

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MARCH 25, 2008**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Johanna Amarin at approximately 8:33 a.m., Tuesday, March 25, 2008, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Ms. Amarin: At this time I'll open up public testimony on any agenda item that we have scheduled today for those individuals who cannot be present at the meeting when that agenda item comes before us. Public testimony will be for three minutes, conclusion will be within 30 seconds. I do have a list. George Aikala, please come forward and state your name.

The following persons testified at the beginning at the meeting:

Mr. George Aikala - Item C-1, HMC Maui LLC, Hyatt Regency Timeshare, SMA
Mr. C. Mike Kiddo - Item C-1, HMC Maui LLC, Hyatt Regency Timeshare, SMA
Ms. Elaine Gallant - Item C-1, HMC Maui LLC, Hyatt Regency Timeshare, SMA

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

Ms. Amarin: Do we have any other member in our audience that wishes to come forward and speak on any of the agenda items we have today? Seeing none, public testimony is now closed. Deputy Director.

B. RESOLUTION THANKING OUTGOING MEMBER JOHANNA AMORIN (Outgoing Chair)

Ms. Suyama: The next order of business that we have is for our outgoing Chairman. I do have a letter from the Mayor's Office for Ms. Amarin. Basically what the Mayor is saying:

"Congratulation on a job well done. On behalf of the people of the County of Maui please accept my deepest appreciation and gratitude for your dedication and service on the Maui Planning Commission. Your efforts and contributions have made a positive difference.

I truly believe that it is important for citizens to play an active role within both our community and government. The process of recruiting and selecting nominees to the various Maui County boards and commissions has given me a greater appreciation for volunteerism and community service.

I would like to commend you for your willingness to devote your time, energy, resources and insight to the betterment of Maui County. Once again, thank you very much for doing your part to make our County the best that it can be. I hope that your experience has been rewarding and worthwhile. Sincerely, Charmaine Tavares, Mayor, County of Maui.”

And in addition to her letter, the Mayor has given you a certificate of appreciation and this is from the Mayor.

Ms. Amorin: Thank you very much.

Ms. Suyama: We also, from your fellow commission members and the department has a resolution:

WHEREAS, The Maui County Planning Commission was established in 1958; and

WHEREAS, since April 1, 2003, Johanna Amorin has served as a member of the Maui Planning Commission; and

WHEREAS, Johanna Amorin, has served as Chairperson during 2007-2008, and has served the Maui Planning Commission with dedication and provided valuable guidance n serving the needs of the people of Maui County; and

WHEREAS, Johanna Amorin’s term of office will expire on March 31, 2008, now therefore

BE IT RESOLVED, by the Maui Planning Commission that it does hereby express its deepest gratitude and appreciation to Johanna Amorin for her service during the past five years and does hereby extend its best wishes in her future endeavors; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the honorable Charmaine Tavares, Mayor of the County of Maui and the Honorable G. Riki Hokama, Chairman of the Maui County Council.

And this resolution has been signed by all your fellow commission members as well as the department heads. And in appreciation of all this, your fellow commission members and the staff has engraved the resolution on a plaque that you can hang on your wall.

Ms. Amorin: And after five years if I may, I just want to say a few words. I’m very grateful for the opportunity to have served on this commission. I originate from Oahu actually and touching the communities all of my life from when I was a little girl. In fact, I lived in a housing project in Manoa Valley if you can believe that right in the heart of Manoa. There

was a housing project and today I still can remember my phone number 907-621. Kanu Street is where I lived. Why? Because it offered a healthy, happy childhood to me.

There was a community center and I think we're trying to bring some of that back today. But you know I was like eight years old and I used to go to that community center to watch the movies for recreation and then when Mama said, oh you know, you girls better get down there and go get the lawnmower and there was a sign out sheet. And at eight years old I was able to go with my sister because we only had girls. Mama and Daddy had seven girls, no boys. I was considered tomboy. But I went there, but the living conditions are not what we have today.

And today as a businesswoman if you can read the book, Who Moved the Cheese?, never the economy, development and growth never stays the same. We need to innovate, we need to address what today is. We can get basic yesterday but it's all about our tomorrows. Why did I do this? I'm a concerned citizen. I've lived on Maui, married my husband who's given me great support since 1972. I've seen a lot of changes.

My children, they've had a pretty good life here. Gone to Hana, gone to Lanai, gone to Molokai, gone to the west side. Lived up Kula, lived in Wailuku. Today I live in Kihei. But it's all for the love. I've heard the arguments, but I've heard the passion from my fellow colleagues here, from the Planning Department and the people, but to understand what is here, but my decisions are made here, the heart. It's all about trying to do what is best for the majority.

And to my colleagues, I say thank you for your support and for your endeavors here within in this body. And to the Planning Department and all your hard work. And to my friend there Carolyn. She's there setting it up at every meeting. She's the strong support for all of us. And I say again, mahalo nui loa ka kou. And on with our meeting. Deputy Director. Commissioner Starr.

Mr. Starr: Yes, I just want to thank you for the hard work you've put in. I know it's taken a lot and you've worked really hard and put a lot of time and effort into it. So I just want to thank you for that.

Ms. Amarin: Thank you very much Commissioner Starr. Planning Director, Deputy Director, I'm sorry.

Ms. Suyama: The first order of business is Unfinished Business. It's Item 1a, HMC Maui LLC requesting a Special Management Area Use Permit for the Hyatt Regency Maui timeshare project located at Lahaina, Kaanapali, Maui. And also, Item b which is the applicant requesting an offsite parking approval for the project and at this point I will turn it over to Jeffrey Dack who's the planner for the project.

C. UNFINISHED BUSINESS

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

The Commission may take action on the request.

- b. **HMC MAUI LLC requesting an offsite parking approval for a 12 story, 131 unit timeshare structure with related improvements on 36.57 acres located at TMK: 4-4-013: 003, 004, 005 & 008, Kaanapali, Lahaina, Island of Maui. (OSP 2006/0007) (J. Dack) (The Commission reviewed this request on December 11, 2007. This matter was scheduled to be heard again at the January 8, 2008 meeting. It was reviewed again on February 12, 2008. Commissioners: Please bring your materials with you.)**

The Commission may take action on this request.

Mr. Jeffrey Dack: Yes, good morning.

Mr. Hedani: Madam Chair?

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Because the Hyatt Regency is a member of Kaanapali Operations, after consultation with the Board of Ethics, I'll be recusing myself from voting on this item.

Ms. Amorin: So noted. Thank you. Jeff.

Mr. Dack: Thank you good morning again, and I hope we can keep the spirit of that last agenda item and carry that on over to this one and the rest of the meeting that be great.

As the commissioners all know, this matter has been deferred from three meetings, December 11th, January 8th and February 12th. At all of those meetings the commissioners had considerable discussion and attempted mightily to be able to formulate a motion which

would be able to achieve the necessary five votes to take action on the project but in large part due to the lateness of the hour of the day, of items which is now being resolved, of course, with the changing of the order in agenda today, you weren't able to maintain a quorum to be able to achieve an action. So we hope that you'll be able to be successful with that today.

You have a recommendation report that's been updated from the December and February meetings. Items updated from the December, the department's original recommendation report include modified conditions numbers 1, 22, 23, 25 that was split up to add a new condition 28, renumbering of and/or within conditions following number 23, a modified renumbered condition 56 and new condition 65.

Except for the modification of condition no. 56, these updates are all reflecting how the conditions were proposed to be changed as a result of the commission's discussions and motions at the December and February meetings plus a few small technical corrections.

The applicants offered to add 10 more beach parking spaces than previously proposed to the current resort parking lot on parcel 5 for a total of 32 new spaces. So recommending condition no. 56 has been modified to reflect that increased amount of beach parking.

Subsequent to the February 12th meeting, the Maui District Tennis Association provided a letter dated February 21 which was largely cited by in a testimony to you a few minutes ago. That requested the planning commission require the applicant to build a 12-court tennis facility as again, as you heard directly from the writer of the letter.

The commissioners will recall, the applicant has proposed to eliminate three of their existing tennis courts on parcel 5 to building parking spaces. The applicant has indicated that their current tennis facilities are under utilized although the applicant does not wish to build 12 new tennis courts – the 12 new tennis courts requested, they have stated they are willing to set up a meeting with the Maui District Tennis Association to explore how they could otherwise help the association with tennis to meet the demand on Maui's west side.

The applicant – Just a few things from the prior staff reports too so you have a complete recommendation. The applicant, we recommend that the applicant, or conclude that the application complies with the applicable standards for special management area use permit application had we previously and that the application complies with the applicable standards for an offsite parking application approval.

The Maui Planning Department still recommends approval of the special management area use permit now subject to 65 conditions. I'll highlight only changes made as a result of or subsequent to the February 12th meeting. You'll find in condition 22 where – condition 22 there was discussion at the last meeting and a modification was made about 60% of the

way down that staff report to reflect the suggestion which did receive favorable consideration that there be a penalty for – associated with failure to be able to fulfill the demand management program be \$2,000 per day so we have the modified sentence to read, “also the final plans shall not include a cap on total monetary penalties and when applied under the terms of the final the penalty shall be a fixed \$2,00 per day.”

As indicated conditions 25 and 28 have been updated. 25 has been split out into two condition with these – portion of that split into condition no. 28.

As was just indicated the applicant has, after discussions with the department offered to increase the beach parking spaces on parcel 5, so you’ll see now in the 3rd line of condition no. 56 on page 15, that it references at 32 parking spaces on parcel 5 to be converted to beach public access parking.

The Planning Department still recommends the offsite parking approval subject to conditions. And in consideration of the foregoing the staff report, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department report and recommendation report prepared for the December 11, 2007 meeting and the addendum reports and recommendation memorandum prepared for the January 8th and March 25, 2008 meetings as its findings of fact, conclusions of law, decision and order and authorize the Director of Planning to transmit said decision and order on behalf of the planning commission.

The applicant has indicated they don’t have a presentation this morning but they are available with q and a, they’re set up to be able to put items up on the board if necessary, of graphics.

The department then would finally suggest that after any necessary further discussion the commission may have we would suggest that you attempt again to formulate a motion which can receive the necessary five votes to be able to take action on the application. Any questions of staff at this time?

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: I am assuming that you’re not going to have any further testimony from the general public, is that correct? Ordinarily we get the recommendations after we have testimony I thought.

Ms. Amorin: Thank you for that concern. Just to be sure, if there is anyone in the audience who wishes to come forward to speak on this agenda item, we’ll allow testimony. Do we have anyone in the audience who wishes to speak on this agenda item? Seeing none, public testimony is now closed.

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

Mr. George Aikala: Good morning Madam Chair, Good morning Members of the Planning Commission, aloha. My name is George Aikala. I'm the Business Agent for Local 368, Laborers Union here on the island of Maui. I represent 400 plus members and they also give their support for this project which is coming up at the Hyatt Regency in the timeshare.

Originally we had a meeting with the developers and I believe they have a real, what do you call, love for the community because they're putting back some money into the community over a period of 10 years, and you're talking about \$25 million dollars.

But I also admire them because of the fact that the EIS, they went and took it on their own selves to go do the EIS and already presented it before the planning commission back in December 12 of 2006.

Other type of what do you call, regulatory processes they went through was with the Urban Design Review Board, the July 3, 2007 which was recommended for approval also. A project which was reviewed by the KOA Design Review Board in August of 2007 also approved for recommendation. So I believe this project not only will bring much needed work for the construction trades and for our members, but also I believe they did their homework in bringing back some money to the community. Like I said, we're all for the project.

Ms. Amorin: Thank you. Any questions for the testifier? Seeing none, thank you very much George for coming.

Mr. Aikala: I'm sorry to hear that you're going to be leaving us in April.

Ms. Amorin: Thank you. Next, C. Mike Kiddo. Come forward and state your name.

Mr. C. Mike Kiddo: Good morning Chair. C. Mike Kiddo from Pacific Resource Partnership. If I may summarize my testimony since I have got a slight cold. PRP strongly supports the SMA Use application before you on your agenda today. PRP understands that several concerns seen by the Maui Planning Commission that have been addressed by the applicant and stated in our testimony. PRP respectfully asks for your favorable consideration of the SMA Use application for HMC Maui LLC. That concludes my testimony. Is there any questions?

Ms. Amorin: Any questions for the testifier? Seeing none, thank you very much.

Mr. Kiddo: Madam Chair, if I may take the opportunity to also to express my appreciation for your public service on this commission.

Ms. Amorin: Thank you. Thank you very much. Do we have any other member of the audience that wishes to come forward and speak on any of the agenda items we have scheduled today? Please come forward and state your name.

Ms. Elaine Gallant: I'm sorry, I must be late. My name is Elaine Gallant. I'm with Maui District Tennis Association. I have testified before, but I'd like to testify again with a new request.

The Maui District Tennis Association is asking that a project condition be placed upon the Hyatt's timeshare building permit to build a retail, 12-court public membership tennis center for the surrounding Kaanapali communities because right now they're gone. They disappeared when Royal Lahaina was permitted to remove its 11 courts for residential villas and the Marriott when it was permitted in 2005 to remove its courts for timeshares.

Now the Hyatt is the last possible resort hotel, I'm sorry I'm nervous I just walked in, it's the last hotel in the Kaanapali Beach Resort area that we can ask this to be attached to. There's three courts left at the Sheraton, but we don't know if they're going to remain open to the public once it's gone. Now the Hyatt is not open to – I mean, it's open to the public but it's an MDTA member club and we use it as overflow and all of that, but they don't have public membership where we can pay like dues and play there. So we're out. That was with Royal Lahaina. That was the last one.

The overall loss is going to be quite large to the community. The social and recreational impact will be long lasting and I doubt that we'll ever see another facility in my life time like that in the Kaanapali area.

Your SMA Rules, procedure, 12-202-12 pages 11 and 12 state that you will evaluate an action when it substantially affects the economic or social welfare and activities of the community, county or state and involves substantial secondary impacts such as population changes and increased effects on public facilities which In this case means the recreational amenity in Kaanapali Resort is being shifted to the County and the County does not allow professional services such as tennis lessons, memberships that sort of thing. No retail sales, no equipment sales, no equipment repairs, nothing like that.

The Maui District Tennis Association ask that you recognize the community's needs and that they should be addressed with private interest not county funds to build such a facility. The resorts have a lot to gain with these residential villas and timeshares but it's coming at the expense of the recreational needs of the community. Kaanapali is big enough to

house one of these. We've been talking with the Puukoolii Village Mauka project and they are very interested in a facility there, but they need someone to build it. In closing, you and the Hyatt are the last people or the last avenues we have to ever see another public membership facility in Kaanapali.

Ms. Amorin: Elaine, your three minutes are up. Can you conclude in 30 seconds?

Ms. Gallant: That is it. Thank you.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, I'm a little confused about the courts on the Hyatt property. How many are there and you said that they're not open to the public? Were they ever open to the public?

Ms. Gallant: They are open to the public, but not in the sense that Royal Lahaina and Marriott were. The Marriott and Royal Lahaina a per diem where you could pay \$5.00 to play or you could pay \$400 for the year and be a member. The Hyatt doesn't offer that service, but they are MDTA club member. When we have large events they are an alternate site for our events. They have in the past hosted a very popular tournament which they have ceased to host and I suspect in anticipation of downsizing their tennis facility. But once those six tennis courts are gone and reduced to two, even the MDTA will not be able to use it as an alternate site because there's going to be only two courts and they will be used for guests only not for the public.

Mr. Starr: I remember there used to be quite a few courts down by North Beach. Those have all gone away, right?

Ms. Gallant: They are officially permitted to be destroyed for residential villas. I assume you're talking about the Royal Lahaina.

Mr. Starr: Yeah.

Ms. Gallant: They're currently open, but they're open on a per month basis until construction takes them into that part of the property and they're just doing it as a courtesy at this point. They've made several announcements of when they're going to close but then they keep extending it a little bit.

Mr. Starr: Does the organization have – I mean is the organization looking to run these courts and build them if they were given financing and if so, does it have any agreement with any land owners that would allow them to build them?

Ms. Gallant: The Maui District Tennis Association is a nonprofit organization. We just represent the tennis players on the island. We would not run the facility. It would be a for profit center such as like Wailea. But I don't want you think that a tennis center will be "profitable." At best, it can break even. It's an amenity, somewhere between a pool and a golf course. It depends on how much you charge. But if it's connected to a golf course and recreational facility such as what the Puukoolii Village Mauka project is doing then you can have member – varying levels of social memberships, tennis or golf, all of the above, you know, whatever they're going to offer and it becomes part of a more profitable situation. But once the resorts take them all out, they're gone. That's it.

Ms. Amarin: I have a question Elaine. Is there still a very strong interest with the community into tennis. I remember in the early '90's, working for the airlines, the private entities were huge sponsors, such a popularity at the Royal Lahaina and I remember it was annual thing. I don't know, has it phased out? Is there still a strong interest?

Ms. Gallant: Well, like all sports it's cyclical. Okay. Golf experienced a major overgrowth and now they're saying golf numbers are down. Does that mean the sport of golf is over? No. And that's the same with tennis. Tennis is cyclical. It has its age and then it slows down, it comes back, but our organization here on Maui and all organizations related to it are trying to build that game and keep that base solid. We have a very good base here on Maui and also in the state. We host the sectionals every year. It brings 600 families, players and their families to the island. We lost it last year because of the timeshare scare. It went to ...(inaudible)... on Oahu and we were very sad about that. Now we were able to get it back because Royal Lahaina said, well we'll keep our doors open just a little bit longer and we were able to move half of it to the Wailea side and half of it to the west side and they were comfortable with that, but we'll see.

Ms. Amarin: Thank you. Commissioner Iaconetti.

Mr. Iaconetti: Thank you and good morning. In the past, there were large tennis tournaments that occurred over in Kaanapali. I can recall Jimmy Connors and whole group of men that came over there and had a tremendous tournament. That must have been profitable for the hotel at that time.

Ms. Gallant: It was also managed in that direction.

Mr. Iaconetti: Yes. Is there any facility on the island that can attract that caliber of tennis player.

Ms. Gallant: Wailea.

Mr. Iaconetti: And they do now?

Ms. Gallant: They do. The Bryant brothers have come for the last three years, Tracy Austin was just here. Justin Gimblestop. Also Kapalua is another facility which is where the Kaanapali people are going to go now when all the tennis courts are gone in Kaanapali they'll go to the civic center but they won't get the professional services. To get the professional services they'll go to Kapalua or 50 miles to Wailea because that's the only public, for profit centers are closest. Everything else is County and you can't have – and the County's been great. I mean, we think the County has come forward but because our tennis pros can't teach on their courts, we can't buy equipment, we can't retail, anything like that, that's what's signifies the difference between a private public membership facility and a public county facility. We're losing this one. That's the one we're losing and it's going to shift us, break up our network in Kaanapali to go to Kapalua or Wailea for those services.
Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: Is Kapalua really large enough to attract that kind of a tournament?

Ms. Gallant: It is large enough. They don't have center stadium court but they have 10 courts at the garden. So it's large enough and we do hold a lot of large events there. We don't know what their plans are with their tennis facility. At one point they were going to take four courts out and build a rock wall and all this other stuff. And we told them which they kind of knew what was happening in Kaanapali, you know, what was going on, they were like, well, okay maybe we should hold back here and instead they resurfaced some of their courts and we're hoping and I'm sure they're hoping they'll be able to capitalize on some of the loss in Kaanapali. But as an organization, the MDTA we're asking, you know, what's going to happen in the next year? Kaanapali won't have anything like that.

Mr. Iaconetti: Thank you.

Ms. Amarin: Thank you very much Elaine. Any more questions? Thank you Elaine.

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

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: I have one more minor question. On page 12, Item 41, I wonder if we could have a little more detail as to what that means? If you want, I'll read it. "That to the satisfaction of the Police Department and as offered by the applicant, the applicant shall work with the Police Department and the Kaanapali Operator's Association to promote driver education and awareness as a means of accident prevention with evidence in the final compliance report." I don't understand exactly what that means.

Mr. Dack: This came up as a result of the environmental impact statement process where there were concerns that were I think offered by the public about safety particularly at that intersection and this came up as a suggested mitigation that I think became part of the final EIS. I personally don't know if there have been any particular discussions between the applicant and the police department to give you a feel for what that looks like. What they would actually do to carry that out but it would have to be to the satisfaction of the Police Department because we do have a county agency would be satisfied that whatever they do is acceptable. And it's possible that the applicant may have had some discussions, I'm not aware of and might be able to answer your question better what they're thinking about.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: Well, exactly who are you educating? The general public? The people that drive there? The visitors? And how are you going to educate them and where are you going to educate them?

Mr. Dack: Again, it's possible that the applicant has put some attention into this. This hasn't been a focus of attention to the department. It's something that would be implemented principally between the applicant and the Police Department so I can't really expand on that.

Ms. Amorin: Jeff, can we hear from the applicant?

Mr. Dack: Yes, please.

Mr. Matt Slepik: Thank you. Matt Slepik, I'm a senior associate at Chris Hart and Partners. We're serving as planning consultants for the project. I think Jeffrey had it about right. This is as a result of some of the public comment from the Police Department and some of the residents up the hill at the neighborhood directly mauka that there was some concern at the time about that intersection light and nothing had ever been particularly clarified but the way that we – the way the discussion went was that in the course of working out the actual, you know, construction of the project and whatnot, we would do some coordination with the Police Department to determine what would be useful so the questions of, you know, who and where and how is exactly what would be worked out at the time and then that would be detailed in the preliminary compliance report which we would submit prior to building permits.

Ms. Amorin: Commissioner Iaconetti, I'm going to pass over to Commissioner Star and come back to you, not unless you want to finish it? Commissioner Iaconetti, followed by Commissioner Starr.

Mr. Iaconetti: I think Item 41 is kind of meaningless. We don't know who you're educating, we don't know how they're going to do it and where they're going to do it, what's going to promote it, who's doing the education? I mean, it's a meaningless statement and I'm wondering why it's even there.

Mr. Slepik: Well, that might be a question for the Planning Department I suppose because they put it in, but I think if you look at a lot of the conditions on this and there are quite a number of conditions being recommended, the strategy that the department took was that if the applicant offered up something in our discussions or through communication with the public, they tended to put it in as a condition as offered by the applicant. I guess from a historical perspective that hasn't always been the case. A lot of these things would have been items that the applicant would have said, yes, we're going to do this and we would have just done it and it would have never shown up as a condition, but the strategy here has been to just put everything up on paper for you. Whether that's meaningful for you as a commission or not, may be your determination.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, I find this part of a disturbing trend which is to create virtual solutions to real problems where, you know, we have an intersection that is dangerous that the police and people in the neighborhood community say is dangerous. You have a project that's going to throw a heck of a lot more traffic into it, so instead of actually doing something that will, you know, either improve the intersection or keep the traffic, you know, really keep the traffic down there, you know, we get a virtual solution, you know, some wording that they'll do a driver education program. I've had problems with many aspects of the traffic study on this project, you know, and I find that it's very different from what we saw from Starwood where Starwood had really created real programs and was running real buses and was, you know, already in the process of moving real people by public transit. Hyatt has been making promises to do things that may or may not have some effect and I don't really believe that it's going to – that it's going to help. I think this project is going to make the traffic situation over there a lot worse. I know that we do have a penalty clause in this now. I don't know if the penalty clause is really going to be relevant and I'd like to ask Mr. Dack to give us some comments on how these traffic mitigation is going to work and refresh us especially with the penalty clause and what are going to be triggers for that?

Mr. Dack: There's a whole extensive traffic mitigation plan that's been before the commission that has a lot of details on it. In brief, a penalty would be applied should there not be satisfactory compliance with that plan in a particular time period. But I have to look it up to get into the exact details exactly how that penalty gets applied so pardon me for a moment here.

Mr. Starr: Yeah, the triggers particularly.

Mr. Dack: And realize that there are still will be some final negotiation on the penalty clause and how it actually does end up getting triggered. But it – if there is a – there will be a transportation report that will be prepared on how adequately the various provisions of the plan have been fulfilled and what has been the actual riders and the actual traffic kind of end result performance standards so to speak of that. And if the targets haven't been able to have been met, there would be a particular time period in which there could be changes that could be made and then again, if targets are still not met 0– at this point it's written 60 days suggested to implements the changes again, a final report – excuse me, a final plan is still to be approved between the department and the applicant, but at as it was suggested if there's still not compliance within 60 days then a penalty would begin to be applied.

There is a flexibility on at least on how the final details of what those triggers and time frames and things, but this condition would fix the amount of the penalty to be \$2,000 per day and there would be no maximum amounts. So basically it's non compliance, a report showing non compliance with an opportunity to correct the problem which if still is not successful after a particular period of time then a penalty would be assessed. That's generally what it looks like.

Mr. Starr: Okay, and what the entity that will be preparing this report?

Mr. Dack: The applicant will be responsible for preparing the report. The applicant will submit the report to a traffic engineer which will have to stamp it. So they'll have their professional responsibility behind the acceptability of the report and that report will then come to the County staff for review and acceptance. So it's prepared by the applicant because they're working on the project day to day, but then it needs to be accepted by both a professional traffic engineer as well as the County staff that also includes professional engineers.

Mr. Starr: Well, I really wish I had any confidence at all that whoever the applicant chooses to hire to do this will do a real report that will highlight problems. You know, I'm sure since they'll be hired by the applicant, we're much more likely to see a defense of this than criticism of it. I wonder if staff might have a suggestion on how we can make this an arms length process either through peer review or perhaps a better thing would be for the Planning Department to hire someone to do this traffic review at the cost of the applicant so that it becomes arms length. Is there a mechanism for doing that?

Mr. Dack: Well, as I have indicated the final terms of the plan are still to be finally agreed to between the County and the applicant. There has been a lot of discussion within County staff, between Planning and Public Works Departments about how this should operate and

then also with the applicant and what you have is what was suggested as a result of that. However, we certainly, since there still negotiations to be done, can take those thoughts into consideration and look at the feasibility and desirability of having a somewhat of a different approach along the lines of what's suggested. There is flexibility to consider that.

Mr. Starr: Even better than that, will the applicant be willing to have this report on which penalties will be based done by the County, paid for the applicant and the County would go out and contract an arms length consultant so that we know that there will not be any funny business?

Mr. Slepik: Let me try to respond to this line of questioning which actually has a number of comments at this points buried into it, but I'll take up the last one first. I think probably asking the County to prepare the report is not likely to be that practicable. The idea that because the applicant hires a consultant to do that job, the job is therefore invalid is I don't think an appropriate way to look at that. That would mean that's nobody's professional reputation means anything because they're all paid for by somebody. They Hyatt would hire a respectable, professional firm with a professional reputation for doing its work to do the report. That report would then be ...(inaudible)... by a third party traffic consultant who also has a professional reputation, so I don't think – I think that's a bit of false problem that you're creating there.

Now the way in which it would actually come to pass is as Jeff mentioned, something that we're still in the process of negotiating. We've had two projects on the west side. This project and Starwood's Lot 3 project that have both come to you fairly recently with innovative traffic management plans, of a kind that hasn't been seen on Maui previously. Previously we've restricted ourselves to promising to build a traffic light or something like that and saying that's going to take care of the traffic. The commission and the community and resorts themselves are aware that that's not really a viable solution and so we've all taken it upon ourselves to come up with a traffic – using the principles of traffic demand management to come up with a plan. Both Starwood and they Hyatt's plan allow for this coordination that we would undergo with the Planning Department because we have to find out the exact correct way to do it. Are we open to negotiating? Absolutely. That's what we've been doing, that's the way the condition's written is that we would find a perfect way to do it and the whole reason that the condition was written the way that it is by Jeffrey who as you know is a very precise fellow was that we would figure our way to best to do it as we go along and that trying to set up the precise specifics of how it would be accomplished at this point is a little preliminary and a little premature. That we would do it best as the program goes along.

If I could just flip back very quickly to this point about the Condition 41, this question of the driver awareness and virtual solution, that I believe incorrect Commissioner. What

happened is that you have some residents who express some concern about that traffic light, the police were not concerned about the traffic light. The traffic report which this body accepted as part of the EIS was not concerned with the traffic light. It's some residents on the hill and the applicant decided rather than ignore the residents or rather than say that our own traffic report shows those concerns to be unfounded, that we would happily try to work out something in coordination with the Police Department. It's not a concern that anybody in a professional or technical position has expressed. It's a resident concern and it doesn't make it invalid, but that doesn't make it something that needs to be particularly addressed in terms of a complicated condition.

Does that hit the points? We kind of went far afield starting from that.

Mr. Starr: Yeah you hit them. You know the fact that it's only the residents who are complaining, I guess we can ignore that.

Mr. Slepín: That's absolutely not what I said.

Ms. Amorin: Commissioner Starr, I'd like to move on. There's other commissioners at this time. Thank you. Commissioner Mardfin followed by Commissioner Hiranaga.

Mr. Mardfin: Thank you. I'm reading on page 3, Conclusions of Law, "in evaluating an action the following factors but not limited to same may constitute a significant adverse effect on the environment." I presume these are grounds on which to deny the SMA. Item D under there says, "substantially effects the economic or social welfare and activities of the community, county or state." We've had testimony that this will adversely affect the social activities of a group of tennis players, maybe a large group of tennis players and so that seems to me that that if that's not mitigated appropriately that that's grounds for denying the SMA.

On page 2 at the very bottom it says, "although the applicant does not wish to build the 12 new courts requested they have stated they are willing to set up a meeting, a meeting with the Maui District Tennis Association to explore how they could otherwise help the association with tennis to meet the demands of the west side." This strikes me of another example of Jonathan's virtual solution to a real problem. That is really meek and to me unacceptable.

Mr. Chris Hart: Commissioner Mardfin, my name is Chris Hart, Chris Hart and Partners. What we would like to do is to just, you know, to try to address your concern, obviously in the context of this project we have tried to document all the possible impact for the project from a development perspective. We have prepared an environmental impact statement which has been accepted by this body. This issue of tennis, you know, is something that

came up late in the process. Okay, it's not that we are turning a deaf ear at it, but in the context of tennis, in the context of its popularity in the community it has declined substantially. This resort destination area at Kaanapali is a private resort destination area. The Royal Lahaina historically catered to the tennis, to tennis as a sports activity and actually built a tennis stadium and a tennis center. And it's not to say that people in the community at Kaanapali shouldn't enjoy the use of some of the facilities, but in other communities where this kind of opportunity doesn't necessarily exist within the resort, the County of Maui Parks Department has been the vehicle for providing public recreation facilities for the community. And we know this for a fact in the terms of our firm's involvement in a recreation and open space study in South Maui and this development of a community, a regional park in South Maui.

Now we're certainly not opposed in the context of business how basically business unfolds over time the fact that tennis is not as popular now as it was before, therefore, all of the resorts that have undergone redevelopment has chosen to decrease the number of tennis facilities on their properties and that has been the case with the Hyatt Regency. They have also chosen because of lack of usage of those facilities to basically decrease the number. And so we are proposing to do that. Now this is something that came up late in the process. We're certainly not turning a deaf ear to it and we certainly want to cooperate with the community but I think it's a larger issue. I think that the testifier mentioned the possibility of working with the developers of the Puukoolii basically new community and that they're interested in the tennis facility. I know that Pulelehua has a responsibility of providing new parks facilities and that actually there was a 50-acre regional park proposed as part of Pulelehua.

And the other aspect of the County not allowing professionals to give lessons at public facilities that's something that from an administrative point of view is being looked at all the time. There are windsurfers for instance, windsurfing schools that try to use public beaches to give windsurfing lessons. I'm not saying that right now the County allows tennis pros to come to County facilities and give lessons. But I know that those accommodations can be made. I think that this issue definitely is important, but it's from a point of view of Kaanapali as a resort destination area it's been the choice of other property owners in the resort to basically downplay the importance of tennis because it's a business decision. It's not as popular with their guests. It's not to say that in this case that we're eliminating all the tennis courts, we're not. And we certainly could allow for the same kind of relationship that exists now with the tennis organization and also we would be willing to work with them to find a solution that would adequately serve the recreational need of the residents of West Maui and we will do that. I don't think that that's you know, ignoring the issue.

Ms. Amorin: Commissioner Mardfin.

Mr. Mardfin: How many courts were in this general area right now?

Mr. Hart: There were six courts that we had at the Hyatt.

Mr. Mardfin: And you're planning to eliminate three?

Mr. Hart: Basically I think we're planning to eliminate four.

Mr. Mardfin: You're eliminating four?

Mr. Hart: Exactly.

Mr. Mardfin: Two-thirds of them?

Mr. Hart: Yes.

Mr. Mardfin: And at other surrounding hotels you said they've also been cutback.

Mr. Hart: Well, they have dramatically. The Royal Lahaina is the most dramatic. But you know, and we haven't – you know, again, this is an issue that came up late in the process, okay? We haven't done an inventory I have to confess of all of the other properties to actually see, you know, how many were eliminated at the Kaanapali Beach Hotel, how many were eliminated at the Sheraton when they redeveloped, how many were eliminated at the Royal Lahaina, I don't know the exact number and the Marriott.

Mr. Mardfin: If I may make two points? So item F under SMA says, "in itself has no significant adverse effect but cumulatively has considerable effect upon the environment." So cumulatively all these hotel doing it could have an effect, and I presume when the decision to cutback the tennis courts was made for the Hyatt – there's always some shifting, you know, if other people eliminate tennis courts, it means the existing ones can have more usage. And so you don't – it seems to me at this point you wouldn't know what the usage is going to be because the impacts of the other reductions haven't been –

Mr. Hart: Well, usually Commissioner Mardfin in the context of the operation of a hotel, and Hyatt Regency has an existing 800-room hotel and obviously in the context of the guest usage of the tennis courts it's declined over the years and so there's not that much of a need. It has to do with the popularity of tennis and primarily the tennis courts were definitely built for the convenience of the guests of the hotel. You know, that's a business decision. And since they're not being used, obviously, you know, the intention or the thought was that they should be in this basic enhancement of the site reduced and so we took that position.

Mr. Mardfin: Thank you for your response.

Mr. Hart: Sure.

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

Mr. Hiranaga: I wanted to sort of I guess continue discussion on the point that Commissioner Starr made regarding Condition No. 22 and I guess I had hoped that since we or the commission found the Starwood application their proposed penalty formula acceptable that I was hoping maybe the Hyatt might look at their methodology and sort of pattern their penalty proposal along those lines because I think with the escrow account and the formula based upon the capital investment I think how we came up with a penalty figure. I know the \$2,000 was initially recommended by Commissioner Starr based on some calculations he may have made, but I actually feel a lot more comfortable with the Starwood plan and so I'd like to urge the Planning Department and the applicant to take a look at the Starwood plan and maybe pattern their penalty proposal along those guidelines. Maybe if we could have a comment from the department or the applicant?

Ms. Amorin: Jeffrey.

Mr. Dack: Yeah, I can't speak for the applicant. I don't know if the department would, you know, ready or able at this moment to actually change the penalty clause around to reflect condition – conditions from Starwood. Certainly from a conceptual standpoint it's something we could look at. Would suggest that if you wish to go that direction right now that you might, rather than trying to detail it out all the specifics of it, you know, here right out of commission meeting, that you might modify condition no. 22 to, maybe that same sentence that says, "fixed \$2,000 per day or greater amount as consistent with conditions similar applicable conditions applied to the Starwood project." I'm just kind of guessing as I'm talking here of how you might be able to do this in a flexible enough way so that you don't have to detail it all precisely here but you can provide the direction that we could then use in the further negotiation to address those kinds of concerns. That's just a staff, initial staff suggestion.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: Before you respond, if you need more time to reply to this request we can continue the discussion. You can huddle up and –

Mr. Slepín: No, I appreciate that commissioner, but you know, as we look at this I don't see a great deal of difference between the two but we would be happy to have the way the penalty condition is written for the Hyatt to be commensurate with the way it was written for

Starwood. Some of the specifics I think are going to have to change, a couple of numbers might be different but the underlying structure of the condition would be the same is fine.

Mr. Hiranaga: I think one of the key elements of the Starwood proposal was the escrow account and they would continue to replenish the escrow account if penalties were being disbursed. So we knew that the money was there to pay the penalties whereas in this proposal, you know, we don't know where the money is coming or it's not put up front and it's a interest bearing account.

Mr. Slepín: We're quite amenable to that.

Mr. Hiranaga: So maybe staff could come up with some language addressing the escrow account be established.

Mr. Dack: Yeah, certainly we can go that direction. Just seeing in the traffic management plan that has been before you, although there was an escrow account there was going to be a guarantee by posting the one million dollar performance bond. So it was a slightly different mechanism for guaranteeing the money was there, but if you want to go in the direction of escrow that would be reasonable too.

Ms. Amorin: Commissioner U'u.

Mr. U'u: Good morning Matt. Two questions. One is in regards to the tennis courts. It makes me laugh at times and I'm into physical activity and exercising and you know I love that, but when we put tennis and say we need 12 courts it's a bit extreme. I mean, we have – we need affordable housing which you guys are giving to affordable housing. That's a need. I mean, but a want and a need is totally different. I cannot see that you going to be forced to build 12 courts and pro shop so somebody can have the luxury of playing tennis in Kaanapali. I cannot see that. We need schools. We need better education. Now that's problems. This is not a problem. I don't see as and with all due respect to the tennis players because I have a lot of friends who plays tennis, but in "d," sustainably effects the economic or social welfare and activities of the community, county or state there is two courts that's going to be remaining there. Testimony earlier said there's courts in Kapalua, well, whether that is adequate, you know I don't know, and you know, I wouldn't be able to comment on that but you have two courts work with now, you have some in Kapalua. I know tennis is on the decline. I remember it was on a incline when you had the two sisters playing, you know, Serena and Venus, and now you got Tiger Woods. I guess that's why golf is up on the upswing. But I think we got bigger problems than having tennis courts with pro shops.

My second question is if I can have information on the greenway connectivity you guys are

planning. That's what interests me.

Mr. Slepik: That's a good question Bruce, thanks. Okay, this came up I think the first time we were in front of us, it was a comment by Commissioner Pawsat and we agreed in that context to put some work in establishing greenway connectivity. Now the way that the condition was worded and the way we discussed it is that this would be done and evidence provided during the compliance report phase of the project. Nevertheless we went ahead and started putting some work on this and I think probably Norman Hong who's the project architect from Group 70 can go into a little bit more detail on this.

Mr. Norman Hong: Good morning Commissioners. My name is Norman Hong, Group 70 International. We're the architects. Yes, I think it was perhaps two or three meetings ago before you, Commissioner Pawsat did raise the issue of the greenway connections. So since that time we have developed this exhibit that shows the various greenways that already exist as well as that will be added to provide a pretty good greenway connection throughout the resort. Everyone knows of course of the shoreline access walkway that is continuous throughout the shoreline. That of course, is already in place. There are – we also tracked the various public beach accessways between various properties that allow access to the shoreline. We've shown all of those.

In specifically, as specifically related to the Hyatt project, we've also shown how the connections from the various parking areas as well as the public walkways come through the property along the waterways and then come into the entry of the Hyatt Regency. And so, we've categorized, in fact, this should go the other way, what we've categorized the various kinds of open spaces in terms of pedestrian gateways, active green space which we need to remember that the golf course is also very much a green space that is actively used as well as in passive green spaces some of these are landscaped areas. So we've started to and there is – we continue to look into this in terms of how we can improve the connectivity. So that's where we are.

If I may also add, we also met with KOA to review this and they are very much not only supportive but they're very much encouraging that we continue this direction.

Ms. Amarin: Thank you for that information.

Ms. Pawsat: Who is, did you say KOA?

Mr. Hong: KOA, Kaanapali Operations Association.

Ms. Pawsat: Yeah, I have a few comments.

Ms. Amorin: Joan.

Ms. Pawsat: Or questions. Yeah, to me this is about, you know, I've kind of edited Lahaina out of my existence actually, but you know, maybe that's why I'm kind of leaning it towards these projects, but I feel like I have to – because of that I have to take in more consideration, the doctor's comments because he actually lives up there and I did catch the last review of this on T.V. So anyway this is about public space and for me, and I do appreciate the work you're doing on the greenway connectivity and I really would like to see that develop more. I mean, you guys kind of drew lines. I don't mean to be negative but I feel like you guys can do more with this. You guys know you can do more.

But I was wondering about what other things you guys have considered like a parking structure if that's just out of the question. If economically that – you know, because this is kind of turning into kind of a poor man's version of the SVO project a little bit. Like they had that 10-acre park which really kind of sold it for me as well as a lot of public support. So – and I know that other commissioners were concerned about the 12 stories and things like that, I was wondering if you guys ever considered, I mean, at Maui Lu is kind of you have a development that kind of goes across the street even though you didn't develop across the street, but it's kind of a project that has to negotiate a street. So I was wondering if you guys had ever thought of crossing the street with this project at all? You know, because you had these other commissioners complaining about 12 stories, that there is any way to reduce the stories by moving, you know, making them shorter and bleeding the project across the street and working, you know, public parking garages and do it so, you know, because it still kind of looks like two parking lots surrounded by green. It's just not really park yet.

So I guess that's if you've considered design – and also I haven't seen something about you guys put a slot in the building that these two, Starr and Iaconetti were a little disappointed with, but if you could just talk a little bit more about their concerns.

Mr. Hart: Thank you Commissioner Pawsat. This is Chris Hart, Chris Hart and Partners. In the context of this project, the area that is across the street is Nohea Kai Drive, is actually zoned and community planned for business. In other words, it's BR Resort Commercial. So it's not – basically the Hotel District, H2 Hotel District zone is along the ocean and so that essentially is the area that we have to work with, and of course, the site was developed back in the late '70's and in the context of enhancing the project from the point of view of diversification, you know, basic evolution of the visitor industry, the luxury timeshare tower together with a really full service 800-room hotel is, you know, basically a good business decision for them, and essentially they are working within the zoning that basically allows the density, the lot coverage and the height. And you know, we were looking at it as it's been called an enhancement and it is an enhancement, we also think

of it as an infill project.

You know, the issue of views in the context of this, you talked about the slot views, you know, basically the way the rules read it's the view basically along the shoreline that's the one that needs to be preserved and the view from the State road or highway nearest the coast, in this case it's Honoapiilani Highway. And we're actually about almost a quarter of a mile, you know, basically makai of Honoapiilani Highway. So the issue of a 12-story building in this location is not as significant as it might be let's say at North Beach where you're a few hundred feet, you know, from basically a building mass. And, you know, obviously we are working with the resort. This is basically a project that is significant at Kaanapali Resort which was the first resort destination area in 1962, to basically enhance and to expand the opportunities for greenways and pedestrian open space.

And in addition, you know, we talked about the elimination of the tennis court, we have dramatically increased the amount of beach right of way parking and I think Commissioner U'u talked about important contributions and I think that this is a very important contribution as far as the community is concerned. You know, so with that, I'd just like to leave that as a comment and hear your response.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: Yeah, the urban planning in Maui has not been so good in history and so that makes things like if I said or bleed across the street, if the zoning were in place and things like that that would be a reasonable request.

Mr. Hart: That would be a logical request.

Ms. Pawsat: But seeing that these developments are going with still kind of this funny business as far as an overall community plan, I do find it hard to hold you guys, like the tennis courts for instance, I feel like that's something the greater community should be involved with and that, you know, there should be a greenway, you know, system in place so when developers come they can just negotiate around it.

Mr. Hart: That's correct, yes.

Ms. Pawsat: And so I hope, you know, I'm not too jazzed on this project in general, but considering what laws are in place and what are within your legal rights and your attempts to work with a green space and a transportation plan, I think you're doing what you can do within what's been I don't know provided with your urban planning set of cards so to speak. But I just hope in the future everyone can, and the county too just you know, and I'm investing a lot in this idea of the community plan that these things are in place so it doesn't

turn into you know, it's the developer fighting against the county, just to get public space. I mean, these are things more back to the cooperative efforts. So I do appreciate it and the transportation plan, I appreciate that. You guys are hopping on board with that, but I do hope you keep in mind that these things that I'm bringing up that they – so we don't have – what I'm saying is I'm not going to nix this project but in the future like five years from now I would nix this project because I would expect by that point the community plan would have caught up and provided infrastructure, green infrastructure for developers to build around so it's not – the onus is completely on the developers. So I can see how your hands are bound by these other things by...(inaudible)....

Mr. Hart: I'd like – one of the things that you talked about too, was the issue of parking garages. You know that is an issue and it's a cost but it isn't out of the question, but you know, in my view, I look at it from the point of view that probably, you know, Maui ultimately is going to benefit from the fact that larger bypass highways have not been built in a timely manner because I really believe that we need on an island to basically to shift into alternative modes of transportation that would reduce the dependency on the automobile. And you know, the fact that we are still using the same highway corridor, we're probably going to be using it for the next 15 years and we're being forced basically to implement a traffic management plan, we should be able to decrease the emphasis or the need for automobiles and become more efficient and therefore, not have to take up open space with parking garages. And maybe not have so much of the surface, you know, turned into parking lots, you know. Obviously the mauka area that the Hyatt owns is a very important facility for all of the rest of the resort basically, there's many of them that use or basically lease space for their employees. So you know, we are an important contributor to basically creating an opportunity for parking in certain order in the resort in terms of the functioning of the resort. Thank you.

Ms. Amorin: Thank you. Commissioner Starr.

Mr. Starr: Condition 44. This is the workforce housing, Mr. Dack, could you explain to us what the obligations are regarding affordable housing? Are they going to fulfill the new ordinance?

Mr. Dack: They have negotiated an agreement with the Department of Housing and Human Concerns if I recall correctly was an attachment to your original staff report. The exact terms of that I don't recall. The applicant probably knows them better off of the top of their head but it has been part of your staff report.

Mr. Slepik: The short answer is yes. It's in full compliance with 2.96, the new residential workforce housing policy. The agreement's being drafted between the applicant and the department which involves partnering with a non profit entity to develop housing which as

we've shown on couple previous occasions is close to about \$6 million.

Ms. Amorin: Thank you. Commissioner Pawsat.

Ms. Pawsat: I was wondering about Condition No. 53. It's about the water quality and I was wondering if you could beef up the responsibility a little bit. Kind of like SVO did about making it longer, monitor over years time and decrease and then leave it up to the planning commission if it needs to be continued and also how they – how Hyatt will participate in mitigating measures if any damages increase.

Ms. Slepik: You do, Commissioner Pawsat, you do have a I think a very different situation here from the Starwood one. Part of the concern with Starwood was in terms of the desalination plant that they're putting in. This is not – Nothing like that is being proposed. This is, in essence I think a fairly simple case where you're taking a developed property. You're redeveloping it. You're putting in drainage improvements to capture more runoff than currently is caught now and to filter those – and to improve the filtering of that runoff which goes through the system. I'm not sure that – in other words, I'm not sure that the concerns that were raised during Starwood are really applicable here but I think the applicant would be happy to, you know, we could probably specify maybe a little bit more exactly what this water quality monitoring is.

The way this is written, which is a fairly standard kind of way to put a condition is that this is construction monitoring because there isn't, as a I say, there's nothing going on here that sort of complicates it in terms of new injection wells or anything like that.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: Yeah, I understand your point. But the thing is I think part of my problem is you know this water monitoring keeps being brought up and you know, it was brought up before, but technically I've never seen a water monitoring report. Just like you said, like what is it? You know exactly. So that would help if someone actually clarified. You know what are you guys looking for because technically you know, just with the – like what you said, put in the basins and things like that I would like to see a water monitor report that actually proves everything everybody is saying. You know what I mean? It's kind of, you know, everyone's just like, well it was taken care of. So I want to know what a water monitor report is basically and how –

Mr. Slepik: Yeah, like I say, we'd be happy to maybe specify this a little bit more beyond what's normally done in terms of a construction monitoring report. I don't know if that's really something in this case that would come back to the commission, but maybe you know, the evidence would go into both the final and preliminary – preliminary and final

compliance reports that would be reviewed by the Planning Department.

Ms. Pawsat: Yeah, just something stronger because I'm not even sure. I feel like on the other hand, you know, there should be like, you know, the Lahaina Kaanapali reef health coalition that is, you know, all the people who have developments are all participating, you know, and the community as well, like individual community members as well participating with resorts to solve this problem.

Mr. Slepín: Okay.

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

Mr. Iaconetti: I'm wondering if staff couldn't somehow get a little more strength into the tennis problem with the rest of this report. We all realize that sporting events are cyclical. When I first got here, many of the tennis courts had almost become demolished. There was really very little interest in tennis. And then thanks to a very energetic tennis player in Lahaina it became a very important sport and tennis courts started developing everywhere and especially in the Kaanapali area and it became very popular. It is the cyclic situation but being such we could expect to come back again. And I think it's important that we have something stronger. I can't expect the Hyatt Corporation to develop 12 courts of their own or a tennis stadium, but I think that it would be important that somehow we state that they will get together with the tennis organization and with the other hotel developments in an effort to get a large tennis facility on the west side knowing that the popularity of the sport will come back again.

Ms. Amorin: Thank you. Chris Hart.

Mr. Hart: Thank you Madam Chair. Dr. Iaconetti, or Commissioner Iaconetti, we have discussed it and I think that in the context of the tennis courts that are existing there are six courts and we're basically eliminating four of those courts. At this point we would be willing to basically increase the number of courts remaining to three in other words, and then we would also working with the community and the tennis coalition be willing to donate to that group or to let's say the county, as let's say a developer of tennis courts or some other non profit that would be developing let's say a tennis center at Puukoolii the value of the additional three courts. To build three new courts. Now I don't know, obviously we've also agreed to substantially increase the amount of beach parking even though we seeing fit because of a business decision to reduce the number of tennis courts. But you know, certainly we would be willing to leave three courts in place at the Hyatt Regency and we would be willing to donate the value of three additional courts to be basically worked out in the context of our compliance process to basically be done on donated or construction or construction of those three courts in some other location.

Mr. Iaconetti: Thank you Chris. I wonder if that could be placed in the section here too that determines the fact that it's going to be done.

Mr. Hart: We could basically work with Jeffrey and come up with a condition. I think though the issue of how the money, you know, gets obviously lets say – this is a example, we talk about a tennis court it might have a value of \$100,000, so \$300,000 that gets donated either to the county or to lets say a, you know, an acceptable non profit corporation that would be involved in constructing tennis courts, something like that. That's going to be left up in the air to be negotiated. Is that all right?

Mr. Iaconetti: Thank you. Yes.

Ms. Amarin: Thank you and as noted, comments will be documented into the project with our staff planner, Jeffrey. Commissioner Mardfin.

Mr. Mardfin: Thank you Chris, this is a step in the right direction, and I agree with Dr. Iaconetti asking to build 12 tennis courts is a little much. But I did want to ask if Elaine Gallant could comment on what she would think of this compromise because I have to admit until you made these statements about this compromise I was ready to vote against the project because I think it adversely affects the thing.

Ms. Amarin: Elaine.

Ms. Gallant: Well, any compromise is a good compromise. So we would be receptive absolutely talking to anybody that will help us build tennis courts. I would like to address two things Commissioner U'u. I feel ridiculous for tennis courts when we need roads and a hospital and all of that, but if I don't ask, the resorts are going to build more timeshares at the expense of their tennis courts. So somebody has to ask. They just have to ask. That said, the magic number in tennis is six. Six courts for competitive natures. We asked for 12 because that's two, sixes, right. It's simple math. Six means we can hold league events on the tennis courts because generally there are four, five, sometimes six matches going on at a time with a league. We can use it as an overflow court which then we wouldn't need – I mean, if we had one center in Kaanapali, the royal playground. Kaanapali is the royal playground. If we have just one royal playground in there every resort could take out all their courts. Just remove them. Send all your guests to these courts. We will play with them. We're on lists, we beg to play with resort guests. We call it fresh meat. If you're a sports player you understand what that means, right?

But if we had just one for, and I say for profit, because I mean retail membership not public which is County and supported by private interests then we have much more leeway with what we can do with those courts on a retail basis. And I'm not saying we, I'm talking about

the management which goes back to everybody saying there's less use on the courts. Well from our perspective it's less management. You gave a very fine example, a motivated tennis player, I assume that John ...(inaudible)... that came in, got everybody excited about tennis at Royal Lahaina, the numbers went up. That's management. People are there. They want to play just like every sport they have to be motivated. We talk about health, we talk about schools, we talk about scholarships, it all comes from sports too.

Ms. Amarin: Thank you. You may have another question.

Mr. Mardfin: Yeah, you do.

Ms. Amarin: Commissioner Mardfin.

Mr. Mardfin: I just want to make sure I understand this that you're comfortable if we include that condition that they retain three tennis courts and that they contribute a financial contribution to some entity to build three additional ones?

Ms. Gallant: Well, if it's negotiable I'd like to see zero tennis courts and six.

Mr. Mardfin: But it also sounds like your idea of having a base of six, if we have this project contributing the cost of financing three and you could find another couple of hotels that would finance one, two or three, you could have your central stadium.

Ms. Gallant: Can we go back to the Royal Lahaina permitting process?

Mr. Mardfin: I don't think so.

Ms. Gallant: Go back to the Marriott permitting processes. The Hyatt is –

Mr. Mardfin: Talk to them they may be amenable to that.

Ms. Gallant: Well, we're trying to, but the Hyatt is literally the last tooth in the mouth and once it's pulled we need a denture.

Ms. Amarin: Any more questions for Elaine? We have a question. Commissioner U'u.

Mr. U'u: You know, I understand that you're an avid tennis player and what strikes me as a – what strikes me is it takes somebody testifying to get it done and having said that, you know, Lahainaluna High School never had a night game ever. Not once. The oldest school west of the Rockies, so I wish we could have them in here testifying because I would much rather support high school athletics which brings out athletes some went to UH that they

have no nighttime games and yet we're here supporting tennis and donating to tennis which is to me a luxury. It's a high luxury. I think we get more kids active in football. In fact, I know we have. And till today we have no nighttime games in Lahainaluna. And then it takes someone to come up here and fight for tennis rights and then we go give them the money. But like I said, I just wish I had every athlete high school in Lahainaluna that ever played football in here testifying on behalf that they need lights to play football instead we have people coming here for tennis. I respect every athlete, I respect, but I cannot see bending over for tennis and a pro shop and 12 of them to say that when you're looking at a royal play ground, that's why you say, a royal play ground and the kids at the school got shit for a play ground. That's what they have right now, shit.

Ms. Gallant: Yes, they do.

Mr. U'u: They have the worst field, the worst of everything and you come in here asking for money for a luxury royal play ground. I cannot support that.

Ms. Gallant: But I'm not asking it just for league play. The students play out of Royal Lahaina. They take lessons at Royal Lahaina.

Mr. U'u: How much students compared to football?

Ms. Gallant: How many students compared to football?

Mr. U'u: There's no comparison, you cannot compare, that's apples and oranges.

Ms. Gallant: So, I'm not sure –

Mr. U'u: Thank you for your testimony.

Ms. Gallant: Okay.

Ms. Amorin: Thank you. Any more questions Commissioners? Commissioner Starr.

Mr. Starr: Yeah, I just want to support what Mr. U'u just said because I wasn't aware they didn't have lights up there, but I played high school football and I know ...(inaudible)... lets try to find a way to help get it done.

Ms. Amorin: Thank you for your comments. Any other questions for the applicant? Commissioner Hiranaga.

Mr. Hiranaga: I just wanted to know more specifically where you're proposing those 10

additional beach access parking stalls? You have site map that show where it's going to be located?

Mr. Norman Hong: Norman Hong, Group 70. Commissioner Hiranaga, what we have is that we are – as you know, we have already provided 20 beach parking stalls right here on site on the north end. We've already relocated 23 beach parking stalls closer to the beach access route and we were proposing that we add 22 more beach access stalls here in parcel 5. So then 10 additional, we most likely add it in this location here. That would be the most reasonable place to locate it.

Mr. Hiranaga: I'm looking at your map, I thought we agreed to put those 23 existing beach access stalls on the south end closest to the ocean. It doesn't appear it's that.

Mr. Hong: They're located here because there's a path that leads right to the canoe park right there.

Mr. Hiranaga: Oh, I see.

Mr. Hong: Yeah, and after discussions that was deemed to be the best location.

Mr. Hiranaga: Okay, thank you.

Ms. Amarin: Mr. Hong, I have a question. Totally for public access, how many stalls do we have? What is your total?

Mr. Hiranaga: 75 stalls.

Ms. Amarin: 75. Thank you very much. Commissioner Starr.

Mr. Starr: This is a question for the Planning Department which is previous to the three large time share projects, how many time share bedrooms have – are there on Maui? And how many in entitlement?

Ms. Suyama: I can't give you that number. I don't really know. It's somebody that needs to research that information.

Mr. Starr: The Planning Department doesn't know how much time share we have for how many, you know?

Ms. Suyama: Asking me that question today, no, I don't know. I know there's several projects that have gotten approvals recently, but as to how many total, you know, have

gotten or gotten entitlements, I can't give you that figure today.

Mr. Starr: Okay, I'd like to request that the department do a census of what we have in the way of time share, what we have in the way of hotel rooms and rental units for a discussion at another day. Someone brought up a statistic which is that these recent projects, the two we approved in the last month and if this one gets approved that it would double the number of time shares on Maui and I know there's a lot of discussion in front of Council as to what the number should be and what the impact is and, you know, it's a lot of concern about what impact time shares had in other communities where they've allowed hotel districts to transition and hotels to convert. So I wish we had that information, but I understand we don't and I want to be sure that we get that so that we can have that discussion.

Ms. Amarin: Thank you Commissioner, your comments are so noted. At this time, we're going to take a little break and we'll reconvene at 10:20.

A recess was called at 10:10 a.m., and the meeting was reconvened at 10:20 a.m.

Ms. Amarin: Commissioners, do we still have any questions for the applicant? I saw the applicant standing at the podium when we recessed.

Mr. Hart: Yes, Chairperson Amarin. I wanted to – there was a discussion about time share in West Maui. I'd just like to say that there have been a lot of projects, there's several projects in West Maui that have changed from hotel to time share or fractional ownership or long term residential condominium projects. You can just look at Kapalua in terms of Kapalua Bay Hotel and the Ritz-Carlton going to fractional ownership.

This particular project at Kaanapali basically represents a situation that's basically existed in the visitor industry and that time share basically is kind of an evolution in the marketplace. But with the fact that they have an 800-room hotel on site, with ballroom space that functions in the context of conventions together with a luau facility, together with group function areas, you know, basically the viability of the hotel is insured because of the fact that there's been a lot of basic conversion that's gone on in West Maui.

This opportunity to basically diversify and have 131 units that are a luxury time share is not going to be a detriment to this property. It's just basically going to enhance the viability of the property. And I think that this represents the best example of a property that utilizing the time share opportunity and still preserving very successfully preserving a pure hotel operation that will be available to the West Maui community. I just wanted to say that. Thank you.

Ms. Amorin: Thank you Chris Hart. Any other questions? Commissioner U'u.

Mr. U'u: Just to comment during recess time I heard there is lighting at Lahainaluna and speaking with Commissioner Hedani, he brought up that I think there is lighting or they're in the process of getting lighting. So I'm happy for them. Also, I will be supporting the condition, the added condition for the tennis courts.

Ms. Amorin: Any more questions Commissioners? Jeffrey Dack, you have any completion on your recommendation with the changes?

Mr. Dack: Yes, I appreciate the opportunity to make some additional suggested changes to our recommendation based upon the extensive and valuable discussion. There was, we'd like to suggest modified or added conditions relative to principally traffic, the offshore water quality monitoring and then tennis courts and I've had an opportunity to discuss this with the applicant during the break. So I'd like to first in response to the desire to see that there is a penalty mechanism, penalty clause mechanism in the transportation demand plan, transportation management plan that's similar to KOR Lot 3. Their penalty clause is addressed in Condition No. 33, as applied to the commission. The substance of which can be brought into the conditions as they had been printed and published for you by adding just little bit more to that one modified sentence about maybe two-thirds of the way down, Condition No. 22, I'm sorry I can't describe it much better, but it's the one I referred to in my presentation which mentioned the \$2,000 per day. So I'd like to recommend that one sentence that begins about the 10th or 11th or 12th line down that starts, "also." To read now instead, "That also the final plan shall not include a cap on total monetary penalties and when applied under the terms of the final plan, the penalty shall be the greater of \$2,000 per day or the percentage of the shortfall of trips multiplied by the full annual cost of carrying out the employee and guest mitigations." And again, that wording is very closely from Condition No. 33.

So then we'd also like to take what was applied also by the commission as Condition 32 for the approval of KOR Lot 3 Starwood, and that would be respond to the desire for there to be more independence in the review of the annual traffic report and so that Condition No. 32 we would now recommend be applied as a new Condition 34, into the Hyatt set of conditions. Condition 32 read, "As may be required by the Public Works Department an annual report shall be reviewed by an independent third party to be proposed by the applicant which shall be selected by the Department of Public Works. The third party review is intended to insure objective interpretation and presentation of relevant information and data in the annual report. The cost of the third party review shall be paid by the applicant, its assigns and/or successors."

In response to the concern about or discussion about the ocean water quality – I apologize,

yes.

Ms. Amarin: Jeffrey, sorry to pause you at this time. Commissioner Hiranaga.

Mr. Hiranaga: You said Condition 32 but that doesn't seem to correspond to our recommendation.

Mr. Dack: I'm using conditions numbers from two reports so I'm sorry if it was confusing. We would suggest that you add as a new Condition 24, in the Hyatt project the same wording that had been applied by the commission on March 6th as Condition 32 for the KOR project and then I read you that condition.

Mr. Hiranaga: Okay, thank you.

Mr. Dack: Sorry about any confusion there.

Ms. Amarin: Thank you for that clarity.

Ms. Suyama: So my question to you Jeffrey would be that you would be renumbering the other proposed Condition 24 and 25 accordingly?

Mr. Dack: Yes. That would be part of the – it's part of the recommendation. Yes, I was going to get to that. Thank you though.

Relative to the concern about the water quality monitoring which is now Condition No. 53, Hyatt Condition No. 53, could be modified to read, precisely as that comparable condition you recently applied to KOR, Lot 3 project as Condition No. 42 on March 6th. So Condition 53 would be revised to read, "That the applicant, its assigns or successors shall participate with other North Beach –" we shouldn't say with other, we'll strike out "North Beach Subdivision developers, " but we'll say, "The applicant, its assigns or successors shall participate with other developers," we could even say, "Kaanapali developers" which would be good, "in the biannual water quality monitoring surveys for construction projects." And again, it wouldn't say in the North Beach Subdivision, but in the Kaanapali area. "Said biannual surveys shall continue until 18 months after the completion of construction. Thereafter, the monitoring shall continue annually for two years. After that time, the department," the Planning Department in this case, "may determine whether there is any basis for the monitoring to continue. Further the applicant will make corrective measures as necessary to mitigate impacts it causes to ocean water quality."

Then responding to the concern and discussion and the offer by the applicant relative to tennis courts, we'd suggest that there be a new Condition No. 67 added, "The applicant

shall retain three courts, three tennis courts and shall contribute the value of the three eliminated courts to be donated for construction elsewhere in West Maui.”

And the final suggestion would be, that the staff be provided, as the Deputy Director mentioned, provided the opportunity to just renumber conditions as appropriate on an editorial basis both the numbers of conditions and within them because in a number of conditions we'll say, you know, x, y, z condition shall be carried per satisfaction of the Public Works Department. We would just need to do some renumbering of those. So those would basically be the five suggestions we have at this time. Thank you.

Ms. Amarin: Are these changes accurate commissioners? Commissioner Starr.

Mr. Starr: Yeah, I just want to thank Mr. Dack. He very much improved the conditions.

Ms. Amarin: Thank you. Good job Jeffrey. Commissioner U'u.

Mr. U'u: I'd like to make a motion to approve as amended.

Ms. Amarin: We have a motion on the floor to approve as amended. Do we have a second?

Mr. Hiranaga: Second.

Ms. Amarin: And now discussion. Commissioner Starr.

Mr. Starr: Yeah, Madam Chair and Commissioners, I cannot support the motion for one prime reason which is that our purpose, our function is regarding the special management area and our role as the sole authority to preserve the shoreline and the natural environment of the shoreline and Maui.

Now there is a one compelling reason why this project should not be approved when you look at the SMA regulations which we are the entity assigned to be guardians of and that is under 205A, I believe it's 12.202.10, Item K. Which is that in evaluating an action the following factors, but not limited to the same may constitute a significant adverse effect on the environment. And this is a project that substantially alters natural land forms and existing public views to and along the shoreline. This was put in place after the development of all the high rise on Waikiki and after a lot of the initial development at Kaanapali put high rise along the beaches there. And by putting a 12-story structure, you know, a very dense, very tall structure of this nature on one of the few open slots, you now, we're filling in one of the last – actually the last tooth in Kaanapali, we're basically filling up the one view plane that exists from the beach inland and from mauka to the ocean.

We've been told that because there's a slight gap between this and the next high rise building that there is a bit of a view if you just kind of look just right, you can kind of sneak a peak through there, but it really is in contravention to what we're put here to do. And this view plane to put a 12-story there in this day and age is in my opinion wrong and absolutely against what we're chartered to do. And so for that reason I cannot support this and I really wish you examine your own conscience about whether you feel that a 12-story building may alter the existing public views to and along the shoreline.

Ms. Amarin: Thank Commissioner Starr for your comments. Commissioner Iaconetti.

Mr. Iaconetti: As I initially mentioned when this came up before, I, too, cannot support this motion for the very same reasons that Jonathan and I have mentioned in the past. I can remember in Waikiki when the Royal Lahaina, I'm sorry, the Royal –

Mr. U'u: Hawaiian.

Mr. Starr: Hawaiian.

Mr. Iaconetti: Hawaiian Hotel initially existed and the open space and the beauty of the grounds was there and then it began developing and they had all kinds of shops and closures and obstructions that – well, we all know what's happened to Waikiki in spite of their efforts to improve it again. I can't see that happening here. I can't possibly vote for another 12-story edifice blocking the view from the beach to the mountains. It's just against my desires for Kaanapali and I, too, will be voting against it.

Ms. Amarin: Thank you Commissioner Iaconetti. Commissioner Pawsat.

Ms. Pawsat: Yeah, I share the concerns of both Commissioner Starr and Iaconetti, but I guess I differ a little bit in the fact that I feel like this is the responsibility of the whole County and that, you know, things like view planes and things like that should have been established before this area all got developed and say hey, we've got these view planes, developers build around them. But the fact remains that we've gotten to this point where, you know, they own this piece of property, they're entitled to certain rights or there's litigation, blah, blah, blah, so we can improve that. But even my suggestions of improvement kind of get thwarted by other, you know, regulations like my suggestion to spread the development across the street. Well then the developers run into a new set of they'd have to apply for a community zoning amendments and then it goes on and on and on. So it's not like, the way the rules exist is helping cooperation on a County and developer level.

And then voidance, you know, and then you have all these unions coming forward about

worrying about air bubbles in continuous workforce, you know. And although I respect the fact that unions support certain projects, I would encourage unions to support projects as well as be critical. I think you can support them and be critical of them at the same time and ask for improvements of them. But I think the onus of this improvements and for better development is on the general plan and making things like view planes and places where there still is plenty of open space to plan for view planes, plan for public space and then design around it so we won't be in this situation again. And although I feel need to approve this project for, you know, just to keep the momentum going as far as building and things like that and preserve other open spaces, this is a project that like I said before, I would not approve if I had my druthers but I think the situation is that they're kind of in a catch-22. I think the whole county is in a catch-22 caught between development and environmental concerns and we need to – and we're in limbo right now and I don't think it's effective just to cut off the projects while we're in limbo. Some projects I'll be more than happy to cut off but this one is infill, it's in already developed area, it means it's low on some infrastructure cost and they're trying to mitigate what's there.

Ms. Amarin: Thank you Commissioner Pawsat. Any more discussion or comments, Commissioners? Commissioner U'u.

Mr. U'u: Yeah, I just want to make a comment. Reading the paper today about the closure of Molokai Ranch and Aloha Airlines also filing for bankruptcy and all of a sudden you have everybody wondering about jobs. You know, big articles in today's paper, about, we need jobs. So they interview the guys and they saying, oh I just bought a house, but I have no job now and I forget the guy's name, but you know, sad to say it happens here. And maybe it doesn't make the front news, and that's not the main thing that I look at to approve a job. It's broader than that. You got 65 conditions and they providing \$6.5 million for the workforce housing ordinance which is needed here to stay sustainable. And I wouldn't want this to be the end result of on Maui, eh, no jobs. We have no jobs like the panic button has pushed in Molokai right now. There's no jobs. And what we do? We react instead of act. We should have been acting prior to reacting and I think that's a fault at times to where, you know, it seems all well and good until something dramatic like this happens and it's going to affect a lot of people on that island and I don't want it happening here. You know, I can understand the give and take of development but when you lose that much jobs overnight, it's tough to swallow. I would hate to see it happen here. So I'll be voting obviously in favor of this project. Thank you.

Ms. Amarin: Thank you Commissioner. Commissioner Pawsat.

Ms. Pawsat: Yeah, just really quickly on the tennis thing. I think the tennis thing is a good example of also what I was saying before. You know, in the community plan, I would encourage the woman who testified to go to the General Plan meetings and really plug

away for developing, including some sort of tennis facility on the west side. I used to play tennis, my cousin's an expert professional tennis player, my brother-in-law is a big tennis player, it's also one of the sports that you can do when you're older and I think, you know, there's things go in and out of fashion but tennis will always be there. And so, but like I was saying, I think that's something that should be included in the General Plan so then when projects like this come up, it's not nitpicking about two courts or three courts or something like that, the problem's already solved. It's been dealt with and then you don't have to worry about public space and nitpicking on this level if it's designed and thought about at the community level.

Ms. Amorin: Commissioner Starr.

Mr. Starr: I just want to comment that we should be aware – this is – we are the county government agency that is responsible for preserving the public views to and from the shoreline, that's our duty.

Ms. Amorin: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: I'm not sure if this is appropriate at this time, but I was wondering if the applicant has photos from Honoapiilani Highway current condition view planes between – to the north of Hyatt and so called proposed development, what impact that would have to the existing view corridor from Honoapiilani Highway? I'm not sure if you would allow that.

Ms. Amorin: That's a good concern, yes I will allow it. Does the applicant have pictures of the view plane with the –

Mr. Hiranaga: The view corridor so we can see what view corridor will be destroyed if we allow this to be developed.

Mr. Slepín: This Matt Slepín again from Chris Hart and Partners. If you recall, we went through the environmental impact statement process and there was a view plane analysis included in that document which had photographs from Honoapiilani Highway which is the public highway as well as from other areas. I don't know if everybody has the EIS. I have some of the same. Are they included in the staff report as well?

Mr. Dack: Yes, Exhibits 137 through 145 in the staff report are visual analysis exhibits which should include the information Commissioner Hiranaga's asking about it. Unfortunately I don't have the ability to project it up on the screen. But in your original December staff report it should be there.

Mr. Slepín: I did just want to clarify one thing though because I've heard this mentioned a

couple of times. We're not talking about views and to and from the shoreline. In the rules we're talking to and along the shoreline, just to be clear that's what the rules state that we're concerned with.

Mr. Hiranaga: Actually what I was – I mean, obviously if you're on the Kaanapali Parkway you're not going to see the ocean, but I'm talking about public view corridors so I'm hoping that you have something from Honoapiilani Highway.

Mr. Hart: Chris Hart speaking. It's very important also from the point of view of the view study that you realize that Chapter 205A which is the State Coastal Zone Management Act establishes that the views are to be taken from the state highway nearest the coast. So in this particular case the state highway nearest the coastal is Honoapiilani Highway which is basically approximately a quarter of a mile mauka of the hotel site. So we're basically talking about a view plane that would be seen across the parking lot, across the golf course to the hotel site from Honoapiilani Highway which is approximately a quarter mile.

There's also, it's important to realize that the County of Maui did a view plane study back in 1989 which still being used by the Planning Department and by the County to establish at Kaanapali areas of critical views from the highway, state highway nearest the coast, in this case Honoapiilani Highway. And at this particular location which is essentially at the south end of the resort, the topography is pretty flat. In other words, Honoapiilani Highway is not that much higher than the hotel site at Kaanapali, therefore, there are no critical views identified, you know, in this particular area of the resort. However, as you drive farther north and the elevation goes up and where you're at the site say around the Maui Eldorado and so on, there are significant views, all right. But in this particular case, the – and this was what was analyzed in the environmental impact statement, the views from the highway, the state highway nearest the coast to the hotel site is not a significant, identified as a significant view plane. And this was actually adopted by the planning commission as a guide for analysis of the issue of views.

The other important part is what Matt indicated is that the rules of the planning commission talk about views to the shoreline and along the shoreline. Now in this particular case, the views to the shoreline are the views from Honoapiilani Highway which is nearly a quarter mile away and the views along the shoreline have essentially been enhanced by virtue of the fact that, you know, we are recognizing, acknowledging the average lot depth setback and we're basically contributing in terms of maintaining the lateral access along the ocean and we're also agreeing to remove the group function paved area at the hotel site. So you know, we are enhancing the view along the shoreline. So in this particular instance in the context of the environmental impact statement again, analyzing impacts, you know, we have addressed it thoroughly and it has been part of the accepted environmental impact statement by this body back in December 2006. Thank you.

Ms. Amorin: Thank you. Commissioner Hiranaga, follow up.

Mr. Hiranaga: Yes, I did find Exhibit 137 and it is a view from Honoapiilani Highway and it does show a before and after depiction and the current view from Honoapiilani Highway is basically a wiliwili hedge which may or may not be there now but monkey pod trees, coconut trees that standing 30, 40 feet high. The after shows the proposed building and it is blocking a stand of clouds. So you can't see the ocean from Honoapiilani Highway through this view corridor. So I'm not sure what argument certain commissioners are making.

From my perspective, the developer is providing additional beach parking for the public good. He has a traffic management plan for the public good. And he's increasing the drainage retention capacity for the public good. So I just wanted to make those points. Thank you.

Ms. Amorin: Thank you. Commissioner Starr.

Mr. Starr: Yeah, first of all, I would like to say that I don't really think that it's seemly for the applicant to be chiming in when the body has finished asking questions and is under deliberation, but first of all, from Honoapiilani Highway you do see the ocean. You don't see the beach but you do see the ocean in a distance right now. And you know, although it doesn't show up on their drawings because they have managed to do them in such a way that you don't see it in their drawings, you do in actuality see the ocean in the distance, you know, because you're up and since you're up you do see – the horizon is lifted.

And also, our duty is not just from the highway to the shoreline but it also to preserve the mauka views from the shoreline. You know, this was specifically discussed when we had the gentleman from DLNR come before us and talk about our responsibilities for SMA. That when you're standing on the shoreline and you're looking at the mountain, that that is part of the obligation regarding the SMA. And although, you know, I can understand feeling that maybe the view from Honoapiilani Highway when you now have one more building sticking up may not be such a huge issue, it is an issue when you're standing on the beach looking up toward the mountain and you won't no longer see the mountain, you'll be seeing a 12-story building there. This is one of the few spots on Kaanapali Beach where you still can see up the hill.

And also this is a case where there is a very large and very excellent hotel operating. It's not as though this property is not being used and it's not generating revenue. It's been a very successful property for a long time. So in denying this, I don't feel like I'm participating in keeping the applicant from being able to build on their property. They built a long time ago, now they're looking to gain more, to capitalize out of it which, you know, if they weren't

blocking the view, I would support.

Ms. Amarin: Thank you. And did allow clarity to the commissioner so that he could make a better informed decision. Any more discussion or comments? Commissioner Mardfin.

Mr. Mardfin: I want to go back my – give some of the reasons for the way I'm going to be voting. But back when we were talking about their traffic management plan and their net zero efforts, I found that very unpersuasive. If you don't have the project, you don't have the project. They start out on their per original traffic impact with 74 trips in the morning and 81 trips at night, well no project those don't occur. And it's like pricing, you know, you know how stores have a regular price and a sales price, they can make the regular price a million dollars and they knock it down to a hundred dollars, a hundred dollars may still be too much. So I'm not very persuaded by original projections. But they get the original projection down through a bunch of stuff some of which involves transporting employees, but they could do that with or without the project. So to lower the number sort of artificially by referring to some sort of employee work scheduling is to me unpersuasive. So that does not persuade me.

On the other hand, it seems like they're sort of balancing it out to some extent. The view plane idea I saw those pictures and that persuaded me that the view plane idea is probably not a reason to stop the project. Although Jonathan raises a concern that maybe these were just special angles and I could be fooled.

I would have voted against this project had there been no accommodation on the tennis because I think that does violate standard D without it. With it, it seems to be basically at least some sort of mitigation and I hope the applicants go even further than our conditions, but I don't have any hope that that will happen.

And so somewhat on the balance but reluctantly, I will probably be voting for the project.

Ms. Amarin: Thank you for your comments. Any more discussion? Commissioner Pawsat.

Ms. Pawsat: Really quickly about this view planes. I understand the point of view planes and I think they should exist and like I said before, I think, you know, Chris Hart pointed out that there had been studies done on it, but you know, if the county was serious about it they should have taken a piece of land and put it aside, made it a park, and constructed an axial view from mountain to sea and made that something. And like right now if we're talking about some sort of view that you might see as you're zipping. You know, I'm trying to see when I would see this view if I'm zipping down the highway and I do a quick right or a quick left and I'd see this corridor. I just don't see that as realistic. And so I don't think this is a site where construction of a view plane is conducive to anything beneficial.

Ms. Amarin: Thank you Commissioner Pawsat. Commissioner Hiranaga.

Mr. Hiranaga: Yeah, couple brief comments. My recollection of the elevation of Honoapiilani Highway is that it starts to rise after the intersection of Kaanapali Parkway and Honoapiilani Highway as you head north. So it is a relatively flat and near sea level until you go through that intersection which is beyond the Hyatt project. And if you continue along Honoapiilani Highway, I believe it's the 15th fairway, I know they renumbered the fairways at Kaanapali North so I can't remember exactly what hole it is, but it is mauka to makai the entire fairway. You can see the ocean, you can see the sand I believe, and that is a major view corridor in the Kaanapali project. So these people forget there is that I think it's the number one handicap hole in the course is the way I always remember it, but there is a view corridor there.

Ms. Amarin: Thank you. Any more discussion or comments? All those in favor of the motion?

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

VOTED: To Approve the Special Management Area Use Permit, with Amendments.
(Assenting - B. U'u, K. Hiranaga, W. Mardfin, J. Pawsat, J. Amarin)
(Dissenting - J. Starr, W. Iaconetti)
(Recused - W. Hedani)
(Excused - J. Guard)

Ms. Amarin: One, two, three, four. Those opposed. One, two. And one recused. Before I vote, it's just my own comments. I enjoy this island of Maui and I've been here and there and everywhere. Lahaina, I've enjoyed Lahaina. I've been to the Alii which is a condo close to the Hyatt. I've been to Hyatt many times, my Momma came for Mother's Day brunch. My son was a canoe paddler and yeah, parking was atrocious, but you know, this project, the applicant, you're doing your job, you're mitigating the adversities out there, you're giving to the community. Keep that in mind now, you're giving to the community and give as much as you can because they deserve it. The people who live there like Dr. Iaconetti. God you know, he rides back and forth, he loves where he lives and we respect his comments and the reasons why. And then Jonathan Starr too, I support all of his comments, but you know, the people of the community they depend on this project doing it right. So give and remember and give as much as you can. And I'll be voting yes. So the motion is carried. Congratulations.

At this time, I'll give it over to our Deputy Director, Colleen.

Ms. Suyama: I would recommend recessing because we have the annual luncheon for the commission at Café O'Lei. We're supposed to be there by 11:15, 11:30. Rather than start a new item I would suggest recessing and reconvening at 1:00 p.m.

Ms. Amarin: This commission is in recess for lunch and we'll reconvene at 1:00 p.m. and we apologize for any inconvenience to whoever is here early. We're in recess.

A recess was called at 11: 00 a.m., and the meeting was reconvened at 1:00 p.m.

Ms. Amarin: ... March 25, 2008 is back in session. Before I begin, I just like to say mahalo nui loa to the Planning Department and the County of Maui for a great farewell luncheon. Mahalo.

And getting back to our agenda. We have an item for public testimony to begin at 1:00 p.m. and being that it is 1:00 p.m., I'd like to give an opportunity to any member in the audience if they would like to speak on this one agenda item. It's Joslin Group requesting a Special Management Area Use Permit for the Minit Stop Wakea alteration project consisting of alterations to the existing building and addition of two new fuel pumps with canopy at 85 South Wakea Avenue, TMK 3-8-050:018, Kahului, Island of Maui. (SM1 2007/0012). Do we have any member in the audience for this agenda item? Seeing none, public testimony is now closed.

And now we'll get back to our next agenda item and I'll give it our Deputy Director, Colleen.

Ms. Suyama: The next agenda item is under Old Business and is Samuel M. Garcia, Jr. and Jon E. Garcia requesting a Special Management Area Permit for the Garcia Family Subdivision at Makena, Maui, Hawaii and Clayton Yoshida will do the presentation for the department.

C. OLD BUSINESS

- 2. SAMUEL M. GARCIA, JR. and JON E. GARCIA requesting a Special Management Area Use Permit for the Garcia Family Subdivision, an 10-lot single-family subdivision to accommodate 10 single-family residences at 193 Makena Road, TMK: 2-1-007: 067, Makena, Island of Maui. (SM1 20020016) (C. Yoshida)(public hearing conducted on November 28, 2006.) (SMA Permit action was deferred until after the Council took action on the Community Plan Amendment, the State Land Use District Boundary Amendment, and the Change in Zoning)**

Mr. Clayton Yoshida presented the Maui Planning Department's Report.

Ms. Amarin: Any questions prior to the presentation, Commissioners? Seeing none, lets continue with the presentation.

Mr. Rory Frampton: Good afternoon Commissioners. I hope you had a enjoyable lunch. My name's Rory Frampton. I'm here representing Sam and Jon Garcia. Sam and Jon are here today. They're the owners of the property. We also have Mark Matsuda today from Otomo Engineering if there's any questions on engineering related issues.

I just wanted to quickly go over, go through this power point to orientate you to the project site for the benefit of the new commissioner who hasn't seen the project. I think everybody else has seen it. As Clayton mentioned we've been before the commission with a draft environmental assessment and a final environmental assessment as well as a recommendation to the County Council for a change in zoning. So this is our last stop in front of this commission and it's for the special management area permit.

Just go through some of the location maps. This is an aerial showing the Makena Landing area and the Maui Prince Hotel and Maluaka Beach and Keawalai Church. The project site is almost across the street from the church and it's sort of L-shaped, five and a half acres, portion of it borders the Maui Prince Hotel property and the front portion also borders along Makena-Keone'o'io Road.

This aerial actually has the community plan superimposed on it and the project site was in this area that was in the community plan all designated for hotel use. What we went in to ask the County Council to do was to change that back to single family and the little square cutout here that's on the bottom portion of the parcel, they're also requested and I believe have received now single family as well. So this area is by the landowner's own request has been down zoned from hotel or down designated from hotel in the community to single family.

This is just the old zoning which was business-resort previously. It's now R-3 zoning and this map shows the urban area which the whole area in Makena in that vicinity was urban except for these three little outholdings that were now owned by the resort. One of which is the Garcias right there. Now that has been changed to urban. So it's conforming to the surrounding urban designated areas. So these are the ordinance that were adopted. Hotel to single family. Ag to urban on the state level and establishing R-3 zoning at the county zoning level.

Just in terms of site photographs, this is actually looking up towards Kihei or the Wailea direction from the project access driveway and Keawalai Church is here on the left and there's a little restroom and parking lot on the right which we'll flip around and take another look at.

This is further up the road now looking in the opposite direction with Keawalai Church to the right and the entry to the public restroom and parking lot area here on the left and the project driveway just being – there's the restroom and the project driveway being just south or towards – further towards Makena direction.

So that's the project driveway. It's an existing easement that's owned by the Makena Resort and the Garcias have access rights over that driveway. That's looking up the driveway. So this is a roadway lot that's owned by the resort and the Garcias will, just like they do now, will have access off of that primary roadway which we'll show you in the site plan.

This is at the far south end of the project looking into the property at the existing residence on the property. As Clayton noted there are three existing residences on the makai side or the makai portion.

This up mauka and the back area of the property where there's a big level plateau looking at the hotel. And this is just in a makai direction from that same vicinity looking towards the ocean.

So the site topography and the existing conditions, in the front there are a variety of residential related structures. The back area is the area where additional lots will be developed. There are – on the back area it's an elevated lava rock outcropping and they have some knolls that kind of fall off to this lower side. So it's higher up here and it's lower here and this big knoll was modified on one side of it and it's been identified as a site that's referred to as the Kalani heiau and that's the site that Clayton mentioned that we do have an approved and accepted preservation plan for. And there's another feature on this back knoll that's a much smaller feature that is also being preserved.

So here are the archaeological sites. There are also a bunch of cattle walls that run throughout the property. Most of these walls are either related cattle activities and livestock and there's some other features that were related to older residences. That's just the detail of the heiau map.

This was our previous site plan that was in the – dates back to December of '04. It was in the environmental, in the early portions of the environmental assessment. It was actually for 11 lots. There were going to be four lots in the front and seven in the back. And there were two preservation areas. The preservation area for the heiau and then the preservation area for the site in the back. The site in the back it's a small modified outcropping and the state had determined that it did not need to be preserved, but we decided to preserve it because it could also – I mean, one of the goals of the Garcias is to try to preserve the character of the Makena, the rural character along the streetscape as

well as on the site and part of that topography of the rolling lava outcrops is something that's typical in Makena. It's just how the natural geology is. There's a lot of natural outcrops or bumps or little ridges and the thought was that you could preserve that feature, that knoll, that outcropping as well as the heiau outcropping. So we had two areas that were going to be preserved. And as we went through the process, you can see there were no buildings proposed in the middle so we actually expanded the preservation areas so the two sites, this archaeological site and then the site here have been – the preservation areas were expanded so that you sort of have feel that it's basically over an acre of an area that will be landscaped in native Hawaiian plants. It will retain the existing topographic features. It will also contain the large significant heiau site. And then along the roadway if you look at the old one. It just had a narrow strip of access to this roadway and under the new plan by eliminating the lot right there, it really opens up the access to the site both visually and for pedestrians that might want to go visit the site.

One of the other reasons for going from three to four, it gave a little bit more area for the preservation area but the Garcias are going to retain ownership of the makai lots, the makai three lots and they kind of wanted to keep the area similar in character to what it is now. It has three homes now. There'll be three lots in the future. And that was one of the primary considerations for that.

One other thing about the preservation area. We have been working with the community. We've done extensive, as part of learning about the site and learning about the features, we've done extensive studies performed by a very well respected cultural historian, Kepa Maly and we have several hundred pages of information. A lot of information that had never before been produced about the Makena area and the history of the Makena area. We did that to try to find out whatever information we could on the heiau. Turns out there was not a lot of information on the heiau either based in historical records, oral history, interviews, the land commission claims from 1850.

There was a claim made by an individual who was residing on the site here. He claimed as Mahele that he wanted all of this land and in his description of the property he noted a number of features although he didn't note the heiau and he didn't note some of the other archaeological features. So we did an extensive background research to find out more information about the sites. Based on that, we came up with a preservation plan, reviewed it in front of the Cultural Resources Commission, they okayed it. State Historic Preservation has approved it, signed off on it and it was considered when we went up to the County Council.

So we've spent a lot of work into it and I guess what I was going to do is we've reached out to the community, the Makena Keawalai Church across the street has agreed to kind of spearhead a community group that would take care of the site and help do interpretative

exhibits and allow people to come visit the area and learn about the history in the area. The historian that we used to do this work has gone before the church on numerous occasions now to provide, to share this information that we collected. So we were – not only did we gather a lot of information about the history of the area, we've been sharing it.

And I know in a recent publication that was done by Lucienne de Naie called Project Kaeo our report was referenced probably more than any other report in this 400-page document that included a lot of information on Makena. So Lucienne used this report which gathered, like I said, first-hand accounts and information dating back almost 200 years about the area. So we're sharing the information with the community. Other people have been utilizing it and we think we have a very good preservation plan that goes far beyond the typical preservation area.

Just want to move onto grading and drainage. We do have a series of basins that we're going to work into the landscaping of the site to catch the runoff from the various home sites. These areas in red depict those areas.

This just, again, goes into some of the detailed history of all the studies and information that we've done. And I can kind of – well, this back summarizing the archaeological and cultural stuff. The inventory survey was approved in 2001. We did a revised addendum which consisted of lot more information. They wanted us to do a lot more testing around the heiau and other features and we got that completed and it was accepted back in 2005. We did the Kepa Maly studies in 2006 and went to the CRC and the preservation plan was approved in 2006.

So the drainage I touched on. We're going to be able to handle more than the required, the County requirements. We're within the County water supply area. We will be trying to incorporate the use of indigenous plants or plants that are adapted to the area to reduce irrigation demand. Wastewater, we will be connecting to the Makena Wastewater Corporation's wastewater collection system. So there will not be septic systems on site.

The workforce housing as Clayton noted, although technically the project is exempt from the workforce housing ordinance, there is a contribution being made to Lokahi Pacific based on a net increase of seven units on the property. So it's a 10-lot subdivision, three homes are existing so the net increase in homes is seven and that's how that figure was calculated.

We did go to the County to ask for – we asked the County Council for an exemption from the typical roadway standards fronting the project and this was consistent with the goal or objective of the Kihei-Makena Community Plan which talks about preserving, protecting and preserving the rural scale and character of the existing portions of Old Makena Road in a

manner similar to that existing at Keawalai Church. And these next series of photos just show you that character. Starting from the Garcia's property going south what you have is a four-foot sidewalk and 22 feet of pavement. And basically the Council has agreed that this – we don't need to do an expanded roadway improvements in this area and that they would – we're going to be able to keep the improvements like you see them right there. That is looking back north with the sidewalk and the 22 feet of pavement.

Those are the adopted zoning conditions that Clayton read for you and he did mention that we will be doing numerous. We will be incorporating CC&Rs that will address architectural and landscape design guidelines, height restrictions. We're going to notify future buyers that they are near an active church so that they need to be aware that that there are ongoing church activities nearby and of course, they got to do the implementation and maintenance of the approved preservation plan.

So thank you for allowing me the opportunity to provide this – repeat the some of the information for some of you and provide new information to the new commissioner. Any questions?

Ms. Amarin: Thank you. Any questions Commissioners? Commissioner Mardfin.

Mr. Mardfin: May I take a look at that report you have that you just brandished?

Mr. Frampton: The Cultural and Historical Report?

Mr. Mardfin: Right. Thank you. I'll return it to you.

Mr. Frampton: There's two volumes. One's the oral history and the other historical study.

Ms. Amarin: Commissioner Starr.

Mr. Starr: You mentioned that the retention will be 50% greater than the County standards. I have great concern about runoff from this leaching and running into the ocean that we have very sensitive places, already some little bit of algae blooms there. Can you tell me what you're going to be doing to prevent runoff?

Mr. Frampton: Mark, you want to expound? But briefly those red areas were a series of basin that would collect the runoff from the homes, but I'll let Mark.

Mr. Mark Matsuda: Good afternoon. Mark Matsuda, Otomo Engineering. Just as Rory mentioned, the retention basins are intended to be in place to capture the runoff from the project site and act as a sedimentation basin which would need to be maintained to prevent

contaminants from going downstream and they're committing a volume of 50% greater than the increase due to the proposed improvements.

Mr. Starr: I'm trying to understand what that means. You have a predevelopment 206.6 and post development 13.7 which shows an increase of 7.1. So what will be the new post development runoff?

Mr. Matsuda: I'm sorry, what was the numbers you referenced?

Mr. Starr: I'm looking at 27 in the EA.

Mr. Matsuda: Well, those numbers also correspond to a volume.

Mr. Starr: Right.

Mr. Matsuda: So the predevelopment volume I recall was about –

Mr. Starr: 6.6

Mr. Matsuda: That's runoff, surface runoff flow. There's a volume that corresponds to that which is how we size the basin.

Mr. Starr: Right.

Mr. Matsuda: The predevelopment volume of the runoff was approximately 7,000 cubic feet and I believe the post development was approximately 14,000 which means a increase of 7,000 cubic feet.

Mr. Starr: Yeah, doubling, right?

Mr. Matsuda: Yeah, roughly. And so when you talk about the volume, that's how we size the basins to accommodate that runoff water as opposed to that cfs number that you referenced.

Mr. Starr: So how much are you going –

Mr. Matsuda: So the basin, the basins will be sized to capture approximately, there's 7,000 cubic foot increase so about 10,500 cubic feet of retention basin volume that it can retain from the design storm.

Mr. Starr: Okay, I'm still having trouble translating into how much is going to end up in the

ocean – how much is going to end up in the ocean in a 50-year storm.

Mr. Matsuda: In a 50-year storm?

Mr. Starr: Yeah.

Mr. Matsuda: The total project generates approximately 14,000 cubic feet of runoff.

Mr. Starr: Is that in a 50-year storm?

Mr. Matsuda: In a 50-year storm.

Mr. Starr: Okay.

Mr. Matsuda: The sizing of the basins will be approximately say, 10,500. So you're talking about –

Mr. Starr: So you're still going to leave 4,000?

Mr. Matsuda: Roughly. Which is less than the predevelopment.

Mr. Starr: Yeah, but the predevelopment there's no lawn chemicals and fertilizers, nitrates, phosphates that are going to cause algae bloom. Is there a way to increase it so that none of that enhanced or degraded runoff is actually going to hit the ocean? I'd like to see 14,000.

Mr. Frampton: Yeah, the 50% is something that we can accommodate without doing extensive, you know, deep basins on the site, but let me just say something about the 50-year storm. The concerns that you're having relate to runoff that's going to be happening repeatedly maybe several times a year, maybe from a six-months storm, a one-year storm or a two-year storm or a five-year storm and those types of events, all the water would be captured. It would be only in the extreme events, the 50-year storms where the water is going to overflow these basins. So for a lot of the smaller events which are the typical, more random events, the entire volume of water will be held within the basins and will be allowed to percolate and will actually, that would be the filtering for a lot of the contaminants or the pollutants that you mentioned earlier.

Mr. Starr: Well, you know, I have to say I'm still not happy primarily just because it's such a sensitive area. That's one of the few places where the water is still pretty good. You know, I go, I spend a bunch of time in the water there. You still see eagle rays on quite regular basis right there, you know, there's a lot of stuff happening.

Mr. Frampton: It's changed a lot since the last – since I've been going down there for the last 30 years, but yes, it is a sensitive area.

Mr. Starr: And there's still some, you know, there's still some decent coral colonies, not a lot are gone. But, you know, your next door neighbor, you know, Dowling guys are – have undertaken a really aggressive regiment of trying to protect the shoreline from runoff, you know, and I respect them for that. Frankly, you've heard me go on and on about how it really disturbs me to see development down there in the sensitive area at all, but if it's to be done, you know, it really behooves us, since you understand the ocean to find ways to keep lawn chemicals out of the ocean. You know, since now we know it's bad. And appreciate the fact that you're tying these into the sewer system, you know, so the one step now is to deal with the runoff and not even runoff because it's lava tubes under there. What goes down is also going to tend to migrate to the ocean to a large extent. Is it possible to get a commitment that practices will be employed on these lots that would obviate the use of agricultural chemicals and utilize instead natural techniques and xeriscape type techniques the way Dowling guys are doing next door?

Mr. Frampton: The short answer is yes. What I can say is what we're going to be encouraging especially in that preservation area which is over 20% of the site is to use plants which are from the area and to the extent that you use plants that are, as you know, adapted to the area, you lessen the reliance on additional chemicals and fertilizers and a lot of excess water by the way too. And so in a lot of the common areas as well as in the preservation areas we will be actually planting those plants in the areas that we have control over and then the CC&Rs will have – I'd call them strong recommendations for the use of these plants and they're going to ask that the majority of the landscaping be plants that are adapted to the area and to implement xeriscaping techniques. We haven't – I'm hesitating a little bit because we've talked about it conceptually but we haven't detailed out the CC&Rs, but in terms of addressing the intent of what you're saying the overall concept, yes, we've talked about it and we want to encourage that via the CC&Rs and through the planting.

Mr. Starr: Since you're – you know, have the intent to do it, would you be willing to work with Mr. Yoshida to put together a condition that will state that xeriscape, natural plantings will obviate the need for –

Mr. Frampton: Well, hesitant to say that it won't need anything because there will be certain areas that will have lawns. There will be certain areas – what we're going to do is try to lessen the need for those types of amenities, but I don't think we can go with a complete palette of native plants. We can be very aggressive. We could work with Clayton on something that's conceptual but to actually say that it will eliminate all future use of any type of amenity or supplement or what have you, I think I'd be hesitant to say that because I

don't know if it would be a real –

Mr. Starr: I mean, that's, you know, your neighbors are doing it, a lot of – you know, the last several large projects that have come before us are LEED certified which – and will be utilizing these standards. You know, I don't see why you would need to go to a lower standard in this. I really ask you to raise the bar for, you know, residential subdivision and work something out. You know, I think it will be a good selling point. But the people, some of the people who buy these will, you know, be people from somewhere else who will not understand the need and the sensitivity for this.

Mr. Frampton: Right, and I'm not trying to disagree with you. I'm just trying to – some of the statements that you said that you know, working towards the use of no chemicals or no additives. I don't know if – those are some strong statements and I don't know if we can commit to something like that because that means you can't even go use a little bit of roundup or something.

Mr. Starr: There is wording that –

Mr. Frampton: If there's other wording that's already been developed we'd gladly look at and we'd gladly – I'm sure if it can work for some of these larger projects we'd be able to make it work for this project as well.

Mr. Starr: Can you try to put something together that will at least show that a real intent to minimize to the greatest extent possible and let us put that as a condition?

Mr. Frampton: I will work on something real quickly.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: Yeah, unfortunately I've got a major problem with this development and it's all related to archaeology and what used to be at the site. Do you mind, can you – I want to explain myself, can you put it back to the surrounding uses slide you have?

Mr. Frampton: ...(inaudible)...

Ms. Pawsat: The bigger one please. Yeah. I need to approach this.

Ms. Amorin: And you need to take the mike.

Ms. Pawsat: Okay, I was just down here the other day because we passed that Makena Landing project a few months back and this is one of the areas where I'm pretty sensitive

about because there's a lot here that is – has not been explored. You guys did a good chunk, you found those heiaus, but those heiaus are part of a larger system. There's Makena Landing right here and you see this point right here is an elevated point, right? These two formations right here in the water, you look at them, they're a rock formation that look like turtles actually. They have little heads and there's humps on the back. And if you followed the spine of this turtle it goes up to an outlook point right there and I was looking at it and I was like well, knowing Hawaiian archaeology, there's probably some sort of archaeological site overlooking the spine of the turtle. I went up there, it's been discovered. There's a marker, there's a archaeological site there and then you can see that it – the sites go back and that this was all part of something that overlooked this whole bay area, right.

So there's private properties along there and so I went along the shoreline and felt like I was trespassing basically even though it's public there's all walls pushed up to the thing and I got around to right here which is basically this person's private beach now and I was on their little beach even though it's public, they wanted to know if they could help me, I said no.

Right here there's a little island right here and it has black rock and then in the middle you can see that there's a path, they've deliberately put coral and you can tell that it was once a processional path and it leads from this – and you can tell that it was part of this structure. Right here, there's basically a pathway, an access that kind of flows down. If you can – you can just follow it like you're kind of riding down a slide and it slides right down and it slides right through here and it slides right through and it leads out to that point. If you're on this site, you can see how that's all interconnected. And so there's white shells that emphasize this specifically. And on this little island also there's an archaeological structure, old, that's in the shape of a boat's bow and you can clearly see it and it's in the shape of a boat's bow. It still remains and you can follow the access of it. You can see that this is a frame thing here too. So if you follow the procession of it, in the access of the bow, it gives you a straight shot out to Lanai.

And then, there's other things. That beach, there's water once running through here that you can tell. I mean, this area wasn't always dry and you can tell that there were streams coming down here and emptying here. And I think it would be foolish to assume that once you pasted all these things together and considering that Hawaii was Polynesian and navigating culture, that it wouldn't make sense – there has to be some sort of relation on the ground to stars and navigational devices and that probably exists. But unless you start mapping – and so now we're talking about heiaus over here. You can tell that these heiaus, this was all part of this one whole cohesive system and these archaeological sites still exist and this is why I'm talking about restoring things that still have a possibility to be revealed again.

And this right here is just so impressive and it just makes – I just was furious to see that that had been cut off by someone doing, you know, that's the problem with people wanting to come in and do their beachside houses is they cut off whole systems. This doesn't exist in a void, it's part of this big system and this is a processional pathway. I mean, it's so clear and it's really beautiful and things like that is an opportunity for public space where you can actually go back in time and see these things if they're restored. And this is the opportunity to do that and because it's really obvious. I did that in one afternoon I could see that. So I don't know what you guys have in your archaeological report, but I could tell that this was a whole system and it went from all around here and that was a key point and there's more to be discovered there about Hawaiians, about their history and if you could link up their axes, about their axes that they had for Polynesian navigating. That there's a lot to be learned there. And I think it's wasteful that we go ahead and pretend like – I think it's nice that you guys have the buffer space that unfortunately is a big step in development around here just to have that buffer space but you guys need to go farther and figure out how these things were linked together and it just teaches so much.

And just right here, I haven't been to any other part of the island where it jumped out like this because of this feature really jumps out and I think it would be a waste to develop this area without studying the cohesiveness of this system before you start monopolizing areas and breaking the whole system. I mean, this house is right here kind of broke the whole system already but, you know, what can you do, but there's something there and I think it needs to be investigated a lot more.

Ms. Amorin: Thank you Commissioner. Any response from the applicant?

Mr. Frampton: Yeah, I'm trying to find a good paragraph what summarizes the work that we did do and it was precisely because of those concerns that we went into – we went well beyond the normal archaeological report with kind of a sweep of the historical information and we generated the information that Commissioner Mardfin has. It's actually – it's the largest chunk of information that I've ever gathered coming to this commission and presenting to this commission. In terms of presenting information, not just about the project site but about the whole historical evolution of the area. And not only in terms of archaeological sites, but in terms of land use, land tenure, traditions – transitions in the use of – I had said land tenure where it went from a native Hawaiian fishing village to basically an area dominated by cattle ranching, to now an area dominated by hotel resort. But it's these type of reports that I do think that you're asking for.

And what I heard you again requesting for is this in-depth research and information. I would say that we done that and we've done that to a degree that I think is unprecedented in terms of project applications that I've seen before this planning commission. I can't speak for all of them. And that comment was echoed by Councilmember Michelle Anderson when

this project came before the Council just a month or two ago, she held up these reports and says, this is what needs to be done. We need to set a higher standard. And so not only did Commissioner Anderson, I mean, Councilmember Anderson say that, I think those same comments were made by the Cultural Resources Commission and all along the way we've really tried to go above and beyond. Garcias are, this is their family land. They have ties to the area. They wanted to make sure that not only – they wanted to make sure that all this – that went above and beyond and that this information just wouldn't sit there. That it would be used for interpretative programs. They were to be used in conjunction with the church's cultural educational outreach program. That would be shared with the members of the Hawaiian community which it has been. And that we would help understand better the history of Makena which I do agree that a lot of times the archaeological reports only look at particular features and they do a little study just on that feature and they don't put it into the context of the larger community and I would submit that in this case we have done that. We have done the type of work that you're requesting.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: Like I said, I have not seen the report, but unless there is a section in there that maps out exactly what I'm talking about because I could see that on the one – three hours I was out on the site. You know, and for me if it doesn't include like that little island and discussions about that and what that whole community is, it's insufficient.

Mr. Frampton: It does include a description of the island and the archaeological feature on the island. It doesn't go as far north as you were, but it does – It documents the – in that area of Kaeo which is surrounded – this property and beyond, it went back and he got the Hawaiian transcripts from all the natives that made claims to the land back in 1850 translated them from Hawaiian into English. So you have a snapshot of who was living there at the time and how they described their property. We have missionary records that involved getting missionary – the documentation from the American Board of Foreign Commissioners I think what it was, but back in Harvard Library, a lot of letters were sent back to the mainland that never made it back to Hawaii. Kepa Maly has gone up there and researched all of those letters. So not only do we have missionary accounts, we have native Hawaiian accounts, we have – this is all transcripts of the oral history interviews that we did with nine individuals that date people who have lived – I think the oldest individual was 93 years old. And we do have the sites, we do show the old maps. In fact, I'll just show you the old map of the area that shows the fish pond.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: You see for me it – you know, although you guys are obviously, I mean, it would be insane if you tried to demo this heiaus anyway because they're probably, couple

of the largest features out there. But to say that these things existed and then just build on top of it, you know, it's kind of like Makena Landing. You guys went through the whole thing about how is an ahupuaa and ...(inaudible)... but it's kind of like, okay, there's that, you know, and then okay, now we're going to build on it. It's like two separate things. So if you guys are already talking to Makena Resort, see this is also the thing, I mean, there's dialog going on. You know, so I don't understand why there isn't a dialog more than that, you know, and I appreciate the work you guys have done, but for me, if this work was done but for me, if this work was done properly then there should be in place between you and Makena Resort, there should be a big preservation plan not just those two heiaus by themselves but of that whole area and how a whole community works instead of just being like, oh here's the heiau.

Mr. Frampton: ...(inaudible - not speaking into a microphone)...

Ms. Amarin: Can we get a mike to you?

Ms. Pawsat: He's just showing me features of old drawings of the shoreline here. But –

Ms. Amarin: Explanation should be noted.

Mr. Frampton: Just one second, what I'm looking for is more of a conceptual map of the area that showed. We have a lot of the maps, but we also showed maps that showed the aupuni wall which was a government wall. Where is that, I just had it, I'm sorry. That's the – this is old aupuni wall which is a government wall which went along the back side of the property. Some of the old native dwelling sites. This map was a map that was from 1850 and it does show the little island with the fish pond and a road that came down. Actually a little bit south of where you noted, you were talking about something that kind of naturally flowed in here but there was a road that came down from mauka right down to the fish pond area. That's a little bit north of where our project is. This map did not depict the location of the heiau.

Ms. Pawsat: Well, that's what I'm talking about –

Mr. Frampton: And all the maps that we, excuse me, all the maps that we did look at and that's the type. That's just one map. There's about 30 or 40 other maps dating from the 18 – I want to say 1840's up to the 1880's, and we really did an exhaustive search to find out any – to look through every reference that we could find related to the Kaeo area in particular and I think we presented that in a way that can be used by the community. It can be incorporated into the resort's plans. I think we've kind of set the standards at the bar if you will. And so I think – I agree with the statements that you're making and I think we're consistent with that approach.

Ms. Pawsat: Like I said, I appreciate this work, and I think every place in archaeological areas should at least have this. All I'm saying is I think it's irresponsible to development on sites and potentially destroy information, important archaeological information in the short term without looking at how those heiaus directly – I mean, like I said, I don't know if you have in here about – well, there can't be, no one knows enough about it. You know, about how those heiaus related to all the other structures in the area. And I just don't, and I'm sensitive about this area so I don't feel comfortable unless I know how those heiaus relate to the other archaeological areas and how that makes a cohesive system. You know, it's one thing to make information but it's what you do with the information afterwards. You know, you kind of make all these things, but then you just go ahead and just build typical buildings on top of it and I just don't understand the logic. It's like if you do all this research, it should affect more the evolution of certain projects and right now it's just kind of all it's saying is like, oh we got all this information and there's couple heiaus here, we'll step back 50 yards or whatever the setback is, 50 feet and we'll just build all around it. And it's as if like if we went along as is all this area would just have the sites and they would just step 50 feet back from whatever archaeological site there is and that would be it. But then if you do that, and then it's all infilled with housing around but you lose the integrity of the system, if you don't look at it as a whole first. It doesn't mean you can't build on this property, I'm just saying you should reference the whole before you divvying up the parts.

Mr. Frampton: And again, I appreciate your comments. I think there are some things that I didn't get into we did do as a result of some of this information. One of which, from the very beginning we had always tried to establish a view plane to the ocean. Certainly this site had, anything in Makena was very much related to the ocean and offshore fisheries and for the Hawaiians it was all part of a single system. But what also came out as part of these is that the studies that there were significant heiau up mauka in the Ulupalakua area. So we've actually established view planes going mauka and that's one of the things that that – by having the preservation plan go mauka through the property and what's not – in this area here is all no build zone so there's a no build zone that does run not only all the way down to the ocean, but it does run mauka. So when you're on that site, you are able to look to the significant hills that were above. You will be able to look below to the ocean. There are roof height limitations on the two lots, Lots 2 and 3 down there on the bottom. So we did – it's not like we came up with this report and we kept our project the same. We have expanded the preservation area. We've incorporated additional no build zones. We've been working with the community so that there's some kind of community stewardship. So again, I appreciate your comments and I do think that we've gone a long ways towards addressing those comments.

Ms. Amorin: Commissioner Pawsat.

Ms. Pawsat: This will be my last. All I need to emphasize again, you go to Central America and there's a Mayan ruin, in less – in worst shape than this, they go crazy about it. They outline the whole thing. They find axis, they find the relations to the, you know, how it might navigational wise, you know, how all these things related to a system. And there's just not that happening here and it's a disgrace particularly when this is something. Like I said, up in Lahaina it's all been bulldozed so you can't – there's no place to map what was there but this is still here and it just makes me angry that it's not being mapped first as a whole system and then being developed on. Maybe you guys have gone above and beyond what's normal here and but it's not above and beyond how archaeological sites, particularly the potential of learning that is available here. Because this one is particularly key and I would like to know how it's key. You know, if you're standing in that heiau right now, you did identify that you know, the views up to the other side. I would like to know how that heiau, I want a real archaeologist who's expert to go on that heiau and figure out how that relates to all the other archaeological sites I've been talking about so far. That it doesn't exist in this void and that's really all I can say about that. But I do appreciate you know that this is starting but I just don't think it's done.

Mr. Frampton: Okay, and I'll just respond by saying that there is a large section in our preservation plan that talks about what you're talking about is interpretive information. So that people who might go to the site can have actual, they can learn about it and there can be interpretive signage, text, maybe some figures, maybe some graphic illustrations of what might have been there before so that they can learn about that. And that interpretive program is all something that's in the preservation plan and it will be developed in the future for this site.

Ms. Pawsat: Commissioner Hedani followed by Commissioner Mardfin.

Mr. Hedani: Rory, in the preservation area that you folks are setting aside on the site itself, I share Commissioner Pawsat's concerns relative to the shoreline in this particular area. It's a very beautiful shoreline area. It's very – it has unique features, a fish pond. One of my favorite fishing areas is right off of the coast over there and I used to hope over the wall at Keawalai Church until they fixed the wall.

Mr. Frampton: It was a neighbor that did that, but anyways –

Mr. Hedani: Yeah, and now you can't do that so the access is cut off over there so that beach next to the fish pond has become essentially a private beach and they've irrigated the vegetation in a manner that's probably not legal as well so that you got to go all the way to the sand beach on the Makena Hotel side and hike over the lava rocks and duck under their trees just in order to get out to the point over there. So essentially there's no access to the beach for the public from Makena Landing all the way up to the sand beach in front

of the Makena Prince Hotel. And recognize that that's a problem but it's not your problem. It's a problem for this commission when anybody along that stretch of property on the makai side of the roadway comes in for any kind of a permit for any kind of a purpose. I think they need to be called on it in terms of access to the ocean. Discontinuing illegal activities such as creating barriers to public access and creating true public access for that stretch of coastline.

I think to some degree you folks have tried to tie the preservation area that you have because you don't know how it might have tied to sites outside of your property by setting aside additional preservation areas to tie the mauka mound to the makai mound and to tie that to the view plane towards the ocean over your ...(inaudible)... easement. What percentage of the total lot area that you folks are looking at is in preservation at this point?

Mr. Frampton: I believe it's over 20%, 1.1 acres of the 5.5 acre property. It's right about 20%.

Mr. Hedani: And you've done that voluntarily basically?

Mr. Frampton: We would have had to have done buffer areas. We've expanded them. So I wouldn't say that that's straight voluntary because we would have – the accepted archaeological plan called for the preservation of the heiau. We went beyond that and incorporated the other parcel. We're also trying to incorporate the cattle walls even though they're not associated with precontact activities. The cattle walls were actually used, the reason why that plan – it's kind of a weirdly shaped preservation areas that we utilized the existing cattle walls as the boundaries, as the natural boundaries for the preservation area. So we thought that would be an appropriate use.

Mr. Hedani: Do you think there's connections to areas mauka from the sites that Joan is talking about?

Mr. Frampton: Well, at one time I would think that a lot of – and it's hard to take one site out of context. You know, it was all –

Mr. Hedani: Right. I can see where you can't plow up your neighbor's property in order to go search for archaeological sites without their permission.

Mr. Frampton: No, we can't.

Mr. Hedani: Especially when they don't want you to find anything.

Mr. Frampton: The surrounding property is all, is mostly all owned by at least to the mauka

and to the north by Makena Resort.

Mr. Hedani: Okay, so from the commission's perspective we should probably keep that in mind when anything comes in for that entire mauka area comes in as – in order to tie that relationship to the sites that are on this property.

Mr. Frampton: Yes, I would think that would be a consideration.

Mr. Hedani: In the preservation area that you folks are looking at, there are no build zones completely mauka and makai over the view easements as well as the mauka view easement?

Mr. Frampton: Yes, over the makai – over the mauka area there's a no build zone and then on the makai it actually – we have a no build zone that we share with the neighboring property where they've agreed to have a no structures along the property line and that gives you the views to the – you know, the access to where the little pull out is, the access to the sandy beach, that gives you the most direct shot, line of sight to the ocean from that heiau and that's where the sand dune comes down and actually diminishes to the beach. And if you go further south, there's a fairly large dune that's in front of the hotel that blocks your view of the immediate ocean like where the waves break. And then to the – around this side of the property all the neighboring structures and vegetation on the other – between the church and the last house, the king property which is on the north end of that beach, but all those existing homes sort of block your view of the very nearshore water and even those kiawe trees actually on those other properties go up pretty high and so you don't really have much coastal views along this portion of the property. The one that you do have a makai view on is that one and we do have no build zones running makai as well.

Mr. Hedani: As far as the connection toward the north, that area is potentially a connection point, who owns the property to the north? Immediately to the north.

Mr. Frampton: I'll go to this. It's almost all Makena Resort with the exception of a few small parcels here, the remaining surrounding area is all Makena Resort. So there's a – where the church does their overflow parking – where's there's a County – Makena Resort has a immediately north of the project is a sewer pump station, well the easement, and sewer pump station and public restroom and parking lot and then north of that is a vacant lot that the Makena Church has overflow parking on and there's another smaller parcel there and those are not held by the resort and there might be one other smaller parcel there, but the rest of it is all the area that Commissioner Pawsat was mentioning is all owned by Makena Resort.

Mr. Hedani: One last question.

Ms. Pawsat: Yes, Commissioner Hedani.

Mr. Hedani: The property owners immediately next to Keawalai Church do you know who that would be?

Mr. Frampton: It's – the owner is –

Mr. Hedani: On the south side.

Mr. Frampton: On the south side, the owner is Makua, it's a Hawaiian family from the area, and their parcel actually wraps around and goes in front of the church and they've leased it out to an entity that uses it for other purposes. They're the ones that made those improvements to the lawn. They actually conduct, you know, weddings and stuff over there.

Mr. Hedani: So it's a commercial use?

Mr. Frampton: Um, yes. They use it for wedding activities. Well, if you go down there, you'll see it happening.

Mr. Hedani: Yeah, I think I have a problem more with them than I do with you.

Ms. Amarin: Thank you. Commissioner Mardfin.

Mr. Mardfin: Can you go to the spot where you looked at the lot where the 10 houses would be? Yeah, that's a good one. Now you said there were already houses here. Could you show me where the houses are?

Mr. Frampton: They're in this area. There's three houses and they're roughly in the same location that you see these houses here.

Mr. Mardfin: And there's no houses in the mauka portion?

Mr. Frampton: In the back portion, that's correct.

Mr. Mardfin: I was looking through the Maui Planning Department's report to the Maui Planning Commission for the November 28, 2006 meeting and there's an exhibit 23 from – it's a letter from Charles Maxwell. It's on, I guess it don't have a page number, exhibit 23. Charles Maxwell, Sr., Hawaii cultural specialist who writes to Chairman Wayne Hedani. I'll read some of it. It says, "During the July 25th meeting which has been broadcast by Akaku Commissioner Suzanne Freitas commented that building a house next door to a heiau is

permissible. To support her statement Mrs. Freitas declared that Charlie Maxwell had tried to obtain property in Pukalani to build a home next to a heiau. This is a completely false statement and Mrs. Freitas should apologize. As a Hawaiian cultural specialist knowledgeable about Hawaiian traditions it is inappropriate to conduct – construct houses next to a heiau especially when houses will be higher than the heiau,” which would be the case if you build the houses there.

There’s another paragraph and then he says, “regarding the Garcia property and the Kalani heiau I seriously disagree with Mr. Kepa Maly’s report on this project. Who in their right mind would allow a road to be built through a heiau complex.” I believe that’s the road you have there. I didn’t see any response to this letter, was there any?

Mr. Frampton: I don’t think so. I don’t think we responded to Mr. Maxwell’s assertions. But I’ll just say with regards to, you know, – I want to go on at length here and I’m going to try to summarize it and I’ll just summarize it by saying I think you look at each site in the context and the State law says that you look at each site in the context of their own surroundings and sometimes there might be 10 to 15-foot buffers. Sometimes there might be 100-foot buffers, it depends on the nature and the setting and the surrounding land uses that are there.

This roadway does not go through a heiau complex. There’s no evidence to suggest that that was a larger heiau complex. There is no evidence – There’s not a lot of evidence that this was a significant heiau in terms of a Luakini Heiau and that goes into a technical term which is a Luakini Heiau is sort of the higher of the higher heiau structures like you have in Hana and that would be a Luakini type heiau. But we did extensive research in terms of what Luakini Heiaus are and the various classes and kind of compared that to what exists on this property.

We don’t think that there’s evidence suggesting that that was some larger heiau complex. In fact, the person who did the research surmises that that structure, what’s called the Luakini Heiau could have been a chiefly residence. It’s a significant site, but we don’t know what the form or the function was of that site. And considering that humans have been habitating down there for close to a thousand years, certainly that site might have changed over time and there might have been different uses and what have you.

I think based on the people that we’ve talked to, the old-timers that grew up in the area, the Cultural Resources Commission, the State Historic Preservation Division and the County Council all have been comfortable with the plan that we’ve come up with. And in fact, in many cases we’ve been applauded for what we’ve done. So, I take issue with a few of the statements made in Mr. Maxwell’s letter. That’s the one being that there’s a road going through a heiau complex that simply is not true. There are two preservation areas and it’s

separated by a road. What we've tried to do is rather than isolate the preservation areas, we've gone beyond that to try to integrate a least visually those two areas when there was no requirement to do that.

Mr. Mardfin: But with regard to construction of houses that would be higher than the heiau, you don't have any Hawaiian testimony to the effect that that would not be a relevant issue.

Mr. Frampton: Well, we have the roof heights in front of the heiau have been limited to 40 feet and the – so the peak of the roof will not go above 40 feet and the top of the heiau mound is 40 feet. So basically if you're standing on it, you'd be higher than the roofs on the makai side.

On the mauka side, this is part of a sloping mountain that keeps sloping up, you know, all the way up. And there were structures, the very structure that's the little knoll on the top is six feet higher than the heiau and that's part of a larger structure. If you go just immediately beyond the property line it goes up to 49, it goes up to 50, and it's a lava ridge that keeps going all the way up. I'm – we have seen that letter and it was considered when we were doing the preservation plan but we have an approved preservation plan that is what you're looking at right now.

Mr. Mardfin: You have the pointer not I, but if you see where the heiau is, to the north – well, I don't know what the direction but –

Mr. Frampton: North would be this way.

Mr. Mardfin: Yeah, and above that you have a house.

Mr. Frampton: Yes.

Mr. Mardfin: How high is that relative to the heiau?

Mr. Frampton: We don't have a height limit there and the ground there I want to say would be somewhere around 20 feet above sea level.

Mr. Mardfin: So if you went more than 20 feet in the house you'd be above the heiau?

Mr. Frampton: Yes.

Mr. Mardfin: Thank you.

Ms. Amarin: Thank you. Any more questions Commissioners? Commissioner Hiranaga.

Mr. Hiranaga: Couple follow up questions regarding the heiau setback. Who determines the or how do you determine and who determines the outline or perimeter of the preservation area?

Mr. Frampton: The way it was done, typically you'll prepare a report and try to base it on some logic or rational, and turn it into the State and the State will comment. And again, if you read the State law, there's no magic formula. You look at each instant in the context at which it's being proposed.

In this case, along this southern boundary there's a rock wall which runs all the way mauka/makai and we used it there. We actually put in it, because that was fairly close to the corner of the heiau, we've incorporated a 20-foot building setback onto Lot 10 to allow a minimum 50-foot building setback. So the preservation area is a little bit smaller because wanted to stay along that wall, but we added an additional 20 feet to keep structures off that side. Along that makai portion here, it runs along another cattle wall, along the north it runs along the roadway, that's as far as we can go. Along this side, we went along the tow of the bank, we used the topographical feature and we again, added another 20 feet to get a minimum 50-foot buffer. And then it runs mauka along another cattle wall that runs all the way up to the back knoll back here. So we kind of connected walls and used topographic features and where necessary added additional building setbacks. And the building setbacks were to provide, we wanted to at least be able to represent that there would be a 50-foot building setback and that's just a round number that seemed – it was just a number that we chose.

So there were a variety of factors that led to the establishing that preservation area. And originally it was just one around the top of the mound here and it was just a circle around there and what we've – we've expanded it. So it's from the top to the bottom I think it's 400 something feet in length and at it's widest point it's over 270 feet wide.

Mr. Hiranaga: Are you going to provide something along the proposed roadway that crosses the preservation area that would prevent people from leaving the improved surface like a low hedge or?

Mr. Frampton: Yeah, we'll probably have a little hedge of some sort which demarcates it. That basically is a driveway and the reason for doing that is we wanted to keep it low, the pavement width is only 16 feet. If we were serving more than three lots we'd have to have 28 feet of pavement and basically a cul de sac that would be about 80 feet wide and we're again, trying to preserve the rural character of the area which is why we came in with two smaller driveways and that driveway is serving two lots. So it's not going to be receiving a lot of heavy usage.

Mr. Hiranaga: So did you say if you use the perimeter roadway to service those two lots it would have to be a wider roadway?

Mr. Frampton: Yes, 44 feet of right of way, 28 feet of pavement, and culminating in a cul de sac that would be the pavement width of the cul de sac, we'll if you've driven around any urban standard residential areas, you know what it is, but the cul de sac would actually be 80 feet wide. So we've seriously considered that option but it –

Mr. Hiranaga: Because if you service more than three houses, you have to go up to 44 feet. Thank you.

Ms. Amorin: Commissioner Mardfin.

Mr. Mardfin: There is no direct public access in this area is there? Is there any direct public access in this area?

Mr. Frampton: Regarding –

Mr. Mardfin: To the heiau or to the beach?

Mr. Frampton: There is none now and there will be when this project is done.

Mr. Mardfin: What will the public access be?

Mr. Frampton: Well, they'll be able to go up this easement and go through the road. What we're going to try to do is manage the access and have the church be in charge of that so that it's just not kind of unfettered access, but there's a provision and a plan for a trail to go along the back side to access the heiau on the backside of the preservation area and this frontage here is basically the access from the road, from the Makena Resort easement.

Mr. Mardfin: I guess I'm trying to understand whether this will be different from, you know, having a nice little heiau that you put in a little glass box – I'm following up on Commissioner Pawsat's concern that there are inner-connections here and it sounds like you're putting a little museum box by itself out of context and I guess I'm having trouble with that as a concept.

Mr. Frampton: Well, it's hard to preserve everything in an area. Yeah, I think it needs to be a balancing approach. But with this area it's going to be – this site will have – I mean, there was originally a house that was here that would have really – this was just a narrow pinch point. And that, you know, basically a buffer around the site with a small little access that would allow for people to walk up there. What this does now is it – you still have the

opportunity for pedestrian access. But we've really opened up the setting so that you can look down towards the church in this way, you can look down towards the ocean, you can look mauka. So we have tried - and with the building height limitations that we put in place we have tried to allow for a better incorporation or a better - what we've done is we've allowed for view plane preservation, site preservation as well as an expanded landscape buffer around it.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: Did you explore the option of moving that driveway that services the two lots 10 and 9 to the 44-foot wide ocean view corridor in trying to provide access through that means?

Mr. Frampton: That would end up running right with - in order to get to those lots you'd be within the preservation area of the heiau.

Mr. Hiranaga: It's 50 feet from the boundary to the preservation - to the heiau?

Mr. Frampton: It's roughly 50 feet from that - this property line goes like that. So you'd be running up here and because there's already a roadway here and you know the - that's really where the Garcia's are going to live and that shot that we took of the old Garcia house was from this corner here. And that little knoll, that rise, that lawn area that rises from the beach access point is an area that they want to try to preserve for the common use and enjoyment of their family so it would detract from that and it would also run right into the heiau preservation area.

Mr. Hiranaga: And what's the ground cover that's proposed there, the green area or are you just going to leave it brown or is it green?

Mr. Frampton: We hope that we can have pili and other native ground cover in some of those areas. For the trees, at the time we were hoping to do wiliwili trees but that was before the bionic bug came in.

Mr. Hiranaga: You're not planning to irrigate it so probably -

Mr. Frampton: It's going to be landscaped but it's going to be with - there's a list of suggested plants in the plan that were from the area. But this plan shows naio as a hedge, wiliwili as a shade tree and pili and other native ground cover for the low story.

Mr. Hiranaga: Okay, thank you.

Ms. Amorin: Commissioner Mardfin.

Mr. Mardfin: We found on our, I found on my desk today a letter from Maui Tomorrow Foundation, two-page letter, and the second page of it I think they're talking about, which is parcel 26?

Mr. Frampton: They're commenting on two projects and that whole discussion – we're only on the first page of their letter.

Mr. Mardfin: Oh.

Mr. Frampton: And all that other stuff is another project, the Schloemer project that's coming up later.

Mr. Mardfin: So they're concerned about – for your project they're concerned about private wastewater treatment systems?

Mr. Frampton: Which is not going to happen. We're going to connect to Makena Resorts. They claim that we're going to use septic tanks, that's wrong. We're going to hook up to Makena Resort's collection system.

Mr. Mardfin: Is that in your plan or is it in the conditions?

Mr. Frampton: It's in the plan, it's in the environmental assessment, it's – I don't know where they got that from.

Mr. Mardfin: And it says the access driveway is located between the Hale o Papa women's heiau and the Kalani Heiau what mitigations are planned to insure the cultural integrity of these sites. And that I guess you've addressed that at least as best you can.

Mr. Frampton: And I'll just add that we disagree that that's a Hale o Papa heiau, what they're referring to as a Hale o Papa and that's been extensively researched and gone over in all of our work.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: Are you planning to have a homeowner's association?

Mr. Frampton: Yes.

Mr. Hiranaga: It wasn't mentioned in the staff material because you said you were going

to encourage the use of traditional Hawaiian architectural elements, but if you don't have a homeowner's association, there's no one to enforce that. And you'll have a design review committee as part of the homeowner's association?

Mr. Frampton: Yes, that will be incorporated as part of the CC&Rs. There was slide of where I had mentioned what would be incorporated as part of the CC&Rs.

Mr. Hiranaga: Okay, thank you.

Mr. Frampton: You're welcome.

Ms. Amorin: Commissioner U'u.

Mr. U'u: You know I hate to put too much restrictions on family property. Just a question, how long have the owners owned this piece of property?

Mr. Frampton: Well, it's since about the '50's. The original property, their family property was mauka. And when Ulupalakua Ranch came in that property was isolated and so they basically traded their mauka, the mauka family lands with this property down here. So they've had it since 1955.

Mr. U'u: I understand Commissioner Pawsat's ideas about the connectivity of how things went together at one time, but I really think this is the first step in that direction. And if we can hold the other landowners accountable to what you guys did I think it can work out in time eventually if they planning on coming before say the Council or the commission where this could be the first step in the next series of steps to make it happen. And you know, you got five acres and one acre is going to be pretty much open space. I just would like to you – I'm thinking somebody is going to be living there, some of the owners still going to be living on property, if you guys could educate the people there about the history and the rich history of Makena I would appreciate it. I think it should be done regardless. That it needs to be done and I would hate for see kids playing up there with rocks. You know kids, yeah? I think more so you got to educate the kids or the parents got to educate the kids and so forth. And I think you can incorporate that in your homeowner's association.

Ms. Amorin: I have a question. The applicant has been living there, the family since 1955. This area where the heiaus are at, when was it discovered? Did you always know about this heiau during the time you lived there? Can I have the applicant come forward and give us some history.

Mr. Sam Garcia: Aloha, my name is Sam Garcia and my brother Jon and I own the property. We've known about it for ever since we've had the property, yes. And we've

respected. My mother was Hawaiian and my brother and I are Hawaiian. We are not going to let anything happen to that heiau. As Rory mentioned we did hire a specialist Kupa Maly and he did some outstanding work and to the point now where I think you're right others should be held to a higher standard because it's very important to protect these things. We've always known about it, yes.

Ms. Amarin: Thank you. And just to share a little bit, I've been in Kihei since 1973, and my husband worked for one of the huge landowners and he surveying in the Makena area since the '70's. Thicket with kiawe and all of that and he used to come home and he used to say, you know, there's a lot of heiaus in there and he used to go in and he used to see, but not to really identify. I mean there was all of this development that was starting and they needed to survey the areas, but he saw a lot of that. And to respect the heiau and to reveal it to the community and to show respect, having people go in and giving respect to the heiau is huge and I thank you for all of that. And you're trying to make sure that preservation is in place. I know as a landowner you don't own the surrounding areas and I can respect Ms. Pawsat's comments but this is a beginning. But you know what I fear, what about all those heiaus that weren't given attention to that's not there anymore. And to you landowners, to the locals that been living there for a long time, thank you. Commissioners more questions for the applicant? Commissioner Hedani.

Mr. Hedani: I guess this is for Rory. During the period when ground altering activities are occurring on the home sites, is there some kind of monitoring plan?

Mr. Frampton: Yes, there will have to be monitoring.

Mr. Hedani: So if anything is discovered then the construction will stop and then they'll come up with a remediation plan?

Mr. Frampton: Yes.

Mr. Hedani: I see.

Mr. Frampton: And just for your information, most of that area just has a thin layer of top soil and it hits bed rock pretty darn quick. So a lot of the work we're hoping to do is to fill some of the areas rather than actually do a lot of trenching because of the rock. But it is rock which lessens the opportunity to find stuff. It's not like we're in sand dunes or something like that.

Mr. Hedani: Two other questions.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: Once the property is sold and third parties come into the picture and acquire say the site, build a house on that particular site, is there a mechanism to have them understand that there are retention areas on their lot that they cannot fill?

Mr. Frampton: Yes.

Mr. Hedani: So that's in your CC&Rs?

Mr. Frampton: Yes.

Mr. Hedani: Okay. The last question that I had was on the bottom lot that you have that accesses to that Makena Road side, I don't know what the name of that road is, but it's kind of a driveway on a curve and did that qualify as far as site distances are concerned for safety perspectives?

Mr. Frampton: Well, it's the site of an existing driveway right now and we have received preliminary subdivision comments and we'll comply with whatever necessary requirements that we need to, but we did locate that at the approximate location of an existing driveway.

Mr. Hedani: Okay, so as far as site distances, you probably need to restrict vegetation, whatever, so they'll be able to see oncoming traffic from either direction?

Mr. Frampton: We may. Typically they would require that for a significant roadway. If it's a single driveway, I'm not sure if they would require that.

Mr. Hedani: That would probably be covered when you get your final subdivision approval?

Mr. Frampton: Yeah, and maybe I'll defer to the Deputy Director.

Mr. Hedani: Public Works.

Ms. Amorin: Any more comments, questions, Commissioners? Public Works you have a comment?

Mr. Miyamoto: Well, Madam Chair to address the concern about sight distance, yes typically on driveways if adequate sight distance isn't available either we ask the homeowner to either modify their property to provide additional sight distance or they basically have a hold harmless agreement that they can have with the county. Something like this you could look at other alternative like a – you know, it may not be the best situation to put a mirror out in the opposite end to see the visibility. But in that area I think in the mauka side where the driveway is, the vegetation is relatively low. There is a low

hedge on the mauka side property line fronting this area. So I think sight distance – and the property is elevated so sight distance is fairly decent in that area.

Ms. Amorin: Any more questions Commissioners? If none, I'll open this time for public testimony. Do we have any members in the audience that wishes to speak on this agenda item? Seeing none public testimony is closed. Commissioner Starr.

Mr. Starr: Yeah, now that we're into deliberation before the recommendations are given to us, I have a couple of things. One, first of all I hope that there's a condition put in place about ag chemicals and xeriscape. I know Mr. Frampton, he's got Mr. Hart who knows the drill sitting behind him too, so maybe they can come up with something for us. But I cannot in clear conscience support this because of the sensitivity of the sites. You know, we have heard testimony that this was an important sacrificial heiau that the second site was also part of it or was a separate heiau. And that the road dividing the two is sort of sacrilegious. That building houses and you know, selling the land in such close proximity to this heiau and to divide up what is a one of the very few large existing unbulldozed sites on Maui I just feel is really, is really wrong and something that I can't be a party to. So, I'm not going to get emotional like last time with this I got really emotional and I'm not going to do that this time, but I really feel pretty strongly on this one.

Ms. Amorin: Thank you Commissioner. At this time before Clayton delivers his recommendation, we're going to take a short break. We'll reconvene at 2:40.

A recess was called at 2:27 p.m., and the meeting was reconvened at 2:42 p.m.

Mr. Yoshida presented the Recommendation.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, that last condition, I believe it's 20. I'd like the wording to be that the applicant shall implement the guidelines not consider the guidelines.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: I have a question about drainage. First question is when you calculated the additional runoff from the project did you take into account the harden surface of the access easement located off the project as part of the project runoff, total project runoff?

Mr. Mark Matsuda: Well we did not take into account the access easement as the – it's existing pavement.

Mr. Hiranaga: Oh, so you're not widening it?

Mr. Matsuda: I –

Mr. Hiranaga: The widening of the existing pavement?

Mr. Matsuda: Oh, excuse me, the increase would incorporate any additional pavement we add to the surface add to the project, but predevelopment did not take into account that existing pavement.

Mr. Hiranaga: So you're saying the additional pavement due to the project, the additional required paving surface was calculated into the additional runoff created.

Mr. Matsuda: In the post development.

Mr. Hiranaga: Right.

Mr. Matsuda: Yeah, correct.

Mr. Hiranaga: And that runoff coming off the easement is that diverted into one of your drainage sumps?

Mr. Matsuda: The proposed –

Mr. Hiranaga: Or is it allowed to flow onto Makena Road?

Mr. Matsuda: No, the proposed plan is to divert it towards the basin in that bottom corner near the entrance.

Mr. Hiranaga: Couple more questions regarding drainage.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: So you stated that the proposed drainage system would reduce the existing runoff prior to the project by 50% approximate.

Mr. Matsuda: Correct.

Mr. Hiranaga: This is based on a 50-year storm.

Mr. Matsuda: Correct.

Mr. Hiranaga: So at what point does the drainage system meets its capacity? Is it like a 30-year storm or 35-year storm because you're saying of a seven something and it's containing 10 and the post project is 14. So between that 14 and 10 there's a capacity that never gets exceeded.

Mr. Matsuda: Correct. That we did not calculate and I couldn't tell you that.

Mr. Hiranaga: I guess one of the net effects is that until that capacity is met, there's actually less runoff entering the ocean.

Mr. Matsuda: Correct. Basically until that capacity is met everything from the site would be diverted to these basins and would be retained and evaporate or whatnot.

Mr. Hiranaga: So your annual storms, your five-year storms would be contained by the proposed drainage system which would in fact improve water quality in the near shore area.

Mr. Matsuda: Of downstream properties, correct.

Mr. Hiranaga: Okay, thank you.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah, lets memorialize the 50% increase in retention over existing conditions in a condition. Clayton, can you do that or you need the applicant?

Mr. Yoshida: That the applicant shall reduce the amount of drainage by 50% more than the County requires.

Mr. Starr: Mike, does that work?

Mr. Miyamoto: Madam Chair, I was trying to look at some other projects, similar conditions just to be consistent so that we don't create something that's relatively new at this point.

Mr. Hiranaga: I have a suggested language.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: Reduce predevelopment surface runoff by 50%.

Mr. Starr: I agree.

Mr. Hiranaga: Existing predevelopment surface runoff.

Ms. Amarin: Clayton is that language –

Mr. Hiranaga: For a 50-year storm.

Ms. Amarin: Clayton, that language is adopted by the applicant?

Mr. Yoshida: That the applicant shall reduce the preexisting –

Mr. Hiranaga: Preexisting surface runoff –

Mr. Yoshida: Surface runoff by 50%.

Mr. Hiranaga: Yeah, for a 50-year storm event.

Mr. Yoshida: For a 50% storm.

Mr. Hiranaga: You can consult with them if they concur.

Ms. Amarin: Thank you. Mike, any comments?

Mr. Miyamoto: I guess that would accomplish what the commission is asking at this point and I guess Clayton can discuss it with the applicant.

Ms. Amarin: Thank you.

Mr. Frampton: Hi, Rory Frampton on behalf of the applicant. So as I understand it, we would be required to – for the net impact would be 50% less and that is which is occurring today? We can live with that. I think that's not quite what we were trying to do but we'll go ahead and agree to that condition.

Mr. Starr: Thank you.

Ms. Amarin: Thank you. Any other concerns Commissioners on the project? Clayton is your recommendation complete?

Mr. Yoshida: Yes, I don't know if the applicant has any comments.

Ms. Amarin: The applicant, do you have a comment on the changes?

Mr. Frampton: I just wanted to clarify that on Condition No. 19, which talks about the maximum building heights of 40 feet above mean sea level will be established on lot 3, and I think Clayton mentioned, and a portion of lot 2, which is what is represented. But I'd just like to insert the phrase after lot 2, "to be consistent with the approved archaeological site preservation plan." So in that preservation plan we establish where the buildings heights were going to be. And just said that because there's a possibility that we might tinker around with the boundaries of lots 3 and 2 and it has to do with Jon and Sam doing the fine tuning of their site plan. But what I want to make sure that's clear in here is that we're going to adhere to those height limits that we've already addressed incorporated in the preservation plan. So those height limit boundaries would stay fixed regardless of how we modify the lot lines and it just allows them a little flexibility in how they rearrange their lot lines while still adhering to what has already been approved by the State of Hawaii. So what I'd just like to say is that, again, that it would be established on lot 3 and portion of lot 2 to be consistent with the approved archaeological site preservation plan.

Ms. Amorin: Thank you.

Mr. Frampton: And again, that's just to make it clear that we want to fix those lines and it's not really the lot lines it's the building height lines that we've already established. So that we might be able to adjust the lot lines just a little.

Ms. Amorin: Thank you. Your comments are well-taken. Commissioners any response to the comments or it's acceptable? Seeing no comments, thank you. Any more discussion, any questions? Do we have a motion on the floor? I'm sorry, Commissioner Mardfin.

Mr. Mardfin: I don't know whether I'm supposed to wait for a motion or not to discuss how I'm feeling about this whole project. Should I wait till there's a motion on the floor.

Ms. Amorin: Yes, we can make a motion. Do we have a motion?

Mr. U'u: I'll make a motion to approve with amendments.

Ms. Amorin: We have a motion on the floor to approve with amendments. Any second?

Mr. Iaconetti: Second.

Mr. Hedani: Second.

Ms. Amorin: Seconded by Commissioner Iaconetti. Discussion? Commissioner Mardfin.

Mr. Mardfin: I very much admired that those two reports that I skimmed and I think that's

been very good work and I appreciate the sincerity of Sam and Jon Garcia. I think that their intents are wonderful, but I'll probably vote no on this project or if there were a motion to defer to get more information, I'd support that. The fact that Charlie Maxwell's letter was not responded to and I wish he were here to comment directly on the appropriateness of building near this site, could have a big impact on me. But the reason I'll be voting no is because of for SMAs we have to find that the proposed action does not involve – part a, does not involve an irrevocable commitment to loss or destruction of any natural or cultural resources and Commissioner Pawsat has convinced me that there's a at least significant possibility that a cultural resource could be lost.

And combined with f, in itself has no significant adverse effect, but cumulatively has considerable effect upon the environment or involves a commitment for larger actions, and her concern that this tie in with other things has persuaded me that I can't support this project at this time despite my good feelings about the Garcias and I understand what they're trying to do, but I think there's too big a risk of losing something important from a Hawaiian cultural point of view.

Ms. Amarin: Any other discussion Commissioners? Commissioner U'u.

Mr. U'u: I tend to believe that they're preserving the cultural resources and like I said before it's a first step into the next step or the series of steps that hopefully we can take what Commissioner Pawsat brought up into the bigger picture. And where it says f, it has no significant adverse effect but overall it does, I think you can only control on what piece of property they own and I agree what they did by preserving that so obviously I'll be voting in favor.

I think the Garcias know what they're doing. I respect them as a local family and I wish them well.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: I concur with what Commissioner U'u just said. I think the property is owned by a Hawaiian family. They have taken steps to preserve the important parts of the property for cultural purposes and while it may be connected to surrounding areas I think it's the commission's responsibility to pick up on the surrounding areas when those areas come before us. So I'll be supporting the motion.

Ms. Amarin: Thank you. Any other comments, discussion Commissioners? Seeing none, all those in favor of the motion with changes. Hands please again? One, two, three, four. And those opposed? One, two, three. Okay, I guess it's all up to me.

Mr. Hedani: Tough last day, huh?

Ms. Amarin: You know, this is my fifth year and I remember some of the details about this project and respect Commissioner Mardfin, he's new on the block and he's trying very hard and thank you. But I remember a neighbor having concerns about the drainage, she came forth, she did testimony and the applicant assured her, actually the drainage is going to be minimal and she's not going to be having all of that flood in her yard. It's actually this project will assist. And the impacts to her property. And being a local family we depend on this commission for survival for your family, for your heritage, you belong there. Your mother and father worked hard for this property and you're doing everything necessary to preserve what's on your aina and it's not only for yourself, it's all about the culture. We have different opinions that come forth. But I will vote yes, motion is carried. Thank you.

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

VOTED: To Approve the Special Management Area Use Permit, with Conditions as Amended.
(Assenting - B. U'u, W. Iaconetti, K. Hiranaga, W. Hedani, J. Amarin)
(Dissenting - W. Mardfin, J. Pawsat, J. Starr)
(Excused - J. Guard)

Ms. Amarin: At this time I'll give it over to our Deputy Director.

Ms. Suyama: The next matter is to go back to the public hearing item which is the Joslin Group for Minit Stop Wakea alterations at Kahului and at this time I would call Danny Dias as the planner.

- D. PUBLIC HEARING** (Action to be taken after public hearing.) (To begin at 1:00 p.m. or as soon thereafter.)
- 1. JOSLIN GROUP requesting a Special Management Area Use Permit for the Minit Stop Wakea Alteration Project consisting of alterations to the existing building and addition of two new fuel pumps with canopy at 85 South Wakea Avenue, TMK: 3-8-050: 018, Kahului, Island of Maui. (SM1 2007/0012) (D. Dias)**

Mr. Danny Dias presented an overview of the Maui Planning Department's Report.

Mr. Frank Skowronski: Good afternoon Members of the Maui Planning Commission. My name is Frank Skowronski. I'm with Territorial Architects. We are the design consultants

with Joslin Group for this proposed project. As a follow up to what Mr. Dias has surveyed for you as an overall, I'd like to bring up a couple points for your attention. The subject property is on the corner of Wakea and Kea in Kahului Town. It's marginally within the SMA district. It's zoned industrial. It is surrounded by a industrial neighborhood. Alpha Electric is one of the boundary parcels. Sheik's Restaurant is on the other boundary line and immediately across the street is the Meadow Gold Dairy processing plant.

The subject parcel has been in continual use as a fuel dispensing operation. We have copies of the old Texaco station that used to be on this location as far back as 1968. In 1999, the present owners purchased and refurbished the property and at that time implemented all the stringent EPA guidelines for fuel dispensing, storage tanks, piping and monitoring systems. So the project as existing and the new additions will be in full compliance with the '99 EPA restrictions. There have not been any significant increases or requirements from EPA since '99 that applied to this project.

The expansion is necessary primarily because of the location. The parcel is uncommonly large for a service station. It's somewhat larger than a half an acre and with the proposed additions we're going to be at a footprint to lot area of somewhere around 16% which allows for a lot of paved area on the property which allows for maneuverability and turnarounds and off street stacking. There's three access drives, two on Wakea, one on Kea. It's a corner location and because of the size of the proposed retail the property is particularly accessible to the neighborhood and to patrons.

And the last item is that in January of this year the Urban Design Board reviewed the project and approved with the conditions and recommendations that we increase the size of the landscaping along Wakea particularly in front of the expanded canopy and the two new dispensers and we have done in effect done that with a hedge situation. And I'd be glad to take any of your questions specific to the project.

Ms. Amorin: Commissioner Starr.

Mr. Starr: With other projects in the shoreline management area we've been – that have an automotive type of use or major parking component we've been seeing the developers put in filtration in the runoff collection basins. I'd like to know what you're doing to keep any fuel and oil residue or oil that may come out of the car that's fueling up there from entering into the street storm drain system then onto to the nearshore waters.

Mr. Skowronski: Typical to most gasoline or fuel dispensing projects in the county the drainage area for the parking and access have surface drainage that connects existing into the county system. But the particular areas underneath fuel distribution areas area highly segregated so that they do not contaminant the surface drainage. So that if there's a

situation where the tanker trucks are dispensing fuel into the existing fuel tanks. Now there is an existing manhole that provides for over spillage into that manhole and then back into the tanks system. The pipe, those fiberglass tanks are double walled and have monitoring systems to prevent any leakage from those existing tanks. The same thing with the piping system. The piping system is up to EPA standard. It's double ringed and it's got an elaborate system of monitoring devices that make sure that there's no leakage through the piping.

But in fact – there's automatic shut-off valves with the fuel dispensing systems at the customer end. There's an automatic shut-off system located with – located at the retail establishment and if in fact there's any mistakes or accidents at the providing of the pumps to the automobiles there are spill kits that are existing at the dispensing locations. The idea is that if there is a mistake or if there is some sort of problem with the customer dispensing the fuel, you want that evident and not distributed or not taken into any system. You want that addressed immediately on the location and you don't want that going into any system into the county. So the filtration systems would be mutually exclusive because that would hide any oil spillage and we don't want that to happen. That's not according to EPA guidelines. We want any accidents or spillage especially from a customer standpoint which would be minimal because of the shut-off systems to be kept underneath the canopies and not infiltrate into the storm drain system.

Mr. Starr: Does that mean that you're not willing to put the – I forget what they call it the filters in the storm drain receptacles which is what everyone else who has been before us for automotive type use or parking lots is doing, has been doing for the last year or so?

Mr. Skowronski: Well, the filtration systems would be filtering out gasoline contaminants or oil contaminants. I'm not quite sure what the filtration is supposed to be doing.

Mr. Starr: Both particulate and there are some kind of I don't know bags or envelopes they put in them and change them frequently that filter and absorb ...(inaudible)... material.

Mr. Skowronski: I mean, we could look into that but keep in mind that the idea here not to allow any petroleum contaminants to go into the storm drain system.

Mr. Starr: I know you're going to try not to, Mike, you know about this? You have any specs on what I'm talking about? I think Chris has been part ...(inaudible)...

Mr. Miyamoto: Madam Chair, yeah, typically on the catch basins there's now the inserts that capture a lot of the first flush, you know, the first flush is where a lot of the contaminants are first washed off and there's filtering systems that capture a lot of the contaminants on the first flush. I think that's what you're referring to Commissioner.

Mr. Starr: Yeah, I know it's not a perfect solution and it's certainly secondary or tertiary to the systems around the pump and the fill up but we have been seeing those in most projects and I feel that they should be part of this. You know, I'd like to condition that if you're willing to do that.

Mr. Skowronski: Yes.

Mr. Starr: Okay.

Mr. Dias: Just to point out, in our recommendation it's under Condition No. 14.

Mr. Starr: Oh, it is? Because I didn't see it.

Mr. Dias: Right before the project specific conditions.

Mr. Starr: Yeah, well that's appropriate. There's more specific, Chris, can you help with this? I know this isn't your project, but –

Mr. Chris Hart: Chris Hart and Partners, Chris Hart. Actually I'm not sure, in terms of the basic drainage system that you have established it seems to be that it's to capture petroleum basically in the vicinity of the pumps. Is that correct? And that the normal storm drainage on site essentially you're saying is a surface runoff that basically goes off the site? Is that correct?

Mr. Starr: I think ...(inaudible)... basin and inserts is I think what –

Mr. Hart: That's what they are, but see the system that he was talking about basically there's two systems. One is for the petroleum products that spill in the vicinity of the pumps and the basic storm water system isn't designed to be retained on site. It actually is a basically sheetflow system that goes off site. So those kinds of basic drop inlets with the filter systems are not really designed for his system.

Mr. Starr: I understand what – I'm not talking about gasoline stations specific, I'm talking about the - I believe they're called segregator basins with drop in inserts and I think that – and that's what I'm talking about and that's for any, you know, if a car outside of the pump area leaks a lot of antifreeze or leaks, you know, or solid particulate then it will pick that up and from time to time those inserts get cleaned out. So ...(inaudible)... condition to that.

Ms. Amorin: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: Were you referring to the Kitagawa application?

Mr. Starr: That was one of them. That was one of them.

Mr. Hiranaga: I think they were proposing some type of a capturing system. You know the one near Kanaha Pond.

Mr. Starr: Yeah, it's just a fancy basin with a separate segment and a place where you put these packs.

Mr. Hiranaga: Right.

Mr. Starr: Environmental packs.

Ms. Amarin: Can that be incorporated with your project?

Mr. Skowronski: Yes.

Ms. Amarin: Thank you. So noted. Any more questions Commissioners? Commissioner Hedani.

Mr. Hedani: I guess it's the North Kea Street elevation of the property there's an extremely wide driveway at that location. Is there a necessity for a driveway that's that wide?

Mr. Skowronski: Other than the fact that it's existing from the old Texaco station, it's oversized but it's existing.

Mr. Hedani: You know, my concern with the whole project was that the landscaping in order to make the project, the entire project look better it could use more landscaping. You know, as at the Urban Design Review Committee is recommending and especially from that elevation when you look at it from that side, there's a tremendous amount of paved asphalt basically is what you're looking at with nothing to buffer it primarily because of that driveway and I was wondering if there's a way to ameliorate that from an architectural standpoint?

Mr. Skowronski: The only, the only solution I could offer is the possibility of narrowing the driveway. I'm not quite sure how wide it is right now but it's probably in excess of 30 feet. We could take it down to something somewhat less, but we valued the idea that there is access/egress driveways on three locations. And so we would like to keep the double access egress access along Kea, but we could bring it down to the same size or same widths of the two access drives along Wakea if you like and thereby increase the landscaping.

Mr. Hedani: Right, that's kind of what I was suggesting.

Mr. Skowronski: Okay. You have a width in mind or it's something that's in scale with the
–

Mr. Hedani: What is acceptable to the applicant that would be functional but still allow for a maximization of landscaping?

Mr. Skowronski: Well I would think we would need – Well, keep in mind that that location also provides for the tanker trucks to come in to fill those two fuel tanks. So I think that that's probably why the access was as large as it was from the old Texaco days. I'd have to look and see what kind of tanker trucks and what size and how often but I would think that if we can take it down to maybe 30 feet which would be larger than the 24 feet minimum that would probably allow for a reasonable turning radius for the larger trucks to access the parcel. Right now they don't access the parcel off of Wakea because of the intensity of the traffic, but Kea is just that one street that accesses the backside of the shopping center and that's where the big trucks come in and maneuver.

Mr. Hedani: Okay, I'm sorry so what is the width of the driveway that could accommodate your tanker trucks and be functional and still allow for –

Mr. Skowronski: I would think between 30 and 32 feet is my estimate based on a 24-foot requirement for two-way traffic of regular vehicles.

Mr. Hedani: And the existing is how wide?

Mr. Skowronski: My suspicion now is that it's probably between 40 and 42 feet. So if we agreed to narrowing that by 10 feet would that be?

Mr. Hedani: That would be fine from my perspective.

Mr. Skowronski: Depending on a real scale to check that if we can live with 32 feet I think that that would be sufficient for the vehicles and for the larger trucks.

Ms. Amorin: Commissioner U'u.

Mr. U'u: I would really appreciate if you guys could charge \$3.00 a gallon. Kidding, kidding.

Mr. Skowronski: Well depending on the vote we could possibly give free gallons.

Mr. U'u: Kidding. No, I'm too, is like Commissioner Hedani I wouldn't you mind you softening the blow of that building by incorporating more plants and hedges and greenery. That Wakea Avenue is not the prettiest avenue. It's just buildings and asphalt and so when

people come in here and we try to incorporate things that we couldn't incorporate in the past because it hasn't come before us but we would like to jump on the opportunity right now but I would want more greenery than what you have there just to soften the blow of the massing of the building and cheap gas.

Mr. Skowronski: In relation to the – into the landscaping, one of the problems is that we're working both ends against the middle with the landscaping. If the vegetation gets too high then it becomes a hazard for people coming in and egressing, and if it gets to low then it exposes too much of the blacktop and the paving. So this issue also came up with Urban Design Review in which we wanted to increase the size of the hedge in its height as opposed to increasing its size in its width and the compromise came in of how high should a hedge be so that you could see over the hood into your accessing back into public traffic. And that's why we came up with a compromise of the 36 inches or the three feet. But modeling it lower or above that sort of compromised dimension starts to bring in other hazards.

Ms. Amarin: I have a concern for safety. I frequent that area when I'm in town too, and you always here Minit Stop go there the gas is a lot more reasonable than a lot of other places. But you know my concern with Commissioner Hedani's proposed narrowing that driveway, it's all about safety and to have those trucks and having two more pumps in there you're going to have more people going in and out, in and out. My suggestion maybe put some big potted plants there because those are moveable, you know. Those are moveable to create a better landscaping for the area. But then who's going to water it, right? Employees of Minit Stop, they can do that, but the concern is one of safety. But you the authority and you have the expertise to understand how wide that place really needs to accommodate the fuel trucks in and out and at the same time have the people exit the one that's on Kea. Thank you. Any more questions? Commissioner Iaconetti.

Mr. Iaconetti: Are there regulations as to how large a driveway has to be for a gas station, service station, county wise?

Ms. Amarin: Mike, maybe you can give us any comment on this one?

Mr. Miyamoto: Madam Chair, typically a driveway you know, depending if it's one-way, two-way, you know typically you allow 12 feet for a vehicle, but in the situation that's at hand you can see the driveway, you can see where the pump locations are, and you can see as the applicant has said, the fuel trucks coming in from Kea Street. So that's probably what dictated the width of that driveway prior to them purchasing it. You can see if the pumps were to be in the area of where the tanks are they may, you know, they may occupy some of that driveway and vehicles may have to go around the front end of the truck while the truck's refueling the tanks. And you know, for the truck to get in and out you know, you can

see if the trucks were to get on Wakea they're limited to a right out only, and you know, they would have to use Kea Street if they were to at least try and go towards, you know make a left turn on Wakea. So you can see why that driveway is wide for the larger vehicular access.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: Well, learning today that the gas is much cheaper there, I might be frequenting the place, but the gas station that I do use has – is right on the corner of Lahainaluna Road and the highway and they're, they are also limited to right turn only out of the gas station and they have very large tanker trucks going in there to feed their tanks and I'm sure those driveways are no – not this large and I don't understand why – that's why I asked are there regulations as to how wide a driveway has to be for a service station because the one I frequent is quite narrow and tanker trucks are going in and out of that place all the time.

Ms. Suyama: Can I suggest something? That maybe the applicant, the owner could explain to the commission how they do the fueling, the refueling of the tanks because I'm not even sure where the tanks are and it may make a difference in your deliberations regarding the driveway.

Mr. Skowronski: If I can point out where the existing fuel tanks are located?

Ms. Suyama: Well, and how the operations of how the tanker trucks come into the project and how they exit right now? I think that would help the commission to understand what is the necessity.

Mr. Steve Witter: Hi I'm Steve Witter. I'm with Maui Petroleum. We supply the fuel to the service station and the reason that driveway was wide is it's an existing driveway, it was because of the tanker access. There's two different types of trucks that we deliver in. One is a semi pulling a solid long tank, a trailer, and there's another type that's a truck and trailer and it's a smaller trailer so it's a little bit more flexible. I think you've seen them. Shell has truck and trailer. They don't deliver in semi trucks but they do come in from that side and the tanks are located right – let me show you where – the tanks are right here. The trucks comes –

Ms. Amorin: Can you take a mike over there?

Mr. Witter: Yeah, the trucks come in this way and they pull right in. It keeps them out of the access of the driveways. Some service stations you actually have to drive through to get through. This keeps them away from the traffic that comes in and they pull in this way and

they stop right across here and they're pretty out of the way besides this drive here as far as dropping their fuel and then they pull out this way and normally come back out this way. It's their normal pattern. Of course, it's up to the drivers if they decided to take a different route in or out or direction in or out for their own safety reasons. So that keeps them out of the way. I think there the minimum we would need 32 feet to come in because driveway here is pretty narrow so you got to have all your angles just right to get in and out. We typically deliver here with a semi with a long trailer, 9,000 ...(inaudible)... trailer is the normal. But it could also be done with truck and trailer.

Ms. Amorin: Thank you very much for that explanation.

Mr. Skowronski: Just as a follow up point. These access drives are existing. They were not placed, they were not designed by the applicant for this location and so the issue has never come up before as to why it is the width it is or what to do about it or what's required. This situation exists. It's working very well. There's not a lot of traffic build up. Even when the tanks are dispensing and our view on it from the get go is that if it's not broken we're trying not to fix it.

Ms. Amorin: Thank you. Commissioner – who was first? Commissioner Mardfin followed by Commissioner Hiranaga.

Mr. Mardfin: I just wanted to ask a quick question. How often do you fill the tanks?

Mr. Witter: Again, Steve Witter, Maui Petroleum. Three times a week is typical for that station.

Mr. Mardfin: So if there – if they double their pump capacity, they're not changing the size of the tank so you're going to be in there six times a week presumably assuming they roughly double their sales.

Mr. Witter: No, that's not what the projection for the project is at all. The idea of having more people's – dispensers is really so people aren't stacking up and waiting in line. I would love to say that we are going to double our business there in fuel, but that's not going to happen. It's making more access for more people at the same time. If you go by there at different periods of time, people tend to stack up. You know, at certain hours in the afternoon.

Mr. Mardfin: Are they anticipating not selling any more gas than normal?

Mr. Witter: We are anticipating selling more fuel but nearly double, yeah. I wish I was wrong.

Mr. Mardfin: Maybe you'd go from three deliveries a week to four deliveries a week?

Mr. Witter: The four at the most, yeah.

Mr. Mardfin: My first job in Maui was at the Hana Service Station. We got delivery once a week.

Mr. Witter: Oh yeah, I think they're up to twice a week up there. Any more questions?

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: Since you stated that you could work with a 32 foot wide access I would suggest that we ask the applicant to reduce the access to 32 feet. He can thereby increase the landscaping area by 10 feet which may make a lot of commissioners happy I guess.

Mr. Witter: Does it matter what side of the?

Mr. Hiranaga: Whatever is most functionally practical for the delivery.

Mr. Skowronski: But the intention is to increase the planting and landscaping as opposed to just decreasing the size of the driveway is that correct?

Mr. Hiranaga: It's a byproduct. I mean, you've got a hedge up there in the upper left-hand corner. So if you take – you can extend that hedge 10 feet.

Mr. Skowronski: Exactly.

Mr. Hiranaga: And if he says you can – he can live with 32 feet and people are making comments about landscaping, it creates 10 feet more of landscaping. You could go five on each side, four on one side, six on the other.

Mr. Skowronski: Okay, whatever. I don't think the applicant will have a problem with that as a condition.

Ms. Amarin: Any more – Commissioner Hedani.

Mr. Hedani: You know, the one thing that I've noticed about gas stations is that there are really bright lights on it. The commission has been sensitive about light spillage from properties in order to protect the viewing quality on Haleakala believe it or not. It's light pollution from all of the cities that's affecting the quality of astronomical observations on the top of Haleakala and they have about \$250 million worth of equipment up there and we're

supposed to be one of the finest places on the face of the Earth for astronomical viewing. The lighting for the proposed expansion is all of it fully shielded so that light pollution does not spill outside of the property line?

Mr. Skowronski: That is correct. And the vast majority of the lighting is taking place underneath the canopy which is downlighting and recessed.

Mr. Hedani: Okay, thank you.

Ms. Amarin: Thank you. Any concerns, any more questions to the applicant? Seeing none, thank you. We did announce public testimony earlier on this project. So at this time, I'll turn it over to staff planner for his recommendation.

Mr. Dias: Just to clarify the conditions. Condition No. 14, I guess we'll amend that to state "that appropriate filtration measures such as oil/water separator to separate petroleum products and so forth." And then we'll also add that "that should be connected to the existing drain storm on Kea Street."

Ms. Suyama: What it is is that there's a condition, a recommendation that came from the Public Works Department that talked about the existing swale at the rear of the property that it not just exit onto Kea Street, that it be connected to the drainage, storm drainage system on Kea Street. So that portion would include that recommendation from the Public Works Department.

Mr. Dias: Okay, sorry about that. In addition, Condition 21, we'll add, that additional landscaping such as a 36 – well, we'll word this better but, such as a hedge 36 inches minimum height, I guess, be planted along the property line.

And then we'll add another condition, Condition No. 22, that states that the driveway along Kea Street shall be reduced to 32 feet in order to increase landscaping along that area.

And with that, the Department of Planning recommends that the Maui Planning Commission adopt the department's report and recommendation prepared for the March 25, 2008 meeting as its findings of fact, conclusion of law and decision and order.

Ms. Amarin: Thank you very much. Commissioner Iaconetti.

Mr. Iaconetti: I move adoption.

Mr. Hedani: Second.

Ms. Amarin: We have a motion on the floor to accept this agenda item with changes and seconded by Commissioner – Well, motion by Commissioner Iaconetti, and seconded by Commissioner Hedani. Any more discussion? Commissioner Starr.

Mr. Starr: Yeah, I'm still not satisfied with 14. I'd like in addition to 14, I'd like a project specific condition that catchment basins with I forget what they're called, separator – with separator basins and filter packs be installed on the project.

Mr. Skowronski: Just as a point of information, the existing drainage on the property is sheetflow off the property into existing catch basins in the storm system that works its way along Wakea and Kea Street. And that's what we intend on using because that's the existing system. I'm assuming that you're not asking for us to dig up the property and set in new storm drains throughout the property that would then have to access into the main street system. Is –

Ms. Suyama: I think what the commissioner is asking for is an upgrade to the drainage system and it may mean putting in new drainage facilities to reduce the sheetflow that currently happens on the property. And a lot of times when a project is being reviewed they are as part of the SMA to reduce impacts request that more than just allowing the existing condition to continue that the applicant may have to put additional improvements in, you know, besides the filtration to try to reduce the amount of sheetflow onto the roadway system which also then increases the risk of contaminants continuing to sheetflow into the system. And I think that's something that you're going to have to work out with the Planning Department and the Public Works Department.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Is what I'm hearing that right now any rain that hits or anything else that hits this property just flows into the street and then is picked up by the basins on the street?

Mr. Skowronski: Yes, there's several, a couple of storm drain grates and catchment systems along Wakea and Kea that this – that the sheetflow from this existing surface goes into and ties into the system. Now the idea is that it's purposely with the civil engineering drained so that it doesn't allow any spillage or any contaminants from the fuel dispensing area to drain into that system. It's specific for that purpose.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Yeah, there's no way I can go along with having a redeveloped service station just sheetflow into the street and then whatever flows off of that just end up in the drainage system and go out into ocean and out into the reef. All the projects we've seen before us

have all installed catchment basins with filter packs that can be maintained inside that and I believe that's what – isn't that what the county is looking for also rather than just having sheetflow from a service station go out into the road on a redevelopment?

Ms. Amorin: Mike.

Mr. Miyamoto: As Deputy Director Suyama pointed out, it was in our comment letter dated October 30, 2007 that this oil water separator to capture the first flush runoff typically as you say Commissioner Starr as we've done in other projects.

Mr. Don Freeman: My name's Don Freeman, I'm with the Joslin Group and just to kind of explain to you the flow of the system and what happens.

Mr. Starr: Yeah, I think we understand what the flow is. I think what we're saying is we want it changed. So you – everything gets captured in onsite basins not running into the street.

Mr. Freeman: The swale in the back of the property that is being addressed drains absolutely nothing but the roof of the property. Then the driveways are basically planing to directions one back into the Kea and the other one back onto Wakea. So back swale was developed, it's on the property line just drains the roof of the existing building. So there's no oil contaminants making that point.

Mr. Starr: Excuse me, but you know, we have had a lot of testimony over a lot of projects in the past that show that there is a lot of oil and contaminants and antifreeze and other particulates ...(inaudible - changing of tape)... that is not necessarily connected with the fueling process, but it's an attempt to try to filter out some of that so that it doesn't enter into the streetscape and flow out into the ocean. And to do that, means basically segregating the water on the property and having that go into specific basins, and that I believe is also what Public Works has asked you to do as well. So that's – we understand what's there now, what we're saying is that since this project is being redone it should be upgraded to best management practices.

Mr. Freeman: I'm not disputing the distribution of what you're saying, but I would dispute that the water flow coming off of the roof of the building would be have any of those contaminants in it such as normal down spout and discharge from roofs of buildings. Now it's good that this building actually, the discharge from the roof moves to the swale and then out so it doesn't carry any of debris that is on the parking lot to that point. As far as the installing drainage filtration basins that will require like you said, basically a connection to the city system through the storm drain system and actually more than likely two locations.

Ms. Suyama: Can I clarify something? The department is not concerned about the runoff that's coming off the building that goes into the existing swale. What the department is concerned about is the existing pavement. Where you have your parking lot, your cars parking, your refueling, etc., and that runoff right now is draining through your driveways onto both Wakea and Kea Street, and that's why we're saying is that as part of the upgrade of the project, we will work with your engineering consultant to make sure that as much as possible that water is captured in some way, the necessary filtration systems are put in like oil and water separators to ensure that when that water gets onto the street in any fashion and into the county drainage system it will reduce the amount of contaminants that get into the county system. So we would work with your engineering consultant to make sure that that occurs and that's why the condition that was proposed by Commissioner Starr.

Mr. Freeman: I'm in agreement.

Ms. Amorin: Commissioner Mardfin followed by Commissioner Hiranaga. Commissioner Hiranaga.

Mr. Hiranaga: I guess a lot of the confusion is the recommendation by staff doesn't point out the key elements that was in the letter prepared by Department of Public Works dated October 30, 2007. If you look at it, they're requesting a road widening lot. They're requesting removal of structures within the road widening lot. They're asking for verification from a registered CE regarding grading and runoff water generated by the project, they're requesting best management practices regarding grading plan. So I'm curious why the staff report or recommendation didn't highlight these items.

Ms. Suyama: The reason is that these things you need to do by Code anyway. So when they come in for a building permit they're going to be required to comply with these conditions. The only time that we put in a recommendation or condition is when it goes beyond Code and it's something that is recommended by the Public Works Department and doing the oil/water separators, I'm not sure if it's currently required by code but we want to make sure that those things are incorporated into any drainage plan and that's why normally other things that are identified by the Public Works Department we don't put it down as separate conditions because it's going to be handled by the Public Works Department regardless.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: Well, maybe I'm naive, but project specific condition 17 addresses this and I think we're talking in circles. It has to be approved by the Department of Public Works and/or the Department of Environmental Management and it's already there.

Mr. Dias: And just to add that it was written in such a fashion like Colleen said, you know, we want to be in a situation we're adding, you know, 15 conditions from Public Works on top of 21 conditions from Planning and so that's why there was this specifically condition 14, 17 sort of a broad language but the assumption is they still need building permits and they're still going to have to follow everything that Public Works wants them to do.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, I'm disagreeing what I'm hearing from this planner here. You know, I know you haven't been that many times before this commission but usually we like to see, you know, all of those conditions that came from Public Works or it came from the department put in as project specific conditions. And that way it's clear to us and it's clear to the public and it's clear to everyone that they'll be done. So you know, these vague, you know, best practices or whatever, that's nice but I think that it's really important and useful to put them in the document. It may make it an extra sheet of paper long but that way it's clear for everyone, everyone can feel good that the best thing – which we know the department is trying to do and is doing will definitely be done and the applicant understands that as well.

Ms. Amorin: Commissioner Hiranaga.

Mr. Hiranaga: I don't necessarily need to see all the conditions in a letter from the Department of Public Works but you may want to say refer to the letter in your comments, per the letter dated 10/30/07 from Department of Public Works, you don't have to list all the items in but at least it's highlighted.

Mr. Dias: Okay, that's a good suggestion.

Mr. Hiranaga: Just a suggestion.

Ms. Amorin: Commissioner Mardfin.

Mr. Mardfin: I don't know if that's sufficient for me because the one we're talking about in that October 30 letter is the air conditioning swale in back of the building drains directly onto the sidewalk recommend installation – recommend installation of an oil/water separator to catch petroleum. It doesn't refer to the asphalt that's already there and I think Commissioner Starr is referring to the entire property not just the roof.

Mr. Starr: Yeah, the parking area.

Mr. Mardfin: Oh, am I reading the wrong one.

Mr. Hiranaga: No, read on, there's more conditions, backside.

Mr. Mardfin: Anyway, I don't mind referring to this but I think also, I like Jonathan's specific language for the project specific condition.

Ms. Amorin: Thank you for your comments Commissioner Mardfin. Danny, respond.

Mr. Dias: Okay, so are we adjusting some conditions to be –

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: I wonder if we couldn't just put that in as an amendment to the motion that I made.

Ms. Suyama: Can you folks wait? I'm trying to tailor a condition.

Ms. Amorin: At this time we'll take a five-minute break.

A recess was called at 3:47 p.m., and the meeting was reconvened at 5:57 p.m.

Ms. Amorin: The meeting of March 25, 2008 is back in session. At this time I'll turn it over to the staff planner. Deputy Director.

Ms. Suyama: Because of the concerns that the department as well as the commission has regarding the runoff, the storm runoff onto Kea and Wakea Street, this is what we would propose as a department in terms of a Condition 23, "that the applicant shall upgrade the existing drainage system to reduce storm runoff onto the adjacent public streets and shall incorporate appropriate filtration systems such as but not limited to basin separators, filters and oil/water separators." Okay.

Ms. Amorin: Any comments from the applicant?

Mr. Skowronski: Again, appreciate that we're unprepared for this. The idea that we would catch all the drainage on all the paving and filter it and after filtration have a physical connection underground to the county's recently installed storm drain system on Kea and Wakea increases astronomically the cost of the project and the permitting process because now we would need to have offsite rights to perform in the county right of way, etc., and it would mean tearing up essentially all the paving that's existing on the parcel now. Now the idea that we would filter the system and somehow filter it and then allow it to sheetflow back into the existing county system is something that we can work out with – the engineer can come up with some sort of solution whether it be a pump or trench drain or something, but

the idea that we would take the entire surface drainage of the property that's existing and tie it underground into the existing county system is something that we're – you know, without the engineer being here, we're unprepared to accept that.

Ms. Suyama: If you're unprepared to accept that then the recommendation of the department is to defer this matter until another date in which you can get your engineer to relook at what our concerns are, the department as well as the commission's concern and come up with a proposal for analysis. That would be our recommendation.

Mr. Skowronski: Okay.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: I think the commission's concern is that the water that comes off of the property be clean. I don't think we care if that water is clean through surface runoff or through underground pipe, as long as it's clean.

Mr. Skowronski: Again, I'm sure with coordination with the civil engineer and with the Department of Public Works we can get the surface drainage of the property filtered and back into the county system that's existing along Kea and Wakea. But if it's the intent of the –

Mr. Hedani: I don't think we're asking you to regrade the entire lot. I think what we're asking for you to do is not produce pollutants that end up in the storm drains.

Mr. Skowronski: And we agree we can do that, but we're trying desperately not to have that requirement that it has to be tied into the underground system that's out in the public right of way. That's all we're asking.

Ms. Suyama: The way the condition is written it does not mean you have to tie in, what we're saying is that you're reducing storm runoff that goes into the adjacent street. However your engineer wants to figure that out, I mean, they could do, you know, onsite drainage system if that's case, but our concern is the storm runoff that gets onto the roadway that in some way you devise a system in which appropriate filtration systems are placed in the project.

Mr. Skowronski: Okay. That's fine.

Ms. Amorin: We have another comment or question? Commissioner Starr.

Mr. Starr: Yeah, just my comment is that everyone who does a development project has

to do this. You know, this is not unique and you know, if you've been doing it for a while that's part of the cost of doing business is to find a way to keep pollutants out of the runoff and to either absorb it on site or to properly process it and pass it into the county system. So I would make a motion to defer but I don't think it's in order because I think there's another motion on the floor.

Ms. Amarin: We have more questions or discussion or comments Commissioners? To the applicant? Commissioner Iaconetti.

Mr. Iaconetti: Well, can't the department verbalize that in some manner so as to comply with what you're saying and still allow it to go?

Ms. Suyama: I think it's already verbalized in the way it's written because all it's saying is the applicant shall upgrade the existing drainage system to reduce storm runoff onto the adjacent public streets and shall incorporate appropriate filtration systems such as but not limited to basin separators, filters and oil/water separators. And the way it's written, it doesn't say that you need to connect to the county public offsite drainage system. It's telling you what our concerns are, are the storm runoff that's actually going onto the street now and that there needs to be some kind of filtration system incorporated in which we're not going to have the problems of pollutants getting into the county drainage system.

Ms. Amarin: Commissioner Iaconetti another question?

Mr. Iaconetti: Well, cannot someone utilize that as an amendment to the main motion?

Mr. Hedani: Yeah, that's what she's proposing to.

Mr. Iaconetti: I don't think I can amend my motion but somebody can amend it.

Ms. Amarin: Commissioner Hedani.

Mr. Hedani: I think for clarification purposes what you've read would be acceptable as long as the understanding is if they devise a system that can intercept and clean the water and then sheetflow it onto the existing surface runoff system that would be acceptable.

Ms. Suyama: Right, and they can rely on the minutes of this meeting as the understanding that what we have.

Mr. Hedani: Right. Right.

Ms. Amarin: Commissioner Mardfin followed by Commissioner Starr.

Mr. Mardfin: I would have agreed with Commissioner Iaconetti about passing it with the understanding of the department but with the applicant is basically saying they're not sure how to do this, I would be for – I will vote against it now and vote for a motion to defer so they can think about how they're going to do it and then bring the plan back to us.

Mr. Skowronski: Just to clarify my statement. There are several ways to do this of which none are delineated on the proposal. All I'm suggesting is that we have an understanding and a clarification of the amendment and that we'll come up with the intent of that amendment, but I don't have a dissolution portrayed as to how to do this, but we will do this.

Ms. Amorin: Commissioner Starr.

Mr. Starr: I mean, I'm perfectly willing to make an amendment that incorporates an additional condition as was read by the Deputy Director and then let the department figure out, you know, how to accomplish it. But I'm seeing the applicant saying that they don't want to proceed with this.

Mr. Skowronski: No. As clarification, as read, as interpreted, the applicant is in full agreement with the amendment as stated.

Mr. Starr: Okay, so I make an amendment to add as a condition the wording that was just read to us.

Mr. Hedani: Second.

Ms. Amorin: I have a motion on the floor by Jonathan Starr. I have an amendment to the main motion by Jonathan Starr seconded by Commissioner Hedani. Commissioner Hiranaga.

Mr. Hiranaga: Just to clarify, you will do whatever it takes to satisfy the Department of Public Works and Environmental Waste Management in order to obtain your SMA permit, correct?

Mr. Skowronski: Correct.

Mr. Hiranaga: Very good.

Ms. Amorin: Any more discussion on the amendment? All those in favor? Any opposed?

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

VOTED: To Add a Condition as Follows: “the applicant shall upgrade the existing drainage system to reduce storm runoff onto the adjacent public streets and shall incorporate appropriate filtration systems such as but not limited to basin separators, filters and oil/water separators.”
(Assenting - J. Starr, W. Hedani, K. Hiranaga, B. U’u, W. Mardfin, W. Iaconetti, J. Pawsat)
(Excused - J. Guard)

Ms. Amorin: Motion is carried on the amendment. We have a main motion on the floor.

Mr. Iaconetti: As amended.

Ms. Amorin: As amended. Any more discussion? All those in favor? Any opposed?

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

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

Ms. Amorin: It’s unanimous. Motion is carried. Thank you. Deputy Director.

Mr. Skowronski: Thank you members.

Ms. Suyama: The next is New Business and it is Western Apartments Supply and Maintenance Company requesting an Environmental Determination on the final Environmental Assessment in support of the community plan amendment from single family to hotel and a shoreline setback variance to maintain current hotel and restaurant uses on a parcel in Kihei, Maui and I believe this is the Maui Oceanfront property and the planner on this application is Robyn Loudermilk.

E. NEW BUSINESS

1. WESTERN APARTMENT SUPPLY & MAINTENANCE CO. requesting an Environmental Assessment Determination on the final Environmental Assessment in support of the Community Plan Amendment from Single Family to Hotel and for the Shoreline Setback Variance to maintain current

hotel and restaurant uses of the subject property and to improve parcel 149 with the construction of a paved parking lot at 2980 South Kihei Road, TMK: 3-9-004: 029 and 149, Kihei, Island of Maui. (EA 2006/0015) (R. Loudermilk) (Draft EA reviewed on February 27, 2007.)

The EA trigger is the Community Plan Amendment. The Maui Planning Commission is the accepting authority for the EA.

The Commission may act to make a Findings of No Significant Impact (FONSI) or take some other action.

The public hearing on the Community Plan Amendment, Conditional Permit, and Special Management Area Use Permit will be scheduled for a future date after the Chapter 343 process has been completed.

Ms. Robyn Loudermilk: Good afternoon Commissioners. With me today I have Jordan Hart and we will be doing a very brief power point presentation to highlight the comments that were provided from this commission in March of 2007 and then the department will go briefly into its recommendation. So I would like to turn it over to Jordan.

Mr. Jordan Hart: So this is the Maui Oceanfront and Sarento's Restaurant. We're completing an environmental assessment. We were here before with the draft EA. So I'll just start to go through the project right now.

The objective is to address the Maui Planning Commission comments that were received for the draft EA in a regular meeting on February 27th. The first comment was to discuss impacts and mitigation measures to existing beach access. Include discussion of who constructed the original beach accesses. Discuss the measures to insure that the public continues to enjoy the state beach reserve. Discuss general locations and types of lighting that will be utilized. Discuss how lighting will meet HRS 205A and county lighting regulations. Finally discussion how provisions – sorry, previous and proposed improvements meet existing county codes.

This is the site. This is South Kihei, existing gravel parking lot, Maui Oceanfront Inn, Sarento's Restaurant.

This is the existing site plan. These items in yellow are existing structures that were unpermitted and are being getting land use entitlements through an EA process, community plan amendment, shoreline setback variance, conditional use permit, offsite parking approval and basically all the entitlements that I went through at the beginning.

This is the proposed landscape plan, existing Maui Oceanfront Inn, Sarento's Restaurant, currently a graded gravel parking lot proposed as paved parking lot with public beach access parking and shared – sorry, they're not shared, it's a half, public beach access 51%, 49% overflow parking for Maui Oceanfront Inn and Sarento's Restaurant. This is the view of the Maui Oceanfront Inn from across South Kihei Road looking west. This is a view north on South Kihei Road in front of Maui Oceanfront Inn. A view south towards Kilohana Drive from the Maui Oceanfront Inn driveway. Into Maui Oceanfront Inn, their existing paved parking lot, Sarento's Restaurant in the back, the ocean, Sarento's Restaurant.

This is county zoning map. The parcel is shown as hotel. The gravel parking lot is park. Community plan, the hotel parcel is single family which is why we're going through the community plan amendment process. This is the park, gravel parking lot parcel.

This is an existing, these are basically concrete paver stones that were set in to facilitate pedestrian access through this naupaka hedge onto the beach.

This is the Maui Oceanfront – sorry, Sarento's Restaurant. This wall here and this awning are part of the shoreline setback variance and various land use approvals because they were in violation and this action is settling all those violations.

This is the access to the gravel parking lot. Public beach access and parking signs here. This is a basically a awning – I'm sorry, a threshold entrance to a beach access sidewalk. This was previously constructed without proper permits which is being clarified through this action. Also, ADA access ramp which is the same, it was constructed the same time without proper permits and we're trying to correct that currently. Another access between the existing gravel parking lot and the hotel parcel.

So the first planning commission comment, "discuss impacts and mitigation measures to public beach access." Maui Oceanfront Inn and Sarento's Restaurant will provide two weeks advance notice of construction on site so that people who want to park in the public beach parking lot will know what's coming and then they'll provide signage on site with directions to nearby public parking which is Kamaole III and Kilohana Drive and South Kihei Road. These are both nearby public parking places. Public beach access was created by – well, the beach path was constructed at the same time as the Maui Oceanfront Inn in 1974. The State leases the property for the gravel parking lot – I'm sorry, the gravel parking lot is leased from the State, at that time public beach parking was included in the lease and then the further expanded settlement agreement that was drafted between Maui Oceanfront Inn, Sarento's Restaurant, the County of Maui and interested parties basically further expanded the parking division between 51% public parking, 49% for Maui Oceanfront and Sarento's use.

Second planning commission comment from the draft EA was, “discuss proposed measures to insure public continues to enjoy the state beach reserve.” Currently the gravel parking lot provides basically 70 to 75 stalls because it’s unlined. When it’s lined it will provide 82 stalls, 51% of those will be for the public. That means 42 stalls for the public. Access improvements such as a shower facility, the walking pathway, the ADA ramp as well as the stairs were constructed to facilitate access between both parcels which are all connected to a path system that goes to the beach right of way. Conspicuous public beach access parking and parking signs are provided at the entrance of South Kihei Road, at the threshold entrance that enters into the beach access pathway and the paved stalls in the completed lot will be designated for public use.

The third comment, “discuss general locations and types of lighting to be utilized and how lighting will comply with 205A and county standards.” The lighting will only be in the parking lot area. They’ll all be shielded and they’ll conform with current county code which regulates light pollution and 205A has to do with shining light over water and things like that which is all going to be covered through current county code for light standards.

This is a photo of the existing gravel parking lot. This is going to be paved and striped with landscaping. This is a typical parking lot light that will be used.

Fourth comment, “discuss how previous and proposed improvements meet existing Maui County Codes.” Now basically this how each of these items which were various structures that were unpermitted, not permitted properly how they fall under different land use entitlements that were part of this consolidated environmental assessment report. And again, this is the existing site plan. So these yellow highlighted structures were in that past matrix and basically these are the items that are being clarified through this action. This is existing – sorry, this is like an electrical enclosure. This was a violation because it’s too close to the setback, so we’re clarifying this. These enclosures were constructed without proper permitting. These are being clarified.

And conclusion, we were here for the draft EA in February 27th. We received comments. We basically provided responses to those comments to the Planning Department. The Planning Department has accepted them. We provided a final EA to the Planning Department, they’ve accepted that and recommended a FONSI.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: The present graveled parking area is going to be replaced with impervious, why?

Mr. Chris Hart: It is the intention of this application to basically replace the gravel parking

and it was essentially agreed to in the context of the settlement agreement that we entered into. I think you were here when we originally presented it. This has a long history and basically the parties in the settlement agreement are the County of Maui, Planning Department, obviously the applicant and Dana Naone Hall and Leslie Kuloloio. One of the issues was basically the completion of the parking lot. So the completion of the parking lot does involve the paving of the parking lot together with the provision of the necessary landscape planting for the parking lot. And also the drainage facilities that would be necessary. We have done a drainage report. We have hired a civil engineer. We've done a preliminary drainage report and we will be retaining the water runoff from basically the parking lot on site and it will include oil/water separators and all of that is going to be incorporated in the design of the parking lot. And of course, the State Department of Land and Natural Resources has also been a party in it because they did issue the revokable permit for the use of the parking. And so the requirement for 51% public parking and the remainder for private parking was all part of that documentation.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: My question Chris is would it not be possible to utilize the concrete grass –

Mr. Hart: Pavers?

Mr. Iaconetti: Pavers.

Mr. Hart: It could be possible, but just from the point of view of being a landscape architect and understanding how that works, a parking lot that's used regularly, you know, the grass does not hold up. And it's fine to use it in an intermittent area where you might have guest parking and so on or like in terms of having a fire lane where you'd have heavy truck running through a lawn area. But if you're going to use it on a daily basis and there a lot of the public, members of the general public that use that area for access to the beach and also they use it regularly as overflow from Sarento's Restaurant in terms of the valet parking. So it's not going to hold up.

There's ways that we could, you know, try to create a parking lot that would be – have a certain amount of paved area and some maybe basically compacted gravel surface. We could probably look at that and it might be – it might be more – something more environmentally sensitive and even it could cost less to the applicant.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: Anything that would make it look better than a big piece of property that's covered with paving.

Mr. Hart: I understand. We would accept that as a further comment or condition that we could incorporate into the SMA permit. You know, we would do that.

Ms. Amorin: Commissioner Starr.

Mr. Starr: Yeah, my concern with finding no impact with this relates to the shoreline setback variance aspect of it and I'd like to request Planner Loudermilk and maybe if she wants – Mr. Abbott's here too talk about the impact of all of the encroachment in the setback area that's involved with this project and it looks to me like it may be affected the actual beach processes.

Ms. Loudermilk: First of all it is not affecting the natural beach processes and secondly, the existing improvements, those that are before us today as part of this final environmental document are part of the settlement agreement between the County of Maui, the applicant and others that Mr. Hart talked about earlier that within the final EA they've clearly delineated where the shoreline setback line is. It is part of the erosion rate and do you have anything other specific regarding the potential for the variances in the shoreline setback area that you would like to highlight?

Mr. Starr: I mean I think what we're seeing here is that the red line is – what is the red line?

Ms. Loudermilk: That is I believe the certified shoreline.

Mr. Starr: Okay, and then the green line is that the annual rate base?

Ms. Loudermilk: Let me look for that exhibit in the – I want to – if we can all turn to, trying to find the appropriate figure in the final EA. Okay that would be under figures, Figure No. 4A. As indicated earlier the red line that we see is the certified shoreline. The green line that we have is the shoreline setback based upon the annual erosion rate method. And then the blue line is the average lot depth method.

Mr. Starr: It seems to me that if we were to approve a finding of no significant impact, we're saying that the fact that there is this structure may be eight feet away from the shoreline has no impact in a place where the shoreline is receding and –

Ms. Loudermilk: I would disagree.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Robyn, can you show us those lines with a pointer so we know what you're talking about?

Ms. Loudermilk: This is the certified shoreline discussed earlier. This green line is the average lot. It's a shoreline setback based upon the average lot depth, and excuse me, by the annual erosion rate as there is an annual rate in front of the two properties and then the blue line is the shoreline setback of the average lot depth. So these are the different points of reference in relation to the shoreline.

Mr. Hart: Just as a matter of further clarification. The project as you basically see it, it was built in 1974. The building permit was issued in 1973. The shoreline setback at the time was 40 feet. So the buildings were all built in the context of the shoreline setback ordinance and the rules that existed at that time. The violation basically is the area in yellow that's on the makai side of Sarento's Restaurant. And that, Mr. Tony Habib, who was a previous owner of the restaurant basically got an approval to do a deck and to basically put up umbrellas, okay, and that's what he got approval of. But subsequent to that, we have a photograph of that, Mr. Habib actually put a basically a canvas trellis over the top and so that this is what it looks like today. So that canvas trellis area is essentially the violation and basically the owners that the individuals who purchased the property most recently essentially purchased it with this violation and so but one of the issues of the settlement agreement is that we basically deal with the issue and seek a variance. So that's why we're before you.

Mr. Starr: You know, I knew Mr. Habib, he was kind of an interesting horse trader but, and I don't have a problem with the awning per se, what I'm trying to understand is whether the hard surface that's underneath the awning was originally permitted before the ordinance is in place in which case it's a preexisting condition and I wouldn't have a problem with it or whether this is also one of his gorilla moves.

Mr. Hart: Well, it was kind of – lets put it this way there is a SMA minor permit in the record to basically provide a paved terrace, okay, and basically it was like a decorative paving and to provide basically umbrellas so that people could actually sit outside on that lanai. And eventually over time, it became something else, you understand? So I don't want to put words in anybody's mouth but, you know, it did actually kind of evolve into what we see today.

Mr. Starr: Yeah, that's what I think and would not have a problem if it were, you know, a temporary type of pavers set in sand, but I do have a problem with it being –

Mr. Hart: it did become a concrete slab, okay. And that is a wall that was built and that pipes that basically that structural system has basically like a canvas type awning over it but it is a structure.

Mr. Starr: Yeah, then in my opinion it would have a significant impact.

Mr. Hart: Could you show the other slide that shows the stepping stones down to the ocean? You know, this is the lawn area. Now, you know, basically the area is a pretty stable shoreline and I think that's what Robyn was trying to communicate with you. This is the lawn area in front of that – of the restaurant, Sarento's Restaurant and it is a stable shoreline.

Ms. Amorin: Commissioner Mardfin.

Mr. Mardfin: This is more curiosity than anything else, but when the new owners bought this were there any violations since the time that they bought it or all of these violations, violations that occurred by previous owners?

Mr. Hart: Actually there were violations that occurred. The new owners bought the property during a period of time in the – it used to be called the Outrigger Maui and they bought it during a period of time as far as the special management area permit process is concerned that you could do exterior repairs and interior renovations without triggering the requirement for an SMA permit. So they basically applied for building permits and got a letter from the Planning Department that said that it was exempt from the SMA permit process so they proceeded to do renovations. They did go beyond the scope of the renovations. They did some things like they built enclosures in the parking lot for basically, I think their electrical and trash enclosures. They built those ADA, the ramp. They built the stairs. They built the gate to the beach, the public beach access. They, let's see, I think – oh, they also built those electrical boxes. There just electrical panels on the back of the buildings, they wanted to make them look nicer so they enclosed them. But it turns out that, you know, they needed a building permit. That was in addition to the building. So they did those things, they did that and as a result of the scope of the work that was being done, there was a concern on the part of Dana Hall and Leslie Kuloloio that they should get an SMA permit. So there was a file – they filed basically a request for declaratory ruling with the Planning Department a long time ago and in the process there was eventually some attorneys involved and there was a settlement agreement that we would have to go through a process to actually rectify the violations.

Now the issue of getting an SMA permit wasn't as simple as, you know, it was made out to be because originally the property is community planned or was general planned hotel and the zoning is HM Hotel, but in 1985, the Kihei-Makena Community Plan identified the parcel and the one next to it which is also a condominium called the Hale Hui Kai as single family, SF. So the process of applying for an SMA permit would not have been possible because there wasn't consistency. In other words, you'd have to have hotel and hotel. So you couldn't do that. So as part of the settlement agreement we had to do the EA in order to amend the community plan to change it from single family to hotel, H, so it complies with the existing zoning. It also would have to have an EA because we're asking for a variance

in the shoreline setback.

So we got involved just because it's a very complex issue and they didn't know where to turn so they – we got it. So we're just trying to go through the process. That's basically it.

The building has been there since 1974. The additions are minimal. The awning is an addition, the electrical boxes on the back of the units are an addition, but basically there have been no further additions to the project.

Ms. Amarin: Thank you. Commissioner Iaconetti.

Mr. Iaconetti: Maybe Public Works can cool my concern, but a propane tank which is located in an area that is within the setback to me seems like it's a hazard and I'm wondering why that was even allowed to begin with.

Ms. Amarin: Public Works your response or the applicant.

Mr. Miyamoto: Maybe the applicant can respond because Public – not to my knowledge I don't think we regulate the location of propane tanks at this point.

Ms. Amarin: Chris Hart.

Mr. Hart: They allow them to be located. There's no setback requirement for a propane tank. The thing that would be a requirement, what they tried to do is put it in an enclosure. You know build a fence around it and they didn't get an SMA permit to do that, but the – in a situation like this where it's a parking lot, the propane gas tank purveyor doesn't object to them being in a setback. In fact a lot of them are put in setbacks.

Mr. Iaconetti: Provided a car doesn't back into it?

Mr. Hart: Well, that was, you know, that was it, obviously. You know, and that's why they basically protected it with the fence.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: One other thing concerning the fence. A wooden fence goes down well into beyond the setback lines. Is that going to be – is that going to remain there?

Ms. Loudermilk: The intent is for the fence to remain there. It is a structure that can be easily removed. So it would meet the criteria for being able to stay in that particular area.

Ms. Amorin: Commissioner Iaconetti.

Mr. Iaconetti: When – how much of the area from the shoreline to the setback is open to the public? Is the public allowed to occupy that area?

Ms. Loudermilk: The sandy beach reserve that is the public space. The public access is located from the upper parking lot and you go between the two properties down to the shoreline. That's where the steps are and once you go down there that's the public beach reserve. Everybody has access to the public beach reserve.

Mr. Iaconetti: So statewide then anything makai of a setback line is not necessarily open to the public?

Ms. Loudermilk: Can you please repeat that?

Mr. Iaconetti: I said, from what you're telling me, everything between the shoreline and the setback area is not necessarily allow public access?

Ms. Loudermilk: Correct. The shoreline setback line is put in place in relation to structures, the location of structures and activities. It has nothing to do with public trust lands or lands that are open to the general public versus lands not open to the general public.

Ms. Suyama: I think what's happening is just to clarify for the commission, the public lands, you know if you look at the pictures of Sarento's you have that fence line, that is the property line. So everything makai of that fence or that wall is the public trust. So it is under the State of Hawaii and that is where the public has access to the beach. So the lawn is now part of Sarento's or the Maui Oceanfront Inn. That is public lands and that's why it was important from the State's perspective when they allowed the parking to have that public access to the beach because you're actually traversing the State property.

Ms. Loudermilk: Thank you Colleen.

Ms. Amorin: Commissioner Mardfin.

Mr. Mardfin: I kind of like to ask the Planning Department was there any penalty for these encroachments or are they just working out a way to clean the slate for themselves.

Ms. Loudermilk: Well, in lieu of fines I believe at this point in time part of the exhibit in the report is a settlement agreement and the settlement agreement requires the applicant to obtain a good faith, obtain the appropriate permits and variances. At this point in time they are doing that. In terms of fines, I'm not sure if they were required to pay any fines. But

what they're doing right now is part of an adopted settlement agreement in which the County of Maui is a party to try to resolve these violations.

Mr. Mardfin: Maybe I'm wrong, but it just seems to me that they're saying – they're confessing their sin, this is what we did in the past and they're being absolved of it assuming this commission –

Ms. Loudermilk: Not necessarily. Just because you go through the Chapter 343 and all these land use processes doesn't necessarily mean that you may be granted all of these permits. So this is the first – this is one of the first steps. So I think once we get to that point, then the department through the Enforcement Division and the County of Maui through the Office of Corporation Counsel has to make a determination on whether fines will then be levied.

Mr. Mardfin: So that's yet to be come presumably?

Ms. Suyama: Yes.

Ms. Loudermilk: Presumably. They've been given this opportunity to try to correct the violations through the existing land use processes.

Mr. Mardfin: Now I'm looking at the map that's up there and I see the green setback line and it's half the restaurant and the blue one is virtually the whole restaurant.

Ms. Loudermilk: Yes.

Mr. Mardfin: Did they not apply? Is that because that's come in later?

Ms. Loudermilk: The restaurant itself is an existing nonconforming use within the setback area. When it was constructed it was constructed within the setback area that was in place at that time.

Mr. Mardfin: Including the awning area?

Ms. Loudermilk: The awning area, no. The awning area is slightly different as Chris had indicated. There was a special management area minor permit in for the umbrellas and so forth, so the violation – the existing violation within the shoreline setback that is part of this application is the awning area, not the rest of the restaurant.

Mr. Mardfin: Okay, thank you.

Ms. Amarin: Thank you. Commissioner Iaconetti followed by Commissioner Starr.

Mr. Iaconetti: Well, if I understood the associate director, that area between the shoreline and at least the green setback line is totally open to the public.

Ms. Suyama: It's not the green, it's where the lanai, the awning currently ends. That is the State beach reserve and that's State lands. And I think you know what Robyn was saying about the shoreline setback in terms of the buildings, it's important to note that when this project was originally built the way our shoreline setback rules were written it talked about being adjacent to the shoreline so because this was not an adjacent property they were not subject to any shoreline setback requirement at the time of construction and that's why they were able to build all the way up to the property line. See, but since that time we've amended our rules and now it doesn't matter whether you are abutting or not abutting the shoreline area, you are now subject to it and if the setback goes over that line and that's why we're showing it as it is today.

Ms. Amarin: Commissioner Iaconetti.

Mr. Iaconetti: I think I've lost my train of thought here, oh I know, you say that the agreement was between the applicant, some other parties and the County of Maui, what do you mean by the County of Maui? Who is representing –

Ms. Loudermilk: The County of Maui is as it is, the County of Maui as part of an appeal of a special management area minor permit that was issued to the property. An appeal was filed with the Board of Variances and Appeals by two entities, Dana Naone Hall and Leslie Kuloloio and when it got to the BVA, the County of Maui also intervened and became a party to the proceedings. And as a result of that and some other issues such as what Commissioner Mardfin had indicated all these violations what are we going to do to have the structure come into compliance as well as to resolve the appeal the settlement agreement was entered into between the four parties. I am trying to identify where in the environmental assessment –

Ms. Amarin: Yes, Commissioner Iaconetti.

Mr. Iaconetti: Who specifically represents the County of Maui in this agreement?

Ms. Loudermilk: The Office of the Corporation Counsel.

Mr. Iaconetti: And they have the final word on something like this?

Ms. Loudermilk: Yes, yes they do.

Mr. Iaconetti: Even though it's within the SMA area?

Ms. Loudermilk: When it comes – it's been done.

Mr. Iaconetti: I know it's been done, but is it legal?

Ms. Amarin: Commissioner Starr might want to put some – go ahead Commissioner Starr.

Mr. Starr: Doc's getting right to the point here. This body not the department, not Corp. Counsel, but the planning commission is the final authority on setbacks and shoreline issues. I, for one, would have a very big problem if it turned out that some other arm of government was making deals regarding shoreline setback.

Ms. Loudermilk: There was no deal regarding the shoreline setback. My understanding is that a number of violations were identified as part of the appeal process for special management area permit, nothing more, nothing less. Potential violations. I cannot answer that question for you.

Mr. Hart: The settlement agreement does require the applicant obviously, the owners of the property to do many things and one of the requests that we have to make is a request for shoreline setback variance and obviously the planning commission is the authority in granting a shoreline setback variance.

There are some other issues involving the SMA permit which you are also authorities and basically can grant or not grant. I'm not saying that this is a simple issue. Today is not the day that we're going to make a decision on the shoreline setback variance, but in order to get to the place where we can ask you for the shoreline setback variance to approve it or not, we have to go through the environmental assessment process and so we tried to do that. And the environmental assessment is an information document that basically discloses all the dirty laundry and tells you how we're going to mitigate any lets say potential impacts. And the comments that were brought up by the planning commission before, for instance, the issue of night lighting and so on are basically what we're addressing together with a lot of other comments that were brought up by other agencies. And those other comments basically have been accepted by the Planning Department as essentially addressing the issue and providing sufficient mitigation. And so today we're coming here to ask you for essentially acceptance of the final EA so that we can move on with the process.

Mr. Starr: Okay, then I have no problem as long as it's clear that, you know, there's not been anything done regarding the SMA. You know to get back to what's germane which is the environmental assessment document which is what's really before us today. There's

one point in it that to me has a very large potential for impact and I, for one, can't go along with it. I have no problem with the structures that existed previous to the shoreline ordinances and I wouldn't even have a problem with the – that yellow awning area had it been you know, what I call break away construction so that if there were a storm event or if there were beach erosion that it would, you know, it would be moved or could be movable and that's what was applied for and permitted. You know, was pavers and umbrellas. I do have a real problem it being a hard structure, you know, not the cloth awning but the concrete and the wall. And I know that as long as that's the case, I can find that there is, that there is a potential for environmental issues and the only – that have not been mitigated and the only solution would be either to alter and show willingness to make that a break away construction or to kick this up to an environmental impact statement which I believe our – is in our purview rather than to reject it. I think what we get to do is perhaps suggest that it go to an EIS, but it would probably make more sense to turn that into break away construction. I know for me if I heard that was going to be the case then I would have no problem proceeding and I also don't have problems with the propane shed or the electrical cabinets or you know, the other stuff. The setback area I have a real big problem unless it's real hardship to give an after-the-fact setback variance because I think that it's not fair to those people who observe the setback law and the intent of it. If we give it away without real hardship then, you know, we're kind of punishing those people who do the right thing.

Ms. Amarin: Thank you Commissioner. Comments from staff planner or the applicant.

Mr. Hart: At this point, you know, obviously in the context of the shoreline setback variance, you know, I in terms of our role as representing the applicant I think that we would have to be in a position to accept mitigation measures that would be practical that would be suggested by the commission. And you know, obviously there's way to modify the structure that's there's now so that it could actually be a break away type construction. So I know I think that that would have to be a recommendation that we would have to live with if that's what was necessary to be able to maintain a lanai. Unfortunately the lanai has become an important part of the success of Sarento's Restaurant and you know, I can't avoid that. It's just something that is there that we have to accept, but modifications to it are definitely I think logical and reasonable and would be acceptable.

Mr. Starr: Can I? I request the Deputy Director, how do we accomplish this you know, in terms of process?

Ms. Amarin: Colleen.

Ms. Suyama: You can request that the final EA be amended to I believe would be under the alternatives scenario that one of the things that you would want considered as an

alternative is to do the break away wall construction.

Mr. Starr: And then we would accept it on that basis?

Ms. Suyama: Right. You could do –

Mr. Starr: Can the department prepare the necessary language for that?

Ms. Loudermilk: I would need – should there be a motion for that.

Mr. Starr: I mean, we just heard from the applicant that it's acceptable.

Ms. Amorin: Commissioner Hedani.

Mr. Hedani: Okay, correct me if I'm wrong Robyn, I think what we're here today to do is to review the environmental assessment and determine if there's additional information we need from the perspective from the environmental assessment.

Ms. Loudermilk: Correct.

Mr. Hedani: We're not here to review the SMA permit. We're not here to establish conditions. We're not here to establish approval conditions, but we're here to evaluate the environmental assessment, right?

Ms. Loudermilk: Correct.

Mr. Starr: I'd be willing to make a motion after it's in order.

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

Mr. Mardfin: I have a question and it's similar to the one we had when we had the contested case recently and back then when we accepted the hearings officer's report we were in effect giving the SMA. Are we going to be in that same situation if we accept the environmental assessment with the FONSI? Does that kind of lock us in too?

Ms. Loudermilk: No, it does not.

Mr. Mardfin: It does not.

Ms. Loudermilk: The acceptance of the – should the body determine that they would accept

the final EA as is, would not lock this commission into any type of support, future support for the other –

Mr. Mardfin: From the request by the applicant.

Ms. Loudermilk: For the other requests if I am hearing Commissioner Starr, he would be more comfortable if an additional analysis, alternative analysis was included utilizing break away construction technology for the awning area, the existing awning area. Is that –

Mr. Starr: Yeah, that the EA would be amended to state that area will be break away construction.

Ms. Loudermilk: I'd like to make a clarification on that. Just because it's in the EA as an alternative does not necessarily mean that's going to be the preferred alternative. You still want them to explore that versus as part of the special management area or the shoreline setback that part of the additional information provided includes break away technology?

Mr. Starr: In what I was thinking and what I felt was you know, the language that I had heard from Deputy Director was that the EA would be amended that the –

Ms. Loudermilk: Yes, it could.

Mr. Starr: That that area will be break away.

Ms. Loudermilk: As an alternative, one of the alternative analysis to be included into the environmental –

Mr. Starr: Yeah, and that it's the – the remaining hardened construction not be an alternative.

Ms. Suyama: Can I suggest something? Because I think this is the issue. Under alternative number three which is the removal of structures in the shoreline setback area that we'd also include a number four which is that there are some unresolved issues which include the construction of the existing structures located within the shoreline setback area consideration should be given to break away construction. So in other words we're saying that although we're accepting the final EA there are still some unresolved issues that still need to be resolved by the commission when you have the actual permits before you for consideration.

Mr. Starr: I think I'd bite on that.

Ms. Amarin: Commissioner Hiranaga.

Mr. Hiranaga: Sort of following Commissioner Hedani's point about we are here to either accept, defer or whatever to this EA. I think the condition that Commissioner Starr is speaking of would – should be handled during the public hearing process when they come back for their community plan amendment, conditional permit and SMA use permit. You know, when you're placing conditions on the SMA use permit.

Ms. Suyama: I do not believe that he's placing conditions. I just thinking – that what we're saying in the EA document is that we do have some unresolved issues and one of them is the existing construction of the existing structures and those things would still need to be resolved once the permits come before you.

Mr. Hiranaga: So this would not delay the process?

Ms. Suyama: No, it's just saying that there may be unresolved issues that cannot be resolved at the EA level but it will need to be resolved prior to the permits actually coming before the commission and the commission taking any action on it.

Ms. Amarin: Commissioner Mardfin.

Mr. Mardfin: In addition to the break away type construction I would like them to look at total demolition of that area.

Ms. Loudermilk: That is –

Mr. Mardfin: That is in there already?

Ms. Loudermilk: Yes that is, yes. Yes, thank you.

Ms. Amarin: Any more questions commissioners?

Mr. Starr: I think we need to have public hearing then I'm ready to make a motion.

Ms. Amarin: At this time we'll take public testimony. If there is any member of the audience that wishes to come forth and speak on this agenda item. Seeing none, public testimony is closed. Robyn.

Ms. Loudermilk: The Planning Department does recommend the acceptance of the final EA with the inclusion of the alternative scenario number four. So that will – in that there may be unresolved issues regarding construction technology and that will be addressed at the

permit level and that concludes the recommendation.

Ms. Amarin: Commissioner Starr.

Mr. Starr: Okay, move for acceptance as recommended by Planner Loudermilk.

Ms. Loudermilk: As amended.

Ms. Amarin: We have a second on the floor.

Mr. Iaconetti: I'll second it.

Ms. Amarin: We have a motion on the floor to approve this agenda item with changes.

Ms. Loudermilk: With the addition of a fourth alternative scenario.

Ms. Amarin: With an addition of the fourth alternative by Commissioner Starr.

Mr. Starr: Yeah, and that is wording as per Deputy Director.

Ms. Loudermilk: Yes, yes.

Ms. Amarin: As per wording by our Deputy Director and seconded by Commissioner Iaconetti. Any more discussion? Commissioner Mardfin.

Mr. Mardfin: For point of information, does that mean that we're saying we'll accept this with a FONSI but they have to come up with a page or two of additional stuff is that what's happening.

Ms. Loudermilk: Yes.

Ms. Amarin: Is that all clear? Commissioner Hedani.

Mr. Hedani: Robyn, couple questions. I didn't see a sign along South Kihei Road that says public beach access. Is there a sign that's going to be put there or is there a sign that already exists that I can't see. I'm not sure, I'd have to get back to you on that. And see what was required by DLNR.

Mr. Hedani: So between now and whenever whatever happens, a sign is going to be part of the deal, right?

Ms. Loudermilk: I can report back within the next – but as part of the settlement agreement my understanding that all appropriate signage will have to be put up and I believe that would fall under that category.

Mr. Hedani: Yeah, my concern is that it just be visible from South Kihei Road.

Ms. Loudermilk: Sure, sure.

Mr. Hedani: And the other concern that I had was the ramp that was pictured in the photograph looked like you'd have to have a four-wheel drive wheelchair in order to make it down there safely. So it looked like it exceeded the grade limitations for ADA specifications.

Ms. Loudermilk: Okay.

Mr. Hedani: So if they could review whether that's in compliance or not.

Ms. Loudermilk: Sure.

Ms. Amarin: Thank you. Commissioner Starr.

Mr. Starr: Yeah, just you know, I struggle for beach parking right near there – in that area for several years and there wasn't a sign, but I do believe they'll be putting a sign, that that's part of the plan.

Ms. Loudermilk: Yes, thank you.

Ms. Amarin: Thank you. Any more discussion, comments? All those in favor of the motion? Any opposed?

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

**VOTED: To Accept the Recommendation of the Department of Accept the Final EA and Issue a Findings of No Significant Impact (FONSI) Determination with the Addition of Alternative Number Four: "There are some unresolved issues which include the construction of the existing structures located within the shoreline setback area consideration should be given to break away construction."
(Assenting - J. Starr, W. Iaconetti, K. Hiranaga, B. U'u, W. Mardfin, W. Hedani, J. Pawsat)**

(Excused - J. Guard)

Ms. Amarin: Motion is carried. Commissioners it's after 5:00 p.m., I know the hour has gone by.

Mr. Starr: Move to adjourn.

Ms. Amarin: Okay, lets see if we have any important – at least comments or –

Mr. Hiranaga: Madam Chair, don't we still have an agenda item?

Ms. Amarin: Deputy Director any comments, information before we adjourn.

Ms. Suyama: Well, if it's the desire of the commission to adjourn, I would just say at this point the only other thing you have one more item which is the final EA for the Schloemer residence which will probably take you more than just a few minutes to get through. You also have the approval of the minutes and you have the Director's Report. The only other thing under the Director's Report I did give you a memorandum dated March 25, 2008 which addressed all of your questions about the permits that were in the previous report that you had concerns about and I'm assuming that's sufficient to address that. And you know, the rest of it we can just defer to the next meeting if that's the desire.

Ms. Amarin: Is that the desire?

F. APPROVAL OF MINUTES AND ACTION MINUTES OF FEBRUARY 12, 2008 MEETING

Mr. Hiranaga: Madam Chair I'd like to at least dispense with the minutes so it can move on the process.

Mr. Hedani: Second.

Ms. Amarin: We have a motion on the floor to at least dispense with the minutes and that should just take a couple of minutes by Commissioner Hiranaga, and seconded by Commissioner Hedani.

Mr. Hedani: Is that for approval?

Mr. Hiranaga: Yes.

Mr. Starr: Call the question.

Ms. Amarin: All those in favor? Okay, thank you Commissioners.

It was moved by Mr. Hiranaga, seconded by Mr. Hedani, then unanimously

**VOTED: To Approve the Minutes and Action Minutes of the February 12, 2008 meeting.
(Assenting - K. Hiranaga, W. Hedani, B. U'u, W. Mardfin,
W. Iaconetti, J. Pawsat, J. Starr)
(Excused - J. Guard)**

- 2. MR. JAMES H. SCHLOEMER requesting an Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the Shoreline Setback Variance application for the proposed Schloemer Residence at 4410 Makena Road, TMK: 2-1-011: 028, Makena, Island of Maui. (EA 2006/0018) (SSV 2006/0005) (T. Abbott) (The draft EA was reviewed at the March 13, 2007 meeting.)**

The Environmental Assessment trigger is the planned work within the shoreline setback area. The accepting authority for the Environmental Assessment is the Maui Planning Commission.

The Commission may act to make a Findings of No Significant Impact (FONSI) or take some other action.

The public hearing on the Shoreline Setback Variance will be scheduled for a future date after the Chapter 343 process has been completed.

Mr. Starr: Move to defer the Schloemer item.

Mr. Hedani: Second.

Mr. Iaconetti: I'll second it.

Ms. Amarin: Motion to defer our agenda item for the James Schloemer project. Motion by Commissioner Starr seconded by Commissioner Hedani. All those in favor?

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

**VOTED: To Defer the Matter.
(Assenting - J. Starr, W. Hedani, K. Hiranaga, B. U'u, W. Mardfin,**

W. Iaconetti, J. Pawsat)
(Excused - J. Guard)

Ms. Amarin: Motion is carried to defer. Colleen.

Ms. Suyama: Because it's under the Director's Report we will just automatically defer it for the next meeting.

G. DIRECTOR'S REPORT

- 1. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission at the March 11 meeting.**
- 2. Planning Commission Projects/Issues**
- 3. EA/EIS Report**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report**

Above matters were automatically deferred to the next meeting.

Ms. Amarin: Just my last sharing. It has been a pleasure. It's made a lot of good friends here. Thank you to all of the commissioners, Starr, Hedani. You know, everything you say, your opinions, tweaking the projects, just making it better for the community, you know, it's all good effort and I thank you and you're continued effort in the future and God bless all of you. Commissioner Hedani.

Mr. Hedani: On behalf of the commission I just wanted to say thank you for your service to the commission and in watching you in action I've learned to appreciate patience and sensitivity and I appreciated those qualities that you exhibited.

Ms. Amarin: Thank you very much and to Akaku, thank you very much because the public is out there and they depend on you. And to everybody else of the department, mahalo. This meeting is now adjourned.

H. NEXT REGULAR MEETING DATE: April 8, 2008

I. ADJOURNMENT

The meeting was adjourned at 5:07 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Johanna Amarin, Chairperson
Wayne Hedani, Vice Chairperson
Kent Hiranaga
Bruce U'u
William Iaconetti
Joan Pawsat
Jonathan Starr (in attendance @ 8:37 a.m.)
Ward Mardfin (in attendance @ 8:40 a.m.)

Excused

John Guard

Others

Colleen Suyama, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works