing trails that are both relatively flat remain as their primary entrance.

Mr. Iaconetti: Excuse me?

Ms. Stang: Yes?

Mr. Iaconetti: Could you finish your testimony? It's been four minutes.

Ms. Stang: Okay. Oh, I'm sorry about that. I just – I believe that this final section of the trail from 25 to 29 should be part of a bigger planning picture and involve more people in the process. And I do support the creation of a community-based management

program that will help to protect this cherished and threatened area. At a minimum, we really need to address the visitor education, capacity, access, parking issues, and facilities.

Mr. Iaconetti: Thank you. Are there any questions of the testifier?

Mr. Hiranaga: You said you're part of the Save Honolua Coalition?

Ms. Stang: Yes, I am.

Mr. Hiranaga: I was just – your personal position on the parking situation on the point above which is the main access for surfers, I mean, that must provide a lot of erosion runoff into the bay. Are you in favor of allowing that to continue? Or are you opposed to having public access on that point?

Ms. Stang: That – actually, that part, the surfer access, is on a dirt road on the bluff that's actually on the opposite side of the bay, and is not part of the coastal trail. But if you're asking my opinion on that there–

Mr. Hiranaga: You talked about reef degradation, so–

Ms. Stang: Yes. I've heard that it would be possible to – and I would support regrading that road so that it angles away and does not contribute to continued runoff. I'd heard that it was possible and that permits were needed in order to achieve that.

Mr. Hiranaga: Okay. Thank you.

Mr. Iaconetti: Are there any other questions of the testifier? What exactly then are your suggestions as to what should be done within that trail?

Ms. Stang: I don't think – well, I think that it's – I don't think it shows good environmental stewardship, or reasonable, responsible planning to allow nearly – to allow the trail to go out there until there is some sort of management plan in place. I mean, we're talking about potentially, 1,100 users to that area.

Now, if the bay out there was – if we had a healthy reef, and there wasn't the runoff, and human – uncontrolled human impact going on out there, there'd be a totally different issue, but this reef is dying. Marine biologists have said the reef is dying. So best management practices may not be enough. I would – I want some action to happen that will help – that will give this bay a chance to survive, and recover, and flourish, because it's not now.

Mr. Iaconetti: I understand your problem, but how do we avoid the situation? You say

have a group that manages this part of the trail?

Ms. Stang: I think that there are many different community members and community groups that would be willing to come forward and provide input into the area, and the use of the area. I mean, number one, there's a carrying capacity study that was done I believe – I'm not sure if it's been finished. Those numbers are – need to be released to the public. And also, to look at areas – involve – it would probably also involve other agencies like DOT and DLNR, but there are community – in terms of what can be done, things – some real basic things like trash cans and port-a-potties can be put in the area. Then you need to talk about well, where? Where are those going to go? Can also look at the question of – well, the carrying capacity issue then would address how many people can really go there in a day, and how do you control that access. I don't think there's a really – if there was a really simple solution, we'd have it right now. So I think further discussion needs to occur. Am I answering your question?

Mr. Iaconetti: Yes, pretty well. Are there other questions of the testifier? Seeing none, we will open it to– Is there any other public testimony?

Ms. Stang: Thank you.

Mr. Iaconetti: We'll close public testimony at this time. What is the–? Yes?

Mr. Starr: Mr. Chair, I'd like to make a motion, if that's in order.

Mr. Iaconetti: Certainly is.

Mr. Starr: Okay. I would like to move that we approve this project which will give good public access to the coastline and include all of the conditions as recommended by staff.

Mr. Iaconetti: Is there a second?

Mr. U`u: Second.

Mr. Iaconetti: Second. I will be voting on this, on the motion. Are you ready for the question?

Mr. Starr: Discussion?

Mr. Iaconetti: Yeah?

Mr. Starr: I just want to comment that, you know, I agree with a lot of the comments that we heard from the last testifier. And, you know, I did kind of go off a little bit at the last

meeting, and I kind of apologized to the applicant for going off on them. But you know, I had spent some time the day before there and just found the – you know, what coral is there covered with silt that was coming down the stream, and all of the long type of sea urchins covered up with eucalyptus leaves that had come down the stream even in a dry time. And there were hundreds and hundreds of trucks, dirt trucks, and cement trucks, you know, accessing property. So there are real issues especially regarding the stream. And I also believe that the carrying capacity has to be done, but I'm a very strong believer that public access to the shoreline is one of our chief responsibilities and especially if – you know, we're not a Body that should be preventing people from walking to shoreline areas. We should be encouraging that and that's what this project does. And so I really support this project, but I hope that, first of all, for the time being that Maui Land and Pine do whatever they can to help with the stewardship of this place up above because you're the only entity right now that can, not because it's necessarily your responsibility by law, but you're the people that can. So I ask you to do it and I also ask the citizens of the community to work and form a kind of oversight group that can help improve this and make suggestions. And I know – I'm sure that we'll all support that when the time comes.

Mr. Iaconetti: Thank you. Any other comment?

Ms. Pawsat: I have a comment.

Mr. Iaconetti: Yes?

Ms. Pawsat: I don't think this is necessarily about really about providing access to shoreline areas. I mean, obviously, this whole plan is about giving access really to the whole shoreline area which actually is kind of our problem. You know, there's no reason why part of this trail or more parts of this trail kind of like exactly at Point 26– Is that right before the bay or right at the bay that it doesn't swing up into that and make a mountainside trail to it? I think we're a little obsessed with hugging the oceanside. And it would be good to go up and meet another trail that went up. So – and I don't think it's unreasonable to ask Maui Land and Pine to maybe postpone the building of the last segment of the trail until that reef gets – recovers a little bit. And it's not to say that it wouldn't be ideal for it to open. And technically, it could just go up that gulch and make an even longer extension. So I – you know, I was actually gonna vote in favor of this until I heard the testimony. And it is just because of the fact that I do think it's reasonable to delay the building of the last part. Just delay it until the reef recovers or make an amendment of delaying of that part of it, but build the rest of it. But I think it's a courtesy to at least spare that bay a little bit, you know. And while I'm at it, you know, there's an article in the *Honolulu Advertiser* last week about Wisconsin and their eco-tourism trails that they have. They have 1,500 miles of eco-tourism trails in Wisconsin. And this is a 3.5 mile trail in Hawaii. And it's kind of pathetic in comparison, but okay.

Mr. Iaconetti: Thorne?

Mr. Abbott: Yes, if I may respond to Commissioner Pawsat's very appropriate concerns? There are two items that I wanted to also add. One is that they will have to get a conservation district use permit from the Department of Land and Natural Resources, Office of Conservation and Coastal Lands when they start doing the portions within the Honolua Bay area. The second thing is, the applicant represented earlier and perhaps this was during the draft EA process prior to your joining our Commission that they would be starting at the Kapalua Bay, and the Honolua Bay would be the last portion of the trail to be done, as I understand it. So to address some of your concerns, I think some of those might've been addressed and will be addressed when they have to get a conservation district use permit. So I wanted to add that information for you.

Ms. Pawsat: How long's the build-out on this again?

Mr. Abbott: I believe it's 12 months to 18 months.

Ms. Pawsat: Yeah, so it's not very long. I mean, it's not like the reef's gonna recover in that amount.

Mr. Abbott: No.

Ms. Pawsat: Yeah.

Mr. Abbott: No, it would take a long time for the reefs to recover.

Ms. Pawsat: Right. So- Huh?

Mr. Starr: The reef's getting worse.

Ms. Pawsat: Yeah, that...(inaudible)... So but why is it not possible maybe-? Well, what about the other things like the public facilities like bathrooms and trash cans? I mean, you know, there doesn't seem to be a - you know, putting trash cans are a pretty common thing. Isn't very well done even in any of the park system. And toilets, I mean, that I would think would be at least - if you guys are gonna get me to go along with it, at least have all that stuff in gear, in place there, you know.

Mr. Abbott: Yeah, part of the challenge was - and I think we'd all agree that there's a management problem of people in Honolua Bay. There's a lot of people using it right now and it's very un-managed. And Highways is not really taking care of the road very well to minimize pretty much unsafe parking areas. I think the attempt here was to channel people off the roadway because right now people walk back and forth on the

road and it's frankly, very, very dangerous, and get them off that, channel them down to the kiosk where there's an education center. Currently, Liz Foot and her volunteer organization has a table and does education at the site. One problem is, once you get into the reserve, it's regulated by the Department of Land and Natural Resources. It's not something Maui Land and Pine or even we can have control over, although we can have influence on it. And maybe a good way to go is, you know, to recommend that they start a stakeholder group to come up with a plan.

Ms. Pawsat: Or isn't – I mean, there's portions of property like before and after the conservation districts where they could have, you know, public facilities, right? I mean, that's what you're saying, right? They can't – Maui Land and Pine can't enforce things in the conservation district.

Mr. Abbott: Correct. And even with that, you'd have to get a conservation district–

Ms. Pawsat: Is this whole thing – parts of it are on Maui Land and Property, though. It's not all conservation district.

Mr. Abbott: It might their property, but it might be zoned State land use designation conservation, but I can't speak exactly what the designations are.

Ms. Pawsat: Well, I guess just the fact that this primarily is really an amenity to Maui Land and Pine world. It really should be serviced by them, you know, in some way that doesn't increase damage. And I know there's all these conditions in here, but they can at least – you know, I don't know. You guys gonna say something?

Mr. Abbott: Perhaps–

Mr. Ryan Churchill: Just waiting for the opportunity. Ryan Churchill with Maui Land and Pineapple Company to address some of the comments that are going on right now.

We'd love to put some restrooms in there, permanent ones. We'd love to manage parking better there in Honolua Bay. And have quite detailed plans both engineered and conceptual plans for that area there. As Nicki mentioned, plans on the surf parking area to regrade that to slope it into old pineapple fields to help with runoff there, and all those plans were withdrawn as part of the GPAC process. And that's the process we're going through right now with the County and the Mayor's Office coming up with a plan for that entire area. That would primarily be a public use plan, and maybe a land trust type ownership. Maybe Maui Land and Pine and possibly County ownership in that area. And that's the process we're going through now. It'll probably go on for the next year or so as we come up with a plan that the community can embrace for that area.

Regarding this portion of the trail, it's – this is three and a half miles, but it's three and a

half miles that's in the SMA area, and that's why we're before you today. As Mr. Kosaka mentioned earlier, we have over 80 miles of trails planned, and this does exactly connect up a portion of Honolua Valley to the mauka portion of the trail system that then connects up above, and some of the ridge tops, and across towards Napili with that whole trail system. So this is one portion of the trail network. This happens to be the coastal portion there.

And I think if we segmented it, and stopped at Mokuleia Bay or before Honolua Bay, then you kind of have a trail that's just going one way and dead ends. And it's important to get into Honolua Bay there where people are trying to go to and get them off hopping in their car in the resort, and driving there, and parking, and then scaling down the cliff somehow and have a controlled access. People are gonna be going to Honolua Bay regardless of what we do. So we think providing the proper safe improvements for them is the right way to go. And again, this would connect up to the mauka trails.

Ms. Pawsat: Well, I agree with you. It just feels like maybe you should do it just a little later. You know what I mean? I mean, that's all. I mean, I don't see why that's like a brain-shocker, that one, you know? I mean, it's rational that obviously with the trail, you are just gonna get more people going there. And you still are gonna get all the car people going there at the same time. You're gonna get both, not one swap for the other.

Mr. Churchill: I think there'll be some swapping, you know, of people, but it is a highly used area, and needs to be managed better.

Regarding the recreational use, it is growing. There is an impact on the bay, but we're more concerned with the land-based, runoff type impacts. I think you could have all the recreational users you want, one, big, major, storm event, and runoff coming down that valley is gonna have more of an impact on the reef than years of users snorkeling out there. So that's – we're focused on both those and really looking at ways to help stabilize that valley.

Mr. Iaconetti: Yes?

Mr. U`u: Yeah, just a comment. And I agree, the runoff is the problem. It's not the sidewalk. It's not the pathway. It's the runoff. And if we wait, we'll never get it built. And that's just the way it goes.

I like the path because it's an alternative transportation. I like walking. I would much rather leave my car at home, take my bike, or walk. And even if you do stop the trail right there at 26 or 27, people going continue to go to Honolua Bay because that is the end destination. It ain't gonna stop me. I'm gonna go, that's for sure, whether if the path is there or not. That is my choice and my right to live here to go to these beaches.

And at times, the problem is, you got private homeowners who block off entrances to the beach. And here we have somebody stepping to the plate to benefit the entire community. And we're going to tell we going wait for the reef to heal? I hope the reef heals. That's just my feeling. I want it – I want all to heal, but I don't think that problem is the sidewalk. I think it enhances it. And I think if we can work on the runoff which is a totally different issue here, and we can help the reef recover – but we can use that throughout the whole island. We can say this—hey, the runoff is here. It's in Kihei. It's in Hana. It's in Paia. We got the erosion. Kihei, you know, every place on this island, there is runoff. So what do we do? Stop all building, and stop all sidewalks, and stop roads? That's not the answer. It happens. It rains. It happens, sad to say, but that's not the answer.

Mr. Iaconetti: Thank you, Bruce. I have one question. The area that the surfers use to go down to the surfing area, that's all Maui Land and Pineapple land, is it not?

Mr. Churchill: Correct.

Mr. Iaconetti: Is that possible for adequate parking?

Mr. Churchill: For the surfers?

Mr. Iaconetti: For anybody who wants to use the parking area to achieve the trail?

Mr. Churchill: It's on the opposite side of the bay, so, no, it's not appropriate parking space for this trail because it's on the opposite side of the bay, and you'd be coming down the north side of Honolua Valley there into the floor of the bay, then going back up the other side. And so we see this initial trail portion, you're coming – you're going north starting south.

Mr. Iaconetti: Do you have any other suggestions to take care of the parking needs? We do and I think that will – you'll hear more about that as we continue our discussions with the County and work with the different community groups out there, and what to do in sort of the foot of the bay there, because I think that's where it needs to be addressed is the cars parking along the road there, the safety issues Mr. Starr brought up. The bathrooms issue are a huge issue in that area, and then the education facilities which we will have as part of this trail.

Mr. Iaconetti: Thank you. Are there any other questions? Are we ready for the question? Motion made by Commissioner Starr and seconded by Commissioner U`u. All those in favor of the motion, signify by saying aye. Opposed?

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

**VOTED: To approve this project including all of the conditions as recommended by the Planning Department.
(Assenting - J. Starr, B. U'u, K. Hiranaga, J. Pawsat
W. Iaconetti)
(Excused - W. Hedani, J. Amorin, J. Guard)**

Mr. Iaconetti: **Motion is carried.**

Mr. Abbott: Thank you very much. Mahalo.

Mr. Churchill: Thank you.

3. **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.) (Matter deferred at the August 14 meeting.)**
 - 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.**

Mr. Hunt read the agenda item into the record.

Mr. Iaconetti: Mr. Dack?

Mr. Jeffrey Dack: I guess, the question I would have at the moment is given you've had an indication during the previous discussion that you will not have a quorum for a vote, do you want to take a staff update at this point? Or do you want to just listen to testimony, and have more of a staff update at a subsequent meeting when you're in a position to be able to take a vote?

Mr. Iaconetti: There have been people here waiting all day to discuss this to testify. I think the least we can do is listen to the testimony so that we don't have to expect them to come back again another time. And so if we can go in that direction, please.

Mr. Dack: Yeah, that would be great. Then I'll be prepared to do an update as the – look at the next meeting when you have an opportunity to vote. Thank you.

Mr. Iaconetti: Alright, could we have the public testimony at this time? Anyone that wants to testify on the Serle action?

The following testimony were given at the beginning of the meeting.

Mr. Herman Romero: Good morning. My name is Herman Romero. And I'm here to make my choice in the approval of the rezoning of John Serle, Kokomo Subdivision, on what could be available for half-acre, rural half-acre.

The property that adjoins that area is property my parents bought back in the '50s. And having a big family my parents had, we were unable to divide the land in the interest of giving all the kids the opportunity to own land because of the lack of land available for the two-acre agricultural zone. So with that interest, if it's been approved for half-acre, I definitely will have a share of half-acre that I can pass onto my family.

Now, my family have been here for the longest time, and I believe that area to the surrounding areas of Kokomo has been rezoned for rural half-acre. And within the closeness of our property, and not having the opportunity to have the same, I think we are deprived from having the same right as the neighbors. So I would like to see my share of what inheritance I gained from my parents be available for my interest to pass onto my family. And that is something I would like for you to think of and accept, and I can appreciate that. I thank you.

Mr. Hedani: Thank you very much. Any questions for the testifier? Seeing none. Also signed up for Ron Serle is Margaret DeCoite?

Ms. Margaret DeCoite: Good morning, Mr. Chairman and Committee members. I'm Margaret DeCoite also representing my husband, Kenneth DeCoite. I just want to say I am in favor of the proposed zoning— According to the map that Chris Hart showed us regarding the Paia-Haiku Community Plan, we are totally in favor of that based on the half-acre parcels for that area.

We have three children. We wish to leave each of them a portion of our property which is approximately two and a half acres. At this time, I want to convey that we are in favor of Ron's success in moving forward with this. At this time, I just want to add that although I am in favor of Ron's program or whatever he has to offer, I am also in favor of a lesser density. I'm highly in favor of lesser density for the proposed property that he is trying to have within that Paia-Haiku zoning. So I don't know what else to say. Anyway, thank you.

Mr. Hedani: Thank you very much. Any questions for the testifier? Seeing none, thank you very much. Ed Ferreira? You'll wait 'til it comes up as an agenda item? Jordan Santay? Santos—sorry.

Mr. Jordan Santos: My name is Jordan Santos and I'm from that area—Kokomo. And to my knowledge back in the '60s, the community plan designated that whole area to be half-acre rural lots. I'm not a fond support of the way the County's handling the situation where each individual property owner has to go in and do a zoning change. You know, you put neighbor against neighbor, and it cause a lot of grief in the property.

I'm strongly in favor of the half-acre zoning. We own property in that area. And so I will be directly affected by that zoning. I've been there – I'm fourth generation in that area, so the property has been truly handed down from family to family. What I would like to see is that since we had zoning designation back as late as the '60s—you're talking almost 40 years ago—I think it's about time that we just go ahead and clean it up, and rezone that whole area half-acre as the community plan dictates, you know. And it'll save a lot of grief and a lot of cost for the additional property owners in the area such ourselves. You got the kind – there's quite a few people in that area that is trying to obtain the half-acre zoning. You know, right now, it's just designated and you gotta go through this whole process. And it would be really nice for the local community there to just bypass that by having you guys just zone that whole area half-acre the way it was intended to be, you know, like I said as far as back almost 40 years. Thank you.

Mr. Hedani: Any questions for the testifier? Seeing none, thank you very much. David Ham? Hau?

Mr. David Hau: I'd like to request to testify later.

Mr. Hedani: Okay. Thank you. Charles Deer?

Mr. Charles DeCoite: Good morning. Charles DeCoite. And I'm testifying on behalf of Ron Serle. And I agree with like what Mr. Santos said, Jordan, prior to this that the plan was made by the County of Maui, and you guys should stick with the plan, and make the whole thing instead of going and making a few lots. Like, I'm above this area where I live now. And when I got zoned, I didn't come in here and ask not to be zoned. It was just done. So usually the County zone areas. And now you going take this one area. I think you should zone the whole thing, the whole area, and stick with what you guys did prior, or get the people that made the plan come back in here, listen to the testimony, because they agreed, and they – I think they oversaw the whole picture, and they zoned that because there was a lot of people being born. And I think you guys going get more tax out of the deal by zoning the property on a smaller portion like I paying on a half-acre zone, so— And a lot of agricultural land now is not being used for agricultural purpose. One orange tree doesn't make a farm. You cannot get this break – or if you're raising animals, I can see. That's perfect. But if you're just there like the Haiku area, they put the stipulation into a subdivision where you cannot even raise a cow. It's only for a horse. That's not agriculture. They should be paying like luxury tax. We would be all rich. Good roads. Okay. Thank you very much. Any questions?

Mr. Hedani: Thank you very much, Mr. DeCoite. Commissioner Pawsat?

Ms. Pawsat: Do you live within the 500 feet of the property?

Mr. DeCoite: Yes, ma'am.

Ms. Pawsat: Yeah. I think I had one other question, but I forgot what it was.

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

Mr. DeCoite: Thank you. You're welcome.

Mr. Hedani: Sorry I messed up on your name, but your signature looks like mine. Are there any other--? Kathy Rose, did you want to testify at this time?

Ms. Kathy Rose: Yes, please.

Mr. Hedani: Okay, please step to the microphone.

Ms. Rose: Hello. My name is Kathy Rose. I drive in that area quite a bit and I don't live there, but I visit friends who are local and people who live in the area. It's beautiful country area, and I'm very much opposed to zoning the particular parcel into totally half-acre parcels. Whatever the community plan is at present, I think we should stick with it unless it's changed, and that the property be in two-acre agricultural minimum lot sizes. And if there's any way that we can preserve the ability for people who've had family property there generations and generations, I think that that's totally appropriate so that they can pass it on to their kids.

And the problem that we have here on Maui--there's no infrastructure supporting the increased growth that we're doing community-wide, island-wide. And even though the property may be on wells, those people are still using roads, schools, water, trash pickup, and that sort of thing. And those roads -- you know they're not built for high density, half-acre lots. Keep those kinds of properties in areas where they already exist, and develop communities, and keep some agricultural space as enjoyable, country space. That's it.

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

This concludes testimony given at the beginning of the meeting.

Mr. Edwin Ferreira: I just have a question. Good afternoon, Mr. Chair.

Mr. Hunt: You need to identify yourself.

Mr. Ferreira: My name is Edwin Ferreira. I testified twice already in July and last month. I need to know at this point before I do my testimony what is Mr. Serle and Chris Hart gonna be presenting to you. That is – my testimony is based on their proposal because I was under the impression that you gave them – all of you gave Mr. Serle and Chris Hart at the July meeting, kind of a commitment to get us, all of the landowners together, and come up with some kind of a compromise. And we did have that meeting. And at that meeting the compromise was a one-acre subdivision. Beautiful map they showed us and everything. And when we left, I asked the question in front of everybody, “Is this what you gonna be proposing to the Commission?” And the answer was from Mr. Serle, and Ron, and Chris Hart, “Yes, that’s what we’re gonna be proposing.” I don’t think they gonna be proposing that today, but I don’t know, but I really don’t think after listening to the other testimony this morning about half-acre lots. So before I do my own – my testimony, I wanna know what they’re up to and what they’re proposing. Thank you.

Mr. Iaconetti: Thank you.

Mr. Hunt: What we are trying to do is give people an opportunity to testify in case it went further, and they wouldn’t have to come back again at the next time is all we were trying to do.

Mr Ferreira: We don’t know what to testify to. We don’t know what they’re up to.

Mr. Hunt: You don’t have to testify right now if you don’t want to. We were trying to accommodate the public.

Mr. Ferreira: Okay, which means I’ll have to come back another – some other time?

Mr. Hunt: Your three minutes are just about up.

Mr. Starr: Mr. Chair, if we are gonna take this out of – I do think we ought to have a presentation of what – by the applicant, and then that’ll act as kind of a disclosure for the community members that are in the room, then allow them to make their comments or to know exactly what’s in the cards, ‘cause there is confusion. And I have heard from some other people in the neighborhood that there was a meeting as was just mentioned. So could I request we have a presentation?

Mr. Iaconetti: Certainly.

Mr. Hiranaga: Mr. Chair?

Mr. Iaconetti: Yes?

Mr. Hiranaga: Since I will be recusing myself, no action will be taken on this matter at this meeting. So I'm not sure if there's a need for a presentation.

Mr. Iaconetti: The whole idea was to allow these people to testify, and I can certainly understand the last testifier's comments.

Mr. Hiranaga: He might not be aware that there will be no action taken on this matter. You might want to explain that.

Mr. Hunt: Why don't you ask if anybody wants to testify right now? They have that option. They don't have to. And then get through that list of people. And then have the staff give a presentation. And those people who wanna wait until after the presentation can testify then, but we're gonna lose our quorum real quick.

Mr. U`u: I think part of the reason he stated is he's gonna recuse himself, so there's no quorum.

Mr. Hiranaga: So why spend the time on the staff presentation?

Mr. Hunt: Because people have said they've shown up and they want to know what the presentation's gonna be in order to testify, like the last gentleman just said.

Mr. Hiranaga: Except they could change their presentation the next time the matter comes to the Commission.

Mr. U`u: And also, just to give them a heads-up that no action will be taken on this matter because we don't have the quorum.

Mr. Hiranaga: I'll defer to the Chair.

Mr. Iaconetti: Well, I agree with both the two Commissioners. It would be nice to hear all of the testifiers, but on the other hand, realizing that we're not going to be able to make a decision today, they will more than likely wanna come back and testify again. So I see little point in proceeding with the testimony.

Mr. Hiranaga: Mr. Chair?

Mr. Iaconetti: Yes?

Mr. Hiranaga: I'm not opposing public testimony. I'm saying I don't feel it's necessary for staff to make a presentation. You can open the public testimony because we do

have another agenda item which is the—

Mr. Iaconetti: Are there any other individuals that are interested in testifying at this time?

Mr. David Ham: Thank you, Commissioners. My name is David Ham. I'm a neighbor of Ron Serle, just makai of him on the proposed subdivision rezoning.

My – why I oppose the rezoning is that I feel that they have – well, the past owners, the present owners, have been negligent, not responsible, for how they handle the land. They've – there's a problem with flooding over there. And I've been a witness to that water being like four and a half, five feet deep, in that area right next to me. And get kids from I don't know where. Neighbors, I don't know where. They jump the fence. I don't know. But they go to that place. And who's to say – you know, nobody there. Who knows if they can swim? What if they drown? And I've had to chase kids outta there. I've had family that so fast they drown. And if nobody was there, who knows? So that's why I feel they gotta be responsible, and they haven't done anything. I asked them about – what about the flooding? One meeting, the first meeting, Chris Hart, "We know nothing about the flooding." The second meeting, I talked to the engineer. What he tell me? "Well, Katrina—" You know, he referred it to Katrina. "That's one natural disaster." That's not one natural disaster. That place flood. Everybody know who from the community know that place flood, but they no do nothing. So that's why I feel strong about it. Thank you.

Mr. Iaconetti: Thank you. Any questions of the testifier? Hearing none, anyone else would like to testify?

Ms. Mary Naylor: Yes, thank you. My name is Mary Naylor and thank you for listening to our thoughts regarding this subdivision proposal. I speak for myself and my husband, Mike. We are property owners adjacent to the Serle property. And there are just a few points I'd like to make with regards to our feeling about the subdivision, in general, any subdivision. in general, on that property.

We have between us, 48 years of working here on Maui. It has taken us this long to attain our "dream property and lifestyle." We chose this particular community because it supports what we love about Maui.

We very strongly oppose Ron Serle or any other developer changing our home, life, and community for the sole purpose of apparently, financial gain. There is already too much traffic through our neighborhood owing to the shortcut status of Puuomalei Road. And it already has four speed bumps on it. The community plan calls for the protection and integrity of productive or prime agricultural lands in the region. The parcel in question has been and is currently productive and prime ag land. Changing the zoning of prime ag land to support the infrastructure necessary to develop the subdivision is a heinous

breach of the integrity of prime ag land. This addresses the proposed well.

We completely oppose the proposed zoning request. The parcel was purchased as a spec. property with current zoning and should remain so. Faulty speculations on the part of property buyers should not be paid for by the – what we consider the destruction of the character and integrity of our neighborhood which is primarily ag, and we'd like to keep it that way.

Mr. Iaconetti: Thank you.

Ms. Naylor: Thank you.

Mr. Iaconetti: Any questions of the testifier? Thank you very much. Are there any other individuals who would like to testify at this time? Chris, I assume you don't wanna say a thing? If there are no other members of the public that want to testify, we'll close the public hearing now. Go ahead, Chris.

Mr. Chris Hart: We've been present all morning since 9 o'clock, and we did have several people testify at 9 o'clock on behalf of this project. And we are prepared to make our presentation. You know, I understand that Commissioner Hiranaga said that he couldn't vote, but there are still five members of the Commission present that could hear.

Mr. Iaconetti: Just four.

Mr. Hart: Four now? I'm sorry. I apologize. What do you mean, there's just four?

Mr. Iaconetti: There's four of us that can vote.

Mr. Hart: Well, I know they can vote, but I mean, there are–

Mr. Iaconetti: Yeah, well, we can still listen.

Mr. Hart: You can have business. You can do business.

Mr. Iaconetti: Yes.

Mr. Hart: Okay. So personally, I would like to make the presentation. I think that, you know, there were some things that were said by Mr. Ferreira that, you know, that I'd just like to correct a little bit, but– And I think that we have reasons why we changed the proposal that was presented at our community meeting. And so I'd just like to be able to present that, if I could.

Mr. Iaconetti: Please go ahead.

Mr. Hart: Okay. Everybody okay with that? Mr. Chairman, members of the Commission, at the Planning Commission's regular meeting on July 10th, 2007, regarding our application for a State land use district boundary amendment and change in zoning, these are – this was the application that was submitted. For the subject property, Commissioners requested that we meet with the neighbors to discuss the proposal. The following actions had been taken.

First of all, there were phone calls made by our office between August 13th and August 20th, 2007. Attempts were made by phone to contact ten property owners who expressed opposition to the project. Now, we actually called people that had definite opposition to the project. We left six messages offering to meet with them at a convenient time. However, none of these messages were returned. One owner decided to change her mind. However, to date, we have not received anything in writing.

Visits—a representative of Mr. Ron Serle went door-to-door on September 1st and 2nd attempting to contact neighbors. She was able to speak to five neighbors about the project. Then on— Community meeting—on September the 8th, 2007, a meeting was held on the project site at 3:30 in the afternoon. I'm gonna ask Raymond to just pass that around so you can see. We actually put up a tent and – Mr. Serle did. And all the neighbors within 500 feet were invited, as well as other property owners who had previously expressed opposition. There were 62 letters, total letters, that went out. Twenty-one people signed in. However, in the photographs, if you look, there's – 30 people appeared to be there not including the consultants and applicants. In other words basically, nine people didn't sign on the sign-up sheet. Now, we presented a little presentation with these boards, and I'd just like to go over that with you, and show you what we actually did present as a proposal at that time.

First of all, we showed the community a land use district boundary map. This was the first State land use district boundary map dated August 23rd, 1964. This is Makawao and this is the Kokomo area. And all of the yellow is urban, and the...(inaudible)...blue is rural, and all the rest of the land is agriculture. That's what it was in 1964. Now, the property that we're proposing to change is this one at this box.

Now, this was the State land use district boundary map in 1974. The urban area again is Makawao. The rural area you see has been decreased in size. The area that's rural on the Pukalani side of Makawao is called "Maui Uplands." It's a subdivision that exists today. Now basically, this is the parcel. And a portion of it basically, approximately, .75 acres is already classified rural.

Now, this is a State land use district boundary map today. And I'm sorry, it's an aerial, but it shows that this portion is still in existence. The portion – this is our parcel, the .75 acres as shown. And this is an additional area which actually fronts on Kaupakalua

Road. This is Puuomalei Road, and this is Kokomo Road, which is rural, okay, today.

Now, the community plans came into play in 1983. The 1983 community plan actually proposed an area that was more consistent with the State land use district boundary map in 1974. You remember? It's a smaller area. I don't know if you can see that, but this is the 1983. This is 1974. You can see that the land area was decreased. Now, this is the 1983 community plan which was adopted by the County of Maui. And this is the current plan, the 1995 plan, that's in effect today. You can see that the area was substantially expanded beyond what was proposed in 1983. And that's what exists today. And this is our parcel. And the whole parcel again is proposed for rural. The area that was identified as rural by the State land use district boundary map is this little portion, this corner, .75 acres. Now, this actually shows the Paia-Haiku Community Plan. It's a blowup, actually, of the area today. And again, this is Kokomo Road. This is Puuomalei Road and this is Kaupakalua Road.

Now, at the meeting, obviously, when we came to the meeting, we were a little bit browbeaten. Now, there was – we didn't get any return calls back. We had been able to talk to a few people, but in general, we were pretty – everybody was pretty negative, we thought, about this project. So we proposed to them, and this is what – Ed Ferreira is correct – we proposed the possibility of recommending that the parcel, this portion, be changed from basically, State agriculture to rural. And that the zoning change be from interim to rural one-acre, that we proposed a five-lot, one-acre subdivision.

Well, when we did that – And by the way, this is the area of the flooding. This is a lot. It's in the agricultural district approximately, two acres. There's another two-acre lot here. But this has been designed by Douglas Gomes, and I don't know where Mr. Ham got the idea that we didn't know that there wasn't any flooding. I mean, I just don't know where he got that idea because the project has been worked by Douglas Gomes, Engineering Dynamics, who is a licensed civil engineer in the State of Hawaii since the very beginning. And flooding has always been an issue. And he basically has to design a retention or detention area that's gonna satisfy the requirements of the County of Maui to deal with the issue of flooding. So it's not something that hasn't been considered. And I'm sorry if he doesn't – if he didn't get that message. I really am.

But anyway, so we proposed this. And then all of a sudden, we got a tremendous negative reaction from a man by the name of Mr. Thomas DeCoite who came all the way from Oregon to come to this meeting. That what we were trying to do was take away their rights. That they had rights. They wanted half-acre. They wanted half-acre. That's their right and we're taking – by proposing one-acre, we're basically saying that – we're basically taking something away from them. They didn't want it. So what was a real negative reaction that we had to stand up to.

So the bottom line was, Ron Serle basically said, as the applicant, that we will ask for

rural one-half acre. We will ask for rural one-half acre, but we will subdivide it as a five-lot subdivision of minimum lot size: one-acre. That's what he said. That's what he communicated. There was a lot of discussion about it: you know, how you're gonna make sure that all the lots are gonna be one acre, and so on and so forth.

Anyway, the meeting kind of broke up. It wasn't a totally organized meeting. I mean, there was some people that were pretty upset. Okay? So Mr. Ferreira, Ed Ferreira, walked away. And I know that Ron Serle asked him, "What are you gonna support?" And he just turned around and he said, "Two acres," and walked away. And so, that's the way we left it.

Now, then subsequently, I got a call from Mr. Ferreira asking for a copy of this map. And I said, "Well, you know, there's been a lot of discussion as a result of that meeting, and essentially, Mr. Serle is not prepared, given the reaction of the neighbors, to agree to do five one-acre lots, and to ask for rural one-acre." So in the end result, this is what we basically decided in the context of satisfying the neighbors, and also addressing some concerns that basically, you know, were brought up by the Planning Department which we feel are valid concerns. So we proposed to do – basically ask for rural one-half acre, and propose instead of a ten-acre subdivision of rural one-half acre, one-half acre lots, we would basically ask for eight lots. So these are larger lots because of the topographic concerns or existing topography of the site.

Now, as a result, there were – we submitted this letter to the Planning Department. We presented the plan with five one-acre lots with basically, rural one-half acre zoning. And the response was mixed. The agricultural zone district preferring two-acre lots, and the owners living in the interim zone district preferring half-acre lots. One interim zoned owner favored two-acre lots.

Now, we attached a letter – we sent a letter to you on September 21st. We attached five letters in support of the project with rural half-acre zoning. Since then, we have an additional 20 letters. So we have actually a total of 25 letters in support of rural one-half acre. Now, 17 of those 25 letters are of those individuals that are located within 500 feet.

Now, of the 35 parcels within 500 feet of the project, 12 of the owners representing 33.56 acres have expressed opposition. The other 23 have either expressed support or no opinion representing 32.96 acres. And that's now since we do have the additional 24 letters or – yeah, 25, 26 letters – we do have 25 – basically, we have their support.

Now, in light of our communication with the neighbors, the applicant is proposing a revised subdivision layout with eight lots varying in size from .52 acres to 1.02 acres, and that's the proposal. This would conform to Condition No. 5 of the Planning Department's July 10th, 2007, proposed recommendation to the Planning Commission.

The eight-lot subdivision was recommended in order to respect the existing land form and the unique topographic character of the area. The request for a change in zoning is for a rural one-half acre. And that's where we are today. And we've been through quite a bit in order to get here.

Mr. Iaconetti: Thank you, Chris. Are there any questions of Mr. Hart? Yes?

Ms. Pawsat: Do you have a map like this? Where are your supporters coming from? I mean, it makes it a little difficult and— He did this by hand. You know, you guys got computers.

Mr. Hart: We have a map. Don't worry.

Ms. Pawsat: Okay. And so you're also telling me that, you know, just Ron, you know, persevered for the sake of, you know, all the rights of all those half-acre people out there, you know?

Mr. Hart: Ron persevered? No, I didn't say that. I said Ron—

Ms. Pawsat: Well, you exploded out and you said, "Ron did it," you know. It's quite a presentation, Mr. Hart.

Mr. Hart: Well, I'm kind of a thespian, you know.

Ms. Pawsat: Yeah, I guess so.

Mr. Hart: All I was saying is that we had some pretty strong testimony by some of the individuals. And basically, Ron was not prepared to basically, subdivide or ask for rural one-acre.

Ms. Pawsat: So this is the property?

Mr. Hart: Yes, it is, and this is the agricultural portion.

Ms. Pawsat: So it's all these. So—

Mr. Hart: This is the 500 feet here.

Ms. Pawsat: Right. So, well, these maps aren't in agreement, it looks like.

Mr. Hart: Aren't in agreement? Why?

Ms. Pawsat: Well, you say these oppose all in red, and then he's saying oppose — I

mean, obviously, this is a lot different. So you're saying you called all these people? I mean, well, they're – we're getting he said, she said. I mean–

Mr. Hart: Well, you asked me for our map.

Mr. Iaconetti: Do you have more copies of that map?

Mr. Hart: Do I have an extra copy? Yeah, we have. We could give you that. Sure.

Mr. Iaconetti: This is it?

Mr. Hart: Yes, sir.

Ms. Pawsat: And I thought the one-acre– I was impressed. I thought this problem would be over, but no, you guys just had to push it, huh?

Mr. Hart: Did we? I'm not sure if that's a correct way to put it, Commissioner Pawsat. I mean, I think that the neighbors had some definite reasons why they wanna see the opportunity available to them to be able to subdivide the property into one-half acre.

Ms. Pawsat: Well, which map is correct? You know, instead of going back and telling him you changed the plan, you just came up here and presented a map that disagrees. So actually, you just made the schism worst. Like why didn't you go back to the guy so we aren't having to figure out which map is correct? I mean, that's ridiculous.

Mr. Hart: Which map is correct? What do you mean by that?

Ms. Pawsat: What do you mean which map is correct?

Mr. Hart: Well, that's not ours.

Ms. Pawsat: I know, so which one is correct. They aren't in agreement with each other.

Mr. Hart: If Mr.–

Ms. Pawsat: Well, you changed – you guys were in accordance with one another. You guys agreed with the one-acre lots.

Mr. Hart: No, we didn't agree.

Ms. Pawsat: You guys changed your mind. Then you come back – and then you come back and changed this. And now we have– What's the difference?

Mr. Hiranaga: Mr. Chair?

Mr. Iaconetti: Yes?

Mr. Hiranaga: Is it possible for staff to determine who wants what as an objective?

Mr. Iaconetti: It would be helpful, wouldn't it?

Mr. Hart: Can I just correct something that was just stated? I mean, what we presented when we went to the meeting was what we thought we could basically expect that people would support. Obviously, we called people. We didn't get a response. There was some people who were contacted personally, and some of them were in favor of two acres. Some said that they could support one-acre. So we decided to propose a one-acre – RU one-acre subdivision: five lots. Okay? We didn't have any indication that Mr. Thomas DeCoite was gonna be there. And that certain individuals were gonna be there, and that there would be an outbreak of concern about that we were doing something that was gonna devalue their land. We didn't know about that.

Mr. Hunt: Chris, the outbreak was based on—correct me if I'm wrong, I'm trying to understand this—was based on a fear that by approving a one-acre minimum lot size here it would have a domino effect or something? And somehow—

Mr. Hart: It would set a precedent, yes, for the area.

Mr. Hunt: Okay. Thank you.

Mr. Starr: Chris, I mean, here's a neighborhood of two-plus-acre lots, agricultural. It's been that way, you know, for at least a while. And someone comes in, your client comes in from outside, and buys a piece of property looking to make a killing on it. And somehow you've managed to completely divide this community. I mean, this is like a Superferry on Kauai where now everyone's up in arms over this thing. And this is looking for an entitlement for something that doesn't exist. There's no as of right to get, you know, half-acre, or one-acre, or any of that. It's ag. Ag is ag. That's what they bought it for. And there's no, you know, compelling need unless there's community support, you know. And, I mean, if it were evenly divided, that's not community support. It seems to me as vocal as the few people who seems that they can cash out, you know, that testified earlier today, it seems to me there's a lot more people who are against this thing, and you're trying to confuse the issue by throwing this lemming of getting people to sign up for it as one-acre and then changing it to half-acre. It's like a shell game. So, I mean, do you really think you're doing the right thing here, Chris?

Mr. Hart: John, be serious. Come on, John.

Mr. Starr: I'm very serious. I'm very serious.

Mr. Hart: Look, look. Jonathan, you're a bright man. I know you are. And look, this area, this is what's shown on the community plan. Okay? This area is rural. This area is rural. This area is proposed as rural. This is our project site. This area, this site, is Class C land as far as the State Land Use Study Bureau. The Land City Bureau classification is Class C land. Mr. Serle came to us. There's rural district zoning here. He has .75 acres of his parcel as rural. It's proposed in the community plan as rural. All of the areas that are zoned rural are rural one-half acre. He came to us, and asked us if it would be possible to change the zoning to be basically consistent with the community plan. And we said that the community plan was adopted in 1995. There's a history of this area going all the way back to 1964 that the area was proposed as rural. You know, it's not something that, you know, we pulled a rabbit out of a hat. You know, we're land use planners. If the— You know, Jordan Santos said something this morning. He's a resident, a landowner, within 500 feet. If the County was really being responsible, what they would do when they adopted the community plan, when they changed the County zoning to interim, they would basically change the zoning to rural so that everybody would be able to take advantage of it. That's what the County would do. But as it is, you know, we have to come parcel-by-parcel and ask. And so that's what we're doing.

Mr. Starr: And do you feel that you have community support for this?

Mr. Hart: Well, we do. I mean, I told you we have 25 letters from people in the community that want to see the—

Mr. Starr: And here's 50 letters against.

Mr. Hart: Well—

Mr. Starr: I mean, you know, even equal is not support.

Mr. Iaconetti: Joan, do you have—?

Ms. Pawsat: Yeah, I just don't understand why you think we have to change the zoning because you poorly advised your client basically, and said, "Yeah, it would be no problem." Well, apparently, it is a problem.

Mr. Hart: I didn't poorly advise him, Commissioner Pawsat. He proceeded to purchase the land, and he came to me and asked what the possibilities are to changing the zoning. And I told him that, normally, if the community plan proposes that the zoning should be changed or could be changed, the chances are quite good. That's what I told him. Okay? I'm sorry.

Ms. Pawsat: Well, everything was accurate except the – you know, I mean, except for you don't know what the outcome is.

Mr. Hart: Well, you don't know.

Ms. Pawsat: Because if you wanted to be a responsible property owner, and it's zoned already as ag, and if you thought he was going to turn it in – he – a wise person would've gone around and asked the neighbors, "Hey, I wanna buy this. You guys gonna make a stink if I change it?" You know, but, no, you just bought it, and seemed to be able to do it.

Mr. Hart: By the way, the State land use classification is agriculture. The County zoning is interim. And the Community plan is rural.

Mr. Iaconetti: Are there any other questions for Mr. Hart?

Mr. U`u: Question: You bought 15 letters in support here, but they make up a total of five families. You know, it looks great. You got 15 of them, but it's all the same households. And also, I remember at the beginning of this, somebody asked you if you foresaw any problems, Mr. Hart, and you said, "No." And the problem was the flooding. That was brought up to my attention by public testimony. You flat out said, "No, not that I can remember." And that is the reason for Mr. Ham testifying. And now you squashed his testimony by saying it's been done. We asked you point blank. At the first time we got here, we asked. And it was brought by our attention by the people in that area. Am I wrong? You know, we said this has to be pono. It's not pono. It's like the Superferry in Haiku, and you hit it on the button. You got a community divided. People been there their whole life are divided right now because of your client.

Mr. Hart: Look, when we presented the plan, that's what we presented to the Planning Commission, Commissioner U`u. And we did point out that there is the retention area where the flooding occurred.

Mr. U`u: You did supply us with the pictures of the—?

Mr. Hart: We did. We did a power point presentation to you.

Mr. U`u: The first—?

Mr. Hart: Yes. And I'm sorry if it wasn't communicated to you, and I'm sorry if it wasn't communicated to Mr. Ham.

Mr. Iaconetti: Are there any other questions of the – Mr. Hart? Yes?

Mr. Starr: I, you know, we know we're not gonna be able to do any action today. I really urge you to find a way, if you wanna proceed with this, to get everyone or at least 99% to buy into it. And if there's some kind of thing that everyone or almost everyone can agree to and be happy, and these people who are, you know, really very strongly against it can support it, then I think it's something that I know I could feel good voting for, but it's gonna be very difficult for some of us members of this Body to support something unless it really feels like, you know, all or 90%, or 95% of the community wants it. I really urge you to find some way to try to bring everyone together here so that when, you know, it comes back to this room, it's something that everyone in that area wants. Otherwise, it's better not to do it.

Mr. Hart: Okay. Thank you.

Mr. Iaconetti: Thank you. Yes?

Mr. U'u: Just a comment, you know, it's on our conscience to vote on this subject. And how do you vote on it when the majority doesn't want it? I wish you well. I wish your client well, but how can you ask us? You rah, rah. Zip boom bah. You know, here's a good plan, but most of the people object to it. It means that public input is not needed. And I think that's where you're wrong. It is needed.

Mr. Hart: No, I totally support public input, totally. And all I can say is that we did propose a compromise, which I indicated to you: five one-acre lots. And we were basically, chastised by some of the other neighbors, and that's where it stands.

Mr. Iaconetti: Thank you, Chris.

Mr. Hart: Alright.

Mr. Starr: Move to defer.

Mr. Iaconetti: I think there's more testimony sitting out there.

Mr. Starr: Oh, sorry.

Mr. Iaconetti: It's now open for public testimony.

Mr. Ferreira: I clearly asked— My name is Ed Ferreira. Chair, people, thank you very much. I asked Chris Hart in front of Ron Serle as I was leaving, "This one-acre that you're proposing to us gonna be proposed to the Commissioners on the September 25th meeting?" and he said, "Yes." At that point, I left. And because the meeting was such — there were so much turmoil and chaos going on, Tommy DeCoite and Mr. Romero were the two cheerleaders jumping up and down screaming for half-acre. That's about it.

Mrs. Santos also expressed her feelings, but as far as I'm concerned, the meeting was a total disaster. I left there with a feeling that we were gonna be shown a one-acre parcel. Now he's gonna time me.

Anyway, at the July 10th meeting, those who opposed the zoning was approximately, 15 people within the 500-foot range. Now, there's a bunch more outside of the 500-foot range. Today, there are 26 signatures, legal signatures, that you have before you. In the blue are those who are for it. There's no difference than the July 10th meeting. This is the exact same percentage. So I urgently and humbly ask that you reject this proposal until such time they can do something better for us. Thank you very much.

Mr. Iaconetti: Any questions for Mr. Ferreira? We thank you.

Mr. Ferreira: One last comment. Just a comment: at the July 10th meeting, Chris Hart's "minimal flooding in the area," that's what he said, "minimal flooding." And you can check the minutes. It's in there. Thank you.

Mr. Iaconetti: Thank you.

Mr. Starr: I just wanted to thank you for your patience and for standing up for what you believe is right in your community.

Mr. Iaconetti: Thank you. Are there any other--? Oh, I'm sorry.

Mr. U'u: Just one more comment, and that is how people without being millionaires intervene on projects the right way: public testimony.

Mr. Iaconetti: Thank you. Are there any other testifiers on this subject? Seeing none, we will close public testimony. As you all know, we can't take a vote. We don't have a quorum or do we? Three, four, five, yeah, we do.

Mr. Starr: I have a question for Corp. Counsel.

Mr. Iaconetti: Yes?

Mr. Starr: Can we act to defer if we don't have a quorum? I think the church calls it "limbo."

Mr. Giroux: Well, it's -- if I may? Basically, we try to get a motion to defer, but technically, if we actually have a bare quorum and we can't -- it just automatically defers to the next hearing.

Mr. Starr: Okay.

Mr. Giroux: Yeah.

Mr. Iaconetti: Okay.

4. **MR. JEFFREY S. HUNT, AICP, Planning Director, transmitting the 2030 Countywide Policy Plan (Plan) to the Maui Planning Commission pursuant to the provisions of Chapter 2.80B of the Maui County Code. The Maui Planning Commission may review and provide recommendations on Section IV (Goals, Objectives, & Policies) of the Plan, which was revised to reflect the recommendations of the Maui, Molokai and Lana`i General Plan Advisory Committees. Emphasis will be placed on the revised EXPAND HOUSING OPPORTUNITIES FOR COUNTY CITIZENS and PROMOTE SUSTAINABLE LAND USE AND POPULATION MANAGEMENT.**

The Commission may take action on these sections.

Mr. Hunt then read the agenda item into the record.

Ms. Simone Bosco: Thank you, Director. I'm gonna need a few minutes to switch over to our equipment. Can you take a few minutes break?

Mr. Iaconetti: We'll have a three-minute recess.

(A recess was then taken at 3:22 p.m. and the meeting reconvened at 3:29 p.m.)

Mr. Iaconetti: Simone?

Ms. Bosco: Thank you, Commissioners. Okay, I understand we're gonna lose quorum at 4 o'clock, so we have about a half an hour. I'm gonna go right into the first section that we're gonna be reviewing which is the sustainable land use and population management section. Just as a housekeeping measure, wanna let everyone know I haven't forgotten about the changes and the information you needed from the last meeting. I'm gonna be bringing all of your requests, and also taking action on some of the policies we didn't take action on at the last meeting, I'll be bringing that back to you at the next meeting. Okay? So—

Mr. Starr: I'm going to be on the Mainland during the next meeting. (Inaudible)...institute and learning about some neat stuff there, but I would like to request that you do it at the subsequent meeting because I was a little bit involved with some of that.

Ms. Bosco: Okay. We can do – we can accommodate that, sure, if the Commission doesn't have–

Mr. Hiranaga: I can't hear what you're saying.

Ms. Bosco: If the Commission has no objection, we can bring the remaining few policies back that still needs to be acted on not at the next meeting, but at the following meeting. So it would be – it's probably the second meeting in October, I think.

Mr. Hunt: The 23rd.

Ms. Bosco: Okay. Okay, moving into our workshop, we're gonna be starting with land use. And just to direct your attention to the worksheets and also the large matrix, we'll start with the Goal Objective J1 and the supporting policies under J and J1. And I did not read any of the policies and I haven't been. So if you'd like, we can start with the bold statement, and move down, and open up discussion on each statement. So we'll start with the goal statement. And that starts out with "community character." Anybody needs any of the handouts or – let me know – any of the tables. Okay, Commissioner Starr?

Mr. Starr: I don't like the way – what it morphed into because what you're saying – you know, you're saying that the goal is growth because "growth" becomes the operative word. And if the goal is managed growth and the goal is – the goal becomes growth where, you know, the – you know, I don't quite know. You know, managing growth – limiting growth – what happened I think "limiting growth" became "managing growth." I don't know. Perhaps there's another word that's not – that would work better than either of them.

Ms. Bosco: So the word here that you might want to revise is which one: "managing" or "growth?"

Mr. Starr: It started off "limiting."

Ms. Bosco: "Limiting growth."

Mr. Starr: Yeah, and it – "limiting" somehow changed to "managing."

Ms. Bosco: Yeah, well, land use needs – land use actions need to be managed, and land use is typically managed. Limiting – staff felt that the word "limiting" wasn't as accurate as "managing," because we're looking at a growth management program in order to manage changes over time. If the Commission wants to explore a different word–

Mr. Starr: How about “managing change?”

Ms. Bosco: I was just about to say “change.”

Mr. Starr: Instead of “growth” because maybe there’s someplace where, you know, someplace wants to be reduced instead of grow or wants to stay the same.

Ms. Bosco: Okay, “change” is one option. You could also change – if you wanted to eliminate the word “growth,” that’s a – that’s actually – that’s a philosophical question. Are we gonna really–? I mean, growth isn’t always an absolute, but it’s almost always an absolute. You could change it to “by managing and using the land in a sustainable manner.” You could eliminate “growth and.”

Mr. Starr: Yeah, I would rather see that.

Mr. Hunt: ...essential concepts in the General Plan update that you guys are going to review. And there’s a difference between a no-growth and a managed growth. And there’s some communities that have literally, drawn lines around their communities, and said, “We’re not growing any more out, at least.” You know, they can still grow up and do in-fill. That’s one possibility.

The draft plan is predicated on a certain amount of population growth that is anticipated. And that population growth, a vast majority of that, comes from the island residents. So, for instance, where are the families today having children? Where are those children going to be housed? There’s gonna be population increase. There’s an assumption.

So even if you limit the growth in terms of growth boundaries saying we’re not going to grow our cities, you still have to accommodate population growth somehow. And the alternative would be to grow up or grow in more densely. And those have issues with them, but those are reasonable responses to growth.

It’s important when you read the phrase, “managed growth,” that doesn’t mean that there won’t be areas that are identified for no growth: open space, critical habitat, cultural areas, etc. So don’t view “managed growth” as we’re not gonna protect any of our natural resources. I mean, you guys just went over that thick section of natural resources.

So one last one comment is, the term – the change from “limiting” to “managing” was suggested by the GPAC, Maui GPAC. And even though the other two GPACs didn’t recommend it, the staff felt that it was a good change.

Mr. Iaconetti: Joan?

Ms. Pawsat: Well, I kind of maybe agree that you just take “growth” out, so it’s “preserved by managing and using the land in a sustainable manner,” and just not bring “growth” into it at all. I mean, because managing implies growth...(inaudible)....

Mr. Starr: Then it’s more – what we’re doing is we’re managing land use instead of managing growth, which to me is more to the point.

Mr. Iaconetti: Any other comments about this? Are we all in favor of “managing” rather than – eliminating “growth?”

Ms. Bosco: We’re making – okay, we’re gonna bring that change up onto the screen, and come back to it later for a vote. Okay? Okay. Next, if there’s no–

Mr. Hunt: Just to remind people briefly, what we did last time that seemed to work was we took them as a block, eventually. So we made our changes, and then came back as a block, and you voted as a block.

Ms. Bosco: Okay, we’re moving on to Objective J1. Any discussion? If none, we’ll move to J1j, first policy. And this is a requirement of Bill 84, by the way, but we felt it was important to be very clear about what our task is here. Okay? Commissioner Starr?

Mr. Starr: Yeah, why was “map” removed from that? I mean, I, you know, I always feel like that’s been the problem for a long time is that everyone feels there should be growth boundaries and there should be buffer zones. And then when we actually have one like, you know, Pulelehua was the one around Lahaina, and it just gets wiped away. So I think unless it’s mapped and you say okay, this is it, it loses clarity when someone goes and wants to build sprawl there.

Ms. Bosco: The reason why “map” was removed is because we need to map these growth limits. We have to do it. In order to establish a growth limit, we’re gonna have to map it. It’s more of something that we’re going to have to do. It’s implied in “establish and enforce growth limits.” And it’s something that’s gonna – we’re gonna be tasked to do anyways.

Mr. Starr: I’d like you to keep the word in there because I want it to be clear that it has to be mapped. That it’s not good enough to have a philosophy. That it be there. That it’s gotta be aligned on the map. So I think you had it right in the first place.

Ms. Bosco: Okay. Thank you. Any other comments? If none, we’ll move to J1k. Commissioner Hiranaga?

Mr. Hiranaga: Going back to the goal, looking at the title of this section, “Promote

Sustainable Land Use and Population Management,” I guess what the Director was saying, unless you have a population decline on this island, you’re gonna have growth. So I guess the overall premise of this section is, how do we manage population growth?

Ms. Bosco: How do we address population changes is really part of it. And population management is implied in a lot of these statements on the goal, objectives, and policies. We’re not necessarily going to manage the people, right? If that’s– But managing population changes is important, and we need to remember that’s inherent in a lot of these statements.

Mr. Hiranaga: You’re assuming that the population will grow.

Ms. Bosco: Not– Well–

Mr. Hiranaga: Unless people start leaving the island.

Ms. Bosco: Population– That’s a very good point. Again, the population could decline. So we’re not assuming that’s– Right now, the studies indicate that it’s going to grow.

Mr. Hiranaga: Unless there’s a large, natural disaster.

Ms. Bosco: Right. The studies, the trends, everything we’ve studied so far–it’s growing.

Mr. Hiranaga: More people moving here than leaving.

Ms. Bosco: Yes, that’s correct.

Mr. Hiranaga: Current and historic.

Mr. Hunt: It’s not just moving here. It’s – the studies have shown that the population has increased. And what they do for population projections is a trend line analysis. You go back so many years, and you analyze where it’s been, and where it has been going, so then it’s safe to assume that it will continue somewhat in that similar direction.

Mr. Hiranaga: So going back to the first goal, I don’t know if removing the word “growth” is appropriate, because you’re assuming there’s gonna be growth. Population growth, not necessarily, urban growth, but population growth, so it’s the premise of the original title, “Population Management.”

Ms. Bosco: Commissioner Starr?

Mr. Starr: I think a better term than “growth” would be “change” because, you know,

sometimes there is growth. The place where I live in East Maui in Kaupo, it now has a population of 60, which is up from 40, but that's down from several thousand back in the '30s. Or like Puunene, that's a place where there was a population center. There isn't now. So that's a change. And then there are other places that are growth. So maybe "by managing change and using the land in a sustainable manner," would be a good way.

Ms. Bosco: Okay, we can put that up on the screen, come back to it, or you can vote on the goal statement by itself, either way.

Mr. Starr: Why don't we come back?

Ms. Bosco: Okay.

Ms. Pawsat: "Managing population" is also another way of saying it.

Ms. Bosco: Okay. Moving back to the policies, we're at J1k, "Identify and define resort destination areas." Okay? No other comments on that. Move to—

Mr. Hunt: If I could? I guess I'd ask you folks to look at that, look at the whole line there, and make sure you want to remove some of the sentence or some of the extra phrase such as "restrict the overflow in the neighboring residential communities." This has been one of the basic premises of growth management on Maui. And in case you haven't been around lately, it is the subject of a lot of controversy right now, and I think it deserves a lot of consideration.

Ms. Bosco: And staff would add the next two policies relate. The next policy is very similar to the tail end of that particular J1k. So if you take a look at the next three, they're related. Commissioner Starr?

Mr. Starr: I actually like what you did here in terms of k – kilo, bravo, and alpha in terms of, you know, 'cause I think we want to define the resort destination areas, and we want to— I don't know if "limit the number of visitor accommodation units" – I would say we want to kind of set a number.

Ms. Bosco: That is implied in "limit." Setting – you can establish limits. You can establish— There's different mechanisms to establish the cap.

Mr. Starr: I mean, you know, to me, there are places where you want really thriving hotels. And that – you want to set that and maybe make more. And then maybe there are other places. I certainly don't believe that ag should have tourists. I support that policy. So, you know, I like the way it's broken down. I just wanna be sure that it's clear that there's some areas where it's suitable; and some areas where, you know, we

wanna encourage; and some areas we wanna discourage. And I'm not sure how we can help to get that idea stronger.

Ms. Pawsat: Well, I think that's implied if you have a high limit, that's encouraging. If you have a low limit, that's discouraging.

Ms. Bosco: Keep in mind when we get to the community plan updates, there'll be opportunities to further refine where you'll be limiting, or how you'll be actually managing the growth of visitor accommodations in each community plan area.

Mr. Starr: Can we like, set the number of visitor accommodation units in the areas?

Ms. Bosco: What we can do is we can propose perhaps an implementing action under this policy that will give it some more teeth. And it'll carry on into an implementing program.

Mr. Starr: Instead of using the word, "limit the number," I would rather set the number or set the—

Ms. Bosco: "Establish?"

Mr. Starr: Yeah, "Establish the number," yeah.

Ms. Bosco: "Establish?"

Mr. Starr: Yeah.

Ms. Bosco: Okay.

Mr. Starr: Is that something we can do, Jeff?

Ms. Bosco: That number may change over time.

Mr. Starr: Yeah.

Ms. Bosco: But it would be— Yes, we can put that up.

Mr. Hunt: You would be establishing the number that are allowed, or the number that are supported, or—?

Ms. Bosco: "Establish the number of visitor accommodation units permitted." Or—

Mr. Hunt: I'm trying to read into your statement, so correct me if I'm wrong, but in

essence, aren't you talking about a limit, or a cap, or--?

Mr. Starr: Well, but maybe there'll be a place where we want to -- we'll say, okay, we want another 10,000 over here. You know, we wanna take them from Haiku, but we want them in, you know, Kaanapali, or whatever. I mean, my idea is, you know, I don't wanna just be limiting. I want to be set so we have a goal of what we want. It may be more in some places. It may be less in other places. Then we have-- Does that make sense?

Ms. Pawsat: So "Setting the number of visitor accommodation." I see -- yeah, I mean, I think it's-- I see your point, but, yeah, it's kind of splitting hairs, but--

Mr. Starr: I guess it's a practical matter.

Ms. Pawsat: By -- yeah, I think when you set the number of the limit, that's the same thing as establishing the number.

Mr. Starr: Okay. Let's let it go.

Ms. Bosco: Okay.

Mr. Hunt: Is there any more thought about the phrase, "restrict the overflow of visitors in the neighboring residential communities?" Is that supported? We're dropping that phrase. Do we wanna drop that phrase? Do we wanna leave it in? Do we wanna add it as an implementing?

Mr. Starr: Let's add it as an implementing, but, to me, we're doing it in a different way. We're doing it by setting, you know, how many visitors are gonna be in each different area. I mean, I would rather have -- if we were gonna have it, I would restrict visitor accommodations in residential communities not earmarked for resort use.

Ms. Bosco: Do you wanna note that, Erin? Can you repeat that?

Mr. Starr: Yeah, "Restrict accommodation for visitors in residential communities not planned for--"

Ms. Bosco: "Visitor use?"

Mr. Starr: Yeah, "not planned for--" Yeah.

Ms. Bosco: "Visitor use?"

Mr. Starr: "Visitor use?" I was saying "resort use," but I guess--

Mr. Iaconetti: So what effect would you have then with things like timeshares – not timeshares, but vacation rentals?

Mr. Starr: Well, if a decision is made that it's not suitable in that area, then it would make it easier to restrict that. And if there were a conscience decision to allow it in an area, then it would enable it.

Mr. Hiranaga: Maybe the word "control?"

Mr. Starr: Yeah.

Mr. Hiranaga: Instead of "restrict." Restrict is like you're denying. Control is there's a process.

Mr. Starr: Yeah, yeah. So, "control–"

Ms. Bosco: "Control accommodations for visitors."

Mr. Hiranaga: "Control the overflow."

Mr. Starr: Yeah.

Ms. Bosco: What we have on the screen now is, "Control accommodations for visitors in residential communities not planned for visitor use."

Mr. Starr: Yes. I like that, but I don't really like the overflow because it sounds like you're just talking about, you know, Wailea into Maui Meadows or something.

Ms. Bosco: Okay. We're gonna– Make sure you're very comfortable with this statement because this is a Countywide policy plan. It will apply to the outer islands as well. And they have some of the same issues, and actually, different issues too. Okay. And this is proposed as an implementing action so you know it will not be retained as the department currently believes implementing actions will be moved to a separate section in the plan, and be further developed in the island and community plans. Okay? But it will be part of an implementing program so it will be addressed. Okay?

Mr. Starr: Are we removing something to put that there?

Ms. Bosco: We're not. We're gonna retain the original policy statement, identify and define resort destination areas. Okay? Okay, next policy statement then would be J1b, "Limit the number of visitor accommodation units and facilities in community plan areas." Did we change that one? Was that the one we wanted to change too? Or did you wanna–?

Mr. Starr: Instead of "limit," we were gonna "set the number."

Ms. Bosco: Okay, "Set the number?"

Mr. Starr: No, "establish," I think.

Ms. Bosco: "Establish?"

Mr. Hiranaga: I thought we were gonna leave it as "limit?"

Ms. Bosco: Okay, leave it as "limit?"

Mr. Starr: Yeah.

Ms. Bosco: Okay, the next one is J1a, "Maintain a sustainable balance between resident and visitor population."

Mr. Starr: That implies that we have one now.

Ms. Bosco: It's opening the door to try and set that. It's an interesting policy. It really is, because tourism is the primary industry here. So when we have 50,000 visitors on the island at any one time using all of our facilities, etc., can we manage that appropriately? Is that the appropriate balance weighing all things?

Mr. Starr: I wanna throw a red herring into the mix here. What do you call someone who's not a tourist staying, you know, comes to stay in a hotel, but doesn't – isn't a resident? And is a – you know, can we deal with those folks?

Ms. Bosco: That's called a nonresident, a nonresident. If it's not a visitor, and it's not a resident, you can't call it a visitor. It's a nonresident. And there's also a whole different group of people.

Mr. Starr: But what if they own a house, or a condo, or a timeshare?

Ms. Bosco: That's an absentee landowner.

Mr. Hunt: Sometimes a second homeowner, is another phrase. Part-time resident, I've heard.

Mr. Hiranaga: A snowbird.

Ms. Bosco: There are other terms.

Mr. Starr: I also think we should set limits for the balance of, you know, these part-timers the same way. How about "Maintain a sustainable balance between resident--?"

Ms. Bosco: "Nonresident?"

Mr. Starr: "Part-time resident, and visitor populations."

Ms. Bosco: Okay. It's up on the board. Okay? Any other discussion? Commissioner Hiranaga?

Mr. Hiranaga: I'm not sure if a part-time resident is a bad thing because they pay real property taxes. They don't drive their cars very often because they're not here.

Mr. Starr: I don't think visitors are a bad thing or residents are a bad thing. I just think that, you know, we wanna establish, you know, a balance of where and how many.

Mr. Hiranaga: So if they don't pay State income tax, they're considered a nonresident or a part-time resident? Is that how you define a part-time resident?

Mr. Starr: I don't know. The definition of pornography is very hard to define, but you know it when you see it. Sorry.

Mr. Hunt: They usually is -- a voter registration and driver's license is two critical issues. Where you pay your taxes, your State income taxes, those kinds of things.

Ms. Bosco: I think the State defines a resident as anyone here more than six months.

Mr. Starr: I mean, I'd like to, you know, establish that as a category. And I'm not saying they're bad, or good, or anything. I'm just saying we should deal with the fact that a very large percentage of the people on this island at any given time are nonresident residents, you know. They're people who--

Mr. Iaconetti: That don't have a vote, locally.

Mr. Starr: Yeah.

Mr. Hunt: Just to support that concept that when we took some data to the County Council, we showed residential housing needs and nonresidential housing needs. So it wasn't visitors. It was second homeowners, for lack of a better term. And those were projected out and there was a lot of discussion about that. And it's an issue that is worthy.

Ms. Bosco: Thank you.

Mr. Starr: So let's put it in there when we're establishing the balance without, you know, saying they're bad or good. It's just another—

Ms. Bosco: Thank you. Okay, if no further discussion, moving to J1c.

Mr. Starr: A point of order? How long you get, Bruce?

Mr. U`u: Three minutes, but I'm not keeping track.

Mr. Starr: I mean, if you really gotta run, maybe we should just vote on what we're doing and stop.

Ms. Bosco: Yeah, good idea, yeah.

Mr. Starr: Move to accept everything from J up to — I don't know. Where are we?

Ms. Bosco: Okay, take a look at the screen. We're at J — we're up to J1a. And please make sure the statements are like how you want them. We've got a change to the goal statement to include the word "population change" instead of "growth." Okay? We've got a change to J1j, j1k, and J1 — let's see here, J1a. Thank you.

Mr. Iaconetti: Okay. Have you moved to—?

Mr. Starr: I move.

Mr. Iaconetti: Is there a second? Joan, you second it?

Ms. Pawsat: Sure.

Mr. Hiranaga: I have a question. So once we — say we approve these comments, then you bring it back for review and comment again, or that's it?

Ms. Bosco: That's typically it. Corp. Counsel will need to explain how to reopen a vote or—

Mr. Hiranaga: Well, I guess because we've spent so much — such a short period of time on this particular item, and we have a bare quorum, I'm gonna vote against that motion, and just wait for more people to be present, defer the matter, but you can retain those— That's what I'm gonna do.

Mr. Iaconetti: Well, we haven't completely wasted our time.

Mr. U`u: Well, saying that, you guys have a great night.

Mr. Hiranaga: Well, we've lost quorum, so there's no action.

Mr. Starr: Okay. See you tomorrow, on the other side.

Mr. U`u: Aloha.

(Mr. U`u was excused from the meeting at approximately 4:00 p.m.)

Ms. Bosco: Thank you. Okay, hey, we made some progress. Thank you. Just for the Commission to know, what I'm going to plan on doing is bring back these two sections at the next meeting. If the Commission can't catch up, we'll have to set a special meeting. But I'd like to also let you guys know that there are at least two or three meetings built in that are lightly loaded. I tend to wanna try and just always be on schedule because sometimes, you know, we're gonna need to really work on something that's gonna extend, and bleed into the next meeting, but we'll try and catch up at the next meeting. Jonathan Starr, you won't be here.

Mr. Starr: And you might, you know, I mean, I guess the meeting's adjourned so we're just talking, but—

Ms. Bosco: Yeah.

Mr. Starr: You may— My bet is you're never gonna get to this next meeting because it's gonna be a buzz-saw in here with the TVRs. You're gonna have 200 people wanting to testify.

Ms. Bosco: Okay. We're gonna need to think about if a special meeting is needed or not, and I don't know what the process for doing that is, but we need to think that through.

Mr. Hiranaga: My comment when I saw the agenda is it seemed like a very full agenda. And I did have my doubts that we would start on this section on time, so—

Mr. Hunt: Today's agenda?

Mr. Hiranaga: Yeah, it looked pretty loaded. So whoever's creating the agenda might wanna try to manage time.

Mr. Iaconetti: I asked Clayton about that and he agreed that there was no way we were gonna get over this.

Mr. Hiranaga: Who made the agenda?

Mr. Iaconetti: Clayton.

Mr. Hunt: In Clayton's defense, there's different pressures. People are anxious to get on the agenda. People want to have their day before you folks. We're trying to get a lot done. We're trying to manage our workload too. We're trying to make our presentations briefer. I coached our staff to make their initial presentations brief, and coached the applicants to make it brief. Some things even the Commission could look at is making your own questions and comments briefer, and just expedite things. Move it along. You know, an ideal world, we'd have a lot of time to thoroughly analyze each of these issues because they're an important, but we don't live in an ideal world. And sometimes we – triage is a daily fact in the Planning Department. You do the best you can, given the time you have, and hope you do a thorough job.

E. DIRECTOR'S REPORT

- 1. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission at the August 28, 2007 meeting.**
- 2. Planning Commission Projects/Issues**
- 3. EA/EIS Report**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report**

F. NEXT REGULAR MEETING DATE: October 9, 2007

G. ADJOURNMENT

Mr. Iaconetti: Okay. Meeting adjourned.

There being no further discussion, the meeting adjourned at 4:02 p.m.

Respectfully submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Wayne Hedani, Vice Chairperson (excused at 2:00 p.m.)
Kent Hiranaga
William Iaconetti
Joan Pawsat
Bruce U'u (excused at 4:00 p.m.)
Jonathan Starr

Excused

Johanna Amarin, Chairperson
John Guard

Others

Colleen Suyama, Planning Department (9:00 a.m. - 11:20 a.m.)
Jeff Hunt, Planning Department (11:29 a.m. - 4:02 p.m.)
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works and Environmental Management