

1 find your favorite limu picking area. But I don't think it  
2 would have an affect on the biological resources that are  
3 there. What's there has adapted to these turbid conditions.  
4 So if you add more sand, it shouldn't change the character  
5 of the existing environment.

6 MR. ERICKSON: I have something to add.

7 CHAIRPERSON AMORIN: On Commissioner U'u's  
8 question?

9 MR. ERICKSON: Yes. The shoreline in this area  
10 back in 1900, and also later than that, was far advance  
11 seaward than where it's now. So none of this sand placement  
12 would be going in areas that weren't once covered with sand.  
13 So I know there might have been recolonization as the  
14 beaches eroded, but all of that area was, at one point,  
15 occupied by a sand beach.

16 CHAIRPERSON AMORIN: Thank you, Mark Erickson.  
17 Commissioner Starr, followed by Commissioner  
18 Hedani.

19 COMMISSIONER STARR: I have a couple of questions  
20 for Susan. It was kind of interesting to note the very low  
21 percentage of coral cover off of there. Add I know I read  
22 recently that in general, Maalaea Bay had gone from 40  
23 percent coverage down to, I believe, it's five percent  
24 coverage. And this is shocking and of great concern because  
25 not only does the coral keep life in general and the fish

1 and everything else going, but the coral is what makes the  
2 sand. The coral is the sand factory. And that all of our  
3 sand here has come from coral. And as the coral stops  
4 growing, we don't have any new source of sand.

5 I'd like to ask you what the factors are that have  
6 brought us to a situation where we have virtually no coral  
7 off the shore there?

8 MS. BURR: I can't speak for the whole bay or the  
9 many years that have gone into the current existence. But  
10 the primary reason why there's not a lot of coral directly  
11 offshore at this site is that there's no suitable  
12 substraight. The coral needs to grow on existing limestone  
13 reef, old coral. And primarily what is in front of the  
14 project area is sand. So the coral is not going to be able  
15 to grow on the shifting sand and rubble areas.

16 COMMISSIONER STARR: But there had been areas where  
17 there had been coral, if it gets covered by sand, then does  
18 that make it less likely for coral to continue to grow?

19 MS. BURR: Yes.

20 COMMISSIONER STARR: Okay. I want to talk about  
21 the turbidity. Because there's a period of about a year  
22 that I used to snorkel. My friend Kimo used to hoist me up.  
23 I spent a lot of time up and down the coast. And it seemed  
24 that the turbidity had a very large variation. And it  
25 seemed that sometimes there would just be a huge amount of

1 turbidity, sometimes a lot less. It didn't seem to have too  
2 much to do with wind and wave conditions. But it seemed to  
3 originate further north.

4           Is there a Kihei map around I can point to? Is  
5 there one back in there? I was looking for even further  
6 north. What I found was that there's some kind of outflow  
7 up in the pond area that's not right -- okay. That's not  
8 right on shore, but it's slightly offshore. Maybe 50 yards  
9 or so offshore. And down -- you know, further up north,  
10 opposite the pond that sometimes flows with a lot of  
11 turbidity. And that turbidity travels all the way south,  
12 and basically spreads out as a plume from that point. And  
13 sometimes it's just a little bit, sometimes it's a lot.

14           And, you know, my theory is that -- there's an old  
15 outflow from the -- that's related to the plantation that  
16 sometimes releases a lot of muddy water from the plantation  
17 and the ponds. And sometimes it's a lot more, and sometimes  
18 it's a lot less. And that's the source of that turbidity  
19 and that it's not -- you know, since it's basically a hard  
20 bottom, less sand, it's not really being stirred up by wave  
21 action.

22           I'm wondering if you have looked at anything that  
23 could further define -- because I think that turbidity is a  
24 lot of the problem that we're having down there.

25           MS. BURR: We collected samples basically in the

1 project area and a little bit north and a little bit south.  
2 So we didn't look at anything coming from further up north.  
3 We took a morning sample and an afternoon sample, seeing  
4 that the offshore winds did create increased turbidity. And  
5 we found that actually that wasn't the case. It maybe  
6 stirred up some of the sand that was there, adding to the  
7 suspended sediment increase, but we didn't find that the  
8 turbidity increased as a result of the offshore winds.

9 Let's see. There's existing data from 1977, in the  
10 project area. And also as part of the State study for the  
11 total maximum daily load, I know that there was data  
12 collected in the area about eight years ago, in 2000. We  
13 compared our data to the data collected eight years ago.  
14 And it's similar. No change. Nothing better. Nothing  
15 worse. But we did notice a large difference in the water  
16 quality samples that were collected in 1977.

17 So there does appear to be a visible decrease in  
18 water quality from 40 years ago.

19 CHAIRPERSON AMORIN: Thank you. Moving on to  
20 Commissioner Hedani.

21 COMMISSIONER HEDANI: Susan, is there a way that --  
22 I know immediately next to Kaonoulu Street, I guess it is,  
23 there's a drainage system that ends up emptying into the  
24 ocean right next to the park that's adjacent to the pocket  
25 beaches and the revetments that we're talking about that

1 throws a lot of sediment into the ocean. Is there some sort  
2 of remediation that could improve the water quality with  
3 respect to that system?

4 MS. BURR: I'm not sure that I would be the one to  
5 answer that question. That seems to me more of an  
6 engineering question.

7 CHAIRPERSON AMORIN: Do we have a consultant that  
8 can answer the question?

9 MR. FUJITA: Mike Fujita, Wilson Okamoto  
10 Corporation. That's the Kulanihakoi gulch system. It's  
11 really a regional drainage system that probably drains all  
12 the way up to Haleakala Ranch.

13 You know, there are areas along the way that I  
14 think captures, and it does provide some ponding from the  
15 beach up mauka. But there's a tremendous amount of flow  
16 that comes through there. And I don't think there's  
17 anything you can do that would do anything that's beneficial  
18 right at that outlet.

19 COMMISSIONER HEDANI: I noticed when I last drove  
20 out there, that the drainage system was going so hard and so  
21 fast that it wiped out the railings on the makai side of the  
22 roadway, and it took out a whole bunch of sand, or whatever  
23 that was, on the makai side and probably washed it into the  
24 ocean.

25 MR. FUJITA: I think the covert crossing on South

1 Kihei is a choke point. I think the improvements we're  
2 doing on our site will help alleviate that somewhat. We're  
3 taking the drainage system and pulling some of that runoff  
4 that went into that system and taking it on the makai side  
5 of South Kihei.

6 COMMISSIONER HEDANI: But wouldn't that still end  
7 up in that same system?

8 MR. FUJITA: Correct. But it does alleviate some  
9 of the flooding that occurs there.

10 COMMISSIONER HEDANI: Just puts on the makai side,  
11 is what you're saying?

12 MR. FUJITA: Right.

13 CHAIRPERSON AMORIN: Okay. It's that time of day.  
14 We're going to break for lunch. We're going to come back at  
15 1:00 p.m. We're in recess for lunch.

16 (At which time, a lunch recess was taken  
17 from 12:10 p.m. to 1:10 p.m.)

18 CHAIRPERSON AMORIN: The Maui Planning Commission  
19 of March 11th, 2008, is back in session. And we're  
20 continuing on with our agenda. Colleen.

21 DEPUTY DIRECTOR SUYAMA: Okay, we're just going to  
22 reopen up the session with our contested case. And we're  
23 still with questions and answers.

24 MR. MANCINI: Ma'am Chairman, do you want me to  
25 address the exhibit list?

1 CHAIRPERSON AMORIN: Yes, that's information that I  
2 believe is important. Could you please.

3 MR. MANCINI: Paul Mancini speaking. I submitted  
4 to the Chair and intervenor's counsel and Mrs. Cua here; a  
5 list of exhibits. I've presented them under the person who  
6 spoke to them. For example, the first one was Rob Iopa.  
7 And I listed each exhibit to be referenced in his testimony  
8 sequentially as he talked about them in his testimony. And  
9 then I gave a source in the record where it exists. And  
10 then I identified if it's a new exhibit, not in the record.

11 If you can determine Exhibit 32, 33, 34 and 35,  
12 under Rob's testimony are new exhibits. And we'll submit  
13 copies of them to the Commission. And under Chris Hart's  
14 testimony, Exhibits 36, 37, 38 and 39 are new exhibits.  
15 They relate to the regional park locations, the traffic  
16 plan, the shoreline setback analysis, and the small scale  
17 beach nourishment exhibits.

18 So with that, it would be Exhibits 32 through 39  
19 will be to the record. And we'll submit copies to the  
20 Commission of all of these.

21 CORPORATION COUNSEL: As the hearing goes on and if  
22 consultants refer back to the exhibit, would you just let us  
23 know which exhibit it is according to the chart?

24 MR. MANCINI: We will give that to the consultant  
25 as he gets up there. But I thought that would straighten it

1 out for the record for now.

2 CHAIRPERSON AMORIN: Thank you. That has to do  
3 with the visual aids and the poster boards that's in here,  
4 to make sure it's all on record. Thank you.

5 Continuing on with our questioning of the  
6 applicant. Commissioner Mardfin.

7 COMMISSIONER MARDFIN: I wanted to ask the Sea  
8 Engineering consultant a couple of questions. And in  
9 particular, Commissioner Starr asked some questions about  
10 this seems to be a one-time deal on putting more sand in.  
11 And I think there were some implications to his questions  
12 that it might need more work down the road. And is there  
13 any way to predict how much additional work could reasonably  
14 be expected for the future?

15 MR. ERICKSON: Mark Erickson. I think it would be  
16 difficult to predict. The approach I would suggest is that  
17 the beach nourishment project be done with the monitoring  
18 program that's proposed and perhaps, if necessary, continue  
19 the monitoring program. That would provide the data  
20 necessary to then gauge what additional renourishment  
21 efforts might be required in the future.

22 So to me, that would be an approach that would make  
23 sense. Do this effort now. Monitor. Assess the  
24 monitoring. Get together with the State and propose the  
25 work that needs to be done that the data tells you.



1           COMMISSIONER MARDFIN: The certain Commissioner  
2 Starr seems to have is that, of course, with timeshares,  
3 people that do it could walk away from it. And in the  
4 future, buyers may not want to pay for it. So might be want  
5 to make some reasonable estimates of what it conceivably --  
6 sort of a maximum of what it could conceivably cost in the  
7 future and set up some sort of endowment trust that would  
8 pay for it in the future?

9           MR. ERICKSON: We could make estimates. It would  
10 probably be more guesswork on the full renourishment every  
11 five years, every eight years, and cost estimates based on  
12 that. As to make an endowment to fund that, that's not up  
13 to me. That's something that I can't address.

14           COMMISSIONER MARDFIN: What's the cost of the  
15 initial resanding going to be?

16           MR. ERICKSON: \$1.5 million, \$1.6 million was the  
17 estimate.

18           COMMISSIONER MARDFIN: Okay. Thank you.

19           MR. ERICKSON: Sure.

20           CHAIRPERSON AMORIN: Commissioner Hedani, followed  
21 by Commissioner Starr.

22           COMMISSIONER HEDANI: On the renourishment project  
23 that you're proposing, when it's done, the area in front of  
24 revetments, would that still be passable? Would it still be  
25 water basically two-feet deep that you cannot get by?

1 MR. ERICKSON: Again, that's hard to say. We  
2 didn't propose putting sand out there because we thought  
3 that it would be more prone to erosion.

4 However, the sand that we place in the neighboring  
5 areas might redistribute and add to the overall system and  
6 build out more of a beach in front of those revetments.  
7 That would be the hope.

8 COMMISSIONER HEDANI: But you couldn't say for sure  
9 whether or not it would be passable?

10 MR. ERICKSON: I cannot say, no.

11 CHAIRPERSON AMORIN: Commissioner Starr.

12 COMMISSIONER STARR: Yeah. I was present eight  
13 years ago or so when someone -- it was Sea Engineering with  
14 another entity did a presentation at a conference, a beach  
15 conference. And at that time, your organization -- and that  
16 was another consultant -- was doing a study in looking for  
17 offshore sand deposits around -- primarily, around Oahu.  
18 But you were looking around the state.

19 And it was the first time, at least for me, that I  
20 had saw you. Your representative had some glass jars of  
21 what the sand looked like when it was down more than 50  
22 feet. And it had become anaerobic and it had turned to  
23 great talcum powder. Because I thought they could go out  
24 and dredge like in other places.

25 And I was wondering what transpired with that

1 study, if any other work has been done? And what the  
2 outlooks are for large scale, offshore deposits of sand that  
3 we can use in the future for beach replenishments? Because  
4 our inland deposits are almost gone.

5 MR. ERICKSON: Yeah, that's an excellent question.  
6 It's a really big problem. The study I think you're  
7 referring to was a paper study that looked at existing  
8 information. There's been a whole bunch of work done at UH  
9 that do physical surveys and sampling. And with that, we  
10 were able to identify prospective areas.

11 Since that time, we've had project with the U.S.  
12 Geological Survey where we have run what's called a  
13 subbottom profiler, which is a sonar instrument that we tow  
14 around. And it sends a sonar signal that penetrates into  
15 the sand, down to the coral bottom, and it allows us to map  
16 sand. There are extensive offshore sand deposits that we've  
17 identified in this way. However, most of those deposits are  
18 prone to the problems that you mentioned.

19 Once you get below the surface a couple of inches,  
20 they've undergone an anaerobic degradation process that  
21 degrades the grain size, produces silt, grays the color so  
22 that they are essentially no longer suitable.

23 There are a couple of sites that we have identified  
24 as being potential sources. And this came out of a project  
25 that we were doing with Wayne for Kaanapali. We looked at a

1 large deposit off the reef runway in Oahu. We've gone over  
2 it with our geophysical systems. We've mapped it. It's got  
3 good quantities, extensive depths. It's at a location great  
4 for staging, close to Honolulu harbor. It's got the reef  
5 runway there. Potentially good stockpile area.

6           We approached the State with a group of people, Sea  
7 Engineering, that would do the resource assessment; Healy &  
8 Tibbits Builders, a very experienced local dredging company;  
9 Hawaiian Cement, who's in the sand business, to talk about  
10 exactly what you say. Hey, we've got a problem; here's a  
11 potential resource; we think it might be worth developing.  
12 And not much came out of it.

13           In my opinion, the start-up costs of something like  
14 that are great. And you're not going to get any private  
15 entity to really jump into it. I think it's going to take a  
16 concerted State effort or backing, where they would say,  
17 okay, yes, we agree to buy so many hundreds of thousands of  
18 cubic yards at this price, if you go out and develop this  
19 resource. But there's all kinds of legal issues.

20           One, I think, it's forbidden. There's a State law  
21 forbidding extraction of sand for commercial purposes. So  
22 right there, that would have to be dealt with before any  
23 movement is made. But it's a big issue. And we have  
24 projects we're looking at in Waikiki. And we're having to  
25 go offshore locally there.

1           So more and more what's turning out for particular  
2 projects, we're doing reconnaissance, site reconnaissance  
3 right offshore in that area to see if there's a local source  
4 right close to that specific spot that could be used to  
5 nourish that particular beach.

6           COMMISSIONER STARR: Is the reason for the local  
7 source because then it isn't a commercial transaction, then  
8 it's the entity, they're doing it for themselves? Did I get  
9 that right?

10           MR. ERICKSON: Yes. It's not like Napili will  
11 happily say to Kaanapali, "Go ahead and dredge out all our  
12 sand and put it on your beach." You'll never get that  
13 project pushed through. Everybody is aware of this issue  
14 now. And they are protective of this resource.

15           So logically, you can make the argument that this  
16 sand is part of this electoral system, and it's okay to pump  
17 it, to put it on the beach that it probably came from. But  
18 to take it from somewhere else and put it on a different  
19 beach, you're exposing yourself to potential impacts to that  
20 beach where you got it from.

21           But it's a major problem for beach nourishment  
22 that's going to have to be addressed. I mean, and just to  
23 ramble on. Obviously, this is a sensitive spot for us  
24 because the State keeps promoting this beach nourishment,  
25 and we're like, "Great, guys. But we need sand."

1           COMMISSIONER STARR: I know with that, several  
2 years ago I was -- it was actually a different conference.  
3 And there was some discussion there about the State possibly  
4 doing a study to see if there were any other places in the  
5 pacific where sand could be purchased and shipped, you know,  
6 the way -- like in the Mediterranean. If you go there in  
7 the winter, there's trains and barges going from North  
8 Africa, and they're bringing sand over. And the European  
9 beaches are replenished with North African sand every year.

10           And there's discussion about bringing sand in from  
11 other places in the pacific, possibly buying atolls or  
12 islands. Do you know if anything has happened with that?

13           MR. ERICKSON: I can say that's been pursued. And  
14 we've, again, had discussions with Hawaiian Cement, who is  
15 in the sand business, both for construction and golf courses  
16 and beaches. And in the last couple of years, they did  
17 scour the pacific area and came up with nothing. And we  
18 were dealing with a guy named George Stewart at that time.  
19 And he really looked hard.

20           And we had projects that we approached him, we need  
21 60,000 cubic yards for this beach. And he couldn't find  
22 anything. The one source that they do have online is  
23 Chinese sand. But it's silica based, which DOH will not  
24 permit to be placed on beaches. We have calcareous sand.  
25 So that's not an option. But Hawaiian Cement is bringing

1 that in, and that's being used on golf courses and some  
2 pools, inland pools, and things like that ponds.

3 COMMISSIONER STARR: I understand construction sand  
4 is also coming from the Philippines, but there's some  
5 concerns about poisonous snakes -- okay.

6 MR. ERICKSON: Could I address a couple comments  
7 from earlier. One, I think was potential impacts to the  
8 fish pond. And I apologize, I had forgotten this.

9 At the time we submitted the permit, there was  
10 formal consultation -- a year and a half ago, there was  
11 formal consultation with both OHA and the association of  
12 fish ponds here. And they reviewed the permit application  
13 and came up with some concerns that had been addressed in  
14 the best management practices for the beach nourishment.  
15 And the closing statement was overall, this is a positive  
16 project and we offer to assist in any way. So the local  
17 fish pond association here is in support of this beach  
18 nourishment project.

19 And the other comment I wanted to address is there  
20 were suggestion that's this beach nourishment was being  
21 proposed to build out a nice beach to sell units. I think  
22 that needs to be corrected. Because this beach nourishment  
23 program came about at the suggestion of the State. So it  
24 wasn't in the original plans. The State suggested it as a  
25 condition of the easement that the Maui Lu readily agreed

1 to, to try to do something positive.

2 Thank you.

3 CHAIRPERSON AMORIN: Commissioner Hiranaga.

4 COMMISSIONER HIRANAGA: In the Coastal Engineering  
5 Assessment that you prepared for the Maui Lu, at Page 26,  
6 shoreline alternatives, you mentioned beach nourishment  
7 structures. One of the these structures is a groin-type  
8 structure, I guess, would stabilize lateral sand  
9 transportation.

10 MR. ERICKSON: Yes.

11 COMMISSIONER HIRANAGA: Can you maybe elaborate on  
12 that. And if this is a better mechanism than the existing  
13 rock revetment, why or why not?

14 MR. ERICKSON: With beach nourishment, you have two  
15 basic options; place sand on the beach without protection  
16 retention structures, and place sand on the beach with  
17 properly designed retention structures.

18 Usually these are fishtail T-head type groin  
19 structures. And essentially what you're doing there is  
20 creating an artificial abatement that reduces your wave  
21 energy and prevents the sand from being lost. That is a  
22 guaranteed engineering method of designing a beach  
23 nourishment project. There are engineering design  
24 guidelines on how to make these groins, the separation  
25 between them, how long they need to be.



1           There's lots of projects in place that have been  
2 done this way that have successfully weathered hurricanes,  
3 and things like that. So places like Waikiki, where there  
4 has been problems with nourishment, sand washing out onto  
5 the reef and reportedly affecting surf breaks and tako  
6 grounds, and whatever, that is something that we're  
7 proposing on a project that we're working on there. And  
8 with sand resources becoming so scarce, clients are not  
9 willing to spend millions of dollars to put sand on their  
10 beach if there's a risk that they might lose it in two,  
11 three, five years.

12           So in terms of beach nourishment project where you  
13 want to guarantee, more or less, that you're going to have  
14 sand that stays and is not going to wash out and impact your  
15 reef, that is the engineering method of choice.

16           COMMISSIONER HIRANAGA: Would that replace the need  
17 for rock revetment?

18           MR. ERICKSON: You could certainly design a project  
19 in this area where you could built T-head groins and a  
20 protected beach and no longer need those revetments there.

21           COMMISSIONER HIRANAGA: Was that option explored?

22           MR. ERICKSON: That option was not explored at this  
23 stage. That's a whole different major project involving  
24 building hard structures out into State land, it requires  
25 full EIS, full permit process. What we've seen here just

1 the comments that arise from a small scale nourishment  
2 project without anything permanent. That type of project  
3 was considered beyond the scope of the current effort. But  
4 it's certainly something that could be done here. But  
5 again, that's another five, ten-year project.

6 COMMISSIONER HIRANAGA: Thank you.

7 MR. HART: Ma'am Chair, could I just clarify one  
8 thing.

9 CHAIRPERSON AMORIN: Yes, step forward and state  
10 your name?

11 MR. HART: My name is Chris Hart of Chris Hart and  
12 Partners. I just had a couple of clarifying items. And it  
13 falls along the same line of the questioning of Commissioner  
14 Hiranaga and the comments by Mark.

15 Actually, when the project was initiated, first of  
16 all, in 1998, there was another client that was proposing  
17 the project. And at that time, the State of Hawaii,  
18 Department of Land and Natural Resources allowed us to apply  
19 for and receive shoreline certification. And it was  
20 approved even with the revetments as an encroachment. We  
21 need to have the shoreline certified in order to have a  
22 complete application for a Special Area Management permit.

23 So when we approached the State in the context of  
24 this project, which was probably about 2002, about four  
25 years have gone by, the State Department of Land and Natural

1 Resources became more conservative about existing basic  
2 encroachments into the ocean, which these revetments are.  
3 They were built back in 1964. So they were actually  
4 determined to be existing and nonconforming.

5 Now, the shoreline properties, shoreline parcel  
6 consists of two parcels, it's about 1.1 acres. The mauka  
7 parcel is a separate parcel. It's approximately 26 acres.  
8 So our initial request of the Department, Planning  
9 Department was that we couldn't get our shoreline  
10 certification.

11 Therefore, we asked the Planning Director if it  
12 would be possible to bifurcate the application. In other  
13 words, to separate the shoreline parcels from the mauka  
14 parcel and actually come in for a proposal for an SMA permit  
15 for the mauka part of the project. And then at this time in  
16 the future, decide what we wanted to do with the makai  
17 parcel.

18 And the Planning Director said no, that essentially  
19 it's a mauka/makai piece of property. Even though they're  
20 separate parcels, it's important to consider the mauka  
21 portion with the makai portion. So therefore, we had to  
22 pursue with the State, basically an action by the State that  
23 would allow us ultimately to have the shoreline certified.  
24 And that's how this unfolded.

25 And, you know, as far as the beach nourishment

1 project is concerned, it was not done -- as Mark Erickson  
2 indicated to you, it wasn't done as an amenity for the  
3 project. I mean, in terms of the purchasers for the  
4 condominium units. It was done as basically a condition of  
5 the basic easement that we received from the State in order  
6 to enhance the shoreline for the public. And that's why it  
7 was continued all the way south to tie in with Kalepolepo  
8 Fish Pond.

9           And one other thing, it was brought up by  
10 Commissioner Guard about Kulanihakoi gulch and the stream  
11 that comes through. Actually, that is a significant  
12 drainage way. And the basically, the County, you know, is  
13 basically studying the possibility of improving the covert  
14 under South Kihei Road to allow better flow to the ocean.

15           And in discussion, we have discussed the  
16 possibility that we would be willing to participate in that.  
17 But in the context of this project, it's been determined  
18 that we're not going to aggravate that problem. We're not  
19 aggravating it, but we would be willing to participate in a  
20 solution, which hasn't been established yet in terms of the  
21 design of the covert and the cost, and so on. For your  
22 information. Thank you.

23           CHAIRPERSON AMORIN: Thank you. Commissioner  
24 Guard.

25           COMMISSIONER GUARD IV: This is more what we called

1 Thorne down for, I guess, as a planning resource, to see if  
2 he has any input for us; if he's followed up with his beach  
3 restoration and impacts it may have, positive or negative.

4 COMMISSIONER STARR: Excuse me, Ma'am Chair, a  
5 point of order.

6 CHAIRPERSON AMORIN: Commissioner Starr.

7 COMMISSIONER STARR: Yes, we were asked to hold our  
8 questions for the Department until after.

9 STAFF PLANNER CUA: If I could comment. I know it  
10 probably -- in terms of how you receive the information  
11 would be better to question Thorne now, except that we still  
12 have some people in the audience; the hearing officer, the  
13 traffic consultant, that are from off-island that will need  
14 to catch planes today. So we'd like to stay on the format,  
15 if we could, with you questioning the other witnesses.

16 CHAIRPERSON AMORIN: Commissioner Guard.

17 COMMISSIONER GUARD IV: I guess if there was any  
18 issues to make sure we're all in agreement with what we're  
19 hearing, that Thorne can say he's reviewed it before their  
20 applicants leave, or their team leaves, and we have  
21 conflicting information. Well, we brought him down here, I  
22 guess, just to listen so that --

23 COMMISSIONER STARR: I have no problem if it's not  
24 a legal issue --

25 CHAIRPERSON AMORIN: Order. Commissioner Starr.

1           COMMISSIONER STARR: I have no problem if there's  
2 not a legal issue. I don't know why we weren't asked to do  
3 it in order. I do have more questions for the consultants.

4           CHAIRPERSON AMORIN: Okay. Commissioner Hedani.

5           COMMISSIONER HEDANI: I'm not sure which consultant  
6 can answer this. But in reviewing the application, I've  
7 heard reference that the project is zoned hotel numerous  
8 times. The community plan and zoning is both hotel and  
9 park. So if somebody could point out to me where the park  
10 location is.

11          MR. HART: Chris Hart. The portion of the site on  
12 the ocean side that's park is right here. It's that  
13 Vancouver Memorial on the north side. The rest of the  
14 parcel on the makai side is H-1 Hotel. And it's community  
15 planned hotel, and zoned H-1. Then the H-1 Hotel continues  
16 on the mauka side for a depth of 200 feet. Then the rest of  
17 the parcel is community planned and zoned H-M Hotel.

18                 Actually, it's in the EA. It's Figure Number 7.  
19 It shows all the land use classifications.

20          CHAIRPERSON AMORIN: Thank you. Commissioners, any  
21 other questions? Commissioner Starr.

22          COMMISSIONER STARR: Yes. Once again, for Sea  
23 Engineering. I had seen the comment --

24          MR. ERICKSON: I thought I was off the hook there  
25 for a second.

1           COMMISSIONER STARR: The comment in the EA that the  
2 erosion rate was .9 feet per year. But now I see a letter  
3 from Sea Grant which states that the erosion rate is 1.8  
4 feet per year. And then there's other comments saying that  
5 it's three feet a year. Then there's a letter from Sea  
6 Engineering, which states that it's between -- it varies  
7 from 1.1 to 1.7 feet per year. So what is the rate?

8           MR. ERICKSON: Mark Erickson with Sea Engineering.  
9 Based on the UH aerial photographic study, our  
10 interpretation of that data was that it ranged from the 1.1  
11 to 1.7. Again, it's not a straightforward thing. There's  
12 different ways to calculate it. But looking at that data,  
13 we felt that was a fair characterization of the erosion rate  
14 in that general area.

15           COMMISSIONER STARR: Also, your comments are the  
16 largest erosion rates occur at transects 1015, 19 and 20  
17 immediately adjacent to the revetments where local flanking  
18 events have occurred. And then you also say that shoreline  
19 hardening without said nourishment to sound retention  
20 structures on any coast that is experiencing long-term  
21 chronic erosion and shoreline recession will eventually lead  
22 to the loss of the beach in front of the structures would  
23 fix the shoreline position.

24           That leads me to believe that with ongoing  
25 nourishment that we're going to see quite rapid loss there.

1 I'd like your comments on whether you feel that this  
2 one-time nourishment is going to do the trick, or if it's  
3 just, you know, a temporary Band-Aid?

4 MR. ERICKSON: Again, in conjunction with the  
5 State, what we did work out was this one-time program with  
6 monitoring. So my suggestion would be that at the end of  
7 this monitoring program, the data be evaluated to determine  
8 what would be appropriate in terms of a renourishment  
9 effort.

10 COMMISSIONER STARR: Who should pay for that, then?  
11 Because the applicant will have sold the units and will be  
12 gone?

13 MR. ERICKSON: Again, that's not something that I  
14 can address.

15 CHAIRPERSON AMORIN: Thank you. Commissioner  
16 Guard.

17 COMMISSIONER GUARD IV: The original beach  
18 nourishment, how many feet did you say we were estimating we  
19 were going to, I guess, recreate?

20 MR. ERICKSON: The initial placement will build out  
21 the beach crest width, let's say, the plus six elevation, up  
22 to 70 feet. However, that's being artificially built out to  
23 maximize sand placement, but minimize the amount that's  
24 actually being placed in the water. So all that, it will be  
25 built out and at a steeper slope, terminated into about the



1 mean low water line. The idea being that less is actively  
2 placed into the water that would minimize turbidity,  
3 minimize the risks of having heavy equipment --

4 COMMISSIONER GUARD IV: So you're not pushing the  
5 water line out?

6 MR. ERICKSON: No. The idea would be to build up  
7 from the mean low water line, let natural processes happen.  
8 Then redistribute to the natural beach profile, which we  
9 calculated would result in a beach width increase of about  
10 16 feet.

11 COMMISSIONER GUARD IV: So even with a loss of two  
12 feet per year, based on what you're going to do on this one  
13 time for 1.6, it doesn't it would cost that much money to  
14 combat two feet a year erosion in comparison to this first  
15 time massive beach nourishment program?

16 MR. ERICKSON: How much money is too much money, I  
17 can't answer.

18 COMMISSIONER GUARD IV: Well, this is costing 1.6?

19 MR. ERICKSON: Yeah.

20 COMMISSIONER GUARD IV: Well, maybe that's  
21 something we can discuss later if the applicant would have  
22 funds available.

23 CHAIRPERSON AMORIN: Commissioner Starr.

24 COMMISSIONER STARR: Yes. I have a question for a  
25 different field here, and not relating to Sea Engineering.

1 So you're off the hook for now.

2 I know that with timeshare projects, there are many  
3 different structures. And I want to get a better  
4 understanding of what kind of business model this is. You  
5 know, there are some places where people actually own a part  
6 of a specific unit. There are other ones where they are  
7 members of a club and they may -- you know, maybe they will  
8 go to Maui, but maybe they will go to Vegas or somewhere  
9 else.

10 Can someone tell us how this is going to work. Is  
11 this part of a larger organization that's like a club, or  
12 are people actually buying part of the fee? What are they  
13 buying?

14 MR. SCHNEIDER: My name is Greg Schneider. I'm a  
15 partner with the Maui Lu. In terms of marketing, it would  
16 be like most timeshares, where it would be a fractional,  
17 like a one-fiftieth ownership. And that would be available  
18 to use in a system, which is RCI or one of the big groups,  
19 where one week, you could go to Maui. If you didn't want to  
20 go to Maui, next year --

21 CHAIRPERSON AMORIN: Excuse me. Just making sure.  
22 Were you sworn in by me earlier?

23 MR. SCHNEIDER: I was not, ma'am.

24 CHAIRPERSON AMORIN: Okay. I need to swear you in.

25 MR. SCHNEIDER: Yes, ma'am.

1 (At which time, the witness was sworn in.)

2 MR. SCHNEIDER: So it would be like anything, like  
3 Hilton or Starwood or Marriott has. It would be the same  
4 approach.

5 COMMISSIONER STARR: So people are not actually  
6 buying part of a unit or part of anything here on Maui,  
7 they're buying the ability to stay at some timeshare  
8 somewhere on earth, you know, for one week, a year, or so?

9 MR. SCHNEIDER: Well, they are buying part of this  
10 project. But how that all works, that will be determined  
11 later on. But there's flexibility in the marketing, and so  
12 forth. But basically, to answer your question, it's a  
13 timeshare project where you buy a fifth of that project.  
14 And you can use it to go to other projects, or you can stay  
15 there. That's about as simple as I can make it for you.

16 COMMISSIONER STARR: I mean, does it state that  
17 they own part of this -- I don't know what you're going to  
18 call it -- you know, the Maui Lu, unit such and such?

19 MR. SCHNEIDER: You know, I'm not sure how the  
20 timeshare attorneys would put that together. But it would  
21 be sold here in Maui and sold to others by this particular  
22 project who would buy into this particular project here.

23 COMMISSIONER STARR: Now, are these people -- what  
24 I'm a little unclear about is who is going to be responsible  
25 for maintaining this the in the long-term? You know, I know

1 that in Europe on the coast of Spain where timeshare really  
2 originated 20, 30 years ago, they became slums because it  
3 became difficult to maintain them. You know, there was no  
4 vested interest.

5 I'm wondering what the mechanism is that's going  
6 to -- say, there's a beach nourishment required eight years  
7 from now and there's a necessity to come up with  
8 \$1 million, \$2 million, \$3 million. Who pays for it and  
9 what are the mechanisms for that?

10 MR. SCHNEIDER: Well, there's a homeowner's  
11 association very similar to a condo project or fractional  
12 project. They are all pretty much run the same way, where  
13 you pay a fee, annual fee. So each owner would pay an  
14 annual fee for that. And they have voting rights, just like  
15 any organization would do.

16 In terms of our project, we're looking at probably  
17 a seven to eight-year sell-out. And sometimes the common  
18 area is kept by the original developer. If not, then  
19 there's a board to continue it for 15, 20 or 100 years, to  
20 make sure all the interests of the owners of the timeshare  
21 would be protected.

22 COMMISSIONER STARR: And who sits on this board?

23 MR. SCHNEIDER: It's elected like any other  
24 condominium board.

25 COMMISSIONER STARR: Even though -- I mean, there

1 would be theoretically thousands of owners. Because it's  
2 part -- as I understand, it's part of a pool with a lot of  
3 other properties?

4 MR. SCHNEIDER: Well, not exactly. What it is, is  
5 one particular property. But when you buy into a timeshare,  
6 some properties allow you to have an exchange program. And  
7 that's within a separate organization called Interval  
8 International, for example, or RCI. And typically, all the  
9 timeshares do that.

10 The one that would be an example that does not do  
11 that is the Trendwest project down in Kihei here. There's  
12 200 units there. And that's a club. And it's sold just  
13 within a club. And we will definitely not be one of those.  
14 So I think in answering your question, we'll be part of a  
15 system right here in Maui that's open for Maui people and  
16 open for outside of Maui.

17 COMMISSIONER STARR: So how many owners will there  
18 be?

19 MR. SCHNEIDER: Well, there will be approximately  
20 50 times 400.

21 COMMISSIONER STARR: So 20,000?

22 MR. SCHNEIDER: Yes. Yes, sir.

23 COMMISSIONER STARR: And they will be paying a  
24 monthly maintenance?

25 MR. SCHNEIDER: They pay an annual fee. Annual fee

1 for that.

2 COMMISSIONER STARR: And is there any commitment to  
3 what that annual fee is?

4 MR. SCHNEIDER: No. It would cover several things.  
5 We would just have to see what the cost is for utilities and  
6 landscaping, and so forth. It's a little hard to estimate  
7 exactly how much that will right now.

8 COMMISSIONER STARR: And how about the reserves?

9 MR. SCHNEIDER: There will be reserves. There's  
10 always reserves.

11 COMMISSIONER STARR: What are the items to be in  
12 reserves for?

13 MR. SCHNEIDER: Typically, anything that needs to  
14 be replaced over time. It would be painting or appliances  
15 or whatever that would be a reserve would be put in there  
16 for. It would be like a condominium project.

17 See, the difference between timeshare and a  
18 condominium project is you have 50 owners versus one. So in  
19 a condominium project, you will also need to have reserves  
20 or a fraction of reserves. So there's a big mistake,  
21 there's a big difference that this is a special thing, it's  
22 all different. But in reality, it's one unit. It's  
23 approximately a 1200 square foot unit that we lease out to  
24 50 people versus one person. But the operations in running  
25 it, they all require the same amount in reserves and fees

1 and maintenance, and so forth.

2           So if we had 50 owners for one unit or one owner,  
3 we still would need the same amount in reserves.

4           CHAIRPERSON AMORIN: Thank you. Moving on.  
5 Commissioner Hiranaga.

6           COMMISSIONER HIRANAGA: So I guess the Department  
7 of Land and Natural Resources agreed to grant an easement  
8 over the existing rock revetment; is that correct? Will  
9 this allow the applicant to do repair and maintenance on the  
10 rock revetment, or must it remain in its existing condition  
11 and not be repaired or maintained?

12           CHAIRPERSON AMORIN: Do we have a consultant that  
13 can answer Commissioner Hiranaga's question?

14           MR. MANCINI: I'm not a consultant. I've done  
15 these easements with the State before. It's usually part of  
16 the easement documentation. And you do have to go back to  
17 the State when you want to do it. So they oversee any work  
18 that you want to do afterward.

19           But there's basically a requirement to go back to  
20 them when you want to do maintenance or any type of  
21 improvement on it. But it's usually embodied in the  
22 easement document, your obligation to maintain, your  
23 obligation to pay insurance on it, indemnify the State and  
24 other Governmental entities as a result of the revetment.

25           COMMISSIONER HIRANAGA: Follow-up question. So if

1 the ocean water is lapping at the foot of the revetment,  
2 will the public be allowed to walk up on the rock revetment  
3 for lateral access purposes?

4 MR. HART: Chris Hart. Actually, what we've done  
5 is, as part of the project, we actually have incorporated a  
6 lateral access on the land. In other words, you know, we've  
7 been aware that the actual access along the beach could be  
8 intermittent. And certainly, it's public land. And we  
9 would not preclude anyone from walking along the beach as  
10 long as it's safe for them to do that.

11 But we've incorporated in the project a lateral  
12 access that starts here, and continues throughout the  
13 project and actually continues and actually ties into a  
14 trail that's along the ocean, which is called the South Maui  
15 Heritage Trail. And we would also -- we would basically  
16 like to encourage that to continue to the south. So as far  
17 as the project is concerned, there is a lateral access that  
18 has been designed into it.

19 COMMISSIONER HIRANAGA: Thank you.

20 CHAIRPERSON AMORIN: Any more questions  
21 commissioners? The Chair recognizes the need for some of  
22 the consultants to catch a plane back to Honolulu. If the  
23 this body is okay with maybe having some of those  
24 consultants come forward with questioning.

25 Which consultants have a plane to catch this



1 afternoon? Okay, engineering. Mark. And the hearings  
2 officer and Susan.

3 Okay. Commissioner Hedani.

4 COMMISSIONER HEDANI: I guess this would be a  
5 question for Mark before he takes off on his airplane.

6 MR. ERICKSON: I can stay as long as this evening.  
7 I think my flight is at 4:00. But I'm here through the day.  
8 Not here tomorrow. But through today. I can delay my  
9 flight until whenever.

10 COMMISSIONER HEDANI: We're not here tomorrow  
11 either.

12 As a follow-up to Commissioner Hiranaga's question,  
13 the question of like groins going out into the ocean,  
14 developing a groin out into the ocean as a permanent  
15 solution, you're talking about cost that would be a multiple  
16 magnitude of \$1.4 million? I know in the case of Sheraton  
17 off of Waikiki, they're talking about \$12 or \$20 million?

18 MR. ERICKSON: I can't say exactly what the  
19 Sheraton prices is. But yeah, it would be a much more  
20 extensive project. And you would not need not just one or  
21 two, but a field would space it at designed intervals to  
22 maintain whatever you decide your sand fill to be.

23 COMMISSIONER HEDANI: If we weren't holding you to  
24 the number, what would you guess that would cost?

25 MR. ERICKSON: Really, I should get back to you.

1 I'm happy to go back to the office and think about it and  
2 get a number to you. But I wouldn't feel comfortable  
3 putting something out right now.

4 COMMISSIONER HEDANI: Okay. Thank you.

5 CHAIRPERSON AMORIN: Commissioners, any more  
6 questions? Commissioner Hiranaga.

7 COMMISSIONER HIRANAGA: I guess reading this letter  
8 from DLNR, dated April 1, 2004, it states that, I guess,  
9 beach nourishment is a temporary fix in order to alleviate  
10 flanking that occurs on the rock revetments.

11 I guess my question is I know that the applicant  
12 wants rock revetments to remain. But I'm just wondering for  
13 the health of the beach, is this a long-term solution? I  
14 guess this might be for Sea Engineering.

15 CHAIRPERSON AMORIN: Mark.

16 MR. ERICKSON: The questions get tougher. Is the  
17 proposed beach nourishment a long-term solution? Is that  
18 the question?

19 COMMISSIONER HIRANAGA: Or allowing the rock  
20 revetments to remain, basically?

21 MR. ERICKSON: It depends on what your objectives  
22 are. If the objectives are to protect the property and the  
23 road, a rock revetment properly designed is a very effective  
24 means of doing that. If you're objective is a recreational  
25 beach with no structures or anything, then not. If you're

1 objective it protecting property with a recreational beach  
2 that you're sure will stay there, then perhaps a T-head  
3 groin beach nourishment system would be what you want. So,  
4 you know, I can't answer for sure.

5 COMMISSIONER HIRANAGA: I'm trying to understand  
6 this methodology. The beach nourishment is actually to  
7 protect the rock revetment because it's being flanked?

8 MR. ERICKSON: The beach nourishment actually,  
9 again, was worked out in conjunction with the State as a  
10 condition of the easement to improve the shoreline, to  
11 enhance the beach. It wasn't specifically designed to  
12 protect the revetment, no. But a design consideration was  
13 to place more sand in that particular corner to the south  
14 to -- because there's been flanking erosion there, and to  
15 help mitigate that.

16 COMMISSIONER HIRANAGA: Because if you didn't do  
17 that, over time, the rock revetment would be sitting out in  
18 the ocean by itself?

19 MR. ERICKSON: It's exposed to flank erosion.  
20 There's been sand bags placed there. At what point would  
21 that become a stable shoreline condition, we can't say for  
22 sure. But it's a vulnerable area and it's possible.

23 COMMISSIONER HIRANAGA: Okay. Thank you.

24 CHAIRPERSON AMORIN: Commissioner Hedani.

25 COMMISSIONER HEDANI: I know you like questions

1 Mark, hard questions. If the revetments remain, would flank  
2 erosion always occur?

3 MR. ERICKSON: On an eroding shoreline -- let's see  
4 how to phrase that.

5 COMMISSIONER HEDANI: Let me back up and ask the  
6 question. When we're explained about the pros and cons  
7 about revetments, we're told revetments, once you put them  
8 in, it normally causes erosion on either side of the  
9 revetment because of flanking erosion. That's what we're  
10 told.

11 MR. ERICKSON: Yeah, it's a very important design  
12 consideration of a revetment. Again, if you place a  
13 revetment on a sandy shoreline and that shoreline is  
14 experiencing erosion, you're going to lose your beach in  
15 front of that revetment and you will get aggravated erosion  
16 around the flanks of that revetment.

17 COMMISSIONER HEDANI: So the answer is yes, you  
18 will get erosion on either side of the revetment in most  
19 cases?

20 MR. ERICKSON: In most indications, yes, you do get  
21 an area that basically is called flank erosion for that  
22 reason.

23 COMMISSIONER HEDANI: Okay. Thank you.

24 CHAIRPERSON AMORIN: Commissioner Starr.

25 COMMISSIONER STARR: Yeah. Is it true that if the

1 revetment's sole purpose is to protect these buildings and  
2 that if there were no revetments there, that there would be  
3 a continuous beach along there that would be available to  
4 the public for recreational use?

5 MR. ERICKSON: That's a question?

6 COMMISSIONER STARR: Yes. Is that correct?

7 MR. ERICKSON: If the revetments were removed and  
8 you removed all the fill?

9 COMMISSIONER STARR: Yeah.

10 MR. ERICKSON: It's a fair statement that once the  
11 shoreline realigns, that you could get a sand beach that's a  
12 continuation of what you have to the south.

13 COMMISSIONER STARR: Thank you.

14 MR. ERICKSON: At the Vancouver Memorial, I should  
15 add, that probably the shoreline that would result there is  
16 very close to the road. And immediately to the north of  
17 that, you do have a revetment that's been built to protect  
18 the road. So as you can see, the shoreline bends out  
19 towards the fish pond at some point -- I mean, you may have  
20 difficulties, in particular in the vicinity of the Vancouver  
21 Memorial, with the road being threatened.

22 COMMISSIONER STARR: Would the ideal case be that  
23 the road would be moved mauka, and then a really nice beach  
24 would occur there?

25 MR. ERICKSON: You may have -- I mean, again,

1 that's not something for me to decide.

2 COMMISSIONER STARR: Geologically?

3 MR. ERICKSON: Geologically, if you move the road  
4 inland there, you might get a beach there. But you'll get  
5 this flanking condition that exists for the revetment  
6 protecting the road -- I don't know how many, 40 feet to the  
7 north, which was placed in the late '70s or early '80s.

8 CHAIRPERSON AMORIN: Thank you. Any more  
9 questions? Commissioner Hiranaga.

10 COMMISSIONER HIRANAGA: This is just for the  
11 applicant in general. Could you provide us the dollar  
12 amount that you're spending on the renovation of the  
13 buildings makai of South Kihei Road?

14 MR. IOPA: I'm the architect, not the contractor.  
15 But I really don't have an idea of what that would be at  
16 this time.

17 COMMISSIONER HIRANAGA: Well, someone should. You  
18 can't approve a project not knowing what your projected  
19 building costs would be.

20 You can take a moment. If someone could come up  
21 with a general number what that costs, the bugeted costs are  
22 for the renovation of the buildings makai of South Kihei  
23 Road. You can continue your questioning and they can come  
24 back when they're ready.

25 CHAIRPERSON AMORIN: Other questions,

1 commissioners? Commissioner Hedani.

2 COMMISSIONER HEDANI: I'm not sure which consultant  
3 can answer this question. But I know that in the past for  
4 the history of this particular project, prior to the  
5 establishment of the revetment easement, the State had  
6 requested the prior owner to remove the rock revetment.  
7 Could someone bring us up-to-speed on what the scenario was  
8 on the legal request from the State and what the response  
9 was?

10 MR. HART: I'm sorry. Can you repeat the question.  
11 I was asking our construction consultant about prices. So  
12 I'm sorry.

13 COMMISSIONER HEDANI: Historically, Chris, at one  
14 time -- well, let me back up.

15 Historically, when this was owned by a prior owner,  
16 the rock revetments were not there. And then they were  
17 placed in order to protect structures that were existing at  
18 the time?

19 MR. HART: That's right.

20 COMMISSIONER HEDANI: The State requested that the  
21 revetments be removed. And I think they were kind of like  
22 ignored for about 10 or 20 years. And I was wondering if  
23 you could bring us up-to-speed on what exactly transpired.

24 MR. HART: Chris Hart. Chris Hart and Partners.

25 Actually, the prior structures were residences on

1 the property. And Mr. Gibson, in 1964, in the context of  
2 expecting that there was going to be a tsunami, there was  
3 some sort of warning or something, we were told, decided  
4 basically to construct the revetments.

5           There was, in the process, back in the '70s, early  
6 '80s, after the adoption of the Shoreline Setback Law, there  
7 was a discussion with the State regarding those  
8 encroachments. And actually, the property line was  
9 redefined. And the area of the revetments were isolated  
10 into separate smaller parcels. And Mr. Gibson did get  
11 approval from the Board of Land and Natural Resources to  
12 actually enter into an easement agreement with the State at  
13 that time. But he was not necessarily the most -- how  
14 should I say it -- always responsible in the context of  
15 detail.

16           But anyway, he never pursued it. He never pursued  
17 it. And so consequently, you know, even after the  
18 redefinition of the property line to actually isolate the  
19 revetment areas, he never pursued any negotiation with the  
20 State to go through the appraisal process to actually be  
21 able to purchase the easement. So had he done that, we  
22 wouldn't be discussing -- I don't think we would be  
23 discussing it. At least we would have been able to get the  
24 shoreline certified.

25           So consequently, we had to go through a whole



1 process of unravelling the record to be able to determine,  
2 first of all, that those were built in 1964, and had to have  
3 an analysis of old aerial photographs, and actually come up  
4 with a date, and have the State reconfirm that they were  
5 existing and nonconforming. So here we are today.

6 But it was basically because Mr. Gibson had not  
7 proceeded with the process that had actually been approved  
8 by the State at that time, which was in the late '70s and  
9 early '80s. I don't know the know the exact date.

10 COMMISSIONER HEDANI: Thank you.

11 CHAIRPERSON AMORIN: Commissioner Mardfin, followed  
12 by Commissioner Hiranaga.

13 COMMISSIONER MARDFIN: This is a totally different  
14 track. But as long as we're trying to get consultants to  
15 answer questions. I believe you had somebody here from  
16 Hawaiian Cultural Practices. I guess, my reading of this is  
17 that you found no traditional or historical cultural  
18 practices that this project would at all impact, and that  
19 there were no historical artifacts or anything else. I just  
20 wanted to confirm my reading is the same as your reading?

21 MS. PESTANA: Elizabeth Pestana for Scientific  
22 Consulting Services. That is correct, we had two  
23 investigations and an archeological survey and a cultural  
24 impact assessment. And they both were negative results.

25 COMMISSIONER MARDFIN: Did you check with local

1 people about any cultural practices or anything, access?

2 MS. PESTANA: Yes, there was an attempt to contact  
3 residents and Hawaiian Civic Club members, et cetera. We  
4 had some response. And we also contacted these people  
5 through OHA. And we spoke with members of the Burial  
6 Council of Maui. And our information that we gathered was  
7 that there was no such impact or cultural practices, and  
8 there are no known archeological properties in the area.

9 COMMISSIONER MARDFIN: Thank you.

10 CHAIRPERSON AMORIN: Could you please repeat your  
11 name again.

12 MS. PESTANA: Elizabeth Pestana.

13 CHAIRPERSON AMORIN: Any other questions?  
14 Commissioner Starr.

15 COMMISSIONER STARR: Yeah, I have one for the civil  
16 engineer.

17 MR. FUJITA: Mike Fujita. Wilson Okamoto  
18 Corporation.

19 COMMISSIONER STARR: Yeah. I want the runoff  
20 numbers pre and post, and also what you're going to do to  
21 filter.

22 MR. FUJITA: The existing runoff is 37 cfs, and the  
23 proposed is 45. It's about a 20 percent increase.

24 COMMISSIONER STARR: Okay. And that 20 percent  
25 increase -- in other words, you're saying that 45 cfs is

1 going to sheet flow into the near shore waters?

2 MR. FUJITA: No. We are retaining increases in  
3 runoff, plus an additional 25 percent within the on-site  
4 retention basins. So the net discharge will remain the 37  
5 cfs. There will be no increase in discharge.

6 COMMISSIONER STARR: It will remain 37, or will it  
7 be reduced?

8 MR. FUJITA: Well, slightly reduced because we are  
9 providing an additional 25 percent. We didn't calculate  
10 that number. I think back in 2002, whenever we came before  
11 the Board, and we offered the additional 25 percent.

12 COMMISSIONER STARR: Is it possible to retain more?  
13 Because as we've heard in testimony, there's a lot of  
14 landscape chemicals getting into the ocean and harming the  
15 near shore waters. And we'd like to see as little as  
16 possible coming off this project into the ocean.

17 MR. FUJITA: We do have the filter inserts within  
18 the drainage structures. And those inserts help filter  
19 sediment, petroleum products. They have absorbent pouches  
20 in them, so they'll do a lot to remove pollution.

21 COMMISSIONER STARR: That would be for the parking  
22 areas; correct?

23 MR. FUJITA: Correct. Within the landscape areas,  
24 we like to work with the landscape architect to try to  
25 divert flow towards grass swales, other landscape areas to

1 filter water. But again, we do have the retention basins.  
2 Those will help settle out a lot of the sediment as well.

3 COMMISSIONER STARR: Is it possible to do more in  
4 terms of reducing the amount of runoff?

5 MR. FUJITA: That's probably more of an economic  
6 decision, and maybe something attached --

7 COMMISSIONER STARR: So what you're saying it's  
8 just money that's causing us to degrade the reef?

9 MR. FUJITA: No, I'm not saying that. It's nothing  
10 that I looked at personally. There is limited land area. I  
11 guess the owner could possibly make that decision.

12 COMMISSIONER STARR: I mean, is it possible to do  
13 considerably more if money could be spent on it?

14 MR. FUJITA: It just equates for a deeper retention  
15 basin. We typically try to keep it rather shallow. The  
16 deeper you get, then you may get into issues with safety.

17 CHAIRPERSON AMORIN: Thank you. Moving along.  
18 Commissioner Hiranaga.

19 COMMISSIONER HIRANAGA: Hopefully, my last question  
20 for Sea Engineering.

21 This letter from University of Hawaii, dated  
22 5-7-04, the last sentence in the second paragraph, it says,  
23 "However, it should be pointed out that the northern most  
24 revetment does not protect any buildings, it protects the  
25 Vancouver Monument. Perhaps this monument could be moved to

1 another location and the revetment could be removed."

2        Could you comment on that suggestion, what  
3 impact --

4        MR. ERICKSON: Again, this is Mark Erickson. On  
5 the impacts, or on the decision to remove the revetment and  
6 relocate the monument?

7        COMMISSIONER HIRANAGA: The impact, if it was  
8 removed, to the beach.

9        MR. ERICKSON: The impacts would likely be  
10 beneficial to the beach, in that you're removing rocks.  
11 Then you would allow the beach to realign itself to be  
12 continuous with the pocket beach to the south. The question  
13 of moving the monument is something that it's not up to me.

14        COMMISSIONER HIRANAGA: You mentioned something  
15 about the ocean being relatively close to the road in that  
16 section.

17        MR. ERICKSON: That is true.

18        COMMISSIONER HIRANAGA: So would removal of that  
19 rock around the monument, would that improve the situation?

20        MR. ERICKSON: No. It would leave that portion  
21 more susceptible to -- the road in that area more  
22 susceptible to potential erosion damage. Because the road  
23 nets into the shoreline right in that area. And again, I  
24 don't know the exact distance -- 20, 30, 40 feet to the  
25 north, the road is revetted. And there are historical

1 aerial photographs that show the beach eroded right back to  
2 the road there.

3           So I mean, removing those rocks there would  
4 probably give you a beach right in front there, but it could  
5 also leave the road vulnerable.

6           COMMISSIONER HIRANAGA: There's a rock revetment 30  
7 or 40 feet north of the monument?

8           MR. ERICKSON: Correct. I don't know the exact  
9 distance. But I've actually got some aerial photos. They  
10 should be in the report there.

11           COMMISSIONER HIRANAGA: I guess I don't recall  
12 that.

13           MR. ERICKSON: In this vicinity here, the shoreline  
14 is revetted.

15           COMMISSIONER HIRANAGA: That's man made?

16           MR. ERICKSON: Yeah. It's been a placed rock  
17 revetment in place there to protect the road. And again,  
18 that was in the late '70s, early '80s. I've got an aerial  
19 photo from '75, showing it's not there. But the shoreline  
20 is in a very eroded state and clearly threatening the road.  
21 And subsequent aerial photos, you could see the rock  
22 revetment in place there.

23           COMMISSIONER HIRANAGA: Thank you.

24           MR. IOPA: Rob Iopa, WCIT Architecture. In  
25 response to Commissioner Hiranaga's question on the value of

1 the construction work on the makai parcel, we estimate that  
2 to be approximately \$10 to \$12 million.

3 CHAIRPERSON AMORIN: Thank you. Commissioner  
4 Hedani.

5 COMMISSIONER HEDANI: In the application on Page  
6 18, comments from the University of Hawaii, Sea Grant  
7 Extension Services in May 2004 cited, "Encroaching  
8 revetments are hazardous. Need to remove or repair. If  
9 removed, makai parcel would mostly become undevelopable.  
10 Recommend beach replenishment be attempted. Encourage  
11 lateral access."

12 Did the applicant have a response to the Sea Grant  
13 service?

14 CHAIRPERSON AMORIN: Before the applicant responds  
15 to the question, we have more on the estimate that you have  
16 given.

17 MR. IOPA: The estimate for the cost of  
18 construction. I apologize. Ann Cua has corrected me. The  
19 question was the cost of the structure, the building  
20 component. I was totalling all aspects in and around the  
21 makai area. So for the buildings itself, we estimate that  
22 to be about \$8 million.

23 COMMISSIONER HIRANAGA: What would the \$2 to \$4  
24 million be for?

25 MR. IOPA: That would include approximately \$1

1 million for the life of the lease of the encroachment. The  
2 \$1.5 million for the beach replenishment. And approximately  
3 \$2 million for the improvements to the South Kihei Road.

4 CHAIRPERSON AMORIN: Thank you for that correction.  
5 Getting back to Commissioner Hedani's question. Do we have  
6 a consultant, representative to answer?

7 MR. MANCINI: Could Wayne repeat the question. I  
8 think there was a lot of conversation going on while he was  
9 asking it.

10 COMMISSIONER HEDANI: Okay. On Page 18 of the  
11 application, there's a comment from the University of Hawaii  
12 Sea Grant Extension Services recommending the encroaching  
13 revetments are hazardous and need to be removed or repaired.  
14 If removed, the makai parcel would become mostly  
15 undevelopable. Recommend beach nourishment be attempted,  
16 and encourage lateral access. And there was a concern over  
17 impervious services. Does the applicant have a response to  
18 that?

19 MR. HART: Chris Hart. Actually, that was a  
20 comment letter. But the State Department of Land and  
21 Natural Resources and the Land Board didn't agree that was  
22 the appropriate approach to take in this particular case.  
23 They felt it was appropriate to essentially leave the  
24 revetments and to basically allow us to negotiate a --  
25 basically, an easement and to pay for that easement. And



1 then as a condition of that easement, to basically do the  
2 beach nourishment project, as well as the dune stabilization  
3 project. And also, they encouraged us to do lateral access  
4 on our parcel, and to continue that lateral access north and  
5 south.

6           So that was a comment letter that was received.  
7 But, you know, essentially the process had been initiated.  
8 And, you know, the State -- basically, the Department of  
9 Land and Natural Resources and the Board felt this was  
10 consistent with other applications that it made throughout  
11 the State to deal with the issue of encroachments.

12           COMMISSIONER HEDANI: So in this follow-up --

13           CHAIRPERSON AMORIN: Thank you, Chris Hart.  
14 Commissioner Hedani.

15           COMMISSIONER HEDANI: So from the Department of  
16 Land and Natural Resources' position, the million dollar  
17 payment for the easement, is that something that's a  
18 one-time payment or periodic?

19           MR. HART: It's basically a one-time payment for  
20 the easement. They're still going through the appraisal  
21 process. And we're not sure it's going to be limited to \$1  
22 million. But that was an estimate, or a budget that we had  
23 provided for our purposes.

24           COMMISSIONER HEDANI: How does that work, Chris?

25           MR. HART: In terms of the --

1           COMMISSIONER HEDANI: The appraisal?

2           MR. HART: The appraisal is -- basically, the  
3 Department of Land and Natural Resources hires the  
4 appraiser. And essentially, it's based on the value,  
5 comparable values of land along the ocean. So it's a cost  
6 per square foot of beach front property.

7           COMMISSIONER HEDANI: So it would be appraised, and  
8 then you would acquire the easement from the State?

9           MR. HART: Yes, exactly.

10          MR. MANCINI: Maybe I can talk to the appraisal,  
11 because it's an on-going matter with DLNR. They have a  
12 group of appraisers which they utilize when it comes to  
13 shoreline property that have experience with regards to  
14 value of that property. And they do go out and do an  
15 extensive appraisal. That appraisal is then tendered to the  
16 land owner that has to pay.

17           There is an appeal process, a process by which you  
18 can contest the appraisal if you don't agree with it. Then  
19 you have to hire your own appraiser and have an arbitrator  
20 deal with it. So it's a rather complicated and long-term  
21 process.

22           One issue I'd like to put in perspective, if I  
23 could, is that how the letter commented and how the action  
24 ended up the way it is now. We go back to 2004. Of course,  
25 we had an environmental assessment. And the request at that

1 time was to deal with all these issues. That's why there  
2 were alternative proposals to deal with the revetment and  
3 with regard to the on shore properties. And from that, if  
4 you recall, there was a finding of no significant impact.  
5 And the choice that was taken was to leave the revetments  
6 there to provide for the easement. And that was all part of  
7 the environmental assessment process four years ago in 2004.

8           After that took place, then there was a process of  
9 gathering all of the parties that were involved in the  
10 shoreline process. The County was involved. The State was  
11 involved. And there were a number of analysis as to what  
12 exactly would be done. That's when Sea Engineering did a  
13 report and made a suggestion with regard to beach  
14 nourishments and the revetments.

15           So that process in granting the easement came as a  
16 result of the FONSI, the environmental assessment, which was  
17 approved by the Commission back in 2004. And, of course,  
18 the State commented and the State joined with that -- as  
19 that was the chosen alternative in the County at that  
20 time -- joined in that, that was the alternative. And  
21 that's why it was chosen. And that's why we are here today  
22 with the revetments being left, with the beach nourishment  
23 program, with the easement, with the appraisal.

24           I don't know if that history helps a bit. But it's  
25 a long duration. And I guess the point I was trying to make

1 is that the decision that triggered all of this was made in  
2 2004. Then the parties went into these agreements. And we  
3 went into the agreement with the State with regard to the  
4 easement and went forward with it, as we are today.

5 CHAIRPERSON AMORIN: Thank you, Paul Mancini. At  
6 this time, the steno needs a break. We will be in recess  
7 for ten minutes and reconvene at 2:35.

8 (At which time, a recess was taken.)

9 CHAIRPERSON AMORIN: The Maui Planning Commission  
10 of March 11, 2008, is back in session. We'll continue with  
11 questions and answers to our applicant. Paul Mancini.

12 MR. MANCINI: Yes, I just had a couple of comments  
13 on a few of the issues that were generated there and  
14 possibly would be helpful, and Mr. Starr's question on the  
15 drainage, the 25 percent. We would not object to a  
16 condition indicating that we had to at least retain 40  
17 percent over the 25 percent. I think we have no problem  
18 with the condition to that degree.

19 With regard to the future funding of the  
20 nourishment program, which is an interesting question to try  
21 to make it work out. My requested would be something like  
22 this. If you were to propose a condition that required the  
23 applicant to work out with the Department of Land and  
24 Natural Resources, as part of their easement, a post  
25 monitoring nourishment program to be part of it so there's

1 an obligation to do post nourishment and to work out a  
2 necessary deposit at that time after a monitoring program to  
3 deal with it, I think that would satisfy your concerns,  
4 which is one, obligation; and two, that there's some  
5 funding.

6           The issue always is what's the next step. And I  
7 think we have to work that out with DLNR after the  
8 monitoring. So if we've got the covenant that we, first,  
9 have to do it; and secondly, we'll work out the appropriate  
10 funding and let DLNR work out what the funding would be  
11 after that, you would have in my mind accomplished the  
12 objective that I see being part of your dialogue here. So  
13 I'm just throwing that out as something to think about it.

14           CHAIRPERSON AMORIN: Thank you. Your comments are  
15 so noted.

16           Commissioner Guard.

17           COMMISSIONER GUARD IV: This might be for  
18 Mr. Mancini that just came up and spoke. And in your  
19 dialogue, either outside why we were there, I know there's  
20 other fees involved, so we can't just keep adding small fees  
21 here and there. But to the tune of \$20 per unit owner --  
22 right, because there's 20,000 owners proposed?

23           MR. MANCINI: There will be whatever it happens to  
24 be, it is.

25           COMMISSIONER GUARD IV: At \$20 a year, that's going

1 to give them another \$1.4 or \$1.2 million per three years.  
2 That would be a pretty generous fund to almost match this  
3 initial major beach nourishment program that's been  
4 receding -- the coast line's been receding from those  
5 photos, I mean 30, 40 years. That, I think they could have  
6 a positive impact. They might not even need to use all of  
7 that, and it could lessen the load on the purchaser.

8 MR. MANCINI: Interesting comment. My comment was  
9 to create the obligation mechanism. Your comment was this  
10 is how you ought to fund it. That's an implementing task.  
11 Your comment was well taken.

12 CHAIRPERSON AMORIN: Commissioner Starr.

13 COMMISSIONER STARR: Mr. Mancini, I want to present  
14 you with another hypothetical. I know you like those  
15 hypotheticals?

16 MR. MANCINI: Yes, I do.

17 COMMISSIONER STARR: Now, the shoreline units have  
18 been reduced in number?

19 MR. MANCINI: That's correct.

20 COMMISSIONER STARR: And I think there's a definite  
21 feeling that the whole shoreline of this project is a major  
22 sticking point, and it's going to become maybe more  
23 problematic with time, trying to maintain the revetments as  
24 the erosion continues, and so on.

25 And there is a hypothetical solution, which in the

1 documentation, as we just heard, is probably would be the  
2 best solution, which would be to get rid of the buildings on  
3 the makai portion. And then instead, get rid of the  
4 revetments and create a nourishment fund. And that would  
5 allow for the existence of maintenance of a really  
6 first-class beach there. You know, instead of some little  
7 pockets with the revetments, but a real beautiful white,  
8 sandy beach with the funds to maintain nourishment on it.  
9 And it would be the show case of South Maui. And it would  
10 be probably, as a shoreline vacation property, would make  
11 this place the show case.

12 I'm wondering if there's any possibility of any  
13 consideration being given to that rather than trying to rely  
14 on the maintenance of these revetments, which I think  
15 everyone realizes are, you know, kind of a bad dog left over  
16 from a previous era?

17 MR. MANCINI: I think those considerations were  
18 given in 2004. And there was a consideration with regard to  
19 removing the revetments. There was talk about the  
20 environmental consequences of removing the revetments; what  
21 happens. To remove the revetments, you do need a  
22 Conservation District Use Permit, you do need a number of  
23 other processes, which will take a series of years to do.  
24 And we don't know the environmental consequences. Although,  
25 they were predicated somewhat today, not only with the road,

1 but with regard to the erosion and outfall into the ocean.

2 At that time four years ago, after considering all  
3 of those, this was the corrected choice. And, of course,  
4 the parties went forward with that. After 2004, there was a  
5 joint agency between County and State agencies and the  
6 Planning Commission. So it's very difficult to backtrack  
7 all of a sudden. And I think we all agree that there is a  
8 great deal of speculation on beach process; what's going to  
9 happen and where it happens, et cetera.

10 And the alternative other choice is to try this  
11 beach nourishment program, which we are hoping with the  
12 improvements will make this the model of North Kihei. So  
13 that's what we're hoping to implement.

14 CHAIRPERSON AMORIN: Thank you. Any more  
15 questions? Commissioner Hiranaga.

16 COMMISSIONER HIRANAGA: So does the Captain  
17 Vancouver Memorial, does that have any historical or  
18 cultural significance?

19 COMMISSIONER STARR: Good questions.

20 MR. HART: There's a sign on it that says it was  
21 dedicated by Mayor Elmer F. Caravello, December 22nd, 1969.

22 COMMISSIONER HIRANAGA: Actually, I was  
23 anticipating a response from your cultural expert.

24 MR. HART: Okay, you can hear from our cultural  
25 expert. But there is a little bit of history about it, and



1 I can share something with you.

2 MS. PESTANA: Elizabeth Pestana. I'm sorry. Can  
3 you repeat the question.

4 COMMISSIONER HIRANAGA: Does the Captain Vancouver  
5 Memorial have any historical or cultural significance?

6 MS. PESTANA: I'm not sure I can answer that  
7 question. Our research didn't include that. We focused  
8 specifically on the project parcel property, and I didn't  
9 get any data on that in my research of our investigations.

10 COMMISSIONER HIRANAGA: The planning consultant,  
11 Chris Hart, made a statement it was dedicated in 1969. If  
12 that monument was he erected in 1969, would you think it  
13 would have any historical or cultural significance?

14 MS. PESTANA: It would seem so. It seems to be  
15 obvious. But that wasn't included in our scope of work.

16 COMMISSIONER HIRANAGA: So you're saying it should  
17 be preserved, that it's a historical cultural monument? Is  
18 that what you would say?

19 MS. PESTANA: Well, my personal opinion is yes.  
20 I'm not sure that that's a recommendation that we would  
21 make. That would be left to the State Historic Preservation  
22 Division.

23 COMMISSIONER HIRANAGA: Thank you.

24 MR. HART: Chris Hart. Could I add a comment.  
25 Mr. Gibson, Gordon Gibson was from British Columbia. And

1 according to what we understand is that Captain Vancouver  
2 first cited the Hawaiian Islands from Maalaea Bay, that area  
3 was the first sighting of Hawaii, as far as his trip to the  
4 Sandwich Islands are concerned. And Mr. Gibson actually had  
5 some totems made in Canada -- they're basically legitimate  
6 totems -- and brought them to Maui, and actually created  
7 this memorial to Captain Vancouver. And it was dedicated on  
8 December 22nd, 1969.

9 But it is, you know, basically in the context of --  
10 it's a southern -- I'm sorry. The northernmost point of his  
11 property along the ocean. And it's meant to acknowledge the  
12 sighting of Maui by Captain Vancouver in the context of the  
13 vicinity of Maalaea.

14 COMMISSIONER HIRANAGA: Thank you.

15 CHAIRPERSON AMORIN: Any more questions,  
16 Commissioners? Commissioner Hedani.

17 COMMISSIONER HEDANI: This is a question for Phil  
18 Rowell. He's been quietly sitting in the back of the room  
19 and he hasn't fielded any questions until now. So I  
20 wouldn't want him to feel neglected.

21 STAFF PLANNER CUA: Ma'am Chair, before you start  
22 with Mr. Rowell -- okay. Although he is from Oahu, he is  
23 staying here this evening and probably can go later than the  
24 hearings officer. And I know we kind of had a format. But  
25 it's already ten to 3:00, and I believe the hearings officer

1 has a fight at 5:00. I'll just throw that out for you. I  
2 don't know if you would like to take the hearings officer  
3 now.

4 CHAIRPERSON AMORIN: So Phillip is not in a rush,  
5 okay. It's always good to have some humor.

6 COMMISSIONER HEDANI: He has escaped again.

7 CHAIRPERSON AMORIN: The Commissioners, if there's  
8 no objection, would you like to hear from the hearings  
9 officer?

10 COMMISSIONER STARR: Yes.

11 CHAIRPERSON AMORIN: Hearings officer, please state  
12 your name.

13 MR. HUNTER: Keith Hunter. I did give a  
14 presentation earlier, I think on January 8th. Obviously,  
15 the record has been reopened. And there's a much fuller  
16 record for you folks to consider with respect to the  
17 consultants. I also received a copy of proposed Planning  
18 Commission's findings and conclusions, and looked that over  
19 very carefully in comparison to the proposed findings I had  
20 made.

21 It doesn't alter my perspective in terms of my  
22 earlier findings. I think it's a much fuller report. It  
23 gives some context to some of the prior Planning Commission  
24 work that had been done prior to the contested hearing. I'm  
25 glad this opportunity has been presented to the Commission

1 to pose questions on all these technical issues, only some  
2 of which were really fully vetted during the contested  
3 caring hearsay.

4 If there are any questions, I'm happy to try to  
5 address them.

6 CHAIRPERSON AMORIN: Commissioner Starr.

7 COMMISSIONER STARR: Yes. As a hearings officer,  
8 how do you see the role of this body vis-a-vis both of the  
9 contested case and as of the intervention and in regard to  
10 our duties overseeing the SMA process? Because in some  
11 fashion, it seems they almost become conflicting duties.

12 MR. HUNTER: It's a very good question.  
13 Commissioner Mardfin and I were talking earlier about the  
14 issue of making this less disjointed. The issues that were  
15 presented this to hearings officer had to do with specific  
16 interventions that were approved for Mr. Haywood's clients.

17 The focus of the four days of testimony that we  
18 took was primarily on those issues because those were the  
19 issues in which intervention was granted. There was a lot  
20 of detailed information. I think there's five or six  
21 banker's boxes sitting in my office that I reviewed, that  
22 had to do with issues over which very little testimony was  
23 given; or if it was given, it was given in writing. And  
24 there was really nobody advocating against those positions.  
25 Those were just being presented in the interest of a full

1 record by applicant.

2 I think that the Commission probably needs to find  
3 a way to make sure it has a seat at that table to the extent  
4 that the hearings officer is going to be making findings and  
5 proposals and recommendations that ultimately find  
6 themselves in the SMA. So I think properly the brakes were  
7 put on in terms of making sure you folks had all the  
8 information you needed to make an informed decision on a  
9 very complex land use issue. So those would be my own  
10 personal observations, as this was the first hearings  
11 officer proceeding I presided over for this Commission.

12 But I do think you raised a good point. And  
13 hopefully, through this adjustment that's been made  
14 midstream, the Commission has the benefit of being able to  
15 actually pose difficult questions to Sea Engineering folks,  
16 drainage people, and the like.

17 CHAIRPERSON AMORIN: Any more questions,  
18 Commissioners? Commissioner Hedani.

19 COMMISSIONER HEDANI: In the discussion that you  
20 had on traffic with the intervenors, did the friction  
21 created by pedestrian traffic on Kihei Road get taken into  
22 account?

23 MR. HUNTER: I think it was the better part of an  
24 entire afternoon. If I remember correctly, Mr. Ruzach  
25 (phonetic) testified. Mr. Rowell was recalled on redirect,

1 or on rebuttal. And I think it was Mr. Yamamoto who was  
2 doing the peer review for the applicant's traffic expert  
3 work, all testified. And there was a long discussion about  
4 pedestrian traffic, both on South Kihei Road and with  
5 respect to where the reoriented entry into the -- the  
6 reposition of Maui Lu was going to take place.

7           There was site line questions about visibility and  
8 those sorts of things, all of which were -- it was almost a  
9 colloquy in terms of experts talking, going back and forth  
10 on those issues.

11           COMMISSIONER HEDANI: From my perspective, the  
12 question that I need answered is whether or not the interest  
13 is -- if you have 400 units, and each unit has 95 percent  
14 occupancy, and you can have up to four or six people per  
15 unit, you know, that's going to be several thousand people  
16 that may or may not want to cross the street. And my  
17 concern is they would all go and trigger the signal and  
18 press the gold button on South Kihei Road 300 or 400 times a  
19 day.

20           From your perspective, after hearing all of the  
21 testimony that you've heard, do you have an opinion as to  
22 whether or not traffic is going to come to a grinding halt  
23 on South Kihei Road as a result of pedestrian traffic?

24           MR. HUNTER: I think Mr. Hart addressed that a  
25 little bit earlier this morning. I think a lot would depend

1 on the level of occupancy of the Maui Lu at any given time.  
2 During the high season, when you have 90 or 95 percent  
3 occupancy, and potentially 3 to 5 people per unit, clearly  
4 there would be a potential traffic problem. I mean, I'm not  
5 a traffic specialist. But clearly, it would seem to me  
6 there would be alternatives.

7 In Honolulu, a lot of studies would show people  
8 won't go across Ala Moana Boulevard to have lunch at Aloha  
9 Tower because they have to cross six lanes of traffic. And  
10 for years, people have thought about pedestrian bridges and  
11 underground tunnels and things to make the pedestrians  
12 safer. I would imagine there is potential problems during  
13 peak pedestrian times or beach access times that the traffic  
14 along South Kihei Road could get backed up. That's  
15 certainly a real possibility.

16 But I'll defer to Professor Rowell, Dr. Rowell on  
17 those issues.

18 COMMISSIONER HEDANI: Oh, we'll pick on him later.

19 MR. HUNTER: I bet you will.

20 COMMISSIONER HEDANI: Thank you.

21 CHAIRPERSON AMORIN: My more questions,  
22 Commissioners, for the hearings officer? Commissioner  
23 Mardfin.

24 COMMISSIONER MARDFIN: This is going to be an  
25 unfair question in some ways, but I want to ask it. You

1 said there was other information presented other than -- the  
2 two contested things had to do with kitchens and with  
3 traffic. But you said there was other testimony that was  
4 taken. Is there anything that you saw that we should be  
5 asking about?

6 MR. HUNTER: You actually got more than I did.  
7 Virtually, all the consultants that are here that didn't  
8 testify live submitted, by agreement, witness testimony  
9 under oath in writing. It was unrebutted. But it was in  
10 the form of what their direct testimony would be if they  
11 were appearing in court. It was formal testimony.

12 And then I believe the exhibits which Ann talked  
13 about earlier today all were admitted into evidence. And  
14 they go all the way back to the EA, the application, the SMA  
15 application, and all of those documents. So that is the  
16 body of evidence and data that I reviewed in conjunction  
17 with, not only the hearing, but in prepping the proposed  
18 findings.

19 But there was nothing outside of what's in the  
20 record that was considered. And as I said earlier, you have  
21 a much fuller record now because you've reopened the  
22 hearing, and you've actually gotten a chance to pose your  
23 own questions of these consultants.

24 CHAIRPERSON AMORIN: Commissioner Starr.

25 COMMISSIONER STARR: Now, the summation of your



1 recommendation states, "For these reasons, I conclude and  
2 recommend that the Planning Commission should find that  
3 redevelopment of Maui Lu will create no ecological,  
4 environmental effect on the coastal area; is consistent with  
5 the objectives, policy and guidelines of the Special  
6 Management Area; and is consistent with the County's General  
7 Plan Community Plan, its applicable zoning ordinances. It  
8 is therefore, my recommendation that the intervenor's  
9 challenge to the application be dismissed, and that the  
10 applicant's Special Management Area permit should be  
11 granted."

12 I mean, on one hand, that says it all. However,  
13 you know, it's my understanding that those comments are  
14 based on a very narrow purview and are related only to  
15 issues related to traffic and to the impact of the units  
16 having kitchens, and that absolutely no -- no weight was  
17 given to issues such as shoreline -- shoreline integrity,  
18 you know, runoff, or any of the other things that we need to  
19 look at as Commissioners to perform our duty as to the final  
20 authority for the shoreline area.

21 I'd like your comments on that, and whether I'm  
22 correct in thinking that -- you've done your duty because,  
23 you know, you gave your opinion regarding those two specific  
24 issues and from what you heard. However, our duty is much,  
25 much wider because it would take into account your

1 recommendation regarding those two issues, but maybe there's  
2 another eight or ten issues that we have to look at. So  
3 your recommendation to us, we have to take with a grain of  
4 salt because we have to look at all these other things for  
5 SMA. Am I correct in that?

6 MR. HUNTER: Well, partially. But remember, I  
7 think you have to look at the moment in time and the  
8 assumptions that I was making when I was serving as a  
9 hearings officer in February, March, April 2007. My  
10 understanding is that the applicant had been completely  
11 through the process, and that the only issues upon which  
12 intervention was granted were those two issues that you  
13 pointed out.

14 What was submitted into evidence to me as the  
15 hearings officer was all of those other materials which you  
16 mentioned that are exhibits before you today. They were  
17 essentially un rebutted. I can only rule on the record  
18 that's before me. And at the time, the two intervention  
19 issues were really the only ones that were contested by the  
20 intervenor and litigated over between the applicant and the  
21 intervenor.

22 So when those recommendations were made, it was  
23 with the assumption that the parties had been all the way  
24 through the process, and the only thing left was the issues  
25 which intervention had been granted. Obviously, the

1 proposed findings, and so on, are really at a different  
2 stage. They are at a stage where you folks are really  
3 vetting through and providing your analysis and properly  
4 raising issues with respect to those matters that weren't --  
5 as a mentioned earlier, that weren't the subject of an  
6 intervention.

7           And that's where I think the process probably needs  
8 a little bit of tuning up. Because you want to make sure  
9 that the Commission has a seat at that table if it's got  
10 concerns over issues that aren't being litigated between the  
11 intervenor and the applicant.

12           COMMISSIONER STARR: It's my understanding that  
13 this body did not look into any issues or performance duty  
14 regarding the SMA at the initial -- you know, at the initial  
15 time. And I'd like to get comments from Staff and Corp.  
16 Counsel to that effect. And that really what happened is  
17 the issue most likely came before this body, there was a  
18 request for intervention, and it was granted before this  
19 body actually either did research or decision-making as far  
20 as our SMA responsibilities go.

21           STAFF PLANNER CUA: Actually, you did not initially  
22 grant intervention. What normally happens when an  
23 application comes before you and there's a petition to  
24 intervene. We do go through the presentation. The Planning  
25 Department goes through an analysis. However, it's not a

1 conclusionary analysis. And we don't provide you  
2 conclusions and a recommendation.

3           But there is a presentation made. We go through  
4 all the facts. You ask questions of the department. But  
5 again, it's not -- we don't come to conclusions and a  
6 recommendation. You do have an opportunity to even question  
7 the applicant. So there is quite a bit of record developed  
8 at that point. And that is pretty typical of any SMA  
9 application or any application that goes through the  
10 contested case hearing, or that is presented with a petition  
11 to intervene.

12           And you also have to recall that even to get that  
13 point -- before you can even get scheduled with the  
14 application -- before a public hearing can be scheduled, if  
15 there is an environmental assessment trigger, that process  
16 has to be completed first. And through that process, you  
17 saw the application. Or you saw the project twice. You've  
18 given comments. You've seen other agency comments. Your  
19 comments have to be addressed. All the other agency  
20 comments have to be responded to. And that's all in the  
21 final environmental assessment -- or final environmental  
22 impact statement that you recommend approval of before the  
23 project can even come back and be scheduled before this body  
24 for a public hearing on an SMA permit.

25           Does that make sense?

1           COMMISSIONER STARR: Yeah. But still, just to go  
2 through slightly further. And I know we had a little bit of  
3 discussion about this at a previous meeting; that we can  
4 either handle this as a one-stage process, which would be to  
5 say, you know -- say there were a desire to dismiss the  
6 challenge and -- by the applicant, and to approve the SMA,  
7 which is what was recommended by the hearings officer; or we  
8 could deny, or whatever.

9           But we could also -- there's also an ability to  
10 deal with it as a two-stage process if we were to -- if we  
11 decided that the application did not have merit and we were  
12 to dismiss it and then deal -- and then left before us is  
13 still the SMA issue alone without the intervention --

14           STAFF PLANNER CUA: And I believe --

15           COMMISSIONER STARR: In other words, that's a  
16 second option.

17           STAFF PLANNER CUA: When you look at the agenda,  
18 that's how we list it. It's listed as two separate matters.  
19 So I think when you actually get to voting and deciding,  
20 you're going to have to dispense with the -- or deal with  
21 the intervenor's position before you act on the SMA permit.

22           COMMISSIONER STARR: And then what happens if we  
23 feel that the intervention has merit and we don't dismiss  
24 it? Well, then, what do we do and what happens?

25           STAFF PLANNER CUA: You've granted the

1 intervention. You've allowed -- well, the intervention has  
2 gone through. They went through the whole contested case  
3 hearing. You have the entire record. Now, it's basically  
4 in your hands, you know, the two issues. You have to decide  
5 if you feel that the issues are valid.

6           The two issues raised by the intervenor is  
7 kitchens, the appropriateness of kitchens in the  
8 Kihei/Makena Community Plan Hotel Designated District, and  
9 traffic.

10           COMMISSIONER STARR: Okay. Say we decided that we  
11 didn't -- that kitchens are not appropriate and so that the  
12 intervention has merit. You know, this is a hypothetical.  
13 Then what happens? And we vote the intervention -- we do  
14 not vote to dismissal the challenge, then what happens?

15           STAFF PLANNER CUA: Well, that would become part  
16 of -- I don't know if I'm understanding you.

17           Corp. Counsel.

18           COMMISSIONER STARR: I mean, does the project die?  
19 Does it go to some other process? What happens? Say if we  
20 were to uphold the intervention?

21           CORPORATION COUNSEL: I hate working with  
22 hypotheticals. But what you've got to be clear with is in  
23 your decision-making, that if you agree with the intervenor,  
24 and it's a basis that is contrary to 205(a) -- basically,  
25 their position is that either the project doesn't meet or

1 conform with the policies and objectives of 205(a), or isn't  
2 inconsistent with the Community Plan or General Plan, then  
3 it would be a basis for a denial of an SMA permit.

4 So that's, I believe, what you're asking me.

5 COMMISSIONER STARR: Then we would vote -- say we  
6 didn't dismiss the intervention, we felt it had merit. Then  
7 we would still go to a vote on the SMA, and that would be a  
8 basis to deny? If we have to vote yah or nay on the  
9 intervention, what happens? If we vote yag this, if nay  
10 that way, what happens?

11 COMMISSIONER HEDANI: Point of order.

12 CHAIRPERSON AMORIN: Commissioner Hedani.

13 COMMISSIONER HEDANI: Can we kind of slow this down  
14 so that the person trying to transcribe this meeting can  
15 actually figure out who is saying what, when.

16 COMMISSIONER STARR: Good comment. I'm sorry.

17 CORPORATION COUNSEL: So what you're asking me,  
18 what do you dispose of first? If after -- and I've got to  
19 remind you, you're not done taking all the testimony. So if  
20 you get to the end of all of the testimony, now you're  
21 getting into discussion. The first thing you probably want  
22 to take care of is the intervenor's issues.

23 If you dispose of those and they do not -- you do  
24 not find them to be dispositive of denying the SMA, based on  
25 all of the testimony and all of the questions given during

1 this contested case, period, you still have to do your  
2 analysis of everything within 205(a) and finding if it all  
3 lines up or meets the burden of following the policies and  
4 objectives of 205(a).

5 So step A, take care of the intervenor's issues.  
6 Step B, take care of everything within 205(a). And then at  
7 the end, you have a choice. Yes, the applicant has met its  
8 burden and the project does meet the policies and objectives  
9 of 205(a), he gets a permit to build.

10 On the flip side, if it's no, there's something  
11 that does not meet the objectives and policies of 205(a) and  
12 you can't find a mitigative remedy, then you start -- if you  
13 can't formulate a remedy or the impact, then you can then  
14 look at denying the permit. But you have to go through  
15 those steps first.

16 CHAIRPERSON AMORIN: Commissioner Mardfin.

17 COMMISSIONER MARDFIN: This sounds a little  
18 different than what I think I heard on January 8th, when we  
19 were told that we could approve the hearing officer's  
20 report. But then that was tantamount to approving the SMA.  
21 And now you're telling us, I think, that we can go through  
22 the issues one-by-one without dealing with the hearing  
23 officer's report? Or we deal with the hearing officer's  
24 report after we go through the issues?

25 CORPORATION COUNSEL: Well, let me clarify this.



1 Because we've gotten to the point where you've gotten a  
2 hearings officer's report, on that day when you received the  
3 report, if there was a motion to adopt it, you basically  
4 would be taking the findings of facts that were produced  
5 from that hearing; and, in effect, by adopting the findings  
6 and facts of the hearings officer, that action would grant  
7 the SMA permit.

8           Instead, there was a question about whether or not  
9 there was enough facts taken up at that hearing. So your  
10 action to open up to further testimony then requires you  
11 also to look at each and every policy and objective in  
12 205(a).

13           CHAIRPERSON AMORIN: Commissioner Starr.

14           COMMISSIONER STARR: Yeah. I'm sorry to maybe be a  
15 little dense here. But does that mean we have an option of  
16 dismissing the intervention per the hearings officer, and  
17 then still be dealing with the SMA based on the additional  
18 testimony that we received? In other words, we would  
19 only -- in that case be accepting part of the hearings  
20 officer's recommendation?

21           MR. HUNTER: I believe so.

22           CORPORATION COUNSEL: Yes, I would concur with  
23 that, that you have the option -- and the full intention is  
24 that, even though you opened up for further testimony,  
25 everything that was taken under oath is being made part of

1 the record. So you can take the bits and the parts that you  
2 like or don't like; you can incorporate parts of the  
3 proposed findings of facts from the hearings officer; and  
4 you could also create, based on the new testimony, new  
5 findings of facts and new conclusions of law.

6 STAFF PLANNER CUA: Ms. Chair, if I could ask a  
7 quick question to Corp. Counsel.

8 Part of what we have to do -- part of the steps you  
9 were laying out was to, in one way, shape or form, deal with  
10 the hearing officer's report? Because at the last meeting,  
11 they deferred it.

12 CORPORATION COUNSEL: Yeah, I think it's -- even  
13 though you opened up testimony, it's still a tool that you  
14 need to look at. Because he did do a lot of work in getting  
15 you all of this information. He's put it to you in a very  
16 orderly fashion. What we're just doing is we're trying to  
17 augment parts that we feel were not sufficiently questioned.

18 MR. HUNTER: I have a question too about the  
19 additional exhibits. Those are coming into the record, I  
20 understand, into evidence. Will there be a supplemental  
21 document that reflects that those additional exhibits will  
22 come into evidence? Or will that just be produced by the  
23 Commission?

24 CORPORATION COUNSEL: I believe that's why we were  
25 trying to mark them as they came in. So they would be part

1 of the record. And then we would be producing another  
2 proposed findings of facts, conclusion of law, based on the  
3 vote taken by the Board. And we would have to follow the  
4 Chapter 91 process of reviewing it, allowing the parties to  
5 comment and object to it. And then we would actually at a  
6 later meeting, take another vote to adopt those findings of  
7 facts and conclusions of law, as far as an action of the  
8 Board.

9 STAFF PLANNER CUA: So if I could add to that, if  
10 that's okay. So basically what that means in laymen's  
11 terms, for people like me, is that the report that you all  
12 have, that we all have, the one we're dealing with now, the  
13 one that I meshed together with the officer's record and the  
14 report that was done by the Planning Department in 2005,  
15 your attorney and I are taking copious notes here because we  
16 know that if you ever -- if you get to the point and when  
17 you get to the point where you're going to make a decision  
18 one way or the other, we are going to need to take that  
19 report and add to it everything that happened today.

20 And that is going to be the report, which has a lot  
21 of what was done by Mr. Hunter, a lot of those facts.  
22 Because we couldn't take that out because that is the  
23 record.

24 CORPORATION COUNSEL: Yes. A lot of facts may be  
25 duplicative. But what we're looking that is any fact that