

1 is significant enough to affect the decision-making of the
2 body. Because your decision has to be based on facts that
3 were introduced at the hearing. So that's what we're doing.

4 CHAIRPERSON AMORIN: Commissioner Mardfin.

5 COMMISSIONER MARDFIN: I'd like to ask Corp.
6 Counsel. We're not ready yet. I think they've got more
7 questions. But at the point we're ready to make a decision,
8 would it be appropriate to have, one, a motion to approve
9 the findings of facts and conclusions of law for the kitchen
10 issue; and then a second motion to accept the hearing
11 officer's findings of facts and conclusions of law with
12 respect to the traffic issue; and then a third motion to go
13 on with the rest of the SMA material?

14 CORPORATION COUNSEL: I think through discussion,
15 you might try to hash that out during discussion. If you
16 find there's enough agreement on certain issues, you might
17 be able to just put those aside and vote and dispose of
18 them.

19 But you have to understand that this body is going
20 to be required to produce a findings of facts and
21 conclusions of law. So you have to look at basically the
22 proposed findings of facts and the conclusions of law, and
23 try to work off of those. And to look at that and say where
24 you would want those augmented.

25 Because you've got the hearings officer's, and you

1 also have Ann's. So that's two bodies of work to go off of.
2 Plus, the new information being presented today.

3 CHAIRPERSON AMORIN: Commissioner Mardfin.

4 COMMISSIONER MARDFIN: The only reason I asked it
5 the other way -- I see your -- what you're recommending, and
6 I think it's fine. The main reason I was proposing the
7 other way is because I wanted to recognize the hard work of
8 Keith Hunter, as the hearings officer. I think he did an
9 excellent job of bringing the issues together, putting them
10 in a way -- at least in my first meeting, there was stuff I
11 could understand. And by deferring it, we, in effect,
12 denied him the ability of his hard work being recognized.
13 And I wanted to recognize his hard work.

14 CHAIRPERSON AMORIN: Thank you. Any more
15 questions, Commissioners?

16 CORPORATION COUNSEL: I'm going to add one thing.
17 And we'll go into this more when we get to the
18 decision-making. But you can adopt things in partiality.
19 You can adopt in part. And that will leave the majority of
20 the product in place. And then you can also work down and
21 start tweaking it, too. So we'll get there when we get to
22 decision-making. But I think we should move forward and get
23 to further testimony.

24 CHAIRPERSON AMORIN: Any more questions? Thank
25 you. No more questions for the hearings officer?

1 Commissioners, you want to hear any more testimony
2 from any of the consultants out there? Phillip.

3 MR. ROWELL: Okay. Phillip Rowell of Phillip
4 Rowell and Associates. I did the traffic study.

5 CHAIRPERSON AMORIN: Commissioners, questions?
6 Commissioner Hedani.

7 COMMISSIONER HEDANI: Phil, I took a look at the
8 traffic reports, all of the information that was provided on
9 the traffic reports. And I noted, while they were very,
10 very extensive, most of them didn't talk about pedestrian
11 friction. How did that enter into the traffic report
12 itself?

13 MR. ROWELL: Well, when I did the analysis -- and I
14 assume you're talking about the intersection of Kaonoulu and
15 South Kihei Road?

16 COMMISSIONER HEDANI: Correct.

17 MR. ROWELL: I assumed there would be a separate
18 pedestrian phase. And typically what happens is you have a
19 certain amount of pedestrian crossing time, then you have a
20 clearance level. Typically, you can handle around 200
21 pedestrians per hour without extending that pedestrian
22 phase.

23 So, you know, if you are able to assume there's
24 going to be one-fourth of all these units emptying out all
25 at one time, then we probably need to make some adjustment

1 on the signal timing, which we can do. Because this
2 intersection is operating at a low service of signal C,
3 which gives us a lot of flexibility. But the pedestrian
4 friction or pedestrian impacts is considered in the EOS
5 analysis.

6 It's just a given thing. When you do the analysis,
7 you do an production phase, and you say yes and how many
8 seconds you're going to put in.

9 COMMISSIONER HEDANI: Let me rephrase the question
10 in a different way. Is there a way of tweaking the signal
11 so that you don't end up with traffic backing up for miles
12 on South Kihei Road?

13 MR. ROWELL: Yeah. First of all, I don't think
14 that's going to happen because we have a fairly high level
15 of service, to begin with. I know there's some areas on
16 South Kihei Road where it backs up between the signals. And
17 you go through that area. And you're right, there's some
18 pedestrian friction. But it's not the level we expect in
19 this area.

20 When I did the counts, I saw a lot of pedestrians
21 up and down South Kihei Road, very little were crossing. So
22 I think what's going to happen is you're going to see the
23 major of the increase is going to be coming from this
24 resort. If we go in and we find out we are creating some
25 backups, the easiest thing to do is adjust the signal

1 timing. That's a manual thing after a project is
2 implemented.

3 COMMISSIONER HEDANI: How would you do that? Which
4 way would you adjust the signal timing? Would you make the
5 pedestrians crossing more frequently or less frequent? Or
6 is it more complicated than that?

7 MR. ROWELL: The solution is relatively simple.
8 But it becomes really how your philosophy of how you're
9 going to time a traffic signal. And we spent a lot of time
10 talking about this just the other day.

11 What you see happening in other areas where you see
12 the long backups and the long cues is not really a function
13 of the pedestrians crossing. It's a function of signal
14 timing, to lengthen the signal phase. There's a direct
15 relationship between that back-up, or that cue you see
16 behind the signal, and the cycle length. And longer the
17 cycle length, the longer the cue, the longer the delays, the
18 lower level of service.

19 So the trick is -- when I was a city traffic
20 engineer, we made the cycles as short as possible. And what
21 governed a cycle length was the length of time for the
22 pedestrian to cross the street.

23 COMMISSIONER HEDANI: So just tell the pedestrians
24 to run like hell and you make it really short.

25 MR. ROWELL: There's a certain amount of time given

1 for pedestrians to cross. That's your green time. Then you
2 have a clearance interval, which is when it goes to a flash.
3 Then it's supposed to go to a solid when you reach the
4 midpoint of the far lane. So there's three phases in there
5 in the first phase of when you've got the pedestrian walk.
6 And you can adjust that.

7 CHAIRPERSON AMORIN: I have a question, Phil.
8 Where the roundabout is to be located, are there any
9 crosswalks in the vicinity right now?

10 MR. ROWELL: I have a drawing somewhere. Hang on a
11 second. I'm not showing it on my field drawing. But you're
12 talking about Alulike and Kaonoulu?

13 CHAIRPERSON AMORIN: That's correct.

14 MR. ROWELL: I'm not showing one on my field
15 drawings.

16 CHAIRPERSON AMORIN: So there is no crosswalk, and
17 there should not be a crosswalk when the roundabout is put
18 in place?

19 MR. ROWELL: I guess the simplest way to say that
20 is different people have different perceptions of pedestrian
21 safety when it comes to crosswalks. We've been in here
22 through a number of hearings where people say a roundabout
23 is safer for pedestrians to cross because traffic is moving
24 slower. And therefore, there are more gaps in the traffic,
25 and pedestrians are safer to crossing when that traffic is

1 moving slower.

2 None of the literature I found in the design
3 manuals back that you. It says the pedestrian crosswalks
4 should be located away from the intersection because the
5 driver, as he tries to move into the roundabout, is not
6 looking for a pedestrian, he's looking for a car over his
7 shoulder. So what happens is you end up putting a little
8 splinter island in and put your pedestrian crosswalk back
9 away from the intersection, usually one or two car lengths.
10 It's a design detail.

11 CHAIRPERSON AMORIN: I'm familiar with roundabouts
12 only because I'm originally from Oahu. And I frequent one
13 that's in Pearl City in my family's neighborhood. And also
14 in Moana Lua, where my grandson lives. And it is a calming
15 measure. I mean, the long street where my family lives,
16 it's a calming measure where we don't have all of the
17 speeding going on by teenagers, or somebody who is trying to
18 get there in the fast lane. And it's worked.

19 It takes the communities to actually adjust to
20 that. And I've never heard of any accidents happening in
21 the areas where roundabouts are. I look forward for
22 something like this to come to Maui. And it's all about
23 protecting the community.

24 Commissioner U'u.

25 COMMISSIONER U'U: Yeah, a question -- during the

1 traffic survey, was it ever taken into consideration the new
2 improvements they made along the Piilani Highway? And I'm
3 thinking it probably would help the Maui Lu Resort with less
4 traffic flow now than it did in the past. You've got any
5 comments on that?

6 MR. ROWELL: I missed something. There's less
7 traffic flow?

8 COMMISSIONER U'U: There's road work that's just
9 being completed.

10 MR. ROWELL: The realignment?

11 COMMISSIONER U'U: Where it takes you to that left,
12 and you bypass the lower portion of Kihei. That probably
13 will help this project alleviate some of the traffic and
14 open it up for more pedestrian right-of-way. Am I correct
15 in stating that?

16 MR. ROWELL: First of all, yes, that will help the
17 traffic as it comes down. It's going to take traffic off of
18 South Kihei Road is what's it's going to do. It's going to
19 put it on Piilani Highway.

20 And along that line, we did some counts for 2007
21 versus the counts we did in 2004, I believe when they had
22 just finished the widening. And we saw like a 25, 30
23 percent drop in traffic on South Kihei Road. And that
24 project is a direct result of that widening project.
25 Traffic previously was doing 25, 30 miles an hour on each

1 road. Once they did the roadway improvements, they still
2 had to do 25 on South Kihei Road, but they could do 45 or 50
3 on Piilani. And that was backed up by the police
4 department's comments.

5 So when this realignment is completed, that traffic
6 that used to stay on Mokulele and go over to South Kihei
7 Road and make that left turn, about half of that traffic
8 will stay on Piilani Highway and further reduce the traffic
9 along South Kihei Road. So that was considered in our
10 forecast because we knew that the levels of service that
11 were shown were a little on the conservative side.

12 CHAIRPERSON AMORIN: Commissioner Guard.

13 COMMISSIONER GUARD IV: Did you take into account,
14 I guess, the testimony from is it Dr. Prevedouros?

15 MR. ROWELL: Which one?

16 COMMISSIONER GUARD IV: The first one, discussing
17 that we should be looking at 2012 levels of traffic. Any
18 comments on that? And then second, I found it interesting
19 regarding the issue of just putting in a traffic light,
20 period. And all of the time you lose, the lost time at red
21 lights, et cetera. It's on Page 14 of that.

22 MR. ROWELL: Those comments were written to the old
23 traffic study in 2002, 2003. When we started discussing --
24 one of the things that he was talking about was old
25 conditions. He was talking about conditions that existed in

1 2002. We are now 2005, 2006. And we knew that the
2 situation in the field had changed drastically since then.

3 So when he was writing those comments, we had
4 already scoped out another traffic study we were trying to
5 get started on, but we couldn't do it because of the
6 construction on South Kihei Road. So most of his comments,
7 we considered and probably took them one step further.
8 Because he was recommending 2012. We went to 2015. We
9 expanded the study area largely because of some of the other
10 development projects that were happening in the area.

11 But he brought up some valid points; things have
12 changed, traffic volumes have shifted, so we should look at
13 a larger study area.

14 COMMISSIONER GUARD IV: Then what about the issue
15 of unsignalized intersections versus the signalized
16 intersections, and its effect probably at South Kihei Road?

17 MR. ROWELL: I assume we're talking South Kihei
18 Road and Kaonoulu.

19 COMMISSIONER GUARD IV: Yes, versus how Chair
20 Amarin is discussing a possible roundabout instead. Any
21 comments in looking into that?

22 MR. ROWELL: I don't recall a roundabout ever being
23 looked at in that intersection because South Kihei was a
24 major arterial. The analysis I did earlier and the subject
25 analysis of this report concluded that the warrants for

1 traffic signals were satisfied. So we proceeded on that
2 assumption.

3 CHAIRPERSON AMORIN: Commissioner Hiranaga.

4 COMMISSIONER HIRANAGA: I still don't understand
5 roundabouts. I experienced them. But it seems to me at a
6 local capacity, they appear to be a traffic calming
7 mechanism. But at height capacity when the roundabout is
8 full of cars and cars are trying to get in, it's not a
9 calming mechanism because people get stuck in the middle and
10 can't get out, or they miss their turn and go round and
11 round. That happened to me, I experienced it on the
12 mainland.

13 MR. ROWELL: I don't know think we want to
14 primarily hear about roundabouts today. But I think you're
15 right. I've always said roundabouts fall into two
16 categories. A traffic calming measure on a residential
17 street, what those residents want or are willing to live
18 with, that's their prerogative. They go through the process
19 to say what they want, and that should get put in.

20 A roundabout on a major arterial is a totally
21 different animal. I think a very good example is when they
22 were doing the Mokulele Highway widening project, we
23 actually delayed the project six to eight months to assess
24 whether it should be a roundabout or traffic signal. And
25 what we had found out is as those cues on those major

1 arterials back up, the accident rates go up.

2 The literature show as those traffic volumes build
3 and build, so do the accidents. They are minor accidents,
4 but they are still accidents. You're right. They are two
5 different animals.

6 CHAIRPERSON AMORIN: Commissioner Guard, followed
7 by Commissioner Mardfin.

8 COMMISSIONER GUARD IV: Well, I'm glad you brought
9 up a minor accident is good pointer on that, that you reduce
10 head-ons or people being able to go at high impact.

11 MR. ROWELL: But you do get a lot more rear-ends.

12 COMMISSIONER GUARD IV: I went on a trip to New
13 Zealand with people from Maui being put right on roundabouts
14 everywhere for the first time. Out of ten vehicles, a lot
15 of them chaperones with kids in the car going crazy as well,
16 we all survived.

17 So I think with the group we had, it's testament
18 that it can be done. And we're going to give people a
19 little bit of encouragement that they can change. They can
20 adapt. Is that -- to me, not having that reduction where
21 you don't have to stop every time there's a light, whether
22 there is someone there or not. Right?

23 I mean, if you get there at 2:00 in the morning
24 when there's a red light when there's not a car in sight,
25 yet you cross that intersection and get pulled over by a cop

1 versus we could get out of that scenario with these. And
2 we're trying to get South Kihei Road from being a major
3 arterial anyway. Correct?

4 MR. ROWELL: I respectfully agree and disagree. I
5 think the continuous moving, that you say, slow is probably
6 good for the major arterial. But the side streets, it makes
7 it harder for them to get out. The traffic signal does
8 create gaps in the traffic flow for both pedestrians,
9 driveways and side streets.

10 The other advantage to the traffic signal when it
11 comes to pedestrians is it gives a positive; you go or you
12 don't go. And that's an advantage in areas particularly
13 when you have people that are not familiar with the area, or
14 particularly around schools, senior citizen groups, you
15 still want, in my opinion, a defined safe crossing, period.

16 CHAIRPERSON AMORIN: Commissioner Mardfin, followed
17 by Commissioner Hedani.

18 COMMISSIONER MARDFIN: I have two. One is at the
19 south end of the project signals. Has it already gone in,
20 or is it about to go in?

21 MR. ROWELL: It will go in when the project does.

22 COMMISSIONER MARDFIN: Okay. Was there any reason
23 not to have one at the north end of the project on South
24 Kihei Road?

25 MR. ROWELL: That's the minor driveway.

1 COMMISSIONER MARDFIN: Okay. My other question is
2 on the roundabout. The intervenor has been concerned that
3 you don't really have a design there for the roundabout
4 there. I just want to ask one general question.

5 Is it intended to be -- I've used roundabouts in
6 Hilton Head, South Carolina and a lot in Europe. In Hilton
7 Head, it's sort of one lane around. But I've seen
8 roundabouts where there's two lanes. You get in the middle
9 if you're going to go 270 degrees, and you get in the right
10 lane if you're just going to go 90 or 180. And I'm curious
11 if you're going to do it as one lane or two lane?

12 MR. ROWELL: I did this capacity analysis as one
13 lane. And I subjectively did a layout at the request of my
14 client. After the last hearing, there was a question. And
15 I put that lane as 18-feet wide. So I visualized it as one
16 lane. And it didn't work at a high level of service.

17 CHAIRPERSON AMORIN: Commissioner Hedani.

18 COMMISSIONER HEDANI: At the intersection of
19 Kaonoulu and South Kihei Road, did you consider -- or I know
20 it was required to put in a signal from Public Works. Is it
21 possible to consider a roundabout at that location as well,
22 or was it considered and discarded for some reason? You
23 just take orders from Public Works?

24 MR. ROWELL: No. Since we met the safe warrants
25 for signals -- and we met that a long, long time ago. And

1 it was part of the original plan and seemed to be acceptable
2 at that time, we just assumed that -- we checked the
3 warrants again, checked to see if we got the warrants. If
4 we got the warrants, we stick with the signal.

5 COMMISSIONER HEDANI: Would a roundabout work at
6 the intersection of Kaonoulu and South Kihei Road?

7 MR. ROWELL: The question is would it work well. I
8 don't think it would work very well.

9 COMMISSIONER HEDANI: On what basis?

10 MR. ROWELL: One of the basic standards for a
11 roundabout is that you have essentially equal approach
12 volumes of each leg. And we don't have that situation here.
13 The approach volumes on Kaonoulu are lower than those on
14 South Kihei Road.

15 The other consideration is I don't think you have
16 enough room to put that in there because there's the
17 right-of-way, and there's a little bridge, I think. Just
18 south of the intersection is a covert or something. I think
19 it would be difficult to put in.

20 COMMISSIONER HEDANI: Thank you.

21 CHAIRPERSON AMORIN: Thank you. Any more
22 questions, Commissioners?

23 Thank you.

24 MR. HAYWOOD: I'd like to ask him some questions.

25 MR. MANCINI: Susan Burr would like to leave for a

1 plane. I asked her to holdup to make sure there wasn't a
2 question for her. Because we would kind of be embarrassed
3 if we were looking for her and she wasn't here. So if
4 anyone has any questions for Susan, you can ask them. Or we
5 could say it's basically okay for her to catch her plane.

6 COMMISSIONER HEDANI: I have one question for
7 Susan.

8 Susan, my concern is over the drainage system that
9 exists on the right side of the project -- well, as you're
10 looking at it from the makai side, on the right side of the
11 project that dumps into the ocean. If you had a
12 recommendation for improving water quality relative to that
13 system, what would that be?

14 MS. BURR: Reduce nonpoint source pollution from
15 the water shed up above.

16 COMMISSIONER HEDANI: So that would be kind of like
17 trap petrol chemicals or sediment coming from other areas?

18 MS. BURR: I would say prevent those chemicals from
19 entering the waterway in the first place.

20 COMMISSIONER HEDANI: Okay. But nothing in the
21 vicinity of the project that would be able to improve water
22 quality?

23 MS. BURR: I think that's more of an engineering
24 question. But from sort of the land use planning, I'd say
25 prevent it from coming into the waterway, I don't imagine

1 that you could fix a problem on that small scale.

2 COMMISSIONER HEDANI: So you're not advocating
3 things like channelization, or anything like that?

4 MS. BURR: No.

5 COMMISSIONER HEDANI: Okay.

6 CHAIRPERSON AMORIN: Commissioner Starr.

7 COMMISSIONER STARR: Yes. While we have you here,
8 I just want to widen our scope for a minute. I know we are
9 on a tight leash to ask you to diffuse things just for a
10 second. This is the year of the reef. It's nationally the
11 year of the reef. Our reef is dead in South Maui. This is
12 in that area. There's almost no coral growth, as you've
13 mentioned.

14 What can we do, you know -- I guess this project,
15 there's not a heck of a lot, but maybe there's something.
16 What could we do in general as a land use body, empowered to
17 deal with shoreline issues, to try to promote our coral,
18 resurgence of coral?

19 MS. BURR: I'd say protect hard surfaces that you
20 have now, protect any limestone platforms that are there.
21 Improve water quality. I'd say those are the two biggest
22 things.

23 CHAIRPERSON AMORIN: Thank you. Any more questions
24 for Susan? Commissioner Hedani.

25 COMMISSIONER HEDANI: In your surveys of the

1 offshore areas, did you notice large fields of sand
2 offshore?

3 MS. BURR: We noticed that it was predominantly
4 sand from the shoreline to -- I think it was 150 meters
5 offshore. It was predominantly sand, but it also had
6 limestone, bedrock, boulders and rubble.

7 COMMISSIONER HEDANI: Thank you.

8 CHAIRPERSON AMORIN: Any more questions for Susan?
9 Commissioner Mardfin.

10 COMMISSIONER MARDFIN: What would the impact be of
11 removing the existing -- help me with this. The hardened --

12 MS. BURR: Revetment?

13 COMMISSIONER MARDFIN: If they were removed, what
14 would be the impact of water quality, et cetera?

15 MS. BURR: Well, I think you would have erosion, as
16 Mark had said. You would have erosion of the fill material
17 that's directly behind the revetment. So you would have
18 increased turbidities, suspended solids in the area until
19 that had sort of redistributed and entered into some sort of
20 new configuration.

21 So you would have an increase in turbidity and
22 suspended solids for a period of time -- I'm not sure how
23 long that would be -- until the coastline would reconfigure
24 itself.

25 COMMISSIONER MARDFIN: So it won't really help the

1 situation from a biological point of view?

2 MS. BURR: No.

3 CHAIRPERSON AMORIN: Commissioner Starr.

4 COMMISSIONER STARR: Yeah. I would assume that if
5 the revetments were removed properly, that would also
6 involve removing the fill that doesn't belong there, and
7 replacing it with beach quality sand so that the -- well,
8 what would be ended up with would be beach quality sand and
9 a sandy beach instead of, you know, mud left over; in which
10 case, would we still have the problems of degradation?

11 MS. BURR: Problems of -- I guess you need to have
12 both a biological look at that and a coastal engineering
13 look at it. I think you would -- on that rock wall, you
14 would lose some habitat for certain; crabs snails, opihi
15 that may live there. But if you have a sand beach there,
16 you'd have new habitat for, say, ghost crabs, and then
17 public recreations. I mean, certainly rock walls provide
18 some habitat, but sand provides some habitat, too.

19 I don't think it would change the near offshore
20 environment one way or the other, except for that initial
21 release from sediments from erosion that might occur.

22 CHAIRPERSON AMORIN: Any more questions for Susan?

23 Thank you very much, Susan. Have a nice flight.

24 Guy Haywood, cross-examination.

25 MR. HAYWOOD: I have some questions for Mr. Rowell.

1 Guy Haywood.

2 Mr. Rowell, I think one of the things you talked
3 about was the proposed testimony of Dr. Prevedouros that
4 analyzed the traffic study that you did in 2003. Didn't
5 he -- well, as I understand it, a warrant, a traffic warrant
6 that you've been talking about means that you do an analysis
7 that a light is necessary; correct? Isn't that what a
8 traffic warrant is?

9 MR. ROWELL: Say that again.

10 MR. HAYWOOD: A traffic warrant is essentially an
11 evaluation of whether a light is necessary or not at an
12 intersection; right?

13 MR. ROWELL: No. I think you're using the wrong
14 word.

15 MR. HAYWOOD: What is the correct word?

16 MR. ROWELL: There are eight warrants specified
17 that we go through the process. And if one or more of those
18 warrants are satisfied, then we should consider putting in a
19 signal. It doesn't mean we have to. By the same token,
20 there are a lot of instances where you don't meet the
21 warrants, but engineering judgment tells you to put a signal
22 in.

23 So these are not warrants. They're not telling you
24 whether they are needed or not. They are just saying
25 they're justified.

1 MR. HAYWOOD: What's the difference between
2 justified and needed?

3 MR. ROWELL: Need means -- for instance, you could
4 go to an intersection, and you may have very low volume, but
5 have accidents. Then you probably need to consider putting
6 a signal in. Whether it meets the number of accidents or
7 type of warrants -- I guess not type of warrants. But to
8 meet the warrants is another question.

9 You may have a situation adjacent to a school where
10 you want to put in a signal. And you need to put one in
11 because you're dealing with children crossing the street,
12 but you don't need the warrants.

13 MR. HAYWOOD: Well, however you justify or decide
14 to put a light in, it could be by engineering standards? It
15 could be by the various warrants? It could be by
16 topography? It could be by children? It could be by many
17 things, couldn't it?

18 MR. ROWELL: Correct.

19 MR. HAYWOOD: Your study, though, didn't say what's
20 going to happen once the light goes in. That was one of
21 Dr. Prevedouros' concerns. Right?

22 MR. ROWELL: I don't know what Prevedouros' concern
23 was. But what conditions would be when the traffic signal
24 were in were reported in the report.

25 MR. HAYWOOD: You stated earlier that people -- you

1 observed in your doing the traffic studies, people walking
2 up and down South Kihei Road, for the most part?

3 MR. ROWELL: Right.

4 MR. HAYWOOD: And you've also stated that people
5 needed to define a safe crossing area; correct?

6 A. That is my opinion, that I would rather see
7 pedestrians -- particularly in a school area or area of
8 senior citizens or even in a resort area, that pedestrians
9 would have a defined crossing area, yes.

10 MR. HAYWOOD: And in this particular project,
11 there's actually three crossing areas for pedestrians?

12 MR. ROWELL: Correct.

13 MR. HAYWOOD: One is it at the light on the south
14 side, one is in the middle, and one is on the north side?

15 MR. ROWELL: Correct.

16 MR. HAYWOOD: And do you recall Mr. Hart's
17 testimony that he expected the majority of the traffic to be
18 in the middle where there is no light?

19 MR. ROWELL: Yes. And we have taken, what I would
20 consider, appropriate mitigation number one.

21 MR. HAYWOOD: Mitigation being the island, the
22 refuge island?

23 MR. ROWELL: The refuge island. And the signal
24 will actually help that because it will create gaps.

25 MR. HAYWOOD: So it creates gap so they can run

1 across to the island and wait and run to the next one?

2 MR. ROWELL: They can walk across.

3 MR. HAYWOOD: Thank you.

4 CHAIRPERSON AMORIN: Thank you. At this time, we
5 are going to take a break again. And we'll reconvene in ten
6 minutes.

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

8 CHAIRPERSON AMORIN: The Maui Planning Commission
9 meeting of March 11, 2008, is back in session.

10 STAFF PLANNER CUA: Just a question. If you are
11 done with Mark from Sea Engineering and Ms. Pestana, I
12 believe they need to catch their planes. So could they be
13 dismissed?

14 CHAIRPERSON AMORIN: Commissioners, any more
15 questions? Commissioner Hedani.

16 COMMISSIONER HEDANI: I have one question for Mark.

17 CHAIRPERSON AMORIN: Any questions for Elizabeth?
18 Commissioners, do we have any questions for Elizabeth?

19 Have a nice trip, Elizabeth.

20 COMMISSIONER HEDANI: Does the seawall, the
21 revetments on the makai side, they are described as loose
22 rubble. Well, they're basically kind of like a sloppy
23 revetment.

24 MR. ERICKSON: We call them nonengineered.

25 COMMISSIONER HEDANI: Nonengineered revetment.

1 Okay. Sea Engineering has done designs in the past. I call
2 it a Hiashi wall. But it was actually done by Sea
3 Engineering at the Mahana in Kaanapali, which is a slant
4 wall which matches the slope of the beach.

5 MR. ERICKSON: A sloping rock revetment.

6 COMMISSIONER HEDANI: Which works really slick when
7 I've seen it. Because it disappears during normal times,
8 and it only appears during high wave events or when you have
9 a severe storm event. Could the revetments that are
10 replaced -- the organic revetments that are placed in front
11 of the Maui Lu be altered so they could accrete sand?

12 MR. ERICKSON: One of the advantages of a rock
13 revetment is that it's very porous and reduces wave
14 reflection as compared to a vertical seawall or other
15 non-porous structures; and therefore, will allow sand to
16 reaccumulate back in front.

17 The Mahana situation is different than you have
18 here. And likely, there would be no change in coastal
19 processes if you replaced this nonengineered revetment with
20 an engineered sloping rock revetment. This revetment is
21 still porous and still -- although it's at a steeper slope,
22 the porosity reduces reflection, it's a different erosion
23 environment here. So I don't expect that you'd see any
24 difference in terms of accretion in front with an engineered
25 sloping rock revetment.

1 COMMISSIONER HEDANI: Thank you.

2 CHAIRPERSON AMORIN: Commissioner Starr.

3 COMMISSIONER STARR: Yeah, if you had a blank slate
4 approach to this and you wanted to maximize usable sandy
5 beach along that whole portion, could you give us --- you can
6 go over to the picture and kind of show us what you might
7 do. I know you mentioned T-groins, and stuff like that.
8 Where would they be? What would it look like?

9 MR. ERICKSON: The ideal approach, if we weren't
10 concerned with impacts to the offshore reef environment that
11 would be an East Coast type of beach nourishment project,
12 where they would pump hundreds of thousands of cubic yards
13 of sand and basically build out your beach along the entire
14 Kihei coast to be equivalent of maybe a shoreline that we saw
15 existed here in 1940 or 1900.

16 That's a massive project, the likes of which has
17 never occurred in Hawaii for a variety of reasons. One
18 being, we don't have those kinds of sand deposits offshore.
19 Two, we have major environmental considerations with the
20 reef and the water quality that they are not concerned with
21 on the East Coast. So if we had a blank slate, that would
22 be an ideal project that would not have hard structures and
23 would produce a recreational sandy beach that's also
24 protective of the shoreline.

25 In lieu of that, if you wanted to protect your

1 shoreline and your structures there with a sand fill that
2 would be guaranteed to last and would be retained and not
3 washed offshore, you would employ a series of T-head
4 groins, probably spaced on the order of 300-feet apart,
5 extending, let's -- and again, this is off the top of my
6 head. This would have to be designed. Extending 150 to 200
7 feet out in the water, just at intervals all the way down
8 this beach, probably to terminate here. You would want to
9 tie into the kind of renovated rock wall here, put a spur in
10 here. And then at, let's say, football field intervals,
11 have T-head groins, you could minimize impact by tapering
12 the stem elevations to bury itself in the sand.

13 So that would be the type of concept. And it's one
14 that we're working on for Waikiki.

15 COMMISSIONER STARR: In order of magnitude, is that
16 a \$100 million project, a \$10 million project?

17 MR. ERICKSON: Again -- not \$100 million. \$100
18 million would be more of a massive sand pumping project,
19 given the cost of locating and dredging sand offshore. In
20 the tens.

21 CHAIRPERSON AMORIN: Commissioner Hedani.

22 COMMISSIONER HEDANI: Mark, did you folks do a sand
23 survey off of this area?

24 MR. ERICKSON: We have not done a sand survey off
25 of this area. And I am not aware of any sand surveys that

1 have been done off the Kihei area.

2 COMMISSIONER HEDANI: So you don't know if there's
3 been a sand source off --

4 MR. ERICKSON: I'm not aware. And the near shore
5 area, as Susan has mentioned, I think is a mostly a thin
6 veneer of sand with lots of hard-core rubble. And, you
7 know, the steps that would need to be required that we would
8 need to do to start assessing that, there's various ways we
9 could attack it. But initial reconnaissance-type level with
10 doing some site scan sonar and grab sampling.

11 CHAIRPERSON AMORIN: Any more questions for Mark?
12 Seeing none, thank you, Mark.

13 MR. ERICKSON: Thank you.

14 CHAIRPERSON AMORIN: Have a night flight. Any more
15 questions for the other consultants? Seeing none, Ann Cua.

16 STAFF PLANNER CUA: Do you have any questions of
17 me? Thorn was with me all day. I'm not sure where he went.
18 His pen and his book are still here.

19 CHAIRPERSON AMORIN: Commissioner Starr.

20 COMMISSIONER STARR: It's a shoreline question, but
21 I think it's actually an administrative question. And I'm
22 sure you're able to answer it.

23 Now, if I had a house next to the shoreline and I
24 had a nonconforming structure protecting it. And maybe the
25 house was nonconforming because of setback. And if I were

1 doing various -- if I were doing work that was more than a
2 certain value, I would have to make it conforming. Right?
3 If I had a house right behind the shoreline that was
4 nonconforming and had a nonconforming seawall and I was
5 doing work beyond a certain value -- you know, the house had
6 a fire, or I was going to replace a one-room house with a
7 mansion, whatever, I would have to make it conforming to
8 setbacks and all of that.

9 I don't really understand why this case is
10 different. Because basically, it's a whole new resort being
11 built here, why the nonconforming revetments aren't, as a
12 matter of course, being removed to allow a proper shoreline
13 certification to be done, and the whole thing started with
14 the clean piece of paper.

15 STAFF PLANNER CUA: I think maybe Thorne can
16 respond to that better than me.

17 STAFF PLANNER ABBOTT: Starting with a clean sheet
18 of paper. My apologies for the absence. Relevant to any
19 private land owner, they can repair a nonconforming
20 structure with unlimited financial -- no limitations on
21 finances. So it could be \$1 million, it could be half a
22 million dollars, so long as they don't enlarge, expand or
23 intensify the use, and the damage was not caused by coastal
24 hazards or coastal erosion to that structure.

25 For example, if you had a bungalow that was eaten

1 up by termites, you could repair it and replace it as long
2 as you didn't enlarge it. If it was a permitted structure,
3 you could replace it up to 50 percent of its replacement
4 cost, even if it was damaged by coastal hazards. So that's
5 the difference.

6 In this particular case, this is nonconforming
7 because these boulders were, in essence, dumped on the makai
8 side of the property boundaries. So somebody placed
9 something in the State jurisdiction on State land. Just as
10 if I built my hot tub on your property, you probably either
11 want me to remove it or buy an easement for it. So in this
12 case, the property is buying an easement because the State
13 decided that removing the revetment was not the best course
14 of action, with all things considered from its perspective.

15 Does that answer your question, Commissioner Starr?

16 COMMISSIONER STARR: Not really. How about the
17 public trust? You know, it seems like the State is trying
18 to preserve the property owner, but it's the opposite who is
19 getting gourd as a public trust by allowing the revetments
20 to continue.

21 I mean, I understand that it might take someone
22 suing the State for not protecting the public trust. But it
23 seems like the State's decision was against all of their
24 shoreline policies. Could you comment on that.

25 STAFF PLANNER ABBOTT: Well, I won't speak for the

1 State, but I will speak to what the rationale on what their
2 decision was, to the extent that I know of that.

3 This revetment was built prior to any law
4 regulating that area. And there are many revetments and
5 seawalls, such as over in Lahaina, that were built long,
6 long ago. So we try to bring those in conformance. One way
7 to do that is by purchasing an easement. The other way
8 would be to remove the structure or any of portion of that
9 structure that's on the State property. And another one
10 would be to remove it and replace it with a more modern
11 technology.

12 In this case, the land owner put rocks on the
13 State's property. But at that time, there were no rules.
14 So when the State had rules -- actually, what happened is
15 when they subdivided the portion -- and Chris can correct me
16 on this if I'm wrong. They subdivided out the mauka lot and
17 the makai lot. And when they did that, they actually
18 subdivided out the revetment. So the revetment became an
19 encroachment in care of the subdivision. And that's also
20 when they had to deal with it.

21 The argument for removal -- and we've heard a lot
22 of testimony. Mark provided excellent testimony, as well as
23 Susan did. If you're going to remove these, you'd also have
24 to remove all the fill behind it. As Zoe Norcross' letter
25 from Sea Grant stated, that would be a very expensive

1 proposition. However, if you did that, it's likely you
2 would restore a continuous beach along that area.

3 One mitigating factor to that is, of course, the
4 revetment to the north at the cross road is protecting South
5 Kihei Road. The overall issue is that the road is in the
6 wrong place relevant to ongoing chronic coastal erosion.
7 Even if you took all the buildings out, took the revetments
8 out, you'd eventually have to abandoned the road.

9 That's not absurd. We're doing that over on the
10 pali to Puamana project, where the subdivision through that
11 redevelopment process is moving the road 600 feet inland
12 because those areas are eroding, too. That's one way to
13 deal with it.

14 The State's primary concern when we were on our
15 site visit in 2004 was lateral shoreline access. There
16 isn't lateral shoreline access there now. The revetment is
17 a bit unsafe during high tied. So that was their biggest
18 kuleana. And the applicant has proposed a number of
19 measures which restores that access which the State felt was
20 appropriate.

21 I think the State's mindset -- I can't speak for
22 them. But I think the record backs this up. Basically, you
23 have an issue where it's very expensive to pull out the
24 revetment. We're not sure, as Mark pointed out, what
25 benefit ecologically that would be. It would probably

1 restore to a nice beach over a long period of time, but you
2 have a maybe because of the revetment up near the road. And
3 so the County and the State would have to concur, we're
4 going to abandoned this road and remove it.

5 And so all things considered, I think the State
6 felt that restoring lateral access in several beach areas
7 was the best outcome given their limited influence on this
8 project.

9 COMMISSIONER STARR: What happens if the revetment
10 gets damaged severely through storm action?

11 STAFF PLANNER ABBOTT: I think this question was
12 asked earlier, who is responsible for maintaining that. And
13 I believe -- I can't speak categorically. But the State
14 normally, when they grant an easement, also requires that
15 there's a maintenance schedule, or maintenance caveat with
16 that. So the primary beneficiary is the land owner. So
17 they are probably going to be responsible. That's a
18 probably.

19 COMMISSIONER STARR: I thought a nonconforming
20 structure, if it was damaged by an act of nature, cannot be
21 rebuilt.

22 STAFF PLANNER ABBOTT: Without a variance from this
23 Commission when it's within your purview. But this isn't
24 within your purview because it's on the State's
25 conservation. So technically speaking, it's the State's

1 call.

2 COMMISSIONER STARR: Okay. Even though the fact
3 that this is being damaged?

4 STAFF PLANNER ABBOTT: The flanking?

5 COMMISSIONER STARR: The flanking which is
6 occurring, not only on the State's portion, but the flanking
7 is occurring in the setback area.

8 STAFF PLANNER ABBOTT: It is. And, in fact, it's
9 occurring on a County parcel, which is a County park. So
10 that's a very good point. And how they rectify that is in
11 this proposal, I believe, is through the beach nourishment
12 activities. So you have flanking on the south end. You
13 have it on the north and the south. But the south is where
14 it's particularly severe, right beyond -- I think it's
15 Building C, the last most southern building. There's a
16 little notch in there that's being eroded away at a pretty
17 steep --

18 COMMISSIONER STARR: Are there sand bags there?

19 STAFF PLANNER ABBOTT: There's geotextile bags, the
20 last time I checked about two years ago. I believe the idea
21 is to pull those out and do beach replenishment in that
22 area, compensate and provide a soft buffer to the flanking
23 erosion. I think Mark could speak as to whether that's
24 effective or not.

25 COMMISSIONER STARR: So is this body put in a

1 position to have to okay the beach replenishment as a repair
2 to storm damage in the setback area of a nonconforming
3 seawall?

4 STAFF PLANNER ABBOTT: That's a good question. Let
5 me see if I understand the question correctly. If they want
6 to repair the revetment at a later date?

7 COMMISSIONER STARR: No, they are doing the repair
8 by doing beach replenishment. In other words, that's the
9 mechanism for repairing the flanking erosion.

10 STAFF PLANNER ABBOTT: I wouldn't call it a repair.
11 I'd consider it a response, one response. Another response
12 would be to leave the geotextile bags in that are there. I
13 think they are proposed to be removed. With those
14 geotextile bags, they would probably have no issues with
15 flanking. But those bags, we would prefer to see sand
16 rather than hardening surface.

17 May I ask if Mark can comment on this.

18 STAFF PLANNER CUA: He's gone.

19 STAFF PLANNER ABBOTT: Oh, he's gone.

20 CHAIRPERSON AMORIN: Any more questions for Thorne?
21 Commissioner Hiranaga.

22 COMMISSIONER HIRANAGA: I read somewhere that said
23 the shoreline certification was granted in October of '03,
24 and that new shoreline rules were adopted in November '03,
25 which are not applicable to this project. And I just wanted

1 someone to explain that.

2 STAFF PLANNER ABBOTT: Sure. Speaking from a
3 policy perspective, we have certain rules that we are
4 obligated to use and to implement. This application was
5 made -- the SMA application, I believe, was made on the date
6 that this Commission decided to approve new erosion based
7 shoreline setback rules.

8 Although the Commission approved it on that day, it
9 doesn't, of course, become law. It has to go to the
10 Corporation Counsel's office, it has to go to the Mayor for
11 signature, then it has to be registered by the County Clerk.
12 That occurred on November 30th, 2003. So this application
13 was already in the till. And it was treated under the
14 guidelines and rules of that particular date.

15 At that time, we didn't use erosion rate setbacks,
16 we used average lot depth setbacks. Looking at this parcel,
17 you'll see there's two parcels; mauka and makai. The makai
18 portion is skinny. So its setback is 25 feet, based on
19 average lot depth. If you add up the average lot depth
20 calculations, it comes up 98 feet. Anything under 100 feet
21 of an average lot depth has a setback of 25 feet. Anything
22 from 100 to 160 feet in an average lot depth has a setback
23 of 40 feet. So the erosion rates don't apply in this case,
24 just the average lot depth.

25 COMMISSIONER HIRANAGA: I have a question. When

1 you say policy of the department, I believe that's different
2 from rules and ordinances. So it is an SMA rule or is it a
3 Planning Commission rule or is it a Planning Department
4 policy that made the determination that the new rules do not
5 apply to this application?

6 STAFF PLANNER ABBOTT: Oh, I probably misspoke.
7 That's not a policy. I think that's just the way the rules
8 are. The rules aren't official until they're entered by the
9 County Clerk and ten days have past.

10 COMMISSIONER HIRANAGA: Who made the determination
11 in the new rules don't apply on to this application?

12 STAFF PLANNER CUA: I can comment on that. What I
13 mentioned earlier when I did my presentation is the
14 application was submitted on October 23rd of 2003. And at
15 that time, the rules that were in place -- shoreline rules
16 that were in place is what the project was reviewed based
17 on. The new rules got adopted after this application was
18 submitted. It's just that this application has been in the
19 hopper for so long.

20 COMMISSIONER HIRANAGA: No, I understand that. Who
21 made the determination that the new rules don't apply?

22 STAFF PLANNER CUA: It's common practice that you
23 cannot apply rules to -- rules that have not been adopted to
24 a project that's come in prior to the rules being adopted.
25 If the project came in -- if the application came in after

1 November 27th, 2003, then it would have been subject to the
2 new rules.

3 COMMISSIONER HIRANAGA: But the new rules were
4 adopted in November '03. This project hadn't been approved
5 yet. So I'm just -- I mean who -- in subdivisions, if
6 you're granted preliminary subdivision approval, you're
7 pretty much grandfathered into all the old rules. In this
8 instance, is it the determination of the Planning Director,
9 new rules don't apply once they've submitted the application
10 because it's been approved yet? I just want to understand
11 who made that determination.

12 STAFF PLANNER ABBOTT: Actually, Deputy Director,
13 who has now been promoted to Planning Director, based on her
14 name tag there, made comment to this. But DSA, Development
15 Services Administration, certifies that an application is
16 complete, and then transmits that to the Director of
17 Planning. They do that based on the date of when it was
18 submitted and if proper documents were in the -- like
19 ownership, and that sort of thing. So as of that date,
20 those are the rules that are effective to that particular
21 application, even though it hasn't been approved yet, just
22 as you commented on.

23 For example -- anyway, that's who would have made
24 that decision. And I believe that's a matter, of course, of
25 the rules of both this Commission and County Code, rather

1 than a policy decision.

2 Deputy Director, would you care to speak to that?

3 DEPUTY DIRECTOR SUYAMA: Because I'm not familiar
4 with the specifics as to how the determination was done in
5 terms of what was the shoreline setback and what rules were
6 going to be used in enforcing the shoreline setback, I
7 really can't address that issue today.

8 CHAIRPERSON AMORIN: Commissioner Starr.

9 COMMISSIONER STARR: Had the new rules been in
10 effect, how would it affect this project? Can you show us
11 on the map.

12 STAFF PLANNER ABBOTT: There's several ways the new
13 rules would have affected this. First off, the new rule --
14 well, first off, the old rules apply. And that's clear.
15 That's ruled on. In an ideal world, had the new rules
16 applied, where you have a revetment that's legal, then the
17 erosion rates cease to apply. In those places where the
18 erosion rates are established and do apply, for the most
19 part, which is at the three beaches -- the north, the pocket
20 and the south -- the erosion rate established runs between
21 1.9 foot a year -- I'm sorry. A low of 1.3 a year, to a
22 high of three foot a year.

23 Sea Engineering did some additional studies. And
24 they added a data point from 1990, which reduced those
25 numbers from, I believe, down to 1.1 to 1.7 foot per year.

1 In either event, you'd modify that by 50, add 25 feet, and
2 you're well mauka of the road. Well mauka.

3 Now, having said that, that would basically
4 indicate that your three pocket beaches would be on the
5 mauka side of the road, maybe over by the wall, and you'd
6 have two little peninsulas in there where the revetments
7 exist and the buildings.

8 I think, looking at -- if I may one moment.
9 Looking at the larger graphic, just draw a line visually
10 with your eye. Would this area be subject to erosion or
11 not? I think it would be.

12 The other thing about the intent of the new rules
13 is that the intent of the new rules is that we don't invest
14 in properties that are in harm's way. And so we probably
15 would not bifurcate this project into two separate parcels.
16 Although it has not been bifurcated, you would want to
17 redevelop the entire site in a manner that was prudent, that
18 protected the shoreline, that put an investment in its
19 proper place, and reestablished lateral shoreline access.
20 That would be the difference.

21 COMMISSIONER STARR: So what I got from that is
22 that if the new rules had been intact, there would not have
23 been any structures in the makai portion?

24 STAFF PLANNER ABBOTT: I won't necessarily say
25 that. But what I could say is that we would encourage the

1 applicant to redevelop the property; to invest their funds
2 primarily in the mauka portion; reestablish shoreline access
3 laterally and perpendicular, which they're doing an
4 excellent job; and minimum their footprint on the makai
5 portion. That would be our recommendation.

6 They still can come to you for request approval
7 because their walls are nonconforming. And they have
8 legitimized those through the State DLNR's Coastal and
9 Conservation Lands easement process.

10 COMMISSIONER STARR: But I remember --
11 theoretically, they can build behind the revetments. But I
12 remember the rules also have something about the side. In
13 other words, they could -- my belief is they would have to
14 take out most of those buildings.

15 STAFF PLANNER ABBOTT: I believe Zoe Norcross'
16 letter commented on this, which is in the record from July
17 29th, 2004, states that if you took everything out, you
18 know, you'd probably have a nice long beach. But that would
19 be extremely extensive. And if you took the revetments out,
20 the buildings would clearly be in danger very quickly,
21 imminent threat. The applicant has the right to protect
22 imminently threatened habitable structures. So he'd have to
23 go to the State and seek that approval, as well as this
24 Commission.

25 CHAIRPERSON AMORIN: Commissioner Hiranaga.

1 COMMISSIONER HIRANAGA: I just notice we lost
2 Corporation Counsel. And I guess my question is since we're
3 in a contested case hearing, is it appropriate for us to
4 continue without the presence of Corporation Counsel?

5 DEPUTY DIRECTOR SUYAMA: Unfortunately, the
6 Corporation Counsel had to leave and couldn't find a
7 replacement. It would not be advisable because he is your
8 legal counsel in this contested case proceeding. And if
9 there is a legal matter that comes up, the department staff
10 would be unable to advise you.

11 CHAIRPERSON AMORIN: Commissioner Starr.

12 COMMISSIONER HEDANI: Can we use Martin as our
13 attorney?

14 COMMISSIONER STARR: I also believe that James is
15 going to have to prepare the report and order. And if he's
16 not here to hear what's going on, it's going to be a very
17 difficult task for him. So I'd like to ask whether a motion
18 to defer would be in order.

19 CHAIRPERSON AMORIN: Commissioner Hiranaga.

20 COMMISSIONER HIRANAGA: Or I'm not sure what the
21 ramifications are for a recess.

22 CHAIRPERSON AMORIN: Are you calling for a recess
23 at this time?

24 COMMISSIONER HIRANAGA: No. I'm asking which is
25 more appropriate; to bring this matter back quickly, do we

1 recess this to the next meeting?

2 CHAIRPERSON AMORIN: Staff Planner, do you have any
3 comments?

4 STAFF PLANNER CUA: If you're going to recess, you
5 have to recess within six days. And so we'd have to check
6 on availability of this room. And we can do that.

7 And just for the Commission's information, I'm
8 going to be preparing the report, and then giving it to
9 James. And we would have to use the transcripts to follow
10 up.

11 DEPUTY DIRECTOR SUYAMA: I think one more important
12 thing, if you're going to recess, because you are basically
13 acting at this point as the hearings officer. That would
14 mean that all of you that are here today needs to be at the
15 recessed meeting. So whatever commitment you make, it has
16 to be with the understanding that the eight of you that are
17 here today should be at that recessed meeting to hear the
18 evidentiary portion of the meeting, which is what we're
19 doing now.

20 CHAIRPERSON AMORIN: Commissioner Iaconetti,
21 followed by Commissioner Hiranaga.

22 COMMISSIONER IACONETTI: Not that this should have
23 us decide anything. But do we all realize that if we do not
24 come to a conclusion today, that we are going to be carrying
25 all of the material on and off the desk so that we have it

1 again here at the next meeting, which is not a very
2 practical thing, at least for me.

3 CHAIRPERSON AMORIN: Commissioner Hiranaga.

4 COMMISSIONER HIRANAGA: So has the agenda for the
5 next meeting been set?

6 DEPUTY DIRECTOR SUYAMA: The agenda has not been
7 set yet. But I believe you have one public hearing, plus
8 you folks have determined that the first matter of business.
9 The next meeting, the 25th, is going to be another contested
10 issue matter, which is the Hyatt Regency. That is scheduled
11 as the first matter at 8:30, on the 25th.

12 And Clayton, I believe we have a public hearing on
13 that date also, the 26th, 27th?

14 MR. YOSHIDA: Yes, you have a public hearing. It's
15 supposed to start at 1:00, on an SMA permit request for
16 expansion of the Kahului Minit Stop store on Wakea Avenue.

17 CHAIRPERSON AMORIN: Commissioner Hiranaga.

18 COMMISSIONER HIRANAGA: As a personal statement,
19 because this is a contested case hearing and we've kind of
20 created a hybrid by possibly not adopting the hearing
21 officer's report in full, and we may come up with additional
22 conditions, with the presence of all of these highly
23 qualified attorneys and the audience, I would feel
24 uncomfortable proceeding without Corporation Counsel's
25 presence. That's my personal feeling.

1 STAFF PLANNER CUA: We can look at availability of
2 the room.

3 CHAIRPERSON AMORIN: Commissioner Starr.

4 COMMISSIONER STARR: Yeah. Move to defer to the
5 first meeting of April.

6 COMMISSIONER HIRANAGA: I'll second that.

7 CHAIRPERSON AMORIN: I have a motion on the floor
8 to defer by Commissioner Starr, seconded by Commissioner
9 Hiranaga.

10 Commissioner Hiranaga.

11 COMMISSIONER HIRANAGA: I was fully prepared to
12 continue. I'm not sure for how long. But to continue.
13 Because Corporation Counsel is not present, I feel
14 uncomfortable proceeding. Especially, in this particular
15 matter. It's not a normal application that we're reviewing.

16 CHAIRPERSON AMORIN: Commissioner Mardfin.

17 COMMISSIONER MARDFIN: If we defer to April, I
18 believe we lose the Chairman, and that will make
19 decision-making even more difficult if there are fewer
20 people, that we'll reach a five-vote decision.

21 STAFF PLANNER CUA: Ma'am Chair, we also have a
22 Planning Commission training that day. There's agenda
23 things planned for that day. The department would be very
24 open to looking at the availability of this meeting room so
25 we could still deal with this body who has heard everything.

1 You know, if you go into April and you have a new
2 commissioner, that commissioner is going to have to come
3 up-to-speed on everything that you have heard.

4 CHAIRPERSON AMORIN: Thank you. Commissioner U'u.

5 COMMISSIONER U'U: I was hoping we could recess
6 this and come back with a special meeting. I'm willing to
7 do it. Or we can wait four more years.

8 Just kidding. But I'm willing to recess this. And
9 if you guys can schedule this within the required time, I
10 know that it will be a tough call to retrain the other new
11 Commission with the agenda items we have -- not retrain,
12 but -- it will be burdensome to redo this again.

13 CHAIRPERSON AMORIN: Thank you. Paul Mancini.

14 MR. MANCINI: Yes. I've got a personal problem.
15 I'm theoretically supposed to leave the island Thursday
16 night and come back the 22nd. I'm not sure that follows
17 your six-day rule that's there. Obviously, I could make a
18 lot of enemies, including my wife and people, and not go on
19 my trip.

20 I'm wondering if it's possible to have a special
21 meeting, identify a special meeting sometime either the day
22 before your 24th meeting, something like the 23rd, or a day
23 after that, if that's possible. I hate to put my personal
24 problems in front of you. That was just a request that I
25 have.

1 CHAIRPERSON AMORIN: Planning Commission goes to
2 the end of the month, March, though.

3 MR. MANCINI: Anytime before March 31st was my
4 hope, to have a special meeting at that time.

5 CHAIRPERSON AMORIN: Commissioner Iaconetti.

6 COMMISSIONER IACONETTI: Is there a possibility
7 that another member of the judicial group could come down
8 here and sit in so that we all feel comfortable?

9 STAFF PLANNER CUA: I could respond to that. I
10 believe the Deputy Director indicated that when your
11 Corporation Counsel left, he checked and was not able to get
12 back-up. If we could take maybe just a three-minute recess,
13 the Deputy Director is on the phone with James Giroux right
14 now. And Carolyn went upstairs to check the availability of
15 this meeting room for the next six days.

16 When she comes back with that, we could go over
17 that. You could pull out your calendars, see what your
18 schedule is like to see if we can reconvene to finish this
19 matter off. You did see the list that we presented to you
20 of the items that are ready today, as we speak, to get on
21 the agenda. So we're trying to be able to dispose of these
22 very large matters.

23 And the Hyatt is coming up next. So we can tackle
24 the 25-plus items that's ready to go for you today. And
25 that list continues to grow. So can we take a quick recess?

1 CHAIRPERSON AMORIN: Is there anything important
2 that needs to be said right now?

3 DEPUTY DIRECTOR SUYAMA: I did talk to James on the
4 phone. He's our Deputy Corporation Counsel. He advised me
5 that you have to recess within the six days. However, you
6 don't all have to be present. But you have to understand,
7 who does not come to the next meeting, the recessed meeting,
8 cannot vote on any of these issues. Because it's assumed
9 that at the next meeting, you're going to come to a
10 decision-making. So that's a decision that you, as
11 Commission members, have to make.

12 The other thing is if we defer it, it would be
13 preferable to defer it before the end of the Commission's --
14 Chairman's term. Because we do have the problem of bringing
15 the new Commissioner on board to be cognizant of what's
16 going on. And that new Commission member would have to
17 review the complete record. In other words, all these
18 boxes, all the verbal testimony that has occurred today, as
19 well as all the minutes.

20 So they would have to review the complete record.
21 So that Commission member would have to be given the
22 opportunity to do that. So for that reason, we would advise
23 you to try to do either a recessed meeting, or to defer it
24 to your next meeting, which is on the 25th. Or you can
25 schedule a special meeting before the end of March 30th.

1 STAFF PLANNER CUA: In terms of this room
2 availability, we could have you come back here on Friday.
3 But probably at the earliest, 11:00. What we have in this
4 room Friday morning is our departmental meeting, and then
5 our all planner's meeting.

6 CHAIRPERSON AMORIN: Commissioner Starr.

7 COMMISSIONER STARR: Yeah. I have a recording
8 session book for all day Friday. And I very much would like
9 to be at the end of this.

10 STAFF PLANNER CUA: We also could do Monday, the
11 17th in the afternoon, starting at 1:00.

12 CHAIRPERSON AMORIN: Monday, March 17th?

13 STAFF PLANNER CUA: Correct.

14 CHAIRPERSON AMORIN: Can everybody be here Monday,
15 March 17?

16 COMMISSIONER MARDFIN: I have a problem with that.
17 I'm supposed to have a Hana Cultural Center meeting that
18 day.

19 CHAIRPERSON AMORIN: Okay. Can everyone else be
20 here on the 17th, Monday?

21 COMMISSIONER HIRANAGA: This Thursday is not
22 available?

23 STAFF PLANNER CUA: There's a Board of Variance and
24 Appeals meeting in the afternoon. And our zoning people
25 have the room in the morning.

1 COMMISSIONER MARDFIN: Thursday would be even worse
2 for me. I have to teach that day. I may be able to move my
3 Monday meeting maybe.

4 STAFF PLANNER CUA: That would be good. Would
5 Monday work?

6 CHAIRPERSON AMORIN: Monday would work for me.
7 Commissioner Iaconetti.

8 COMMISSIONER IACONETTI: Is this room occupied
9 tomorrow all day?

10 STAFF PLANNER CUA: Yeah, it is from 8:00 in the
11 morning. The Planning Department has use of it in the
12 beginning. Then the Director of Finance. And then the
13 Board of Ethics in the afternoon. It's completely booked
14 tomorrow and Thursday. So either Friday --

15 COMMISSIONER HEDANI: What about next Tuesday?

16 STAFF PLANNER CUA: Are we within the -- Tuesday is
17 too late.

18 DEPUTY DIRECTOR SUYAMA: Unless you do a special
19 meeting. You could do a special meeting rather than a
20 recessed meeting. You could also do a special meeting.

21 STAFF PLANNER CUA: Then if you're doing a special
22 meeting Tuesday, there's an Urban Design Review Board in
23 here in the morning. Thursday is wide open, the 20th.

24 COMMISSIONER HIRANAGA: Monday is a full-day
25 availability?

1 STAFF PLANNER CUA: Monday, the 17th, is not a full
2 day. This room is being used from 10:00 to 11:30.

3 CHAIRPERSON AMORIN: Commissioner Guard.

4 COMMISSIONER GUARD IV: I'd prefer Monday or
5 Tuesday over Thursday.

6 MR. YOSHIDA: I think as far as Urban Design, we
7 only have one item. I think we'll be finished by 1:30.

8 STAFF PLANNER CUA: That is Tuesday the 18th. So
9 if we go from Monday the 17th, you could use the room from
10 12:00 on. If we go with Tuesday the 18th, per Clayton's
11 statement, you could use the room from around 10:30.

12 CHAIRPERSON AMORIN: Commissioner Mardfin.

13 COMMISSIONER MARDFIN: My preference would be for
14 the Tuesday. That means I won't have to change a whole
15 meeting, and we have more time.

16 DEPUTY DIRECTOR SUYAMA: One of the things you have
17 to remember, Tuesday, you have to post a new agenda. And I
18 believe the agenda posting would have been today --
19 tomorrow. Tomorrow is the posting. So if you go on
20 Tuesday, it's going to be considered a new meeting and not a
21 recessed meeting.

22 STAFF PLANNER CUA: So staff would have to prepare
23 a new agenda as opposed to just recessing to Monday.

24 CHAIRPERSON AMORIN: Commissioner U'u.

25 COMMISSIONER U'U: Can we come on Monday, recess

1 again, and come on Tuesday?

2 STAFF PLANNER CUA: If we need to, that's possible.

3 CHAIRPERSON AMORIN: Commissioner Hiranaga.

4 COMMISSIONER HIRANAGA: I think Tuesday, I may not
5 be available because my presence may be requested.

6 CHAIRPERSON AMORIN: Elsewhere?

7 COMMISSIONER HIRANAGA: Yeah. I have a feeling.

8 DEPUTY DIRECTOR SUYAMA: Tuesday is a full Council
9 meeting.

10 CHAIRPERSON AMORIN: Commissioner Starr.

11 COMMISSIONER STARR: Yeah, I'd prefer not to
12 recess. Because my understanding is there's some kind of
13 suit or something going on over the technical aspects of the
14 ability of the Council and this body to recess. And, you
15 know, it might be better to just defer so we don't end up in
16 the middle of that.

17 MR. MANCINI: Is Monday the 23rd out of the
18 question?

19 STAFF PLANNER CUA: That Sunday is the 23rd.
20 Monday is the 24th. The room is wide open.

21 CHAIRPERSON AMORIN: Commissioners, what about
22 Monday, the 24th -- at what time?

23 STAFF PLANNER CUA: You could call the time because
24 it's wide open.

25 COMMISSIONER GUARD IV: I may not be here.

1 CHAIRPERSON AMORIN: Okay. Commissioner Guard may
2 not be here.

3 COMMISSIONER HIRANAGA: I guess my only concern is
4 we're going to have two days in a row of Planning Commission
5 meetings if we do it on the 24th. Then we have a regularly
6 scheduled meeting on the 25th.

7 Question. If you have it on Tuesday and I have to
8 be absent for an hour or so, does that disqualify me?

9 DEPUTY DIRECTOR SUYAMA: Not necessarily. You may
10 have to maybe during the break, listen to portions of the
11 meeting as to what was discussed during the time that you
12 were missing.

13 COMMISSIONER HIRANAGA: Absent.

14 DEPUTY DIRECTOR SUYAMA: Absent, yeah.

15 CHAIRPERSON AMORIN: Commissioner U'u.

16 COMMISSIONER U'U: Why don't we call a lunch at
17 that time.

18 DEPUTY DIRECTOR SUYAMA: You could, or you could
19 call a recess during the time, lunch or recess during the
20 time that he's gone.

21 CHAIRPERSON AMORIN: So we're looking at more next
22 week Tuesday?

23 STAFF PLANNER CUA: So did everyone agree that
24 Monday was out of the question?

25 COMMISSIONER MARDFIN: We agree that Monday, the

1 24th --

2 STAFF PLANNER CUA: No, no. I'm still on the 17th,
3 which would be within the six days.

4 COMMISSIONER HIRANAGA: I'm okay with Monday.

5 COMMISSIONER U'U: Me, too.

6 COMMISSIONER GUARD IV: You had a meeting. Can you
7 reschedule?

8 COMMISSIONER MARDFIN: Maybe. I don't know until I
9 get home.

10 CHAIRPERSON AMORIN: Does Monday work for you,
11 Commissioner Guard?

12 COMMISSIONER GUARD IV: Yeah.

13 CHAIRPERSON AMORIN: We would actually love
14 everybody to be here. However, if it works out best, Monday
15 the 17th, everyone else can be here?

16 COMMISSIONER STARR: What time?

17 STAFF PLANNER CUA: 12:00.

18 CHAIRPERSON AMORIN: 12 noon.

19 COMMISSIONER STARR: High noon.

20 STAFF PLANNER CUA: Until 5:00, I guess.

21 CHAIRPERSON AMORIN: Noon until 5:00. And
22 hopefully, Commissioner Mardfin, you can get a reschedule
23 hopefully.

24 Okay. To the applicant and the representatives out
25 there, will that date be feasible for all of you to attend?

1 This would be the 17th of March, a Monday, at 12:00 noon.

2 MR. MANCINI: I'm scheduled to be out-of-state from
3 Thursday night until the 22nd. I would have to basically
4 cancel my plans to the West Coast and the East Coast.

5 COMMISSIONER HIRANAGA: This Thursday?

6 MR. MANCINI: I leave this Thursday night. That's
7 why I'm saying I have to cancel plans. It does create a
8 problem.

9 MR. HAYWOOD: Ma'am Chair, for the record.

10 CHAIRPERSON AMORIN: Yes.

11 MR. HAYWOOD: Guy Haywood. I am available Monday
12 the 17th, at 12:00. I have things in the morning, but I
13 will be available at 12:00.

14 MR. MANCINI: If I have to cancel the plans, I'll
15 cancel the plans.

16 COMMISSIONER HIRANAGA: How about the 27th?

17 COMMISSIONER GUARD IV: The 28th?

18 STAFF PLANNER CUA: Well, the 26th, the room is
19 completely available.

20 DEPUTY DIRECTOR SUYAMA: It's a holiday.

21 STAFF PLANNER CUA: Oh, that's why it's available.

22 COMMISSIONER GUARD IV: What about the 27th or
23 28th?

24 MR. MANCINI: If I'm the only one, I'll cancel the
25 plans that I had for the mainland.

1 COMMISSIONER GUARD IV: What about the 27th or
2 28th?

3 STAFF PLANNER CUA: Okay. The 27th, no. 9:00 to
4 12:00 is Burial Council. 12:00 to 6:00 is BVA. You could
5 do the 28th in the morning, 8:30 -- what time does -- Maui
6 Redevelopment starts at 1:00.

7 We could do 8:30 to 12:30, four hours. We could do
8 that on the 28th.

9 CHAIRPERSON AMORIN: Is that sufficient time?

10 STAFF PLANNER CUA: Well, I mean, it's four hours.
11 And if you need to, you could possibly --

12 DEPUTY DIRECTOR SUYAMA: I think it's getting too
13 close to the end of the month. So it would be better to
14 stick to the 17th.

15 COMMISSIONER GUARD IV: Or the 24th was open. If I
16 was the only one objecting to that.

17 COMMISSIONER HIRANAGA: I wouldn't be looking for
18 two consecutive days of Planning Commission. It takes me
19 like a week to recover.

20 CHAIRPERSON AMORIN: How about the 21st?

21 STAFF PLANNER CUA: The 21st, it says holiday. It
22 says holiday on here.

23 CHAIRPERSON AMORIN: Okay. Thank you, Paul
24 Mancini. So the 17th. Recessed until the 17th.

25 DEPUTY DIRECTOR SUYAMA: So there's a motion to

1 recess to the 17th at 12:00.

2 CHAIRPERSON AMORIN: 12:00 here, Monday, March
3 17th, at 12:00. Thank you.

4 With that said, the meeting is coming to a close.
5 So we need to have a motion to recess this meeting.

6 COMMISSIONER U'U: Motion.

7 COMMISSIONER HEDANI: Second. We have a motion on
8 the floor to defer.

9 COMMISSIONER HIRANAGA: I'll withdraw my second if
10 Jonathan will withdraw his motion.

11 CHAIRPERSON AMORIN: Jonathan.

12 COMMISSIONER STARR: Okay.

13 CHAIRPERSON AMORIN: So the motion has been
14 withdrawn, the motion to defer. We have a motion on the
15 floor by Commissioner U'u, and then seconded by Commissioner
16 Hedani to recess this meeting until Monday, March 17th at
17 12:00 noon. All those in favor.

18 (Round of ayes.)

19 CHAIRPERSON AMORIN: Any opposed?

20 COMMISSIONER MARDFIN: Nay.

21 CHAIRPERSON AMORIN: Motion carried.

22 (Proceedings concluded at 5:05 p.m.)

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County of Maui)
) ss.
State of Hawaii)

I, CAMMIE GILLETT, a Certified Shorthand Reporter in and for the State of Hawaii, do hereby certify that the foregoing pages comprise a full, true and correct transcript of the proceedings had in connection with the above-entitled matter.

Dated this 4 day of April 2008.


CAMMIE GILLETT, RPR, CSR No. 438