

**MAUI PLANNING COMMISSION
REGULAR MINUTES
FEBRUARY 12, 2008**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Johanna Amarin at approximately 9:03 a.m., Tuesday, February 12, 2008, 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.)

Before we begin Kung Hei Fat Choi. It's the year of the rat. It's supposed to be a very good year, lets hope for everyone. At this time we'll open up this meeting for public testimony on any of the agenda items that we have scheduled today. Testimony will be for three minutes for those who can't be here while the agenda item does come up. Do we have any – I do have a list here. Conclusion will be in 30 seconds.

The following people gave testimony at the beginning of the meeting:

Mr. Vernon Ta'a - Item D-2, HMC MAUI LLC, Hyatt Regency Maui, SMA
Mr. Gordon C. Cockett - Item D-2, HMC MAUI LLC, Hyatt Regency Maui, SMA
Ms. Elaine Gallant - Item D-2, HMC MAUI LLC, Hyatt Regency Maui, SMA
Mr. Perry Artates - Item D-2, HMC MAUI LLC, Hyatt Regency Maui, SMA
Ms. Lucienne de Naie - Item D -1, Final EA prepared in support of the Entitlements Action for Palauea Beach Lots
Ms. JoAnn Johnson - Item D-2, HMC MAUI LLC, Hyatt Regency Maui, SMA
Mr. C. Mike Kiddo - Item D-2, HMC MAUI LLC, Hyatt Regency Maui, SMA
Mr. George Aikala - Item D-2, HMC MAUI LLC, Hyatt Regency Maui, SMA

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

Ms. Amarin: Do we have any other individual in the audience that wishes to speak on any of the agenda items at this time? Seeing none, public testimony is now closed. I'll give this meeting over to our Director, Jeff Hunt.

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

- 1. GRAND KAHANA INVESTMENTS, LLC requesting a Conditional Permit for the Coldwell Banker Office, an office for timeshare, real estate, and activities sales and management in the Hotel District at Kahana Villas #6, 4242 Lower Honoapiilani Road, TMK: 4-3-010: 013-0106, Kahana, Lahaina, Island of Maui. (CP 2006/0009) (J. Dack)**

The public hearing will be rescheduled to a later date as the applicant did not meet all of the notification requirements.

Mr. Hunt: Your first item involves Grand Kahana Investments, LLC, requesting a conditional permit for the Coldwell Banker Office, an office for timeshare, real estate, and activities sales and management in the Hotel District at Kahana Villas #6, 4242 Lower Honoapiilani Road, TMK: 4-3-010: lot 013-016 in Kahana, Lahaina. The file number is (CP 2006/0009) and the project planner for this is Jeffery Dack.

Mr. Jeffery Dack: Yes, commissioners this was originally scheduled for this time frame, however, the applicant unfortunately was not able to complete the noticing requirements and so the item is being renoticed for your March 11th meeting. So this Grand Kahana Investments would as I say, hopefully we expect to be taken up on March 11th. Thank you.

Ms. Amorin: Thank you Jeff Dack.

2. **MS. LINDA GALLAGHER on behalf of CB LAANA, CHARLES BRENT & SUKUMA LUMJUAN requesting a Type 3 Bed and Breakfast Permit for the Spyglass Bed and Breakfast-Vacation Rental at 367 Hana Highway, TMK: 2-6-009: 017, Paia, Island of Maui. (CP 2006/0005) (SMX 2006/0141) (P. Fasi)**

The public hearing will be scheduled to a later date as the applicants did not meet all of the notification requirements.

Mr. Hunt: The second item involves Ms. Linda Gallagher on behalf CB Laana, Charles Brent and Sukuma Lumjuan requesting a Type 3 Bed and Breakfast Permit for the Spyglass Bed and Breakfast-Vacation Rental at 367 Hana Highway, TMK: 2-6-009: lot 017, Paia. The file number is (CP 2006/0005) (SMX 2006/0141) and on behalf of the project planner I believe this item has been rescheduled to a later date for the audience sake because of notification requirements were not met by the applicant.

3. **RDOB LIMITED PARTNERSHIP requesting a Special Management Area Use Permit in order to construct a single-family residence with attached ohana unit and attached garage at 3020 South Kihei Road, TMK: 3-9-004: 102, Kihei, Island of Maui. This will be a second, single-family residence on the same parcel. (SM1 2007/0008) (J. Buika)**

Mr. Hunt: Your next item is RDOB Limited Partnership requesting a Special Management Area Use Permit in order to construct a single-family residence with attached ohana unit and attached garage at 3020 South Kihei Road, TMK: 3-9-004: 102, Kihei. This will be a

second, single-family residence on the same parcel. The file number is (SM1 2007/0008). The project planner for this is Jim Buika.

Mr. Jim Buika presented an overview of the Maui Planning Department's Report.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: You said the existing house is nonconforming to the SMA Rules, correct?

Mr. Buika: Yes.

Ms. Pawsat: So why wouldn't it be required that if they're going to build a new place that they'd demo the existing residence?

Mr. Buika: There is no plan at this point to demo. It will remain. This is the second dwelling so there's no demolition.

Ms. Pawsat: Well right. But I'm saying a lot of times when you go in for a permit if you're going to go – they require you to upgrade to the most current rules, you know what I mean? Do you understand what I'm saying?

Mr. Hunt: When the existing dwelling ever comes in for any kind of remodel or any kind of permit on that, an extensive permit, I guess a better way to say it is if the existing dwelling were ever to be demolished then we would require that it comply with existing regulations. But we wouldn't require them to demolish it at this point.

Ms. Amorin: Thank you Director. Commissioner Starr.

Mr. Starr: Yeah, is the applicant here?

Mr. Buika: Yes, the applicant is here.

Mr. Starr: Is this intended for personal use or is this something –

Mr. Buika: Yes, it's for family use, personal use. Tom and Kathleen O'Gorman are here in the audience if you'd like to ask them a question.

Mr. Starr: It's really – is there any concerns regarding traffic flow into that? Were there any comments from Police?

Mr. Buika: No, there were none. No comments from Police.

Ms. Amarin: Commissioner Guard.

Mr. Guard: Thank you. I don't know if this is, I guess for staff or Director Hunt. The ADU you said was about 700 feet? Is that above what would be allowed on R-3?

Mr. Buika: R-3 allows for 700 foot dwelling.

Mr. Guard: I thought that was rural half acre?

Mr. Buika: I checked it, double checked it, triple checked it.

Mr. Guard: So for the third unit – even though –

Mr. Buika: Yes.

Mr. Guard: Okay, I thought if it was just one house and one ADU it would be 700 but if they're going for two full size main dwellings and an ADU, I thought that would go back to the R-3 zoning.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: Jim, the drainage that's going to be generated by the additional structure that they're putting down you said was going to be handled by landscaping. Does that mean it's going to be retained on site?

Mr. Buika: Yes, it will be retained on site and infiltration and a full drainage report is required to Public Works prior to building permit issuance. So that will be handled in the building permit side.

Ms. Amarin: Commissioner Ward.

Mr. Mardfin: I noticed in the report there was a back and forth about whether utilities would be underground or not and I gather the final resolution was they will not be underground because that's the way things really are around there?

Mr. Buika: I believe that – I mean that's all in the future, conditions for the future. I think it didn't require them to commit to undergrounding the utilities as part of a condition of this, of the road widening lot. That was the kind of the concession from Public Works.

Ms. Amarin: Commissioner Ward.

Mr. Mardfin: But the original, Exhibit 7, said that they were going to have underground

wiring I believe. And then which and Exhibit 7 was from Sustainable Science LLC, preliminary engineering report, and on page 4, Item No. 5, it said, "the proposed electrical, telephone and cable T. V. distribution systems will be installed underground. The main electrical line will be connected from the overhead distribution line on the makai side of the South Kihei Road." And then it seems that in Exhibit 5, in a back and forth between the Director of Planning that they got the – that the director finally agreed that they didn't need to put them underground. I mean, it was an interesting back and forth. I was just kind of curious about it more than anything.

Mr. Buika: Well, that was from the Director of Public Works. That was dialogue with the Director of Public Works and I believe that was for the road widening lot for undergrounding of utilities along South Kihei Road eventually.

Ms. Amorin: Commissioner Ward.

Mr. Ward: I just have kind of a second question. You get a lot of sunlight there. I didn't notice that there was any solar or hot water heating or anything planned for it and you know, I'm not willing to say that they have to do it or anything like that, but I wondered if they'd ever consider putting solar water heater on to ease electrical generation consumption sort of thing.

Mr. Buika: I'll have the consultant answer that.

Ms. Amorin: Please state your name.

Mr. Vince Bagoyo: Yes for the record Madam Chair, my name is Vince Bagoyo and I represent the owner. I think there was a question about solar. I believe solar will be installed and I think the existing unit is also solar.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Okay, Commissioner Bagoyo, your report states that the increase in runoff will be .41 cfs. That's the increase due to this new development. Are you aware that new development cannot create an increase in runoff because you know, and this is an important rule because this runoff is going through landscaped properties which is what has been destroying our reefs bringing the phosphates and nitrates from the fertilizer onto the reefs and in this area the reefs are virtually dead from this practice already? Now you're bringing a project before us that does not follow the county code and mandate that your project shall not create a new increase in runoff. So I'm wondering what you have to say to that and I quote in the end of the preliminary drainage report, page 4, on the conclusion where it says, "the increase due to development is .41 cfs."

Mr. Bagoyo: As result of this second dwelling as you have indicated in our drainage report from our engineer, the additional runoff is .41 cfs and it will be contained on site. It will not be flowing into the shoreline. Whatever the code or the rules that will apply to this project that we will meet as Jim Buika had indicated.

Mr. Starr: It does show that there will be a minor increase in runoff.

Mr. Bagoyo: Yes, .41 cfs.

Mr. Starr: I mean it's – the law's quite clear, it's not allowable.

Ms. Amorin: You have any response Mr. Bagoyo?

Mr. Bagoyo: It will be contained on site and you know, whatever the requirement by the Public Works or your rules as we proceed with the building permit process that we will comply. The additional runoff which is very negligible .41 cfs will be contained on site.

Ms. Amorin: Thank you. Commissioner Starr have another question.

Mr. Starr: Yeah, we've never as far as my experience on this board approved a project where it says that there'll be an increase in runoff. And your statement that it will be contained on site, you know, I'm sure that's a good intent but your documentation shows that there is an increase in runoff. It doesn't show retention basin, it doesn't show any place where this runoff is going to be directed. It just says, well you know, landscaping will, you know, it's minor and landscaping will take care of it. As far as precedent, this would be a very terrible precedent for us to set to allow the project to go through. In fact, just about every project that's been before us in the last year or so has added in a decrease in runoff, created a decrease of runoff because as development happens more and more of the existing runoff, you know, that naturally occurred is being polluted by fertilizers and getting into the reef. So here you're not helping the problem but adding to the problem. I really think you should go back and redo this and create some kind of management plan to retain that which I certainly don't see in your documentation.

Mr. Bagoyo: Thank you very much for your concerns Commissioner Starr, but like I have indicated we will, as indicated in the staff report, the drainage report, once we go for a building permit, that's part of the rules that we will comply. And the additional runoff that will be generated from this project is just .41 cfs and that will be contained. It's not going to be discharged into the shoreline. It would be contained on site. I don't know what else I could say that we will meet whatever the rules are.

Mr. Amorin: Commissioner Starr.

Mr. Starr: You're currently here for the SMA, this is a shoreline management area special permit where we are the guardians of that shoreline and the health of the near shore waters. This is not something that we can just slip on the basis that well it will be taken care of later. This is something that we have to be assured before we pass an SMA.

Mr. Hiranaga: Madam Chair, point of order.

Ms. Amarin: Excuse me Commissioner Starr, Commissioner Hedani.

Mr. Hiranaga: I understand the point that Commissioner Starr is making and I understand the reply that the applicant has made and I don't know why we're belaboring this point. He's made a point about his concern about runoff and he says he's going to comply with the County Code. So why are we spending so much time on this? I don't understand.

Ms. Amarin: Thank you Commissioner. I'm going to go over to the next commissioner, Commissioner Starr. Commissioner Hedani followed by Commissioner Guard, followed by Commissioner Hedani, I'm sorry Hiranaga. Commissioner Hedani, the H's.

Mr. Hedani: Vince, on this project I'm following up on Commissioner Mardfin's question. The Director of Public Works waived the undergrounding of utilities, but it seems like he still required curbs, gutters, sidewalks and other improvements along the road widening section for the road section. Has that been resolved?

Mr. Bagoyo: Yes, I think if you look at the second letter that we have, you see from the Director of Public Works. We believe that Item No. 6, and I think your – of their original letter with respect to that condition that had been resolved. We are providing a right of way if they are going to pursue it in the future. Pretty much the entire South Kihei Road, the main utility lines if you drive through that area are all above ground.

Mr. Hedani: Right. So are you folks going to do the curbs, gutters, sidewalk or is that waived too?

Mr. Bagoyo: Our understanding based on the letter is it's been waived. If it's not, whatever the code is, because they still have to go for the building permit application anyway. So whatever the requirements that they have to do will be.

Mr. Hedani: The way I read it, he's waiving the undergrounding of the utilities but he's still saying curbs, gutters and sidewalks are required by code so you gotta comply with that is the way I read it.

Mr. Bagoyo: If that's the requirements by this commission we will have to comply.

Ms. Amarin: Commissioner Guard followed by Commissioner Hiranaga.

Mr. Guard: Thank you. Who did your drainage report to come with the increase in cfs?

Mr. Bagoyo: Sustainable LLC.

Mr. Guard: Okay, so did they have any plan to either do like a kind of cinder pit or anything like that just to hold the water or is it mainly with berms and whatnot, do you know?

Mr. Bagoyo: Landscape, it's a grassing.

Mr. Guard: Just the grassing?

Mr. Bagoyo: Yeah, because it's .41, it's a very negligible amount.

Mr. Guard: Yeah, well that's I guess my question would be if they try to increase that to maybe take over some of the – the original house looks like it's fairly old, so maybe that one they could try to accommodate some of the water runoff that that one's creating as well.

Mr. Bagoyo: There's actually a substantial setback from the shoreline to the existing home which is fully landscaped and there's some rock wall on the north side of the property. So there's a substantial setback and well landscape from the shoreline to the existing dwelling unit.

Mr. Guard: So they'd be able to entertain the idea of either a berm or a small basin to capture water so that it goes – it remains on site instead of flushing out onto the beach there?

Mr. Bagoyo: That's correct.

Ms. Amarin: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: Just a clarification. The staff kept talking about the existing structure is nonconforming and I just wanted to clarify that it's nonconforming because it exists within the new shoreline setback. Is that correct? That's why it's called nonconforming?

Ms. Amarin: Director.

Mr. Hunt: I'll defer to Mr. Buika on that question.

Mr. Buika: Please repeat the question. I apologize.

Mr. Hunt: How is the existing structure nonconforming, in what way?

Mr. Buika: Oh, it was built prior to June 16, 1989 or it got a building permit prior to June 16, 1989 or it got a building permit prior to June 16, 1989. It was permitted in 1983. So any structure prior to June 16, 1989 permitted is a nonconforming structure.

Mr. Hiranaga: Because it's in the setback, shoreline setback?

Mr. Buika: Yes, yes.

Mr. Hiranaga: I'd also like to follow up on the question that Commissioner Hedani had regarding Condition No. 6 from the Department of Public Works, and I guess this can come from Department of Public Works, the roadway widening lot will be approximately how wide?

Mr. Mike Miyamoto: Madam Chair, I'm not ready yet, right offhand to tell you exactly how much the road widening lot.

Mr. Hiranaga: I guess I have – This is something new to me. This is not a proposed subdivision and I guess I'd like clarification from the department as to why curbs and gutters and sidewalks are required for this application for my education I guess. There's no subdivision proposed so I'm just wondering why the department is requiring this.

Mr. Miyamoto: Madam Chair, if I may respond?

Ms. Amorin: Yes, Public Works, Mike.

Mr. Miyamoto: Frontage improvements do not only apply to subdivisions, they apply to basically all the construction. It's, you know, the County's process of getting frontage improvements and planning for future widening of roadway corridors. So this roadway is, you know, based on the classification of adjacent land uses, it's an urban area and it has to meet the County Code, so it has frontage improvement requirements and the comment that was made about waiving all of the improvements is incorrect. The Director's letter dated January 8, 2008, identifies Condition 6 as being required by County Code and that the only flexibility that the director has is in regards to undergrounding of utilities. The applicant can file for a deferral with the Board of Variances to defer the frontage improvements.

Mr. Hiranaga: Will this be a continuing policy by the department that all SMA applications

for second dwellings will be required to provide these type of improvements islandwide for SMA applications for second dwellings?

Mr. Miyamoto: It's not necessarily just for SMA. You know any time you do modification to an existing property, the County Code kicks in the frontage improvements can be required depending on the designation of the land use type. Obviously ag lots have a lot less requirements.

Mr. Hiranaga: So will the department be doing this then for all urban residential areas that have, that require improvements, will they be placing this condition on all applications for accessory dwellings?

Mr. Miyamoto: It's a standard condition for any construction on a property that we have – you know, if they're doing a major construction on the property, the Code allows us to get frontage improvements they don't exist as today.

Mr. Hiranaga: May I continue?

Ms. Amorin: Yes, Commissioner Hiranaga.

Mr. Hiranaga: My parents live on Nakoia Drive in Wailuku which does not have curb, gutters or sidewalks and they live on a 13,000 square foot lot. So if they're going to put up a 600-square foot cottage you're going to require them to put curbs, gutters and sidewalks fronting their property?

Mr. Miyamoto: If the County Code requires us to, yes we will. If they wish to not implement that then there's two avenues. They can get a Board of Variances or they – as in one of the projects that Council Member Anderson, they – one of the conditions of zoning they allowed the condition to waive that requirement of frontage improvements.

Mr. Hiranaga: Thank you.

Ms. Amorin: Thank you. Commissioners lets stay with the subject. Commissioner U'u.

Mr. U'u: Yeah, along that lines, there's nothing to tie into with the curb and gutters as far as on the frontage of the property. I mean, you can make a sidewalk I guess the length of their property and it would end there. I also have some concerns because my mom lives on a SMA area. She's, you know, collecting – she's retired from the State, she's not a millionaire, however, our property is worth a lot of money and if we were to go before and build an additional dwelling which we're entitled to it will be deemed unaffordable, it will be unaffordable for us. So I think I know when you guys place that certain laws in place to

benefit the community but when you taxing an individual without money, it makes it unaffordable and it's sad. But I going tell you the good thing about this project, I like that they going with lap siding and they matching the existing. So it's not a sore thumb as you pass by in that area because some of the houses there don't blend in with the environment, but I think this one does and I like that fact that it's blended in with the environment.

Ms. Amorin: Thank you. Commissioner Guard.

Mr. Guard: Thank you. I guess, yeah, the curbs and gutter is a big issue and I just can't remember on a few of the other projects that we have done – I feel like the church on South Kihei Road had to do it, on Lipoa Street we made them do it. So I guess just for consistency sake, I don't remember all of them, but I'm just – the ones that I do remember in that vicinity even though they led to nowhere, the idea was that eventually it's going to get there. But I do understand the commissioners on both, on either side of me. Just my memory, could be failing me either way also, take it for what you will, I feel like the church had to a few months back and on Lipoa Street we had people put in the sidewalk and Mike may just be following the line that the commission has done with previous conditions.

Ms. Amorin: Thank you, and Commissioner Guard with your earlier question, did you get confirmation regarding the square footage, 700?

Mr. Guard: How it reads, it is I guess just in my interpretation of that it was as if, you have a lot so large and you're only doing the house and ADU, but when you go to do the second home instead that I thought the ADU, I know other people in the area are doing it, it seems like it's kind of double dipping because you're already putting one house per 10,000 feet and so you're getting the bonus of the R-3 zoning but then you're taking the Rural half are cottage size, but that's the Planning Department's issue not mine. I just thought it was a 600-foot ADU.

Ms. Amorin: Thank you. Commissioner Ward followed by Commissioner Hiranaga.

Mr. Mardfin: I'm new on the commission and I'm trying to understand something about this runoff that Commissioner Starr raised and let me ramble for a minute or so. It seems to me that there's a whole lot of concrete and housing put on here. So that should mean that there's less fertilizer use. On the other hand, there's more .41 cfs additional water coming in. I presume that's because of the concrete and the house so that it's generating more runoff. And I guess if the issue is, are you transmitting fertilizer to the reefs it will cause algal bloom and harm the reef. If the issue is actual runoff that is water going off of the top of the property and into the ocean I can see how that would hurt the reef. If it's retained on site, I guess I'm trying to figure out what happens. You're talking about concrete, some pits and stuff, so instead of running off the land, it's going down into the water table or into the

water and out. I guess I'm a little confused about what the net impact on the reef is and I can see a plus and a minus. The minus is because of the more concrete there is more water that's likely to go out, either down and out or directly out. On the other hand, because it's concrete there's less fertilizer use because there's less growing stuff. So there's less fertilizer to go down and out or just out and if somebody can explain this whole thing to me I'd appreciate it.

Ms. Amorin: Commissioner Starr can you answer his question?

Mr. Starr: I can, but you know, I guess we have start with the state of pre – a predevelopment state which doesn't exist here but once upon a time existed there where there was natural vegetation and no house or no concrete and at that time, you know, there was a certain amount of water that would hit the ground, most of it would get absorbed on a big storm, a 50-year storm, some of it would run into the ocean. There was no chemicals being put into it. It might bring some mud into the ocean, but it was not necessarily a very bad thing. As, you know, development happens, there's less grass and natural surfaces to absorb it so increasing amounts tends to run into the ocean. And that is not a good thing because it brings mud into it but it's a worse thing when it's landscaped and lawn chemicals are put into it and many studies have shown that that's the main reason why our reefs are virtually dead. And this is one area where they are dead.

Now the County ordinance and perhaps Mike can make some comment here states that new development shall not increase runoff. That it shall either go into a County drain system, say if you build in Kahului or Wailuku, the County puts in drainage pipes and then they deal with it and you plug into those or if that doesn't exist you have to retain it on site yourself. And projects that come before us have intricate systems of drainage basins to hold that and usually what we've been seeing is projects decreasing the amount of runoff going into the ocean from the total site, when they build something new, they'll actually build more retainage to try to help the situation. This is, you know, it's rare that a project comes before us where it actually increases the runoff like this one. So that's a – you know, explains, as least as far as it goes to me, my concerns that this will bring more water into the reef by .4 cfs which may not be a huge amount but it would set a precedent for allowing something that's not – doesn't go along with our codes.

Ms. Amorin: Thank you Commissioner Starr. Staff Planner, did you have any comments to address Commissioner Ward?

Mr. Buika: Yes. I'd just like to say that I think there's a misunderstanding that certainly in the drainage or the engineering report there is a calculated runoff and that's what that is due to the concrete exactly what Commissioner Mardfin was saying. And certainly where we are at it is, it's a sand dune, they're living on a sand dune. So the filtration of any water

is directly down into sand. And so, it's not going to runoff into the ocean but it will filter downward through drainage or through landscaping. So certainly they can build a swale. The intent of the owners and the applicant certainly are to comply with zero runoff. And maybe that wasn't stated in here well, and maybe that's the misconception. But we could add in a, you know, in the conditions of the SMA approval we could – I have already in there No. 28, is "that a detailed and final drainage report and best management practices plan shall be submitted to the Director of Public Works with the grading plans for review and approval prior to issuance of the grading permit." Also we could add in that, "all runoff shall be contained on site through best management practices and approved by Public Works." So certainly the intent has always been to – in the building permit process to get – to acceptable drainage so that nothing will go into the ocean. That's the last thing that will happen here. I guarantee it and I'm sure that's the intent of the applicant also.

Ms. Amorin: Thank you Jim to stabilize this concern and again Commissioner Ward another question?

Mr. Mardfin: Just to clarify. Does that mean that after this is built, there will be a net reduction of fertilizer going out into the ocean one way or another?

Mr. Buika: This is Tom Gorman, the owner of the property.

Ms. Amorin: Please state your name.

Mr. Tom O'Gorman: I'm Tom O'Gorman and I just wanted to address the commission and thank you for this time. I've been very sensitive to the reefs. I've been diving these reefs for over 30 years and 10 years ago when we took over management of this house for our family there is no phosphate fertilizer goes on our property and we will not have any in the future. It will be best management practiced. I'm very sensitive to the reef. We're fourth generation here on Maui, third and fourth is coming in a couple of days.

Ms. Amorin: Congratulations.

Mr. O'Gorman: Thank you.

Mr. Mardfin: Thank you sir.

Mr. O'Gorman: And we're very sensitive to this. Thank you.

Ms. Amorin: Commissioner Guard.

Mr. Guard: I was just going to say maybe we could get the staff report, I thought we were

moving in the right direction, and I don't know if the consultant has any feedback on the curbs and gutters issue is my last question.

Mr. Bagoyo: No, like I said from the beginning that whatever the conditions are – just keep in mind that the curbs and gutters just going to be pretty much on the South Kihei Road would be just on the frontage of this property and we certainly be willing to work with the Department of Public Works in terms to resolving that particular condition. And if might add there's a minor change in the power point presentation by Jim and I just want to thank Jim and the Planning staff for really helping us out in this process. The 3020 not 2030, and then the second page of your staff report the contact person is Tom O'Gorman not John Northrup Walker. John Walker doesn't exist so I'm not sure where that name came from. So I just want to make those minor changes for the record.

Ms. Amarin: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: Thank you. Did Public Works have a chance to figure out what the road widening lot width is going to be? If not, I have another question. Just curious why the applicant is proposing this second floor accessory dwelling since the property seems to have ample room. To place the accessory dwelling on the ground – from an architectural standpoint I'm just kind of curious why they're proposing that.

Mr. Bagoyo: Let me ask the owner. He has a large family.

Mr. O'Gorman: We started counting up head count and we didn't know who we were going to put up in one of the motels or something, so when we have all the family here it does require that.

Mr. Hiranaga: No, the question is why is it a second floor dwelling versus a ground.

Mr. O'Gorman: Because of the square footage allowed we could not do it, because of the setback, the side setback, front setback to the street we couldn't get the extra room in there. So that's why it was done.

Mr. Hiranaga: Okay, thank you.

Ms. Amarin: Thank you. Anymore questions? Commissioner Starr.

Mr. Starr: I think this may be a question for Thorne because I know that we're dealing with a substandard setback here because they have preexisting grandfathered condition but there seem to be a berm where the planting is started and I'm wondering is there a retaining wall in there or is that – what is keeping that division between the beach, and I

guess that's naupaka? What's locking that in place?

Ms. Amarin: The Chair would like to address the staff planner can you answer Commissioner Starr's.

Mr. Buika: Yes, it's a shoreline bank of four to five feet there. It's the dune there that is protected by the naupaka plant there. There is no shoreline hardening on the property.

Mr. Starr: I mean, isn't that a form of hardening though when it's irrigated naupaka like that fixing it. To my understanding that the beach would actually extend higher up had that not, had that not been artificially fixed like that.

Ms. Amarin: Mr. Bagoyo.

Mr. Bagoyo: Thank you Commissioner Starr. There is actually a rock revetment on those naupaka plant.

Mr. Starr: That's what I thought.

Mr. Bagoyo: And those being approved by the Department of Land and Natural Resources. Those are existing prior to 1961, and so if you look at your certified shoreline that's before you that's signed by the Department of Land and Natural Resources there is an existing revetment, rock revetment.

Mr. Starr: Could I ask Mr. Abbott a comment on this? Because I know, you know, we're looking at new development on the property and I really think that all of this should be taken into account. And my belief, you know, this new development should trigger the current setback regulations as well. But as far as having this revetment or seawall here which is in a way taking beach away from the public, I'm not so sure if it really is legal.

Ms. Amarin: Thorne, ask for your expertise.

Mr. Thorne Abbott: Thank you Madam Chair. I'm not sure that I'm a expert as much as...(inaudible)... but Jonathan thank you very much for your question. I think overall first off, my comments on this project and Jim's been very actively involved is the applicant was very interested in following our processes first which I compliment them for.

Second, DLNR certified this as a nonconforming old seawall, that's a old revetment that's been there for a long time.

Third, by – there's a clause that Jim had recommended as a condition that they cannot

harden the shoreline in the future to protect their structures and what that does, although not immediately, what it really does is it's a managed retreat. He's building a new house but eventually the more makai house, one is either going to be at risk of coastal damage and he won't be able to save it and he'll have to tear it down or two, it's just going to get too small and too cramped and too old and too costly to repair and eventually it's going away. You know, maybe it's not as soon as some of us would like, but over time, he's actually doing managed retreat which is something we generally support, the department. So given those caveats and given the fact that, you know, it's the DLNR's kuleana to recommend whether this revetment be removed or not, and we can't forcibly require that, it seemed like a pretty good outcome overall. Thank you.

Ms. Amorin: Thank you. Mike, do you have a response for Commissioner Hiranaga?

Mr. Miyamoto: Thank you Madam Chair. The required right of way on South Kihei Road is 60 feet. The actual diagrams that we have don't identify the mauka right of way line at this point. So it would be rather difficult. But as they go through their construction plan, development process, we'll identify, require them to identify the mauka right of way and measure the 60 feet. Actually they would only be required to do half of their portion if the mauka side has not already given their road widening lot. So whatever the difference is that would be the amount.

Ms. Amorin: Commissioner Hiranaga, you have any questions for Public Works?

Mr. Hiranaga: I guess there's no chance that that roadway lot would then make the subject property less than 20,000 square feet? I'm just looking here at – I guess the road frontage is 76 feet, so it's very unlikely it would reduce by creating that roadway lot it won't reduce the lot size to below 20,000 square feet.

Mr. Miyamoto: No.

Mr. Hiranaga: Highly unlikely.

Mr. Miyamoto: Yeah, it's highly unlikely, but again, we'd have to work on it during the construction plans. And Madam Chair if I may respond to the drainage question that has come up?

Ms. Amorin: Yes, Public Works.

Mr. Miyamoto: In checking the staff report, Exhibit 6 which is the applicant's drainage report, if you look in the table they actually show a proposed I think they're showing how they're going to handle the additional, the increase in runoff and it mentions a – a proposed

drainage basin and how that's developed, you know, they'll start developing that more and more in detail when they start developing their construction plans. So I think, you know, the study does indicate that it's – there is a proposed drainage basin. If not, in the typical sense it may be a more landscaped drainage basin but they still be required by the County Code to handle the increase in run off.

Ms. Amarin: Thank you Mike. Commissioners any more questions for the applicant? Commissioner Guard you had another question?

Mr. Guard: This might be for the consultant, Exhibit 12, if we could review this new shoreline survey or Jim I guess. Is the eroded area still considered the applicant's property? That's my concern. That is? Okay. Well, this shows the new area's 17,000 feet so I just wanted to make sure that that was still property that they owned to be over the 20,000 feet.

Mr. Bagoyo: That's correct.

Mr. Guard: Okay.

Ms. Amarin: Thank you. Any other questions? At this time before we go into public testimony, we're going to take a break. We'll reconvene at 11:20 a.m.

A recess was called at approximately 11:08 a.m., and the meeting was reconvened at 11:20 a.m.

Ms. Amarin: ...(inaudible)... is back in session.

a. Public Hearing

Ms. Amarin: We are still on Item B-3 with our agenda and so before we get recommendation from our staff planner I'd like to open this time for public testimony. Do we have any individual in the audience that wishes to speak on this agenda item? Seeing none, public testimony is closed.

b. Action

Mr. Buika presented the Recommendation.

Ms. Amarin: Thank you Jim. Commissioner Starr.

Mr. Starr: I just have a question regarding one of the conditions and its implementation,

that's Condition 20 regarding the retaining wall or revetment that exists there. And obviously it says that "no construction of a shoreline erosion control structures shall be permitted," but I want to know what constitutes construction as opposed to repair say the existing one would be damaged by a storm event. How much repair can be done before it kicks us off?

Mr. Buika: Repairs in the shoreline setback area can be up to 50% of the valuation only anything after that, I do believe –

Mr. Starr: I mean, I'm talking about repairs to the revetment.

Mr. Buika: And repairs to the home?

Mr. Starr: No. Specifically to the retaining wall. I know it's something that's been before us and I'm confused about how this is being handled.

Ms. Amorin: Thorne.

Mr. Abbott: Hi, Thorne Abbott, coastal planner. Commissioner Starr for a permitted structure you can repair it up to 50% so long as you don't enlarge, expand or intensive the use. So that would may be for the existing house. For the rock revetment which is nonconforming because it was built prior to 1970 or permitted prior to 1989, you can repair it unlimited amount of money, you can't enlarge, expand or intensive its use. However, if it was damaged by coastal hazards such as coastal erosion, you cannot repair it without a variance approved by this commission. So in essence to answer your question, he cannot repair it if it's damaged by coastal erosion without your approval.

Ms. Amorin: Thank you Thorne. Any other questions Commissioners? Commissioner Ward.

Mr. Mardfin: I just have one quick one. Condition No. 23, "no artificial light from floodlights, uprights be used, etc., on the water." This probably doesn't matter but I just would like clarification. Does this only apply to the new project or would it apply to the entire lot?

Mr. Buika: I would say it applies to the entire lot because that's a rule of the Coastal Zone Management Act.

Mr. Mardfin: Okay, thank you.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Move to approve as recommended.

Mr. U'u: Second.

Ms. Amarin: Have a motion on the floor to approve by Commissioner Hedani, seconded by Commissioner U'u. Any discussion? Commissioner Starr.

Mr. Starr: Yes, there's definitely a part of me that does not like to see increasing density in the shoreline area. However, I will be voting for it because there already is this density in that neighborhood and I don't want to penalize just this one particular owner, but there is – I just want to comment that there is something inherent in creating more density in this shoreline area that's disturbing to me.

Ms. Amarin: Thank you Commissioner Guard.

Mr. Guard: Yeah, I'll be voting in favor of the project and I hope some of the other neighboring properties around here can look at this one as an example, that they're not trying to maximize the size of the homes and they're actually using the exterior area as their playground instead of building for other environments of winter, etc., so I like it.

Ms. Amarin: Thank you. And just my comments to the owner. Being three generations, four generations to come and I'm sure your neighbors are aware of you being there all of this time and respect how you feel about the aina and the shoreline and just keep talking about it. Thank you.

It was moved by Mr. Hedani, seconded by Mr. U'u, then

**VOTED: To Approve the Special Management Area Use Permit as Recommended.
(Assenting - W. Hedani, B. U'u, K. Hiranaga, J. Guard, W. Mardfin, W. Iaconetti, J. Pawsat, J. Starr)**

Ms. Amarin: Motion is carried.

Mr. Buika: Thank you Commissioners.

Ms. Amarin: You're welcome. Director.

Mr. Hunt: Your next item is a communication item involving communication from James Giroux dated January 15, 2008, Deputy Corporation Counsel requesting that the Maui Planning Commission clarify the language of its amendment on its action taken at the

September 25, 2007 meeting regarding proposed amendments to Chapter 12-202 of the Maui Planning Commission's Special Management Area Rules regarding time extensions. Joe Alueta is the staff planner assigned to this project.

C. COMMUNICATIONS

- 1. January 15, 2008 letter from JAMES GIROUX, Deputy Corporation Counsel requesting that the Maui Planning Commission clarify the language of its amendment on its action taken at the September 25, 2007 meeting regarding proposed amendments to Chapter 12-202 of the Maui Planning Commission's Special Management Area Rules regarding time extensions. (J. Alueta)**

The Commission may take action to clarify the language of its approved amendment action taken at its September 25, 2007 meeting.

Mr. Joe Alueta: Good morning Commissioners. As you recall, you did hold the public hearing on this matter with regards to your rule change. You were reluctant to grant the approval of amendments wholeheartedly to the Planning Director and the staff with regards to those amendments. You felt that, but you didn't want to see these time extension and minors all the time, but you wanted to see was a list of those applications and what was applied for and they would be attached as part of your – sort of like your SMA report you get now and if no one raised an objection, the Director would then proceed and process that time extension or amendment request for a time extension for either initiation of construction or completion of the project. And that was the procedure that we sort of talked about. We had drafted some preliminary language on the floor with Colleen Suyama, our Deputy Director.

However, when we sent it up for drafting as again, you have a memo from your Corporation Counsel seeking clarity and I think that's the issue that is before you today is to provide clarity is what I just told you. An accurate statement of what you acted on and what kind of language do we put in there to insure that your wishes are actually carried in the manner you want them to be.

Ms. Amorin: Commissioners, any comments on this item? Director.

Mr. Hunt: From our perspective what this does is – the original intent was to delegate down some of these decisions to free up your agenda. We've talked about it in the past and it's actually an agenda item today. We'll be talking about it later. Just how packed your agendas are and that you need to do some kind of prioritization and you can't address everything and this seems like an area where it would be good for delegation down. Again,

all it is at this point is it's coming back to you for clarification of the wording from our legal counsel. So I think the intent is still there. It shouldn't be a big issue.

Ms. Amorin: Commissioner Hedani followed by Commissioner Ward.

Mr. Hedani: I have no objection to the recommended clarification language that's being suggested. The only concern that I would have is if it would tie the hands of the department and further slow things down?

Ms. Amorin: Director.

Mr. Hunt: To be candid with you, yeah we would prefer that you simply delegate these down, but at the last or when you folks discussed it apparently, I wasn't here, but I was informed that you had some reservations regarding that and so this seems to be the compromise and we can live with that. As it's worded, if you folks don't wish to review it at the next meeting then the decision simply stands. So I think the intent of streamlining would still be achieved.

Ms. Amorin: Commissioner Ward followed by Commissioner Starr.

Mr. Mardfin: I just wanted to ask Corp. Counsel, it said, "the department suggests the following language to avoid ambiguity." Can you explain to me what the ambiguous part is?

Mr. Giroux: Yeah, because the language was drafted in anticipation of you agreeing with the department, and the department was anticipating that you would just delegate this to them. They would make the decision and they would notify you of their decision. When in discussion, it was clear that that's not the procedure you wanted. And so, language was proffered to you from the department saying, well okay if that's not your intent then how's about this language?

And when we read it, I went back to the minutes and I was basically – my job at that point was to just take what you guys did put it in format and send it off to the Mayor for signage. And when we read it, it didn't make clear sense of exactly what your intent was. And my concern was is that 205A allows the authority and you're the authority to delegate some of your powers, but the law says that if you delegate that power and you do give somebody that power then you've given them the power. And when you give and you hold back and you review and you take back and then somebody says, hey who made the decision, it's the attorneys are going to have to say, well, okay I got to look at the Charter, the commission's the final authority but you've delegated it to the director but then you wanted to review it again, but then the director made the decision.

So there comes a point where you got to get rid of the ambiguity. Did you give him the authority to make the decision, did he make the decision, is that an appealable decision and where – the applicant has to know where to go from there in order to exhaust his administrative duties as far as to exert their rights. And we came up with the same problem with, you know, exemptions, SMA minors, the rules as they're read are giving a certain authorities to the director but then there's these ambiguous clauses of then he'll notify you or then he'll you know, and so it's got to be clear who's making the decision.

And that's why in the revised language if that – we looked at the intent of the discussion, and we said, well if that's the intent of the discussion lets create language that clearly follows the intent of the discussion because as lawyers what – if it's ambiguous and it doesn't make sense to us and you can see we deleted a huge section from the bottom because it either became redundant or it became ridiculous. You can't have that when you're writing law, you got to say, okay, if I'm going to read this word for word and I'm going to follow it, I can't have a ridiculous result. I have to say, okay, I don't understand, I don't get it.

So then I got to look at the transcript and say what were they talking about and you know, what were they thinking? And then I can say, well, okay, well me reading this this is where I get. You don't want that when you're writing law. You want to say, from these words, what is the intent? You're delegating, the director will do "A" then he'll send it to you, then if you want to review it, you will take an action and then if you don't review it, the director will make a decision. So it's very – what we tried to do is just so nobody's guessing at who's making the decision.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, I'm happy with the proposed wording except with one exception, I think that it should say, "prior to granting or denying any permit time extension request." So that it's clear that the director has the ability not only to grant but to deny. I know that's made – it's mentioned later on, but it should be prior to granting or denying.

Mr. Giroux: I think if you look at the rule in total above this paragraph there's a clear delineation of what the director has to do in order to review a permit. So I'm not sure if it's absolutely necessary to add.

Mr. Starr: Well, you know, if you're saying prior to granting, it should also be prior to deny. Or it could be just prior to reviewing in which case it would moot the issue, but if you're saying granting it should be granting or deny.

Mr. Alueta: If I may Madam Chair?

Ms. Amarin: Joe.

Mr. Alueta: I think Commissioner Starr's concern I guess is because James if you look at your second to the last line you have "director may grant or deny" and because you only have grant on the very top. So it's either – I guess he wants it to be consistent. Either prior to granting and then on the very bottom take out denying I guess on the second to the last line.

Mr. Giroux: Yeah, that's fine for consistency.

Mr. Starr: Well, I think it should be both. I mean, the director should have the choice. He shouldn't just be able to just grant.

Mr. Giroux: Right.

Mr. Starr: So I would add the word, "denying" – "or denying" after the word "granting" in the first line.

Ms. Amarin: Thank you Commissioner Starr. Actually if you look at the whole paragraph putting the denying up really and it ends with it at the same time. Commissioner Hedani.

Mr. Hedani: My point is, I think if you don't grant a time extension request that's a denial.

Ms. Amarin: Makes sense. Commissioner Ward.

Mr. Mardfin: If Jonathan was making the motion to add the words "or denying" after the word "granting" and then the forth and fifth words, I would second the motion.

Mr. Starr: Well, I haven't yet, but is a motion in order Madam Chair or do we need to take testimony first?

Ms. Amarin: We should take testimony first. Any other questions on this item? We have any individual in the audience that wishes to speak on this agenda item? Please state your name.

Ms. Lucienne de Naie: Thank you Madam Chair. Lucienne de Naie. As many of you know I've been here through many different SMA hearings and I really think the reason that we have a planning commission is to represent a widespread geographic body of knowledge. So the director, as hard as the director may work only knows certain things about certain parts of the island. So I think it's important for folks to know that some things should be denied and some things should be approved. And that language should be clear. I agree

with Commissioner Starr there. But I want you to make sure that this language, I don't have it in front of me, but I want you to make sure that this language does not leave a decision to like an overworked agency with no specific knowledge of whether something is worthy to deny or extend and make sure, you know, that you who were appointed to oversee the public's interest have that opportunity. That's all. Thank you.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, just to allay any concerns, the wording allows for any item that would be granted or denied administratively to be presented to the commissioners and if we don't feel that it should be handled administratively then we have the opportunity to say, no we want to handle this.

Ms. de Naie: That's excellent because I had to appear on a matter in our neighborhood where it was an administrative decision, the director knew nothing about what was going on, people from the neighborhood testified. The commission realized that this was something that needed more review and it was a good thing that they were there because the director would have been too busy probably to, you know, get the whole story. So I'm glad to hear that that's the case. Thank you.

Ms. Amorin: Thank you. Any other individual in the audience that wishes to speak on this agenda item? Seeing none, public testimony is now closed. Commissioner Starr.

Mr. Starr: Madam Chair, I move that the commission approve the recommended wording as per the January 15th Corporation Counsel letter with the addition to the words, "or denying" to be inserted in the first line after the word, "granting."

Ms. Amorin: Commissioner Ward.

Mr. Mardfin: I'll second the motion.

Ms. Amorin: We have a motion on the floor to approve with changes by adding the word "denying" in the first sentence of this paragraph by Commissioner Starr, and seconded by Commissioner Ward. Any more discussion?

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

VOTED: The Commission Approve the Recommended Wording as Per the January 15th Letter of the Corporation Counsel with the Addition of the Words, "or Denying" to be Inserted in the First Line After the Word, "Granting."

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

Ms. Amarin: Motion is carried.

Mr. Alueta: Thank you.

Ms. Amarin: Thank you. Director.

D. UNFINISHED BUSINESS

- 1. MR. JEFFREY HUNT, Planning Director requesting an Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the Entitlements Action for Palauea Beach Lots located at TMK: 2-1-011: 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, and 023, Palauea, Kihei, Island of Maui. (EA 2006/0014) (C. Suyama) (Matter was previously scheduled to be heard at the January 22, 2008 meeting. Commissioners: Please bring your copy of the Final Environmental Assessment and Departmental Report with you.)**

The Environmental Assessment trigger is the Planning Director initiated community plan amendment from Park to Single Family for parcels 013, 014, 015, 016, 017, 020, and 021. The accepting authority for the Environmental Assessment is the Maui Planning Commission.

The Commission may act to accept the Final Environmental Assessment as a Findings of No Significant Impact (FONSI) or take some other action.

The public hearing on the Community Plan Amendment and Change in Zoning will be scheduled for a future date after the Chapter 343 process has been completed.

Mr. Hunt: Your next item involves Unfinished Business. The Planning Director is requesting an Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the Entitlements Action for Palauea Beach Lots located at TMK: 2-1-011: 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, and 023 in Kihei. The file number is EA 2006/0014. The staff planner is Colleen Suyama.

Mr. Starr: Madam Chair?

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, I have a question that I'd like to ask the director before we have the presentation and I think it's germane to the very discussion because the department has recently come out with a recommendation which frankly I agree with and I apologize for not being at the public meeting last week but – to support it but I was very sick with the flu and I didn't want to spread that. But their contention is that it's unseemly and untimely to submit community plan amendments with the new general plan coming up soon and the community speaking what they want to see in terms of the community plan. And as I said, I support that, but I'm a little bit confused about why the department itself is submitting this report in support of a community plan amendment from park against the wishes and language of the existing community plan at a time when it's come out with a clear statement that such changes in terms of community plan amendments are not to be supported by the department?

Ms. Amorin: Director, any response?

Mr. Hunt: I appreciate you expressing your support for that policy. The policy has exceptions in it. It's not a blanket absolute policy and contrary to the editorial that the Maui News wrote, it's not a moratorium. It's a policy that says we would recommend – not recommend support in certain instances. There's exceptions. Some of those exceptions are for areas that are already committed to development, areas that are small in scale, areas that would not have a large impact. And in this particular instance, these are small lots if they don't go to – if we don't designate them as park and buy them then we have to allow the development and that's the issue. And the Planning Department doesn't necessarily advocate one way or the other on which way this should go. We're suggesting the County needs to make a decision on the community plan amendment one way or another.

Ms. Amorin: Thank you. At this time, I'll give it over to Colleen.

Ms. Colleen Suyama: Maybe what I can also explain to Mr. Starr, Commissioner Starr is that because of these inconsistencies between the unlining zoning and the community plan, for a lot of these properties we have the problem of when we're dealing with the special management area of trying to get consistency. And the way the rules are written is that if you lack consistency, we don't even review the application, we return it to the property or the applicant saying that we're unable to process your application unless the inconsistencies are resolved by either you filing a concurrent application for community plan amendment or change in zoning to bring the property into consistency.

But because several years ago, this commission went through a rigorous appeal process

from two property owners in which their property was community planned park but was zoned I believe was Hotel at that time, and they wanted to build their house. They basically won that appeal before this commission.

And what we're saying is that, there are going to be instances within the community plan areas where we're going to find these inconsistencies and to either bring them into consistency there may be proposals for community plan amendment, but these are in areas that are basically the urban district and they're not going to change out of these urban districts and this is a case, you know, situation and that's why you know, we have agreed, you know as a department to propose the community plan amendment so that it gets before the County Council.

So the County Council can make a decision do you want to remain, you know, these properties to remain in park or do you want these properties to be, you know, allowed – allow the property owners to develop these for residential use primarily. And if that's the case, make a decision one way or the other because if your decision is that you really want to keep this in park then also going up concurrently with the community plan amendment is a zoning proposal to zone it for park.

So you have these two choices as counselors is that you can either keep the designation in park, zone it in park or you can allow the property owner to develop it as a residential use by community planning it residential and zoning it for residential purposes. So those are your choices. And both, you know, proposals would go up by the department for the Council to make that final decision. Because if their decision is that they want this to remain in park, then start looking at how are you going to obtain the properties for park purposes? And that's our intent.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, there's a third alternative though and I don't understand why that doesn't be given equal weight. I mean, the department could recommend that the zoning be changed to something consistent with the park. That the community has come out and stated that it wants in the community plan. Why didn't the department instead of saying that they want to change the community plan say that they want to change the zoning to something that would be consistent with the park?

Ms. Suyama: Because this gives the Council the best options of what they want done with this property. Whether it's park designation with park zoning or single family with single family zoning. So it goes up. Ultimately the decision is the Council's decision and the Mayor's decision by signing it into ordinance.

This commission has the power of recommending to the Council which way they want the Council to go. If you want the Council to go for the park designation then that should be the recommendation of this commission that we recommend denial of the community plan amendment and the zoning to residential. We recommend retaining the community plan as park and we recommend park zoning. So this gives the best options to the Council to consider. So if there's no other questions about why we're doing this I will make my presentation.

Ms. Amorin: Thank you Colleen.

Ms. Suyama: Okay, I did transmit a memorandum dated February 12th, today, and this was based upon some further input from Thorne Abbott who's our shoreline planner and basically what we're recommending is that there be an amendment to the final EA to include several paragraphs and this deals with the shoreline setback rules and the shoreline setback area.

And what we're recommending that under Section 4, Relationship to Government Plans, Policies and Controls, Item 6, Coastal Hazards Policies Responses, on page 41 that we add two paragraphs as stated as such:

"As coastal properties any development on the lots will be subject to the shoreline setback rules of the Maui Planning Commission. The shoreline setback line is determined based on the erosion rate of the shoreline fronting the subject property. The setback multiplier of 50 years is generally used based on the minimum expected life of a wood frame structure. However, according to the United States Department of Housing and Urban Development the average life span of a coastal structure is 70 years."

"Further, the 2006 Hawaii Coastal Mitigation Guide Book recommends a 40 feet buffer and 70-year multiplier for structures less than 5,000 square feet and a hundred-year multiplier for larger structures based on the recommendations of the guide book. The multiplier should be 70 for the average life of a coastal structure or possibly hundred for larger structures which would be greater than the current rules."

We also recommend an amendment under Section 7, Findings and Conclusions, Item 11, page 51 and 52 by adding this paragraph:

"As coastal properties any development on the lots will be subject to the shoreline setback rules of the Maui Planning Commission in order to mitigate any impacts from coastal hazards. However, based on the recommendations of the 2006 Hawaii Coastal Mitigation Guide Book the multiplier used to determine the shoreline setback line should be 70 for the average life of a coastal structure or possibly hundred for larger structures which would be

greater than the current rules.”

These are amendments that we’re proposing for the final Environmental Assessment.

And if I can then get you back to the January 22nd memorandum, on February 26, 2007, the Maui Planning Commission reviewed the draft Environmental Assessment and made their comments which have been incorporated into the draft final Environmental Assessment for the above-referenced project. Please note that the proposed action is in anticipation of a community plan amendment for the Palauea Beach area to be proposed by the Planning Director pending completion of Chapter 343, Hawaii Revised Statute process.

The Planning Director proposes a community plan amendment and change in zoning that will establish consistency between the intended uses of the property with the land uses identified in the Kihei Makena Community Plan and the zoning on the property.

As I had explained earlier, it’s basically to make a decision whether you want to keep this in park or you want to keep this in, you know, allow it to be developed for single family residential, so those are the two proposals.

I’m not going to go any further through the memorandum other than to say that you have several choices as a commission. You can accept the final EA with the amendment that we had recommended. You can defer final action on the EA pending whatever other concerns the commission may have or you may request that they prepare an Environmental Impact Statement based upon whatever reasons the commission have.

But in conclusion, the department has reviewed the final EA and concludes that the document does not pose a significant impact relative to Section 11-200-12 of the Hawaii Administrative Rules and the department recommends that the commission accept the final EA document as proposed with the amendment and issue a findings of no significant impact determination.

This concludes my presentation unless there’s any questions.

Ms. Amarin: Thank you Colleen. Any questions for Colleen commissioners?
Commissioner Ward.

Mr. Mardfin: Back to your – the memo you passed out today, you talk about – I understand the 70-year and hundred-year multiplier instead of the 50-year multiplier. The 40-foot buffer I think is an increase from a 25-foot buffer?

Ms. Suyama: Originally when the rules were adopted, at one time there was talk about a

20-foot buffer, but now based upon the – and that was based upon if there was no erosion rate in front of your property. But now the Hawaii Coastal Mitigation Guide Book is now recommending a 40-foot buffer.

Mr. Mardfin: Plus erosion.

Ms. Suyama: Yeah, plus the multiplier.

Mr. Mardfin: And you say that on the first page, but on the second page I just see the multiplier I don't see the 40-foot mentioned.

Ms. Suyama: Because in this case there is an erosion rate for the Palauea Beach. So you would use the erosion rate plus the multiplier.

Mr. Mardfin: But it doesn't say it on the second page, should it?

Ms. Suyama: Well, what we're saying is that they should use the 70 for the average life of a coastal structure or hundred if this is, you know, turns out to be larger structures as recommended by the guide book.

Mr. Mardfin: It doesn't need to mention the 40 feet again?

Ms. Suyama: I don't believe it does because it's the way we do the calculations and the calculations is based upon the erosion rate and we know that there is an erosion rate on this beach, the shoreline.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: Yeah, I'm just a little confused. So I think this should be turned all into park so what should I – stand should I be taking? Because you're talking how we do want to change into park, so we do – so what are you saying? By accepting the final EA what does that mean?

Ms. Suyama: It does not make the final decision on the land use amendments. This is just a process that we need to go through which is the environmental process. What will come before the commission at a later date is a proposal by the department for a community plan amendment to single family and a change in zoning to single family, but would also run concurrently with that is a proposal to change the zoning to park in accordance to the current community plan. So you're going to have two proposals coming up to you. At that time the commission is going to be asked to make a decision on both proposals.

Ms. Pawsat: So if at some point I think an archaeological survey should be done of these areas and – but I don't know what step that should be done.

Ms. Suyama: If you feel that this environmental assessment is deficient in terms of the archaeological information and that's one of the basis by which you know you feel that it's not a complete document then you can request either more information from the applicant, I mean, which is the department about what portions of the archaeological document you feel is insufficient. Or if there's impacts that you feel that need to be further investigated through an environmental impact statement then you can recommend that an EIS be done, but that is your choice in terms of you can either ask for more information or you could determine that this is to the level that an environmental impact statement is required for this proposal.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah, was there a recent change in the setback area that would make them less restrictive at the Palaeua lots, is that something that occurred recently?

Ms. Suyama: I do not believe that there's been a change that would make it less restrictive, but you could – Thorne Abbott is here if you need to know specific portions of the rules that was recently adopted.

Mr. Starr: No, I'm asking whether this is something that occurred recently through Farrington Bayless Architects, whether they were able to plead and get less restriction on the setbacks on those lots.

Mr. Abbott: No, the rules apply to all shoreline properties. The current multiplier is 50 years times the erosion rate plus a buffer of 25 feet.

Mr. Starr: Oh okay, I just want to bring the commission's attention to something that came to my attention which was posted on the Oceanic which is a sea engineering company. Their website which is basically they're kind of the bragging rights of what they're able to do for their clients and this is beach erosion and dune certification. The client was Farrington Bayless Architects. And the project beach erosion and dune certification Palaeua Beach Maui challenge owners of beach front property at Palaeua Beach on Maui were faced with new Maui County Shoreline Setback Rules which would have severely restricted buildable areas on coastal lots. And then it goes on to brag about how they used, you know, historical aerial photographs, UTM4 projection, WGS84 datum and so on, and then they – new erosion rates were calculated by measuring the distance from a baseline to the crossing points of beach toe lines and each transect, solution less restrictive setbacks were determined giving the clients more land to develop on. So, you know,

they're bragging about how they managed to increase, even though it is community planned park and there's strong wording. Now, to my understanding this EA by nature is insufficient. Part of me is disturbed that the only recourse we have is to kick it up to an EIS because I hate to see the County have to spend a lot more money doing an EIS. But I don't see any other recourse other than to say that approving it will have no significant impact because you know, there is many cases to be made that it will have a significant impact in terms of all the archaeological sites, in terms of the loss of park which the community plan very strongly says that we should maintain and so on. I mean I once again, is there a – it seems to make more sense to let it wait for the general plan to come out rather than for the department to be proceeding by this. But I don't see any other recourse than to kick it up to a demand for an EIS because there certainly are potential for significant impacts. So I go again to Colleen and ask if there's any way we can get this thing put on the shelf until the community plan comes on other than kicking it up to an EIS.

Ms. Suyama: At this point I think you have a choice of either saying that the EA document is insufficient, identify where the insufficiencies are or determine that if you feel that an EIS is justified then make the motion to require an EIS and base your reasoning – I mean, if your reason is archaeological, loss of shoreline, etc., I mean, that could be your reasons why you feel that an EIS is required, but under the environmental process, I mean, this is basically the process, you either say a FONSI is issued or you say it's a preparation of an EIS and you require an EIS to be done.

Ms. Amorin: Commissioner Guard followed by Commissioner Pawsat.

Mr. Guard: Thank you. It looked like Thorne had some feedback to Jonathan or Commissioner Starr's initial topic on Oceanic that I'd be interested in hearing about that. I think that's a significant item.

Ms. Amorin: Thorne.

Mr. Abbott: Thank you, Thorne Abbott, shoreline planner. Thank you for bringing that to our attention Commissioner Starr. I'm familiar with it. It's a nice piece of advertising. My understanding and I haven't researched this entirely and spoken directly to Oceanit, however, there was an interim period between 1997 when UH was contracted to develop erosion rates for our islands, our sandy shorelines and 2003 when the rules actually became effective. During that interim period, one of the landowners did want to develop their lot, used what was preliminary from UH in their erosion rates and had a second study done by Oceanit which our current rules allow that if you want to amend the established erosion rate or establish your own, you can do a study using a peer reviewed published methodology that's accepted by scientists and that would be the erosion rate that was used.

In this particular case, Oceanit might be overstating the case that they assisted their clients so much because in fact the erosion rates weren't established as of yet. So it was an interim period when there weren't formally erosion rates established for the County and so Oceanit did a study for a private property owner and came up with a different rate but using the same kind of methodology. I'm not sure that they necessarily gained or loss land. I couldn't comment to that end. I will say that the current erosion rate that would be used for the setback calculations and have been used on the SMA proposals and in preconsultation have been based on the University of Hawaii established erosion rates.

Ms. Amarin: Commissioner Guard.

Mr. Guard: Thank you. In the past I know I've run into Dolan Eversaw, just on Oahu and whatnot and he's either been contracted during periods of high surf mainly on Kauai I don't know if that's kind of his jurisdiction but he's wanted to go there at stormy periods to actually see where the high surf is at a peak time. And I wonder if anyone did that between November and December around this area because I had, I mean, luckily I had a day off and I guess it's going to become an issue with unemployment whatnot that may be a thing of the past, a) the beaches are packed, but I went between, the little beach park between Polo Beach Club and Kea Lani and that beach was wiped out and you had to actually crawl along the rocks to get to the Polo Beach side and we drove to Palauea Beach to just look for better access and the existing homes, I don't know if existing or under construction the naupaka is like this sea of green and the water is actually going underneath. So they had done a pretty effective job of negating any people from walking in front of that. So I don't know if – the main issue were new lines established then at a period of high surf because that would definitely change the game on how buildable these lots are. And for Planning to say oh we can enforce all of these things when in the paper, I mean, this department is already heavily burdened that I don't think naupaka would have been growing there naturally from the day we did the site visit on the undeveloped lots there was nothing there except the kiawe trees and maybe one or two palms growing in the shade closer to the street. So I guess start, if we did any new observations during times of storm or high swell activity.

Ms. Amarin: Thorne.

Mr. Abbott: To answer your question, no. I wasn't able to get to that particular beach. We did go to Kamaole II because there were obvious erosion issues there, massive erosion as you probably well know. Perhaps some of my colleagues did visit that site. However, Dolan represents Sea Grant and he is on technical assistance and support to the State Department of Land and Natural Resources Office of Coastal and Conservation Lands. He helps delineate the state certified shoreline throughout the state.

Having said that, they use the highest wash of the waves during the highest tide of the year normally evidenced by the debris or vegetation line. Now, when you say highest wash of the waves, during the year is that the last 12 months? Is that the calendar year? There's some ambiguity in that statement. As a result, the DLNR was sued by Sierra Club, went to Supreme Court they lost. I believe it was negotiated, maybe Lucienne can speak to this, but they have to rewrite a new definition of highest wash of the waves during the highest tide of the year.

Further Zoe Norcross would inform you that out of the last 25 years, 23 of the last 25 years have been the lowest high tides that we've experienced here in Maui and that's because there's a recurrent cycle that's larger than a year. There's some inherent problems we don't have control over that.

Ms. Amorin: Commissioner Guard.

Mr. Guard: Last question. I know we've had this conversation either on the commission and just to standardize, I wonder why we would take a shoreline setback on a per year basis yet when we talk about flood control and drainage we deal with a hundred-year flood. I wonder if something like that – obviously these are bigger impact issues that year to year doesn't work and wet year, dry years, I mean we're going to build only during dry years or low tide and no surf. So I don't know if that is language we could use to borrow that from drainage and flood control.

Mr. Abbott: If I could speak to that? Colleen mentioned this proposal for 70. There's three things, if you're going to do setbacks they should be scientific rather than arbitrary one size fits all and we learned that doesn't work real well, we have 20 and 40. So this commission passed new rules that were scientific in basis. When you look at a site, one, it depends on topography and that relates to flood zone, how high you are above the ocean. Two, the substrate your on, that's erosion. How much – you know, if it's a sandy shoreline it's going to erode a lot. So at that point, you establish an erosion rate per year looking back at a hundred year which is actually a pretty good data because that's more than, you know, the flooding we only have maybe five or six data points whereas, the erosion rate maps are a hundred years, so a bit richer data. And then the third item is the type of structure you're building. If you're doing an erosion rate, that's great, but what's the multiplier and the multiplier has to be based on some good science which is the type of structure which is where the 70-year multiplier comes up because HUD did a study. This came out in the Hawaii Coastal Mitigation Guide Book which was just in 2006, so this is pretty recent stuff and it recommends 70-years is the average life span of a coastal structure for a house. For larger structures like resorts, concrete structures that have steel and rebar it's going to be a hundred years. Now looking at that hundred-year multiplier what that really means if you have a 1 percent chance of a hundred-year flood event that means there's a high degree,

in other words, more than a 51% chance that it will get flooded in its building life span. Right now we use a 50-year multiplier which is the minimum for life span for a wooden structure. So when you look at the flooding, that means there's pretty much a 100 percent chance that will get flooded out some time. So that's why the memo from Colleen. Thank you.

Ms. Amarin: Thank you. Commissioner Pawsat followed by Commissioner Starr and just to keep in mind that it's after 12:00 p.m. so probably about 12:30 I'll just call a lunch break. Commissioner Pawsat.

Ms. Pawsat: Yeah, Colleen, I was wondering if this just kind of somehow just marches on down the road to becoming a residential project is this right now the only opportunity to put an EIS on it or does that come up again later?

Ms. Suyama: It would normally would not come up again if a house was built unless they – the only trigger that I can see that would happen on a residential house would be if they were in the shoreline setback area and they needed to get a variance. And if they needed to get a variance that would trigger compliance to Chapter 343 and that would also come back to the planning commission.

Ms. Pawsat: So this would be the time to acquire environmental impact on this property to be safe because I mean, if it's a park I don't think it should be required, but if it ends up turning into something else I would want – you know, you'd want it then or if improvements to the park but that would be a trigger.

Ms. Suyama: This is your opportunity because there's no guarantees that any subsequent permitting would require Chapter 343 compliance. So it's something that the commission needs to be aware of.

Ms. Pawsat: Okay.

Ms. Amarin: Commissioner Starr followed by Director.

Mr. Starr: Madam Chair I had some other questions but I'm wondering if it might not be more timely to allow testimony because I know there are some people who want to testify and that way they don't have to wait through our lunch break and then we could pick it up after that. That's up to you, but just a suggestion.

Ms. Amarin: No, thank you. Thank you very much for your consideration. If it's okay with this body can we do public testimony just for the consideration if we have anyone out here that wishes to speak on this agenda item. Will that be okay? Okay, we'll go into public

testimony for the sake of anyone out here that wishes to speak on this agenda item. Please come forward. Lucienne you did speak earlier on Palauea. Only if you have new information to share, okay.

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

Ms. Amorin: Calling Lucienne de Naie. Please come forward and state your name.

Ms. Lucienne de Naie: Thank you Madam Chair. My name is Lucienne de Naie. I do have a handout if – who should I hand it too? I'm testifying today on item D-1 which is the Palauea Beach lots. I know it will be on your agenda later but I may not be able to stay all day. So appreciate this opportunity to offer you some comments. I'm testifying on behalf of the Sierra Club Maui which has been very interested in this area for very many years.

Little bit of an update. Forty years ago it was decided that lots along the shoreline of South Maui would all be hotel zoning. It was kind of a blanket zoning that was given in 1970. There was no mechanism put in to review that so over the years there's been a number of conflicts between various land uses and there was a classic case in the late '90's Kamaole Point, the GATRI decision that affirmed that a community plan designation was superior to a zoning designation in terms of the use that should be permitted. That's what we're facing here. Citizens work very hard to make sure that all these lots that you're considering, the sandy lots would be park or open space in the community plan. Citizens devoted many years to this effort. They were promised two-term Mayor Lingle that these would be a beach park, five-acre beach park consisting of eight lots. Mayor Lingle got busy running for governor even though a bond issue of \$31 million was passed to purchase these lots and lands at North Beach and other places, all that was purchased was Kamaole Point because it was I think litigated by Maui Tomorrow and the County.

At any rate what we have here today is a complete violation of our community plan. May I just read you the language of our community plan. It says, "that in places designated in the 1997 community plan land map we should prohibit future community plan amendments which is what you're considering today along the shoreline that would increase the intensity of land use with the exception of land use that is public or quasi-public in nature."

Now the old zoning on this was hotel. You're being told, gee this is a decrease in use because it's residential. But actually, the community plans says, don't increase use from what's in the community plan map, not what's in your zoning ordinance. I feel that this project deserves an EIS because this particular aspect of the community plan was not even discussed in the EA and it really deserves to be discussed along with a number of other things.

I would hope this body would want to know the impacts of having unsewered development on this beach. This needs to really be part of our process. I passed out an archaeological map to you to show that the beach lots and the lots behind them of the Palauea Preserve are connected. Just a simple picture. Thank you for your time.

Ms. Amorin: Thank you Lucienne. We have a question. Commissioner Guard.

Mr. Guard: Thank you. You may know better than I. I've been, I guess privy to a discussion where someone mentioned the Palauea lots and all these archaeological sites when the original development was proposed all of Palauea saying that they knew how many archaeological sites were there and there was going to be a minimum of a 25-acre park, but that any new site would be added in addition to that, I guess, corridor.

Ms. de Naie: That's true. That's actually language that's in the community plan. I think it's a minimum of 22 acres but if additional sites were found, they could be added. And originally when this was surveyed, two sites were found. Now we know there's, you know, in the whole area not just the preserve which is the Dowling property across the street, there are approximately 50 sites and hundreds of features, like 500 features. This is a very, very rich area and it is true that the community plan gave a provision that additional lands could be added to the preserve if they were found to have, you know, a cultural significance. And the key thing is cultural significance. The consultant for this project felt, buried in the back appendix, that allowing building you would actually interfere with the cultural use of the property, but that was not brought forward in the EA in the final language. It's buried in the appendixes.

Mr. Guard: So that – okay, so what we just discussed it's not really addressed at all in the EA?

Ms. de Naie: Well, they just say that archaeological review has been done, but in fact, one lot has not had complete review at all. This is why you need an EIS so that you get the full archaeological reports for all the lots. I sent about, I don't know, 20 pages of comments in. I don't know if you guys ever got them on the EA. I don't know if they were part of your binder or anything, but you know, I'm sorry I didn't bring you all copies of that today. I thought it would already be part of the public record. But in essence, there is a very incomplete archaeological review that has been done on these lands. There's already been four or five burials discovered, two by accident when they were planting trees on a developed lot. And this will not be handled in the SMA because many of these lots will never have SMA review, they're already developed. You deserve the information now while you have a chance. Thank you.

Ms. Amorin: Thank you very much Lucienne.

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

Ms. Lucienne de Naie: I do. Thank you Madam Chair. I wanted to continue. I did submit 12 pages on this which gave a basis of the community plan objectives that needed to be met. This is an important decision and if you support a park, I would suggest that you support an EIS because the park option was not analyzed in the draft EA, they merely stated that the County had decided that the existing park was all that was going to be there and so if you really want that including funding options and so forth analyzed an EIS would be a good way to do it.

I also want to build on my previous testimony that the community plan clearly states that development projects should identify all cultural resources, this is the South Maui Community Plan located within or adjacent to the project area prior to application as part of the county development review process. It's very clear that the only ones of these properties that have had very, very in-depth review are parcels 16 and 17. Parcel 15 does not even have a completed archaeological survey and this should really be addressed in an EIS. You should get this complete look.

On water quality, the community plan really wants to make sure that we protect the quality of near shore waters by insuring that land-based discharges meet water quality standards. While your final EA says that they'll be no impacts because there's going to be individual wastewater systems which were approved by the State Department of Health. It doesn't really reveal to you that these types of systems are installed under a general permit which requires no cumulative review of any impacts to near shore waters and requires no monitoring or other features that are specified in the community plan. So if you really want to get the answer to the questions about whether the existing structures and the proposed structures that would be affected by this community plan amendment would be injecting sewage effluent into the ground or discharging it into the ocean, you'd want that reviewed in an EIS. You would want an EIS to talk about potential impacts to water quality in this specific region to discuss whether the waters here are currently impaired. None of this is in your EA.

These are these that identification of possible pollutants. This is a public area and there is no sewage availability and there's no water availability right now either. This is why this area was proposed as park. The land across the street is agricultural. It's not urban. It would make a nice interface. If we do have rising sea levels and this park is inundated, basically you still have a park across the street. You still have some place for the public to enjoy a hundred years from now and if nature takes its course.

I just want to bring to your attention that some other famous places where the community plan and the zoning were not consistent were the lime kiln site in Paia that just cost the

county \$8 million after-the-fact to do what should have been done through the community planning process and the Front Street property that cost the county a bunch of money. They too, had inconsistent community plan and zoning.

So if there's a possible way that we could get an EIS that would analyze the park option, give us the detailed information we need and I'd be happy to rerefer my 12 pages of comments that detail those impacts that should be examined in an EIS. I feel that that would be your best option and that way you can make a decision about a park based on real information. Thank you.

Ms. Amorin: Thank you Lucienne. Commissioner Guard.

Mr. Guard: I have a quick question either Lucienne or Colleen may be able to help with. On page 8 of this talks about the historical contacts and everything seems to point to park or a hotel with a 10-acre park in front of it. It doesn't really give us the – I'm not really seeing where all of a sudden it got sold as residential lots on this historical side.

Ms. de Naie: Well, you want the quick version of that? This property all belonged to the same people who owned what's now called Wailea 670 or Honua'ula. It was all one big parcel. And the land that is now the One Palauea Bay, the land that are these beach lots and the 670 acres was all under one ownership. The partners had some disagreements and so they had some financial difficulties so they One Palauea Bay, the 44 acres what was going to be a hotel and then this would be the beach for the hotel that was sold off to Mr. Dowling and his investors. The beach lots went to one of the partners to make up for his interest in the project and then they were, you know, seen as individual lots to be sold off and the 670 acres was resold to Mr. Jencks and his partnership. So that's the short history of this. But these lots had long been sought by the public for the simple reason that they figured Wailea is developing, if Wailea 670 is approved, this is the nearest beach for 1,500 or 1,400 households to go to and why make it smaller? Why not make it bigger?

Ms. Amorin: Thank you Lucienne. Any more questions?

Ms. de Naie: And Madam Chair wanted to clarify about the Sierra Club lawsuit, just call me up again. I know all about it, about the shoreline setback.

Ms. Amorin: Thank you. Thank you Lucienne. Any other individual in the audience that wishes to speak on this agenda item? Please state your name.

Mr. Rob Parsons: Aloha Madam Chair, Commissioners, my name is Rob Parsons. Thank you for your consideration of presenting testimony at this time. Today is yet another chapter in the continuing saga of efforts to preserve Palauea Beach, a priceless treasure

of South Maui that somehow became another pawn in real estate speculation.

There have long been dedicated efforts to preserve Palauea as a beach park evidenced by its inclusion in the Kihei-Makena Community Plan as park designation. During the 1990's more than 8,000 petition signatures were gathered, bumper stickers were printed and by 1996, both the Kihei and the Wailea Community Associations called for a beach park at Palauea.

In 1998, UH Sea Grant shoreline specialist Rob Mullane submitted a 12-page report requested by the Lingle Administration. It stated that Palauea meets the criteria for a natural area reserve, not merely a recreational park. "Without a protective fringe reef," Mullane said, "Palauea Beach is vulnerable to Kona Storms, high surf and erosion." He stated, "that perspective buyers didn't have all the information they needed, developable areas on the lots were quite limited and that the lots were over valued."

Palauea is directly across from the 20-acre parcel fronting featuring a heiau and other cultural sites. Pre contact burials and features have been found in the dunes at the beach including on lots now built upon.

Ten years ago Uncle Les Kuloloio was jubilant about finding iwi in the Palauea dunes. We found the kupuna we explained while calling for a change in land use laws to stop selling the beach in this fashion.

In 1998, owner Peter Morris, placed the nine beach front, half-acre lots in the Massachusetts Limited Liability Corporation and they soon went on the sales block for two to three million dollars each.

Though the County had enough carryover funds, bond funding from the Lingle Administration to purchase all nine lots, our decision makers dropped the ball and purchased only two lots despite a last-minute plea for help from the Trust for Public Land.

In 2000, the Maui Coastal Land Trust was formed. In 2002, Maui voters overwhelmingly passed a Charter amendment to create an open space land acquisition fund with 1 percent of our real property tax revenues. In 2005, Governor Lingle signed the Legacy Lands Act. So my point is that we now have more mechanisms in place for preserving our precious rapidly dwindling inventory of coastal properties.

The action before you today is to consider accepting a findings of no significant impacts from the final environmental assessment and this as was mentioned was triggered by the Planning Director initiating a community plan amendment on the beach lots from park to single family. But given the enormous public sentiment to preserve Palauea Beach, we

might just as easily have chosen to change the zoning from park as it's been explained that is an option that we're looking at, that you are looking at. Of course, that would mean the County would probably have to pay market value to acquire the property by eminent domain.

Ms. Amorin: Rob, your time is up.

Mr. Parsons: Thank you.

Ms. Amorin: Any questions for the testifier? Commissioner Starr.

Mr. Starr: Did I catch – you were saying that by allowing a change from park that would raise the market value of these lots and make them much more difficult to acquire them?

Mr. Parsons: No, I don't believe so. I think one of the things that it's in your best interest as our decision makers or making a recommendation to Council to do is to ask what the current assessed valuation might be, ask if an appraisal has been done that would give you an idea. And this is similar to what the Council asked for on the third and final lot at the lime kiln property at Paia, they asked for an appraisal so they would know given the legal parameters of inconsistency in community plan designation and zoning what the real value was, not just what the real estate listing was, but given consideration such as Mr. Abbott discussed about limited lot developable area. So I think that these are the kinds of things that if you ask for an EIS, that would have to be studied in the overall discussion of a park usage alternative.

Ms. Amorin: Thank you. Any more questions for the testifier? Seeing none, thank you Rob. At this time we're going to go on a lunch break, and we'll come back at 1:30 p.m.

A recess was called at 12:30 p.m., and the meeting was reconvened at approximately 1:34 p.m.

Ms. Amorin: ... of February 12, 2008 is back in session. When we left off we were on agenda item D-1, Unfinished Business regarding Palauea Beach Lots. It was brought to my attention Commissioners that we do have in the audience an owner of one of the lots who wishes to come up to testify. I understand we did close testimony but it's up to this body, you want to hear his testimony? Okay, at this time I will open up the floor for public testimony. Please state your name.

Ms. Sharon Altman: Hi, good afternoon. Sharon Altman and this is my husband, Dwayne Altman.

Ms. Amorin: You're going to speak one at a time?

Mr. Dwayne Altman: Yes.

Ms. Amorin: Okay.

Ms. Altman: And we are Lot 20 on Palauea Beach. We are kind of stuck in the middle it seems like. We just bought it with the intention of, of course, building a home on it, and now we're understanding that the community wants to purchase the lot and if that is the case we are willing to sell the lot, but we can't be held up and held up, it's already been two years that we've owned it. And we're just asking to, you know, have it settled and –

Mr. Dwayne Altman: Yeah, we bought the lot two years ago. We came into the County and talked to Mike Foley and he had told us that we have to change this so the two plans match. So he said that the money has been given to the County by the owners for the EA and that it was going to go forward. The County, the Planning Department was committed to do that. And Mr. Foley said that it would be one to two years before that would happen. And so we went forward and bought the land. If we knew there was going to be a fight, obviously, we would have never done this because we're not here to file a lawsuit. We haven't filed a lawsuit. Other people have filed a lawsuit. I'm trying to do everything I can not to do that. I'm trying to get a meeting with the Mayor just to be reasonable. I've tried several times and I've had no luck yet.

And again, it's not that we have to build there. Obviously it would be a dream to build there, but if the County or the community doesn't want it then we're very open to selling the lot and we would just like to get to the point where, okay, then you would like to buy the lot or wouldn't like to buy the lot instead of keeping me in limbo forever. We have – my intention was to try to build on there and our son's in ninth grade right now, our oldest son.

Ms. Altman: Here on Maui, our children go to school here and live here.

Mr. Altman: And now we're running out of time. I wanted him to enjoy, you know, the new house with us before he goes off to college. So I'm just trying to say that, you know, fine if you want to buy it, buy it. If not, please help us to go forward.

Ms. Altman: And we are both from a working class family. We're from Pittsburgh. My father was a steelworker, his dad was a railroad worker and we don't have a silver spoon in my mouth. We don't have unlimited resources. You know we need the money back from this land if we can't build there. You know, we're stuck. We might be unlike some of the other owners, I don't know what their situation is. But we bought it, you know, being told we would be able to build there. I don't know what else –

Mr. Altman: We're also not looking to build a huge mansion. Just enough to have our family there. We think it's ridiculous some of the people that have –

Ms. Altman: Ruined the beach.

Mr. Altman: Some of the things that they're building there, we go down and we try to clean the beach up.

Ms. Altman: Yeah, I have numerous pictures of the beach too that sickens me because even if I can't build my home there, I want it to be seen what is being done down there. There's signs up that say no camping, no open fires and there's wooden skids on the beach they burn and the rusty nails are all over the place. If you go down to Palauea Beach it's not a nice sandy beach any more, strewn with wooden debris, garbage, people defecating in the woods and camping down there. There's signs that say no camping overnight and they seem to be tourists. They just come and camp there. I have pictures of them. I have license plate numbers.

Ms. Amorin: You can go ahead and circulate. We can look at your pictures.

Ms. Altman: And I called the police because they told us to call the police.

Mr. Altman: We're obviously not good talkers but we've just been in this situation.

Ms. Altman: You know, either pay us for the land or let us build our home there and we'll follow all the guidelines. Our land in Pennsylvania we ended up buying a 126 acres. We're environmentally conscious and we bought these woods to prevent it from being timbered and we didn't resell the land, we didn't timber the land. We could profit off of it. It's just sitting there because we wanted it to remain forest. You know, we're environmentally conscious people that's why we love this beach in particular. We're not staring at condos, we're not staring at a high rise and we want to build a low rise home, Hawaiian style.

Ms. Amorin: Okay, you have any more testimony to give? I have a question from one of the commissioners. Commissioner Hedani.

Mr. Hedani: What did you purchase the land for and how much area does it contain?

Mr. Altman: Area?

Mr. Hedani: What did you purchase your lot for and how much area does it contain?

Mr. Altman: The area I think it's .47 acres.

Ms. Altman: It's at the south end of the beach Lot 20, and then the two park lots are next to us and then other vacant land, lots that people are I guess in a lawsuit over.

Mr. Altman: And it was \$7 million.

Mr. Hedani: Seven?

Mr. Altman: Yeah.

Ms. Amarin: Commissioner Iaconetti did you have a question?

Mr. Iaconetti: It was just asked but I have an additional question.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: You purchased this from whom?

Mr. Altman: Doug Shatz.

Ms. Amarin: Can you speak into the mike please?

Mr. Altman: Doug Shatz.

Mr. Iaconetti: And were you aware of the fact that this was – there was certain amount of discontent with building on this property?

Mr. Altman: I was aware that – as I said I went in to speak to Mike Foley and that's the reason why I went to talk to Mike Foley that there was a difference between the community plan and the zoning. And what he had told me was that was all going to change. We are behind getting this to change to – so that they matched up, so it was the same so you could build a house on it. And that's why I went forward and bought it. I would not have ever bought it because I'm not here to fight anybody.

Ms. Altman: No, we came here to have a nice, you know, life in Hawaii compared to the winters of Pittsburgh.

Mr. Iaconetti: I assume that this was not in writing, Mr. Foley's comments?

Mr. Altman: No, just a meeting that we had, notes that we took at the meeting, that's correct and the time lines he gave us and also the former owner's lawyer, the same commitments that he was making to him also.

Mr. Iaconetti: And that was not in writing either? The former owner's lawyer's commitment.

Mr. Altman: Well, I – no, it was not. I felt that if I'm talking to the county that I'm going to build on that what the person's telling me would be the truth and I would be able to go forward with that. And that's just how we are from – you know, I'm not from L.A. or somewhere else. It's you know, I felt that you know, I was – you know I was coming to a small place myself and what he said would be the word.

Mr. Iaconetti: Thank you.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: I just want to say that the jury is not out yet as far as the determination of the use of these parcels and that's why you have nine commissioners, we each have a vote and we're doing the process here. So personally I think some type of determination needs to be made so that either the county is going to buy it or they're going to allow the current owners to use it, but you know, it's a process. So this is one step in the process. We're all independent thinkers, so like I said, the jury's not out. I mean, you may think the public wants this or the public wants that, but you know, there's certain people that are part of the public that are a lot more vocal than other people. So that's why we're going through this process. Hopefully we can conclude this process rapidly so that you can have some type of conclusion to this issue.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Some of the picture, nice pictures, some of them show, you know, people, a family, kids playing on the beach, throwing a football.

Ms. Altman: Right, we have no problem. We do that ourselves. Those are my kids.

Mr. Starr: Oh okay. You don't have a problem with people?

Ms. Altman: No. That's why we like it down there. I have three children. We live – if I could I'd put a tent up. I'm going to end up doing that next cause I can't even live on my own land but yet people can camp down there. I mean, I have nothing against camping either but take your garbage with you. Don't burn wooden skids on the beach and leave the nails. You know, they're allowed to camp fine but clean up after yourself. You know, I have nothing against it. We're down there at night. We sit down there. I have no problem with that. And we're – and we'll follow the guidelines, you know, view corridors, whatever. There's two empty lots right next to us that will remain park and we're not going to stop anyone from going to the beach. Our kids go to the beach and play with the kids that are

already there.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: As owner of the properties if there was environmental impact statement done and significant cultural ruins were found on the property would you be willing to preserve those and also allow access if the Hawaiian cultural practices if people would want access, is that something you'd allow the public to use because that's a problem right now is about public space and you guys got stuck in the middle. It was a bad business deal, they unloaded the land, you guys came in not knowing what's going on and technically get a receipt is kind of a general wise thing. I mean, that was kind of your fault you guys stepped into this from out of town and you don't know what's going on here. And sometimes dreams you know, aren't as good as they look. So that's why I asked if there were a compromise there if you're allowed to build, you know, public space, you know and can you leave part of your property to allow people on there.

Mr. Altman: Well, first of all, it wasn't we just came in. We did do due diligence. We've talked to different lawyers, past owners, talked to the County, the Planning Department. You know, they told us that there was money being tendered by the owners currently that was taken by the County and was being used for this so that's basically a contract in my opinion. That they had a contract that they were going to go forward with this and make this happen. And that's why I felt the way I did and that's why I went forward. And as far as things on the beach lot, we've already had the archaeological survey done and there was nothing found. So I don't believe that's an issue.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: I wonder if you could enlarge upon the comment you just made about money being tendered, to whom, for what and how much?

Mr. Altman: I don't know the exact amount but I believe it was \$60,000 to the County to pay for the EA assessment that you apparently have in front of you. And because the County did not have the money to go forward with that. So the owners decided that they would pay for it and they took the money in good faith, gave the money in good faith feeling that this was going to be changed because we were told that they can't do anything with the park unless this is changed. There could be nothing done, there could be no facilities, they can't do anything with the park unless this is changed. So what's what we based our opinion on.

Mr. Iaconetti: May I ask another question?

Ms. Amorin: Yes.

Mr. Iaconetti: You said the County accepted these funds?

Mr. Altman: Yes.

Mr. Iaconetti: Who in the County accepted it?

Mr. Altman: I don't know. I don't know.

Mr. Iaconetti: Was it a department that accepted the funds or an individual or what?

Mr. Altman: I don't know who the actual person was, but how was the assessment paid for, the EA assessment?

Mr. Iaconetti: I have no idea how this EA –

Mr. Altman: I mean, I was told by Mr. Foley that he was getting the funds, they were paying it.

Mr. Iaconetti: Does anyone on the staff have any recollection of funds being given to the department?

Ms. Suyama: May I address that Mr. Iaconetti?

Ms. Amorin: Colleen.

Ms. Suyama: There was no funds given to the County of Maui. What had happened is that when Mike Foley was the director he had agreed that the only way that he would go forward with any community plan amendment is because there needed to be compliance to Chapter 343 and the department did not have monies to pay for such a document that the applicant or the property owners who were involved would have to front the money by getting a consultant to prepare the document and we would review the document to our satisfaction and upon our satisfaction of the document, we would transmit it to the commission for review. But there was no exchange of monies. It was an agreement that if we were to proceed with this community plan amendment, the applicant or the property owners involved would pay for the funding of that environmental document because we could not do it through the County funding system. But we made no promises that by doing this that they were going to be guaranteed any kind of community plan amendment or zoning change because that would still require Council to do that as well as a recommendation from the commission.

The only representation that this department made at that time was that we recognize that

there was the inconsistency between the community plan and zoning and to resolve this matter we were willing to do a community plan amendment to bring it before the Council for them to make a final decision as to whether they wanted to continue to have the property in park or whether they wanted to let the properties go for single family residential uses. That is the only commitment we made that we would process the application. However, it would still be based upon the input of the commission and the Council as to what was finally disposed on the property. And if that mean that the County wanted to continue to keep this in park, then they would then have to start looking at mechanisms by which to purchase the property either through eminent domain or through negotiations. So that's the only commitment the department did. So there was no exchange of any funds between the department or the property owners.

Mr. Iaconetti: So the \$60,000 went where then?

Mr. Altman: To have the EA done.

Mr. Iaconetti: And who hired the EA? Who hired the people to do the EA?

Mr. Tom Welch: May I speak?

Ms. Amarin: Yes, state your name and your affiliation.

Mr. Welch: My name is Tom Welch, Mancini, Welch and Geiger. I represent three of the property owners including Mr. and Mrs. Altman and I'm the guy that had the conversation with Mike Foley that Mr. Altman was referring to and I'll just quickly tell you the story. We – after the Lambert and Sweeney settlement, we went into – I went in to visit Mike Foley to ask him about the possibility of my clients going forward on a community plan amendment to resolve the inconsistency. How would he receive that and look at it and would that be something that might be supported by the Planning Director and the Planning staff?

He said, well that's very interesting. He said, actually I want to ask you not to apply, let us apply and the reason we want to apply as a County is we can solve the problem for all of the parcels including the County parcels because we're frustrated. He says I hear from the Parks Department or somebody that we're frustrated that we can't do any improvements on the County park because the County is subject to the SMA requirements too and the SMA law says if it's inconsistent you can't get an SMA approval and you can't get an SMA exemption which was the department's policy. So I said, well, that sounds okay to me. But he said there's one hitch, we don't have funds in our budget to fund an EA. So if you guys can get your people together and put the money together and hire the consultant, we'll cooperate with that and do the EA on our behalf and we'll review it and get back and forth

and so forth, it will be our EA essentially but if you would pay for it that would be much appreciated. So we contacted the clients and they said yes, and we put together, I think it was \$50,000, \$50,000 I think, had in my client trust account and we engaged Munekiyo and Hiraga, Gwen Hiraga who's done a great job on it and sent us her reasonable bills we funded it out of that money. It's now exhausted. We're going to have to send some more invoices to the clients to make up the overflow. But that's how it all started.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, you know, I find this really highly irregular and suspect. I, you know, of course, reviewed first the draft and then the final document and it says on it "prepared for County of Maui, Department of Planning." And up till this moment, I had assumed that it was prepared for the County of Maui Department of Planning. And you know, although you know, I completely respect the work of Munekiyo and Hiraga, there is a difference in what kind of document gets created depending on who pays for it. This in itself is enough to invalidate this document because, you know, without getting past the cover, it's already misleading. It's already telling a lie.

I really, you know, don't want to castigate the Director because he wasn't the director when it happened, but I really think this is a shell game that we're in with this thing. You know, when action time comes, you know, in a little while I guess I'll act accordingly, but the thing is it's smelling worse and worse.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Mr. Welch can you very briefly because I know there's a long history to these lots bring us up to speed on the Lambert and Sweeney lawsuit?

Mr. Welch: Well, I didn't play a part in that. Martin Luna represented the land owners. As I understand it, the issue was whether the County was correct in revoking SMA exemptions and building permits which were issued in the 11th hour of the Apana Administration permitting those two houses to go forward. And I don't recall what the exact procedural aspects were and whether it actually went to court, but it was I think before the commission on appeal, the commission level there was a hearings officer appointed I think and it resulted in a settlement in which they allowed those permits to be reinstated on legal grounds and they continued to build.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Thank you. Maybe since Mr. Luna is in the audience we can ask him to just bring us up to speed on litigation that has already taken place relative to this lot or these

lots?

Mr. Welch: Sorry Martin.

Mr. B. Martin Luna: Commissioner Hedani, Members of the Commission, Madam Chair, the Sweeney and Lambert actually was an appeal to the planning commission after the Director Foley I guess a couple of weeks after taking office in 2003 rejected the exemptions given to the two lots for construction of the residences and also the – which subsequently followed the revocation of the building permits for the two lots. So an appeal was taken, but I want to say here that although the permits were issued right before the Apana Administration left office, the process for obtaining that, those permits took over two years. So it wasn't a last minute, last ditch effort at all. I want to dispel that right now.

So after that when the appeal was taken it went through a contested case hearing, the hearing officer was Judge McConnell. Judge McConnell ruled in favor of the Planning Director. We went before the planning commission, the commission saw the unfairness of what had happened in the process and reversed the decision of the hearing officer. So subsequent to that reversal then a settlement occurred where we would not Sweeney and Lambert would not seek damages from the County and the County would not appeal. I mean, it would be difficult for the County had appealed the planning commission's action at that point anyway, but we decided not to seek damages from the County. That's essentially what happened.

Mr. Hedani: Thank you.

Ms. Amorin: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: Martin may I ask you a question? So the reinstatement of the SMA permits basically allowed the continuing construction of those two residences, but because of the inconsistencies of the land designations, are they allowed to occupy those residences?

Mr. Luna: Yes, yes. Certainly. And in fact, if the two houses they're just about completed I think if not already completed because it's been a while since they started.

Mr. Hiranaga: Thank you. I have a follow up question for the director.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: So how are they able to build their residences and then occupy them if there's these land designation inconsistencies? Is it because the planning commission granted them an exemption?

Mr. Hunt: I believe it's part of the settlement but I'll defer to Colleen.

Ms. Suyama: I was the planner that handled the appeal. Once the planning commission overturned the hearings officer's recommendation and granted the exemption that cleared the way for them to get their building permit reinstated as well as to start doing the construction. So in doing that, in essence the commission found that this project in terms of the exemption was consistent only for the Lambert Sweeney.

Mr. Hiranaga: So the exemption that was granted allows them to continue?

Ms. Suyama: Right. Because that's what you need in order to clear the special management area rules. And it's not this commission, but it was a previous commission that made that decision. I mean, actually the hearings officer was in favor of the County's position but the commission overruled the hearing officer's recommendation and voted to you know, basically sustain the issuance of the exemption that was done. And as part of the settlement because that was done, the original building permit and the original siting of the property was what they determined to be built.

Mr. Mardfin was excused from the meeting at 2:00 p.m.

Ms. Amarin: Thank you. Any more questions Commissioners? Any comments on the project? Commissioner Hiranaga.

Mr. Hiranaga: I just wanted clarification on this memo that dated February 12th regarding the 70-year multiplier, 70-year multiplier. Are you by this memo suggesting that we make this a condition? Or is this just information?

Ms. Suyama: This is just additional information that is being put into the environmental document. It's not as a condition. Any time any conditions that would be attached to any of this project would be when it comes before you formally as part of a land use amendment proposal.

Mr. Hiranaga: So it's information only.

Ms. Suyama: And can I address one thing, one question that Jonathan Starr had brought up about, you know, the environmental document. Although the environmental document is being paid by the property owners in order to see this thing forward, the department is the one that works with the consultant to set the parameters by which the document is being drafted. In other words, when the first document came up, it was not to the satisfaction of the department and that's where the department wrote back saying we want this, this, this, this, gave them an itemized list of everything that we wanted in the

document, the base document, the draft document that went before you. Once the draft document came before you, you provided your own input as part of the commission. That's also included. When the final draft document comes back to the department, the department again reviewed the document and asked them to make changes again because it was not to the satisfaction of the department. So we're basically the client. And as the client, we're the ones that dictate to the consultant what we want contained in the document and the wording in the document. So we did all that editing before you got the final document today.

Ms. Amarin: Commissioner Starr followed by Commissioner Hedani.

Mr. Starr: Yeah, I have a question for Gwen Hiraga. Who's your client in terms of this project?

Ms. Gwen Hiraga: Gwen Hiraga. Our client contact is Mr. Tom Welch.

Mr. Starr: Okay, what's the name of your client?

Ms. Hiraga: Mancini, Geiger and Welch.

Mr. Starr: Thank you.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: It's a question for Colleen. Colleen, basically I have two concerns relative to the 70-year guideline and the hundred-year guideline that we're talking about as part connected with this particular proposal. If it's for informational purposes that you're describing, what you're suggesting is not a policy that's being agreed to by the commission or being established as policy for the future. It's something that's just being talked about at this point?

Ms. Suyama: That's correct.

Mr. Hedani: Okay, because I have deep reservations about just stumbling backwards into a 70-year and a hundred-year guideline which can essentially make people's property worthless in some cases.

Ms. Suyama: I understand that and I think the department understands that. Because this document, the Hawaii Coastal Hazard Mitigation Guide Book came out, one of the things that I've talked to Thorne Abbott about is that if we're going to use that as part of the way we establish the shoreline setbacks then it should be formalized in rule changes. In other

words, changing the shoreline setback rules to reflect those guidelines. And that's something that he's been directed to start preparing.

Mr. Hedani: Okay.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: So from reading the EA, I guess the 1985 community plan designation for these parcels were either hotel or apartment? And they were changed to park in 1989 or 1998, is that correct?

Ms. Suyama: The original Kihei-Makena – was the Kihei-Makena General Plan or the 701 Plan had identified these properties as hotel and apartment in that area. Then when the first community plans came up then it was redesignated to I believe was part of the original, one of the project districts. And then later on, it was changed to park to reflect that as the original project district was contemplated that the ocean front properties would be a park, you know, reserved for park use and the mauka portions of that project district would then be developed hotel, multi-family uses. And you know, what was said originally by Lucienne de Naie that eventually the properties got separated with different owners and as one property got sold to Everett Dowling to do the Palauea One project, the makai properties were already subdivided lots and those subdivided lots over the years were individually sold off to different property owners. So that's basically the history of what happened to this property in the past.

Mr. Hiranaga: Follow up question.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: So in 1998, when the community plan was changed to park, were the owners provided notice that this was going to happen and were they in concurrent with the decision?

Ms. Suyama: No, what happens is when you do a community plan amendment, there are no notice requirements. It's just that the County is coming in and updating its community plan documents and at that time, you're just giving general notice to the public that if you want to participate in the review process you have the ability. But we don't individually notify every single property owner when there's an amendment to their particular property.

Mr. Hiranaga: But with the redesignation to park you basically made those properties unbuildable and you've taken value away from that property without providing notice to the owners?

Ms. Suyama: That's not a requirement when the County does community plan updates.

Mr. Hiranaga: That was in 1998, right?

Ms. Suyama: That's correct.

Ms. Amarin: Commissioner Guard followed by Commissioner Starr.

Mr. Guard: On page 8 it says that the 1985 version had this designated as a park for the hotel being mauka. So that's 13 years prior to the 1998 change correct?

Ms. Suyama: Right, it was already done.

Mr. Guard: So it was always meant to be park?

Ms. Suyama: Right. Originally the Palauea projects was I believe Mike McCormick was the original proponent of this whole wide range of land use amendments and it came in as a general plan amendment, those land use amendments. So it was during that time, it's actually amending the 701 Plan which is the original General Plan for the Kihei area that was ever developed by the County.

Ms. Amarin: Commissioner Guard.

Mr. Guard: Then the other issue I guess is in those larger plans they were going to take out the lower road, right? The Makena-Keone'o'io Road.

Ms. Suyama: Right, and as part of not doing that they maintained –

Mr. Guard: So that's what separated –

Ms. Suyama: Right.

Mr. Guard: And when was that?

Ms. Suyama: I don't know what the exact date that that happened.

Mr. Guard: So when they kept the road in tact that actually had a negative impact on being able to sell these lots individually.

Ms. Suyama: Right so the makai properties were designated for park use and then mauka properties were going to be developed as the hotel, multi family units.

Mr. Starr: ...(inaudible - changing of tape) Yeah, I'd like to read a few things from the Kihei-Makena Community Plan and they're notable not just because they have such bearing on this project but because there were left out of this EA document even though, you know, this EA document is supposed to be examining the community plan and it does quote from the community plan but only – it quotes those places that are favorable to this particular project.

Here's one, "preserve coastal vistas, open space and recreational opportunities for residents by prohibiting further shoreline development except in places designated on the 1997 community plan land use map and prohibit future community plan amendments along the shoreline that would increase the intensity of land use with the exception of land use that is public or quasi-public in nature."

Here's another one that was left out. Natural resources under opportunity, "the shoreline is one of the region's major assets. Shoreline recreational areas and accesses must be increased to meet the growing needs of the region and island residents. Improve beach access and other supporting facilities at the shoreline are also recommended."

Under Objectives and Policies, "acquire beach front properties for public use."

Here's, "establish cultural parks and heritage corridors for visitation and education." "Require development projects to identify all cultural resources located within or adjacent project area prior to application as part of county development review process." "Further require that all proposed activity include recommendations to ...(inaudible)... adverse impacts on cultural resources including site avoidance, adequate buffer to areas and interpretation, particular attention should be directed toward the southern areas of the planning region," in other words here. "Provide a sense of history and define a sense of place in the Kihei-Makena region."

I mean, there's you know quite a few more. I'm not going to read them all, but these were conveniently left out of this document. As such, I would like to move that this document be considered insufficient, that there is likelihood for significant impacts and with that in mind, I move that this body require an environmental impact statement particularly in respect to shoreline, shoreline access, archaeological aspects, and interaction with the community plan and other county rules and documentation.

Ms. Pawsat: I'll second.

Ms. Amarin: We have a motion on the floor. Who made a second? Okay, we have a motion on the floor by Commissioner Starr to prepare a EIS on this project and seconded by Commissioner Pawsat. Any discussion? I have a raise of hand earlier by

Commissioner Hedani followed by Commissioner Pawsat. Commissioner Hedani.

Mr. Hedani: From the standpoint of this particular property we have 11 lots. We know the value of one of those lots is \$7 million. The information that was just cited by Commissioner Starr says "acquire beach front parcels for public use." It doesn't say condemn the property or take the property away from private property owners without compensation. It says, "acquire." The question was already brought before the Council, it was brought before the commission, it was brought before the people that intervened relative to these lots and the result of all of that was the county purchased two lots out of the total.

Unless we're going to cough up \$7 millions times 11 lots or \$77 million to acquire the balance of these parcels, we're basically going through a charade of trying to stretch these guys out to the point where they have to sell their property because we're throwing more and more stumbling blocks in front of them. I don't think it's fair to the people. Personally I like the beach, I think it would be really nice if it were all a beach park. The question is can the County of Maui pay \$77 million to acquire all of the parcels and they're willing to sell it to us in order to create a beach park in this location. That's the question that we need to answer.

The Council has already said no. The Administration has already said no. The public that was clamoring for a beach park here was only able to raise \$12,000 toward the acquisition of the property. So I think we're doing a disservice to ourselves as well as to the people that actually own this property. Although I would really like to see a beach park at this location, I don't think we can afford it. I think we need to be very, very careful in terms of doing things that abridge private property rights along the beach and to try to acquire a property in an unfair manner.

Ms. Amarin: Thank you Commissioner. Commissioner Pawsat.

Mr. Pawsat: I'm going to have to disagree. I really don't think it's fair to the public, for the public to pay victim once again to like developers gone a muck. Their own little internal business deal went bad and I think this is an example of how developers have no vested interest in the island. The development went bad and this guy wanted his part of the beach front properties and he just started selling them off piecemeal. It actually sounded like what you said, if there's a park there, it actually kind of had something that might have worked but they all got busy fighting and they sold it off, you know, and the previous commission planned it – allowed these beach front properties to be developed at – against the wishes of the Planning Department and I think it is our responsibility to catch error. I mean, those are all being developed. That place down there, I mean, it's like all those places down in Makena where the house is just right across the street from the beach and like there's a

traffic jam. It's a one road and it's a traffic jam and it's because there's no rules there and you know, and when you have developers do their own archaeological studies and their surveys they are not going to notice things that interfere with their plans. It's just a fact and we can stop fooling ourselves. I mean, they present plans and you know, if there's a ruin, it just happens to be in the far end corner that no one's building on and it's not because other stuff isn't there. And so I'm very – I do not trust, you know. And that's all I'm saying, an EIS, you know they can build on there. If their EIS comes back and nothing's there then fine they can build.

But I would like to know if anything's down there. I mean, there's tons of places down there. I find them all the time and they're intact too, the ones I see. The one at the beginning of La Parouse, there's a little community right there back behind the beach and there's little places in there and it's there and it's pretty intact actually, but it's just sitting there, you know, and it should – something should be done with it. You know, that's what create parks. Back in the old days, a civil war would be fought on a piece of land and that became a park because people thought it was important and no one thinks anything valuable is left to create public space out of anything out of any more. And the only thing left are these ruins and that's an opportunity to create interesting public space that uses Hawaiian history to continue making it an interesting place for tourists and just continuing the culture of it all.

Ms. Amarin: Thank you Commissioner Pawsat. Any other questions or comments on the project? Commissioner Guard.

Mr. Guard: I'm not sure we need the EIS because either way whether you're going for the community plan amendment or the change in zoning, right, both are going to be working at the same time? Is that right? Maybe we need a little outline of the process. So we have two legs that are going to be working simultaneously and that EA is needed for either one of them whether the community plan amendment changes from this park designation to single family or we do the change in zoning from hotel residential multi family to park.

Mr. Hunt: You don't need an EA for the change in zoning. That's not a trigger.

Mr. Guard: Okay, so if we were trying to keep it as park we didn't need – this is all unnecessary.

Ms. Suyama: The reason why there is the community plan amendment too is that there are the properties that are already developed and those are the ones with all those mansions that have been built already. Out of all of these properties that are left, only four of them are vacant including and the additional two lots that the County already owns. So out of all of the lots, six lots are vacant. The rest of the lots that are part of this community plan

amendment are built. They're constructed, there are houses that were recently built. So what's going to happen is that rather than leaving the inconsistency on the properties that are built, those should be redesignated to single family because with that kind of houses that are built on those lots, you're not talking \$7 million to purchase one of those properties, you're talking multiple million dollars because they already have mansions on those properties.

The only ones that you can really save at this point is the four remaining vacant lots not owned by the County because there is no construction. So what the department was going to do is propose is that as part of the community plan amendment, one, you can zone the other lots that are built as single family for single family use because they're actually some of them are hotel apartment use as the zoning, but you still have to be consistent with community plan. So those still would require community plan amendments. The six remaining lots, if you choose to keep it in park use, then you can zone it park designation in accordance to the community plan. But if you determine that, well, the only park property that should be zoned is the two remaining lots that the County own and you're going to allow the four additional lots to be redesignated to single family then those require the single family designation as well as the single family zoning. But you would do both going up at the same time so what the department was proposing to do is you have one proposal that allows single family and you have one proposal that keeps the six vacant lots, the existing six vacant lots as park but you allow at least the ones that are already built to be designated and zoned for single family because that to me has been lost already for park use.

Ms. Amorin: Commissioner Guard another question followed by Bruce U'u.

Mr. Guard: Would it have been helpful to have some of the history on this? Because I feel like back in the day someone had to come up with this master plan of here's this big hotel resort with a 10-acre beach park and the road was gone. Right? So then Uncle Les and Dana Hall said hey you can't take away this historical road here and that probably put a wrench in the system for this big resort with a big open beach park. I'm just kind of playing this out loud because I can see it happen all the time that now these are coming up for redevelopment and people are saying these are my rights yet the community, I don't even know when this was proposed. I mean, that's why we have other people bird dogging these items as well to change this original Palauea general plan or community plan update way back when promising a 10-acre park and now it's down to the promise of two lots. I feel a long the way we've gone from 10 acres that the general public should be happy now with just over one acre of park. Yet we also gave the change in zoning from agriculture to allow One Palauea Bay and Wailea 670. So that part of it was some of the bartering way back when I'm imagining. You're going to get this 10-acre beach park in exchange for being able to develop mauka and now that's gone and now they're also trying to pull the

carrot out on the beach park side.

Ms. Suyama: You have different options. Although you have already a motion unfortunately on the floor what we had stated in our original presentation is that the commission had three options. One was they could have accepted the final EA document as presented. You could have recommended as part of it that if you felt that there was additional information that you needed to have in the final document you could have requested that additional information and third was what the motion of Mr. Starr was that you determine that it's to the level of where an EIS is required. So those are the three options that the commission has.

Mr. Guard: Okay, but then I guess if I want more of a historical perspective does that – do we need the EIS? To me to look back at the history of how this came about from hey, we want to build a hotel up here in exchange for a 10-acre beach park down below, and now it's like hey, you're taking away their rights to build because of this change in business partnerships, maintaining the historical road that was a lawsuit filed before when these guys, same thing that happened at the Prince, right, that they had to keep that footpath there that it's being played out to us now that oh, people – I know there's some property rights being taken away but technically it shouldn't have gotten to that point where those were sellable lots to individuals.

Ms. Suyama: If your only issue is the history portion which a portion of it came out today with presentations from Lucienne de Naie, you could basically say that that's what I want. I want more information as a commission member before I'm willing to make a decision on whether the EA is adequate or even to make the decision on whether you feel that an EIS is required. That is your prerogative as a commission member.

Mr. Guard: So either way, I guess – well, I want to expedite it for property owners that are here to move along. I think the County should keep as much of this for park as we should. I'm sure \$7 million seemed like a lot of money in '96 and it still is today, but now we're talking about \$49 to \$70 million based on one sale and I think in 10 to 20 years we're going to be looking at that was a mistake again, that if we let it turn to houses then we're going to look back in shame and hopefully I'll still be around then and I'll be disappointed that it's not a park.

Ms. Amorin: Commissioner U'u.

Mr. U'u: I understand how history plays a part. It's – We got six vacant lots left, the rest were built. The County owns two irregardless or regardless of what happened in the past, that's what it is now. And I was wondering if, are there intentions to buy the remaining four lots that's not developed and keep the two for park or can we afford it? I doubt it if we can

and that's the scenario we're living today right now. It's not about history. I understand how important history is, and I would love to acquire all the undeveloped lots as park. But being a realist can we do it? And is it even worth asking for an EIS if it's not going to change?

Ms. Amarin: Commissioner Starr followed by Commissioner Hedani.

Mr. Starr: It's my belief that the mechanisms are finally in place to possibly allow this to happen. But what's really before us at this time is the adequacy of this document and you know, if we feel that this document should have examined things that it didn't such as the option to purchase the undeveloped lots and at what price and what fund-raising mechanisms there were, those are things that would be included in an EIS.

If we feel that the fact that there were all these archaeological sites that some of them are known, some of them are not known but we have a map before us that's filled with them that they should be looked at in this document then that's what an EIS is for. If we feel that there should be a historical narrative on what happened with it, that's what an EIS is for to provide that. And to provide full context with the community plan and really to do, to present all of that to us and to the County Council who will be the ultimate decision makers and you know, that's what the process is for and it's a good process.

You know, I may differ with some of the commissioners in that I have maybe a little less sympathy for folks who purchase a beach parcel that's community planned park. I know I would not purchase something that's in the community as a park and expect to build a house on it. You know, it's a gamble you. You throw dice and maybe you win and maybe you lose and probably they're going to win in the end, but you know, the real question before us is whether this gives us all the information, gives the County Council all the information whether it presents a path to a solution and I really feel that an EIS will do that and that this is going from the cover where it tells us that it's prepared for the County of Maui Planning Department where in fact, it was prepared for a very excellent and prestigious law firm that's representing the property owners. I mean, right from the get go it is wrong, you know and it's not complete. So I do really be of your consideration to kick this up to an EIS and in the meantime I do feel that those of us who feel that this should be park we should go out into the community and talk to the Council and talk to the Mayor and see if mechanisms can be created to make it happen because funding sources on the State and County level are in place. You know, for Oahu's they're talking about you know Turtle Bay and hundreds of millions of dollars, maybe you know, a little tiny fraction of that kind of thing could come here and people's dreams to have protected place to go to the beach and Palauea can become a reality.

Ms. Amarin: Commissioner Hedani followed by Director.

Mr. Hedani: Okay, the question that we're supposed to be answering today is whether or not the environmental assessment document that has been provided to us is adequate to address the environmental concerns that affect the ocean relative to these parcels. Everything that I've heard so far relates to everything else except that.

The other question that I have is that if we have 11 parcels and six of them or five of them have already been built upon, does that mean we're going to force somebody to prepare an EIS and assess the people that have already built their houses to retroactively create an environmental impact statement that might nullify their house?

Ms. Amorin: Do you want to direct that to any particular person, Hedani?

Mr. Hedani: Anybody that can answer it.

Ms. Amorin: Director.

Mr. Hunt: Well, I can't answer that, so I'm going to skip right over it.

Mr. Hedani: Next question.

Mr. Hunt: I just want to reiterate what your duty is before you today. Is whether your document in front of you has adequate information. If it doesn't have adequate information, then you have the ability to ask for additional information. Once you have all your information gathered including potential mitigation then you make a determination. Only then do you make a determination as to whether there are going to be significant impacts. If you make that determination that there are going to be significant impacts then you call for an environmental impact statement. That's the way the process works. I don't believe that you're at that point yet to make that determination. You may make that determination but I think you need, what I'm hearing is you need additional information to be included in this document and then you make your determination as to whether there will be significant impacts or not.

Ms. Amorin: Any other questions Commissioners? Commissioner Hiranaga.

Mr. Hiranaga: So if the planning commission decides not to request a environmental impact statement and eventually a recommendation is forwarded to the Council, does the Council have the power at their discretion request an environmental impact statement?

Ms. Amorin: Colleen you want to answer that one?

Ms. Suyama: Since you have a motion on the floor which is a motion for an environmental

impact statement, you need as a commission need to determine whether that's correct or not, is that the way you want to go. If the commission determines that yes, you want an EIS, then it goes into another phase in which a draft environmental impact statement needs to be prepared.

Mr. Hiranaga: No, my question is, if we do not require an EIS and we forward this, we move forward in the process, when it goes to the Council do they have the ability to request an EIS?

Ms. Suyama: No, because you would have to have determined and if you're not going to require an EIS then you would have to have determined what is the department's recommendation is to accept the final environmental assessment as a finding of no significant impact. That's the choice you have. Either an environmental impact statement needs to be prepared or a final EA is accepted and a FONSI is issued which is a findings of no significant impact. Until you dispose of it either way, we can't move forward on any land use amendment.

Mr. Hiranaga: But once it does move forward –

Ms. Suyama: Once you decide that a FONSI or an EIS has been done then it moves forward to the Council and the Council basically is just saying that Chapter 343 has been complied with before they take any action, but they're not going to come back and say that an EIS needs to be done because it's already been done.

Mr. Hiranaga: No, if we accept the EA, the final EA, and we move it to the Council –

Ms. Suyama: That's it.

Mr. Hiranaga: They have no ability to request an EIS?

Ms. Suyama: No, because you've already complied with Chapter 343. The only way that happens is that if a FONSI is issued or a EIS is issued is someone in the public once it's published in the environmental bulletin, you can appeal the decision of the commission, but it's a legal appeal that you go to the Second Circuit Court.

Ms. Amorin: Director followed by Commissioner U'u.

Mr. Hunt: Because the planning commission's the accepting authority on this document that's the final say on this document. The Council could ask for additional information during the processing of the CPA along with this body, once the CPA comes through here you can ask for additional information. Technically if the information wasn't adequate there

could be supplemental EAs and those kinds of things but you are the accepting authority on the EA.

Ms. Amorin: Commissioner U'u.

Mr. U'u: That was – it was answered. Thank you.

Mr. Starr: Call the question.

Ms. Amorin: Did you have another question Dr. Iaconetti?

Mr. Iaconetti: Yes I do. It's a comment. One gets the impression that our major concern is the people that are invested in these properties and what is fair to them. I think we sit here not for that concern but for the concern of the general public and what is fair to the general public. I don't see how we can vote against the EIS being necessary. We're representing the people of the community and they felt apparently in the past and many still do, that this should be a park. And in order to satisfy the individuals that have purchased this property unfortunately to build their homes we are making a decision that we have a responsibility primarily to them and I don't think we do. I think our responsibility is to the general public who expects to be able to utilize this area for a park. And if an EIS is going to give us more information, I think we ought to have one.

Ms. Amorin: Thank you Commissioner. There's a question, all those in favor. Raise of hands. One, two, three. Those opposed? One, two, three, four. The motion fails.

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

The Motion to Require an Environmental Impact Statement particularly in respect to shoreline, shoreline access, archaeological aspects, and interaction with the community plan and other county rules and documentation, Failed.

(Assenting - J. Starr, J. Pawsat, W. Iaconetti)

(Dissenting - K. Hiranaga, J. Guard, B. U'u, W. Hedani)

(Excused - W. Mardfin)

Ms. Amorin: Commissioner Guard.

Mr. Guard: I hope there's more information we can get just in the EA document. I'm for the general public in thinking that this was brought the public and the community plan of Kihei-Makena way back when when a huge development was proposed and people were promised the 10-acre park. I know maybe history is in the past and I don't know where two

wrongs make a right here that we have to start answering some of these issues and I don't know if the case of someone – if a developer came in now promising I'm going to do a building and then I'm going to do this big park to be able to do this building, and then later one they want to sell the park land for more houses is that possible? Is that kind of part of the process these days? I'll ask the director that because that's what I feel they – maybe that's a good business to get into. Is that kind of what happened here? Director, maybe Deputy Director would be able to answer that.

Ms. Amorin: Colleen.

Ms. Suyama: Unfortunately, because these were all subdivided lots that didn't require any kind of governmental approval at any time, what happened is the person who owned the Palauea Beach lots ended up selling it individually. They probably sold it at a profit of what they got, but I mean, you can't prevent people from selling property and it basically ends up being, buyer beware. You're buying property with certain designations on it that doesn't really guarantee that you are allowed to build on those properties. Unfortunately out of all of the properties that were designated as park for Palauea, some of the properties have been allowed to build. And we're only left now with six vacant parcels two of which are owned by the County.

Ms. Amorin: Commissioner Guard.

Mr. Guard: So the courts actually were in favor of the County saying that no this was supposed to be a park and a previous planning commission overturned that.

Ms. Suyama: No, what it was is that this went to contested hearing as an appeal. In the appeal, the hearings officer which was Judge McConnell, he ruled in favor of the County's position that the exemption should not have been issued because of the inconsistency. However, the final arbitrator of the appeal was the commission and the commission at that time did not follow Judge McConnell's recommendation. They actually scolded the Planning Department for having rescinded the exemption because of what they perceived as our let us call it incompetency in the processing of the application. So basically they felt that the two property owners were unfairly treated by the department and therefore, they granted the exemption or they sustained the original exemption that was issued and that's how it ended. And what Martin Luna described is the County then entered into a settlement agreement with the two property owners because they were asking for damages from the County of Maui because this cost them a lot of money. It cost the two property owners a lot of money in the terms of the delay and having to do this contested hearing before the hearings officer. And as part of the settlement agreement, the County agreed not to appeal the decision the commission had done because, you know, basically we're appealing a county agency and for not appealing, the property owners did not ask for damages. The

only thing that they asked is that the original building permit and the original plans that were originally part of the exemption we would not stop the building permits or any other further action from occurring and we agreed to that as the County of Maui because it wasn't to the benefit of the County to go through further litigation. It would have cost us a lot of money in the end.

Ms. Amarin: Thank you Colleen. Commissioners we have two more options before us either accept the final EA or defer the final EA. Commissioner Guard.

Mr. Guard: I guess I would have to defer or ask that we defer based on a few new items that I think we do need either answers or some better clarity on.

Ms. Amarin: Do we have a second?

Ms. Pawsat: Second.

Ms. Amarin: We have a motion on the floor to defer the final EA, seconded by Commissioner Pawsat. Discussion, Commissioner Starr.

Mr. Starr: Yeah, I'd like to add a few items that should be address. First of all, all pertinent language in the community plan that has bearing on shoreline and park space and archaeological conditions be addressed.

Second, that the a full archaeological study be done to locate all possible sites in the areas of these lots and that a historical narrative be created regarding this area and that that be included and that an alternative option regarding the creation of a larger beach park be looked at in terms of options, feasibility and funding mechanisms.

Ms. Amarin: Thank you Commissioner Starr.

Mr. Starr: Do we have that Carolyn? Are we okay with it?

Ms. Takayama-Corden: I have some.

Mr. Starr: Sorry, I apologize. I should have gone slow. Let me have what you got and I'll try to fill it in.

Ms. Takayama-Corden: ...(inaudible)... full archaeological study be done in the areas of concern. A historical narrative be done.

Mr. Starr: The community plan stuff.

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

Mr. Starr: Community plan with all relevant items regarding shoreline, open space, archaeological, etc., and the community plan be addressed. And other options for mechanisms to maintain it as a park including mechanisms for that, funding mechanisms and I don't know what – I'll let you word it but whatever needs to be done to examine ways for that. Did I miss anything?

Ms. Amarin: Commissioner Guard followed by Thorne Abbott, followed by Commissioner Iaconetti.

Mr. Guard: Okay, this may be for the Director or Deputy Director. I don't want to get stuck having an EA that by name that looks like an EIS. So I don't know where the line is that an EA becomes an EIS based on what we try to require of it in asking for more information. So I don't know if that's a response or not. My main concern was that on page 26, Item C, it says, "the proposed action is limited to the community plan amendment. No construction improvements are proposed, " I guess is what it refers to, but my moving the EA on, does have the tertiary – excuse me, we will be committing to potential development later is kind of where everyone is fearful at this point. And so from – you go to page 10 and it talks about "kiawe trees growing along the back beach create cool shaded spaces for family gatherings." I think we all need to know as a commission that those cool trees are going to be gone because there's actually no trees in the public area as of right now, correct? When we went down there and we sat in the shade at our site visit, we were on someone's private lot. So to say that there's no significant impact, I could take a nap in the shade all day at the beach on the external environment, but to be down there on a hot beach those are significant impacts when I'm trespassing to get into the shade. But I again, my main concern is that we're not overburdening the EA and I don't know who's paying for these new issues.

Ms. Amarin: Thorne Abbott.

Mr. Abbott: I just wanted to clarify from Commissioner Starr your reference to – first off, thank you very much for providing direction. I think all of the commissioners have given us a lot here. But secondly, this is to apply to only the vacant parcels or the entire portion of the EA, all 11 lots? For example, you indicate costing factors, funding mechanisms and also archaeological inventory surveys. Could you clarify that for us sir?

Mr. Starr: To my mind since what is being discussed is a change of the community plan designation for all of these parcels and it should apply to all of the parcels that we're examining the impacts for changing.

Mr. Abbott: Thank you.

Ms. Amarin: Commissioner Starr.

Mr. Starr: I just do want to stress that you know, this EA currently does not examine the possibility of the acquisition in making the six parcels a park. And I believe that that still is something that should be on the table and once, if we were to approve this without it and not examine it then it becomes kind of almost off the table. So I feel that it's very important to examine the potential and the mechanisms for that.

Ms. Suyama: Could I just interrupt?

Ms. Amarin: Colleen.

Ms. Suyama: We did address purchasing the four parcels. If you look on page 47 of the final EA document, we have alternative 3, and that is the purchase of the four privately owned parcels and entitle both the County parcels and four vacant parcels for park use. So that was one of the alternatives that was under consideration. And if you look through that portion of the document, we did talk about, you know, possible ways of funding the acquisition of parks and one of the things that we had proposed was mitigation banking. And as part of it, you know, just to let you know, I have asked Thorne Abbott to look at mitigation banking and proposing an ordinance that hopefully if everything works out correctly when the land use amendments come before you, there will also be an ordinance talking about land mitigation – mitigation banking as a method for the Council to consider because we also recognize that if the Council is going to have to purchase property you know, through eminent domain or negotiations, they need methods, you know, viable methods of providing the funding source for those acquisitions. So one of the things we were talking about is mitigation banking. So that's one of the proposals that we're going to bring before you as well as the Council.

Mr. Starr: Okay, I stand corrected. I think I had been looking at the draft and this had been added subsequent.

Ms. Amarin: Thank you. Commissioner Hedani.

Mr. Hedani: I think the motion as it's proposed right now requires that that information be gathered for all of the parcels. So you're talking about 11 parcels. So you would have to move the buildings that have been built in order to do the archaeological survey underneath the buildings that are already constructed?

Ms. Amarin: Colleen is that possible?

Ms. Suyama: No. To me, you know, as I presented to the commission, those parcels that have been developed I think it's lost. Because they have extensive construction. Whatever archaeological findings that may have been part of those parcels, have either been found or they have been mitigated in some way. What I would like the commission to do is that if you're going to ask for a deferral and you're going to ask for additional information, I think the primary parcels are the four vacant parcels that still remaining. And if you would maybe focus your request for information onto those four parcels, I think that would help the department.

Ms. Amarin: Commissioner Hedani followed by Commissioner Hiranaga.

Mr. Hedani: Colleen, which four parcels are we talking about?

Ms. Suyama: There's the four vacant parcels.

Mr. Hedani: What numbers? 20 is one of them.

Mr. Abbott: Parcels, 15, 16, 17 and 20. Parcels 18 and 19 are vacant and owned by the County.

Ms. Suyama: Right.

Mr. Abbott: So it would be helpful to clarify whether you want for example archaeological inventory survey of the County owned parcels.

Ms. Amarin: Commissioner Starr followed by Commissioner Hiranaga – Oh, I'm sorry, Commissioner Hiranaga followed by Commissioner Starr.

Mr. Hiranaga: Looking at this final EA on page 47 as was pointed out there is an option to purchase four of the vacant lots. I agree with the staff planner that to attempt to have those five properties that already been improved with residential structures would be extremely expensive to the County and I think monies could be spent elsewhere more effectively. So we should really be focusing on the four vacant lots because the County already owns two of them. My question is, when did the Council purchase those two lots for the County of Maui? Anyone recall approximately what year?

Ms. Suyama: I'm not really sure what was the exact date, but I believe –

Mr. Hiranaga: The year?

Ms. Suyama: Maybe 1997.

Ms. Amorin: Thorne.

Mr. Abbott: That could be a question, additional information that we respond to.

Mr. Hiranaga: Well, my concern is in 1998 the community plan was changed to indicate that these lots should be park and since that period if these two lots which were purchased by the County occurred before 1998, then for the past nine years there has been no action on this community plan amendment, so when we look at these four vacant lots, the County needs to determine in a reasonable, timely fashion if they are going to buy these lots or not. And if they're not, then they should allow the owners to make use of them because to hold these lots up for eternity looking for the money I think is unfair. So I would like to know when the County of Maui purchased those two lots if it was before 1998 or after 1998 and what attempts has the County been making in the past nine years to acquire these lots. Because if it's – if the answer is none, then we should place some reasonable time frame that the County needs to make a determination if they're going to buy these lots or not because there's a lot of vacant lots on the shorelines of Maui and are we going to start trying to acquire all of these vacant lots on the shorelines of Maui, would be nice if we could make money, but we don't. We're not the Federal government. So I think you know, we need to make a decision as to is this really what the public wants and is this really ... (inaudible - changing of tape)... the public wants it. I can't speak for the public. I'm one person of the public and I don't think there's anybody here that can speak for the public. You can speak for segments of the public but I – would be hard for me to accept that you speak for the public. But I'd like to find that out when did the Council actually purchase those two lots because I believe most of those lots were available for purchase to the County.

Ms. Suyama: Right.

Mr. Hiranaga: And they decided to purchase only two lots.

Ms. Suyama: Yes. For your information, I found the information, on page 8 of the document, in 1996, the County acquired \$6.7 million dollars to purchase property and the property was finally acquired in 2000. So the two lots basically cost over \$3 million for each lot at that time and that was in 2000.

Mr. Hiranaga: And since 2000, has the County been making any efforts to acquire the balance of the properties?

Ms. Suyama: Not to my knowledge, no.

Mr. Hiranaga: Thank you.

Ms. Amarin: Commissioner Starr followed by Commissioner U'u.

Mr. Starr: Yeah, you know, I'm willing to modify my request that, you know, as far as the archaeological and acquisition study that it be limited to the six – I'd like the archaeological to be the six lots and the acquisition study to be the four lots. And I do think we should have archaeological study for the County lots as well.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: Okay, the request that's before us I think is part of changing the designation to single family eventually leading to a designation of single family from hotel apartment which is what it is right now. Is that correct?

Mr. Hunt: It's park right now.

Mr. Hedani: It's park, it's not hotel? Oh, I'm sorry, you're talking about community plan as opposed to zoning. Zoning is hotel. So even if community plan is changed to single family, the zoning is still hotel?

Mr. Hunt: Colleen, I thought the –

Ms. Suyama: Page 7 of your documents lists all the properties and –

Mr. Hedani: It would be nice if all of us read our document.

Ms. Suyama: Yeah, but it lists all the designations for each of the parcels, and right now all of the parcels in the question, they're either zoned HM Hotel or A-2 Apartment. And what we're proposing is that those that are built would be R-3 Residential.

Mr. Hedani: Of the vacant parcels are they zoned hotel right now?

Ms. Suyama: Yes, they are, 15, 16 and 17 are hotel, HM Hotel. Parcel 20 which is the Altman's property is A-2 Apartment.

Mr. Hedani: So if we do nothing we would actually be buying hotel property for park purposes.

Ms. Suyama: Basically if, assessed values is not only based upon zoning. It's based upon what the price of the properties were brought at and I don't think you can have the argument that because you zoned it PK or Park that now the value of the land is less than what the value was before from that action. So it still would be a negotiated selling price

or acquisition price.

Ms. Amarin: Thank you. Commissioner Guard.

Mr. Guard: When was it turned into hotel zoning?

Ms. Suyama: It's always been hotel zoning since the original zoning map which was I believe was 1969 is when the Kihei-Makena zoning map was adopted.

Mr. Guard: And so that zoning map had – was it kind of like these would be an overlap of a larger hotel and the mountain –

Ms. Suyama: No. The original Kihei General Plan which was the 701 Plan had identified all of these properties for hotel and apartment use. It didn't change until later on when we did first community plan for Kihei is when the next general plan sort of general plan update was done for Kihei.

Ms. Amarin: Commissioner Guard.

Mr. Guard: And these were all individual lots at that time too?

Ms. Suyama: They were always individual lots.

Ms. Amarin: Any more discussion Commissioners? We have a motion on the floor. All those in favor? Raise of hands. This is to accept the final EA.

Mr. Starr: No.

Mr. Iaconetti: No.

Mr. Hiranaga: No.

Ms. Amarin: I'm sorry, to defer the final EA. I'm sorry. Raise of hands again. One, two, three, four. Those opposed. Raise of hands. One, two, three.

Mr. Hedani: Chair's vote.

Ms. Amarin: So the Chair – my comments before I vote. I went to the site visit to see this area Palaeua. I've there in Maui Meadows since 1973. I've never been down there. My kids grew up Kalama Park, Kamaole, the beach parks 1, 2 and 3. Kamaole is not a good park for swimming. It's sports oriented. It's bad out there. When I saw this Palaeua it was,

wow. Wow. Just like now we have good land and we have bad land. That's what makes this park designated pristine. I can see sandy beach and not too far off you see rocks and lava, but not Palaua. I believe I speak for the people who live here on Maui, the families, the keiki will they enjoy it? Darn right they will if they know about this place. They'll go there not to mention the tourists. If it's something that we need to preserve I feel strongly that we should. And it's very unfortunate you bought property that's designated hotel. You're paying lots of high property taxes, and yes, you want some resolution, this is a problem to you, but the community, that's why we're here, I believe. I am part of a body trying to make good decisions for the majority, for the people who live here and so based on that I will defer this and all the comments to the Council and with all our concerns, because I really feel based on everything that I've heard today that it needs to go there. We need to have listen and our notes are all in tact. Thank you. So the vote is yes for the deferral. Motion carries.

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

**VOTED: To Defer the Action on the Final Environmental Assessment Pending Submittal of the Requested Information of all pertinent language in the community plan that has bearing on shoreline and park space and archaeological conditions be addressed. That the a full archaeological study be done to locate all possible sites on the six vacant lots which includes the two County owned lots and that a historical narrative be created regarding this area and that be included and that the acquisition study to be for the four vacant lots regarding the creation of a larger beach park be looked at in terms of options, feasibility and funding mechanisms.
(Assenting - J. Guard, J. Pawsat, J. Starr, W. Iaconetti, J. Amarin)
(Dissenting - K. Hiranaga, B. U'u, W. Hedani)
(Excused - W. Mardfin)**

Ms. Suyama: It's deferring action on the final EA pending submittal of the requested information. So we're clear about that, right?

Mr. Hiranaga: Right, the matter is returning to us.

Ms. Amarin: Yes.

Ms. Suyama: Right.

Mr. Hiranaga: Not, going anywhere, it's returning to us.

Ms. Amorin: Yes. Commissioner Guard.

Mr. Guard: And that was just on the vacant parcels.

Ms. Amorin: And this is on the vacant parcels. Commissioner Hedani.

Mr. Hedani: Just a question for staff as to when this might come before the commission again and who's going to be in charge of that at that point?

Ms. Suyama: What was your question?

Mr. Hedani: When is the deferred EA going to come back to the commission and who would be representing the project at that point?

Ms. Suyama: I'm not sure because if you're requesting the archaeological study that means somebody needs to be hired to do the archaeological study and that's going to be a funding issue with the department. It may not come back any time soon because it depends on how you can find an archaeologist to do the study and then present the information and include it in the document.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: I have a question about funding the increased information. Is the County paying for this or the property owners paying for it?

Ms. Amorin: Colleen.

Ms. Suyama: That's up for discussion because originally when this was brought before the property owners I don't believe they were looking at having to fund archaeological studies for all of the properties that are being mentioned especially on the county properties. So it would be a matter of the department having to find funding for this archaeological study if we're going to proceed. I mean, that's the realities. You know we were looking at the applicant or the property owners doing the funding of the EA document. This situation may change that funding source and the County may have to be the one to do the funding of the reports.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Colleen, you don't think the owners of the property would fund an EA at this point to do the archaeological work on their vacant parcels so that it can be converted to a park?

Ms. Suyama: I'm not sure. I'm not sure whether the – you know, if it's converted to a park, probably not if I was the property owners. Sorry. Probably not, if that's what I'm funding. I'm probably going to tell you no. You know, and that means the County will have to find the funding on its own.

Mr. Hedani: Are you retiring in June?

Ms. Suyama: I'm retiring in July. That's official. That's official. So you know, depending on how it may take, I may not be up here before you.

Ms. Amarin: With that said, we're going to take a little break and we'll resume in 10 minutes at 3:20 p.m.

A recess was called at 3:06 p.m. and the meeting was reconvened at 3:20 p.m.

Ms. Pawsat excused herself at 3:06 p.m. for the remainder of the meeting.

Ms. Amarin: Next on our agenda will be D-2. Planning Director.

Mr. Hunt: Your next item involves HMC MAUI LLC requesting a Special Management Area Use Permit for the Hyatt Regency Maui Timeshare Project, a 12-story, 131 unit timeshare structure with related improvements on 36 acres located at TMK: 4-4-013: 003, 004, 005, & 006, Kaanapali. The file number is (SM1 2006/0001 and the project planner assigned to this is Jeffrey Dack.

2. a. **HMC MAUI LLC requesting a Special Management Area Use Permit for the Hyatt Regency Maui Timeshare Project, a 12 story, 131 unit timeshare structure with related improvements on 36.57 acres located at TMK: 4-4-013: 003, 004, 005, & 006, Kaanapali, Lahaina, Island of Maui. (SM1 2006/0001) (J. Dack) (Public hearing conducted on December 11, 2007. This matter was scheduled to be heard again on January 8, 2008 meeting. Commissioners: Please bring your materials with you.)**

The Commission may take action on the request.

- b. **HMC MAUI LLC requesting an offsite parking approval for a 12 story, 131 unit timeshare structure with related improvements on 36.57 acres located at TMK: 4-4-013: 003, 004, 005 & 008, Kaanapali, Lahaina, Island of Maui. (OSP 2006/0007) (J. Dack) (The Commission reviewed this request on December 11, 2007.**

This matter was scheduled to be heard again at the January 8, 2008 meeting. Commissioners: Please bring your materials with you.)

The Commission may take action on this request.

Mr. Jeffrey Dack presented the Addendum Report of the Planning Department.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Before we get the recommendation shouldn't we have public hearing?

Ms. Amorin Yes, we will have public hearing. Are you giving us your recommendation right now?

Mr. Dack: Yes, I was working into the recommendation that is correct. If you prefer to wait that's fine.

Ms. Amorin: Yes. Commissioners? Commissioner Hedani.

Mr. Hedani: I believe the public hearing for this item was opened and closed. The public hearing was held at the last meeting and because we couldn't reach a decision on the recommendation it was deferred.

Ms. Amorin: Okay, I was told that any given meeting we could open it up for public testimony just in case there is some individual here who wishes to speak on this item. As Chair, I will allow that. Do we have any individual in the audience?

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

Mr. Vernon Ta'a: Good morning Madam Chair and Members and of the Commission, my name is Vernon Ta'a. I'm speaking on behalf of Mr. Herbert – Mr. Reginald Castaneres, business manager, Mr. Castaneres is the business manager and financial secretary of the Plumbers and Fitters Union, Local 675.

I'm speaking on behalf of our members and Mr. Castaneres in support of the request for a special management permit, area permit for the Hyatt Regency time share project. Obviously our members who live here on Maui would seek to be employed in construction of the 12-story unit time share structure. We strongly support it and ask for your support on this action to move this request forward. Thank you.

Ms. Amorin: Thank you Mr. Ta'a. Next on my list Gordon Cockett. Come forward and state your name.

Mr. Gordon C. Cockett: For the record my name is Gordon C. Cockett, Vice-President of Maui Unite, born and raised on Maui. Madam Chair, ladies and gentlemen of the Planning Commission, here we go again pleading with you not to approve any more time share development anywhere on the west side.

A time share unit is a not a home. It is a vacation luxury which contributes heavily to the environmental problems we have here. At a recent public meeting the head of the County Wastewater Department stated that the treatment plant in Lahaina was very near capacity. You must not approve more of the same. In addition to this imagine the impact on the traffic situation, the Fire and Police Department, public safety, etc., etc.

Let me first say that I am not a rocket scientist, but I am learning about the dangers of injection wells. I'm counting on you knowing all about them. I will only say that they are a dredge on the shoreline here.

The fact that native plants are planted whether or not I've done my homework or a canoe is involved, is immaterial. And I'll defend my position against anyone who calls himself a Hawaiian culturist who disagrees, but I would need more than three minutes.

The fact remains that we cannot sustain another project like this. Developers and their supporters don't have the heart to look at what's happening to this island as long as their greed is being nourished. A prospective letter to the editor was passed my way prior to printing and I'd like to share a few comments from it with you.

"And there has not been day passing by where I don't hear or read the disapproval by citizens over the plannings and time share complexes to be or is being built. The question is who has the leadership of the County? It's people or a group of ruthless and greedy relenters turning Maui into a metropolitan killing environment, clogging traffic. It is time overdue to listen to the people. Maui can and shall not allow any further developments burdened on its citizens. Maui at this ought to care for its people. But first, excuse me, first things must come first. The listening to the voices of Maui citizens." And this was written by a Dr. George Woodman. Ladies and gentlemen the time is now. Thank you.

Ms. Amorin: Thank you Mr. Cockett. Elaine Gallant.

Ms. Elaine Gallant: That was well spoken. Aloha my name is Elaine Gallant and I am with the Maui District Tennis Association and Chairperson of the Save our Courts Committee. I appeared before on January 8th to testify regarding Hyatt Regency's SMA permit request

and it's destruction of four of its six tennis courts not three as stated in all its documentation.

I am here again today to reemphasize how Maui's tennis community is dreading the year that has finally arrived. You see, 2008 is the year when the Hyatt will close the bulk of its courts and the Royal Lahaina Tennis Ranch will close its doors after April. Between those two centers alone that's 15 tennis courts permanently destroyed. Add to that, the loss of Marriott's five courts in 2005, and temporary the Whaler's private courts due to reconfiguration in 2000 and 2008 it's a near complete loss of all resort, public use tennis courts in Kaanapali. The few remaining tennis courts are mainly for private and guest use only.

The MDTA is not necessarily against the resort's SMA permit request as everyone knows time shares and villas should be good for the local economy. But it is seriously concerned at the how the tennis community is being so deeply and directly affected by this trend without full consideration. We kindly ask that the local tennis community which has supported Kaanapali's resort tennis courts for the past 40 years be included in a feasibility and funding discussion with the Planning Department, KBRA Resort and Kaanapali Development before all the resort courts are forever gone and its voice is not fully heard.

We kindly ask that consideration be given to the resorts coming together collectively to build a 10 to 12 court tennis facility where professional services and retail sales, equipment repairs or purchases can be made and membership and visitor interaction is available much like what Wailea currently offers on Maui's south side which is several county court sites, the Makena Tennis Center which is much like our Kapalua and the Wailea Tennis Center for a profit retail center something we will no longer have unless Kaanapali builds one.

We also kindly ask if the Planning Department in conjunction with Parks and Recreation would seriously consider resort requests of directing park assessments toward the construction on such a center on Maui's west side just as Royal Lahaina Resort has done.

Please know that it is the responsibility of the Maui District Tennis Association to speak up about the destruction of tennis courts in the Kaanapali area. Without courts, there is no sport of tennis. A sport that lasts a lifetime. And it is the West Maui tennis community in Kaanapali that is facing the biggest loss while it is trying its best to be given full consideration and recognition. Mahalo.

Ms. Amarin: Thank you. Perry Artates. Please step forward and state your name. I pronounced it wrong I believe. Artates?

Mr. Perry Artates: Artates. Anyway Madam Chair, good morning and the rest of the commissioners. For the record again, my name is Perry Artates, Executive Director for the Hawaii Operating Engineers Industry Stabilization Fund.

I am honored to come before you and speak in behalf our membership of the Operating Engineers where we see in our different distinctive union halls the trend of unemployment starting to happen. I believe that this is first birth of things that will happen if it's approved and move forward that sustainable work will be put for our membership in the future.

It's hard and heartbreaking when you see members within the union trades come before our office and say, my husband or my son or my daughter or my wife even just got laid off and where's the work? So we try to comfort them in saying the process takes a long time from public hearings to Planning to Council and sometimes it takes three to five years out before we can see even something breaking ground.

But in a roundabout way reading over some data that was spoken about, Hyatt Regency has really put a lot of effort in some of the economic benefits to the west side. And the numbers is over \$25 million in ten years. So I see that they try to embrace the community itself on the west side. So I ask in favor of you moving forward with this project because the trend is happening now commissioners that our construction industry is taking a downfall and you're going to have a lot of people that's going to go before unemployment. And if we're talking about people who bought affordable homes, well, we better think twice because those homes might just go in foreclosure if they can't pay their mortgage too, and even higher education for the kids are going to different schools. So I plea with you to move this project forward and thank you for letting me come before you.

Ms. Amorin: Commissioner Starr followed by Commissioner Iaconetti.

Mr. Starr: Yeah, Mr. Artates thank you for coming before us, you know, I don't think anyone wants to see unemployment. It's not a good thing. How many people do you have now that are out of work?

Mr. Artates: Since December the number has been growing from about 95 at this point.

Mr. Starr: How many people – You know, I know we both been around long enough to see the various cycles.

Mr. Artates: Correct.

Mr. Starr: How many people came into your pool as the cycle came up and the boom?

Mr. Artates: As far as new members you're talking about?

Mr. Starr: Yeah.

Mr. Artates: I would say about 40 to 50 new members applied back then when the trend was up in our construction industry.

Mr. Starr: Okay, you didn't have a lot of folks come over from the mainland, you know, kind of on a temporary basis? Are they gone?

Mr. Artates: To supply the demand at that time when it was booming?

Mr. Starr: Yeah.

Mr. Artates: Well, there were, but they – the projects are dwindling down so they move back home already. I can honestly say that the membership that are here are coming into the halls too now that live on Maui. Thank you.

Ms. Amorin: Commissioner Iaconetti followed by Commissioner Hedani.

Mr. Iaconetti: I'll pass, Commissioner Starr asked many of the questions that I was going to ask.

Ms. Amorin: Thank you. Commissioner, Commissioner Hedani.

Mr. Hedani: How many members are in the Operating Engineers on Maui?

Mr. Artates: We have close to 400 at this point.

Mr. Hedani: 400?

Mr. Artates : That's correct.

Mr. Hedani: Thank you.

Mr. Artates: And you know Chairwoman, for the record I'm born and raised on Maui too, so I mean speaking – a lot of our membership are really born and raised on Maui.

Ms. Amorin: Thank you. Commissioner Mardin followed by Commissioner U'u.

Mr. Mardin: For this particular project you're urging support of, how many operating

engineers would it employ and for what period of time would they be employed?

Mr. Artates: Whether it's 20 whether it's 9 whether it's 50 that's at least 9, 20 or 50 of our members at least having some sustainable work. So in a broad picture, if we have a general contractor that look – oversees the whole general project I would say close to 25, but yet then if you have sub crafts that's there like the carpenters and the plumbers and laborers, gee maybe the capacity would be approximate maybe about 200 from the different trades total or maybe more.

Mr. Mardfin: And that would take a year or two or?

Mr. Artates: I don't know really the time frame of how long the project is, but I would say can leave it up to the gentleman who represents Hyatt to kind of give you a sustainable.

Ms. Amorin: Commissioner U'u.

Mr. U'u: Yeah Perry. Members you said 400 members?

Mr. Artates: That's correct.

Mr. U'u: Is that also including pensioners?

Mr. Artates: No.

Mr. U'u: No.

Mr. Artates: Good question there Commissioner U'u. With the pensioners I would say there would be about 600. And you know, it's amazing that if we don't have our active members really working those who are already pensioned might just have to take one cut in their pension check too. That's the way of the world ...(inaudible)... we rely on the active members working in order to have the pensioners have a sustainable paycheck.

Ms. Amorin: Any more questions for the testifier? Seeing none, thank you. – Oh, excuse me.

Mr. U'u: Perry I know it's been brought up before about we hiring from the mainland. We heard it at Council, we heard it, what the percentage of locals, people born in the State of Hawaii working for you guys? What is the percentage, rough percentage?

Mr. Artates: Gee I would say about over 80%.

Mr. U'u: Okay, thank you.

Ms. Amarin: Any more questions? Seeing none, thank you.

Ms. JoAnn Johnson: Yes, JoAnn Johnson. I'll testify on my own behalf and as a resident of West Maui today. I'm coming before you on the subject of the Hyatt Regency time share project. I really have serious concerns about the public health and safety as we continue to have an assault on our West Maui area. We cannot continue to build and we cannot continue to add to our already horrific problems in West Maui with inadequate public infrastructure. It is impossible for us even now to address the problems we have.

As a member of the West Maui Honoapiilani Highway Relocation Task Force we are looking at a corridor that we're not even going to know where that corridor is going to be two years from now. Some of the concerns that I have is the access to and from West Maui. Our civil defense is inadequate. The evacuation plan for West Maui to get not only our area residents but additional individuals out of West Maui is nonexistent. We are told by our Civil Defense Director we are on our own. We have four police officers that actually live in West Maui and we keep adding. And again, I've tried to put in a moratorium because that is the only control I have to introduce these kinds of issues into West Maui. I've tried to do it repeatedly and I cannot seem to get it through.

Some of the other issues. The tsunami inundation zone and I don't know how many of you watch the National Geographic channel, but we are a hot spot for tsunamis in West Maui. We cannot continue to develop along the coastline. With the coastal erosion that has been actually revealed through a study done by Chip Fletcher which you should all have which I know Mr. Hunt has a copy of, that is something that he said we cannot continue to develop along our coastlines because of the severe damage and coastal erosion. I don't know how many of you have seen this but this is an article and everybody keeps saying, oh the reef is so healthy in West Maui, we are losing our reef. That is our only protection from coastal erosion. As you harden the shoreline, adjacent properties will actually be negatively impacted when we continue to place more and more stress on not only our reefs but our coastal infrastructure overall. So you're placing people's lives really in severe danger by continuing to add more people into the mix when we cannot even address what we have now. So I'm very concerned about this.

I have other things, but –

Ms. Amarin: JoAnn we have a question. Commissioner Starr.

Mr. Starr: One of the points in the presentation we got regarding this project is that because of the programs that the developer plans to do to convince existing workers and visitors to

take buses that don't exist now that this will actually have a negative impact on – it will have a positive impact on traffic. In other that building this 12-story project will reduce the traffic in West Maui. I was wondering if you have any comments in that area.

Ms. Johnson: Well, just because of items that have come before us on the Council particularly with traffic impact analysis reports and because prior to my getting on the Council I was intervenor on the North Beach development all of the plans basically that were outlined in the environmental assessment for those projects all along North Beach that is fractured. Fairy tales as far as I'm concerned because none of the implementation, you know, is done. Once the project is approved, you have no control over who utilizes that. You cannot force these people to take public transportation.

The construction workers for the existing projects they are lined up and down our public spaces. They come into Kahekili Park, they come into the public space in the center of North Beach. There's absolutely no enforcement and there's no way for you to compel or the developer to compel any ridership. Right now the County of Maui picks up the tab for all of the rider – well, basically other than the transportation that's the resort-oriented transportation, we're spending millions of dollars on public transportation. That's your money, it's not the developer's money. So I don't believe that's in any way, shape or form accurate.

Ms. Amorin: Commissioner U'u. Well, they have brought up a traffic mitigation plan and they're saying that they're saying that they're going to be following up with that and it was an agreement with the County, the Planning Department to follow up with that. And it is based on tweaking things out as it happen. And it's never been done on Maui before. I think Hyatt was the first people to introduce this. So how can you sit there and tell us it's not working when it's never been implemented? And it's fair tale. It never happened yet.

Ms. Johnson: What I'm saying is that the developments that have already occurred at North Beach and in the area they had plans similar and they measures similar to what has been proposed for transportation. Utilization of the West Maui Airport was a big component of the early development. You know as well as I do what's happened to the West Maui Airport. It's not happening. You cannot force individuals to utilize public transportation when they have their own private vehicles particularly during the construction phase every individual, and I get the calls. I'm the one that gets the calls of people complaining how come the construction people are parked in the public spaces. This is, you're talking about post construction. There is no way that you can compel a person not to go rent a car. There is no way that you can force a person to utilize public transportation if it does not meet their schedule. So you can have all the best plans which have incidently already been stated by other developments before, and when there's no enforcement and there's no mechanism to enforce you cannot do that.

Mr. U'u: So you're saying to have unemployed construction workers would solve the problem of the post construction because that's what's happening right now.

Ms. Johnson: I don't follow, you're asking me about —

Mr. U'u: You're saying that the construction creates traffic, and you're getting complaints about traffic due to construction. However, when you have unemployed construction workers isn't that a bigger problem than traffic.

Ms. Johnson: Well, it would depend on where those construction workers are coming from. When they're coming with trucks from Arizona and Texas and Canada and every place else, the problem —

Mr. U'u: We're not hiring from out of state. So I don't know where you're getting this information from because you brought it up to us before.

Ms. Johnson: It was actually given as part of public testimony the other day under questioning on Wailea 670 by other representative from another union who said they were importing people from Canada. I live right in an area where we have several construction workers brought in for the Ritz-Carlton who are all from Canada who live right on our property, that's where I'm getting it.

Mr. U'u: Well, what we got, we let them bring in their main guys and the rest, the bulk, the major part is throughout this island, Maui. A big bulk. If a company comes over, they allowed to bring out "x" number of people, their superintendents but their core of the workers come from this island. So if you're saying that traffic is a huge problem, I think unemployment when people start losing their homes, it's a bigger problem. That's what I think. And I think it was on you guys to follow up with this previous developments to insure that traffic was followed up and I will leave the responsibility on the Planning Department to follow up with this traffic mitigation plan. If you guys dropped the ball prior and let people without following through the process it is on you.

Ms. Johnson: The development at North Beach was not under the control of the County Council. It was the planning commission and the enforcement responsibility rests with the administration not with the County Council. The only enforcement to my knowledge that we have had has been from complaints generated by individuals who are in the general public. They come, I call, I do, but I do not do the enforcement. These reports are also coming to me from people within the Department of Transportation stating that enforcement on many issues including best management practices, leaving debris on the highway, that if it had not been for the public there would be no knowledge of this and that the enforcement basically is very weak. It's not because Mr. Hunt doesn't want to go out there

and enforce, there's a limitation to the number of individuals that come out there and enforce. But I've worked with the individuals that you're speaking about to try to address some of the traffic congestion caused as a result of the construction. What I was informed by many of the people who came to my office from the unions and from the actual construction company doing this work that many of their individuals they had security, they couldn't force these gentlemen to use their transportation they were providing. They were taking their own trucks and parking on the cane haul road. So I'm not an enforcement person. Sorry.

Ms. Amarin: Commissioner Hedani followed by Commissioner Pawsat.

Mr. Hedani: JoAnn you know some of the comments that you made I don't think are accurate. When you say that you intervened on North Beach and that they never followed through on implementing the actions that they are committed to do I disagree with that. I think you know that all of the signals in the west side have been synchronized so that the traffic flows better and that the synchronization was paid for by the developers of North Beach and that greatly improved the flow of traffic in West Maui. So for you to stand there and say, you know, they made all these promises and they never followed through with anything I think is a misrepresentation of the facts.

Ms. Johnson: Madam Chair, I just want to address the specific concerns that I have with regard to failure to follow through. In the environmental impact statement that was a part of the North Beach record, the West Maui Airport was part of the key transportation plan and circulation plan to reduce the impact on Honoapiilani Highway. That was one of the most key components and when you read the circulation plan which I knew intimately because I'd gone through it many times, the traffic impact analysis was simply inadequate because of what happened with that. The signalization for the traffic signals only goes from Canoe Beach I believe to Shaw and that is all the farther it goes. The signalization was paid for by some of the developers.

But also with regard to the housing which would have reduced some of the traffic impact so that you would have had people living closer to where they actually worked, some of the very developers that moved in or actually established on North Beach who could have had opportunities to provide a wonderful setting for people to actually live in West Maui and work close to their work, that never materialized and some of them actually used an old formula instead of using the current formula which meant that there was less money coming for affordable housing and there was also less money available for providing a place for people to live close to where they worked. They used not the current formula which I don't think is honorable.

Ms. Amarin: Thank you Commissioner Pawsat followed by Commissioner U'u.

Ms. Pawsat: Hi. You mentioned earlier by what you were able to do as far as like what you have control over basically as a county council person. For me, you know, all of this is really it's not a matter of building or not building. I mean, I'm an architect. I don't want to be unemployed technically, but it's what we're building. You know. And we built fast and we built quick and everyone's struggling to survive and I think we are all paying the price and the price is going to get bigger. But if we realistically expect some sort of shift to occur where we can like start beginning to, you know, catch up our planning the building and so when people build they actually care what they're building. So for instance like, would a realistic interim measure like if you propose something that affects obviously particular construction workers or unions, can you as county council member increase unemployment funds or the length of the time you can withdraw funds or something like that to mitigate things. Or even you said the traffic, like you mentioned how rental cars, you know, you can't force people, well as a county council person can you do something about rental companies and car rental companies and limit the number of cars they bring over to the island?

Ms. Johnson: To mitigate some of the things you're talking about, during the 911 crisis we did have an emergency fund that was created to address some of the unemployment because it was virtually overnight. There were many people without jobs.

Basically in the hotel or time share industry one of the strongest things that's stated is that during periods because we have mostly time shares now and conversions to time shares from hotels and other properties what's happening is you supposedly have people that come over regardless of any other reason. So in terms of employment for those individuals who work within that industry we're hearing from the industry itself that you don't have the peaks and valleys because once a person buys a time share they continue to come.

As far as the construction of the time shares or hotels or anything else, one of the difficulties we have and the unions will tell you this, there is nothing that they have – they have reciprocity. They're for when people come into the area. We cannot prevent outside people from coming in just as when our people, the other day during testimony it was revealed that when our people go to work on projects like in Las Vegas or other places, they are also fully employed and they do the same thing over there. So I have no control who comes in whether that person is local, whether they're not local and you know, it's because of the unions own rules that you can't really adequately plan for that.

I don't really care about providing employment for off island people but part of the problem is that the reason that we're here now is because when crews, and I can tell you for a fact that the Ritz-Carlton and this is right from the general manager, the Ritz-Carlton had a deadline. They had to import labor in order to deliver on time the product, you know, to their visitors. So they had a time constraint, they had to bring over an off island crew. If

that work were parceled out over a longer period of time so you spread out the work to provide employment for local people we wouldn't be here where we are now. So it's because of the very rules that we have through our unions that we can't control that.

As a county council person, I cannot control the rental cars because that's a state issue. We have tried before. Even taxation to make it less attractive for people to get in their rental cars and hopefully use public transportation. I am going to hopefully support an expanded bus service for West Maui that is the villager route which I am hopeful will get approved. I'm proposing that that even be free because that way nobody can ever complain, oh I don't have the dollar or the two dollars or whatever and encourages people to get out of their cars. So those are the only things I really, you know, have to offer.

Ms. Pawsat: Thank you. Also, has the County Council in the past try, I mean, I keep hearing this about the off island workers coming on island. Obviously when I was land locked before this wasn't a problem. So I mean, has the county tried to work with the union or is there just no co-op. I mean, these are cooperative effort days I would say, and then yeah, you can't do anything and your efforts are stunted because of this, and unless people starts cooperating none of this is going to work.

Ms. Johnson: Well, I think we have tried to cooperate. I don't think that's an issue. But I think because of reciprocity, my father, you know, he's long since retired but he was a, you know AFL-CIO teamster member. So I come from a union family. I know the issues about unemployment, but there is no way, just like in our housing policy where we cannot prohibit certain people from coming in. If they get off the plane and there's an affordable housing they have a lottery you can't say no to that individual. It's the same way in our unions because if our union employees expect to be employed in Vegas they go where the work is, my father did. He had to go where there was work, sometimes on the mainland of course, it was you know, driving two, three, four hundred miles. Other times it was getting on a plane and going to Omaha, but my father had to do that and unfortunately because the construction business is so cyclical and it's tied to the economy, you know, there's very little that they can do about it and we can do about it if you want full reciprocity where we, our people have the same rights that the other union employees have when they come into that area. I can only speak about what I know and on the property where I live, I can tell you the number of units that are rented out to people who are not from here. Time share sales people. It's caused a tremendous escalation also in our rents which is also inadvertently and with an unintended consequence forcing our off island people or on island people off island because they can't afford to compete.

Ms. Amorin: Commissioner U'u.

Mr. U'u: Just some clarification. Well maybe you can help us when a contractor or a

developer looks to hire an outside or off island crew by asking him to hire local because I can assure you we can supply projects with the manpower. Maybe you can help us in that department or make sure they go local. Because if they decide to go off island whether it be from the mainland, they bringing them. And part of the process was by you guys passing them. And when people come from, say they want to come from California and we got a hundred guys laid off or hundred and twenty. He's hundred and twenty one. That's how it works. He doesn't go straight out to work. He's on the bottom of the list because our 120 who was there prior to him coming on this island, goes out before him. That's how it works. That's a fact.

Ms. Johnson: I would just say Madam Chair, that one of the things that would also help is because most of the development and what you're considering is in special management areas in areas where there's a lot of intense development such as hotels or time shares that if you, if you clear it with Corporation Counsel to find out whether or not you can put in those kinds of conditions. I think that it can also help at that level because those are the only ways, you know, that we can control it. As far as conditions that we've put in, I hate to say it, as well-intended as some of our conditions are, many times, the enforcement is impossible. I can't go and survey and as Mr. U'u knows it's very difficult for him to even know when jobs are occurring, who's working and who isn't working and who's from here and who isn't from here.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: ...(inaudible - changing of tape)... chance to review the Hyatt's traffic demand management program?

Ms. Johnson: I have. It was a while ago when I took a look at it. And so I haven't recently reviewed it. I went through the executive summary. I realize I'm not giving you specifics, I'm giving you historical information based on the representations.

Mr. Hedani: The question that I have is that in this particular case the zoning was put in place by the county in the 1970's, it's the county's rules that say you are allowed to build up to "x" number of units density. So in this particular property, they could build a project twice as large as what they're proposing but they're not. They're also proposing a traffic demand management program, you know, you talk about subsidizing a dollar or two dollar, they're already doing that not just for the people that will be working in the project, the new time share project, but for all of their 800 employees. Did you realize that?

Ms. Johnson: I realize that and again, where are the employees going to live? Where are they going to get the 800 employees?

Mr. Hedani: The 800 employees of the hotel live wherever they live. What they're saying is that they're subsidizing free transportation via the public system in order to put bodies into your public buses and get those bodies off of the private rent a cars forever and that's not something that you would support?

Ms. Johnson: I believe that what will end up happening and as well-intentioned as much as you put the plan in place, the reality is people want their individual cars. They've got to pick up their kids, they have to run errands.

Mr. Hedani: JoAnn, the employees are already using it. They're getting out of their cars and they're using public transportation because of what's being done.

Ms. Johnson: And the county is paying the lion's share of that.

Ms. Amorin: Thank you. Commissioner Guard did you have a question for the testifier?

Mr. Guard: Yes I did, but I just wanted to see if people would let people finish their statements before we keep cutting people off just as common courtesy. Thank you for time. On the historical note, when North Beach and these ones came through as resort the percentage of occupancy was probably lower than it would be for a time share. So if you extrapolate those numbers for traffic, the employees may be the same but the actual visitor count would be higher so those traffic impact plans that are in place for West Maui to say oh, we need these traffic improvement plans updated before we'll allow development those numbers are kind of out the window when you compare an annual 70% occupancy resort to a 100% occupancy time share, I would think. You have any comments on that?

Ms. Johnson: Yeah, and actually through our information on the studies that we've received on time share versus hotel it is quite different. The time share also in at least, in some of the ones that we've seen they have what they call lock out feature which enables, you know, two sets of people to actually go in there. Because the industry information is all that we basically have, you don't have independent confirmation from outside studies. We tried to get this already. So this is one of the problems. Everything you're getting, everything that we got in our study was industry driven. So to me, you know, that already says there's a bias. But if you buy it, if you accept and you're stating what my understanding is that occupancy in time shares because once people invest \$50, \$60, \$70,000 in a time share they either will trade it which means that the unit is occupied or they will return themselves sometimes with friends or whatever, but they will return. Statistically and Kauai basically bore this out they do believe that the occupancy and the return rate is much higher in a time share than it is in a hotel and that's why they push time share because it's presold vacation ownership, it's interval ownership and people will come back. So the traffic impact analysis reports and the standards that you would use for a hotel when you compare that

to a time share, even though zoning wise they're classified the same it is completely different. Their habits are different. Even the number of trips, if they've been here previously it will affect the trip generation. People coming out. If you're a first-time visitor there is many more trips in and out. Even the restaurants that used to be provided at hotels, all the amenities where you would see – where it would reduce the number of trips actually in a hotel, you will not see that in a time share because now most of those amenities are not provided, banquet facilities, all those things, somebody has to go out of that facility. So the trip generation rate tends to be in my opinion higher and that's what I've seen.

Ms. Amorin: Thank you JoAnn. Commissioner Iaconetti.

Mr. Iaconetti: JoAnn this isn't a question, but I'm wondering about the – about a environmental impact statement that is 20 years old, is that of any value today and that's when the environmental impact statements were made, 20 years ago.

Ms. Johnson: Generally what we're told is that an environmental impact statement should be updated. I mean, the Planning Department and past planning directors and planning staff have always said you need the most recent and most accurate information. Because you've had a land use entitlement, the information that you're basing that on, sometimes it's not even reality. Today we're facing that right now on another issue with something else, I won't say the project, but I think you're familiar with it. If you don't have updated information, then you cannot make an informed decision. And part of the general plan update is to provide that new set of information so that everybody will know. Even our land use planning that should be taken into consideration. The cumulative impacts that have occurred over time and even the plans, the West Maui Airport was supposed to be a hub of activity. Look what it is today. It is not happening. That was in the original North Beach environmental impact statement. Also, the environmental impact statement I believe if it is not updated what it will do is it will give you no assistance on mitigation measures that you could actually use in today's world. It's not going to help you because if you're trying to develop something that's based on today, an old EA is not going to do it. I personally think they should not be over five years old. Office of Environmental Quality Control actually would be a better agency for you to check with to see what they believe is an acceptable length of time before you have to update an EA.

Mr. Iaconetti: And how do we change that?

Ms. Johnson: Well, you know, your Corporation Counsel can tell you but basically the environmental laws that we're all governed by they come out of the federal government, you know, the special management area rules. I've been asked personally for my input on other updates at the federal level. The Department of Health, the Environmental Protection

Agency, these things can be changed but it takes time. And even your coastal zone management act, look at how long that took to get that updated and how much controversy erupted over that. But Chip Fletcher I think is a really important resource and if you don't believe me, talk to this man, he just gave a wonderful interview on television just about the issues and the environmental issues that you're talking about because their computer modeling is so much better today. It didn't even exist back then. Geographic information system also, which Mr. Hunt and the full Planning Department have at their disposal.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: JoAnn, you know, you're giving the impression that the environmental impact statement for this particular project is outdated. Do you know that they did a complete environmental impact statement for this project although they weren't required to do it?

Ms. Johnson: The environmental impact statement it has to first of all have a trigger. We had this problem with Parks before. When you do an EA –

Mr. Hedani: They did not do a EA. They did an EIS for this project although they weren't required to do it.

Ms. Johnson: What will end up happening though is if you look in the rules when the developer does an environmental impact statement as opposed to an EA, if you read in the law it basically lists the Planning Department as the agency that is supposed to actually do the EA. You know, I have a no problem –

Mr. Hedani: It's not an EA.

Ms. Johnson: I know. It's an environmental impact statement which is done by the developer. We've had other environmental impact statements done by –

Mr. Hedani: Are you saying it's inadequate?

Ms. Johnson: What ends up happening –

Mr. Iaconetti: Point of order. This has been brought up before, but it would be nice if the questioner would allow the person being questioned to complete their answer. It isn't happening.

Mr. Hedani: Please complete your answer.

Ms. Amorin: Thank you Commissioner Iaconetti. JoAnn Johnson.

Ms. Johnson: An environmental assessment in some respects if it's done with the cooperation of a Planning Department will be more objective than a full on environmental impact statement which is prepared completely by the developer. You and I know that when you want to get a project done, how many times have you seen on the bottom of any environmental impact statement FONSI, findings of no significant impact? How many of these documents can be prepared when they all say the same thing? And for me, when a developer pays to have this prepared there is already a bias. I've seen it. When the department goes out and independently gathers information and there's no bias, there's no I guess siding with the developer or not siding with the developer I think sometimes an environmental assessment is more objective because it doesn't predispose the individuals doing that statement that they're going to have a particular outcome. That's my problem with environmental impact statements as opposed to EAs and also how prepares them.

Ms. Amarin: Commissioner U'u. Any other questions? Commissioner Pawsat.

Ms. Pawsat: Back to like what you can and can't do as a – with policy and such, I'm beginning to believe like the longer an EIS statement is, the more suspicious I am of it these day. I mean, it's just like you know, if it was clear, you know, and if it was concise, it was right there, instead of like everything lost and redundant, repetitiveness and like fluff and – and you know, so when I look at this project coming up and about the injection wells and the pollution, you know, it was very fuzzy when it got to you know, the damage, it got to the reef and things like that. So you know, I don't understand like you know, can you require or you know, like someone just hire a real biologist, a real team of scientist and solve the problem and you know, can you enforce, you know, who does that? You say well everyone that's occupying that bay and has private property who's obviously causing the problem, you know, whether it be their services or the buildings themselves, I mean, you know, it's collectively. So can you require the bay of owners, you know, to come together because right now we're getting piecemeal. So it's not like I can say to the Hyatt people is like, oh well you do it. You know, and they're like, well that's not fair because I've got all these neighbors and they're doing it too. You know, so how do you require all of them? You know, and you would hope as like stewards, you know and the fact that they would want to protect their own industry I mean, I go out and swim and you know, I've noticed just in the time here everything's covered in brown sludge and you'd think that they would want to be like, well, you know, we better solve this problem and for some reason they just don't do it. So who makes them do it?

Ms. Johnson: Well, actually under Coastal Zone Management Act, Department of Health, Department of Land and Natural Resources, there are many agencies that actually have because basically our authority in terms of Maui County, our authority ends at the high wash of the waves. Everything that's out in the ocean basically would be the responsibility of either the State or the Federal Government. Clean Water Branch of Department of

Health actually is a really wonderful agency. You've got your Army Corp of Engineers, but for me, I understand what you're saying the cumulative impacts of smaller projects or I would say the collective impacts of all these projects have really degraded the reef quality which is hurting the overall reef. And this being the year of the reef, I think that it's really important perhaps for you I would say the best person, the resource person that I would ask to come over that could explain what your options are and with reef health and who has wonderful knowledge and will probably do a full on power point is Mr. Chip Fletcher because he is the gentleman who we paid to do an independent study of all of the hot spots coastal erosion and this was done through the Department of Planning. It was a wonderful and I don't know if Jeff was here when it was done, but this was a great product. So those kinds of things help to really insure the viability of the reef which is if you don't address it now with these agencies and at least get some kind of compliance what you will do is you will degrade it so that visitors will no longer come. They don't want to swim in brown water or they don't want to swim in water with things unknown floating in it and that is what is happening. So for me, I just think you need to get independent confirmation and people who are experts in the area that can tell you what you can do to comply these individuals who are building on our coastal areas to use best management practices and also what they can do to help restore the health of the reef because it is eroding and it's evidenced by the development that's already gone on.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Okay, one more time. Chip Fletcher came up with the studies that established annual erosion rates for transects all the way around the island. Those transects were used to set setbacks so that buildings wouldn't be built closer than the land would erode within a 50-year time span. Do you realize that the project that's being presents meets the guidelines that were developed by Chip Fletcher and the erosion study in order to comply with setback?

Ms. Johnson: Yes, I and believe that that was based on historical data. What I'm referring to is his most recent information given some of the new modeling that he's doing and that's what I'm referring to because of the sea level rise, the accelerated rate of coastal erosion. I don't have the pictures here but in West Maui, our highway is actually eroding and under subsurface there's parts of it that if we don't address it soon, it will go into the ocean. But Chip Fletcher just like anybody else he has developed over time utilizing the historical information that you're referring to, he has done the modeling. But just like our update for our community plan, our general plan, all of that is being refined and I what I'm asking is that get the latest information from him because he just did a presentation about why it is important not to continue to develop in these coastal areas. And irrespective of that, the runup through tsunami inundation is tremendous.

Mr. Hedani: So are you saying that the existing setback requirements are obsolete?

Ms. Johnson: It may be that in some portions due to additional gathering of more recent information and more accurate modeling it may actually be inaccurate, it may have to be updated, yes.

Mr. Hedani: So are you working towards updating those things?

Ms. Johnson: What I'm doing is within our studies for the general plan we're looking at all kinds of data gathering. I just only saw this a few days ago when Chip was doing a presentation on television. So I was unaware of the serious concerns that he had and he was speaking about all of our coastal areas?

Ms. Amarin: Thank you JoAnn Johnson.

Ms. Johnson: Thank you. Thank you very much.

Ms. Amarin: Calling Mike Kido. Come forward and state your name.

Mr. C. Mike Kido: Good morning Chair, Members of the Maui Planning Commission. My name is C. Mike Kido representing Pacific Resource Partnership. We've submitted our written testimony for the sake of the agenda if I can summarize and provide some antidotal information for you.

We're supportive of the application in front of you. We've reviewed the documentation as outlined in our testimony and at this time I'd like to provide some antidotal information. The Ritz-Carlton project for your information Chair was done by a mainland contractor that was non-union. So that's probably why they brought in workers. I'm from Honolulu. I can tell you about traffic in Honolulu. I've only driven here in rental car. Thank you. Any questions?

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: Mike, what does the C stand for?

Mr. Kido: My parents named me Clarence, and it's being used now with the TSA requirements.

Ms. Hedani: Thank you.

Ms. Amarin: Thank you C. Mike Kido. Thank you. George Aikala.

Mr. George Aikala: Madam Chairman it's Aikala.

Ms. Amorin: I'm sorry, Aikala.

Mr. Aikala: Good morning Madam Chairman, Planning Commissioners. My name is George Aikala. I'm the business agent for Local 368, Laborers Union here on Maui. I also stand before in support for the Hyatt Regency to be – I mean, this building to be built at the Hyatt Regency.

They talked about impact statements, EIS, we seen the plans, we seen the setbacks from the ocean that is allowed by the State I believe or by the impact statements that they have and I believe the building is setback enough, in fact, further back than what is allowed for the setback area. And not only that, the developers and the architects when they built that place, they built it with also the neighbors that are within that area, that they'll also have view not only of the ocean but also of the mountains. So I believe this plan was well thought about.

And I'm also here because of the fact that I have laborers that need work. They were in the same situation as the other trades. We're looking to have more work done so that our members here on Maui can go to work. We're looking to build the economy here. You know, by them going to work, the economy is built. There's money to be spent around to the merchants so that way more of the money stays here in the islands. So this is why we're in support of the Hyatt Regency. Thank you.

Ms. Amorin: Thank you. Any questions for the testifier? Commissioner Iaconetti.

Mr. Iaconetti: Thank you for coming. How many people in your –

Mr. Aikala: Organization?

Mr. Iaconetti: Organization?

Mr. Aikala: For the Island of Maui we have 492 members. Out of the 492, we have 50 retirees and 60 of them are apprentices.

Mr. Iaconetti: How many of them are unemployed presently?

Mr. Aikala: Forty.

Mr. Iaconetti: Thank you.

Ms. Amarin: Thank you very much George.

Mr. Aikala: You're welcome.

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

Ms. Amarin: Do we have any individual in the audience? Seeing none, public testimony is closed. Okay, Jack. Jeff, I'm sorry. Your recommendation.

Mr. Dack: You certainly had a fair amount at your 9:00 a.m. portion of the meeting this morning, so I guess that exhausted that need.

Mr. Dack then presented the Recommendation.

Ms. Amarin: Thank you, Jeff. Commissioner Hiranaga.

Mr. Hiranaga: Your condition No. 22, you don't specify the formula for the penalty. You're still working on that?

Mr. Dack: Condition 22 is principally rides authority for the department to negotiate a final transportation demand management plan largely along the outlines of the draft plan dated in November that was submitted with the staff report. One of the items still to be finally determined would be the formula for a penalty, but as discussed at the last meeting there is being inserted that there would be no cap listed on the penalty, no cap on the penalty that is we picked up from the commission clearly last meeting.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: I guess my concern is that during the applicant's presentation there was much made ado about this penalty if their plan was not successful they would be held accountable by this penalty clause and I have difficulty I guess not being told what the penalty schedule will be. The proposed penalty of a hundred dollars a day I believe it was seemed rather nominal to me considering the size of the development. Had been hoping that in the past two months that staff and the applicant would have been able to come up with a more definitive penalty schedule.

Mr. Dack: No, there hasn't. There are no more definitive penalty schedule has occurred but there have been some discussions among different departments about having the penalties possible rise as high on a daily basis as the cost of carrying out the program. So you know, that's there's certainly nothing definitive yet. But we appreciate the concerns of the commission and don't – the department would not expect to be negotiating a penalty

which leaves the implementation of the program unlikely to occur and be effective.

Ms. Amorin: Commissioner Hiranaga. Commissioner Starr.

Mr. Starr: Yeah, I believe that I recall a number in the range of \$2 million a year or something for the program. Is that right? And if so, perhaps a number in the order of \$5,000 a day might be realistic. I just throw that out for discussion.

Mr. Dack: Yeah, I don't recall the applicant ever indicating a cost, annual cost of the program. I think you had some estimates for the KOR Lot 3.

Mr. Starr: Yeah, I might have been mistaken.

Mr. Dack: Expenses, but not for the Hyatt. I think it be probably more in the range of a million or less, but that's – maybe I shouldn't even said that because it's speculation.

Mr. Starr: A million would be maybe \$3,000 a day. Would the applicant like to address that maybe, I don't know.

Ms. Amorin: Applicant.

Mr. Matt Slepín: Good afternoon Commission. My name's Matt Slepín. I'm a Senior Associate Planner with Chris Hart and Partners, we're representing the applicant. You know, the question of the penalty clause is spelled out in the traffic management plan that we submitted to you I believe back in December. If you look at that, the penalty that was being proposed was based on a percentage, a percentage of noncompliance. That is the more that the traffic was not meeting the goal, the greater, the penalty clause that would be provided or the penalty payment that would be provided. At the time we had proposed a million-dollar cap. The commission requested that that cap be removed. So the cap is gone in essence at this point.

Ms. Amorin: Commissioners any other questions? Commissioners, no questions?
Commissioner Starr.

Mr. Starr: Yeah, can I ask staff if it would make sense for us to put a number in there and if so, maybe we can –

Mr. Dack: It's certainly your prerogative to put a number in there.

Mr. Starr: Okay.

Mr. Dack: We're all hopeful that it will never need to be implemented at all anyway.

Mr. Starr: Yeah.

Mr. Slep: If I could just interrupt, if that's what you're talking about in the management plan what was suggested was a \$1,000 a day. Again, a percentage of that based on the compliance or noncompliance. And the whole approach that the Planning Department had taken with the management plan was to say that in essence what we'd put together here was a proposal that we would on and continue to refine through the life of the project. So there's a number attached right now and that's something – it's not as Commissioner Hiranaga would be concerned about, you wouldn't be asked to vote on something with no number attached to kind of an open check.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: Could someone explain to me how you would be measuring whether there is compliance or not?

Mr. Dack: In the transportation ...(inaudible)... management parameters requirement for a monitoring program there's a whole series of steps. There would be traffic counts done to provide a baseline early on and then there would be monitoring done of how – what the actual end result has been as far as trip reduction is concerned. It's to be done on a periodic basis. There would also be reports and then the reports would be prepared and submitted to the Planning Department. We would be asking the Public Works Department for their review and recommend of those the adequacy of them. Those reports would be signed and stamped by a traffic engineer so there's a professional obligation of responsibility behind those reports and those would be the basis on which if it's determined that there's inadequacies, deficiencies then that's when we get into the penalty clause discussion about what amount of time would be provided for rectification of those deficiencies and then should those not be rectified then a penalty clause, then actual monetary penalties would apply. But the monitoring would be carried out by a combination of monitoring by the most likely the transportation coordinator for the hotel working with a traffic engineer.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: Where exactly is this monitoring going to take place, what point?

Mr. Dack: Okay, there's two pages of a monitoring plan on page 14 of the traffic demand management plan, it indicates that the applicant during the first five years of occupancy would prepare the annual transportation report. So it again, done annually for the first five

years. There will be biannual – again, if – you know, I’m sorry, each annual report includes the biannual traffic counts. So there would be a base line count done and then there’s biannual work. There’s also employee transportation surveys that would be carried out on an annual basis to determine the success of the employee mitigation program, the valuations of process of how the various components of the program are – whether they’re being successful or not along with suggestions on how those could be corrected and of course, the parking utilization studies conducted every two years. And then if it turns out that successes have been significantly demonstrated, the annual traffic reports could go to a less frequent interval than an annual report, but there would still continue to be monitoring that would occur, at least until you had a long term mitigation for the overall region such as something like the Lahaina bypass. So there will be – it’s part of an overall package to assure that the mitigation will actually be effective.

Ms. Amarin: Commissioner Iaconetti, another question?

Mr. Iaconetti: Yes, for the totally – for me, I’d like to know exactly place wise where are you going to be monitoring. Are you monitoring coming out of the hotel? Are you monitoring at the junction of Keawe Street and the highway? What is being monitored?

Mr. Dack: The most likely location would be somewhere –

Mr. Slepín: Can I? If I can interrupt. The monitoring, if you’re talking a physical location the monitoring would be done at the entrance to the hotel on Kekaa Drive and the entrance to the employee parking lot. So that you’re monitoring hotel traffic and not somebody else’s traffic.

Ms. Amarin: Public Works.

Mr. Miyamoto: Thank you Madam Chair. The idea behind the penalty is not to punish the company for not meeting the goals. The idea of the penalty is to bring them back into compliance. So as part of this penalty – the penalty part of this program is to increase the amount of monitoring that they need to do because then that will give you an idea whether or not they’ve come up with a strategy to get back in compliance. That’s the whole idea we’re trying to promote with this project and the KOR project. We’re trying to get them back into compliance because compliance means that the overall public will benefit. If it’s cheaper to pay the fine than to operate the program, of course, naturally that will be the preferred option. So you know, trying to figure out that amount is a very fluid thing.

So what we prefer to try to emphasize is trying to develop a program that brings them back into compliance, have them come up with a plan, you know, if they’re not in compliance, come up with a plan on how you’re going to get back into compliance and we’re going to

increase the amount of monitoring that they have – the frequency of monitoring they have to do to demonstrate that this plan of theirs is bringing them back into compliance. And if it doesn't work after a certain period of time then additional daily fines will start being implemented on top of trying this additional monitoring. So the whole goal is to bring them into compliance, it's not to penalize the company.

And we understand, you know, as mentioned by staff that, you know, some of the penalties, the sizes of the penalty, some people thought it should be the cost of operating the programs. Well, you know, that's fine, but we're just trying to bring them back into compliance. We don't want to bankrupt them in trying to bring them into compliance also.

So as far as monitoring traffic, yes, you have to isolate the hotel's traffic because that's what you're, you're coming up, you're evaluating, but there's also other additional requirements to monitor the traffic. For example, the biannual reports is what DOT does. DOT counts the state highways every two years that will have to be evaluated. There's additional for traffic – just on the highway because there's other people that are developing and there's other traffic that's on the roadway. So it's hard to isolate that traffic. And so as part of this program we're trying to develop strategic locations that will give the public a good idea whether or not this program is working. So some of the things involve internal audits of their records, how many people are taking bus, how many people are using car pools, how many people are using other modes of transit to get to the site so that we can demonstrate that there is some benefit to this ...(inaudible)... measure.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: And the cost of this monitoring is going to be on whose, from whose salary? I mean, where is it coming from? Are they going to be doing the monitoring? Is the County going to be doing the monitoring?

Mr. Slepik: The applicant is going to be doing the monitoring as offered in the plan. The monitoring is going to be done and then it's going to be sent as I believe we worked out in discussion and it would be reviewed by a third-party traffic engineer not associated with the project, again, paid for not by the County and then we would enter the – pardon me, and then we would enter the whatever negotiations needed to be made if there's noncompliance.

Ms. Amorin: Commissioner U'u.

Mr. U'u: This is not only for the addition, correct? This is for the existing also?

Mr. Slepik: The traffic management plan just to be very clear, you have an existing

approximately 800-room hotel right now that has a certain level of traffic generated and has for the last 30 years, the existing condition. Adjacent to the 800-room hotel, we're proposing a 131-room expansion of the site which is a time share structure, but the traffic management plan would apply not just to the time share tower but to the existing hotel as well. That's part of what makes the whole thing work where you get the ability to develop – where you get the situation where a development would see an actual reduction in the traffic below what's there today because you have a certain level of traffic there today that's going to be reduced as well as the – what would apply from the new time share structure, yeah. It was a long-winded answer to your question, but yeah.

Ms. Amorin: Any more questions Commissioners? Commissioner Hiranaga.

Mr. Hiranaga: I guess I interpreted the purpose of the penalty clause was to punish the applicant for noncompliance. And you don't want that to occur. You want them to be complying and so you make the penalty punitive so that they won't even come close to noncompliance. So I guess I misunderstood the purpose of the penalty clause. Because they're making this assertion that this traffic management plan is going to not create any problems or additional traffic and so if they're wrong they should be penalized or punished.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Move that the penalty be set at \$2,000 a day fixed and that will be inserted into the, I forget what condition that is, 22.

Ms. Amorin: Do we have a second?

Mr. Iaconetti: I'll second that.

Ms. Amorin: We have a motion on the floor to include a penalty amount per day of \$2,000 to be inserted in Condition No. 22, and seconded by Commissioner Iaconetti. Any discussion? Commissioner Hedani.

Mr. Hedani: From the standpoint of the County being consistent we should consider that this should be something that we would apply to all future projects as well.

Ms. Amorin: Thank you Commissioner. Commissioner Hiranaga.

Mr. Hiranaga: I recall during a previous presentation some number was provided by the applicant, you really what that penalty number was?

Mr. Slepik: I'm not sure what you're in reference to.

Mr. Hiranaga: When you were calculating the penalty, I thought in one of the staff reports, wasn't there a number, a daily fee, a daily amount?

Mr. Slepini: I think that's the thousand dollars we were talking about previously.

Mr. Hiranaga: Right. Yeah, my thought was to increase that by 10 times. So I guess Commissioner Starr is proposing just to double it.

Mr. Starr: I'll go with 10 times if you want.

Ms. Amorin: Any other discussion?

Mr. Hiranaga: You have a motion on the floor?

Ms. Amorin: Commissioner Starr.

Mr. Starr: To speak to it, I think that their program was going to cost a million bucks a year, I think the Starwood was going to be two million bucks a year, but I just took the million bucks and kind of divided it roughly to figure a daily number so that if they did nothing it would be the cost, not quite a million it would be whatever, seven hundred and something thousand a year. It's giving them the benefit of the doubt, I rounded down.

Ms. Amorin: Any other discussion on this? All those in favor? Any opposed? One opposed.

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

**VOTED: To Amend Condition No. 22 to Include that the Penalty be Set at \$2,000 a Day Fixed.
(Assenting - J. Starr, W. Iaconetti, J. Guard, B. U'u)
(Dissenting - K. Hiranaga)
(Excused - W. Mardfin, J. Pawsat)
(Recused - W. Hedani)**

Ms. Amorin: Motion carries. And then also staff planner Jeff, the consistency with this condition to be applied to other projects applicable.

Mr. Dack: We understand that. We would have to probably make that...(inaudible)... with size for example, of a level if you had for example, penalty \$2,000 for a 130 units, that might give you kind of a rough formula to look at for other projects.

Ms. Amorin: Director.

Mr. Hunt: Just to be clear, the request or the direction is that we consider implementing this in other projects. You can't put a condition of approval on this project affecting other projects, but we will consider this on other projects.

Ms. Amorin: Thank you Director. Any other questions Commissioners? Commissioner Hiranaga.

Mr. Hiranaga: Just one comment on Condition No. 55. Since you've offered to provide shuttle service for the 22 spaces on parcel 5, you may also want to consider servicing the 20 spaces on the northern end of parcel 8 because I believe the cart's going to be driving by that area and those people might not be happy if the shuttle doesn't stop for them.

Mr. Slepín: We'd be happy to consider that. I mean, those spots on, those 20 spots off alone on the north side are as close, about as close to the beach as we can get, I mean, but I understand what you're saying.

Mr. Hiranaga: The shuttle's going to be driving back so it would be nice if they stopped for the people there too.

Mr. Slepín: Yeah, it would make sense not to throw them off the car as it goes by, yeah okay.

Ms. Amorin: Commissioner Guard. This isn't really about traffic. It came to my attention the beach park on the other side, is there more commercial activity going in over there that the Hyatt's aware of and are they doing anything to keep that more of a public beach. I guess a lot of members of the community felt that that wasn't – was supposed to be a noncommercial area and it's starting to get a lot of commercial activity overflow through Kaanapali. You guys aware of any of that?

Mr. Slepín: You're talking about Canoe Beach on the south end?

Mr. Guard: Yeah.

Mr. Slepín: The Hyatt doesn't run any commercial activity at the Canoe Beach.

Mr. Guard: No affiliation with that.

Mr. Slepín: No.

Mr. Guard: That ship that comes in right on the beach there?

Mr. Slepín: No.

Mr. Guard: Or that whatever it is the catamaran?

Mr. Slepín: I'm going to say a simple no.

Mr. Guard: It's not there any more? The Kiele or whatever it is? Gone? Okay.

Mr. Slepín: And just to clarify something that came up before – as we agreed the public beach parking on the Hyatt lot there actually has already been moved. Those stalls to be – the stalls closest to the Canoe Beach there. That's already been done. That's one of the recommended conditions.

Ms. Amorin: Commissioners any more questions for the applicant? Seeing none, your recommendation staff planner.

Mr. Dack: I've provided the recommendation that you will adopt the SMA with conditions as recommended.

Ms. Amorin: Okay, Commissioner U'u.

Mr. U'u: Motion to approve with amendments.

Ms. Amorin: Do I have a second?

Mr. Hedani: Second.

Ms. Amorin: I have a motion on the floor by Commissioner U'u to approve with amendments and seconded by Commissioner Hedani. Any more discussion? Commissioner Starr.

Mr. Starr: Yeah, I'll be voting against. I feel that the 12-story footprint and the height of this project goes against the letter and spirit of the SMA which mandates us to protect the views to and from the shoreline area and that this impinge on those sight lines that are mandated to be kept available. That the little slot between the buildings does not go far enough in keeping the views to and from the shoreline free and clear.

Ms. Amorin: Thank you Commissioner. Commissioner Iaconetti.

Mr. Iaconetti: Maybe I'm confused but I thought Commissioner Hedani had recused himself. Was it this one or the North Beach?

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: Even if I recuse myself from voting, I think Roberts Rules of Order provides that I can make motions for the floor to consider and seconding a motion would be part of that procedure?

Mr. Starr: Corp. Counsel?

Ms. Amarin: Corporation Counsel.

Mr. Iaconetti: May I just interject a little something?

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: In the past when someone has been recused – has recused himself, he was allowed to participate in the discussions but that was as far as it went. And seconding a motion is more than simply discussing the situation. It's counterpart to voting. Without a second you can't have a motion.

Ms. Amarin: Thank you Commissioner Iaconetti. Corporation Counsel.

Mr. Giroux: Yeah, I don't think this would be under the purview of Roberts but more under our purview of the Charter under our Ethics. If a member is going to recuse himself, we've always allowed as long as there's full disclosure of the conflict we allow the person to enter into discussion, but I would strongly discourage any type of voting beyond that.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah, I wouldn't be the one, but I would recommend one of the other commissioners make the second so that the body does not end up being challenged if it does get approved.

Mr. Hedani: If it serves the commission's purposes I can withdraw my second.

Ms. Amarin: Okay, it's accepted Commissioner Hedani your motion, your second is withdrawn. Thank you. Do we have a second on the floor with the motion?

Mr. Hiranaga: I'll second it.

Ms. Amarin: We have a second on the floor by Commissioner Hiranaga. Other discussion? All those in favor of the motion? Raise of hands. We have two. Those opposed. We have three.

It was moved by Mr. U'u, seconded by Mr. Hiranaga, and

**The Motion to Approve the Special Management Area Use Permit,
Failed.**

(Assenting - B. U'u, K. Hiranaga)

(Dissenting - J. Guard, W. Iaconetti, J. Starr)

(Recused - W. Hedani)

(Excused - J. Pawsat, W. Mardfin)

Ms. Amarin: Motion fails. Commissioner Starr.

Mr. Starr: I move to defer.

Ms. Amarin: Motion on the floor to defer this item. Do we have a second?

Mr. Iaconetti: I'll second that.

Ms. Amarin: Seconded by Commissioner Iaconetti. Commissioner Iaconetti.

Mr. Iaconetti: Does that mean that we will be taking this up again, and again, and again?

Mr. Hiranaga: No just once. It's only one deferral.

Ms. Amarin: Director.

Mr. Iaconetti: But it can get deferred that one time.

Mr. Hunt: The motion to defer indicates that there's a need to defer a reason, additional information, additional analysis, whatever? If you're absolutely going to vote against it in any manner or form, deferring it isn't going to change that. So deferring it is just postponing the decision. If the planning commission wants to deny this, then you should work on a denial. Conversely, I would suggest that you try and find a way to approve it. This is a – this property it's zoned hotel – pardon me, the community plan is hotel. They're not asking for a community plan amendment. This is in keeping with the plan and sure, there's any impacts to any use that's allowed in the plan, but you should seek mitigation of those impacts as opposed to denying the use that is consistent with the plan. And growth has impacts but it also have benefits. You heard a lot this morning about jobs and the economy

and work for construction workers. Tourist facilities need to upgrade themselves constantly otherwise we lose our competition with other destination resorts. I think it's important that you realize that –

Mr. Starr: Point of order Madam Chair, I don't understand why we're getting a sales pitch from the Director. I don't think that's in order.

Ms. Amorin: Director.

Mr. Hunt: Another 15 seconds.

Ms. Amorin: I'll have him conclude.

Mr. Hunt: Earlier today we talked about community plan amendments and how the department's not going to support some of those. If we aren't going to support growth in non planned areas we should be supporting it in planned area. It's a balloon, if you squeeze it one place it has to go somewhere else, otherwise it affects our economy. So again, this is planned for hotel. This is a hotel use. It's consistent with the community plan. Try and mitigate the impacts that you're concerned with rather than denying it. And the reason I am talking is because I'm trying to find a resolution. If the commission was clearly going against it. If there was going to be five or six votes and a majority I wouldn't bother, but at this point I don't see a resolution at this point with the number of votes you have. So that's why I'm encouraging you to find some kind of mitigation that makes it satisfactory to you folks.

Ms. Amorin: Commissioner U'u.

Mr. U'u: When you have a project that comes before us that coming up with a traffic mitigation plan, giving \$6.5 million for the workforce housing, you add on 64 conditions, 65, who knows, God knows, "X" amount of dollars, that's sending a bad message to do business elsewhere. We rely on tourist and a lot of people are against time shares but when we have a recession, or we starting to slope that way, the hold out at about 90% occupancy unlike hotels who dwindle down to 60 and 50. And I think this would soften the blow or the fall in the future, but you know, everybody is entitled to their opinion and that's mine.

Ms. Amorin: Commissioner Starr.

Mr. Starr: I certainly respect what Commissioner U'u just said. You know, I do have a problem with the height of it, if it were cut down to four stories, I probably would be very ready to go along with it. But it seems like we're in a state of limbo. I had a one-time

thought that if something came before a body for three votes then it was automatically denied, but I understand – I saw a memo that was sent from Corp. Counsel to the County Council a couple of years ago that said that that's not legal. So I guess we're just caught in a limbo where there's not votes to pass and not votes to deny. So I guess it's going to – all we can do is defer or I guess and perhaps Corp. Counsel can correct me if I'm wrong, but if we don't have the votes to defer then we're deferring it anyway. That it's just going to sit there and come back no matter what. But that's where we're at.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: The vote was two nay and three ayes, is that correct?

Ms. Amarin: Yes.

Mr. Hiranaga: And we have two absent and the Chair did not vote.

Ms. Amarin: Yes.

Mr. Hiranaga: So there is potential for a determination if the two absent commissioners were here. So I guess by deferring it, it provides the applicant an opportunity to try and address some of the concerns that the commissioners who voted against the motion and I guess there's – I guess the primary objection maybe the commissioners who voted against the motion might clarify their specific objections. I know that Commissioner Starr talked about height. So they need to try and address that concern. I'm not sure what Commissioner Iaconetti's concerns are but if he could elaborate he could possibly address those.

Mr. Iaconetti: Well I certainly agree with the height limitation. I'd like to see it more like one story rather than two. I'd like to see the whole building smaller so that there's more open space. Those are my concerns. I've been voicing them ever since we started on this and I still have the same feeling.

Ms. Amarin: Commissioner Starr.

Mr. Starr: You know, this is not a – one of those issues where there's not the owner of the property has not been able to gain beneficial use of the property. There is a very large and very successful and very excellent hotel operating on the property. So I do feel that there's already quite a bit of density there and I'm also not in favor of additional density along the shoreline which is already crowded. So you know, it's taking away tennis courts, it's taking away other opportunities. So there are a number of issues, but as far as the SMA goes, certainly my own primary concern is regarding the height of the – and the mass of the

structure.

Ms. Amorin: Commissioner U'u.

Mr. U'u: At times, and I know Commissioner Hedani brought this up, when you put setbacks right around your property that you're entitled to build on, front, back, side, there's only one way to go and that is up. And at times I think the laws passed prior to us gives them no option. Question, what would be the maximum usage of the property in terms of rooms?

Mr. Hunt: I don't know that off the top of my head. Does the applicant know? They've done a build out analysis?

Ms. Amorin: Norman Hong.

Mr. Norman Hong: Norman Hong, Group 70, we're the architects. In the various studies we did initially we found that we could build as much, as many, I think the number was actually 190, but we said maybe 160. So that's where the number, we looked at we could conceivably do 160 time share units within the parameters of the existing zoning given floor area ratio, lot coverage, open space, parking, all of that. So we are significantly below that. We're at a 131. We have no lock offs. I know that issue came up earlier on another item, but we have no lock offs. Our traffic management plan is based on the expected projected occupancy ratios. So we are far below what is possible by zoning.

Ms. Amorin: Any more comments Commissioners on this project? Commissioner Hedani.

Mr. Hedani: Sometimes I think the more I talk the worse it gets for this particular project. The applicant has done their best from my perspective. They've listened to the comments that came from the commission. They've addressed all of the concerns that every commissioner raised. If the zoning for the property was one story, they wouldn't build higher than one story. If it was two story they wouldn't build any higher than two stories. The zoning for the property is 12 stories. If you're going to mandate that they cannot use 12 stories and they can only use one, then you should compensate them for the loss.

From the perspective of the hotel, they've come up with programs that are more innovative than any hotel development on the island of Maui. They've addressed traffic concerns to the point where they're actually going to reduce the overall traffic demand coming from the project site to the highway. The County hasn't done that. The County doesn't provide free transportation for all of its employees to the site, the county sites. No other property on the island of Maui has done that to date. These are the kinds of things that they're proposing to do and they're willing to pay a penalty of up to a million dollars or now there's even no

cap of a million dollars if they don't put their money where their mouth is. If they cannot perform what they say they're going to perform.

I don't know what more they can do from a reasonable standpoint to try to address the concerns that this commission has. They're within their legal rights as far as what they're entitled to do with the property. They've addressed impacts from every single perspective that you can think of. They've gone beyond that and broken new ground in terms of doing positive things for the community. And we somehow seem to think that they're trying to get away with something.

If they wanted to they could take the 800 units at the Hyatt and convert all of it to a time share. Instead they're saying they're going to retain the hotel as a hotel use and they're going to add a 131 units for time shares. I said this once before and I'll say it again, I stood on the boundary of the Marriott and the Hyatt when September 11th occurred, the Hyatt was empty and the Marriott was full. It's an insulator against down times, against the recession which we're sliding into right now. It provides construction jobs. It will provide more stability for the operation of the hotel itself. Even though hotels are becoming an endangered species on this island and they've done everything that a reasonable person could expect them to do.

From the standpoint of a special management area permit, I don't think we've identified anything that they're doing that causes environmental harm without being mitigated to the best of their ability and I think that should be remembered is that any project that comes before the commission doesn't have to have an absolute zero impact on the environment, it has to be addressed in the best manner that they can and mitigated to the best manner that they can mitigate it and I think they've met that task. I think they've done it better than anybody else on the island has done it. And to not be able to – my frustration is this, if they decide to litigate against this commission, I will be dragged into that litigation without the benefit of voting for or against this project and be held personally liable for damages that they could sustain without the ability to call on the County's Corp. Counsel for my defense. I think that's unfortunate and I think that we really need to seriously consider what we're doing here and why we're doing it. And if you have a problem with the project, tell them because they can address it.

Mr. Starr: Are we getting threatened by a paid employee of the entity that is before us who sits on this commission and can't vote on this? This is –

Mr. Hedani: Commissioner Starr –

Ms. Amorin: Commissioner Starr, I'm allowing Commissioner Hedani to his time.

Mr. Starr: We were just threatened by an employee of the entity. This is not –

Mr. Hedani: Nobody –

Ms. Amorin: Order on the floor. Commissioner Hedani, are you concluded?

Mr. Hedani: I'm done. I'm not employed by the Hyatt. I don't get paid by the Hyatt. I can vote against the project if I want to vote against the project and they wouldn't do anything to me. That's how much integrity they have. Thank you

Ms. Amorin: Thank you Commissioner Hedani. Any other comments, Commissioner Guard? Seeing none, and due to a lack of bodies here within the body, I will defer this project to be on another agenda.

Mr. Starr: There's a motion on the floor.

Mr. Hiranaga: Yeah, I think there's a motion on the floor.

Ms. Amorin: Okay, we have a motion on the floor to defer, all those in favor. One, two, three, four. Those opposed? Okay, the Chair votes –

Mr. Iaconetti: Is Bruce voting?

Mr. Hiranaga: Well, abstention is a yea.

Mr. Iaconetti: Yeah.

Mr. Giroux: So you've got your five votes.

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

VOTED: To Defer the Matter.
(Assenting - J. Starr, W. Iaconetti, K. Hiranaga, J. Guard, B. U'u)
(Recused - W. Hedani)
(Excused - J. Pawsat, W. Mardfin)

Ms. Amorin: Okay, deferral is approved. Thank you. Director.

Mr. Hart: Madam Chair, could we request a date for basically a replacement of the item on the agenda?

Ms. Amarin: Yes, lets check with our clerk Carolyn or Director, can we give the applicant a future date?

Mr. Hunt: I'm reluctant to do that because I don't know the scheduling of a future agenda that intimately, and whether there's things that have to be on there or otherwise. I can commit to trying to get this back as quick as we can. Again, as I stated earlier, I think we need resolution one way or another.

Ms. Amarin: Chris, we'll get back to you as soon as we can, thank you. Commissioner laconetti.

Mr. laconetti: I was simply going to say that on our agenda on G-1, there is a question as to whether or not the commission should have special meetings in order to take care of backlog, and I don't see how they can be – we can give them a date certain if we're backlogged already and we haven't even agreed to have special meetings yet.

Ms. Amarin: Yes, so the Planning Director will get back with the applicant to let know of any future dates and what time. Commissioner Hedani.

Mr. Hedani: Madam Chairman, this particular project has been deferred four times. You know they've appeared before the commission in good faith four times together with all of their consultants to answer any questions that we might have from all the way across the country. In the interest of fairness to them, I would ask that we consider taking up Unfinished Business before we take up New Business in the future when this particular issue comes up.

Ms. Amarin: Thank you and that way you'll be in the a.m. and not the p.m. and hopefully this will be resolved and we thank you very much for patience, all of you for being here. Thank you.

Mr. Hart: Thank you.

Ms. Amarin: Director.

F. APPROVAL OF MINUTES AND ACTION MINUTES OF NOVEMBER 20, 2007, DECEMBER 4, 2007, DECEMBER 11, 2007 and DECEMBER 18, 2007 MEETINGS (Deferred from the February 22, 2008 meeting. Commissioners: Please bring minutes with you.)

APPROVAL OF THE MINUTES AND ACTION MINUTES OF THE NOVEMBER 27, 2007 and JANUARY 8, 2008 MEETINGS.

Mr. Hedani: Move to approve.

Mr. Iaconetti: I'll second that. I'd like to thank the department for the synopsis of the minutes that are being circulated. I think that's a great idea and keeps us from having to go over the whole thing.

Ms. Amarin: We have a motion on the floor to approve the minutes by Commissioner Hedani, seconded by Commissioner Iaconetti. All those in favor.

Mr. Hiranaga: Please note that I oppose.

Ms. Amarin: One oppose, Commissioner Hiranaga.

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

**VOTED: To Approve the Minutes, as Circulated.
(Assenting - W. Hedani, W. Iaconetti, J. Guard, B. U'u, J. Starr)
(Dissenting - K. Hiranaga)
(Excused - J. Pawsat, W. Mardfin)**

Ms. Amarin: Commissioner Starr.

Mr. Starr: Madam Chair, there are some minutes that we've not received from October, I believe it's October 23rd meeting and this is kind of suspicious to me. This was the meeting where the transient vacation rental issue was heard and it went late and at a subsequent meeting we were told that at that October 23rd meeting that certain recommendations were approved at the previous – at the subsequent meeting we were told that certain things had been approved at the October 23rd meeting. And you know, I've been waiting for those minutes to understand because I had to leave, Corp. Counsel had to leave and most of staff had to leave before those alleged motions approving our recommendations had been made. And you know, it seems, you know, months go by and we've still not gotten those minutes from October.

Now, what disturbs me is that I see a memo dated February 1st transmittal to Riki Hokama and the Council regarding – from the Director regarding transient vacation rentals and it puts forward the recommendations that I don't believe were approved by this body. And so, I still want to see those minutes and I can assure you that if when those minutes come or if they don't come, you know, and it turns out that there's no proof that those motions had been made as alleged then you know, some action will have to be taken because we've not made those recommendations. I'd like to see those minutes. I don't understand what's holding them up. If this is an attempt to confuse the issue or what? If that's not it, lets have

those minutes and see if those motions were made. And in the meantime, I think that this recommendation that went up should be held in abeyance until we really see if this commission did act or not.

Ms. Amarin: Carolyn, as far as you know was distribution done on the October 23rd meeting?

Ms. Takayama-Corden: It will be on the next agenda. We received the copy of the transcript that the court reporter transcribed from tapes and we got it after the agenda was mailed out for this agenda.

Ms. Amarin: Thank you for asking commissioner. There was a delay and it will be on the next agenda.

Mr. Starr: I'll look forward to it. Thank you.

Ms. Amarin: Okay, director.

Mr. Hunt: Again, the delay as I understand it is because we have a court reporter that's why the other minutes are coming in quicker.

G. DIRECTOR'S REPORT

1. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission at the January 22 meeting.

Mr. Hunt: The next item on your agenda is the Director's Report. Item one is the department's follow report on matters raised at the January 22nd meeting. I was not at that meeting. I asked my staff if there were any items and I don't believe, Colleen said that she didn't believe there were any so I don't have anything to report.

Mr. Iaconetti: We didn't have time to go over those items. We adjourned before we ever got to that point. That's why there weren't any comments.

Mr. Hunt: So she was accurate then.

Mr. Iaconetti: She was accurate but it's not because we didn't look at them.

Ms. Amarin: Commissioner Iaconetti you have any comments for any of the last meeting?

Mr. Iaconetti: No, not for the last ones. I've been throwing those away since we never

seem to be able to get to them.

Ms. Amarin: Okay, moving along, Director.

2. Planning Commission Projects/Issues

Mr. Hunt: Number 2 is Planning Commission Projects and Issues. So I guess that would be open to you folks to raise any issues or projects?

Mr. Guard: I have a question.

Ms. Amarin: Commissioner Guard.

Mr. Guard: Just from looking at, we were going to be reviewing this Spy Glass one today that didn't come up or the Type 3 Bed and Breakfast. Did they only apply in 2006 and they're already on the agenda to have their hearing?

Mr. Hunt: I believe so.

Mr. Guard: Is there a list of people that have applied years earlier to this that have still not had an opportunity to be heard?

Mr. Hunt: There's not an ongoing list like that. We could probably generate that kind of information. Sometimes it's due to the uniqueness of each application or circumstances of each application. The information hasn't been adequately addressed, if the issues are more complex, sometimes you need more thorough analysis or studies. So some applications move along quicker than others. There's also different timings for or different complexities of the projects. As I understand this project has been reduced from a B&B with an ohana to just the B&B. So that could have moved it along quicker.

Mr. Guard: Okay. So I'm, I mean, I'm becoming desensitized to all these issues of people being deferred when I have people, friends and - in their owner-occupied homes facing foreclosure, losing their properties and they've been on the list much earlier than this one and they call the Planning Department and their planner does not give them their - they've done additions to their house, sprinkled it, done everything to the date that that they think they've done to be ready to come in front of us yet they're not getting responses back. So they just don't - I mean, they're going to lose their homes, so to me that's a little different than just a typical investment and I just don't understand where the holdup is. I mean, people are like, oh we've been in line for year, it's like gosh, these guys are in line for six, eight years for a bed and breakfast and they don't even get a phone call back.

Mr. Hunt: Well, I can certainly say they should at least get a phone call back. It's hard for me to generalize. It sounds like you're expressing a lot of frustration and concerns from a number of different situations. I don't know the specifics of each application.

Mr. Guard: Okay. I just saw this one come through and it look like it was fairly quick compared to people that applied for a B&B and now with the change in market and interest rates and whatnot and now they're like, gosh I did all these things the Planning Department asked me to do to become compliant and now I'm an illegal bed and breakfast so I have an empty house and I'm going to lose it.

Mr. Hunt: The whole TVR -

Mr. Guard: And that's a owner-occupied home.

Mr. Hunt: The whole TVR, B&B issue is fairly complex and there were some people who specifically asked that their application be held in abeyance was the term the previous administration used. At the same time, there was others who didn't ask for theirs to be held in abeyance and I know for a fact when I was a staff planner and I actually worked on the Spy Glass one, they didn't ask for abeyance. They wanted theirs to be moved along. And so, perhaps there's that difference, and I don't know that for a fact. I'm just trying to toss up potential solutions and help you understand that there's a number of reasons why applications move along quicker than others.

Ms. Amarin: Director, can these people that I'm hearing a concern for, can they do something to generate a reply. Should they call into the department or?

Mr. Hunt: If they're not getting a response from the project planner then they should talk to Clayton Yoshida who is the division head and if they're not getting a response from Clayton then they can talk to me.

Ms. Amarin: Okay, thank you. Commissioner Starr.

Mr. Starr: Yeah, I just want to mention that I know a lot of people who have applications in and some of them are frustrated by how long things take but I have heard good reports about the people they're working with. And I've never heard a, you know, a negative report that people won't get back to them, but just that it is frustrating because it takes a long time.

Ms. Amarin: Thank you. Director.

3. Possible scheduling of special meeting(s) to reduce the current backlog of project applications ready to go to the Commission.

The Commission may take action to schedule special meeting (s).

Mr. Hunt: The next item is possible scheduling of special meetings to reduce the current backlog of project applications ready to go to the commission. And coincidentally, let me back up, we ran a - we asked the planners for information and we compiled a list of applications that are ready to go, they're in the pipeline so to speak, they've gotten all their agency responses, all the issues have been addressed. There's one under Old Business, the Serle Subdivision, there's 15 that require public hearing and then there's another 12 that require non public hearing so it would be more of a communication item, something like that. Out of the public hearing applications, out of the 15, it looks like nine are regarding either a B&B or TVR. So they are starting to move along. Along there was a - the past administration took a different approach and we're trying to process these so you do have a number of them that are starting to come towards you.

The point of this conversation isn't just on those TVR and B&Bs it's the fact that we have a whole lot of work to get done and in addition to these actual applications, you guys have other roles. You just reviewed the countywide policy plan. You saw how much time that took. The Maui Island Plan eventually will come to you and then after that the community plans.

In addition to that, there's a number of legislation proposals that the Planning Department needs you to review. There's a bill regarding home occupations that we're hoping to get through quickly that will help to allow and liberalize those rules. There's legislation that we're discussing about agricultural subdivisions because right now they're not being regulated outside of the subdivision review process. There's no public hearing. We want to overhaul the Zoning Code and make it more efficient for everybody, for you, for the planners, for the citizens. And just those legislative reviews take a lot of time. So you know, a lot of projects and not that much time I guess is the simple message.

So what's our solution? We can do time management. We can try and get staff to be more concise, presentations to be more concise. The public, we can try and coach them. I think your chair's done a really good job especially with the more controversial hearings of saying you got your three minutes and that's it. We certainly don't want to stifle public input we have to manage it. You guys can coach yourselves and manage yourselves on not deliberating as much, not talking as much. You can tell the director if he's going on a little bit too long. So there's those kind of time management issues, but also another way to do it is you may have to just simply say we need a special meeting or maybe a series of special meetings. Maybe a third meeting every month and it's on the schedule. You can

plan around it on your calendar easier and I guess that's where we're headed. We think we can do some time management. We don't think that's adequate enough to really address the issue that we're dealing with here.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah, long term I try to keep all Tuesdays open, you know, and I would be willing to have a third meeting a month or you know, just fill in special meetings because I think we need to do catch up. You know, I'd also like to suggest that when the agendas be maybe a little bit more strategically created. You know, rather than - we kind of have mix and match and you know if we have a bunch of B&B, TVRs, lets schedule a bunch of them, you know, in one day and just go with that and then, you know, we put maybe two big items and only two big items on another agenda so we don't have a lot of, you know, we don't start a major, major project after we've already eaten up most of the day with small items and so on. Perhaps a little, you know a little better planning could allow us to be a little more efficient in getting through our agendas but I'm - not that I want to, but I'm willing to put more time and Tuesdays for me would be the day.

Ms. Amarin: How does this body feel about maybe once a month on a Tuesday to do special meetings? Are you all open? Commissioner Hiranaga.

Mr. Hiranaga: Personally the addition of additional meeting dates is a last resort that I would like to look at. I think we were functioning with less than a full commission, and we finally have that. So hopefully if the commissioners were able to make themselves available for the entire meeting so that we can have full votes so that we can make determinations. I think this past year because we were not a full commission, a lot of times we couldn't come up with a determining vote either way and so it kept coming back and I think I would prefer time management. Everyone try to be here the entire Tuesday that we're here and also, I guess the arranging of the agenda like what was brought up. If you just, you know, case in point, the Hyatt, you keep putting them at the end of the meeting, they're constantly running out of time and I don't know if that's required by Robert's Rules of Order as far as the positioning on the agenda. But it would appear to me that you'd want to put these major ones first so that we - so we don't have to keep hearing the same presentation three times. You because we ran out of time or didn't have enough members to make a determination. So you put the big ones up front. Hopefully we'll have the nine members to make a vote.

Mr. Starr: Yeah.

Mr. Hiranaga: But adding a third meeting to me is the last resort.

Ms. Amarin: Commissioner U'u.

Mr. U'u: I think we need substitute Planning Commissioners and the Chair is more like a kicker. She can win the game, fill a game for us with extra point. Just kidding by the way.

Ms. Amarin: Thank you for all your comments.

Mr. Starr: Shouldn't it be like hockey where you get penalty you got to sit out, thrown in the box.

Ms. Amarin: Hey, I'm doing my Aloha Run coming up 20 years. Commissioner Hedani.

Mr. Hedani: I think today it was a good example, you know, how much staff tries to plan our agendas for us we had two major items that came up today, one was Palauea and they're both controversial, Palauea and the Hyatt. We spent six hours deliberating on those two issues and we managed to defer both. So, we're doing a lot to shoot ourselves in the foot.

Mr. U'u: It's consistent.

Mr. Hedani: Yeah, right, we're consistent at least.

Ms. Amarin: Your suggestions have been great, you know, with the big projects put them in the a.m. Commissioner Starr.

Mr. Starr: Yeah, I mean, we are way backlogged and I think that although maybe we can be more efficient I think we better start some special meetings and I, for one, would, you know, would say lets have a special meeting later this month and try to get through some - get ahead a little bit.

Ms. Amarin: Is everybody open for a Tuesday? Commissioner Hedani.

Mr. Hedani: I feel like Commissioner Hiranaga. Committing to two meetings a month for full days, eight hours a day, is a lot. And I think expanding from two meetings to three or to four meetings a month would be counterproductive for me.

Ms. Amarin: Director followed by Commissioner Guard.

Mr. Hunt: I guess the first issue is as a body do you want to go for extra meetings and then the second issue is what day? We can come back to the day after we discuss the first issue but Tuesdays doesn't work because this room's taken. So we would have to find

another day. Another alternative would be to continue your meetings into the night. We could order dinner and then we could go till 8:00, 9:00, 10:00 at night.

Mr. U'u: That sounds fun.

Ms. Amorin: Commissioner Guard followed by Commissioner Starr.

Mr. Guard: We've had an immediate backlog like particular with this Hyatt and other issues that keep getting deferred. So if we don't keep putting it on the very next agenda meeting and we push it out to a date certain, we may be able to get through a lot of that list that you just mentioned, correct? Like a lot of those may be less controversial. That's the exact same thing that happened with the Council Planning Committee is all these other items got backlogged behind very large projects. So if that large project just gets deferred or put back by a month or two, all we - the pipeline really opens up for these smaller ones to push through. So maybe it's not as big of a problem as we're thinking. Is that a possibility? And I will also agree that I can't commit more days right now. That I think getting rid or just pushing back some of these larger items, we'd be able to push through the other ones.

Mr. Hunt: I think your comments are - there's a lot of good suggestions and I think those are viable solutions. In my opinion, I think the problem's going to get worse not better even with those solutions and there's a number of reasons again.

We've got a lot of legislation that we need to take care of. In the past, the planning commission and the Planning Department were so consumed and possessed with just doing day to day activities that we weren't doing long term maintenance, figuring out better ways to do things, more efficiencies, cleaning up the code so that we're tripping over the same things time and time again. And in addition to that we've got general plan update which is going to be a lot of time, take a lot of time from you folks, the Maui Island Plan will take a lot of time. Then we've got these TVRs, B&Bs that because 70 of them were held on abeyance, they were just stacked up and waiting, and they're going to start moving through. If we get new legislation adopted which streamlines the process that may help and it may actually increase more, it may encourage more people to apply because of a streamlined approach as opposed to going all the way to Council with a conditional permit. So that one I'm not sure exactly how it's going to play out. But we've got a lot of stuff to do in the future.

Another suggestion, I'm just trying to help you guys out with solutions is maybe we hold a special meeting for a few months and kind of get this out of the way and get caught up and it doesn't have to be forever or we could try time management for awhile and see if it doesn't get better and then revisit the issue.

Ms. Amarin: Commissioner Starr followed by Commissioner Hedani followed Commissioner Hiranaga. Commissioner Starr.

Mr. Starr: Yeah, once again, you know, I suggest we do some soul searching see if we can do some additional meetings. I think that's a solution. I would not be in favor for going continuing our regular meeting later after 5:00 p.m. You know, when I do meet to 5:00, I always schedule stuff afterwards so I can get some other stuff done that day. But I would not be adverse to doing evening meetings on a different day if that is easier for other commissioners. My own preference would be to add additional work days, but if other commissioners wanted to do night and staff could do it, I could handle that as long as it's not on an existing meeting day or the night before because I want to have my brain fresh when we go to it.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: A couple of suggestions that I might have would be to start the meeting earlier than 9:00 a.m., say at 8:00 in the morning and run to 6:00 in the evening. I would be willing to go longer than 5:00 and earlier than 9:00 on the two days a month. And the second would be to make sure that although it is a huge commitment to time is to make sure we honestly read all of the material that's given to us before we come to the meeting. You know you could have a document that's this thick with an EIS and it has all of the answers in there of the questions that we ask time and time again.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: I would be in favor of starting earlier and ending later. But the problem is, you know, we need the commitment from the nine members to be present because as we get closer to the end of the day when we start losing members we can't make a vote to make a determination. Extending it into the evening I don't think is an answer because I think you're going to have the same problem of commission members leaving and not having the numbers to make a vote either way. Again, adding that third day I'm not opposed to it once we start getting into the general plan, but for now as a catch up I'm opposed to it. I think time management and better scheduling should be tried first. One idea, I see at that Council they have that little mechanism on the testimony podium where they're getting to two and a half minute there's a yellow light that comes on. At three minutes, the red light comes on and you just don't give them that 30 seconds to conclude. You just cut them off right at three minutes. And they see yellow light comes on at two and a half minutes, so they know they've got 30 seconds. The red light comes on and the Chair just says well thank you. You can save, cut down on the testimony if you just limit them to exactly three minutes. So maybe that's something the staff could investigate. I don't know how they control that. I guess it must be controlled remotely because you have to start it.

Mr. Hunt: With other commissions we have hand timers and they have a bell and so we could explore something like that. Hitting a bell at 2:30 would kind give them okay, you got 30 seconds. So then instead of going three minutes and giving them 30 seconds, you're actually sticking to the three minutes.

Ms. Amarin: Commissioner U'u.

Mr. U'u: I'm not in favor of staying here past 5:00 and usually I get plans at 5:30 p.m., but I'm open to starting early, 6:00, 7:00 you know.

Mr. Hiranaga: 8:00

Mr. U'u: 8:00 is fine.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah, I would not be in favor of starting before 9:00, about half the time I drive in from Kaupo before the meeting and that's enough, you know, Commissioner Mardfin drives in from Hana.

Mr. Hiranaga: I hope you guys are carpooling.

Mr. Starr: I can't go from my house to his house now you know.

Mr. U'u: Traffic mitigation.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: I'd be opposed to adding more special meetings during the month. I'm not adverse to starting at 8:00 a.m., I'm usually here by then anyway. I am also opposed to going after 5:00. If this job is going to be taking that much more time out of my retired life, I may have to just pull out because I can't see spending that much more time here. I think two meetings a month are fine and again, I'll be happy to start at 8:00 a.m.

Ms. Amarin: Commissioner Guard.

Mr. Guard: I think our best option is the time management. I think a few of us tried to deny a project just for six hours and the only person it really kills is us because these guys can sit here and wear us down and then they end up getting the votes. So if we ask the precise questions and make the changes on the recommendation instead of trying to drag it out

when there aren't real major issues to stop the project from moving forward, I think that's what seems to kill me is that I sit through a meeting for six hours knowing people are trying to stall something out, knowing that it's kind of an impossible action to do that we just have to be prepared with our recommendation sheet and make those changes where we can and have the impact as commissioners as precise as possible.

Ms. Amarin: Thank you. Just for the commissioners that are here right now. 8:00 a.m. to 5:00 p.m., how many of you can be here?

Mr. Hiranaga: I mean, I respect what Commissioner Starr has to say about his commute and then Commissioner Mardfin. It's a two-hour drive from Hana?

Mr. Starr: Yeah, a bit more.

Mr. Hiranaga: So he would be starting out quite early. I'd like to suggest maybe 8:30 to 5:30 because actually County starts at 7:45 so it gives them 45 minutes to --

Ms. Amarin: Would that help you Commissioner Starr 8:30 to 5:00 -

Mr. Hiranaga: To 5:30

Mr. Starr: I'd be willing to go 8:30, but I got to stop at 5:00. You know, if I sit here all day, I've got to go out and get some exercise otherwise -

Ms. Amarin: Okay, well we can start 8:30. I think that would work for most of us.

Mr. Hiranaga: And maybe cut lunch to 45 minutes.

Ms. Amarin: We could do that. Okay, so we do have suggestions, you know, put on the table for you Director.

Mr. Hunt: So let me try and summarize the consensus. Starting at 8:30 but still ending at 5:00, cutting the lunch to 45 minutes and then seeking other time management techniques that we talked about. Maybe I can summarize those and hand them out as suggestions.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: Can we also limit questions from commissioners to five questions per commissioner.

Mr. Iaconetti: Per day.

Mr. Hedani: Per day.

Ms. Amarin: Commissioner Hiranaga, you had a question?

Mr. Hiranaga: And as far as concluding at 5:00, I think it depends on the agenda. You can kind of poll people, you know, can we continue - I mean, it's not like a time certain, you shut the lights out, you know you kind of go meeting by meeting. If we're close to resolution you can kind of poll people and say are you guys willing to say another half hour so we can conclude this matter. It's not like, you know, the horn goes off and we rush out the door at 5:00, so some discretion to the Chairman or at least a commitment 8:30 to 5:00

Ms. Amarin: I think if they know there is a schedule for the day, they will try to be here.

Mr. Hiranaga: A minimum of 8:30 to 5:00 but then if we extend it's up to the discretion of the chair.

Ms. Amarin: And there should be some allowances. Commissioner Starr.

Mr. Starr: Yeah, I would not be in favor of forcing a limited discussion or gag rule type of thing. I think that would be illegal among other things.

Ms. Amarin: Thank you for your comments. Director.

Mr. Hunt: Another idea is, I thought you did very well today, is the breaks. We often say a 10-minute break and it turns into 15 or 20 and maybe we can stick to the 10-minute break.

Ms. Amarin: And then also with Commissioner Hiranaga's suggestion about testimony. Instead of three minutes it's two and a half.

Mr. Hunt: Yeah, and staff will explore all the suggestions, the timer, organizing of the agenda.

Mr. Guard: It's us, not the public testimony.

Ms. Amarin: That's the honest truth, but you know it's important. Commissioner Starr.

Mr. Starr: I think we should keep public testimony at three minutes. I think that's consistent with what the Council and other bodies do. But I do think that we can be - I think the Chair has been doing a good job with us, but I think a mechanical means would be good and there are devices that can be bought that flash lights and bells and so it doesn't - people

don't feel like it's a personal thing.

Ms. Amorin: Director followed by Commissioner Hedani.

Mr. Hedani: The initial three minutes I think is critical that everyone gets their three minutes but what I've noticed at a lot of meetings is on follow up questions, people answer the question and then they kind of use it as an opportunity to get up on the soap box and start going off on whatever.

Mr. Guard: Does that open it up? Is there supposed to be another time?

Mr. Starr: It's up to the Chair.

Mr. Hunt: I think the person who asked the question has the authority or ability to say thank you, you've answered my question.

Mr. Hiranaga: Or the Chair.

Mr. Hunt: Or the Chair.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: I think the other thing we can do is when we ask question to ask the question, ask a follow up question possibly along the same lines and then yield the floor to other questions from other commissioners instead of asking 25 questions in a row.

Ms. Amorin: Commissioner U'u.

Mr. U'u: I remember when Susan was Chair and she used to hit the water, traffic, drainage. So you would do it in bing, bang, boom, not so much a little here, a little there, anybody get issues with traffic, anybody get problems with the TIAR, anybody get problems with water, sewage, you do it in a whole sequence instead of being sporadic.

Ms. Amorin: And so we should have a guideline to follow, it makes it a lot easier. Okay, Director.

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

Mr. Hunt: The next items regard all the reports that we give you, the EAs, the SMA minors,

and the SMA exemptions.

Mr. Iaconetti: I'm assuming that all of us are going over the SMA minor projects, etc., and looking at the items that are in their particular kuleana and that's the reason why I come up with all of these and these are primarily just questions like the antenna facility in Lahaina for the Royal Kahana, what is that all about and there's another one for the AOA Lahaina Shores.

Mr. Hunt: Can you cite the permit number so I can get you some answers?

Mr. Iaconetti: Permit number is 2008/0002 and the other one is the same 2008/0004. And I'm wondering about the makeup of these things. This thing - there's one that's been voided for three years and continues to stay on the thing. I'm wondering why?

Mr. Hunt: And do you have a permit number?

Mr. Iaconetti: If I can find it, yeah, it's 2005/0007, Pineapple Grill.

Mr. Hunt: And I don't have the answers off the top of my head. I can get back to you on those.

Mr. Iaconetti: Well, I've tried. I think it was your suggestion that I call the individual that is the planner for that particular project to find out so that he would be ready to answer the question. Your planners are obviously very busy and not always available and I can't keep calling them up. I do leave messages, I don't always get an answer.

Mr. Hunt: Sometimes they're more responsive to me. So I can try and help you out.

Mr. Iaconetti: The Ritz-Carlton thing at 2007/0368

Mr. Hunt: 2007/0368.

Mr. Iaconetti: And that's the Ritz-Carlton. I don't know what it is. It doesn't say. Three lot subdivision. I don't know what that means. And the Maui Land and Pineapple the one concerning an open pavilion, buildings 1, 2, 3 and 4 and that's 2007/0445. You don't have any idea what that is either.

Mr. Hunt: No I don't.

Mr. Iaconetti: And then the KRV Diesel Tank Concrete Slab what is that all about, 2007/0460. Now these may be minor things and I hate to take your time up, but if you're

going to send this to me then I'm going to have to ask you questions.

Mr. Hunt: I'll try and get you answers.

Mr. Iaconetti: You have in the past. Thank you.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: Jeff, is there a reason why we get this? I mean, are you required by law to provide this to the commission?

Mr. Hunt: I think we are but I shouldn't say that absolutely. If we're not, it's a communication item to let you know what's going on. Do you know Carolyn are we required by Code?

Ms. Takayama-Corden: The approved SMA Minor and the approved Exempt is required. But the other reports are just for our information. Commissioners wanted to know in the past what was going on with the department.

Ms. Amarin: Director.

H. NEXT REGULAR MEETING DATE: February 26, 2008

Mr. Hunt: Your next item is announcement of the next regular meeting on February 26th. Do we know of anybody who is not going to be here?

Ms. Amarin: All of us present will be here? We have quorum.

Mr. Iaconetti: Do we have any rules with this organization that if you miss so many meetings or if you're late for so many meetings or your leave early at so many meetings that you -

Mr. Guard: Kick us out.

Mr. Iaconetti: Yeah, you get kicked off.

Mr. Hedani: I think if you miss three consecutive meetings unexcused you can be expelled.

Ms. Amarin: Unexcused meetings. With that said, I just want to relay good intents to all you commissioners regardless of a lot of challenges that we have had you have been really doing a great job for the community. Commissioner Hedani.

Mr. Hedani: I'll be submitting a letter to the Commission or the Board of Ethics to get a determination on whether I can vote on items that come before commission on any projects that relate to Kaanapali. Just for your information. So we can get a clear determination one way or another from the board.

Ms. Amarin: Absolutely. Commissioner Guard.

Mr. Guard: I just thought it was like a monetary issue, like if you had something to gain.

Ms. Amarin: With that said, this meeting is adjourned.

I. ADJOURNMENT

The meeting was adjourned at 5:00 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Johanna Amarin, Chairperson
Wayne Hedani, Vice Chairperson
Kent Hiranaga
John Guard
Bruce U'u
William Iaconetti
Joan Pawsat (in attendance @ 9:14 a.m. & excused at 3:06 p.m.)
Jonathan Starr
Ward Mardfin (excused @ 2:00 p.m.)

Others

Jeff Hunt, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works