

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
MAY 27, 2008**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 8:32 a.m., Tuesday, May 27, 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: Good morning everyone. This is the May 27, 2008 meeting of the Maui Planning Commission. I'd like to welcome commissioners, members of the public and members of the Planning Department. We have with us Commissioner Kent Hiranaga, Commissioner Bruce U'u, Commissioner J. B. Guard, I'm Jonathan Starr, Chair, we have Commissioner Joan Pawsat and Commissioner Wayne Hedani so far. Commissioner Iaconetti is excused. We have our Planning Director Jeff Hunt. We have Carolyn our able secretary and other exceptional members of staff and our Corporation Counsel James Giroux. With that we'll proceed with our meeting.

Before we start members of the public will have an opportunity to testify on any item on the agenda. They can testify either at the start of the meeting or before that specific item. We request they only take one of those possible opportunities and then keep their testimony as short as possible and in no case no longer than three minutes and if you speak past three minutes we'll let you know.

Anyway, moving right along with the meeting. I'd like to ask the commissioners before we have testimony, we do have some members of the public here regarding some of the three related bed and breakfast TVR applications we have as Item C. It may be kinder for them if we were to move Item B-1 behind Item C on the agenda so that the public can participate in that if any of the members which is to move that, that would be welcome, if not, we'll proceed as planned. Okay, seeing not, we'll move along to Item B-1. I'm sorry, and before we do that we're going to give the public an opportunity to testify on any agenda on the agenda. I do have some people signed up. I don't know if you want to wait for the specific item or testify now. Anyone wishing to testify please make yourself known. Not seeing any – oh, come forward.

The following persons testified at the beginning of the meeting:

Mr. Mike Gary - Item C-1, Janice Tanaka Tower, SUP2, CP  
Mr. John Hirashima - Item C-1, Janice Tanaka Tower, SUP2, CP  
Mr. Paul Meyer - Item C-1, Janice Tanaka Towner, SUP2, CP  
Mr. Mike Newboro - Item C-2, Linda Gallagher, CP

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

Mr. Starr: Any other members of the public wishing to testify at this time on any item please let yourself be known? Seeing none, the initial public testimony portion of meeting is concluded and we'll move along to Item B-1. Director Hunt.

Mr. Jeff Hunt: The first item on your agenda involves Mr. James H. Schloemer requesting an

Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the Shoreline Setback Variance application for the proposed Schloemer Residence at 4410 Makena Road, TMK: 2-1-011: 028 in Makena. The file numbers are (EA 2006/0018) (SSV 2006/0005). The staff planner assigned to this project is Thorne Abbott.

**B. UNFINISHED BUSINESS**

- 1. MR. JAMES H. SCHLOEMER requesting an Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the Shoreline Setback Variance application for the proposed Schloemer Residence at 4410 Makena Road, TMK: 2-1-011: 028, Makena, Island of Maui. (EA 2006/0018) (SSV 2006/0005) (T. Abbott) (The draft EA was reviewed at the March 13, 2007 meeting. Final EA determination previously scheduled for March 25, 2008 meeting. Final EA previously distributed for the March 25, 2008 meeting. Commissioners: Please bring your Final EA with you to the meeting.)**

**The Environmental Assessment trigger is the planned work within the shoreline setback area. The accepting authority for the Environmental Assessment is the Maui Planning Commission.**

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

**The public hearing on the Shoreline Setback Variance will be scheduled for a future date after the Chapter 343 process has been completed.**

Mr. Thorne Abbott: Aloha, good morning. Congratulation Chair Starr and Commissioners. You've already reviewed the draft EA. There were changes made and as a result of that, of your comments in the final EA, Chris Hart and Partners and Raymond Cabebe would like to do a short presentation of what those changes are. You've also, most of you have conducted a site visit at the location to get the better sense of place. With that, I'll turn it over to Chris Hart and Partners and Raymond.

Mr. Starr: Before you start do you have an idea of how long it will be about?

Mr. Abbott: I believe it will be quite brief.

Mr. Chris Hart: It's going to be about 15, 20 minutes if that's all right?

Mr. Starr: Right now, I'm just asking how long they'll be, but I know as time goes on we'll be looking to try to save time where we can.

Mr. Hart: Okay, thank you Mr. Chair, and also congratulations on being the chairman. My name is Chris Hart of Chris Hart and Partners and I have with me, Raymond Cabebe who is the staff

planner in this project. Our applicant, Mr. Jim Schloemer is present in the audience. The architect for the project is Anthony Riecke-Gonzales and he's also present together with Satish Gholkar who is our engineer and Lisa Rotunno-Hazuka who is our archaeologist and if there's any questions, they will be available for questions.

With that, we'd just like to begin and I'm going to just introduce it. Oh, I'm sorry, and then we have – Thorne suggested that we pass out these changes that were made to the final EA so that you have them ready for reference. He felt that that was a better approach. So we have them for you.

This is the Schloemer residence and the commission actually made a trip to the site almost – just about a year ago on May 14, 2007. Basically an application for shoreline setback variance triggers the requirements for Chapter 343 compliance so we have prepared this environmental assessment. Today you're commenting, you're doing on the final EA with the hopes of being accepted today.

The shoreline setback variance is the trigger for Chapter 343, environmental assessment requirement. The applicant is seeking a variance to construct a portion of the main residence outside of the erosion rate base setback but within the average lot depth setback. Basically, the items located within the setback are 765 square foot pool, chemical free, 1,991 square foot lanai and 667 square foot living area. The applicant is seeking an acceptance of the final environmental assessment and issuance of a finding of no significant impact. And I'll turn this over to Raymond at this time.

Mr. Raymond Cabebe: Good morning Commissioners. My name is Raymond Cabebe. This is a location map to kind of show you where the property is. Makena coastline up here. It's right outside of Wailea. This is the tax map. This is Kaukahi Street coming down here and Makena Road along here. The address is 4410 Makena Road. TMK 2-1-011: parcel 28. Has an area of 46,209 square feet and it's currently vacant and there is a 14,750 square foot archaeological preservation easement and a natural drainageway. The land use designation is urban, single family community planned HM, Hotel. And it's within, the flood zone designation is C which is minimal flooding, A4 is mostly in the drainageway and V14 is along the shoreline and it's within the special management area.

A brief chronology of what's happened on this property. March 1998, that was when the property was subdivided. A preservation area was created because of the two burials discovered on the property. On April 2004, there was a letter from the previous Planning Director on establishing the shoreline setback at 40 feet, and in June, Mr. Schloemer purchased the property with the understanding that the setback was at 40 feet. In 2006, in July, the draft EA for the shoreline setback variance was submitted and the shoreline was determined at that time to be 88 feet, and this commission reviewed the draft EA on March 13, 2007. March 23, 2007, OEQC published the project in the Environmental Bulletin and on May 14<sup>th</sup>, some members of this commission visited the site. In September we submitted the final EA and on March 25<sup>th</sup>, due to time constraints the commission decided to defer.

Just to refresh your collective memories here, this is a site photo as you approach from Kaukahi Street. The entrance to the property is right here. This driveway is to the adjoining property to the north. As you turn left, this is Makena Road and the property is down here on the right side. You

can see the Bestill hedge, it's pretty thick right now.

This is on the property as you come down to the where the area of the proposed main residence is going to be. It's this top picture here and if you're standing on the shoreline looking north, that's what this photo is here. And looking up towards the drainageway, you can see the property to the south here. It's pretty much completed right now and this is a area of the proposed residence.

The site visit on May 14, 2007, the orange fencing shows the limits of the archaeological preserve. This area here is where the access to the makai side of the site. It's about five feet wide. The applicant had a – from the Burial Council received an additional 3.2 feet. So for a width of about 8.2 feet.

This is another picture of site visit if you can see the outline of the proposed residence here, ...(inaudible)... with that white string. And looking from the shoreline you can see the outline of the proposed residence here in relationship to the archaeological preserve up there and to the house to the south.

The owners are proposing to construct a 5,844 square foot, two-story, single family main residence. There's a 664 square foot attached garage and there's a covered lanai, swimming pool, lap pool and a spa. There's also a ohana dwelling on the mauka portion of the property.

The next series of slides will show you how the limitations of the site is very challenging. This is a side yard and front yard setbacks. You can see the light, kind of light green area. This is flood zone area. This is the preservation area up here it's 14,000 square feet. And finally, the shoreline setback area, this is the erosion rate based and the average lot depth based setback right there and you can see the view corridor through the drainageway. So the building envelope of the property of this 46,000 square foot property, 18% of it is 8,260 feet.

So the encroachment from the draft EA design to the current final EA design, area of encroachment has been reduced by 1,055 square feet or 38% or 2,791 to 1,736 square feet. That's on the upper and main levels. At the pool level the encroachment is reduced by 350 feet, 350 square feet or 17%.

This is original draft EA plan. You can see the pool has a little different configuration. You can see it actually goes little into the erosion base setback that was because when it was originally designed the rules stated that it was a 50 times the erosion rate plus 20, but now it's 50 times the erosion rate plus 25. This is the current design where everything is completely out of the erosion rate setback.

The next series of slides will show you the difference between the two, between the draft design and final design. This is on the ground level, pool level, the encroachment on the draft design was 22,472 square feet or 84% of the area inside of this – the difference between the erosion rate and the lot depth base setbacks. And that was reduced to 1,756 square feet or 60% of the area. The applicant decided to take out all the enclosed areas within the setback area. So the final design here is what we passed out today which shows you that the – there's no enclosed areas within the setback area at the pool level. At the main level, the encroachment and the draft design was at 1,570 square feet or 53% and then on the revised final EA design it's at 1,236 and 42%. And the upper level it was 787 square feet or 26% and that was reduced to 500 square feet or 17%. So just to summarize again that the area of encroachment is reduced by 38% and at the pool level by 17%.

Another concern that came up at the last meeting was the landscape planting. It wasn't quite detailing so we're detailing it here in the final EA. Mostly native planting. There's a couple of nonnatives those are around the dwelling itself. You can see there's – I'll have Chris describe the landscape planting.

Mr. Hart: Just wanted to point out that one of the slides that Raymond showed was that there were a lot of bestills along Old Makena Road. Those bestills have been replaced with palms and basically it's an ilima groundcover which is ilima papa and that truly the area has been opened up quite substantially as far as the visual opportunities are concerned. Right now it is pretty much blocked off from public view but the bestills and so on will be removed again.

Also, I'd like to just point out that this is the residence, the existing residence on the north side of the property which has been constructed and that basically it does actually protrude beyond the erosion base setback that our building is actually setback farther.

Mr. Starr: That's 15 minutes Chris.

Mr. Cabebe: Yeah, I'll go quickly through the next few, the existing views that we've seen before. This shows the view corridor, it's 44% open here through the drainage area and then a small area up here to the north. This is a photo realistic representation of what the house would look like on the shoreline. This is a site section showing what the view, a person standing on the road here. So the property kind of rises a little bit. A person on the road will only see the top portion of the house. This is the drainageway looking from the road, if you're standing right on the road and the guardrail is right there you can see it. In looking down into the drainageway there was a concern that at the last meeting about access to the shoreline and the applicant has agreed that he'd be willing to put maybe some stones down there so to make the access a little bit easier to get down to the shoreline. Also note that the bottom part of the shoreline here is actually in the property to the south, but he'd be like willing to put some stone steps either on this side or this side of the slope to allow people to walk down to the shoreline. And this is looking back towards the drainageway from the shoreline.

And another thing that we handed out today is a revised drainage plan. Originally there was going to be six dry wells under the driveway here to accommodate the runoff, the storm water runoff. That's been changed to a hundred linear feet of perforated pipe still be located in the same area you can see by the profiles it's kind of less intrusive into the ground. It's not as deep as the dry wells would be.

That concludes our presentation.

Mr. Starr: Okay, members, questions? This is a time to ask questions of the applicant and also of our staff planner. I know he's got some comments as well, but first I'd open it up for questions of the applicant and then I'll turn it over to Thorne. Go ahead Commissioner Mardfin.

Mr. Mardfin: I apologize for not having been on the commission last year when they did the site visit and everything else. But, I have a letter, I think we all got a letter from Maui Tomorrow regarding this and they say, "Maui Tomorrow Foundation has concerns regarding the determination of environmental assessment, the above-mentioned lot is situated on a cove along the shoreline. An

ancient fishing shrine, koa, is located a few lots over and a coastal trail now blocked once lead from the koa out to this rocky point, a significant fishing area for many generations of Hawaiians. Can the Planning Commission insure that the proposed action will not further impede the ability of traditional fishing and gathering access in the area." So I pose that as my question.

Mr. Abbott: Staff would be glad to comment to that. You received this memo on March 25, 2008, and they also commented on the Garcia residence. In the case of the Schloemer residence, they actually have the wrong TMK and they're talking about the wrong property.

Mr. Mardfin: So this doesn't apply?

Mr. Abbott: No, it does not.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, members? Why don't you give us some presentation on this especially regarding the setback variance Thorne.

Mr. Abbott: First off, let me read the staff report and what your options are. You originally reviewed the draft EA back on March 25, 2008. I'm sorry on March 13, 2007, and the final EA represents the changes and responses to your comments as well as other agencies. In consideration of the significance criteria defined in Section 11-200-12, Hawaii Administrative Rules, the commission may take the following actions, either accept the final EA and issue a Findings of No Significant Impact, you may defer the final EA, you request the applicant prepare an environmental impact statement, any of those. The Department's recommendation is that you issue a Finding of No Significant Impact.

Now having said that, this application is nearly four years old. The applicant has made substantial, substantial changes as a result of this process and the point of this process is to mitigate, minimize and avoid any environmental impacts. As you saw from the site plan there, the lot has a lot of restrictions as to the buildable area and I compliment the applicant for going through this process and making so many substantial changes. With that, that concludes the staff report. We do recommend the issuance of a FONSI or a Finding of No Significant Impact.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: Just for clarification. So this shoreline setback variance they want to break the standard shoreline setback so they can add a pool and this kind of monstrous, the rest of this 6,000 square foot house is that correct?

Mr. Abbott: The vast majority of the house is actually outside of the setback area. Previously when this application was submitted there was a statement in the shoreline rules which has since been changed that says that you can build within the difference between the erosion rate setback and the average lot depth setback under certain circumstances. And in this case, he meets that criteria. So that was their original proposal. They were building outside of the erosion rate base setback but within the average lot depth base setback.

One of the reasons the lot depth setback is very large is because their property extends all the way to the road, but the vast majority, about half of the property cannot be used because of the preservation area. That still counts towards their average lot depth setback. So in this case, in some respects they're being penalized for that area which they cannot use as developable area. The erosion rate base setback is based on 50 years. So within 50 years one would presume the ocean should be right around where the pool is, well actually give or take 20 to 25 feet.

The applicant also made one other change. Originally when this application was submitted, the formula was the erosion rate setback times 50 years of protection plus a buffer of 20 feet for high surf, storms, large waves, that kind of thing. We amended the rules to make the formula, 50 years times the erosion rate plus a buffer of 25 feet and he has adjusted his proposal for that extra five feet which I think is commendable. He did not have to do that given when he made this application.

Ms. Pawsat: He was aware of the reserve on the lot when he purchased the property I presume?

Mr. Abbott: Yes, he was. Also, there is a caveat that he is not allowed to harden the shoreline in the future to protect this property. That's a important condition.

Mr. Starr: Yeah, Vice Chair Guard.

Mr. Guard: Thank you. Does this make your job any harder for the next applicant who wants to start building in the setback variance and why not?

Mr. Abbott: No, I don't see this as a precedent setting because we corrected that oversight in the shoreline rules.

Mr. Guard: And this one got through there?

Mr. Abbott: You could say, you could interpret that way, yes.

Mr. Guard: One concern is, I know there was last year, the year before we had someone on Front Street wanting to build in the setback saying they didn't have enough room and we told them to build in their backyard on Front Street and they I guess went away I don't know, but that was – I don't want anything like that stinging us that, hey these guys jumps through hoops and they did it and why not us?

Mr. Abbott: I'm very mindful of precedent setting and I think Director Hunt can speak to that, that I'm pretty anal when it comes to that. In this particular case, we're supporting the FONSI because the applicant has made substantial changes. There were errors made including errors by the department. He purchased his property based on a shoreline setback determination of 40 feet that was incorrect. It's actually 88 feet. So to summarize, I think it's a reasonable use of his property and that's the criteria you have to use.

Mr. Guard: So we're not going to have the – we're not going to later on deal with other properties, there's some down the street that say stay away from my pool because the pool creates a 12-foot wall and you're trying to walk around the rocky point and you're stuck in the wash of the waves on

certain days trying to walk around the point. So this is further back than that?

Mr. Abbott: Correct.

Mr. Guard: Because that's a concern of some people that walk the shorelines around there.

Mr. Abbott: Correct. This will be substantially – this will be behind the erosion rate base setback. So presumably over the next 50 years you would have lateral shoreline access.

Mr. Guard: And last question. I know other people have done these subdivisions to create a circumstance like this where they create one large flag lot to allow the houses to get pushed forward. So is there something to stop that in the future because I believe it was all one large parcel and they created this when was that preservation area created and then did that allow the opportunity to push these houses forward?

Mr. Abbott: Unfortunately, you know, a lot of the subdivisions you're quite right, flag lots, in fact there's one further south on this property that was done many, many years ago and it's going to be a real challenge to deal with that particular parcel. Mr. Kean, I believe it's Mr. Kean, just to the north, whose house is on Raymond's pictures is actually much closer to the shoreline. He's 25-foot away. So we try to work with subdivision. They do need to get an SMA now to prevent this kind of inappropriate development. In this particular case, more than 50% of the lot is unusable and it's a reasonable use.

Mr. Guard: It's unusable because they created it that way, right? I mean, lets just look back a little. It's not like 200 years ago this preservation area was there, right?

Mr. Abbott: No, I think it was done in '98.

Mr. Guard: Okay, so people know that it was created fairly recently. Instead of saying, oh the lot is encumbered with these things. They created that encumbrance.

Mr. Abbott: Yes, and it was done prior to your erosion base shoreline rules back when the setback was 25 foot or 40 foot unfortunately.

Mr. Starr: Commissioner Pawsat first.

Ms. Pawsat: I just have to ask you a question about your opinion on something. Now collectively if you take all the individual residences on this beach, if a developer had developed it all at once, he would probably be required or we would require them to make some concessions for public space and public use.

Mr. Abbott: Absolutely.

Mr. Pawsat: How do you feel that collectively these homeowners have – they seem to be kind of becoming a public nuisance, so to speak, how do you see that they have contributed collectively, because it's kind of piecemeal development on a residential scale. So then we are – because we



determined – individually we're like oh, that's not fair to do that to the one individual resident. But collectively they contribute really nothing to the public. What is your opinion on – have they made any contributions collectively to the public or is there a public space besides these, you know, very limited, you know, 20-foot wide or less “view corridors” which are really drainage canals. They don't have views and they have to be there anyway and things like that.

Mr. Abbott: This is my personal opinion and not reflective of the department's position. I completely agree with you because this has been done piecemeal. It is not reflective of more intelligent development and design that protects the public's access and views to the ocean. I believe there's six properties in the string of developments, four have redeveloped without any real consideration of view planes to the ocean or access mauka to makai access. Mr. Schloemer has included view plains. Agreed it is in a drainage arguably but he's changing the vegetation to enhance that view which I commend him for. He's also looking at putting in some stairs. It's a real steep, difficult access area, but he is obviously willing to try to accommodate that as much as possible, not to mention let people walk over his property to get to the ocean. There are fishermen that go there on a regular basis. There is one, actually it's a three parcels running mauka to makai at the very south end that are vacant. When they come to be developed, we're going to be requesting that they provide a public access, but that's a request, we can't demand that. So it is a problem and fortunately Mr. Schloemer is the only one that developed his lot being mindful of that. He's also been mindful of the archaeological considerations in letting native indigenous people visit it.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Couple of questions. One, the setback's based on 50-foot, 50-year, I'm sorry, but without consideration of global warming and impact that what used to be 50 feet year thing might be 10 or 20 or 30. So I don't have to ask it. This may be too little from an erosion point of view actually but it's the law. What if any, liability exposure does the County have if we allow something like this and then 20 years from now things get wiped out. Do they come back to the County saying, well, you let us do it so you're responsible.

Mr. Abbott: An excellent question. This will be coming back to you for the SMA and shoreline setback variance approval. Right now you're just deciding whether there's an environmental impact on it or not or whether those impacts have been mitigated sufficiently. When they come back for the SMA major and the shoreline setback variance, mandatory conditions are that one, the County is held harmless. There's no liability. And two, they cannot protect the structure, they cannot harden the shoreline in the future in order to protect this particular property.

Mr. Mardfin: So they bear all risk of ...(inaudible)...

Mr. Abbott: And that's recorded in a unilateral agreement that runs with the land. So even if he sells it to someone, that same person will have the same issue.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner U'u.

Mr. U'u: If that happens and that's when we run into runoff problems though with the erosion and I know you guys stated that there's a chemical free pool. Could you explain that? And how you would monitor a chemical free pool.

Mr. Abbott: The concern Bruce, Commissioner U'u was that if you had say a large storm wave come in and went into the pool and went out if that was a chlorinated pool it would take that chlorine out into the reef. Chlorine kills fish and corals, we don't want that. So they've changed their pool from a chlorine based pool to a brine, semi-salt type pool. I believe that is correct. Yes.

Mr. Starr: And ...(inaudible)... too.

Mr. Abbott: Right. So there's no chlorination. There's no chemicals, there's no ...(inaudible)..., it's just UV.

Mr. U'u: Also, you used the term, "reasonable." It's almost 9,000 square feet the home. And you used the word, "reasonable." What is unreasonable in your opinion Thorne?

Mr. Abbott: The applicant would suggest that if you look at neighboring properties one of which is 14,000 square feet, one of which is proposed as 18,000 square feet with a gymnasium, a theater, a sports arena, wine cellar, elevators. His proposal in contrast to the neighboring properties is substantially smaller. The other contacts of reasonable use is, is he being denied reasonable use? If you add up all those setbacks together, there used to be on the books if you had less than 50% of your property usable, you could use up to 50%, but we've changed that, looking at all those setbacks he has less than 50% to use.

Mr. U'u: Did he buy that knowing that though?

Mr. Abbott: He bought it based on a setback, shoreline setback of 40 feet not 88 feet. So yes, that would have changed things a bit.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Thorne, when the applicant purchased the property and got the determination from the County that the setback was 40 feet was that in writing?

Mr. Abbott: It was in writing. It was done by previous administration.

Mr. Hedani: So they did get a determination in writing from the county that the setback was 40 feet?

Mr. Abbott: They did.

Mr. Hedani: We're changing the rules on right now?

Mr. Abbott: Correct.

Mr. Starr: Okay, Commissioner Guard.

Mr. Guard: I think the view line over that easement is going to be a benefit because those other houses, yeah, you can't really see anything through them. There used to be small cottages up and down that street and it's going to be sad when they are 14,000 to 20,000 plus, hopefully we'll go see concerts and basketball games down there soon.

To the north, this proposed residence you can actually walk there to Polo Beach. It's only two or three lots away. From your last visit could you actually get there right now? Because that was another concern is just in the future, all these other houses that vegetate or irrigate on the shoreline keep anyone from being able to actually access those lateral beaches along that point. Just from your last site visit, it doesn't really have to do with the Schloemer residence, but if there's anything we can do to insure lateral access around there?

Mr. Abbott: The shoreline in this particular case is a rocky shoreline so it kind of moves and mounds and in that area it would be very difficult to grow anything on for people to prohibit access on. The property to the north has probably been the most successful with growing their naupaka out to the edge. Of course, they only have a 25-foot setback. The other properties we've been very mindful of and have kept a close eye on to make sure they don't water their lawn to the makai side. So I don't see any problems with lateral access. I do see problems with mauka to makai and the fishermen will be concerned about that. There is one cottage left. We anticipate that will be sold soon. There is also the three vacant parcels one of which is a flag lot at the very south end. Beyond the south end it becomes kind of a hill, a very steep hill so it's very, very difficult to get through on that side, but that south end, we'll be asking for some public access there, otherwise, it will block it off. And so, once again, Mr. Schloemer is offering that people could at least walk down that drainage ditch which I think will become important.

Mr. Guard: Last one. While we were down there, I think the problem is, is it is currently a rocky shoreline but I think we saw the neighbor to the south had significant soil going into the drainage ditch.

Mr. Abbott: Correct.

Mr. Guard: And is there anything Planning or Enforcement can do? I mean, this was a big thing in the paper about grading that area. Again, not only Mr. Schloemer but other people in general to say it's a rocky shoreline now and five years later it's all of a sudden the best soil on Maui, I think we'd have a problem there. And you can have your roots from your naupaka fairly far away and have it creep seaward correct?

Mr. Abbott: Yeah, the concern there. We did – and there are two RFSs and conducted two site inspections. I met with their landscaper there and even though technically they had a permit to do that from our DSA section we educated them as to why they didn't want to put soil and vegetation in the drainage there. So they subsequently stabilized the bank and changed the grade a little bit and moved it back. Unfortunately, that is all on their property. They did have a permit to do it which was –

Mr. Guard: So we're limiting that or educating, having a little discussion between departments on not allowing the soil in the setback areas?

Mr. Abbott: Yes, that is ongoing and we recently had a presentation from DSA to our team at our staff meeting a couple weeks ago.

Mr. Guard: Last question. The building envelope, that's actually, that's on, that's not on coral and boulder rubble, right? That's on actually hard pack, lava?

Mr. Abbott: As far as I know, yes it is. In fact, it's all elevated out of the flood zone.

Mr. Guard: Okay, well just out of the flood zone, but even with erosion that ever came to be an issue, it's on actual lava, not just the coral and the black rock. If memory serves me, I just can't remember, it seemed like it was elevated up out of that.

Mr. Abbott: Yes. I'm quite sure about that. Fairly sure.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Thorne, the access to the beach for fishermen it seems like it's sort of, kind of, we're going to allow this to happen. What if the property is sold? Is there anything that's going to be legally set down that would allow people public access?

Mr. Abbott: Sure. First off, the mandatory conditions of the shoreline setback variance require –

Mr. Hedani: Mauka to makai?

Mr. Abbott: Lateral access, but when it comes back for the SMA we can make the condition that that drainageway be open to public access at least on Mr. Schloemer's portion of the property.

Mr. Hedani: Okay.

Mr. Abbott: Is that a – well, you can't impose conditions at this juncture but staff will take that into account.

Mr. Hedani: I guess the other comment that I would have is that when the entire commission went down there, what looked like to me was a very flagrant violation by the neighbor to the north of encroachment into the public space, public beach reserve.

Mr. Abbott: Yes.

Mr. Hedani: Which prevented lateral access across their property in an attempt to keep the public out and if you need a complainant for an action on something like that, I'd be happy to do that.

Mr. Abbott: Mauicounty.gov, first column is online services, hit accept and put in a request for service. We'd be glad. And Commissioner Hedani, I think Mr. Schloemer's proposal speaks a little bit to that. He is, if you connected dots between the two neighboring houses, he's setback behind them including his pool and everything else. You know, I'm not real supportive of variance. CZM recently interviewed our department and wanted to know as a matter of tracking performance how

many variances we issued because all the other counties have done many so that's a good performance and I said, no we haven't issued any or maybe one or two. We're pretty tight about doing that, but in this case, I think the applicant's really made substantial effort to adhere to the intent of our rules.

Mr. Starr: Commissioner U'u, did you have one? Don't have to.

Mr. U'u: No, I wanted to know how would you make a complaint. Can we make it now for the neighbors, what Mr. Hedani said or we would have to go online. Since we're speaking to the man right now.

Mr. Abbott: Staff will take that into consideration and take appropriate action.

Mr. Starr: Okay, Chair has a question for you. My understanding is that the shoreline setback rules were put into place to really guard beach access and shoreline, that there will be beaches and there will accessible shoreline for at least 50 years to come and that we're the guardian of the public interest in being able to have beaches and have shorelines in a fluid environment. And that a shoreline variance is an unusual thing to consider and grant and that there needs to be a compelling hardship shown. And in this case, we're being asked that the compelling hardship is a location for a second swimming pool. I believe there are two swimming pools. There's a lap pool and a regular pool was given to us in our presentation and a 2,000 foot lanai. Now I'm sure if that's exactly compelling hardship. In fact, I'm going to ask Corp. Counsel to read the criteria from our rules.

Mr. Giroux: Chair, I just want to give a caveat that we are looking at a environmental assessment and basically I don't want you to be looking at this as looking at the merits of this case because you are going to be required to look at it in the SMA context and the setback context, but I do want you to focus your questions on what kind of information could have been included in this environmental assessment to lead you to a conclusion that there wouldn't be a ecological impact and because this is unique and that we are looking at a variance also and that is the trigger for the EIS, I do believe that it's warranted to at least look at what is the criteria for a variance in order to understand what information you would want at this juncture in order to be able to get you to the point of actually making that decision. So you're kind of looking at this as kind of a predecisional but don't look at it as looking at the project on its merits. So this is basically to allow you to have the information you need at the time in the future when you are going to look at this on its merits.

So being that it's – we're looking at your rules, 12-203-15 criteria for approving a variance, I'm going to jump all the way down to Section B which basically is your hardship analysis and it states: "A structure or activity may be granted a variance on the grounds of hardship if: 1. The applicant would be deprived of reasonable use of the land if required to fully comply with the shoreline rules. 2. The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline setback rules; and the proposal is the practicable alternative which is best conforms to the purpose of the shoreline setback rules. "

Section C. "Before granting a hardship variance the commission must determine that the applicant's approval is a reasonable use of the land because of the dynamic nature of the shoreline

environment inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason, the determination of the reasonableness of the use of the land should probably consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot. For the purposes of this section, hardship shall not include economic hardship to the applicant, county zoning changes, land development permits, cluster permits or subdivision approval after June 16, 1989, any other permit or approval may have been issued by the commission. If the hardship is a result of the actions by the applicant such result shall not be considered a hardship for the purpose of this section.” And then it goes on to talk about –

Mr. Starr: Okay, why don't you tell us about no variance.

Mr. Giroux: Practice my reading skills.

Mr. Starr: You're doing great.

Mr. Giroux: Okay, Section E, “no variance shall be granted unless appropriate conditions are imposed. 1. To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss. 2. Minimize risk of adverse impacts on beach processes. 3. To minimize risk of structures failing and becoming loose rocks or rubble on public property. 4. To minimize adverse impacts on public views to, from and along the shoreline for purposes of this section only. Adversely impacts views means the adverse impact on public views and open space resources caused by new building structures exceeding one-story, a 30-foot height limitation. And 5. To comply with Chapter 19.62 and 20.08, Maui County Code relating to flood hazard districts and erosion sedimentation control respectively.

Mr. Starr: Thank you for keeping us on track. You know, if you want to speak to that, otherwise we can go onto public hearing. Okay, yeah, go ahead Commissioner Hiranaga.

Mr. Hiranaga: I'm not that familiar with the reasoning behind the average lot depth calculation. If you could provide us some historical information as to –

Mr. Abbott: I'll try to be very brief, in 1977, 1978 the minimum setback was established as 20 feet by State. The counties could expand that. In 1989, it was changed to 25 feet by this county and 40 feet for lots that were deeper. In 1994, I believe it was or '95, it was changed to be basically 25% of your lot. So your setback's 25-foot, 40-foot or 25% of your lot. The logic is if you have the room to move out of harm's way get the heck out of the way. That's the logic regardless of what the situation is.

Mr. Hiranaga: Hypothetically, if the preservation area was say a very deep and steep gully that was a unbuildable area, there would be no exception to the average lot depth calculation.

Mr. Abbott: We have not made one to date. For irregularly shaped lots a recent rule amendment which you passed in December of 2007 was that for irregularly shaped lots the director has some discretion in setting what the lot depth setback would be provided it generally follows 25% of the lot. This application was not made when that rule amendment was available.

Mr. Hiranaga: But would this lot configuration qualify as irregular under the new rule?

Mr. Abbott: I'd rather have the precedent of not having it be an irregular lot and they go through a variance process.

Mr. Hiranaga: But you have a criteria right to determine whether it's irregular or not?

Mr. Abbott: The criteria in the rules is an irregularly shaped lot is flag lots, L-shaped lots, peninsulas, lots that have steep bluffs where it be dangerous to measure the shoreline. You know, like Haiku where you're going over a cliff or peninsulas where you have ocean on two or more sides. Given that, I don't think this would qualify as an irregularly shaped lot.

Mr. Hiranaga: Thank you.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: Is there any information about how homes like this abutting the dunes how they affect? I mean it seems, I mean, there's only a 10-foot elevation when you get into the house already and I would think that would be considered like what constitutes a dune? Isn't that like dune?

Mr. Abbott: We do have a dune grading ordinance. It wasn't the opinion of DLNR or I wouldn't speak for Zoe Norcross, but it was not my understanding that there's any sand dunes there, in fact there's not much sand at all because it's a very rocky shoreline. It's, you know, rocks about that size, ...(inaudible)... and black rocks. If they were going to grade a dune, they'd have to get a permit from our DSA and I don't believe there is any sand, plentiful sand material there.

Ms. Pawsat: So there's nothing protecting the line of houses from ocean, you know, storms or things like that? Because that's what dunes traditionally provide, right?

Mr. Abbott: Correct. So, on Halama Street, you have a long dune, Kamaole II and you have a long dune, but here you don't have any dunes. It's mostly volcanic dike material. It's a more fresh part of the island. So you know, dunes and sandy beaches haven't formed quite as well there. Now at the Polo Beach you have a very nice sandy area.

Ms. Pawsat: So they haven't formed yet because they're new, you could –

Mr. Abbott: Geologically speaking. We would also probably be treating this application a little bit differently if this was a sandy shoreline as opposed to a rocky shoreline.

Mr. Starr: Okay, I'd like to move along and invite public testimony on this agenda item. Any one in the public wishing to comment please let yourself be known. Okay, not seeing any public testimony on this item, is closed. Just one more time, Thorne, why do you set out what our options are and what we're called to do.

Mr. Abbott: Okay. Your options are to either accept the final EA and issue a Findings of No Significant Impact determination. That will be published in the OEQC, Office of Environmental

Quality Control publication which initiates a 30-day legal challenge period. If the determination remains undisputed, the department will continue processing the special management area major and shoreline setback variance request and those will be brought back to you at a later meeting together with recommend – certain conditions.

You may defer the final EA, the commission finds that additional information is required to make a determination on the final EA. Once that additional information is incorporated, the applicant resubmits the final EA to the department, the department retransmits it to this commission for action.

And finally you can decide it needs an environmental impact statement. The commission determines that the proposed action may pose significant impacts and requires the preparation of a more detailed environmental impact statement. An EIS assesses the proposed project through additional research, discussion and review. For the record, the commission must note any deficiencies relative to the significance criteria provided in Hawaii Administrative Rules Section 11-200-12.

So in summary, accept the final EA and issue a FONSI, defer the final EA to another meeting and ask for additional information or prepare an environmental impact statement and list the criteria that this needs to address. Mahalo.

Mr. Starr: Okay, so my understanding is we have three options. One is to accept the Finding of No Significant Impact of the EA, to defer asking for more information or to feel that it may have an impact in which case it would kick it up to an EIS, is that correct?

Mr. Abbott: Correct, and then you would also have to specify the specific criteria it needs to meet under HAR 11-200-12.

Mr. Starr: Okay, members, questions, comments, motions. Commissioner Hiranaga.

Mr. Hiranaga: I guess trying to understand the EA. The purpose of the EA I guess is to just provide information that will allow us to make a determination at a future date during a public hearing is that correct? I know it's difficult to separate comments regarding the proposed project and the EA, it gets kind of gray. I mean, you want to start commenting about the project, but really you should just be commenting whether you have all the information you need to make a determination in the future. Is that correct?

Mr. Giroux: That's correct.

Mr. Hiranaga: I mean, the house is going to get built with or without the variance I'm assuming. The variance is basically for that blue, light blue area which I guess as previously stated there will be no vertical construction in that variance area or is that incorrect?

Mr. Abbott: I'll let Raymond speak to that. Is there – I believe there's a second floor lanai that overhangs into the shoreline setback area based on the lot depth. Is that correct?



Mr. Anthony Riecke-Gonzales: My name is Anthony Riecke-Gonzales, I'm the architect on the project. On the ground floor level there's no enclosed area, there's just lanai and pool. On the second level there's a small portion of the living room and lanai area. On the upper level there's only lanai area.

Mr. Hiranaga: So you're saying the vertical construction is outside of the setback area but there are overhanging issues?

Mr. Riecke-Gonzales: There is vertical construction within the light blue shaded area which we're asking for the variance.

Mr. Hiranaga: Those are overhang lanais or those are vertical walls?

Mr. Riecke-Gonzales: There's a combination of both.

Mr. Starr: Okay, members. Comments, questions or a motion. Commissioner Hiranaga.

Mr. Hiranaga: I guess I've never had any experience about kicking it into an environmental impact statement requirement but what additional information would that provide us if we were to do that?

Mr. Giroux: I guess the way people look at it is that if you're kicking it into the EIS, you're – basically you got to come with a line item saying that you see that there's possible ecological effect by this project. Once you do that then there's a higher level of scientific review. They have to go and look at their global warming, they may have to go and, you know, look at sea level, these types of things which then takes it to a very high level of scrutiny because you're looking at, you know, a potential environmental impact. When you're getting to the FONSI level you're getting to the conclusion that the project, you don't see a significant impact. So with the information you have, you're comfortable making that decision.

Mr. Hiranaga: But the impact is primarily whatever is constructed in the variance area because if they were not constructing in the variance area and EA would not have been required?

Mr. Giroux: that's a difficult analysis. But I think that what you're looking at is that's the trigger, but when you're dealing with environmental law segmentation and truncation of a commutative look at the project you have to be inclusive of everything that the project is going to do in order to make that conclusion that it's not going to have an impact on the shoreline or on any environmental system.

Mr. Hiranaga: But if their entire residence was proposed to comply with the average lot depth, would they have been required to prepare an EA? They were not requesting a variance.

Mr. Giroux: I don't believe so. I don't see any other trigger. There's no – a lot of times properties like this are improperly zoned or improperly community planned. Once you have to change your community plan then that triggers an EA. So there are properties that are treated different as far as their scientific review using the EA process.

Mr. Hiranaga: Thank you.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: This is for Corporation Counsel. So would things like, it says effect on the — like its relation to the coastal zone management at the individual scale and the scale of the beach would that be the next or would be next meeting or the next application or would that be within now, would that be?

Mr. Giroux: Well, I think you want to look at this document to be able to clear all of those questions whether it's 205A, 205, you know, anything that you're going to have jurisdiction over to make a discretionary decision about which would involve an environmental impact. You would want this document to be as thorough as possible so that you could make an informed decision on those areas. So that would include SMA and the variance.

Ms. Pawsat: So if I was interested, if we were interested in making concessions for public space and public recreation and use in this whole Polo Beach area, is that something you can require them to do, ask them to — request to include an environmental impact statement or is that a merit based for the next meeting?

Mr. Giroux: I think you're treading — you're starting to go on more of a policy decision not legal decisions. I think the history of challenges to EAs has always been the adequacy and that's always left to the deference of the board that has the expertise which is you guys. But I mean, if you can make that connection to say that you would want information dealing with public views, access and the such, then you would make that connection to the reason you want it is because of the policies and objectives within 205A.

Mr. Abbott: May I add to that? This will be coming back as a special management area major permit and shoreline setback variance at which time you'll put conditions or may recommend, the department will recommend various conditions on this. The EA is really to look at ecological or environmental impacts. So things you can actually measure parts per million, you know, how much pollution is coming out of the smokestack. How much runoff is going to go into ocean. Is there going to be chlorine going into the ocean, those kinds of things.

More public access issues are under 205A, Coastal Zone Management Act, and those venture into more of the police realm. For example, if the house was bright pink with purple stripes, probably we would find that not a pleasant thing. But that's not an ecological or environmental or environmental impact. That's something you control under the Urban Design Review Board at the SMA level and say, sorry you can't, you can build this house, but it can't be pink.

Mr. Starr: Yeah, Commissioner Mardfin.

Mr. Mardfin: I want to take one slight detour. I think you answered it earlier or somebody answered it earlier but I don't remember the answer. At the time that the Schloemers bought the property did they know about the preservation area?

Mr. Abbott: I believe they knew about the preservation area, they had also met with Michael Foley, former director and one of the staff provided a setback determination of 40 feet from the shoreline.

Mr. Mardfin: Do you know what basis that was made?

Mr. Abbott: Yes, the staff planner misinterpreted the data. Just made the calculation.

Mr. Mardfin: So it's basically county fault not anybody else's fault?

Mr. Abbott: Correct. And when Mr. Schloemer came and put his actual application in, then he had a new planner who calculated it differently –

Mr. Mardfin: Okay. I'd like to make a motion to accept it as a FONSI.

Mr. Starr: Okay, we have a motion before us.

Mr. Hedani: Second.

Mr. Starr: By Commissioner Mardfin. Seconded by Commissioner Hedani to accept a Finding of No Significant Impact. Before we discuss the merits of it, I just want to be clear about what it is because you know, I came to this meeting believing that we were looking at the merits of this document which, you know, I'm sure we've all read every word of it and studied the pictures and then, you know, we did have a submittal before us with a lot of, you know, kind of cloud looking things on it in different colors that for the life of me I can't figure out what they're trying to say and this apparently becomes part of this document. So my understanding is now we're not actually approving this but we're approving that plus this which we haven't had a chance to see.

Mr. Abbott: I think to clarify, I'll let Mr. Hart speak, but there were out takes of the document. I had recommended they take the major changes as a result of going from the draft EA to the final EA and highlighting those to you and I believe that's what that handout is. It's the same information as in the actual big document but it's kind of broken out.

Mr. Starr: Okay, so these are not alterations, they're clarifications. So this is still the item.

Mr. Hart: Exactly.

Mr. Abbott: Correct, yeah.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I wanted to speak to my motion. I mean, it seemed we were discussing things but a motion wasn't being made so I made it. The other members with the exception of Donna have a much fuller knowledge of all this because you did the site visit and you've seen this before, but I just wanted to kind of move it along. I'm paying some attention to the staff recommendation on this also. But I would urge in the discussion about whether to for or against the motion that – it seems to me that the issues we have are not with the science of the environmental assessment it's with

the merits of the problem when it becomes an SMA. So that's – I can accept this as a FONSI and then deal with the others when it comes to the SMA. If somebody believes that there is a – if a member believes there is a – commissioner believes there's a problem with the EA in terms of you need more information please speak up so that I'll be aware of that.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: I think in this particular case, well for one thing to have the process extend over four years is somewhat obscene. For anybody to try to have to go through a process that extends over a period of four years in order to build a residence is extraordinary. I think there are extraordinary conditions on the site. When I first looked at it the question was why don't you pull the whole structure, pool and everything else with it back another 20 feet to get out of the setback determination area. But then you're bounded by the preservation area to the mauka side and you have the drainage catchment systems which are under the driveway which also compounds the entire situation. So I believe there is a condition for hardship from that perspective where over 30% of the entire lot is being dedicated for preservation purposes.

The other thing that I think is worthy of note for this particular case is that public access is being improved over time both laterally and mauka/makai and I think that's positive. Public views are being enhanced by the bestill hedge and creating a view space over the lot itself.

And I think the last thing that should be mentioned is that our setback laws are so contorted and so complicated and nobody in his right mind can figure out, including staff planners, what the setback line is and that's a problem because it's not something that's easy for the public to understand.

Mr. Starr: Okay, Commissioner Pawsat followed by Commissioner Guard.

Ms. Pawsat: Well, first of all I think their erosion, I mean, the setbacks are based on erosion rates and they have a fairly simple equation to get to the setback. And their erosion rates were studied very meticulously as far as I recall. But I think what makes this difficult is because it's not one larger development of this whole area. It's makes difficult to like pigeon hole ecological impacts at a single residence scale whereas if it was a larger development it would be have to do that and it would be easier to understand and I think that's why it takes so long is because there's all these mitigating circumstances or whatever you want to call it. But I think basically so since it's hard to make any environmental comments on it because ...(inaudible)... such a small scale most of my comments really I guess will go on to the merits of the project which I suppose is better suited for the next meeting. You know, things like I feel like this whole area, they're all victims of lifestyle propaganda and they sleep with the ...(inaudible)... reports underneath pillow, but I'll save that for the next meeting.

Mr. Starr: Okay, Commissioner Guard.

Mr. Guard: I guess with the motion I feel like we have to pick our battles and this one, seems to be because of this 40-foot setback. Is that because the preservation area was so large and they kind of miscalculated it as being encumbered and it gets kicked to the 40 feet?

Mr. Abbott: No, staff made a simple calculation error. They looked at the wrong number and just used the wrong number. Pretty simple. They also put it in a letter signed by the director and shortly thereafter, the applicant purposed the property based on that information.

Mr. Guard: The one thing I don't like is hearing about the hardship based on purchasing the property knowing this preservation area was there. So for the SMA we gotta kind of stop that, that they probably got a discount back then I would assume. Well, we hear it every time, oh poor me, poor me, I bought this property and you probably got a better deal because of this large preservation area, but maybe for the future, I don't know if it's SHPD they should look into creating these larger preservation areas because I think on other properties they give them about a two feet buffer around a burial like that when it's convenient for them. So something like that, this could be an example of the proper way to preserve a burial. I know there's other areas down there that you might have a strip of you. You might be able to plant ti around it and that's about it because it goes back to parking lot. So for the archaeologists on site to maybe take that into account talking to your other projects.

Mr. Abbott: I think it is noteworthy that he did not get a discount for that preservation area on his average lot depth setback which is –

Mr. Guard: Oh no, just on the purchase. Oh I bought a multimillion dollar property and being like I'm going to go through this four-year process to try to push a big house into a tiny envelope is kind of what we're looking at. Luckily it's not a sandy beach. I guess that's the only benefit to it.

Mr. Starr: Vice Chair Guard, I'm going to turn the gavel over to you for the rest of this item because I really believe that's the right process to do if I'm going to speak for or against a motion. I do have a comment that I will not be supporting the motion because I think this could have a significant impact in that we do have a shoreline that's moving quickly. It may be speeded up by forces of global warming. We have excellent protections in place regarding setbacks to try to keep a good space available for the public and I don't see compelling reason that that setback area should be encroached upon for you know, the second swimming pool and the lanai. So I won't be supporting the motion.

Mr. Guard: Is this okay to do?

Mr. Starr: Yes.

Mr. Guard: Any further discussion? Commissioner Mardfin.

Mr. Mardfin: I'd like to ask Commissioner Starr what additional – if you vote against the FONSI, so you want them to do an EIS can you explain to me what additional information you would like to see in the EIS?

Mr. Starr: Well, I would like to see analysis regarding the impacts of building in the setback area and I think to a greater extent, my concern is that I think that it can have a significant impact. And if it can have a significant impact then I feel that the correct action is to vote against it.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: I guess I'm confused. By accepting this EA are we condoning the construction within the variance area? Is that an inferred approval?

Mr. Abbott: No, I would not say that because you get another look at it under the SMA and the shoreline setback variance. At that point, you'll be looking at the Hawaii Revised Statutes, Chapter 205A criteria which is the Coastal Zone Management Act. That's going to take into account things like public access, view planes, architecture, urban design. Right now, the EA, is basically environmental and ecological criteria which is, you know, you want to look at the short term and long term impacts, the direct and indirect impacts relevant to the criteria provided in Chapter 343 which I believe is things like water pollution, more measurable things that we would think of as pollution, air pollution, water pollution, runoff from the site. So issuing a FONSI – You bring up a good point, how do you issue a FONSI and say there's not impact then turn around at the SMA level and say, no we don't approve this. Presumably when you get to the SMA level, you're going to put conditions on that avoid, minimize or mitigate any negative impact. So for example, if he was putting a piling in the setback area and you could show that was going to have a negative impact on say views, then one condition of the SMA would be he'd remove that piling so he wouldn't affect the views. But that piling may not have a direct environmental ecological impact. Kind of hard to sort those two out, but the issuance of a FONSI is not implied or deferred approval because this will be coming back to you again. Would that be a correct statement Corp. Counsel?

Mr. Giroux: No, you're not setting a precedence, but you do want enough information in the document that if you do put conditions that your nexus is ecological and environmental, you do want the information in the document to help you to hang your hat on. To say you are making those conditions based on information that you did receive which is reasonable scientific bases.

Mr. Guard: Any further discussion? Last thing is, this may be for Director, it goes back to OEQC and there's a 30-day challenge period of the general public felt like we shouldn't have given the FONSI.

Mr. Abbott: That is correct.

Mr. Hunt: If you accept the EA.

Mr. Guard: If it's accepted. And was the period, OEQC publish this as well?

Mr. Abbott: They published the draft, they will – if you issue a FONSI, they'll publish that for 30 days and that sets that period anyone can challenge that. Any public person can challenge that and that's available on their website as well, Office of Environmental Quality Control Bulletin.

Mr. Guard: Commissioner U'u.

Mr. U'u: Just for clarification. Say we accept the EA. It goes back to Council, correct?

Mr. Guard: This doesn't go to Council.

Mr. Hunt: No.

Mr. Abbott: It will come back to you after the 30-day legal challenge period then the applicant has to notify all the neighbors within 500-foot radius and provide 45 days, put an ad in the newspaper saying that we're going to have a hearing on the item and invite public testimony, send certified letters to all the neighboring land owners noting when the public hearing is going to be and then it will come in at that time for an SMA major and shoreline setback variance. There are mandatory conditions on the variance and at that time, this commission will review the project and determine whether this is a reasonable use of his property. You can recommend conditions at that time as well.

Mr. Guard: Thank you. Commissioner Hedani.

Mr. Hedani: One of the things I'd like to see between now and the time it comes back to us on an SMA is the alignment of the mauka/makai access if that could be displayed somehow on the documentation that comes back to us. I'd appreciate that.

Mr. Abbott: So noted.

Mr. Guard: Thank you for that. And maybe they'll take into consideration looking in the past history. I know on Kuau point there's three or four access points so maybe the current county staff could look at how we got so many access points there and so few in Makena.

Mr. Abbott: So noted.

Mr. Guard: If it passes. Ready for the question? All those in favor of Commissioner Mardfin's motion signify by saying aye. Nay. Okay, is that five to two?

Mr. Hunt: Could I ask for a hand count?

Mr. Guard: Yeah, lets go with a hand count. Left hand or right hand is fine. On the ayes for the main motion. Five. And you have two nays as well.

**It was moved by Mr. Mardfin, seconded by Mr. Hedani, then**

**VOTED: To Accept the Department's Recommendation to Make a Findings of No Significant Impact (FONSI)  
(Assenting - W. Mardfin, W. Hedani, K. Hiranaga, B. U'u, D. Domingo)  
(Dissenting - J. Pawsat, J. Starr)  
(Excused - W. Iaconetti)**

Mr. Guard: FONSI passes. Fifteen minute break. Ten? Ten-minute break.

Mr. Abbott: And I very much appreciate your diligence.

A recess was called at 10:07 a.m., and the meeting was reconvened at 10:25 a.m.

Mr. Starr: ... is back in order. Everyone welcome back. I turn it over to able Director Hunt for Item C-1, the Star Lookout.

Mr. Hunt: This item involves Ms. Janice Tanaka Tower requesting a State Land Use Special Use Permit and a Conditional permit in order to operate the Star Lookout transient vacation rental, three rooms within an existing cottage located on 1.4 acres of land in the vicinity of Thompson Road, TMK 2-2-001 054, Keokea, Kula. The application numbers is SUP2 2002/0007 and CP 2002/0009. The planner assigned to this project is Joe Prutch.

**C. PUBLIC HEARING** (Action to be taken after public hearing.)

- 1. MS. JANICE TANAKA TOWER requesting a State Land Use Special Use Permit and a Conditional Permit in order to operate the Star Lookout Transient Vacation Rental, three (3) rooms within an existing cottage located on 1.427 acres of land in the vicinity of Thompson Road, TMK: 2-2-001: 054, Keokea, Kula, Island of Maui. (SUP2 2002/0007) (CP 2002/0009) (J. Prutch)**

Mr. Joe Prutch presented the Maui Planning Department's Report.

Mr. Starr: Okay, thank you Joe. I have a question on the process for Director Hunt which is I understand that we have a county special use permit process and we have a county conditional use permit process. The conditional use permit we recommend to the County Council. I understand this is state special use permit and I'm not really clear why and what our role in that. I know if it were a county special use permit then we would be the agency that says yea or nay but I don't understand how we fit into the state special use permit and why it is a state special use permit.

Mr. Hunt: The county conditional permit you have to make a recommendation to the council and they have the final action. On the special use permit because it's under 15 acres, the county is delegated that authority and so the planning commission can issue, can approve or deny the special use permit. In effect they need both permits. So even if you approve the special use permit and the conditional permit is denied, they could not operate.

Mr. Starr: Okay, so it is a special use permit, but we're acting for the state since it's a threshold of size?

Mr. Hunt: Correct.

Mr. Starr: Okay. Members, any questions? Yes, Commissioner Hedani.

Mr. Hedani: On the department's recommendation, under – this is on page 17 of the submittal, "as of May 14, 2008, the Planning Department has received no public testimony in support or opposition of the project." You're excluding the 78 people and 131 people that provided comments in writing?

Mr. Prutch: Oh, I'm sorry. I'm sorry. That was petition signed. Yes, I did include that as part of the staff report. I guess what I meant by that, I'm sorry, is that I didn't receive any letters or comments



from the hearing notices that had gone out. Yes, the petitions were in the staff report. I had that way before the project was ever – the staff report was even written. Does that make sense?

Mr. Hedani: I'm confused. I guess when you say – when you get 78 letters and a 131 people signing in favor to me that's testimony in favor.

Mr. Prutch: Yes, they weren't letters, it was a signed petition. It's the last exhibit on your staff report. I'm sorry, it wasn't letters it was a petition. So it's a bunch of signatures from different residents in support of the project and the public testimony was just I didn't receive any letters after the public hearing notice went out. Sorry about that confusion.

Mr. Hedani: Thank you.

Mr. Starr: Okay, looking like – oh, Commissioner Mardfin.

Mr. Mardfin: Oh, I have a bunch of things.

Mr. Starr: Go for it.

Mr. Mardfin: One, my understanding and I guess this would be for you, is that to be a bed and breakfast it has to be under the same roof? So that to make this work as a bed and breakfast you'd have to build a long thin connecting path from the transient rental to the residency.

Mr. Prutch: Well, we don't want to encourage that.

Mr. Mardfin: You don't want to encourage that, but –

Mr. Prutch: However, yes, the definition for a bed and breakfast does state that the rooms are rented out in the primary residence where the owner occupy or the manager lives.

Mr. Mardfin: And this looks like it would be like a 200-foot little thing to make it work or something like that.

Mr. Prutch: Yeah. It's definitely just a –

Mr. Mardfin: But that's the distinction between the bed and breakfast and t– if it were connected we'd be calling it a B&B and we'd have no problem with it is that sort of the bottom line.

Mr. Prutch: If it were connected, I guess technically we could call it a B&B, sure by definition.

Mr. Mardfin: If it weren't as far away as it was and if it was right next to it, we'd be calling it a B&B probably, is that ?

Mr. Prutch: If it was attached, yes.

Mr. Mardfin: Yes. Okay.

Mr. Prutch: As long as it was attached.

Mr. Mardfin: And then there would be no problem with it under the zoning.

Mr. Prutch: Well, the ag district, Jeff –

Mr. Hunt: B&Bs aren't allowed in the ag district so they would still technically need a conditional permit, but the application would be for a B&B as opposed to a TVR. Though this is – in earlier discussions we have tried to distinguish between what we call a pure TVR with no manager on site versus a B&B with a manager in the same house. This one's in between you have a manager on site but it's not in the same house.

Mr. Mardfin: And I believe I heard you say a few minutes ago that this land really isn't suitable for high level agricultural activity is that?

Mr. Prutch: Yes. Yes.

Mr. Mardfin: I was concerned about – curious about a density of surrounding TVRs or B&Bs, are there anything in the say half-mile from this? Were there other TVRs or B&Bs?

Mr. Prutch: The only one I know of which I just heard of this morning is one up the street from there. I don't know the size or number of units. I don't know if Ray has an idea of how big that is. I know there is one up the street, but I don't know of any others in that close vicinity.

Mr. Mardfin: And these may or may not be legal. I mean, I'm asking whether they're actually using them.

Mr. Prutch: That's true too. This one is legal. Do you know the name of it?

Mr. Starr: Give us your name first.

Mr. Ray Bane: I'm sorry, my name is Ray Bane and I'm the resident manager at Star Lookout. There are no properties within a half mile, if you will, of us that are operated as TVRs to the best of my knowledge and I'm pretty much aware of what's going on. There are perhaps some beyond that that distance and there is, I believe one permitted TVR at the end of Thompson Road and that one, I don't have the exact date of when the permit was granted but I believe it was somewhere in the neighborhood of three years ago. Three or four years ago. It was a former B&B and then it was reapplied for as a TVR because of buildings being separate from the main structure.

Mr. Mardfin: Thank you. Was this ever, this extra unit ever used for long term rental?

Mr. Bane: Again, it has I believe at a couple of occasions been, people have stayed there for periods of several months. But I'm not aware of it being, you know, a steady long term use. Prior to our arrival it was essentially a TVR operation although not in a formal sense.

Mr. Mardfin: And you arrived there in 2000 was that?

Mr. Bane: Yes.

Mr. Mardfin: And you've been paying GAT and GET?

Mr. Bane: Yes sir. We took out all the necessary licenses and we had been paying our transient taxes, all things that are required.

Mr. Mardfin: I think I heard the staff planner say this has been used for years for transient vacation?

Mr. Prutch: Yeah, that's my understanding from the application.

Mr. Mardfin: But they weren't paying taxes on it prior to eight years ago?

Mr. Prutch: That I don't know because it was previous owners. So I'm not sure what they did at the time?

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Pawsat.

Mr. Pawsat: So we're talking about one TVR unit is that correct?

Mr. Prutch: Yes, one, three-bedroom unit.

Mr. Pawsat: On a 1.47 acre piece of land.

Mr. Prutch: Yes.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: A while back we spent a lot of time reviewing draft ordinances prepared by the Planning Department for proposed B&Bs and TVRs in the urban areas, rural areas and ag areas. The proposed draft as presented to us my recollection was totally opposed to any TVRs to be allowed in the ag areas because it was contrary to Hawaii Revised Statutes. I'm just wondering where those ordinances are. I know they're in front of the Council and I'm just curious, this recommendation here seems to be totally contrary to the draft ordinance that was proposed to us by the Planning Department. So have they had a change in position regarding TVRs. This is a TVR in ag lands.

Mr. Hunt: The draft ordinances are the Council now. They're scheduled to be reviewed. They actually were reviewed for one or two days back in March and they're scheduled to be reviewed in June. The policy of the ag land, the department made a recommendation in that draft bill that there be an income test. There has been some discussion since then about perhaps having an exception of land unsuitable for farming because the reasoning being that ag land, the ag zone does not include all good farmable land. They just included all land and some of it isn't suitable for farming. That's just discussion. The outcome of those bills is yet to be decided. It may change the existing

laws, it may not change the existing laws, we don't know. We can't predict. So until those laws are changed, we're processing the permits under the existing laws under the existing processes.

Mr. Hiranaga: Follow up. Is the Planning Department still supporting their proposed ordinances as presented to us previously and as it's being presented to the Council?

Mr. Hunt: The Planning Department may recommend – made a recommendation to Council and the recommendation in the ag zone for an income test. At the same time, we are working with the Council particularly the chair of the Planning Committee to consider revisions to those ordinances and if the Planning Committee recommends revisions to those and the Council adopts them, we'll certainly implement those. So we're taking an approach where we've made a recommendation but we're not saying we don't want to be privy to any discussions unless there are recommendations. We don't think that's a productive role for us to play.

Mr. Hiranaga: Thank you.

Mr. Starr: Okay, go ahead Commissioner Mardfin.

Mr. Mardfin: Two quick things. One, because you're a resident manager I presume this property does not get a real property tax exemption? Homeowners exemption?

Mr. Bane: I believe that's correct. I'm not sure, but we would not get a –

Mr. Mardfin: Owners exemption.

Mr. Bane: No, we don't get that.

Mr. Mardfin: I guess the fact that the staff member is recommending this means that the department doesn't feel that they're being bent out of shape by this sort of a thing otherwise he wouldn't be recommending approval is that correct?

Mr. Hunt: To be honest with you, the staff has had a lot of discussions about all three of the applications that are before you today. I think there's arguments and concerns on both sides and we tried to say that along this whole discussion about TVRs. In this particular case we believe that we can support it. We tried to explain in the staff report that there's arguments on the other side if this commission doesn't want to support it we can understand that. We think that in some instances, and this is one instance, we think they should be allowed. There's going to be some instances and you're going to hear those later today where you think they shouldn't be allowed and so it's up to you folks. It's not an easy decision. There's arguments on both sides.

Mr. Starr: Okay, Commissioner Hiranaga first, followed by Commissioner Guard.

Mr. Hiranaga: Yeah, just couple of follow up questions from Commissioner Mardfin. Can you confirm that this property is not being given an agricultural discount assessment for real property tax purposes? Will you do that? Make sure you're not claiming that.

Mr. Bane: I'm not going to make a claim that I couldn't back up Sir. I don't know that.

Mr. Hiranaga: Okay, can you notify the Real Property Tax Office that you are not agricultural activity so you should not be receiving a discount.

Mr. Bane: We most certainly will.

Mr. Hiranaga: Can you also insure that you're not receiving an ag rate discount for your water.

Mr. Bane: To the best of my knowledge we are at this time, but we will, you know, I want to be up front with you. That goes through all the areas out there, but I will do whatever I can to bring it into compliance with your wishes Sir.

Mr. Starr: Yeah, members when it comes time to craft a motion those may be an amendment that –

Mr. Hiranaga: I should have posed it as a question. Are you paying ag water rates?

Mr. Bane: Yes, Sir.

Mr. Starr: Commissioner Guard.

Mr. Guard: Thank you. For all the commissioners that haven't been able to be down there it is a beautiful property and I just want to commend the Banes and even the former owners that I think it allows the general public to either have a very nice walk or jog or even as a driving tour to go down there. It's a peaceful setting that they've been able to maintain and I believe this application will actually benefit the Keokea community out there and I think that's evident with all the petitions and letters in support.

Mr. Bane: If I might Sir? Just back to Commissioner Hiranaga's, we do very little in the way of watering that I can tell you. We don't have that much we can water to be honest with you. And our – we do our very best to keep our water use down as much as possible.

Mr. Starr: Okay. Commissioner Hedani and then possibly testimony.

Mr. Hedani: In reviewing the petition that was submitted, somebody signed with x's. And I was wondering if that was because he needed to do that because he couldn't do anything else or does the applicant have a comment on that?

Mr. Bane: No, I saw that one as a matter of fact, and I honestly – the person who signed it, I'm not quite sure why they put the x's, but we do have people in our area that are – that have limited educations and we did have when we ask everybody how they felt about it, we had universal support at the time, but I can't state that's the case.

Mr. Starr: It could have been kisses also. Okay, moving right along we're going to open up the floor to public testimony. Any member of the public that has not already testified on this agenda

item is welcome to testify. We ask that testimony be kept as short as possible. In no case longer than three minutes and we will inform you if you get to three minutes. Anyone wishing to testify, please stand up. Please identify yourself first and welcome.

**a. Public Hearing**

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

Mr. Mike Gary: My name is Mike Gary. I'm here to speak regarding the special use permit for the Tower property on Thompson Road in Kula. I have lived on Maui for 30 years. There's four generations of my family living here right now and we're all very active in everything in the community. We appreciate you folks listening, considering this application. There's a lot of different things to speak on on these transient vacation rentals, but the one I'm uniquely qualified to speak on is the type of guests that frequent these facilities.

I had the privilege of being the Bane's next door neighbor to the south for several years and I ran a bed and breakfast, the Silver Cloud Ranch. I owned and operated it for 15 years. The thing that I feel I'm probably the most qualified person on Maui to talk about it, is the type of people that stay at these facilities. Before the Bane's took over there was a really nice family living in there but I had to go down and ask them on many occasions if they could please quiet it down because my guests wanted the peace and quiet of country living, that's why they came so far out of their way to do this. The family was there, they were being like any normal family and they'd have their parties and things and they always honored my requests and we're very good friends to this day, but I never had to do that when the Star Lookout started happening.

The types of guests I had an interesting fact and most people are astounded by was over a third of my guests were kamaaina and half of those were people who lived here on Maui. A lot of them did it because they could get away for a weekend. Didn't have to buy a plane ticket, didn't have to rent a car, didn't have to spend two, three hundred dollars a night and they got to meet people from all over the world at breakfast. They enjoy this. They like bringing their kids to a country setting where they could go for walks see the horses, chickens, pigs, this sort of thing. But they all weren't there just to save a dollar. A lot of them were there because they found – they worked at hotels, and our hotels do a wonderful job, I stay in them on occasion, but I also stay at bed and breakfast all over the world and all over Maui County. Stayed at a lot of them. They all do a good job.

The guests are always as pleasant as things can be. But I had guests who were literally billionaires and they stayed there and they'd tell me I can't understand why anybody would spend \$200 a night on a hotel room when you could stay at place like this for a lot less. They enjoyed the noncorporate experience of it all. So I'm open to any questions at any time not at this meeting. You guys want to know about what it's like to run a bed and breakfast and I got a lot of people that would call me over the years, "I want to get a bed and breakfast what do I do?" And I said, "well make your application, pay your taxes, get on really terms with your neighbors and give back to the community. And if you do those things, our county's wise enough that they will let you to continue your operations because you're an asset to the community, the community will support you." And I think I see that happening here on Maui.

Mr. Starr: Okay, Commissioners questions? Mike, do you have kind of a for or against?

Mr. Gary: Oh, I'm majorly in for, for it. Yeah, you know, again, saying that I've stayed in a lot of B&Bs I've never met a host and hostess more qualified or more capable than Ray and Barbara Bane doing this sort of thing.

Mr. Starr: Okay, thank you very much. Okay, another testifiers at this time? Yeah, please come forward. State your name and try to keep it short.

Mr. John Hirashima: Good morning, my name is John Hirashima. I'm a resident of Kula. I've been a flower farmer for the last 35 years and I'm here to support the application, the Tower SUP. I'd like to say a couple things about the application.

I'm very familiar with the property. It's very small. It's less than an acre and half. It's very rocky, very slopy and very unsuitable for agriculture. If anybody can eke a living out of that would be a miracle and I ought to know.

There's only one next door neighbor, they're right next door and they're very supportive. The Silver Cloud Ranch that Mike referred to is almost a half a mile down the road and on the other direction, is at least a half a mile to the next neighbor so it's really isolated.

The owners, I'd like to say something about the owners and the managers. The owners are Janice and Steve Tower and they are residents of Alaska and they're both in the medical profession and Steve is probably Alaska's most prominent orthopedic surgeon and he does extensive medical missions in Africa and Ray and Barbara have lived here for quite a while and Ray is the retired superintendent of Katmai National Park in Alaska so we're talking about very responsible people here. I mean, these are solid people. In addition, Ray has been volunteering with the local Disaster Response Team for many years. So he does contribute greatly to this community.

The property I believe is about the most suitable piece of agricultural land for this type of vacation rental. I don't think you could find another piece that has all the attributes of this place. Isolated, it's very quiet, the type of clientele stays very long, many of them will book an entire month, and it's extremely low impact and it does help some of the local businesses in Keokea. So I'm open to any questions you have.

Mr. Starr: Okay, members? Once again, you're for or against?

Mr. Hirashima: Oh, I am definitely for this application.

Mr. Starr: Okay, thank you very much for coming up and taking the time. And let the record show that we've been joined by Commissioner Donna Domingo and Commissioner Ward Mardfin burning up the road all the way from beautiful Hana. Any other public testimony? If so please let yourself and come. Try to keep it brief.

Mr. Paul Meyer: Thank you Commissioners. My name is Paul Meyer. My wife and I wrote you a letter about a week ago. One page, tried to keep it short. We've been upcountry residents for over

25 years. I worked for Maui Pine for 25 years and my wife was a judge for a while. We have know the Starr family for a lot of years and ever since we've been around, the Star Lookout as we call it, this property has been in operation as a guesthouse and it's been a wonderful part of upcountry. Great – supported by the community, respected by the community, it's well run and we're certainly not aware of anybody who objected to it or has problems with it. It would be a shame if an exception is made and this property would shut down. We would urge you to support this application and keep this property that's been in operation, but a really important part of upcountry ...(inaudible)... Thank you. Questions?

Mr. Starr: Okay, thank you for taking time to come down. Yeah, commissioners? Seeing none, thank you very much. And also let the record show that I'm not in any way related to the applicant that I know of.

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

Mr. Thomas Croley: My name is Thomas Croley and I'm just here to testify in support of this application. I think this is a perfect example of how a B&B can work in a seating with a resident manager. Ray and his wife keep up the property. That makes a home for Ray and his wife. It gives a job to Ray and his wife. If they weren't allowed to do this that property may not be kept in the same level. Perhaps or perhaps not the owner would put a long term tenant in that cottage, in the house that they're living in. So this is a perfect example of a B&B and I would hope that the legislation that is being pushed forward will recognize this and we won't have to go through this whole process of which this is just one step along the way of granting these people their SUP and CUP. Thank you.

Mr. Starr: Okay, members any questions? Okay, Commissioner Mardfin.

Mr. Mardfin: You look very familiar. Are you the President of the TVA Association or the B&B Association?

Mr. Croley: No, I am a member and board member of the Maui Vacation Rental Association. Just to be clear I'm testifying on my own and I look familiar you heard me speak out in Hana about that position.

Mr. Mardfin: Okay, thank you.

Mr. Starr: Thank you very much. This is really for the public to testify at this time. Any other members of the public wishing? Please come forward, identify yourself and share your mana`o.

Mr. Stacy Lindeman: Hi, my name is Stacy Lindeman and I've been in Hawaii for several years, about eight years and I've traveled quite a bit. I'm a construction worker and I'm here in favor of bed and breakfasts. I used to run a bed and breakfast, 14-room in Costa Rica. I've pretty much traveled the world. I've lived up in Kula. I've lived in three places now since I've been here and I've visited one of the vacation rentals bed and breakfast here on the beach and where I was living in Kula, the motorcycles, the cars because everybody says it's a big issue about the parking and everything, there's actually the two places that I lived which was down the street from Morihara's



you can hardly even find a place to park other than on the lawn or in your own parking spot.

The place that I did visit here which was down on the beach the Spyglass House, been there several times, there's hardly any noise down there. There's ample parking.

I'm living now in Makawao and it's just down the street from where the fire station is and you've got all the motorcycles. The street I that I live on I actually have to park my 20-foot truck. I have a big rig because I'm in construction, my truck's 20-foot long and actually have to park it up on the lawn in the neighborhood where I live. And as everybody knows I've lived In Hawaii for years and so has everybody else, there's lots of cars that are parked in people's yards. The gentleman that works for me, I have a young man, they have 20 cars parked in their front yard and that's kind of like part of Hawaii. And I think when people come and visit here, you know, the cars that they have, if you park in front of a bed and breakfast, I think it's just part of – it's part of the balance of life.

So and the property in question, you know, bed and breakfasts are really clean. There are people that go to hotels and places. For myself personally, there's more security there than at a hotel because some people target the hotels. It's more of a personal experience. It's a little bit cheaper. Some of them are expensive. It's more a family-oriented thing. So that's all I wanted to say and also stimulates the economy because the business everything. Just recently I reading the Honolulu Advertiser the State of Hawaii, we're all tax payers here, the State of Hawaii wants to spend \$3 million on promoting tourism. Well, I was told here that there's 400 bed and breakfasts that they're all the tax paying people and they're promoting tourism here and that's not costing us anything. So I think it would be detrimental to get rid of those people. So thank you very much.

Mr. Starr: Okay thank you. Any questions? Okay, seeing none, any other members – I'll ask, please refrain from applause, it just wastes time. I would rather have you talking than applauding. Anyway, anyone else with testimony on this specific item please come forward, identify yourself, try to keep it as brief as possible.

Ms. Beverly Livingston: Hi, my name is Beverly Livingston. I hadn't planned on testifying but I know Ray and Barbara very well and have for several years. They're wonderful people. Ray has contributed to the community. He's on a commission or a group where they're helping neighborhoods be prepared for emergencies and I'm going to invite him into my neighborhood to instruct our neighbors about things to do to be in readiness for any kind of natural disaster. And that's the sort of contribution that Ray and Barbara are to the community. They're very ethical people and they have the kind of values that I love to see in people in the community and so if anybody I would say is a – somebody that deserves this sort of thing I would say Janice Tanaka Tower who owns the property and then Ray and Barbara who have the job there and who live there, they deserve this and I would really like you take this in consideration. Like I say, they're really incredible, beautiful people. Thank you.

Mr. Starr: Okay, any other members of the public wishing to testify on this? Seeing none, public testimony will be closed on this item. Ray, you have a comment, if you need to, be brief. Identify yourself first.

Mr. Ray Bane: Ray Bane, Resident Manager for Star Lookout. I wanted to say that in speaking for

the owner that she tremendously appreciates the fact that you folks have taken the time to consider the application and that we will do whatever we can to work with the commission and with the Council and everybody else involved to make sure this remains a positive and constructive part of the community and bring something back in return for the privilege of being able to operate. Thank you.

Mr. Starr: Yeah, Director.

Mr. Hunt: Mr. Bane, could I ask you a question?

Mr. Bane: Yes Sir.

Mr. Hunt: You have closed down your operation since January 1?

Mr. Bane: Yes Sir.

Mr. Hunt: I recognize that's been a burden on you but I do appreciate that and you should be commended for following the County's laws. Thank you.

**b. Action**

Mr. Starr: Okay, members now is the time for questions, comments or motions. Commissioner Hiranaga.

Mr. Hiranaga: Personally I'm not against B&Bs in agricultural districts. I am opposed to TVRs and maybe not specifically as defined currently TVRs in agricultural districts. Concerns that I have, let me ask questions. Reading the staff material I note that there is one cesspool on the property is that correct or are there two cesspools on the property?

Mr. Prutch: There's just one.

Mr. Hiranaga: I believe EPA requires that a septic system be installed if there is more than one dwelling on the property and that was I think effective about five years ago ... (inaudible)... federal violation.

Mr. Starr: Lets hear from Mr. Miyamoto, Deputy Director of Public Works.

Mr. Miyamoto: Yes, Commissioner Hiranaga is correct. The EPA did have a desire to eliminate a lot of the large capacity cesspools and typically a residential house with an ohana unit was considered large capacity and for example, like the residents – a lot of the residents in Kihei that are not on the county system are being asked to convert to cesspools with leach fields.

Mr. Starr: Septic tanks.

Mr. Miyamoto: Yes. I'm sorry. Yes, septic tanks with leach fields.

Mr. Starr: Yeah, Commissioner Mardfin.

Mr. Mardfin: As a follow up to that, would they be applied retroactively or if once built – presumably this second unit was built with certain approvals. Do they have to go back after the law's been changed by the EPA do they have to back and retrofit?

Mr. Miyamoto: Yes. The EPA is the sole body that's doing the enforcement. The County and the State has nothing to do with that. They are the ones pushing the issue and going after all bodies that have these large capacity cesspools. They're looking for septic tanks with leach fields. So yes, they do go back.

Mr. Starr: So I guess what I just heard is that they are not in compliance in that event but it's not a county kuleana and it's not part of – shouldn't be part of our decision making is the correct James?

Mr. Giroux: Again, the standard is you're looking at this permit in all of the required context of 205 in the Land Use Commission so this does allow you to do reasonable conditions in that if that's something that's discussed I would want to see some kind of rational nexus to the permit.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: Just also, if this is already a rocky property there could be mitigating circumstances about installing a leach field about getting the proper depth and things so it might be out of our – I don't think it's something we can decide today without knowing the condition of the soil.

Mr. Starr: I don't know, perhaps department could recommend some wording that would just state that the applicant will move to insure compliance with regulation on that. Is that something we can do Jeff?

Mr. Hunt: You can recommend conditions to the Council. You can put a condition on there. The condition that you just worded is more of a aspirational type of condition. There's no enforcement that the Planning Department would pursue as a result.

Mr. Starr: But we're acting for the state though in the special use permit, we are functioning as a state decision making body.

Mr. Hunt: I would depend on the wording of the language. The wording that you that I thought I heard was more of a suggestion or suggested action on behalf of the applicant.

Mr. Starr: Okay, Commissioner Hedani.

Mr. Hedani: Jeff, in this case we're making a recommendation to the Council and we're also approving basically from our perspective on one permit.

Mr. Hunt: You're acting on the special use permit and recommending on the conditional permit.

Mr. Hedani: Right. And it has both standard and specific conditions. So if we were to attach a

condition, we could attach a condition that the cesspool be converted to a septic system.

Mr. Hunt: I believe you could do that.

Mr. Hedani: Right. The other question I have is if the applicant has a problem with that.

Mr. Bane: Again, Ray Bane. I don't think so. I can tell you that we've never had any type of problem in so far as our septic system is concerned. That there has been a test made on it and had no difficulty whatsoever.

Mr. Hedani: Attaching a condition for a septic system would be an expensive proposition for you.

Mr. Bane: Yes it would. It's extremely difficult ground. It's virtually nothing more than a very thin skin of vegetation over top of hard lava and it's broken lava. It does drain very quickly in the area there.

Mr. Hedani: But you would be willing to put in a septic system?

Mr. Bane: I would have to speak to the owners. To be honest with you Sir, I can't say that specifically but I certainly would, you know, we would do everything we can to be in compliance.

Mr. Starr: Deputy Miyamoto commented that standard condition number one which is added to all of these types of things states, "that full compliance with all applicable governmental requirements shall be rendered." So if it is indeed the state regulation then we already would have a condition to that effect. Commissioner Hiranaga.

Mr. Hiranaga: Actually it's a Federal regulation. But I have a question. What is the existing fire protection level there on Thompson Road? Are there stand pipes in the nearby area?

Mr. Bane: The nearest stand pipe is at the head of the road, but we do have – we keep a – it's a large wooden tank, storage tank that we use for any type of issue of that type. We – if the property, I'm trying to make sure I'm speaking directly to your question Sir, but if there were a fire on the property it would be of no difference than it would be currently whether it's a long term or short term occupancy. It would all be basically the same. All the properties out that way including our neighbors have essentially the same type of water system.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: Ray, I was wondering if you had any comment about putting on a condition that allows only one car for the unit?

Mr. Bane: That would be fine. We do have, if you've not been there, when you come out Thompson Road it's about a half mile from the beginning, you turn down into our property, there is a flat area, it's fairly large and it is possible to park more than one car on the property. We have, my wife and I have a car for ourselves. So we do not do off property at all. We won't allow people to park off the property. Yes, we have a rock wall that blocks our view or blocks the view from the road and

a fence also. So it's I would say really not an issue in so far as the parking is concerned. We do occasionally we'll have somebody there, somebody may come down to visit with them briefly, you know, and they'll park their car there and they may leave. So we have cars coming and going in that regard, but not much traffic at all.

Ms. Pawsat: I'm just talking in kind of a precedent as far as one car per unit, rental unit.

Mr. Bane: That's something you may want to consider. You know, if it is for just the unit itself. We only allow, as a matter of fact when we were talking about this being a three-bedroom or three-room cottage, it's actually down to two now. We've closed off a certain section. We want to keep it as small as we can.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I notice the staff has project specific condition, "that the applicant is encouraged to pursue preservation of the 100-year-old primary farm dwelling by listing it in the Hawaii Register." I notice the May 22 letter we got from the owners second paragraph, they say, they weasel on it, they don't say they will apply for that, they say, "the department ... has encouraged us to undertake forms of preservation including nomination for listing on the Hawaii Register ... because Star Lookout has been a small gem to Keokea for many years we have fervently protected the original character and historic charm. We have no intention of modifying the structure," but they don't say they're going to apply for the –

Mr. Bane: We'll apply.

Mr. Mardfin: They are going to apply?

Mr. Bane: Yes, we will apply.

Mr. Mardfin: Okay, thank you.

Mr. Starr: Okay members this would be a good time for a motion if anyone has one.

Ms. Pawsat: I make a motion to approve.

Mr. Hiranaga: I have a question.

Mr. Starr: Oh wait. Go ahead Commissioner Hiranaga.

Mr. Hiranaga: Because you have a second dwelling on the property, are you farming 50% of your property in order to obtain that second dwelling?

Mr. Bane: No sir. The second dwelling was there when it was purchased. I mean it was built under applicable permits from the county and whoever else is involved. So the structure's been there for roughly 30 years. The property itself, we are not farming 50% of that property. We've built up a vegetable garden that perhaps is 15' x 20' that we've been able to bring in soil and we've also done

some terracing and put in some other plants and that we are, frankly we just recently put in, a flock of chickens. My wife and I are trying our best to make full use of the property in that regard. We share our produce, whatever we have, and we have a number of vegetable and, I'm sorry, fruit trees. We share that with our neighbors and we also share it with our guests. We try our best to be as much in keeping with the intent of ag in so far as a private person can be in what we're doing.

Mr. Hiranaga: I have one more question.

Mr. Starr: Okay, go ahead.

Mr. Hiranaga: These permits are being, if they're approved, or forwarded to Council, is being given to Janice Tower and not Mr. Bane?

Mr. Hunt: My staff planner is nodding his head affirmatively.

Mr. Prutch: Yeah, the property owners. Ray Bane has been the applicant, in fact, Ray Bane filled out all the application on behalf of the property owner.

Mr. Hiranaga: But in effect, the Towers are the ones that are applying for these permits?

Mr. Prutch: As property owners, yes.

Mr. Hiranaga: And Mr. Banes could be removed from his employment a day after the permits are approved and the permits stay with the property owner who is not here.

Mr. Prutch: There was a condition – There is a condition, “the conditional permit shall not be transferrable unless the Council approves the transfer by ordinance.” However, my understanding is the Banes aren't going anywhere. They plan to stay there and from the letter from the property owner she wrote in there that she plans on keeping them there. They're doing a good job and it sounds like it's a win-win situation for owner and applicant. I don't see why they'd want to break that up. But technically yes, they could move out, sure.

Mr. Hiranaga: Right, my question was – right, okay.

Mr. Starr: Can certainly add a condition if you wish. Commissioner Pawsat.

Ms. Pawsat: I'd like to make a motion to approve also with an amendment that only one –

Mr. Starr: Why don't you just do the motion and then we'll – once it's on the floor.

Mr. Hedani: Second.

Mr. Starr: So, Commissioner Pawsat, a motion to approve as recommended with the conditions as per the green sheet. Commissioner Hedani has seconded that. It's on the floor for discussion or to add amendments. We're starting the State Land Use Special Use Permit. Is that okay with the maker of the motion that this is referring to the State Special Land Use for which we're acting as

the decision making body for the state. Is that okay for the second?

Ms. Pawsat: Okay.

Mr. Hedani: Sure.

Mr. Starr: So now discussion or possible amendments. Commissioner Hiranaga.

Mr. Hiranaga: For this specific application, I know we're probably going to be receiving a lot of these types of applications in ag areas and I would not be opposing this application if Mr. Banes was the owner of the property and he lived on site and he operated this in order to assist him in retaining his primary residence.

The reason I will be voting against this motion is because the owner lives in Alaska and is using this income to allow them to retain this property on Maui. And it's going to be difficult in the future as we get applications coming through here before the new ordinance approved and for me, you know, it was a challenge before, you know, this affordable housing issue versus TVR and I agree that we need TVRs or we need B&Bs outside of the resort area, but I think if there's someone out there that lives on the property is trying their best to farm it, it can't produce the income to keep their property and they're allowed to do some type of B&B as supplemental income to allow them to retrain their primary residence I'm not opposed to that. But when you have someone who's not a resident of the Island of Maui and is generating income off of this in order to retain that property in an ag district, I have concerns about that. So I will be voting against the motion. But if you do decide to approve the motion, I'd like to suggest some conditions.

Mr. Starr: Okay, we're open for more discussion or a potential amendment. I believe Commissioner Pawsat had an amendment.

Ms. Pawsat: Well, yeah, the amendment, but first I'd like to address, I agree with Commissioner Hiranaga. I think it would be more an ideal situation that the Banes actually owned the property and things like that. I don't know if something, you know, or there's requirements. Everything's so influx right now, I think it makes it difficult for us but if there was some way, you know, the Banes could be partial owners, you know, hire a lawyer and get partial ownership or something, but I don't know the questions, but I just wanted to say I agree with what you're saying, but because I agree, you know, and I think this is a kind of a versioning of eco tourism and I want to encourage that and this is so low density and by denying it I think we're putting Ray more at risk than helping him if we deny it.

So but anyway, I would like to make an amendment that allows only one car for the rental unit.

Mr. Starr: Do we have a second for the amendment?

Mr. Hedani: Second.

Mr. Starr: Okay, amendment moved by Commissioner Pawsat, seconded by Commissioner Hedani to add a condition that only one car shall be parked on the property for the use of the rental.

Discussion on the amendment? Vice-Chair Guard.

Mr. Guard: I have difficulty with that one. Being in Kula and Keokea if you have say parents and a sibling that could drive or a son or daughter that can drive and one person wants to stay upcountry or one person wants to the crater and one wants to go to town, it's a three-bedroom house and I believe if it had been a residence there may be up to six cars there in some of the places that I've seen with couples living in every bedroom. I'd be happy with probably two as I believe it's meant for one family as it is instead of multiple families staying in the same one. So I see where you're going with the one car. I guess per unit is okay, because a bed and breakfast, if it had been a bed and breakfast they would have up to three cars there with a different guest in each room. So I'm not really sure how we would police that either. People are staying there for a couple months and they have friends coming by, do they have to park outside?

Mr. Starr: Okay, more discussion on the amendment or it is possible to have up to one additional amendment on the amendment if someone wanted to raise it, the number of cars or whatever. Commissioner Hedani.

Mr. Hedani: I think the applicant can correct me if I'm wrong, but I think the applicant indicated that they didn't have a problem with a restriction to one car. And since this is breaking new ground and it is contrary to the department's general position on TVRs I would think making it restrictive would be helpful to some degree.

Mr. Starr: Okay, more discussion on the amendment? Seeing none, yeah go ahead.

Mr. Bane: The only concern I would have is that when people come in, folks who are there, we get a lot of local people who are staying at the property. They come and they sort of use it as an extension for their family home. So we get lots of people from around the general neighborhood. They may drive in and park their car to visit the folks who are there. There's coming and going in that regard. I would say, I agree, you know, we wouldn't have any problem with an overnight if you would, so that it doesn't – the one thing we don't want, is we do not want people parked out on the road. We want to keep that impact as minimal as possible and we don't allow our guests to park out along the side of the road.

Mr. Starr: I'd like to ask staff to read back the amendment so we can be clear whether this would prohibit the local visitors from being able to come in to visit their friends.

Mr. Prutch: The only amendment I've heard so far is to allow one car for the rental unit.

Mr. Starr: Was that the exact wording?

Ms. Pawsat: Yeah.

Mr. Prutch: That's what I wrote down in general, but that was –

Mr. Starr: It is important that staff write down the motions and the amendment precisely. Did our secretary, Carolyn did you get that?



Ms. Takayama-Corden: ...(inaudible)... one car for rental unit.

Mr. Hunt: That's what I had too. To allow only one car per the rental unit.

Mr. Starr: Perhaps some word ...(inaudible)... should be done or someone wants to?

Ms. Pawsat: It has nothing to do with visitors. I mean, they're renting the unit. It's a fairly simple thing. Somehow it's getting complicated.

Mr. Prutch: I could say, "that only one car for the rental unit shall be allowed to park overnight." If that's the intent is that one car be parked there overnight, not visitors coming to visit for the day.

Mr. Starr: Commissioner Guard.

Mr. Guard: What was the language in the bed and breakfast that we approved. I just feel that that is so much, we're restricting this one as the first one in the hopes of being conservative. I feel like if the bill went through they'd have the ability to have three or more cars. I don't think that's their intention. I'm just – I don't want to restrict someone to one car and something that's difficult to police. We approved one in Makena that had the ability to have quite a few cars there.

Mr. Hiranaga: Commissioner Chair?

Mr. Starr: Yeah, Commissioner Hiranaga.

Mr. Hiranaga: I think on the proposed B&B we were primarily concerned about on site parking, meeting an on site parking requirement. It wasn't to limit parking, but that for every bedroom there had to be one space on site. I can't remember the exact wording.

Mr. Starr: I think you're correct.

Mr. Hiranaga: But on 1.47 acres, –

Mr. Starr: Yeah, go ahead.

Mr. Paul Fasi: Paul Fasi. The parking requirement for TVRs and B&Bs we generally classified them into a hotel category and the hotel category requires one space for every two rooms.

Mr. Prutch: And further in the offstreet parking ordinance or the chapter of the municipal code, bed and breakfast homes say one parking space for each bedroom used for short term rental under the B&B ordinance.

Mr. Starr: Okay members, Commissioner Hedani.

Mr. Hedani: I'm getting confused. The applicant is applying for a TVR not a B&B right?

Mr. Prutch: Yes, they're applying for a TVR because it's detached. Doesn't meet the definition of

B&B. Staff has been reviewing this as a B&B.

Mr. Hedani: Well they're applying for a TVR because it's not owner-occupied and it's not operated by the owner within the primary residence.

Mr. Prutch: Yes. So technically yes, it is a TVR.

Mr. Starr: Okay, Commissioner Mardfin. Lets try to –

Mr. Guard: Why don't we vote?

Mr. Mardfin: Quick question. They're using two rooms or that two bedrooms or one bedroom and one living room.

Mr. Prutch: Okay lets see. I went out to the site what I saw is it's one unit. It's a small structure. It's a cottage. It's got a one-bedroom. It's got another – a bed in, so it's essentially two bedrooms and a small loft upstairs for kids to sleep in. Would probably sleep up to six people with four adults, two kids most likely.

Mr. Mardfin: I'd like to amend the amendment. The amendment would be to add the word, "make it one car overnight." This would allow for people to visit during the daytime but not be able to stay.

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

Ms. Pawsat: Can I have comment?

Mr. Starr: No.

Ms. Pawsat: Okay.

Mr. Starr: Is there a second to the amendment to the amendment? Then you can comment on it.

Ms. Pawsat: I'll second it.

Mr. Starr: Okay so we have an amendment to the amendment by Commissioner Mardfin, seconded by Commission Pawsat that it shall be one car to remain overnight, and now for discussion Commissioner Pawsat.

Ms. Pawsat: I'll be happy to withdraw my motion. It's getting a little complicated. But the general point is I mean, we seemed obsessed with like providing enough parking and it should start going in the direction of limiting parking. That's really kind of my basic premise for this.

Mr. Starr: The Chair concurs that less cars is better but lets dispose of this thing yea or nay? Are we ready to call the question on the amendment to amendment. Okay, the amendment to the amendment that there shall be one car allowed overnight. All in favor of that please signify by raising thine hand. We have two in favor, three in favor. And those opposed, please raise your

hand. One, two, three, four, five opposed. So the amendment to the amendment dies.

**It was moved by Mr. Mardfin, seconded by Ms. Pawsat, and**

**The Motion to Amend the Proposed Amendment to Allowing One Car Overnight Failed.**

**(Assenting - W. Mardfin, J. Pawsat)**

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

**(Excused - W. Iaconetti)**

Mr. Starr: We're back to the main amendment which is that there shall be one car allowed, only one car allowed. Discussion? Commissioner Hedani.

Mr. Hedani: I think if you would allow the maker of the motion to withdraw, the second would concur.

Mr. Starr: Okay, want to do that?

Ms. Pawsat: I'll withdraw the motion.

Mr. Hedani: I concur.

Mr. Starr: Any objection? No objection motion is off the floor. Commissioner Hiranaga. We're back to the main motion.

Mr. Hiranaga: I'd like to offer an amendment. Special conditions, "that the applicant shall install septic system prior to the granting of the or issuance of the permits as required by Federal EPA regulations."

I also like, "the applicant to install a fire suppression sprinkler system in the cottage," if it is being used for commercial purposes. It's not that financially prohibitive to install a sprinkler system in a 500 square foot cottage.

The other thing is that, "the owner will notify the County Real Property Tax Office that they are not engaged in an agricultural activity so they should not be receiving any type of agricultural discount on their real property taxes."

And also, "the applicant shall notify the Department of Water Supply that they are not engaged in any agricultural activity so they should not be receiving an ag water rate on their water usage. So I guess those are four special conditions.

Mr. Starr: Okay do we have a second for the amendment?

Mr. Hedani: Second.

Mr. Starr: Okay, moved by Commissioner Hiranaga, seconded by Commissioner Hedani that –

Mr. Hunt: There's four conditions. Number one is to require the installation of a septic system prior to granting of the permits as required by the EPA.

The second is to install sprinkler system in the cottage.

The third condition is the owner shall notify Real Property Tax Office that they're not engaged in agricultural activities and should not receive agricultural tax rates.

The fourth is the applicant shall notify the Water Department that they're not engaged in agricultural activities and not receive agricultural water rates.

Mr. Starr: Okay, does the applicant have a brief comment? Please identify yourself once again for the record.

Mr. Ray Bane: Ray Bane. We'll do whatever we can to keep the property as acceptable as possible. The only thing I would ask that is in making these recommendations that you take into consideration that there is, you know, if you put enough straws on the back and eventually it will break. The intent is not to get away with anything. We have been above board ever since we came on the scene. We've applied for our permits, we paid our taxes. We've tried to be as compatible with the local community as possible. You know, we're trying as hard as we can to be a positive, to play a positive role in the community and that whatever we had there would have been – essentially in keeping with that setting. The more we do out there in terms of development, the less it becomes traditional. And we're trying very hard to maintain that setting as it is. If the expense gets –

Mr. Starr: Please be brief.

Mr. Bane: If the expense goes to beyond a certain point, quite frankly if that's the intent, you know it will stop this operation. It will stop everything. And if anybody else comes along and wants to buy that property I can almost guarantee you it will not be kept in its current condition.

Mr. Starr: Okay, discussion on the amendment? Commissioner Guard.

Mr. Guard: Regarding the water and the ag. It looks like the neighboring parcels are all in pasture. So I just don't want to keep it, it should remain open ended that if they opt to fence in their pasture on a three-quarter acre that they could put a horse in and they would be compliant with the ag use as well, correct?

Mr. Prutch: ...(inaudible)... utilize the 50% I believe as ag?

Mr. Guard: Yeah, and it's 1.5.

Mr. Prutch: So yeah, about three-quarters –

Mr. Guard: Just on that language, we're not trying to deny them ag use of the property with the current language on that as the amendment read and same with the water. If they start farming,

I mean, that would keep with the rural character of that neighborhood out there. The septic I guess they're lucky that they've gotten away from the EPA so far. They would have needed to do that whether it remained a bed and breakfast or a long term rental.

Mr. Starr: Okay members, Commissioner Pawsat.

Ms. Pawsat: Some of these issues on the amendment I feel like are kind of going into the area of code enforcement and it's really not our department. For instance, be one thing if you made it so Lieutenant English of the Fire Department had to go out and inspect the property to figure out if he's safe or get a letter from the EPA approving it or something but I don't feel comfortable making it a condition. And then as far as, you know, it being non ag and require – and not getting water priced, ag water, right like I think that's a no-brainer but we shouldn't have to include that. It should just convert. So I want to know what you think about that. Is that something that you guys, since we're converting it, do you guys tell the Water Department or does this have to be a whole separate thing, you know.

Mr. Hunt: We generally work with the agencies and they'll often times ask for improvements based on applications such as this. The real – the tax situation is a legitimate one that has come up a number of times. Should we be giving people tax breaks on these properties that they're using for more of a commercial use. The issue on sprinklers, the traditional response from the Fire Department is that you need three things. You need a fire extinguisher, you need escape routes and you need smoke detectors. They've never required to the best of my knowledge to have sprinklers inside of the rental unit in the past. So you might take those comments into consideration of the motion.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I'd like to amend the motion.

Mr. Starr: Amend the amendment.

Mr. Mardfin: Amend the amendment regarding the second condition about the sprinkler system to change it from this particular wording about the sprinkler system to bring it into conformance by the Maui Fire Department.

Mr. Starr: Is there a second to the concept of that amendment to the amendment? Commissioner Pawsat.

Ms. Pawsat: Yeah, second.

Mr. Starr: Okay, so moved by Commissioner Mardfin seconded by Commissioner Pawsat that the amendment to the amendment shall instead state –

Mr. Prutch: No, no, no that's fine I just wanted to make a comment that –

Mr. Starr: Oh, okay then wait.

Mr. Prutch: Okay, never mind.

Mr. Starr: Okay, that – go ahead Jeff.

Mr. Hunt: I believe the amendment to bring it into conformance with the Fire Department, right?

Mr. Starr: To insure conformance with Fire Department regulations. And if that's the case, just for clarity would that remove the specific wording about the sprinklers?

Mr. Mardfin: Yes, it would.

Mr. Starr: Okay, so the amendment to the amendment is that – it shall state that shall insure compliance with Fire Department regulations and that the wording regarding sprinklers shall be removed. That's the amendment to the amendment which has been seconded that's on the floor for discussion. Commissioner Hiranaga go ahead.

Mr. Hiranaga: I just wanted to explain I had proposed these amendments and I'm not opposed to the amendment to the amendment, but rather than – I wanted the applicant to be proactive, to notify the departments versus waiting for the departments to detect that they're not in compliance because I don't believe the Water Department is that conscientious about determining who's using water for ag purposes and who's not. So I want them to be proactive and it's also with the Real Property Tax Office, I don't think the inspectors are that – they're unable to cover this island constantly to determine who's an ag use, who's not. So I wanted these people because they're coming for these permits to be proactive and to notify the appropriate departments because what they're doing is basically running a commercial activity so they should be paying at non agricultural rates. They're not in an ag activity. So that's why I put these, and not wait for the EPA to send them a notice that they're not in compliance because you know, and you're saying well, the topography or the – they're making everyone in Maui Meadows put in septic systems and that's all blue rock out there and they're not running commercial activities. So that's why I put these conditions in there.

Mr. Starr: Yeah, and the motion will do that. Commissioner Pawsat.

Ms. Pawsat: Well, I was wondering if we could maybe just state it also maybe to get letters of approval or letters of whatever from that address all your concerns from the Water Department, from the Health Department and from the Fire Department just require those three letters be submitted that the property complies or something more along those lines.

Mr. Starr: Okay, that could be an additional amendment later. Right now we cannot take an additional amendment though just for process. Commissioner Hedani.

Mr. Hedani: Call for the question.

Mr. Starr: We're going – anyone object to that? Seeing none, we are going to vote on the amendment to the amendment which takes out the requirement for sprinklers and add insure compliance with Fire Department regulations. All in favor signify by raising a hand. Any opposed?

**It was moved by Mr. Mardfin, seconded by Ms. Pawsat, then**

**VOTED: To Amend the Proposed Amendment of Requiring the Installation of a Sprinkler System to, "That the Applicant Comply with Department of Fire Regulations."  
(Assenting - W. Mardfin, J. Pawsat, K. Hiranaga, J. Guard, B. U'u,  
D. Domingo, W. Hedani, J. Starr)  
(Excused - W. Iaconetti)**

Mr. Starr: Okay, motion carries eight - zero. Now we're back to the main amendment. Any comments on the main amendment. Commissioner Pawsat.

Ms. Pawsat: I would like to make an amendment to the amendment that requires that the owners provide letters from the Water Department, and there's other ones.

Mr. Hunt: EPA.

Ms. Pawsat: The Health Department that they've been notified of their activities on the property and that they have no objection.

Mr. Starr: Okay, is there a second to the amendment.

Mr. Mardfin: Second.

Mr. Starr: So moved by Commissioner Pawsat, seconded by Commissioner Mardfin that

Mr. Hunt: The motion is to require letters from the applicant be sent to the Department of Water and Department of Health notifying them of the proposal and that the Departments state no objections.

Mr. Starr: Okay, any discussion on the new amendment? Commissioner Hedani first.

Mr. Hedani: I think the original amendment stated that that was the requirement.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I believe I said notify these agencies and I'm not sure you're going to get a response from EPA. You notify them that you're complying because as far as I know there is no exception to this EPA regulation. Congressman Case before he left office was trying to get an exemption for Hawaii and EPA would not grant it. So I don't think there is an exemption. It's just that their enforcement agency is again limited financially. I want these applicants to be proactive and to comply with the law.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: Well, I guess well technically I don't see why the Health Department couldn't take care of it and secondly, you know, I don't know if there's various ways of dealing with waste issues and

there's a lot of things that aren't approved by the EPA that are sustainable and like using worms and things like that that is not approved by the EPA and the EPA actually prevents eco solutions on that level. So that's just another issue.

Mr. Starr: Okay, discussion? Any further discussion on the amendment? We ready to call the question? Okay.

Mr. Hiranaga: Mr. Chair, amendment to the amendment or just she opposed to the amendment?

Mr. Starr: This is the second new amendment to your original amendment, and just for clarity sake one more time director please repeat the amendment to the amendment which is the only thing that we're voting on at this time.

Mr. Hunt: My handwriting is not very fast so if I don't get it exactly give me a little slack. As I understand it, the motion is to require letters from the Department of Water and Department of Health that they be notified of the proposal and that they state no objections to the proposal.

Mr. Starr: Okay, I'm not sure what that says. I think that the – I believe that the intent was that letters be sent to the departments requesting that they comment. Is that what we're trying to do?

Ms. Pawsat: Yeah, that they be notified and that they give the applicant some sort of piece of paper that says that they have no objection that they can give to the County.

Mr. Starr: Okay, so it's that the department shall be notified and a response requested with their comments.

Ms. Pawsat: Yes.

Mr. Mardfin: I have now that I think about it, this could be a problem because just by refusing to send a letter back they could essentially veto the whole thing. So I'm going to vote against even though I seconded it.

Mr. Starr: Okay, we ready to call the question on the amendment to the amendment? Commissioner Hedani.

Mr. Hedani: I concur with Commissioner Mardfin that I don't think you can require the applicant to do something that's not within their control. In this particular case it's writing to an agency and asking for a beating and then requiring that they beat you.

Mr. Starr: Okay are we ready to vote on it guys and gals, gals and guys?

Ms. Pawsat: One comment. I guess I don't understand I mean, developers do it all the time. They send letters and get, you know, comments from the Health Department to things like that.

Mr. Guard: They have pull.



Mr. Starr: Okay, order, order.

Ms. Pawsat: Huh, they have pull.

Mr. Starr: Lets see hands up. Okay, looks like we're ready to call the question on the amendment to the amendment. All in favor signify by raising a hand. All opposed signify by raising a hand.

**It was moved by Ms. Pawsat, seconded by Mr. Mardfin, and**

**The Amendment to the Amendment to Have the Applicant Notify the Departments of Health and Water and That a Response be Requested with Their Comments, is Defeated.**

**(Assenting - J. Pawsat)**

**(Dissenting - K. Hiranaga, J. Guard, B. U'u, W. Mardfin, D. Domingo, W. Hedani, J. Starr)**

**(Excused - W. Iaconetti)**

Mr. Starr: The amendment to the amendment is defeated by seven to one. Now we're back on the main amendment. The main amendment as per Commissioner Hiranaga as modified by the first amendment to the amendment which changed the requirement from sprinklers to be in compliance with Fire Department regulations. Any comments? Commissioner Hedani.

Mr. Hedani: Call for the question.

Mr. Starr: Okay, calling for the question on the first amendment. All in favor signify by raising your hand. All opposed, raise your hand.

**It was moved by Mr. Hiranaga, seconded by Mr. Hedani, then**

- VOTED: To Approve the Amendment of Adding the Four Conditions:**
- 1. To require the installation of a septic system prior to granting of the permits as required by the EPA.**
  - 2. That the Applicant Comply with Department of Fire Regulations.**
  - 3. The owner shall notify Real Property Tax Office that they're not engaged in agricultural activities and should not receive agricultural tax rates.**
  - 4. The applicant shall notify the Water Department that they're not engaged in agricultural activities and not receive agricultural water rates.**

Mr. Starr: The main amendment with the amendment to the amendment attached has passed. So now we're back to the original motion. I believe made by Commissioner Pawsat about a year ago for approval with the recommendations of the department attached with the amendment and the amendment to the amendment. Commissioner Hedani.

Mr. Hedani: I think the amendment to the amendment failed.

Mr. Guard: The second amendment.

Mr. Starr: The second one.

Mr. Hunt: The first one passed.

Mr. Starr: The first one passed, the second one failed.

Mr. Hiranaga: Mardfin's one.

Mr. Mardfin: It's not a sprinkler system, it's bring it into compliance with Fire regulations. That passed.

Mr. Starr: Okay, all in favor of the main motion with the two amendments attached. Signify by raising your hand.

Ms. Pawsat: I'm confused.

Mr. Starr: Wait before we do that. We have a main motion to approve the Special Use Permit. We haven't even gotten to the condition yet with the recommendations by the department with the additional that came from Commissioner Hiranaga and the one regarding fire by Commissioner Mardfin.

Mr. Pawsat: So we already passed the motion that Kent made.

Mr. Starr: The amendment that he made, but not the main motion that it's attached to. Okay, Commissioner Hiranaga.

Mr. Hiranaga: Just for clarity can you state the main motion so that people may have forgotten what the main motion is.

Mr. Hunt: As I understand it, the main motion is to approve the special use permit application with the conditions as recommended by staff with four additional conditions.

Mr. Starr: Well, those aren't the main motion.

Mr. Hunt: As amended.

Mr. Starr: Yeah, as amended. Okay, everyone clear? All righty, steady. All in favor, raise your hand. One, two, three, four. All opposed raise your hand.

Mr. Hunt: The commissioners need to be aware that if you don't vote, that's counted as a yes. So right now we have seven votes.

Mr. Starr: Any abstention? Raise your hand.

Ms. Pawsat: I have a question.

Mr. Starr: Okay, lets take the vote off the floor for a second. Go ahead.

Ms. Pawsat: So what are we voting on? Are we voting just on the – to allow them to have a transient vacation rental, that's what we're doing?

Mr. Starr: Yeah, with the amendment and the amendment to the amendment to attached to it.

Ms. Pawsat: Okay. Well then I agree, yes.

Mr. Starr: Okay, so one more time. All in favor, please raise a hand. One, two, three, four, five. All opposed please raise their hand?

**It was moved by Ms. Pawsat, seconded by Mr. Hedani, then**

**VOTED: To Approve the State Land Use Commission Special Use Permit, with Conditions as Amended.  
(Assenting - J. Pawsat, W. Hedani, J. Guard, W. Mardfin, J. Starr)  
(Dissenting - K. Hiranaga, B. U'u, D. Domingo)  
(Excused - W. Iaconetti)**

Mr. Starr: Okay, the motion carries by the vote of five to three. We've dealt with the special use permit. Now we have before us the conditional use permit and in the conditional use permit, we are advisory to the Council. So a motion would be welcomed that would recommend approval or denial to the Council. Commissioner Mardfin.

Mr. Mardfin: I move approval to the Council for conditional use permit with the staff recommendations plus the four additional conditions, one that they come in compliance with EPA regulations with regard to sewage; two, that they come into compliance with Fire regulations; three, that they notify the Real Property Tax Division so that they come into compliance with real property taxes appropriate to what they're actually doing on the property; and four, that they notify the Water Department so they come into compliance with whatever water rates there are depending on how they're doing it.

Mr. Starr: Okay do we have a second to that motion?

Ms. Pawsat: Okay, we have a motion by Commissioner Mardfin, seconded by Commissioner Pawsat to recommend to the Maui County Council approval along with additional conditions same as we just passed for the special use permit. Any discussion? All in favor by raising thine hand. Counting five votes for. All opposed, please raise your hand, three votes against.

**It was moved by Mr. Mardfin, seconded by Ms. Pawsat, then**

**VOTED: To Recommend Approval of the Conditional Permit to the County Council, with Conditions.**

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

Mr. Starr: The recommendation passes. Thank you very much and we wish all luck to the applicant. It is a beautiful place. Moving right along.

Mr. Bane: Excuse me sir, it's been a long process.

Mr. Starr: Okay, really, really fast.

Mr. Bane: It's been a long process and folks, those of you who have expressed concerns we'll make sure that we take those into account and work with you. We just want to say thank you very, very much.

Mr. Starr: Okay, thank you. Mahalo. Okay, short technical recess.

A recess was called at 11:47 a.m., and the meeting was reconvened at 11:52 a.m.

Mr. Starr: I'm going to do this in a slightly unusual fashion because we have members of the public here that wish to testify on this and they need to go work some of them or to other places. So we're going to ask staff to give us the briefest of brief, brief presentations and without – and if the commissioners will bear with me and hold questions, we'll just have a brief explanation from staff about what this about. We'll have public testimony then we'll go into recess for lunch and when we come back we can get additional detail from staff. So without further ado Director Hunt why don't you introduce the item and we'll have the most brief presentation before we open up the floor for public testimony. Is that okay with the members? Okay, go ahead.

Mr. Hunt: Your next item involves Ms. Linda Gallagher on behalf of CB Laana, Charles Rent & Sukuma Lumjuan requesting a conditional permit for a Type 3 Bed and Breakfast operation for the Spyglass Bed and Breakfast-Vacation rental in the P-1 Public/Quasi-Public District at 367 Hana Highway, TMK 2-6-009: 017 in Paia. The project file numbers are CP 2006/0005 and SMX 2006/0141. The planner assigned to this is Paul Fasi.

**2. MS. LINDA GALLAGHER on behalf of CB LAANA, CHARLES RENT & SUKUMA LUMJUAN requesting a Conditional Permit for a Type 3 Bed and Breakfast operation for the Spyglass Bed and Breakfast-Vacation Rental in the P-1 Public/ Quasi-Public District at 367 Hana Highway, TMK: 2-6-009: 017, Paia, Island of Maui. (CP 2006/0005) (SMX 2006/0141)(P. Fasi)**

Mr. Paul Fasi gave a brief overview of the Planning Department's Report.

Mr. Starr: Thank you for the brief description. We'd now like to invite the public to testify. If anyone really needs to get out of here to go to work or somewhere please give them priority. Someone please come up forward and share your wisdom with us. Identify yourself, try to keep it short. Three minutes limit.

**a. Public Hearing**

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

Mr. Starr: Anyone else for testimony at this time? Please come forward. Please let us know your name and try to keep it inside three minutes.

Mr. Mike Newboro: Name is Mike Newboro and I'm here to voice my opposition to the bed and breakfast permit or transient vacation accommodation permit for the Spyglass House. That being said, I am actually a proponent of the TVRs, the ability for people to have vacation rentals, but in this specific case the impact of this particular property on our neighborhood exceeds any other property on the street significantly. I brought letters, current letters from 10 of the neighbors stating their opposition. I've had – this has been applied for previously last August. I have 12 letters that were written back last August in opposition to this being approved.

The issue primarily is safety and impact. There's been continued problems with cars racing up and down the street, people that are not familiar with the neighborhood. We have young children in the neighborhood. There's been a number of incidents where there have been near collisions. There have been collisions and there have been some near misses with children in the neighborhood.

The property, although they've been stating that they are scaling back their operation they still have a website and I have one of the exhibits in here is from this morning showing that they can accommodate up to 20 people on the property. Their application says that they are going to apply for only two-room transient vacation accommodation – if that were the case, I don't know how that would be policed frankly. If they have a permit to operate with two rooms in their six-room accommodation there's nothing to stop them from renting out the rest of the rooms.

The other issue regardless of the short term or the long term issue is that these people are renting out specific rooms in a home. So whether they're long term or short term the impact is significant. They've got six, eight, ten cars in their parking lot on any given morning. I've got two photos in here from last week showing six, seven, eight cars in their parking lot. Again, back to the fact they are exceeding the impact whether it's on trash or sewer or water, they have a significantly greater impact on the utilities than anybody else in the neighborhood.

The other inherent problem with the property owner, not owner, property is that they do not own the property. They are leasing it and that is the basis for one of the biggest concerns in the neighborhood. Everybody else that owns their property in the neighborhood has a vested interest in making their properties nice, maintaining them. Given the fact that these people as a business operation do not even own the property they are concerned about cash flow first and foremost and as a result the property is poorly maintained.

Mr. Starr: Okay, please try to wrap.

Mr. Newboro: Okay to wrap up, there's a 500-foot radius rule as I understand that if these people are granted a permit then nobody else or it makes it extremely difficult for anybody else within that

500 feet to get a permit to operate a TVR or vacation rental or B&B. These are the last people that should be given that right in that area. If any other – if everybody else owns their property, these people as a leasee should not be given the first shot at it. So thank you very much for your time.

Mr. Starr: Okay, thank you. Members, any questions? Okay, thank you very much for your time and your concerns. Do you have a handout for us? Is that what that – okay, please. Staff will help to distribute.

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

Mr. Starr: Give us your name.

Ms. Moj Scheidler: My name is Moj Scheidler and I came here to just give my own personal perspective on this issue. Spyglass is a very magical property. If you've ever been there you would know that. And I'm real estate appraiser and I came from Lake Tahoe which is a very similar community. And the point I want to make across today is how much I'm saddened how the most pristine properties, the most beautiful places are getting owned by the few and not being utilized.

In Lake Tahoe where I worked before I came here they called it the Gold Coast, the coastline around the lake and the big joke was that the properties, the billionaires are buying the millionaires out and that probably already happened here a long time ago. So anyhow, with that in mind I would go to properties on a daily basis doing my job. Homes that were in excess of 5,000 square feet that were left vacant and empty because they were second, third, maybe tenth home that these people owned and just weren't being utilized. So, what I've seen here when I came to Hawaii, to Maui was the same thing, was all these properties that are the most beautiful properties that offer the most to the public and people are buying them, they're building huge houses as we saw with the first applicant here today and they're putting up big gates and walls and keeping everybody out.

So when I came here to talk about Spyglass I just wanted to take about a property that hasn't done that. It's a property that is in one of the most beautiful locations that you'll ever find. They didn't tear it down. They didn't close it out to the public and they have done really, really good things for the community. So to do anything but to grant them a permit would be a disservice to all of us because I can guarantee you based on experience that if this property doesn't maintain its course it will probably get torn down and rebuilt with some huge house that never gets used. And you can put as many rules or as many, you know, things you want, but ultimately you have to look at the good of few versus the good of money and most people can't afford the \$3 million price tag for oceanfront property these days, but they can afford a place to stay when they come to visit here. And to keep that beautiful place –

Mr. Starr: Please – ...(inaudible - changing of tape)... Okay, thank you very much. Any questions? Okay, thank you. Next testifier please come up let us know who you are and try to keep it under three minutes, as brief as possible.

Ms. Joni Gelica: Hi, good afternoon. My name is Joni Gelica and I've been employed by the Spyglass for about three years up until February when we closed. Have to stay it's been difficult

finding work since then. It's kind of been a big hardship on me personally. I miss the Spyglass. Linda Gallagher is not just a thoughtful employer but she's a good friend of mine as well and she cares a great deal about the people and her community around her.

The Spyglass and myself and Pony and all the people that work there have taken great pride in keeping it really immaculate. We have gardeners that come once a week. There's pest control that comes as well as the daily staff and it's kept up. The accommodations as well as the grounds, they're pristine and we've never heard anything but that.

And as far as the guests, they love to come and enjoy these beautiful quiet surroundings. There were on several occasions or Pony or Linda Gallagher has traveled. I've stayed at the Spyglass and there were probably days on end that I wouldn't even see the guests. I mean, they're up in the morning, they gone doing their activities in the day, coming in late afternoon, they're showered ready for dinner, go out for a bite and home by nine or ten in bed. I mean, it's really super quiet. So basically, it's kind of a place to just kind of rest their head and so I hope that in forum that we can see that and impress the demand that less corporate and commercial experience, you know, like on the – where the big resorts are because – and there's been so many, there's been numerous, dozens of people who've come back to the Spyglass, you know, from year to year and I think it would just be a great shame for them not to have this place, this opportunity to see the more down to earth side of Maui and not the big resorts and not the big crowds. So I'm hoping that we don't lose this. Thank you.

Mr. Starr: Okay thank you. Members? Okay, next testifier please.

Ms. Kat Moore: I'm Kat Moore. I also agree with Moj that it's really nice that more than just one person or one couple can enjoy a beautiful part of shoreline Maui. I think that's really important and Linda and Liam do offer that. I'm a long-term of theirs and I've also been a long-term friend of theirs, close friend for about three years. And they're extremely integral people. They maintain all their properties extremely well and as Joni said, how very thoughtful in working with the people they work with as well as the guests that come to stay with them who are repeat guests. I'm very grateful and happy to be able to live in one of their properties. As I say, they are very good landlords and then they had their bed and breakfast were very, very nice in that capacity also.

Mr. Starr: Okay, Commissioner Mardfin has a question.

Mr. Mardfin: You say you're a long-term tenant. Do you run the operation for them there?

Ms. Moore: No, no, I'm just a tenant.

Mr. Mardfin: In this building?

Ms. Moore: No, I don't live in that building. I live in one of their other buildings.

Mr. Mardfin: On the shore?

Ms. Moore: No.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: You mentioned the comment all of their properties, how many properties do they own?

Ms. Moore: I'm not sure. I just stay in one of their properties and I know they have the Spyglass and you'd have to ask them that question exactly.

Mr. McCormick: Would you like me to answer that?

Mr. Starr: No, no. Okay, thank you very much. Next testifier please come. Let us know who you are and try to keep it brief.

Ms. Linda Gallagher: Hi, I'm Linda Gallagher and I just thought it should be a – would be a good time for me to speak.

Mr. Starr: Linda, you're the applicant right?

Ms. Gallagher: I am the applicant.

Mr. Starr: Okay, why don't you wait because this is for public testimony. You'll have an opportunity to.

Ms. Gallagher: Okay, it's just that it would give everybody –

Mr. Starr: You're out of order, you'll have an opportunity after public testimony.

Ms. Kathy Lu Hunt: Aloha, my name's Kathy Lu Hunt and I am a resident at Spyglass House. I want to say prior to my residency I've always visited Spyglass House and it's always been a beautiful, cozy, homelike place to stay which I recommend it to all my friends and family who have stayed there in the past and have come back. Pony's amazing and she just keeps it so warm and friendly. I feel very local, very part of like a family there as opposed to just being a tourist coming to visit and checking into my cookie cutter room that you know, that I can't even afford and probably pay off in two years on a credit card or something.

So I just want to say that now being a resident, it's still a very cozy, safe, beautiful place to live and Pony came down the other day and just knocked on my door just randomly and said, she's like how is everything Kathy I just want you to be happy here. How can I make your stay better here? And it is clean. It's just paradise and I'm very fortunate to live there and I have a 12-year-old daughter and we just love it. So just want to say that.

Mr. Starr: Okay, thank you. Members? Hold on, please come back.

Mr. Mardfin: Are you a resident at the Spyglass?

Ms. Hunt: Yes, I am.



Mr. Mardfin: Okay, thank you.

Mr. Starr: Okay, thank you. Next testifier. Please come, let us know who you are and try to keep it fairly brief.

Ms. Deja Howard: Good afternoon, my name's Deja Howard, and I am here in part to support the Spyglass House and my friends, Liam McCormick and Linda Gallagher. And I also want to address some concerns that I have personally in regard to some of the restrictions the County's been making on what I perceive as small businesses. The bed and breakfast, the ocean activities which some of you might recognize me from those meetings, I'm very concerned about the quality of life as a community that we are going to suffer at the hands of the County's ordinances for the reasons that it seems as though the corporations are garnering a lot of support and if – and hardly any at all restrictions where as these small bed and breakfasts, like the ocean activities and businesses that are literally owned by families on the island are being restricted and in many instances being put out of business.

You know, corporations the money goes off the island and small businesses the money stays on the island. And you know, as they – as we like push out these small businesses like the bed and breakfast you're giving all the business to the corporate conglomerates that exist in these resort areas. And I think that that's very small sighted as a community here on Maui. We need to support our community and to me I feel like you council members are here and I thank you for being here to support us as a community and to stand up for our rights as the small individuals that elected you going up against these huge corporate conglomerates that are from not even necessarily the State of Hawaii but aren't even from the country of America. You know, I am a kayak and snorkel tour guide that I've been here on Maui since '99. I've been doing that for eight plus years and I've seen a lot of changes in the ocean activities industries and I'm also – I do – I'm independent contractor over at the Grand Wailea recently and I've been seeing – they are where the money is going. And it's definitely a source of concern for me. I have my notes here, so – but provisions need to be made to protect the community. The culprit for the lack of affordable housing in my opinion is not the bed and breakfast. The culprit for the lack of affordable housing is what the woman Moj said, first, it's these people that have the affluence to come and by third, fourth, and some instances eight and nine homes in different places around the world and most of these homes are sitting vacant. Most these homes not only are they sitting vacant but they have lights coming on all the time, they have water coming on all the time, the refrigerator's running, they have hot tubs running, and this is a drain on our infrastructure and I think that – I have recommend – I have recommendations which are –

Mr. Starr: Try to wrap though, pretty quick.

Ms. Howard: Yeah, my pleasure. You guys were saying that you wanted some recommendations so, my recommendations are, I think you guys need to tax non-resident property owners much higher than you are. Instead of going after the small businesses, instead of going after these people that are actually contributing to the well-being of the community you need to tax people that don't live here that own property. If this is not your primary residence, you're not paying residential tax to the islands, then you need to pay something to circumvent the drain on the infrastructure and they can afford it. And the developers need to pay more and you know, these people are draining

the infrastructure, they're not giving back to the community.

Mr. Starr: Okay, please wrap up.

Ms. Howard: And you know, Linda and Liam do give back to the community innumerable times before I even knew these people I was welcomed to the Spyglass House, I was treated as a friend. I that, you know, it's short-sighted to put people like this who do keep the ways that were here when so many of us first came to the island to push these people and in the end what's going to happen is exactly what Moj said, they're going come in and build a much larger mansion with less ocean access for the people and I think that –

Mr. Starr: We need to have some time for other people.

Ms. Howard: Okay, so well thank you very much and I'd also like to thank Akaku for being here and covering everything because that's real important for everyone to get hear these.

Mr. Starr: Okay, thanks good comments. Commissioner Mardfin.

Mr. Mardfin: Quick question.

Mr. Starr: Come back, come back.

Mr. Mardfin: Do you live in a Gallagher home?

Ms. Howard: I do not sir.

Mr. Mardfin: Thank you.

Ms. Howard: Any other questions?

Mr. Starr: Okay, thank you. Aloha. Next come please. Yeah, come. Introduce yourself and try to keep it to three minutes or less.

Ms. Melissa Verbena: Hi, my name is Melissa Verbena. I've been a Maui resident for over 10 years and I've known Linda Gallagher probably 17 years and I've just watched the quality of life of the Spyglass House and that kind of thing the B&Bs bring and TVRs. And what I'm – my concern is the effect on just even just Paia from this one particular instance. I do business quite a lot with the Paia ...(inaudible)... I'm an artist and it's where my reproductions are and I've just noticed from the owner there that there's been quite an impact by the limitations that have happened this year and my concern is that is the bigger impact of the community and the way having the small kind still being available and I just wanted to speak from the heart that I want to see that continue that the small time operators still be supported. So that's what I'm here to say.

Mr. Starr: Okay, thank you very much. Members? Okay, thank you. Any other testimony? Who's next?

Ms. Howard: I have a few more things if I may?

Mr. Starr: No, I'm sorry, but you had a lot of time. Anyone else who has not testified? Okay, in that case, I'm going to close public testimony. I'm going to give Linda Gallagher a chance to –

Mr. William McCormick: I was just wondering if I –

Mr. Starr: Come to the mike and introduce yourself or if you have a question you can ask that first.

Mr. McCormick: I'm one of the other founders of the Spyglass property and I'm just wondering if I should read my testimony now or wait to do with Linda Gallagher.

Mr. Starr: If you're part of the applicant, members we're good for a few more minutes? Go ahead Commissioner Hiranaga.

Mr. Hiranaga: If they're testifying within the public testimony realm it's fine, but I would prefer you not allow the applicant to speak until after lunch because it is a quarter after 12:00 and we're probably going to have numerous questions that –

Mr. Starr: We're going to – we need your name actually.

Mr. McCormick: It's William McCormick.

Mr. Starr: Okay, thanks William. We're going to recess for lunch. All this brainwork has developed an appetite so we're going to recess until 1:15 p.m. when we'll continue staff presentation and we'll hear from the applicants and the applicants will have ample time to talk to us. I want to thank everyone who came forward to testify. 1:15 p.m. we'll be back.

A recess was called at 12:15 p.m., and the meeting was reconvened at 1:15 p.m.

Mr. Starr: ... is back in session. I had a additional testifier has signed up and I know we had closed testimony, but if it's okay with the commissioners, I'd like to give an opportunity for people to testify who have not testified before. So it looks like Heather Riley. Is that right? Come on up, state your name and try to keep it short, certainly under three minutes.

Ms. Heather Riley: Sure. My name is Heather Riley. I'm a web designer and local resident here. I basically have come here to testify for the Spyglass House. I've known Pony and Liam for quite some time and I just wanted to bring to your attention that I find them really outstanding members of the community. I'm personally working on a project called the "No More Plastic Bag" for the town of Paia and they've been so supportive that I think that really has a lot to say for their character. Pony actually wrote a song that will be really helpful to raise awareness and spread that message about no longer using plastic shopping bags. And I know that doesn't directly link with Spyglass House but I think it's an important point to make, a better character. And I find her an outstanding resident supporting that in helping with whole introduction of the corn starch bag and that sort of thing. And I know that if they're given permission to reopen the Spyglass House then they want to also participate in that project by using the corn starch liners and I'm really pleased with that.

I also wanted to testify as a web designer. And just bring your attention, by the Spyglass closing it did affect me personally. I had an opportunity to redo their website and we were discussing how we'd do it then when we found out that they could no longer operate everything went on hold. There's so many levels that things trickle down and affect local businesses. I'm a really tiny, small design company, so things like that I can only imagine. You know, people cleaning, and doing maintenance and they're always very reliable, they always ...(inaudible)... time and so to lose a client like that is difficult.

I also just know from being there, just mainly Pony there because she takes care of the place. She lives on property. She's very reliable and she makes sure that everyone's quiet and responsible and she doesn't tolerate anything less than that. And so I'm sure that you could have confidence that if it were allowed to reopen that everything would be running smoothly. She's respectful of the neighbors and I just wanted to have the chance to let you know that. So I hope that my testimony can make a difference. I know that it's probably the last one today, and I just wanted to thank you for considering to reopen the Spyglass House. I strongly support that decision if that could be made and I think it's a great place for the community. I know when I have personal guests come, that's where I want them to stay and at this time I can't and it's now always possible to have people stay in your home when you run your business from home. So to be able to refer someone to a bed and breakfast that's close by, you can still see your friends rather than have to drive all the way to Wailea where they may not even come. So I think that it can only enhance the northshore.

Mr. Starr: Thank you very much. Any members any questions? I know I hope we get to hear some of that song, maybe a verse and chorus later. Any other members of the public who have not testified that wish to testify this would be the last opportunity. Okay, seeing none, Paul take it away and why don't you start by making real clear what we're being asked to procedurally.

Mr. Paul Fasi: Thank you Chairman. Good afternoon. What we are reviewing today is a conditional permit and this body will give a recommendation to the County Council which has final authority on this matter. The conditional permit is a permit to continue use of the Spyglass Bed and Breakfast operation in Kuau.

Mr. Starr: Paul is this in residential or is this in ag?

Mr. Fasi: This is in public/quasi-public and I will get to that.

Mr. Starr: So that's why we don't need the State Special Use Permit like we did in the last one?

Mr. Fasi: That is correct. Also, with me today is Charles Villalon from the Zoning and Enforcement Division of the Planning Department and he can address any of your questions that you may have on the two notice of warning that were given.

This application for conditional permit was filed in January of 2006, and just to clarify it had gone through several iterations of this application from a Type 3 to a 2 to a 1. So we are considering recommendation on a Type 1 Bed and Breakfast Conditional Permit for a bed and breakfast. This is a two-room operation.

Mr. Starr: Hold on a second. I think we may have a problem. The agenda says Type 3.

Mr. Fasi: That is correct. I had a meeting with the applicant. I believe it was last week and they wish to amend their application. So it will reflect –

Mr. Starr: Before we go any further I want to ask Corp. Counsel if there's any issue with the fact that this is agendaed for a Type 3?

Mr. Giroux: Well, this would raise Sunshine Law issues as far as notice. I think that the fact that the address and the fact that most bed and breakfasts fit the definition of the transient vacation I think they're – you know, I'm not saying that this is going to rule out any type of challenge, but I would say that there has been notice. Did you mail out anything to neighbors or anything?

Mr. Fasi: They did notify the 500-foot neighbors, I believe it went out as a Type 2 or a 1?

Ms. Gallagher: It went out as a Type 2.

Mr. Starr: Wait, please come up to the mike.

Mr. Fasi: Just to clarify what the applicant said it went out as a Type 2?

Mr. Starr: Which is more restrictive?

Mr. Fasi: The Type 2 is more restrictive. So they actually downgraded their application instead of making it into a more restrictive category.

Mr. Giroux: Paul, all I can say is that it's a Conditional Permit which we usually don't even mention the type of unit. We usually state how many rooms or whatever. So if it's a matter of density or matter of scope, I think that's going to be a problem for the, you know, for the department to deal with. But as far as the fact that there is notice that there's action going on on this property it might meet the bear minimum of notice. So that's all I can say.

Mr. Starr: And since we're acting on the more restrictive Type 3 right gives less entitlement is that correct Paul?

Mr. Fasi: Type 3 would give more entitlement, more rooms. Type 1 is one and two bedrooms. Type 2 is three and four and Type 3 is five and six. But what we're really discussing right here is not the actual bed and breakfast.

Mr. Starr: Okay, but wait, let me just get this straight. So the agenda went out as a Type 3 which would allow more bedrooms.

Mr. Fasi: Correct.

Mr. Starr: And they reduced their request?

Mr. Fasi: That is correct.

Mr. Starr: Okay, then I think that we – the Chair will rule that it's in order for us to proceed because we're not – they're not asking for more entitlement than went out as part of the agenda.

Mr. Fasi: Thank you Chairman.

Mr. Fasi then presented the Maui Planning Department's Report.

Mr. Starr: Okay, thank you Paul. Once again, the item before us is a recommendation to the County Council on Conditional Use Permit. Commissioner Hiranaga.

Mr. Hiranaga: At this time I would like to recuse myself from this agenda item because I believe at one time I did have a professional business relationship with the owner of the property and to avoid any type of appearance of a conflict of interest, I will be recusing myself.

Mr. Starr: Okay, let the record show that Commissioner Hiranaga has recused himself because of prior relationship and thank you for bringing that to our attention. Vice Chair Guard.

Mr. Guard: Thank you. I'll have to recuse myself as well with some relationship with neighbors.

Mr. Starr: Okay, let the record show that Commissioner – Vice Chair Guard has recused himself also. Thank you for bringing it to our attention. Members if it's okay I'd like to allow the applicant I believe there's two individuals who are both involved with the project who would like to speak before us and try to tell us what you wish and keep it fairly short if you can just because time management.

Ms. Linda Gallagher: Yeah, we've all been here a long time. I appreciate all your efforts. Well I've waited many years to stand up here at this podium.

Mr. Starr: Oh, introduce yourself.

Ms. Gallagher: Oh, my name is Linda Gallagher. I have a nickname Pony, you might hear me referred to as Pony. I'm a musician and Pony Brenden is my stage name. Okay, I'm really passionate about this project. I've been living at the Spyglass House which we have named 10 years ago, since 1998. I'm a Maui resident for 16 years. I have a 22-year-old son and have raised him here and he's now living in Makawao.

Well, I kind of wrote down. I'm just going to read this. How passionate I am. I've built a living, I've made a life about – built around living and working at home. I have a neighbor across the street that for some reason wants to shut me down so badly that he went door to door in the neighborhood on the other side of a six-foot cement wall to rally people to sign letters of opposition. Understandably I'm probably the more passionate one because this is my life and my lifestyle.

Ten years ago when all the other properties in our street were just sugar cane fields, my partner and I stumbled upon the property. It was covered in brambles, dust, peeling linoleum floor, leaky

roofs, rotten porches and stained mattresses on the floors of all rooms. We saw the potential to make the property beautiful again and obtained a lease that could be only afforded if at least some of the rooms were rented short term.

We invested thousands of dollars into the property, fixed it up, built a website, got our business license right a way and found that we could indeed run a beautiful bed and breakfast. As we came across the stumbling blocks of obtaining a legal permit over the years we have invested quite a few thousand dollars in permits, architectural drawings, renovations and tried to follow through with any requirements that were asked of us.

I'd like to point out that this was very important. The owners of the property are actually a foundation that makes prosthetics for children in Thailand and Vietnam. They make them hand made and in 1999, my partner Liam and I took a trip to Thailand to take a peek at the small factory. We spent two weeks living with the family that runs the foundation and getting to know them and they became like family to us as well. We suggested at the time that since we have to put so much into the property and they weren't there to take care of it and we were that maybe we should buy it from them. We made them an offer and they told us that the taxes that the foundation would have to pay on selling the property would not benefit the foundation since they're always getting our payments every month predictably.

In the meantime, we continued to house the friends and family of residents on the north shore and also new guests and they all showed great respect for our property. The neighbors as well as spending their vacation money on our merchants in Paia which goes without saying. We have massage therapists, water sports schools, yoga, all the things that the north shore has to offer. And we became a landmark in Kuau.

We have wonderful reviews in guidebooks such as Frommer's, Fodor's, Lonely Planet and others and the L. A. Times did a front page article on us saying how beautiful it was. Our clientele mostly consisted of middle class couples that were on the north shore because they enjoyed what the north shore had to offer and they did not want to stay in resorts. These people were always out in the morning, always really. I had the place to myself pretty much all the time. And back in the evening to shower and we were always very quiet. I never had people that partied or drank or you know, maybe have a glass of wine in the evening, but really most people were out all the time and I really want to stress that and also that tourist tend to drive quite slow as we all know.

Now that I have some long term tenants there I really just as far as, you know, the ecology and planning and shoreline and everything, I really wanted to express to you that I am noticing quite a larger impact even though we are in the boundaries of what we're supposed to have there. There are less people on the property now although each of us drives our cars in and out all day long to do errands, go to work, buy food, go out for coffee, pick up kids, go to the beach, go to class, go out for dinner, go surfing, etc. Now that there are no guests we can have our friends come to visit more often, taken hot tubs, wash our cars in the driveway, have people for cocktails and live our ocean front lives as we do which is totally in the boundaries of reality. When I had guests staying there all the time, the impact was close to nothing in comparison really. As well as being able, I was able to afford the cleaners to come every single day to clean up the property. The gardeners to come once a week, the hot tub person to come take care of the hot tub once a week, the bug,

pest control person to come once a month and anyway, yeah, now we can – it's hard, I mean, I want to keep it up, but it's just harder to make the payments on all these things. It's a big property. Don't get me wrong about the tenants that live with us. I hand picked each one of them and they're all wonderful tax paying citizens of Maui, but I'm just making a point about the traffic.

I'd like to address the letters of opposition that were turned into the county. Most of those letters were prompted by the neighbor. You will all probably know who he is. He lives across the street. In our 500-foot radius the residents consists of two streets. Our street has seven TMKs on it and out of the 25 all the other TMKs are on the other side of a pretty tall, six-foot at least cement wall and there's no access or visibility or hearing range or anything to my street. And I don't even think many of them even know that the Spyglass House exists. So most of the letters were prompted by the neighbor. I watched him go door to door on his motorbike and solicit these people to sign this 500-foot radius rule. I understand that people's – like a couple people's objections about not wanting to support my bed and breakfast because they're afraid that they in turn will lose the right to open their own and I can understand that, but I don't think that is an actual rule and I've done a lot research. I'm not really sure with your guys language if it is or isn't. But I think that it shouldn't be. And a lot of the letters as you will see are signed because they're afraid of that 500-foot rule.

The other thing I'm concerned about is about the taxes going up for the other residents if it was to be approved and I'd like to have some kind of clause in there that if it did sell to somebody else that it really wouldn't have an effect that they would have to start their permit process all over again away and I believe that that's true. The house hadn't changed hands in 20 years or 30? We just talked to the owners in Thailand last night and I believe it's 20 or 30 years. Anyway I'm pretty passionate about keeping it nice for as long as I can. It's really magical place on the shoreline.

Also throughout the process of trying to obtain this permit, I was asked to get some flood zone drawings done because they thought it was in the flood zone and it actually – I have it stamped it is not in a flood zone at all. So that's good news.

And as far as the things that the county has asked me to do, I've been in what do you call it the Building Department has kind of given me a runaround a little bit with getting all the different drawings and after the fact permits. I have not added or taken away anything from the property since we've gotten there in 10 years. Apparently there was a stairwell in the house before we got there. You can tell because there's a star-shaped wooden structure on the ceiling downstairs where a stairwell had been taken out. I believe the County wants us to put it back in and we had the drawings done and that will be fine. I would love to put it back in if they need it, but I stopped on that process because I didn't want to keep going until we got through this portion. So if want to make an amendment about a stairwell or anything else.

I know that parking is a issue with you guys. We are in conformity I believe if that's the word with all the parking. There's plenty of parking on our street, I mean, on our property. If ever there is an overflow of parking it has nothing at to do with transient people, it's just friends of people who live there. That's it.

Mr. Starr: Okay, thank you. I'm going to ask the other co-applicant to speak and then we can ask questions to either of them or the staff planner. So I forget your name, come on up, introduce



yourself and try to be brief so we can –

Mr. William McCormick: My name's William McCormick. I'm actually not on the application. I've just been a business partner of Linda's for 10 years.

Mr. Starr: That's good enough.

Mr. McCormick: And yeah, I don't really need to add anything. I feel like she did a really good job of summing it up.

Mr. Starr: Okay, thank you William. Members? Discussion? Questions? Commissioner Pawsat.

Ms. Pawsat: So originally, we have some sort of from the Spyglassmaui.com. It seems like you originally had nine rooms for rent is that correct?

Ms. Gallagher: When we first opened the property there was also a cabin on the property and my bedroom – we were a little confused in the very beginning on what to do and how to keep the property going and it was a trial and error kind of thing. I don't believe we ever rented out nine rooms. It kind of narrowed down to the six rooms and then when we found out that the ohana would be basically impossible to ever get permitted we withdrew those three and just were going to apply for three. There was never nine rooms.

Ms. Pawsat: Well, according there's the King Neptune's Room, the Mermaid Room, the Garden Room, the Ground Floor Private Ocean Suite, Upstairs Private Ocean Suite, the Sunset Room, the Plumeria Room.

Ms. Gallagher: No, those aren't on our property.

Ms. Pawsat: It's Spyglassmaui.com.

Ms. Gallagher: Yes, spyglassmaui.com has six bedrooms on the website and never had more than that.

Ms. Pawsat: There's a little bit of things that concern me. I mean, generally in support of what you guys are trying to do, but I don't feel like you guys have all your i's dotted and t's crossed here.

Ms. Gallagher: I'm willing to answer any questions.

Ms. Pawsat: You know just the fact that there's – you have all these building code violations is a problem to me which I'd like you to explain in a moment.

Ms. Gallagher: Okay.

Ms. Pawsat: And also the fact, I mean, when I compare it to the one we just passed that was a two-bedroom unit on one and a half acres, yeah. And so and according to this, I mean, you're saying six, you had six but according to this there is at least eight and that's eight units on a third of an

acre. So that just highlights to me that I can understand that this probably did generate a lot of complaints with the traffic and such. That there's so many people on one site and then you mention all the buddies and the drinking and the hot tub and things like that. You know, and enjoying the lifestyle so to speak. And it seems like if you were renting all these rooms and having friends over it just, you know, kind of makes me think that there's some legitimacy to these complaints about noise and things.

Ms. Gallagher: Can I clarify that?

Ms. Pawsat: Yeah, please do.

Ms. Gallagher: In my reference to having people over, that is now that we're not having guests. When we had guests I would discourage my friends from coming over at times because it was my business. And I would like it to be that way again, a nice quiet place. But now I do have long term tenants and they do have friends and I was trying to amplify the difference between having people that live long term is more usage than actually the vacationers that are never around. So I really would like to clarify that.

Ms. Pawsat: Another thing I think that you guys have a whole – you guys should have brought in a site plan or something of the property.

Ms. Gallagher: We have that in the book here.

Ms. Pawsat: So we can see how much parking there is and where everyone parks.

Ms. Gallagher: Yeah, it's all right here. I had distributed about, I think it was 24 of these booklets a long time ago and they've got all the maps and site plans. Should I bring it over?

Ms. Pawsat: Yeah, please.

Ms. Gallagher: And then I have another book here with all my applications and drawings of building permits and things that were asked. If anybody wants to see anything I've got a huge book here.

Ms. Pawsat: Can you address all the building permit violations?

Ms. Gallagher: Yeah, I believe there's – I'll start chronologically. I believe there's one in there from almost eight or ten years ago that that cabin was too close to the property line and it was immediately taken down, sadly but it was taken down. It was not ...(inaudible - changing of tape)... and when it somehow the Planning Department, Building Department, whatever Zoning, I don't know came and gave me a violation, we immediately took it down.

Then there's a covered lanai upstairs that has been there for I don't know 30 years and I applied for the after the fact permit for that and that's when they wanted the flood zone drawings to go with it and that's where I got held up.

And then there's the stairwell that they want put in and I have also been working on that as well.

I believe that's all.

Mr. Starr: Excuse me, I see Inspector Villalon. Are you here on this matter?

Mr. Charles Villalon: Yes sir.

Mr. Starr: Can we ask you possibly to comment on this because we are talking about violations and such on this particular item?

Mr. Villalon: Honorable Commissioners, before I testify, I'd like to identify myself. I'm Charles Villalon with Zoning Enforcement, Planning Department, County of Maui and we rotate in our districts. This was primarily mine in '03 and it went to another inspector who is not on the island right now but I got the entire folder of complaints. But if I can, I've got some photos and it depicts some pretty egregious building codes.

No railings, the ones that we're concerned is out interior/exterior stairways without railings. They got ladders that you can access lofts. And as you can see in the photos, those rooms are not even allowed by housing code for the size of the rooms. It's like from the T.V. to the corner at the end of that window. You can call it storage, but you got desk, you got beds, you got habitable areas that are being use. So we haven't verified whether or not they're going to be using that. We don't know whether or not the scope of allowance will include there other areas or we're calling it habitable lodging units because they don't have any stoves or heating elements for cooking, but they in fact have areas to sleep in.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Charles, we're kind of confused as to how many units are on the property. Can you help us with that?

Mr. Villalon: You're asking for the habitable units in which that's a whole question, that's what needs to be cleaned up because by the housing code and by building code, a lot of those rooms are not even supposed to be used. She commented it was storage, but you know, when its full and it's a big surf tournament that's an area that they can use and occupy and it's obvious that's what they've been using for for this time. I'm not speculating. I'm showing photographs with bed and accommodations in areas that are not even allowed by housing code.

Mr. Hedani: So from your perspective how many units would that constitute?

Mr. Villalon: Nine plus units including lofts and lanais and closets.

Mr. Starr: Commissioner U'u.

Mr. U'u: Yeah, just a comment. Thank you for your work by the way. You know, it kills me at times that I follow the law to a "T". I live close to the Spyglass House in a older neighborhood but you know, I got a one-bedroom extension. Went through the whole SMA permit process doing things legal to the "T" and it hurts me at times when people have no disregard for the law because that is

blatant. I glad you – I thank you for the pictures because it is blatant. There's no railings at all. Done without a permit and you guys making a profit. I'm there for life living and I follow the law to the "T". So it hurts me when you guys call yourself good for the community. So, what's good for the community if you do everything illegal there? It kills me in fact. I took one year waiting for a one bedroom, one year going through the process and you guys build your illegal for profit and you guys talk about aloha. We highest rent in the nation, the highest rent in the nation and you guys not helping the cause at all.

Ms. Gallagher: ...(inaudible – speaking from the audience)...

Mr. U'u: No, no, not really. It did. The pictures address that. I believed everything you said prior until I saw the pictures.

Mr. Villalon: Let us note that it is within the SMA area.

Mr. Starr: Okay, beyond the issue of whether, you know, they meet the letter of the codes, are there anything that you would consider – would you characterize as a critical safety issue with this or is it just a kind of a paperwork kind type of thing?

Mr. Villalon: ... mention is that I initially got one of the calls in 2003 in regards to a disgruntled tenant who claimed there was invested with fleas in all the bedrooms. I got in touch with them, I said, "look this is not going to help your permit. You don't even have your permit. Show me immediately that you're going fumigate the home." So in couple days they gave me a receipt that they did fumigate the house and at least alleviate that sense of flea inundation to the structure. I got the report and the notice that I issued. We didn't make this up. We didn't go knock on their doors. People called.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: So has everything within this Exhibit 1 been addressed? It hasn't been addressed.

Mr. Villalon: We need to – that's the building side. That's what building needs to confirm that they've passed.

Ms. Pawsat: Okay.

Mr. Starr: Okay, I will give the applicant an ability to speak to all of this, but just hold on a minute. Commissioner Mardfin.

Mr. Mardfin: I'm reading June 5, 2006, from the Department of Public Works and Environmental Management and it said that, "the existing ohana dwelling exceeds the allowable floor area of 600 square feet and the applicant is to verify that a building permit and variance were approved." And then I see a comment it was built in 1965, but I don't see a direct response to the question. The ohana dwelling is supposed to be what, 500 feet or less?

Mr. Villalon: Yes, but again that's out of our Planning Code. We do the use, DSA does the Uniform Code, Uniform Building Code requirements.

Mr. Mardfin: Okay. Thank you.

Mr. Starr: Members? Okay, I'm going to let the applicant address these issues and particularly about building code and even more importantly safety violations that, you know, stairways, you know.

Ms. Gallagher: Can I see those photos please?

Mr. Starr: Stuff that I think we've all lived with but never on a commercial basis.

Mr. Mardfin: I think Wayne has them.

Ms. Gallagher: And are they dated.

Ms. Pawsat: Yeah.

Mr. Starr: Yeah.

Ms. Pawsat: Question.

Mr. Starr: Hold on one second. Commissioner Pawsat.

Ms. Pawsat: I was just wondering, Hunt, if do you know if these, what's going on with the follow through with this notice of warning?

Mr. Hunt: Inspector Villalon would know better than me.

Ms. Pawsat: Didn't he just say that's now with a different department to enforce that? I know he wrote it, but didn't he say it's a building department's responsibility now. I know you're not the building department but.

Mr. Hunt: I don't know the follow up.

Ms. Pawsat: Okay.

Mr. Starr: Commissioner Hedani. Do me a favor, can we let her see those for a second just so she has an idea what we're looking at so she can answer some of that stuff, then she can give them right back to you.

Ms. Gallagher: Okay, well first off I see that the railings in here don't have the lattice and now they do. This is just one of the improvements that we had done to the whole property. If I knew that these old pictures were going to be brought in, I would have brought in new ones. This is also the old parking lot. Now it is totally different. This platform here was the little tent room that was my son's at one point that got taken down. This stairway here is not there anymore. It is just a storage loft. This ladder here is moveable and is there for the storage loft. Yes, I do have a futon bed up there for any friend that I might want to have a bed for. Lets see if I can address any – I know these

pictures look terrible, but I can address each and everyone of those things. I don't think that – yeah –

Mr. Starr: Okay, Commissioners do we need any more comments?

Ms. Gallagher: But I'd also like to address a couple of other things he said.

Mr. Starr: Okay, go ahead.

Ms. Gallagher: Yeah, I did have a complaint once, just once in 10 years from a guest that thought that the bed had fleas but I believe she got bit on the beach and then probably thought she had fleas. But anyway, we did get it fumigated immediately, of course. You know, of course. And I have guest books here. These are less than half of my guest books that are full to the "T" with very happy guests. So yes, of course, you might have the opinion of one person. As far as, I've never had nine rooms so I don't – you know, it's okay, people's opinions can have their opinions, but I really – I'm here with an open heart trying to tell you from my heart I'm not trying win everybody – anybody over. I just want to continue to live there and support my family and be able to support the place and keep it nice. Okay.

Mr. Starr: Could we have the pictures back, please? Because I think Commissioner Hedani was looking at them. I have a question which is, I'm still not clear how many buildings you have. How many rooms, how many of them are to long term rentals and how many you're looking to rent out as a TVR use.

Ms. Gallagher: Okay, there's the main house. It's a two-story structure. There are two bedrooms downstairs and there are – it's pretty much one bedroom upstairs. There's also an office upstairs that could be a bedroom, but I'm not asking for it to be. It has been in the past. The ohana has three bedrooms and they're all rented long term. That's it.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: Yeah, I looked at the documentation you gave me. I really think it needs to be updated. I don't – it's clear particularly now if you're just trying to apply for a two-bedroom. I mean, looking at, I was kind of flipping through, you can't figure out what is what, and so you could have something very simple. I mean, I don't know what the other commissioners are thinking at this point but I think the nicest thing that I can do for you and which I think is pretty lenient is to request a deferral of this item so you guys can start dotting your "i's" and crossing your "t's" and have the inspector come over again and inspect the property again and make sure it's in compliance with everything because we can't really take your word for it now. And all these things are --

Ms. Gallagher: Well I have an updated copy here that I was going to –

Mr. Starr: Please wait. Commissioner Pawsat has the floor.

Ms. Pawsat: So like I was saying it's difficult for us to just take your word that these things are fixed without having it being reinspected at the very least perhaps someone here – you know, technically

I don't have enough information to make a decision because I don't even know if these things that have been pointed out in violation have been addressed and you know, we can't go cutting off the legs of our enforcement team since that needs to happen more and so we really have to take the matter seriously.

Mr. Starr: Okay, Commissioners any more comments, questions or – Commissioner Hedani.

Mr. Hedani: In the prior application that you observed this morning where there was an applicant for a TVR, they came in with 78 letters of recommendation that were positive and a hundred and some odd additional comments that came in all positive. If one of those recommendations were negative I would have voted against it. In this particular case there's numerous complaints that have been filed from the neighbors of this particular area. The recommendation of the staff planner was for denial of the recommendation and you still want to proceed at this point?

Ms. Gallagher: Well, like I said most of the letters were due to the 500-foot rule about only having one permitted bed and breakfast and I can understand the reasoning if that's true. I don't believe that – is that a rule? Is that true that there can only be one?

Mr. Starr: We're not really entertaining questions.

Ms. Gallagher: Okay, well so I'd like to state that most of those letters if you read them through that is their reasoning. Complaints about the one – the building department, yeah, they've all been amended, they've all been fixed. So I have – I guess I can – I didn't know he had those pictures. I had no idea. They're old.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I wanted clarification regarding the only one B&B within the 500-foot radius. Doesn't it just kick it up into a different permit category?

Mr. Hunt: The way the law works right now for a bed and breakfast, if there's another within 500 feet, it kicks it up to the next levels. There's three tiers of review. During the review of the draft bills there was some discussion that perhaps we should make that mandatory so it wouldn't be a discretionary thing but that was just discussion.

Mr. Hiranaga: Yes, I guess there was a misstatement in this form letter that was passed out to a lot of the people in the 500-foot. But I do have another question. In the photos that got passed around, it shows a parking area on the adjoining lot located east of the property and that actually is a cemetery lot that's owned by a church in Paia. Do you have a rental agreement with them? A written rental agreement?

Ms. Gallagher: I'll give you the whole history about that. It is – That is an old photo like I said and right now there are huge, gigantic boulders all around that area so that nobody can go in there. There were many people, kids, drug dealers, I don't know, pull into the lot there, camping out, making a lot of disturbance some of which are some of the calls that the neighbor made referring to those disturbances coming from my house.

Mr. Hiranaga: The access is blocked now.

Ms. Gallagher: So the access now blocked. At the time that we were using that parking lot, yes, the owners had an agreement with the cemetery, with the church. Now I believe it's leased by another church or something and we actually, I'm really not into Roundup but we have to spray it just to keep it under control. We don't put a lot of energy into it because it isn't ours but we do try and at least keep the weeds from taking it over because nobody's taking care of it. So it is blocked off completely. So these pictures are old. I'm so sorry, that we don't have updated.

Mr. Starr: Okay, members we're open for any more questions, discussion or motion. Commissioner Mardfin.

Mr. Mardfin: I don't know who to ask. It's either the director or the planner I would suspect, the 600-foot structure which exceeds the area for a ohana zoned piece was that built prior to the 500-foot limit put in or was it built subsequent?

Mr. Fasi: I believe you're correct. It could be a nonconforming structure.

Mr. Mardfin: That was there before the –

Mr. Fasi: It was built in 1965.

Mr. Mardfin: One other – are we just asking her questions or the department in general?

Mr. Starr: Anyone you want.

Mr. Mardfin: A lot was made about this being on the shoreline and that this would set a precedent for having shoreline accommodations. Can the planner go into the issues surrounding this?

Mr. Fasi: The language in the Paia-Haiku Community Plan is the strongest languages out of all nine community plans. The department's recommendation is based very strongly upon this community plan policy which states to prohibit hotel resort development within the region. The Planning Department classifies TVRs, short term rentals as a hotel use. The second quote from the Paia-Haiku Community Plan specifically says limit visitor accommodations to owner-occupied bed and breakfast establishments that are residential in both scale and character which this one is. However, any proposed bed and breakfast should not be situated near the shoreline. Should not be situated near the shoreline. That's a very strong statement. So the department has no other alternative other than to give the recommendation that we're recommending.

Mr. Starr: Okay, members do something. Anything. Commissioner Hedani.

Mr. Hedani: I have a question for staff, the community plan designates the property as public/quasi-public. Is there any history on the designation?

Mr. Fasi: The information that was given to me by the zoning department, the only thing they could tell me was that it was designated public/quasi-public at that date I had given you earlier. Some



time in 2000 I believe. And in the public/quasi-public district this type of operation is prohibited.

Mr. Starr: I'm curious. Does anyone know the background of why it was changed to public/quasi-public? That kind of seems like a weird thing.

Mr. Fasi: The explanation I was given very briefly was it had to do with the graveyard next door.

Mr. Starr: Okay. Commissioner Mardfin.

Mr. Mardfin: I'd like to ask Ms. Gallagher, suppose this is turned down, you won't be able to operate as TVR, what would you do with the – would you just revert to a long term rental situation.

Ms. Gallagher: I don't have another choice, yeah. And then if I feel I can't keep the payments up then I don't know – it's going to get abandoned like it was when we found it. I don't know what would happen to it.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: I make a motion to defer.

Mr. Starr: Is there a second?

Mr. Mardfin: I'll second.

Mr. Starr: Moved by Commissioner Pawsat, seconded by Commissioner Mardfin to defer. We're open for discussion on that and if we do defer it probably will be best to be a little bit specific in what we would be looking for at the time when it came back to us. Commissioner Mardfin.

Mr. Mardfin: I would like to address that. Some of the writing in this proposal says Type 3. The staff recommendation talked about Type 2. You today said that you're going to do Type 1. I think pick one. I don't care which one and settle on it. Show the plan, show the site plan, show what areas will be proposed for the short term rental.

Mr. Fasi: Commissioner –

Mr. Starr: Yeah, wait a second. You got more?

Mr. Mardfin: No. That's a start.

Mr. Starr: Go ahead Paul.

Mr. Fasi: I could clarify that. It is a Type 1. They are coming in for a Type 1.

Mr. Mardfin: But then she –

Mr. Fasi: However, let me clarify that. This is not about a Type 1, 2 or 3. This is about a conditional permit. What you are making a recommendation on is a conditional permit and not necessarily the bed and breakfast. Are you going to recommend to the County Council approval of a conditional permit? That's the issue before us.

Mr. Mardfin: But it would be a conditional permit for a one of the three types.

Mr. Fasi: That is --.

Mr. Mardfin: And if she's going to provide us sufficient information she's got to settle on what she's going to do. I mean, if she came in with two different plans, one for two bedrooms and one for four bedrooms we might react very differently to those. I'm recommending a conditional permit. I mean, it might be that we want zero in which case it doesn't make a difference but I would at least want information on what the actual intent was.

Mr. Fasi: Understood. It is for a Type 1, two-bedroom just to clarify that once and for all. It will go before the County Council as such unless the applicant changes her mind between now and then. Thank you.

Mr. Starr: Okay, Commissioner Guard.

Mr. Guard: So that's the two bedroom in the front house, in the wood house and continuing the long term in this, the accessory dwelling is what we're talking about?

Mr. Fasi: That is correct.

Mr. Starr: Okay, I know I wish we didn't have to do another go around, but who's next? Commissioner Pawsat.

Ms. Pawsat: Yeah, and included also, I mean, you guys need to prove that it's meeting, you know, that you fixed all the code violations. I would have the inspector come out and inspect it again and issue some sort of, you know, giving it the okay so to speak. But in general, yeah, I think the presentation of the material was pretty sloppy actually and so you guys just need to clean it up and make it really clear. And also, I'm giving you guys the benefit of the doubt actually just also because the laws concerning this, you know, because it does concern me as well that this has the prohibited use in the Haiku ...(inaudible)... TVRs but considering they're so influx right now I think that that's actually working for you because otherwise I'd probably vote against it if we felt like we had a really solid TVR rules.

Mr. Starr: Okay members are we ready to vote on the motion which is to defer? Commissioner Hedani.

Mr. Hedani: This is a question for staff. When the community plan has specific language such as prohibit hotel-type uses in this particular area the conditional use permit that they're applying for supercedes that?

Mr. Fasi: Yes it does.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I'd just like to say I'm going to vote for the motion to defer, but boy if we didn't do that I would be a definite take the staff recommendation of denial. This is not looking good, but I think you've brought up some issues that maybe, maybe you can resolve, maybe not.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: I also think you should try to do a little PR with your neighborhood, you know, and see if you can get some of these naysayers reduced so to speak.

Ms. Gallagher: ...(inaudible- speaking from the audience)...

Mr. Starr: Okay, please don't come back. Members ready for the vote? Oh, Paul did you have something to add?

Mr. Fasi: Yeah, I would just like to add in defense of the applicant that they did have a consultant when they first came on board to me with this project which – and it had a lot of confusing information that the applicant submitted through their consultant. So it kind of went through its winding way. Prior to that, the application has gone through several iterations. It's gone through several planners as well just because of the length of time it's been sitting around. I would just like to point to the commission is you know, again, there is no stronger language anywhere and this is basing our recommendation on that language in the general plan, community plan as well as county zoning. The applicant does have the option of going long term rental. If it were otherwise and if there weren't any building code violations in the SMA which is what you're tasked with upholding and the number of complaints from the neighbors perhaps the Planning Department would have looked at this differently. But the facts being as they may, it was difficult for us to make a recommendation of denial. Thank you.

Mr. Starr: Director, you have a comment?

Mr. Hunt: Just a follow up to Mr. Hedani's comment. We don't view conditional permit language as superceding the language in the community plan. We look at it as a possible avenue to make an exception to the community plan. But to us it raises questions, are you implementing your community plan and if you're making exceptions to it.

Mr. Starr: Okay, members. Okay, we're going to take a vote on the motion to defer. All those in favor of deferral please raise your hand. One, two. I have two in favor. All those in opposed to deferral, please raise your hand. We have four opposed, so the motion fails and two recused and so we're back at zero.

**It was moved by Ms. Pawsat, seconded by Mr. Mardfin, and**

**The Motion to Defer the Matter Failed.**

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

Mr. Starr: So we're ready – Commissioner Guard do you have a comment?

Mr. Guard: This is in response to the Planning Director. Are there other ones on the shoreline that have gotten approvals, do you know?

Mr. Hunt: I don't know. I wouldn't be surprised if there were. We are – the current administration takes the approach that we're not committed to or we're not forced to abide by previous precedence. I wasn't part of the previous decisions, but some of the staff planners have told me that they were instructed or directed to make recommendations that they felt were against the community plan language and the department – the current department and the current administration is very comfortable with the recommendation that Mr. Fasi made based on the existing community plan language.

Mr. Starr: Okay, Chair is open at this time for a possible additional motion. Commissioner Mardfin.

Mr. Mardfin: I move that we follow the staff recommendation, department recommendation and deny approval.

Mr. Starr: Do I have a second?

Mr. Hedani: Second.

Mr. Starr: Okay, we have a motion by Commissioner Mardfin, seconded by Commissioner Hedani to follow the staff recommendation which is for us to recommend a denial of the conditional use permit to the Maui County Council with the language in the recommendation. Any discussion, comments? Commissioner U'u.

Mr. U'u: For discussion. You know there's a couple reasons that there's a red flag for me and voting no on this project. One is following the county's recommendation and numerous other reasons where it was an eight-year operation. The owners are living in Thailand. It was built illegally some structures. There was \$20.00 per person for double occupancy. In the Paia and Haiku Community Plan they prohibit hotel and resort with that region. That is strong words. So we're just following law. It's been written. It's situated near the shoreline, another red flag. And to pass a TVR or B&B it cannot adversely affect the surrounding neighborhood and it has. We have proof here. Granted you're saying that's one neighbor who says that – cause there's just one neighbor, but we got a whole list of them here. They could have opposed what that one neighbor was saying. And you had various complaints and building code violations. It is hard not to go. It's hard not to go against the county recommendations. It is very hard. And we're just upholding the rules. That's how I look at it as. It's nothing personal, it's just the rules. We comply and we follow the rules and that's what I'm doing. I'm just one vote. But I'll be voting for denial.

Mr. Starr: Okay, we have a comment by Corp. Counsel.

Mr. Giroux: This is just from my experience from other conditional permits, I just want to make it clear on the record that under 19.40.070, there's Section b which talks about denials of conditional permits. I haven't heard anything in the conversation that's related to this but I want to bring it up as an issue so it's addressed. It says, "should the commission determine that the permit requested is for a use which is substantially different from those uses permitted in the use zone, the commission shall recommend denial of the request and may instruct the applicant to seek a change of zoning should the facts warrant such application." I don't think there's been any discussion and what I don't want is this application to go up to Council and for them to not have any guidance on this issue and send it back for a redo. So I just want to make sure that as part of your analysis and I didn't see it in the staff recommendation or anything, so I just want that conversation to happen.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: So Jim, the request for rezoning would be to be to go from public/quasi-public to resort?

Mr. Giroux: Probably hotel.

Mr. Hedani: Hotel.

Mr. Giroux: That would I believe an outright permitted use by that.

Mr. Hunt: An alternative would be to residential and since it's a B&B then they wouldn't a conditional permit.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: So – sorry.

Mr. Hunt: However again, there's other issues that we have, particularly the community plan language but in terms of the zoning –

Mr. Giroux: Right, and that's why the language says, if applicable. I mean, it doesn't mean you have to recommend a zoning, it's just that I want that conversation to be on the record so they know that it happened.

Ms. Pawsat: So you're saying that step 1 should be have been a step, change in zoning before they applied for this in the first place?

Mr. Giroux: Well, it's part of your analysis if you come to a place where you think that this use is so unusual that it doesn't comport to the zoning that you find that there's a better zoning for the property that you can recommend to the applicant to go get that zoning instead of getting a conditional permit. That's the conversation. I mean, it doesn't say that that's what you have to do, it's that if you find that, it says if the facts warrant that. So I just wanted a conversation on the

record about this line of thinking. So looking at the facts, do you see that it would warrant a change in zoning or are the facts that it's such an inconvenience and out of harmony with the area that you wouldn't even think of doing this type of operation in the area.

Mr. Starr: Commissioner Hedani, have you got any comments in that area?

Mr. Hedani: From my perspective, based on the number of complaints that have been filed relative to this particular property, the zoning violation, the building code violations that are tied to it I don't know that deferring the application would make any difference to the neighbors or to the facts of the case. I take staff recommendations very seriously and when the recommendation is for a denial or recommendation of denial to the County Council, it takes an extraordinary amount of convincing from the applicant's standpoint to convince me to take on personal liability for going against the staff recommendation for the County of Maui and I'm not prepared to do that in this case and I don't know that deferral would make any difference.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: The motion to defer died. We're going to be voting on –

Mr. Hedani: I understand that.

Mr. Mardfin: But the Corp. Counsel's comment was on letting the applicant know that there is an avenue to pursue in terms of getting it rezoned, but it sounds like our discussion even had it been zoned residential, it sounds like the staff recommendations and our analysis of it being on the coastline against the plan would make very little difference. So while they certainly have the opportunity, the legal opportunity to ask for a rezoning, it might well be a waste of time.

Mr. Starr: I'd like to just make a brief comment in that, you know, I like the spirit of the place, I like of the spirit of the people, it looks like some place I'd love to go and hang out, but it's, you know, a difficult situation because you know, there's kind of a perfect legal storm against it between the community plan and the zoning and the opposition from the neighbors. And if it dies, then it probably would be the proper route to go to start with the rezoning along with getting support from the neighbors and maybe even a community plan amendment to make it into a more suitable use in that particular location on the shoreline in that district. So Paul real quick what's –

Mr. Fasi: The Planning Department internally had that discussion that Corp. Counsel did bring up. We did look at possible change in zoning, but you still would not get over the community plan hurdle. And it's our responsibility as planners to respect policies in the community plan as we're going through community plan amendments right now there's a lot of time and effort that goes into these and to just turn around and override this would – I don't think would be prudent planning.

Mr. Starr: Okay members, Commissioner Hedani.

Mr. Hedani: Again, this is a question for staff. If the commission denies or makes a recommendation of denial to the County Council at this particular point in time, can the applicant withdraw their appeal or application before it goes to the County Council?

Mr. Fasi: Yes sir.

Mr. Hedani: They can.

Mr. Fasi: They can withdraw it at any time.

Mr. Hedani: Okay, thank you.

Mr. Starr: Okay, we ready for a vote on the motion to deny per staff recommendation? Okay, all those in favor of the motion please raise a hand. Okay, all those opposed.

**It was moved by Mr. Mardfin, seconded by Mr. Hedani, then**

**VOTED: To Accept the Recommendation to Recommend Denial of the Conditional Permit to the County Council.**  
**(Assenting - W. Mardfin, W. Hedani, B. U'u, D. Domingo, J. Starr)**  
**(Dissenting - J. Pawsat)**  
**(Recused - K. Hiranaga, J. Guard)**  
**(Excused - W. Iaconetti)**

Mr. Starr: Okay, the motion carries. I'm sorry to inform you that our recommendation to the County Council is for denial.

Mr. Fasi: Thank you.

Mr. Mardfin: What was the vote count?

Mr. Starr: Five to one with two recusals. Members, can we go any further or do we need a short break and Akaku, you guys okay? We need a break or good to go? Okay, we're good to go.

Mr. Hunt: Your next item involves Mr. Troy McCasland requesting a conditional permit in order to continue a short term rental in the R-2 residential district at 451 Ilikahi Street in Lahaina, TMK 4-6-006: lot 39. The file number is 2006/0016 and the planner assigned to this Paul Fasi.

**3. MR. TROY MCCASLAND requesting a Conditional Permit in order to continue to operate a short term rental in the R-2 Residential District at 451 Ilikahi Street, TMK: 4-6-006: 039, Lahaina, Island of Maui. (CP 2006/0016) (P. Fasi)**

Mr. Paul Fasi presented the Maui Planning Department's Report.

Mr. Starr: Okay, before we go any further is the applicant or a representative, okay, Mich Hirano here is. Mich you want to say anything? Identify yourself.

Mr. Mich Hirano: Yes, good afternoon Chair Starr and Commission Members. I'm Mich Hirano with Munekiyo and Hiranaga and our firm is assisting the applicant Troy and Susan McCasland with conditional permit application before you today.

As Paul had mentioned in the staff report, the property has been operating as a transient vacation rental for four years. The McCaslands property in 2004. They stay on the property up to two months a year and are on Maui several times over the year. When the McCaslands are not on Maui they rent the property out on a short term basis. The intent of the conditional permit as noted in the Maui County Code Chapter 19.40 is to provide the opportunity to consider establishing uses not specifically permitted within a given zone where the proposed use is similar, related or compatible to those permitted uses. And I'd just like to point out to the commission that the permitted uses in the R-2 residential zone includes uses such as schools with dormitories, daycares, bed and breakfasts which are subject to restrictions. And so one of the criterias to really look at this particular application where it is proposed use is similar, related or compatible to those permitted uses within the residential zone.

In addition, another criteria of course is and it goes on in Chapter 19.40 is which use has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed. And that is that not only you look at the application and the proposed use of a TVR and a permitted use that's within the residential district but also its impact on the surrounding neighborhood.

The application for the conditional use permit for the subject property meets the intent and requirements of the conditional permit criteria. The McCaslands have been good neighbors. They have made many friends in the neighborhood and as indicated by the petition that was signed by the neighbors in support of the conditional permit application which was in your package. There were 19 neighbors immediately adjacent and in the surrounding neighborhood who had signed a petition in support of the application. And the reason for this is when the McCaslands are staying on the property they've made many friends in the neighborhood. They have been good neighbors. They've been very sociable. They've invited the neighbors over to their property to enjoy the amenities that are on the property such as the swimming pool. The McCasland's children play with the neighborhood children. Their house and the property has been open while they were there to the neighbors and to the neighbor's children. And the McCaslands have generally been friendly, sociable and responsible owners and have become friends to many of the residents in the neighborhood.

When the McCaslands rent their home out for the short term use, the property is managed by a local real estate agent and property manager licensed in the State of Hawaii. In the event that there is a problem with the property, the neighbors or renters have a contact number to call. It's a 24/7 contact number that's available at all hours, at all times of the day, seven days a week. The property manager's telephone answering system has an emergency access number line and this line rings the property manager's cell phone. Then if there is no answer, it rings their home phone and again, no answer it continues to ring on other personnel in the company and finally if there is no answer it rings the McCaslands cell phone and their home phone so that there will be and this is always a emergency number and a person to respond to any complaints that may arise out of the use of that property as a short term rental. No complaints have been lodged since the McCaslands have lived here and have used the property as a vacation rental. The neighbors are in support of the application which indicates that the use of the property for the short term vacation rental does not adversely impact the neighborhood.



The Planning Department in their staff report had recommended denial based on the policy of opposing any vacation rental in the residential district. They also at the same time have given some what of a balanced report talking about some of the pros and cons of how the particular application meets the intent and its compliance with the General Plan or out of compliance with the General Plan and the West Maui Community Plan. And as you can see, there are components of the application that are in support of the West Maui Community Plan.

What the staff report does not do is address the particulars of this particular application in terms of its conditional permit criteria and that is the compatibility of this use within the neighborhood or its compatibility with its permitted uses within the residential district. And those are items I think that must be considered in reviewing the conditional permit application.

The commission should recommend conditions that would reasonable insure compatibility rather than just denial of the permit or recommend denial of the permit. As was mentioned earlier in the Maui County Code, Chapter 19.40.70(b) which is the criteria for denial, the criteria states that the applicable use, and that is the use of this residence as a short term rental is substantially different from the permitted uses and not the surrounding uses, but the permitted uses in the residential district. And as I mentioned earlier, the permitted uses with the residential district include schools, day cares, schools with nurseries or schools with dormitories or universities. So to see that this is somewhat different and substantially different from those permitted uses. It would be very difficult I would think in terms of the impact that this short term vacation rental will have on the neighborhood.

In closing, the application was circulated to the agencies. During the review period and it's worth noting that there were only two comment letters in the application. One was from the Maui Police Department which indicated that they did not see any problem with the application and the other letter was from – was actually a petition that was signed in support of the application by the 19 neighbors who lived in and around the neighborhood. I think there is no better indication of compatibility with the neighborhood than that letter of support, than that petition that was submitted with the application.

There was also nothing in the record indicating in the record that it is not compatible. So in closing the application meets the intent and requirements of the conditional permit and importantly it is supported by the neighborhood. Thank you.

Mr. Starr: Thank you Mich. Just out of the interest is the applicant himself –

Mr. Hirano: Yes, Mr. McCasland is here, yes.

Mr. Starr: Okay, looks like John Rapacz has something burning to tell us.

Mr. John Rapacz: Thank you Mr. Chair, John Rapacz on behalf of the applicant. I'll be very brief.

Mr. Starr: Very brief.

Mr. Rapacz: Two points that have been brought up throughout the day. One was burning or

alarming when I heard it and that was Commissioner Hedani's comment or concern about taking on personal liability when disagreeing with a staff recommendation and I think your counsel can probably advise you that that in no way serves as any basis for personal liability particularly where you're not the final authority on the matter. You're just passing on your opinion to the County Council. So please, don't have any concerns about personal liability in these cases.

Second thing is something that's been coming up again throughout all three applications, it reflects the Planning Department's policy, okay, their policy is there shouldn't be any TVRs outside the hotel district. They've proposed a law that would stop people from even being able to apply for a conditional permit any more. Okay, that came through you folks. You folks didn't agree with that part of the proposal and passed it on up to the Council and that's in their hands now. And what's happening as far as I can see is that the department as it shows in the report is taking that policy and saying that's a reason to deny this one, that's a reason to deny one and it's going right down the line and trying to accomplish the same thing as changing the law. But they're doing it one by one and that's not the way to do it.

The way to do it as Mich said is you look at the criteria for the permit and the permit criteria say it's got to be compatible with the permitted uses and that should not be confused as the only criteria being you have to be compatible with the surrounding uses, what's already there. Okay, the theory there and the reason for it is that the – anyone living on these residential properties can build or do anything that's listed as a permitted use in the residential zone. Now of course the first thing listed is the single family homes and that's what most people do. Second thing listed is schools, elementary, high school, colleges with dormitories can exist in the single family, in a residential zone right next to a single family house. So the question then is does allowing people to stay short term which means less than a 180 days, allowing them to come and stay for less than a 180 days does that create more impact than having a college with a dormitory? Okay, that's how it reads.

Now so far you haven't been instructed to examine it that way, but pages two and three of your report set out the criteria very clearly and in order to recommend denial you have to find that having these people stay on this property for short term is substantially different from the uses that are allowed. Okay, bed and breakfasts are allowed. Is having somebody stay short term in a TVR substantially different from a bed and breakfast? Is it substantially different in terms of impact from having a school next door? Those are the tests you should be applying. It's not a question of whether how is it a good policy? Do we like TVRs? Yeah, we like TVRs or we like B&Bs but not TVRs. Is it a good thing? Is it a good project? The criteria are clearly laid out for you. So far today, I haven't heard anyone discuss any of them. None of them are even mentioned in terms of how they apply to this application in the staff report. There's nothing there except one thing about harmony with the neighborhood, 19 letters of support from surrounding neighbors. That's the one item that goes to this particular application. Everything else is a general policy statement.

Last item and I'll be done Mr. Chair. The question about the General Plan and community plan, okay. Now we've heard in the first two applications community plans contains all kind of modifiers. We've got restrict, we've got limit, but all of them also say prohibit. Okay. So it's not as if the drafters of the community plan didn't know about the word "prohibit." The use it in other parts of the plan. They don't use it when they're talking about TVRs. They talk about restricting, they talk

about limiting but they don't talk about prohibiting. Okay. Thank you.

Mr. Starr: Thank you. Okay members, any questions for staff, the applicant, representative or attorney? Commissioner Hedani.

Mr. Hedani: I just wanted to comment that I would ask Mr. Rapacz to represent me pro bono whenever we have litigation commenced against us individuals.

Mr. Starr: Pro bono. We'll take you up on that. Okay, members. Okay, Commissioner Hiranaga.

Mr. Hiranaga: I have this handout that was given to me that has I guess copies of a website called "Rental Avenue." Guess maybe the commissioners might have the same thing and it lists the subject property as a – on this website. I'm just – and I guess it lists five other properties that you can also rent via this website, "Vacations FRBO.com." Anyone wish to comment on this exhibit? I'm not sure where this came from. It was on my desk.

Mr. Starr: It looks like it's testimony against, as part of supporting documentation.

Mr. Fasi: The Planning Department has not seen that documentation. I'd just like to point out in response to Mr. Rapacz's comments regarding the differences between a TVR and B&B. There's a huge difference. There is one big difference. A B&B has an onsite manager whereas a TVR is uncontrolled.

Mr. Starr: Commissioner Hedani first.

Mr. Hedani: I was going to suggest maybe a five-minute recess since the applicant hasn't had an opportunity to review the information.

Mr. Starr: I think that's a brilliant idea. The Chair is undergoing brain fade himself. Ten-minute recess. We'll be back at two, three minutes after 3:00 p.m.

A recess was called at 2:51 p.m., and the meeting was reconvened at 3:01 p.m.

Mr. Starr: The commission is back in session. Paul where were we?

Mr. Fasi: We were talking about the differences between a B&B and a TVR and the fact that a B&B has an onsite manager and TVRs do not. During the break I was handed this letter of support from Douglas Shu in support of the application. And at this time, I would also like to bring up zoning inspector, Sonny Huh was the zoning inspector responsible for this particular application and he will make some comments to the 19 petitioners.

Mr. Starr: Okay, yeah, Chair would like to recognize Sonny Huh. I think he's sitting outside though. Oh there he is. Come. Identify yourself and give us some – share some of your experience with the subject property.

Mr. Sonny Huh: My name is Sonny Huh. I'm a zoning inspector for the County of Maui. In contrast

to those statement that there had been no complaint against the property my research reveal that there had been four complaints. Two complaints in 2006 and each complaint a Notice of Warning was issued. In 2007, there had been two complaints and one complaint was followed by Notice of Warnings and Notice of Violations. And Mr. McCasland had file an appeal which is to be heard in July 10<sup>th</sup> of 2008.

Mr. Starr: Okay, members any questions? Commissioner Hiranaga.

Mr. Hiranaga: Can you be more specific as to what these complaints pertained to?

Mr. Huh: The complaints are basically based on the fact that TVR is being operated out of a property without an approval.

Mr. Hiranaga: All of them?

Mr. Huh: All of them.

Mr. Starr: Commissioner U'u.

Mr. U'u: Was it coming from the neighbors?

Mr. Huh: You know sir, I cannot tell you. That is part of my job. I cannot tell the requestor. Am I allowed to tell the requestor at this point?

Mr. Hunt: You should stick with your policy.

Mr. Huh: Thank you very much.

Mr. Hedani: He can tell you but he'd have to kill you.

Mr. Starr: I have a question for you which is, I've heard that this is a neighborhood where there is quite a few unlicensed TVRs operating. That it's in fact one of the spots where most of the houses have been taken away from the residential pool for this purpose and possibly that some of the people that commented are also operators of other TVRs. Do you have any experience in this regard?

Mr. Huh: Well, I took over the area in May of 2007, and I have not had any TVR complaints on that street. Perhaps the prior inspector who was assigned to the area may know about the TVR complaint on the street or the neighborhood.

Mr. Starr: Okay, members any questions? Okay, Commissioner Hedani.

Mr. Hedani: What's the name of this subdivision, do you know? Is it the Wainee Ka'ula Subdivision?

Mr. Huh: You know, I cannot tell you that sir.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: You said on the street and the neighborhood you haven't had any TVR?

Mr. Huh: Yeah, not on that Ilikahi Street.

Ms. Pawsat: But what about the neighborhood?

Mr. Huh: Within the vicinity of about five blocks, no I have not.

Ms. Pawsat: Okay.

Mr. Starr: Okay, thank you very much for coming up. If you could wait just a couple minutes just in case anything else comes up.

Mr. Huh: Yes sir I will.

Mr. Starr: Members, questions for staff, for the applicant. Director.

Mr. Hunt: I just wanted to respond to Mr. Rapacz's comments the allegation that the Planning Department's trying to one by one deny these applications. I'll remind you that this morning we recommended approval of the first one so that flies in the fact of his allegation right there. What we're trying to do is find a policy that the county has established and find similar uses to those. The county has a specific prohibition against TVRs and that goes back several years, actually decades with several iterations. Then subsequent to that the County approved B&Bs. So we believe through the conditional permit process you can approve a B&B or something similar to a B&B such as you did this morning. When it comes to a pure TVR where there's no onsite manager at all that seems to be a fairly large gap in the direction that the county has been going down at this point. So that's why we're recommending denial on this case.

The second application that you heard today, if that had been in a different location given the fact that it was a B&B, we would have been recommending approval. So again, lets not listen to the rhetoric out there, lets listen to the facts and the laws that we have before us.

Mr. Starr: Okay, Commissioner Guard.

Mr. Guard: Did the applicant look into trying to convert at least one of the units into a manager type situation? Because I believe it has a house and a cottage on site.

Mr. Fasi: I'll let the applicant address that.

Mr. Hirano: Yes, Commissioner Guard the applicant did look at that. It was a option that he felt that he would not like to pursue at this time. He would go forward with the application that was presented for a TVR. There is a manager, property manager that does look after the property but does not live on site.

Mr. Guard: Thank you. Yeah, maybe in different areas, I'll admit and hopefully I don't go to jail, I've stayed in bed and breakfasts before. But most of the ones that we have stayed on seemed to have someone like within earshot so that the phone is not the only source of who to complain to or the Police Department. So I think the applicant has an uphill battle when he has an available unit to provide some type of affordable housing, part-time work for an on site manager especially when it's a growing problem definitely in Lahaina especially. And I think these are the type of situations where someone's willing to outbid a potential owner-occupant to take over a house to turn it into a TVR and I don't know if that's the direction I'd like to see my friends getting stuck in competing with someone trying to buy a vacation rental.

Mr. Starr: Okay, Commissioner Hedani.

Mr. Hedani: The reason I asked the question about the name of the subdivision was back in the 1970's as part of the approval process for Kaanapali, some of the hotels in Kaanapali there were several subdivisions that were built specifically for employee housing. Kilauea Mauka, Kilauea Mauka 1, 2 and 3, Paunau Terrace, Aholo Subdivision, Kapunakea, Wainee and Wainee Kaula. I believe that this is one of those subdivisions that was intended to provide for employee housing by requirement of the SMA permits that were issued for those projects. And I think what's happening is that areas that were traditionally intended for employee housing are essentially being converted. If you look at that exhibit that was supplied by Robin Ritchie that was distributed to the commissioners, in this particular map on this one block essentially she's identified up to nine homes within that block that may have been converted in one form or another or the density's been increased. So it's a significant impact from my perspective.

Mr. Starr: I'd like to ask Mitch, and you know, I don't want a full explanation but what's the name of the subdivision that we're talking about. I'm not sure of the subdivision Chair Starr but it was Ilikahi Street that's the area. It's just south of Shaw Street and mauka of Front Street but I looked at the building permit application for this particular property. I think it was built sometime around '73. There was an application for a single family residential property and then I think a few years later or a year after there was the building permit application for the ohana and it was by a individual, the property owner. So I'm not sure that that would be the affordable part of the subdivision that Commissioner Hedani had been referring to because this was a individual property.

Mr. Starr: Okay, I see someone back there, it's not a time for testimony but if you have just have an answer give your name and just answer the question.

Ms. Lena Kanemitsu: My name is Lena Kanemitsu and I live in the same subdivision and it is the Kaula Subdivision and single family homes originally.

Mr. Starr: Okay, thank you very much. Is it time for public testimony, members? Is that a good time to hear from the public on this?

**a. Public Hearing**

Mr. Starr: Okay, the Chair will open the floor for members of the public who may wish to give testimony. Please come forward and give us your name again for the record and thank you for

coming.

Ms. Lena Kanemitsu: Again, my name is Lena Kanemitsu. I've lived in the subdivision since its opening in 1972. I reside right across the street from the applicant, Troy McCasland. I'm here to say that I really have no objections to his property being used as a TVR. The tenants so far have been very respectful. They are not – we had no problems with noise and they know that they have rules because our neighborhood is an old neighborhood with – basically quiet. The tenants park the cars in the driveway which is a whole lot better than I can say about residential homes that rent out room by room on Wainee Street which is two streets mauka of myself. When we go walking in the morning there's cars on both sides of the street parked and I really think that's an eyesore. But anyway, Troy has been a very considerate and good neighbor when he first bought the place, he came across and introduced himself and whenever he's home we get to talk. I, like I said, I have no objection to it being vacation rental because we have had no problems. I live there. We don't go out that much. We have our own friends coming over and I have not had any complaints from anybody in that area. Thank you.

Mr. Starr: Thank you. Hold on a second. I think we have a couple of questions for you. Commissioner Pawsat first followed by Commissioner Mardfin.

Ms. Pawsat: Have you noticed the other TVRs in the neighborhood?

Ms. Kanemitsu: We have bed and breakfast, but I don't know them as being TVRs. But I know individual homes have a lot of rentals, you know, rooms for rent.

Ms. Pawsat: And do you feel like it's been a nuisance in the neighborhood?

Ms. Kanemitsu: Well, when they don't provide parking it is. You know, because you know, around the curbs sometimes you find the cars just parked any old way and you really got to be careful.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I forget what I was going to ask, forget it.

Mr. Starr: Members? Okay, thank you very much for your testimony. Please come forward and tell us who you are and try to keep it fairly short.

Mr. Mack Suzuki: Thank you. My name is Mack Suzuki. I'm an owner and resident of the neighborhood and actually I live right next door to Troy and from my four years of knowing Troy he's always been a good neighbor and an asset to the neighborhood and I feel that he should be granted his ...(inaudible)... of operating his property and I approve him doing so.

Mr. Starr: Okay, thank you. Commissioner Mardfin.

Mr. Mardfin: If it were a long term rental instead of a temporary vacation rental would you be happy with that also?

Mr. Suzuki: I think it would be more an impact on me than him operating the way it is because of the mentioning about the addition of cars and parking which seems to be something that goes along with some of the lifestyle in the neighborhood where people who have long term rentals.

Mr. Mardfin: Why would a long term rental be worse than having McCaslands living there?

Mr. Suzuki: Because they usually bring several cars not just one or two, but several cars. Park on the street, have guests, have dogs that sometime are manageable and sometime they're not.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, Vice Chair Guard.

Mr. Guard: Just as a neighbor in the subdivision would there be concern if more and more of these properties were being converted to TVRs from owner occupant or long term rentals?

Mr. Suzuki: Not if they manage their property as Troy does.

Mr. Guard: Okay.

Mr. Starr: Okay, members. Please come forward and tell us who you are and give us your testimony.

Mr. Paul Lau: Aloha ka ko I'm Paul Lau, and I know everyone's concerned about nice, quiet accommodations and I think we're looking at two different things and it's a substantive thing where if you're young and you're wild and you only can pay \$15, \$20 bucks that's one kind of a place to stay. If you're a family and you're in a million-dollar home, you're different. It may be the same guy but it's maybe 30 years later. So, with that, when you say a place is not controlled, in this case there's a 24/7 operator available by phone. You have the police by phone. You have the Fire Department available by phone. You have the neighbors who all know him obviously. You can run next door and say, hey this is the problem whatever it happens to be because that's a neighborhood. That's what we do in neighborhoods. You know your neighbors. Your neighbors are your friends. They're part of your ohana. And clearly in this case, he has a big ohana. He has a lot of friends. And so to put everyone in the same box, okay this is a wild establishment and this is a multi-million dollar home it doesn't fit. So I just you to think in those terms. Thank you very much.

Mr. Starr: Wait a second there Paul. Commissioner Mardfin.

Mr. Mardfin: Do you live in the neighborhood?

Mr. Lau: I live on Front Street. I live about, oh, eight or nine blocks.

Mr. Mardfin: Okay, thank you.

Mr. Starr: Okay, thank you very much. Next testifier please come.



Ms. Sherry Boonstra-Barbier: Good afternoon, my name is Sherry Boonstra-Barbier and I live several doors south of Troy and I actually knew the original owner of the home as well and it was a pleasure to have – a lot of times you hate to see really great people leave the neighborhood but it was welcoming to have someone like Troy who was very similar to the previous owner. And I will tell you that in the neighborhood, we do have a lot of homes that are dissected probably illegally into a lot of different bedrooms and those are the ones that have all the loud music going from afternoon until someone calls the police on them. It may seem hard to imagine when you're sitting here that a vacation rental could be so much better but it really is. It's so much better because those people are here to go out and enjoy the island. They're not here to party and get rowdy and have bands and I've had that experience where we've had a neighbor that left and when she was leaving I knew she couldn't afford the rent and what happens even in Troy's situation it's going to bring in other people that have to separate the house out into so many bedrooms then that's when you get all the rowdiness because you can't afford a long term rental on such a property. But anyway, I support Troy. He's been an asset to our neighborhood.

Mr. Starr: Okay, thank you. Commissioner Mardfin.

Mr. Mardfin: You live in the neighborhood.

Ms. Boonstra-Barbier: Yes, I do. I live about five doors south.

Mr. Mardfin: Do you have a bed and breakfast operation going?

Ms. Boonstra-Barbier: Yes I do.

Mr. Mardfin: Thank you.

Mr. Boonstra-Barbier: If I could make one more comment. The bed and breakfast that did shut down because she couldn't afford it because the rent up so much that's where the long term people came in and it was night and day difference between her and my new tenants next door.

Mr. Starr: Okay, anyone else in the public wishing to testify, now is the time. Seeing none, the public testimony on this item will be closed. Let me put it back to the members for questions, then when we get a break I'm going to ask Paul to explain the recommendation. Members anything now or you want the recommendation?

Mr. Mardfin: I'd like to ask a question.

Mr. Starr: Yeah, Paul, if these people were asking for a bed and breakfast would the recommendation of the staff be different?

Mr. Fasi: Most likely. We could support a bed and breakfast operation. It would be allowed by code to have a B&B in the residential zoned area.

Mr. Mardfin: And it would also be supported because there would be an on site manager – the distinction would be an onsite manager is that correct?

Mr. Fasi: That is correct.

Mr. Mardfin: Thank you.

**b. Action**

Mr. Starr: Okay, Paul, why don't you – we don't need to have the whole thing read but why don't you give us the gist of it and the logic behind it?

Mr. Fasi: Let me get the recommendation. Excuse me.

Mr. Starr: And I forget exactly what we're doing here. I think it's just a CUP is that right?

Mr. Fasi: The planning commission is just making a recommendation on the condition permit.

Mr. Starr: That's all that's before us right?

Mr. Fasi: That is correct.

Mr. Fasi then presented the Recommendation.

Mr. Starr: Okay, members we're ready for a motion or additional discussion or questions. Someone do something please. Okay, Commissioner Pawsat.

Ms. Pawsat: Is it possible to make an amendment to require an onsite person living there like a B&B or can this be converted to a B&B right now or is that not possible?

Mr. Starr: Well, if that were the case the Chair would recommend that that be made as a condition after a motion of approval, however, that would really change the face of it and I don't know if the – we should probably hear from the applicant whether they would be willing to accept and an acceptance with that type of condition. Mr. Rapacz, do you have – really brief John.

Mr. Rapacz: Yes, very briefly. The applicant is willing to offer as a condition that there would be a full-time onsite manager in the ohana unit.

Mr. Starr: Okay, then that could be an amendment if there were a motion to approve. Commissioner Pawsat.

Ms. Pawsat: I make a motion to approve with the condition, amended condition that there be a full-time onsite person in the ohana unit.

Mr. Starr: And do we have a second for that?

Mr. Guard: Second that.

Mr. Starr: Okay, so we have a motion by Commissioner Pawsat, a second by Commissioner Guard

that we recommend approval with the condition that an onsite manager be living full time on the TMK, the same TMK. Have you got that Jeff.

Mr. Hunt: Could you repeat it please?

Mr. Starr: With the condition that an onsite manager be living on the TMK in question. Now I know to the Chair that brings up questions of what other conditions would be suitable and perhaps that's something that Paul will be ready to help us with in the few minutes that if this were to pass that we would be sure that our bases are covered. Commissioner Mardfin.

Mr. Mardfin: I'd like to ask the staff, what's the distinction between a TVR with an onsite manager required and a B&B? And if there's no distinction why doesn't this just turn into a B&B application?

Mr. Fasi: TVR with an onsite manager is a hybrid. There's nothing in the code that addresses that. A B&B has an onsite manager. The other difference that I can think of right now is that in a B&B, you don't have the – a food establishment type operation. Whereas I guess in a TVR you can operate as a fully function single family residential house. In a B&B, they would provide just kind of a continental breakfast type of environment.

Mr. Mardfin: The fact that, it's a hybrid, would make it more or less enforceable that they have that onsite manager?

Mr. Fasi: It would be a huge grey area as far as enforcement because the code does not address a TVR with an onsite manager. There's no such animal.

Ms. Colleen Suyama: Maybe I can clarify some things for the commission?

Mr. Starr: Please identify yourself Colleen.

Ms. Suyama: Colleen Suyama, Deputy Planning Director. The only legal vacation rental that's permitted right now through a permit is a bed and breakfast. That's why we have the Type 1, Type 2, Type 3. The difference between the bed and breakfast and the transient vacation rental is, you can have only one unit which is the main dwelling in which the person, you know, the owner/operator resides in and rents out part of their house or their rooms for vacation rentals. That is what is a bed and breakfast. Once you're away from that, you're basically classified as a transient vacation rental. Whether you have an onsite manager in another dwelling or you have I guess a real estate agent that does the property management for you or you're just renting it out yourself, as long as you are not the owner/operator within that one single family dwelling, you are a transient vacation rental. That is how you are classified. So it makes no difference whether you have an onsite manager or an offsite manager, you are still, as long as you're not operating a bed and breakfast home, you are a transient vacation rental.

Mr. Starr: Director.

Mr. Hunt: Just to follow up on your question. We believe that through the conditional permit process you could recommend approval of an application such as this with an onsite manager

similar to the situation you did this morning. I understand some of the concerns that were expressed this morning. That's something that you folks need to work out.

In terms of the enforcement, we believe that through the conditions of approval if you require an onsite manager, we can enforce that.

Mr. Mardfin: Even after the conditional permit has been approved. If they wind up later in violation of that you could jerk the permit? Is that sort of?

Mr. Hunt: We would have methods to enforce that.

Mr. Mardfin: Okay.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I'm opposed to amending the recommendation with this so-called onsite manager because I believe the application was for a TVR and the staff report was focused on the issues of a TVR application. If the applicant now wishes to apply for a B&B permit he should go through the process so that the staff will have the opportunity to review whatever conditions that may arise. For instance, there's onsite parking requirements. Mention of five-year lease typically is required. So you know, the staff has been focused on a TVR application. Now to piggy back this change on it, I would prefer because I'm sure he has ample legal counsel that if he wants to operate a B&B and obtain a B&B permit he should resubmit his application under that request.

Mr. Starr: Just for a quick comment from the Chair. I do believe it would still technically remain a TVR because currently the definition of a B&B does not allow for a manager and a separate dwelling unit. However, I understand that the spirit of a B- it would be closer to the spirit of a B&B, but if we were to go that way, the conditions that we usually put on that such similar to the conditions that the first application we went through today would have to be created which the director tells me that, you know, could be done by himself and Paul and Colleen probably in the few minutes while we dealt with another item. But anyway to continue, Commissioner Pawsat, you're next.

Ms. Pawsat: Yeah, that's just what I was going to say too, that technically it's still a TVR. It's not a B&B.

Mr. Starr: Commissioner U'u.

Mr. U'u: Just a question. Prior to the applicant purchasing the house, was the house operated as a TVR?

Mr. Fasi: I'm going to let the applicant address that question.

Mr. Starr: Okay, the short answer guys.

Mr. Hirano: No, it wasn't.

Mr. U'u: It was a long term?

Mr. Hirano: It was a owner/occupant residence. That was from the neighbor. I don't know personally.

Mr. U'u: So the letter we received from Robin Ritchie is inaccurate.

Mr. Hirano: Well, the letter that was received I do want to comment because Commissioner Hiranaga had brought this up, the Rental Avenue is basically a company that Mr. McCasland had created and it is a marketing for a software, computer software on tracking vacation rentals and bookings. That's what this Rental Avenue – it doesn't have anything to do with TVRs. It's a business for marketing the bookkeeping and reservation system. And I think when I look through this letter I see everything that doesn't pertain to 451 Ilikahi Street. Those other things are maybe surrounding properties. I'm not aware of them, but it doesn't pertain to the applicant address or the subject property.

Mr. Starr: Okay, thank you. Commissioner Hedani.

Mr. Hedani: Can I get a clarification on that Mich? Does the applicant own only one home?

Mr. Hirano: The applicant owns three homes on Maui, but this is the one that's for the conditional permit today.

Mr. Hedani: I see. Are all three homes operated as TVRs?

Mr. Hirano: They were, but since the legislation, I believe they stopped.

Mr. Hedani: Thank you.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: I just wanted to make the comment that had the applicant not had the testimony of his neighbors, a friendly, very creditable neighbors I would not recommend approval.

Mr. Starr: Okay, members just to keep in mind that we do have a motion on the floor with a second that is to recommend approval with the one condition that a resident manager be living on the TMK. I'd like to hear what you have to say and if it does look like there's support for this then we're going to need to craft other conditions. And if there's not, we can move on some other method. So, please – go ahead director.

Mr. Hunt: If the commission wishes to go down that road, I think a more prudent approach would be to defer it and ask staff to come back with some draft conditions. That would give us time to analyze it thoroughly rather than shooting from the hip right now.

Mr. Starr: Okay, in which case we would have to either withdraw or defeat the motion.

Ms. Pawsat: I withdraw my motion.

Mr. Starr: The second.

Mr. Mardfin: The second.

Mr. Starr: Okay, the motion is withdrawn. We have no motion on the floor. And now we're open to other motions and if we do defer we should perhaps be ready to give some guidance as to – under what condition this comes back to us. Commissioner Pawsat.

Ms. Pawsat: I make a motion to defer based on that application be revised to reflect a TVR with an onsite manager in the ohana unit and all the necessary conditions per the Planning Department.

Mr. Starr: Do we have a second for this motion?

Mr. Hedani: Second.

Mr. Starr: Okay, we have a motion by Commissioner Pawsat, a second by Commissioner Hedani that –

Mr. Hunt: The motion is to defer the application so it can be revised with an onsite manager and necessary conditions of approval.

Mr. Starr: Okay, Paul comment.

Mr. Fasi: Just briefly, if you go down that road, you know, the Planning Department looked at these various alternatives that you're discussing right now and the road you're going down is you're going specifically against a policy of the general plan which states, "restrict a transient rental use of single family housing in the residential zones." That's very clearly stated in the General Plan. Furthermore, in the West Maui Community Plan, if you go down this road, you're going to be inconsistent with the land use standards A and B in my report which says, "all zoning and land use approvals shall be consistent with the West Maui Community Plan and its land use policies." And which does not allow for transient vacation rentals in the residential zoned areas.

Mr. Starr: Okay, so basically commissioners if you agree with what Paul just said, then the action will probably be to deny this motion. Commissioner Mardfin.

Mr. Mardfin: I'm just going to make a comment and maybe somebody wants to respond to it. I'm trying to think of what all the possibilities are. One is, he's presumably stopped doing it as a TVR now and it would be a long term rental or left vacant. He could apply for a B&B but then he'd have to live there which sounds like they have business interests that would keep them from doing that. They could if they got lucky and this commission went for it they could operate as a TVR with an onsite manager. Have I missed anything?

Mr. Starr: Yes, they could return the house to the residential house to the residential pool of housing.

Mr. Mardfin: And use it for long term rental.

Mr. Starr: No, I mean, someone could buy it who needs to –

Mr. Mardfin: Oh, they could buy it. Yeah.

Mr. Starr: We are short of housing.

Mr. Fasi: And if I may clarify, the owner does not have to live in the B&B, they can have a lessee operate it with a five-year lease.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Actually, the motion is to defer right?

Mr. Starr: Yes.

Mr. Hiranaga: Okay, then what I have to say to moot, because I would just have to wait to see if the department changes their recommendation based upon the change in proposed use.

Mr. Starr: Okay, Commissioner Hedani.

Mr. Hedani: I thought my concern is that we've gone through a very difficult and brutal discussion on TVRs that have affected a thousand maybe two thousand, maybe three thousand units on the island and the question really that this particular case brings up is whether or not it creates a slippery slope for us for an additional four thousand applications at some point.

Mr. Starr: Okay, well members we have a motion before us to defer, but the motion to defer also has the wording that it come back before us with the conditions necessary to approve it as a TVR with a resident manager in the ohana. So if you favor that eventuality, then the motion to defer would be a good choice. If you don't favor that then probably a better choice would be to vote against the deferral. But I believe Akaku is signaling we need a quick break. So lets take just a very short two-minute or so recess for technical purposes.

A recess was called at 3:39 p.m., and the meeting was reconvened at 3:40 p.m.

Mr. Starr: – Maui Planning Commission. We have a motion on the floor to defer and when it comes back before us if that motion is accepted it will come back with the conditions necessary to allow a recommendation of approval with a manager on the property. If that's the outcome you should vote to defer. If it's not the outcome you want, probably another alternative – Commissioner Hiranaga.

Mr. Hiranaga: I'm not in favor of the motion as proposed because I don't want to influence how the department determines what their recommendation should be. So if the motion was to defer period and allow the applicant to work with the department to come up with a solution that's acceptable to both, I would be voting for the motion. But for the motion as proposed, I will be voting against

it.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: Okay, now I agree. I mean, after hearing Paul explain about, you know, I don't want to get into a slippery slope of you know, just overriding everything.

Mr. Starr: If that's the case, then probably you should vote to defeat the motion then. Are we ready to call the question? All those in favor of the motion please raise your hand. All those opposed, please raise your hand. Keep our hands up.

**It was moved by Ms. Pawsat, seconded by Mr. Hedani, and**

**The Motion to Defer the Matter and the Application be Revised as a TVR with an Onsite Manager and the Necessary Conditions of Approval be Prepared, Failed.**

**(Assenting - None)**

**(Dissenting - B. U'u, W. Mardfin, K. Hiranaga, J. Guard, D. Domingo, J. Pawsat, W. Hedani, J. Starr)**

**(Excused - W. Iaconetti)**

Mr. Starr: Let it be shown that we have eight opposed, none for the motion. Dies. Now, we're open for a possible other motion to approve – to recommend approval, to recommend denial and acceptance of the staff report or anything else your heart should wish. Commissioner U'u.

Mr. U'u: I recommend denial.

Mr. Starr: That's per the recommendation.

Mr. U'u: Per the recommendation and the reason is, I understand that they have been good neighbors, but at one point in time do you say it's enough when you own three homes and you having – part of that three homes has TVRs. When they know there's a housing shortage here on the island. We have the highest rent in the nation like I said before, so what point do you say, it's a good thing? When do we say it's all right?

Mr. Starr: Hold on a second. Do we have a second?

Mr. Mardfin: Second.

Mr. Starr: Okay, we have a motion by Commissioner U'u, seconded by Commissioner Mardfin to deny per the recommendation by staff. Please continue Commissioner U'u.

Mr. U'u: Last year we had 10,000 residents leave the state when it was in good times. We're foreseeing bad times in the future. How much more we going leave before we wake up. There's zoned hotel, there's places that are zoned hotel that we can accommodate the visitors there. But now infiltrating the residential areas and I cannot live with that because I'm here not for them, I'm



here for the residents. I agree with Mr. Fasi. It's nothing personal, but I want a long term person there so we ...(inaudible)... falling into that category as highest rent in the nation and I don't want to be responsible for having or being involved with the highest rent in the nation.

My kids looking at it right now. I ask my daughter what do you want to do? She tells me she can't live here. She's going to have to move. I cannot live with that. So that's my basis for denying and going with the county recommendation.

Mr. Starr: I know for the Chair something Commissioner Hedani said earlier really struck home because now I'm remembering back and you know, a lot of the subdivisions in Lahaina were at one time the attempt at creating affordable housing, you know, workforce housing for the people working in the resort areas and working throughout to balance the resort development of the hotels and you know, we do need – we do certainly need housing. Anyway members, if we're ready to call the question on Commissioner U'u's motion. Looks Like we are. All those in favor of the motion, please signify by raising your hand. Okay, all those opposed, please raise your hand.

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

**VOTED: To Accept the Recommendation to Recommend Denial of the Conditional Permit to the County Council.**  
**(Assenting - B. U'u, W. Mardfin, K. Hiranaga, D. Domingo, J. Pawsat, W. Hedani, J. Starr)**  
**(Dissenting - J. Guard)**  
**(Excused - W. Iaconetti)**

Mr. Starr: Okay, let the record show that it's seven for the motion, one against. I apologize to the applicant, but your recommendation to the Council is denial. I just want to be sure that when we take these votes that staff is recording which members are voting because that's something we need to have in our minutes. Okay, good. Thank you. Thank you Paul.

Mr. Fasi: Thank you.

Mr. Starr: Mich, you got something.

Mr. Hirano: No, just thank you for your consideration commissioners. It was a very difficult decision. We understand.

Mr. Starr: It was. ...(inaudible)... Okay, moving right along.

Mr. Hunt: The commission's next item involves Pacific Rim Land Incorporated requesting a special management area use permit for the proposed four unit single-family condominium and related improvements at 201 Makena Road, TMK: 2-1-007: 066, Kaeo, Makena, Island of Maui. The file number is SM1 2001/0017 and Colleen Suyama, the Deputy Director, is the planner in charge of this application.

**D. UNFINISHED BUSINESS**

1. **PACIFIC RIM LAND INCORPORATED requesting a Special Management Area Use Permit for the proposed four unit single-family condominium and related improvements at 201 Makena Road, TMK: 2-1-007: 066, Kaeo, Makena, Island of Maui. (SM1 2001/0017) (C. Suyama) (The Maui Planning Commission conducted a joint public hearing on this request in 2002 and deferred action on the request until after the Council had taken action on the other land use entitlements such as the community plan amendment, district boundary amendment, and change in zoning.)**

**The Commission may take action on this request.**

Mr. Starr: Okay, before we proceed, it looks like Colleen and Gwen – Colleen, can you give us an idea of how long your presentation and Gwen's is going to take?

Ms. Colleen Suyama: I will be done in less than 10 minutes.

Mr. Starr: Good. How about Gwen?

Ms. Gwen Hiraga: I do have a power point but I do not have to show it. I presented hard copies. If you have any questions on it we can go through it. It's up to the commission. I know you're pressed for time.

Mr. Starr: I mean, is there a way you could like just cruise through real fast.

Ms. Hiraga: Zip through, yes.

Mr. Starr: Maybe like a five-minute version and then if we ask you, we can bring back a slide.

Ms. Hiraga: Yes.

Mr. Hiranaga: Mr. Chair?

Mr. Starr: Yes, Commissioner Hiranaga.

Mr. Hiranaga: I guess I'm not in favor of what you're proposing because this is a SMA application for a four-unit condominium project very near shore. I think it should be given the time for us to analyze it.

Mr. Starr: Okay, so Gwen give us the 10-minute version and then where we have questions we'll bring back. Is that okay?

Mr. Hiranaga: I think she should be able to present the case she feels comfortable with in order to obtain a positive outcome or her desired outcome.

Mr. Starr: Okay.

Ms. Suyama: None of the commission members were on the commission when this matter first came before the planning commission because this was done in 2002 I believe. For that reason, we did send a memorandum to the commission members giving you the past record which was the department report and the public hearing minutes of that time.

The reason it was deferred was because there were some land use amendments that needed to be dealt with with the Maui County Council and that was for district boundary amendment, a community plan amendment and a change in zoning. That has since occurred in 2008, and for that reason the applicant now is coming back with the special management area permit to develop the four-unit single family condominium and related improvements.

The original public hearing was on January 8, 2002. The commission at that time had recommended the approval of the land use amendments with no conditions. Since 2002, there was because a community plan amendment was being done at that time and originally an environmental assessment had not been done for the project, in 2006 we did do an environmental assessment for the project which was approved by the Maui County Planning Commission and filed with Office of Environmental Quality Control on August 8, 2006. Once that was completed the County Council went back and reviewed the application again. The application was finally passed second and final reading on April 4, 2008 and the ordinances which is Ordinance 3550, 3551 and 3552 was adopted and became effective on April 6, 2008.

The change in zoning had five conditions that were attached. One was that the preservation of the rural character of the portions of Makena-Keone'o'io Road. Two was that the applicant shall grade the shoulder fronting the property to provide for safe, on-street parking for beach access purposes. That the frontage along the beach access parking shall have signs prohibiting commercial use and restricting parking from 8:00 p.m. to 7:00 a.m. That no transient vacation rentals or timeshares shall be approved and no bed and breakfast homes or commercial operations shall be approved.

In terms of the analysis the site plan that was originally reviewed by the commission January 8, 2002 is still the same site plan that the Maui County Council had also reviewed. The site plan are in accordance with the conditions of the change in zoning. As stated in our report, the revised roadway plans were submitted. In essence, what they're doing is they're leaving the street frontage the way it is and they would do minimum grading and they would be planting it with grass on the side of the pavement road. They indicate they are putting the restrictions dealing the parking, the parking restrictions on the area. So they are in accordance with the condition of zoning. So they have, they are aware of the restrictions that prohibit transient vacation rentals, bed and breakfast operations and commercial activities.

Basically the department finds that the application is in compliance with the special management area rules, county zoning and the Kihei-Makena Community Plan. At this point, unless there's any questions I will turn it over to the applicant to make their presentation.

Mr. Starr: I have one question. What does condominium mean? I mean I've lived in them but I'm – is this a condominium regime or how does it – what does it mean?

Ms. Suyama: It's a condominium regime. It's not really use. It's really a, when you look at it it's really single family yet but it's unsubdivided and the ownership interest is through the condominium property regime.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: During the general plan, I know that there's coming up with the, what, the heritage, what is it called the heritage plan? I want to know why this whole area – I'm getting sick of seeing projects come up from this area. I know that there is a whole cohesive site down there and I want to know why this whole area isn't being set aside and being reviewed to be part of that heritage plan. I'm getting tired of seeing oversized basins that are going to be used for future development and being sold to us as some sort of benefit. And I'm getting sick of seeing these cheap, tacky residences going up with total disregard to the heritage around here to the point and I feel so strongly about this that I think the existing residences on the beachfront in many of these areas should be condemned for public recreational use actually because they have annihilated everything of value in this whole area. So I want to know why this hasn't been set aside and being included and looked at as being part of the heritage plan amongst other sites.

Mr. Starr: Okay, thanks for your passion. It's not misguided. Commissioner Hedani.

Mr. Hedani: Stronger words to follow?

Mr. Starr: I think a lot of us share some of those feelings. Gwen, please your turn and good presentation Colleen, thank you.

Ms. Gwen Hiraga: Good afternoon Chair Starr and Members of the Planning Commission. My name is Gwen Hiraga and we are assisting the applicant this afternoon. So we'll go through our power point presentation right now. The applicant is BNO1 Investment LLC, and he is represented today by Mr. John Maloney. Civil Engineer is Otomo Engineering Inc., and Stacy Otomo is here as well. Landscape architect is Maxwell Design Group and Brian Maxwell is present. Architect is Farrington Bayless Architects and the archaeologist is Scientific Consultant Services and Mr. Mike Dega is here. So the resource people will be available to respond to any questions you may have.

Again, the applicant should be changed it should be Pacific Rim Land Inc., but BNO1 LLC. It is located along Makena Road and identified TMK 2-1-07:066 consisting of approximately 1.55 acres. The property is currently vacant.

This is another – this is an aerial of the project area. Not too long ago just for perspective the commission reviewed I think the SMA for Garcia and the Garcia property pretty much surround this area.

The applicant's original land use request was a district boundary amendment from agricultural to urban and the county zoning from Interim to H1 Hotel. Through discussions with the Planning Department and based on the Planning Department's recommendation, the application was revised for a community plan down designation from Hotel to Single Family and a county zoning amendment from Interim to R-3 Residential and it was because of this community plan down

designation that an environmental assessment was prepared and a findings of no significant impact was issued by the Maui Planning Commission in July of 2006. The third land use item is district boundary amendment from agricultural to urban.

Improvements to the site will include grading retaining walls, underground utility installation, drainage improvements and landscaping.

This is the project plan and as was noted it's for four, single family residences.

We've included elevations. The south elevation, north elevation, east and west elevation.

In terms of the project highlights. A drainage basin as noted by Commissioner Pawsat is being oversized to handle more than the required runoff from the project site. The applicant is willing to connect to the Makena wastewater service when the service becomes available. The applicant will provide parks and playground assessment fees to the county and the applicant has agreed to do a voluntary contribution of \$250,000 for workforce housing.

Colleen had already noted this area here. The plan was revised to reflect condition number one of the approved zoning change.

That's the end. So we're open to any questions members of the commission may have.

Mr. Starr: Okay, thank you Gwen. Commissioner Hedani.

Mr. Hedani: Gwen, what was the change on Condition No. 1?

Ms. Hiraga: The change in condition no. 1, I shouldn't say the change. The condition no. 1 of the zoning, of the change in zoning requires and I'll just read it, "as noted in the department's staff report," and Colleen has attached these council approvals as Exhibits 2, 3 and 4. Now on the exhibit dealing with the conditional zoning, the change in zoning which I believe was number 4.

Mr. Hedani: Is that for curbs, gutters and sidewalks?

Ms. Hiraga: Yeah, that's the condition. That requires the preservation of the traditional rural scale and character of the existing portions of Makena-Keoneo'i'o Road per the community plan language and that the applicant shall construct improvements to Makena Keoneo'i'o Road fronting the project site with a pavement width of 22 feet. Existing right of way is 44 feet and that there shall be no curbs, gutters or street lights and no concrete sidewalks. And that the county basically is exempting BNO1 Investments LLC and/or Pacific Rim Land from improving any portion of Makena-Keoneo'i'o Road to urban standards. So it's a compliance issue with the community plan that comes up I think whenever the commission and applicants have to deal with projects in Makena.

Mr. Starr: Commissioner Pawsat, oh are you still going Wayne?

Mr. Hedani: So it's actually for a reversal of the requirement for curbs, gutters and sidewalks?

Ms. Hiraga: That's correct.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: Who is Pacific Rim Land Incorporated?

Ms. Hiraga: Pacific Rim Land and maybe John you want to respond to that?

Mr. Starr: Please identify yourself.

Mr. John Maloney: My name's John Maloney and I'm the development manager for Pacific Rim Land. We're a small property management company.

Ms. Pawsat: Who, you are part of Pacific Rim Land Inc., as well or –

Mr. Maloney: Yes, I am.

Ms. Pawsat: And you live in Hawaii?

Mr. Maloney: Yeah, I've lived in Hawaii for 19 years.

Ms. Pawsat: And so why – do you see no value, archaeological value of the area or what drives you to develop properties like this and who are you selling it to?

Mr. Maloney: Our company is the applicant for this project which is a group of investors that are local people that are planning to build four homes on it and sell them.

Ms. Pawsat: Well, I appreciate actually the honest name to the property what it is, BNO1 Investment. At least it's honest and appropriate. But you know, I just don't understand what your vision is except to make money off of this property and it really disappoints me your guys vision of this and I think you have to have more social responsibility when addressing these projects. I mean, I don't see, you know, any value public benefit to this project and I'm getting sick of the term, "donation to workforce housing," as if you know, as if you aren't the developer, you're part of this like ...(inaudible)...

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Can you identify the principals involved in Pacific Rim Land and BNO?

Mr. Maloney: Yes, Steve Goodfellow is the Vice President of Pacific Rim Land and it's been in business for about 20 years. His other investors that are in this BNO1 would be Rod Olsen and he's the owner of Coast Hotel and those are really the principals.

Mr. Starr: Does BN have a – is that an acronym for something?

Mr. Maloney: Bak North. It's just a location that the property, that used to held by the owners.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Do you have your archaeologist present and could he go over what the findings were on the property?

Mr. Maloney: Yes we do. I'm going to ask Mike Dega from SCS to take over.

Mr. Mike Dega: Good evening. Mike Dega, SGS Archaeology. We did an inventory survey on the parcel. We documented one site composed of 13 features, rock walls, mounds, amorphous mounds, let's see what else, a couple of pavements and three enclosures. We did 13 test units and all these features came up with almost nothing. Very shallow bedrock. Everything that we found dated to the historic period and this is not just based on the archaeology. We looked at archival maps, 1842, 1848, walls weren't on the maps. We found the walls later and linked them to the ranching period. We could not find any footprint related to Kalani Heiau on the opposite side of the cattle walls.

Mr. Hedani: I'm sorry, do you have an exhibit as part of the application that we could take a look at?

Mr. Dega: Would you like to see a map with all the sites on it?

Mr. Starr: Yes. Are all the walls and structures on the property are they all going to be raised as part of this project?

Mr. Dega: What we do is we write the report with recommendations submitted to the SHPD and they can concur, modify or reject it. These are significant under Criteria D, but no preservation was requested by SHPD. They can be raised yes, but there is one condition that's archaeological monitoring full time during all ground altering activity in case something does come up. We provide samples. We can't dig up a hundred percent of every lot. We'd be there for 10 years.

Mr. Starr: Were you going to pull up a map of the –

Mr. Dega: I don't think they have a archaeological map on their power point presentation.

Mr. Starr: I know I have my EA here we can share it around.

Mr. Dega: Is it in the EA?

Mr. Starr: It seems very extensive.

Mr. Mardfin: If you could us a pointer to show where they are would help.

Mr. Starr: Joan, can we pass that around?

Ms. Pawsat: Yeah.

Mr. Starr: Let Ward see it. Lots of stuff on there. It's almost solid with walls.

Mr. Dega: I'm trying to find a map of the –

Mr. Starr: While we're waiting Commissioner Pawsat.

Ms. Pawsat: I have a question. Do you really think as a professional archaeologist that it is really possible to ascertain the exact nature of the archaeological sites in this area not just that little site but the entire area until it is completely grubbed so you guys can even see really clearly what you're looking at instead of just like a little, itty bitty piece no larger puzzle.

Mr. Dega: No ma'am, I agree.

Ms. Pawsat: Thank you.

Mr. Mardfin: Until those maps get around and we go back to the archaeologist I'd like to ask a couple of real quick questions. When was this property acquired?

Mr. Maloney: John Maloney, Pacific Rim Land. It was acquired in the year 2000.

Mr. Mardfin: 2000.

Mr. Maloney: Yes, and we started this process in 2002 for a change in zoning, community plan amendment which was Hotel H1 down to residential.

Mr. Mardfin: The second thing. Under socio-economic impact on page 28 of this, I guess it's the staff report I'm reading, it says, "socio-economic impacts on a short term basis the project will support construction, construction related employment." That's true for almost everything. "In the long term the proposed project will provide resort residential housing." What does mean? Are workers going to be buying these things?

Mr. Maloney: No.

Mr. Mardfin: So it's going to be bought by absentee owners or people that want to live there and could afford, I'm assuming a fairly high price for these units?

Mr. Maloney: Yes.

Mr. Mardfin: Okay. And I am also presuming that there will not be an attempt down the road to ask for TVR or B&B accommodations on these?

Mr. Maloney: No we signed a unilateral agreement which lists all the conditions and that is that there will never be any transient housing. It's all in the documentation that we've just gone through in the last six years.

Mr. Mardfin: And is there any possibility that any of the – it's a condominium. Is there any possibility



of it being split into eight units or something like that?

Mr. Maloney: No, it's listed in the unilateral agreement there.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Hedani followed by Commissioner Hiranaga.

Mr. Hedani: The presentation indicated that you would be willing to hook up to the wastewater system once that's available. What would you do in the interim?

Mr. Maloney: Actually it will be available as soon as the process is approved because we have an agreement with the neighbors, Garcias cost sharing to put in a sewer line that would tie into the resort and there's a pump station over by the parking area across from Keawalai Church.

Mr. Hedani: So it's going to be hooked up to the county system?

Mr. Maloney: No, it will go to the resort.

Mr. Hedani: Private system.

Mr. Maloney: Private resort system.

Mr. Hedani: Makena Resort system.

Mr. Maloney: Correct. And we have an agreement with them in writing.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: On your power point presentation, page 9 that you handed out to us. Are all the units going to be identical in character?

Mr. Maloney: These are concept plans and they will be the same kind of construction, look with some maybe painting differences and things like that.

Mr. Hiranaga: I guess I would – I mean, I'm familiar with this area, you know, it's across from the church, it's at the end of the road. It's fairly low key right now, I know but the Garcia property is going to be developed. You're bringing in this four-unit condominium development and I would think that you try to make each unit more individual in character so it doesn't look like it just fell out of the sky and landed there. I mean, it looks like Hale O Makena. I mean, an extension of Hale O Makena. I know it cost more to individually design them but I'm looking at this picture, you're going to have four identical units there facing the road. I just hope or maybe we'll make it a condition that you spend more time trying to make them more individualized.

Mr. Maloney: We'd probably be open to that.

Mr. Starr: Okay, I have a question for the archaeologist. I was interested to see that in your report you have some discussion about the Kalani Heiau and you state that it was a luakini heiau, it was an important heiau used by the alii, by the chiefs that the second part of the site associated was almost certainly a woman's heiau used by the female royalty and is probably a unique feature on Maui. I know it's not on this property but when the adjoining property came before us we had testimony that that was probably not the case and it probably wasn't a luakini heiau and that the other site was probably not a woman's heiau. I was interested to see your description varied. Could you give us some comments about Kalani Heiau and I forget the name of the – you know, the second part of the site the P2.

Mr. Dega: Actually we didn't call it a luakini or a sacrificial heiau or woman's heiau, we were using past reference to it. These are previous citations. We didn't call it anything because we didn't study it. It was on the Garcia parcel so we left that to them to study.

As far as the footprint of the heiau, we couldn't find any empirical evidence on the present parcel to make a connection to the heiau in the form of artifacts. Some are architecture or anything else except maybe spacial proximity. We did have two kupuna, Uncle Les and Dana Hall went out to the heiau and drew the footprint and the large buffer zone around the heiau and didn't encroach anywhere on this parcel. They couldn't find evidence either for it either in oral traditions or in the empirical record. So most of the heiau we left to Alan Haun, the other archaeologist working with the Garcia folks on – again the citations are from some other people. We didn't call it the luakinis or anything.

Mr. Starr: Regarding this property, I mean, you know, I know I'm a stranger to that neighborhood but I do spend a lot of time in the water there over the years but you know I do live in a rather Hawaiian place as you know and I see stuff like this, you know, these rough formations. I don't know I just leave them alone and treat them with respect, you know. I'm not really one to go in there with a bulldozer certainly not without a lot of blessing and stuff and even still I'm reluctant. I was wondering if there were any comments by Uncle Les and Dana and them, I mean, did they, are they approved of a plan that would just bulldoze all this stuff because there's a lot of old stuff there.

Mr. Dega: There is especially in the Garcia parcel and I'm not going to speak for those two. I mean, they're giants. I wouldn't ... (inaudible)... to do it. But they focused on the Garcia parcel and the footprint of the heiau remnant itself. They obviously, if they were more concerned with this parcel they would have approached me and so far they haven't.

Mr. Starr: In other words, they weren't on this project? You meant that they were –

Mr. Dega: They looked at both parcels to see if there was a connection with the heiau with the features on this parcel and they drew the footprint around it which was exclusive to the Garcia parcel. There is some question, I mean, there's a couple enclosures on the current parcel. We tested those and didn't find anything. We suspect that they're animal pens. We tested mounds which, you know, some people will say they could be burials or they could be habitation. We didn't find any evidence for anything. Little charcoal, little bit of shell. So empirically which is what we base our ideas and thesis on, there wasn't very much on this parcel. In the area there certainly is, if you go down by the church. Theresa Dunham found over a thousand artifacts in six test units.

We did twice and many and found almost nothing. Further down Makena you do find enclosures. So, you're right, there's a deep history to the area and we are doing part and parcel on it.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I'm not sure this is for the archaeologist but did anybody in the study look at whether there were any traditional Hawaiian practices used there.

Mr. Dega: Yeah, they did a cultural impact assessment and there was a TCP study done for the Garcia parcel.

Mr. Mardfin: And for this parcel?

Mr. Dega: Yeah, that's correct.

Mr. Mardfin: And there were traditional practices?

Mr. Dega: Traditional practices were on the coastline for fishing and then up to the heiau itself, use of that heiau.

Mr. Mardfin: And did they go through this particular parcel?

Mr. Dega: As far as I know yes and there was a call for interviewees for this particular parcel and nothing significant for this parcel came up. People were focused on the coastline and the heiau.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: How far mauka of your parcel did you folks do your survey? Or is that entirely surrounded by the Garcia parcel?

Mr. Dega: It's actually well-defined by a couple of rock walls on the north and – rock wall here, rock wall here, ...(inaudible - not speaking into a microphone).. Garcia parcel here, the property lines and the road. So it's real well defined ...(inaudible - not speaking into a microphone)... within Makena.

Mr. Hedani: So the entire mauka property has been surveyed?

Mr. Dega: Yes.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Sort of following up. Were there any stories of night marchers going through this area?

Mr. Dega: Yeah, I believe there were actually.

Mr. Mardfin: There were?

Mr. Dega: Yeah, I'd have to look into the TCP study for the Garcia parcel which is available and I'll read through that.

Mr. Mardfin: I hope they'll let the buyers know about that.

Mr. Starr: Okay members, should we move on to public testimony? Okay, are there any members of the public that would like to give testimony on this item and this item only please make yourself known. Seeing none, public testimony is now closed. Deputy Suyama would you like to give the department's comments and recommendation. I don't know if you need to read all of it, but the important points.

Ms. Suyama presented the Recommendation.

Mr. Starr: Okay, thank you. Members what's your pleasure? The Chair would welcome further questions, discussions or a relevant motion. Commissioner Hiranaga.

Mr. Hiranaga: I would like to offer an additional condition and maybe the applicant can actually prepare the language.

Mr. Starr: Go ahead.

Mr. Hiranaga: I really want to discourage four identical units placed side by side in that rural environment. It just looks like Wailea Resort is entering rural Makena. You say it's a architect's rendering, but you know, that's what you're presenting to us and you look at them they're exactly the same. I mean, you don't even have flipped layouts, they're just four of them identical. So I would like – and I know Mr. Bayless is a very talented architect. I'm sure he could come up with a way to individualize, I'm talking specifically of the west elevation because that's the elevation to the road. So maybe the applicant can come up with something or the staff can come up with something.

Mr. Starr: Colleen, comments on that.

Mr. Hiranaga: It looks like Wailea Point is coming to Old Makena Road.

Mr. Starr: Kind of ancient meets the '60's. Gwen, someone, comment on that please.

Ms. Hiraga: Gwen Hiraga. I see that Colleen is already writing up a condition for your consideration.

Mr. Starr: Okay. Meanwhile, go ahead Commissioner Hiranaga.

Mr. Hiranaga: How far back are the buildings set back from the west boundary?

Mr. Stacy Otomo: Good afternoon Commissioners, Stacy Otomo, the civil engineering consultant. Commissioner Hiranaga the unit furthest to the right is approximately 40 feet to the front of the building.

Mr. Hiranaga: How about the one on the left, furthest left?

Mr. Otomo: The one on the left I would estimate it about 70 feet from the roadway.

Mr. Hiranaga: Thank you.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Yeah, this is an SMA permit and usually when my short time here when I hear SMA I'm hearing all about runoff, drainage, beach access, of course this is the mauka side of the road, all those other things and I haven't heard them today. It's not my kuleana particularly so I wouldn't know what to ask but is there some reason we're not addressing things like that?

Mr. Starr: Well, I can only take my own point of view and I'm the one who tends to really harass applicants in this regard and I saw in this power point that they're going to make three times as much retention as the project needs. So that kind of answered it for me. I don't know if maybe I'm missing something but it seemed to be a, you know, a slam dunk in that area. Commissioner Pawsat.

Ms. Pawsat: Well, it's just going to be used later.

Mr. Starr: What?

Ms. Pawsat: It's not being used later, the retention basin by the adjoining properties when they develop?

Mr. Starr: How about Stacy Otomo can answer that.

Mr. Otomo: Stacy Otomo again. To answer Commissioner Pawsat's question, if you recall, the Garcia property actually borders the eastern and northern boundary of this particular property and they're maintaining their onsite – I mean, their runoff on site. This particular basin is sized specifically for this parcel only.

Mr. Starr: And this basin is going to retain more than the entire 50-year runoff not just the delta, you know, the increase, but the entire runoff.

Mr. Otomo: The number that you saw on the power point Chairman Starr, this 44, 37 cubic feet, that's the storage that's required for the post development runoff. So it's not only the increase but it's the total runoff after development. And if you look at the capacity of the basin, we're providing almost 14,000 cubic feet of storage. So as far as the excess, it's three times the fully developed flow which is substantially more than what the drainage standards require.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Stacy, so is it your understanding that no water from the mauka properties will flow through this property?

Mr. Otomo: I think the Garcia's drainage plan called for retention basins along the eastern boundary so they would be mitigating their – at least their increase on site so there will be some runoff that's coming down there now continuing down onto this particular property.

Mr. Hedani: I guess my question is the property mauka of the Garcia property whenever that's developed, is that going to be flowing through this property?

Mr. Otomo: A portion of it does, I mean, the frontage is very small along the border that you're talking about. So there will be some offsite runoff that comes through there. But the amount that we're mitigating onsite is substantially more than what we are obligated to do.

Mr. Hedani: Let me ask a question in a different way. Is there a drainage easement through this property for the mauka properties?

Mr. Otomo: No.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: What's the property directly above, I don't know what direction – ...(inaudible)... north of this property. Is that Garcia residence as well?

Mr. Otomo: That's correct. They share that northern boundary of this particular property.

Ms. Pawsat: So the Garcia property surrounds it on two sides?

Mr. Otomo: The north and east side, that's correct.

Ms. Pawsat: Who's on the south?

Mr. Otomo: There's a vacant lot there. I'm not sure who the owner is and that vacant lot is actually the low point in this particular area.

Mr. Starr: I'd like to ask the applicant what's being done to utilize drought tolerant and native species and avoid chemical – avoid the use of chemical fertilizers and the heavy watering that is required on a lot of properties.

Mr. Maloney: I would like to yield to our landscape architect, Brian Maxwell and what he's – what we're trying to do is use dry forest type of plantings that will take less water in a drip system and the areas that you see grassed would be –

Mr. Starr: Come. Identify yourself first.

Mr. Brian Maxwell: I'm Brian Maxwell from Maxwell Design Group. I'm the landscape architect for the project. Throughout the site we're going to be using drip irrigation. More and more projects throughout Hawaii we've implemented almost 75% to all our designs. And the areas here we have up in the front is going to be lawn basin as well as some areas up in the parking just so you can

step off, but primarily we're going to be doing 25% lawn, 25% ground covers and then mostly mulches as well as like cinder. So we're really going to minimize the type of – how much water we're putting down on the property.

Mr. Starr: How about chemical fertilizers because nitrates and phosphates are leaching into the ocean as algae blooms gone up.

Mr. Maxwell: What we've been doing mostly on our projects is using eco type soils and really trying to use the mulches. A lot of the stress from a lot of the plants come when you start adding all the fertilizers and you know those even the price of that stuff is going up. So if we can utilize eco compost in our soils that's the best way to do it.

Mr. Starr: Okay, so mulching chips and that sort of thing.

Mr. Maxwell: Yes, exactly.

Mr. Starr: And nitrogen bearing trees.

Mr. Maxwell: Yes.

Mr. Starr: Okay, how about energy, I know it's not your kuleana but how about energy efficiency and reduction of carbon footprint in the design of these units.

Mr. Maxwell: I believe I would speak for the architect, I know that he will be using the best practice possibly solar panels for heating the water. I'm not sure about the solar voltaics. We could utilize it in our irrigation for our controllers. We can utilize LED lights in our lighting if we have any pathway lighting. But in the house, I'm sure they're going to be using energy star type of ratings if they can.

Mr. Starr: Can we get a commitment on that?

Mr. Maloney: The developer will commit to that.

Mr. Starr: Yeah, Commissioner Mardfin.

Mr. Mardfin: I want it clarified, commit to what? Using solar water heaters? Hot water heaters?

Mr. Maloney: Yes.

Mr. Mardfin: Solar voltaic?

Mr. Maloney: Well, we're in a concept design and we will try to incorporate it all in. I mean, that's state of the art that we try to build and so it will be part of the project.

Mr. Mardfin: If this approved this doesn't come back to us in any way, shape or form does it? This is it?

Mr. Starr: And you know, maybe someone else is building them.

Mr. Mardfin: Is it appropriate to put a condition in that they –

Mr. Starr: Yeah, though usually I think there maybe is a condition in there to some extent. You could can strengthen it if you want. I don't have the conditions here.

Ms. Hiraga: I'm sorry it's condition no. 12.

Mr. Starr: You got that Ward? You happy with that Ward?

Mr. Mardfin: I don't want to mess around it. I don't have anything specific.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: Well, if this ends up being passed, I would request that there be a condition that they are completely solar powered. You know, I think they should take a little bit of initiative in making this an interesting project. And I think they should be completely solar powered. Now that's one thing.

And then they can take pools out considering the fact that we're in this water shortage and they're banding for swimming pools in front of our face which is redundant right next to be a beach and it's excessive and extravagant.

Mr. Starr: Yeah, lets see if we get a motion.

Mr. Mardfin: Are you making a motion to that effect?

Ms. Pawsat: Well, I don't know, I mean, another things we've added just to include conditions, it hasn't gone through a whole motion thing.

Mr. Starr: Yeah, the time to do that would be if there were a motion to approve and that would be an amendment to it. But right now we're don't have any motion yet. Any more discussion or a motion? Commissioner Guard.

Mr. Guard: I'm just wondering how much work went into these. I mean, these guys are pretty high level architects and to put four of the same ones. Were there other concepts or was this pretty much like lets see if we can get the four units through or not?

Ms. Suyama: Well, these were concepts that were part of the land use amendment and the SMA permit. Normally when they come back for – you know, after they get their SMA permit when they review the final, you know, project plans, we usually look at to see whether it reflects the concept that was originally proposed by the applicant, but because you folks have some concerns that they look all the same and it may not be in the context of the surroundings, and you asked us to come up with a condition, proposed condition, the condition that I would recommend is that, "the final architectural plans shall be submitted to the Planning Department for review and approval to ensure



that the residences shall be individualized within the context of its rural surroundings rather than have the appearance of a multi-family complex.” And that way we would make sure that you know, you have some of the details that make the units different from each other and we also will look at the, you know, the rural Makena area and how the context of the buildings are with the surrounding.

Mr. Starr: I'd like to ask if Bak North 01 Investment is actually planning to build these or they're going to just market it after their entitlements for others to build?

Mr. Maloney: Excuse me, John Maloney with Pacific Rim Land. Our plan is to build them. The timing is uncertain just because of the way the market sits right today.

Mr. Starr: So also there's no compelling need to get the SMA since it may be a while yeah?

Mr. Maloney: Well, actually we'd like to get the SMA as soon as we can.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: John, does BN01, Pacific Rim Land or any of its affiliates own property in this vicinity mauka of this project or is it owned or contemplated to be owned in the future?

Mr. Maloney: Not that I know of.

Mr. Hedani: The question that I'm asking is in this particular map, all of this area here are there any ownership interests by this organization in the surrounding –

Mr. Maloney: No.

Mr. Hedani: And none are contemplated.

Mr. Maloney: None are contemplated.

Mr. Starr: One question first Joan. Has the Urban Design Review Board looked at this? Generally we don't get it here until they have. Gwen, Mich?

Ms. Hiraga: I'm sorry. I don't have the exact date but it was some time in 2002. As Colleen mentioned, this is an application that was heard, the public hearing was held in 2002 by the planning commission. Then it had to go to the Council for the land use amendments and during the course of that review there was an opinion from the Corporation Counsel saying that an environmental assessment was needed so that set the project back again. At first the department felt that because it was direct initiated amendment a environmental assessment would not be required, but in 2004, is when the Corporation Counsel came out with that opinion. So it did go through Urban Design Review Board.

Mr. Starr: Colleen, you got something for us?

Ms. Suyama: The exact date that it went before the board was November 9, 2001, and at that time

they recommended approval of the project and the approval was not conditioned upon any specific conditions. They just recommended approval.

Mr. Starr: Commissioner Pawsat.

Mr. Pawsat: Just as a follow up to Hedani's question, but concerning Makena Resort I suspect Goodfellow Brothers would be in charge of grading and grubbing that – grading the whole site apparently and I can – much work on that property. I consider that investment in surrounding properties.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Regarding your proposed language for that additional condition, when the Urban Design Review Board reviewed the application they had large vertical elevations to review?

Ms. Suyama: They have boards like this which they review.

Mr. Hiranaga: And they had no issues regarding the buildings all being identical.

Ms. Suyama: No, they did not. So their recommendation basically was to recommend approval with no conditions. Normally what happens at the board if they have issues on architecture of the project rather than make a recommendation they will tell the architect these are the concerns we have, go back, redesign your project and then come back to the board.

Mr. Hiranaga: So is the Planning Department the appropriate agency to review their revised renderings when it comes back?

Ms. Suyama: Normally when it's the final architectural plans it's the department that reviews rather than the board. If you feel the board, you require their comments or you want them to redesign it, you do it before this body takes action. I mean, the department may send it to the board, you know, just for comments or recommendation, but not necessarily as an approving body.

Mr. Starr: Okay, members anything else or a motion maybe like approve, deny, defer, something like that would be suitable. Questions, comments, we'll take anything.

Mr. Guard: I got a question.

Mr. Starr: Commissioner Guard.

Mr. Guard: I don't know very much about pools and I have to concur with Commissioner Pawsat, that I'm going to go home and look at my dying plants while if these ever get built I don't think they're going to hesitate to either water or refill the pool or flush it weekly, biweekly or monthly. So I don't know if that's real critical on BNO1's investment strategy on gotta have a 2,000 foot pool to go with the home. So I would like to know how critical that part is to either downsize some of these features. I don't think it's going to be getting any easier before it gets worse on the water situation. So I'm hesitant to approve a project that's going to use more water in the pool than a probably use

in a month for my whole house.

Ms. Suyama: From our perspective, it depends on whether the applicant is voluntarily restricting their project of not having a pool because appropriately that issue should have been dealt with the County Council when they reviewed the change in zoning that if water was an issue they could have conditioned the project that no swimming pools shall be built, but on our perspective it's hard for us to now tell the applicant you shall not build any swimming pools when there is no regulations that restrict it because of the water situation. So I think it's a question for the applicant as to whether they will voluntarily do it.

Mr. Starr: Yeah, I know also pools are also one of largest energy users and in today's awareness of energy use and carbon footprint that does have a direct relation to shoreline and sea level rise, but anyway, I'll leave that to the applicant.

Mr. Maloney: John Maloney with Pacific Rim Land. We showed the pools because we wanted to show what the build out could be and there could be buyers that will come and don't even want a pool and that would be the case. On the other hand, these are approximately 425 square foot pools of surface area and we've calculated the average evaporation rate and it's less than a half inch per day and so we're going to propose covers if the pools get built. And we'll be using solar power as much as we can in the property and for probably the pool's operation.

Mr. Starr: So in other words you're committing to have photo voltaics to offset the pool plus?

Mr. Maloney: Yes we would.

Mr. Starr: Colleen, you got that?

Ms. Suyama: The use of photo voltaics is already on the condition in terms of some of the methods by which they can reduce their energy consumption.

Mr. Starr: I think that that may just turn into a shall in that 12 and that there's an additional condition that photo voltaics shall at least offset energy usage of the swimming pool. That was what the applicant just stated. Any way we haven't gotten to there yet because there's no motion. Members? Commissioner Mardfin.

Mr. Mardfin: I know that Commissioner Starr, Chairman Starr wants a motion and I'll make one in a minute but I'm going then propose an amendment that we add a condition that there be no pools, zero pools.

Mr. Starr: Okay.

Mr. Mardfin: So I will move to follow the recommendations of the department that we approve this SMA.

Mr. Starr: Is there a second to the motion?

Mr. U'u: I'll second.

Mr. Starr: Okay, there's a motion to approve by Commissioner Mardfin, a second by Commissioner U'u that the SMA for this project be approved per the conditions recommended by staff and then Commissioner Mardfin first.

Mr. Mardfin: When you said conditions recommended by staff, you're including the latest one that Colleen had about the plans will go back to the Planning Department.

Mr. Starr: And there's the energy one also.

Mr. Mardfin: I would like to make an amendment.

Mr. Starr: Okay.

Mr. Mardfin: That the project be approved with the deletion of pools. That pools not be allowed on any of these projects, any of the condominiums and that the Planning Department insure that that condition be in the proposal.

Mr. Starr: Okay, is there a second for that amendment?

Ms. Pawsat: I'll second it.

Mr. Starr: Okay, amendment moved by Commissioner Mardfin, seconded by Commissioner Pawsat, that there shall be no pools. Now before we do that I want to be sure that there is a rational nexus for – of connectivity between not having pools and the shoreline management rules. So perhaps some discussion about why pools could be detrimental to the shoreline would be in order to make sure that that's on the record. Who's got something like that?

Mr. Guard: I don't know much about pools but the previous one this morning was discussing the either chlorine or when you backwash a pool. I don't have a pool so maybe a pool owner could tell me what you do in the ownership scenario. I can see chlorine going into the ocean being as a –

Mr. Brian Maxwell: Hi, this is Brian Maxwell, the landscape architect. You know, one option, you know, if you're thinking about deleting of pools, you got to think of the other side too is that, you know, pools – I mean, first of all, they can use filtration. They don't have to do backwashing any more. So there is a salt water and they can actually osmosis to take out the impurities. So I mean, there's a whole different way of doing it. You don't have to add chlorine to your pools any more. And you can use a filtration so you don't have to do the –

Mr. Starr: Okay, thank you.

Mr. Maxwell: But also, one other thing that may be able to do is with the pools is use it for fire control.

Mr. Starr: Okay, thank you. There was an amendment on the floor and I want to hear from the

applicant whether that amendment, that added condition is a friendly condition or not.

Mr. Mich Hirano: With Munekiyo and Hiraga. The applicant has discussed that and I think that the applicant feels that it would restrict the opportunity to sell the property without the pool as an option. The applicant has put forward mitigation for a pool and that is to cover the pools as well you heard this morning and you heard today that there can be other mitigated measures that would reduce chlorine and use salt water. So there are ways to mitigate the use of pools, but to outright restrict it would be somewhat of a restriction and a hardship that the applicant would not agree to or would have difficulty agreeing to.

Mr. Starr: And I stress to members if we are going to keep that condition we better tie it to the SMA rules. Commissioner Mardfin.

Mr. Mardfin: The reason I made the motion is because I'm concerned about the additional water when pools are drained and replenished. I heard the applicant say they'd put covers on it but they'll still be evaporation. It's near the ocean and therefore, there's a potential for inadvertent discharge into the ocean affecting the beach. And so, - I'll stop there.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I'd like to give the applicant an opportunity to craft language regarding conservation, water conservation methods they would employ regarding the use of the pool.

Mr. Hirano: The last part of that comment Commissioner Hiranaga was to what? To?

Mr. Hiranaga: For water conservation. You know, recycle water to minimize the use of new water, craft some language that the applicant would implement.

Mr. Hirano: For the pool.

Mr. Hiranaga: For the pool.

Mr. Hirano: Water conservation measures to conserve water.

Mr. Hiranaga: I don't have a pool either.

Mr. Starr: Okay, while they're doing that, we should deal with the amendment and Director quickly.

Mr. Hunt: Just to remind you folks what you're reviewing is an SMA which is a mitigation overlay of development. The intent of that overlay is to protect coastal resources. You have to ask yourself a question, if you're going to put a condition on a proposal in the SMA would you put that same condition in it if it was outside the SMA? Are you going to start banning pools altogether or is there some specific reason in the SMA that you're not allowing pools? This morning you had a mitigation where the pool was going to be filled with salt water or whatever so it would have less of an impact should that pool be overrun by the sea. So that has a direct correlation with an impact to a resource.

A concern that the pools use more water I'm not sure that has a coastal impact as opposed to just a general impact. And if you have concerns with pools because of water use we should be addressing that across the board not just in the SMA is my concern.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Is someone wants to craft something restricting – allowing pools but only salt water pools I would find that an acceptable compromise. It just seems to me somewhat obscene to be building four pools when they're 70 feet from the ocean and I just don't get it. It's – and as the Director says there's a possibility that some sort of storm surge would go in if it was fresh water and have an adverse effect on the reef system or the fish life or any of the life in the ocean. So that's the reason that I would restrict it here whereas I wouldn't do it if it was Kula.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: The difference is if you live upcountry you can't walk 100 feet to take a swim in the ocean. That's why the difference.

Mr. Starr: You know, I agree with the sympathies, it's just a legal tough position to be in, but you know, there may be other issues with this. Commissioner Hiranaga.

Mr. Hiranaga: In the past when hotels have come before us for SMA permits and their renovations they always talk about how they're conserving water for their water features and recycling water so that's basically the same intent that I'm requesting they craft is water conservation and how they're going to recycle their water so that it's not in from the potable water and out into the sewer.

Mr. Starr: Okay, anyways we're approaching the witching hour here. Can we deal with the vote on the amendment or is there any other comments before we go? Commissioner Mardfin.

Mr. Mardfin: I'd be willing to – I sort of threw out there that somebody might want to craft something about a salt water pool, but I haven't heard anything. So if there's nothing coming forth on that, that I'm happy to vote for my amendment.

Mr. Hiranaga: I believe they're working on language currently.

Mr. Starr: But right now we have an amendment on the floor, and unless one wants to amend that amendment then we should vote on that amendment. So, Commissioner Hedani.

Mr. Hedani: I have a problem with prohibiting pools on this particular project. Because it's a condominium project that's being proposed I think to some degree that's why you see architecture that's, well, it's actually identical I think on the drawings is because they wanted to create a unified presentation for the project as a condominium project with four independent single family units. That's not to say that that's right or wrong but that's probably the philosophy that they're following. The question of pools has to be something that we would relate to every shoreline property. We don't know what the elevation of the pool is. We don't know what tsunami inundation possibility of a swimming pool is at this particular point in time and I find it difficult to connect the dots as far as

swimming pool, eliminating a swimming pool and the effect on the ocean. So I'll be voting against the amendment.

Mr. Starr: Although I think it's insane to have pools there I don't think I can legally defend the amendment for those technical reasons. So anyway, are we ready to vote on the amendment? Okay, all in favor of the amendment please raise your hand? All opposed to the amendment please raise your hand?

**It was moved by Mr. Mardfin, seconded by Ms. Pawsat, and**

**The Proposed Amendment of Not Allowing Pools Fails.**

**(Assenting - W. Mardfin, J. Pawsat)**

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

**(Excused - W. Iaconetti)**

Mr. Starr: Okay, the amendment fails by a vote of 6 to 2. Commissioner Mardfin.

Mr. Mardfin: I'd like to impose a condition that the entire project be allowed one sea water pool.

Mr. Starr: Is there a second to that? Sea water or a UV salt – UV saline.

Mr. Mardfin: That would be fine.

Mr. Starr: Seconded? Do we have a second for the amendment? Seeing none, the amendment dies. Commissioner Hedani.

Mr. Hedani: Is it appropriate to ask some questions of the applicant at this point?

Mr. Starr: Yeah go for it.

Mr. Hedani: Mich what is the elevation of the properties that we're contemplating?

Mr. Hirano: Stacy Otomo.

Mr. Stacy Otomo: Stacy Otomo again. Commissioner Hedani, it ranges from about eight at the northerly end, starts off at about elevation seven here. It goes up to roughly about elevation 20 on the eastern boundary.

Mr. Hedani: What is the elevation of the pools?

Mr. Otomo: It will be roughly at around elevation 10 or so. Between 8 and 10.

Mr. Hedani: Ten feet?

Mr. Otomo: Yes.

Mr. Hiranaga: Above sea level?

Mr. Otomo: Above sea level.

Mr. Hirano: Chair Starr, did you want to hear the draft condition regarding the conservation measures for the pool or is that open for discussion?

Mr. Starr: Okay, lets hear them.

Mr. Hiraga: Gwen Hiraga. For your consideration and feel free to edit as we go along, but what I came up with was, "that the applicant shall make every effort to minimize the usage of water, and reduce evaporation by mitigative measures such as installation of filtration systems, pool covers, prohibition of backwashing, and use of salt water if practicable." Something like that.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I don't care for the word "if practicable."

Ms. Hiraga: Okay, saline pools is okay.

Mr. Hiranaga: When you say filtration, does that mean the same thing as recycling the water?

Ms. Hiraga: Brian you got to come up.

Mr. Starr: Identify yourself.

Mr. Brian Maxwell: Sorry, Brian Maxwell. That's a process of the filtration of cleaning it. So they'll use filters instead of the old fashioned way they have a big drum and they'd backwash the whole thing. Now they can do it with filters and not have to waste so much water.

Mr. Starr: Okay, does anyone want to offer an amendment to add that as a condition?  
Commissioner Hiranaga.

Mr. Hiranaga: I'd like to offer an amendment but there was also the other condition that Colleen offered regarding trying to individualize the –

Mr. Starr: That was already included. That one and the energy conservation were already part of the original motion. So I think we just need to add a pool one and then whatever else you want.

Mr. Hiranaga: Are you sure about that?

Mr. Mardfin: Yes.

Mr. Starr: What was the original motion Jeff?

Mr. Hiranaga: I think it was just the staff report.



Mr. Mardfin: Kent I made it as part of my motion to approve.

Mr. Hunt: That's what my notes indicate also.

Mr. Hiranaga: They were inclusive?

Mr. Hunt: Correct. Move, okay with architectural changes, my wording and then also, with a deletion of pools and that one failed.

Mr. Mardfin: I'll second the amendment.

Mr. Starr: Wait, was that an amendment Kent?

Mr. Hiranaga: Well, I don't think they have the language yet. This is amendment regarding the pools?

Mr. Starr: Yeah.

Ms. Suyama: What I got from the proposed amendment is that it would be a condition 21, "that the applicant shall make every effort to minimize the impact of the pools through mitigative measures such as filtration systems, pool covers, prohibition of backwashes and use of saline water." That was what was stated.

Mr. Starr: Use every effort? Can they delete that?

Mr. Hiranaga: Just say, "shall minimize."

Ms. Suyama: Shall minimize.

Mr. Starr: Yes.

Ms. Suyama: Shall minimize the impact of pools through mitigative measures such as –

Mr. Starr: Including not such as.

Ms. Suyama: Including. Okay, including but not limited to?

Mr. Starr: Yeah.

Ms. Suyama: Want me to restate it all over?

Mr. Starr: No.

Ms. Suyama: Okay.

Mr. Starr: Commissioner Hedani. Wait, wait, we have an amendment as offered by Commissioner

Hiranaga, seconded by Commissioner Mardfin and now we need to read it over one more time Colleen.

Ms. Suyama: "That the applicant shall minimize the impact of the pools through mitigative measures including but not limited to filtration systems, pool covers, prohibition of backwashes and use of saline water."

Mr. Starr: Okay, so we have an amendment on the floor. We can discuss that amendment, we can amend that amendment or we can vote on it. Commissioner Hedani.

Mr. Hedani: Okay, I have a question at this point. The language as proposed indicates they have no choice other than to have a salt water pool. Is that acceptable to the applicant?

Mr. Maloney: John Maloney. Yes, we always intended to use saline, have saline pools.

Mr. Hedani: Jesus Christ, why didn't you say so in the beginning. Thank you.

Mr. Starr: They're more fun to swim in anyway. Okay, we have an amendment on the floor regarding the pools. Are we ready for the question? Okay, all those in favor of the amendment, please raise a hand. Anyone opposed to the amendment raise their hand.

**It was moved by Mr. Hiranaga, seconded by Mr. Mardfin, then**

**VOTED: To Add the Condition: "That the applicant shall minimize the impact of the pools through mitigative measures including but not limited to filtration systems, pool covers, prohibition of backwashes and use of saline water."  
(Assenting - K. Hiranaga, W. Mardfin, J. Guard, B. U'u, D. Domingo,  
J. Pawsat, W. Hedani, J. Starr)  
(Excused - W. Iaconetti)**

Mr. Starr: Okay, I saw seven hands go up and I saw one hand not do anything which abstention which is counted as a vote for. So the amendment passes. Now we're ready for discussion, another amendment or the main motion. Go ahead Commissioner Hedani.

Mr. Hedani: Okay, I have a question for the applicant's archaeologist one more time.

Mr. Starr: Okay, we're overtime though go ahead. Cost is triple.

Mr. Hedani: Put it on my tab. When the question was posed to you as to the ability to connect the surrounding potential archaeological features anything that might be on site your response was that there's no way that you could tell without the area being cleared. Is that correct?

Mr. Dega: I'm not sure I understand. You're trying to connect the surface architecture with the subsurface or?

Mr. Hedani: No, I'm trying to connect anything that might be on the site with anything that might be around it.

Mr. Dega: Yes.

Mr. Hedani: Is there a way that that could be mitigated?

Mr. Dega: Well, the best mitigation we have right now would be monitoring. And how do you connect these things chronologically and by material types, that's how we connect the different parcels together.

Mr. Hedani: Okay, the property that I'm talking about is surrounding the Garcia property.

Mr. Dega: Yes.

Mr. Hedani: Who is that owned by? Is that Dowling at this point?

Mr. Dega: You mean the non Garcias parts?

Mr. Hedani : Right.

Mr. Dega: I don't know.

Mr. Hedani: Does anybody know?

Mr. Dega: Makena Resort.

Mr. Hedani: So it's the Dowling Company, Makena Resort or the consortium that owns the Makena Resort. Have they contracted with you to do an archaeological survey of that area?

Mr. Dega: No.

Mr. Hedani: Are they contemplating doing that?

Mr. Dega: Haven't talked to them at all. I'm not sure. If they plan to build or do any ground altering activity they have to go through the permit process and the SHPD will require inventory survey there. If they don't want to do anything, the land just stays like that.

Mr. Starr: I think they have another consultant working on there.

Mr. Hedani: Okay, the question that I would have then would be whether or not we could allocate funds from this particular project towards the efforts of doing a larger more comprehensive archaeological survey of the region in order to address Commissioner Pawsat's concerns that were first raised.

Mr. Starr: Well, offer an amendment if you want to.

Mr. Hedani: ...(inaudible - changing of tape)... ass backwards way then. What would it take to do an archaeological survey of the property mauka of the Garcia property in terms of dollars?

Mr. Dega: What's the acreage?

Mr. Hedani: A hundred acres.

Mr. Dega: That whole area. A good inventory survey I'll give you time for a hundred acres, at least two to four weeks.

Mr. Hedani: I'm talking dollars.

Mr. Dega: Oh geez, we're no good in math that's why we're in archaeology, \$50,000 to \$80,000 maybe. I mean, \$30,000 to \$50,000. I'm just guessing. It depends. If you know what's out there to begin with you do a reconnaissance so you can see what is out there and then narrow it down to the time and the cost. Right now based on what you have in Garcia, in this area, there's going to be a lot of sites out there especially historic. There may be more heiau, there may be permanent habitation so I would expect something, you'd find something. So \$50k just off the top of my head.

Ms. Hiraga: Gwen Hiranaga. In response to Commissioner Hedani's comment I just wanted to note that should Makena Resort as Mr. Dega indicated, if they will be will be proposing any kind of project then they will have to do a complete archaeological inventory survey and they do that on a project by project basis and they have always done that accordingly. So if you're looking at possibly this project to fund or pay for a larger study I don't know if it's appropriate to have that as a condition for this project but I think that each project within the Makena Resort if they were to come in for an SMA permit they would have to do their own archaeological inventory survey.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: The problem I see is that they'll come in and they'll do it for their property and they won't connect it to your property and what we want is a comprehensive study of the entire region.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: That's the problem with making it a standard that nothing exists unless the developers discover it. You can't do it by project, by project, development, development. It's a sham and it's irresponsible and all these areas should have been identified a long time ago and have a proper archaeological study done of the whole area and there would be places to develop in there and you know, I would be having a fuckin tizzy here.

Mr. Starr: Well said. Okay, Deputy Suyama.

Ms. Suyama: Unfortunately, if we worked in a perfect world we would have the funding to do the comprehensive study, unfortunately –

Ms. Pawsat: No, point of order, it's not about working in a perfect. It's about common sense and

it's just not that difficult. These guys are already talking to each other. They're using the same developers, it's the same dudes and for them to have a little bit of social responsibility to go in and do the archaeological site is not requesting too much. They've already taken enough. They can contribute a little bit back.

Ms. Suyama: Well, Ms. Pawsat, we can recommend things to developers that if they are coming to coordinate. We try to do that. Similarly how we try to do like traffic studies, to coordinate drainage studies, etc., but we cannot force people to do that. It's a cooperation between government and the private developer. We always try to do that, but other than –

Mr. Hiranaga: Can we get back to the agenda item please?

Mr. Starr: Anyway, Deputy Suyama lets move along but I do want to make a very brief comment in this area because I had some discussion on this at the American Planning Association National at a very well attended session on ethics just a few weeks ago with the top ethics people from the American Planning Association and you know, asking about this type of situation what was suggested was that in many, many jurisdictions these studies are done not by the applicant but by the department and funded by the applicant. And so that it's done in an arm length way and that way it can be done on a wider basis instead of, you know, two or three separate small area studies that don't intermesh and although I don't see any mechanism for dealing with that today except perhaps denial which would, you know, put it off to another day, then you know, I do think that that's something that as a policy we should discuss in the future. Commissioner Hedani.

Mr. Hedani: I'd like to move that we add an amendment to the main motion to require an archaeological assessment of a \$100,000 be imposed against the project for potential mitigation or for a potential use in the future at identifying –

Mr. Starr: Regional.

Mr. Hedani: Regional archaeological sites that may be of significance in the area that can be used by the county.

Mr. Starr: Is there a second for the amendment? Okay moved by Commissioner Hedani.

Mr. Hedani: And I'd like to know if the applicant would be agreeable to something like that.

Mr. Starr: Seconded by Commissioner Pawsat. And the motion is to add a condition that would state.

Mr. Hunt: I'll try. Correct me if I didn't get it right. "Require the applicant to contribute a \$100,000 for potential use at identifying regional archaeological sites to be used by the county."

Mr. Hedani: Correct.

Mr. Starr: I would take out the word, "potential." For use by the county in a regional archaeological study. Looking for sites in the area.

Mr. Hedani: Essentially we're breaking new ground here and I think what we're talking about is setting up a fund so that we can try to have some independent analysis done by the county relative to situations like this where there may be interrelationships.

Mr. Starr: You got that Jeff?

Mr. Hunt: Somebody would have to repeat it. There's a couple versions.

Mr. Hedani: I think you got it right the first time.

Mr. Starr: Okay, I just don't want to "potentially" use it. If there's a fund, I want it to be definitely used. Commissioner Hiranaga.

Mr. Hiranaga: I'd like the Corporation Counsel to comment on the proposed condition.

Mr. Giroux: I hate to interfere with your process.

Mr. Starr: Come on, come on.

Mr. Giroux: Well, I think that, you know, you've got to put it on the record as far as you know what your basis is. And I think there's been discussion about it. Any time you're asking for money it's going to be looked as an exaction. This type of decision making, you know, has to be done by a body. You know, like Mr. Hedani said, you're breaking new ground and you're looking at a situation where, you know, you really don't have a template. So, whether it's going to be looked at as reasonable or rational or whatever, I think that's got to be debated amongst the body and if you guys can get consensus to that and feel comfortable with your basis then you got to go to the next level and look at proportionality.

Mr. Starr: Before we go any further, I'd like to ask the applicant if this is something that they will do voluntarily in which case there's no legal – you know, the legal issue is a moot point because it's being offered up by the applicant. So applicant.

Mr. Maloney: John Maloney, Pacific Rim Land. I'd like to remind everybody here that this is 1.55 acres of land and we have all the archaeological studies done on our property that we're responsible to do. All of a sudden we're going to start doing a hundred acres of somebody else's land and have to pay for that. I just feel that that's terribly huge injustice as far as putting that on our project and the Garcias were here a month or so ago and that wasn't the case to theirs and their's is even a much, much larger site that has more significance than this one according to the reports that we have read.

Mr. Starr: Okay, Commissioner Hedani.

Mr. Hedani: Is that a no?

Mr. Maloney: We might consider participating, but geez to all of a sudden to have a \$100, 000 levied on this project for that it just seems unfair on a 1.55 acre project and we're down zoning from

community plan hotel to residential.

Mr. Starr: Okay, we really got to finish up here one way or another. Commissioner Hedani.

Mr. Hedani: Last question. Robert, what's the value of the property that you're contemplating constructing.

Mr. Maloney: What the value it would resell for?

Mr. Hedani: Right.

Mr. Maloney: Our pro forma right now is approximately \$3 million.

Mr. Hedani: A piece?

Mr. Maloney: Yes.

Mr. Hedani: Times four?

Mr. Maloney: Yes, but we also paid quite a bit for the property for acquisition.

Mr. Starr: Commissioner Guard.

Mr. Guard: Thank you. I don't remember what happened with the Garcia one mainly in regards to the size of their homes and then going from hotel to residential, I don't know if that changes the character of what we should be looking at from a community plan standpoint because I'm looking on your power point presentation on page 4, and I can name most of the owners on that side of the road and on both they're fairly – mostly of them are all very rural in character. So I just can't remember what we saw as part of the Garcia presentation for the size of those seven homes and with the loss of them here, I'm going to have to leave, I'm wondering if we might be able to defer to take a look at that later to get the community plan information for residential just to make sure it's going to fit in with the neighborhood. Just it seems like everyone's getting frustrated and I'm going to have to leave anyway and I don't know if we're going to come to a vote in the next five to ten minutes.

Mr. Starr: I must say I would much rather either approve or deny because we have a hundred, two hundred, three hundred items to deal with.

Mr. Guard: I realize that, but without the community plan to be looking at four, 4,000 foot homes when I cannot remember what the Garcia family subdivision said. I mean, they were going to keep a few of those existing ones which are very rural in character. You have the King property, you got David Bowie's old house which is probably the topic of most debate on that point then it goes to all original family owners and we can go all the way down the list and most of them are all single story very quaint homes.

Mr. Starr: Okay.

Mr. Guard: Just to keep the character of the neighborhood.

Mr. Starr: Commissioner Hiranaga, you had your hand, you still want?

Mr. Hiranaga: I'm not sure if Commissioner Hedani had some basis to come up with the \$100,000 fee, but on 1.5 acres that's \$60,000 per acre. So are we going to be setting a precedent that whenever undeveloped property comes before us for an SMA approval in the Makena area we will be requesting \$60,000 per acre. So on a 100-acre project we're going to be asking for \$6 million in archaeological donations for this fund. I mean, I can see the need for it or some justification for it but I think more time has to be spent on how you come up with that number and maybe you can enlighten us as to how you came up with that number.

Mr. Starr: Commissioner U'u, I'm sorry, let me let Commissioner Hedani answer and then Commissioner U'u.

Mr. Hedani: The logic of the number Kent was I took \$50,000 and doubled it.

Mr. Starr: Commissioner U'u.

Mr. U'u: No, I agree with Commissioner Hiranaga. One acre a hundred grand. We had testifiers saying it would cost roughly \$50,000 to do a study. Anybody we should be going after is the bigger land developers. That's my personal point of view.

Mr. Starr: Okay, lets vote on the amendment. Commissioner Mardfin, your last.

Mr. Mardfin: I wanted to – I'm not looking at the acreage. I'm looking at the number of units and it works out to be \$25,000 a unit and I think that's a tad excessive because we're talking about putting this into a fund and therefore, we presumably will get other people to put into this fund and I would urge that this be put into some sort of escrow fund because I don't think we ought to do it until we have more participating bodies. But I would make \$10,000 unit. So I would like to amend his motion from a \$100,000 down to \$40,000.

Mr. Starr: Okay, is there a second to the amendment?

Mr. U'u: Second.

Mr. Starr: Okay, so we have an amendment to the amendment, that raises the amount from a \$100,000 to \$40,000. It was moved by Mardfin and seconded by, who was that Bruce U'u?

Mr. U'u: Yeah.

Mr. Starr: And Commissioner Hedani on the amendment to the amendment.

Mr. Hedani: I would consent to withdrawing my motion or restating my motion to revise the number from a 100 to 40.



Mr. Starr: Well, it's already done by an amendment to the amendment.

Mr. Hedani: Just to move things a long.

Mr. Starr: Are we ready to vote on the amendment to the amendment?

Mr. U'u: Yeah.

Mr. Starr: Okay, we're voting on the amendment to the amendment which is to reduce the amount from a \$100,000 to \$40,000.

Mr. Mardfin: And to have this go into an escrow account.

Mr. Starr: And I'm assuming that this is something that's still hostile to the applicant is that correct even at the reduced amount?

Mr. Guard: I have a comment.

Mr. Starr: Wait a second.

Mr. Guard: Well, while they talk I got a comment.

Ms. Ohashi: Reducing it to \$40,000 is much better for the application. However, we do have some concern about the precedent that the commission is setting and if that's the case then I think we need to see something like this in all projects. As it was mentioned, Garcia which came before the commission about a month and a half ago, never came up. It's a much larger area and the Garcia's one I believe was just for single family lots. In response to Commissioner Guard, I believe it was just for residential lots not homes.

Mr. Starr: Okay, so it sounds like it's still hostile to the applicant. Commissioner Guard go ahead.

Mr. Guard: Just on – talking of escrow accounts it starts to bring very bad memories of Honua Kai and all these accounts that go unfunded or never worked on. I know there's funds out there. Maybe in this region we just need to look at more comprehensive plan on – I mean, OHA's – we see OHA always giving examples and I believe they wanted to participate in studies mauka of this area. So, I just feel like we're kind of just shooting real quick. You're going to loose us.

Mr. Starr: We have an amendment on an amendment. Commissioner Hedani. Yeah, lets get to where we vote on it.

Mr. Hedani: My suggestion for this particular initiative was to obtain consent from the developers towards the initiative. If it's hostile to the developer then – and it's the Garcia property that prompted this particular movement where you can have an artifact identified in one location that has a connection to another location that you don't know about. In this particular case, the developers own archaeologist has stated from his side that he cannot make that assessment because he doesn't know. And so I'm just disappointed that we're haggling over \$40,000 on a project that's

well, you know, that's worth well over \$12 million.

Mr. Starr: Please be very, very brief. Three words you've got.

Mr. Maloney: As far as the hostile, I mean, we're not trying to be hostile, it's just that I was trying to be fair and we would entertain a \$40,000 commitment to a study. I don't know how that gets collected or ?

Mr. Hedani: I appreciate that and from my perspective it would be towards something that would recognize Makena as some place that's special and different.

Mr. Starr: Okay, lets move along. We have an amendment to the amendment on the floor lowering the amount from a \$100,000 to \$40,000 on the original amendment. We're going to vote on that amendment to the amendment. Just the amendment to the amendment lowering it to \$40,000. If you're in favor of that amendment to the amendment, please raise your hand. Okay, I see seven in favor. One opposed.

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

**VOTED: To Amend the Proposed Amendment that the assessment be \$40,000 and that the assessment be placed in an escrow account.  
(Assenting - W. Mardfin, B. U'u, K. Hiranaga, J. Guard, D. Domingo, J. Pawsat, W. Hedani)  
(Dissenting - J. Starr)  
(Excused - W. Iaconetti)**

Mr. Starr: The amendment to the amendment passes. Now we're voting on the original amendment which would create a special escrow fee and now it's been changed to \$40,000 for an archaeological survey of the area. Comments on the amendment?

Mr. Mardfin: It's just the wider region.

Mr. Starr: Yeah, the wider region. We are voting on that amendment with the second amendment attached to it. All in favor, please signify by raising your hand.

Mr. U'u: What are we voting on?

Mr. Starr: We're voting on the amendment that would create this archaeological study to be – \$40,000 for the region. All those in favor, please raise your hand. So one, two, three, four, five, six, seven. All opposed please raise your hand.

**It was moved by Mr. Hedani, seconded by Ms. Pawsat, then**

**VOTED: To require the applicant to contribute \$40,000 which is to be placed in an escrow account for use at identifying regional archaeological sites to be used by the county.**

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

Mr. Starr: We have seven in favor. One opposed. So we have accepted the amendment and that will create the archaeological study. Now we have the main motion with the amendment and the amendment to amendment attached to approve the SMA for the entire project with the condition regarding swimming pool, energy conservation design and archaeological, etc., etc. Are we ready for the main motion? Okay, all those in favor of the main motion with all that other stuff attached please raise your hand. One, two, three, four, five. All those opposed please raise your hand, one, two. All those abstained, please raise your hand.

Mr. Guard: I guess I'm a nay. I was just hoping to defer.

Mr. Starr: Okay, we're one short. We got to go back again.

Mr. Guard: You had five.

Mr. Starr: I forgot to count. Five and two and one.

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

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

Mr. Starr: Okay, the motion passes by the vote of five to two with one abstain which actually counts in favor. So it becomes six to two. Congratulations.

Ms. Hiraga: Thank you.

## **F. DIRECTOR'S REPORT**

- 1. Planning Director reporting pursuant to the Maui Planning Commission's SMA Rules the filing of the following Notice of Appeal of the Planning Director's Decision:**

**LANCE D. COLLINS on behalf of WILLIAM KNOWLTON and CATHERINE KNOWLTON submitting a Notice of Appeal of the Director's Decision dated April 18, 2008 of an exemption on the Special Management Area Assessment application submitted by LUDMILA GUTERMAN-REEVES for the construction of a boundary wall and three (3) 80 square foot storage sheds**

**at 530 North Holokai Place, TMK: 2-8-011: 007, Peahi, Hamakualoa, Island of Maui. (SM5 2008/0061) (APPL 2008/0001) (T. Kapuaala)**

Mr. Starr: Okay, we're out of time. Folks I wanted to take one item very, very quickly and then we're going to leave the rest and they will roll over. This is an item on which we don't have to take action but for which we need to be notified. Take over Corporation Counsel. He wanted us to deal with this today.

Mr. Giroux: Yeah this is item F-1. You just have to acknowledge receipt that you have received notice that somebody has appealed a action of the director. So, I guess we'll at the next time we'll take care of scheduling this as far as – it looks like it's going to end up as a contested case.

Mr. Starr: Okay, does everyone acknowledge that? Okay, good we've acknowledged it and with that being said, everything else will roll over. Meeting is adjourned.

#### **E. COMMUNICATIONS**

- 1. Corporation Counsel's discussion on Professor John Van Dyke's Memorandum on the Sunshine Law, Chapter 92, Hawaii Revised Statutes (J. Giroux)**

Matter deferred to the June 10, 2008 agenda.

#### **F. DIRECTOR'S REPORT**

- 2. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's of his intent to issue a time extension on the following requests:**
  - a. SUNSTONE KEOKEA, LLC requesting a 2-year Special Management Area Use Permit time extension on the period to initiate construction of the Liloa Village Subdivision at TMK: 3-9-002: 116, 150, and 151, Kihei, Island of Maui. (SM1 2004/0010) (L. Callentine)**

**The Commission shall acknowledge receipt of the request. The Commission may review the permit time extension request or waive review of the request.**

Matter deferred to the June 10, 2008 agenda.

- b. BETSILL BROTHERS CONSTRUCTION, INC. requesting a 2-year Special Use Permit time extension on the period to complete construction of the Kalama Heights Phase II project, a 36-unit senior multi-family residential project with related on and offsite infrastructure improvements at 101 Kanani Road, Kihei, Island of Maui. (SM1 970012) (P. Fasi)**

**The Commission shall acknowledge receipt of the request. The Commission may review the permit time extension request or waive review of the request.**

Matter deferred to the June 10, 2008 agenda.

- 3. Planning Director requesting that the Hana Advisory Committee be allowed to comment on the proposed Service Business District (SBR) District Bill as several SBR designated properties in the community plan are located in Hana Town. The public hearing by the Maui Planning Commission is scheduled for June 24, 2008.**

**The Commission may decide to seek comments from the Hana Advisory Committee prior to the June 24 Maui Planning Commission public hearing.**

- 4. Registration for 2008 HCPO Conference - Sept. 10-12, Grand Wailea Hotel.**
- 5. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission at the May 13, 2008 meeting.**
- 6. Planning Commission Projects/Issues**
- 7. EA/EIS Report**
- 8. SMA Minor Permit Report**
- 9. SMA Exemptions Report**

Item Nos. 3 through 9 were deferred to the June 10, 2008 agenda.

**G. NEXT REGULAR MEETING DATE: June 10, 2008**

**H. ADJOURNMENT**

The meeting was adjourned at 5:29 p.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

**Present**

Jonathan Starr, Chairperson  
John Guard IV, Vice Chairperson  
Kent Hiranaga  
Bruce U'u  
Ward Mardfin  
Donna Domingo  
Joan Pawsat  
Wayne Hedani

**Excused**

William Iaconetti

**Others**

Jeff Hunt, Planning Department  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works