

**MAUI PLANNING COMMISSION
REGULAR MEETING
MAY 13, 2008**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at 8:36 a.m., Tuesday, May 13, 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.)

Mr. Jonathan Starr: Before we get to our first item, I would like to invite any members of the public who wish to testify on any item that's on our agenda today to come before us. We don't have anyone signed up. Are there any members of the public who would like to testify on any agenda item at this time? Please come forward. Yeah. Please come to the microphone and introduce yourself. And we ask you to try to keep your testimony inside of three minutes and as brief as possible. Thank you. Please introduce yourself. Welcome.

The following persons testified at the beginning of the meeting:

Ms. Sally Hanley - Item B-1, Council Resolution No. 08-05, Home Occupations in Various Zoning Districts

Ms. Bev Gannon - Item B-1, Council Resolution No. 08-05, Home Occupations in Various Zoning Districts

Ms. Pamela Tumpap - Item B-1, Council Resolution No. 08-05, Home Occupations in Various Zoning Districts

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

Mr. Starr: Anyone wishing to testify on any agenda item now please come forward. Seeing none, our initial public hearing is closed. There will be opportunity for public to give testimony before various agenda items or during the process. Anyway, I'll turn it over to Deputy Director Suyama to introduce our first item on our agenda today.

B. UNFINISHED BUSINESS

- 1. MR. JEFFREY S. HUNT, Planning Director transmitting Council Resolution No. 08-05 containing A Draft Bill to Authorize Home Occupations in Various Zoning Districts to the Lanai, Maui, and Molokai Planning Commissions. (J. Alueta) (Public Hearing conducted on April 22, 2008.)**

Ms. Colleen Suyama read the agenda item into the record.

Mr. Joseph Alueta: Good morning, Commissioners. I will try to speak a little slower. I did have a lot of coffee this morning. I try to avoid having coffee before these meetings, but I forgot all about it.

As you remember at your last meeting, you deferred action because you wanted have Hana comment on the draft ordinance. So finally, on their third or fourth attempt, we did get a meeting with them, and they did recommend approval as the Department's – based on the Department's recommendations. So that included setting a limit of 250 square feet maximum as well as 25% not to exceed 250 square feet, as well as expanding the home occupation definition to the rural district.

Just to address some of the previous testifiers, I wish they were here so they could understand because apparently, maybe they didn't read the ordinance, but it is quite broad. We do not at all specify any occupation. That's the beauty of this definition that they've come up with is that they – it's open to any business provided you do – you meet the criteria as far as potential impacts. And so the limiting factor is basically, size, percentage of your house, and the only people that should be working on the home occupation is those who live in the dwelling or live on the property. So I think it's an excellent bill.

As far as the permit process, I don't know how streamlined a permit process you can get with no permit. If you meet the criteria, you can do it. You're not breaking the law. So I think it's an excellent bill. With regards to catering, I'm not sure about this Commission in particular, but we have had several. We've dealt with them through the County special use permit, which is only done here at this Commission level. As far as being a daunting task to get a special use permit for someone to do a commercial kitchen or anything, I don't think it's been a very daunting task because we've had several of them. Many local people have come in. We've had Lau – I've personally had worked on Lau Eggplant in Lahaina, which he did pickled eggplants. We've had kim chee packing. So you've had a lot of small-based catering and kitchens come in through the County special use permit process which has been I think the most effective way to deal with these uses that do not meet the criteria of a home occupation, and can be dealt with on a case-by-case basis that the Commission can see and analyze those impacts.

So again, the proposed ordinance resolution by the County Council is to basically just specifically list where home occupations can be. There is currently a definition for home occupations. That's attached as your Exhibit 2 on your – your staff report. So that definition currently exists. The Department is only recommending that – we feel that there should be a maximum not to exceed 250 square feet, as well as that – given that in the rural district, a single-family residence is considered to be a principle use, and its home occupation would be an accessory – clearly an accessory use to that principle use. We feel it is appropriate to be expanded to the rural district. And that's pretty

much where we stand. And again, your deferred last time because you wanted to see what the Hana Advisory Committee did. They did hold a public hearing, and again, they did recommend approval based on the Department's recommendations. Do you have any questions?

Mr. Starr: Okay. Members? Go ahead, Commissioner Hedani.

Mr. Wayne Hedani: Joe, from the perspective of the Department, how do you address the question of vacation rentals as being described as a home occupation?

Mr. Alueta: It's not.

Mr. Hedani: So it's specifically excluded?

Mr. Alueta: No, it doesn't meet the definition. If you look at Exhibit 2, your definitions, in which someone's coming to the house, then it doesn't meet the criteria. It doesn't address that.

Mr. Hedani: Okay. So it's not a – it's not a back door provision for allowing TVR?

Mr. Alueta: No, not at all. One of the key– If you look at the definition, to meet the criteria is one, you – the workers or the occupants of the dwelling are the only employees of the home occupation, we limit it in size, and you do not have any customers coming to your house. So that would exclude people coming to your house. And the only time that you can have in the provision is for one-on-one training or teaching so – which is already allowed under the residential district such as piano playing or ukulele – one-on-one ukulele classes. This bill is not intended to be the catchall end-all for others. If you look at I believe it's Exhibit 4 of our staff report, we did have a draft of what we are proposing that will be coming back to you to modify the residential district to try to make amendments to that district to incorporate such things as – or create a permit process in which for say, hula halaus that operate, or we also – right now we don't define garage sales. So we would list that as a permitted use limited to a number. So there's some other issues that we will address in a later bill, but for the most part, we feel this bill is a good bill. It creates clarity for a lot of those home occupation – home businesses that are currently operating that have that sort of cloud that am I legal or am I not legal? And for that 80 to 90% of those businesses: accountants, architects who work clearly out of their home, they have nobody come to them, ebay sellers, stuff like that, do a lot of – consultants, this creates clarity for them and a layer of protection for them also.

Mr. Starr: Okay, Members, any other questions? Okay. If not– Oh, yeah, Commissioner Hiranaga?

Mr. Kent Hiranaga: How did you come up with the 250 square feet limitation?

Mr. Alueta: We made it up. Originally, we – it was 240 square feet, and that was based on what we consider to be a – an average room size was about 10x20. So 120 square feet. So we figured two rooms would be about 240. And then we round – some of – wanted to round it up to 250 because it sounded better. And so that's where we came up with the number. And there was an internal policy that was being administered by the Zoning Administration Division. Again, the definition of home occupation was already in the code under definitions, but it wasn't specifically listed in a lot of the categories. It was only specifically listed in some of the project districts in Maui Lani. So for an internal policy, the Zoning Administration Division created their own policy. And they said, well, there's no clarity in this, but we're gonna allow home occupations, and they set up a standard based on the definition, as well as setting up a maximum room size or area that could be occupied. And so again, this ordinance basically clarifies it and makes it – codifies it rather than just being an internal policy.

Mr. Hiranaga: I guess I don't see the need for this 250 limitation. I would be more comfortable with just the 25% of the building area because I think it's an ambiguous, arbitrary number that's, you know, with – I think with the use of the Internet, I know people that one guy has a recording studio in his house. He just does soundtracks for movies. I mean, he's got all this equipment in it. He's not bothering anyone. He just sends his product to California via the Internet. And so why place the 250 square foot limitation on him? He's got a 4,000 square foot house. I mean, who knows what he's doing in his house. He's not bothering anybody. So I think, to me, the 250, I think it will become outdated very quickly. I just don't see the need for that.

And one more question: as far as the Department of Water Supply's comments regarding discretionary or building permit is needed, can someone define what a discretionary or building permit would trigger the need for these commercial improvements? You wanted to put an additional electrical outlet in to service your air-conditioning unit, that would be – that would trigger the need for–?

Mr. Alueta: No, a discretionary permit is like a State special use permit or a County special use permit. Under the provision that the ordinance is is that we already have a definition of a home occupation. If you meet that criteria of that home occupation, you don't need any discretionary permit. And that's basically their concern is that they're saying that if you have a home occupation, and you meet the criteria, the Water Department will not be able to assess them outside of the standard building permit. So if you have an existing home, and you use a percentage of your home, and you meet the criteria of a home occupation, there is no permit. There is no Department of Water Supply review.

Mr. Hiranaga: What if you need to upgrade your electrical service in order to operate

your home occupation? Is that considered a building permit because you need to get an electrical permit?

Mr. Alueta: I'll leave that to Public Works.

Mr. Starr: Mike?

Mr. Michael Miyamoto: Thank you, Mr. Chair. Granted, it'll be based upon what the level of work that's required, how much upgrade it is. If it's purely electrical, then it would go into electrical permits. If it's a structural thing that needs to be modified to accommodate the additional electrical work, then it would include the building permit, but it would go into that permitting process.

Mr. Hiranaga: So a building permit is different from an electrical permit?

Mr. Miyamoto: Yes.

Mr. Hiranaga: Thank you.

Mr. Starr: Members, any other questions? Seeing none, I'd like to move on to our public hearing on – public testimony, not public hearing—excuse me—public testimony on this item for those who haven't testified.

a. Public Hearing

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

Ms. Sally Hanley: Good morning. My name is Sally Hanley. I'm a loan officer for MEO Business Development Corporation. For those of you are not familiar with us, we are an affiliate of Maui Economic Opportunity, and we do a couple things. We're kind of a bank for small businesses who are economically-challenged. We offer loans from – small business loans from \$500 to \$25,000 to businesses that are starting or expanding. We also teach a class on business planning and how to write a business plan.

Anyways, I have before you – I think she passed out a memo from my boss: Susie Thieman, the CEO. I'd like to read it to you, if I can.

To Maui Planning Commission:

Subject: Home Occupation Draft - Ordinance Council Resolution No. 08-05.

Good morning, Planning Commission Chair Starr, Captain Starr, and

Members. We at MEO Business Development Corporation are excited about the prospects of expanding the opportunities for our clients through your support of an ordinance to authorize home occupations in various zoning districts.

Over the past 11 years, MEO BDC has taught entrepreneurial classes and awarded micro loans to over 1,500 students and loan clients who have had the ultimate dream of starting their own successful businesses here in Maui County. To these students and our clients, MEO BDC teaches, through its classes, an understanding of doing business legally. We have found many who do business, but have felt they could not comply with certain legal issues because of cost. One of the most outstanding costs for a start-up business is the rental of commercial property.

Many communities on the Mainland provide incubator offices, warehouse, and kitchen spaces for startups knowing the cost of renting privately-owned commercial spaces is way beyond the means of our low budget start-up companies. MEO BDC has over the years shared many of the success stories of its clients, but as we look back over the years, we can see many others whom might have made a success of their business had they felt free to start up and do business from their homes. These are businesses which fall into the categories as described in the proposed legislation you have in front of you today.

We ask and encourage you to move forward with your discussion and support for a home occupation ordinance that will allow our entrepreneurs to be legal, legally doing business in their homes as long as it does not adversely affect their neighbors and neighborhoods.

Aloha and thank you for your consideration,

Susie Thieman, CEO of MEO Business Development Corp.

Mr. Starr: Okay. Thank you. Commissioners, any questions? Okay, thank you for your testimony. Anyone else with testimony please come forward. Yeah, come forward, and introduce yourself, and try to keep it as brief as possible.

Ms. Bev Gannon: Aloha. My name is Bev Gannon. I'm the owner and operator of Haliimaile General Store, Celebrations Catering, and Joe's in Wailea. I moved to Maui 28 years ago. And in 1984, decided to move towards a career path of cooking. I spent the next few years building a business out of my home kitchen, and then to a garage kitchen that allowed me to test the waters without a huge financial commitment. Because of my cottage start out of my home, I was able to create a financial base that

eventually allowed my growing business to expand to commercial areas. And as of now, generate millions of dollars and employ over 120 people. If I had not been able to use my home as a starting point, I would absolutely never be in business today. The cost of starting up a novice business was way too daunting. It allowed me to learn, make mistakes, gain confidence. As of today, the proposal that you're looking at does not even include my type of business.

I urge you as a group of planners that are supposed to be for the people to make sure that you understand the necessity of drafting a fair, user-friendly, expeditious process to allow home businesses to continue. You cannot make the application process difficult or lengthy so that it becomes one more impossible hurdle for the average Maui resident. You cannot inadvertently forget a home business like mine that later to amend the draft to include them will be a lengthy, drawn-out, potentially, impossible task.

I've been in business for over 20 years, and in discussing the present economic condition, economic climate, and lost of tourist dollars with my colleagues, we are all for the first time in many, many, many years very concerned about the economic downturn of our islands, and feel that some of the decisions being made by our government are making it increasingly more difficult to stay in business. You must not create one more user-unfriendly obstacle to keep local residents from creating new businesses and jobs for our island residents. They should be able to work from their homes as long as the business does not impact the neighborhood they live in. They should be able to apply for a permit and have it approved in a reasonable amount of time without incurring unnecessary costs that would keep them from starting the business that could potentially end up as mine employing many local residents, and bringing many tax dollars to the community.

Ms. Leilani Ramoran: Three minutes.

Ms. Gannon: Oh, how as that? Perfect timing. You know, I'm here today– Real shortly. I'm here today because I really believe that we have to keep Maui going and we have to keep it going with some of these small businesses out of your homes. I think it's a critical thing to keeping Maui afloat in this particular economic time. Thank you.

Mr. Starr: Okay. Thank you, Ms. Gannon. Any questions? I actually have a question. Bev, do you have any wording that you would recommend be added or changed that would help this do what you're suggesting, which I assume means to allow business – a business startup such as yours to be legal?

Ms. Gannon: Well, I think what really what needs to happen is when I read the draft, you know, listing businesses and listing specifics in that kind of draft I think really limits you. I think you have to look at an application by someone what they wanna do, you know,

how many people are gonna be in the home working. I think when you start limiting it to categories, like I said, you might forget some, one, and here I am wanting to start this little business that can't even put an application in because I'm not in that list. I think how it's defined should be fairly broad. And then the application process is what then takes what that home business is to be. And you decide whether it's okay to have that business in your house or not. You know, and discussing it – I've been discussing it a lot the last few days. Do I want eight cars being worked on in front of my yard and it's a 5,000 square foot lot? No. I think that's an impact to the neighborhood. If it's a cottage industry that really has very little impact, I think you have to look at it on a case-by-case level. And I think if you really – if you – if you make a list of 20 businesses, you're gonna miss 50 businesses. And then you're gonna run into trouble.

Mr. Starr: Okay. Thank you. Anyone else wishing to testify, please come forward. Welcome to the chamber.

Ms. Pamela Tumpap: Aloha and good morning. I'm Pamela Tumpap, President of the Maui Chamber of Commerce. And I wanted to testify on the draft bill to allow home-based businesses in various zoning areas in Maui County. I will give you more detailed testimony. I'll leave a copy here for you today.

The Chamber has been involved in this effort for quite some time. We've formed a subcommittee to review appropriate home-based businesses. And we did a survey of our membership to look at what we consider to be appropriate home-based businesses, and what the conditions were. And what we found was that our membership doesn't see all home-based businesses as being appropriate home-based businesses. We certainly want to address some of the concerns Bev just mentioned. We wanna address noise level. We wanna address parking and traffic. And so through our report – well, you mentioned some of the language or how the verbiage would look in the bill. It's interesting because we, too, at the Chamber of Commerce wanna see very broad allowance of home-based businesses as long as it doesn't negatively impact the community. So we will share with you some of the kinds of things that are in there. Certainly, some of the consulting things, accounting, and bookkeeping, graphic design, wedding coordination. They had family counselors and therapists, publication. It goes on and on, but again if we get too narrow, we run the risk of leaving somebody out. So we want to have the legislation be encompassing more over looking at how we impact the neighborhood because as Bev mentioned, we don't wanna see a ton of cars parked on the road or a lot of broken down things. Caustic materials were of concern. And so we need to look at smells and other neighborhood nuisances. But basically what we found in surveying our membership was that there's broad acceptance of home-based businesses. Eighty-eight percent of the Chamber's membership is made up of small businesses with 25 or fewer employees. Many of these people started from their home. Many continue to work from their home. And many who were in commercial spaces still know somebody or have a partner or spouse who is working from their home. So we

really wanna see that appropriate legislation goes forward.

In terms of regulation, we wanna see the process be supportive of small businesses and home-based businesses. And we had concerns in terms of our membership looking at whether they felt that regulation could be enacted under the current administration given the way they've seen some of the concerns with the TVR situation. So while 89% said they favor regulation, those that had concerns, it wasn't that they didn't favor regulation. They just had concerns about how that regulation would be applied.

So from the Chamber's standpoint basically, what we wanna see is the regulations being more inclusive of different types of home-based businesses and allow home-based businesses throughout Maui County. I know the current draft doesn't deal with rural and agricultural zoning areas. And we feel that it should be inclusive of that.

Ms. Ramoran: Three minutes.

Ms. Tumpap: Thank you. We feel that it's only fair to have a new law in place before any enforcement takes place. Any restrictions on home-based businesses should be dealt with dealing with the high-level neighborhood concerns. Legislation should facilitate appropriate home-based business and not be cumbersome. And the operator of a home-based business as determined in the legislation should be allowed to operate unless there are verified complaints that the operator is operating outside of the rules. So I'll leave this more detailed information with you, and I'd be happy to answer any questions.

Mr. Starr: Once again, do you have in your handout, do you have any specific wording that you'd like added or changed?

Ms. Tumpap: Well, not specific wording, but with the addition of the language "home occupations," we feel when you say, "home occupations," it can be vague. And so what we're saying is we've got listings of type of things that our members considered appropriate. We've got lists of types of things in the handout that members said might be concerning, but we need to as a community come together as a – as a bridge, and look at home occupations. If it's too broad, then I think that there could be concerns down the road in terms of the impact on neighborhoods. So we wanna make sure that that is somehow addressed.

Mr. Starr: Members? Okay. Thank you very much for coming in.

Ms. Tumpap: Thank you.

(End of testimony given at the beginning of the meeting.)

Mr. Starr: If anyone wishes to testify on this item, please raise your hand and come forward. Yeah, Pam, usually we ask people to testify once, but if it's a new item since you are representing the Chamber, I'll just ask you to be very, very brief.

Ms. Tumpap: Thank you, Chair. You were discussing another exhibit that I – when we had requested the document, hadn't seen, which was the definition of home-based business. So I just received it here. So I'd like to share a lot of the home-based businesses that we're dealing with, of course, we're looking at what are the concerns to the neighborhood? And as I look at the definition here it says, "No person other than a member of the family residing on the premises of the dwelling unit shall be employed by the home occupation." Many home occupations have other than family members working for them. So the question is, what concern are we trying to address? Are we trying to address traffic? And that's why we're limiting who can be in the residence? We wanna look at this from a high level standpoint. This definition is extremely limiting. You've already discussed the 25%. Again, what is the concern? When we come up with a number like that, what is the concern that we're trying to address with how much space they use?

"That no product shall be exchanged." And there are gonna be financial transactions, so we have to allow for that. If we're gonna allow financial transactions, what concern are we trying to address in not allowing it the way this definition is stated?

The signage, I think that that sometimes can change the character of a neighborhood, so I would say that there might be sign limitations, or no signage might be appropriate as the – this moves forward. But when it talks about the exchange of goods and services, when we talk about the storage of goods, when we looked at this early on, at one point people talked about the concerns of storage being maybe because here in Hawai'i, we have open carports. And so maybe storing things in your carport would be considered unsightly. So if that's what we're trying to address, we feel the definition should be – should so reflect that concern because many people may store goods in their garage. The way this is currently written we would say is highly too restrictive, and needs to be brought in, and we can give you more specific language later.

Mr. Starr: Okay. Members, any questions? Okay. Thank you very much for coming forward. Any other members of the public wishing to give testimony? Not seeing any, public testimony is closed. And before we go further, I'm gonna ask Planner Alueta to respond to those comments because I know there was logic behind this.

Mr. Alueta: Thank you, Mr. Chair. Again, you're dealing with the residential district, not the commercial district. The principle use is the residential district. We are trying to allow for those that are – uses that are clearly subordinate to that residential district without turning the residential district into a commercial district. And I think the limits are there to cover 80 to 90% of them. I think once you reach a certain criteria, the business

needs to make a business decision. And that is, do I seek a State – a County special use permit and argue my case before this Commission in which you have seen several like I said, Lau Eggplant, and a variety of different small businesses that have started, candy-making businesses that have started in the residential district, and address those on a case-by-case basis through a simplified special use – County special use permit process? Or as we have seen some of the other businesses, once they reach a certain capacity, they then decide to move on. Hopefully, those businesses make that decision because not only is it financially beneficial for them to move on, but also they feel that they do not want to create any more of a burden or create a burden on their neighbors. Hopefully, they'll have the good sense to do that and be a good neighbor. So that's the reason, one, for the limitation in the size, the limitation that the Council had done in their definition. Again, this is an existing definition of home occupation. I think it was battered around for several years before the Council finally adopted this criteria that they established. The only thing— Again, the only thing that we're looking at is we do want to expand it to the rural district because the residential – a residence is considered a principle use. We feel that a maximum of 250 square feet should be incorporated rather than just leave it at 25%. At 25% or 250, you would max out at a thousand square foot home. We all know that homes today are being built that are well in the excess of a thousand square feet. It's – you easily can have a 4,000 square foot house which could be a thousand square foot, a thousand square feet of area if it's just by the 25. We've also seen ten thousand square foot homes. So it's not uncommon. And so that's the reasons for the limitations. It's pretty straightforward. I think it covers the 80 to 90% of those small home occupations that are out there. Those that do have employees as a business, is that really a home occupation? If you have outside employees coming, you need to make that – that person needs to make a decision: either a County special use permit, argue the impacts before this Commission, or seek commercial space.

Mr. Starr: Okay, Commissioner Guard?

Mr. John Guard IV: There's quite a few people out there that possibly just do architecture work, or drafting, and have someone there to help answer the phone. So all of a sudden, they're – they'd be subject to a special use permit? If you have someone come in to help answer the phone while you're a photographer? Internet stock trader? I mean, you name it. There's people out there that I think Maui and I think the world is going through this change on trying to get out of only working in Kahului, or Wailuku, or in the commercial sector.

Mr. Alueta: That's true. I know of at least two architects that, you know, they answer their own phone, but they have commercial spaces. They rent small spaces down here in Wailuku and they don't have a person answering the phone, and they have a commercial space. They just choose because it's more convenient for them to be in town. So I just—

Mr. Guard: Right, but that's their choice.

Mr. Alueta: Yes. And so again, the line I guess has been drawn by Council in their definition. And if someone feels that they have an exterior reason to have – they have to have someone other than a family member answer the phone. It doesn't mean you can't have someone answer the phone. It just has to be a family member or someone living onsite. And that's their choice. Again, if they wanna have someone answer the phone that lives off property, they have two choices: they can either apply for a County special use permit or seek commercial space.

Mr. Starr: Okay, Commissioner U`u?

Mr. Bruce U`u: Yeah. On regards to the one person answering the phone, if you had 72 homes and you got 72 people answering the phones, there is a potential problem. And, you know, that's why you have the option of coming here. We got – I could see the potential problem if you're opening it up where everybody could have an employee. I like the concept of people having their own businesses in the house that– Where do you draw the line? At one point is it a burden on your neighbor? So I guess you guys drew the line and maybe not everybody gonna agree, but I agree with what you guys did.

Mr. Starr: Okay, Commissioner Hiranaga after you.

Mr. Hiranaga: I agree with Commissioner U`u's statement. I think what you wanna avoid is having an employee who parks their car on the street in front of their dwelling five times a week. But rather than say "member of the family," I would just say "no other person not residing in the dwelling" 'cause you could have – you know, you could be not married. And if that person resides in the dwelling, they're not creating additional traffic to the property. So rather than limit it to a member of the family, I would prefer to see it limited to individuals residing within the dwelling.

Mr. Alueta: I believe that the definition, Commissioner Hiranaga, is that no person other than a member of the family residing on the premise, so this person could be in the cottage also. So we're not limiting it to the actual physical structure. So we're saying that you could – the person could be living in the cottage, and they work, you know, the–

Mr. Hiranaga: Right.

Mr. Alueta: In the main dwelling is where the home occupation is located. Also, the definition of family has been expanded. If you look at the definition of family, it includes unrelated members. If you read the – I don't have the definition of family, but maybe my boss has it off the top of her head. But if you look it up, it includes like up to like three or

four unrelated—

Ms. Suyama: It's five unrelated persons constitute a family.

Mr. Alueta: And that definition was changed to – that definition was changed to meet – to help— I guess, the State Social Services had what you call homes, assisted living homes. And so it was expanded to say family. You could have these certain families.

Mr. Starr: You learn something every day. Commissioner Hiranaga, keep going.

Mr. Hiranaga: The storage of the product, is that gonna be limited to the 250 square feet?

Mr. Alueta: Yes.

Mr. Hiranaga: So you have to store your product and work within – work your business within that 250 square feet?

Mr. Alueta: That is correct. That would be a 10x25 area.

Mr. Hiranaga: I guess, again, just to repeat myself, I prefer 25% of the dwelling space versus this 250 arbitrary limitation. Thank you.

Mr. Starr: Okay, yeah, Commissioner Guard?

Mr. Guard: Yeah, I agree with Commissioner Hiranaga on that. And I think we discussed it last time going up to the whatever the average size of the garage is, is 480 or something I believe, or capping it somewhere that might be a little more relevant. I feel that the County needs to look at everything as a whole. If we're trying to get out of being an auto centric County, we shouldn't be trying to force people either to rent a Five A storage space or any other storage company for an exorbitant amount of money. If I have shelving in my house to store the files, photography, CDs, office paper, you name it, you're gonna give up a fair amount of your space for that unless you wanna go pay \$300 a month for 50 square feet or something like that. So I agree with the original intent of the 25% for an 8,000 to 10,000 foot home, and all of a sudden you have a massive office. You get a small office building in your house. I would think somewhere between 400 to 500 is fair. I mean, that's a small garage. That's not much space to work with as is whether you're a small-time, one person florist; architect with files; interior designer with samples trying to get going; doing any kind of ceramics, or pottery, or type of art where you just have unfinished pieces sitting around. I think 250 seems fairly small when you start adding if you have to store it in there as well.

Mr. Starr: There'll be opportunity from us to make amendments, certainly. Before we

proceed with action, I just wanna turn it over to Corp. Counsel to explain what our role in this is.

Mr. James Giroux: I think Joe explained, but I'll do it again. As far as the – you're being asked to review and comment on these potential new ordinances and that's by Charter. The Charter requires these types of land use ordinances to be reviewed by the Planning Commission. So you're reviewing it, and making comment, and it's gonna go back up to Council for – probably end up back at the Committee, and then get to Council.

Mr. Starr: Okay, so we're making a recommendation to the Council which is the final authority.

Mr. Giroux: Yeah. And looking at the bill, it doesn't look like there's any actual change to the definition. It looks like they're just expanding the uses to different districts within Title 19. And just another thing, Joe, I have the definition of family, if you want me to just read it into the record?

Mr. Starr: Yes, please.

Mr. Giroux: If that helps you out. It says:

Family means an individual living alone or a group of two or more persons related by blood or marriage and their legal issue living together as a single housekeeping unit in a dwelling unit in which two boarders unrelated by blood maybe living on a long term residential basis. A family may also be defined as no more than five unrelated persons living together as a single housekeeping unit. In addition, eight or fewer persons who reside in a residential facility monitored and/or licensed by the State pursuant to Chapter 46-15.3 of the Hawai'i Revised Statute shall constitute a family. Resident managers, supervisors, or operator and operator's family shall not be included in the resident count.

If that helps.

b. Action

Mr. Starr: Okay. Good. Members, the floor is now open for action or further discussion on it. If anyone has a motion, now would be a good time. Commissioner Hedani?

Mr. Hedani: I'm generally supportive of home businesses as long as there's no impact to the surrounding community. I think it's good that the Department is taking a position where it's moving forward to try to make a provision for legalization of what would otherwise be a gray area, and to offer clarity. So I think that's positive. From the

standpoint of the recommendation, because home businesses are something new that we're moving into, I think perhaps maybe it's prudent to walk before we run on this particular issue. And from that perspective, I think the Department's recommendation is modest or conservative from their perspective, but maybe prudent from the perspective of being cautious. And it could always be amended at a later date. With that being said, I'd like to move that we support the County resolution or the ordinance on home businesses as recommended.

Mr. Starr: Do we have a second?

Mr. U`u: Second.

Mr. Starr: Okay, it's been moved by Commissioner Hedani, seconded by Commissioner U`u that the Commission support the recommendation as stated in the memorandum presented to us by staff. Yes, any discussion or amendments? Commissioner Hiranaga, I saw you first.

Mr. Hiranaga: I'd like to offer an amendment to the motion to increase the size limitation from 250 square feet to 500 square feet.

Mr. Starr: Is there a second?

Mr. Guard: Second.

Mr. Starr: Okay, it's been moved by Commissioner Hiranaga, seconded by Commissioner Guard to increase the size limitation from 250 square feet to 500 square feet. Any discussion on the amendment? Okay, seeing none, the time has now come to call the question on the amendment and on the amendment only which would raise the size limitation from 250 square feet to 500 square feet. Commissioner Guard, do you have a comment?

Mr. Guard: I have a comment and a question, I guess. Just so I don't have to ask for another amendment regarding the additional person in the house, is there a concern if you have a house cleaner twice a week at the same time that you're working in your home-based business, Joe? I mean because that would – actually, I mean, there is that potential that you have someone at your house ten to 20 hours a week working for you either as– I mean, you have an additional car there. So if the issue is the parking, if they're either on the property versus on the street, like Commissioner U`u said, I mean, heaven forbid you have a visitor at your house all the time, is that a problem?

Mr. Alueta: I'm not following the question.

Mr. Guard: Okay. I'm an attorney. I'm an architect. I work out of my house and I'm a

slob. So I have someone come and clean my house two days a week. That's an additional non family member. Are we in a potential problem?

Mr. Alueta: No, you hired somebody to come clean your house.

Mr. Guard: Okay, so but they couldn't answer the phone?

Mr. Alueta: Yeah, my wife is trying to get me to do the same thing, but I'm not willing to pay the bill so-

Mr. Starr: I think the definition of slob is those who don't hire.

Mr. Guard: Well, okay, so, I mean, that - that - you will hit that gray area with someone else in your house outside of the family because you're working from home. So I don't really see a problem with one outside family member. If the whole neighborhood has one, that neighborhood's got something going on because most of the people that I know are- Traffic's coming into Kahului, right? And I appreciate that we're expanding this and you're just fixing bills that were created. I don't know when this one that we're looking was originally adopted. Right? And I just would think that as we move forward, we need to look at these bills from when they were designed, much smaller community, auto centric, and now we're trying to get out of that, maybe spread out some business opportunities to other areas of the island so we can get more people out of their cars. If you can hire a neighbor from three doors down, I think that's a benefit to the community instead of something we should oppose.

Mr. Starr: Okay. Any other comments on the amendment and on the amendment only? Not seeing any. This time we'll vote on the amendment which raises the maximum size from 250 to 500 square feet. All in favor, please signify by raising thine hand. Okay. Any opposed?

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

VOTED: To amend the Planning Department's recommendation which raises the maximum size from 250 to 500 square feet.

**(Assenting - K. Hiranaga, J. Guard, D. Domingo, W. Hedani,
B. U`u, J. Starr)**

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **It is - the amendment is unanimously carried.** We move back to the main motion or any other amendments that anyone wishing - wishes to make. Any

discussion or amendments on the main motion which is to recommend approval? Go ahead, Commissioner Guard.

Mr. Guard: I'd like to make an amendment to allow for one personal assistant living off property to also work in a home-based business.

Mr. Starr: Is there a second to that? Motion dies for lack of a second. Any further discussion or possible amendments to the main motion as amended? Seeing none, we're voting on the main motion as amended which is to recommend approval with the maximum size being raised from 250 to 500 square feet.

Mr. Alueta: Mr. Chair, just to be clear, you're also including the Department's recommendation with regards to the rural district.

Mr. Starr: Yes.

Mr. Alueta: Okay. Thank you.

Mr. Starr: Yeah, the original motion was based on the submittal by staff and includes all of their verbiage. Okay. All in favor, please signify by raising your hand. Okay. Any opposed? No opposed.

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

VOTED: To approve the Planning Department's recommendation as amended.

**(Assenting - W. Hedani, B. U`u K. Hiranaga, J. Guard,
D. Domingo, J. Starr)**

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **It unanimously carried.** Thank you for your good presentation, Mr. Alueta. Okay, moving right along, I see we got Dave Taylor in the house. Colleen?

C. PUBLIC HEARING

- 1. MR. DAVE TAYLOR, Division Chief, Wastewater Reclamation Division, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT requesting a Shoreline Setback Variance for the Wailuku Wastewater Pump Station Force Main Replacement project consisting of the installation of approximately an 850 ft. section of 24-inch PVC sewer**

main pressure pipe located makai of Kahului Beach Road at TMK: 3-4-027: 026, 036, & 001; 3-7-001: 016, Wailuku, Island of Maui. (SSV 2008/0004) (T. Abbott)

Ms. Suyama read the public hearing item into the record.

Ms. Suyama: Thorne Abbott was supposed to be doing the presentation, and I believe, Joe, are you doing the presentation? Joe Prutch from our office is handling the presentation today.

Mr. Joe Prutch: Yes, thank you, and good morning, everybody. This application before you comes to you as a shoreline setback variance. It was filed in February of 2008 by Ms. Cheryl Okuma, Director of Department of Environmental Management. It's located along the Kahului Beach Road right-of-way and continuing to the wastewater pump station. The application is requesting a shoreline setback variance in order to replace the property's existing 21-inch force main with a new 24-inch PVC pipe force main between the Wailuku pump station and the recently renovated sewer line along Kahului Beach Road. Now, this project was before you I believe back in 2006. An SMA was approved for the entire project site. However, this section was bifurcated at that time because the shoreline setback variance was required. So this is the aftermath of the SMA approval back then.

For background, and for project overview, and analysis, I'm gonna leave that to Dan Shupack. He's got a power point presentation. He'll – he'll present it to you right after I'm finished here.

The justification for a shoreline variance—the shoreline rules for the Maui Planning Commission state that a shoreline area variance may be granted for a structure or activity otherwise prohibited by this chapter if the Commission finds in writing based on the record presented that the proposed structure activity is necessary for or ancillary to facilities or improvements by public agencies or public utilities. That's our justification for the shoreline setback.

There was an alternatives analysis. There was one alternative route considered which was aligning the force main to run directly west towards Kahului Beach Road after leaving the Wailuku pump station. However, several issues were – several issues were identified and eliminated this alternative. And Dan's got a presentation, too, that will elaborate on why the other alternative was not the alternative of choice.

As far as public testimony, there was none received by the Department either in support or in opposition to.

In conclusion, the importance of this project to the community cannot be understated.

The existing force main is only – is the only conduit for transferring millions of gallons of raw sewage daily from greater Wailuku to the Wailuku-Kahului Wastewater Reclamation Facility. The existing force main is near the end of its useful life and the Department's assessment indicate that it suffered significant deterioration. Of all the sewer line projects within the County, the Wailuku force main is the highest priority, and the proposed force main alignment is the only visible alternative at this time. The applicant feels that the sufficient justification within this document and within the Shoreline Rules has been provided to the Commission to approve the requested variance. And with that, I'm gonna turn it over to Dan Shupack. He'll go over the – more of the nuts and bolts of the project, and describe the alternative choices. Thank you.

Mr. Dan Shupack: Thanks, Joe, and Chairman, Commissioners, and Deputy Director Suyama. It's good to be back here wearing a different hat this time. Those who are confused, I am no longer with the Planning Department. I'm now with the Wastewater Reclamation Division, although I was the assigned Planner at the time when this originally came through the Planning Commission last April of 2007. And perhaps, not coincidentally, I'm now presenting this to you for Wastewater Reclamation Division. And I'm here representing the – our Division. Also, present is our Division Chief Dave Taylor, and the Manager of our Design and Construction Section Eric Nakagawa. Project Manager Juan Rivera is actually on Molokai and couldn't be present, but we should be able to field any questions you might have. Also present is Alan Unemori from Warren S. Unemori Construction, and they were the design consultants for the project.

Okay, so basically, I got a little power point here. And first we're gonna just kinda give a brief project overview, a history of the Wailuku force main, and Wailuku pump station. Then we're gonna kinda recap the overall project scope, and then briefly discuss the status of construction as construction has already begun on the force main replacement. Then I'm gonna go over some of the regulatory history: permitting and etc. And then go over kind of the high – the main points of our SSV application.

So basically, the history of the Wailuku force main—the force main was completed in 1976. This was basically when the island infrastructure was changing radically to a modern sewage treatment system. The Kahului-Wailuku treatment plant was actually opened in 1977 so – so the pump station force main have now been in operation for approximately, 31 years and counting.

The Wailuku wastewater pump station collects all the consolidated gravity sewage flows for all of Wailuku as well as a good portion of Kahului, Waikapu, Waihee, and Waiehu. So it's a very large flow. And it pumps it into the Wailuku force main which carries the sewage to the Kahului-Wailuku treatment plant. And it's a pretty large capacity pump station—ten million gallons per day. And based on our most recent capacity analysis, the average dry weather flow is 3.3 million gallons per day. And the pump station –

actually, I should note that the pump station was upgraded with new pumps in 1999. And it was also – it underwent a tsunami protection in the early '90s.

The Wailuku force main which carries all the sewage, as I mentioned, from the pump station to the treatment plant, it's – the existing force main is a 21-inch, ductile, iron, pressure pipe approximately, 12,000 feet long. And this map also – the one that's up in front of you, I believe, is – just shows actually the – basically the scope of our force main replacement which basically generally follows the same path as the existing force main. So as you can see, that's the Wailuku pump station up there. It comes down Kahului Beach Road. It bends over Kaahumanu Avenue, runs through the harbor area, and to a junction box at Hobron Avenue. The remainder of the force main, that final stretch there is not being replaced as part of the overall project, just to this junction box here. And the portion that is involved in this shoreline setback variance is basically, the first 900 lineal feet from the pump station to where it crosses Kahului Beach Road. And we'll talk about that. I've got a photo tour, a little slide show that I'm gonna present as well. This basically just shows the service area for the Wailuku pump station. As you can see, it's a pretty large service area. And it's basically, everything in yellow so–

So kind of the more recent history of the force main—in 2003, there was a section of the existing force main that was sort of due to shoreline erosion. It had been kinda – had been exposed, and we had to protect it. So we actually jacketed about 50 – I think like 50 to 70 feet of the force main. We jacketed it with concrete in order to protect it from basically, rocks and the ocean.

And then fast forward to today, the force main has been in service for over 30 years. Because it's made of iron, it's severely corroded due to age and elemental corrosion. And we've had plans in the works to replace the force main since 2000, and it's been delayed for various reasons.

So just to recap this project, we're replacing about 10,200 lineal feet of the force main, as I mentioned before, from the pump station to Hobron Avenue. And from Hobron to the treatment plant, the existing force main will remain in service. Instead of ductile iron, we're moving towards a PVC, Class C905, heavy duty, pressure pipe. And we're also gonna be increasing the pipe diameter from 21 inches to 24 inches which will provide for future growth and capacity for the pump station and, you know, for future sewage flows. And it should also be noted that we're using both open trench as well as trenchless installation methods for the force main replacement. The goals of the project is gonna improve the system's efficiency. It's gonna be a, you know, a brand-new pipe, clean-flowing, no leaks or anything like that. Life span of projected 50 to 75 years. As I mentioned, we're increasing the diameter so we're gonna have increased system capacity. And once completed, we're gonna leave the existing force main in place, and that can be used as an emergency backup. We're also looking at possible future uses, maybe rehabilitating the existing force main using it for future expansion of reclaimed

water system for Kahului – actually, for Wailuku distribution. That’s just one idea we have.

And the various parties involved: obviously, Wastewater Reclamation Division is the owner; Unemori Engineering is the designer; and Fred Callucio Construction Company out of Honolulu has been contracted for the construction.

Just some figures on the project—the construction cost over nine million dollars. When you factor in design and change orders, it’s about ten million dollars total cost.

The notice to proceed was issued October 1st and construction began in January. The completion time is 300 calendar days from the notice to proceed. As of today, approximately, 5,800 lineal feet of pipe has been installed or 57% of the project completed. This is from, you know, obviously, from outside of the permit scope area that we’re gonna be discussing today. And the overall project completion date based on the most recent estimates from our contractor is August 2008, the end of August.

So a little bit of permitting history—the final EA FONSI was published in 2002. No appeals have been filed. The SMA Use Permit—we wanted to submit this years ago, but we had difficulties obtaining land entitlements, particular – at the old Y. Hata property, which is a major land piece that has to be traversed for the force main replacement. That was resolved via eminent domain, but due to the lengthy takings process, that delayed the project even further. We finally filed a use permit late 2006, and in April of 2007, a shoreline Planner required that a shoreline variance be filed due to the proximity of a portion of the force main to the shoreline.

So the use permit was approved by the Planning Commission April 24th 2007 basically, with the condition that a shoreline setback variance would be obtained for Station 0 to Station 900 basically, the 900 lineal feet from the pump station to where it crosses Kahului Beach Road. And so we had to hold off on construction for that particular section, but it could proceed for the rest of the project. And originally, a new EA was prescribed by the Planning Department due to the fact that our alternatives analysis wasn’t given in the original EA for the portion – for the scope of this permit. Basically – so basically, we talked that over with Planning, and they kind of revised their requirement. And just – we agreed that it’ll be fair, more fair to just include an alternatives analysis for this project scope rather than deal with a whole new EA since the EA was already approved or FONSI’d. So the alternatives analysis is included in the variance application. I’ll go over that a little bit later.

The shoreline – as part of the shoreline variance application, we had to get the shoreline certified, and Unemori Engineering performed the survey. And we received certification on March 4th 2008. This was with the understanding from DLNR, Office of Coastal Conservation Lands that we would remove some encroachments that they had

discovered on the shoreline unrelated to the force main project, but we kind of used that – used this shoreline certification as kind of leverage to get these encroachments removed. So there's two defunct drainage pipes near our Wailuku pump station parcel that they want removed from the shoreline area as well as about 30 cubic yards of concrete debris. And we are currently entering into a memorandum of agreement with OCCL. It's currently being reviewed by Corp. Counsel in order to get that removed. So we filed the application March 2007.

And just to show you the encroachments that we're gonna be removing for DLNR, OCCL, on the left is a drainage pipe that's at the northern most – northern corner of our pump station property. It basically, juts out. It's defunct. Outfall – old drainage outfall, no longer in service. And there's another – the pipe on the right is another – Okay. Okay. And these debris chunks we're removing.

I was gonna give you a quick tour slide show, but I think I'll just skip that due to time constraints.

Okay, shoreline impacts – basically, we can explain this a little bit later. Thorne actually would be the best person to explain this, but it has to deal with the different erosion rates, and it gets a little technical.

But basically, we feel that shoreline erosion, it's gonna be mitigated by the new force main. Basically – or the existing force main is basically gonna be buffering the new force main. And two-thirds of the proposed force main line will also be buffered by an asphalt access road that runs along about 600 feet of the force main alignment on the makai side. We ran this by Zoe Norcross-Nuu at UH Seagrant. And she basically concurred that, you know – she expressed reservations about the project and its proximity to the shoreline, but concurred that it is the only viable alternative.

And in response to your – the Wastewater Division is going to adhere to several best management practices. We also transmitted to the Fish and Wildlife Service. They had no comment. An archaeological monitoring plan is still in review by SHPD, but they gave us the go ahead to begin construction and follow the monitoring plan. And an archaeological monitor has been present during all phases of construction and will continue to be.

Recreational impacts – fishermen mainly use this shoreline. It's not really a desirable shoreline for the general public just because it's rocky and it's on the windward side. So it's mainly frequented by shoreline fishermen. There might be some impacts to them or access in certain sections, but over all, it won't cause much of an impact. In fact, it'll have a – probably a positive long term benefit in that it'll reduce sewage – the risk of sewage spills thus protecting the fish population.

And the alternatives analysis that I spoke about earlier—basically, the only other alternative we looked at was to run the force main as it leaves the pump station immediately west and up to Kahului Beach Road near the intersection of Waiehu Beach Road, Kahului Beach Road. This was basically, eliminated from consideration for several reasons: again, land entitlement issues at the old Y. Hata property; cultural issues; and just basically that it wasn't a very good design, hydraulically. A couple of other alternatives that I also included just for reference's sake: one would be to relocate the pump station and force main inland, which was basically not feasible just due to the extreme cost that would be involved. There's also a no built-out alternative, which obviously can't be considered—that is the pipe is facing imminent failure.

The justification is actually laid out in the shoreline rules of the Planning Commission. Basically that a shoreline variance may be granted if the proposed structure or activity is necessary for or ancillary to facilities or improvements by public agencies or public utilities regulated under HRS Chapter 269, which a sewage force main is regulated under Chapter 269. So that's basically the justification for the variance.

And in conclusion, this is our highest priority sewer line project. This force main conveys millions of gallons of raw sewage per day to Kahului, Wailuku treatment plant. The force main is near the end of its useful life and significant deterioration has occurred. The proposed force main alignment is the only viable alternative. And the variance is justified per the shoreline rules. That concludes my presentation. Thank you.

Mr. Starr: Okay. Thank you, Dan. Dave, you have anything to add? Members, questions? Comments? Go ahead, Wayne.

Mr. Hedani: The only comment was if Dan took any longer, the sewer line would explode.

Mr. Starr: Yeah, go ahead, Commissioner Hiranaga. I'm worried about – I'm stressed over this too.

Mr. Hiranaga: Looking at Exhibit 7A, the annual erosion hazard rate map, and if I'm looking at this correctly, the proposed placement of the sewer line is between these two lines here?

Mr. Shupack: Yeah, it's kinda – this one is kinda little hard to read, and I apologize for that, because we used the existing – we overlaid the proposed force main and the existing force main over this erosion rate map which has all kinds of colored lines on it. But basically, that blue line represents the existing force main. The black line represents the proposed force main. I think it's the dashed blue line that represents the surveyed shoreline. And the red lines, dotted lines, are 25 and 150-foot setbacks. So

as you can see, the proposed force main is a minimum of 30 feet outside of the existing force main alignment at its closest point. And there's one small section where it's – where it goes within the 25-foot setback, shoreline setback.

Mr. Hiranaga: So there's only two sections that encroach into the 20-foot setback up near the pump and further back near the big end by 180, I guess?

Mr. Shupack: That's correct. That's correct. And – I mean, of more concern, I guess, is the area further down because the area by the pump station is a little bit better bolstered by the rocky shoreline and kind of where the pump station sits. Whereas the portion further down is where we – the existing force main actually has been exposed by erosion over time. That's why we had the concrete jacketed a few years ago. That area is also the highest – if you look at the little bar chart, that's the highest area of shoreline erosion based on that annual erosion hazard rate so–

Mr. Starr: Members? I have a couple of questions on this. First of all, I'm glad to see the project in work. And can't be done fast enough for me. I did hear a comment from someone I know who works for one of the contractors on the job where they're – and this is on the other section of the project that was bifurcated out and where they're doing the trench – I believe it's called trenchless construction where they actually take the bell sections pipes and are using a rather infernal device to push it under the roadway and under the ground. And that when they were doing this – pushing the sections of the new PVC pipe through, a couple of the bell housings caught on a rock projection or something and cracked. And it – one or two sections were replaced. And I want to know whether the other sections that have been pushed through there have been inspected, and whether a camera has been passed, and we have insurance that there aren't any more cracked sections that have been pushed.

Mr. Eric Nakagawa: Hi, Commission. My name's Eric Nakagawa. I'm head of Design Construction. Juan's not here right now so I'll answer your question, Chairman. Yeah, it's a jacking of the pipe. Basically, there was a rock, and I guess one of bells did crack. So Callucio had to excavate it, remove the sections, and we CCTV'd it, and all the bell sections are okay.

Mr. Starr: Okay. There were none that were pushed that haven't been checked. Is that correct?

Mr. Nakagawa: Yeah, that is correct.

Mr. Starr: What was the past–? I'll ask one more and then I'll turn it over to– What was the original history because it looked like – did all of the sewage generated in Wailuku just go out into that old iron pipe that went out into the harbor? Or what was it before the '70s?

Mr. Nakagawa: Yeah, prior to 1977, that basically just went into an outfall into the ocean. And yeah, there was no modern sewage treatment. That's kind of, you know, I guess like in the early to mid-'70s like nationwide was kind of when the whole revolution of modern sewage treatment technology came about—the Clean Water Act—and the government pumping billions of dollars into rebuilding sewage infrastructure around the country. And so that's when we got all our treatment plants and our modern sewage system.

Mr. Starr: Okay. Commissioner Hedani?

Mr. Hedani: Dan, the section that's closer to the sewage treatment plant, the last 900 or a thousand feet or whatever, how come they didn't replace that section as well past the junction box?

Mr. Shupack: Oh, I believe that—

Mr. Hedani: You wanted to leave an area for possible eruption in the future?

Mr. Shupack: I don't know. Eric, you wanna maybe—?

Mr. Nakagawa: It's scheduled to be replaced. And actually, if you really wanna know, you can ask the Deputy Director of Public Works over there who is the actual original project engineer on the project.

Mr. Starr: Mike, any comment?

Mr. Nakagawa: But it is scheduled for replacement.

Mr. Miyamoto: Mr. Chair, the original plan was to go all the way to the treatment plant. The cost estimates that came in were extremely beyond the means of the Department at the time to support. As that section between – there's a junction box in that area that there's a dual pipe. So there is a – there is the ability to take a pipe out of service and repair it should there be a break. And it is relatively newer than the original sections. So as they indicated, they do have plans to eventually replace that, if the funds become available.

Mr. Starr: Go ahead, Wayne.

Mr. Hedani: My only other comment was that whole pipe use to lead to an area that had the biggest lobsters in Paukukalo.

Mr. Starr: Go ahead, Commissioner U`u.

Mr. Hedani: And that was slipper lobsters on top of that, yeah? No, but I just wanna make a comment that when they do put in the sewer lines that they put in that task with that camera. And I've been involved with a few of those before where they put the camera. And it is very thorough. And so everybody is hoping for the best when the camera going down there. And they especially check all the joints of the pipe so you can be rest assured that it is very thorough when they do the job.

Mr. Starr: Okay, I have a couple more. The monitoring plan not being approved, as long as there is monitoring, I have no personal problem, but I'm just wondering as far as procedure, is there any issue with that? And I'd like to – I guess, Colleen?

Ms. Suyama: We have been trying to work with the State Historic Preservation Division regarding getting their comments out and getting timely reviews. The problem has been that the chief archaeologist for Maui has been since last year, we've not had a Maui archaeologist. There are some internal problems with State Historic Preservation. So there are deadlines that are established by their own rules and regulations that if they don't meet their deadlines, basically they are in concurrence with whatever the monitoring plans or the preservation plans that are coming out by the archaeologist of record. So as long as there's an archaeologist that's working with the project, they've come up with a monitoring plan, and they're implementing the monitoring plan, I believe it is in compliance with State Historic Preservation.

Mr. Starr: Okay. So just to clarify, there's no culpability. If we approve this, we are not legally liable for—?

Ms. Suyama: I do not believe that we are because the State Historic Preservation rules have specific deadlines by which they are supposed to review these monitoring reports and preservation plans. And their failure basically means that they concur with the report's results.

Mr. Starr: And the EA issue as well is—?

Ms. Suyama: I believe they followed the Chapter 343 requirements for the EA, so I don't believe that would be a problem for the Commission.

Mr. Starr: Okay. And what other endangered force mains are there out there in the County that we have the pleasure of looking forward to potential problems and should be rushed through, Dave?

Mr. Dave Taylor: Since everyone else got to talk, I'll take my chance. I'm Dave Taylor. I'm the Wastewater Division Chief. We have 42 force mains in the County. Each one is programmed in a long term 20, 30-year plan based on its age, and location, and materials, and chemical composition of soils, and they're all programmed to be replaced

essentially before they fail. So over the next 30 years, every one of them will be replaced except for the ones that have been replaced in the past few years. So we have a schedule. They're all programmed. And from time to time, the ones in the shoreline area, we will be coming back for replacements of those.

Mr. Starr: I mean, this one was held up for probably more than a decade because of the reluctance to get an easement by a landowner. Are there any others that are critical that are being held up by anything that we should be knowledgeable of?

Mr. Taylor: All of the – every pipe line project goes through land that we don't control at some point usually. So that's usually built into the schedule. You know, we usually have a little bit of float in there realizing that these things don't go as planned. And in the case of this project, it started so early knowing that it would take a couple of years to get land use entitlements and things like that. So that's all kinda factored in.

Mr. Starr: Okay. And while you're up there, I, you know, I – I'm certainly, you know, wanna see this proceed, but I don't think this is, you know, in certain ways a real long term – long term solution because, you know, the – this – the area where the Wailuku water treatment – the Kahului waste treatment plant is, we've had presentations shown to us that that's gonna be under water and, you know, the not all that distant future, and certainly it's in an inundation zone and so on. So I'm wondering what the process is in terms of a wastewater plan and looking – looking ahead, not just ten years and 20 years, but 50 years, a hundred years to make sure that our infrastructure in this area is gonna be – are gonna be able to cope with first of all, growth, but also sea level rise and – and possible tsunami inundation, all of that?

Mr. Taylor: The bottom line for this project that you're looking at today, this force main and the pump station it serves, as long as people live in Waiehu and Paukukalo, there will be a pump station at that location, and there will be a force main at that location. The pump station and force main have to be downhill of the last house and the last business. So even if the plant is moved, even if a lot of people relocate, you know, up the hill, that pump station and that force main will be there until the last person, you know, moves up the hill. So it's really a secondary issue about whether or not, you know, we relocate large areas of our population. If that happens, we'll basically be the last to move because as long as the last person is living near the coastline, we will have pumping stations and force mains in that area.

Mr. Starr: Yeah, but is there a planning process for our wastewater infrastructure looking – looking ahead? I know the Council's been debating at kinda ad hoc, but is there any, you know, any real planning process taking place that's looking far ahead?

Mr. Taylor: Well, I wouldn't call the Council process ad hoc because they did pass a resolution that – back to the plan to leave the treatment plant where it is, and make

improvements for erosion and tsunami protection. And basically, that was because after seeing the whole presentation, they came to the conclusion that it's just economically unfeasible that in the current economic climate with lack of any sort of Federal funds available to relocate the treatment plant. So we are proceeding along that course of action. That – that is our plan. So we have a number of projects ongoing to do erosion protection, to increase the tsunami preparedness and tsunami protection of the plant. The pump stations in the area have already been protected against tsunami. So essentially, in concurrence with the growth in the General Plan and the urban growth boundaries, we are basically committing to our current infrastructure, and trying to improve it as much as practically possible, but there is no plan to relocate major facilities at this time. And we would follow the General Plan. If the end result of the General Plan, for example, was that, you know, we want to move everybody out of low-lying areas, and start, you know, moving the community up the hill, the sewer system would follow that. You know, the sewer system doesn't happen first. We follow development trends.

Mr. Starr: Does that mean you're planning to put in reuse, wastewater reuse, and – at the Kahului plant in the current location and get – so we can get rid of the injection wells and start to utilize the liquid coming out of there?

Mr. Taylor: Currently, the Council's just finalizing, as you probably all know, the fiscal year 2009 budget. There is no – there are no funds for expansion of the Kahului reuse system in the current draft of the fiscal year 2009 budget. Whether or not there will be funds for that in the future, you know, I can't say right now.

Mr. Starr: What's needed to start using some of that?

Mr. Taylor: In order to have – we would need to do plant improvements and pipe line improvements. So in the range of ten to 20 million dollars probably to use one to two million gallons of water a day.

Mr. Starr: Members? Commission Hedani?

Mr. Hedani: Dave, the technology that you guys are using for this particular line, there's joints between segments of the pipe. How do you fuse the joints?

Mr. Taylor: I'll let the project engineers answer that question.

Mr. Nakagawa: Hi. Eric Nakagawa. Basically, it's just PVC, C900 pipe and basically, it's butt and end. You just stick it in. There's a line and it just goes in.

Mr. Hedani: And you glue it?

Mr. Nakagawa: There's no glue.

Mr. Hedani: There's no glue?

Mr. Nakagawa: No, it's pressure pipe. It's designed to withstand the – like whatever it's rated at 200 psi, I think, or something like that. I don't know what the– There's all different ratings and it's designed for our specific head pressures and the pumping pressures.

Mr. Hedani: So it's just the pressure itself that keeps it together?

Mr. Nakagawa: No, no, no. There's a bell end, yeah, with a gasket . . . (inaudible) . . . gasket, and basically, you have a male end, and it's inserted into the pipe. And it goes – you go in about, I don't know, it's like six or eight inches in. And the gasket actually seals the pipe. And it's normal. Every – every system is like that. Water lines, everything, it's the same. There is new technologies that you can get for HDP, and even PVC now that you can actually fuse pipes together, but in particular cases, I mean, it's all site specific. I mean, you're doing it aboveground unless assuming you have places where there's no utilities that you can open up a trench about 1,200 feet, and start fusing them all, and then dropping it in. And unfortunately, we're on Kahului Beach Road. And then we'll be on Kaahumanu that has a lot of utilities, and you can't just open up a whole trench, and leave it open, and then drop in a fuse pipe. So we left it up to the contractors on however they wanted to bid it. Our system is a procurement system. It's a low bid system. And they elected to do dig and replace, open trench. And we tried to eliminate some of the traffic concerns to the community. So we implemented some trenchless technology.

Mr. Hedani: The only reason I asked the question was because I know 20 years ago we had fusing technology was used with Driscoll pipe where you would have a fuser that would fuse it, then we slip lined a drainage line with it, you know, and there's no joints because the fused section is stronger than the pipe.

Mr. Nakagawa: Right, right, right. Yeah, so, and we do have that technology. They do have HDP for these larger diameter pipes and PVC and all that fuses, but however, we left the means and methods up to the contractor which is both – they're both accepted as far as certifications and . . . (inaudible) . . . stuff.

Mr. Hedani: Okay. Thank you.

a. Public hearing

Mr. Starr: Okay. We now come to that point where we open the floor for public testimony on this item. If any member of the public wishes to offer testimony on this,

please make yourself known. Not seeing any, public testimony on this item is now closed. Members, the floor is now open for further discussion on possible motions. Commissioner Hedani?

b. Action

Mr. Hedani: Move to approve as recommended.

Mr. Guard: Second.

Mr. Starr: Okay. Motion by Commissioner Hedani, seconded by Vice-Chair Guard, to approve as recommended. Any – any discussion on that? Okay. Discussion? Amendments? Anything else? Not seeing any, the Chair will call the question on the motion before us to approve as recommended by the Department. All in favor, please raise your hand. Okay, any opposed?

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

VOTED: To approve as recommended.

**(Assenting - W. Hedani, J. Guard, K. Hiranaga, D. Domingo,
B. U`u, J. Starr.)**

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **It is unanimously carried.** Thank you very much and good luck with the project. The Chair will take a ten-minute recess. And just for future, if any Member needs or wants a recess at future, you know, future meetings, let me know sooner. Anyway, a ten-minute recess. Back at 25 after 10:00.

(A recess was taken at 10:15 a.m., and the meeting reconvened at 10:25 a.m.)

D. COMMUNICATIONS

- 1. MS. KAUI KANAKAOLE, Chair of the Hana Advisory Committee to the Maui Planning Commission transmitting the recommendations of the Hana Advisory Committee on the request by ROGER K, WILLIAMS, Trustee and RUTH W. WILLIAMS, Trustee et al. for a Change in Zoning from the Interim District to the Rural -0.5 District in order to build a 5th dwelling at the front portion of the lot at 6756 Hana Highway located 3 miles outside on the Kipahulu side of Hana Town at TMK: 1-4-010: 022, Island of Maui. (CIZ 2007/0007) (P. Fasi)**

Ms. Suyama read the agenda item into the record.

Mr. Paul Fasi: Good morning, Commissioners. Thank you, Deputy Director. This matter arised from an application for a change in zoning filed on March 19th, 2007. This matter did go before the Hana Advisory Committee on October 18, 2007. They did recommend approval with a couple of conditions. The first condition that the Hana Advisory Committee attached to this approval was that the owners relinquish the right to subdivide the property in perpetuity with the exception of County or State requirement for road-widening purposes and/or road improvements. And the reason they put the requirement on the restriction for the road improvements is that the applicant is willing to grant an easement to the State for future road-widening in that particular area of frontage. I did speak to the State, the Highways Division. They have no interest in any road-widening in that particular area. So the item is moot.

There was a transient vacation rental on the property. I'm gonna let the applicants' representative address the latest development on what the status is on that TVR.

The property has 2.993 acres, almost three acres. The land use designations are State land use district's rural, the Hana Community Plan is rural, the County zoning is interim. And so that is the reason for the change in zoning to bring it in conformity with the Hana Community Plan. This piece of property is not in the SMA.

The reason for the change in zoning is the applicant has owned the property for almost 30 years in the family. They wanna change it from interim to RU.5 which gives them the ability to subdivide it into half-acre increments. That's all they wanna do at this point. There is no proposal for any fifth dwelling at this point in time. They're not proposing any development, but if this is approved, then they do have that capacity to put the fifth dwelling. So you're gonna – the request is to change it from interim to RU.5 which breaks it down to half acres. They can subdivide down to half acres. And each acre – each half acre would be able to put a dwelling on it, and they do wanna eventually construct a fifth dwelling for a family member. That's basically the proposal. Are there any questions?

Ms. Suyama: Just for clarity, Paul, this letter dated May 1st, is the correction is that they're recommending approval of the change in zoning subject to the two conditions, right? This is a typo error?

Mr. Fasi: Well the– Correct, that is correct. Also, the correction to this May 1st letter to Jonathan Starr, Chair, and Members of the Maui Planning Commission, it says – it references a special management area use permit. Just delete that. It's just a change in zoning request.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Just for curiosity, Exhibit 2, letter from the Department of Housing and Human Concerns, I know they're not requesting their – a fifth dwelling, but if they were to request their fifth dwelling, why does that not fall under the—? Maybe you can explain. Someone could explain that, you know, their statement, "Creation of five or more new lots, or a combination of new dwelling units and new lots totaling five or more?" I'm just kinda curious.

Mr. Fasi: I can't answer for the Housing and Human Concerns. I believe that – they did review the application and the proposal, and their response is what you have before you.

Ms. Suyama: I think what it is it's a question of new. So even if they built the fifth lot, it is not a new five or new – you know, total of five or new lots or dwellings. And that's why I believe they say they're not subject to Chapter 2.96.

Mr. Hiranaga: Thank you.

Mr. Starr: I have a question which is reading the minutes, it had looked like the discussion at the Hana Advisory Committee meeting was to allow a maximum of one additional dwelling whereas – and not– It seemed like they were saying not to have any more dwellings subsequent to that, but the recommendation didn't mention that. It seemed to me that that should've been in there.

Mr. Fasi: Well, the discussions kinda varied off and veered off into other areas that were not really pertinent to what the main purpose of the application is and was. And that is just to create the change in zoning. And sometimes the discussions go off on these hypothetical situations. That can't be helped, but the purpose and really the concern here was the change in zoning.

Mr. Starr: Didn't the motion—? The motion did mention "and one additional house." So I believe that the intent of the one additional house and the motion was to limit it to only one additional house. And I didn't see that in the recommendation. That was part of the motion.

Mr. Fasi: Did the motion pass in the minutes? I don't know if it did, because when I did finally clarify the conditions, they gave approval to the conditions as they are written in the letter to you, Chairman.

Mr. Starr: Here is the motion. I quote:

To approve with conditions and the conditions would be that no further subdivision except if required for the road-widening as requested by the State or County and one additional house be built, and that the vacation

rental not be a vacation rental because it is not legal on that property.

Mr. Fasi: That is correct. I believe that as far as the TVR is concerned, the Condition No. 2 in the letter dated March 1, 2008 to you covers that. The issue and concern of one additional house would be covered by the Zoning Code. They wouldn't be allowed to put any more than one house anyway per code. So the fact that Condition No. 1 just addresses the subdivision and doesn't mention the extra house, they wouldn't be allowed to put more than one house based on the Zoning Code in the RU.5 Ordinance. We could have put it in, but it would've kinda been redundant.

Mr. Starr: Knowing Hana, I – you know, and I served on that Commission for quite a few years. And I think that they would be happier if we followed that so that they knew that there was no way that that would be more than–

Mr. Fasi: I believe in the minutes also that the applicant, as I recall, also agreed that they would only put one dwelling on this additional lot, and no more than that.

Mr. Starr: Okay, so it would be suitable to add that as a condition, right?

Mr. Fasi: Yes, sir.

Mr. Starr: Okay. Members? Yeah, Commissioner Hedani?

Mr. Hedani: Condition No. 1 that the owners relinquish the right to subdivide the property in perpetuity, the owners are agreeable to that?

Mr. Fasi: Yes, they are.

Mr. Hedani: Okay, so there's no intention to subdivide for the children in the future?

Mr. Fasi: This is the subdivision for the children. The purpose of the change in zoning–

Mr. Hedani: So the children couldn't have five individual lots, in other words?

Mr. Fasi: Correct. They will have the change in zoning so they can go from interim to RU.5, and then submit an application for subdivision for their family.

Mr. Hedani: Okay, maybe I'm just confused then. So that the owners relinquish their right to subdivide the property in perpetuity doesn't mean they cannot subdivide it into five lots?

Mr. Fasi: It means that they will not subdivide after the five lots.

Mr. Hedani: I see.

Mr. Starr: Would further –“ further subdivide” might be a better–?

Mr. Fasi: Correct.

Mr. Starr: Members? Go ahead, Commissioner Hiranaga.

Mr. Hiranaga: On page six of the staff report, there's a handwritten note on my reports. It says “Zoning map says rural 1.0.”

Mr. Fasi: I believe – I don't know how that got there. I don't know whether that's a fact or not. That looks like, if I may take a guess, Clayton Yoshida's handwriting. But whether it be rural 1.0 acre or rural half acre, rural is rural, basically. And the size – but everything else remains the same, if that makes sense.

Mr. Hiranaga: I thought rural 1.0 means minimum lot size of one acre?

Mr. Fasi: Correct.

Mr. Hiranaga: How can it be the same as rural 0.5?

Mr. Fasi: Well, I'm saying that other than the size of the property, pretty much the permitted uses remain the same.

Mr. Hiranaga: So I should just ignore that?

Mr. Fasi: I'll talk to Clayton Yoshida about this, off the record. But if they – you know, the request is to go to RU.5.

Ms. Suyama: I have a comment. It makes a difference whether it's rural one or rural 0.5, because if their intent is to subdivide into five lots, they would not be able to subdivide if it was 01.1 – 1.0 while they would be able to subdivide if it's 0.5. And I believe that's why they're requesting 0.5.

Mr. Hiranaga: So the community plan does not specify?

Ms. Suyama: The community plan doesn't specify exactly. There are some areas like in Kula at one time they had designated that certain areas should be rural 1.0. But I believe Kula was the only area that they had specified the 1.0 zoning designation versus everybody else, you know, it was just designated as rural.

Mr. Fasi: A brief . . . (inaudible) . . . this application as it just came to mind. The original

application was for rural – subdivided to rural 1.0, but I informed the applicant they wouldn't be able to subdivide and have their five lots at 1.0. They would have to subdivide RU.5. So the Planning Department recommended to the applicant that they change it to .5 so they can subdivide down to a half acre.

Mr. Starr: Yeah, Commission Guard?

Mr. Guard: Thank you. This May 1st letter and what we're looking at today seemed far, far apart. It says they wanna construct a fifth dwelling on their property with the condition that they're not gonna subdivide as the Condition No. 1. And we're being told that they wanna subdivide the five lots would then allow them to build up to ten units.

Mr. Fasi: No, they're gonna subdivide from what it is today, the interim zoning. They're gonna subdivide to RU.5. So–

Mr. Guard: They're gonna change the zoning to RU.5 or subdivide?

Mr. Fasi: Correct. They're gonna change the zoning to RU.5, and then they're gonna submit an application for subdivision to RU.5. That's the end of the subdivision in perpetuity. That's what they're agreeing to that they will not further subdivide beyond RU.5. In other words, they won't–

Mr. Guard: They're changing the zoning to RU.5, which would then they would a minimum of 2.5 acres to do that? And on each one–

Mr. Fasi: It's almost three acres.

Mr. Guard: Well, it's not three acres. So the maximum they could have is five lots.

Mr. Fasi: That is correct.

Mr. Guard: And then that's a subdivision. So what are they–? They're not really– It doesn't seem like the intent of this letter is being reached because – unless there's a limit– Once it's subdivided, they could then build an accessory dwelling on each of those lots to get ten lots. And I don't know if that's the intent of ten dwellings.

Ms. Suyama: I believe the condition as written in the May 1st letter is very confusing, because if the intent is to subdivide into five lots, the 2.9 acres would allow them only to have five lots. But if the intent is not to have more than five dwellings, then the condition should be reworded because then it should read that the project or the parcel shall be limited to a total of five dwellings regardless of whether you have the right to have ohana units or not. I think that's the big difference.

Mr. Guard: So then we're gonna get stuck in something that we just went over the last meeting with the Kai Holu Subdivision. And ten years later, if they ever did sell, and someone comes in they'll be like, oh, I just wanna be rural half acre. Let me build another dwelling. Right? And that's exactly what we – the heartache we went through in the last meeting with people being like we wanna be like everyone else. So I just don't know if the Hana Advisory Committee, what their intent was. So I guess I gotta look through the meeting minutes a little better. Five lots equal ten houses or is it five houses? That's what I'm not sure about.

Ms. Suyama: I think if the intent was to limit it to five subdivided lots with five houses, then it should've read that – the condition should be that no ohana units or accessory units shall be allowed. Then that would prevent you from having an accessory unit.

Mr. Fasi: As I recall, the accessory units were not an issue at th Hana Advisory Committee.

Mr. Starr: I read it carefully. And my understanding is that there was definite concern about that, and that the motion was crafted to state that one additional house be allowed and not more than that so that it would be limited to five dwellings – five dwellings total maximum. And when we get to that, maybe we can deal with that.

Mr. Fasi: Well, as it stands now in the Interim Zoning Code, they could have one family dwelling per 6,000 square feet. Okay, one dwelling per 6,000 square feet equates out to 21.7 dwellings as the existing code is right now.

Mr. Starr: Go ahead, JB.

Mr. Guard: So if they're like, okay, I'm gonna come apply for a permit with the interim code right now, what triggered this, then? Someone – someone said, hey, we wanna – we want you to get – be concurrent or current with the community plan? I mean, I would say stick with the interim and build whatever you want 'cause they're not in the SMA, right?

Mr. Fasi: They're not in the SMA, correct, but 21.7 dwellings is what's allowed, theoretically. But the limiting factor is that they need 60 feet per front lot frontage per house. So that's – you know, it won't work.

Mr. Guard: Oh, okay. For – okay, 'cause I thought if you came in for permits in interim now because they are trying to get rid of interim zoning, that would be a red flag that you'd have to–

Ms. Suyama: Maybe I can clarify for you. What happened in the past is that under interim zoning, they used to allow you one dwelling per 6,000 square feet, but their laws

have changed. What it does say now is that you're allowed that by density in the interim district. However, the Subdivision Ordinance, after you build the fourth dwelling, it is considered a subdivision. And in order to get subdivision approval, you have to be in compliance or consistent with the General Plan or the community plan. And interim zoning is not considered being consistent. So you need to file a zoning change in which your zoning is consistent to the community plan to be in compliance with the Subdivision Ordinance. And I believe that's why they're asking for the zoning is that they by building the fifth house will trigger the subdivision requirements, and they need to be in compliance with the community plan at that point. However, even after they build and subdivide. If they have the right to subdivide the five lots, they still have the right through the Accessory Dwelling Ordinance to be allowed to have an accessory dwelling which would bring it up rather than five to a total of ten. So if the intent of the Hana Advisory Committee is to limit the number of dwellings that would be permitted on this property, then by that sense, the condition should've read that no accessory dwelling shall be permitted. That will definitely restrict the density of the property to not more than five dwellings.

Mr. Starr: Go ahead.

Mr. Guard: Is there anything from the applicant that might shed some light on what their intent was? Well, then we can do public testimony? If that's the—

Mr. Starr: Yeah, it's in order.

Mr. Lawrence Ing: Thank you. I'm Lawrence Ing representing the applicant. May I take this opportunity to introduce Ruth Williams; Roger Kenneth Williams; and the son, Dusty; and the wife, Jane.

Mr. Starr: Welcome.

Mr. Ing: I wanna thank Paul Fasi for bringing us to this point. But as you read the letter, the letter is correct. We agreed not to subdivide. So there is no future subdivision in the works unless the road-widening strip is being – gonna be requested. The zoning will permit the fifth dwelling, and that's for Dusty, the last of the Williams' kids that don't have a home on the premises. When they bought the premise in 1978, there already were two homes. They built the home in 1986 and in 1988. And then when they came in for the last home, and that's what Colleen is talking about, they said, hey, you have to conform. And that's why we're here today.

Mr. Starr: My understanding then is that what the intent of the applicant is is to be able to build a fifth house and not any subsequent houses after that?

Mr. Ing: That's correct.

Mr. Starr: Okay. Let's – can we move on to public testimony? Okay. I'd like to open the floor for any members of the public who'd like to testify on this item. Please let yourself be known. Okay. Not seeing any, public testimony is closed. And I want to – it's now time for discussion or action by the Members. And I do want to clarify because I'm in a bit of confusion whether the request is at this time to subdivide into five lots or to leave it as one lot.

Mr. Ing: The request is to leave it as one lot.

Mr. Starr: Okay. Good. Members, questions or motion to start–? Commissioner Guard?

Mr. Guard: I don't know if this is for Paul or maybe Deputy Director: if they build the fifth dwelling, would all of them be able to be full-sized dwellings as being on one lot? So then all they're saying is we're gonna leave it as one lot. We can buy – build five full-sized homes, and not – it's not – they're not stuck to three full-sized homes and two ADUs of 700 feet that can't be expanded?

Ms. Suyama: No, they would be allowed five full dwellings. The only thing based upon what the Hana Advisory Committee wanted and which I would recommend is that there be a specific condition that says that the density of the property shall be limited to five dwellings. The only reason is because even with one lot, they are still allowed an accessory dwelling for that one lot.

Mr. Guard: So they're just – so we're just gonna change the zoning to the RU.5 with a condition that they cannot subdivide, right? That's what it sounds like. That's what they agreed to and that's what the community wanted that it sticks as the one lot, and then no further dwellings whether it be full-sized or ADUs.

Mr. Fasi: Correct.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: I guess this is a question for the applicant. So you're basically gonna create five undivided interests in this property. You know, I'm just a little concerned that in the future as the family expands, at some point, someone will want to divest themselves of their interest in the property, and it would be very difficult for this family to do that unless the other parties buy out that individual because they would not be able to – it's very difficult to convey undivided interests. So I'm just wondering if they're just kind of– It seems very restricted that they're unable to subdivide in the future.

Mr. Ing: Let me address one of the prior things, and then I'll get to Commissioner Hiranaga. There is one accessory dwelling already there. So there's four dwellings and

one accessory. So we're adding a fifth main dwelling, but there already is one accessory. So it's five and one. And an attorney who has passed away did work with the Williams and the dwellings have been condominiumized. So that will allow each child to control their own destiny or future whether they transfer it to another family member, or borrow money, or dispose of it any other way. They are able to do so. That was an important thing for them.

Mr. Starr: Okay, Members? Commissioner Hedani?

Mr. Hedani: I guess this is for Larry. You know when I look at the Williams subdivision map that was included in our packet, this particular map, on the right-hand side as I – on the upper side as I look at it, there's a rock wall that looks like it encroaches onto the neighboring property outside of the property line.

Mr. Ing: That's correct. That's an original rock wall that was built prior to their purchase of the property.

Mr. Hedani: I see. So the boundary line is within the rock wall, and the rock wall is actually on somebody else's property?

Mr. Ing: That's right. If you look at the map, it'll also show three water meters on the County or the State right-of-way. I think one meter is for the neighbor. But in the old days again, they used to require you to put the water meters on the government right-of-way.

Mr. Hedani: Okay. So the 2.99 acres excludes the portion between the property line and the rock wall?

Mr. Ing: That's right. I think there's a small bit of the rock wall that is on the property.

Mr. Hedani: Right. Okay.

Mr. Starr: Would you like a microphone and you can comment? And please introduce yourself for the record.

Mr. Roger Williams: I'm Roger Williams and I just wanna say that that problem, if it's a problem, has already been adjudicated because there was a quitclaim deed action sometime ago. That's all.

Mr. Starr: Okay. Members, Deputy Director Suyama has put together a wording – potential wording for – that might be used as a basis of a motion if anyone wishes to utilize it. And I'd like to ask her to read the wording on this.

Ms. Suyama: Based on what the intent of the Hana Advisory Committee was, you know, the recommendation, what I would recommend as part of your recommendation to the Council is that you recommend approval of the zoning change subject to the following conditions:

1. That the owner shall relinquish the right to subdivide the property in perpetuity with the exception of County or State requirements for road-widening purposes and/or road improvements.
2. That the un-permitted transient vacation rental shall immediately cease all operations.
3. That the parcel shall be limited to a total of five dwellings.

I think it's very clear that that's what was the intent of the Hana Advisory Committee.

Mr. Starr: Commissioner Guard?

Mr. Guard: Should that be five dwellings plus one accessory dwelling unit because they said right now they have four full-sized dwellings and one accessory dwelling unit.

Ms. Suyama: It's five dwellings total. It's their choice whether they wanna do a full dwelling or do one that's based upon an accessory, but it's just five dwellings, and they're not gonna be allowed any more than that.

Mr. Guard: Oh, so they'd either have to expand that or tear one down, right?

Mr. Starr: Did the applicant have comment on that?

Mr. Ing: I think the clarification would be that the Hana Advisory Committee would approve one additional dwelling to what already existed. So to limit the applicant to one additional dwelling I think would be the correct thing.

Mr. Starr: Okay, yeah, Commissioner Hedani?

Mr. Hedani: Larry, just a question at this point. The intent is not to tear down the accessory structure that exists today?

Mr. Ing: That's correct.

Mr. Hedani: Okay. Thank you.

Mr. Starr: Is it legal to have the five main dwellings plus the one accessory dwelling?

Ms. Suyama: It is right now. Based upon the R0.5, if it's an unsubdivided lot, they would be permitted by zoning to have five full-sized dwelling units as well as one accessory unit. That is what the code would allow. But hearing from the discussion, if the intent of the Hana Advisory Committee was to allow only one more dwelling, regardless of what the sizes of the four dwellings that are already existing, I think the condition is saying that you are limited to five dwellings are the same thing as what Mr. Ing is saying that they're allowed to have one additional dwelling. It's still the same thing.

Mr. Starr: Okay, Members. Commissioner Guard?

Mr. Guard: Yeah, I'm wondering if there might've been some confusion on that because it didn't sound like they wanted them to either replace the ADU or tear it down, correct? So they're still giving up the potential for – by saying they're not gonna subdivide, they're still giving up four ADUs to keep it as one parcel. So, I mean, would that – to add that language in to just allow the owner that–? There's confusion on what a dwelling is versus the accessory dwelling.

Mr. Starr: You wanna make that as a motion, and maybe utilize the wording, and then alter it slightly?

Mr. Guard: Well, I'd like to hear Deputy Director's recommendation again. I think that'll be the only change would just add that one more potential ADU–

Ms. Suyama: Well, right now, the way the recommendation reads is that the parcel shall be limited to a total of five dwellings. And when I say "five dwellings," it doesn't necessarily mean that there's a distinction between whether it's an accessory dwelling, or a full dwelling, or the main dwelling. It is just five dwellings regardless of the size of the buildings.

Mr. Starr: Okay, Commissioner Hiranaga?

Mr. Hiranaga: My understanding from the applicant is there are five existing dwellings currently. One may be considered an accessory dwelling because of its current size, but it's still a dwelling. So there are five existing dwellings. Is that correct?

Mr. Ing: That is correct.

Mr. Hiranaga: So if you're gonna limit it to five, they're gonna keep what they got. They're not getting anything more, and I don't think that was the intent. I think the intent is to allow the last person in the family to have a full-sized dwelling. And they wanted – then that smallest dwelling will become the accessory dwelling. I think it needs to be less than 800 square feet is my guess.

Mr. Starr: Someone wanna offer that as a motion?

Mr. Hiranaga: Well, I'm asking clarification of the intent of the applicant. Is that--? Or the smallest dwelling, it's not an accessory dwelling, currently.

Ms. Suyama: Mr. Ing, can I ask a clarification from you? So right now on the property, there's four full-sized dwellings and one accessory dwelling?

Mr. Ing: It's my understanding, yes.

Ms. Suyama: Okay, because that makes a big difference. If there are already four full-sized dwellings and one accessory dwelling, then I can see that if they ask for just one -- you know, one more dwelling, then the intent was to give you as an unsubdivided lot, the full density which is the five dwellings plus one accessory dwelling. And if that was the intent, then the correction to Condition No. 3 would be that the total of five dwellings and one accessory. That would be the total density that would be permitted on the property.

Mr. Starr: Commissioner U`u?

Mr. U`u: I'll make a motion to approve as stated by Deputy Director.

Mr. Starr: Okay, is there a second?

Mr. Guard: Second.

Mr. Starr: Okay, there is a motion by Commissioner U`u, seconded by Commissioner Guard. And just for clarification, I'll have the Deputy Director read the wording one last time.

Ms. Suyama: Okay. The three conditions would be, "That the owner shall relinquish the right to subdivide the property--"

Mr. Starr: Wait, wait, wait. Start with changing the zoning.

Ms. Suyama: Oh. Change the zoning--

Mr. Starr: The full motion.

Ms. Suyama: Okay, would be changing the zoning from the interim district to the RU-0.5 zoning district subject to the following three conditions:

1. That the owner shall relinquish the right to subdivide the property in

perpetuity with the exception of County or State requirements for road-widening purposes and/or road improvements.

2. That the un-permitted transient vacation rental shall immediately cease all operations.
3. That the parcel shall be limited to a total of five dwellings and one accessory dwelling.

Mr. Starr: Okay, does that meet the intent? Okay. Then that motion is now the property of this Body. The floor is open to either discussion or possible amendments. Not seeing any, the Chair will call the question on the motion as we've just heard it. All in favor, please raise your hand. Any opposed?

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

VOTED: To recommend approval of the change in zoning from the interim district to the RU-0.5 zoning district to the County Council with the three conditions as noted.
(Assenting - B. U`u, J. Guard, K. Hiranaga, D. Domingo, W. Hedani, J. Starr.)
(Excused - W. Mardfin, W. Iaconetti.)
(Absent - J. Pawsat)

Mr. Starr: **Okay, unanimously, the motion has passed.** And we wish good luck to the applicant.

Mr. Ing: Thank you very much.

Mr. Fasi: Thank you.

2. **MR. WILFRED TAVARES, JR. requesting a 10-year time extension on the State Land Use Commission Special Use Permit and Conditional Permit in order to continue to operate the Hana Tropical Waterworks Purifying and Bottling Company in the State Agricultural District on approximately 5.9 acres of land at TMK: 1-3-009: 085, Hana, Island of Maui. (SUP 980009) (CP 980005) (S. Bosco)**

Ms Suyama read the agenda item into the record.

Ms. Simone Bosco: Thank you. Good morning, Commissioners. Just as the Deputy Director has indicated, this is a time extension request. The applicant is requesting ten

years. The Department is supporting that request. The operation is for a water bottling and purification company located in Hana. The – in the review of this application, the Department found that for the most part, all conditions have been addressed, and the applicant is in compliance.

What I wanna do, though, is give the Deputy Director of Public Works a chance to respond to any possible CO requirement that might be required on this. I would like to just explain, however, that in 1999, this requirement was waived by the Department of Public Works. There was a meeting that occurred between Public Works, and Planning, and the applicant. And it was agreed that at that time, the CO requirement that was placed on the special use permit would not – the CO would not be required. So in the Department's recommendation, that condition was removed. It was struck. However, I understand that the standards have changed since '99. So the Department of Public Works may have a recommendation regarding the CO. Other than that, if there are any questions, I'm available.

Mr. Starr: Deputy Director Suyama?

Ms. Suyama: Well, I didn't know about this. Normally, this is my predecessors, if there is a condition that a certificate of occupancy is required, we normally would then if the CO is to be waived, go back to the Commission, and have the condition deleted, or have the condition deleted out of the conditional permit. That is the normal way of doing it, not where the Department Heads or the Department decides that a certificate of occupancy is not necessary. So if the recommendation is going to be that it be deleted, then it should be deleted as a formal action of the Commission as well as the Council.

Mr. Starr: Can we have comment from Public Works?

Mr. Miyamoto: Thank you, Mr. Chair. In speaking with Simone and the applicant, they are willing to abide the requirement of the CO. And we've been discussing on the process on what would be involved and miscellaneous inspections of the property, some minor floor plans just so that we have an idea of what the structures look like. And since the structure was obtained with a building permit, we don't foresee any major issues unless things have changed since the original building permit was issued. So like Director Suyama said, you know, typically, we don't do elimination of conditions for – that this Commission has imposed upon applicants without the body being – the approving agencies. So–

Mr. Starr: I know I'm a little bit confused. Ms. Bosco, can you clarify what action would be – what would take care of this?

Ms. Bosco: Yes, the Commission will need to make a decision whether or not Condition No. 10 from the previous State special use permit which is Exhibit–

Mr. Starr: Could you read it?

Ms. Bosco: Sure. Exhibit 14, Condition No. 10 states:

Special use permit – that a certificate of occupancy shall be obtained for the change in use of the existing agricultural building to a commercial building.

Okay? And on that note, since this is new information for me as well, there were other conditions deleted. And I don't – I was under the impression the Department made the decision if all conditions had been complied with, those conditions could be dropped. So with no – you know, with – to add to the confusion, Condition No. 8 and 9 were also dropped because the applicant has met those conditions. So 8, 9, and 10 on Exhibit 14:

8. That the existing driveway shall be upgraded to County standards.
9. That off-street parking, loading spaces, and landscaping shall be approved per Maui County Code and the Hana Design Guidelines. That said plan shall be reviewed and approved by the Department and the Department of Public Works and Waste Management.

And then the Condition No. 10 that I read. Those were met.

Mr. Starr: So in the recommendation then that those—?

Ms. Bosco: Be deleted.

Mr. Starr: Okay. Then you'll have language ready when we get to it as part of a new package?

Ms. Bosco: Yes, not a problem.

Mr. Starr: Okay, Members, any questions?

Ms. Bosco: I also have colored photographs if you guys want the colored version of this. I can hand this out to you. Is that possible?

Mr. Starr: Okay. And is the applicant here? Does the applicant wanna give us about a 45-second presentation on the operation and what they're asking?

Ms. Gwen Hiraga: Good morning, Commission Members. My name is Gwen Hiraga. And I represent Mr. Wilfred Tavares. Real quickly—what we're – what we requested is a ten-year time extension request for his water bottling operations. The original permit

was granted – the SUP permit was granted in 1998, and the conditional permit in 1999. The duration of the State special use permit runs concurrently with the conditional permit. So we're here today to request a ten-year time extension. And that request was made in March of 2004. So it was a timely request.

With regard to the deleted conditions that Simone mentioned, the applicant has met those Conditions 8 and 9. And that's why I believe she deleted it because we have an approved landscape plan as well as parking plan that was reviewed by the Department.

With regard to the Condition No. 10 of the certificate of occupancy, what happened there was we had a meeting with Public Works back in 1999. And it was determined that a CO was not needed at that time. And we did not come in to seek an amendment of that condition. What we did, though, is that we reported it in our compliance reports for which the Department of Planning had signed off and accepted. So I don't – we apologize if we should've come in to specifically delete it, but we did not. And as Deputy Public Works Director Mike Miyamoto is saying is that they feel that a CO is now required or may be required. It will involve a miscellaneous inspection. Mr. Tavares does have some concern about if he has to upgrade his building. But we will deal with it at the time of the inspection. That's all we have to say.

Mr. Starr: Okay. Okay, Members? Okay. We come to that time of the day when we ask– Oh, Commissioner Hiranaga, go ahead.

Mr. Hiranaga: This may be a question for staff. If the requirement is to obtain a certificate of occupancy, would the Department of Water Supply require him to provide commercially-rated fire protection for his operation? And also, I'm not sure if his property is being serviced by a cesspool or a septic system, but that he would have to meet commercial requirements for a septic system? We can move on if–

Mr. Starr: Yeah, while Mike researches that, Commissioner Guard?

Mr. Guard: On – let's see, part of Exhibit 7 on page three it says the copy of the CO is attached.

Ms. Bosco: Yes, that's correct. And I looked and looked for it. That's where the question even came up in the first place. There is no CO That was either–

Mr. Guard: That Exhibit E was never–?

Ms. Bosco: Never – I never found an Exhibit E. So we never located a CO which actually was later addressed in a later letter. If you look at Exhibit 16A, you can see that that issue is clarified in Paragraph 3 by the applicant. And then, Exhibit 16C, the last page of your exhibits, you just flip the report over, it shows that the Department actually

approved that information.

Mr. Guard: 16A?

Ms. Bosco: 16A.

Mr. Guard: Well, that's a letter ten years earlier than the 2007.

Ms. Bosco: No, the requirement for a CO was imposed in 1998. And the compliance report came in 1999 and addressed that requirement.

Mr. Guard: Exhibit 7 is from 2007.

Ms. Bosco: Exhibit 7 is the most recent compliance report. And that's – yes, that's incorrect. That's why I followed up with this. This is – that's incorrect. And so, in the earlier compliance report during the earlier process, okay, the applicant indicated a CO was not required. Okay? That's why we could approve– It's a typo. But we cleared it up before the hearing. And it indicated in 19 – she indicated in 1999, a CO was not required. Okay? I know that's confusing, but I wasn't in the meeting. I wasn't even the Planner on this project.

Mr. Guard: I just – to get this here without – we don't see the Exhibit E, and I read that a CO was attached, so it's not like not dotting an i or something.

Ms. Bosco: Do you see where I'm referring to in Exhibit 16?

Mr. Guard: The 1998 versus the '07, so I just assumed within ten years, it sounded like they got the CO and it was part of Exhibit E that we're not seeing.

Ms. Bosco: No, no, yeah.

Mr. Starr: Okay, Deputy Miyamoto. Wisdom for us, please.

Mr. Miyamoto: In speaking with the applicant about this, you know, when that question did come up, the – instead of – the Appendix E actually shouldn't have been the CO. It should've been that letter, that document that the meeting that the applicant had, you know, the inadvertent waiver was given for the certificate of occupancy. That should've been the attachment in the Exhibit E.

Regarding the water, if you look at the conditions, the Water Department evidently in the original conditions had placed a limit on the number of gallonage that this property was limited to to take on a 30-day basis. So I would think that since that condition had not changed, they would somewhat be in compliance to the Water Department's needs.

Mr. Starr: Okay, Commissioner Hiranaga?

Mr. Hiranaga: So you do not believe the Department of Water Supply would require commercially-rated fire protection?

Mr. Miyamoto: Not being very familiar with the Fire Department – Fire Code at this point, I really can't answer that question. I guess that's one that would have to be passed on.

Mr. Hiranaga: So it would be circulated for comment to the Department of Water Supply or not? I'm not familiar with the process of granting a CO.

Mr. Miyamoto: Yes, we can flag this to send it to Fire Prevention for their review.

Mr. Hiranaga: No, I mean, I don't care. I just wondered what the process is.

Mr. Miyamoto: I would have to check with staff on that for this particular instance.

Mr. Starr: Okay, Commissioner Guard.

Mr. Guard: So is that something the applicant could be looking at before they go to the Council meeting then? And hopefully by then, they would know if that's something they can meet or would put them out of business temporarily or longer? If he agrees to the CO and he can't fulfill that, then that's the problem. I don't think that's what we're trying to do today. Keep it moving forward, but that's probably a question he'd wanna have answered prior to the Council meeting.

Ms. Bosco: I'll let the applicant answer that because they need to–

Mr. Starr: Yeah, Gwen?

Ms. Hiraga: Gwen Hiraga. Yes, we will follow up with all of the CO requirements with the various agencies. Indication from Mr. Miyamoto was that we would need Public Works and Water to review the CO request. So I'm sure that they will have their comments. I should note that this is a private water system. Hana water system is not serviced by the County's Department of Water Supply, but we will follow up with the individual departments on what the requirements are.

Ms. Bosco: I'd also like to note that the Department of Water Supply did review this application and they made no requirement, no additional requirement.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: So this property is serviced by a private water system and not the County

of Maui?

Ms. Bosco: That's right.

Mr. Hiranaga: Is that surface runoff or well?

Ms. Bosco: It's well, yeah.

Mr. Starr: Is that the Ranch system? So it's well. Okay, I'd like to open for public testimony. Anyone has any testimony on this item? Come on, Martin. Seeing none, public testimony is closed. Members, the floor is now open for further discussion or for a motion. Planner Bosco is ready with a recommendation that could be utilized in a possible motion.

Ms. Bosco: Should we do away with the deletions first? Should we do that?

Mr. Starr: However— Well—

Ms. Bosco: Well, I'll just say it. I'll just read. First of all, okay, handling the State special use permit recommendation first, the Department recommends approval of a ten-year time extension with the proposed 14 conditions. I would like to amend Condition No. 1. There's a typo. It says "2013" as the expiration date. I'd like to recommend that that be "2018" which would grant them a ten-year time extension. In addition, under Project Specific Conditions, we recommend that the Maui Planning Department recommends approval of the State Land Use Commission Special Use Permit to the Maui Planning Commission, subject to the following conditions, we recommend that the Maui Planning Commission Condition 8, and pursuant to the Department of Public Works' recommendation, add Condition No. 10 back in which refers to the CO I can read those, if you'd like. And that's it. All other conditions would remain the same. You want me to read anything else to you?

Mr. Starr: Let me leave that to the Members. If someone's ready for a motion, they can either read it themselves or have you read it, or however they wanna handle it.
Commissioner Hedani?

Mr. Hedani: I guess I'm just thoroughly confused right now. The recommendation that we have in green is for approval of the State's land use special use permit recommendation with the adjustment to 2018 instead of 2013, but you're changing the recommendation?

Ms. Bosco: Yes, what I need to clarify is that the earlier previous Condition No. 8 which read "That the existing driveway shall be upgraded to County standards," okay, this is the previous Condition No. 18 on the existing State special use permit. That has been

deleted from the Department's recommendation. I'd like that Commission to approve that deletion. We have inserted a new Condition 18 in its place, okay, with a new Condition 8.

Mr. Hedani: Because I'm slow, you gotta go really slow.

Ms. Bosco: Oh, okay. That's not a problem.

Mr. Hedani: The green paper that I have doesn't have any recommendation for a driveway requirement.

Ms. Bosco: That's right. It was not inserted in the Department's recommendation. The reason I'm mentioning it now is that the Deputy Director said that had to be a formal motion that we actually officially delete Condition 18. Is that right?

Ms. Suyama: Maybe I can clarify. The way it gets deleted is by saying that these are the new conditions that are gonna be applicable. So you don't have to go back and say Condition 8 has to be amended, Condition 9 has to be – you know, deleted. By saying that these are the new conditions, you've automatically deleted it from the old approval.

Ms. Bosco: Okay. Thank you. That makes it much easier.

Mr. Hedani: So the only thing that we're considering is what's on this green paper, right?

Ms. Bosco: That's right. And the CO, the addition of the CO requirement. The CO, we're adding one condition to the Department's recommendation for the State special use permit. The condition would be at the very end. It would be Condition No. 15. Okay? It says "Special Use Permit Recommendation." A new condition, Condition No. 15, and it would read, "That a certificate of occupancy shall be obtained for the change in use of the existing agricultural building to a commercial building." Okay? And we are also amending the expiration date to the year 2018. Those are the two changes to the State special use permit.

Mr. Starr: Okay. Commissioner Hedani, do you have a motion?

Mr. Hedani: Moved to approve as recommended with those changes.

Mr. U`u: Second.

Mr. Starr: Okay, we have a motion made by Commissioner Hedani, seconded by Commissioner U`u. For clarification, I would like to state that the motion – there – there – I'm a little bit confused because there are two items before us. And was your motion

to deal with both of them at the same time?

Ms. Bosco: No, separately.

Mr. Hedani: Yeah, one is a recommendation to the County Council, and one is an approval that this Body grants for the State permit.

Ms. Bosco: That's right.

Mr. Starr: Okay, so which one—?

Mr. Hedani: So my motion covers the State land use special use recommendation with two changes: the 2018 date and the addition of Item No. 15.

Mr. Starr: Okay. So the motion then is to approve the special use permit with the conditions as per the staff's submittal with two changes. And for the record, I'd like you to read one last time, the two changes.

Ms. Bosco: Thank you. The first change is to Condition No. 1 to amend the expiration date to read "2018" instead of "2013." Okay. The second change is to add Condition No. 15 to read, "That a certificate of occupancy shall be obtained for the change in use of the existing agricultural building to a commercial building."

Mr. Starr: Okay. Is that consistent with the maker and the second? Okay. And do we have that for the record? Yes. Okay. So the floor is open for comments or possible amendments. Commissioner Hedani?

Mr. Hedani: I just wanted to make sure that it's okay with the applicant at this point as it was presented.

Ms. Hiraga: The recommendations as presented are okay with us. And again, it's regarding the time extension request to 2018. With regard to the CO, we do have some concerns as I mentioned because of the cost and possibility of upgrading to a commercial building but, you know, we will work on that with the departments and find out what the requirements are. And I expect that, you know, we will have to do a compliance report, and we will be documenting our meetings in the report. So as it is right now, yes, we're okay with it.

Mr. Starr: Okay, Members? Do you have something, Simone? Okay. In that case, we're ready to take a vote. All in favor of this approval of the special use permit, please signify by raising your hand. Any opposed?

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

VOTED: To approve the State special use permit with the conditions as per the staff's submittal with two changes as discussed.

**(Assenting - W. Hedani, B. U`u, K. Hiranaga, J. Guard,
D. Domingo.)**

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **Okay, carried unanimously.** And now we can move on serially to the recommendation regarding the conditional use permit. Simone?

Ms. Bosco: Thank you. The Department recommends approval of the conditional permit as proposed on the – page six of the recommendation report. There are five proposed conditions. Only one condition was slightly changed, but as you can see on page six, you can please direct your attention to the five conditions. Most of them are all the same. Condition No. 2 is only very slightly amended, and that is to address the ten-year extension. That's the change that we grant them a ten-year extension.

Ms. Suyama: Can I clarify something?

Mr. Starr: Yes, please, Colleen.

Ms. Suyama: Because you have extended the SUP to 2018, and the way this conditional recommendation is written, it is based upon the date of the ordinance being granted. And when I look at the Exhibit 15, the ordinance was originally granted May 11, 1999. If I add ten years to that, it would be May 11, 2009 where the conditional permit will expire. So my recommendation would be to change Condition No. 2 to be in concert or consistent with your special use permit recommendation. And my recommendation would be that Condition No. 2 be changed:

That the conditional permit shall be valid until May 31, 2018 provided that an extension of this permit beyond this period may be granted pursuant to Section 19.40.090 of the Maui County Code.

In this way, both permits will expire on the same date.

Ms. Bosco: Can you repeat that, Colleen?

Ms. Suyama: I'll give it to you afterwards. I just wanna make sure that both permits expire on the same date.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: Move to approve as recommended with both – with that amendment.

Mr. U`u: Second.

Mr. Starr: Okay. So we have a motion by Commissioner Hedani, seconded by Commissioner U`u that we recommend to the County Council approval of the conditional use permit with the staff's recommendations per this green sheet with the two amendments. And one more time, I know that – I really do believe that all parts of a motion should be stated before it goes on – before it becomes part of the Body. So please–

Ms. Suyama: The recommendation is to recommend approval of the conditional use permit subject to the – what was written on the original report except for Condition No. 2, which is amended as follows:

That the conditional permit shall be valid until May 31, 2018 provided that an extension of this permit beyond this period may be granted pursuant to Section 19.40.090 of the Maui County Code.

Mr. Starr: Is that both of them? Okay. Is that consistent, Commissioner Hedani? Okay. Any comments, questions, or possible amendments to this motion? Seeing none, we will call the question on the motion. All in favor signify by raising a hand. Any opposed?

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

VOTED: To recommend approval of the conditional use permit subject to what was written on the original report except for Condition No. 2, which is amended as follows:

That the conditional permit shall be valid until May 31, 2018 provided that an extension of this permit beyond this period may be granted pursuant to Section 19.40.090 of the Maui County Code.

(Assenting - W. Hedani, B. U`u K. Hiranaga, J. Guard, D. Domingo.)

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **The motion carries unanimously.** Thank you, Simone, and congratulations to the applicant. Thank you for your time.

Ms. Hiraga: Thank you.

Mr. Starr: Before we do anything, the Chair would prefer to go on, but if anyone needs a recess, we could. Let's keep moving. Okay. Do--? We--

Ms. Suyama: The annual report.

Mr. Starr: Yeah, we're gonna take them one at a time.

Ms. Suyama: Okay.

Mr. Starr: Colleen?

- 3. MAUI BEACH RESORT LIMITED PARTNERSHIP submitting their annual report on the disbursement of the funds in the Settlement Agreement between the developer and the CHARLES D. FOX III, Intervenor, as called for in Condition No. 32 of the Special Management Area Use Permit approval for the proposed Honua Kai Resort, North Beach Park, and related improvements at TMK: 4-4-014: 006 and 008 and 4-4-001: 010, Kaanapali, Lahaina, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (J. Prutch)**

Condition No. 32 of the subject SMA approval states:

"That an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements for their information."

Ms. Suyama read the agenda item into the record.

Mr. Starr: Take it away, Joe. Keep it quick, of course.

Mr. Joe Prutch: Thank you, yes. If I can, I'd like to combine Agenda Item No. 3 and 4 since essentially they're the same.

Mr. Starr: No, I'd like to . . . (inaudible) . . . one at a time.

Mr. Prutch: You wanna separate them? Okay. Then we'll have them discuss the annual report on the settlement agreement between the developer and Charlie Fox. And then Agenda Item No. 4 will be the developer and the WMPA. So I'll let Anthony come up, and Anthony will give the annual report.

Mr. Starr: Thank you. And again, let's try to keep it brief.

Mr. Prutch: Gwen will.

Ms. Hiraga: Gwen Hiraga providing you with an update of this annual report. And I'm assuming all Commissioners have the report dated March 13th. Real briefly, pursuant to Condition No. 32 of the SMA permit that was granted for Lot 4, North Beach, requires that an annual report be filed with the Maui Planning Commission on the disbursement of funds per the settlement agreement that Intrawest entered into with Charles Fox. And basically, this is relatively simple. The agreement provides that the developer donate \$500,000 to Lahainaluna School Foundation. And just to recap, the initial \$100,000 was made in March 2005. And subsequent to that, there is an obligation to fund an additional \$100,000 for each year. So as of March 2008, Intrawest has funded the Lahainaluna Foundation in the amount of \$400,000. And there is an additional \$100,000 that will be paid out next year. What we have here is – this is an overview of the funding that Intrawest has made in terms of both settlement agreements, as well as an SMA condition on traffic mitigation. So any questions on this first report?

Mr. Starr: Okay, Members? I know I'm a little bit confused as to what action we can or need to take on this before we proceed.

Ms. Suyama: There's no action that needs to be taken by the Commission. This is an annual reporting because the Commission wanted to know how the monies that were part of the settlement agreement was being dispersed and used. And so they have this annual reporting that needs to be done.

Mr. Starr: Oh, okay, so it's a report for our information?

Ms. Suyama: Right.

Mr. Starr: And although it may not be necessary, I would like to open the floor if any public has testimony on this. And please keep it really, really short because we're trying to finish the agenda. Come. Come, Auntie.

Ms. Hiraga: I'm sorry. She wants to wait until after the next report.

Mr. Starr: Okay. Good. Okay, seeing none, public testimony is closed on this item. Members, any further discussion or any action desired? Okay, seeing none, we're happy to accept the report on that.

Ms. Hiraga: Thank you.

Mr. Starr: And moving right along to the next item.

4. **MAUI BEACH RESORT LIMITED PARTNERSHIP submitting their annual report on the disbursement of the funds in the Settlement Agreement between the developer and the WEST MAUI PRESERVATION ASSOCIATION, INC., Intervenor, as called for in Condition No. 32 of the Special Management Area Use Permit approval for the proposed Honua Kai Resort, North Beach Park, and related improvements at TMK: 4-4-014: 006 and 008 and 4-4-001: 010, Kaanapali, Lahaina, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (J. Prutch)**

Condition No. 32 of the subject SMA approval states:

“That an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements for their information.”

Ms. Hiraga: Okay, the next item is the second annual report that the applicant is required to submit to the Commission. And this involves the settlement agreement between Intrawest and West Maui Preservation Association. Again, we have a letter that was dated March 13th which serves as the report. The information from this letter is also shown on this particular board. Do you want me to go through every item? I know you have it before you.

Mr. Starr: I think just if Commissioners have questions.

Ms. Hiraga: Okay, sure. So we're— So if you have any questions, I wanna just highlight the changes that were made from last year. We were here before you last year. And looking at that board, in terms of traffic impact for the light sequencing, there is a balance of \$35,000. Mill Street—\$1,325,000. And can you all see this? And, you know, we'll respond to specific questions in the interest of time.

Mr. Starr: Members? Commissioner Guard?

Mr. Guard: Yeah, I don't know if this is for the applicant or for Public Works. On the Lower Honoapiilani Road-widening, maybe I just need the history of that. Is that something that could be started? Or is that just off in the future and a low priority to have that completed? And why a lot of the traffic fees haven't been paid out? I see a couple of the other ones, but the Lower Honoapiilani looks like that highway's done. Or is it waiting for Honua Kai to be finished to do it all – to sequence at one time?

Ms. Hiraga: Do you want us to respond to that?

Mr. Starr: Yes, please.

Ms. Hiraga: Okay. Anthony Plitt will respond to that and this relates to Condition No. 16.

Mr. Anthony Plitt: Hi. My name's Anthony Plitt. I'm with Intrawest . . . (inaudible) . . . the developer. The— You are right. The Lower Honoapiilani Road-widening is complete. We started it in March after this report was – the annual report was submitted. And at this time, we're just waiting for our final billing from our contractor, so we didn't report it on this annual report. It will be shown on the subsequent report next year.

Mr. Starr: Commissioner Guard?

Mr. Guard: Well, then, so I'm just assuming these other ones are waiting for the rest of the Lahaina Bypass, which is kind of on hold anyway?

Mr. Plitt: Yeah. The Lahaina Bypass—\$250,000, nothing's happened with that. There's no—

Mr. Guard: The same thing with Mill Street? Everything's kind of waiting on—?

Mr. Plitt: Mill Street, no actually, Mill Street's moving ahead. We pay about \$30,000 a month for design fees. With that account, we always keep a \$100,000 balance in the escrow account. We pay the \$30,000 or whatever, and we reimburse that at the end of every month as applicable.

Mr. Starr: Members? Is that a hand? Yeah, Commissioner U`u.

Mr. U`u: I got a question for Gwen, please, or could be Deputy Director also. I know at one point in time, we asked WMPA to give us a breakdown. Am I correct?

Ms. Hiraga: Yes, it came up last year in the Commission's review of the annual report. That was March 13th '07. And there was a subsequent meeting, I believe, where WMPA's attorney sought clarification from the Commission. And they had indicated that they needed to discuss it with the Board. And I believe the Planning Department did send out a letter to the organization on behalf of the Commission. And I am – to my knowledge, I have not seen that accounting, but maybe the Planning Department has. I'm not sure what the current status is.

Ms. Suyama: At the last annual reporting, you know, the Commission had asked WMPA whether they would break down how they had spent the \$100,000 that was allocated to them. They had indicated at that time their willingness to do that. And we did send out the letter requesting the information. To date, we have not received the information

from WMPA. And I do not see Mr. Collins or Ms. Matin here to address the issue. I believe they may be here later for some other items that deals with the Honua Kai project, but I don't see either party here today.

Mr. Starr: Is there any representative of WMPA here? Not seeing any. Okay, yeah, Members, any other questions? Commissioner Hiranaga?

Mr. Hiranaga: In order to obtain a response from WMPA to Commissioner U`u's question, should we defer this matter to later in the day so that it's still an open agenda item so he can ask those representatives if they appear?

Mr. Starr: If there's a later in the day. What the Chair will do is allow a question later if they show up. If not, perhaps we could request that the Department reach out to them and get us a report. Commissioner Guard?

Mr. Guard: If memory serves me, I think last year some of those questions from the public came up or other members of the West Community area wondering what was happening with that money as well. That's kinda why this came up versus if they don't show up to hold this report hostage because of that. I think WMPA's gonna be showing up for future things that they might need a few credible answers.

Mr. Starr: Before we go any further, I'd like clarification. I believe this is the same situation as the last one where we don't necessarily need to take any action. We're just receiving a report at this time. And that, you know, at another time when we get more information, we can look at that. Anyway, I'd like to see if there's any member of the public who would like to give testimony on this item. Please come forward and be as brief as possible and no more than three minutes. Please introduce yourself, Auntie, and come.

Ms. Patty Nishiyama: Aloha. My name is Patty Nishiyama. Everybody calls me Auntie Patty. And I'm here testifying on various items on your agenda pertaining to Intrawest. The first item pertains to the annual report for disbursement of funds and the settlement agreement between Intrawest and West Maui Preservation Association. I testified last year on March 13, 2007 when the annual report was presented to you. At that time, I had requested that you look into the formation of the nonprofit community benefit funds which is required by the settlement agreement. To my knowledge, I am supposed to be a member of the board. This nonprofit organization has not been yet been formed. The fund was more than \$550,000 in escrow with an initial \$400,000 deposited upon the approval of the SMA for the project in 2005, \$50,000 per year, and for the past two years, 2006 and 2007, and \$50,000 deposited this year. This nonprofit organization is to decide upon funding, for the projects that benefit the North Beach West Maui area and community. And it could include funding for all – for land acquisition, improvements of coastal resources, roadway improvements, scholarship, Native Hawaiian cultural

purposes, and other appropriate benefits. I have not been contacted to attend any board meeting. Other members of the board are Bruno Ariyoshi and Dr. William Iaconetti, as well as a representative West Maui Preservation Association IntraWest. Again I would like to request that you look into this formation of this nonprofit organization. Mahalo.

Mr. Starr: Commissioner U`u?

Mr. U`u: Auntie Patty, so to date, what is the total about that was given to WMPA?

Ms. Nishiyama: The total amount – it was \$500,000, \$550,000 in escrow, with an initial \$400,000 deposited upon the approval of the SMA for the project in 2005, \$50,000 per year, and for the past two years, 2006 and '07, and \$50,000 was deposited this year. That's a lot.

Mr. U`u: So is Dr. Iaconetti on the board?

Ms. Nishiyama: Yes, we're supposed to be on the board: Dr. Iaconetti, and myself, and Bruno Ariyoshi.

Mr. U`u: Is he or is he not?

Ms. Nishiyama: Well, the meeting hasn't even–

Mr. U`u: Oh, okay. No– Okay, okay. I know he asked that's why.

Ms. Nishiyama: Yeah, he asked a couple of times about it, yeah. It hasn't even been formed yet. It's been like three, three, four years now. So we're kinda concerned if – what is this lady doing? Because I really need that money for our cultural purposes – e kala mai. I need a preschool for Hawaiian language, you know? And if it's there, I'd like to utilize it for our children, you know. That's the bottom line, period.

Mr. Starr: Okay. Thank you, Auntie Patty. I think, you know, we might like to schedule this as an agenda item in the future, but thank you for coming before us and making us aware.

Ms. Nishiyama: Thank you. Mahalo.

Mr. Starr: Any other member of the public? Alright. Now we got Martin.

Mr. Martin Luna: She reminded me, that's why.

Mr. Starr: Yeah, come. Please try to keep it brief.

Mr. Luna: I'm Martin Luna. I'm one of the attorneys for Intrawest. With respect to the funding that has been provided for the community organization that was intended to – for West Maui citizens and the community as a whole, I've worked with – well, initially, the formation of the community association was supposed to have been done by West Maui Preservation Association and they retain a local attorney. Apparently, there was some miscommunication somehow. So for one year, there was no documents done or at least not agreed upon. Then when Mr. Collins was retained, he prepared the articles of incorporation and bylaws, provided them to me. We – I made some suggestions for revisions. He incorporated some of the suggestions. The association is formed, but there are no bylaws yet. The bylaws, according to Mr. Collins is he's waiting for the bylaws to be acted upon by the board. And then thereafter when the bylaws are approved, then he can proceed to obtaining the 501C3 for the association. So I've asked him a couple of times if they can proceed, and that hasn't happened yet. So you might ask him why not. And if the meeting of the board members do not take place soon, then Intrawest is willing to initiate that and call for the meeting of the board to get this going.

Mr. Starr: Commissioner U`u?

Mr. U`u: I get one question. Maybe this is for Corp. Counsel. If they don't get their nonprofit, if there's no time limit, can we allocate that money somewhere else where it's usable? Is that legal?

Mr. James Giroux: Well, I think the whole problem when this came up to light was that we're dealing with a private contract and a private settlement. You know, I mean, this whole reporting thing is just so we know what the heck's going on out there because I think we got a little tired of people intervening, and then getting settlements, and then us not knowing what's going on with these activities. And so what this was – the whole purpose of this recording was so the public would know and that we would know what's going on with these monies that are being generated through private settlements but using a public venue. So we don't really have jurisdiction over that. We don't have any control over their private contract.

Mr. U`u: So, but what's happening now is that you got money being deposited to nothing because there's no nonprofit formed. So in actuality, by using the County process, we're taking the money actually, out of the County hands where they supposed to be providing for a community service for the community.

Mr. Starr: You know, I feel the same way but, you know, I don't think we can deal with this now other than to receive the report, and have the Department put this as an item on an agenda at a future meeting, and make it clear that, you know, at that meeting, we'll wanna hear a report from the board members that, you know – including our own Dr. Iaconetti.

Ms. Suyama: If I can respond? I think we – the Department can make a request to WMPA, but we cannot compel them to come before the Commission. So I think that's all we can do is saying that the Commission has concerns regarding the West Maui community fund, and the board that was supposed to be created, and the disbursement of the monies. And then asking them very politely to come before the Commission and report, you know, what – their progress to date, but that's the most the Department can do.

Mr. U`u: Question: but didn't they volunteer on record to give us that information?

Ms. Suyama: They volunteered to give the information, but there's no way that we can compel them to give us the information if they, along the way, decide to change their mind, and not forward the information to the Commission.

Mr. U`u: Thank you for clarity.

Mr. Starr: Okay. Commissioner Hedani?

Mr. Hedani: My recommendation would be to – that this Commission recommend that the developers of the project area consider moving ahead on forming a community – a West Maui community-based organization if WMPA is incapable of executing that document, independently.

Mr. Luna: Mr. Chairman, Martin Luna.

Mr. Starr: Martin, you're out of order.

Mr. Luna: Oh, sorry.

Mr. Starr: Commissioner U`u?

Mr. U`u: No, that's all.

Mr. Starr: Members? Does anyone have a question for–?

Mr. Luna: I was gonna respond to Mr. Hedani's point.

Mr. Starr: Sorry. Okay.

Mr. Hedani: Let me ask a question: would Intrawest be capable of forming a nonprofit and establishing a local board, Martin?

Mr. Luna: The nonprofit articles have been filed. So it's taking a step to have the bylaws

approved. So what we need to do is call the meeting of the board which I had asked Lance to do several times. And we're gonna – we're willing to do that now since they haven't acted. And then see if we can get the bylaws approved by the board, and then go ahead. And if Lance doesn't do the 501C3, we will do it. But in answer to, I think, your concern, Commissioner U'u, as to what kind of funding there is, there's still on this board, if you look at the first line of left, Lahaina Traffic Light Sequencing, there's – I think there's \$35,000 left. And then there's the design fees for the Lahaina Bypass Road, the \$250,000 that hasn't been used. In – as I recall in the SMA proceedings, that \$250,000 was supposed to be for the Lahaina Bypass Study that goes north of – I forget which street, but the one that's by the cannery that goes straight up–Keawe Street. But I think in the discussions that took place at that meeting, there was – the Commission wanted to be able to use that fund anywhere it wanted to for the bypass. It could be north. It could be south, wherever the need was. And so you have discretion on those two things: the \$35,000 that's left on the traffic sequencing, and then the \$250,000 Bypass Road. Our attorneys' fees weren't that high, so they have all that leftover.

Mr. Starr: Okay. Thank you. Okay. Go ahead, Commissioner U'u. I'm trying to bring this to a close, though, 'cause we can't really do anything.

Mr. U'u: I wanted to know if I could ask Mike Welby, the funding that's best suitable for the County, but he's not here. So I'll hold off on my question.

Mr. Starr: Okay, we're still in public testimony. Anyone else wishing to give testimony? Seeing none, public testimony is closed. And once again, we don't have any imperative for action, but it seems that there's a consensus that some action is required. And that is to see that some sort of stakeholders meeting, board meeting, is held, and that a report on that be brought forward to us. I understand it can only be on as a request, but we should request it both of WMPA and also of the developer. And do we need to do any action for the Department to try to do their best to do that, Colleen?

Ms. Suyama: I think an action, a motion, from the Commission to direct the Department to draft a letter to WMPA, as well as the applicant requesting WMPA's reporting of the funding that was given for the community benefits, as well as a status of the incorporation of the board in getting the board started, as well as directing the applicant of which is Honua Kai to do everything possible to getting the bylaws approved. We can do that.

Mr. Starr: Members?

Mr. U'u: I'll make a motion.

Mr. Starr: Okay.

Mr. Hedani: Second.

Mr. Starr: Okay, motion by Commissioner U`u, seconded by Commissioner Hedani for the Department to draft a letter to get us more information. Any discussion? Amendments? Seeing none, all in favor, please raise thine hand. Any opposed?

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

VOTED: To direct the Department to draft a letter to WMPA, as well as the applicant requesting WMPA's reporting of the funding that was given for the community benefits, as well as a status of the incorporation of the board in getting the board started, as well as directing the applicant of which is Honua Kai to do everything possible to getting the bylaws approved.

**(Assenting - B. U`u, W. Hedani, K. Hiranaga, J. Guard,
D. Domingo.)**

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **Motion carries unanimously.** As far as disposal of the communication, is there any further action desired at this time? Commissioner Hedani?

Mr. Hedani: Move to accept the report.

Mr. Starr: I don't think that's— Okay. Anyone wanna second that?

Mr. U`u: I'll second.

Mr. Starr: Okay, moved by Commissioner Hedani, seconded by Commissioner U`u to accept the report. Discussion, amendments, etc.? Commissioner Hedani?

Mr. Hedani: Can we provide a copy of the report to all of the Members of the County Council because there's some Members that believe that – that don't understand the contributions that have been made to date? So if the Department could transmit it?

Mr. Starr: Can someone offer that as an amendment or—?

Mr. Hedani: Well, administratively, we could probably handle that.

Mr. Starr: Why don't we make that an official part of the motion or amendment?

Mr. Hedani: To include a transmittal to the County Council for their information.

Mr. Starr: Is that okay with the second?

Mr. U`u: That is . . . (inaudible) . . .

Mr. Starr: Okay, so the motion is to accept the report and to send a copy of it to Council Members. Any discussion? Anything else? All in favor, please raise your hand. Opposed?

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

VOTED: To accept the report and to send a copy of it to Council Members.

(Assenting - W. Hedani, B. U`u, K. Hiranaga, J. Guard, D. Domingo.)

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **Okay, it passes unanimously.** Any further action required on this? Okay. Thank you for the report. Hopefully, we can take it – get that money somehow being used. Okay. Moving right along. Let's try to keep moving for another five minutes. Let's see where we are.

- 5. MR. ANTHONY PLITT on behalf of INTRAWEST requesting a Step 3 Planned Development Approval for the North Beach, Lot 4, Honua Kai Project, which involves the development of the Luana Enclave (72 townhouse units), North Park Road and Comfort Station and related improvements on 34.8 acres of land at TMK: 4-4-014: 006 and 4-4-014: 008, Kaanapali, Island of Maui. (PD3 2008/0002) (J. Prutch)**

Mr. Suyama read the agenda item into the record.

Mr. Prutch: Thank you. I'll keep it really short because the applicant does have a presentation to give. So essentially, this application arises for Step 3 Planned Development. It was filed on April 2nd of this year by Anthony Plitt and Intrawest. They're essentially requesting Step 3 Planned Development approval, construction drawings for Phase 3 site improvements, including the Luana Enclave which will be 72 town homes, the North Park Road, and the comfort station. I'll let them go into more of the details and the history to preserve some time. And our conclusion and recommendation is in consideration of the foregoing, the Planning Department

recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for this meeting, and its findings of facts, conclusion of law, and decision and order to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission. And I'll go ahead and leave it up to the—

Mr. Starr: I'm actually seeing from Members that there's some interest in discussion and slowing things down on this. So with that in mind and growling stomachs, we will be recessing for lunch at this time, and we'll take this up at five minutes after one o'clock in the afternoon. Meeting is in recess.

(A lunch recess was then taken at 12:01 p.m., and the meeting reconvened at 1:05 p.m.)

Mr. Starr: Okay, Maui Planning Commission session for May 13th is back in session. And we're about to proceed on Item 5 on the agenda. And before we do proceed, I have – the Chair has two things. One is a disclosure. And I'd like to disclose that the Planning Director Jeff Hunt did mention to me that his wife is employed by the Intrawest Corporation, but that should not have, you know, in my opinion, any affect on things, but I did wanna disclose that he told me that feeling that in disclosure is fairness. And the second is before we proceed on this issue, there are some legal issues that have come to light regarding the restaurant redesign and Item 6. And I want to be clear whether Item 5, which we're about to proceed with, whether that includes in any way, the restaurant in Item 6, or whether that's excluded.

Mr. Luna: Mr. Chairman, Members of the Commission, the PD 3 Step 3 approval is for the town homes, the park improvements, and the comfort station. So the restaurant is not included in the Project District Step 3 – I mean, Planned Development Step 3 approval.

Mr. Starr: Okay, so, as my understanding that allows us – we're clear to proceed without issues. So I'll turn it over to Deputy Director Suyama to introduce the subject and we'll slow things down a bit and give us a good hearing.

Ms. Suyama: Okay, as presented before, this is the Step 3 Planned Development approval for Honua Kai, for the Luana Enclave, which is 72 townhouse units, the North Park Road, and comfort station, and related improvements at TMK: 4-4-0014: parcels 6 and 8, Kaanapali, Maui. And Joe Prutch is the Planner on this application.

Mr. Prutch: Welcome back from lunch, everybody. Okay, we'll go back. I'll be brief again still because I know the applicant does have a presentation put together for you that'll elaborate on everything anyway, so I'll be real brief. This application arises from a Step 3 Planned Development application filed in April of 2008 by Anthony Plitt of

Intrawest and his gang. They're requesting Step 3 approval of construction drawings for Phase 3 of the Honua Kai Resort. This Phase 3 includes the Luana Enclave which is 72 townhouses, the North Park Road, and the comfort station along North Park Road. As Martin mentioned, the restaurant is a separate issue. That would come back to you as a Step 3 later on in time as it's own standalone.

Brief history—I'll let the applicant go over some of the history. Essentially, this Phases 2E, 3A, and 3B are the subject of this Planned Step 3, which is the North Park, one phase of the townhouses, and then second phase of the townhouses. The construction plans were reviewed by us, and they're essentially in accordance with the sketched plans that were approved by the Commission back in 2005.

As for the conclusion of law and the recommendation, in consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for this May 13th meeting, as its findings of facts, conclusion of law, and decision and order, and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

And you should've just got a document given to you by Gwen. It looks to me like it's gonna discuss the basement levels of the tunnel and the groundwater level. So you should've just received that just after lunch here. Oh, I'm sorry. I'm sorry. Never mind. Sorry, we'll go on that the next time. Okay, so for this Planned Step 3, I'll invite Gwen up to go ahead with her presentation, and give you some history of what's going on with Step 3.

Ms. Hiraga: Good afternoon, Members of the Commission. My name is Gwen Hiraga. We're gonna do a very short presentation on the Step 3 application. And before I start, I'd like to introduce – this is not part of your power point presentation handout, but just make some short introductions. On behalf of Intrawest Resorts, we have Eric Gerlach, he is the Vice-President of Development; Ed Soares, the General Manager for the resort; Anthony Plitt, Development Manager; Todd Johnson, Development Manager; from TS Restaurants – no that's the next item. I need to keep it separate. Sorry. The architect is Rob Iopa from WCIT. We have Mr. Jeff Thompson from Ledcor Construction; Barry Toyota from Wilson Okamoto Corporation; Stan Duncan from PBR Hawai'i; Dana Dorsche, acoustical consultant. So now we can get started.

When we did our last Step 3 application last year, there was some interest by Members of the Commission. And as I recall, there are a couple of them that actually wanted a site visit. And the Commission decided that a site visit was not necessary, but I'd like to go through just a real brief history of what has happened on the project.

Starting back in – and these are just a recap of all of the Planned Development Step 3

approvals that have been granted by the Planning Commission. Earlier approvals for SMA and Step 2 were granted in 2005. And the Step 1 application was granted in 2004. So since the approval of the SMA and Planned Development Step 2 approval in 2005, we come before you for every phase or segment of the development with a new Step 3 application.

So first of all, the first Step 3 application that we received from the Planning Commission is shown on this. And this is primarily the South Enclave, this area; and the Discovery Center, which is here. These approvals were granted in June 2005, and then again in December 2005. The south tower was split. The North enclave which is right here received approval last year March 2007. And that was the last time we were here before you. Today, our application deals with the Luana Enclave which is here. These are the 24 town homes, and the North Park Roadway, and comfort station. And basically, I'm gonna turn over the presentation to Rob now to—

Mr. Rob Iopa: I just have several photographs to describe and give the status of the project currently, and some of the areas that are covered this Step 3. This is an aerial photograph looking north. Honoapiilani Highway. The project site is defined by the dust fence located here. This is Lot 3 of the North Beach. And this is the — part of the dedicated public open space located here. What you see primarily here is the status of construction. These photos were taken about April 1st just a little over a month ago. The status of the construction of the south tower—all the levels have been completed, and the roof has been topped off, and we're currently doing exterior work and — exterior siding work, and interior finishes.

Another photograph of the site looking obviously, from Maui back mauka. The south tower, you can see here. Essentially, here is what becomes the detention basin as part of the final design component. You see the footprint of the north tower which was approved and . . . (inaudible) . . . under construction. The basement has essentially been complete and we're starting some elevated slab work. Here back on the south tower, you start to see the beginning of some of the excavation for pool work. And Luana or the townhomes are essentially areas located back here.

Another view looking south, the south tower, north tower, the location of the Luana development, the townhomes, 150-foot shoreline easement. Going all the way here you see parts of Starwood's Lot 2. Another photograph looking from makai — mauka looking above.

There was a mention of status of the lower Honoapiilani road-widening. So that work is complete as you can see here.

Mauka looking makai. A more detailed aerial of the south tower. Again, Lot 3 here. You can see the status of the construction on the south tower. The south tower again.

South tower looking back from makai up through the courtyard. So again, all roof structures have been topped off.

Orientation of the south to the north. Later we'll be discussing the beach restaurant which is proposed for a location here. The foundation work and the beginning of elevated slabs for the north tower. Another view from makai. And finally, some aerial shots for perspective. This constitutes from about this area, Kai Ala Drive, to this intersection at Lower Honoapiilani constitutes the North Beach Subdivision. And then the projected – project landscape plan. Essentially, this was as proposed at SMA, and very close to what the project is stated to be currently. Thank you.

Ms. Hiraga: Okay, so that concludes our presentation. We're open to questions—myself and the project team.

Mr. Starr: Before we get to questions about the project, I'd like to ask Deputy Director Colleen to explain to us what our duties and prerequisites are regarding a Step 3.

Ms. Suyama: The Step 3 is the final construction drawings for the project. And what the Department does is we review the plans to see if they are in accordance with the preliminary plans that were reviewed by the Commission during the SMA portion and the Step 2 Planned Development. And I believe in this case, Joe Prutch has done that. And I believe in his recommendation, he's stating that the plans are in accordance to the original preliminary plans that the Commission originally reviewed.

Mr. Starr: Okay. Members, questions? Commissioner Hiranaga?

Mr. Hiranaga: I was just wondering if you have any vertical elevations of your townhouses that we could look at. I mean, you have it in the packet here, but it's kind of black and white.

Mr. Iopa: None that we can project right now. It is included as part of the package.

Mr. Starr: Any follow up or you want any other info back? Members? Commissioner Hedani?

Mr. Hedani: Rob, you know in the slide that you had of the construction underway, what was the setback from the edge of the north – I mean, your south enclave tower to the edge of the vegetation line? Is it 150 feet?

Mr. Iopa: 150 feet minimum.

Mr. Hedani: So that's based on the criteria of the SMA permit?

Mr. Iopa: Correct. For an approximation, the silt line is approximately, the location of the 150-foot setback.

Mr. Hedani: Was there any criteria that was provided for screening the sewage treatment plant from the mauka units of the project?

Mr. Iopa: None as part of the SMA approval that I know of.

Mr. Hedani: I see. Is that something you folks would be interested in doing? I noticed from the aerial that you can see the basins of the tanks from the sewage treatment plant.

Mr. Iopa: This is probably what you're referring to here. If I can go through our landscape site plan, if you notice our planting plan along the highway is to be consistent with the other plans for North Beach. So they're large, shade trees, monkeypods, in this condition along Honoapiilani Highway. We're definitely looking at ways of shielding both highway from site and site from highway along this public corridor. We are challenged, though, because of height, and how tall planting can grow for absolute shielding. I think one thing—if one was to look past this treatment plant here, the West Maui Mountains are a pretty beautiful site as well.

Mr. Hedani: I guess my question on that was whether or not you would be interesting in planting on the mauka side of the highway closest to the sewage treatment plant in order to screen it from view from the units with the permission from the County in order to enhance the view for the units from the mauka side.

Mr. Iopa: I think that's something that probably could be considered.

Mr. Hedani: There's nothing you can do about the odor because the wind just blows, but at least you might not be able to see it.

Mr. Iopa: Some of the improvements are successful at the sewage treatment plants.

Mr. Hedani: Mike doesn't care anymore because that's not his kuleana.

Mr. Starr: Perhaps Night-blooming Jasmine. Members? I have a question, which is what – what's being done to keep the runoff from landscape chemicals and other possible nutrients or pollutants out of the ocean?

Mr. Iopa: Maybe I can bring up our landscape architect to speak to that question—Stan Duncan, PBR. I apologize. Just reminded that we have this slide as part of the next presentation. There's a question on the location of the 150-foot setback in relation to our building. So this reinforces kind of where the silt fence line was in that photograph.

Mr. Stan Duncan: Good afternoon, Members. My name's Stan Duncan, landscape architect, with PBR Hawai'i. Your question related to, I guess, runoff and the protection of the shoreline area. As part of the SMA conditions of approval, we are looking at re-vegetating the entire shoreline area with native Hawaiian plants particularly, native groundcovers and so forth, and removing some of the undesirable sort of grasses and miscellaneous weeds that have kind of overtaken the area. And we're doing that in a very systematic way in terms of removal and replanting. And there is no – within the 150-foot shoreline zone area, there is no intent to bring in any additional soil media and so forth in those areas. We'll be planting directly in the existing soil medium that's there now. Especially in the area where the sand dunes are, we'll be planting directly into the sand. So there'll be no additional material brought in. In terms of the way that the site has been graded from a civil engineering standpoint, the catch basins and so forth that will pick up any runoff that may move in a mauka direction will be collected within the mauka of the dune area as well. So any sort of onsite drainage, if you will, will be collected well mauka of the dune area itself.

Mr. Starr: Is there any situation that within a hundred-year storm range that would allow sheet flow into the shoreline?

Mr. Duncan: Perhaps, Barry, you might be able to– Our civil engineer might be able to answer that better than myself, but– Barry?

Mr. Barry Toyota: Barry Toyota from Wilson Okamoto. The detention facilities for the project is designed to handle the hundred-year storm.

Mr. Starr: Okay. I have one other area of question. What's being done on this project in terms of energy efficiency?

Mr. Iopa: The – there are many things that'll be done for energy efficiency and sustainable practices as part of the project. We are in all cases allowing for deep overhangs, cross ventilation, the passive-type of design influence especially, with the townhomes. We are allowed that in the townhomes, unlike some of the larger structures more easily from a passive and design perspective. From a more active perspective, we are looking at including solar hot water generation as part of the townhomes. Again, much more feasible in the size and scale of these structures than for some of the larger structures. We are looking for sustainable practices with our materials that we're using as part of the project as well.

Highlighted is – there's several other components I can maybe speak a little bit further to. We are using extremely water-efficient – in fact, in many ways, cutting edge technology with our air-conditioning system. First and foremost, these units are designed for passive cooling. This is so you can allow for opening up windows and opening up doors so that natural ventilation can provide the first means of passive

cooling. If deemed desirable, the air-conditioning units are variable VRV systems essentially, using less than half the amount of water than more conventional systems would use. Dual-flushing toilets, heat recovery for pools associated – each enclave has a pool that's located here, so heat recovery for use of these pool systems. As Stan had mentioned also use of native plant material, not only native plant material, but native plant material that's endemic to this type of location. So that means less need for use of water. And as part of this project in its entirety, it also – the irrigation system is being designed for dual usage both a potable system, and we have the R1 system and lines in place when the R1 becomes available for North Beach.

Mr. Starr: Okay. Commissioner U`u?

Mr. U`u: This is in regards to workforce. We had testimony from union representatives. And we also had testimony from Councilwoman Jo Anne Johnson regarding the workforce. Is it gonna be from out-of-state or is it gonna be local?

Mr. Iopa: Construction workforce?

Mr. U`u: Construction workforce. I know there's a lot of people being laid off right now in the construction field. Obviously, it's spread out more so, you know, not only in the field of construction, but also Aloha, ATA. And to make this a truly sustainable project, I'm thinking – I'm mentioning that by utilizing the local workforce, that will add to it being sustainable.

Mr. Iopa: Absolutely. I think there's definitely the desire to do so. And I can introduce Jeff Thompson from Ledcor Construction, the construction manager to speak more on this.

Mr. Starr: Yeah, please.

Mr. Jeff Thompson: Hi, Members. Jeff Thompson, Ledcor Construction. We currently have about 500, 550 guys onsite right now. We're gonna top out at about 650 guys in the next six to 12 months. Over 80% of our workers are from Hawai'i. Over 85% of our workers are union workers. That's the program we're carrying on with the rest of the site.

Mr. U`u: So that would be included into the 72 units utilizing local workforce?

Mr. Thompson: What we've been doing is pricing them all with existing trades. We're trying to think this as one project so keep the same guys working.

Mr. U`u: Okay. You got any contractors in mind?

Mr. Thompson: For the townhomes?

Mr. U`u: For the townhomes.

Mr. Thompson: Contractors you mean in terms of subcontractors?

Mr. U`u: Subcontractors, yes.

Mr. Thompson: We've been talking to all the trades we're using currently, as well as additional ones if there's scopes that don't match with the current towers we've gone underway.

Mr. U`u: Okay.

Mr. Thompson: So— I don't have the names of everybody, but we've been talking to all sorts of different companies.

Mr. U`u: Okay. Thank you.

Mr. Starr: And it is important to try to keep our Maui people working and especially, you know, both construction and in the operations as well. Commissioner Hedani?

Mr. Hedani: I'm not sure who can address this, but on — it's on page 5 of the exhibit that I have—North Park PD P3 Application Request. There's been some property exchanges at North Beach so that there's a contiguous parcel that would be available for park purposes. Where you see that kind of horseshoe white area, there's been an exchange and consolidation. So it's kinda like commercial on the top portion along Lower Honoapiilani Highway. And the bottom portion where it says "North Park B" has been consolidated into North Park A's parcel, I believe, so that it can be one contiguous parcel. The question that I have is that is North Park B going to be improved along with North Park A?

Mr. Plitt: Aloha, Commissioners. I'm Anthony Plitt with Intrawest. You're a hundred percent correct. At the time of SMA, just as a little history, the North Park was — North Park B was bifurcated from the application because as you mentioned, the Nunes' portion which is landlocked was — we did a land swap which was — we came to the Commission last May. That's now with the — going — it's with the County Council and going to Land Use Commission, as I understand, in June. Hopefully, that will be finalized by the end of summer at which time we'll come back for the completion of the SMA, as well as for Step 2 and Step 3. As far as the construction, our intent right now and requirements are to complete North Park A, you know, as soon as possible with the closure and occupancy of the south tower. North Park B, we will be — we'll be delaying somewhat as you can imagine as we're completing, you know, 40 acres, we need some

place to end up with our construction trailers, and lay down areas, and so forth. So we're planning on using this portion temporarily as a staging area until such time that we can complete that.

Mr. Hedani: Thank you.

Mr. Starr: Okay, Members, any other question? Okay. So at this point, I'd like to invite any members of the public that would wish to give testimony on this particular item. And I see Sharon Matin. Please introduce yourself, and please keep it as short as possible, and no case over three minutes.

Ms. Sharon Matin: Thank you, Chairman Starr, and Commissioners. I would like to address the item of drainage. There have been two Konas. Both occasions, water flowed into the near shore waters and into the former wetland. Department of Health had to come out and pump out the wetland. There were two dune breaches each time. They were serious and severe. They have not been repaired. As opposed to Starwood that did not have breaches, the first storm, but the second Kona, they did. They already have their emergency permits going. They're already doing some work to repair their dunes' breaches. I pointed out to the Commission in March when the grading plans came up on north tower that there was not sufficient drainage on this lot. Our expert, our vice-president, who will be here next week, has still not received any drainage plans from Intrawest despite numerous requests. Might I request a condition to any action you take that that gentleman immediately have the drainage plans? He visually inspected. I visually saw that detention pond is not holding any water except the rainfall. All of the water goes around it. It was not designed to be that way. There is inadequate drainage. Secondly, I— Sorry. I'm trying to reach our Council who's en route and due to land momentarily, and be here momentarily. Did I hear that the park is being used for storage after the occupancy of the north enclave during construction of the south because my — let me just state my memory is this Council, this Commission, specifically insisted that that park be entirely open and usable before occupancy of the north tower? If that was not the case because I was occupied trying to verify Council's location, then I would ask that that be explored. Thank you.

Mr. Starr: Okay. Thank you. Members, any questions? Okay. I'd — not seeing any, I'd like to— I do have a question for the applicant relating to that, but I'll wait until after testimony is done. Any other members of the public wish to give testimony on this? Not— Yes? No? Not seeing any— Last chance. Okay, public testimony on this item is closed. And I would like to get a response from the applicant from whoever is doing the construction regarding the retention and also the issue regarding the park. Let's start with the retention. And it is definitely high on the priorities of this Body to make sure that the near shore waters are not degraded.

Mr. Toyota: Again, Barry Toyota from Wilson Okamoto. Currently, as you saw in the

aerial photos shown earlier, this basin is constructed at the site. In addition to that, there's also existing storage that also occurs naturally behind the sand dunes just in this area. Now, as far as breaches to the ocean, it's my understanding that there were no breaches from Lot 4. There are breaches elsewhere up and down the coastline. We have a report from Sea Engineering that did a site survey approximately about a week after the storm, and they indicated in their report that there were no outflow of storm water from the site to the ocean. And the breach that was seen was due to high waves and actually sea water entered the site, not from – not the reverse.

Mr. Starr: I'd like to ask the Department who is the County or State entity responsible for monitoring this, and what can we do to make sure that they're on the ball?

Ms. Suyama: Because this is a construction activity, it would basically, fall on the Department of Public Works. I don't see Mr. Miyamoto here.

Mr. Starr: Can we make a note that there – that concerns were raised, and that we wanna be sure that there's not – that there are no ongoing issues with this? Commissioner Hedani?

Mr. Hedani: Could we get a copy of the Sea Engineering Report?

Mr. Plitt: We can make copies.

Mr. Starr: Okay. Members? Commissioner Hedani?

Mr. Hedani: I noticed that in the Step 1 and the Step 2 approvals that were granted for Intrawest, one of the normal conditions that we attach for almost all projects as a standard is for fully cutoff or down-lighting on the project. I didn't see that as a condition, you know, that was listed for this particular project, but the fixtures on the project itself, are they designed to be fully cutoff?

Mr. Iopa: Yes, as standard with all these developments as required.

Mr. Hedani: Okay. So for the high-rise as well as the low-rise portion?

Mr. Iopa: Correct.

Mr. Hedani: Okay. Thank you.

Mr. Starr: I'd like to also ask for a response regarding the comments that were made regarding the park. I don't remember what occurred at that previous meeting. Can we get our staff to comment on that? Yeah, go ahead, Martin.

Mr. Luna: Yeah. I'm sorry, what was your – the question about the park?

Mr. Starr: The question as I remember it from the public testimony was that there are reports that the park area is being used for storage but that it was not supposed – I believe it was not supposed to be used for that, and that it's supposed to be enabled as a park before the north enclave is allowed to–

Mr. Luna: No, the requirement is that before we can have certificate of occupancy for the south enclave, which is the one that's under construction now, the North Park A has to be improved and operational. And that's what's being – that's why we're here for North Park A for Planned Development Step 3 approval because it's not gonna take that long to do that. So the intent is to do North Park A and have that ready before we seek certificate of occupancy for the south tower. And North Park B will occur sometime in the future after they receive the entitlements from the County Council and come back to you for the SMA approval.

Mr. Starr: So my understanding is the south enclave is the first one that will be completed.

Mr. Luna: That's correct.

Mr. Starr: Is there a rough idea of when – what that–?

Mr. Luna: I think it was December of this year.

Mr. Starr: December of this year? And so – and then what is the timeframe for getting the park online?

Mr. Luna: Same time.

Mr. Starr: Okay.

Mr. Luna: If not, before. Might be better just a little bit before, in fact.

Mr. Starr: Okay. And to staff, is that consistent with what's supposed to happen?

Ms. Suyama: It is consistent with the staff understanding that in order for them to get the certificate of occupancy for the south enclave, the part of – Part A of the North Beach Park has to be completed, concurrently. I think one of the questions that came up from the testifier was regarding whether the park, which is the North Park B was going to be used for storage of materials and equipment. I think that's one of the things that we need clarification.

Mr. Luna: That was represented by Mr. Plitt that until – because as they go across the Lot 4 that the only portion left that would be available would be that North Park B for construction trailers and for their workers to park. So that's the intent is to use a portion of that North Park B only, not North Park A, because that has to be operational.

Mr. Starr: I know my concern would be how far from the shoreline that's gonna take place.

Mr. Luna: This will be North Park A. This will be North Park B. So it's quite a bit of distance from the . . . (inaudible) . . . It's – I don't have a scale, but it's quite a bit . . . (inaudible) . . . about 500 yards.

Mr. Starr: So what I think I heard is that it's North Park B that will be utilized.

Mr. Luna: That's right. Right up here.

Mr. Starr: And not North Park A, which heads down toward the—?

Mr. Luna: That's correct.

Mr. Starr: Colleen, are there any other issues that I'm not seeing with this?

Ms. Suyama: I don't believe there is. You know, we can follow up on Ms. Matin's claims about dealing with the runoff that went into the ocean and the breach of the dunes as a follow up with the Public Works Department.

Mr. Starr: Yeah, and can we get a commitment, a firm commitment, that from an applicant that they will not allow any breach of the dunes or sheet flow to occur? And they'll do – they'll use heroic measures, if necessary, to prevent it?

Mr. Plitt: Yes, we have no problem doing that, and just to add a quick note, if I may? Right after the storm, we sent out our inspectors to check out all of the best management practices which are part of the Public Works NPDS permit, and we had no failures in the system at that time. And I believe those – that's mentioned in the Sea Engineering report as well, which we'll provide you a copy with.

Mr. Starr: Okay, you'll provide that to all Members?

Mr. Plitt: Yes.

Mr. Starr: Commissioner Guard?

Mr. Guard: This is in regards to the dunes. It might be for the landscape. From the aerial versus the concept photo, it looks like there's gonna be significant uprooting of

trees to transplant other types of trees.

Mr. Duncan: That's correct. Basically, the shoreline, if you've been down there, is heavily vegetated with nonnative species of plant material namely, the kiawe or mesquite. The conditions of approval in the SMA actually calls for the entire shoreline not only fronting Lot 4 but all the way down to Lot 1 with the eventual sort of transformation of the shoreline to re-transform it, use more native Hawaiian plants in that zone. So the process or the schedule of change along the shoreline, we're really looking at trying to selectively remove some of the smaller and more dead material initially, and then planting native trees such as milo, and kou, and coconuts, and so forth along the shoreline. And then eventually over time, over a five or six-year period, as those trees develop and be – develop more of a larger canopy, then the nonnative species such as the kiawes can then be removed, and we don't lose the entire shade quality that's provided there now, which I think is a positive for the public as well because, you know, for those that wanna seek some shade, it does provide that. Although you gotta watch out for the thorns and stuff, but it does provide shade.

Mr. Guard: Yeah, that was one of my concerns is that if you're staying at Honua Kai, there's plenty of shade back there, but there's not much if you're not staying on the property. What about the topography of the dune? Is that – that's, I'd imagine, taken into account, not just clean . . . (inaudible) . . . for the caterpillar?

Mr. Duncan: Oh, no, no, no. Although the work that's going on within the sand dune area is really hand-clearing that's being done, there's no heavy equipment that's really allowed to be out there. The pruning of the trees, chainsaws, and just removing it basically primarily by hand. There may be a few trucks to transport some of the material offsite, but there's no heavy bulldozers or anything like that. And the intent is to maintain the integrity of the dune in its current state, remove the existing undesirable weeds and grasses that are there, and re-plant it with . . . (inaudible) . . . plantings of native plants such as naupaka, and pohinahina, akia, things of that nature, things that are coastal typically, found–

Mr. Guard: Grasses

Mr. Duncan: Right, aki aki grass, which is a native grass that's growing there now. It will also be replanted on those dunes.

Mr. Guard: So is that being – is that process being started yet?

Mr. Duncan: Yes.

Mr. Guard: Like the hand-cutting, getting rid some of the smaller debris?

Mr. Duncan: Right, the initial stage of the transformation is being started directly in front of the south tower enclave. And we're – we'll be working in a methodical way towards the north side of the site. And it's hoped as stated earlier that all of this work will be completed at the end of this year in December upon the opening of the south tower project.

Mr. Starr: Okay, Members, any more? Commissioner Hedani?

Mr. Hedani: I guess this is for the landscape person for the project itself. If you're removing the kiawe trees and replacing them with native plants, you might wanna incorporate those changes before the owner of Unit 114 on the north tower says this native tree is blocking my view to the ocean.

Mr. Duncan: Well, we're doing our best to replant other, you know, native trees. Initially, there's several varieties of milo, and as I mentioned, kou, milo, hala, coconut palms that are being planted as part of this work effort.

Mr. Hedani: Yeah, I think my perspective is that – to allow the trees to assume a natural form rather than, you know, be selectively contorted to the point where that particular owner preserves his view to the ocean.

Mr. Duncan: Okay. Understand.

Mr. Starr: Okay. I'd like to get our – I know we had a recommendation once before. That kinda went – Let's have it again.

Mr. Prutch: Yeah, I can repeat the recommendation again. Okay, under the conclusions of law, the proposed project meets the requirements for Step 3 Planned Development Approval and the staff's recommendation goes as so:

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for this May 13, 2008 meeting, as its finding of fact, conclusion of law, and decision and order, and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Mr. Starr: Okay. Thank you. Members? Commissioner Guard?

Mr. Guard: What are we doing about the Sea Engineering Report? Is that just something to see on our own time?

Mr. Starr: Well, you could add that as an amendment or we could just have faith that it'll

be coming to us. Up to whoever wants to make the motion or the amendment, whatever your pleasure. Commissioner Hedani?

Mr. Hedani: I move to accept the Department's recommendation.

Mr. Starr: Okay, is there a second?

Mr. U`u: Second.

Mr. Starr: Okay, moved by Commissioner Hedani, seconded by Commissioner U`u to accept the findings of fact and other points of recommendation.

Mr. Prutch: And one more thing: the applicant just told me that you can get a copy of that engineering report to you tomorrow, if need be.

Mr. Starr: Okay. Anyway, we do have a motion that is part of this Body. Commissioner Hedani?

Mr. Hedani: Well, my only comment was that I've worked with Sea Engineering in the past, and I find them to be a very competent organization. I have no doubt if they produced a report relative to the project, it would be accurate.

Mr. Starr: Yeah, I concur. You know, the question is whether we want to make an amendment to make sure we see it. I have confidence that we will, but Commissioner U`u?

Mr. U`u: Just a comment on Intrawest and I guess Munekiyo and Hiraga on being professional. And I really like the breakdown you guys did for us. It's clear. It's, you know, third grade level where anybody can understand this right off the bat. And I think they're doing an awesome job. And it's easier for us as a Commission to look it over, and see what is owed, and what is being paid.

Mr. Starr: Well said. Commissioner Guard, did you have something?

Mr. Guard: I just wasn't sure how we wanted to handle it. I hadn't asked for the report. So if you guys are happy that it's Sea Engineering that did the report, I can go along with that. It's just with two opposing stories.

Mr. Starr: Okay. And I'm convinced that we'll see it within a day or so when every Member will receive a copy. Okay, Members, it would be time for further comments, for any possible amendment. Seeing none, we will move to a vote on this. All in favor of the motion as stated for the recommendation – to approve the recommendation by staff, please raise your hand. Any opposed? Seeing none.

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

VOTED: To approve the Planning Department's recommendation for approval.

**(Assenting - W. Hedani, B. U`u, K. Hiranaga, J. Guard,
D. Domingo.)**

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **The motion passes unanimously.** Thank you and good luck with this. Build a nice facility.

Ms. Hiraga: Thank you.

- 6. MR. ANTHONY PLITT of INTRAWEST PLACEMAKING requesting a determination that the restaurant re-design (Duke's Canoe Club) is a non-substantive modification to the Special Management Area Use Permit and Planned Development Permit - Step 2 Approval for the Honua Kai Project and that amendments to the Special Management Area Use Permit and Step 2 Planned Development Approval are not required for the Honua Kai property situated at TMK: 4-4-014: 006 and 4-4-014: 008, Kaanapali, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (J. Prutch)**

Mr. Starr: And before we move on to the next item, it's come to the notice of the Chair that there has been a number of correspondence, including, I believe, a petition to intervene regarding the Duke's Canoe Club. And because of the issues involved, and particularly, regarding public notice requirements that would require a public hearing to be agended ten days before – specifically for this item, it somewhat complicates the issue of us being able to even discuss the request for intervention on this. So it is the Chair's recommendation that this – that either one of two things happen: we defer this until we can make sure that the process is such that we can deal with it without violation of the Sunshine Law, or perhaps we should maybe go into executive session to hear about this from Corp. Counsel, or if you want to hear whatever else we can get from Corp. Counsel without executive session, you're welcome to hear it, but anyway, friends, what is your pleasure? And you're not in order right now, Ms. Matin. Commissioner U`u?

Mr. U`u: I'd like to make a motion, I guess, to go into executive session, and take it from there.

Mr. Starr: Is there a second?

Ms. Donna Domingo: I'll second.

Mr. Starr: Okay, moved by Commissioner U`u, seconded by Commissioner Domingo to go into executive session. Yeah, and the reason why—and I believe this was part of the motion—the reason why we would go into executive session is—

Mr. Giroux: To discuss your rights, and responsibilities, and liabilities regarding procedure regarding this matter.

Mr. Starr: And for that purpose only and not for decision-making, but just to consult with counsel. Any discussion on that? Okay, all those in favor of the motion to go into executive session, please raise your hand. Any opposed?

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

VOTED: To go into executive session.

**(Assenting - B. U`u, D. Domingo, K. Hiranaga, J. Guard,
W. Hedani.)**

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **Unanimously, we are going into executive session.** Request that the room be cleared. We will request that Corp. Counsel remain with us. Also, that—Whatever it takes. Also, that Deputy Director Suyama remain with us. That the Secretary – Acting Secretary Suzie remain with us, and also – what's your first name?

Mr. Prutch: Joe.

Mr. Starr: And Joe remain with us. That's all we need, right? And Akaku will assure us that they're turning off the cameras.

(The Commission then went into executive session at approximately 1:53 p.m., and reconvened back into regular session at approximately 2:15 p.m.)

Mr. Starr: Okay, the Maui Planning Commission May 13th meeting is back in regular session. Commissioner U`u?

Mr. U`u: I'd like to make a motion.

Mr. Starr: Please proceed.

Mr. U`u: Motion to strike the agenda item and inform the applicant to proceed in accordance with Maui Planning Commission SMA Rules 12-202-17 and 12-202-13 to a public hearing.

Mr. Starr: Okay, do we have a second?

Ms. Domingo: I'll second.

Mr. Starr: Okay, moved by Commissioner U`u, seconded by Commissioner Domingo to strike the agenda item and to request that if a desire is to proceed that it be done in a fashion mentioned – the wording of the motion will be transferred to the Department. Any discussion or amendments from Members of the Commission? Seeing none, we will vote on the motion. All in favor, please raise your hand. Any opposed?

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

VOTED: To strike the agenda item and inform the applicant to proceed in accordance with Maui Planning Commission SMA Rules 12-202-17 and 12-202-13 to a public hearing.

(Assenting - B. U`u, D. Domingo, K. Hiranaga, J. Guard, W. Hedani.)

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: **The motion carries.** Okay. Yeah, Martin, go ahead. I'll allow you to ask question.

Mr. Luna: Thank you. Martin Luna for the applicant. Could we have a little clarification on the motion 'cause our understanding would be that if there is any potential adverse effect, that would require going through the SMA. That's question no. 1. So if there's a concern that there may be potential adverse effect, then if – would it possible for the Commission to inform us what that would be? And then secondly – the second question–

Mr. Starr: Okay, wait. Let's deal with one at a time, and I'll ask Counsel Giroux to answer.

Mr. Giroux: Hi, Martin. Martin, I'm looking at 12-20-17, and I'm gonna ask you to get a copy of it. Do you have a copy of it?

Mr. Luna: Not handy.

Mr. Giroux: Can you get one and read it, please, for us? Because this is really crucial in the fact that, you know, I think the public and everybody involved has to really be aware that the role of the Commission in granting SMA permits and then dealing with subsequent changes is a very difficult one. And if you look at our Rule 12-202-17 that it states – it says:

Any person who has been issued a special management area use permit may request the Director or the Commission to amend, delete, or determine any terms, conditions, or time stipulations placed upon such permit.

And I'm gonna skip down to Section C, Paragraph 2. It says:

Unless waived by the applicant and the Director, notice of the public hearing to amend or determine the permit shall be given pursuant to the procedure set forth in Section 12-202-13.

And that's our Public Hearing section:

A public hearing shall not be waived if a petition to intervene was filed or any person other than the applicant was admitted as a party to any prior proceeding on the matter unless a written waiver from all parties had been received by the department.

In reading that rule, I do not see anywhere in it where it's telling this Commission to make a predetermination of whether or not that change is significant or not. If there are any changes that were minor enough to not raise the concern that this may be a major change would've been taken care of by the Director. Being that the Director didn't dispose of it, for us to try to dispose of it without a public hearing puts us at a very severe disadvantage. And I think that's the – where the Commission is looking at in giving the direction to the developer to say that if you are gonna make a change, and it's significant enough to raise an eyebrow, then we need to be following our procedures within our Commission rules despite the fact that you want that change, a determination, of whether or not there is an ecological effect made by that change.

Mr. Luna: You're saying that as long as WMPA says it's a significant change for you folks, the Planning Department, and the Planning Commission is gonna say it's a significant change?

Mr. Giroux: No, as long as there's an intervener who has been given–

Mr. Luna: That's what I mean–WMPA is the intervener.

Mr. Giroux: No. But it's not – they're not the ones to be telling us if it's significant or not. What we're saying is that if the applicant is coming before us to ask for an amendment or a change of their conditions, we have to follow our rules and allow the public participation.

Mr. Luna: No, I understand that, but here we have some changes made to the restaurant. And so the question is—and this was asked, I think, at the Urban Design Review Board by one of the architects—and he asked, at what point because when they come in for an SMA permit—

Mr. Starr: Excuse me, Martin. I'm gonna call that discussion out of order because we don't really intend to get into discussion of the merits of the change.

Mr. Luna: No, no, no. I'm not asking for the merits. I'm just asking – trying to determine what the architect asked also. He said at what point do we know whether it has to come before the Commission for SMA approval, an amendment, or not? That was his question. And that's what we're faced with right now. So you're saying that the motion was to go ahead and require us to go get an SMA amendment. And so my question is— Because we do have a restaurant that's already been approved, and I'd like to ask if you folks can modify your – the intent of your motion is that if we don't come in with our same approved restaurant, then we're required to come before this Commission with what we have asked your – the Commission to review with the changes. I wanna make sure that it's clear that your motion is not just requiring us to come in because we already have an approved restaurant, but if we change the way we have changed it already or proposing to change it, then we're required to come in with an SMA amendment. Is that okay?

Mr. Giroux: Martin, if you're going to ask us to amend the SMA or to make a determination that the changes that you've made are not significant, then you will be – what we're asking you to do is please follow 12-202-17.

Mr. Luna: And we don't have any determination as to what point it's not required to do – with whatever changes we make, we're not – we don't know whether to come in or not. Or would it be the Deputy Director's decision at some point because since the Planning Director is disqualified from acting? Is that the guidance we can have the Commission?

Mr. Starr: I think the guidance is – resides in the motion and in the rules of the Commission which frankly, the thing has occurred very quickly, and perhaps some study might lend more wisdom to it. Commissioner Hedani?

Mr. Hedani: I think what we're saying in this particular case is that in an over abundance of caution if you're gonna do it, let's do it with the appropriate hearing, is what we're saying. Or if you wanna proceed with the plan as was originally proposed and

approved, you already have an approval.

Mr. Luna: Okay, so for – the intent of the motion is only if we come in with the changes that we proposed on the revised restaurant, then that motion would apply. Otherwise, we can still proceed with our – with what we have.

Mr. Starr: I think that if, you know, the Department, the Director or Deputy Director feels that it's truly insubstantive, you know, then that becomes their call at a certain level but, you know, that's not what we've heard from the–

Mr. Luna: Okay, that gives us a little bit of guidance. Thank you.

Mr. Starr: Members, anything further on this? You ready for the vote? Or did we vote already? Okay. Okay. So thank you. That finishes up– Okay, Item No. 6.

E. APPROVAL OF MINUTES AND ACTION MINUTES OF FEBRUARY 26, 2008, MARCH 11, 2008 and MARCH 17, 2008 MEETINGS

Ms. Suyama: The next item on the agenda is the approval of your minutes, February 26, 2008, March 11, 2008, and March 17, 2008.

Mr. Hedani: Move to approve.

Mr. U`u: Second.

Mr. Starr: Okay. Moved by Commissioner Hedani, seconded by Commissioner U`u to approve the listed minutes. And any discussion? None? All in favor, raise your hand. Any opposed, say no.

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

VOTED: To approve the minutes and action minutes of February 26, 2008; March 11, 2008; and March 17, 2008 meetings.

**(Assenting - W. Hedani, B. U`u, K. Hiranaga, J. Guard,
D. Domingo.)**

(Excused - W. Mardfin, W. Iaconetti.)

(Absent - J. Pawsat)

Mr. Starr: Lance and Sharon, could you hang for a minute? There may be a question from some Commissioners. I don't know. Moving right along. The Planning – we have follow-up reports?

F. DIRECTOR'S REPORT

- 1. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission at the April 22, 2008 meeting.**

Ms. Suyama: Not to my knowledge. There is no follow-up report.

- 2. Planning Commission Projects/Issues**
- 3. EA/EIS Report**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report**

Ms. Suyama: The only other thing that's on your agenda is the reports that the Commission – projects that were issued, EA/EIS reports, the SMA minor permit reports, and the SMA exemptions report. So unless there were any specific questions regarding these?

Mr. Starr: Okay. So as far as the EA/EIS report, do any of the Members have any questions or comments on that? Okay, SMA minor permit report? Commissioner Hiranaga?

Mr. Hiranaga: Actually, Planning Commission projects and issues.

Mr. Starr: Yeah, I kinda skipped that one for a second.

Mr. Hiranaga: Okay.

Mr. Starr: Exemption, SMA exemption report? Okay, go ahead on Planning Commission projects/issues.

Mr. Hiranaga: I had a chance to review the draft General Plan that was distributed to us. And I wanted to make a couple of requests, I guess, to give the Department appropriate time to meet these requests. I'd like to see an overlay of the current plan versus the proposed plan so we can see what changes are being proposed from the current plan, 'cause it's not like we're throwing the current plan away and starting from scratch. So I'd like to see what the designations are in the current plan and maybe you could do like a plastic flip-over so we can see what the changes are from the current plan and the proposed plan.

Ms. Suyama: You're talking in terms of when an application comes in for a community plan amendment?

Mr. Hiranaga: No.

Ms. Suyama: You're talking about the actual general – the Island Plan?

Mr. Hiranaga: Yes.

Ms. Suyama: Okay, because the Island Plan has no map to it. It's – I mean, the General Plan has no map to it. It's just a policy–

Mr. Hiranaga: I'm talking about the urban–

Ms. Suyama: The urban growth boundaries?

Mr. Hiranaga: Yeah.

Ms. Suyama: So you're talking about the Maui Island Plan rather than the General Plan.

Mr. Hiranaga: Yeah, the current plan designations and the proposed. So if you could do some type of a thing where you can overlay it and you can see where the changes are.

Ms. Suyama: I think the overlay would be only where growth is being projected versus where growth is existing right now.

Mr. Hiranaga: Well–

Ms. Suyama: Because it's not gonna be like where you're gonna have land uses that show that this is residential, apartment, business, commercial because that comes after the Island Plan is adopted. When each individual community plan gets revised is when you change all of those specific land use designations.

Mr. Hiranaga: So we would just be talking about urban, rural–?

Ms. Suyama: Yeah, the urban growth boundary means is that within this area is where development should occur. And the areas outside is where development should not occur. So it's only a development here, a development not there is all the Island Plan is meant to be.

Mr. Hiranaga: Right. So there are changes – there are additions and deletions in the proposed plan.

Ms. Suyama: Right. So the only thing they could show is that if this is where the new Maui Island Growth Plan – Maui Island Plan is, what areas that are on the current community plans are signified for development that's been taken out. They can do that.

Mr. Hiranaga: Or the increases.

Ms. Suyama: Right, or the increases, right.

Mr. Hiranaga: Yeah, the expansion.

Ms. Suyama: Right, so we can do that graphically, for you.

Mr. Hiranaga: Yeah, I'd like to be able to identify those. And then the other thing is I'd like to know the major landowners of those designated areas. I don't know at what point you consider them a major landowner.

Ms. Suyama: Well, to me, if you own more than hundred acres, you're a major landowner.

Mr. Hiranaga: Yeah. So I guess at some point when those urban growth boundary maps come to us, I'd like to be able to have that information.

Ms. Suyama: Okay.

Mr. Starr: Okay. So noted. I don't think that's gonna be 'til probably about September. I have an issue. I recently attended the American Planning Association National Conference in Lost Wages, Nevada. And it was really a great experience. And I really want to encourage other Commissioners to try to attend the next year and subsequent years. You know, I – apart from, you know, so much about basic planning, and urbanism, and sustainability, and all of that, there's a complete track for Commissioners, just for Commissioners. And, you know, I spent three full days going to meetings that were just designed for training Commissioners. You know, it's amazing the way people do things differently in different parts of the country. There were mock Planning Commission meetings that show how they do it in different jurisdictions. It's, you know, we do things one way. There were 20 different ways of doing it. Maybe some were better. Maybe some are worse. But it's interesting to understand it. You know, I sat through three workshops on – just on ethics. And, you know, there was just so much to do. It was incredible. So, you know, I'll be bringing up some stuff I found about that, you know, at later meetings, but it really was worthwhile. I did go on my own behalf and it was a bit expensive, but it was well– It was eight hundred bucks just to register. You know, forget about hotel and your flight but just, you know– Wayne?

Mr. Hedani: I was just gonna say I have served on the Police Commission. And the Police Commission has a similar organization nationally that handles oversight over law enforcement officers. It's called NACOLE. This would be the equivalent of NACOLE. And in the Police Department, the Department budgets for Members of the

Commission, usually the Chair, or Vice-Chair, or whoever is really interested from the Commission to attend national conferences to gain better insight on the process. And I would make a recommendation that the Department consider funding, you know, two or more people from the Commission on an annual basis to meetings like that because I think it's worthwhile.

Mr. Starr: Yeah, I think so too. Really – you really learn a lot. And it really – you know, if more of us go to these, it'll enable us to do this a lot better and a lot more efficiently. Commissioner Hiranaga?

Mr. Hiranaga: Yeah, I'd like to encourage the Chairman to work with the Director to see if we can have that as a budget item for the next fiscal year.

Mr. Starr: Okay. And maybe hearing that, you know, start putting – you know, look at your calendars. It's gonna be the last, you know, the last week of April. It's gonna be in Minneapolis. There may or may not be snow there. The host committee is really all fired up. I got to meet all the guys who were hosting it. It's gonna be great. So anyone who can make it, think about it. And I'm happy to try to move forward with that. Commissioner U`u?

Mr. U`u: I will be volunteering myself if money is allocated to be going on that.

Mr. Starr: Okay. No golfing, though. There's snow on the ground over there.

Mr. Hedani: It's gonna be in February, so it's gonna be cool.

Mr. Starr: Do they have an indoor golf course in that big mall? I don't know. Anyway, good things. And also, don't forget about the Hawai'i Conference of Planning Officials, September 11, 12, 13 at the Grand Wailea. It's gonna be a great event.

Now, just to go back on our agenda before we adjourn, there was spirited discussion before regarding WMPA, and reporting, and the – I forget what the organization that was to be constituted. And I know there were questions that people wanted to have answered by the WMPA representatives who are now before us. So if anyone has any questions or – and also, someone should bring them up to speed on what we discussed before. Commissioner U`u?

Mr. U`u: I have confidence that by explaining it to the Planning Director, the Assistant Planning Director, that she will notify them of things we discussed.

Mr. Starr: Okay, but just since they're here, Colleen, what was the outcome of that? And I know it will be put in a letter, but just in fairness, what's—?

Ms. Suyama: The Commission had asked from WMPA whether they would give a status on the monies that were allocated to WMPA for the West Maui Community Fund, and the status of getting yourself your nonprofit status, as well as getting your board together to vote on the bylaws. That was one of the things that they had some questions on. And if you're not able to get the Board constituted and approving the bylaws, whether you would allow Intrawest to take that responsibility. That was the other thing. The other one was, they did realize that the \$250,000 that was used for the design fees for Lahaina Bypass Road, and the remaining \$35,000 for the Lahaina traffic light sequencing whether it could be reallocated to another project that maybe would be supported by the Public Works Department in terms of roadway improvements. And I believe that was basically what, you know, the Commission had asked from – for some kind of status report.

Mr. Starr: Okay. So basically, we're asking that that meeting that, you know, hopefully, will take place very, very shortly, and that we'll get reports, and all will be good in the world. Okay, anything else? Go ahead, Commissioner Hiranaga.

Mr. Hiranaga: On that request for the overlay, if you could have the Department's proposal and then the GPAC's proposal because, you know, they'll have changes, possibly.

Ms. Suyama: Okay.

Mr. Hiranaga: And then the proposed. So there's three scenarios.

Mr. Starr: Okay, Members? Okay. We'll adjourn. Everybody go fishing.

G. NEXT REGULAR MEETING DATE: May 27, 2008

H. ADJOURNMENT

The meeting was adjourned at 2:40 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Jonathan Starr, Chairman
John Guard, Vice-Chairman
Wayne Hedani
Bruce U'u
Donna Domingo
Kent Hiranaga

Excused

Ward Mardfin
William Iaconetti

Absent

Joan Pawsat

Others

Colleen Suyama, Planning Department
Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works (Morning Session)