

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JULY 22, 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, July 8, 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. Starr: This is the July 22<sup>nd</sup> meeting of the Maui Planning Commission. Welcome everyone here. I'll introduce our members. On my left is Commissioner Kent Hiranaga, Commissioner Bruce U'u, Honorable Corp. Counsel, James Giroux, I'm Chair, Jonathan Starr, this is our Director of Planning for the County of Maui Director Jeff Hunt, you have Commissioner Donna Domingo, we have Commissioner Dr. William Iaconetti and Commissioner Wayne Hedani on the right. We have secretary to the board, Carolyn Takayama-Corden, we have Mike Miyamoto, Deputy Director of Department of Public Works, we have planner Paul Fasi and other planners will be with us and the always ready Kenny Hulquist doing video for Akaku.

Members of the public will be given the opportunity to testify on any item and they'll be given two possibilities to testify on any item and I ask they try to choose one of them. They can either testify before the meeting, before all the agenda items which will be momentarily or they can testify before each individual item goes to decision making. We ask that they keep testimony as short as possible limited to three minutes. We do have a very full agenda and if we're able to get through all our items we'll have a special presentation on the Maui Bus system by Department of Transportation. If we can't get to it, we'll have to put that off, but I think that's would be a really interesting presentation. So without further ado I'd like to open up for public testimony today. Anyone can testify on any agenda item at this time or before the item. Anyone wishing to testify at this time, please raise your hand or come forward. Please come forward and please introduce yourself, let us know who you are and go ahead and welcome.

The following persons testified at the beginning of the meeting:

Ms. Leslie Bruce - Item B-1, Dept. of Environmental Management - Hana Landfill, SUP, CUP, SMA  
Mr. John Blumer-Buell - Item B-1, Dept. of Environmental Management - Hana Landfill, SUP, CUP, SMA  
Ms. Irene Bowie - Item B-1, Dept. of Environmental Management - Hana Landfill, SUP, CUP, SMA

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

Mr. Starr: Do we have another other members of the public who would like to testify on any agenda item at this time? Okay, seeing none, this portion of public testimony will be closed and I'd like to turn it over to the director to introduce the first item.

Mr. Hunt: Your first item involve Ms. Dawn Lono, Chairperson transmitting the recommendations of the Hana Advisory Committee to the Maui Planning Commission on the applications by Ms. Cheryl Okuma, Director, County Department of Environmental Management requesting a State Land Use Commission Special Use Permit, County Special Use Permit, and Special Management

Area Use Permit for the County's Hana Landfill for land consolidation, boundary realignment, and grading activity on approximately 74 acres at TMK: 1-3-006: 012 (por.) and 1-3-006: 007 (por) in Hana. There's several applications, (SUP1 2007/0004) (CUP 2007/0001) (SM1 2007/0003) and Paul Fasi is the planner assigned to this project.

## **B. UNFINISHED BUSINESS**

- 1. MS. DAWN LONO, Chairperson transmitting the recommendations of the Hana Advisory Committee to the Maui Planning Commission on the applications by MS. CHERYL OKUMA, Director, COUNTY DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, requesting a State Land Use Commission Special Use Permit, County Special Use Permit, and Special Management Area Use Permit for the County's Hana Landfill for land consolidation, boundary realignment, and grading activity on approximately 74 acres at TMK: 1-3-006: 012 (por.) and 1-3-006: 007 (por.), Hana, Island of Maui. (SUP1 2007/0004) (CUP 2007/0001) (SM1 2007/0003) (P. Fasi) (Deferred from the June 24, 2008 meeting.)**

Mr. Paul Fasi: Good morning Commissioners. Thank you Director Hunt. Mr. Chair, good morning. A public hearing was held on February 21, 2008 at the Hana Advisory Committee and again on May 5, 2008 at the Hana Advisory Committee. At the May 5<sup>th</sup> meeting there was a site visit to the cinder ash site in question.

At the May 5, 2008 hearing held at the Hana Community Center Cafeteria the Hana Advisory Committee voted to recommend approval of the Department of Planning Report and Recommendation that was dated February 21, 2008.

They did add six new condition and at that May 5<sup>th</sup> meeting the cinder ash portion of the permit was under discussion as it is this morning. The issue was reviewed by the Hana Advisory Committee and their recommendation was basically to have a cultural assessment be done on that cinder ash portion. Above and beyond that the Planning Department feels that they were comfortable with the Planning Department's Recommendation. They did not call for any further environmental assessment be done on the portion of the project concerning the cinder ash.

This item was brought before this body on June 24, 2008, at which a request was made to review the final environmental assessment. The department did get the final environmental assessment to this body and so that brings us up to date and where we are today.

I would like to remind the commission that we are not approving an SM1 permit today. We are reviewing it. There can be no approval made until the County Special Use Permit and the State Special Use Permit as been approved and then the SM1 permit will be approved or disapproved at that point. We need concurrency on the special use permits before the special management area permit can be considered. Any questions on that portion?

Mr. Starr: I'm a little bit confused. I had thought that the item – the item, first of all, I do want to comment I don't really like the way this was introduced as an agenda item as a transmittal because the application that's before us is for the County of Maui Department of Environmental Management

to obtain a Special Management Area Use Permit which I thought was before us but you're telling me that's not before us today then a Land Use Commission Special Use Permit, County Special Use Permit for the County's Hana Landfill, land consolidation, boundary realignment and grading activity on approximately 74 acres. So if the SMA is not before us how come that's what the report is titled?

Mr. Fasi: The SMA portion is before you today. It is up for review by this body but an approval by this body cannot be made until we get concurrency on the County Special Use Permit and the State Special Use Permit from the State Land Use Commission. So today, you can make a recommendation for approval based on contingency of approval with the State Land Use Commission approval. You are reviewing the SMA permit today.

Mr. Starr: We are the deciding agency on the SMA.

Mr. Fasi: That is correct.

Mr. Starr: We are the sole and final authority on the SMA.

Mr. Fasi: Yes sir.

Mr. Starr: But we cannot rule on it today.

Mr. Fasi: You can make a recommendation for approval and that will be –

Mr. Starr: You mean to recommendation to ourselves?

Mr. Fasi: It will not be a final approval because it still needs State Land Use Commission approval.

Mr. Starr: Paul we do not recommend approval on an SMA. We either approve or we deny. Am I correct on that?

Mr. Fasi: You are correct.

Mr. Starr: Okay, thank you. So the SMA item is not before us since we cannot issue it. Is that correct? Or is it before us –

Mr. Fasi: I cannot entirely agree with that. The issue is before you. If you make a recommendation for approval based on a perhaps on a contingency that –

Mr. Starr: Recommendation to whom?

Mr. Fasi: To the Planning Department that –

Mr. Starr: No, it's not in the Planning Department, I'm sorry.

Mr. Fasi: Well, what I'm trying to get at is what we can do is we'll have to bring this back before this

body for final –

Mr. Starr: We will in any case, right.

Mr. Fasi: Sure.

Mr. Starr: Excuse me, Director.

Mr. Hunt: Perhaps I can try and clarify. You've got three permits before you. The special use permit and the conditional permit you only recommend on. Because the special management area use permit requires consistency with the zoning and the community plan, the logic in the past has always been to forward the recommendations on the special use and the conditional permit to the Council. If they approve those, then we come back with the SMA with the idea that okay, they've approved them so we found consistency now we can act on the SMA. So you're just deferring the SMA. We don't believe you can actually act on it until the conditional permit and state special use permit are approved by Council or the Land Use Commission should the case be.

Mr. Starr: Yeah, thank you and agree with that. We are not recommending anything with the SMA. The buck stops here with us for the SMA so we're not recommending and we can't act on it today. So it will come back before us for the SMA no matter what happens on the other two items and we will not be deciding on that today. I'm sorry for –

Mr. Fasi: No, that's quite all right. We did get that cleared up. Thank you, Director Hunt. If there are no further questions for the department, the applicant does have a short presentation for those commissioners that did not see it and I'll leave it up to the Chair if they want to see this short presentation again. I have to remind the body that the representatives from Environmental Management have to leave this meeting at approximately 11:45 and no later.

Mr. Starr: Okay, I'd like them to proceed with it. Is that okay?

Ms. Cheryl Okuma: Thank you. Good morning. Cheryl Okuma from the Department of Environmental Management. We appreciate the opportunity to be here. With us is Mich Hirano from Munekiyo and Hiraga who will do the overview and presentation and we also have Ray Matasci from Brown and Caldwell who will specifically address the questions regarding the monitoring wells. Thank you.

Mr. Mich Hirano: Good morning Chair Starr and Commissioners, my name is Mich Hirano with Munekiyo and Hiraga. We prepared a power point presentation for the commission this morning so I'd like to just go quickly to it.

The Hana Landfill has served the region, the East Maui region since 1969. That's when the original right of entry to the landfill site was granted by the Department of Land and Natural Resources. It's the single disposal facility for the districts of Keanae, Nahiku, Hana, Kipahulu and Kaupo. It provides an essential waste disposal recycling and green waste composting for the area.

Permitting requirements as was described this morning. There's a special management area use

permit for the facility. State Land Use Special Use Permit and a County Special Use Permit.

The project site is in East Maui just north of Hana. This is the existing landfill area approximately 29 acres and the proposal is to expand the boundaries and get this area from the State Department of Land and Natural Resources to expand the landfill boundaries. And the reason for the expansion are to incorporate existing encroachment that has happened on the landfill site. There's approximately a 4.5 acre expansion that has encroached off the landfill site into the state land. It's also to incorporate environmental monitoring stations that have been established in and around the landfill and these are the methane gas monitoring wells and the ground water monitoring wells. And it's also an expansion to just provide a buffer for the landfill for future uses.

This is the area and there are certain elements that I would just like to describe. This is the existing land use. I'm sorry, the existing landfill that was the management and control of the landfill was transferred from the State of Hawaii to the County of Maui. Officially it was done in the early 1980's. Prior to that as I mentioned in 1969, the State had granted the County a right of entry to use the area for the Hana Landfill. At that time it was called the Hana dump site.

This is the encroachment area that's happened to the west of the landfill. It's approximately 4.5 acres and this is the active area of the landfill presently and so this expansion which is approximately 45 acres is to incorporate this expansion area and due to the new environmental regulations to the federal code of regulations 40 and Clean Water Act new landfills are required to put in groundwater monitoring, methane gas monitoring and as well, to capture the storm water runoff on site. So this proposal as well would incorporate approximately 100 feet by 100 feet storm water detention basin that would be located in approximate this area that would capture the storm water runoff from the active phase of the landfill.

In terms of the ownership of parcel – the landfill is parcel 12 and this approximately 250 to 300 foot area between the landfill boundary and the water front, the shoreline, was retained by the State of Hawaii as a conservation buffer. So this area has been always set aside as a conservation buffer.

Again, in little more detail, this is the landfill site, this is the conservation buffer on the makai side of the landfill boundary. This is the active landfill area. This is the residential waste active area. It receives approximately four tons of solid waste a day from the community of Hana.

This is the storm water detention basin which is located just one the downslope side of the active face of the municipal waste area. Previously the landfill had these other areas that were used for deposit of waste materials in the East Maui area. There was the scrap metals area that was in this particular location and this was the green waste area and recycling.

The County of Maui has cleaned up and is cleaning up, in the process of cleaning up the scrap metals and they are no longer receiving scrap metals at the Hana Landfill and they are removing all these scrap metals which really are old cars and refrigerators and appliances and they're taking them off island. They're crushing them on site and taking them off island.

These are the locations of the ground water monitoring wells. There are three ground water monitoring wells. And as well, this is – there are four methane gas wells on site.

The land expansion is required to incorporate the existing encroachment on the landfill site. To incorporate proposed drainage improvements that are required under new federal regulations. To incorporate existing environmental monitoring stations and to provide the buffer zone from the existing residences. And I would like to point out that the expansion is really limited to the boundary expansion. There's no real active expansion of the actual landfill area or the municipal solid waste area. That has been and will continue to operate within the existing location.

As far as air quality, the four methane gas monitoring probes on site. They're monitored by the Department of Environmental Management and there is no presence of methane gas that has been detected with those probes.

I'd like to just at this point ask Ray Matasci from Brown and Caldwell to come up and talk about the ground water monitoring because I think the last presentation that we made in June 24<sup>th</sup>, there were some questions about the ground water monitoring and Ray has – his firm was the original firm that established the ground water monitoring wells on site and I would like to just have Ray explain the ground water monitoring process.

Mr. Ray Matasci: Yes, there are as Mich had said there are three ground water monitoring wells. There's one here which is currently outside of the existing property boundary. A second well here and a third well right here. These wells were constructed in late 1992 in accordance with Department of Health guidelines and the intent with most ground water monitoring wells is to establish a background well which is not supposed to be influenced by the landfill and then down grading wells to see if you can detect if there is an impact.

Originally we'd anticipated that the ground water would flow towards the ocean. It typically would follow along the topography, but it turns out that the ground water actually flows in the south, southwest direction. And I just recently reviewed – we established these wells again back in 1992. There has been monitoring twice a year at these three wells for the last 15 years. So for the first eight years basically about a hundred constituents were analyzed. There were various organics, pesticides, inorganic materials and those first – from 1993 through 1999, that basically established a baseline in the vicinity of the landfill.

And what they do, we haven't done the monitoring but I recently reviewed some of the reports, they'll go out to the wells, measure the depth to ground water and if you know the actual surveyed elevation then you know what the elevation of the ground water is. And over the past 15 years, almost in every case, the water depth measurements coupled with the references showed that again the water is flowing in the south to southwest direction.

Now during those first – from 1993 to 1999, the first seven years they didn't detect any volatile organic materials or anything that you might – that you would expect that would indicate influence from a landfill things like arsenic or things related to paints or things of that nature. After those first seven years, with the establishment of that baseline they established what are called control limits and basically they monitor again the concentrations in those three wells and if they go above a certain limit, they'll indicate ...(inaudible)... something is changing. But during the – I reviewed just the most recent report again which summarizes all of the data and basically the ground water's not

being influenced by the landfill based on this data that's being collected.

Now you might ask if the ground water is flowing in this direction south, southwest and there's a well here or a well there, this in essence becomes the background well. And you would expect that first off, the tide goes up and down by say a couple of feet and there was a study done in '99 that actually measured the ...(inaudible)... variation in the wells itself. You expect a large variation here and the well levels were very – as much as a foot, but less than what you would see at the tides.

You would expect that if this active area even if the ground water is flowing in this direction, if this active area was influencing the ground well or the ground water I should say, you would expect some influence here and possibly here. So again, the data seems to indicate that based on the control limits that the ground water is not being affected by the landfill and that the concentrations that they're measuring are basically consistent and they aren't fluctuating significantly.

Mr. Hirano: Thank you Ray. Ray will be available for questions at the end of the presentation when Commissioners are reviewing the action.

This is just a slide of the company that comes out semiannually to do the ground water monitoring. I'd just like to add that in the environmental assessment we also did a flora and fauna study and this is in relation to the comments that were made earlier about miconia. There was a flora fauna study done and we specifically asked the biologist to look for signs of miconia at the landfill site and there were no signs of miconia infestation at the landfill site. So that has been reviewed in the environmental assessment.

In terms of the conformity with government land use policies and objectives and plans I'd like to just go over the applicable county jurisdiction, state jurisdiction and zoning conditions at the landfill site. This is a conservation district subzone map, the conservation district runs sort of a east to west and is right through the landfill area. This is in the limited conservation subzone and the dark brown area is the general conservation subzone. So the expansion area as you can see does not – was cut off at the boundary line of the conservation district. So this action does not trigger a conservation district use permit because it's all within the agricultural area which is the white area.

We've conferred with the State Department of Land and Natural Resources, the Office of Conservation and Coastal Lands regarding permitting of the landfill within the conservation district and within the existing landfill site. They basically had said that the landfill has been in operation since 1969. It was permitted when this was granted as a landfill to this county and that a conservation district use permit was not required for the existing operations and that letter is in the environmental assessment.

In terms of the community plan designation for the landfill it's public/quasi-public for the 29 acres. There's an area where the encroachment actually occurs which has been community plan designated light industrial and then this dotted line where the 45-acre expansion area is within the county community plan agriculture. So it's our agricultural designation.

In terms of the zoning, because of the inconsistencies with community plan and the zoning, underlying zoning this has been zoned interim, the existing landfill is zoned interim and the

expansion area, the encroachment area and the community plan designated light industrial area is zoned interim and the bulk of the expansion area is zoned agricultural.

These are pictures of the existing landfill. As you can see it's fairly well kept. It's nicely landscaped. It's won awards for beautification of landfills in Hawaii.

And this is coming of Waikoloa Road and going up to the landfill site and that's the sort of the height of the landfill. Again, more landscaping at landfill site. The landfill does not have litter and paper bags and you know, garbage that's been windblown. It's been very well maintained and that's why the ground cover as well is required to bury the landfill debris. And this is coming up into the active municipal waste so the collection trucks come up and they dump their land fill and then it's spread, you see some material, cover material right up on top that's spread with the machinery.

These are the areas that are now used for the recycling and the depository for glass, bottles, tires, batteries, appliances, oil. It will all be kind of held in these containers and there will be undercover.

Those aren't operational yet. They've been put on site but they're not operational because the special use permit that's required from the County and the State Land Use Commission as well as from the special management area permit are required in order to get the Department of Health permits for the solid waste landfill.

This is the fuel dispensing, diesel dispensing station at the fuel tank at the landfill site and it's solar powered so there's a solar panel there that powers the fuel dispensing.

In terms of the summary of the action, it's basically to develop drainage improvements and environmental monitoring to meet new Federal regulations. The actual new component would be a 100 feet by a 100 feet drainage detention basin that is to capture and retain the storm water runoff from the active landfill area and keep it on site. It's to correct an existing encroachment that has occurred. There's no further expansion of that encroachment but it is to correct an existing encroachment and bring it within compliance with land use policies and regulations. And as I mentioned earlier, the action does not involve any physical expansion at this point of the municipal landfill operations.

The Department of Environmental Management was before the Hana Advisory Committee on two occasions in terms of the review of this application before it came to Maui Planning Commission. This is their transmittal letter. The FONSI, the environmental assessment was issued November 23, 2007. A FONSI was established for the landfill environmental assessment.

Some of the conditions that were imposed for recommendation to the Maui Planning Commission which were developed by the Hana Advisory Committee had really I think addresses the issues that have been raised at the meeting today and therefore, the recommended conditions were:

That the applicant shall take appropriate mitigative measures to minimize erosion.

Prevent cement products, oil, fuel and other toxic substances associated with heavy machinery from spilling or leaching into the ground and this is at the landfill site.

That the applicant shall comply with the Department of Health Ambient Air Quality Standards and

their administrative rules regarding air pollution control.

And the applicant shall comply with the Environmental Protection Act's new Source Performance Standards.

That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire. The applicant shall utilize nonpotable water to the extent possible for grading, dust control and irrigation of the landfill.

This is in regards to the cinder pit. As was mentioned by Paul Fasi during the deliberations of the Hana Advisory Committee there was a site visit in May at the cinder operations. And at that point I think some of the concerns that were raised by the community members or by the Hana Advisory Committee members regarding the cinder pit operations are addressed in these two recommendations and one is that because the Department of Public Works and the Department of Environmental Management and the community of Hana all have access to the cinder pit, the cinders there are used not only for the landfill but they're also used for road construction and road repair and maintenance throughout East Maui. And the cinders are also available on a gratuitous basis to members of the Hana community. They can go up at any time and get the cinders and use it for their own personal needs.

The Department of Public Works and Environmental Management make their best efforts to ensure daily operations are conducted in a safe manner and this addresses some of the slopes that were observed that the committee members felt were pretty steep and that they undertake an engineering slope and soil stability analysis prior to construction within the three-year period. So this addresses some of the safety issues that have been brought up about that operation and the Department of Environmental Management has agreed to look at that and have the area engineered properly so that the slopes and the stability of the slopes will be safe and will be properly engineered and designed.

Secondly that a cultural assessment be conducted to address impacts to cultural resources resulting from the excavation of cinder ash and that the Office of Hawaiian Affairs shall be consulted prior to the construction within the three-year period. And prior to construction is construction of the 100 feet x 100 feet detention basin.

Again, the Department of Environmental Management has agreed to carry this cultural assessment out.

And this relates to whether or not there is a trigger for an environmental assessment at this time and that the applicant execute a legal document with the State of Hawaii and the County of Maui regarding the removal of cinder ash from the Kaeleku area. The cinder operations have been going on since 1976. They've been taking that cinder as I said to repair, road maintenance, build new roads, construction throughout Hana and as well as a cover material for the landfill. That license was expired and there is a verbal agreement that the County can continue to use that cinder operations. They're going through now a more formal right of entry process with the State and at that time, if the State requires and indicates that a trigger for Chapter 343 is invoked by this action by this permit then that will be complied with. That's what this recommendation addresses.

Finally, that mitigation and measures be taken to address the visual height of the landfill by

landscaping and other methods such as waste diversion, recycling within the 10-year period. As was mentioned with the Hana Advisory Committee this state land use special use permit and the county special use permit are being requested for a 1-year period from 2008 to 2018 and during that time the County Environmental Management will be looking at ways to mitigate the vertical expansion of the landfill through buffering and screening of the material such as landscaping and at that time, when the license or the permit gets renewed that would be evaluated in terms of the overall height. But these permits are for a specific period of time. They're not on forever and I think allows reevaluation at a later date of these particular aspects of the landfill.

The recommended conditions at the Hana Advisory Committee as well was that a recycling program begin immediately thereafter permits are issued because basically recycling although the facilities are there, the containers are there to recycle, the permit is not in place by the Department of Health. So the first step is to get the special use permit, the special use permit from the County and the State as well as the special management area use permit. And then get the proper permits from the Department of Health to operate the recycling program at the Hana Landfill and as well to operate the Hana Landfill.

Recycling shall consider but be not limited to glass aluminum, plastics, batteries, newspapers, cardboard, appliances and oil. With that, the Department of Environmental Management currently does not recycle aluminum, newspapers or cardboard. So those will be kind of difficult to incorporate with this particular wording of the condition, but I think the Environmental Management ask that some of these others be changed so that they can comply with the specific recommendations and conditions of their permitting. And that would be limited to glass, plastics, batteries, appliances and oils.

And finally, the applicant increase its groundwater monitoring at the landfill from semiannually to quarterly. And again, this was brought up because of the issues about the concern with the ground water impact and the Department of Environmental Management has agreed to increase the monitoring frequency from semiannually to quarterly.

That ends our presentation. So thank you for your attention and we are available to answer any questions that commissioners may have.

Mr. Starr: Okay, members questions?

Mr. Mardfin: I have a lot, but if somebody wants to go first please.

Mr. Starr: Yeah, why don't you take a few Ward and then we'll – Commissioner Mardfin.

Mr. Mardfin: Lets start this out. I appreciate you bringing Ray – I'm sorry I didn't get his –

Mr. Hirano: Ray Matasci.

Mr. Mardfin: Ray Matasci, could I ask him a bunch of questions and if we have that portable mike and you go to the map where the wells are. I need one to speak and I'll pass it back to you. I can ask the question while you're getting it on. Mr. Matasci, I appreciate your candor about you

expected the water to be flowing eastward and then you discovered after you'd drilled the wells that they were flowing southward. If you had to do it again, I believe the wells are here as a control well basically. Well, it would still be a control well. If this is north, so the stuff is going like, the water flow is going like that at I believe 13 feet a day according to one of the reports. So that's a good control.

These two gets stuff that was here. Maybe that misses, but that was in anticipation of it going that way. But all of this on the mauka side of the road should be missed by this. Now you said the tide might get some of it in there for, move 13 feet a day I don't know. If you were to do it again, where would you put the well?

Mr. Ray Matasci: First off, the water level in this well and this well are about the same, about 1.75 feet above sea level. The water level in this well right here is actually a foot higher. So that's why we're saying the direction of groundwater flow is in this way. So actually this is the background well, serves as the background well because the water here again is a foot higher than it is in either of these two wells and that's been fairly consistent for the last 15 years.

Mr. Starr: Commissioner Mardfin, I would just – Corp. Counsel just suggested continue your questioning but try not to use the word "this," try to use a direction or something so in the record it's clear.

Mr. Mardfin: I'll try my best.

Mr. Giroux: Just so we can distinguish what you're pointing at.

Mr. Mardfin: I'll talk with my hand behind my back.

Mr. Giroux: You know use the most southerly or you know something so we can identify with.

Mr. Mardfin: The western most well is well 1, I believe.

Mr. Matasci: Right.

Mr. Mardfin: The eastern most well is well 3? 2?

Mr. Matasci: Actually that is well 3.

Mr. Mardfin: Well 3. The southern most well is well 2. And so I'll refer to wells 1, 2 and 3. Now well 2 sounds like a good control well since you said it's higher and if the water is going in a southwesterly direction according to figure 4 then that would probably miss that anyway if it were percolating down. And well 3, would – being lower and directly in the direction of the water flow from the scrap metal area would probably pick up any contamination from the makai portion of the lot. But I'm failing to see how anything from the mauka portion of the dump where most of the collected refuse gets put gets picked up at all.

Mr. Matasci: Again, this is well 1, well 2, well 3. I hope I didn't make that – I may have confused

you here. But I think that it's important. I understand what your question is but first off, if there were something that was leaching into the groundwater from here to think that it would go just very precisely in this direction without any movement in either direction I think – I don't think is what's happening – would happen in nature. Because of the tidal fluctuation and maybe some variation in the groundwater this particular well is not that far from the active area and so I think that if there were leaching into the groundwater that you would – I don't think that it – It doesn't necessarily move that quickly that you would probably pick it up in here and possibly here as well. Now as engineers and scientists – okay, well 1 and well 3. I think that engineers and scientists always like more data and sure, you know, you could make the case knowing what you know today that it might be advantageous to have another well, you know, in this direction. But I guess what I'm saying is that you would – to the southwest of the active area, but I would expect that if, and again, this has been monitored over the last 15 years and that you would get some indication in well 1 and well 3 if there were leaching. Okay, these two wells would pick something up and then again, it doesn't fall, it wouldn't necessarily follow precisely in this direction and completely miss this well and that well.

Mr. Mardfin: Do you have any idea what it would cost to drill another well? At approximately somewhere in here?

Mr. Matasci: My rough guess it probably be about \$15,000 something like that, \$15 to \$20,000.

Mr. Mardfin: How long would it take?

Mr. Matasci: It would probably take about – once the drill rig is mobilized, about a week to drill that and construct it. I mean, the elevation is probably about 50 feet, you know, just to the southwest of the landfill. So you've got to drill probably another 50 feet and the groundwater is about at sea level. You drill another 10 feet or so. So you have to drill about a 60-foot well roughly.

Mr. Mardfin: And how long would it take before you would have from the get go to when you'd be able to do your initial testing to see if the stuff that's picked up in well 4 compared to well 1 and 3?

Mr. Matasci: Well, I think that it would take some time. I mean, one sample wouldn't necessarily be indicative. We took, the County took six years collecting samples a couple times a year to establish a baseline and had about I guess 10 to 12 samples then. So it would take a number of years. And you don't want to collect the samples too close together. It would be a minimum of three months typically between when you would collect a sample for it to be representative and independent. So it would take – you would get some indication after the first couple of samples, but to determine some type of pattern it would take a couple of years of data analysis unless something unusual came up, I mean, some very high values. But basically there hasn't been much detected in any of those wells.

Mr. Mardfin: And I know you don't do the detection work, you're the well driller, but John Blumer-Buell's letter mentioned a whole bunch of stuff that's getting tossed into the – where the mauka dump site is on the active waste management, waste landfill and the comment was that we get four tons a day on average, but for Hana the collection is on Fridays. They go around and they get the whole – the County workers go around and get the whole town on Fridays. So my guess is they

probably get 20 tons that day and people put in a little bit during the week from other things. But what they do is they go around and collect our garbage bags which we put out by the road and we could put anything in those. I mean, we could put needles, we could put computers, we could put almost anything. I don't think they check for what's in there. And so there could – I read, I apologize to the Ms. Okuma, you had a meeting yesterday at Hana and I happen to be at a board meeting for the Hana Cultural Center, I apologize for not being there but my wife was and she picked up the handouts and I noticed in reading that there's a whole thing about electronics with very dangerous metals and stuff and that's probably going into there. You know, somebody sticks a computer into a plastic bag rather than separates it out for the – you know, it should be put in the makai land containers but it's probably not. So some dangerous chemicals could be there and it sounds like the monitoring wouldn't pick up at least some of those chemicals. It might pick up some but it would miss others is that more or less correct?

Mr. Matasci: Well, I haven't studied all of the monitoring reports but I know during the first seven years the samples were analyzed for a very broad spectrum of things, a hundred different constituents, heavy metals, agricultural pesticides, petroleum products, very broad spectrum and I believe that according to the DOH standards after a period of time when you've continued to have – you're not detecting these constituents, there's a period where they say, you no longer have to analyze for this particular compound. So I didn't study all of the – I know for the first seven years, six or seven years, up until '99, they basically didn't detect much of anything and so I believe that there was some compounds they no longer had to analyze for on a consistent basis.

Mr. Mardfin: And that comment comes throughout the EA, but I would go back to the potential problem of the wells being in the wrong location to pick that up. I mean, maybe it does and maybe doesn't. But they seem to be off to the sides of at least the mauka dump down flow. And so, they could be there and we're missing them which is why I think another well is probably necessary. And with doing a broad variety of testing for a broad variety of chemicals, wastes, pesticides and all kinds of other things. I think that's all the questions I have for you, but thank you.

Mr. Hirano: I'd just like to add Commissioner Mardfin that these reports they go to the Department of Health as well. They review them and get back to the County if they found anything out of align or out of line with the monitoring that's being done.

Mr. Mardfin: Yes, I agree with that and that was said throughout the EA, but if the wells are in the wrong place through no fault of the well digger that if they're in the wrong place then the stuff could easily be there, and it's just not being picked up. Now maybe it would pick it up sideways and maybe it wouldn't but assurances that they have never detected it doesn't assure me if the wells – you know, if you put all the wells to the north, you could be measuring it for a hundred years and you wouldn't get anything and that wouldn't convince me at all. Ray has convinced me that maybe it would pick some of it up, but maybe not.

Mr. Hirano: But in that report it also shows where the wells are located and the direction of the ground water flow in that report that goes to the Department of Health. If they felt that those wells were not in the proper location I think that they would have commented on that as well.

Mr. Mardfin: Well, that's possible, but in the testimony before the Hana Advisory Committee I didn't

raise these issues because I didn't realize it until the last time you were here on this issue. And I started to ask which – I got concerned about the fish ponds by Leslie Bruce and if the water's coming in a southwesterly direction that's aiming and assuming it starts to come back a little bit, the fish ponds are virtually due south of this area and –

Mr. Hirano: But there's been no indication that the ground water is contaminated. In fact the –

Mr. Mardfin: We haven't tested it down by the fish ponds I don't believe.

Mr. Hirano: No, it's from the landfill because –

Mr. Mardfin: But, the wells may be in the wrong position to detect it.

Mr. Starr: Commissioner Mardfin –

Mr. Hiranaga: Are we having a debate here?

Mr. Starr: Let me let some of the other commissioners ask a few and then you can continue. I'm not complaining about the questions, I just want to give everyone a chance. Yeah, we'll give it a couple more questions and then we'll take a break. Commissioner Guard.

Mr. Guard: Thank you. Yeah, my question was for Brown and Caldwell as well. Did they take into account how much water was coming in like through a rain gauge on the days that they did the testing? I know, it being cinder if water seeping down through the dump site and I don't know how long it would take that water to reach the ground water levels like if they only did it during drought times you may not see much in the water, but if we did it either during a rain, rainy day period or while it was raining if you see more water flowing through those well sites.

Mr. Matasci: The testing is not done on any – under any specific type of weather conditions. It's basically designed to try to capture the long term trends and so there have been now I guess 30 different sampling days and I can't tell you how many days or if it rained on those days, but I think, again, the – it would take some time for the water to get down to the, you know, to percolate down through the ground and into the ground, while I can't tell you exactly how much. But I think the intent is to try to find what the long term trend would be.

Mr. Guard: So would that be of any benefit to know how much like rain in that immediate period, lets say a month prior? So you knew, just a broader scope of while it's raining you're going to have more ground water flowing, right?

Mr. Matasci: Well, I think that that would be true if in fact the water that fell say from the previous month got to the groundwater and moved off site. But I don't think it necessarily moves that quickly, that body of water would move that quickly. It might take much longer than that really for the underlying groundwater to completely move. So I think that you wouldn't necessarily want to do it in any one specific type of weather condition, you'd like to do it under varying conditions so that you get a better sampling of what's typically there over the long term.

Mr. Guard: So you're doing it biannually is it like always August 30<sup>th</sup>, there was a February 30<sup>th</sup>.

Mr. Matasci: I think it was typically in March and September I believe. But it didn't have to be in March and September, it could be plus or minus a month if I recall correctly.

Mr. Guard: Then last question. Following up with Commissioner Mardfin's would there be any benefit to testing some of the actual ponds in the area?

Mr. Matasci: Well, I think the challenge is the farther you get off site, there's the potential for other things impacting. So if you're farther off site, and say you find something you don't necessarily know if it's the landfill or some other runoff or some other land use.

Mr. Guard: So is there a fear that we would find stuff in those ponds versus just to kind of assure the community that the water's clean?

Mr. Matasci: Well, I don't know that it's necessarily that. I leave that up to the Department of Environmental Management to test but you would want to be able to test as close to the landfill as you could so that you knew that what you are measuring was actually related to the landfill and not some other condition.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Yes, this is a question for Brown and Caldwell. Your wells 2 and 3, where are they placed in relation to the inactive landfill, what was already used as a landfill? Aren't they smack dab in the middle of the landfill?

Mr. Matasci: You know, I'm not certain about that. I think that this area long ago may have been used a landfill but I'm not certain about that. These – when these were drilled they did not encounter waste. They only encountered soil so I know for a fact that they did not – they weren't put right in the middle of waste.

Mr. Hedani: Okay, I guess the question is there was an 80-foot hole there that ended up being an 80-foot mountain was the description that I heard. Where was the hole and where was it filled as far as prior landfill operations?

Mr. Matasci: I'm not sure. I don't know that I could answer that question.

Mr. Starr: Could we have someone from the department?

Mr. Tracy Takamine: Tracy Takamine, Solid Waste Division Chief.

Mr. Hedani: Basically the question is where was the old landfill operations located?

Mr. Takamine: Again, this is before my time but the footprint that I know of and where the wells are situated, this is the active landfill right here in this area. So we have as far as I know we have municipal solid waste in this area here which is where our recycle center is located that we showed

you. It's sitting on previous fill.

Mr. Hedani: So none of the area outside of that was included as the prior dump site?

Mr. Takamine: Out here? Not that I know of. And the whole we're talking about I believe again, before my time, but it's in this area but 80 feet, I find that, you know, questionable. Because 80 feet or 100 feet that was mentioned is a pretty, pretty deep hole. You know, how we would get refuge in there and compaction equipment because right now at Central Maui Landfill we're looking at a 40-foot quarry and that's pretty – 40 feet alone is pretty steep and you need to get some roads with long grades to get in there. So I question the depth of a 100 feet previously that we started with.

Mr. Starr: Commissioner Guard.

Mr. Guard: Just out of curiosity to collect four tons of trash, how big is that? Is that one container, 20-foot container on average?

Mr. Takamine: You know honestly I can't tell you what a refuge tonnage would be but when we say average of four tons, we're taking into account everything that comes into the landfill. We currently only collect from 213 homes in Hana. So on Friday, our refuge collection day is only 213 residential homes. Everything else that we look at that comes in is either brought in by the residents on a daily basis and we're open seven days a week or through commercial businesses.

Mr. Guard: So does one truck accommodate all of that?

Mr. Takamine: Yes.

Mr. Guard: So I mean, just to, I guess, minimize the vertical impact on possibly being the first thing people see coming into Hana in the future at some point just to look at maybe taking out some of it to Central Maui Landfill?

Mr. Takamine: It was mentioned in our ISWMP Plan we will be evaluating. In fact we have brought in Caldwell, they'll be doing that for us, evaluating what the feasibility and impacts would be to transfer the solid waste and change it into a transfer station and take everything to Central Maui because we need to start looking at what kind of manpower, what facilities we have to build at the landfill to accommodate the drop off, what kind of trucks to use, how is it going to impact the highway, you know how many loads are we going to be taking every day? We may limit what's being disposed of at the landfill because you have to only take what can be put into maybe rear loader truck that would preclude residents from bringing in real big bulky items unless we have some kind of compaction equipment there. So all of that's going to have to be looked at before we decide if that's even feasible. But it is a recommendation that we're open to looking at as an alternative to continuing the operation at the landfill as it is currently done today.

Mr. Guard: Have they talked to Maui Visitor's Bureau. I would think they would a concern about people driving into Hana and seeing something similar to Central Maui Baseyard. I mean, it's almost like a good reference point from the water to see the pu'u we've created there. I mean, we've all contributed to it, but to I guess minimize the impact is coming down into Waikalua and

here on the side of the road we might start seeing equipment flattening out the top layer of trash over there as well. I think anyone would be concerned with that to start trying to mitigate the vertical height of the trash.

Mr. Takamine: Definitely, you know, our plan, again the part of the ...WMP Plan is to also look at recycling, increasing the recycling activities in the Hana region, Maui County overall. Based on the recommendations and our recycling activities we will be looking at somehow increasing the recycling for Hana Landfill to include such things as the newspaper, card board, the same things we provide with the rest of the community on Maui, we want to look at providing Hana community. Of course, you know, it's going to be more expensive because you're in an isolated community, smaller quantities you take in, to transport that, I mean, it's going to be some cost involved. So we have to weigh the feasibility and the cost versus the service provided. But we definitely want to reduce what's going into the landfill, in fact, all of our landfills.

Mr. Starr: I have one question and we're going to recess and then Commissioner Hedani will be up at the beginning. You know, when you take this cost analysis into account, does the potential for polluting the shoreline area, I mean, is that taken into account or is just what's cheapest?

Mr. Takamine: Are you referencing the transfer station?

Mr. Starr: Yeah, when you're discussing, you know, when you're doing an analysis. You mentioned that the analysis will be done on what's cheapest. I'm wondering if the possibility causing the pollution to Hana Bay and the shoreline is taken into account?

Mr. Takamine: At the current time what we've proposed for the scope of work, that was not part of our analysis to – is to take into offsite impacts in the nearshore waters. Basically it would be looking at the cost impacts and impacts to the landfill staff and transporting, so maybe impacts to the traffic on Hana Highway. And right now if we do do it we're looking at maybe two trucks a day if at all. It might be just one truck a day going back to Central Maui Landfill. I mean, we're not talking much trash. A rear loader right now takes 213 in Hana on average. Our rear loaders out here in Central Maui it might have 500 homes they pick up. So the current customer base right now is small for us.

Mr. Starr: Okay, we're going to take a 10-minute recess.

A recess was called at 10:11 a.m., and the meeting was reconvened at 10:22 a.m.

Mr. Starr: Okay, Maui Planning Commission is back in session. Okay, quiet down folks. We're back in session. We're continuing with the Hana Landfill. We're at the point in our meeting where commissioners get to ask questions of the applicant and Commissioner Hedani has the floor.

Mr. Hedani: Mich, the question – well, I have two questions actually. First question is why or do you have any idea as to why the groundwater would be flowing southwest as opposed to mauka-makai?

Mr. Hirano: I have no idea.

Mr. Hedani: Maybe Brown and Caldwell would?

Mr. Matasci: We can hypothesize but we don't know for sure. I think that one hypothesis is the basically the underlying conditions are comprised of a series of overlying flows. Some of them are dense, some of them are porous and it just could be very well that there are dense barriers that prevent it from flowing east and that there could be lava tubes. It just could – it's very hard to tell, but I think that it's not unusual to have very heterogeneous conditions underground. It's not like sand or something like that. So it's explainable but we don't know for sure. You know, I think that the data seems to clearly show it's flowing in this direction and there's a consistent pattern, but exactly why it flows in that direction it's very hard to determine.

Mr. Hedani: Okay, the second question that I would have would be in the assessment itself on the analysis of alternatives it's only one page long.

Mr. Hirano: Yes.

Mr. Hedani: Is there a reason why we weren't looking at other alternatives?

Mr. Hirano: Well, I think at the time that the report was being written the integrated wastewater management plan hadn't been public yet and some of the findings of that may have altered in terms of some of the alternatives in looking the, I guess, the landfill site as a weigh station, as weigh station site, could be looked at as an alternative. But that's coming up now and through public hearings.

Mr. Hedani: Okay.

Mr. Hirano: Really the alternatives that we considered were very minimal because this is really a compliance issue. You don't have very many alternatives. You have to comply and that's what the county is doing. It's comply with existing State Department of Health regulations, it's complying with Federal regulations that have come into place.

Mr. Hedani: Okay, so what you're saying basically is you really have no choice other than to do what needs to be done with the existing landfill?

Mr. Hirano: Yes, to get the proper land use permitting so that they can go forward and get the appropriate Department of Health permits.

Mr. Starr: I have a question for Mr. Matasci. Could you back up the slide to the one that shows, there's one that shows the area with Hana Bay in it as well? I think it had – yeah, that one right there. How do you know that the flow is to the south and, you know, describe your wells and what work has been done that gave you a belief that the flow is to the south?

Mr. Matasci: I think this north arrow is incorrect so let me – actually this would be the best figure for me to use. The way you establish ground water flow is at these three wells one, two and three, you basically go in and a surveyor goes in and establishes the ground elevation at the top of the well and then they will get what's called a sounding device, the technician will and measure very precisely within about a hundredth of a foot the distance from that reference point at the well down to the ground water. So then they can establish what the actual elevation is of the ground water

below. So basically throughout most of the testing, the elevation, the water elevation at these two wells were approximately the same. About, depending on the tide, but somewhere around 1.5 to 1.7 feet above sea level and the water surface elevation in this well, again, based on the surveying and the water depth measurements were typically close to a foot higher. So, if these two are the same, and this one's well number two, the water surface elevation is a foot higher. That basically establishes the direction of flow.

Mr. Starr: So you're using head to establish that?

Mr. Matasci: Correct. So if the water surface elevation is a foot higher here in well 2 than it is in 3, the direction has to be in that direction.

Mr. Starr: Could you describe those wells what they physically look like and what the process is when the sampling is done?

Mr. Matasci: The well, I can't remember exactly the diameter but I think that there was approximately a 10-inch hole drilled down through the ground and then at the very bottom, and approximately 10 feet below the top of the ground water the well is extended, and then what is done is at the very bottom of the well there's what's called a slotted screen that may be six inches in diameter that fits inside the 10-inch hole and it extends maybe a foot above where the ground water is. And then from about a foot above the ground water to the ground surface it's a solid pipe. And then the exterior between the rough hole and the – what's called the well casing, the plastic casing is basically packed at the bottom with some type of, sometimes with filter material, gravel of some type and then above that it's packed with usually a bentonite material, it prevents ground water or other material from going down into the ground water at the top. When they go to sample the well, basically what they will do is take a device called the bailer and they'll remove a certain number of well volumes. They'll manually remove it so that water then comes – when they take a sample it hasn't been the water that's just been sitting there, it's been water that basically is just around the perimeter of the well that will then flow into the slotted part of the well. So once they've, they call, purge the well, they will then put a sampler down in the well and put into the various sample bottles and different bottles have different types of preservatives depending on what you're trying to measure.

Mr. Starr: When it was noticed that the flow, so in other words, it was after the wells were drilled and the difference in head was established that it was realized that the flow was south and that any plume coming out of it would tend to be toward the south. Why when that was realized was there not a recommendation by your company which was monitoring this to put a well to the south where the plume would indeed show up?

Mr. Matasci: Well, I think that you're correct that initially we had anticipated that the water would follow the topography which is what you would expect typically and again, as I had mentioned before we believed that these two wells because the water direction is not that precise and that – I'll use the term sloshed there is some mixing that happens because the water will change direction slightly depending on the tide. And so I think that in general, these two wells, even now based on the survey that the direction of the ground water has for the most part south, southwest we believe that these two wells would typically pick something up because again, the ground water flow is not

precise and there are some mixing and analytical detection techniques are fairly sensitive.

Mr. Starr: How deep are these wells cased from the ground?

Mr. Matasci: They go all the way down about roughly 10 feet below the ground water surface.

Mr. Starr: So you mentioned that this is lava rock and that there are layers and there are tubes and that –

Mr. Matasci: There may be layers or tubes.

Mr. Starr: So potentially could there be a flow of toxic material that is leaving the area where the wells are between layers or in a tube and not being picked up by these wells?

Mr. Matasci: Well, I guess you could construct theoretically a possibility where there is a large lava tube that runs in this direction and you know, virtually all of the flow passes through a large lava tube. I mean, that is you know, a possibility, but even if you did that you could actually put a well directly here and theoretically miss it. You know, if there were a large lava tube. I mean, that is a possibility.

Mr. Starr: Could you back up to that other slide now? Okay, because I do feel real concerns because you know, I mean, I don't think it continues to flow southwest because that would put it uphill again. My guess is that it flows south and that would take it into Hana Bay which is, you know, not only where the area where the fish ponds are and a lot of people fish there but it's also the main recreational area all the kids very day are swimming there on the beach in Hana Bay. There's a hundred kids or more right there swimming and I don't think there's been any testing. I mean, don't you think that with what's involved there should be testing downstream in the direction, we know it's flowing south, there's no wells south.

Mr. Matasci: Well, I think, we discussed this before. I think that you could again, put, again here's south, southwest, this is based on the data the direction is in this direction and there's a well roughly here. I'm sorry, roughly about here and a well roughly here. Yeah, this is the current landfill area and there is a well roughly here and a well roughly in this direction.

Mr. Starr: No, I think the wells are further north.

Mr. Mardfin: I thought they were inside that white area.

Mr. Starr: Yeah.

Mr. Matasci: No. This is the white area. Okay, one of the wells is in the white area. This is the second one which is actually outside. This is outside of the current property boundary.

Mr. Starr: Okay, so lets clarify, there are no wells to the south of the area where the waste has been dumped?

Mr. Matasci: Nothing directly south of this, yes.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: Do you guys test the salinity of all these wells and is there difference between the salinity between the wells?

Mr. Matasci: Yes, this is as you would expect this is the most saline well. This one is not much – well number 2, well number 3 is slightly less saline. This is I'll say about if I recall correctly about a third of the salinity of this makai well.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I just have a couple more on this issue. The water sample's coming from the top level of the ground water. Is there any – I don't know the chemistry of this stuff, but could stuff be going in and then sinking down below where it would be caught?

Mr. Matasci: Again, I don't recall precisely the construction of the well. I think it's about 10 feet down below. I think it would be unusual for something to go directly down and be missed and basically go underneath where the wells being collected.

Mr. Mardfin: Could you go back to that other slide which shows Kapueokahi which is the formal name for Hana Bay, Leslie, could I ask Leslie Bruce to come up and show us where the fish ponds are so the commissioners clearly understand that?

Ms. Leslie Bruce: My name is Leslie Bruce, parcel 10 which has the three fish ponds. This is parcel 10. The large fish pond that is written up in Kamakau's book is where Robert Mailaikini lives and I don't know exactly his parcel but just in relation to the spaces his large fish pond is on the dump road about here. It's the largest of the 12 fish ponds. This open space belongs to the Hana Ranch and there are a number of fish ponds, several of which have lots of opai in them and grass which grows nowhere else on Maui.

Mr. Starr: There's another map, I think one forward that I don't think it has all the landfill stuff but it's clearer, yeah that one.

Ms. Bruce: This is the ranch land here and this obliterates part of the area that's significant.

Mr. Starr: Ward, you're still going?

Mr. Mardfin: No, that was the part I wanted to ask about that.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Could you clarify your statement that there is no expansion of the active landfill area?

Mr. Hirano: Yes, Commissioner Hiranaga. This is the encroachment area that is currently existing

at the Hana Landfill site. This is where the active municipal waste is deposited on a daily basis. These boundaries. And there's no expansion of the landfill within this area. So when we say that there's no expansion of landfill activities, the landfill is not expanding the footprint. The new action will be this detention basin, this drainage detention basin.

Mr. Hiranaga: What is the capacity of that active area? How long before it's going to be filled?

Mr. Hirano: It's about 88 years the total life span of the landfill.

Mr. Hiranaga: That current area – current active area?

Mr. Hirano: The current active area is –

Mr. Hiranaga: Has a capacity of 88 years?

Mr. Hirano: Yes.

Mr. Starr: At the last meeting Mich, it was explained that the area that had been used is going to be capped and that there would be clay that would probably have to be brought in from the other side to cover that so that water couldn't seep in and wash whatever is in there down into the water table and that other areas would be opened up. Could you clarify those comments about what area is going to get sealed up with this top layer?

Mr. Tracy Takamine: Yes, I believe I mentioned last time, actually we're currently, our active phase is about this area here. So this area in the back has been inactive basically, you know, we build forward, we build different cells as we move forward. We move forward and then we raise another level up, you know, maybe 10 feet and then build cells. So what we're talking about, the area that we're not using currently we would do like an intermediate closure. You know, we'd temporarily close it. Currently when we close, at the end of the day we're required to have six inch of daily cover over the refuge to keep out the animals from digging it up, litter from getting out, smells. If we're not going to use it for an extended period of time, we can do an intermediate closure which required a foot of cover and that we'd probably use some kind of impermeable cover and prevent the storm water from going down. So any water that falls on it would basically, storm water would roll off and go into that detention basin or retention basin that we're talking about building.

Mr. Starr: You know, I did some – I downloaded Hawaii Administrative Rules, Title 11, Department of Health, Chapter 58 under Solid Waste Management Control and was reading it. I was a little confused about what the difference between a permanent landfill which I understand all landfills now are supposed to be lined to keep the, you know, the stuff that comes out of the waste out of the ground water and anything that's not it's considered an open dump which is now illegal. I do want to disclose that I spoke with Lynnae Okuba of the Department of Health, Solid Waste Management Control and you know, she said that she expects that the County will come before them with permits but that right now they didn't have concerns because you know, they were being told that there was no expansion. However, in the report that's given to us which is what we're using to decide on the term expansion is used many, many, many times. You know, I think I found a dozen places. This is on page 15 it talk about, "coordination with State Land Use Commission,

office indicated that special use permit for the existing and expansion area within the state agricultural district will be required.” On page 16, “the continued operation of Hana Landfill at the existing and proposed expanded site would maintain a service that the County is providing.” And then further on page 16, “the county’s expansion of the landfill will be located in an area which is surrounded by vacant lands.” You know, page 18, “the proposed expansion will help alleviate the increasing use demand of the Central Maui Landfill and extend the life of both Central and Hana Landfills.” I mean that statement is saying that the proposed expansion will help alleviate increasing use demand on Central Maui Landfill. In other words, they’re saying there’s a new portion that’s going to – here on 19, under zoning, “the 45.14 acre portion of parcel 7 proposed to be added to the landfill site is county zoned, etc.” So it, you know, the use of the word “expansion” in the report that came to us when we’re being told that it’s not being expanded is confusing at best and I’d like an answer why we’re being told it’s not expanded but your report keeps using the word “expansion, expansion, expansion, expansion?”

Mr. Takamine: Let me try and answer that. Well a couple of things you brought up. First of all, that permitting requirements I think you were referencing is subtitle D which is new requirements for lined landfills. That applies to any landfill that’s over 20 tons per day. That is required to be lined. That’s why Central Maui is a lined landfill. We’re averaging 550 to 600 tons a day. Molokai is not lined although the next phase that we’re building we’re close to 20 tons per day, we’re at 17 tons per day so we’re lining that landfill just because eventually it will be over 20 tons per day. Hana Landfill is 4 tons per day so it’s not required to be lined, although we’re required permits and that’s why we’re here for is that to get the county special use permits. So we can get an operating permit to operate that landfill which we do not have right now. We do not have an operating permit so we’re not in compliance with Department of Health regulations. So I hope that answers your question.

Mr. Starr: So it’s the amount of opala put in on a daily basis that decides whether it needs to be lined?

Mr. Takamine: Yes. So once you hit 20 tons per day you have totally different requirements in the new subtitle D requirements from EPA.

Mr. Starr: And one other piece. I was told by a contractor that’s removing the cars that there are between 1,200 and 1,500 cars that were brought in and piled up there. And until the county was violated and stopped because there was leaking a lot of oils and other fluids that were being added to. Can I understand what the County thinking was in allowing that kind of thing to occur. I mean, that’s a lot of vehicles especially in Hana which is a small place.

Mr. Takamine: I can’t tell you what the County’s thinking was prior on allowing it to happen. It did occur. I don’t know if it’s 1,500. I can tell you that we’re estimating 4,000 tons of scrap metal to include vehicles. So I doubt if it’s 1,500 vehicles. That’s a lot of vehicles out there at 3,000 pounds per vehicle. So we are now attempting to clean up. That was done in the past, it was done without the required permits again to accept that type of material and that’s why were issued a Notice of Violation from the Department of Health to cease and desist basically of accepting vehicles and to clean up what’s out there now. So we are in the compliance mode. The contractor is out there right now is cleaning up all the material. We’re talking about appliances, automobiles, scrap metal,

propane tanks, batteries, tires which was allowed to be disposed of at the landfill, basically unchecked. We are trying to clean that up and once we clean it up, and similar to Molokai, we've done the exact same thing on Molokai and now Molokai is totally clean. And once we clean it, we are going to be strictly enforcing what will be accepted in the landfill. And again, it's all tied to these permits. Without the permit, the special use permits, we cannot obtain the operating permit. Without the operating permit I cannot obtain recycling permits. So it's basically, everything's at a standstill right now although we still taking the municipal solid waste because there's no other options and we can't stop taking solid waste or else we will have an environmental hazard in the community.

Mr. Starr: Why can't you truck it to Central?

Mr. Takamine: Right now, I could take the residential trash. I could tell my drivers to drive it to Central, but that would mean I'd stop everything else in Hana because we cannot just tell people to just throw it in a truck. We'd have to really look at what type of accommodations we would need for say a business to come in with a pickup truck, you know, how is he going to unload that truck into the back of a rear loader? Is that a safe way to do it? Maybe we need to get 20-foot roll offs in there. Will the roll offs need to be sealed? What kind of permits do we need to get from the State of Hawaii, Department of Transportation? What kind of permits we're going to need from the Department of Health? All that has to be analyzed and we haven't done that yet and that's again, what I mentioned, we're going to have Brown and Caldwell doing under their contract within the next few – next year actually to look at what it takes to actually implement that. It's not – I can't just do it right now and say, take that truck and go to Central Maui Landfill because now it's a totally different operating permit actually for that landfill.

Mr. Starr: Are there any other locations on Maui island or better yet in Maui County where there are unpermitted landfills or there's other stuff piling up in a way that is not in conformity with the 58, chapter 58?

Mr. Takamine: I kind of mentioned it. Molokai Landfill we're in a similar situation. Not exactly the same but – well I take that back. We just received actually – we didn't have an operating permit in Molokai also due to some land issue entitlements and so forth. But we recently resolved those issues and we did an operating permit early part of 2008. Lanai, we have a similar situation we don't own the property and we're in the process of obtaining ownership and because of that we are not able to obtain an operating permit from Department of Health because of landfill ownership issues. So Lanai Landfill is also operating without a operating permit.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Takamine: I wanted to answer your question yet on the expansion.

Mr. Starr: Yeah, wait one minute. Commissioner Hiranaga. Go ahead.

Mr. Takamine: You're right, you hear a lot of the verbiage of expansion but I think – the definition of expansion we're not expanding the landfill in terms of increasing as Mich mentioned the footprint of the active landfill. In other words, we have municipal solid waste within this area of the landfill.

We do not intend to go outside of this footprint when we say we have 88 years of life. To the term "expansion" is went outside of our boundaries and we're actually out here. We encroached into the State land. So whenever we're mentioning expansion we're talking about and actually we're talking about I think it was a bigger area so we're looking at expanding the land of the landfill but we do not intend to go outside of the current footprint and putting municipal solid waste. So we're just expanding it to accommodate the encroachment and to create a buffer. So yes, the actual landfill will be expanding in terms of the size of the land that we will be utilizing but we're not expanding the landfill for municipal solid waste disposal.

Mr. Starr: Well so my understanding is that you did expand it illegally and –

Mr. Takamine: Basically that's correct, it's encroachment.

Mr. Starr: But you're not expanding it now because it was already done in an illegal manner over the last several years.

Mr. Takamine: That's correct.

Mr. Starr: You know, I wouldn't use the word castigate but the consultant should probably not bandy about term expanded when that is the trigger for all kinds of other stuff in the report that's being produced. That's probably not a good thing to do. Anyway, Commissioner Hiranaga it's your turn. I'm sorry for taking the floor.

Mr. Hiranaga: You mentioned that the dump receives approximately 4 tons of refuse a day and the County picks up approximately 200 households on Friday. So I'm not sure, but I guess there are more households in Hana than 200 and a lot of them have elected not to use the public service and pay the public fee. So are there dumping fees at this landfill also?

Mr. Takamine: We do not charge for residential customers but we do charge for commercial.

Mr. Hiranaga: And you identify that by their license plates?

Mr. Takamine: Yes.

Mr. Hiranaga: So it's a similar practice as in the Central Maui Landfill?

Mr. Takamine: That's correct. Because we don't have a scale at Hana it's based on the size of the vehicle.

Mr. Hiranaga: Thank you.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: My understanding is that the Hana Landfill has now stopped accepting cars, all appliances, is that correct?

Mr. Takamine: That's correct.

Mr. Mardfin: As an economist I think I know the answer to this question but I want to ask you to answer the question. What do you suppose happens to the cars and the appliances?

Mr. Takamine: Well, we all know that everybody, you know, are not as sensitive to the environmental as we all are and so they get dumped on the side of the road. We have issues and they're not just in Hana. I can tell you right here in Central Maui when we offer the service of free pick up at your door for appliances we still get hundreds of appliances on the side of the road that we end up, the County ends up picking up at a very expensive cost. So unfortunately they're probably getting some of them are getting dumped on the side of the road and we Solid Waste, not Solid Waste actually, it's Public Works Highways are probably picking them up on the side of the road. Vehicles that get dumped on the side of the road once they are tagged in our abandoned vehicle program, we send out a tow truck and we pick it up.

Mr. Mardfin: What would it take to be able to get a compactor or something like that in Hana so that they could accepting cars and these other things because I can imagine people dumping it on the side because they're not going to drag it to this side of the island. But if there were a legitimate place to do it at the landfill I think, I'm not saying you'd get a hundred percent compliance but you'd get higher compliance than you're currently getting. Well, zero compliance now because they can't do it.

Mr. Takamine: I mean, there's options you know, but it's not that easy and simple to just say get a compactor. You would need to have the right zoning, you have to have the right permits, so that would require another recycling permit. You'd have to have a concrete pad placed on the surface. No spillage, we'd have to have – a good example, we're doing that in Molokai because there's no other options on Molokai. So we're trying to develop and we've got an interim approval from Department of Health right now to take cars and automobiles but it takes money, it takes staff which we don't have Hana and as an example in Molokai, just to do what you just mentioned and we don't have much volume in Molokai now, it's costing \$400,000 plus to build this concrete slab and fencing the area just to accommodate and do it correctly on the Molokai Landfill and it's impacting my staff. We have to hire a contractor to come in right now it's about three or four times a week to man that site and accept appliances and automobiles and it's taken us over a year to develop that plan to get approved by Department of Health which is just temporary until we come up with a permanent solution. So all of that you know, takes a lot of coordination, a lot of effort and permitting. In Hana, you're right, you can do it that way, we don't have the land, we don't have the staff, and we haven't pursued as much in Hana because unfortunately there's a road between here and Hana. It might be 57 miles long, it might be curvy but there's an option and on this side of the island, there's two recycle facilities that take the automobiles from the public at a cost now, minimal cost that – I think it's a \$160. We do the appliances free. So there are other options. Although it might be costly, there are options on this island.

Mr. Mardfin: But if they're not being used, then they're not being used. What does it cost you to pick up the stuff on the side of the road?

Mr. Takamine: If I have to send a tow truck out to Hana it's costing us almost \$400 per tow.

Mr. Mardfin: \$400 per tow.

Mr. Takamine: Per tow.

Mr. Mardfin: And you said the Molokai one is \$400,000. So a thousand cars would be a break even situation.

Mr. Takamine: That's just to tow it. If I tow a car here, I end up paying, when I say "I," the County, we pay a \$108 per car to process that car.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Actually this question might be for Mr. Matasci. There's been a lot of discussion about the ground water flows and I'm just curious, how much water are we talking in, if you have an idea of velocity they're flowing at?

Mr. Matasci: I'm not sure. I'm not sure exactly what the ground water velocity or the flow. I would expect it to be on the order of a few feet per day in terms of an average velocity. The EA says 13 feet per day.

Mr. Hiranaga: And you know, there's a lot of speculation about where this water ends up but from a practical standpoint, no one really knows where the water ends up because you can't see underground. You're just detecting where the flow is at those locations but you know, a quarter of a mile away it could change direction. You have no way of telling.

Mr. Matasci: It could.

Mr. Hiranaga: Okay, thank you.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: May I address Commissioner Hiranaga?

Mr. Starr: Sure.

Mr. Mardfin: I know we normally don't do that. I spoke with one of the people that – the person that operates the equipment to do the landfill and she says that and the reason I haven't asked about runoff, first you have the retention basin and secondly, she says what happens is if you're at the landfill there's a road that does sort of a "s" turn and goes down. She says she's never seen runoff go into the ocean. It all comes down the hill and is sort of laying in the lower areas and sinks in. So that's the reason I haven't raised issues about that the runoff situation. It's the percolation, leaching that concerns me because if the water is not going into the ocean then it's going somewhere and it's got to be – well, could be evaporating and concentrating the bad stuff or it could be leaching down and so that's why I've spent a lot of time being concerned about what's going on down below.

But, and to the extent that sheets off then there's less – to the extent it sheets off into a detention basin then it seems to me one of two things. Either there's less water to percolate down in the direct landfill area so it reduces the odds of stuff hitting the groundwater. Or it gets carried into the retention basin and will leach down from there so it seems to me you need the monitoring well below where the detention basin is going to be.

Mr. Starr: Ray, I think that was a question about whether the water that's going into this retention basin is now going to be a source? Because it's going to seep down there right?

Mr. Matasci: Well, the retention basin doesn't exist right now. It's proposed.

Mr. Starr: Yeah.

Mr. Matasci: And so I don't know that all of the details have been worked out. Whether it's going to be lined or unlined at this point.

Mr. Starr: If it's a lined retention, a lined basin is like a swimming pool. All it can do is evaporate, right?

Mr. Matasci: It could or until it fills up and then it would be released at a controlled rate basically to whatever drainage way goes away from that.

Mr. Starr: So can we find out what's going to happen? I think that was your question, right? The water that's going to go into this retention basin and say there's toxics in that where are they going to go? Are they going to get treated by people in moon suits and carted away or are they going to go into the ground?

Mr. Hirano: Well, the detention basin is to take the storm water runoff. So it's not the leachate, actually it's the runoff. So it won't be as, potentially contaminated as the maybe the leachate would be on an active landfill. So the basin has not been designed yet and looking at it and discussing it with environmental management there is the option to line it if it's required. But they feel that at this point in time it's the storm water off is not as – the potentially damaging to the environment so that it could percolate through otherwise it will just be like a big swimming pool.

Mr. Mardfin: Follow up, there was some statement in here. I can't tell you the page number off hand where it said you'd be moving – I couldn't tell whether you were actually moving the retention basin or moving the piping that leads to the retention basin.

Mr. Hirano: It's moving the piping because as Tracy mentioned the active landfill, well, the encroachment area and the active landfill area this is 5.3 acres. So this whole area is probably over 10 acres. The active face of the landfill is a cell that's approximately 50 feet x 50 feet and that's what they use on a regular basis and then when they're finished with that they move on to another area. So the piping from the active area to capture the storm water runoff would be from an active cell. Say it was in this area then they would build the berms and the piping to take the runoff from this area. When they close that cell and move off to another cell then they'll have to reroute the pathway for the storm water runoff. The detention basin will stay the same, it won't move, but the

actual ditching and the channeling to capture the storm water runoff will have to be adjusted to the active area of the landfill, the active cell that they're currently working in.

Mr. Mardfin: Will the one employee be trained as to how to do this and do it?

Mr. Tracy Takamine: Probably what's going to happen is we're not going to – I don't think there'll probably going to be actual pipes. You know, it's going to be all, what the operator has to do is when he closes the area for the day has to make sure that the slopes are right, that when does rain that the runoff kind of follows the contour of the area that they just closed and then probably drain off and have some kind of a storm water system that eventually enters into that retention basin. That's how we kind of operate, if you go to Central Maui Landfill you see all the slopes and at the bottom of the slopes there are swales. All these swales are graded to all get into a basin at the end. In the Central Maui Landfill we have a huge basin that's unlined and just percolates into the ground.

Mr. Mardfin: In the makai portion of the landfill where we have the more dangerous stuff where the cars used to be, where the batteries are, where the oil is, is there anything to take the – what will happen to storm runoff there? Does it cross the road and go to the retention basin?

Mr. Takamine: Right now we don't have any storm water system. Basically what you said, you talked to Roxanne, our operator, is correct. Nothing flows off this site because it's so porous. All that cinder that's been put on this site is so porous everything just goes straight into the ground. That's why I mentioned, if we do do an intermediate cover and close this area, we probably going to have to get some kind of impermeable material brought in because what's there now just basically goes into the cap and goes down, straight down.

Mr. Mardfin: So we have to be careful of what on the makai portion the wells have to – I think that one well probably will test, but we really need to be careful of what's going into the ground water from that area, because there's more dangerous stuff actually on the makai portion, known dangerous stuff on the makai portion.

Mr. Takamine: Like we mentioned, we're cleaning everything up right now as we speak. Now in the next four to six months, we'll be completely out of there and we do not intend to put that stuff back on here, and most likely we'd have to go in there and do a ground analysis, do sampling and if it indicates we have to do some type soil remediation from any contamination that has occurred over the years.

Mr. Mardfin: I guess I'm – I mean, it goes beyond this thing but I'm concerned about the – I mean, you explained for cost benefit why you can't do it, but I'm real concerned about what will happen with the refusal to take cars, refusal to take certain kinds of things. I mean, I just – I imagine it's going to be put – dumped there at night, maybe not cars because you can identify them but other things will just get dumped there at night.

Mr. Takamine: I mean, it's not a refusal. I mean, we are not permitted to take it. We can't take cars. The County in the past allowed it to happen and that's why we're in this situation right now. The cost to clean up that landfill right now is over a million dollars. When I cleaned up Molokai it

was \$1.7 million.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Tracy, the thing that bothers me about this operation, I think the people that are operating it are operating it very well from the standpoint of what I've seen. You know it's very well operated, it looks very attractive. You know, the plastics and all that stuff isn't hung up in the trees like it is around the Central Maui Landfill and it's well operated from that perspective. But the thing that bothers me here is that it's just a regulation that we're complying with. You know, the 20-ton limit and because we're under the 20-ton limit we're allowing the leachate to go into the ground. Good news is that the monitoring wells, at least the ones that you have, are not picking anything up that's, you know, radioactive dangerous, but the idea of just continuing to do same old, same old in a situation where you have land that's porous that will send it down eventually for me going into the future doesn't seem like the best solution.

Mr. Takamine: I can comment on that. What you're saying is why do we line it? First of all, if you line a landfill, especially in Hana, especially with the material we use, very porous, we're going to accumulate leachate. I mean, if you think about it, if you got a five-acre hole in the ground with a liner on it and it rains in Hana every day, the volume of water you can accumulate in that landfill then requires treatment. Central Maui Landfill we pump that landfill, we have leachates. We pump leachate out and we can get hundreds of thousands of gallons of water out there. Every gallon of that water needs to be treated. I cannot take that water and dump it some place else. Right now Central Maui Landfill everything we pump out I then have to transport it physically by truck to the wastewater reclamation facility which does not want that water. Because when I dump that water in the wastewater treatment plant it becomes another hazard for them. So if I can't dump it at the landfill, I mean, the treatment plant, then I gotta build a treatment facility on site to treat that water and that's what they do on the mainland. A lot of these landfills in the mainland they also have a treatment for leachate. So it just creates another aspect of landfilling. And Hana Landfill, you know, that's what's going to happen because it just rains every day and I'm going to have thousands of gallons of water that we now have to treat. So that's one of the reasons why we don't want to line it if we don't have to.

Mr. Starr: It sounds like what you're saying is that if, you know, say you were told – say there was nothing in Hana and you were told go put a landfill out there right by the shoreline, right above Hana Bay and go build a landfill there, I mean, you would not be excited about the prospect, you would probably say that's not suitable soil, that's not suitable location. Am I correct on that?

Mr. Takamine: I'm not following your question I guess.

Mr. Starr: I mean, –

Mr. Takamine: If I had to build a new landfill?

Mr. Starr: Yeah, say this landfill never existed and you were told okay go to Hana and build a landfill

on this, you know, this side in the shoreline area. I mean, what would your response be?

Mr. Takamine: I guess we would have to – if you're building a new landfill really evaluate with the new requirements in. Now a days everything is the environmental aspects are a lot stricter than when the Hana Landfill was built. So those questions will probably be brought up and determine you know is it right to have a landfill there? Maybe we might not have that landfill, maybe we would just do what we're talking about. Do a transfer station and take the refuse straight to Central Maui Landfill because the volume is not that great there. So you have that other option. Like I mentioned in Molokai, although we're under the 20-ton limit we're so close to that limit we have decided that even though we could go with an unlined landfill, in Molokai the next cell that we're building right now we went with a lined landfill which is costing the County almost \$3 million to build and now requires us to put in sumps. So now we have you know that additional obligation to insure that the leachate is being pumped but we said, you know, that's the way to go because eventually that landfill will reach the capacity and we'd have to meet that requirement, so we took that step now and said we're going to line it. Hana again, because of the rain I would be very hesitant, I guess to build something that's going to be lined because I know what the operation and maintenance and would be and the requirements. So from the operator side, you know, I would be hesitant to – or require my consultant to really evaluate what the other options or how much impact it's going to have on us.

Mr. Starr: I want to compliment you for taking the position you are in Molokai and doing it right. Commissioner Hedani and then Commissioner Pawsat.

Mr. Hedani: Tracy, well I think the idea of lining the landfill doesn't really make sense right now anyway because the existing landfill isn't lined and it's going to continue to leach down into the ground anyway and you can't dig everything up in order to line it. To me, when I look at the site, I look at the community plan, I look at the zoning that's on there. You have a light industrial site that's adjacent to the area where you're working. Because Hana is such a special place, because it's 50 miles away from everything else, to me it's kind of like a perfect test bed for new technology that could solve all of the problems that we're looking at, you know, no leachate, you wouldn't have contamination of the soil. Have you folks been exposed to gas plasma incineration as an alternative? Has anybody brought that proposal to you because I saw a DVD on a gas plasma, whatever you call it that just turns everything into an inert glass in the end which you can use for road building and eliminates all of the problems of leachate and hauling and you could do it on a small enough scale that it wouldn't be tremendously expensive possibly. Have you folks looked at that as an alternative?

Mr. Takamine: We haven't at this point in time really looked into it in depth. Our ISWMP actually has a chapter that's dedicated toward looking at alternative disposal sources and one of it is, you know, the plasma arc technology but there's numerous other technologies out there that we will be looking at in the future to determine if in fact we should be going in that direction, but it's very costly. Right now, we charge I think it's \$53 per ton on commercial. You can look at it doubling in cost for that, to build a facility, to get the right – the other thing is you also need the right tonnage because like you said, you know, you can make it small but you need, when you build something like that, you need, where the operator likes to get a commitment of how many tons he's going to be getting and for Hana, we didn't look into it in particular but you know, it might be too small for the amount

of waste that's coming in to build something at that cost. But I'm not saying we're not looking at it but like I said, it's in our plan to look at that type of technology in the future but we haven't done it yet.

Mr. Hedani: Okay, the reason I think it's kind of a neat place to do something like that is because it is small and the quantities are small. You're not dealing with huge volumes of things. If you make a mistake, the mistake is small. It's not a huge multimillion dollar mistake that you can't undo after time. But I'm hoping that we would look at all the available technologies that are available to see what's the best possible solution that could be applied economically over time, but you got to take into account all of the problems that you would solve by doing something like that. The remediation efforts, you know, the contamination, the pollution, the litigation efforts that go with all of the stuff if something goes wrong and your test well turns out bad instead of good.

Mr. Takamine: I do want to mention, you know, waste to energy technology what you're talking about basically doesn't do with landfills. In fact the majority of waste to energy technologies you end up with a residual, some kind of ash, you still need a landfill. It's a monofill landfill. If you go to Waimanalo Gulch you know with the H power in Honolulu, I don't know how many hundreds or thousands of tons a day, but it still has to be landfilled. So it's like a regular landfill, same requirements, same operation.

Mr. Hedani: I agree. All I'm saying is that look at the best available technology that could possibly be used to use it as a pilot test bed to see whether or not it could be scaled up for solving the bigger problems that we like the Central Maui Landfill had.

Mr. Starr: Okay, Commissioner Pawsat.

Ms. Pawsat: Yeah, I'm just trying to understand. So if the water that we know that if it rains a lot and we know if there's water accumulates it really toxic water and they don't want to dispose of it right, and treat it. You have to treat the water. So and then we're saying down below the ground that the water is clean down there I guess you were saying. So what are we saying all that stuff just hasn't – so it's just all that mucky stuff is trapped in the middle. Or is that what the status is? It's just trapping itself in the middle right now, all that pollution in the water?

Mr. Takamine: Well, I don't want to give you the impression that it's hazardous waste and water down there, but by EPA regulations, DOH regulations, if water touches trash whether it be your household trash with nothing in there it's considered leachate and once it's considered leachate I cannot dispose of it outside of the landfill. It has to be disposed of in either a wastewater treatment plant or treated. I'm not saying that it's really bad stuff, but it's just considered a liquid that cannot be – it has to be handled a certain way.

Ms. Pawsat: And we're just saying right now that liquid whatever the leaching is just trapped right now between the groundwater level and the dump basically. That's where it exists now.

Mr. Takamine: It could be or it could be percolating into the groundwater, but as Mr. Matasci said, you know, we haven't picked up any constituents that indicate that anything harmful is down there.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I want to move along to another line of questioning and one of the things that was commented on in the original EA was how long this landfill is expected to go and now you've – in here it said 2050 I think in the revised one. And you said 88 years. Is that 88 from 1969 roughly? I'm not going to hold you to within a three-year limit.

Mr. Takamine: We just recently did as part of our ISWMP, we had a consultant evaluate the capacity of all our landfills and based on that evaluation and I think we were looking at from 2006, 88 years.

Mr. Mardfin: From 2006 not from when it was started?

Mr. Takamine: No.

Mr. Mardfin: Okay, because that – in the EA it says 2050 and I think this says 2096. This is the –

Mr. Takamine: That's our – right, correct.

Mr. Mardfin: So we're looking at more at 2100 rather than 2050?

Mr. Takamine: Correct.

Mr. Mardfin: Just wanted to clear that up. In the appendix E, State of Hawaii Department of Health notice, oops wrong one, sorry. Appendix F, botanical and fauna survey, Mich said there was no – Appendix F, page 5 is where I'm going to read from. Mich had said there was no problem with miconia, the concern that John Blumer-Buell had and several other people have. And under discussion, recommendations, it said, the last paragraph on page 5 of Appendix F, "because of the" – next to the last paragraph, "because of the above conditions there's little botanical concern with regard to property and proposed landfill is not expected to have a significant negative impact on the botanical resources." That's because there's nothing special there. Although – I'll get back to that, but the next paragraph, "a special concern in the Hana area during the past decade has been the spread of miconia into the wet native forest. This highly invasive species has been the focus of an intensive eradication program since 1993 that's still ongoing. No miconia plants were found on or adjacent to the project area, but the cinder used in the landfill comes from a cinder cone in the mauka forest where miconia has previously been found. There is a concern that seed could be transported to the landfill and spread in this area. Since there are no known miconia plants presently in the immediate vicinity of the landfill, a practical recommendation would be to perform periodically monitor both the landfill property as well as the cinder pit for the presence of miconia plants and eradicate any individuals found while they're still immature." And yet in the EA I saw nothing, no plan to that effect. Like the consultant provided the report but I don't see any plan in there that there will be ongoing miconia – apart from our normal eradication efforts no special effort of monitoring at where you're moving the cinders to here and at the original cinder pit.

Mr. Hirano: On page 21 of the environmental assessment under Flora, Fauna and Avifauna, potential impact and mitigation measures we quote that section in the Appendix F. It says, "that

although no miconia plants were found on or adjacent to the project area, the cinder used in the landfill comes from the cinder cone in the mauka forest where miconia has previously been found. A practical recommendation is noted to periodically monitor both the landfill property as well as the cinder pit for the presence of miconia plants and to eradicate any individuals found while they are still immature." So we have included that as part of the mitigation in the EA.

Mr. Mardfin: So that's one of the conditions of getting this is that that plan will be implemented?

Mr. Hirano: I think it came in as a condition of the special management area permit or the special use permit.

Mr. Mardfin: So it's just at this point a recommendation?

Mr. Hirano: Yes.

Mr. Starr: Commissioner Hiranaga.

Mr. Hirano: I think just on that, the landfill operator as well is familiar with the plants. I think that they've been identified if they are sighted that they just pull them out. They're fairly easy to spot. It's pretty easy to spot it in the landfill site as well.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Just a point of clarification. As the final EA been accepted?

Mr. Hirano: Yes, it was accepted November 23, 2007.

Mr. Hiranaga: Okay, so is it appropriate to question the completeness and validity of the EA if it's already been accepted? It seems like there's a lot of discussion regarding the –

Mr. Starr: Can we hold that till James is back because he has some comment on that?

Mr. Hiranaga: Sure. Because a lot of the public testimony was questioning that but it's already been accepted.

Mr. Starr: Yeah, lets wait till Corp. Counsel is back for that particular discussion. Commissioner U'u.

Mr. U'u: I was wondering if you could open it for public testimony.

Mr. Starr: I think we still have a couple more questions. I think we're almost there. Commissioner Mardfin.

Mr. Mardfin: This is a very minor issue, but the Department of Health letter of 26, June '03 talked about a mosquito control plan. On 9, July '07, in their letter they elaborated on that and there was a response that a mosquito – in the first one a mosquito control plan would be developed and in

the second response, it said they'd just make sure the water didn't sit around. Is that the extent of the mosquito control plan?

Mr. Hirano: Well, I think the mosquito control plan was in reference to standing water that was maybe noticed or observed during the time that the landfill was operating. Since that letter – well, I guess the Department of Health came in, cited the landfill operations for a number of infractions and one of them was to eradicate areas of ponding water. So what the Department of Environmental Management has done is to put in those containers that we showed a picture of. They're putting all the oil containers, battery recycling areas, all under cover, under the container so that there is no standing water in and around the landfill site. There are no areas where water can accumulate and so that is the ultimate prevention is to get rid of those areas as opposed to a mosquito control plan is to really eradicate the area from the environment that would allow mosquitos and dengue fever to grow and you know, develop. So when we wrote that letter in response we consulted with Environmental Management and they said that, "no, we're eradicating. We don't know eradication plan now because we're actually taking care of the ponding of the water, accumulation of water by having everything under cover and in those containers."

Mr. Mardfin: Will the retention basin have the potential for breeding mosquitos?

Mr. Hirano: While there's standing water in there, I mean, there could possibly be. I'm not an expert on that.

Mr. Mardfin: When I moved back to Hana in 2001, it was right about that time that the dengue fever started to come and I know that was a huge concern in and still is. But it's certainly not the – the prime source was not the dump site, it was a lot of other things. So I certainly can't blame that on this, but –

Mr. Hirano: But we have – I think we –

Mr. Mardfin: We want to minimize it.

Mr. Hirano: Yes. But the intent of that was to eradicate that situation.

Mr. Starr: Okay, we'll go to Commissioner Hedani then we'll go back to Commissioner Hiranaga who had a question about the EA and I asked him to hold off till Corp. Counsel was back with us. Commissioner Hedani.

Mr. Hedani: Yeah, Mich, in this particular case the ground water flow does it flow in a direction that affects any water sources, potable water sources for the community in Hana?

Mr. Hirano: Well, I can't totally answer that. The aquifer is the aquifer that they do potable water from.

Mr. Hedani: I guess the question is – yeah, I guess the question is is the sources for potable drinking water for Hana away from this area?

Mr. Hirano: As I understand it, I believe that it's the same aquifers. There are aquifers that they're using for potable water.

Mr. Starr: I believe that there's a county well within 4,000 feet actually on the same TMK is that correct?

Mr. Hirano: We identified that in the - I thought the closest well was actually to the west across from the highschool site.

Mr. Starr: In your documents you say it's 4,000 feet and I believe that puts it under the, I believe it's 6,000 foot radius that's in the state regulations there's mention about that. Could perhaps Brown and Caldwell comment about the location on the county wells and I believe this is the only source, one of the only two sources for Hana drinking water?

Mr. Matasci: I'm not sure which regulation you're referring to frankly about the 6,000 feet or the 4,000 feet. I do believe that the landfill's below what's called the underground injection control line which - and I believe, I'm not certain about this, but I believe the potable water well is above that and usually that line is demarcation between what is considered non potable, that is if you're below it and if you're above it, it's considered potable. But again, I'm not sure about the distance number that you've mentioned which regulation that is in.

Mr. Starr: Okay, but how about the proximity of the county well to the site?

Mr. Matasci: Again, I think that if it is 4,000 feet above and I'm not sure what the ground water surface elevation is at that point, but presumably it would be above the - the ground water well would be above the ground water elevations at the landfill which should prevent migration in that direction.

Mr. Starr: Commissioner Hiranaga, you had a question, I asked you to hold off and thank you for being patient.

Mr. Hiranaga: Yes, I guess a question for the director or Corporation Counsel. Some of the public testimony and some of the questions by fellow commissioners were addressing the completeness or adequacy of the final EA and I'm just wondering since it's been accepted is that still open for comment? Wanted to understand the process.

Mr. Giroux: I think you gotta look at this on several levels when you're dealing with the environmental document and again it's a informational document. It's supposed to contain sufficient information so that you can make decisions based on facts. It's already gone through what's called the appeals process. It's got a declaratory of FONSI, there's a change for the public to comment and it's been accepted by the authority.

Now what causes confusion or maybe throws in a gray area is that this document now becomes a working document for agencies that either didn't participate or didn't have - weren't the accepting authority. Now at this stage if you find that the - there's the issue of whether or not this document is useful to you because you're the final authority on certain entitlements and if you see that, that

well, I just don't have the information, I don't understand this, how come nobody looked at this? You have the authority outside of Chapter 343 in your own powers of your special use permit and within your SMA to actually make the applicant go out and get that information. You don't have to make them do an EA, you just say where's my hydrology report, where's my – you're telling me this has no impact, show me, give me the scientific basis. You have the power to do that or else, you're not going to be convinced that you're meeting your statutory demands within the Maui County Code or within 205A.

So when the issue comes up do they have to go and do a whole EA again, I think you should focus on well, what are we missing? What are we told to look at? We're told to look at impacts, environmental, social, yada, yada, yada, do we have the information in front of us to say, there's no impact. So that's what you have to do as part of your analysis. And if you look at Chapter 19.510.070 there is criteria that the applicant has to meet in order to convince you that there's no impact and you can look at that laundry list and it looks a lot like almost an SMA permit. You're not supposed impact an environment, you're not supposed to impact this that and the other thing.

The other thing is that within 205 where you're looking at the state special use permit, you're also allowed to make reasonable conditions. But in order to be reasonable, something has to be based on facts. So if you're going to make a condition, and the facts aren't in front of you, you can request for those facts to be presented because you need to have clear and convincing evidence that you're doing your job in evaluating the project or its impacts.

The third analysis on the EA is that when you're looking at a project and the EIS or EA rules in 11-200-26 there is a possibility of getting a supplemental EIS and I was reading the rule and it really doesn't clear up the matter, you know, as far as whether or not you're looking at a project that's been expanded or decreased. You also have to do the same analysis to say were there changes in the original project when it originally got evaluated or reviewed under the EIS process that would convince you that there is impacts that were not, you know, that were not taken into effect but that has to be based on a change in the project itself. So there's several alternatives. And again, you saw through the litigation that state's gone through and sometimes the county that these issues sometimes are not solved easily and they are actually resolved through litigation. So the guidance I can give you at this point is to clearly identify what is the information that you want and clearly identify the information that you feel is lacking.

Mr. Starr: We had heard from Mr. Fasi that the applicant has to leave in five minutes. Cheryl could you come up and tell us what you have to do. Identify yourself first.

Ms. Cheryl Okuma: Cheryl Okuma. Actually we're very busy this entire week preparing getting ready for the public hearings. We had our first one in Hana. We have Lahaina. We have the added surprise, actually it was surprise to us because we had intended to have our consultant with us to help us with the Q & A and so we just found that out late Sunday and have actually been trying to get ourselves ready and fully in gear. We haven't even had a chance to make sure, although we did the presentation last night we did that on fairly short notice given that we were just recently informed our consultant was not available. So we could use a little bit of time. We probably don't need to start driving out to Lahaina until about 2:30 p.m., but we do have to account for set up and that kind of thing. I'd like to give us a chance to have some lunch and at least touch

base and get ourselves ready for day two.

Mr. Starr: You're not running the door in five minutes, right?

Ms. Okuma: So we can stay a little bit longer but I would like to have some time for ourselves to get ourselves ready, so thank you.

Mr. Starr: Lets keep going a little bit. Commissioner Hedani. I've actually got some questions and comments and maybe some stuff that might lead us to some action but I don't want to discuss any of that or even put in on the table until after our public testimony portion. So you know, we can either ask some more questions or we can have our public testimony and then have some more questions and consideration. Commissioner Mardfin.

Mr. Mardfin: I'd like to ask some more questions if you don't mind.

Mr. Starr: Okay, keep talking.

Mr. Mardfin: I'm very happy that our Corporation Counsel made that distinction about it's not an EIS we're after, it's not another EA it's information we're after and that leads to the major issue – the second – I had two major issues. One is the ground water – potential ground water contamination and the wells might not be picking it up. My second concern is the cinder quarry which the EIS, EA and the John Blumer-Buell and the Hana Advisory Committee raised about the quarry operation and it seems that – It was John Blumer-Buell keeps getting told that well, it's outside the scope of this EA and maybe it is but it's not outside of the scope, I don't believe it's outside of the scope of what this commission's being asked to do. And I'm not saying I need a huge document. I'm saying I want some information as the Corp. Counsel suggested. So –

Mr. Starr: Commissioner Mardfin, I'm going to stop you right there because I don't want to get into a discussion of stuff we want to do until after public testimony.

Mr. Mardfin: I want to ask questions about it.

Mr. Starr: Okay.

Mr. Mardfin: Does anybody know how long the quarry cinders are expected to – how many years of taking out cinders – excuse me for being, sounding like somebody that can't speak a sentence – what do you anticipate the lifetime of the quarry to be at the current of decrease?

Mr. Hirano: When we were at the site visit on May 5ht, the operator at the cinder quarry which is a I think a Department of Highways operator said about seven to eight years more.

Mr. Mardfin: So seven or eight years. That brings us to 2015 maybe 2020 at the outside and this is a proposal for 2021, 2096 or something in that order of magnitude. What does the county plan to do after the cinder quarry is depleted?

Mr. Hirano: Well, I guess the idea would be to try to first of all find alternate sources and it can be

trucked in from Central Maui. There could be other operations or opportunities for cover through other operations and sources in Hana.

Ms. Okuma: I just want to mention that this point has not been forgotten, it has been mentioned, one very important initiative we are undertaking is the integrated solid waste plan which has been mentioned throughout these hearings and we are just now going through the public hearing to try to get into a final approval from Department of Health. You will be hearing more about that as we see where these recommendations come out but that also includes Hana and what to do with respect to Hana Landfill. And currently what's coming out of the recommendations is to increase our recycling activity from 30 to 60% that's obviously going to divert out of the landfill.

The other thing, other recommendation that's coming out is a secondary consideration is the waste ...(inaudible)... Waste energy, various types of technologies as I've just heard one of the commissioners inquiring about all of that is on the radar screen as we are working through this process. Anything that happens with respect to that could change and will change the picture of what happens to Hana Landfill as well as all of our other landfills. So we just happen to be at that point in time which I think is actually a point in time where we have a lot of these things that are being looked at and discussed within our community as we're actually working on this blueprint of a plan that we're hoping is going to carry us into the next 20 years although we've got to review it by law every five years, but we're hoping this is going to be a very good blueprint for us within the County of Maui. So as you go through your deliberation just bear in mind that we have this other very important initiative that's going on too. And depending on what comes out of that could very well change the picture of what's happening to Hana Landfill.

Mr. Mardfin: Thank you. I appreciate that and I do appreciate what you're trying to – Hana needs some way to take care of our waste and I appreciate everything you're trying to do with that. I'm just trying as a responsible commissioner to insure that we're approving a plan or a special management permit for something that can't be sustained. And it sounds like we've got maximum 10 years of cinder in the current area. I hope we're not planning to mine Kauiki Hill and move it over just across the bay into the landfill. That's a little facetious, but and it seems to me that if you're going to bring – if you're going to find a new source of cinder in the Hana that's one thing, if you're going to bring cinder in or some other cover from Central Maui then it makes no sense rather than to truck to stuff out since – does somebody know how much cinder it takes to cover how much waste currently?

Ms. Okuma: I think we have that number, but perhaps so I don't lose this point because I know that we appreciate the concerns about the cinder hill. We certainly do appreciate that, but I'm going to go back again to the draft plan that we are doing could very well change whether – how we're utilizing or if we're even utilizing that cinder hill because if you recall, what's coming out of the draft plan is a recommendation of placing Hana Landfill on standby although we're going to need operating permits for emergency permits, there may be technology that's out there that we haven't looked at that yet because we're still going through with the community deriving at the recommendations that will eventually become the final plan, but that's all in the mix of everything we're talking about. So we appreciate that yes, there is a concern over what can happen during the seven to eight-year horizon during this permitting that we are applying for. However, there's other things that are also going on and we do hear your concerns and we do understand that. It's

not only with respect to Hana Landfill, it's all of our landfills that we have too and we can appreciate the movement to increasing recycling, the movement to looking at all the different kinds of technology and certainly whatever we do we want it to succeed on Maui. We may only have once chance at that and we do want it to succeed so we're very conscious and careful about what we're doing. A lot of these things won't necessarily happen overnight. It is a process in and of itself. So that I hope kind of indirectly perhaps addresses the particular concern that you are raising and I'm going to ask Tracy for any more details in terms of the quantities that you're asking about.

Mr. Takamine: I don't know the exact quantities but normally for cover material we're looking at maybe a two to one ratio, somewhere around there for every say one truckload of refuse – I mean, for every two truckloads of refuse you might need one truckload or one ton of cover material.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: This is a question actually for Cheryl. Well, thank you for your comments on that and I appreciate those comments. The concern that I have I think is that, you know, by taking action on the request that's before us today that we're not just do same old, same old for the next 88 years or to the year 2096 because I think at some point we're going to exceed 20 tons, we're going to exceed whatever the threshold is for Hana and we're kind of taking a chance with the people of Hana from my perspective in just doing an unlined existing landfill operation on a continuing basis. So if I were to review this, in terms of approval, one of the things that I would like to see is that we not forget about it for the next 88 years but what we include within our work an analysis of alternatives.

Ms. Okuma: And thank you I appreciate that comment and I guess one of the things we would ask for is to not forget that we have this draft plan that we're hoping that we're going to be able to finalize some time this year. There are some things not in our control because we don't know what kind of public comments are going to come out during this week that we'd have to deal with. So one of the things is to also just bear in mind that there are some – there are a lot of recommendations that are coming out of that plan and I do believe that when you take a look at that and it's whole mix and menu of different kinds of programs and projects that we can look at that you consider that in the mix. We don't expect that it's going to be business as usual and I think when you look at that plan you will see that there is the desire, very strong desire in that plan, it's not just business as usual. So I think we do appreciate the comments. We certainly understand where your concerns are coming from and the only thing I can say right now is that we do have this draft plan is going to be a very important blueprint and guidance for us for the entire county and that would include Hana as well too. So I ask that as you do your deliberation that you consider that as a piece in this whole picture which could very well change the way we look at our landfills in the future.

Mr. Starr: You know, I just want to compliment that statement. It's good to hear that we seem to be heading in a new and better direction. We don't need to repeat the sins of the past.

Mr. Takamine: Can I add on to Cheryl's comment first?

Mr. Starr: Yeah.

Mr. Takamine: I just wanted to, and we're talking about the plan and not being status quo, we are, as I mentioned, I want to emphasize, even though the plan is still in a draft phase, it hasn't been approved and the recommendation was to go on standby, and start a transfer station, we're not waiting for that plan. We're already like I mentioned, and I don't know if you caught onto it but we are already in contract with Brown and Caldwell to actually take that next step and do that evaluation and come up with the pros, the cons, the feasibility, the cost to convert that landfill into a transfer station. So we're not waiting two years, one year, whatever it is to get the plan approved. You know, we looked at it and said, that's a viable option. You know, that's something we can look at now, so we already got that going with Brown and Caldwell and within the next, I don't know, about a year or less than a year hopefully we'll have that decision made and you know, we might be going by next year's budget if it's doable to start implementing a portion of this plan.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: Two things. I appreciate what you said and I echo the chairman's comments to the director about, the other director about what's going on. I'm not implying any ill-will on anybody's part. I think you guys are all trying to do what's best for the community and the island and the county. You are asking us to approve – and I understand why, you're asking us to approve this thing now so you can get the permits because you're going to need the permits even if it's a standby and I understand that, but you are asking us to sort of by a pig in a poke, to approve this thing to approve this thing without knowing where it's going to go. I mean if I had my druthers I'd wait a year till you had the plan finished for the waste management and then approve it or not approve it. But I do understand why you have to do this.

But let me ask one other specific question right now and that is, when will this come before us again if ever? Will it come before in five years when the integrated management plan is done or will it come when the quarry runs out? I just don't know.

Mr. Hirano: I guess the request for the special use permits are for 10 years. So it's from 2008 to 2018. So it will be coming back after those permits because you have to renew the permits.

Mr. Mardfin: So after the cinder cone is gone?

Mr. Starr: I do want to comment that it will be before us for the SMA which we're not going to bring up today. Commissioner Guard.

Mr. Guard: So they may be for the director. On that note that it's just a recommendation for a 10-year permit we could recommend say a five-year permit to go –

Mr. Starr: Lets not discuss it till we –

Mr. Guard: I'm asking the director something or even seven years if that's the anticipated life span of the cinder cone. I feel like there's all this fear factor that we're approving something for a hundred years and I don't think that's the case.

Mr. Hunt: It's common for the commission to put conditions on there based on concerns. So if you

have a concern via a time line or something you could put a condition on there regarding that.

Mr. Starr: If it's okay with members I'd like to go through public testimony then we can start talking about action.

Mr. Mardfin: Can the director respond?

Mr. Starr: Yeah, you want to?

Ms. Okuma: Yes, just so I didn't want to forget this. I just wanted the commissioners to keep this in mind also. We do need the land use entitlement permits in order to do the recycling activities too. So, I mean, the question goes to I think what you had expressed. We need to get in the door to even implement recycling activities and everything else we need to do to divert out of the landfill. So if that can just be kept in mind. Thank you.

Mr. Starr: Okay, I'm going to ask if there's any additional public testimony from members?

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

Ms. Leslie Bruce: Good morning. My name is Leslie Ann Bruce. I am part-owner of three inland fish ponds in Hana, parcel 10 in Waikaloa. Loko ke kalo a, the taro of a clan fish pond, I'm passing a picture around of one of the fish ponds is named in an 1889 map of this area and its inland fish ponds. My fish ponds along with 12 other fish – 9 other fish ponds are located on a lower topographic level south of the Hana landfill. To I support the recommendation of Kauai Kanakaole's requesting a cultural assessment. ...(inaudible - technical difficulties) environmental assessment of the Olopava cinder mining operation because one, its historic significance as a pu'u in Hana. Two, no agreement to mine this pu'u has been established. In my opinion, an important key to sustainable well-being of Hana's inland fish ponds and ocean environment is the Hana landfill. "The material in the landfill could be transported to the Central Maui Landfill." This information was repeated to the General Plan Advisory Committee by a member of the Public Works.

On page 3-3 of the April 30, 2008 Integrated Solid Waste Management Plan, prepared by Gershman, Brickner and Bratton of Fairfax, Virginia, the write, "this material could be transported to the Central Maui Landfill freeing up the landfill employees to operate a convenience center." Thank you.

Mr. Starr: Okay, Members, any questions for the testifier? I have one, you were talking about the pu'u. Were you referring to the one mauka?

Ms. Bruce: Olopava.

Mr. Starr: Was there any public process, were there any meetings on that in Hana or any discussion on that?

Ms. Bruce: Yes, I believe John Blumer-Buell will be testifying about that. Thank you.

Mr. Starr: Thank you very much. Anyone else wishing to testify on any agenda item at this time? I see John Blumer-Buell. Please introduce yourself and it is yours John.

Mr. John Blumer-Buell: Aloha Planning Commission Members and Chair Starr. My name is John Blumer-Buell and I'm going to testify regarding the Hana Landfill proposal. I've been observing the growth of the Hana Landfill for more than 30 years, more than 30 years ago that was a hundred-foot pit in the ground and now it is a – turning into a mountain at Hana Bay that could go as high as 80 to 90 feet. It's now clear beyond any question that the mining operation above the Hana Airport on Olopava Mountain is directly connected to the Hana Landfill. The Public Works Department has now admitted that they cannot run the Hana Landfill without the mining operation and yet the County has no right of access to the mining pit. There's no agreement with the State. They're spending enormous resources to bring it down and really destroying a mountain up there. And you have none of the information as required by Chapter 343 to understand what the impact of that mining operation is on the proposed project and I don't see how at this point you could possibly reach any findings of fact or conclusions of law on which to support this project.

So I've been first ask for the information I'm still asking for in 2004, that's four years ago, I submitted eight items regarding this to the Hana Advisory Committee and to the Planning Commission and through the EA process. At this point, I'm requesting just a couple things that I think you need to make a decision on. First, you need to require an environmental assessment for the mining operation above Kaeleku before any decision. Environmental assessment should require full disclosure of the mining operations and related impacts including cultural impacts as requested by Kauai Kanakaole and the Hana Advisory Committee to the Maui Planning Commission.

Secondly, the original EA and the revised EA never laid out any alternatives to the proposed project. Now the County is talking about setting up a full recycling program and transfer station in Hana. In other words, taking anything we don't recycle to Central Maui. And on the other hand, Mr. Takamine is talking about an 88-year capacity at the Hana Landfill. So it can't be one or the other. You've got to have the information on which to make the decisions. So I'm simply asking you to please request a supplemental environmental assessment or a full EA, it's up to you to gather the information that you don't have. And I'm quite certain that you have to have all the information in front of you in order to make conclusions of fact and conclusions regarding the law.

A final thing –

Mr. Starr: Please wrap up John.

Mr. Blumer-Buell: I will, thank you. In my June 23<sup>rd</sup> testimony to, on page 2, one short paragraph, I said, "in addition, the County of Maui does not currently meet the tests of the special management area regulations, the county special use or the state land use commission special use permit requirements." So, you know, at this point, after more than four years, I'm just still asking to get the information that we all need on which to make an intelligent decision. So, mahalo.

Mr. Starr: Members any questions for Mr. Blumer-Buell? I have one. You mentioned this mining operation at the pu'u up above Hana. Could you tell us why you think that that could have an environmental impact and what basis you have that it's connected with the matter before us?

Mr. Blumer-Buell: It's clearly having a big environmental impact. At the last meeting I gave you a overhead map from Google and shows an enormous area that is just totally degraded. Now there are James Perry of the Public Works Department said they are taking 10, 15 yard dump trucks out of that area every day of the week or five days a week and it's now as big. You know you could drop the County Building into the whole that's there right now. This has all been done without a 343 environmental assessment as required by state law.

So other issues I brought up in 2004 directly to Jonathan's question is this area in Olopava is in one of the most heavily infested miconia areas in the state. It's where the initial outburst of miconia got loose from Palani Farms in Hana. And although the Maui Invasive Species is doing a good job out there the cinders are being spread all over the Hana district not just the Hana Landfill. And I have personal experience as a landscaper seeing miconia seed sprout more than 10 years after they've been spread out. So we have – that is a big potential impact. Again, there's no 343 information.

The other thing, a number of Hawaiians have approached me. This is crown lands. They're entitled money that should be going to OHA and Hawaiian programs as far as I know the County has not done – paid a penny for anything and there should be an accountability of the amount of mining that's taking place and what the County owes to OHA and other concerned people. So, I hope that answers your question.

Mr. Starr: Okay, Commissioner Mardfin. And let the record show Commissioner Mardfin and Commissioner Pawsat are with us as well. Go ahead.

Mr. Mardfin: Mr. Blumer-Buell is the photo you're talking about that you gave us last time that shows the landfill?

Mr. Blumer-Buell: Yes, yes.

Mr. Mardfin: Not the landfill, the quarry operation.

Mr. Blumer-Buell: That shows the mining operation above Kaeleku and to give you some scale there is a scale on the map and it shows some of the mauka residents and Kaeleku below the mining operation. Now I can say that something that should be looked into and I've had people that live directly there tell me that the mining operation has altered runoff in the area. It's another environmental impact. It's never been discussed anywhere.

Mr. Mardfin: Is this marking on the map showing 505 feet the width of the operation?

Mr. Blumer-Buell: I hope that's to scale but it's certainly longer than a football field and at least half as wide and probably a hundred feet deep in the deepest part. I've submitted a photograph of a bulldozer working in there to you folks at the last meeting that should give you some scale as to how big it is.

Mr. Mardfin: In your opinion, could they continue with the landfill operation where it is if they didn't have access to the cinders?

Mr. Blumer-Buell: According to the Public Works Department they need to be covering the landfill on a regular basis. That it's now been established that in fact the mining operation is not outside the scope of the proposal, it's actually an integral part of it. It needs something to cover the landfill and that's the source right now. But there's no agreement to do so. Now I would ask I think Mr. Takamine I think mentioned that they were considering putting some sort of a cover part of the landfill rather than using cinder everyday. They could be putting a big cover over it and then putting cinder of the end of it. So they could be reducing the amount of cinder is my understanding that they are using. But I tell you, there's a lot of concern about the vertical expansion of that area. I mean, we're moving a mountain from – we're moving Olopava Mountain down to Hana Bay and it's never – you have no information on that on which to make a legal decision. Part of all those permits have to do with environmental degradation and both the County and the State permits. There's no question that they don't pass the test. So if you – when you go through all the different tests for each of the three permits, environment's going to be a big part of it. It's I think legally indefensible that you could give a permit at this point without having any information on that environmental impact as required by Chapter 343.

Mr. Mardfin: I apologize for coming in late so I missed the beginning of your testimony. Did you refer at all to the impact of leaching or percolating down to the ground water from the existing landfill area?

Mr. Blumer-Buell: I did not, but just briefly I have previously written in testimony regarding that subject. Biologist Hannah Bernard from Paia was in Hana when the Hana Advisory Committee had one of their meetings. She fully supported my recommendations which one of those recommendations was to ask for testing four times a year instead of two. The second one was to set up a least one additional monitoring spot and the third was to develop a list of chemicals and so forth that we actually know have been put into that landfill over decades. The concern is that they're not actually testing for some of the things that have been put in there.

Mr. Mardfin: Why do you think they need an additional well?

Mr. Blumer-Buell: Well, the – from my understanding of the geology and I have requested that the original geological reports on which their monitoring wells were set up that you should have that information. I've requested, they haven't given it to me. The EA describes how the water is coming from mauka-makai but then kind of turning back towards mauka and that could be because of a perched aquifer which is a possible geological formation not unusual in Hawaii that there's no question that that water is headed makai and that's where an additional monitoring station would be appropriate I think. So that was my recommendation.

Mr. Mardfin: Do you think the landfill's been useful over the last – well, since 1969 when it was established?

Mr. Blumer-Buell: Absolutely. I mean, it was – historically that was a hundred foot hole in the ground you used to have to drive down in it. You know, they pushed a road going down to the pit and so now it's, you know, they're saying they can go 80 feet over grade. It's been useful, I believe Chair Starr mentioned that for years there was an effort to get a serious recycling program in Hana which has never been achieved and so we're, you know, it's built up because I think of poor

management frankly there.

Mr. Mardfin: In your opinion, what do you think the impact would be on Hana, its residents, its businesses if the land fill operation wasn't allowed to continue?

Mr. Blumer-Buell: I think that's something that should be disclosed. Those projections should be disclosed in the environmental assessment. In my 2004 letter on that subject as you probably know we have roughly 750,000 to a million visitors, day visitors out there every year and this is according to the national park. And so we're getting half of their day's rubbish roughly in the Hana Landfill. Now that's never been, you know, if this was just a landfill for people who lived in Hana it probably wouldn't even be up to the, even up to grade at this point. But like the whole island, we're dealing with the rubbish of, you know, a million people out there every year and maybe a half-day's waste.

Mr. Mardfin: Thank you for your testimony.

Mr. Blumer-Buell: You're welcome.

Mr. Starr: Okay, members anything else for Mr. Blumer-Buell? Okay, thank you very much. I want to thank you and everyone who drove in from Hana today, particularly Commissioner Mardfin. It's a real commitment to do that.

Mr. Blumer-Buell: Yeah, thanks for your work and I'm going to stick around in case I can be of any help.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Chairman, may I ask Leslie Bruce a question?

Mr. Starr: Yeah, I'm going to call back a previous testifier Leslie Bruce for Commissioner Mardfin.

Mr. Mardfin: I apologize for not being here earlier, but I read some of your letter that was in the EA and some other things that you've provided to the commission. I don't know exactly what you said, but I'm very concerned about – last time you were here you talked about the fish ponds by your property. Those were historical fish ponds?

Ms. Leslie Bruce: My name is Leslie Bruce. I have an 1889 map that names 12 fish ponds in the Waikalua area and that doesn't include the ocean fish ponds. I've only talked about inland fish ponds because I don't own the ocean. I didn't say that there are two fish ponds if not more directly in front of my house in the ocean. I'm not sure how many there are in Hana Bay and in that vicinity in the ocean.

Mr. Mardfin: The fish ponds that are fresh and/or brackish water are they fed from – I think last time you testified they were fed from springs?

Ms. Bruce: They're fed from springs and they rise and fall with the tide and the ocean fish ponds are also very brackish. You can see the spring water coming up in the ocean.

Mr. Mardfin: Do you happen to know whether or not ground water aside from springs go emptying into the fish ponds? You may not know.

Ms. Bruce: Ground water. When there are storms the whole mountain side is awash directly above there in Kauaipapa ahupua'a and that is all coming down and some of that you see coming into the fish ponds, but I don't know about the ground water. I can't tell.

Mr. Mardfin: Okay, thank you very much.

Mr. Starr: I have a follow up question. The water in the fish ponds does that have a fresh water component?

Ms. Bruce: Yes. The only fish that will grow in the interior fish ponds are fish that are adapted to brackish water and I've tried other ocean fish because I have a fish pond operator's license and the fish die if they are just can handle ocean water. They have to have brackish water in the fish ponds.

Mr. Starr: Would it be fair to assume that that fresh water component is flowing underneath the landfill to get to those fish ponds? Are you, you know, kind of directly makai of the landfill?

Ms. Bruce: I am not directly makai of the landfill. Actually the ocean is directly makai of the landfill but we are to the south and the grade, on the surface of the land, the topography the grade goes down toward us. I don't know how the underground water moves in that area.

Mr. Starr: The EA states that it moves south.

Ms. Bruce: We are south.

Mr. Starr: Have you ever done any testing of the fish for heavy metals and stuff like that?

Ms. Bruce: I have never tested my fish. Actually I don't eat my fish, the neighbors eat my fish when the ocean is rough to fish in the ocean.

Mr. Starr: Okay, thank you. Okay, Fred did you want to testify at this time or before the item? Okay, and I see Maui Tomorrow is here. Now or before? Okay, please introduce yourself for the record.

Ms. Irene Bowie: Aloha, my name is Irene Bowie and I'm Executive Director with Maui Tomorrow Foundation. I'm here today because of the concerns over the proposed actions at Hana Landfill and my testimony is basically going to echo Mr. Blumer-Buell's.

The draft environmental assessment for Hana Landfill's expansion states that the proposed development will not adversely impact the social, cultural, economic, environmental and ecological character and quality of the area. Yet the Hana Landfill is near shore and all aspects must be considered. We've been told by the Department of Health that this is not an expansion and does not trigger a new permit process in compliance, but the SMA documents use the word "expansion"

to describe the action.

The height of the Hana Landfill is not recognized as a significant impact yet Hana Landfill is currently well over grade and the landfill's estimated capacity is over 290,000 cubic yards. The County says it can accommodate waste disposal to the year 2050 at this site. What will the vertical height of the landfill be by that time and what will it be in the next 10 to 20 years and how will that impact the character and quality of the area? What are the cumulative effects of continued cinder mining? What are the cultural impacts of this mining?

Maui Tomorrow asks the Maui Planning Commission to consider an environmental assessment for the cinder mining operation as it is a directly related environmental impact of this landfill operation and both primary and secondary impacts should be studied.

The cinder mining is in an area heavily infested with miconia seed. This cinder is very light and washes away easily. An EA is necessary to address further infestation of this invasive species through the mining and delivery of cinder to the landfill. The impact of cinder runoff and possible degradation of Hana's reefs also needs to be studied. An assessment should consider the cultural impacts of the destruction of the immediate mining area. And due to the removal of a 120 cubic yards of cinder a day, safety for workers should also be studied. I think you all have this photo and you really need to take a look at that and see what that's like for the driver of that equipment. I mean it's a massive scar on the earth.

Alternatives to the proposed action should also be explored. One of the recommendations in the draft integrated solid waste management plan is the transport of nearly all solid waste in Hana to the Central Maui facility. Yet the no action alternative lists this as an inefficient and costly waste disposal service for the Hana region. A satellite facility for Hana should be considered as an alternative action.

Lastly, environmental monitoring of the waters off Hana Bay by independent professional biologists in consultation with the Department of Health and the EPA should occur every three months and include monitoring for a comprehensive list of chemicals including pesticides and herbicides.

As the applicant was the Maui County Department of Environmental Management and the County of Maui was the accepting agency, the finding of no significant impact is questionable. While it may be legal for the applicant and the approving agency to be one and the same, it is not desirable. The Planning Commission should require an environmental assessment of the cinder mining operation and hold the County and State accountable. Thank you.

Mr. Starr: Okay, thank you. Members, Commissioner Hedani please.

Mr. Hedani: Yes, does Maui Tomorrow have a recommended alternative to the proposal?

Ms. Bowie: No, I think – you know, we feel that things should be considered. The alternatives should be considered on this and the public should have a say and comments should be taken. More than anything I think at this point we just feel that the cinder mining operation needs to have an EA and public comment on that.

Mr. Hedani: Okay, but you're supportive of continuing landfill operations if the cinder mining can be resolved?

Ms. Bowie: Yeah, I would think that at this point that's the main concern that we have is that that needs to have an EA. It definitely does. The other I think, you know, I think there's issues with it. I think the FONSI was questionable. I think you've looked, you know, this operation began in 1969 before there was Hawaii's environmental law and certainly your – the County is at a place now because a lot of things that needed to be enforced were never enforced. But I just think, you know, consideration should be looked at and most importantly I don't think that you cannot consider the cinder mining operation to be a secondary impact of this landfill.

Mr. Hedani: Thank you.

Mr. Starr: Members, any other questions? Yeah, Commissioner Mardfin.

Mr. Mardfin: If it became a standby landfill and most of the stuff had to be taken out to the other side, what impact would that have on the bridges and roads?

Ms. Bowie: I understand it absolutely could have an impact, but I think you have to consider that as an alternative. It needs to be looked at.

Mr. Mardfin: Thank you.

Mr. Starr: I have a question. I know Maui Tomorrow, you know, examines a lot of EAs and other documents, do you see a lot of them where the applicant is the same entity that prepares the EA and then approves it?

Ms. Bowie: No, I think that's why all of this really needs to be looked at and thought through before approval is given. It's not desirable.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: To be honest, that bothers me less than another issue which is, the argument was and some of the responses to letters where the issue of the quarry was raised. The response was well that's not part of the job.

Ms. Bowie: Right.

Mr. Mardfin: Jonathan said you have a great deal of experience with other EAs so you've probably read a lot whole more of them than I ever had. Can you recall any time when you were looking at an EA and it was restricted to certain geographic area but had a significant component that affected the environment somewhere else.

Ms. Bowie: I can think of one right off the bat and that's Hawaii Superferry. To say that the action was only in Kahului Harbor, the barge going into the Kahului Harbor was the impact that was being looked at when obviously the Superferry traveling across the waters affected so many issues.

That's the secondary impact that needs to be looked at.

Mr. Mardfin: I guess I want to ask it the other way. Have you ever seen an EA where it explicitly took into account some secondary impact that was not directly connected? I mean, I'm wondering if this is unusual or whether this is standard practice?

Ms. Bowie: Well, I guess I would unfortunately say it's more standard practice in what we see, but when you look at Chapter 343, I mean, you need to remind the governing bodies that that's the intent of the law is to look at those secondary impacts. I think most people doing an EA would prefer not to, but it needs to be done.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, thank you very much.

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

Mr. Starr: Okay, John, usually we don't let people testify unless they have something based on new information and if that's the case I'll give you one minute, and one minute only.

Mr. John Blumer-Buell: Thank you. John Blumer-Buell again. Jonathan you brought up the word "expansion" a number of times. The one thing you haven't talked about is I see this whole thing as a vertical expansion. I've never talked about it so much horizontally. This is a 80-foot vertical expansion. All of the expansion is coming from Olopava Mountain where there is no permit whatsoever. Cheryl said that there's five or seven years left or Tracy did. That is just hearsay by Jimmy Perry, the Public Works Director in Hana. That's scientifically unsound period. They can mine that mountain for the next hundred years. They can move Olopava Mountain to Hana Bay, they'll keep mining it. There's no limitation of cinders up there. That was his on-the-spot guess.

Mr. Starr: Okay, time's up.

Mr. Blumer-Buell: Final one. I know all about the Hana water systems, all of the wells and everything if you want that information.

Mr. Starr: Okay, thank you. Questions? Seeing none, any other members who have not testified wish to testify please make yourself known. Okay, seeing none –

Mr. Mardfin: Could I ask a question of the last testifier?

Mr. Starr: Yeah, come on back John. Go ahead Commissioner Mardfin.

Mr. Mardfin: John you just commented on the height of the cinder cone, the new cinder cone that's going to be built with the landfill if it's going up ...(inaudible)... feet in three years and in 30 years that's an 80 feet expansion as trends continue. I know it won't. Things happen. But, is there any – my last line of questioning was the effect on the quarry and you said that they won't run out of cinder. Are there any other effects in the quarry because the quarry was not addressed in the EA.

The argument is that it's a secondary impact or something and it was outside of what they planned to consider. But do you have any further – you've already mentioned a couple of concerns about the miconia and other things. Do you have any further concerns about the quarrying operation?

Mr. Blumer-Buell: Yes, and I'll be brief. The County Highways Division as has been stated by Mich, your consultant is being used all over the Hana district on the road. My concerns about the spreading of miconia have not...(inaudible)... at the dump site. It's the fact that it's getting spread on remote roads in the Hana district and the Corporation Counsel made a legal ruling that the Public Works Department in Hana was maintaining an entire, a very long and wide road from the Hana Highway to Uluino where the County has no interest whatsoever. This was a legal ruling, legal opinion that went to court and the County's using that unpermitted mining of that cinder to pave roads at the discretion of the head of Public Works down there. So that's a real concern. I guess that will have to be addressed in another forum. But if there was a supplemental information it would be good to add that in. Other than that, you know, Kauai Kanakaole their concern, and when Auntie Kuulei Haina went up there with us on the site visit she was kind of visibly shaken by what was going on up there. Just the, you know, the connection to seeing this mountain just torn down and other Hawaiians have told me that there may be some chance which I haven't been able to identify regarding the winds being impacted by Olopava Mountain coming down and impacting the weather at Honomaele. So there's these cultural, additional cultural things that may not even seem on the radar screen but they're important to people.

And finally the money that is entitled to the Hawaiian people for the taking of their crown lands. Thank you.

Mr. Mardfin: Was this a crown land or ceded land?

Mr. Blumer-Buell: All the Hawaiians I've talked to consider that mining pit to be crown lands that's how they refer to it and that's one of the things you could ask for in the information.

Mr. Mardfin: Does the consultant know where the quarry land is ceded land or?

Mr. Starr: Why don't we wait till after testimony?

Mr. Mardfin: I'm sorry, excuse me.

Mr. Blumer-Buell: Thank you.

Mr. Starr: Okay, thank you for those good information. Any other members wishing, of the public wishing to testify please make yourself known. Okay, not seeing any, public testimony portion is now closed. And now we're at a point when we can have deliberation, action and more questions. You had a quick question Commissioner Mardfin.

Mr. Mardfin: Yeah, does anybody from the County know whether that land where the quarry is, what kind of land that is? In the EA it says it's – somewhere it says it's State land but that doesn't say whether it's ceded land.

Mr. Hirano: Yes.

Mr. Mardfin: Ceded land would be considered State land wouldn't it?

Mr. Hirano: I think some ceded land is on State land.

Mr. Mardfin: And some is not.

Mr. Hirano: Some is not.

Mr. Mardfin: Do you happen to know whether this is ceded land?

Mr. Hirano: I don't know for sure. I don't.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Actually this is question for staff. I know there was some discussion at the beginning of the meeting as to what's before the commission, if I could just have that clarified once more what we are addressing?

Mr. Starr: Well, we might as well do it now. I about to call on Mr. Fasi to give us a clarification. Why don't you go up to the podium, Paul. Give us a full.

Mr. Hiranaga: I guess the reason I asked for that was because I just wanted to understand the line of questioning and also the ramifications of our decisions. So that's why I asked for that clarification.

Mr. Starr: This is the time for that.

Mr. Fasi: Thank you Mr. Chair. What we are doing today before this body is the Planning Department is recommending that you defer on the special management area permit, you will make a decision on the county special use permit today, come to some kind of conclusion on that if that's possible and on the state land use commission permit you will make a recommendation. So to sum it up, the county special use permit if we can come to some conclusion and with a decision on that today, a recommendation on the state special use permit and we will defer on the special management area permit for a later date.

Mr. Starr: Okay, go ahead Commissioner Hiranaga.

Mr. Hiranaga: So if the county special use permit request is denied, what effect will that have on the landfill?

Mr. Fasi: That will pretty much end it all.

Mr. Hiranaga: Would that be effective immediately?

Mr. Fasi: It would be effective upon the date that you make effective.

Mr. Hiranaga: The filing of the decision.

Mr. Fasi: You could put a condition and make it effective at a later date or you can make it effective as of today.

Mr. Hiranaga: Thank you. I just wanted to understand what the ramifications would be of our decision. Thank you.

Mr. Starr: Yeah, Commissioner Mardfin.

Mr. Mardfin: Is it appropriate to ask one more question?

Mr. Starr: Yeah, sure.

Mr. Mardfin: On the EA I guess this is for Mich, maybe, there's a letter from OHA on April 14, 2004, and they on their page 3 they ask, they refer to the cultural impact statement and this is for the draft EA and it says, I'll wait till you find it.

Mr. Hirano: Yes, I got it.

Mr. Mardfin: The draft EA must include a substantive cultural impact statement based on consultation with native Hawaiians. And they go on to say, the project developers should consult with the following individual with expertise on Hawaiian issues in the project area and the Maui in general. The individual is Terry Poaipuni with Hui No Ke Ola Pono. Now they did check with Sam Kalalau III, who I believe was a member of the Maui Planning Commission some years back and who is very knowledgeable and with there was another person, whose name is escaping me at the moment, oh, Andrew Park who used to work down there and they're both very knowledgeable, both Hawaiian. But I'm just curious why there seem to be, the letter of response was the interviewees were chosen because they're individuals familiar with cultural practices of the areas affected by the undertaking. Mr. Sam Kalalau III is a native Hawaiian born in Hana, blah, blah, blah, and he is, he's a fine man. I'm just wondering why there was no attempt to follow up on OHA's suggestion of contacting of Terry Poaipuni?

Mr. Hirano: I can respond to that, but in the State OHA's letter of July 11, 2007 which is in Chapter 10 of the final EA, OHA says that the cultural impact assessment included in the draft environmental assessment for County of Maui's Hana Landfill meets the criteria set forth by Hawaii Revised Statutes 343 and Hawaii Administrative Rules, 11-200-10 for cultural impact statements. We are satisfied with the consultation of Samuel Kalalau, Chairperson of the Maui Cultural Resources Commission. So --

Mr. Mardfin: I understand that, I would just -- for future reference if somebody suggests they contact somebody I would strongly recommend that you contact that person. If they don't respond then you can say they didn't respond. But I wouldn't ignore things like that if it were me.

Mr. Starr: Okay, members we're a point when we can have action. I would -- we also have one other item that we need to deal with before lunch because of Corp. Counsel's needs, but Commissioner Hedani go ahead. Lets try to finish up questions.

Mr. Hedani: Before we lose the department I wanted to get feedback from the department on whether or not they had any objections to any of the recommendations that came out of the Hana Advisory Committee?

Mr. Starr: Oh, good question.

Mr. Fasi: The department had no objections to any recommendations made by the Hana Advisory Committee.

Mr. Starr: I think he meant the other department.

Mr. Fasi: Well, the Planning Department didn't have any either.

Ms. Okuma: Thank you. We are fine with all of the conditions and would just like to clarify because Mich Hirano had explained in terms of what might be involved in terms of some of the recycling efforts, but it's condition no. 19, if we may suggest that the language be something along the lines of, "the recycling program may consider but not be limited to those items," because there may be some of those items that may be a little more involved for us. We need to really look at how we can incorporate recycling on those various types of materials. Some are easier than others. So we'd like a little bit of latitude and flexibility. I mean, that's all good thoughts. It's just that for the department, we would like to have a little more flexibility to incorporate those items into a recycling program. So again, that's condition no. 19.

Mr. Starr: Okay, thank you. I, you know, we have several different, three different items before us. One of them, the SMA we have to defer we cannot deal with because of procedural matters. The other two we can deal with one way or another. I know personally I have a lot of problem to support the recommendation at this time without some additional information on several areas. I know I would want to have before us before I personally would want to vote to approve the two land use items, a hydrogeology assessment of where the flow is going and then the next would be water testing of the coastal waters in Hana, Hana Bay and on the shoreline to make sure that there's none of this stuff getting into the shoreline waters because we are the custodian of those shoreline waters. I would want to have an environmental report on the cinder mining. I would want to have the cultural study done regarding the cinder mining, and I'd want to see alternatives which I understand are being considered but, you know, should have been in the EA and if they're not in the EA because the project has changed and that, you know, would invalidate the EA, but that's not really a road that I want to take. So the alternative would be to have some kind of information done separately regarding alternatives and transfer station. I think that if there's a desire to move in that direction I could support the process because I know it's going to a better place, but I would have trouble supporting, you know, basically just continuation of doing something that we know better about. Commissioner Hedani.

Mr. Hedani: I was just going to say I think it's up to the commission to propose action at this point

and then go into deliberations.

Mr. Starr: Yeah, it is and I was just giving my personal comments which are the members are ready to do or to make motions or whatever they wish at this point. Commissioner Mardfin.

Mr. Mardfin: Could I ask the department, what kind -- if this is delayed, deferred for a while, I get the impression that we want some more information I share with Commissioner Starr's idea that we need more information, but I don't want to see this whole thing stopped because if the landfill shut down Hana would really be in a world of hurt. So it's a matter of doing just enough to keep the process going while we get additional information and find out more concretely how the department plans to proceed.

Ms. Okuma: Okay, one thing is we cannot do recycling which my understanding is from Hana community there's a strong desire to do that and that fits in with the draft solid waste plan. The longer this is held up, we cannot do that. And then we can't address the questions about the metals, scrap metal ... (inaudible)... and the automobile, appliances and that kind of thing. We can't even begin to address that. So all of that's going to be on hold. We can't accept anything. Technically we are in state of violation now because we don't have the DOH permits. DOH has, I believe, although I can't speak for Department of Health has held off on any enforcement action because we've told them we are making good faith efforts to try to get these permits. Technically and legally, they could shut the landfill down, but we can't -- I mean, that's not our call, that's a regulatory agency, that's within their purview. We have been in touch with them. They believe that we are pursuing these land use permits in good faith, but I can't tell you what will happen if this gets delayed, you know, beyond. But that's one consideration. Enforcement against the county, possible shutdown of the landfill, we cannot do the recycling, we can't address the issues that seem to be important to the community so there'd be several different types of impact that could occur.

Mr. Starr: Commissioner Guard.

Mr. Guard: I don't know if this -- for probably Planning Director, so we could -- if we wanted to recommend approval for the county and state special use permits and then possibly have this laundry list of items that we think the council should review or could we get those prior to approving the SMA?

Mr. Hunt: You can conceivably do them at the SMA level. So you could give them direction that before this body is comfortable approving the SMA we expect to have this kind of report.

Mr. Guard: I 'm comfortable recommending approval if the people from Hana, I guess the responsible commissioner, I don't know if they're ready to deny it if they get bad news on some of the water. Is that, that's my question.

Mr. Hunt: To help clarify the permitting process because they have an overlap it gets a little confusing. Technically the permitting process that you're acting on now regards the agricultural zone. So if that gives you any comfort level, you could conceivably approve the conditional permit in the agricultural zone, recommend approval to the State for the agricultural special use permit and you still get the SMA card in your back pocket and that's coastal resources which I don't want to put

words in people's mouths, but that's what I am hearing today.

Mr. Starr: Commissioner U'u.

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

Mr. Starr: Yeah, please.

Mr. U'u: To defer SMA and approve the County and State Special Land Use.

Mr. Guard: Second.

Mr. Starr: I just recommend that we make them separate motions, I think, because they're going to separate bodies. So --

Mr. U'u: Okay, so I'll withdraw my motion then.

Mr. Starr: Pick one first.

Mr. U'u: First I'd like to defer the SMA.

Mr. Guard: Second.

Mr. Starr: Okay, --

Mr. Mardfin: Point of information.

Mr. Starr: Yeah, Commissioner Mardfin.

Mr. Mardfin: Does that need a motion: I thought we had already said that we wouldn't deal with the SMA today? That we wouldn't deal with the SMA.

Mr. Starr: It's on the agenda. It's best practice.

Mr. Hedani: Call for the question.

Mr. Mardfin: I'll second the motion

Mr. U'u: Did already.

Mr. Starr: Okay, we have a motion on the floor and it's been seconded and the motion is to --

Mr. Hunt: Defer the SMA to a later date.

Mr. Starr: Okay and I know that there are things that we've mentioned that we want -- that some of us want to see before then. Is that clear? Or does anyone wish to make an amendment or can

we get a statement that that's been clearly heard. Commissioner Mardfin.

Mr. Mardfin: I'd just like to comment that I would really like to see -- I don't think they should wait. I would really urge them to drill a well in the right place and start monitoring so we'd have that information.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Call for the question.

Mr. Guard: Yeah.

Mr. Starr: Okay. Director.

Mr. Hunt: I'm not sure as the director what kind of information I'm going to ask the applicant to come back with. There's been four hours of discussion. I think the board should, I know this may be painful but somehow you need to give clear direction on what you expect when it comes back for SMA.

Mr. Starr: Okay, members do we want to do that with a amendment, do we want to do that with statements or do we want to ignore that? Up to you. Commissioner Hedani.

Mr. Hedani: Well, the question that's before us right now is just a question of deferring the SMA permit. Requirements for additional information or requirements, we can attach that to the next motion if we wanted to, right? So it's just a question of deferring the SMA permit to a future date. The department has been here for the entire four hours and they know all of the concerns that we've expressed.

Mr. Starr: I know I've just given my laundry list and I'm certainly not going to do it again. Commissioner Hiranaga.

Mr. Hiranaga: I agree with Commissioner Hedani. The department has been present here and I'm sure they will be working with the Department of Planning as they prepare their SMA permit. So I don't see a need to create a laundry list with this particular motion.

Mr. Starr: Okay members. Okay, all in favor of the deferral please raise your hand. All oppose? We're starting a new process today, I've asked, the director will be counting the votes and reading them back to us.

**It was moved by Mr. U'u, seconded by Mr. Guard, then unanimously**

**VOTED: To Defer Action on the Special Management Area Use Permit.  
(Assenting - B. U'u, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo,  
W. Iaconetti, J. Pawsat, W. Hedani, J. Starr)**

Mr. Starr: Director.

Mr. Hunt: I've got a vote, affirmative vote of 9 - 0 for motion to defer.

Mr. Starr: That motion carries. The item regarding the SMA is deferred. Commissioner U'u, you have further motion to make?

Mr. U'u: Yes, I'll also like to make a motion to approve the State Land Use Commission Special Use permit.

Mr. Guard: Can those two go together?

Mr. Starr: Okay, is there a second?

Mr. Guard: Second.

Mr. Starr: Okay, so we have a motion by Commissioner U'u, seconded by Commissioner Guard and that motion, director?

Mr. Hunt: Technically the motion is to approve the State Special Use Permit. You don't have the authority to approve it, you're making a recommendation to the State.

Mr. U'u: To the state.

Mr. Starr: So could you restate the motion I believe that your -- that was accepted by the maker.

Mr. Hunt: So as I understand, the motion's amended to recommend approval to the State regarding the State Special Use Permit.

Mr. U'u: Correct.

Mr. Guard: Correct.

Mr. Starr: Okay, so motion's been made, it's seconded. It's on the floor. Would anyone like to offer discussion or amendments?: Commissioner Hedani.

Mr. Hedani: Would that include the recommendations from the Hana Advisory Committee? Or was the intent of the motion to include it.

Mr. Starr: We did not have the full recommendation from staff before we had the motion. So what are we dealing with Paul?

Mr. Fasi presented the Recommendation.

Mr. Fasi: The department recommends that the planning commission recommend approval of the State Special Use Permit. There are no conditions attached to it. The County Special Use Permit conditions will be brought before the State Land use Commission and they will probably add onto that.

Mr. Starr: So there are standards that do?

Mr. Fasi: There are no standard conditions for the State Land Use Commission.

Mr. Starr: Okay, Commissioner Hedani, do you want to add anything to that? An amendment perhaps or --

Mr. Hedani: I guess the question for staff is do you support the recommendations of the Hana Advisory Committee?

Mr. Fasi: The Planning Department does.

Mr. U'u: Call for the vote.

Mr. Starr: Okay, so in that case we have a motion on the floor, it's been seconded to recommend approval of the State Land Use Commission Special Use Permit, that's the one, right? And we're ready for the vote. All in favor, please raise your hand. All opposed, please raise your hand.

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

**VOTED: To Recommend Approval of the State Land Use Commission Special Use Permit as Recommended.  
(Assenting - B. U'u, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo, W. Iaconetti, J. Pawsat, W. Hedani)  
(Dissenting - J. Starr)**

Mr. Starr: Okay, Director.

Mr. Hunt: Because not voting is counted as a yes, I've got it as 8 to 1 in favor of the motion.

Mr. Starr: Okay, so the motion passes. We are ready for a possible additional motion.

Mr. U'u: If we could have him read it.

Mr. Starr: Yeah, why don't you give us the recommendation on it Paul?

Mr. Hedani: You're on Paul.

Mr. Fasi: I'm sorry, too many pieces of paper and three permits are involved here. The Planning Department as we have done, as you have done recommend deferral on the SMA permit until such time as both the State Special Use Permit and the County Special Use Permit are obtained. If the State Special Use Permit and the County Special Use Permit are obtained without any major revisions to the proposed conditions then the Hana Advisory Committee would recommend approval of the SMA permit subject to the following conditions. If there are substantive changes by the State Land Use Commission to the conditions, then the Hana Advisory Committee may want

to recommend referral of the SMA permit request to the Hana Advisory Commission for a revised recommendation. In short, if the item goes before the State Land Use Commission and they have some major revisions and recommendations and conditions that are significant then the Hana Advisory Committee wants to review it again.

In consideration of the foregoing the Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt the Planning Department's Report and Recommendation for the meeting on the February 21, 2008 at the Hana Advisory Committee which was the first meeting as it's finding of fact, conclusion of law, decision and order and authority the Director of Planning to transmit recommendation to the Maui Planning Commission.

Mr. Starr: Okay, so what would be the recommended motion?

Mr. Fasi: The Planning Department recommends that the Maui Planning Commission recommend approval of the County Special Use Permit subject to the conditions that the Hana Advisory Committee stated in their May 5th meeting of 2008.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I believe the applicant had requested that condition no. 19 be modified and I'm wondering if the department is against that request or --

Mr. Fasi: That is correct. I'm glad you brought that up. If we can get clarification from the department on how they want to have condition 19 worded.

Ms. Okuma: We would just suggest the second sentence of condition 19 be stated as follows: "The recycling program may consider but not be limited to," and it remain glass, aluminum, plastics, batteries, newspapers, cardboard, appliances and oil. It allows us to the flexibility to see how we can incorporate these various materials. So may consider. "Recycling program may consider, but not be limited to," those following materials.

Mr. Fasi: So noted.

Mr. Starr: Okay, do we have a motion? Anyone want to make a motion? Commissioner U'u.

Mr. U'u: Motion to approve the County Special Use Permit with amendments.

Mr. Starr: As recommended.

Mr. U'u: Recommend approval. As recommended.

Mr. Hedani: Second.

Mr. Starr: Okay, so we have a motion by Commissioner U'u, seconded by Commissioner Hedani and the motion is that --

Mr. Hunt: To approve the County Special Use Permit subject to the conditions proposed by the Hana Advisory Committee except that Condition 19 is amended to read, "the recycling program may consider but not be limited to," and the rest of that condition.

Mr. Starr: Okay, members, any amendments, any comments? Commissioner Mardfin.

Mr. Mardfin: I'd just like to ask the Chair who voted no on the previous motion if he would be willing to share his reasoning with the group?

Mr. Hiranaga: Out of order.

Mr. Starr: You know, I already gave my comments once. I don't want to give them again.

Mr. Mardfin: Okay.

Mr. Hedani: Call for the question.

Mr. Starr: All in favor. Please raise your hand. All opposed? Okay, Director.

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

**VOTED: To Approve the County Special Use Permit as Recommended.  
(Assenting - B. U'u, W. Hedani, J. Guard, K. Hiranaga, W. Mardfin,  
D. Domingo, W. Iaconetti, J. Pawsat)  
(Dissenting - J. Starr)**

Mr. Hunt: The Director will record that as an 8 to 1 vote in affirmative of the motion.

Mr. Starr: Okay, so that passes. No one go. We still have one more thing we have to deal with before we can take our break for lunch and I really want to thank the department for its time and for looking ahead and I hope that when it comes back before us we really have something forward thinking that we can feel proud of when we do get to the SMA.

Ms. Okuma: Thank you very much and again, we appreciate the opportunity to be here and to hear the concerns. So thank you very much.

Mr. Starr: Okay, members we have another item that potentially could be dealt with very quickly. If that's agreed by the members. There's several people from Corp. Counsel who are here on this other matter who have to leave Wailuku at 1:00 p.m.

Mr. Hiranaga: I can't hear you Mr. Chair, may we have order please?

Mr. Starr: Order please, please quiet. Quiet, thank you. Okay, we have a matter that potentially we could deal with very quickly. There are some Corp. Counsel representatives here who have to leave at 1:00 p.m. and if there's a way we could deal with it very quickly before our lunch break, I'm

told that it would be much appreciated by the Corp. Counsel staff. So although we would all love to take a lunch, I will see if we can deal with this. Can I let you introduce this? Do we have a planner on this? Or can I have James introduce this?

Mr. Hunt: We've got Trisha as the planner. We've got different counsel.

Mr. Starr: Okay, Director, why don't you introduce this and I think that if we decide on this that we want to have a -- what are we going to have?

Mr. Giroux: A mediator and a hearings officer.

Mr. Starr: A mediator and a hearings officer and if we could select them quickly we should do it. If it's going to require discussion someone please chime in and we'll just have to deal with it on another day. Director, go ahead.

Mr. Hunt: Your next item involves a communication from Lance D. Collins, Esq., representing William and Katherine Knowlton appealing the Planning Director's decision to grant a Special Management Area Exemption. File No. SM5 2008/0061 to Ludmila Guderman-Reeves for parking barrier, three storage shed and three garden structures on property located at 530 North Holokai Place, TMK 2-8-11:007, in Peahi. The application is 2008/0001 and Trisha Kapuaala is assigned to this and we also have Corporation Counsel here to give you advice.

### **C. COMMUNICATIONS**

1. **LANCE D. COLLINS, ESQ., representing WILLIAM and CATHERINE KNOWLTON appealing the Planning Director's to grant a special management area exemption (SM5 2008/0061) to LUDMILA GUTERMAN-REEVES for a parking barrier, three storage sheds and three garden structures on property located at 530 North Holokai Place, TMK: (2) 2-8-011:007, Peahi, Hamakualoa, Island of Maui. (APPL 2008/0001) (T. Kapuaala)**

- a. **BRIAN T. MOTO, Corporation Counsel and MARY BLAINE JOHNSTON, Deputy Corporation Counsel submitting JEFFREY S. HUNT, Director, Department of Planning, County of Maui's Motion to Dismiss Appellants WILLIAM KNOWLTON and CATHERINE KNOWLTON's Appeal of the Director's Decision, Memorandum in Support of Motion. The Motion was received on June 27, 2008. (T. Kapuaala)**

**BRIAN T. MOTO, Corporation Counsel and MARY BLAINE JOHNSTON, Deputy Corporation Counsel submitting JEFFREY S. HUNT, Director, Department of Planning, County of Maui's Amended Motion to Dismiss Appellants WILLIAM KNOWLTON and CATHERINE KNOWLTON's Appeal of the Director's Decision, Memorandum in Support of Motion. The amended Motion was received on July 9, 2008. (T. Kapuaala)**

**The Commission may take action on the amended motion and dismiss the appeal or take some other action.**

- b. Selection of a mediator. The Commission may take action to select a mediator.**
- c. Selection of a Hearings Officer. The Commission may take action to select a Hearings Officer.**

Mr. Starr: Okay, Trish give us a brief -- Commissioner Hiranaga.

Mr. Hiranaga: I guess, you know, I read the material. For me to make a decision whether to amend motion, dismiss or allow it to go to mediator or a hearings officer, I don't know if I can make that decision in very brief period of time because you know, there's monies involved in hiring a mediator or hiring a hearings officer.

Mr. Starr: Okay, that's what I wanted to hear.

Mr. Hiranaga: I wanted to express that concern.

Mr. Starr: In which case my understanding is that Corp. Counsel on this matter but someone else will have to leave at 1:00 p.m. So we should put that off to another day is that? Please come to the microphone and identify yourself.

Ms. Mary Blaine-Johnston: Mary Blaine-Johnston, Deputy Corporation Counsel representing the Planning Director, Jeffrey Hunt. I did have an appointment, I went out, took a break and I've moved that so I can stay. If we can deal with this today that would be really good.

Mr. Starr: Okay, in that case we are going to go to recess for lunch. We're overdue, we're all in brain fade. See you at 1:30 p.m.

A recess was called at 12:30 p.m., and the meeting was reconvened at 1:30 p.m.

Mr. Starr: ... is back in order and we were dealing with the item C-1, however, there was an item that we had deferred from our last meeting and we had made a commitment that we would take it up immediately after lunch and especially we'd like to get that out of the way. The planner was kind enough to come in on her vacation time all the way from Lahaina. So we should appreciate that dedication and try to move that. So if anyone would like to make a motion to take Item D-1 on the agenda before we get back to C-1.

Mr. Iaconetti: So move.

Mr. Mardfin: Second.

Mr. Starr: So we have a motion by Dr. Iaconetti, seconded by Commissioner Mardfin and the

motion is to modify the agenda.

Mr. Hunt: Move to Item D-1 on your agenda.

Mr. Starr: So calling the question on that. All in favor please raise your hand? Any opposed?

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

**VOTED: To Take Item Up Item D-1 Before Continuing with Item C-1.  
(Assenting - W. Iaconetti, W. Mardfin, K. Hiranaga, J. Guard, B. U'u,  
D. Domingo, J. Pawsat, W. Hedani, J. Starr)**

Mr. Starr: And the vote boss?

Mr. Hunt: Unanimous.

Mr. Starr: Okay, so we're now on Item D-1 and I'll give it over to the Director to introduce our next item.

Mr. Hunt: This item involves adoption of written findings of fact, conclusions of law and decision and order. No public testimony has to be taken as the commission will be completing their adjudicatory function. The item involves Chris Hart and Partners on behalf of Genesee Capital requesting a Special Management Area Use Permit for the Maui Lu redevelopment project consisting of the demolition of existing structure and the redevelopment of the Maui Lu Resort into a 400-unit time share complex with lock off units, recreational amenities, landscaping, beach nourishment and related improvements on approximately 27 acres of land at 575 South Kihei Road, TMK 3-9-1:83 ...(inaudible - changing of tape)... File no. is SM1 2003/0021 and Ann Cua is the project planner substituting for Joe Alueta.

**D. ADOPTION OF WRITTEN FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND DECISION AND ORDERS (No public testimony will be taken as the Commission will be completing their adjudicatory function.)**

- 1. CHRIS HART AND PARTNERS on behalf of GENESEE CAPITAL requesting a Special Management Area Use Permit for the Maui Lu Redevelopment Project consisting of the demolition of existing structures and the redevelopment of the Maui Lu Resort into a 400-unit time share complex with lock-off units, recreational amenities, landscaping, beach nourishment, and related improvements on approximately 27.282 acres of land at 575 South Kihei Road, TMK: 3-9-001: 083, 086, and 120, Kihei, Island of Maui. (SM1 2003/0021) (A. Cua for J. Alueta) (The Commission took action at the March 17, 2008 continuation of the March 11, 2008 meeting to approve the SMA request. Copies of the proposed Decision and Order were distributed for the July 8, 2008 meeting).**

Ms. Ann Cua: Mr. Chair, Members of the Commission. First of all, the Department on July 2, 2008 served the written findings that you have before you on all of the parties as noted in this certificate of service that you received.

On July 14, 2008, we informed all parties about the meeting today starting at 1:00 p.m. So I wanted to let you know that.

So with that, you know, we have the final findings for you to sign. You did receive them prior to your last meeting and I believe both the applicant and the intervenor are in the audience today.

Mr. Starr: Okay, I'd like to ask Corp. Counsel, Honorable James Giroux to comment because we did have a filing from the intervenor regarding this.

Mr. James Giroux: I'd just like to give, to have the Chair give both parties at least to make one last comment on whatever record they want to make or procedural issue and then we can go into adopting it.

Mr. Starr: And is there an order that I should take in terms of who goes first? Okay, I'm going to offer Mr. Haywood the first opportunity to share his comments here.

Mr. Guy Haywood: Good afternoon Mr. Chairman, Commission Members. I, you know, as you can obviously tell I've submitted a lot of documentation in this case. I submitted some objections at the last meeting on this issue and I don't have obviously anything more to add to them. I think my last set of objections summarized by simply saying that I rely on my previous objections made from the hearing officer's findings and conclusions to the extent that they overlap and I don't have anything else to add unless anybody has specific questions.

Mr. Starr: I have one question for you had, I believe the last submission you made was that there was -- you did not have time to properly respond to the last filing an agenda. Has that been -- have you now had enough time to have consideration and whatever action you want?

Mr. Haywood: Well, I've filed the objections I think later that day and as I've said I stand by those objections and any previous objections that are noted in the record, appropriately noted in the record I think reflects. That's it.

Mr. Giroux: Guy, I think what the Chair is trying to ask you is have you had sufficient time to file your objections?

Mr. Haywood: If you're asking me that I'm waiving any rights, that my clients may or may not have, I'm not going to do that because --

Mr. Giroux: I'm not asking you that. You told us ...(inaudible)... that you did not have enough time to respond to any type of order.

Mr. Haywood: That's correct.

Mr. Giroux: You were served the order.

Mr. Haywood: That's correct.

Mr. Giroux: And what we're asking you is did you have sufficient time to respond and file objections?

Mr. Haywood: Well, again, I think it's implicit in the question and I'm not going to beg the point, but my point is is that I filed objections, I don't plan on supplementing those objections at this time. What I have submitted is before you.

Mr. Starr: Okay, thank you Mr. Haywood.

Mr. Haywood: Thank you.

Mr. Starr: Mr. Mancini.

Mr. Paul Mancini: Good afternoon, thank you for hearing us. I only have a few comments and I guarantee you I will be brief on it. I'm just going to respond to Mr. Haywood's objections that the filed the last time. There were no subsequent filings today so I believe that all others have been waived.

His first issue was possible violation of commission rule 12-201-81 and I don't see any violation. I went through that. The rule deals with the fact that the commission could have asked for proposed findings at that time, it didn't. If there were exceptions to the hearings officer's report they could have modified or changed it and that was dealing with exceptions to hearings officer's report. So me that provision was irrelevant.

Mr. Haywood made a comment in his objections with regard to traffic on South Kihei Road and those issues had been dealt with at length in the record. ....(inaudible)... supports the improvements that are being done on that.

There was another objection that there's no legal relationship between Maui Beach Vacation ...(inaudible) and Consolidated and I guess the objection was to deal with that. Just draw the attention of the commission our memorandum in support of the hearings officer's finding 122 on pages 13 and 14 of that document. We went through in detail the relationship between the two entities and what's in the record on those entities. I won't go through to repeat that but that's clearly in the record.

And the last objection was there was no ...(inaudible)... relationship between the rejection of the offer to purchase the property in the intervention and the fact is in the record there was established a fact that there was that offer and it was rebutted and that's all the findings. So with that I appreciate your time and any questions I'd be happy to answer.

Mr. Starr: Okay, members any questions? Not seeing any, thank you very much Mr. Mancini. Sorry it took so long to approve this. Now I turn it over to the competent and graceful Ann Cua to

tell us what we should do.

Ms. Ann Cua: I guess at this point, you know you have voted to approve the project. This is the final decision and order. It's ready for your signature. I believe as we mentioned, this process that we're taking is somewhat of a new process where we're bringing it before you for you to sign. Normally we would had you sign it at your last meeting. And so at this point, I believe and Corporation Counsel can correct me if I'm wrong, that I can just go ahead and pass this around for signature. What I have done in the signature block is noted how you have voted. So if you dissented or an assenting vote that has been so noted or excused.

Mr. Giroux: Ann, just to seal the deal, I would just like the board to take a motion to adopt what you have as the final form and then they can execute it.

Ms. Cua: And what I have is what you received at your last meeting.

Mr. Starr: And is any additional action necessary regarding the final complaints, if we don't feel that they have merit, we'll continue to act is that correct?

Mr. Giroux: Right if the objections aren't incorporated then they are deemed to be rejected by this board.

Mr. Starr: So anyone who does not feel that those objections have merit and agrees that this how we acted should probably vote in a favor of a motion that someone may make now if they wish to. Commissioner Domingo.

Ms. Domingo: I'm not sure if I should be voting because I did -- it was not in front of me since I just came on the commission in April?

Mr. Starr: That's a good question.

Ms. Cua: We do not have her down as a signatory.

Mr. Giroux: I would be comfortable with you abstaining just because you did not hear the case.

Ms. Domingo: Thank you.

Mr. Starr: Okay members, would someone be interested in making a motion as recommended to adopt the finding.

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

Mr. Hedani: Second.

Mr. Starr: So we have a motion by Commissioner U'u and seconded by Commissioner Hedani. And that motion is Director?

Mr. Hunt: Motion to adopt the Findings of Fact, Conclusions of Law, Decision and Order granting the Special Management Area Use permit as presented by staff.

Mr. Starr: Seeing no comments or amendments being offered I will call the question. All in favor please raise your hand. Any opposed? Okay, Director.

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

**VOTED: To Adopt the Finding of Facts, Conclusion of Law and Decision and Order.**  
**(Assenting - B. U'u, W. Hedani, K. Hiranaga, J. Guard, W. Mardfin, J. Pawsat, J. Starr)**  
**(Dissenting - W. Iaconetti)**  
**(Abstained - D. Domingo - was not part of the commission when action was taken on item.)**

Mr. Hunt: I believe that from my count that was unanimous. There was no votes against.

Mr. Starr: So that's seven -- no I shouldn't be counting. I always get myself in trouble.

Mr. Hunt: We'll call it 8-0 in favor.

Mr. Starr: And then the document that we will be passing around we will all sign to memorialize this.

Ms. Cua: Thank you.

Mr. Starr: Okay, and thank you for coming Ann. Okay, so we're moving back to the previous item which is C-1 and we call upon.

Mr. Hunt: The planner assigned is Trisha Kapuaala.

## **C. COMMUNICATIONS**

1. **LANCE D. COLLINS, ESQ., representing WILLIAM and CATHERINE KNOWLTON appealing the Planning Director's to grant a special management area exemption (SM5 2008/0061) to LUDMILA GUTERMAN-REEVES for a parking barrier, three storage sheds and three garden structures on property located at 530 North Holokai Place, TMK: (2) 2-8-011:007, Peahi, Hamakualoa, Island of Maui. (APPL 2008/0001) (T. Kapuaala)**
  - a. **BRIAN T. MOTO, Corporation Counsel and MARY BLAINE JOHNSTON, Deputy Corporation Counsel submitting JEFFREY S. HUNT, Director, Department of Planning, County of Maui's Motion to Dismiss Appellants WILLIAM KNOWLTON and CATHERINE KNOWLTON's**

**Appeal of the Director's Decision, Memorandum in Support of Motion.  
The Motion was received on June 27, 2008. (T. Kapuaala)**

**BRIAN T. MOTO, Corporation Counsel and MARY BLAINE JOHNSTON, Deputy Corporation Counsel submitting JEFFREY S. HUNT, Director, Department of Planning, County of Maui's Amended Motion to Dismiss Appellants WILLIAM KNOWLTON and CATHERINE KNOWLTON's Appeal of the Director's Decision, Memorandum in Support of Motion. The amended Motion was received on July 9, 2008. (T. Kapuaala)**

**The Commission may take action on the amended motion and dismiss the appeal or take some other action.**

- b. Selection of a mediator. The Commission may take action to select a mediator.**
- c. Selection of a Hearings Officer. The Commission may take action to select a Hearings Officer.**

Ms. Trisha Kapuaala: Good afternoon Commissioners my name is Trisha Kapuaala from the Zoning Administration and Enforcement Division. The Director recently assigned all contested cases to me. So I'll be seeing you more often as the public may appeal the decision of the Planning Director or one of your decisions, I'll be handling the case.

The basis of this appeal is the Planning Director issued a SM5, what we call a SM5 which is Special Management Area Exemption for Ms. Reeves and a neighboring property owner, Mr. Knowlton appealed that decision. Representing the Planning Director is Mary Blaine-Johnston who is here, Deputy Corporation Counsel representing Planning and also the attorney representing Mr. Knowlton is Mr. Lance Collins and they're here to plead their cases before you.

Mr. Starr: Before we proceed, you know, I know this is a little bit of I don't think I've been a party to one of these before and I guess it's an unusual thing. We have I guess a appeal of the Director's decision and I have no problem using a -- you're a member of Planning staff, Trisha, right?

Ms. Kapuaala: Yes sir.

Mr. Starr: I have no problem though using a member of Planning staff as our staff board even though she works for the director and I also no problem with using I guess as far as counsel, I guess James Giroux will be representing us where there is counsel that's representing Corp. Counsel which is defending the director. So it puts both staff in a difficult position, it puts James in a difficult position and if any members are uncomfortable with it we could theoretically look for outside counsel or outside staff. Frankly I don't personally see a need but I do want to put that out there for members if anyone has a concern or problem with that. And not seeing any, I will ask you to proceed Trisha.

Ms. Kapuaala: Thank you sir. For the record, Mr. Giroux was very careful from the beginning to consult Deputy Corporation Counsel, Mary Johnston because he is your advisory counsel and she is representing the Planning Department, the conflict was noted very early in this case and I'd like Ms. Johnston and Mr. Collins to make their appearance before you.

Ms. Mary Blaine-Johnston: Good afternoon, Mary Blaine-Johnston, Deputy Corporation Counsel representing Planning Director, Jeffrey Hunt. Commissioner Starr, like you, this is the first time I've been in this proceeding so I guess we're going to be learning something new here.

I'm new to Corp. Counsel. I joined it in November and I've been on a really -- learned more in the last few months I think than I have in my whole life. It's been very challenging. I know that normally when an appeal is noticed that the board usually appoints a hearings officer to hear the matter and then make a recommendation and come back to you. And initially when I got -- I was given this notice of appeal to work on, I thought well, I'll just come and we'll go get a hearings officer and proceed accordingly. But the more I looked at the notice of appeal, I became convinced that this appeal has no business being here. That this body doesn't have jurisdiction over the claims being made by Mr. Knowlton.

I provided you with my motion, my amended motion and I forgot to attach one document which you should also have which is the transcript which the whole conditions were --

Mr. Starr: Hold one second. I just want to be clear where we're at with this and what I see happening is you're basically making the case for, I guess, it would be defense where we were getting a presentation on the process. I just want to be clear that you're speaking now against the motion as the counsel for defending the decision, am I correct?

Ms. Blaine-Johnston: Okay, let me clarify.

Mr. Starr: Usually we, I believe in this kind of matter we would be very clear that we give equal.

Mr. Giroux: I think that Trish just wanted the two parties to make their appearances.

Ms. Blaine-Johnston: Okay, I can reserve my comments if you would rather have him go ahead.

Mr. Starr: No, you can go ahead, but I just want to be clear that we're not getting a presentation about the process, we're getting one -- we're getting your presentation.

Ms. Blaine-Johnston: Yes.

Mr. Starr: Your introductory presentation as defense.

Ms. Blaine-Johnston: Okay. The position of the Planning Department is that this body doesn't have jurisdiction to hear this appeal. That it would be -- there's no reason for the planning commission, the Planning Department, the Corporation Counsel to be involved in this dispute which is a dispute about a private easement. Not going to be asking this body to make any determinations of the facts that are raised in the appeal. I'm going to say is the facts assume they're all true, doesn't give

jurisdiction to this body to hear an appeal because there's no basis. It's a private claim. I've attached -- They filed it two weeks after this notice of appeal, they filed a complaint over in the Circuit Court which is where it belongs. And what I'm doing is asking this body, you can rule and you will ultimately have to rule on whether you have jurisdiction, whether you appoint an arbitrator in the meantime to make a recommendation. And it just seemed to me and I can go into more detail either now or later that there's no basis for this body going any further today than to decide to dismiss this appeal and be done with it. So that's basically my position. I have more to say, but if you want me to I can reserve that and come back and give counsel, the appellant a chance to talk.

Mr. Starr: Okay, we'll give you another opportunity then and we'll give the -- I guess the --

Ms. Blaine-Johnston: He's the appellant.

Mr. Starr: I'll give the appellant opportunity to make an opening comment.

Mr. Lance Collins: Good afternoon Chairman Starr and Commissioners, my name is Lance Collins, I'm the attorney for the appellants. Mr. and Mrs. Knowlton are public school teachers. The Knowltons have lived on Maui since I think 1981, and they're actually born and raised on Oahu.

I'm not exactly sure how this process is going to play out but if public testimony is going to be accepted we would like to reserve time to speak to the County's motion after public testimony unless the commission has another preference.

Mr. Starr: Okay, we're going to take a one minute recess. Don't go anywhere. We're in recess we'll be in --

A recess was called at 1:50 p.m., and the meeting was reconvened at 1:52 p.m.

Mr. Iaconetti: We're not in recess because you said one minute, and it's been over a minute.

Mr. Starr: Okay, we're back in order. The Chair will open the floor for public comment.

Mr. Giroux: Testimony.

Mr. Starr: Yeah, for public testimony at this time. This is a contested case so there will not be further public participation but we will open it up for public testimony at this time. So any members of the public wishing to offer their comments please make yourself known. Okay, please identify yourself.

Mr. Frederick E. Reeves: Good afternoon, Chairman, Commissioners. I'm Frederick E. Reeves. My wife is the one noted in this ...(inaudible)... she's on the mainland with her ill mother. This situation came about when I discovered on my own property a rather dangerous situation that I had no idea existed which was an incline that was usually covered by high grass.

As my next door neighbor, 97, was building his new home there were a lot of workmen, a lot of

people coming down the easement A, which is on my property down at the northern end of easement A, and I drove over to that side because I had never driven down the easement because it's behind my house and behind a bunch of trees and I have a large 2000 Chevy van. I almost backed over this culvert and if I had gone down there, I'd never come back out because it's impossible for a car to come back up, it's that steep an incline.

I immediately as a landowner that has several properties, my attitude has always been, if you have a problem on your property take care of it now so you don't pay for it later and so the parking barrier was put in recognizing that people who have never been here before could very innocently do the same thing. And I had observed in the time that I'd live there I'd hear noises late at night, people parking I imagine, just parking because it's a dead end out in quiet land. And I didn't want, after I discovered this thing, for anyone to have the scare that I had. And by putting this 13-inch parking barrier on my property and not allowing people to go over, I didn't have to worry about not sleeping at night and I expressed this to Mr. Knowlton when he said, you can't build that. And I said, Bill, a prudent property owner tries to make sure that you don't have situation that you can end up having someone harmed on your property if there's anything you could do about it. And that's what this is for and that's when all of this started because I was being careful for anyone that might end up there and I certainly didn't want anybody to be harmed or injured. Thank you.

Mr. Starr: Okay, thank you.

Mr. Reeves: I have here a picture that I can pass around. This is the area and if you look at it the parking barrier in no way hampers the ingress or egress that's been going on in the easement for the past 16 years. I didn't know it was an easement when the event happened. All I saw it as was a cliff that someone could go over and I was scared and so I took the action necessary and later on I found out the history of this piece of property.

Mr. Starr: Okay, thank you very much. Any other member of the public wishing to give testimony at this time would be your chance. Seeing none, we will close public testimony on it. And I'm going to ask our planning commission counsel, James Giroux, to give a little bit of an explanation of what our abilities and what possible actions we could take.

Mr. Giroux: Chair, I just want to kind of go over procedurally just so everybody's clear. In your rules under 12-202-26, it lays out the framework for the ability of either an applicant or a member of the public to appeal the decision of a director. So the decision that the director has made that's being appealed is deciding that somebody is exempt from an SMA minor or major. So in the SMA law, we have -- the director has three decisions to make when somebody does an assessment. They can give them an exemption, a minor or a major and then the fourth one is an emergency. Okay, so what we're talking about is the decision was that the director made was that he gave an exemption.

Now, in 12-202-30 says that any appeal is then treated as a contested case. So we're looking under rules under subchapters 3, 4 and 5 which is our rules of contested cases.

Now our rule 12-202-32 gives us the standard about which that decision needs to be looked at as far as the decision making process of the director.

If you go over to Chapters 3, 4 and 5, under the SMA it basically lays down all of the procedural matters that deal with having a contested case. Your first section is 12-201-66 which says that motions are allowed before, during or after a contested case and that's what Corporation Counsel has done. They've filed a motion. It's prior to the contested case as far as how we look at it as an official contested case when we haven't yet hired a mediator or a hearings officer.

One thing that you have to know about your powers and duties is under 12-201-54(b), the hearing officer has a lot of powers. Once you choose a hearings officer, that hearings officer is given the duties to basically manage the case. They have to do the prehearing date, they have to meet with the attorneys, talk about discovery and such. One of the powers that is crucial is that the hearing officer can take and hear motions. Okay. The only thing that the hearing officer can't do is make a ruling on a motion that would be dispositive would basically terminate the case. What the Corporation Counsel has filed is a motion to dismiss. It's one of those motions that are dispositive. You have a choice. You can select a mediator, get hearings officer and have the hearings officer hear this motion but at the end of day that hearings officer would only be able to make a recommendation to you. They would not be able to dispose of that motion. You would be the ultimate decision maker on that because that Charter says that you are the authority in the CZMA.

So the choices are do you want to take on this motion now and dispose of it or do you want to follow the procedure of picking a hearings officer, having the hearings officer meet with the parties, set down, you know, basically get ready for a full-blown contested case and one of his duties would be to hear this motion before he get started and then brief it and bring it back to you before he moves further in the case.

So that's kind of where we're at in a nutshell is how you -- the decisions that you have to make at this juncture.

Mr. Starr: So to clarify we can decide to dismiss, we can decide to hear it or, and/or have a hearings officer and mediator who will take it up and bring it back to us, is that correct?

Mr. Giroux: Yes, that's accurate.

Mr. Starr: Okay, I'm going to allow the two parties to come before us again as requested. So first I'll ask for I don't know if the defense is the right term but Ms. Johnston.

Ms. Blaine-Johnston: Thank you very much. The notice of appeal was filed. It focuses only on, excuse me, focuses only on the parking barrier. While there were was an exemption given for the three tool sheds and the three garden sheds, the appellant is making no claims of being injured by the decision of director to exempt those buildings. And in fact, since the filing of the appeal, those buildings have been moved. They are not in the setback area. The only thing that is alleged about them in the notice of appeal is that there's zoning violations by being in the setback area. They have been corrected and as I point out in my motion, this commission doesn't have jurisdiction over deciding whether zoning violations have occurred.

So the single issue is whether or not the parking barrier interferes with the Knowlton's private property access rights. And throughout the notice of appeal, the statement is made, "the easement

comprises a right of way to pass freely," it's on page 1, it goes on, "the easement comprises of a right of way to pass freely with all means of conveyance. The parking barrier obstructs ingress and egress, the wall obstructs the use of the easements by the Knowltons and interferes with the quiet enjoyment of their property."

As I point out there is no basis for this commission having deciding an issue, it's a private property rights issues. So that's number one. The motion of dismiss is brought primarily on that point.

In the memorandum in opposition to the motion, the appellant states that, on numbered page 2, that, "the Knowlton's have standing to bring this matter before the commission under the CZMA, Coastal Zone Management Act, and characterizes that act as one to protect the interest of the public in coastal areas." In the notice of appeal, the appellants state that their interest in the decision is clearly distinguishable from that of the general public. And that is a correct statement. There is no -- none of the objectives that are set forth in the CZMA are objectives that this appellant has in bringing this matter. I've listed the 10 objectives of the CZMA, the recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection and marine resources. This property is not on the coastline. The Knowlton's don't have a right to come onto Mr. Reeve's property for recreation. There's no allegation of historic resources. So simply the interests are not interests under the Coastal Zone Management Act.

Recognizing that a very slim read forms the foundation of this appeal, the appellants quote from the conditions that were imposed at the time the subdivision SMA permit was granted. And what is stated in the notice of appeal is that "the petitioner," one of the conditions, Condition 6, "the petitioner shall provide for maintenance all drainage ways or easements on the property." There's nothing in the notice of appeal that suggests that drainage is an issue with the property interest that the Knowltons have. It's only when we get to the memorandum in opposition after the department has pointed out that the only mention of easement during the hearing on the conditions was drainage easements. That all of a sudden now there's a claim made for a drainage. Drainage is a problem. That was not an issue that was not a basis of the appeal, I've included in the notice of appeal. It cannot be put in now. That's waived. He's not claiming that drainage is problem.

Then again to try to make it appear as though perhaps the commission should be enforcing the conditions that are somehow being violated by this parking barrier. The appellants cites Condition No. 25, excuse me Condition No. 22, "the petition, its successors, and permitted assigns shall exercise reasonable due care to third parties with respect to all areas affected by the subject special management area use permit." With the suggestion that somehow by placing this parking barrier so people won't drive over the edge that the Reeves are not using, exercising reasonable due care to third parties. Au contraire you heard Mr. Reeves state that by putting the barrier there it was his intent that people would not go over the hill. And if you look at the picture you will see the parking barrier and behind it you'll see another, looks like a gate of some sort. I'm told by Mr. Reeves that that gate was put there by the Knowltons for the same reason, to make so people couldn't, wouldn't drive over the edge.

The Reeves is the what we call the servient easement owner. The servient owner is the one that the easement goes over their property. Has a duty to maintain the easement. The dominant

easement holder also has a legal duty to maintain that easement and also under these same conditions, the Knowltons have an obligation to exercise reasonable due care for that particular cliff as was described by Mr. Reeves. So there's no basis in this appeal that gives this body jurisdiction to hear it, to appoint an officer to draw the conclusions. And we're not asking you to make any rulings on whether a) there is an easement, b) whether it's being obstructed because all that's over in the Circuit Court. And if mediation seems appropriate, the Circuit Court can order the parties to mediate. I can see no reason, and this may be the only time that this ever comes up, it is kind of unusual, see no reason for any more time or effect of the County, money, the Planning Director to continue to have to be involved in this matter which is clearly a private beef and not properly before this board.

So I would ask that the commission simply dismiss this appeal and let it continue on in Circuit Court where it's presently at issue. Thank you very much. Questions?

Mr. Starr: Thank you. Members any questions for Ms. Johnston? Okay, thank you. Wait please, Commissioner Hedani.

Mr. Hedani: Ms. Johnston, by dismissing the appeal, are we canceling a right that they would normally have under normal circumstances to appeal the director's decision?

Ms. Blaine-Johnston: You mean in other circumstances?

Mr. Hedani: Right, well say they haven't filed a case in Circuit Court and they filed a motion to appeal the director's decision, by dismissing their case are we canceling their right to that procedure?

Ms. Blaine-Johnston: No, no, it would have no effect on it. I mean, they're free -- whether or not they had filed a complaint in court or not they would still be free -- it's not kind of determination on the merits of this claim which is simply that you're in the wrong place. Go to the right place if you want to take this issue up. I don't know if that answers your question or not.

Mr. Hedani: It sort of confuses me more.

Ms. Blaine-Johnston: Oh okay, right. You have a choice. If you have a issue that you want to litigate with another party, you have maybe several choices of where you can go. Some cases you can -- you can take some cases to Federal Court, some cases to State Court, some cases could be in either court, some cases Federal Court with State claims there. The principal is you can't -- it's called forum shopping. You can't file here and here and here and here on the same claim. You have to put your claim before one body to make a determination. And by dismissing this case, there's forum shopping going on. First they file here and then they go over to court. And so okay, where can I win the most. Well, they're asking a lot of money over in court, but they're also asking for a determination about whether that easement is being violated. The private interest. I mean, there's no right for the public to come on this easement. And by dismissing here you're saying, no, what your claim is we don't have -- we don't believe we have the ability to hear that and make a determination. But it doesn't preclude the case that's over in Circuit Court from going on and on and on.

And I will also tell you that if you don't have jurisdiction and you're in a court situation, that issue of whether the case is properly before that court can be raised at any time and so you have -- you have a case that's filed, it goes on for years, it goes through six months jury trial, there's a decision that gets appealed. Nobody ever raises jurisdiction as issue. It gets up to the Supreme Court and the Supreme Court says, oh, there's no jurisdiction, it's all out the window. You know, and that can happen.

And so what my goal here is bring this kind of unusual motion is just say we don't have jurisdiction now let them go ahead and fight it out in the Circuit Court where it's properly placed. But as far as the merits of the claims, no there's impact on that at all.

Mr. Hedani: In my head because I'm not an attorney, if the director makes a decision and the decision is something that you don't agree with, your recourse is to appeal to the commission.

Ms. Blaine-Johnston: Generally yes.

Mr. Hedani: Which is what they're doing.

Ms. Blaine-Johnston: But you have the basis for why you're appealing that. If they -- if in fact, the property were on the coastline and this barrier was put there and it was creating a problem and it would be an issue that fall under CZMA and yes, you would have the right. And yes, the case law that is cited in their brief talks about the public's right to come in whether you're hurt or not under the CZMA to make these claims but they're not the public and he stated in his appeal, this is not the public coming in. There's no public interest here at all. It's totally a private interest with a limited, with the limited exception that the terms of the use permit that was put in place at the time the subdivision was granted and in that, there's nothing that says, that gives any power to enforce private property access easements. The only easements referred to is drainage for obvious reasons and that claim is not in this appeal.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Since the storage shed issue seems to be resolved they have been removed from the setback areas, why is an exemption required for a two-foot high barrier that's 8 to 12 feet wide? And I guess the follow-up question, was the exemption granted after the fact or before the barrier was constructed?

Mr. Starr: How about I'll ask Trisha to answer that?

Ms. Kapuaala: Thank you. Any development, any structure being erected, any action which means a new use or construction needs a SMA assessment. There are a number of different types of development that we consider a non development and therefore can be exempted. So because this was a minor action it was deemed exempted from a minor and make the permit process.

Mr. Hiranaga: But it s till takes some type of action from the director to exempt it. So if I were to put in a six-inch high curbing around my garden because I live in the SMA area I'm supposed to get a determination from the director?

Ms. Kapuaala: We do get those questions from the public and the technical answer is yes, by the letter of the law.

Mr. Hiranaga: Don't come over to my house.

Mr. Starr: Commissioner Pawsat.

Ms. Pawsat: I don't understand. Is that the issue or is the issue that that six-foot high curb is also blocking an easement so it's doing two things, right?

Ms. Kapuaala: The issue is --

Ms. Pawsat: And ...(inaudible)... blocking the easement is a violation of the SMA which was granted in 1992. According to the SMA they can't block that easement and then by building the wall they broke that easement. But then they came back and then that was deemed no big deal to block the easement, is that what you're saying.

Ms. Kapuaala: The claim from the appellants is that that's correct, you stated it correctly. The issue that the Planning Department is raising is that the act of exempting it wasn't an error by the Director. The act of erecting it in a easement is one issue. The act of the Director exempting that development was not in error by the Planning Department. So I guess that's two separate issues if you could see how that's separate.

Ms. Pawsat: But when did they exempt it? Are you saying they exempted it in 1992 or are you saying they exempted at what point?

Ms. Kapuaala: They exempted it this year.

Ms. Pawsat: Yeah.

Ms. Kapuaala: It was exempted this year and according to your rules, the appellant had 10 days from the day that you were notified that it was exempted. He timely filed that exemption and part of his claim was that that act of exemption violated the original subdivision's SMA, SM1, SM Major.

Mr. Starr: Okay, thank you very much Trisha. And now I'd like to call on the appellant.

Ms. Blaine-Johnston: Can I just add one thing?

Mr. Starr: Very briefly you may add on very brief.

Ms. Blaine-Johnston: The conditions that were imposed don't speak to an assessment, ingress and egress. That's a private property interest that is not regulated through the SMA process. All that you can -- the only condition that comes close is you've got to maintain drainage ways and drainage easements and that's the only condition. The only easement that's mentioned in those conditions which are attached to memo are drainage. That is not part of this appeal. It's not put in the notice of appeal. He's trying to resurrect it in a memo of opposition but it's not -- whether or not that barrier

is blocking that easement this is a part of the conditions.

Mr. Starr: Thank you. Mr. Collins.

Mr. Lance Collins: Thank you. First to start of and I think I don't want to belabor any of the points that have been made already, but the issue before the commission today is an appeal of the director's decision. That issue is not being brought up in Circuit Court. There's no other forum where the director's decision may be appealed. If the Knowlton's tried to appeal at the Circuit Court it would be thrown out because for failure to exhaust administrative remedies. This is the forum where the issue of appealing the director's decision may be brought. And so any arguments made contrary to that are simply wrong. There is no other forum to appeal the director's decision because in your own rules this is the place to do it and so that's why the Knowlton's have appealed this issue here.

There are other issues related to the easement that are in the Circuit Court because that is the proper forum but the whole issue about this issue needing to be before the Circuit Court is wrong. You folks do have jurisdiction and you are the only folks that have jurisdiction over this issue.

Second, in the notice of appeal if you look on page 3, the wall is mentioned. Page 3 also mentions the point of appeal to the 1992 SMA permit, both the drainage and the duty of care. Page 4, talks about the storage sheds. Page 5 talks about the garden structure and page 5 also talks about the applicants engaging in unpermitted activity. And so all of these issues were brought up in notice of appeal. It wasn't a surprise in the memo in opposition.

One issue also to point out is that the County, the appellants disagree with the County. The coastal zone management act does involve this property and that's why there is an SMA exemption that was asked for and granted. So to say that this is not part of the CZMA it makes no sense whatsoever. The director's whole action is predicated on the fact that this area is within the CZMA otherwise nobody would be right. It's perplexing and I don't understand the basis for that, but this property is within the CZMA, that's why the director exempted and that's why we're here appealing it today.

You know, I don't want to belabor my written pleadings, but this is an appeal of the director's decision. When a motion to dismiss is made, all facts that were plead in the appeal are to be taken as true and all inferences are supposed to be viewed in favor of the appellants. All of this additional information from what he said or she said or copies of minutes from things 15 years ago are not properly before the planning commission unless they're planning to begin the contested case proceeding, in that case, then of course, both sides would have the opportunity to present evidence. But a summary disposition where the county tries to bolster it's claim that a claim has not been made before you folks by adding all of this other outside information is irregular and inappropriate. So of course, we ask that you deny the motion to dismiss and either send us to a mediator which may be possible since some of the actions are claimed to have been changed or to hearings officer for a contested case proceeding. Thank you.

Mr. Starr: Okay, questions for? Commissioner Hedani.

Mr. Hedani: Lance, are you forum shopping?

Mr. Collins: No. No, forum shopping is when you go to the forum where you think you'll have the best result. There's no forum shopping for the appeal of the director's decision the Knowltons have come here and for the issues that are properly before the Circuit Court they've gone there. And there's no -- the director's decision is not being discussed at the Circuit Court because it would be inappropriate because the Knowltons have to exhaust their administrative remedies before they can take this issue to the Circuit Court.

Mr. Hedani: So they're not in Circuit Court now?

Mr. Collins: They are in Circuit Court but not on this issue. They're in Circuit Court over the obstruction of the easement but this issue is not about the obstruction of the easement. The issue here is that the director granted an exemption to the SMA permit process and the Knowltons believe that that was wrong. And under the SMA practice they have a right -- I mean, if the development were bigger or wasn't granted an exemption and had to get an SMA permit through you folks, the Knowltons would have the right to intervene as neighboring property owners and the fact that they have property interest in the property itself, the easement.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: What kind of easement are we talking about?

Mr. Collins: Well, legally it 24 feet wide.

Mr. Hedani: Is that an access easement or a drainage easement?

Mr. Collins: Well, when it created, it was created - the easement was created for a number of purposes, utilities and some other things. When the SMA permit in '92 was issued it was part of the drainage. It was used to be part of the drainage plan and I cite that a little bit in the memo in opposition to the motion to dismiss.

Mr. Hedani: Is the easement an access easement or a drainage easement?

Mr. Collins: What I'm saying is over time now it's become that and other easements as well. It's also now a utility easement.

Mr. Hedani: It's a utility and drainage easement.

Mr. Collins: Utility and access easement from way back when and since 1992 also involves drainage. But the issue about whether, as we said, the issue of whether No. 6 of the SMA permit says it only relates to drainage easements is a fact issue that the hearings officer would have to determine and it couldn't be determined at this point because it is a factual issue. It's not a legal issue but that's what we said in our memo in opp.

Mr. Starr: Okay, Director, you're a party to this so I would be cautious about jumping in too much.

Mr. Hunt: As I understand it the director has three choices on an action inside the SMA. We can either exempt it or we can find it's a minor or we can find it's a major. So if you're arguing it's not exempt, you're saying then it's a minor permit or perhaps a major permit?

Mr. Collins: Well it depends because the plans keep on changing. But very likely it might be a minor, but it could also be a major. I mean, I have no idea how much all of that work cost. But of course, that wasn't in the application anyways. The application was incomplete as we mentioned in our notice of appeal. So, who knows? Hypothetically, who knows what the other possibilities could be because we don't have a complete application which is one of the reasons why we appealed your decision.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: So, if you were to physically verify that the storage shed and garden structures were removed from the setback areas and the only point you're appealing is whether the approximately two-foot high barrier that's approximately eight to 12 feet wide should not have been exempt, but should have probably received some type of a SMA permit. Are you willing to concede that the storage sheds and agricultural structures were removed from the setback area.

Mr. Collins: Yeah, you know, that wasn't the director's decision and so that would be purely speculative. The Knowltons are appealing the director's decision to exempt all of those things. Whether or not they've changed or not, there still has been an exemption and that's what's being appealed from. I don't know personally. My understanding is all of that other stuff has not been removed by of course that again would be a factual determination for a hearings officer to make. It would not be properly resolved on a motion to dismiss.

Mr. Hiranaga: So you're not willing to speculate if the shortage sheds and garden structures were removed that the only point in contention is the two-foot high barrier wall.

Mr. Collins: Well, there's a drainage issue, the fact that the application wasn't complete. There's a number of issues that the illegal activity, unpermitted activity was engaged in. So there are a number of things in the application and that's why I'm trying to say is that, yeah, that is one of the issues but there are a number of other issues that are being appealed from the director. So even if those things were taken away, there would still be other things other than the wall.

Mr. Hiranaga: I guess I have a question for Corp. Counsel.

Mr. Starr: No, for our counsel.

Mr. Hiranaga: For our counsel, the County Planning Commission's counsel, an SMA determination would not be involved in determining the legal and authorized uses of a easement area. It seems to me that that would be a property rights issue that would be handled in some different arena.

Mr. Giroux: I think what the board should look at in your rules is in 12-202-12 and that's your assessment and determination procedures and I think you should look in that and look at what the procedures are and what an application should involve and what the director has to do in order to

process an assessment. And within that it basically sets out everything that the director has to take into consideration when giving an exemption. At the end of doing that evaluation then he has his five choices of what to do with that application. So, the issue of whether or not there's other land use issues involved and such, you have to look at the criteria as far as what – it goes all the way from A to L as far as all the things that the director looks at before he gives an exemption.

Mr. Starr: Okay, thank you Mr. Collins, oh hold on. Commissioner Mardfin.

Mr. Mardfin: I really hate to get involved in this because my inclination is that it isn't under this criteria. But I'm curious, this is more out of curiosity than anything else, how was the easement, how has the easement been used over the years since 1992?

Mr. Collins: Well, actually the easement's been used much longer than that. The Knowlton's property is part of the original Peahi Land Hui Partition and the Reeves property was part of a, sort of a gentleman estate subdivision in Haiku that's next to it. The problem is is that subdivision included lands that were part of Peahi Hui Land Partition and so there are certain roads, excuse me and trails, and all sorts of things that when that was done in the '30's got incorporated. And so easement A which is from Holokai Road is one of the only ways to get into the Knowlton's property in and both neighbors on each side.

Additionally, easement A connects to two easements that run over one of Mr. Knowlton's neighbors that connect to the Knowlton's property. And it has been used, the northern end of the easement where the wall and the garden structures are in has been used less frequently but Mr. Knowlton does engage in agricultural activity on his farm and does have a number of mango trees that now are actually ready to harvest.

Mr. Mardfin: So he drives down this?

Mr. Collins: He has yes, in fact, he did a crusher, crusher run improvements over the –

Mr. Mardfin: And now he can't drive down there?

Mr. Collins: No, he can't drive down there. Of course, you know, as the trees were growing he wasn't really driving down it very much, but it is used. It's not used every day and it hasn't been used every day, but it has been used, it was not abandoned.

Mr. Mardfin: When was the last time that he used it? Approximately.

Mr. Collins: I think my understanding – well, with a vehicle it was before the wall was constructed, but my understanding is –

Mr. Mardfin: Is it 10 years before the wall was constructed?

Mr. Collins: No, no, very recent. In fact there was a – the gate, I didn't see that picture and I'm not sure this is entirely relevant for the motion to dismiss, but he did construct a gate that said do not block drive and did use it and then of course, the wall went up right in front of it so –

Mr. Mardfin: Was the director aware of that situation?

Mr. Collins: I doubt it.

Mr. Mardfin: To the best of your knowledge.

Mr. Collins: At least from the public records that the Knowltons used to appeal his decision, I don't think so. The application was totally incomplete.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Lance, what is the action that's in Circuit Court?

Mr. Collins: The action in Circuit Court has to do with the blocking, the blocking of the easement itself.

Mr. Hedani: Blocking of access.

Mr. Collins: Blocking of access, essentially interfering with the Knowlton's property rights and also some zoning issues.

Mr. Starr: Okay, thank you Mr. Collins. Okay, members now we would be open to a motion. The motion could possibly be to dismiss, it could be to grant, it could be to select a hearings officer and I understand that with a hearings officer goes a mediator by statutory requirements. So what's your pleasure?

Mr. Mardfin: May I ask our Corporation Counsel a question?

Mr. Starr: No, you can ask the planning commission counsel.

Mr. Mardfin: That's what I meant.

Mr. Starr: Yeah, okay.

Mr. Mardfin: I don't quite know how to ask this, but if the contention is – if it is accurate to say that this does not affect the drainage easement, but it's a different kind of easement, an access easement and not involving the public because it's a private easement, what responsibility does the Planning Director have to take that into account in making a determination?

Mr. Giroux: I think that's the bone of contention I think you're going to get different answers from both parties as far as that issue. I think what you have to understand is that the Planning Director is given the discretion to process these assessments and make determinations. You have to understand that he is given a broad brush of responsibility in that he has to follow the policies and objectives of 205A and he has to follow the rules of the planning commission which spells out a lot of factors which has to take into account and he can weigh within those factors he also has the discretion to weigh a lot of pros and cons within those factors. What an appeal, and if you look at

the disposition of the appeal is that the final question is is in that process was the decision based on a clearly erroneous findings of material fact or erroneous application of the law or was it arbitrary or capricious in its application or is it a clearly unwarranted abuse of discretion? And so that issue would be wrapped up in the analysis of what did the director do to get to his determination that an exemption was warranted because whatever action, whatever action was taken was not a development. And what you have to understand is, is that, not only do we as a board don't have jurisdiction over nondevelopment but the director is the one that determines whether something is a development or not. And so basically to come to the bone of the matter is is his analysis so flawed using the criteria of an appeal that you find that this action is actually a development therefore warranting a permit? Because once the determination of an exemption is made, then it's not a development and therefore, not only do you not need a permit, but all of your actions therefore are no longer under the jurisdiction of the planning commission. So that's a real thin road.

And to answer Member Hiranaga's question when he goes out to plant roses every time does he have to go get Jeff's permission and that's a very crucial question because then at some point Mr. Hiranaga's rose garden is going to raise some flags and the Planning Department is going to come investigate to see why he's blocking the view. But you see how difficult it is and that's why a director is given the discretion to evaluate a project to find out if it reaches the level of a development or not, and if it doesn't then his decision is it's not a development. But then our rules give you and the public one more crack at it to review and say well, was he right or was he wrong, did he abuse his discretion, was it clearly unwarranted, abuse of discretion, or did he not follow the law?

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Jim, in your opinion, does this commission has jurisdiction?

Mr. Giroux: I'm going to stay away from that because I think that's for you to determine. Because you got nine heads, you can knock it around, kick each other, bite each other and decide whether or not you want to make that decision.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Just to clarify. There are three points of contention by this appeal. One is the wall, one is the storage sheds and one is the garden structures. Is that correct? There's three points of contention in this appeal.

Mr. Starr: Trisha.

Ms. Kapuaala: I'd like to defer that question to Mr. Collins.

Mr. Starr: Okay, be brief, but Mr. Collins.

Mr. Collins: Again, there's six. There's the wall, there's the 1992 SMA permit, there's the storage shed, the garden structure, the engagement in unpermitted activities and the incomplete application. Yeah, there's six, six items.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Someone made the statement that those garden structure and storage sheds have been removed from the setback areas, is that correct?

Ms. Kapuaala: Hi. Yes, as a result of Mr. Knowlton's appeal the department's Zoning Administration Enforcement Division filed a request for service and what that does it triggers an inspector to go out there and work with the landowner to resolve the issues. According to the report by the inspector, those structures have been moved from the setback area. So the issues of zoning violations have been resolved.

Mr. Hiranaga: Okay, thank you.

Mr. Starr: Okay, members now would be a good time. Dr. Iaconetti.

Mr. Iaconetti: I wonder if we could ask the director his reasoning behind his exempting the SMA?

Mr. Giroux: You should probably reserve that for an actual –

Mr. Collins: We'll object, the Knowlton's will object if you folks start taking evidence.

Mr. Giroux: It should be under –

Mr. Starr: Yeah, so I'll have to rule that out of order procedurally. Commissioner Hedani.

Mr. Hedani: Question for the commission's counsel. Can we dismiss the case without prejudice so that they can come back before us again in the future?

Mr. Giroux: I didn't prepare for that one. You know, the thing is I think there should be a dispositive decision, I mean, something that actually deals with it because if we're wrong, Mr. Collins can take our decision to Circuit Court. It doesn't leave him in limbo if we're wrong. You know, you make a decision, you're wrong it gets appealed to the Circuit Court. There's also injunctive relief. I mean, if the director is absolutely furiously wrong the 205A allows for injunctive relief with the court. So you know, your decision now is because of your rules. You're interpreting your own rules and you're given broad discretion to do that, but 205A is the ultimate authority and the Circuit Court actually holds that injunctive powers. So if the director's, you know, like I said, absolutely furiously wrong, then there still is a remedy.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Can they appeal, if we were to move this onto a hearings officer can they appeal the hearings officer's determination?

Mr. Giroux: Well, what would happen is that the hearings officer in accordance with your rules would listen to the motion to dismiss. If you decide at this juncture not to take it, the hearings officer would merely listen to both arguments and prepare a memorandum for your review and a

recommendation of whether or not you should dismiss it or not. And then at that point if you decide not to dismiss it then the hearing officer would be given the green light to go ahead and start taking evidence on the merits of the case.

Mr. Starr: Okay, members would anyone like to –

Mr. Mardfin: Can somebody tell me, I'm looking at this thing, can somebody tell me where it says that it was considered exempt? Is there a page in here that shows that?

Mr. Starr: Trisha.

Ms. Kapuaala: Commissioner Mardfin, that page right there is the actual exemption that the director issues.

Mr. Mardfin: Oh.

Ms. Kapuaala: It should list on there the authority by which the director has – the rule that states that the director has the authority to exempt. That list of blank boxes and one of those should be checked.

Mr. Mardfin: It says the proposed construction was determined to be structural and nonstructural improvements to existing single family residences where otherwise permissible.

Ms. Kapuaala: Yes sir. That is the list of criteria where the director has authority to exempt any action within the SMA. The director found that that was the criteria that authorized the exemption.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hedani: I have a question for staff.

Mr. Starr: Okay, Commissioner Hedani go ahead.

Mr. Hedani: Trisha in terms of sequencing of the improvements that were put in place, was the gate put in before the wall was put in or after the wall was put in?

Ms. Kapuaala: I'm sure of the sequencing, the history of the property. I'd like to defer to either Mr. Reeves, would you like to answer that question?

Mr. Collins: Again, the Knowlton's would enter objection ...(inaudible – not speaking into a microphone, speaking from the audience)... That's the whole point of why –

Mr. Starr: Okay, please you're out of order Mr. Collins.

Mr. Collins: Our objection is on the record.

Mr. Starr: But I would request that we stay out of the details of the issue, but Commissioner Hedani.

Mr. Hedani: Well, I have a question for Lance Collins in that case.

Mr. Starr: Okay, Mr. Collins please come up.

Mr. Hedani: Mr. Collins, the gate that was put in over the easement was that put in before or after the wall was put in?

Mr. Collins: Again, the Knowltons are going to have to object because that we believe is properly part of the contested case proceeding and should not be considered for a motion to dismiss.

Mr. Hedani: So you're refusing to answer?

Mr. Collins: Well, we believe it's inappropriate and so we're objecting. We're objecting to that question.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: I have one more question. When did they put in the gate, did they get an SMA exemption?

Mr. Collins: Again, that's I'm going to have to say that all of that stuff, that's the whole point of having a contested case. You folks aren't supposed to – that's part of our opposition to this motion is that we don't believe it's appropriate to essentially try to do an end run around the contested case proceeding. You can only look at what the appeal said and if it's deficient, if the appeal itself is deficient then it's appropriate to dismiss it. But if it's not, you can't consider things that are not part of the notice of appeal and that's where our objection will continue. That all of these factual things the county is trying to bring up are irrelevant for this part of the proceeding.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I agree with Lance Collins that we shouldn't be inquiring into these sorts of things. I move to dismiss the appeal.

Mr. Starr: Hold on a sec, Commissioner Hiranaga first.

Mr. Hiranaga: No, actually I was going to make a motion.

Mr. Starr: Okay, whichever you guys want to make a motion.

Mr. Hiranaga: I will second Commissioner Mardfin's motion.

Mr. Starr: Okay Commissioner Mardfin please restate your motion.

Mr. Mardfin: I move to dismiss the appellant's William Knowlton and Catherine Knowlton's appeal of the director's decision.

Mr. Starr: And Commissioner Hiranaga, that was a second?

Mr. Hiranaga: Yes.

Mr. Starr: Okay so we have a motion on the floor by Commissioner Mardfin, it's been seconded by Commissioner Hiranaga and I'll restate the motion which is to dismiss the appeal. Is that properly stated Mr. Giroux? Okay, to dismiss the appeal. Discussion? Dr. Iaconetti.

Mr. Iaconetti: With the passage of this motion completely eliminate any other attempts by Mr. Knowlton to object to the fact that the exemption was granted since this is our kuleana right now. We're the determining group.

Mr. Giroux: To answer the doctor's question, this would be the last administrative juncture, the next level is in the circuit court.

Mr. Starr: Okay, members you ready to vote on the motion? Okay, the motion is to deny the appeal, dismiss, I'm sorry. Dismiss the appeal. All those in favor, please raise thine hand. All those opposed?

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

**VOTED: To Dismiss the Appeal by Lance D. Collins, Esq., Representing William and Catherine Knowlton.**  
**(Assenting - W. Mardfin, K. Hiranaga, J. Guard, B. U'u, D. Domingo,**  
**J. Pawsat, W. Hedani, J. Starr)**  
**(Dissenting - W. Iaconetti)**

Mr. Starr: Okay, I count 8 in favor and 1 against. And someone back me up. Did I count right?

Ms. Kapuaala: You did right.

Mr. Starr: Okay, so the action has been taken.

Mr. Giroux: Chair, just for procedural, I would like the Corporation Counsel to draft a findings of fact, conclusion of law based on the granting of your motion and serve a copy of that on the opposing party and then we'll get that back and then we will then adopt that findings of fact, conclusion of laws and then execute it.

Mr. Starr: Okay, is that – anyone have a problem with that? Not seeing any, please proceed, and thank you all for your time. And hope you make your appointment Lance, sorry it took so long.

Okay, we're going to take a recess. We'll back at 3:00 p.m.

A recess was called at 2:50 p.m., and the meeting was reconvened at 3:00 p.m.

Mr. Starr: Commission is back in session. We're up to Item E-1. I turn it over to Director Hunt.

Mr. Hunt: You're next item involves New Business. The first item, the only item under that is WILSHIRE DMK I LLC requesting an Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the Special Management Area Use Permit for the Alahahele Subdivision, a 48-residential lot subdivision at Alahahele Place, TMK: 3-9-17: 034 in Kihei. The file numbers are (EA 2007/0009) and (SM1 2007/0006) and the planner assigned to this is Jim Buika.

## **E. NEW BUSINESS**

- 1. WILSHIRE DMK I LLC requesting an Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the Special Management Area Use Permit for the Alahahele Subdivision, a 48-residential lot subdivision at Alahahele Place, TMK: 3-9-17: 034, Kihei, Island of Maui. (EA 2007/0009) (SM1 2007/0006) (J. Buika) (Draft EA reviewed on April 8, 2008. Commissioners: Please bring your materials with you.)**

**The EA trigger is the use of State or County lands.**

**The Commission may issue a Findings of No Significant Impact (FONSI) determination or take some other action.**

**The public hearing on the Special Management Area Use Permit will be scheduled for a later date after the Chapter 343 process has been completed.**

Mr. Jim Buika: Good afternoon Chairman Starr and Commissioners. I'd like to thank all of you for your expertise and your continued commitment to the people of Maui County. My name is Jim Buika, Planner with the Planning Department and the purpose of the agenda item is for the Maui Planning Commission to take action on the final Environmental Assessment which has been distributed to you.

With me today is the applicant's representative Mr. Cary Marks as well as Chris Hart from Chris Hart and Partners, consultants to the applicant on the project. The applicant Wilshire DMK 1 LLC is requesting a finding of no significant impact from the commission for the final Environmental Assessment for the planned Alahahele 48-lot residential subdivision, lots only development project in Kihei.

The EA trigger is the use of county lands to develop a portion of the north-south collector road as part of the subdivision project. The Maui Planning Commission is the accepting authority and the draft Environmental Assessment was reviewed by you at the regularly scheduled Maui Planning Commission meeting on April 8, 2008.

At that time, five changes were requested by the Maui Planning Commission. Chris Hart will follow my introduction by reviewing each of these five change requests in the final Environmental

Assessment.

Here are the options before you. In consideration of the 13 significance criteria defined in the Department of Health rules relating to environmental impact statement, Section 11-200-12, Hawaii Administrative Rules, the commission may take one of the following three actions today on the document.

Option one is to accept the final EA and issue a Findings of No Significant Impact determination. With this the commission determines that the proposed action will not have a significant impact on the environment and that potential impacts have been adequately mitigated. As such the commission issues a FONSI determination. If this is your determination the department will transmit the said determination to the Office of Environmental Quality Control for publication which initiates the 30-day legal challenge period. If the determination remains undisputed the department will continue processing the SMA application.

Option two is to defer the final EA if you find that additional information is required to make a determination on the final EA.

And the third option is to prepare an Environmental Impact Statement. In this case, 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.

The department's conclusion is that upon reviewing the final EA, the department concludes that the project as proposed with mitigation measures does not pose a significant impact relative to Section 11-200-12 of the Hawaii Administrative Rules and the department's recommendation is that we recommend that the commission accept the final Environmental Assessment and issue a Finding of No Significant Impact determination at today's meeting.

If you do this, in the future at a future meeting the Maui Planning Commission will conduct a public hearing and review the SMA Use Permit application. This concludes the department's remarks about the project's final EA and if there are no questions and with the Chair's permission I would like to turn the podium over to Mr. Chris Hart to discuss the changes in the final Environmental Assessment. Chris Hart has a short slide presentation.

Mr. Starr: Yeah, just before they begin, how long will their presentation be approximately?

Mr. Buika: Less than 10 minutes.

Mr. Starr: Okay, please proceed.

Mr. Chris Hart: Thank you very much Mr. Chairman and thank you very much Jim. I will say that Jim's been a great member of the staff to be working with and we appreciate it.

Besides Mr. Cary Marks who is our client from Wilshere DMK LLC. We also have Michael Wright of Michael Wright and Associates who's the project manager. We also have with us today our civil engineer, Stacy Otomo and our traffic engineer, Mr. Phillip Rowell. And I'd also like to mention Brett

Davis who has been the planner from our office on this project.

The Alahahele Subdivision, the proposed subdivision is located in Kihei adjacent to Piilani Highway with access from Alahahele Place and Auhana Road from the future north-south collector road. The project will result in a 48 lots only subdivision with necessary supporting infrastructure and the option of building an ohana unit on each lot.

This slide basically gives us a sense of the location of the project in order to refresh your memory. This is Piilani Highway and our project site is located immediately makai of Piilani Highway. The access that we're proposing is from the intersection of Kanani Road, Kanani Road actually runs all the way down to South Kihei Road which is on the bottom and Auhana Road. And this actually is the proposed alignment of the north-south collector through our project site and this portion of the north-south collector right of way is a portion that actually has been set aside already and belong to the county.

The subdivision and landscape plan we have provided for a passive park, bike path, the actual north-south collector. We have street trees and we also have a bike path along the north-south collector that we're proposing.

Planning Commission comments on the draft EA and again this was in April 8th of this year. Number one was to incorporate a sustainable design elements in the CC&Rs this has been discussed in the final EA on page 13.

The second was the reduction of the sales price of the lots. This was discussed on pages 14 and 15 of the final EA.

The third was the education impact fee, compliance with that and that's discussed on page 18.

And then the fourth was the cultural impact assessment to actually reinforce the comments that were basically originally requested. And that is actually in Appendix I.

And then the fifth is the drainage, involves drainage improvements which is on pages 20 through 22.

The draft EA comment responses, "the applicant will incorporate sustainable design elements into the CC&Rs to be managed by a homeowners association," The applicant is willing to work with the Maui Planning Commission during the SMA permit process to reduce conditions or reduce project fees as incentives to reduce sales prices of lots in an effort to expand owner occupancy opportunities to working families of Maui. And as Jim pointed out there will be further detail that will be forthcoming in the context of the SMA permit and some of that detail can actually be established in the context of conditions of the SMA permit.

The education impact fee. Act 245 relating to education was passed into law in 2007. The applicant has been in touch with the Department of Education and we will comply with the requirements of Act 245. Act 245 requires that the applicant have an agreement in place with the Department of Education prior to final subdivision approval. It involves the actual execution of a

worksheet and work plan as an agreement.

The cultural impact assessment, Scientific Consultant Services, SCS Incorporated, distributed a second round of letters dated May 12, 2008 to organizations and individuals. You gave a 30-day response period. No responses were received from the second round of letters because there were no cultural activities identified within the project area there are no adverse effects with regards to the cultural impact.

Now the subdivision and grading, I'm going to initially go over this and then as indicated to you Stacy Otomo is present in the audience and if there are a need for further clarification or questions, we'll certainly -- he can answer those questions.

We've actually worked with the Department of Publics primarily with Joe Krueger of the department and discuss the issue of drainage. This site has a site that actually has been vacant for a long period of time. It's been actually planned for residential development and zoned since 1969, '68 and '69. As part of the issue there was some concern about drainage and so we have taken the initiative and actually identified substantial retention area on site in this location.

And then a another one at the lowest end of the site and in addition in order to actually make an impact on the offsite flows that flow through the site, we have actually taken an abandoned segment or section of Kananui Road and actually in conjunction with conversations with the Department of Public Works and designed another retention area to further basically mitigate off site drainage impacts on the site.

Our anticipated impacts. The proposed project will increase runoff by 18.55 cfs and all of this runoff, all of it that's generated will be retained on site. Mitigation measures beyond this would be onsite detention basin with a capacity to retain present 50-year storm runoff and the additional 18.55 cfs of onsite runoff. So in other words, what is actually generated onsite in terms of a 50-year storm would actually be retained all of it, 100% of it together with the 18.55 cfs onsite. In addition we will mitigate the entire 50-year storm, not just the increase on site. The additional onsite and offsite Kananui Road detention basins will reduce the peak 100-year flow.

Now this was one of the requests to actually show the existing drainage to actually give you an idea how it actually traverses the site and how it actually continues through this older subdivision below Alaloa Road down across South Kihei Road through Kalama Park to the ocean. Now this portion is existing, and then this portion -- this also shows the partially improved north-south collector.

Could you go back to the slide? I'm sorry. And also in the context of the traffic in terms of the north-south collector which actually empties out onto Auhana Road, Kalama Heights is retirement home that was constructed and there is an additional site that's makai of Kalama Heights it was going to be a senior citizen condominium project and as part of the construction of that there were some substantial improvements that were to be made to Auhana Road that would actually mitigate the increased traffic that could occur in the context of this project but also in the context of traffic that would be basically coming from Piilani Highway or from South Kihei Road along Auhana Road. And so we have -- this work is ongoing today and we just included a couple pictures just to show you that this is basically a road widening project, there's a bridge, there was a bridge with a culture,

there is a bridge with a culvert, it's being widened to increase traffic. This is where the intersection of the unimproved portion of the north-south collector road would actually intersect Auhana Road.

The project benefits and mitigation measures. The proposed project is a lots only subdivision. We're improving regional offsite and onsite drainage. The north-south collector road, that segment of it is going to be constructed. We're increasing automobile and pedestrian connectivity. Subdivision sidewalks and north-south collector road, stabilize gravel pathway to Auhana Road. There will be a passive neighborhood pocket park. The parks contribution with the project will \$787,950. The education contribution is yet to be determined but there has been a contact with the Department of Education and that will be established in the context of Act 205, 245 excuse me. Subdivision design guidelines and CC&Rs will be prepared and presented as part of the SMA package. And then there will also be a contribution for the creation of workforce housing.

I might add, lets see here, I guess that's about it. Thank you very much.

Mr. Starr: Okay, members. Commissioner Mardfin, look like you got something?

Mr. Mardfin: I just wanted to thank you for going the extra effort to attempt to get input from our host culture practitioners and if people don't respond, they just don't respond. But thank you for doing the extra effort.

Mr. Hart: You're welcome.

Mr. Starr: And I want to thank you for the drainage for absorbing not just the increase but the base drainage. Does that appear in the document now?

Mr. Hart: It does, yes. And that was on the pages that we cited. Where we actually, you got that.

Mr. Starr: I didn't see that.

Mr. Hart: 20 and 22. The drainage, the additional comments on drainage were on pages 20 through 22.

Mr. Starr: Okay, all I see is that you're negotiating and hope to be able to do something, but you seemed a lot more positive on what you're doing in the presentation.

Mr. Hart: We have negotiated and --

Mr. Buika: Excuse me, are you referring to page 22 on the negotiation with Haleakala Ranch on the mauka side of Piilani Highway, is that your reference?

Mr. Starr: That's what I see here, but what he showed us on the power point was something different.

Mr. Buika: Well, that's actually above and beyond this negotiation or consultation with Haleakala Ranch if I'm correct Chris, is above and beyond everything that was mentioned here and the pages

before it explain the drainage strategy. So that was not even mentioned in the power point and is even additional potential drainage mitigation. Correct Chris.

Mr. Hart: That's correct. The Haleakala Ranch one is something that is, you know, it's going to happen, you know, in the context of improvements that Haleakala Ranch is basically contemplating in the future. But in this particular instance, from the very beginning we've been in dialogue with the Department of Public Works, Engineering Division and what we initially tried to do was to take part of the Piilani Highway right of way which is a larger area but the State Department of Transportation rejected our request and in order to make a retention, but the County of Maui agreed to allow us to use this abandoned section of Kananakui Road to create the retention area.

Mr. Starr: Is that Kananakui Road, where is that?

Mr. Hart: At the bottom of page 20, it says, "as noted, all storm runoff generated as a result of the site build out will be retained in onsite detention basins. Additionally, the applicants have acknowledged existing regional drainage impacts and have taken proactive steps to coordinate with Public Works Department to develop additional mitigative drainage solutions. Public Works has approved the use of an unimproved portion of Kananakui Road as an additional offsite detention basin for existing storm runoff." That's on page 21 at the top.

Mr. Starr: Okay.

Mr. Hart: Okay.

Mr. Starr: And that will absorb everything, a hundred percent of the runoff for a 50-year storm.

Mr. Hart: For that generated by the project onsite yes, but this is additional runoff, remember the drainage system, the water shed that we showed coming down. This will actually retain water, not all the water, but a portion of the water that's coming down from the mountainside before it reaches the site.

Mr. Starr: Okay, I have a couple other here. Transit, and I'm not going to hold you to it with this document because this is something we really started discussing subsequent to the draft but I would like to know from you or from your traffic, from Mr. Rowell, where the nearest bus stop is and what will be -- will people do if they want to commute from there without an automobile.

Mr. Hart: On Appendix N we did add a section on public transportation. We kind of anticipated that you might have a question.

Mr. Starr: And I apologize for not having found that.

Mr. Hart: That's all right. But it's not a long statement but the Alahele Subdivision will have access to the Kihei Island No. 10 bus route. The closest bus stop to the proposed subdivision is located at the intersection of Keala Place at South Kihei Road. Note this information was provided by the Maui County Department of Transportation. The bus stop at the intersection of Keala Place at South Kihei Road is located approximately 1,500 feet from the project site.

Mr. Starr: Okay, thank you for including that.

Mr. Hart: Okay.

Mr. Starr: Okay members, any more? I got one or two others and they've probably been addressed and if they are I apologize. But there was discussion about energy efficiency and LEED. All I see in here is that you know, there'll be an attempt at LEED principals and then it goes and talks about Polynesian style roofs but there's no mention of energy efficiency in what's going to be CC&Rs. Did I miss, is that something else I missed?

Mr. Hart: Not really. In our comment letter that we sent to the Planning Department. What we're proposing is that in the context of the CC&Rs that we would produce that would be basically part of the purchase of the individual lots, the lots only, we're proposing to incorporate feasible LEED principals into the conditions, covenants and restrictions, guidelines to be managed by the homeowners association. Basically what we're proposing would be that, you know, that we would be using wide roofs, with wide roof overhangs and essentially what we would be asking for is, you know, other kinds of improvements that would be incorporated into the actual construction of the houses.

Mr. Starr: Okay, I would have liked to see some mention of energy efficiency and that's what it's about, but I'm not going to press it but I'm hoping you know, when the SMA comes that --

Mr. Hart: Okay, so we can expand -- but these are, again, these are principals that or guidelines that would be essentially undertaken by the individuals who purchase the lots and build the houses.

Mr. Starr: Yeah, I understand that, but I'm still looking for some mention of energy efficiency.

Mr. Hart: All right.

Mr. Starr: Okay. Commissioner Pawsat.

Ms. Pawsat: I understand this is just a lot thing but I was wondering if under terrestrial biota, flora and fauna you just say, "there are no significant habitats of rare, endangered or threatened species of flora or fauna on subject property." Which should be there aren't any significant habitats left basically. I was wondering if you guys could propose -- and basically the next sentence, "thus rare, endangered or threatened species will not be impacted" because they already have been by the proposed project. I was wondering if you could say that rare, endangered or threatened species, flora, fauna that you will utilize in your project.

Mr. Hart: In other words in the context of native plant material and so forth?

Ms. Pawsat: Yeah, I would like to know what efforts you're making to restore the rare, endangered and threatened flora and fauna. Yeah.

Mr. Hart: Okay. Can I just say that you know, in the context of the site itself in terms of its character you know, it's basically the character that the purchasers of the property found it in and

whatever, you know, modifications were made to the site were made before these individual, our client actually purchased it. But you know, in the context again of the development of the site, we would certainly be open to incorporating the use of native plant material in our landscape planting of the site.

Ms. Pawsat: Yeah, in the park area and like on the sidewalks and stuff like that and try to use endangered would be nice too. If you could actually -- if there's some sort of like collaborative person they can go to to consult with indigenous plants and things?

Mr. Starr: ...(inaudible)...

Ms. Pawsat: But anyway, thank you.

Mr. Starr: Chris is that something that we can expect to see in the SMA?

Mr. Hart: Yeah, actually we've use Bob Hobdy in the past who is basically a great plants man and he's a former district forester. And we could certainly consult with him in the context of the plant palette for the --

Ms. Pawsat: Thank you.

Mr. Hart: Okay, we'll do that.

Mr. Starr: Okay, members anything else? Commissioner Hiranaga.

Mr. Hiranaga: In your document you state you're proposing to design and construct a two-lane north-south collector road, but are you making any provisions in case it's decided to become a four-lane.

Mr. Hart: The right of way will be sufficient to accommodate the full width of the north-south collector.

Mr. Hiranaga: For four lanes?

Mr. Hart: No, actually -- well it is -- I think the right of way width could accommodate four lanes but there's been a lot of dialogue you know with the Department of Public Works regarding the north-south collector and perhaps Mr. Miyamoto might want to say something about it, but it has -- it's become a two-lane road with basically a substantial bikeway and pedestrian way and I think maybe -- but this improvement that we're proposing at this time is an interim improvement. It's not the actual file improvement for the north-south collector. The grading will be in accordance with the requirements of the county, but basically the two lanes, will be -- you know, ultimately expanded, in terms of, you know, paved bikeway, walkway and I wish that maybe Mr. Miyamoto might elaborate a little bit on that. It's an interim proposal.

Mr. Starr: Mike. I know we had to put you on the spot somewhere today.

Mr. Mike Miyamoto: Thank you Mr. Chair. Yes, we have been in discussions with the applicant about the north-south collector. It's not our intention for them to build out the final two-lane roadway with all the bike paths and bike lanes that the community, the Kihei Community Association has pretty much mandated for this corridor as being shown in the other sections that had been completed. So their responsibilities to do the frontage improvements and we'll do some of the enhancements such as the bike paths, but there'll be the sidewalks and the curb, gutters.

Mr. Hiranaga: Question actually for, follow up question for public works. I heard that if it was built as a two-lane road the north-south collector would not receive federal funding.

Mr. Miyamoto: Mr. Chair, the statement that was made by the now Director of Transportation, Brennon Morioka, was that there was a requirement of 12 through lanes, travel way parallel to the shoreline whether it be – the original plan called for four lanes on South Kihei Road, four lanes on the north-south collector and four lanes on the Piilani Highway. That was the original 12 lanes. Since the community has come out and opposed such a invasive roadway system, the requirement placed upon the county by the State is that we do a master plan study of additional mauka roadway lanes and that's something that they're going to be looking at for the county in their transportation master plan update. We've developed some preliminary sketches for them to evaluate to also be incorporated with the General Plan update so that we can have these urban growth boundaries that coincide with a proposed roadway.

Mr. Starr: Okay, let me ask Jim to give us – well, no I'm not going to ask you to do that yet because I'm going to open it up for public testimony if there is any member of the public that wishes to testify on this item, please make yourself known. Not seeing any, public testimony is closed. Now I'll ask Jim to give us a recommendation and possible courses or action.

Mr. Buika presented the Recommendation.

Mr. Starr: Okay, thank you. Members questions, possible motions? Go ahead Commissioner Hedani.

Mr. Hedani: I had a question actually for the applicant or for staff. The document states that water is going to be addressed through hopefully additional water development before final subdivision approval?

Mr. Buika: Yes it will be it falls under the show me the water bill. So it will prior to final subdivision approval the applicant will work with Department of Water Supply to define their – a unique source of water.

Mr. Hedani: So that will be identified?

Mr. Buika: Yes, it will be. It's a requirement.

Mr. Starr: Okay, members possible motions? No one? Someone's got to have a motion. Commissioner Hedani.

Mr. Hedani: Move to approve the department's recommendation.

Mr. U'u: Second.

Mr. Starr: Okay, we have a motion by Commissioner Hedani, seconded by Commissioner U'u, and the motion states:

Mr. Hunt: The motion is to approve the department's recommendation which is to accept the final EA and to issue a finding of no significant impact.

Mr. Starr: Okay, discussion, amendments? Seeing none, we shall call the question. All in favor of the motion please signify by raising your hand. Any opposed please raise your hand. Director.

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

**VOTED: To Approve Department Recommendation to Accept the Final Environmental Assessment and Issue a Finding of No Significant Impact (FONSI).**

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

Mr. Hunt: The department will record that as unanimously.

Mr. Starr: Thank you. Good presentation Jim and good luck with the project. Okay, we now – Don do you need any time to set up? Okay, Director why don't you introduce the next item which is something I'm really looking forward to.

Mr. Hunt: The next item involves a workshop conducted by the Maui County Department of Transportation on the Maui transit system and we have the Director of the department, Don Medeiros here.

**F. Workshop conducted by the Maui County Department of Transportation on the Maui Transit System.**

Mr. Don Medeiros: Good afternoon. I've got some handouts.

Mr. Starr: Yeah, pass the handouts around.

Mr. Medeiros: Good afternoon, I'm Don Medeiros, the Director of County Department of Transportation. Thought I'd just give you some handouts that I felt would be germane to what you're trying to do.

The first one was to graphically illustrate the growth of the transit system that's on the road today. We've gone from 2004 with 29,000 boardings all the way up to last fiscal year with over a 1.4 million boardings. This has been a case of as we build it people come to it and more and more people are

looking at it as an alternative to providing one person in one car type of thing which is just wonderful as far as that's concerned. This last fiscal year which is really the second year of the new improved system, that's why you see the graphs go up the way they are. In 2007 we restructured the entire system and I think this is the point that Jonathan wanted me to make so that people can understand how this works.

We went to a hub and spoke system using Kaahumanu Center as the hub. Similar to what the airlines operate on. So from Kaahumanu Center the routes all go out through Wailuku to Kahului to South Maui, to West Maui and Upcountry. And then we use some transfer centers, Maalaea being a transfer center, Wharf Cinema Center in Lahaina being another and the Whalers Village another transfer station. So that for instance, the Kaanapali bus would leave Queen Kaahumanu head into Wharf Cinema Center which is a terminus for that run and then there's another bus that would leave there serve Lahaina, go out to Kaanapali, terminate at Whalers Village and then another bus picks up there heads out all the way out to Kapalua comes back. So presumably if you live in Napili and you wanted to get to Kahului as you do Doc, you'd run three buses to get into Kahului. Then what we have in the Kahului area are several circulator buses that serve Wailuku and Kahului and then we have buses that head upcountry.

Come next week Friday, on August 1<sup>st</sup>, we'll be expanding the Upcountry service which currently has three-hour headways. The entire system other than the Upcountry service has one-hour headways. In other words, there's a bus every hour at that particular time at that particular location. In the case of Kaahumanu Center with our connector buses that go out into the rural areas, it's every hour on the half hour. Once we did that and it became convenient and easy to understand, people started to flock to the system.

Predominantly it's a dollar every time you board except for the Wailuku, Kahului routes they go – they're half an hour service simply because of the density of the usage and the amount of folks that wanted to use it. And January of last fiscal year, the service was so popular we couldn't keep up with it and we actually ran out of standing room. And so we now have four buses that operate on those routes and those routes are free. The reason they're free is to provide connectivity within Central Maui and to get cars off the road.

Come August 1<sup>st</sup>, we're going to do a Villager in Lahaina that will provide service free of charge from Lahaina up to Lahainaluna out as far as the Civic Center back into town mainly to get people that live there, who work there, moved to where they need to work and where they live.

Upcountry, that service has been building and we had three-hour headways, we're now bringing it down to an hour and a half headway. That's the only one that's sort of an odd ball because it's tough, Upcountry is tough and I think as ridership increases then we'll be able to address it with more and more service.

The other piece of information I've given you is mainly just so it's in your folder as you start to view different projects it will help you to understand where the lines are, where the bus lines are and maybe as you look at projects it will help you to bring it in. So we have it -- so we have an overlay with the road map.

What we've been doing is we've been working quite closely with the other departments, particularly the Planning Department and they have been sending us projects and we've been responding to the project providing comments. In general if we know and I'll use the last applicant as a segue if there's something that's going happen on the north-south collector road ultimately it's still in the General Plan so it should be a collector road, so we're saying, you know, you should consider putting in a bus shelter, a bus stop, although maybe we don't operate there right now. We're saying that at some time that should happen. We've been meeting with some other developers for instance Maui Lani who's going to be adding an extension out here that's going to go out into from Kuhikahi into Kahului and they have plans out into the future. So we said, look you know there's certain locations put your bus pullouts in as you develop this so that later on we won't have to deal with it. I'm afraid that where we're heading because this has happened as you can see, this growth of this transit system has been unlike government it's at a lightning pace and this thing is really moving along and we've been taxed to try to meet the demand by being in rolling stock.

However, what's lagging especially in a rural community like ours is the physical infrastructure with bus stops, bus shelters and that sort of thing. And so I get ribbed about that every day that we don't have these things in place and if you drive along South Kihei Road you'll see some brightly colored benches that we had nothing to do with and it's the bench fairy that's doing. I don't know who's doing it. I really don't and then there are other areas where people have done different things that are quite unique. The folks on Maui are just wonderful. Out in Waiehu someplace this gal got drift wood and made a drift wood, but ... (inaudible)... And so as we've moved along we've sort of given information to that.

So where are we headed as far as the department and a county? We're just completing our bus stop plan which we've done over these last few months and we'll be delivering it to Council on the 19th of next month which will sort of lay the foundation. Currently we have a 135 stops, come next Friday we'll have a 150 something stops as we start to add more service. And with that plan we have identified every stop, looked at all the amenities that are needed or the infrastructure improvements that will be needed. The lion's share of what we're going to need to do is going to be address ADA. That there's a pad for it, that the people can go to. We have a hierarchy of what requires a shelter, what requires a bench, what may just require a pad. All of our buses are accessible. They all have lifts or ramps. In fact, on the white ones, the new big ones that you see running around here we exceed the federal requirement to have two wheelchair stations. They have four wheelchair stations and two ramps. One in the front and one in the back simply to facilitate the movement of folks who need some sort of mobile device for their mobility. And part of that is due to when you look at our demographics and that many of us are getting older and there are going to be more of us as time goes on. I have selfish, self interest in the whole thing and we're just trying to make life a lot easier for the people on Maui that use it and are coming to use it.

And so this is the infrastructure piece that it will be coming to your table and you'll see. And we've been working with a lot of the developers and all and it's just great. Even in some areas where maybe the bus line probably will not go in our life times but as we look at these we say, you know, you should probably look at how you're developing your plan and if it's a large development put some bus stops some place because the school buses are going to need to go there and other types of services are going to go there and it might actually cut down on the entire traffic flow of the project. If people know in a large project you can pick up Jr. at the bus stop it will probably be a lot

easier than running around through this whole thing. And so some of the developers have taken that to heart and are looking at it.

The other piece that goes on with the Maui Bus that's sort of an anecdotal piece is in fiscal year 2007 we added commuter service for the workers of the island from Upcountry and Central. Last fiscal year we doubled that service and it's -- people are just coming to it and we're having to run more and more buses. Roberts Hawaii is our vendor and they'll have this grant for five years. It has to go out to procurement because we do have federal money and it's great that we're working with an entity such as Roberts who is the largest transit agency in the state and they have very large buses. To help us address our needs they have brought in three, 63 passenger super coaches to try to address the overload that we're experiencing every morning particularly down at War Memorial. If you look at our schedules we have three buses, three times scheduled. We're actually running sometimes five buses out of there as people are using it and Upcountry as well. So on any given day we can have -- we have planned for eight buses but we can exceed that and we can have up to six coaches heading out to the west side and back each day and if you just use the rule of thumb of 50 that's over 250 people. So we're moving the folks where they want to go and they need to go.

The other piece of Maui Bus and I'm just giving this so you can sort of understand what the Maui Bus is. It's the fixed route which I was talking about. You have the maps. It's the commuter service which is basically a bus goes out in the morning, comes back in the afternoon with workers and the third piece is a federal law because we have a fixed route that we have to have a mandated what they call, complimentary para transit. In other words, it compliments the fixed route that three-quarters of a mile in either direction of a fixed route if a person is unable to get there due to a disability we have to provide service to them. So we have other things going on. So every day for the fixed route currently we need 12 buses on the road. Come next Friday, we'll need 14 buses on the road. For our commuter we're running eight to 10 to 12 buses a day and then the ADA service which continues to grow we're running five to six buses a day.

Part of the department funding not only includes the Maui Bus but it also includes MEO and MEO is our social service transportation program that generally takes folks from their homes to somewhere and back again and it serves a lot of groups. You have to qualify to be there like a senior citizen or a workshop, a sheltered workshop at Cameron Center or we have youth programs where we pick up the youth after school, from the schools and take them to youth centers or some other activity. During the summer when we have canoe paddling we do that. So that's our social service part and then the Maui Bus really makes up the system of service on Maui.

The bottom line for the whole thing is this is a great place to live and great place to retire. There's a lot of services available for us young folks as time goes on. So I thought I'd make it brief and then leave it open to questions because it's a lot to absorb.

Mr. Starr: Good. So we do have some time for questions. I just want to ask something. These bus route maps and schedules is that available to the public? Are you putting it out there because I would have loved to have seen this and understood it.

Mr. Medeiros: These bus route maps are not generally available to the public at this point. We're

working towards that with the plan and ultimately would have something like Google Transit if you'd seen it. So all of the stops that you see we've GPS. Taken pictures of, we have it in a data base and we'll be updating that data base and at some point in the near future we hope to have it set up so that you can do these things on Map Quest or whatever. We're also updating, the County's updating our website to include some these things and they're ready to roll that piece out. What is on and general for the public is on the county website, we have all of our schedules, all the information, all of our buses have that, most of our transit locations have them, the schedules which shows a bit of a map on it. Sort of general map on it.

Mr. Starr: This is great. Dr. Iaconetti.

Mr. Iaconetti: I want to congratulate you for the work you're doing here. I think this is great. I would think that it would be very enlightening and inspiring for you to do this because this is really a great advantage to the island. One of my -- I'm wondering how long you're going to be able to maintain the very economic cost of a bus ride. How long is that going to be able to be kept at such a low rate?

Mr. Medeiros: As long as the public wants it I would assume. This would be like a road. And we -- Mayor Tavares is looking at it as another form of a road rather than trying to build roads lets try to provide alternatives. We all know, I guess I'm really preaching to choir here. No matter how big the road is, you're going to fill it up in a short time. This is probably the fastest way that you could get some sort of relief to people and some sort of alternative to people. As you know, dealing with traffic, transit is a piece of the puzzle. There's no silver bullet, it's a buckshot approach. You know, carpooling, vanpooling, ride sharing, you know, working habits, times and all of these things factor into transit and traffic. Timing of lights for those of you who live on the west side know what that does. It can be wonderful if it works well.

Mr. Starr: Doc go ahead.

Mr. Iaconetti: You lost me there, I had something else in mind now I can't think of what it was. I'm sorry.

Mr. Starr: Commissioner Pawsat, we'll come back to you.

Ms. Pawsat: Yeah, I just had a question about a couple of the routes. The Wailuku Loop, Route 1 and 2 and Kahului Routes 5 and 6. I was wondering if it was possible if I got on the bus at the State Office Building I can go straight over to like Kmart without transferring at Queen Kaahumanu Center.

Mr. Medeiros: No, you can't.

Ms. Pawsat: So that was the thing. So I feel like, I like the loops and how you guys kind of weave inside the fabric to get all the areas on the two loops. But then it seems like it would help the system a bit if there is just, just a trolley more, and that was more commercial like. You know, I always see the tourist come off the cruise ships, I don't know what's going on with them any more but you know, they just kind of float around and they don't know where to go. But if there was a

trolley that just went specifically did a loop up to the State Office Building, went down, you know, and just went back and forth along Kaahumanu Avenue between Kmart and the State Office Building and that's all it did, you know, so that became a more, you know, zip lane so to speak through the -- so it won't take so long. The other question was about who funds or how do you guys get funding for like benches and stuff? I notice, watch people up here on the corner sitting on the grass, waiting for them on the ground, and I was just wondering when they might start installing benches. The same thing down, you know, I see people lining up ...(inaudible)... and they're always standing up and there's no where to sit or anything like that. But yeah, I think this is great.

Mr. Medeiros: Thank you. Yeah, we're opportunist when it comes to that at this point and squatters. We have CIP money this fiscal year and that will be setting up the infrastructure design. We've done the plan, so now it's the design piece where you're actually going to look at a roadway and come up with, you know, what does it need, sidewalks and how much concrete do you need here and what is it going to require and go through the permitting process, a good portion of our bus stops particularly in South Maui and West Maui, the ocean's right there so we know that there's going to be SMA issues and whatnot. So we're looking at hopefully being able to get at least eight to ten of the various bus stops squared away with a design piece this fiscal year and then get some idea what it will cost and ask for construction money next fiscal year.

One of the big, nuts for us to crack is at Kaahumanu. We have really outgrown the Kaahumanu Center and so part of what we're going to be designing this fiscal is a transit center at Kaahumanu Center. I didn't bring that, but if you could try to follow me through. If you're coming in the back end off of Wakea and come in that back way, that big parking garage on the cannery side of it, we're looking at knocking out all of the parking stalls there, which means we're going to have to go to the Board of Variances and all these sort of things. So yeah, we've got a lot kicking out for us here this next year, this year rather. We're going to be taking out about 35 some what stalls and then putting in a saw tooth that can hold five buses with five shelters that would be 20'x 6' to sort of segregate everybody. You know of the five saw tooth, one would be west, one would be south, one would be Wailuku, Kahului and then the upcountry runs. And we're running buses in there now every hour or every on the half hour. And that, it looks quite doable and that is critical to having this system continue to operate. We're actually at Kaahumanu as their guests and we don't want to be unwelcome guests. There's a saying about fish and how long you stay. We've been there quite a while.

Mr. Starr: Commissioner Guard.

Mr. Guard: Thank you. Great services. I just have two questions on how you go about expanding the routes. The Makawao Avenue looked like it had about a stop every hundred feet or so, and the Paia - Haiku only has a couple and I guess again, being selfish, what the opportunity is to get one closer to where people live and then the second question would be on the upcountry, other friends, if you live above Makawao, there's not like a real park situation. I don't know if Pukalani Terrace is okay with that or if you're possibly looking at different land owners to get maybe a park and ride location along one of those spots.

Mr. Medeiros: It's sort of a two-part question. Currently we're using the community centers as park and rides. So that's Haiku, Paia, Eddie Tam and Hannibal Tavares, and we're using the state park

and ride on the bypass highway. There are times you'll see that one overflow. And as far as setting the routes, upcountry hasn't had the service, it's been three-hour headways is not the greatest. We just tried to do the best estimate of what we thought would work. Our challenge has been to try to do everything in an hour. That you can get there and back in an hour. However, when we went out to public hearing, the people that showed up felt that airport service was needed. And so, logically that was the way to do it with the funding that we had. And so the upcountry service as it goes out of Kaahumanu stops by the airport and on the way back in both of them do the same thing. So that's going to increase service for the airport and get people in and out of the airport which is a good thing and a bad thing. In this business that's the way it is. People always want to come with their luggage, we can't haul luggage, so hence the gray hair, but it can move people in and out. At some point I think we'll have to redesign that, we'll see how this goes.

We go about setting the stops up in Lahaina, in the South Maui and West Maui it's wonderful, it's a linear community, it's great for transit. Central, Upcountry it's a nightmare. You see how the runs are going and we're trying to hit the attractors. What are the attractors that we can hit. So when you look at the Wailuku, Kahului, we're hitting post office, we're hitting, we're trying to get shopping centers, government facilities and those sort, medical facilities and those sorts of things. We tried to do some of that Upcountry and see what we could do to grab it and I feel what's going to happen is as more people are going to use it, and we just let out the schedule recently so our phone is ringing off the hook on what we should have done and what we should do. And so we're looking at those things.

In the case of Paia and Haiku, it's the infrastructure. Can you imagine us at about this time stopping on Hana Highway just as you enter Paia? Can you imagine what that would look like? With a bus holding me up and so it's like where do you stop? So what we've done is we've used the community centers. Now that DOT has upgraded Paia Town with sidewalks we're actually looking at somewhere up the ways say by Charlies that we could do something that sort of in town. Because the routes heading out to Haiku, we go up to Haiku as you could see and then use the back road by the school to head on back down. But I think as time goes on and people use it and want more I can see some splintering going on and some circulators going on Upcountry. So, and we've developed the system and the particular stops mainly by input, the folks have been great. You know, why don't you do this, why don't you do that, why aren't you doing this? And you know, we take a look at it and is it feasibly possible to do it?

Right now, last month being our heaviest month ever which was, what was it, it was a 143,000 boardings for the month which came out to a daily average of about 4,700 and some change people a day. So on a given day it can be 5,000 people, we're moving 12 buses, you know, so they're full. And we're trying to meet all of these things.

So I think the next steps sort of will be we need to add frequency now because we addressed the overloading with the aid of Senator Inouye to get these buses. Went from 25 to 38 or 41 passenger buses. County didn't have to pay a heck of lot. We paid 20%, but they're 350k a piece and we've got 13 and we probably need another 13 as time goes on and the commuters going. And so this next piece will likely be that we've got to get some more buses in to reduce the frequencies to half an hour to address the loads. But if it works for you it's pretty fast and you can get to where you need to go. There are a lot of people that are using it to get to work and do what they need to do

or the car dies and they find that transit works for them and that's part of all this whatever you want to call it, cognitive restructuring, economic restructuring, but I think when the car starts, the second car particularly starts coming to the dinner table you've got to figure out what to do. And so I think a lot of people are saying well, maybe we don't need the second car, maybe we can use the bus for some of these things and we don't need this and they factor out what it's all going to save them. But as you can see by the graph and how it's going we haven't had a fuel crunch through the whole time. It's just that Maui's really wanted a service and every study that we've had over the years have said that they wanted a service and it truly is the field of dreams if you build it they will come. It's been my pleasure to do it, honestly.

Mr. Starr: Commissioner Mardfin first.

Mr. Mardfin: Hi, I got a number of things. You were talking very fast so I missed some of it. Most of the routes are every hour?

Mr. Medeiros: Yes, the majority of the routes are every hour, hourly is the frequency.

Mr. Mardfin: And so at a particular spot it might 8:20, 9:20, 10:20?

Mr. Medeiros: Correct.

Mr. Mardfin: What's their on time performance?

Mr. Medeiros: Actually last month with the heaviest month of all we were up at 93.4%

Mr. Mardfin: Great. The planes do that within a 15-minute window.

Mr. Medeiros: Seven.

Mr. Mardfin: Seven minute window. You said it was dollar every time you board the bus, but you said, except some where free. What routes were free?

Mr. Medeiros: Wailuku, Kahului.

Mr. Mardfin: So 1, 2, 3 and 4? 1, 2, 5 and 6?

Mr. Medeiros: That's the one. And then the new Lahaina Villager route will be free and that's yet to come.

Mr. Mardfin: Which one is that one?

Mr. Medeiros: That will be probably somewhere around the back there.

Mr. Mardfin: Not the Lahaina Islander.

Mr. Medeiros: No.

Mr. Mardfin: Oh, Lahaina Villager, 23.

Mr. Medeiros: Yeah. Yeah, 23.

Mr. Mardfin: You don't have monthly passes?

Mr. Medeiros: We do.

Mr. Mardfin: You do? How much is the monthly pass?

Mr. Medeiros: It's \$45.00 for an all route. It's \$25.00 for a single route and it's \$25.00 for commuters.

Mr. Mardfin: How much was it for commuters?

Mr. Medeiros: \$25.00, and if you're a student or a senior we knock of five bucks.

Mr. Mardfin: I presume this doesn't pay for itself? What's the subsidy roughly? Not in millions but any idea what the cost is?

Mr. Medeiros: This fiscal year we're in now, this service is a little over \$6 million. Last year it was a just a tad over \$5 million and our fair bucks recovery rate was about 17%, we brought in around \$800 some what thousand.

Mr. Mardfin: So you're subsidizing 83% if I'm adding right?

Mr. Medeiros: Oh yes.

Mr. Mardfin: Okay, that's what I wanted sort of a percent thing.

Mr. Medeiros: General fund.

Mr. Mardfin: I wanted to ask you about your relationship with MEO and you said that you're -- you work with them or are they separate --

Mr. Medeiros: We fund them.

Mr. Mardfin: You fund them?

Mr. Medeiros: We fund them. The services that they operate are funded by the County.

Mr. Mardfin: Entirely?

Mr. Medeiros: Yes.

Mr. Mardfin: They came in for a base yard proposal a couple of weeks ago, do you have a base

yard?

Mr. Medeiros: No. We use Roberts base yard facilities. Roberts as part of the contract we're in agreement with them, they run, maintain and do all that good stuff.

Mr. Mardfin: I notice Hana's not included but I can understand why.

Mr. Medeiros: Hana's included through MEO, five days a week.

Mr. Mardfin: Yeah, and I use it to come out especially when I go to the airport. Real nice, don't have to leave the car. You talked about, you're going to come in for a bus stop thing. I remember when I lived on Oahu that some of the cost of a bus stop were enormous and they were having redesigns every time and it was costing a fortune. I don't know if you can do it but if you got one design that could go everywhere, it probably would help you with the permitting.

Mr. Medeiros: That's the plan.

Mr. Starr: I want to chime in on that because I was in the business of building bus stop shelters and advertising on buses and selling advertising on the shelters and you know, the benches and all of that for many years. I signed an agreement not to do it again, about 15 years ago, but you know, I do have a little bit of experience in that and if I can be helpful, but you know, we were involved in about 20 cities and their advertising revenue paid for a lot of the operating costs. I know you have a voided cost and I don't know if you can tell us what -- you know the \$5 million how much is saves on roads and police and all of that but you know, if our future is anything like you know, what happens in cities we'll be looking at advertising revenue potentially as part of ...(inaudible)... and especially for building the bus stop shelters and so on. Those can not only be paid for through advertising revenue but can generate revenue but controls have to put in place so that it's acceptable and tasteful. Commissioner Hiranaga, you had your hand up before, I'm sorry, to step in there.

Mr. Hiranaga: I forgot my question. No, actually I do remember. On the Haiku route, I guess I'd just like you to consider and you probably have stops at the Kaunoa Senior Center, Baldwin Park and Hookipa Park.

Mr. Medeiros: The Kaunoa Senior Center the issue is getting out. To get out on Hana Highway and make a left to head up to Paia we don't have that much of a storage lane. It's a very short little half stretch and so we're working with HDOT to see what we can do to try to do that. Our problem is the minute you get that bus off the road, you gotta get it back on the road and that becomes an issue especially on high volume highway at certain times of the day like Hana Highway. And so that presents some super challenges for us.

Mr. Hiranaga: You said left to Paia?

Mr. Medeiros: Yeah, coming out of Kaunoa.

Mr. Hiranaga: Just go real slow and they see this big bus coming out, you know --

Mr. Medeiros: Then you have a red ... (inaudible)... embedded in the side of it. You'd be surprised what we go through. It's amazing.

Mr. Starr: Okay, who's next? Commissioner Hedani.

Mr. Hedani: I know Donny for a long time, I just wanted to say you do a great job and I think you guys do a nice great service.

Mr. Medeiros: Thank you for letting us use your facilities, as a transfer center, it works really well. Works really well.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: So are there same challenges for Baldwin Park and Hookipa Park.

Mr. Medeiros: Yeah.

Mr. Hiranaga: It seems like people are driving from Paia and they can't stop, they end up at Kahului Airport.

Mr. Medeiros: In the case of Baldwin Park, you know, it's pretty close to Paia so if we can have something pretty decent in Paia Town it should help to service that. We try to keep the bus stops within no less than two to three-tenths of a mile apart, no more than five-tenths in the heavily populated areas. When you look at upcountry that rule went right out the door. But we're trying to deal with the infrastructure itself. And so here we are. In Paia, you know, if that bypass road was open all the time, okay, that's one thing you can go up and come down, but then how do you do it, you bypass it on the way back.

So you've got to be fairly consistently that where you stop going out, you've got to stop coming back generally in the other side of the street so people don't get lost and confused as to where things are. And so that's the challenge with putting it up. And when we look at a location to put a bus stop, we're looking at several factors, one is, you know, do you have enough roadway on the side to let people off. We're really in arrears as far as ADA is concerned. We look for a crosswalk so that people can cross from one side to the other and a street light because we do operate at nights and during the winter it's dark in the morning. We've taken the lead from Oahu and you've read some of things that they're doing in Oahu. They're trying to eliminate mid block stops. So they want stops closer to intersections especially if they're signalized and what they call a far side stop so if this is the intersection, the bus is heading in that direction, they want to stop on the other side of the intersection so that the crosswalk is to the rear of the bus. To people to walk out of the back door and go around the back not try and dash out the front of the bus and woop, and that's what's happening in Honolulu with these mid bus stops. People are anxious and they want to get across the street, dash out in front of the bus and wham, and that's the horrible part about this whole thing. So we're trying to look at those things so how we place them is really crucial.

A lot of people have been wanting us to do a stop in Waikapu and we're working with Highways to see where we can put a couple there, you know, either side of the road and there's one location.

So we're just working with them now to do a trial stop up there.

What we run into with bus stops either one of two things. Either you want it in front of your house or you don't. And if you have it in front of your house you don't like me.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: If I had a comment to offer on bus stops it would be that I think to some degree they're kind of like graffiti magnets and from my perspective it would almost be better not to have a bus stop than to have one that's covered with graffiti.

Mr. Medeiros: Yeah, as a part of this plan we worked with the consultants that we hired from the mainland that do a lot of this and they used Munekiyo as a sub and Munekiyo used George Rixey as the architect and we met with all of the various community associations and what George came up with was I guess he kept it ... (inaudible) ... principal. He just kept it simple, they looked nice, poles rather than you know, girth and all of this and it's pretty generic and everybody bought into it. Yeah, you're right, and the simpler the better sometimes. I don't know if you --

Mr. Hedani: I really like the drift wood idea.

Mr. Medeiros: The drift wood is cute. I'm sure. You know, there's all sorts of things, but we have to address ADA. So the lion's portion of what we'll do will be ADA and connecting with sidewalks and curbs and that sort of mundane things that's needed because of -- most of the newer buses have ramps so it just comes out like a draw bridge but that things about almost three feet long. So when the bus gets to the curb you've got to have enough space behind that a wheelchair say or whatever, a scooter comes on and off. We've got a couple of guys that use the system that have scooters that look like mini golf carts. I mean, they've even got a roof on it. I can't get them in the front of the bus. They won't come in, they can't make the turn. They can get in the back on the new ones though. So we can at least bring them in the back and get them out. I just figured I'm maybe one of those guys down the road. Few of us here with our scooters.

Mr. Starr: Let me ask if there's any member of the public wants to give testimony on this. Kind of an empty house, but I know Kenny's a bus guy.

Mr. Kenny Hulquist: I'll be catching the bus at 20 to maybe.

Mr. Starr: Seeing none, public testimony is over. And have you done any work on the figuring the avoided cost. I know I saw a presentation that Jeremy Harris gave some years ago and you know, when he was -- people was giving him grief for making the Honolulu Bus inexpensive and he had tried to show that it was saving money to subsidize it. Have you done anything?

Mr. Medeiros: I haven't really gotten into that that heavily at this point. Frankly because everybody's been embracing it and I guess if you look at what it took the State just to build out Mokulele you know, with the limited federal funding that comes in, I mean, they didn't do that because they wanted to do that run it over five years, they did that because they had to do that because we don't have enough funding to do it. And then when you look at the overall cost of the

Mokulele Highway versus a bus system, just that highway alone you can see that the bus system is a way of approaching that to try to get people out of cars. And we think the quality of service is pretty nice and the buses we've tried to make them nice so that people can enjoy the ride. Roberts drivers are real great, they're real homey and try to make people comfortable as they're riding.

Mr. Starr: Dr. Iaconetti.

Mr. Iaconetti: How much of the tremendous increase in your passenger count do you think is due to the increased cost of fuel so that people aren't using their cars. Is that the reason why it suddenly jumped out in 2007 and 2008?

Mr. Medeiros: It's part of the reason, it's not the whole reason.

Mr. Iaconetti: And do you have any idea what kind of mileage your buses are getting. I'm sure it varies depending on --

Mr. Medeiros: Actually the big buses get about four miles to a gallon, but you can jam you know, 40, 50 people in it and you know, if they're running around depending on where they're going how much gas they're going to use, it's definitely a cost savings. These buses that we're running around are extreme -- they meet the EPA 2007 standards which if you know anything about automotive I'm going to have a lot more gray hair before the day is done. But they put out very little and we're using -- what we're all using now ultra low sulfur fuels, but we're also having to use in these buses ultra low sulfur engine oil in order not to pollute, ...(inaudible)... particulate filters which is a three stage affair of ceramics that keep things clean. When the feds did comparisons with the hybrid buses and all this sort of thing, you know, a hybrid buses is about a quarter of a million dollars more. And when they did that the emissions on the emissions side with the 2007 EPA standards there was really no distinct ...(inaudible)... of visibility in it. And yet just as we were dealing with that in 2010, EPA's got another level that we're going to have to get through so, I'd like to buy buses real fast.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'd just like to say I think getting a 160 passenger miles per gallon is wonderful. I mean, if you get 40 people at four miles a gallons that's an equivalent of 160 passenger miles and that's really good.

Mr. Medeiros: It's great. You know, you figure if we're hauling about 5,000 people a day and you're taking 5,000 cars off the road, you know, depending on how you calculate it, it's got to be at 5,000 gallons of fuel if not probably more.

Mr. Starr: Okay, Commissioner Hedani.

Mr. Hedani: Donny, you know the commission is doing its best to put you out of business because we're going to design communities where you can be born, you can live, work and die and be buried in the community.

Mr. Medeiros: Unless there's a Costco it will never happen.

Mr. Starr: I can't express how happy I am to see this going so well. What's your process in terms of, in terms of adding routes, adding stops?

Mr. Medeiros: We've pretty much come to the end of what we projected in our short range transit plan. It's on the road or it will be on the road next week Friday, and so the next challenge for us I see will be upcountry trying to address whatever it is that the folks want up there. And we'll be moving forward with that.

Mr. Starr: I'm a little unclear. It seems like most of the buses are owned by the county but you're running some buses that I guess you're leasing from Roberts.

Mr. Medeiros: On the commuter.

Mr. Starr: Yeah, just on the commuter.

Mr. Medeiros: On the commuter.

Mr. Starr: And that's just because of timing of getting equipment yeah?

Mr. Medeiros: The fixed route, on the fixed route buses you got to comply with ADA so you have to have these ramps and lifts and then we're trying to be multi modal so we have bike racks on all of them. That's not something you're going to find in a tour company. But with commuter it's basically moving people from point A to point B and point B to Point A just mass movement and not needing all of those sorts of amenities. It's for workers.

Mr. Starr: And you have more flexibility than buying.

Mr. Medeiros: Correct. That is correct. Commuter does not come under the ADA rules for fixed route.

Mr. Starr: We had a project come before us that was I think it was Hawaii's biggest parking lot that was going to be the service facility and this huge parking area out by Puunene. I guess it's an MEO project and there was a transfer station on that and parking for look like a hundred buses or something. And there was talk about eventually having that be a transfer point between routes but not now. They didn't want anyone to be able to park there and ride. I'm wondering if this is something that you're going to use or would be useful to you because it seems like that would be a good facility for the Maui Bus.

Mr. Medeiros: That's a MEO initiative and they've gotten the land on their own and they're raising funds to do that. Although the county does fund them and for the services and buys its buses this is something that they felt that they needed to do on their own.

Mr. Starr: Okay, looks like we're running out of questions. This is great.

Mr. Medeiros: Any time I could be of any assistance, you know, feel free to give me a call or email me or whatever, just one thing that we have noticed and I think it'll be coming to you just a quick one, we're seeing that in many of the dense areas particularly back east and the northwest I guess the best example, would be if somebody is coming in for a hundred room apartment type building, you know, already you'll know if there's a hundred apartments you'll probably have to have 200 parking stalls to at least accommodate that and probably more. And what they're doing in many cities they're saying the municipality or government is saying you can have only 75 parking stalls, so you'd better have some other way of doing it preferably near a transit line or something to that effect and so I think, in some of denser areas that's probably something that we would want to look at as time goes on. I don't know, but if we do some of this smart growth and do some of this density and mixed communities they are cognitive ways of dealing with transit or transit oriented developments type of thing. It makes a big difference where you can actually get rid of cars.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Two quickie, quick ones. Do you have any idea what percentage of your riders are visitors as opposed to residents?

Mr. Medeiros: We anticipate it's about a 60/40 with about 40% being visitors, but it depends on what runs. Overall, certain runs will have a higher amount of visitors especially at certain times of the day. But actually I'm glad you brought that up, there were different letters to the editor about how the tourists are always taking over the buses especially when the ships come in. Two ships are gone, that's four days of no tourists and the ridership is just through the roof. That's local folks, that's residents.

Mr. Mardfin: My second question is, you mentioned that for the airport run you're not allowed to take baggage, are people allowed to go shopping and carry bags on?

Mr. Medeiros: Oh yeah, pretty much what you can put on your lap or under the seat, we've had to designate how large a bag is so that you're not coming with one of these things should have a motor attached to it. And so pretty much it's like an overnighter.

Mr. Mardfin: So you can't go to Costco but you can go to Safeway or something like that?

Mr. Medeiros: Yeah, yeah, you're not going to buy toilet paper and –

Mr. Starr: Piilani, is there going to be a route down Piilani in Kihei.

Mr. Medeiros: Probably in the future not at this point. Part of it is the idea was that, you know, if the north-south collector road was contiguous that it would be great to run just circulators. I think what will probably happen at some point in the next couple of years is we'll have to do a villager that will probably use Piilani to go up to Maui Meadows or to the other side of the north side of Kihei and somehow filter people through there.

Mr. Starr: I know a number of projects have been coming before us, you know, right off Piilani and been asking the question.

Mr. Medeiros: Piilani would be a challenge because there's no way you're going to stop on that highway. So we'd have to get off the highway and get back on it and that would be the fun part of it.

Mr. Starr: Okay, thank you very much for coming before us. Keep doing the great work.

Mr. Medeiros: Thank you. Appreciate it. Thank you for all the hard work. Sorry to keep you over time.

Mr. Starr: Can you keep this updated with us and with the department so we have reference to it?

Mr. Medeiros: Oh yeah, and the department has all of the maps, the Planning Department has all of that on their S: drive and as we update it we will update theirs.

Mr. Starr: Okay, and please get it out to the public. I know you're busy getting buses on the road but get the information so people know the stops. Thank you Don. Okay, members, lets finish up quickly here. Director's Report. Director.

Mr. Hunt: Your next agenda item is actually approval of the April 22<sup>nd</sup> minutes.

**G. MINUTES OF THE APRIL 22, 2008 MEETING AND ACTION MINUTES OF THE JULY 8, 2008 MEETING**

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

**VOTED: To Approve the Minutes of April 22, 2008 and Action Minute of July 8, 2008.  
(Assenting - W. Iaconetti, B. U'u, K. Hiranaga, J. Guard, W. Mardfin,  
D. Domingo, J. Pawsat, W. Hedani, J. Starr)**

Mr. Starr: Okay, unanimous.

Mr. Hunt: The next item's the Director's Report.

**H. DIRECTOR'S REPORT**

- 1. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission at the July 8, 2008 meeting**
- 2. Planning Commission Projects/Issues**
- 3. Discussion of the August 12, 2008 Maui Planning Commission Agenda**
- 4. EA/EIS Report**

- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report**

Mr. Hunt: First one is follow up on the matters raised by the planning commission at the July 8<sup>th</sup> meeting. There was some questions regarding the SMX list that you're handed out every month. Just to clarify they're broken out into different categories and it's mostly for your information. It's so you guys can keep an eye on what's going on. It's not intended for you to comment or influence because you can see what would happen if you get an appeal on one of these like we just had. As part of the SMA rules you delegated down these decisions to the Planning Department with the idea that we would report to you and just to keep you informed. Some of them are already approved and some of them are open, some of them are assessments, some of them are minors, some of them are shoreline. They're broken out into categories.

Mr. Iaconetti: I realize by law you have you have to give us these. I'm at a loss to determine why. I mean we've got things like use of the property for weddings that were, the entry date was 2005, they're still open. Does that mean nobody got married all that time?

Mr. Hunt: It probably means they're waiting for another permit before we can issue the exemption or something like that.

Mr. Iaconetti: What about the events that go down Front Street in Lahaina. I can't find them right now but these are events that occurred already and the thing says open. Is this just kind of an open request to give it approved the department.

Mr. Hunt: Open means it hasn't been decided on or there hasn't been an approval.

Mr. Iaconetti: Well, they're things that have already occurred.

Mr. Hunt: If you point out the particular one maybe I can give you a better answer. You don't have to do it now we can do it afterwards.

Mr. Iaconetti: I just wonder how much of this is really worth while? I go over it every time.

Mr. Hunt: Staff understands that it's our obligation. If you guys don't find this information valuable I don't think we're going to have any heartburn on not providing it to you.

Mr. Starr: I know I like to look, to glance through it, but you know, I know a lot it is irrelevant. Commissioner Hedani.

Mr. Hedani: I was just going to say personally I don't really see a need to see this. Unless it's something that statutorily required you know, for the department to provide to us because I think we have enough people in the department that know what they're doing that we can handle the appeals and still be busy enough.

Mr. Giroux: Corp. Counsel's side, it is required in the sense that the exemptions are – the rules say that it's 10 days after your receipt of notice that whoever's going to appeal has – it triggers their

clock ticking. So it is necessary because it's kind of a minimum public notice that an action has been taken.

Mr. Starr: How about this for a possibility. That any commissioners who don't want to receive it on paper can receive it in an email or something like that and that way we still receive it but you don't have to worry about cutting down the tree. Commissioner Mardfin.

Mr. Mardfin: I'd just like to say I appreciate getting it. I have to admit I go through and I just circle all the 2-1-4 and check them. I'm only concerned about what goes on in Hana, let you worry about what goes on in your neighborhood. But there was one I asked about at our last meeting that I was kind of concerned about and I called the planner as you suggested, they told me what it was about over the phone, I was even more concerned because it's an area I particularly know about and they basically got permission and sent me the whole file. You know, SMA request and sort of a mini EA, and read it very carefully because it's an area I'm very, very concerned with and I had no problem with it, I thought it was great, but I feel if somebody in Hana ask me did you know about this? I can say yes I did and I looked and it looks like a reasonable kind of a thing. So I want to express to you that I'm very grateful that I was able to be accommodated that way.

Mr. Hunt: It sounds like some people find it of value and we're obligated under the rules so how about if we just keep doing it.

The next item was, and again, this is follow up there was a discussion about packing the agenda to assure items through 5:00 p.m., and you saw what we did today and we'll probably continue with that. There was also talk about a General Plan update that will be in the future. There was a talk about a Planning Department of list of projects and just off the top of our heads we've got a lot going on. We've got the SBR bill we're dealing with, home occupations, parking standards, B&Bs. We're looking at requiring a public hearing for ag subdivisions. Subdivisions in general regarding the consistency. We're working on administrative rules regarding enforcement, and overall of entire zoning code, Title 19. Updating the interim district, accessory dwelling, County wide policy plan, Maui Island Plan, Community Plan for Molokai, Lanai, Hana, West Maui. And we're also dealing with streamlining projects, SHPD 45-day rule adherence, digital transmittal to agencies, so we've got a lot going on.

Mr. Mardfin: What do you do with your spare time?

Mr. Starr: Commissioner Guard.

Mr. Guard: I was just on the Big Island again, and you can drive by on the highway and see these huge white signs for where future development is going and it would be a huge benefit to see the exact location instead of reading about TMK in the newspapers. I think people would get a better sense so if they drove this huge bill board, I mean it's not a bill board but it says, that something is going to change here in the near future. And I asked about that when Foley was here and I've asked you a couple of times and it wasn't on your list.

Mr. Starr: Yeah, we've been through that several times. Can you put that on your list there?

Mr. Hunt: I'll, you know, we had a staff discussion on that, I forget what the outcome was, but we'll come back on it.

Mr. Guard: Because I'm a big island. I mean it's in the middle of the lava fields down at Waikoloa and you're like oh, here it goes again. Here's another condo development and I mean, all the orange tape until it's already finished that' the only time people know about it. I mean, your staff probably don't want it because they take the heat but without we take the heat in the Letters to the Editor after the fact.

Mr. Hunt: Well, it's common for jurisdictions to require that so it's not unheard of.

Mr. Starr: Yeah, we've been through this.

Mr. Guard: I'd appreciate it if you start making a list of that.

Mr. Hunt: Okay, next item is projects and issues that you folks want to raise.

Mr. Starr: Just who's going to miss the next meeting? Are we going to have good quorum? This is great today. I'm going to leave early next time, you'll be in the able hands of Vice-Chair Guard from about 3:00 p.m. and I'm going to miss the subsequent meeting and probably do better without me.

Mr. Hunt: August 12th is the next meeting and the 26th would be after that.

Mr. Starr: Okay, I guess that's it right? We have potential items for the agenda for the next meeting.

Mr. Hunt: That's handed out to you.

Mr. Starr: In the meantime, great work everyone.

**I. NEXT REGULAR MEETING DATE: August 12, 2008**

**J. ADJOURNMENT**

The meeting was adjourned at 4:34 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  
Donna Domingo  
Wayne Hedani  
Kent Hiranaga  
William Iaconetti  
Ward Mardfin  
Joan Pawsat  
Bruce U'u

**Others**

Jeff Hunt, Planning Department  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works