

**MAUI PLANNING COMMISSION
REGULAR MEETING
MARCH 13, 2007**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairman Wayne Hedani at 9:01 a.m., Tuesday, March 13, 2007, 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. Hedani: At this we'd like to open it up for public testimony to be taken on any agenda item in order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered by the commission. Public testimony will also be taken when the agenda item is taken up by the planning commission. Maximum time limits on individual testimony is three minutes. A person testifying at the beginning of the meeting will not be allowed to testify again when the agenda item comes before the commission unless new or additional information will be offered. We have two people that have signed up on our public testimony sign up sheet. Would you like to testify at this or when the agenda item comes up before the commission? So go ahead and step to the microphone, identify yourself and proceed.

The following persons testified:

Mr. Steve Sutrov - Item B-1, BRE/WAILEA LLC, PD1, PD2 and SMA

Mr. Charles Maxwell - Item B-1, BRE/WAILEA LLC, PD1, PD2 and SMA

Ms. Patricia Nishiyama - Item D-1, Maui Beach Resort Limited Partnership, Annual Report

Mr. Buck Buchanan - Item D-1, Maui Beach Resort Limited Partnership, Annual Report

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

Mr. Hedani: Are there any other members of the public to offer testimony? Seeing none, public testimony portion of the meeting will be closed, and we'll move onto agenda item number B-1.

Mr. Clayton Yoshida: Good morning Mr. Chairman and Members of the Commission, Clayton Yoshida, Administrator, Current Planning Division, Maui Planning Department. Our Planning Director as we speak is providing the Council Planning Committee with an update on the General Plan update process before the Council goes into the budget session. Our Deputy Director, Colleen Suyama, had some unexpected family members to tend to.

So our Unfinished Business item, a request from BRE/WAILEA, LLC for Step 1 Planned

Development Approval, a Step 2 Planned Development Approval and a Special Management Area Use Permit for the Wailea Marriott Resort renovations and upgrades projects at TMK 2-1-008: 61 and 76, Wailea, Island of Maui.

Public hearing was held on this matter in September 2005. In October 2005, the commission granted intervention to Lai Honua LLC and the Association of Apartment Owners of the Wailea Beach Villas represented by their attorney, David Nakamura. In January 2007, a settlement agreement was produced between the applicant and the intervenors.

This matter was taken up by the commission at the February 13th meeting, but due to the shortage of time, the matter was deferred. So what is before the commission is taking action on the Step 1 and Step 2 Planned Development Approval and the Special Management Area Use Permit request. Providing an overview is staff planner, Thorne Abbott.

B. UNFINISHED BUSINESS

- 1. BRE/WAILEA, LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the Wailea Marriott Resort Renovations and Upgrades project on 21.89 acres of land at TMK: 2-1-008: 061 & 076, Wailea, Kihei, Island of Maui. (PD1 2005/0001) (PD2 2005/0001) (SM1 2005/0008) (T. Abbott) (The public hearing was held in September 2005.) (The matter was deferred at the February 13, 2007 meeting.) (Commissioners: Please bring your report/documents with you.)**
 - a. Intervention by MR. DAVID NAKAMURA, attorney for LAI HONUA LLC and the ASSOCIATION OF APARTMENT OWNERS OF THE WAILEA BEACH VILLAS in the proceedings for the above-mentioned permit requests. Intervention was granted by the Maui Planning Commission at its October 25, 2005 meeting.)**
 - b. Settlement Agreement presented in January 2007 between the applicant BRE/WAILEA LLC and the Intervenor LAI HONUA LLC and the ASSOCIATION OF APARTMENT OWNERS OF THE WAILEA BEACH VILLAS.**

The Commission may take action on the Step 1 Planned Development Approval, the Step 2 Planned Development Approval, and the Special

Management Area Use Permit requests.

Mr. Thorne Abbott presented an overview of the Maui Planning Department's Report.

Mr. Hedani: Questions for staff from the Commission? Commissioner U'u.

Mr. U'u: Yeah Thorne, is that typical as far as the sites might be having remains to submit a plan and not to have an inventory done instead of?

Mr. Abbott: I can't speak expressly for SHPD's policies or concerns but it's not unusual that if an inventory hasn't been conducted they'll allow a monitoring plan to serve as that as an initiation of that inventory. I think in this case in part it's that they're not doing a lot of ground altering. Most of what they're doing is just renovating the existing structures. Now the new structures they'd have to have a monitoring plan for.

Mr. U'u: What would normally be -- what would be included in the monitoring plan? What is the norm?

Mr. Abbott: And this is traditional standard comments from SHPD. Monitoring plan must contain the following nine specifications. One, the kinds of remains that are anticipated and where in the construction area the remains are likely to be found. Number two, how the remains and deposits will be documented. Number three, how the expected types of remains will be treated. Number four, the archaeologist conducting the monitoring has the authority to halt the construction in the immediate area of the find in order to carry out this plan. Number five, a coordination meeting between the archaeologist and construction crew has to be scheduled so that the construction team is aware of the plan. Number six, what laboratory work will be done on the remains that are collected. Number seven, a schedule of report preparation. Eight, details concerning the archiving of any collections that are made. And nine, an acceptable report documenting the findings of the monitoring activities will be submitted to SHPD for review upon 180 days following the completion of the proposed undertaking.

It's also my understanding that if they did encounter burials, all work would cease immediately as SHPD would be contacted and no further action would be taken without SHPD approval which I believe if there is a burial, it has to go to the Burial Council at that point and the Burial Council makes recommendations.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: I think it's when you were speaking to number four, I could be wrong, but does somebody from SHPD have to be on site during the tractor work?

Mr. Abbott: No, an archaeologist --

Ms. Freitas: So they leave it up to the contractor to stop if they find something?

Mr. Abbott: No, they leave it -- consider you have a construction crew, people with dozers and then you have an archaeologist that's on site with a clipboard walking next to you.

Ms. Freitas: Oh, there will be one on site?

Mr. Abbott: Yes.

Ms. Freitas: Oh, oh, I'm sorry.

Mr. Abbott: And that archaeologist is a state -- I believe it's a state qualification.

Ms. Freitas: Okay.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Thorne, where the regulations concerning burial sites in place when the original hotel was built?

Mr. Abbott: I could not speak to that. I cannot speak to that, perhaps Chris Hart could comment on that. I believe the hotel was built in the '70's. I know for example the Coastal Zone Management Act was not in place in the 1970's. That didn't come till '78.

Mr. Iaconetti: So whenever something new is proposed for a property, regardless of whether or not they're going to be excavating, if they're just building over something else that's been there, then they don't have to comply by any regulations as far as burial sites?

Mr. Abbott: No, we send all the projects off to SHPD for review and we let them make the determination. Typically what they say, first off, if there's excavation it's almost certain that you're going to have to have a monitoring plan. That's been our experience.

Mr. Iaconetti: But if we're doing something over an area that was never excavated to begin with because there were no regulations at the time, then the burial sites are there and they can continue to build over an area as long as they don't dig anything up?

Mr. Abbott: Yes, that's generally true. However, if you're covering -- if something's already covered by concrete, then typically yes, they're not going to require additional monitoring if you're just building on top of that. If you're proposing to cover a new area, even if you're not excavating, so you're just pouring slab on grade, then they typically do want an inventory

at that time because you're covering up something that might be down there. I will give you a recent example, the Maui Palms demolition that was before you about a month ago, they're just demolishing so they're not doing any real excavation, right, but they're still going to have an archaeological monitor there during the excavation. So once they pull the building away in case they find something underneath there.

Mr. Iaconetti: But if they're not doing any excavating then what is the monitor supposed to be doing?:

Mr. Abbott: Well, for this one, for the demolition because it is going to go down. You know they're going to do a little excavation in the ground, but basically if there's concrete there and you're just building on top of some concrete that's already there, I haven't found SHPD to be recommending archaeological monitoring.

Mr. Iaconetti: Seems a little strange to me that we know the likelihood of burials in that area is very good. But we are not even looking at them because we're not excavating anything or we're --

Mr. Abbott: I think the preference and I can't speak for the Burial Council obviously but from my experience and Clayton would be better to speak to this, my understanding is a lot of times leaving them place is the preferred method of treatment rather than disturbing them. But I defer to the Burial Council's expertise. Clayton, you have any comments on that.

Mr. Iaconetti: Even though it would be covered by concrete.

Mr. Abbott: Clayton do you have any comments? Does the Burial Council normally want to leave things in place?

Mr. Yoshida: I believe the Burial Council would get involved if there are cultural remains that are found.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, we did hear from the Chair of the Burial Council that was concerned that an inventory was not done here. Can you explain what the process of an archaeological inventory on a dune coastal ...(inaudible)... like this would they?

Mr. Abbott: I'd be glad to speak to that I want to make a caveat though however, I'm not a historic planner. My experience merely comes from what I've seen SHPD, ...(inaudible)... Burial Council's the lead. But in my experience basically an inventory survey is taking a backhoe, digging a trench, looking in that trench and seeing if there are any remnants. If

there are remnants at what depth are those remnants, what kind of soil type is there. Is it clay, is it sandy loam, that kind of thing, and documenting that, bagging it and tagging it and sending it to SHPD who may assign a number at that point and register it with the State. And again with the Maui Palms Hotel, they'll be doing an inventory survey for that whole area because that was built well before the rules existed. So over time as they do excavation, that will in part serve as their inventory survey. So it will be a cumulative thing.

Mr. Hedani: Any other questions for staff? Commissioner U'u.

Mr. U'u: Getting back to that -- I know they put up a pole on the luau grounds.

Mr. Abbott: Apparently

Mr. U'u: Is that legal?

Mr. Abbott: Apparently not.

Mr. U'u: Exactly.

Mr. Abbott: I have no idea. I wasn't aware of that.

Mr. U'u: Put it up, take it down and you know, come before us and ask for permission. It's kind of after the fact, that's what I'm looking at.

Mr. Abbott: Well, they corrected -- if they did have a violation, one option to correct it is to remove the violation. So apparently --

Mr. U'u: I took a year to have a permit at my house and these guys put it up and put it down. Come on.

Mr. Hedani: Any other questions for staff? If not, can we hear from the applicant?

Mr. Abbott: Sure. Thank you very much. I'll introduce Mike Summers from Chris Hart and Partners as well as Chris Hart.

Mr. Chris Hart: Thank you Thorne. My name is Chris Hart of Chris Hart and Partners and we are the applicants for the Wailea Marriott Resort renovation and upgrades. And again, this is an application for a Special Management Area permit together with Step 1 and Step 2 Planning Development Approvals.

We were told by the department that we should go through the presentation that was actually presented at the time when we came before you for the Special Management Area

permit for familiarization primarily from the point of view of the time lapse together with the fact that we have new commissioners on board. So that's what we're going to be doing.

Today we have with us John ...(inaudible)... who is actually the general manager of the Wailea Marriott Hotel and he'll be present. The project manager for the project Rod Oderguard is present. Also from Hill Glazier Architects, Peter Mason will be making the presentation and the landscape architect from Belt Collins is Dawn Easterday and together with our office Mike Summers will also be making part of the presentation this morning.

This is our consultant team. I have gone through and I might add SCS ...(inaudible - changing of tape)... does come time to discuss the issue of archaeology we do have the letter from SHPD, Genevieve Salmonson that actually does go through the process of their decision making in terms of the determination not to require an inventory level survey but to actually retain the services of an archaeologist to do archaeological monitoring. And there's some interesting information in that letter that might bring clarification to some of the concerns that some of the commissioners might have.

February 2003, I'm sorry, February 23, 2005, the applicant was filed for an SMA permit and Step 2 Planned Development Approval. On October 10, 2005, a petition to intervene was filed by Lai Honua LLC and the Association of Condominium Owners and this is the Wailea Beach Villas condominium project that is immediately to the south. On October 25, 2005, project presented to the planning commission and the public hearing was held and it was closed. The commission at the meeting granted intervenor status to Lai Honua LLC. On December 20, 2006, the settlement agreement was reached between the applicant and the intervenors. On February 13th, again, 2007, the applicant is requesting approval for the SMA permit and Step 2 Planned Development Approval.

The settlement agreement it actually addresses Wailea Beach Villas concerns regarding the project impacts and mitigation measures in the agreement include modification of the restaurant design, limitation on restaurant hours, landscape modifications along a portion of Wailea Beach Villas boundary, building height limitations and control of music and location of luaus.

The resort history. The project was actually constructed in 1974, and opened in – construction began in 1974, and opened in 1976. It was called the Maui Inter-Continental Hotel. It was the first hotel at Wailea Beach Resort. In 1989, parking structure and banquet rooms were constructed as a major renovation of the project. In July 2004, Blackstone Real Estate Advisors acquired the property. Blackstone's goal is to restore the property to a true four-star resort and basically the forecasted cost of the project is \$72 million.

I might add that in 1989, when the parking structure or the – basically it's a group function area was constructed during that period there were archaeological surveys done during that

period as part of the construction of that project. Again, Dr. Iaconetti mentioned that the project when it was initially constructed back in the '70's there wasn't the same kind of level of concern about archaeological surveys at that time. But that 1989 renovation did involve – it was quite substantial and did involve archaeological survey.

The project, the existing facilities approved for 558 hotel rooms within eight buildings and it's not our – our intention is not to change the number of hotel rooms. It has residential suites, conference and banquet facilities, retail shops, pools, spa, recreation facilities. We're maintaining the existing hotel operations throughout. The project area, the project site is 21.82 acres.

The proposed improvements for the project, we're proposing to enhance the exterior facade treatments and roofs to create a more Hawaiian territorial theme. The original Inter-Continental Hotel had kind of shed roofs which Peter Mason will discuss with you and our intention is to create a more what we consider Kamaaina Hawaiian architectural theme for the project. We're also renovating the porte cochere and the arrival entry experience. We're renovating and adding new pools and water features and we're also enhancing the ballroom and meeting rooms. Constructing a new specialty restaurant and we're developing additional parking. I might add that we're going to be adding about 222 additional parking stalls to the project. We're providing significant landscape planting and lighting enhancement to our project.

Our preconsultation. We met with the Wailea Community Association. We met with them in November 12, 2004, February 17, 2005. We met with our neighboring property owners. This was the Wailea Elua Village, The Shops at Wailea, the Four Seasons Resort, Wailea Golf LLC, Renaissance Wailea Beach Resort, Fairmont Hotel and Resort and Maui Hotel and Lodging Association.

We also met with neighboring property owners within 500 feet on September 16, 2005. We sent out a letter and on September 30, 2005, we conducted a community meeting regarding our project. And I will say that in the general sense the basic feeling of those – of the people that we've met with and the property owners that we met with was that the – this property, this hotel site is one of the first – is the first at Wailea and it was really in need of renovation and there was definitely a feeling that this was a positive project overall for Wailea Resort property values.

Also we met with the Urban Design Review Board as Thorne Abbott said on June 21, 2005, and again on September 20, 2005. The project was approved. Recommended for approval.

This is our location map at Wailea Resort. You can see that the parcel, 21.82 acres, does not have any sand beach frontage fronting the parcel. There's a hardened shoreline. It is

a lava flow. And then to the south and to the north fronting the Wailea Elua and fronting the Grand Wailea are the beaches.

The parcel immediately mauka of the property is The Shops at Wailea and the property immediately to the south is the Wailea Beach Villas property and again, this is Wailea Elua and the Grand Wailea Resort.

As far as the community is concerned, property is identified as hotel. There's also a business resort or business commercial site which is the site of the parking garage and this would of course be The Shops at Wailea, the business parcel.

The zoning of the site is kind of an interesting zoning. The front portion of the site is H-1 Hotel and then the back part is H-2 Hotel and then of course, this is BR Resort Commercial where the parking structure is located.

I'm going to ask Mike Summers to go through the site photographs and then Peter Mason will present.

Mr. Mike Summers: Mr. Chairman, Members of the Commission, my name is Mike Summers. I'm a land use planner with Chris Hart and Partners. And today I'll take you quickly through the site photographs and after our landscape architects presents the landscape architecture I'll also be summarizing the potential project impacts and mitigation measures.

Okay, from location 1, we have both the location map as well as the site photos. You can see that from this perspective we're looking west along the project driveway entrance towards the Wailea Marriott Resort. In the background there you'll notice the area that will be renovated to create a new entry experience and of course, our architect will discuss that in greater detail.

And here we're looking at the existing parking structure and currently we have parking at the ground level as well as the second level of parking. We'll be adding an additional level of parking and as Chris had mentioned that would increase our total parking capacity by approximately 220 stalls. There will be significant visual screening including a trellis system and landscape planting to kind of buffer the impact of that additional height.

And here we've actually just entered through the lobby. We're going towards the beach along the existing walkway to the main pool area and on the right is the lower arrival court and gardens and this area will be redesigned and enhanced with a variety of different features to provide more interest and you'll see the pool area in the next slide.

This would be the family pool area and these pools will remain. But there will be a new

temple water slide and some cabanas, etc., that will be added to the existing pool.

This area is proposed for a new pool. It's called the serenity pool which will feature cabanas over the water and the terraced lounge. That pool would be – well, it's pretty obvious, but it would be right in this area here of course.

And again, we're taking a shot looking mauka towards where that pool area would be. And this whole area will be kind of enhanced for additional landscape plantings and so it should be a much nicer experience from what we currently have.

And here we're looking at the existing hotel luau facility. This is to be replaced by the proposed specialty restaurant and a reflecting pond.

This is a panoramic to the ocean of the existing luau facility. It's important to note that existing luau facility is currently operating within the shoreline setback area, the 150-foot setback that Thorne had mentioned. The proposed restaurant will be located entirely mauka of that 150-foot setback area.

Okay, it that I'll turn it over to Peter Mason.

Mr. Peter Mason: Good morning Commissioner and staff. My name is Peter Mason. I'm with Hill Glazer Architects. We're the architects on the project and we're looking forward to completing this project.

The project itself as you've been through this list before and I'm sure you've heard the list before but basically what we're trying to do is we're trying to reimagine the project a little bit and bring it a little bit more up to date. We're trying to add some additional facilities to make it a better hotel experience for the visitor and –

Mr. Hedani: Peter can you please speak directly into the microphone?

Mr. Mason: Okay, is that better?

Mr. Hedani: Thank you.

Mr. Mason: Basically this is the overall master plan and we'll go through each of the individual areas as we move through it. The first area that really was the focus of the settlement agreement really relates to the specialty restaurant that's being added over – the existing luau grounds is really in the – right up near the ocean and because of the 150-foot setback the restaurant is back behind it. So there were some changes that were made from the initial design. This gives you kind of some images of the overall project and what we're trying to do is give a very Hawaiian very up-to-date feel for the overall project.

The guest rooms are being renovated. The interiors have all been basically completed at this point. What hasn't been touched at all is anything on the exterior but the rooms have been totally renovated on the inside. New toilets have been all water savers, you know, the whole package on the inside has been update and becomes a whole new resort. I mean, if you've been in any of these rooms you'll know the difference between what it was before. It's a very free, clean approach to it.

The exteriors, what – this is the 1970's version of the project. It was sort of a simple concrete boxes with shed roofs and really what we're trying to do is add more roofs, more complete roofs to it, give it a more Hawaiian feel. The railings will have an Hawaiian motif to them. The exterior, the three-story elements that the design review is talking about are these kind of things where we're adding individual elements on the buildings. Dawn is going to talk a little bit about what we're doing with the landscaping, to enhance the landscaping and to also deal with some of these big facades like here where we're going to have more planting up against the building. But we think this improves the overall image to the project. And that applies all the way across the project. This is kind of a montage of all the way across the site. But you know, the entire project gets new roofs, new railings, new fin walls to give it a little bit more massing and feel at the bottom so it doesn't feel like it's those spindly little walls that were in the 1970's design.

We're adding more water – more pools. This site is 22 acres and what's really unique about this site is that it's basically four different horseshoe courtyards that allow for everyone to be very close to the water, have a close feel to it. What we wanted to do was add alternate locations so that when you're on the site you really feel like you have an individual area of your own. You're not crammed into one pool area but there would be different experiences. So we're adding a small pool over here. It'll be called the oval pool. The serenity pool we talked about a little bit which was in this area and it fits kinds of in this zone down below. So it's separated from these guest rooms but it's down on this sloping lawn area and gives this kind of feel. So what we're getting is we're having these cabanas that are out in the water, you look towards the sunset. It's going to be an absolutely spectacular new pool.

There's two existing pools that need to be – have a little bit of work done to them. One is the team pool which is off to the side which is off to the side which I think was one of the very first pools that was on this property. And then there's the family pool that's related to the outdoor pool bar that will get a series of renovations as well. For example, at the family pool we're going to be adding a kids slide. So there's some place for the families to go. There's some place for the older kids and then there's more adult pool which is the serenity pool or the oval pool. Team pool gets a little bit of update. There's an existing waterslide that's going to be removed as part of fitting in the restaurant.

Existing parking garage gets an additional deck. Adds 220 stalls. It's basically designed,

this is the upper deck of it, it's basically designed so that it has screening all the way around it and Dawn will go through the landscaping because it's basically a very simple structure that we're using the landscaping to fit in. If you look at what's there now the landscaping does a pretty good job of hiding what's there. We're going to continue that same thing.

The lobby area we're going to do a little bit different lobby experience. What we're trying to do is downscale thing. The existing lobby is kind of a big bus terminal type of structure that's there and it doesn't have -- what we're looking at doing is orienting -- it's current orientation it looks right at this building. So what we're trying to do is rotate the lobby a little bit so that really what it's doing is it's looking up -- it looks up the Maui coast you get this view as you walk into the hotel rather than as seeing the buildings out in front and we think this is a big improvement to it. It's a much smaller more intimate lobby experience.

It looks up the Maui coast and you get this view as you walk into the hotel rather than seeing the buildings out in front. We think this is a big improvement to it. It's much smaller more intimate lobby experience. And really what you're doing is you're entering into a pavilion here that looks -- has this water feature that comes over and cascades down and the reception is off to the side. So it's very much a -- you enter into a court -- much more green courtyard. It's a very private area that you come into. Separates the motor car from the rest of resort by this very dense hedge that goes all the way around the outside of it. Give it a totally different feel for how you come into this hotel.

Here's a rendering of the hotel lobby. Much more of a Hawaiian feel to it. Much more smaller scale experience and then you look out toward the Maui coast in a much more refreshing entry to the project. This is some of the images for the ideas that came -- started to work on the lobby area.

On top of the ballroom when it was built in 1989, they put a roof top terrace and it was originally designed to have a -- and was approved this way was approved to have a big roof structure similar to the one that's over the lobby. And we thought that was kind of -- you know, not really the direction we go, but it's an outdoor area that gets used on an occasional basis for meetings and groups and that kind of thing. So what we're adding, what we're looking at is adding an tensile structure over the top, very light, very light color mat. The color will go with the color of the new roof tiles that we're replacing. It gives an upscale feel, it allows for outdoor functions there to be protected from the sun a little bit, and that's the idea on that area.

The fine dining is being proposed down at in this corner and this is the area where we had the intervention with the Wailea Beach Villas which is really basically along this whole side. And what we had done, the idea is that it's an open -- a series of open air pavilions that open onto what is the currently the luau lawn and the ocean is out here in front. Gives a probably one of the few on the water restaurants in the Wailea area was the idea.

The original plan, this is the property line to the Wailea Beach Villas. There's a condo villa here and there's a couple more up in there. The original idea was there was a bar and then a series of pavilions and restaurants with a display kitchen in this zone and basically this whole back side was protected up against the beach villas. As part of the settlement agreement this has moved around a little bit. The elements are basically still there but the bar has been moved over so that it's away from this property line and provides more privacy and noise protection for the residents of the Wailea Beach Villas. And then this back wall has become even more solid than it was before so that there's really no noise generated that would -- all the noise that's generated will be towards the ocean and away from the beach villas.

Again, this is, again starts to show how we're protecting the views from the back. We're dealing with all of the -- as a way to deal with the noise, we're also putting in a scrubbing unit on the hood, on the kitchen hood so that it cuts out all the smells. And then there's a revised landscape plan that Dawn will go through that shows how we're beefing up the landscaping along this property line to improve the privacy and the views from the Wailea Beach Villas.

What we think we're doing is really creating a new beginning for this hotel. It's a 1979 hotel that had its ups and downs over the years. We think this is a great improvement to the project and it's going to make it a great addition to Maui and to the Hawaiian Islands. Thank you very much for your consideration.

Ms. Dawn Easterday: Good morning Chair and Commissioners. My name is Dawn Easterday and I'm the landscape architect on the project from Belt Collins. Currently this hotel has a very mature landscape and we're looking at keeping most of the existing featured trees and just enhancing around those lower areas. We're also looking at having some water savings by removing some of the turf areas, we're replacing with low water using plants and some native plants.

These are just a plant list of some of the native plants and the low water using plants we're going to use and some supplemental trees that will help us also meet with the UDRB requirements for those three-story walls.

We're also planning on taking some of the existing light fixtures that are pictured here and updating them to a more modern standard.

Currently on the project there are some glare problems like this and we're going to be installing hex louvers and something that from the walkway, from the public walkway that you don't get that tremendous glare into your eyes because it's a little more subtle, a little more refined, more up to date.

This is an example of one of the three-story blank walls that we'll be adding treatments to like a travelers palms, some lauhala, some other smaller trees along those to help buffer that wall. I'd be glad to answer any questions. Actually, I'm going to back over to Chris or Mike? Mike Summers is going to come up.

Mr. Summers: Again, Mike Summers with Chris Hart and Partners and I'm just going to quickly summarize the potential project impacts and mitigation measures and I think Thorne did a pretty good job just at doing this earlier so I'll make it brief.

Regarding drainage the project will produce a slight increase in drainage primarily because we are adding a restaurant facility and new pools and as a result of those activities obvious increase the amount of impervious surface. But the increase will be small and it will all be contained on site within subsurface retention structures.

As for air quality, of course, there would be a potential for short term impacts during the construction phase. And so we will conduct regular watering on site and we'll install dust fencing to reduce a potential for windblown emissions.

We're also required of course, to comply with the Hawaii Administrative Rules, Chapter 11.61 for air pollution and Chapter 11.61.33 for fugitive dust.

There was a concern as we went through this process obviously with the Wailea Beach Villas and the restaurant, they were concerned regarding potential impacts from the restaurant and as a result of the settlement agreement specifically to address the issue of potential odors, the application has agreed to install a Gaylord Clean Air Pollution Control Unit or some other similar type unit to mitigate any potential for odor emissions impacting those residents.

As for ambient noise levels, of course, during the construction phase activities will be limited to normal daylight hours and of course, we will be required to comply with the Hawaii Administrative Rules, Chapter 11.46 for community noise control. There was also a concern of course, by the neighboring property owner, the Wailea Beach Villas regarding the potential noise that might be created by the restaurant. And as a result, the restaurant hours will be restricted to 9:00 a.m. to 10:30 p.m. That would include not only the restaurant hours but also service delivery to the restaurant. There will be the incorporation of solid walls on the south and east facing sides of both the reflecting pond area and the restaurant. So we will definitely be mitigating noise impacts to those residents. Also, as was mentioned previously, the noise levels along the Wailea Beach Villas property line will be limited 60 decibels from 7:00 a.m. to 10:00 p.m, and 50 decibels from 10:00 p.m. to 7:00 a.m.

There will be a slight increase in traffic resulting from this project but it will be fairly minimal. According to our traffic study, we'll have nine inbound and two outbound trips during the morning peak hour and 11 inbound and seven outbound trips during the evening peak hour and previously it was a morning peak hour. The reason why that traffic impact is fairly small of course is because most of the customers to this restaurant will be from the Wailea Marriott property and the surrounding properties. So we don't anticipate a lot of traffic coming off site. And of course, the applicant is willing to contribute its pro rata share as required by the State and County. As a matter of fact the traffic impact fee ordinance is currently before the Council and should be adopted fairly soon. So I'm sure they'll be making a contribution.

There will actually be a reduction in the amount of water consumed on the property as a result of this project primarily due to the installation of low flow fixtures within all of the existing facilities. So we'll actually experience an eight million gallon per day reduction in our water use despite the fact that we're incorporating a restaurant and a --

Mr. Starr: Per day?

Mr. Summers: No, per year, I'm sorry. Sorry about that. There will also be, there will be some increase in waste water generated by the restaurant facility. It's anticipated about 14,400 gallons per day, but overall again, the waste water contribution will be reduced because of the low flow fixtures, the residential suites.

And of course, there is adequate capacity as we documented in our report for the wastewater that's generating and we will be contributing expansion collection.

Regarding archaeological resources, We did hire an archaeologist, SCS, Chris talked about that and you know, right from the get go we understood the sensitivity of the site to potential archaeological resources and we requested our archaeologist to contact SHPD and have a discussion with them. And basically what they asked the archaeologist to do was to conduct a preplanning and due diligence field inspection and draft a report, and then follow up with SHPD to talk about the specific requirements. And so they did that, and then they had a conversation with SHPD and SHPD basically said that, you know, the area is a sensitive site. There is a potential for archaeological resources and that there should be monitoring during the construction phases. So that was all understood by SHPD.

You know also, you have to remember when that original resort was built; most of that property has been significantly disturbed. I mean, there was a lot of trenching, a lot of earth work that took place, probably including in that area where the restaurant will be. So it's really, despite the fact that there may well have been burials there in the early 1970's, there's a good chance if there were burials there, a lot of those burials have been removed. But anyway, nonetheless, there will be an archaeologist on site. There will be a monitoring

plan and that will be addressed.

As for visual resources, there will be no impact of this project on public resources. However, there was a concern obviously by the Wailea Beach Villas. Some of the residents there that we would impact their views. And so as part of the settlement agreement, there is a height limit restriction on the restaurant building. That building will be limited to 28 feet, chimney you can go to 29 feet. And they've also established a view plane over those existing luau grounds. So no structure within the4 luau grounds can exceed 28 feet.

Overall, obviously through the settlement agreement there has been a reduction of these potential impacts on the neighboring property owner. We haven't received any other comments on the project regarding impacts. And so with that, we're available for any questions you might have. Thank you.

Mr. Hedani: Questions from the Commission? Commissioner Freitas.

Ms. Freitas: Mike, the structure that's going above the ballroom, how do you access that? Is that like those two elevators and some steps?

Mr. Mason: Yes, yes.

Ms. Freitas: That's it still and it's going to remain like that?

Mr. Mason: Yes, it's exactly the same. Currently the exits per code. There's an exit stair on -- there's an exit stair here and then there's the elevators in that zone. So it currently meets all code.

Ms. Freitas: Yeah, I just know that there was some -- my concern is about safety. Johanna is not here. And I know that we were there at a ball and there was some concerns about if there was a fire up there, about how we would even get out because the elevators weren't working. So I'm very concerned because if you're going to make that beautiful people are going to want to go up there and I don't see there being an escape route.

Mr. Mason: There's actually three stairs built into that and they're probably not very well signed and as part of this there will be better signed. I mean, I agree with you. I mean, you can't see what's up there at all right now, but there will be signage as part of that that we'll deal with it, but it currently meets exiting requirements by the building code. But even the current one, there's basically are three stairs that come down off it. There's the grand stairs that come up --

Ms. Freitas: Okay, and I'm not, you know, pushing this, I'm just going to make a suggestion, when there is an event there, it wouldn't be a bad idea for the hotel to

accommodate whoever's throwing it by having someone stationed at all these exits because you're going up and down and there's so much confusion just in the event itself, if there was any panic I guarantee you it would be a mess.

Mr. Mason: No, that's a good idea. Yeah, that's a great idea.

Mr. Hedani: Any other questions for the applicant? Commissioner Starr.

Mr. Starr: Yeah, I want to get back to that rooftop area and I've been to quite a few really nice events up there especially sunset, it's a great place. And we had heard in testimony that part of the settlement agreement is that events there will have to be constrained. Is that the case?

Mr. Mason: The big issue with the Wailea Beach Villas was maintaining views and maintaining some sense of quiet. I mean, obviously their concerns are there, but they have agreed that events on that ballroom terrace area an acceptable use.

Mr. Starr: I'm a musician and you know, I really feel it's important to support live music including luaus and other things. Is this going to curtail the ability to have live music up there at reason hours and a reasonable volume?

Mr. Mason: I think the tenting actually helps the situation by quite a bit because it tends to contain the noise and keep it from floating too far and I think if you position the amplifiers and the stage in a certain position that you do not have issues, there would not be issues related to that.

Mr. Starr: In other words, it will be able to continue to have?

Mr. Mason: I would assume so. I think that's an operations issue that I'm sure the general manager can address.

Mr. Starr: Yeah, can we hear about that?

Mr. John Jascula: Good morning, John Jascula. I'm the General Manager. And one of the things that Marriott is very focused to is culture and out of the nine properties that we have throughout the islands, we're very focused and dedicated to Hawaiian culture. In fact we've hired a consultant Ramsey Tom to be our guide in that journey.

In the luau with our neighbors we've been very -- we would work them, as an example they complained about the smoke pit and we closed that. We've also changed the luau. I apologize that the entertainers move too fast on that scaffolding that we brought down right a way. But our luau today is very focused to culture and we tell a great story of mythology.

The sound levels are quite good. I believe though there are restrictions on luau on top of the ballroom.

The other thing I have to say though, it's been very difficult for our associates over the last 15 months and our wholesale business and our group business have gone away and a lot of our associates have lost hours due to ...(inaudible)... Now our commitment is, when we do these renovations we firmly believe that our business is going to come back and stronger and that we will not have any one of our associates leave us. We will find jobs for everybody and the luau may close, but if we have a new option on the ballroom that's so important. And groups want to have luaus. Groups from all over the world that come to Hawaii and they want the entertainment. They want the musicians. They want that feeling of being in Hawaii and have an experience.

Mr. Starr: Can I make one follow up Mr. Chair?

Mr. Hedani: Follow up.

Mr. Starr: Yeah. I just want to understand is the luau going to be stopped or is there going to be another luau and I have a big concern because I feel that that is an important part of the service that our hospitality industry provides. It is not only provide some cultural experience for the visitor and also the opportunity for the practitioners to dance hula and musicians to play and those jobs are really critical more critical than in other areas. So you know, I want to know what the plan is going to be if this is going to make it impossible to have the luau then I have concerns.

Mr. Jascula: Well, what will happen is because the restaurant the luau will have to close but we move the luau into the ballroom area if we can. We'd love to do that and use it throughout the property but more focused to group business coming in on a convention and booking the luau through that versus --

Mr. Starr: You mean it's going to be inside the ballroom?

Mr. Jascula: No, we would hopefully be on the roof if that's permitted.

Mr. Starr: Can we get a reading on what's going to happen with this?

Mr. Hart: Thanks John. Actually, the luau in its current location will be closed in the context of the restaurant being constructed. There is a prohibition in the context of the agreement of having a luau as part of the group function area. So they will not be able to do it there. But there are other locations on the site, on the property where a luau could be accommodated and that's something that's being -- that is a subject of further study. Basically what Blackstone and Marriott want to do is to go through the renovation process

and be able to construct the restaurant, be able to -- make the improvements to group function area and essentially get off and running and you know, there is a possibility of reestablishing the luau in another site. Now it hasn't been determined where that site would be at this time. But after the construction is done of the pools and all the other renovations is completed, it is possible that the luau would be reestablished on site.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Chris, I think that somewhere in the notes should be noted that they have to do that, establish, I'm sorry as a follow up, another place for the luau because through the entire presentation I don't know how many times it was stated about the Hawaiian experience, you know. And if you eliminate the luau then you've taken that all away. So I mean, you can put pictures on the wall and everything but it's not the luau. So I think instead of just possible words like that make it really mandatory.

Mr. Hart: You know, that's really, you know, within the purview I believe of the commission as far as the uses, you know, that could be established on the site. Now, you know, again, can refer to the site plan, it's a 21.8 acre site and Peter Mason was talking about it in the context that you know, there's these pods, these areas. The area where the serenity pool, there's a possibility. I would think that -- and of course that would be quite remote from the Wailea Beach Villas. But you know, it hasn't been determined yet, but they obviously from a business point of view Blackstone and Marriott can see the benefit as well as from a cultural point of view they can see the benefit. So that's where they are right now in the context of reestablishing the luau.

Ms. Freitas: So when they pick where they're going to have the luau because they're going to have to have a luau, are they going to need to come back for building permits and SMAs and all that again?

Mr. Hart: Well, a lot of the luau type facilities are basically nonstructural. They're tables and so on. There would probably have to be some kind of a permit and it's highly likely though that it could be considered as a minor permit, structures that would not exceed a \$125,000 in value.

Ms. Freitas: Right.

Mr. Hart: But definitely -- and again, I wasn't aware of the issue of the pole being installed and I think that neither was the management. It just happened in the context of the new operators of the luau. So we apologize for that. But we have been trying to be very conscientious about permits for this project.

Mr. Hedani: That was the Hawaiian acrobatic pole, right?

Mr. Hart: Right.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Chris, I received an email about condos down here becoming for sale. Is Blackstone going to keep this property? Is that the other hotel?

Mr. Hart: This property is being renovated as a hotel. Purely as a hotel.

Mr. Guard: Okay.

Mr. Hart: And it has been -- we did process a few -- actually back in 2004, we processed an administrative permit in order to do interior renovations. That has been ongoing. In those shots that Peter Mason showed you are the renovated interior rooms and they are hotel rooms.

Mr. Guard: So it's remaining a hotel and not --

Mr. Hart: It is remaining a hotel. It's about 547 units.

Mr. Guard: Okay.

Mr. Hart: Yes, no condos.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Just a few questions. I like the design. I think it's very nice.

Mr. Hart: Thank you.

Mr. U'u: What you're doing right now you asking us to almost trust Blackstone as far as you know, you said, let us get on with this, let us continue our renovation and entrust Blackstone with hopefully in the future of having a luau. You guys use the term Hawaii feel, Hawaiian style, and sitting here I would believe by your speech that you guys will be continuing the luau. However, you guys going get rid of the luau which in fact affects the workers which you guys say by, you know, we're going accommodate our workers. You going displace some workers bottom line. And then you said about the pole it just happened. It just doesn't happen brother. How can it just happen? And we entrusting you guys? We got to trust you guys to come up with a renovation. I am for renovations. I think it looks great but the process in which you guys doing them I disagree. And this is just my personal note. I mean, you cannot sit up here preach Hawaiian, get rid of the luau, put up

a pole, say you're following procedure and we might be having them indoors. Jesus Christ brother you can take that to the mainland and going be the same effect. No difference if you don't have it outdoors. So where we going? You making promises that you not sure you going do? You know sure how the pole went up, but I'm a little lost right here. But although I agree with the design getting to the bright side. It is a nice design granted, but I think the process you're doing it and you keep using that word Hawaiian feel and Hawaiian style and it's totally un-Hawaiian.

Mr. Hart: Well, the things that we're talking about from a Hawaiian perspective, you know, the indoor, outdoor feelings of the hotel. The architecture when it was designed you it was basically a '70's kind of shed roof type of and we're trying to incorporate hip roofs that would make it feel more -- you know, like it belongs in Hawaii and I'm not talking about it being absolutely Hawaiian cultural but feeling comfortable in Hawaii.

In terms of the luau facility obviously there's a desire to essentially build the fine dining restaurant and you know, that was presented to you as part of the original SMA permit and the luau facility was being proposed to be closed.

Now in the context of how this is all evolved. You know there is an area that's been identified that would be prohibited as far as the settlement agreement for establishment of a luau. But again, the site is 21.8 acres and there are other areas where a luau could be accommodated. It's probably not going to be as large as the current luau. But that's something that you know, again, it could be within the purview of the planning commission. Now again, though, where it's going to be has not been determined. And I guess I am asking you for trust because of the fact that it is a business decision and it's also you know, essentially a cultural kind of a decision. I mean, the intention is to try to be a hotel that essentially is not like another mainland hotel. It's a hotel that's going to basically promote the values and the environment of Hawaii.

In terms of the people that are working currently at the luau, you know, they're basically talking about 30 to 50 people. There will be expanded group function areas obviously with the ...(inaudible)... structure on the roof. So the intention is not to lay off people. You have to trust us on that. We're not intending to lay people off.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Okay thank you Chris and we can handle the luau I believe in a condition. But Chris I know you've said it before, I just have to hear it again, I'm sorry. These will never go into time share?

Mr. Hart: In the context of the project that's being presented to you today with the owners being Blackstone Real Estate Advisory Group and the operator being Marriott, I would have

to say that they would not be time share. Now if somebody else buys this property, in the context of another application that comes to you. This project came before you in 1989 in terms of a renovation and it was different owners, I can't really say that it would never be time share. Well, it couldn't be time share. At Wailea it could not be time share.

Ms. Freitas: Because of Wailea.

Mr. Hart: What am I thinking of.

Ms. Freitas: Because of Wailea's --

Mr. Hedani: The CC&Rs.

Mr. Hart: The CC& Rs at Wailea prohibit time share, period.

Ms. Freitas: Thank you.

Mr. Hart: So I would have to say, unless something like a change or an amendment of their CC&Rs occurs it would never be time share. Okay.

Ms. Freitas: Thank you.

Mr. Hedani: Any other questions from the Commission? Commissioner Guard.

Mr. Guard: Thank you Chair. Chris, what's the small shed building in the very bottom corner?

Mr. Hart: Actually it's an activities booth that was basically set up -- I'm not sure what year that was but I think it was back in the '80's. I think it was part of the '80's renovation. And it's essentially going to remain. We did some renovations to it. Just in terms of improving the character of it, but it wasn't expanded.

Mr. Guard: So just makai of that shed, is that the beach or is there still more green space and the walkway?

Mr. Hart: This is the walkway. It goes over and it basically goes in front of the Wailea Beach Villas which there is the main sand beach that extends down to the Grand Wailea.

Mr. Guard: And one more question. In the -- what is this -- one of the appendix A it talks about adding a natural sand beach and fire pit and I --

Mr. Hart: No, that was something that we had talked about there's an area over here, see

how the lava flow is, there was a proposal to basically add some sand and there was also a proposal here. It basically -- the decision was made not to do that. So that that's not part of our project. It would just require too many environmental and shoreline and permit problems.

Mr. Guard: Okay. So one more. The drainage issue you guys are just going to take care of what you're adding now --

Mr. Hart: On site.

Mr. Guard: What's the -- do you know what the drainage requirements were in the '70's for the original hotel? I mean, what type of waters the hotel is actually contributed into Wailea Beach?

Mr. Hart: In terms of runoff. I don't --

Mr. Guard: Or if there's any opportunity to improve on drainage. Visibility down there has definitely decreased, so --

Mr. Hart: In terms of the offshore visibility?

Mr. Guard: Where's the drainage release right now that they're talking about on the north side of the property?

Mr. Alan Kato: Good morning Commissioner Members, my name is Alan Kato, I'm the civil engineer on the project, and what is the question again?

Mr. Guard: I was wondering where the drainage goes to currently?

Mr. Kato: The drainage right now kind of, you know, all sheet flows off the property. There are existing subsurface drainage structures that allow the runoff to percolate into the ground. Under the new project what we're proposing to do is put in seepage wells which are large six-foot diameter concrete rings which have perforations in them and then they basically will have the capacity to store water and also allow water to percolate back into the ground to recharge the natural ground water table.

Mr. Guard: And that those I believe are under the proposed patio and the restaurant?

Mr. Kato: They will be installed with the different improvements that we're going to be making.

Mr. Guard: Oh, okay I thought that the major improvement area was down there. And then

it is lined to take out any chemical sediment from irrigation as well?

Mr. Kato: It's lined with gravel.

Mr. Guard: Gravel?

Mr. Kato: Yeah, and then you'll have to periodically maintain them.

Mr. Guard: Maintain them.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: With the increased number of pools, the backwash from these pools where does it go?

Mr. Kato: Right now we're taking it to the sewer system.

Mr. Iaconetti: In the sewer system?

Mr. Kato: Yes.

Mr. Hedani: It's a big no, no.

Mr. Kato: Well, what we can do is change that to take it to the seepage wells because we do that on the Big Island.

Mr. Iaconetti: Are you using chlorinated methods to keep the pools clean or salt or what?

Mr. Kato: Salt.

Mr. Iaconetti: Salt? And that doesn't create any problems as far as chemicals going into the sewer system?

Mr. Hart: I wasn't aware that, you know, that's what we were doing, but that currently that is not a practice that's allowed, you know, in Maui County as well as the Big Island. So the water, the backwash from the pools will have to be accommodated in the manmade drainage structures, the drywells that are going to be developed on site for disposal. And you know, we're not using chlorinated water so it would be salt solution and that is allowed as far as basically Department of Health wastewater management.

Mr. Hedani: Go ahead.

Mr. Iaconetti: Would this settlement agreement between the Wailea Beach Villas and the Wailea Marriott Resort would that have been approved by both parties if page 4, paragraph titled I think J, Hotel Privileges means the unconditional and irrevocable agreement by the developer for itself and its successors in title to the Wailea Marriott Resort property to grant the Beach Villa apartment owners and their business and social invitees charging privileges, etc., etc.

Mr. Hart: Yeah.

Mr. Iaconetti: Would this had been passed if that paragraph was not included in the settlement agreement?

Mr. Hart: It would have. Basically we're concerned about that, you know, because of our concerns -- I mean, lets say prior concerns expressed by the commission, and, you know, in the context of like for instance the 10% from -- discount, it's you know, basically standard kamaaina type of discount that anybody would get you know, that if they basically at the Marriott according to John and he might want to say something about that, that if you are a resident, a kamaaina that you would get a discount automatically.

Mr. Iaconetti: At any of the Marriotts?

Mr. Hart: Maybe John can say something about that.

Mr. John Jascula: You're all welcome. No, it's a kamaaina rate which are our neighbors. You know one of things, you know, of course we're a group hotel, but the kamaaina rate is very important to us. So that particular thing to all neighbors.

Mr. Iaconetti: To all neighbors?

Mr. Jascula: To all neighbors.

Mr. Iaconetti: So I can go to the Marriott over on the west side and say I'm a kamaaina and I'll get a 10% discount.

Mr. Jascula: Well, that's our property. This is a promotion that we put for our property. But probably, I'm not aware of theirs, but most properties and the Marriott is kamaaina rate, but I'm not sure with that one. But for us, definitely.

Mr. Hedani: Any other questions for the applicant at this point?

Mr. Hart: Could I just clarify one more. That's also a reciprocal practice for members of the Wailea Community Association I was informed as well. If it was a 50% discount now I could

understand what you were getting at, but it's basically meant to be a kamaaina courtesy.

Mr. Iaconetti: It looked like a bribe to me.

Mr. Hart: I know.

Mr. Hedani: Incentive for intervention 10% discount. Commissioner Hiranaga.

Mr. Hiranaga: Yes, Chris, could you go into more detail regarding how your archaeological consultant was able to convince SHPD that an archaeological survey was not necessary?

Mr. Hart: This basically the letter that Mr. Maxwell referred to from Melanie Chinen is dated July 28, 2005. It was a comment letter. Can I just read from the letter? Is that okay? That's the best way to --

Mr. Hiranaga: Actually I've read the letter, but I'm more interested in the letter that your consultant provided to SHPD.

Mr. Hart: Okay, maybe Mike, you might want to say something about that.

Mr. Mike Summers: You should have all received a letter from our consultant SCS. It's addressed to Dr. Melissa Kirkendahl, the local Maui archaeologist. And basically the letter describes the preplanning due diligence study and field inspection that was conducted at the subject property. That would be in your packet. In our report it was appendix B and I'm not sure if it was a different appendix with the staff report, but in any event Mike Dega, the archaeologist, the chief archaeologist for Scientific Consultant Services did a preplanning and due diligence field inspection and drafted a letter to Melissa Kirkendahl basically describing what took place during that field inspection and asking her for a recommendation in terms of whether monitoring would be acceptable or an inventory level survey or what might the requirements be. And so I think that letter pretty much documents the rationale that Melissa used to make her determination that the monitoring would be a good way to go with this project. I can read that letter to you if you'd like but you do have a copy of it.

Mr. Hedani: Kent, do you have a copy of the letter?

Mr. Hiranaga: Yes, I found it. Thank you.

Mr. Hedani: Okay, any other questions for the applicant? Seeing none, staff recommendation.

Mr. Yoshida: Public testimony.

Mr. Hedani: Oh, I'm sorry, are there any members of the public that would like to offer testimony at this time that have not been heard? Please step to the microphone and identify yourself for the record. Seeing none, the public testimony is closed. Staff recommendation.

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

Mr. Steve Sutrov: Good morning, my name is Steve Sutrov. Good morning, aloha planning commission and chair and staff. I'm speaking for myself this morning. I am an associate. I'm an employee at the Wailea Marriott Resort and Spa. I've been on the property for over 30 years, actually working in the hotel over 30 years, working on the property for probably 33 years. I was there during the construction of Inter-Continental during that time.

I've been there a long time. It put my family through school, college. My girls through college. Helped my wife and I buy a nice house on Maui and it's been a great job in taking care of us with great benefits. I plan on working there a few more years definitely.

I am speaking out on -- I'm speaking in regards to the SMA process for Blackstone, the owning company going forward with major renovations on the property. I'd like to see the SMA continue on and have many of the outdoor amenities that they plan be constructed, but I am speaking out against the restaurant and I'm speaking out against the transformation of our luau gardens lawn area because I believe it's going to transform into the resort into something less than what it's been and the flexibility for Marriott management will be stifled by what is being proposed by the owning company.

With allowing the restaurant to go forward and allowing the luau gardens to be transformed into nothing but a quiet garden area for the restaurant I believe that the only main function area outdoor for the hotel, for the resort will be taken away. There's one other lawn area on the property that can hold maybe a third of the amount people and the weather conditions there with the direct trade winds, it's not an area where a public luau or any other event can be sustained on a continued basis. It's a very adverse place to have functions. The luau gardens is sheltered from the trade winds by natural features and buildings. It's a beautiful place for cultural events such as a luau.

So I'd like, very quickly, I believe the SMA must address historical and cultural resources and I believe Hawaiian music, dance and food is a cultural resource. It's a living cultural resource that must definitely pay attention to in this property. Those luaus we serve sometimes up to 2,000 people a week, and this is a cultural experience that people come here for to learn more about Hawaii.

Mr. Hedani: Three minutes Steve. If you can finish up?

Mr. Sutrov: I can't come back right?

Mr. Hedani: You can come back if you have new or additional testimony to offer. You have a minute to finish up.

Mr. Sutrov: Finish up now or come back?

Mr. Hedani: You can have a minute to finish up.

Mr. Sutrov: Okay, and that's my option, huh? Okay. Okay, I'll try to finish up. So, yeah, a couple of things I have to correct is that employees that lose their possible jobs at the luau will not be employed by the restaurant. The restaurant is going to be a stand alone operation. Very few of us would even apply for that job since we are not restaurant workers. We are banquet catering workers.

Also, the sound levels that are being in the agreement between next door and the property, they are not realistic for any resort use as far as any outdoor functions. I'd hate to see that agreement enacted with sound limitations for any resort. If it happens here, if you agree with that agreement that was done by local lawyers and local planners, it's going to be taken and used in every resort in this island and with any time there's an neighboring development going in next door eventually there's going to be no outdoor functions and there's not going to be any more public luaus or a Hawaiian music, dance or food served outside. Thank you very much.

Mr. Hedani: Thank you very much. Questions from the Commission. Commissioner U'u.

Mr. U'u: So they got rid of the luau that was held there? No luaus.

Mr. Sutrov: No, right now there's definitely luau going on. It's a very high quality cultural experience. It's not just a tacky luau. This thing is a major production which really educates the guests.

Mr. U'u: So it is ongoing the luau?

Mr. Sutrov: It is. We have four days a week right now. And it's over by 9:00 p.m. at the latest. The restaurant will go to 10:30 p.m., seven days a week. Luau's only four days a week. We set it up in two hours in the afternoon and we start about 4:00 p.m., 4:30 p.m. and we're out of there by 9:00 p.m., totally broke down and lights off.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Thank you. This is the spot that they also had a few years back, is that where

the sailing canoe championships used to have their little -- the final race around Molokini and back in? And the hotel would host that event.

Mr. Sutrov: I believe so. It's the far corner, bottom corner of the property. Is this our resort here, yes. The luau prohibition zone I think is going to be this whole area in here along with the roof top open area that we have on top of one of our buildings which is what's bordering the Villas more than any other portion of the property.

Mr. Guard: So it's the same spot where Xterra would do their staging, if I'm correct.

Mr. Sutrov: Yeah, it's a beautiful open lawn area overlooking -- it's the only place I understand where events like this, like luaus can take place right on the water's edge in any of the resorts. It's the only place -- that's why people love coming to ours because it's a real experience being right on the water and having this event.

Mr. Hedani: Commissioner Iaconetti, did you have a question?

Mr. Iaconetti: Who is your employer?

Mr. Sutrov: Pardon me now?

Mr. Iaconetti: Who are you employed by?

Mr. Sutrov: I'm employed by Marriott. Marriott which is the managing company of the property.

Mr. Iaconetti: And the development that is being proposed is --

Mr. Sutrov: Is the owners.

Mr. Iaconetti: Of the property?

Mr. Sutrov: Right, an investment firm, real estate investment firm.

Mr. Iaconetti: Thank you.

Mr. Hedani: Commissioner U'u.

Mr. U'u: How much employees will be affected by this?

Mr. Sutrov: Well, just on our banquet staff alone, there's probably -- we have I think 16 full-time workers and maybe 10 part-time workers and then there's the cooks and bartenders

and the stewards and so I'm not really sure when it gets into the numbers, but maybe 30 or more.

Mr. U'u: Also, I know I like the walkway area, nice place to take a stroll yeah. Very nice. I like the grounds too.

Mr. Sutrov: It's unique.

Mr. U'u: It's real relaxing. I notice a few months back there was a large pole. Was it?

Mr. Sutrov: A large, what now?

Mr. U'u: Pole. I don't know -- What was that for?

Mr. Sutrov: We had the new -- when this new luau production came in, they have -- one of their acts is a acrobat -- this is Ulalena type production almost and they constructed this and it was done without permit and so it had to be removed immediately.

Mr. U'u: How high? I seen it, it was huge.

Mr. Sutrov: Yeah. Right now it's operated -- they have this act out of a tree and it's beautiful.

Mr. U'u: Out of a tree?

Mr. Sutrov: Out of a tree. Acrobatic act out of one of the huge banyan trees which I believe is -- that tree is a -- I hope they do not plan on altering that tree because I think it's one of the special trees on the island.

Mr. U'u: So they got rid of the pole?

Mr. Sutrov: Oh yeah.

Mr. U'u: It's no longer there?

Mr. Sutrov: They never even used it. It went up and they realized that you need a building permit for this or more than that. You probably need an SMA for it. I'm not sure, but immediately it was taken down.

Mr. U'u: In your estimate how high was the pole, 30 feet?

Mr. Sutrov: I -- no, I don't know. It wasn't that high. I only saw it up one day I think.

Mr. U'u: I seen it that one day.

Mr. Sutrov: Yeah. It went down immediately though. It never was used.

Mr. U'u: Never was used.

Mr. Sutrov: No.

Mr. U'u: All right. Thank you.

Mr. Hedani: Any other questions for the testifier? Seeing none, thank you very much Mr. Sutrov.

Mr. Sutrov: Thank you.

Mr. Hedani: Charlie Maxwell.

Mr. Charles Kauluwehi Maxwell: Mr. Chairman, Members of the Commission, my name is Charles Kauluwehi Maxwell, Sr. I am a Chairman of the Maui Island -- Maui, Lanai Island Burial Council, and I'm also a cultural consultant.

I have two areas of concern. If you refer back to July 28th, the 2005 letter from Melanie Chinen, she's the Administrator of the State Historic Preservation Division. When the Inter-Con was built some years ago, there were burials that were found and we reburied it at the Kealani Hotel about 350. And if you note in her letter, there was no archaeological inventory survey done for this particular property. As the Four Seasons have found even after construction has been gone and all these years the burials are still underneath. So I hope this is referred to the Maui Island Burial Council so we can look into this. This is very important. As you know it's a sand dune area and our ancestors used to bury in the sand dunes throughout the islands but more so here on Maui.

The other area of concern is the luau grounds. The no luau sanction, but I think it also covers another area which is Section 7.1 of the Hawaii Revised Statutes which give native Hawaiians the right to traverse down to the ocean to practice their cultural beliefs and if it's about consuming, you know, any kind of pig or ceremonies down at the beach that cannot be stopped. So I think the language might be too broad and it has to curtail if they want to get rid of the luaus, the luau grounds, fine, but they'll be negating the use of native Hawaiians passage through there. And that's my area of concern.

Mr. Hedani: Questions for the testifier? Commissioner Starr.

Mr. Starr: Uncle Charlie, the burials, I'm not familiar with the issues regarding this location. Where are the areas in question and what – do you know what is proposed to be done at those locations?

Mr. Maxwell: Well, according to Melanie Chinen's letter when any ground alteration is to be done, they should at least have a inventory survey and it hasn't been done here. So I would hope that this happens before any kind of ground altering occurs in this area because the sand dunes are typically known for burials. And just as a point, if you notice if you go up high on the plane and you look down on Maui from Waihee all the way down to Pu'uolai is a sand dunes undulating and that's why they call the Mo'okuauhau which is a genealogy of the Hawaiians. It's the Mo'o the shape of the vertebrae of the Mo'o and that's where the people bury in the past.

Mr. Hedani: Any other questions for the testifier? Seeing one, thank you very much Mr. Maxwell.

Mr. Maxwell: Thank you.

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

Mr. Abbott: Chair Hedani before I start the recommendations, if I may have the liberty of responding to some of the commission's concerns and comments to just to clarify a few of those?

Mr. Hedani: You're willing to take that chance, huh?

Mr. Abbott: Yes.

Mr. Hedani: Okay, proceed.

Mr. Abbott: I just wanted to clarify what from a regulatory authority HRS 205A provides as far as cultural resources, if that's appropriate. And this comes from the actual report from the consultant. But it says, protect, preserve and where desirable restore those natural and manmade historic and prehistoric resources that are significant in Hawaiian and American history. Identify and analyze significant archaeological resources, maximize information retention through preservation of remains and artifacts and support State goals for protection and restoration, interpretation and display of historic structures. So it refers there to structures primarily.

Then if you look at the SMA rules in your evaluation under 12-202-12(e)(1)(a) involves an irrevocable commitment to loss or destruction of any natural or cultural resources, and (d) substantially affects the economic or social welfare of the community, county or state. So

I just wanted to mention that.

There was a question about the luau prohibition zone and some discussion about whether that would be allowed on the rooftop structure. It is not allowed on the rooftop structure. According to the settlement agreement, page 4, item M and N. And also as far as music up there and at the boundary there can be noise up to 60 decibels between the two properties up to 10:00 p.m. After 10:00 p.m., 50 decibels. To answer your question sir.

I think also, John, your comment about looking at properties, right now all they have to do is capture any increase in runoff from their development. Well, they're obviously just developing a very small portion of the site. As planning staff I'll take it back to current that you recommend looking at the entire parcel especially for these older building that probably don't have drainage that was designed for today's standards and I apologize for not considering that. That you for bringing that to my attention. Finally, there is a requirement from DOH and I'll mention that in the recommendations as far as the pool water discharge. Thank you for letting me comment on that.

Mr. Abbott then presented the Recommendation.

Mr. Hedani: Questions for staff? Commissioner Guard.

Mr. Guard: I don't know if you'll be answer or not Thorne. There's discrepancy from all the paperwork we have shows a \$19 million permit valuation and then today it was a \$72 million on the board or on the presentation. Is that a fee discrepancy that the County would be getting if you turned in a permit for \$19 million versus \$72 million?

Mr. Abbott: Not to my knowledge. My understanding is that when they -- actually they submitted the application under \$19 million. Unfortunately, because there have been delays it now apparently costs \$72 million, but I don't know if that's appropriate.

Mr. Summers: Yeah, I'm sorry, there's no change in the permit fee for this project as a result and that was a miscommunication between our office and the Wailea Marriott Resort office when we drafted our application. So that's how that came up. It's a \$72 million project. Thorne's right the delay has resulted in a cost increase but certainly not that much of an increase.

Mr. Guard: Well, like if I turned in a permit saying \$120, 000 I could get an SMA exemption, \$126 I'd --

Mr. Summers: No, there's a maximum.

Mr. Guard: There is a maximum?

Mr. Abbott: There is a maximum amount.

Mr. Guard: I haven't been able to pull a permit for that amount lately. Rules must have changed. Then on the -- lets see I think it's 27, I'm pretty sure it's your prior page, we talk about putting in native landscaping. Do we have like any percentages that we're looking at. I see they have one hala tree at least. Is that sufficient or are we going towards, hey we want to use 50% landscaping that actually would survive in this environment?

Mr. Abbott: I'll let their consultant speak to that, but to my knowledge we do have a landscaping plan review that occurs during the building permit process, but I'll let the applicant speak to that.

Ms. Dawn Easterday: It is a mixture of low water use exotic plants as well as native plants. Right now I'd estimate that the native plants, we're probably thinking about 25, 30%.

Mr. Guard: Thank you.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Thorne, maybe you could help us construct if the rest of the commission, you know, votes to agree about adding something in there about the luaus? You know, mean, and outdoors. That they have to somehow provide it and it got to be outdoors somehow.

Mr. Guard: On that note, maybe the applicant -- what's the capacity of the luau right now that they're supposedly taking away?

Mr. Hedani: John for the record, can you just speak into the microphone.

Mr. Jascula: 350.

Mr. Guard: And what's the area of that lawn? You guys know about how many acres the actual existing luau garden is?

Mr. Jascula: Probably less than an acre.

Mr. Guard: Less than an acre. Okay, so how much space would you need for a more intimate luau setting for 150 to 200 people based on quite a bit of sprawling space on the oceanfront sector if that's what the commission was interested in? So you wouldn't need that much space.

Mr. Jascula: Yes. I mean, we've done luaus up to a hundred. In fact we've done some on

the other areas around there so the idea being that when groups ask for a luau then we would use those areas.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Sir, as of right now you only do luaus if somebody asks for them?

Mr. Jascula: That would be the case if the --

Ms. Freitas: No, presently?

Mr. Jascula: Presently, no, no, now we do four times a week.

Ms. Freitas: Okay, well that's what I don't know about the rest of the commissioners, but that's what I was looking at. I'm not looking that if some group comes in and decides it's a novelty that they want a luau performed that you gather a group and do a luau. I'm thinking of something more permanent and not just for -- you know, only visitors don't go to luaus. You know, local people go to luaus too. You know you get company in, you want to take them to a luau. So what, you have to be -- you know, going to the hotel and be with a group? I just can't see wanted to be Hawaiianna and everything, pull that magnificent luau and then not replace it with something out.

Mr. Jascula: Right now we'll be restricted from going onto the roof. That would be a logical area.

Ms. Freitas: ..(inaudible)...

Mr. Jascula: And as Chris, Mr. Hart said, we'll have to find another area to do the luau within the property. So those are the only two options.

Ms. Freitas: Okay, you said it, you said it right there. You're going to have to find another area to do the luau.

Mr. Jascula: Either that the rooftop.

Ms. Freitas: No, you can't go on the rooftop.

Mr. Jascula: No.

Ms. Freitas: I would like to see you imu a pig up there.

Mr. Hedani: Okay, lets not debate with the applicant. The discussion right now should

center on the staff recommendations and whether or not you want to impose a condition relative to the luaus as an additional condition. Commissioner Starr.

Mr. Starr: First of all, I'd like to ask our Corp. Counsel a question. This settlement agreement, how does that affect the action of the commission? Are we being asking to approve this document in our actions? Because there are some things here that I think are real concern. I just want to know -- if we're just being given notice of it for information or if we are party to this settlement agreement?

Mr. Giroux: Within the rules we -- the parties are allowed to go into private settlement agreements either before, during or after certain steps in their procedures. We, as a board, were concerned about these agreement and we're asking the parties to bring those agreement before us. Our rules state that nothing within those agreements can abridge the final authority of the board. I think it's tricky when you get into the area of either approving the settlement. It's always a private settlement and I believe that as far as what the board is looking at is looking at whatever is within that agreement whether or not the board feels that it abridges its authority. I think that if the board bound that it would necessarily have to at least voice its displeasure in the agreement itself. So the parties would know.

When an intervenor applies for intervention, we allow the intervention either by leave or by right. We evaluate that. Sometimes a person will have a higher -- what we perceive as a higher standing so they would have intervention by right and other times they would have intervention more by leave because the rules say that we should, you know, freely grant these types of intervention.

Once we do grant intervention, that intervenor has the rights that our rules bestow upon it as far as having the guarantees of a contested case which would mean that the intervenor would be allowed to go into, kind of like a judicial setting and have the powers of subpoenaing and doing discovery pursuant to the rules of civil procedure.

So when the intervenor comes forward with the applicant to get a settlement, one of the things that we're looking at is the procedure of whether or not that person is going to basically waive their right to do the full blown out contested case. And the short answer on that is, is that we really don't have to concern ourselves fully with the context of a settlement agreement because you are the final authority on the SMA itself. If you look at the agreement and you find that certain aspects of the public's concern have not been addressed then it is under your power to conduct a fact finding hearing and to create conditions which would address those which you feel were not addressed by that agreement. I believe that that was the whole objective as far as getting to see these agreements to see what was being agreed on and to see what you would need to focus on as fact finders within your hearings as far as to see whether or not the public's interest was being protected.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I support the project. I feel this hotel has been a good neighbor and I'm really glad that they're going to keep it as a hotel and one of things that, you know, I like about it, is the luau and it is the nature of the Hawaiian culture and that they do provide opportunity for hula dancers, for musicians, for cultural practitioners as well as providing employment. Now I really do not like this process which I feel is almost like a shakedown on the part of the residents next door who have arrived you know many decades after the hotel started operating and starting providing the luau. You know, the luau has nothing to do with the project that they're doing except that the nearby residents are using their leverage to stop it. And the wording here on what is being prohibited, the luau means a feast with Hawaiian or other Pacific Island food, dancing and/or music including without limitation the service, eating and/or performance of among other things, poi, kalua pig, and/or hula dancing. Now to prohibit this on the shore in a Hawaiian place is something that I don't want to be party to. You know, it really seems wrong when someone manages to stop allowing, you know, people to eat pig or kalua pig or poi or dance hula in a place where it's being done probably a very, very, very long time. I really have a problem with being party to this settlement agreement but I don't want to punish the applicant because I feel that the applicant in this case is the victim. You know, they don't want this either and I don't know if there really is another location on the property that will be suitable for these cultural practices. So, I'm in a bit of a quandary because as I said, I want to see the project go through. I think that they're doing something really good but I feel that we're having a really bad precedent set by the nearby residents who for their own selfish interest, you know, it's not only the luau, but as Dr. Iaconetti pointed out, there's a shakedown in terms of giving them a discounts and incentives and membership as well. It really stinks. I don't really know quite where to go with this.

Mr. Hedani: Thorne do you have suggested language?

Mr. Abbott: I respect what your comments and what you're struggling with. I don't believe you can regulate a commercial activity through the special management area process for the extent of, you know, what if the hotel closed down, what if luaus became unpopular, what if the guy fell out of the pole and broke his leg, God forbid and they had to stop? What I do think you could probably do is regulate the dedication of a particular area because what we're fundamentally talking about is land use, mixed use as within a particular resort.

So one thing I've recommended, the applicant has not reviewed this or commented on it, but here's the suggestion, an area of sufficient size to support a traditional Hawaiian performance to large groups shall be dedicated by the applicant and reported in compliance reports to the department because they will have to submit a preliminary and a final compliance report for the conditions of the SMA. At that time, they could come to the

department and say, okay we found this area here. Here's what we're going to dedicate for future traditional activities that still meets the settlement agreement.

Mr. Hedani: Is that acceptable to the applicant?

Mr. Hart: Something in that nature would be acceptable. As I indicated to you before, the opportunity of providing the luau is something that would have to happen after the construction activity is finished you know, like for the pools and for the restaurant and it's -- but the opportunity of an identifying an area where a luau could occur or other traditional activities could occur we would certainly be willing to participate in that.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Thorne can hopefully answer this one. Where is the luau prohibition zone referenced to? We didn't get Exhibit E1. Noise impacts, no luaus will be permitted in the cross hatched area shown on Exhibit E1.

Mr. Abbott: To the best of my memory, I will point this out. It starts here runs along the building up to here and also includes the rooftop structure. ... (inaudible)... point that out.

Mr. Guard: It's a shame that they agreed to that because the luau had been there for years prior to Wailea Beach Villas. They all bought knowing there was a luau grounds there and to give that up as a probably a big taking. I guess the second part, and -- oh, so if that was on your language saying we'll try to find a space for the luau, would that be before a step 2 part of the SMA application? Because they're applying for step 1 and step 2 at the same time. Wouldn't step 2 be saying like, oh here's our luau ground?

Mr. Hedani: They're also asking for step 2 at this point.

Mr. Abbott: Yeah.

Mr. Hedani: They're asking for a step 1, step 2 and an SMA.

Mr. Guard: I thought construction drawings were more for the step 2?

Mr. Abbott: Clayton, would you like to speak to that?

Mr. Yoshida: Construction drawings would be the step 3. You have a step 3 item on the agenda today.

Mr. Hedani: So you could have them identify the area at step 3. Commissioner Freitas.

Ms. Freitas: Yeah, you know, we spend so much time on drainage, water, traffic, architecture, the team is unbelievable and brought us a beautiful project. It's too bad that something that has to do with more like personality of the organization not to do with any of the technicians that they would not have the compassion or maybe that's the wrong word, but the feeling that they would want to participate in a luau, that's a whole other issue and that's too bad that that's our debate is over something like that. You know that we're not arguing about what they put in the water and everything. They did it right. So that's up to these guys. Yeah, we're going to make them give us a spot, but I just hope that they do a good job.

Mr. Hedani: You want to complete your recommendations?

Mr. Abbott: I believe, Chris do you have something to add?

Mr. Hart: We were just discussing it in the context of a location and the location, generally is the area in front of the serenity pool but in order to do it, you recall the slides, the grade drops off here and you know, we would probably have to be able to do some grading in the 150-foot shoreline setback. It would probably be the area that would be behind this -- the lateral walkway, but it might mean that we'd have to do some structures like some small retaining walls and things like that to create the area. But you know, that would be the area that we would probably be talking about. And so I'm just asking in the context of the commission if there would be an opportunity to do some minor retaining walls to actually create an area that would be a contiguous flat lawn.

Mr. Hedani: Commission? Commissioner Starr.

Mr. Starr: I don't think I would have necessarily a problem with minor grading assuming that there were no archaeological concerns with it. It would seem to me that any -- that the retaining wall would be mauka of the shoreline there. Would be mauka of the 150-foot because it would have to be -- I understand the retaining wall is something that would be needed to protect the serenity pool.

Mr. Hart: Commissioner Starr, if you look at this, this dotted line is the 150 feet. So the pool is clearly behind the 150, but this is the area that we're talking about and whether or not -- you know, the portions of it could be behind it but there might be some portions that might be a little bit in front of it if we're trying to, you know, basically flatten out the grade.

Mr. Hedani: So the question is improvements necessary to conduct a luau in that area within the 150-foot setback. Commissioner Hiranaga.

Mr. Hiranaga: I guess I have some concerns about making it a condition to require a commercial activity. If you're going to do that, are you going to specify how many times a

week, what is the minimum size of this activity, are you going to have 300 people in attendance, a hundred, fifty? Personally I think if there's a demand for that activity the hotel would accommodate that demand, but I guess I have concerns about putting that requirement in the SMA as a condition. If you are going to do that, I think they need time to figure out the specifics of that requirement. Is there a site? How often they're going to have it? How big is it going to be? You know, mention that -- I mean, you need an operator for the activity, it seems to me that if you're going to make that a condition right now, it's a little too general.

Mr. Hedani: Any other comments from the commission? Mr. Yoshida.

Mr. Yoshida: Yes, I guess due to the passage of time since the recommendation was developed, the department would recommend it revise its condition no. 1 to extend the deadline to March 31, 2010. The intent being that it gives the applicant three years from the time of approval to initiate construction.

Mr. Abbott: Yes, that's a typographic error on my part and because this wasn't revised in a timely fashion. My apology.

Mr. Hedani: Okay, any other comments? Commissioner Iaconetti.

Mr. Iaconetti: This has nothing to do with our luau, but on our desks this morning, there was a copy of a letter addressed to Mr. Collins written by Colleen and it deals with settlement agreements and I won't read the whole thing but paragraph three on page two, the settlement agreement --

Mr. Hedani: Oh, this is for a different subject.

Mr. Iaconetti: No, I'm talking about settlement agreements and Jonathan asked the question about where do we sit with these, and according to this and I'm asking our attorney the settlement agreements are for commission information purposes only and any enforcement of the terms of the private agreement is between the two parties. Does that mean that we have nothing to say about what happens with a settlement agreement?

Mr. Hedani: I think what it means is that we're not a party to the agreement. You can correct me if I'm wrong Jim.

Mr. Giroux: Right, what --

Mr. Iaconetti: I realize that but do we have to accept it or do we not? Does it make any difference whether we accept it or not?

Mr. Giroux: Right, it's for informational purposes that we are reviewing it. And like I said before we're reviewing it because in our own rules there's nothing in that agreement that should abridge your rights or powers as the commission as being the final arbiter of the findings of facts and conclusions of law in accordance to 205A. So when the parties come to this private agreement, it is outside of the purview of the 205A mandate which means that you are not bound by it. So if you are not bound by it, it also means you are not the enforcers of that agreement. It is like a private contract if they agreed to have something built on their property, it's between those two parties. But they need to come to us in order to get SMA approval.

Mr. Iaconetti: So if we're not bound by it, we just don't accept it or accept a portion of it.

Mr. Hedani: I think what he's saying is that the commission can do whatever the commission decides to do within our purview. We can make a requirement that they have the luau in the prohibition zone and that could make the settlement agreement become unglued but that's within your purview if that's something that you want to do.

Ms. Freitas: May I?

Mr. Hedani: Commissioner Starr.

Mr. Starr: One brief comment. I guess relating to that and to Commissioner Hiranaga's comment, I don't think any of us want to mandate them having a luau at certain times or anything. I think just that there be a facility where it can be done if the financial and other conditions are met to their satisfaction. I think that's more, more the consensus. But the point I want to comment about is on another condition that I would like to see, you know, since we've had the Chair of the Burial Council come before us with concerns that no archaeological survey was done. And I don't know if I really want to mandate an archaeological survey because of the fact that it will take quite a bit of time for them to get it done. I'm wondering if there's -- Thorne, Mr. Abbott, Thorne, no, I want you to hear what I'm saying.

Mr. Abbott: Thank you. My apologies.

Mr. Starr: I'm wondering if there's a possible way of creating some wording in a condition that short of demanding an actual archaeological survey be done that some coordination be done with the Burial Council to I guess to try to avoid any problems that would pop up, you know, in the program of monitoring. I think that's what Uncle Charlie was looking for was some way of, you know, having someone go walk through it and do some minor survey work ahead of time. Not necessarily a full survey and then try to identify places where there might be problems before the machinery comes in.

Mr. Abbott: Okay, I do think SHPD generally speaking, they're kind of the lead agency on that jurisdictionally and their monitoring plans are pretty comprehensive. As noted if the burial was discovered it would have to go to the Burial Council, but we can make that explicit in the condition along with an SHPD approved monitoring plan shall be implemented during all ground altering activities and should any burials be encountered, the Burial Council will be consulted. Would that be something like that or --

Mr. Starr: Yeah, I think consultation with the Burial Council before and during the process.

Mr. Abbott: Okay, it seems reasonable to add that presuming the applicant concurs with that. We could have 26a, that the Burial Council shall be consulted prior to ground altering activities. I think the applicant concurs that. But I think a motion would need to be made for an additional.

Mr. Hedani: We don't have a motion on the floor at this point regarding any recommendations. So do they have any further questions for staff on these recommendations at this point?

Mr. Starr: Ready for motion for action?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Motion for approval with the conditions as per staff with the addition two additional conditions one relating to future luau grounds and the other relating to the inclusion of the Burial Council.

Ms. Freitas: I second that.

Mr. Hedani: Motion by Commissioner Starr, seconded by Commissioner Freitas for approval with conditions, with those two added conditions. Any discussion? Commissioner Guard.

Mr. Guard: I'd like to see some improvement in the drainage plan to possibly -- there may be new technology out there that would intercept more soils and solids from entering the water system underground or these dry ponds than there were in the '70's. Has there been any new technology since the '70's that you know of Thorne?

Mr. Abbott: A few.

Mr. Guard: Oh really, okay.

Mr. Abbott: Lots.

Mr. Starr: Is there best management practice in there because best management practices change with the times.

Mr. Abbott: True. And good point John. It does require best management practices that's in our standard language for the drainage, and grading and the grubbing and other activities and that also be reviewed by DPWEM and determined what's appropriate at that time by them through the building permit process.

Mr. Guard: So they're going to increase some drainage capacity, right? By less than one cubic foot or whatever it was, .18 cubic feet per second. So they're already catching 50 cubic feet per second. I just wonder if those basins have the ability to absorb more nutrients or if there's like filter material that we could put on top of the gravel that could be retrofitted to improve the absorption of nutrients going into the ocean?

Mr. Abbott: Can I ask the applicant if they're willing to commit to providing a higher level of treatment at the site? And while they're discussing that allow me to read condition 24, that appropriate best management practices shall be reviewed and approved by the Department of Public Works and Environmental Management. Said plan shall address impacts associated with erosion contaminants and construction waste. The approved plan shall be filed with the Planning Department prior to approval of the grading permit. So it is a bit generalized.

Mr. Guard: Isn't 24 for during construction?

Mr. Abbott: Yes.

Mr. Guard: So I'm talking about ongoing drainage that -- I mean, there may just be a blank cinder pit that if you can just put a sheet of cotton or some fill material that they use in construction now to absorb more heavy solids right?

Mr. Abbott: Let me have the engineer speak to that. It is relative to construction but there are BMPS that DPWEM requires for the drainage plan anyhow for the operations on the site.

Mr. Kato: For the construction portion of the project we will be using --

Mr. Hedani: Please state your name again for the record.

Mr. Kato: Alan Kato at Belt Collins Hawaii. We will be implementing BMPs which includes silt fencing which will be set on the ocean side of the project to capture all of the silt runoff from the project.

Mr. Hedani: I think what he's talking about is ongoing operations of the hotel.

Mr. Guard: The last time you were up, you mentioned we're going to fill in these concrete cylinders with gravel to allow water to go in there and seep back into the ocean.

Mr. Kato: It's a concrete cylinder with gravel around it.

Mr. Guard: And what's in -- oh, and nothing on the inside?

Mr. Kato: It's a hollow cylinder inside. So the water can go inside. If you're concerned about trapping more sediment inside of it, what we can do is we can also add on filter fabric on top of the grading on the top.

Mr. Guard: Is that what people do now or like on the Big Island you have the same issue.

Mr. Kato: No.

Mr. Guard: No?

Mr. Kato: It's not done. It's not done on the Big Island. It's more done on a construction -- during construction when you have the heavy silt runoff because a lot of the BMP measures that we try to implement is we try to do it more naturally with grassing, with landscaping so that the natural landscaping will capture the nutrients rather than try to make it -- you try to have more green space than have more hardscape.

Mr. Guard: Okay so on this project being from the '70's to now, like Big Island probably a lot more newer projects that you're working on the Kohala Coast or Kona Coast. Are there ideas that could be implemented into this one to improve nutrient capture in any of the greenways that maybe we're not looking at right now besides just the runoff that we're trying to capture from the new restaurant.

Mr. Kato: The seepage well concept is similar to what's being used on the Big Island. It's kind of a standard that you -- but they actually do it as a drywell. So it's actually a much bigger structure. It extends down about -- right now I think they're looking at extending it down about 70 feet deep, but the ones that we're trying to implement are smaller, it's shorter, it's only about five feet deep because we feel that in our opinion when you put in a structure that's going to be 70 feet deep, that's kind of the standard that's being implemented on the Big Island. When you put in a structure that deep you're not going to be able to maintain it very well. I mean, you're not going to get a suction hose 70 feet. So we feel that the five-foot deep ones that we're going to implement on this project are going to be a lot easier to maintain for the staff because they can just take the cover off, they can

go inside, clean it out, put the cover back on. And they could do that on a six-month or yearly basis versus having a hole 70 feet deep.

Mr. Guard: Okay so that could be something that you'd have a filter material on the surface that you could replace as needed, six months, annually and if the grassy areas are doing their job, that filter fabric may be fairly clean for a few years if the drainage plan is implemented properly or as it's been designed.

Mr. Kato: But typically the new standard is to try to put in more grass swales, more vegetation and this project site, you know, is well vegetated now. The more filter fabric material that you do see is more related to when you have construction sites because the land's not stabilized you're going to see a lot of runoff, you're going to get a lot of erosion. But once the area has stabilized with grass and landscape and then you shouldn't be seeing that much.

Mr. Guard: You don't see as much?

Mr. Kato: Yes.

Mr. Guard: Because on the Big Island, we were just there, I noticed even areas there that are now being under development some of the water visibility is going down here and there on that coast as well it looks like.

Mr. Kato: Yes.

Mr. Guard: And same idea you're taking what was lava rock five years ago and now putting some pretty heavy nutrients in there to turn it into an oasis, correct?

Mr. Kato: Well, this is just my opinion, but a lot of it I think is because you need to stabilize the lava when you do developments out there and to be able to grow vegetation you have to bring in top soil into areas that you just have right now a'a lava. So in the areas where you have a'a lava you don't get the runoff, you don't get any kind of silt coming off those areas. But once you introduce the top soil, now it becomes something that can erode off and then you have this top soil that you just brought into your site eroding off into the ocean and then, you know, degrading the ocean waters.

Mr. Guard: Okay. Well, back to the Maui one, I guess that's the same idea. Is now that this is established maybe not as much heavy nutrients need to be applied, but if we could capture anything it would be a benefit to the hotel as well if your visibility right off of your rocky coastline, it's better for snorkeling, etc., for the cliental that you're trying to get to come have their Maui experience here. Would that be, at least a small remedy to say, hey if we can capture a little more nutrient in these cinder pits or the five-foot deep wells, is that

one of the few options that would be to retrofit a drainage system that was put in place in the '70's?

Mr. Kato: Actually the drainage system that's there now is I believe they're like 12-inch diameter type with just six-inch diameter pipes that go out and allow the water to percolate into the ground. What we're proposing is a much larger ring so that you actually can get more storage volume into that.

Mr. Guard: So you're going to take out all of the existing ones?

Mr. Kato: No, no, no, we're not taking out.

Mr. Guard: Okay, so you're going to add to that?

Mr. Kato: We're just adding on.

Mr. Guard: Okay.

Mr. Kato: So we're going to actually be capturing more water. The intent is to try to intercept all the water that's going to be generated by the new --

Mr. Guard: By the new construction.

Mr. Kato: Yes.

Mr. Guard: So for the existing buildings there have used those smaller wells.

Mr. Kato: What's there now we'll just leave them there.

Mr. Guard: Okay, so is there anything we could retrofit there to improve, even the water that does percolate in to make sure that fewer nutrients are going into the ocean or recharging the water that's below as you stated.

Mr. Kato: Well, ideally you'd want to try to get them -- put on more landscaping, but -- our site is pretty well landscaped as it is.

Mr. Hedani: Alan, the question when you said the Big Island has pits that are, was it one seven, 17 feet?

Mr. Kato: No, 70 feet.

Mr. Hedani: seven zero feet deep.

Mr. Kato: Yeah. That's kind of the new standard.

Mr. Hedani: 70 feet deep?

Mr. Kato: Yes. What they do is they put in a pit that's about six-foot diameter rings, goes down about 20 feet and then beyond that they're requiring the contractor to core a hole an additional like -- the additional depth.

Mr. Starr: Below the water table?

Mr. Kato: Yes.

Mr. Starr: They're going into the aquifer?

Mr. Kato: Yes.

Mr. Hedani: Interesting. Commissioner Starr. Thank you Alan.

Mr. Starr: You know, I appreciate what Commissioner Guard is saying and what I am hoping is that we can move to gaining some language about nutrients and amount of nutrients on a new project. I hadn't quite pushed as hard on this because I do spend a lot of time in the water there and right off of this location it's pretty good even when it's been raining and it's silty that's kind of a haven where the water clarity stays pretty good. Where there is a real culprit in that neighborhood in about three-quarters of the way down in front of Wailea Elua there's a culvert that comes down and that discharges lots and lots and lots of silt and that silts up all the way down in front of Elua and in front of the Wailea Beach and puts a plume out and that's really the culprit that I wish we had the ability to deal with because that's the one that makes the mess there. But in front of this place it's stays pretty good.

Mr. Hedani: Is that within this property boundary or the next door property boundary?

Mr. Starr: Next door. It's over right over here.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Well, it sounded like it's a pretty small item then to install some filter fabric on top and if it's never needed to be replaced because the grass swales capture it all, then it will never need to be replaced. But if they're finding that there's a lot of sediment on top of that filter fabric maybe it's a best management practice to implement as to change it out as needed.

Mr. Abbott: Yeah, so something like, that filter fabric shall be installed in all drainage.

Mr. Guard: I'd like to see it in all of them. I mean, it's a 1970's project. It's still a great project. I like everything about it except caving in on the luau ground issue to a new project, but if that's what it took to get through the intervention then that's their own kuleana.

Mr. Kato: Would it be possible to just limit that to the construction period or like a period of one year? Because the filter fabric while it does -- we're talking about the seepage wells, it does limit the amount of water that can actually get into the drainage structures. So what we've actually seen on some projects is that when you get a really thin layer of the silt build up on there, the water doesn't get inside and then all of a sudden your drainage structure isn't functioning the way it supposed to be functioning and then really what you want to do is you want to get the landscape established and then the landscape will filter out all the nutrients and then the water can access into the top of the seepage wells when you don't have the filter fabric on top.

Mr. Hedani: Alan, I think part of the concern that the commission has is that we've been sensitized to the idea of pesticides, herbicides, other chemicals that are contained in the use of growing landscaping ending up being washed into the ocean and killing reefs and doing other bad things. And what we're driving at I think is do you have best management practices that can address that?

Mr. Kato: Well, the best management practices that we've been implementing is trying to route the water through grass swales and through vegetation. That's kind of the standard practice right now.

Mr. Hedani: Maybe Dawn can address that too.

Ms. Dawn Easterday: Hi, Dawn Easterday. One of the things that I was hearing is that the nutrients and the sub particles that we're talking about aren't really going to be captured by the filter fabric. The best way to filter those is to have them go in through the ground, in through the soil and go into the ground water naturally because it will catch along the way. And we're not talking about water running through the grass and over the lava and directly into the ocean. What we'd like to do is, and with the seepage wells is contain that and let it infiltrate slowly over time and let nature run its course rather than have the excess irrigation water run across the grass and over into the ocean, that's where your heavy nutrients are getting into the ocean. But I think that through the ground water and through the soils it will have a natural filtration process.

Mr. Hedani: And I think part of it is an ongoing program of controlling the amount herbicides and pesticides that you apply in the process.

Ms. Easterday: That are used initially. That's correct. And I think that one of our best management practices that we typically write into our specifications now is to not have that going on while construction is in practice because it's more likely to make its way off site.

Mr. Hedani: Okay, any other questions for staff or any other discussion? Commissioner Hiranaga.

Mr. Hiranaga: May I hear the proposed language for the condition regarding the luau use?

Mr. Abbott: That an area of sufficient size to support a luau as defined in the settlement agreement shall be identified and allocated for the purposes of holding events formerly held at the location of the new restaurant and reported in pre and final compliance reports to the department.

Mr. Hedani: Any other discussion? Commissioner Freitas.

Ms. Freitas: Could I ask Mr. Hart to comment on our -- on the condition.

Mr. Abbott: Sure.

Mr. Hart: We actually do have some problems with it. And Blaine Kobayashi is here representing us. You know, when we were discussing it before we were talking about an area that could be set aside that could essentially be used for traditional practices and activities and a luau could be part of that, but this seems to be something that's going to basically establish us or constrain us or require us to have an area sufficient, similar size and it's basically kind of a shall type of -- you know it's a mandate. I think that our attorney, I think needs to comment a little bit about that.

Ms. Freitas: Wait, wait.

Mr. Hedani: Not that the commission is looking for a seat for seat replacement of the luau operations, they're looking for something.

Mr. Hart: Well, when we talked about it before, and in talking with our architect, Peter Mason, the area that could be set aside that could be used to basically do basic traditional practices on the site would be the area in front of the serenity pool. And we could certainly basically reserve that area for that kind of activity as it evolves, you know, in terms of the operations of the hotel. The luau is basically a business operation and it's something that, you know, it's not going to be totally out of the question that there is going to be a luau, but you know, it's going to be something that's going to have to be, going to have to happen in the context of the basic business operation of the hotel.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Okay, I guess they don't follow Chris because when the gentleman was up here speaking earlier he said that if a group requested it they would have this luau. Well, if already it's worked into the plan that there is going to be one for a group, I don't understand then. Either at that point he's still going to have a problem providing space for them. Either you have it or you don't.

Mr. Hart: No, no. I think that if a group came that wanted to have a luau, that it would be in the area that we talked about. That where it would be, that we would essentially set aside the area in front of the serenity pool as the area where that kind of function could take place.

Mr. Hedani: But that would be addressed from the standpoint of like a special function.

Mr. Hart: Yes. And a lot of the hotels have special function areas.

Ms. Freitas: So then what's the problem?

Mr. Hart: I think it was the way it was worded. It sounded like, you know, we had to have -- the area had to be same size or similar size to the one that we currently have and I don't think that we could do that.

Ms. Freitas: Well, could maybe you work on some of that wording with Thorne?

Mr. Hart: And then the other was that it would be, you know, in the context of the size and the use, that it was an absolute mandate, that we wouldn't have the flexibility.

Mr. Hedani: If the hotel were required to have a luau for a \$72 million project to proceed, I would think there would be a luau.

Mr. Hart: Anyway I can't really comment on that.

Ms. Freitas: Can I have five minutes?

Mr. Hedani: Okay, lets take a five-minute recess.

A recess was called at 11:48 a.m., and the meeting was reconvened at 12:00 p.m.

Mr. Hedani: You'd like to suggest Thorne?

Mr. Abbott: Okay, I'd like to read two recommended conditions. The first is relevant to Commissioner Starr's comment which was that the Burial Council will be consulted prior to ground altering activities. Then the second would be, the area in front of the serenity pool will be allowed to outdoor group functions such as a luau and minor improvements within the shoreline setback area that meet 12-203-12(a) ...(inaudible)... is criteria in that particular section may be required. And I'll have the applicant point out where this is on the site and describe the kinds of improvements that may be required in that area.

Mr. Mason: Okay, the area we're talking about is this zone in here and what we're talking about is, in order to -- what it does right now is this is fairly flat in here and then it comes up the hill. And what we're talking about is in terms of improvements is probably moving that walkway path back a little ways and then grading this zone to make sure that it's flat enough in order to do the luaus area. And we think that would make a good, really great location for it. You know, sun sets off that way, it's an absolutely good improvement.

The other thing that may require is a small less than three-foot high retaining wall in order to get some of that grade to take up and we don't know that for a fact but those are the improvements that we would see would be probably required in order to make this zone happen.

Mr. Hedani: Thank you. Commissioners? Would that require a variance in the setback?

Mr. Abbott: No, it would not because it would be a minor structure that does not artificially fix the shoreline, doesn't interrupt sand transport process and doesn't interrupt public views or access to the beach. It's approvable by the Director as a administrative approval. The shoreline access path would probably be relocated either makai or mauka that's also something the director could approve.

Mr. Hedani: Is that satisfactory to the commission? Okay, seeing on objections, any other discussion?

Mr. Starr: Move for the question.

Mr. Hedani: Call for the question? Any further discussion?

It was moved by Mr. Starr, seconded by Ms. Freitas, then

**VOTED: To Accept the Recommendation of Approval of the Special Management Area Use Permit and Step 1 and Step 2 Planned Development Approval with the Additional Conditions as Discussed.
(Assenting - J. Starr, S. Freitas, K. Hiranaga, J. Guard, B. U'u, W. Iaconetti, P. Eason)**

(Excused - J. Amarin)

Mr. Hedani: Carried. Thank you. We'll take a break for lunch and we'll be back at 1:00 p.m.

A recess was called at 12:02 p.m., and the meeting was reconvened at 1:04 p.m.

C. NEW BUSINESS

1. **MR. JEFFREY HUNT, Planning Director requesting comments on the Draft Environmental Assessment prepared in support of the Entitlements Action for Palaeua Beach Lots located at TMK: 2-1-011: 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, and 023, Palaeua, Kihei, Island of Maui. (EA 2006/0014) (C. Suyama) (Copies of the draft EA were circulated to the Maui Planning Commission members at the February 27th meeting.)**

The Environmental Assessment trigger is the Planning Director initiated community plan amendment from Park to Single Family for parcels 013, 014, 015, 016, 017, 020, and 021. The accepting authority for the Environmental Assessment is the Maui Planning Commission.

The Planning Commission is being asked to:

- a. **Provide concurrence on the filing the Draft Environmental Assessment and the Anticipated Findings of No Significant Impact (FONSI) with OEQC for publication.**
- b. **Provide comments on the draft Environmental Assessment.**

The public hearing on the Community Plan Amendment and Change in Zoning will be scheduled for a future date after the Chapter 343 process has been completed.

The Commission may act on the requests for concurrence and comments

Mr. Yoshida: The department has distributed the draft Environmental Assessment prepared by the consulting firm of Munekiyo and Hiraga in anticipation of a planning director initiated community plan amendment from park to single family use and a change in zoning from HM Hotel and A-2 Apartments to R-3 Residential District for 10 of the parcels and rezoning to PK-1 Park District for the two parcels which the County of Maui has purchased.

The community plan amendment and change in zoning will establish consistency between the intended uses of the property with the land uses identified in the Kihei-Makena Community Plan and the zoning of the property. Current inconsistencies have led to litigation and appeals in the case of the Lambert and Sweeney properties during the special management area permitting process.

The County of Maui has been able to purchase only two of the parcels for park purposes and due to the high land cost associated with the properties it is highly unlikely that the County of Maui would have the ability to purchase the remaining undeveloped parcels.

To prevent future problems associated with the inconsistencies between the Kihei-Makena Community Plan and zoning, the Planning Director proposes to initiate land use amendments that reflect the intended residential use of the properties and the existing park use of the county owned properties.

The department has reviewed the draft EA document and finds that pursuant to the Department of Health, Office of Environmental Quality Control, the document meets the requirements for a draft EA.

I guess we have the Kihei-Makena Community Plan map where the blue push pin are these 11 parcels below the one Palaua project district that are in question that are currently designated I believe park on the community plan.

We have the consultant from Munekiyo and Hiraga who could respond to any questions the commission may have on the preparation of the draft EA. All we're asking for are comments from the commission on the draft Environmental Assessment.

Mr. Hedani: Comments from the Commission? Commissioner Iaconetti.

Mr. Iaconetti: I understand that the County does not have the funds in order to purchase more of this property. I am -- one of the alternatives that's mentioned in this draft Environmental Assessment is no action. That would prevent them from developing the property for residential purposes, property which these individuals own. But it would also allow the people of Maui to utilize this beach area if we said no action we have access through the two pieces of property that the County has purchased. So if we decide on no action on this thing then the whole beach would remain as it is now and they would not be able to build on the land that they own. Granted, we can't buy it but if we say no you can't develop it then we then have access to it, at least the beach.

Mr. Hiranaga: Mr. Chair?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: May I suggest we wait this Corporation Counsel is present so he can respond Commissioner Iaconetti's statement.

Mr. Hedani: Do you want to wait Doc, until Jim gets back?

Mr. Iaconetti: I just thought it was kind of a hair brain idea in order to maintain the usage for the public and thereby prevent any further building along that area.

Mr. Hedani: Okay, any other comments? What we're discussing is the Palauea Beach lots. Commissioner Guard.

Mr. Guard: When's he coming back?

Mr. Hedani: About 1:30 p.m. Commissioner Starr.

Mr. Starr: My comments are is there's no way that I can support the presumed finding of no significant impact because I feel it will have considerable impact to change it from park to residential single family. And that building houses with a minimum of setback behind those beaches will have a very severe and long term impact and so, you know, one comment is you know, as far as the draft goes is, that building -- that changing it and allowing houses to build with the residential setback which I believe for those lots is -- is Thorne here, 25 feet?

Mr. Abbott: It would be based on an erosion rate if one's established and I would presume it's either 25 -- it would be 25 foot for lots that are less than a 100 foot in average lot depth. I believe most of these are between a 100 and 160 in which the setback would be 40 feet. And for those over a 160 it be 25% of the lot up to a 150 feet. I believe those lots though are in the range of a 100 to 160 without seeing the plat map. So it would be 40 foot or 25 foot.

Mr. Starr: So if it's a 40-foot setback and we have some severe erosion rate there in a range of about a foot every year it means that we are by doing that signing a death warrant for the beach in 40 years or sooner. Because as soon as it erodes back to where the structure and the hardening takes place will happen in less than 40 years there'll be no more beach. So we're saying that by saying it has no significant impact we're saying that it's not significant that in the -- by the year 2050 that there will be no beach there. I cannot support that.

Mr. Hedani: Other comments from the commission? Clayton, does the department have a response? Since the department is the applicant in this case?

Mr. Yoshida: Well, the department is, the director is initiating the changes. Again, I believe that on three of the lots they have building permits to build single family residences. But anyways, you know, basically it was felt again, that the County had an opportunity to purchase the property. It has purchased two lots. There is this inconsistency between the community plan and zoning.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: I, for one, do not see why the County is spending its time and resource doing it and I have a definite problem with the County initiating this. I could understand it better if the applicants were looking to develop their properties were initiating but I don't see what business the County has of taking it from park to single family and aiding and abetting the loss of that beautiful place. Right now the water is pristine there. There's, you know, it's crystal clear most of the time. Once those houses get built, it's going to be different and not for the better.

Mr. Hedani: Okay, any other comments from the commission? Commissioner Guard.

Mr. Guard: Whether it be for the EA or a possible EIS, same thing that we discussed earlier is on how people are going to do their drainage and drywells. It's sand all the way to the roadway. So are they going to be able to bring in soil right there that may slowly filter back into the ocean on a now pristine beach? Should they be involved in possibly sand replenishment fund for that beach so that the public retains its use of that park as Jonathan was saying. I think that is going to be a concern. I've been down there, when there's waves there, there's not much beach in some spots as it is so the public's not going to be able to enjoy it if they're sitting in a future owner's front yard that possibly encroached with naupaka as we've seen down there quite a bit. The 35-foot building height is typically from the V14 level. I don't know, is that correct Clayton? In this it talked about a building height of 35 feet and typically that 35 feet starts at grade on most properties but in a flood inundation zone it starts from -- are there already, is the grade above 14 feet above sea level there? If it's not, they start their 35 feet at 14 feet above sea level.

Mr. Hedani: Thorne.

Mr. Abbott: It would depend on the base flood elevation. The base flood elevation was 14 feet and your grade was 14 feet then you'd be at zero and you could develop --

Mr. Guard: 35 feet from there.

Mr. Abbott: 35 feet up from that.

Mr. Guard: So if it's nine feet and you're at a V14 you can go 39 feet?

Mr. Abbott: No, you have to squeeze your house smaller.

Mr. Guard: You stay at 35 feet.

Mr. Abbott: If your first floor rises, your roof stays the same height.

Mr. Guard: Okay, because I've seen other places where they got to start from that base flood level and go 30 feet from there. Okay, well would that be something to clarify?

Mr. Abbott: That's a good point to clarify. We'll do that.

Mr. Guard: And then view plane studies, this says that there's going to be no effect when there's definitely going to be a tremendous effect on the public view plane corridor and the other idea would possibly be we don't know where people are parking right now. They may already be parking on private property. So you may lose all of that and, I think the term would be defacto parking that people are enjoying now that may be six-foot walls in another few months and there may not be any parking on that parcel and we don't want to have to see the County owned lot become a parking lot just to accommodate people to use the beach. I mean, that could really cause this to become a real exclusive beach front area that we've seen on the beach past this one, has no beach access. I don't know if you've ever been down there by boat, but that is probably one of the few ones there's no beach access to the sandy beach adjacent to this and I bet these people would love to have the same thing here.

Mr. Hedani: Other comments from the commission? Okay, I think -- you're asking only for comments from the commission at this point or are you asking for a finding of no significant impact?

Mr. Yoshida: I think we're asking for comments from the commission and that we could file the draft EA with OEQC -- we have done that the draft EA, so we're just asking for comments from the commission.

Mr. Hedani: So the draft EA has been filed?

Mr. Yoshida: Yeah, it has been filed as noted in the report. The publication date of the draft EA was March 8th. The 30-day public comment period ends on April 9th.

Mr. Hedani: Okay, Commissioner Guard additional comments?

Mr. Guard: So there's already two building permits out for these are actually properties on the shoreline or on the sandy beach. A few of the ones are on rock outcroppings up higher, right? Are there now two permits on the beach?

Mr. Yoshida: Well, I guess these are all shoreline properties. You know some of them may have sandy beaches and some of them may not.

Mr. Guard: But the sandy beach ones they're going to be the ones prone to the most erosion, right? The ones on the fringes of the bay, a few of them probably have a grade of zero erosion now. The County probably has the two that probably have the most erosion.

Mr. Yoshida: Yeah, they would have to conform with the shoreline area rules.

Mr. Guard: Okay, but that would be a major one because in this one it talks about no -- this proposed action will have no effect on water quality and any of these buildings that are going to bring in, I'm sure they're not going to just keep it as sandy beach front xeriscaping. There's going to be a major impact on water quality from sandy beach to bringing in top quality soil for what we've seen palm trees, heliconias, you name it. They probably want to turn it into a more of a Patti Eason's backyard down there in Makena instead of the native and that might be something to address is the ...(inaudible - tape recording not audible)....

Mr. Abbott: This was not my project so I can't speak to that. I have not reviewed the EA.

Mr. Hedani: Zoning for the was hotel.

Mr. Abbott: Clayton?

Mr. Yoshida: I believe zoning of the property ...(inaudible)... and A-2 Apartment.

Mr. Hiranaga: No, not the zoning, community plan before the change to park. Before the change to park. It was designated in the '85 plan as something else and in 1998 it changed to park. I wanted to know what was the previous designation.

Mr. Yoshida: I believe it was park in the 1985 community plan.

Mr. Abbott: We'll make sure that comment is addressed in the EA.

Mr. Hedani: Additional comments from the commission? Commissioner Guard.

Mr. Guard: I have a question, these if they converted to residential from park, does individual home because they're on the shoreline they don't get an SMA exemption,

correct. They have to come through the SMA major process?

Mr. Abbott: No, they'd have to go through the SMA assessment process and the shoreline setback determination/assessment process. Presumably most of them would get an SMA exemption as a single family residence is not part of a larger development. They would have to get a shoreline setback approval so they'd have to setback based on where the State certifies the shoreline and whatever the erosion rates or the average lot depth is there. In that area, they could not build a major structure. They could put minor structures, they could landscaping, they could do irrigation with connection with that landscaping.

Mr. Guard: Can they take in soil into the shoreline setback area?

Mr. Abbott: We generally don't promote the use of soils on top of sand. That would be reviewed on a case by case basis. And you are allowed to do landscaping, it doesn't qualify whether landscaping involves soil or not. But if there's a primary dune identified there then there's greater restrictions through the zoning ordinance Chapter 20.08 in which they can't do -- they can't change the grade of the dune. But I'm not positive that there's specifically a primary dune at that location. That could be again another comment they could address in the EA.

Mr. Guard: Okay, and then so even from these amendments you could have conditions on the amendments for people building in this region.

Mr. Abbott: Yes, and fortunately although the SMA would be an exemption, the shoreline setback approval is a discretionary permit that can be conditioned. So you could presumably condition that to say there's no landscaping allowed using soil in the shoreline setback area. Now outside of the shoreline setback area, mauka of that they could use soil presumably.

Mr. Hedani: Commissioner Starr.

Mr. Starr: As a comment, I would like the document to address whether there's a primary dune in the area of these lots.

Mr. Hedani: Additional comments from the commission? Clayton.

Mr. Yoshida: I would say even with the land use entitlements, the individual owners are still subject to your SMA and shoreline area rules. So they still would have to come in and ...(inaudible)... They would have to comply with your shoreline area rules.

Mr. Guard: Okay, but if we could have that also attached to this entitlement process, correct? Because these are comments that go up to Council.

Mr. Yoshida: Yeah, I mean, you would be the recommending body to the Council at that time when we have the public hearing on the land use entitlements.

Mr. Hedani: Clayton, does this commission, if the commission were to approve the EA and if the commission were to approve the change in the community plan, do the individual residences come back to the commission or do they go straight through administrative procedures toward construction?

Mr. Yoshida: Well, individual owners would apply for an SMA assessment.

Mr. Hedani: Get an exemption because it's single family residential and avoid the commission, right?

Mr. Yoshida: Well, the commission is made aware of the SMA assessment applications.

Mr. Hedani: But we do not approve it.

Mr. Yoshida: That's correct. But they are made aware of --

Mr. Hedani: So we've got one shot at this and that's it, right.

Mr. Yoshida: Yeah, you are made aware of SMA assessments and SMA exemptions.

Mr. Hedani: So it comes back in the SMA minor/ SMA exemptions report.

Mr. Yoshida: Right.

Mr. Hedani: Which we get a copy of every month. Additional comments from the commission? Commissioner Iaconetti.

Mr. Iaconetti: As a comment regarding the draft I have a hard time, in fact I cannot agree with findings and conclusions, page 46 and 47, it wherein it states, the proposed action could not curtail the range of beneficial uses of the environment. The proposed action does not conflict with the State long term environmental policies, etc., etc. I can't -- my comment is that I can't agree with the findings and conclusions that are presented in this draft.

Mr. Hedani: Could you be more clear on that Doc?

Mr. Iaconetti: Well, I've given you the page and what I'm talking about. I don't know how much clearer. If we approve of the draft, if we don't have any comments, I don't see how we can possibly agree with this.

Mr. Hedani: Okay, additional comments from the commission? Okay, seeing none, are there any members of the public that would like to offer testimony on this item? Does the consultant to the County have any comments to offer? Please step to the microphone and identify yourself.

Mr. Martin Luna: I'm Martin Luna. I'm not the consultant but I'm assisting Gwen who's the consultant. I'm familiar with Palauea Beach because we did the contested case hearing for Parcels 55 and 54 which are on the north end, the extreme right. And on the contested case hearing this commission found that the Planning Department had erred and allowed the two parcels to proceed with its building permits.

As a result of that, the Planning Department felt that, and the reason that they had originally denied the exemption for a single family residence was because of the difference in the community plan designation of park and the hotel designation for zoning. But the Planning Department felt that to be consistent with the rest of the parcels because these two have already proceeded, the park designation should be changed.

Now in 1985, in answer to Kent's question, prior to that it was part of Project District 8. Project District 8 is the Palauea Bay designation on the mauka side and part of the makai side and it spread all the way across the beach on the Palauea Beach side, but it was changed after that to park. That was when VMS sold the parcels off or the property off to a Japanese company and then the Japanese company then sold to another firm and they were the ones that sold it off.

I think the concern of Dr. Iaconetti and Jonathan Starr and the rest of you is that this beach area will be degraded because of the building that occurs there. You find that these owners have paid more than a million dollars for those properties. In fact, they're worth more now. So the reason for they paid that amount is because of the beach and the water. So they're not going to be partly responsible for trying to degrade the near shore waters because that's why they bought in that area.

And one of the things they've done over the last three years is if you may remember there was a homeless population out at Palauea Beach for a number of months. The County, Mike Davis folks had been trying to get the homeless population out of the beach area. They finally came to us. We asked the property owners and most of them contributed funds to help in getting the security force out to police the beach so that the homeless and those that just camp there illegally would not be able to do that. So for the last -- it took them six months to get the homeless out of the area, and since then, the property -- most of the property, not all, but most of the property owners have continued to post money into this fund to pay the security firm every night, four times a night to police that area and that's happened for the last two and a half years, three years. So it's not the property owner's

interest, it's not even their interest to have this beach turn into something that's not what it was when they bought it or bought the property adjacent to the beach.

So I think the concerns are valid, but it's also, I think you need to look at the fact that the property owners have a great deal more interest than the public in keeping that beach clean and keeping that beach pristine and to keep it from having just anybody on the beach camping overnight and you know, the beach there has no public facilities like toilets or any -- they go into the private property to relieve themselves and that just builds up over time. It's -- in fact some of the property owners had made an offer to Mayor Apana to develop the two county parcels after Mayor Apana had purchased it or the County had purchased it as a result of Mayor Apana's urging.

Mr. Hedani: Three minutes Martin, but since we're lacking an attorney right now and you're the only attorney in the house that I can see, why don't you continue.

Mr. Luna: The background on all of this that has happened there I think is pertinent to what your questions are and your concerns are. And the owners have tried very much to maintain the area as well as they can by putting in their own money even though many of them have not been able to build there as yet.

The two have building permits at the end and then parcels, parcels 13 which is lot 55, 14 which is lot 54, those two are under construction.

Mr. Hedani: And parcel 23.

Mr. Luna: 15, 16, 17 are not. And then 18, 19 are the County properties. 20 is not under construction. 21, 22, 23 -- 21, 22 are completed with homes, 23 is almost completed. Those are on the south end before you hit Mr. Eastwood's property at the very south end. So you've got five parcels either under construction or with homes completed already.

Mr. Hedani: Do you have a comment Martin on Dr. Iaconetti's question regarding if the community plan were not amended. It's sort of like backing into using the property, actually it amounts to I guess trespass on private property at that point as far as the public entering onto those lots, right?

Mr. Luna: Yeah, and that's partly the role of the security firm is to keep people from, away from the private property areas and then when they see people trying to camp on the County lots, they'll call the police and get the police to remove them from the County lots. So it's a cooperative effort between the homeowners and the County in trying to keep the beach area clean and not being used illegally.

Mr. Hedani: From your perspective Martin, does not changing the community plan which

prevents people from actually constructing their houses in some cases amount to inverse condemnation in your ...(inaudible)..

Mr. Luna: From the private property and property side, that's part of the reason that the Planning Director had decided to proceed in this way to possibly evade or avoid that question from occurring.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Okay, I have to say there's certainly merit in what Mr. Luna says and I have a lot of respect for his comments, but I feel this is a very emotional and kind of a sad thing for myself and I know a lot of members of the Maui community. I think Palauea became symbolic at one point of whether those pristine areas of shoreline were going to be kept for the future use of future generations or were going to be sold and developed and privatized and walled off and so on. And unfortunately, although at one time the County Council did approve the purchase of them, the then Governor did not act and purchase the lots and you know, an opportunity was lost. But symbolically it's a real said thing. It's one of the few things that makes me want to cry every time I confront it. I used to spend a lot of time down on that beach and it was one of the pristine beautiful places. You know even just hearing that, you know, the property owners, who, you know, I don't think they're members of the community from here, but you know, things have gotten to the point where they hire security companies to kick local families who try to camp down there off. Well, I understand it but it's sad and it really is a sad day to see it going step by step and inexorably to a situation where these lots will be walled off, where the water quality will be degraded by soil and nutrients being brought in and dumped into the ground and flowing out where, you know, in 40 years they'll be no more beach and it'll be just seawalls protecting million dollar, many, many million dollars houses.

You know, contrary to what Mr. Luna does say, people who spend a million dollars or more, many ten million dollars in some cases to buy a shoreline lot they have not in fact proven over time to be the best stewards of that land. I really feel the County, and it intends to be a better steward, even a large corporate people and the hotels are better stewards. You know where you see illegal seawalls, where you see the encroachment and forced naupaka and other stuff trying to keep -- it is where people place a value on each square inch of it and feel that they own it. I don't really know if there's anything we can do at this point to stop it, but I do feel that there is significant impacts that will not be able to be mitigated and I'll let it go at that.

Mr. Hedani: Any other questions for Mr. Luna at this point? Commissioner Guard.

Mr. Guard: I guess mine is in regards to the parking with the two lots now it is a lot of defacto parking over there and probably some parking going on on private property owners

lots.

Mr. Luna: It's difficult to get on the private property owners lots because there's rocks a long the side to make sure that the property lines are observed. But as far as the county areas I don't think they're allowed to go onto the county lots to park.

Mr. Guard: That's going to be the issue and I've seen it all over the place, not even on ocean front, well, probably a lot on ocean front but in other subdivisions as well where people put up a wall but then they still don't want people parking right outside their wall so they'll put on a bunch of rocks to kind of keep vehicles away. A one-foot or two-foot piece or coral boulder would probably do a good job to keep cars from being able to park there, then can't go to the beach that then allow this to be a nice playground for nine property owners.

Mr. Luna: Let me make clear. If there are any rocks, it's not on county right of way. It's on the private property side. That's clear because back in the I think mid-'80's the Japanese owner had tried to put rocks along there and the county intervened. So any rocks now are all on the property owner's side. They're not in the county right of way.

Mr. Hedani: In this particular case Martin, the county has a 30-foot right of way.

Mr. Luna: Yeah.

Mr. Hedani: I mean the roadway is 30 feet wide so --

Mr. Luna: They've condemned it and it's all county road now.

Mr. Hedani: So basically in answer to Commissioner Guard's question I'm thinking the only way that the public can get access to the beach without actually creating parking on the park on the county lots would be to have on street parking with an improved roadway where you'd have dual side on street parking, right?

Mr. Luna: That's correct.

Mr. Hedani; And there is enough width at 30 feet for putting lanes of 10-foot lanes or 20-foot lanes for travel and you would have a 10-foot lane for parking. So it would be restricted to one side of the street?

Mr. Luna: I don't know how the county would administer that but --

Mr. Hedani: Thorne, do you know is it 30 feet or 50 feet that the county has the right of way through that adjoining lot?

Mr. Abbott: We don't know offhand at this time, but again, that could be addressed in the EA comments.

Mr. Luna: And one other clarification I need to make is the security firm does not do things that are not within the law. So when Jonathan says that they're kicking out local families it's because it's illegal to camp there. You know, if it were legal they wouldn't be doing anything, they wouldn't be interfering in any way.

Mr. Starr: I'm just saddened by it.

Mr. Luna: Yeah.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Yeah, on a side note from that, it is a very special place and over Christmas I was able to take three canoes down there with high school kids and it was like -- to see them beach the canoes right there, get out of them with no houses there, it's like their own abandoned beach for the day. I just don't know the value of allowing nine people to put their houses there to take away the general public's enjoyment of a now rural area. So to say, to quantify that to oh, they paid a million dollars or two or three million, I mean, we have a hundred thousand residents that there's fewer and fewer of those spots to enjoy that type of retreat. I mean, there's going to be classes and classes of kids getting to come out, ... (inaudible) ... school every year to be able to do that in the Hawaii State sport, the paddle down from Kihei past all those hotels, everything and then come to the first isolated beach and only have two other people walking on the beach is a pretty unique event and one that maybe in three to five years we'll have to go down to Big Beach and maybe further after that. So I guess, to maybe start to quantify how much all of our time or all of our sense of just retreat from these developments what's that worth. I don't know if we could put that in the EA.

Mr. Hedani: Okay, additional questions for Mr. Luna?

Mr. Luna: May I just point out one other thing in concern of the -- I think on your page 12 of your draft Environmental Assessment, it addresses how you as a commission and the Planning Department can make sure that the near shore waters and the area there can be kept, still kept from being degraded and it's the last paragraph. It's says that the -- to ensure that shoreline resources are not adversely affected by the future construction applicable best management practices will be implemented, including but not limited to use of filter berms, etc. So this commission even after -- if it agrees and proceeds to approve the entitlement action for the Palauea parcels, it's not the last action on your part. They still have to proceed with an SMA and it's unlikely, although there's been some talk that you

could probably get an exemption because it's a single family home, that's a possibility but you as a commission can make sure that exemption if it's given that the Planning Department will provide some directions on what to be done for maintaining the pristine condition of the area. Thank you.

Mr. Hedani: Additional comments from the public on this item? Okay, are there any other members of the public that would like to offer testimony on this item? If not, then the public hearing portion of the comments will be closed. Are there any other additional comments from the commission?

I confirmed for the record that the right of way of the county is 50 feet wide. So there is 20 feet for two travel lanes at 10 feet wide, 15 feet on each side of the road where you could actually double load parking and have off street parking on both sides, mauka and makai sides of the roadway for parking for the public. Although there would be no crosswalks for them to get to the county beach park. So that would be a consideration. Commissioner Starr.

Mr. Starr: Yeah, I just want to put that into a comment that we'd like to be shown how much parking, how much on street parking can be provided for users of the beach park.

Mr. Hedani: Right. For the commission's edification, without the change in the community plan amendment, the county can't proceed with the county park improvements as well because it would not be coinciding this particular case.

A question that I would have would be whether or not because it's being taken all at one time whether or not the individual lots in this case could be required to come back to the commission for an SMA permit without an exemption as a condition for the commission's approval for the community plan change. So that would be a change they would need to go over with probably Corp. Counsel.

Mr. Starr: Well, can we have that as one of the questions for the EA?

Mr. Hedani: Right. Commissioner Guard.

Mr. Guard: Just on the side note on that parking to make sure it takes into account everyone's driveway aprons, and their typical setback for where they put their mail boxes which could severely impact the number of cars you're going to have on the street.

Mr. Hedani: One comment that I would have would be that the homeowners be made aware that there will be anticipated on street parking in this area to provide parking for the beach park parcels. So in that particular case, they should be precluded from movements to remove on street parking from adjacent to their home sites basically. Commissioner

Starr.

Mr. Starr: It might be more effective to put diagonal parking on the mauka side which would make it a wider area but wouldn't be obstructed by driveways.

Mr. Hedani: Additional comments? One comment that I would make would be to see whether or not the department, the Planning Department can approach the County Council one more time to see whether or not there is any -- whether or not there is any consideration being given to expanding the size of the county park. I heard that they had a \$50 million surplus so they might want to throw some of that toward an additional acquisition in this area. We're talking about Palauea. Commissioner Hiranaga.

Mr. Hiranaga: Just a question. When these lots were created or subdivided there was no requirements to put curbs and gutters and sidewalks on the makai side of the roadway? Maybe we could have an explanation as to how these lots were created and why the subdivision infrastructure wasn't required.

Mr. Hedani: We could note that. One additional comment that I had was in the exhibit that was provided to us I guess it's Figure 8 in our Entitlements Action for Palauea Parcels is the title, erosion rate map, the designation of the seaward boundary of the parcels looks like it's ...(inaudible)... right through the middle of the sand. I'm not sure if it's land ...(inaudible)... parcels and that's why it's recorded this way or shown this way, but I would like to see that the makai boundary of the parcels be reflected to represent the current interpretation of the shoreline boundary laws. I think it was recently amended to go by not the vegetation line but the upper reach of the wash of the waves for the mean high tide line. And I'm not sure how that relates to these lines that we have in Figure 8.

And the other question I guess would be how can build on a parcel with a one-foot erosion rate in a V-12 district that has tsunami inundation with velocity considerations related to that property? Other comments for the department's consideration? We have corp. counsel back you want to restate your question Doc?

Mr. Giroux was in attendance at 1:50 p.m.

Mr. Iaconetti: Well, on page 46, no. 2, it says, "the proposed action would not curtail the range of beneficial uses of the environment." Now how can they possibly say that?

Mr. Hedani: I don't know that that's a legal question.

Mr. Iaconetti: Page 46, no. 2. There's no way that this action will not curtail the range of beneficial uses of the environment. I mean, we're keeping people who unfortunately don't have a home from utilizing the property for those people who have enough money to buy

this property. Are we really benefitting a greater number of our citizens by doing this? Granted nobody wants homeless people parked on their property, but on the other hand, you know, we're all human. And they've got to go somewhere. So, we're turning this property over to people who fortunately have sufficient funds to develop it and keeping people don't have sufficient funds from utilizing it. Socially it doesn't sound correct to me for some reason.

Mr. Hedani: He's asking for an opinion from Corp. Counsel.

Mr. Giroux: Doc, I think your opinion is well-taken. I think that's something that can be incorporated into the document as far as you know, your understanding of the thoroughness of this document.

Mr. Hedani: Additional comments from the commission? I think Doc, you know, my response to that in that particular case would be that if the county's intention is to preserve the land for the public then they should acquire the property. If they don't have the money to acquire it, it they don't have the ...(inaudible)... to acquire the property then they should allow the private property owner to proceed with use of this property. So it's decision time. We either do it or we don't. Okay, if there's no additional comments from the commission and you're not asking for an approval of any sort at this point we can proceed on to the next item on the agenda.

Mr. Abbott: Yes, we can. Clayton, would you recommend that I read back the comments that were voiced by the commission or shall we just –

Mr. Yoshida: I think we would just note the comments of the commission and we'll forward them because they're part of the record. Can we proceed Mr. Chair?

Mr. Hedani: Okay, lets proceed with the next item on the agenda.

- 2. MR. JAMES H. SCHLOEMER requesting comments on the Draft Environmental Assessment prepared in support of the Shoreline Setback Variance application for the proposed Schloemer Residence at 4410 Makena Road, TMK: 2-1-011: 028, Makena, Island of Maui. (EA 2006/0018) (SSV 2006/0005) (T. Abbott)**

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

The Planning Commission is being asked to:

- a. **Provide concurrence on the filing the Draft Environmental Assessment and the Anticipated Findings of No Significant Impact (FONSI) with OEQC for publication.**
- b. **Provide comments on the draft Environmental Assessment.**

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

The Commission may act on the requests for concurrence and comments

Mr. Thorne Abbott: Chris Hart and Partners has a presentation to describe what the proposed action is and I'll let them carry it from there. But I did want to repeat a few things from the shoreline rules to provide some guidance as to why this variance is being requested.

You'll recall we had some lengthy discussions about overlay when we were looking at how you calculate our shoreline setbacks. We don't have an overlay here. What we do have is two different setback calculations.

The red line indicates the state certified shoreline. The blue line indicates the erosion rate based setback. And the light blue line represents the setback based on the average depth of the lot. So the average lot depth is more mauka than the coastal erosion hazard rate base.

Now if you look under definitions in 12-203-4 of your shoreline rules, "adversely effect beach processes means to pose an immediate or future adverse effect on beach processes as a result of a structure or activity located within coastal erosion hazard zone." And when you look to your rules under criteria for approval of a variance which is 12-203-15(a)(8) you're allowed to build private facilities or improvements which will neither adversely affect beach processes. It's not just the literal translation of that , but the defined translation of that and will not artificially fix the shoreline provided that the commission also finds a hardship or result to the applicant if the facilities or improvements were not allowe4d. Hardship means deprived reason of your land. So basically you can approve a structure within the shoreline setback area so long as it doesn't adversely affect beach processes. But when you look at adversely affect beach proceeds that only applies to coastal -- the setback based on the coastal erosion hazard zone. So they're not proposing anything in the erosion hazard zone. They're proposing something between the Coastal Erosion Hazard and the setback based on the average lot depth. Is that clear?

Mr. Hedani: Almost.

Mr. Abbott: There is ...(inaudible)... for approval. With that, I'll give it over to Chris.

Mr. Chris Hart: Thank you very much Thorne. My name is Chris Hart of Chris Hart and Partners and we have a project that we would like to present to you. This afternoon essentially we're asking you for comments on our draft Environmental Assessment which has been prepared in accordance HRS Chapter 343. The reason for the environmental assessment, the trigger is our application for a shoreline setback variance. And we're also, this is for a single family residence and we are also as part of our application, our consolidated application applying for a special management area use permit which would be part of a separate hearing when we would be hearing the shoreline setback variance and the special management area permit application.

We have with us today, before you turn all the lights out, Jim Schloemer who is the owner, and also the architect Anthony Riecke-Gonzales of RSK Architects and our structural and civil engineer, Satish Gholkar who has been the civil and also the wastewater engineer on the project and Raymond Cabebe of our office has been the planner on the project and myself of Chris Hart and Partners. Oh, and Lisa Rotunno-Hazuka, our archaeologist. I apologize, Lisa, I'm sorry.

The purpose again of this environmental assessment is to analyze the potential impacts related to the proposed construction of a single family residence with a garage along with a swimming pool, lap pool, spa and landscape planting. A caretaker's cottage is also proposed. Preparation of an environmental assessment is again in compliance with the provisions of HRS Chapter 343 since it involves an action within the shoreline setback area which is the shoreline setback variance.

Parcel data, the parcel is located 4410 Makena Road, Makena Keone'o'io Road, Makena, Kihei, Maui. Tax map key is 2-2-1-011: 28. The area of the parcel is 43,209 square. It's a little over an acre. The existing land use, currently it's vacant. There's a 14,750 square foot archaeological preservation easement and natural drainage way located on the property and we'll discuss the archaeological preservation easement a little bit more. Location is actually just south of the Polo Beach Club. So it's essentially in the northern most area of the area of Maui called Palauea. This is Alanui Road. This would be basically -- That's Makena Road, old Makena Road and this would be the Palauea Beach -- Polo Beach Club which would be immediately to the north. This would be the Kealani Resort.

The is parcel was a separately owned parcel of the Palauea Beach lot. It as owned by Jack Kean and Ed Bellow and they participated in a subdivision of the parcel and this portion is already developed with a single family residence which we'll discuss. And this is the Schloemer property.

The 1998 Kihei-Makena Community Plan identified this parcel, both parcel parcels as

single family. The Polo Beach Club is identified multi family and the Kealani Hotel site is hotel. The portion of the property that was referred to in terms of Palauea is essentially PD8 and you're just talking about the park designated parcels along Palauea Beach. Our portion is again at the northern most portion of the Palauea area. It's identified as SF single family and the zoning is HM Hotel and this is a pretty old zoning map but the zoning is HM Hotel. This is our parcel. And I should say that ...(inaudible - changing of tape)... and they're also in the proposed zoning SF single family.

This is our flood insurance rate map. And the flood zone designations are C, A4 and V14. The V portion is actually right along the -- actually this area right along the drainage channel.

The land use designations, the state land use classification is urban. The Kihei-Makena Community Plan is single family, the county zoning is HM Hotel and the flood zone designations again are C, A4 and B12. Special designations are located within the special management area and again, in the context of this project, single family residential project because it's a very sensitive project we're not asking for an SMA assessment or a determination for exemption. We have applied for an SMA permit for it. So it will be an actual SMA permit for a single family residence.

These are site photos. This is looking southwest from the corner of Makena Road and Kaukahi Street which is the street actually coming down from Wailea Alanui. The right center is the driveway to the residence on parcel 3, located right there and, yeah it's right there. At far right is the entrance to the Polo Beach Club Condominium. This would be the area, it goes into actually an area that's a beach right of way and parking.

The view from Makena Road looking west at the bestill hedge along the property's Makena boundary. This was the Polo Beach Club that we talked about on the northern boundary which is multi family and this is our parcel, the bestill hedge and then you can see the entrance to the existing residence.

These are again, a view of the site of the proposed, where the proposed main residence is going to be sited. Looking west, the existing residence on the adjoining parcel 3 is to the north, it's just barely visible through the trees.

The view of the shoreline looking north from the top of the bank the rock and coral beach. The existing residence on parcel 3 is at the right.

The shoreline is basically stable. And it is a rocky coral and stone cobble beach.

A view of the drainage gulch from the shoreline looking west. It would be looking mauka. Kealani and the Fairmont Hotel is visible in the distance. You can see it up here. This is in

the hotel district again.

Raymond, can you just go back to that? I'm sorry. There is an existing residence under construction on a parcel 5 which is at the right. This is called the Heatley residence. Site of the proposed main residence was at the left center. This would be the site of the residence being proposed.

The owners are proposing to construct an approximately 5,410 square foot, two-story, single family main residence with a 624 square foot attached garage, covered lanais, a swimming pool, lap pool and spa, related landscape planting and site amenities. Carriage house cottage is proposed on the mauka portion of the property. It will function as a garage with a 938 square foot caretakers cottage on the second level with 408 square foot lanai.

This basically is our erosion rate map. And this is the parcel that we're talking about. You can see the Polo Beach Club and the Kealani Resort. The average lot depth setback was calculated and the actual setback is 87.25 feet. The erosion rate setback when it was applied the setback is actually 62.5 feet and 60 feet. That's in the context of two transects 101 and 102.

This gives us a basically a sense of the site. This is the parcel or the existing residence that was basically constructed by Jack Kean and Ed Bello. This is our site and this is the Heatley residence. There's an existing preservation area that was discussed. It's about 14,000 square feet and it was created as part of the subdivision that was actually initiated by Jack Kean and Ed Bello. So it's actually part of the parcel.

This is a portion of the parcel that's in the drainage way. And this is the portion of the parcel that would be actually identified as the erosion rate setback which is 62 feet something like that, 62 feet.

This would be the actual location of the residence that would be constructed and this would be the location of the carriage house.

Actually it works out that approximately 29% of the 46,000 square foot parcel is available for development in the context of encroachments that already existing on the site.

This is the landscape planting plan basically shows the preservation area and open space and relationship to Makena Road. And then the open space of the existing drainage way and we were talking with the Heatley residence, the architect at the Heatley residence in terms of doing some landscape planting that would be similar native plants. It would be similar to the plant material that the Heatleys would be doing on the south side of the bank. And then of course, this would be the residence and the erosion-based shoreline setback.

This is some additional detail showing the access to the main residence, the turn around, the garage, the residence itself, the lanai and the pool and then of course, the shoreline setback is farther makai.

This is the carriage house. I'm sorry, the second floor of the residence and I apologize. And this would be the carriage house. And then the first floor garage and the access driveway. The residence actually is going to be built up on piers along the front portion, the makai, most makai portion.

These are existing views again from old Makena Road and from the site. Polo Beach Club. View corridors. This is basically a computer simulation of how the residence would look. This is the residence that was designed and developed on the north side. This would be the proposed residence. You can just see the Heatley residence through the trees. And then this is a view from the drainage channel. This would be the main residence and this would be the carriage house and this of course is the preservation area.

Again, this is essentially is a section through the site. This would be old Makena Road right down the center of the site. This would be the preservation area. This would be the residence and this is what it would actually look like from Makena Road.

It's essentially our presentation and we have some larger scale reference boards if we need to refer to them during the question of answer.

Mr. Hedani: Questions from the Commission for the applicant? Commissioner Starr.

Mr. Starr: Yeah, it's refreshing to see an applicant come in here with ...(inaudible)... to go completely against all we've been trying to do in terms of shorelines preservation. So, anyway, I don't see the justification for building this mason in the shoreline setback. You know, I remember back about eight, 10 years ago I remember back down there with the Planning Committee of the County Council when they were doing the Kihei-Makena Community Plan and also that was when the subdivision of this property was taking place and at that time there was Mr. McCormick who was there who had owned that property before it was subdivided and he was selling it at that time to Jack Kean and Ed Bello. And what everyone was told was they wanted the subdivision because the Bello family and the Kean family were each going to build their primary residence on one of these lots which of course turned out not to be the case. You know, apart from it being in the shoreline, one thing that really came to my attention here is that they're putting inside the shoreline area right above the beach something they call a macerator with forced main to leach field in driveway which I assume means that they're taking the sewage from the house and bringing it to a point in the ground right above the beach, you can look at what this is Figure 10.2, bringing it to a point below the house right above the beach in the shoreline setback where there'll be a pump there. Now I know these macerator pumps, you know, little giant

and danseur and there's different varieties of them. You know, I have several of them in operation. They fail about once every year and a half at which time raw sewage pours out of them especially if they're looked in the ground like this, I would assume that every 18 months or so we'll have sewage going right into the ocean. So you know, possibly if they insist on doing this maybe they should post a \$10 million bond and be fined a million dollars for each episode or something like that because there's, you know, for putting raw sewage into the ocean there can be no -- but I was still interested in about having the leach field up in the preservation area for their sewage. I mean, this whole thing, you know, it may now stink now but at some point in the future there's a very good possibility.

Mr. Hedani: Response from the applicant.

Mr. Hart: Yeah, I have a couple responses. Thank you for congratulating us with our ... (inaudible)... you know. But first of all this parcel was not owned by Mr. McCormick or the Japanese group that owned Project District No. 8. Mr. McCormick was present when the Council was there because it was a field trip to look at this parcel. Jack Kean was present and I think Ed Bello, but I know Jack Kean was present, but he had purchased it from another property owner. As part of the community plan, it was proposed, he proposed to make it single family for the purpose of developing it for Jack and Ed's residence. You're right there. Okay. And Mr. McCormick proposed to develop -- to identify the rest of it as Project District 8. During that dialogue, the discussion with the Council that was when Palauea Bay was changed to park as part of the 1998 community plan. So Mr. McCormick was never an owner of this particular parcel.

Mr. Starr: I know he spoke at that time. I assumed he was --

Mr. Hart: No, he was speaking about the Project District 8. Okay so the other issue that you brought up regarding the sewer and the sewage treatment. There's no proposal to put first of all any leach fields in the preservation easements. But be that as it may, we're showing at this particular point our waste water system on system. And we're also in negotiation with Mr. Dowling to be able to basically run the sewage onto his sewage treatment plant but it's quite a negotiation. We've been involved with another residence on the same street. Mr. Dowling has quite a complicated negotiation that we have to go through. But the intention is and we're very confident that Mr. Dowling will let us hook into the -- basically his sewer line and then sewer line goes to a, gravity flows to a pump station and it's pumped actually eventually into the County wastewater treatment system. No, not private system.

Mr. Starr: In either case though you're planning a macerator and pump for the sewage right above the beach inside the setback is that correct?

Mr. Hart: No, it's not --

Mr. Starr: That's what's in the drawing.

Mr. Hart: I'll have to defer to Mr. Gholkar.

Mr. Starr: Is this ...(inaudible)... Yeah, Satish?

Mr. Satish Gholkar: What we've done --

Mr. Abbott: Could you identify yourself?

Mr. Gholkar: Oh, sorry. My name is Satish Gholkar. I'm the civil engineer for this project.

Mr. Hedani: Satish can you address your comments into the microphone since it's being recorded.

Mr. Gholkar: Okay, my name is Satish Gholkar. I'm civil engineer for this project. What we've done is we've moved the lift station underneath the house close to the turn around.

Mr. Gholkar: That's not in your drawings though.

Mr. Gholkar: That's in the revised drawings. Somehow these drawings weren't you know, revised for the presentation but the drawings which we've submitted for the county application for the off site sewer they show the actual lift station underneath the house closer towards the turn around.

Mr. Starr: Mr. Chair, I move to defer this because we're not looking at the correct documents. I think until we receive the documents which they say -- conform with what they're going to do I think we should defer this. I'd like to move at this point to defer it.

Mr. Hart: Could I just add one thing Mr. Chair? According to Mr. Schloemer which I wasn't aware of he has an agreement with Mr. Dowling to basically hook into his sewer line. And so as far as any of the leach fields are concerned they would not be on site.

Mr. Hedani: Okay, is there a second to the motion.

Mr. Iaconetti: Second the motion.

Mr. Hedani: Is there a second?

Mr. Iaconetti: I'll second it.

Mr. Hedani: Seconded by the Commissioner Iaconetti. What the commission is being asked to do in this case is provide concurrence on the draft environmental assessment, an anticipated finding of no significant impact for OEQC publication and provide comments on

the draft environmental assessment. That's basically the two things that we're being asked for at this point, not necessarily approving anything.

Mr. Starr: No.

Mr. Iaconetti: That wasn't his motion though.

Mr. Hedani: Right.

Mr. Starr: To speak in favor of the motion, we've just -- the very first two points that were raised were told have been changed. So I don't see how we can make comments or do anything since our documentation is for a project that's different than what we're trying to review. You know, I feel that I've spent a lot of time looking at this and now I find that what I've looked at isn't really what they're planning to build.

Mr. Hedani: What page do you find that discrepancy on?

Mr. Starr: Figure 10.2. Figures are kind of about one-third of the way through. And then you'll see kind of on the upper portion of the property below where the existing house on the next door there's a little circle with a macerator with forced main to leach field in driveway. That kind of raised a red flag for me.

Mr. Hedani: This is on Figure 10.2?

Mr. Starr: Yeah. It's right here.

Mr. Hedani: Okay, any additional comments from the applicant at this point?

Mr. Hart: I would just like to call your attention to the fact that essentially you know, we've been working at this for a long time. The original application was in July and revised in November. Actually what I understand at this particular point would be essentially we have received permission through an agreement with Paluaea developers and essentially what we're securing is an easement to cross old Makena Road for the waste water line. That's essentially the issue at this time.

In the time context of the application this is submitted as a draft and is submitted for your comments, but you know, we can't stop working on the project just while we're waiting to have it reviewed. So you know, things have been going on, on going with regard to the project and evolves. From that point of view I would beg the indulgence of the commission to at least be able to go through the draft and give us comments so that we can come back with a final to you.

Mr. Hedani: Okay, additional discussion on the motion on the floor? From the commission,

Commissioner Guard.

Mr. Guard: I see Jonathan's point but I feel like we could continue to give other comments. There's a few items that I don't agree with. So I don't know if we want to get the motion out of the way and continue with comments? If it is just at the draft stage I wouldn't mind even if it's going not go through the EA process or if they need to revise to get out of the shoreline setback area in general. Could we accommodate that part of it today's discussion where if we defer now we're not going to talk about anything?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yes, I'd like to use the opportunity to provide comments so that applicant can address those comments in the next draft versus stopping at this point?

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Does deferral mean that we won't have continuing comments?

Mr. Hedani: Deferral means it will taken up at a future date and there'll be a revised drawing to figure 10.2 that will move that macerator circle from the makai side to the mauka side.

Mr. Iaconetti: But that doesn't necessarily mean that we can't continue with other comments.

Mr. Hedani: Well, deferral means we won't continue with additional comments at this point. We'll just defer it. Defer it mean, we defer it.

Mr. Iaconetti: Maybe we ought to defer the motion then until we get additional comments.

Mr. Hedani: Commissioner Hedani.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'm willing to have other comments but I would like it to come back before us for additional comments so we get another shot at it with the proper documentation. I, you know, I'm a stickler for the belief that when we do act on a document that document should be correct. And when it's knowingly not correct, --

Mr. Hedani: Right. Jim, does it come back to us for additional comments in the final EA.

Mr. Giroux: Yeah, what would happen is that any comments made here today, the applicant would have to address and come back and then we would have a chance to comment on that before we accept it as a final document.

Mr. Hedani: Would like to withdraw your motion at this point?

Mr. Starr: No. Because I don't feel that even with comments we're ready to go to a final EA. I think that we're going to need -- It should come back to us as another draft. You know, if we want to give comments and then have it come back to us as another draft when we comment on the real thing not the thing that is not, you know, is fake. Then I think we'd be following a correct process. I think if we comment on something that's already been changed then we're doing the public a disservice.

Mr. Hedani: Okay, Additional discussion? Commissioner Freitas.

Ms. Freitas: I can see Commissioner Starr where you're coming from, but I also think that we ought to hear the rest of their project and comment on it. You have to understand how they keep the ball rolling. They don't stop and send the document. So you can see where they would have things going on and new drafts and everything and would come to us and it wouldn't totally be complete. Final is final but at this point they are working. So you can see where maybe some of that would happen at this point. I'm not saying later done. But at this point you can see, that things do go on.

Mr. Starr: Okay, let me ask counsel a question. If I were to withdraw my motion, the second would be withdraw, we have more discussion so that we had some comments, and then another motion were to defer, would they be able to use those comments to prevent -- to fine tune a second draft that would be closer to the -- or they have to ignore those comments.

Mr. Giroux: I don't think they're going to ignore anything that happens at this point. Just procedurally, the process of having a draft is for the purpose of finding these type of things so that comment would be that you would want to see a updated map or sewage plan and then when you look at accepting the final if that's not up to your, you know, if they haven't adequately addressed that environmental issue then you can deny the final. You can say that you are not going to accept the final.

Mr. Starr I would still like to see it come back as a draft but to allow discussion to continue which other commissioners seem to want, if the seconder is willing then I'm willing to withdraw my motion for the time being.

Mr. Hedani: Okay, so the motion is withdrawn. Question for Corp. Counsel, procedurally if the commission does not concur with a finding of no significant impact, what is the result.

Mr. Giroux: Well, then a letter would need to be sent to OIP withdrawing the previous letter of Finding of No Significant Impact.

Mr. Hedani: Okay. I think I understand. Additional comments from the applicant or on the draft EA at this point? Commissioner Guard.

Mr. Guard: On Figure 3.2 this was one thing that we just were discussing earlier on the Palauea Bay. You can see the property to the north is falsely watered the naupaka and it's now coming over half way down the coral to hopefully mitigate that or not falsify their shoreline. The actual drainage way, it's actually kind of a popular surf spot out there. There's a little reef that breaks. I don't know if there's a potential to allow access down that gulch at some point, the nearest one being Polo Beach to the north and Palauea Bay to the south that there's a little reef break that's pretty popular that used to be able to access all the time and now everyone's kind of gotten shut out of that, off shore, I'm sure the applicants would enjoy watching people surf out front. And then this is kind of a side note but the bestill hedge to take a photo of a view from a bestill hedge that hasn't been there all that long. Gives a real false look to say that there's never been a view and that's been the case and we have a lot of other planners in the room that we need to start looking at maybe vegetation that's been there for 50 years or more not cane grass that's planted two years in advance so you can't see the ocean, to say that oh, there was never a view there. A bestill hedge shouldn't really count either. I don't think it's been there that long. And I think I'm going to definitely concur with Jonathan on that -- I don't know if they need to be that close to the ocean with 6,000 foot home, that it could be downsized. I know they're probably trying to get up as close as Kean's property but he probably did the subdivision -- how he did it to minimize his property line so that he needed to be within 25 feet or he would lose too much land. It looks like the flag lot helped him a house close to the ocean on that one. So they may not have the same -- that might not be available to them on this property to look at getting maybe back in line with the southern property boundary.

Mr. Hedani: So the request is for consideration to downsizing the house to some degree to pull it back from the setback.

Mr. Guard: There's a little bit of room to move it back but then get into running over the preservation area and I know they're down to 30% but at the time they bought it they knew that preservation area was in place that it was probably discounted instead of a full value acre lot in South Maui. Now they're trying to come to us to say oh, we're being the victims on your shoreline setback and this preservation area. We need a 6,000 foot house.

Mr. Hedani: Okay, additional comments? Commissioner Starr.

Mr. Starr: Well, in a sense they're double dipping here because not only are they trying to get approval to build in the shoreline area but they're also getting a variance on the preservation area so that they're going to build partially in the preservation area.

Mr. Hart: Where are we doing that?

Mr. Starr: I read it in here that there was a variance on the preservation area.

Mr. Hart: There was basically -- we went to the Burial Council and there is a -- the access road is a little wider.

Mr. Starr: Okay, that's what I'm talking about.

Mr. Hart: We're not building in it though Jonathan.

Mr. Starr: You're building a road in it.

Mr. Hart: Well, a driveway, portion of it.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'd just like to echo Commissioner Guard's comment about the possibility of downsizing the house. It might be more palatable to me if there was a smaller encroachment into the setback area versus building out all the way to the HR setback. So what I'm saying is can you pull the building back ..(inaudible)... versus just building it all the way up to the secondary setback area.

As far as downsizing --

Mr. Hedani: Kent, do you want to quantify that by a certain amount of feet or generally or?

Mr. Hiranaga: No, I'm not -- I don't want to say you know, 70% reduction or 50. It's just an idea I want to put out there for them to --

Mr. Hedani: For them to consider.

Mr. Hiranaga: Yeah. You have a proposed three-car garage in your accessory dwelling. Is it necessary to have a two-car garage attached to primary residence.

Mr. Hedani: So that's five cars total.

Mr. Hiranaga: If you eliminated the attached garage you could possibly push the building a little further back.

My other concern is have the neighbors been notified of this intent because it may impact their peripheral ocean views because they're trying to push your house closer to the ocean. Are they aware of this application?

Mr. Hart: They are, yes.

Mr. Hiranaga: To adjoining neighbors. And they have no concerns. They have not --

Mr. Hart: Well we've been in contact with the Heatley because that's under construction and you know, we're not moving and basically the subject of discussion primarily has been with regard to a landscape planting proposal that we're sharing for the drainage way because we basically share. Their property boundary actually goes through it. So they're aware of our project yes.

Mr. Hiranaga: Okay, I guess for myself they've -- you can hear some type of confirmation from the two neighbors that they're not concerned that their the peripheral ocean views will be impacted if this house is allowed to be built closer to the ocean.

Mr. Anthony Riecke-Gonzales: Hello Commissioners, my name is Anthony Riecke-Gonzales. I'm with Riecke, Sunnland, Kono architects. I'm the architect on the project. I'm also involved with the Heatley project next door so we've had several discussions with the Heatleys and their concerns voiced so far are not so much in view planes actually as in screening the house that we're proposed. So the latest landscape plant we've actually added some screen planting that wasn't on the preliminary plan on the south boundary. Where I just pointed on the exhibit there of landscape plan. We have not had any communications from Ed Bello or -- I have talked to Jack Kean. Jack has indicated to me he doesn't have a concern because there's actually -- it's a duplex property next door and Jack Kean's house is actually on the north side and it's Ed Bellos that's the one that's shown in the photographs that have been show to date and I understand he's not around very often. And so, we haven't had any direct feedback from him. However his house is actually about 35 to 40 towards the ocean in front of the house that we're proposing.

I'd also like to point out, as the architect on the project, it is only this little north projection up here that's the enclosed area that's being the part of the house that would be in the setback area that they're asking for a variance. If they went to the 80 some foot, I think it was 87.9 foot shoreline setback. The rest of the house would actually would not be encroaching into that. So it's the lanai that you see on there and then that -- it's about a 110 square feet of area of a bedroom that is actually what they're requesting to stick in there.

There is some other issues here that haven't been mentioned that I'd like to mention right now as well. There's all of the archaeological. There's a flood way that goes through the property and so that's another reason that the house is kind of shaped with the way it is. And also on the elevations that were shown to you, why it was up on piers is by FEMA rules you have to allow the water to flow through whenever there's a flood. So I'd ask the Commissioners to take that into consideration.

The other issue that I heard mention that I just wanted to have a comment on, is the driveway variance that was issues was actually issued to a previous lot owner and we did

go before the Burial Commission asking for a wider variance which was denied and we respected that decision.

The Burial Council actually was very helpful though. They said, you know, that they did understand the reason that we were asking for the wider access to the lot, was not so much for once the house is built but to be able to build the house, construction equipment will need to be able to get to the lot. And so they have granted us an additional variance for a temporary sand pad so that we can bring wider equipment and trucks and stuff across the access there and then that would be restored after the house is completed.

And then just my own little pet thing on the discussion earlier on the waste water system and you know, the fact that it's my drawing that's up there that has it in the old location and that is, you know, waste water systems in Maui County tend to be something that evolved and part of this is throughout this process the way I see it, even though we're further along than I would expect with Dowling Company is it takes about a year and a half to two years to get a final answer from the County whether or not they would allow us to hook up to Dowling's property because we're going to need an easement across the county roadway to do that. And until they actually give that we would need to have as our back up a system on site. And that is why the current plans show a private wastewater collection system and disposal system. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, the soil there is basically gravel and rock which means that anything going into the ground is going to end up in the ocean. Now you know, apart from the sewage and leach field which is what they are currently proposing although they say that they may be talking to Dowling or whoever, you know, that's all going to end up in the ocean there.

Now in addition there are two swimming pools, maybe consideration should be given to getting rid of one swimming pools or whatever, but they're talking about taking a pit and using that to drain the swimming pools in which is also going to end up in the ocean and is also going to kill the reefs.

Now I look at this drawing here and I'm not sure exactly what they airbrushed but it looks like some one -- you know from the color it looks like attempted a little scene from Nahiku. So I would like in the EA to see what they plan to plant in the shoreline setback area which that certainly is and what chemicals they intend to use to fertilize it and to do pest control because all of that stuff is going to end up in the ocean and on the reef and already at that location the nitrate level is between seven and ten times the recommended levels that there are algae blooms out there and this place is going to make it a whole lot worse. So for additional comments are what are they going to be applying on that makai landscape portion, what they're going to plant, what chemicals they're going to use there and the

effect of the swimming pool water and the effect of the sewage water will have on the near shore waters when they do enter the waters?

Mr. Riecke-Gonzales: I can let Chris Hart and Partners who is doing the landscape architecture address the fertilizer and the planting issues. I can address the pool. I believe in your documentation it does propose that we would do a salt water pool for both pools. So there is no chlorine involved. It's basically an ionizing system with salts and I'm not a biologist but my understanding is, you know, that does not pollute or harm if when the flood comes through that water were to wash into the ocean.

On the septic system, it's not a cesspool. So I differ with your characterization that the effluent goes directly into the ocean.

Mr. Starr: It's a leach field.

Mr. Riecke-Gonzales: There is a leach field. It's an aerobic system. And if you're family with aerobic system. It's basically a stage 2 process. So it's not a great deal different than what happens with the County sewage system. The leach field is actually up at about 25 to 30 feet in elevation which is the reason for having the pump. And yes, the water will eventually go into the -- actually first into the ground water table but it would probably take anywhere from three to five years and it's already stage 2 treated water. So I would say you know, it's quite a correct characterization to say that it all goes into the ocean. And I'll let Chris Hart and Partners deal with the planting and fertilizer issues.

Mr. Hart: As far as the planting along basically old Makena Road basically we weren't intending to portray that the bestill hedge was put there to, you know, indicate that there wasn't going to be any view because really the idea is to try to open it up because we do have a tremendous setback from old Makena Road and we are responsible to do a native planting scheme first of all for the preservation area and then in terms of the shoreline setback we will do a native planting plan for that and there won't be any opportunity to do irrigation. And what we would like is that any kind of native plan that would be salt water tolerant would really not need fertilization. That we essentially would depend on, you know, essentially the natural basic character of the land to support the plant. We're not going to be able to build an irrigation system and irrigate it. If that's what's actually happening at the Kean residence to the north, I'm not sure. But we could check on that.

Mr. Starr: Okay, please show it in the document.

Mr. Hart: Yeah, we certainly will. And it will be native plants.

Mr. Hedani: Questions? Commissioner Guard.

Mr. Guard: Yeah, on the bestill hedge I appreciate that Chris, just a photo. Brought that up that it's happened in the past that even for all of us to know that even a kiawe tree can grow fairly quickly. That people using kiawe forests that you can never see through have gotten away with pretty significant projects that we just need to start going that route.

Mr. Hart: Well, it just happened to be existing. Somebody planted it and it certainly wasn't this owner.

Mr. Hedani: I have a question Chris. In this particular case because it's at the very end of Wailea Alanui Road I guess and you're approaching makai on that road, does this project present the opportunity to create a view to the ocean by eliminating the bestill hedge and creating a view channel between the residences?

Mr. Hart: It does actually.

Mr. Hedani: It does.

Mr. Hart: I think that we showed that on one of the slides actually. Actually, Raymond, we have that one view corridor slide. Actually, Mr. Chair, we are actually showing that we are actually opening up two view corridors.

Mr. Hedani: Okay so you will be able to see the ocean from the approach from Wailea Alanui at that point?

Mr. Hart: Well, I'm not exactly sure where the turn is but you know, I think that looking down --

Mr. Riecke-Gonzales: This is Anthony again. We did wrestle with this issue actually. We met with Mike Foley, then the director, and he was actually the one who requested because it was part of his agreement with Mr. Heatley next door that that larger view corridor that goes down the existing gulch be preserved and we went out, and the reason that we showed that picture of the bestill hedge along the roadway is that one, it's an existing hedge and it's on the county property. It's not on the lot owners property. So he doesn't have a right to go in there and clean it out or trying to see but at one time about two years ago when we started on this project they had just finished that culvert work in there and so the bestill hedge had either been removed or cut down where the culvert is and just in the two years it's grown back where you can't see through it anymore.

The other issue if we could go to the slide that has the section that I did right through there, if you look way to the right there which is a person standing with a five-foot high eye level there is actually a berm of earth that's hard to see but that bestill hedge is actually sitting on an earth berm and again, the earth berm is part of the county's right of way and then it

transitions into the lot owner and a five-foot high person can just barely see if that berm was, you know, planted with grass or low ground cover. You would only just be able to see over the top. So yes, you would see like the second floor of the building that we would be building but the rest of it you wouldn't be able to – you can't actually see down to the ocean because of the way the ground is shaped. You can see off to the horizon, but not down to the ocean.

And if we could go to the elevation there, the client actually requested from me that rather than have a house that goes all the way across the width, that we have an opening in the middle there where it's a flat portion at the second level that you would actually be able to see through as if the house wasn't there. So that's kind of – one of the reasons is there's an opening between two pieces where you know, versus just filling it all in.

Mr. Hedani: Could you show me on this diagram on, you know, to your right where the view corridors would run?

Mr. Riecke-Gonzales: Sure.

Mr. Hedani: Okay so between the homes on either side of the residence?

Mr. Riecke-Gonzales: That's correct. The one that's through the drainage swale which was requested by Mike Foley is actually the only one where you can see the ocean and like the beach. Again, because of the shape of the land it's kind of rounded at the top.

Mr. Hedani: Okay. As a comment, I would offer that I concur with Commissioner Guard's comment relative to consideration for not necessarily a public beach access being dedicated to the county and raised to county standards but access to the ocean being provided to the public over private property. I understand that there is a state law that says if you allow the public access over your private property for recreational purpose and you don't charge them, you're exempt from liability if they fall down and get hurt on your property. And the intent of that law was to create opportunities for access to the ocean over private property.

Mr. Riecke-Gonzales: The only way I can think of doing it right now would be through the drainage swale.

Mr. Hedani: Right, and I don't think people would be adverse to doing it.

Mr. Riecke-Gonzales: Yeah it's just that it's only half on Mr. Schloemer's property. The other half is on Mr. Heatley's.

Mr. Hedani: Right. So discussion would have to be undertaken with the neighbor to the

south I guess in that particular case.

Mr. Riecke-Gonzales: It's been, you know, –

Mr. Hedani: I think consideration should be given to not planting landscaping that would preclude them going through that area.

Mr. Riecke-Gonzales: I think they'd be very open to that. I know already, the archaeological area has low planting but it's my understanding that people aren't supposed to be going on the archaeological area.

Mr. Hedani: It's not a good thing.

Mr. Riecke-Gonzales: Right. We have to think about that. The only way I could think of doing would be through the drainage swale.

Mr. Hedani: Right, and it would be like a natural path that people would use at that point.

Mr. Riecke-Gonzales: It is. It's a little deceiving on the photographs and stuff. The drainage swale is a lot more like a ditch and it's a natural one but it's basically – the sides of the ditch are like five feet high earth. It's not a real –

Mr. Hedani: Is it wet all year long?

Mr. Riecke-Gonzales: No, though I've gone out there maybe a dozen times and very often there's stagnant water in the bottom of it. So walking through it, it's kind of mucky.

Mr. Hedani: Well, sometimes you know, if you don't have a way to get down there, you use whatever you have.

Mr. Riecke-Gonzales: Okay.

Mr. Hedani: Other comments from the commission? Commissioner Iaconetti.

Mr. Iaconetti: I've got a question. Why is the preservation area so large? The burial site is quite small but then we have this great big piece of property that's being preserved. Is there a reason for that?

Ms. Lisa Rotunno-Hazuka: Lisa Rotunno-Hazuka, I'm the archaeologist for the Schloemers. We did not do the original work on there but this is a very extensive site. There's multi occupation layers. There's a lot of subsurface architecture all through this site. I believe that there may be other burials present. So, when they tested this area, everywhere they

tested they could find remains, cultural remains, subsurface architecture, so that's how this came to be so large. We have some of the earliest dates in South Maui there as well.

Mr. Iaconetti: I've got one other questions on that.

Mr. Hedani: Follow up.

Mr. Iaconetti: You can't answer this, but are they – is the property owner taxed for the preservation area?

Ms. Rotunno-Hazuka: Yes.

Mr. Hedani: Single family residential.

Ms. Rotunno-Hazuka: Yes.

Mr. Iaconetti: So they pay taxes on the area that they cannot use.

Ms. Rotunno-Hazuka: It happens a lot. We're trying to do things to help the landowners when they're in preservation because a lot of people don't want to give up their land for preservation but there are no tax incentives at this time.

Mr. Hedani: Actually you're taxed on hotel zoned land.

Mr. U'u: I wouldn't mind asking my fellow commissioners if it will be all right to have a site visit. I think there's a lot of questions needs to be answered. Some will be the height, the mass. If we could have you know, things of that laid out for us and have a visual effect because that house is huge and it's pushed to the limit to the ocean every side. I would want a visual.

Mr. Hedani: That's for the Planning Department to consider I guess when the final or the next draft EA comes up. Commissioner Guard.

Mr. Guard: Would we be able to tie in with that with a lot of these other EA request s that are all neighboring as well?

Mr. Abbott: You do have three in that location.

Mr. Hedani: Okay, that will be noted. Other discussion? Commissioner Hiranaga.

Mr. Hiranaga: I guess I was looking at Figure 10.1 and I was trying to identify the average depth lot setback line, and having difficulty doing that.

Mr. Abbott: If I understand it correctly, this is the erosion rate base, this is the average lot depth, this is the area ...(inaudible- not speaking into microphone)...

Mr. Hedani: Does that answer your question Kent?

Mr. Hiranaga: Yes.

Mr. Hedani: Additional questions from the commission, additional comments?

Mr. Hiranaga: So that's the area in question basically?

Mr. Hart: Yes, it's – the lot is a long lot, and you know, basically longer than most lots and essentially from Makena Road to the ocean, that's the average lot depth setback. We meet the requirements of the current erosion base setback but we weren't able because of the depth of the lot to meet the average lot depth setback. So that's essentially the reason for the variance. And Mr. Schloemer in the context of buying the property had some discussions with the Planning Department before he purchased it. And I'd like to have him maybe give you some little bit of background.

Mr. Jim Schloemer: Thank you. My name is Jim Schloemer and as was mentioned I'm the owner of the property. I bought the property in July of 2004. I appreciate the comments. I'm glad we had a chance to hear more comments today. We've tried I think to be responsive to issues that we anticipated as well as comments that we've heard from Planning staff over about the last two years time. There's been time spent here. Specifically when I bought the property a letter had been issued in April of 2004 by the Planning Department office signed by Mr. Foley indicating that the setback at this site was based on the erosion control setback at approximately 50 feet and I understand the other setback, the lot line setback or the lot depth setback was in existence but that was a letter that we had in receipt that we received at the time we bought the property.

As I mentioned briefly, to answer the question, yes, the property is taxed on its entire size and its tax based on hotel use even though the Kihei district designation is single family. The large preservation area according to the archaeological report that I received was defined at that size because in the early '90's a developer planned to build a condominium project on this site and it would have required removing all of the artifacts that were found there and as it was explored and determined how rich in artifacts it was, the State Historic Preservation Department requested and recommended that the site be used to for single family use which is our plan now. So that got the size of that preservation area defined and it is because of the size of the preservation area that I'm caught in what I consider to be a hardship in regard to the setbacks.

We've respected that shoreline setback for erosion purposes but in fact because we can't

move the house back further because we're got a large preservation area or because that preservation area isn't owned by the public, it isn't owned by the county, if my lot line was at the edge of the preservation area and it was owned by the county for example, then I wouldn't have this lot depth issue because my lot would be significantly smaller.

So I guess what we're essentially saying is if there's some consideration given to the fact that my hardship is that the lot depth doesn't accurately reflect the lot use that I have then the lot line or the lot depth setback no longer comes into play and it would be the more restrictive governance would be the shoreline erosion matter.

One other thing that I would like to mention is that we worked I think carefully with the Burial Council and addressed this issue about gaining access for construction. And at that time one of the things that I pointed out or we pointed out to them, I wasn't there was that there's a fair amount of erosion that occurs currently along that drainage ditch. And in fact the archaeological study indicates that there have been artifacts that were exposed through the erosion. And one of the things that we want to take care of as part of our construction is to also protect that and to do erosion control measures along our side of the bank and we made that commitment to the Burial Council as well that we would make that -- do that erosion protection along the bank.

We've tried to respond, as you can see the house kind of angles from south to north with the idea that it protects the views from the neighbor to the south. The neighbor to the north is already significantly farther makai than we are and there is that one section of the house that does extend into the lot depth setback. The bulk of the house and pretty much all of the house other than that one section is within even the lot depth setback.

So those are the things that we spent about two and a half years now trying to respond to get input from staff, from our neighbors and as it relates to questions about access I think that point, I'm a little reluctant to say what kind of, you know, dedicated access and the issues that might be involved with that. But in terms of opening it up, not having landscaping that would prevent people from using that drainage way as a point of access, and certainly it's a key point for people to be able to see the surf point from Makena Road. So if it isn't blocked with landscaping at the road, it allows people to see the surf point and see what kind of action is available on the surf point at that point in time. And those are all things that I'm very open to and would like to do. Thank you.

Mr. Hedani: Thank you. Any other additional comments from the commission? Commissioner Hiranaga.

Mr. Hiranaga: Could you on Figure 10-4 also show the average lot depth line? Is that the second floor of the building?

Mr. Hart: You mean on the plan? Not right today.

Mr. Hiranaga: No, on the plan.

Mr. Hart: Yeah, when we resubmit. Certainly we can, yes.

Mr. Hiranaga: And maybe provide information regarding the percentage of the building that exceed the average lot depth.

Mr. Hart: Okay, we sure can.

Mr. Hedani: Additional comments? Thorne.

Mr. Abbott: I just wanted to clarify for the commission that as Anthony Riecke-Gonzales pointed out there's a small portion of the habitable structure that is encroaching into the setback area. However, the pool is also considered a structure. It's not a minor structure even if it was under a \$125,000; we don't consider those minor structures. It is a structure. So you're not just assessing or we would appreciate guidance when you, for example, Commissioner Hiranaga, when you recommended that they look at downsizing the house, does that also mean removing the pool? One option is removing the pool. One alternative is without the pool. One alternative with the house smaller or larger. Could you give us some direction on that?

Mr. Hiranaga: Well, I previously stated I guess it would make the variance request more palatable if they tried to reduce the amount that encroaches beyond the average lot depth versus trying to build it out fully to the other setback calculation. Try to minimize the encroachment.

Mr. Abbott: Okay, thank you for that clarification.

Mr. Hedani: Additional comments? One last comment Chris, I'd like to see them take a look at consideration on the turn around that's on the mauka portion of the house. If the turn around were to be eliminated and you can somehow arrange for the vehicles to be turned around without a circle you may be able to pull the entire house back as far as the site is concerned.

Mr. Hart: Okay.

Mr. Hedani: Accomplish everything that you want in terms in of square footage for the house itself and avoid this setback variance question all together. But I don't know how important the turn around is to the owner, but that would be the first thing that I would eliminate if I were to consider changes.

Mr. Hart: I appreciate that. We can look at that but I can't give a comment one way or the other at this point.

Mr. Hedani: Right. Commissioner Guard.

Mr. Guard: On a positive note, maybe to just to discuss the erosion control measures that you're proposing for the burial preservation area and then possibly regarding the access through the drainage culvert if that is a possibility if the southerly neighbor might participate in the method on the reduction and landscaping to kind of --

Mr. Hart: We're definitely for the drainage area, it would be basically groundcover and we, you know, essentially can commit that it would be open and I think both property owners would be open to that idea whether or not it back described as a public access through the Heatley project, process or property, I'm not certain at this time. But from the point of view of a person viewing the drainage way from old Makena Road looking down it would be open.

Mr. Guard: Yeah, that is a tough one. Make sure it doesn't end up in some tourist book. It shows you a private way to get to the beach.

Mr. Schloemer: That's right. The frontage of Makena Road of that drainage way is all on my property. The drainage way cuts at an angle so by the time you get out to the ocean most of the drainage way or the actual outlet of the drainage way is on the Heatley property but I can provide assurances that the landscape area would be removed along the roadway. So from a view standpoint in getting into there, but there may be a point at which the neighbor could object to them continuing as they get at the ocean where the outlet is.

Mr. Hedani: Mr. Kaai, do you have any comments?

Mr. Sam Kaai: Well, I was called to bless the property because it has a lot of archaeological sites. Sometimes we need to look at property as how much zoning has already done to it. There seems to be a great confusion. There's on 3% of the society that understand things the way you do. Most of the people don't understand this thing about view since you charge me taxes on my square footage. And a great deal discussion creates great confusion and pain especially people who can't afford these things you're proposing.

But that historical site was picked because it's slightly elevated because when tidal wave comes in the houses would be there and the part that is missing containing the biggest amount of artifacts is the part where they constructed the Neolithic canoes, fish hook making, ... (inaudible) ... and that stuff. A place of light industry or Neolithic industry. Bring what we worried about is if get `uhane problems there, spirit. And I can as a spiritualist,

there are none. There are no pathways that lead to temples that would be a grand move and would bother those who are building and those next door.

The amount allowed by the ...(inaudible)... division of this thing as taken a generous part of something. So there's also I believe a kind of responsibility that of what is left has to have some aloha. As we become micromanagers we tend to throw away all the common sense that we live in a community and that is what -- Aloha is not aloha Sheraton Maui, that is a courtesy, an English courtesy. What we're talking about is aloha for the site and therefore for the person who has the burden to pay the tax for the site. Those are ...(inaudible)...Hawaii would at that way rather than another ...(inaudible)... When you have a house already living over the line no one seems to fix bad problems only lay it on the last person. The last guy on the line you pa'i you slap um. So maybe spiritually there's no `eha. The fact that there's going to be right way to get to the beach will suffice all our papanalu people, people who want to stand on water, walk on water, wave rider. There is a much aloha being given one way, there might be some consideration for prayer to go a little bit the other way. Mahalo nui loa.

Mr. Hedani: Thank you. Okay, I think we pretty much covered everything at this point. Additional comments? Are there any members of the public that would like to offer testimony at this point? Seeing none, public testimony is closed. Commissioner Starr.

Mr. Starr: Yeah, move to defer pending proper documentation and site visit.

Mr. Hedani: Motion to defer. Does that make sense? Is there a second? Okay, motion dies for lack of a second. We pretty much covered a lot of the things that we want to see them address when they come back to us I think at this point. Do you need a motion for concurrence or anything at this point? No.

Mr. Starr: No.

Mr. Abbott: No.

Mr. Hedani: Okay, so that would conclude this item. Move onto the next item on the agenda. Oh, sorry we'll take a five-minute recess.

Mr. Abbott: Thank you very much.

A recess was called at 3:18 p.m., and the meeting was reconvened at 3:30 p.m.

Mr. Hedani: We'd like to welcome Deputy Director Suyama to our meeting today.

D. COMMUNICATIONS

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

Condition No. 32 of the subject SMA approval states:

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

The Commission may review the annual report.

Ms. Colleen Suyama: Item D-1 and D-2 are the same thing. It's basically the Maui Beach Resort Limited Partnership submitting their annual report on the disbursement of funds in the Settlement Agreement between the developer and the West Maui Preservation Association, Inc., for your information which is in compliance with Condition No. 32 of the Special Management Area Permit which was approved for Honua Kai Resort and the North Beach Park and related improvements. And at this time, I would turn it over to the Intra West representative which is Gwen Hiraga.

Ms. Gwen Hiraga: Good afternoon Members of the Commission, my name is Gwen Hiraga from Munekiyo and Hiraga. The first item is the annual report for the Settlement Agreement with Maui Preservation – West Maui Preservation Association. And this report was submitted in compliance with Condition No. 32 of the SMA Approval which provided that an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the settlement agreement for their information.

So the first report that's dated March 1st is submitted. Item No. 8 of the Settlement Agreement provides for several disbursement of funds dealing with traffic. And \$325,000 for a traffic light synchronization project. For this particular item, out of the \$325,000, \$275,000 have been disbursed.

The second item is \$1.53 million for the design of the proposed Mill Street extension for studies and design fees. One hundred thousand has been deposited in escrow and there is an agreement that Intra West or Maui Beach Resort Limited Partnership has entered into with Kaanapali Development Corp.

The third item is the \$250,000 towards design studies for the Lahaina bypass north of Keawe Street and of this amount, no funds have been disbursed.

That relates to the traffic and I believe Carolyn handed out a reduced copy of this board. This gives a total – this is a chart on the total disbursements per the settlement agreements and I wanted to as I go through this report note two things.

One is that the condition that allowed – the SMA condition for this particular item when the SMA was granted was that road improvements required a fair share contribution for road improvements and that was one part of it. So when you look at this chart the figure that shows \$640,000 because it's not part of this report I just wanted to call to your attention that totaling these amounts for traffic is \$2,750,000 and the SMA approval said \$2,500,000. Intra West, the applicant realizes that the widening project for Lower Honoapiilani Highway is going to cost more than the \$390,000 that was anticipated as part of the \$2.5 million. So they're actually allocating \$640,000 for this work. So there is this difference.

The next item covered by this report is the community benefit. The Settlement Agreement provides that funding be provided for a charitable non profit organization to manage and distribute funds benefitting the West Maui community. \$400,000 is the amount to be disbursed and \$400,000 was deposited into escrow in May of 2005.

The next item deals with the ongoing funding of this non profits organization from resales and nothing has been disbursed because there have been no resales.

The third item under this particular section deals with lump sum payments of \$50,000 annually to the charitable non profit organization. The report notes that out of the total aggregate of \$250,000, the amount disbursed was \$50,000 in March 2006 and the other change I wanted to note was that an additional \$50,000 was deposited in March of this year. So that's the second change to this report.

Item three in the report deals with Item 10 of the Settlement Agreement, and this was reported last year, no change. The \$20,000 estimated – of the \$20,000 estimated, \$17,866 was deposited in escrow in November of 2005.

Item no. four which is Item 18 of the Settlement agreement provides for a donation of a \$100,000 to West Maui Preservation Association. This is no change from last year's annual report. The \$100,000 has been donated to the organization.

Item no. five pertaining to Item 22 of the Settlement Agreement reimbursement of attorney fees, and this item also no change from last year. The \$24,512 to Isaac Hall was made in July of 2005.

Would you like to just go onto the next report or ask questions? I believe there is some comments to be made on this report from others.

Mr. Hedani: Did you finish up on this one?

Ms. Hiraga: On this one, yes.

Mr. Hedani: Okay, I had a question on traffic impact on the Lahaina traffic light sequencing or for the traffic impact items that you have. What are the triggers that cause the contribution to move from the balance going to the paid to date?

Ms. Hiraga: From the amount – you mean the \$275,000, is that what you're talking? Is it for the lights and –

Mr. Hedani: At what point do the funds – By what point are the funds expended?

Ms. Hiraga: I'll have Mr. Sewall address that, but my understanding is that they did the design first. They had to do like a traffic study first and then there were phases as part of this study. And then they had to do the hardware, the programming of the signals and then they have to monitor. But he can further explain how the \$275,000 was spent. You want him to respond now or after?

Mr. Hedani: Sure.

Mr. Starr: Mr. Chair.

Mr. Hedani: Yes.

Mr. Starr: For those of us who weren't here and really don't have a clue about what this is all about, could someone give us a really brief overview?

Ms. Hiraga: Sure.

Mr. Hedani: One paragraph Gwen.

Ms. Hiraga: One paragraph. Okay, Commissioner Starr.

Mr. Hedani: They sued and this was the settlement.

Ms. Hiraga: This involves a SMA application that was filed by Maui Beach Resort Limited Partnership. There was intervention that was filed, two interventions filed. One was from the West Maui Preservation Association, and one from Mr. Charles Fox. When the

commission reviewed – the intervention was granted and there was a settlement. And when the commission reviewed the project again for decision making on the SMA, they also reviewed for information, the settlement agreements. So when the commission took action on the SMA permit, they added a condition that the applicant submit annual reports to the commission for information on the disbursement of funds per the settlement agreement. So that's why we're here and you're going to see us every year.

Mr. Starr: Do we approve this or do we just get a report?

Ms. Hiraga: It's for information.

Mr. Hedani: Just receive the report.

Mr. Steve Sewall: Good afternoon, I'm Steve Sewall. I'm Director of Development for Intra West and with respect to the traffic sequencing, to date, as Gwen said, we basically have gotten about three-quarters of the way through the expenditures which as she said entailed both traffic studies as well as hardware as well as replacing a length of the conduit that actually linked all of the lights together. That was part of the problem. It's been ongoing for about 10 years is that while DOT actually had conduit that linked all the lights together and those lights were actually sequenced for a couple of years. When they went back in to put in guardrails, they punched all of the posts that support your guardrails along the highway through their conduit system. So we actually put all that conduit back into place. The ironic thing was, Freddie who presently basically is kind of head of DOT, he was the guy that basically was in charge of the work crew that took out all the conduits. So it's kind of come full circle. So we actually put back together the work that was taken out a number of years ago.

So all that work is in place today. And as Gwen said, as part of that package, our consultant is on basically retainer for a year to monitor how the traffic are going or if there's any comments from the public or if they don't feel that the sequencing is working properly. There's a number of sequences that basically have been set up through computer modeling, for different times of the year as well as different times during the day based on all that traffic information. So over the coming – basically the anniversary date for the one-year period will be the end of September of this year. So the remaining \$50,000 is to basically cover off that monitoring program and we're doing that on an hourly basis. So any funds that would be left at the end of September, we turn over to the County or whatever. I mean, we'd be prepared to basically allow our consultant to carry on until that money is basically exhausted. So it would kind of be at the discretion of the planning commission on how you would like to see whatever the balance of that left spent. My expectation given that it seems to be functioning quite well now without a lot of feedback that would require more consultant time, that it would make sense to keep that as probably a residual that the planning commission or the County could basically call on our consultant if need be to

come in and basically readjust or comment on any sequencing problems that might come up.

Mr. Hedani: I know from my personal perspective I felt that when the sequencing was done and the programming was implemented the traffic moved really slick through Lahaina and it was operating at a very high level. I'm not sure if it's just my imagination or not but ever since the earthquake when we had the power outages tied to the earthquake, I have constantly contacted Freddie's office to say I think they're not in sequence because when I green on one, it's red on the next one. And his response to me was that, you know, my comment to him was I think there's a residual fund that you can use to reprogram it or resequence it or tie it back together. His response was that I think that they have personnel that should be able to do that in-house.

Mr. Sewall: Correct.

Mr. Hedani: And I'm concerned that the persons that are doing it in-house may not be as good as the people that implemented the program. And so that \$50,000 tweaking fund to retweak those signals may be very appropriate at this point.

Mr. Sewall: I know there was a interruption again in the conduit system, probably about two months ago because the –

Mr. Hedani: They're still putting posts down.

Mr. Sewall: Well, no, they dug a trench this time. So that's now been replaced again.

Mr. Hedani: I see. Okay, thank you.

Mr. Sewall: Well, I guess while I'm here maybe there's a couple other things before we go onto the next report that I just want to bring to the attention of the planning commission on maybe giving us some additional direction.

One of the things that Gwen did say is that we have \$250,000 that we actually – is part of the Settlement Agreement have allocated for design funds for the bypass. And we kind of need just direction from the planning commission on how exactly or how you would like us to basically or what you would like us to do with those funds. You know, we don't have any real direction right now on how those would be spent or who would they go to or how do you guys wants to basically allocate those funds. So it would be something that you as a group if you gave us some direction on how you would like us to or what you would like to do with those funds in the coming years. Because right now we just don't know how you want us to spend that money.

Mr. Hedani: Okay. Have you gotten any kind of feedback from DOT at this point?

Mr. Sewall: On how they would like to? No, at this point, you know, while we're working with DOT on a number of issues, we haven't really – we haven't had any direct communication with them on the bypass road at all. And it may be that the funds, you want to spend the funds on the bypass or there's other community road related things that you would like to spend the money on. The Settlement Agreement does give you that kind of discretion to kind of do some of those things.

Mr. Hedani: Thank you. Commissioner Starr.

Mr. Starr: Does anyone know if there's a subcommittee of Bypass Now that could advise on that?

Mr. Hedani: There is an active Bypass Now Committee and we can request input from them at this point.

Mr. Starr: Do we need action to do that? Unless someone's got a better idea.

Mr. Hedani: I think the department can undertake that.

Ms. Suyama: Actually the applicant can request Lahaina Bypass Now as to whether there's some project that they want that money to be placed on in terms of the design of the bypass.

Mr. Sewall: That might be a good way to, you know, at least start the process because right now I don't have any direction on how to spend the money at all.

Mr. Starr: I'd like to see it come from the department or the – that request come from the department or the commission.

Mr. Hedani: So the request would be from the planning commission to the Department of Transportation requesting an appropriate –

Mr. Starr: No, from the planning commission to the Bypass Now organization regarding recommended use for the quarter million dollars of design money from this project.

Ms. Suyama: Okay. We can write a letter to them.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: I don't know if this is the proper time to ask this question or after the next

item on our agenda, but was there not supposed to be a committee or of some sort that was to determine where the money was being spent? That was part of the agreement as I understood it.

Mr. Sewall: Yeah, and this would be the right agreement to talk to it about. Yes, there was a community fund and that's what Gwen – we basically right now have half a million dollars sitting in a trust account waiting for that, in essence, non profit to be set up WMPA. It's earning interest. It's in an interest-bearing account today. So as soon as that non profit 501(c) is set up, we'll transfer those funds in and that was set up as a five-member committee. Three members from public and we have made our recommendation, you are one of the three that we've recommended to sit on that committee. It's got to be supported as well by WMPA, and then there will be a member from us and a member from WMPA that will complete that five-member committee that will then in essence decide how that money get spent.

Mr. Iaconetti: What is the reason for the committee not having been set up yet?

Mr. Sewall: You're going to have to get that response from WMPA because it's not our responsibility.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Since we're sort of in a fiduciary capacity with this, could I also request the department to send a letter on our behalf to WMPA asking what the status of that committee is?

Ms. Suyama: You don't need to write a letter, Ms. Matin is here.

Mr. Starr: Should we do it by letter or you want to talk to –

Ms. Sharyn Matin: ...(inaudible - speaking from back of the audience)...

Mr. Starr: Okay. Sorry. Lets do it in real life.

Mr. Hedani: Ms. Matin do you have any comments? There's \$500,000 burning a hole in their pocket and they need to know how to spend it.

Ms. Freitas: They needed it so bad.

Ms. Sharyn Matin: I would love to get that going too. All of us. And incidently, Dr. Iaconetti, I asked you before Mr. Sewall if you could be on that benefit committee and Aunty Patty Nishiyama is also requested. So we have those two nominations ready to go. But we have

to wait until you're not a commissioner, don't we?

Mr. Iaconetti: Do we?

Mr. Hedani: I'm sorry, I couldn't understand – I didn't get that last comment that you made.

Ms. Matin: We were concerned that any sitting official would have a conflict of interest. And so we were trying to see if Dr. Iaconetti, who was invited by both WMPA and Intra West would have a conflict and would have to wait until his term expired or not. But that's not why I'm here today unless you wish to explore that. That would give us some answers to get going on the non profit.

Mr. Hedani: I think the question was what is the status of the formation of the non profit.

Ms. Matin: Okay. The letter that I received from Planning was to address the financial, and I can certainly jump right now to the non profit status, but that would leave us hanging on the things here and some of your questions about what was contained in the Settlement Agreement. Would it be a problem if we first went through that very quickly? Which would perhaps give you some additional questions?

Mr. Starr: Why don't we stick to get the non profit question answered first.

Ms. Matin: All right, non profit first commission? Chairman Hedani?

Mr. Hedani: Please.

Ms. Matin: Very good. Non profit. Articles and Bylaws, these are dated January '05, and as I reported last year this has not gone into effect yet. The escrow that we just heard about that has been set up is to be a double signature escrow. We have asked since walking out of the room on our initial appearance on the intervention to get the escrow into double signatures. It requires an escrow agreement generally done by the escrow company because they're the third party to it. The bulk of the escrow agreement involves protecting them. It includes the interest-bearing capabilities and I was concerned that this fund was not receiving interest and it should be. So I'm delighted to hear from Mr. Sewall that the deposit does at least carry interest. It needs to be double signature which then automatically feeds into the non profit when the non profit is formed. We have no identity to pursue that escrow agreement. We're happy to do the escrow agreement ourselves to move it along, but it is typically done by the escrow company. We had no contact with them and we didn't even know who they were.

Mr. Hedani: Ms. Matin, I think the question is –

Ms. Matin: And we still don't.

Mr. Hedani: What is the status of the legal formation of the 501(c)(3)?

Ms. Matin: This cannot proceed until the escrow is ready.

Mr. Hedani: I understand.

Ms. Matin: With the double signature.

Mr. Hedani: No, I understand.

Ms. Matin: It then funds into this organization. If this organization is –

Mr. Hedani: – I know that setting up 501(c)(3) take a long time and is it that –

Ms. Matin: Correct.

Mr. Hedani: – you've applied for it and not gotten approval?

Ms. Matin: No. It has not started because the funding does not pour into it under the agreement. When you file it without funding you cannot proceed with a 501(c)(3).

Mr. Hedani: You cannot get 501(c)(3) approval – well, you're saying you need money before you get the 501(c)(3) approval.

Mr. Starr: Five dollars is sufficient.

Ms. Matin: No.

Ms. Freitas: Yes, yes.

Ms. Matin: You can open it now but you're going to have continue – the expenses involved in it and you're 501(c)(3) is going to go in with no ...(inaudible - changing of tape)... the budgeting part is going to be something you just make up. It's difficult to get a 501(c)(3) that way.

Mr. Starr: No, it's not.

Mr. Hedani: Commissioner Freitas.

Ms. Matin: It can be done but it's difficult.

Ms. Freitas: Excuse me, excuse me, excuse me.

Ms. Matin: Yes.

Ms. Freitas: It seems to me that you haven't even started yet. I mean, you're standing here asking the doc if he can even serve during his time. That was quick. It took you all these years to even get that far? You haven't even set your group up yet? What kind of organization is this?

Ms. Matin: The group is waiting for the escrow agreement by the –

Ms. Freitas: –whoa, whoa, what group?

Ms. Matin: – escrow company whom we don't have any contact with.

Ms. Freitas: – you don't even –

Mr. Hedani: Wait, wait. Can we speak one person at a time because Carolyn is going to have a heck of time trying to transcribe the minutes of this meeting.

Ms. Freitas: It's the last time you have to do it for me.

Mr. Hedani: Commissioner Freitas. If you could pose your question?

Ms. Freitas: I'm sorry. Step one is forming your group.

Ms. Matin: Step one is the double escrow.

Ms. Freitas: Oh, so you're going to open it without your group even being formed and I know the double signature thing.

Ms. Matin: We do not open it.

Ms. Freitas: We required it. Step one I would think would be getting your group together.

Ms. Matin: It's ready to go on this.

Ms. Freitas: You just asked the doctor to be on it today.

Ms. Matin: Excuse me, Mr. Collins –

Mr. Lance Collins: Hi, Lance Collins, I'm the attorney for WMPA. I think that – yeah, no,

she – Judge Matin is the president of the non profit. I'm the attorney for it. September 14th, right I understand, September 14th of last year we notified you folks that I became the attorney of record.

I think that maybe what's happening here is the entity was incorporated and it has been formed and the next step once that occurs is to get the double signature account on the escrow. So I think, both of your questions are being answered. It has been formed, it was incorporated, excuse me, over it was two years ago?

Ms. Matin: The articles –

Mr. Collins: Yeah, articles.

Ms. Matin: – have not been filed for the lack of the escrow funds.

Mr. Collins: Right for the lack of the escrow funding but they have been finished. Attorney Welch has finished this. We have constantly been asking Intra West, you know, it can't be done only by WMPA because it's a collaborative effort by both Intra West and WMPA and you're essentially raising your voice to her. And all she's saying is that there's a procedure that requires their participation and they have not been responding to that, and so I think it's a little unfair to be attacking her when at this point – if there's supposed to be five people and they have to concur with all of those five people and they're not communicating about that, you cannot blame WMPA solely for all of this.

Ms. Freitas: Chair, may I?

Mr. Hedani: Mr. Collins, there's a simple question that the commission is posing at this point and that is what is the status of the establishment of the 501(c)(3)?

Mr. Collins: Right. And WMPA, – Right –

Mr. Hedani: Has it, has it been approved?

Mr. Collins: Right, and the answer is WMPA is waiting for communications from Intra West.

Mr. Hedani: So the question –

Mr. Collins: Answer to your question.

Mr. Hedani: Mr. Collins.

Mr. Collins: Yes.

Mr. Hedani: The question is has the 501(c)(3) been approved?

Mr. Collins: No.

Mr. Hedani: It has not.

Mr. Collins: No.

Mr. Hedani: Has it been filed?

Mr. Collins: No.

Mr. Hedani: It has not.

Mr. Collins: No.

Mr. Hedani: You have not filed for a 501(c)(3)?

Mr. Collins: No.

Mr. Hedani: The process takes like a year to get approved.

Mr. Collins: That's right.

Mr. Hedani: And you haven't started?

Mr. Collins: That's right, WMPA –

Mr. Freitas: And you haven't because?

Mr. Collins: Well, we've gone as far as we can go without Intra West participation.

Mr. Iaconetti: Could we hear from Intra West?

Mr. Collins: Well, if you review the settlement agreement you'll –

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: I would like to hear from Intra West please. Martin, please?

Mr. Martin Luna: Mr. Chair, Members of the Commission, we have communicated with Ms. Martin and West Maui Preservation Association on a number of matters that follow up on

our settlement agreement as to consultants that we had to select, as to a number of issues this has never been brought to our attention. This is the first time we've seen this articles of incorporation.

And when Mr. Collins makes this bald lie saying they've been in constant communication with us, I've never received a letter from Mr. Collins until I see these copies that came in on that intervention number one, and these three letters that were filed on March 8th. No other communication from him. So, when he says he's been in communication or WMPA been, that's a bald lie.

Mr. Hedani: Okay, so the funds have been deposited into an escrow account, they're accruing interest and they're waiting for the 501(c)(3) to be formed.

Mr. Sewall: That's correct. And basically when it is formed –

Mr. Hedani: Mr. Sewall.

Mr. Sewall: I've got the balance sheets here if you guys want the balance sheets that are sitting in escrow. And yes, you're right. Basically once the 501(c) is basically prepared, we will transfer those funds into the 501(c). To my knowledge, there is absolutely no relationship between setting up a 501(c) and this double escrow account. I mean, I am prepared and you guys can trust me, that I will transfer those funds into that 501(c) as soon as that basically happens. And there is nothing to my knowledge that limits a 501(c) being done based on the money – I'm telling you the money is in escrow and I've got the accounts here. You're quite right. We don't have a double escrow account here because it's taken two years and nothing has happened. And if something doesn't happen, I am prepared, if you guys instruct me, I will set that thing up and I will transfer the funds and I don't need WMPA's signature to put the funds in right now.

Ms. Freitas: Can I follow up?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, first of all, I see three of the best, possibly four, but at least three of the best legal brains on Maui here in front of us. I filed a bunch of 501(c)(3)s myself. It's not that hard, you know, for a rank amateur who's – but any of you should be able to do it in about 10 minutes and then you have to sit and wait for it. I mean, can I just – please – Lance, Mr. Collins, I mean, you seem to be – you're the attorney for WMPA, can I ask you if within the next two weeks you can finish the application for the IRS and send it in so that it comes back. You do not need any funding. I think you might need \$5.00 and a bank account or something, you don't even need that. All you need to do is finish the form and send it out to them so that the clock is ticking on getting your tax exempt number from the IRS.

Mr. Collins: I would have no problem doing that except that I believe at the moment, Mr. Welch is the attorney for WMPA and this community benefit fund to establish a–

Mr. Starr: Okay, then could you –

Mr. Collins: – I'm not the attorney for it.

Mr. Starr: Okay, then could you call Mr. Welch every single day until he does it?

Mr. Collins: Sure, if they allow me to do that, I'll be more than happy to.

Mr. Starr: Can he do that Sharyn?

Ms. Matin: I would appreciate that help very much. I would.

Mr. Starr: Okay, Lance is going to call Tom Welch until he files it.

Mr. Collins: And I have not lied to the commission. So I just want to set the record straight.

Mr. Starr: Please get it done guys.

Ms. Matin: We do need the three community members appointed as well as the double escrow as part of that process and it should very easily be done in two weeks. We'd be more than happy to do the escrow agreement if we could get the identifying –

Mr. Starr: You have selected your community members?

Ms. Matin: We have a multiple slate of people that we have been absolutely willing to trade off with their list and lets hope they match.

Mr. Starr: Okay, well pick their names out of a hat and do it.

Ms. Matin: Absolutely. And that's all that's holding it up. We've been waiting and waiting and as frustrated as everyone else.

Mr. Starr: And I think Doc would be a great candidate.

Ms. Matin: Absolutely.

Mr. Starr: I don't think there's a problem. I'm sure that if there were a conflict that he would recuse himself on that specific item and that would be the only thing.

Ms. Matin: That was our only question and we're absolutely thrilled to find out that is not a problem, and of course, Aunty Patty is right here. We can get a confirmation from her also.

Mr. Hedani: Thank you very much. Thank you very much Ms. Matin. Commissioner Freitas.

Ms. Freitas: I just want to make a comment to the commission. You know, this is something that we did. You know, in all of this, this is what happened and you see what kind of predicament we put these developers in when they have to do these things and then the receiving party doesn't even received. I mean, this is years and they're hung up. So following the reports and everything I think are very important and intervention settlements you got to read them and that's important because you see what happens. It falls through the cracks, and here we're making them do all this stuff.

Mr. Hedani: Okay, Ms. Hiraga, would you like to continue on your report at this point?

Ms. Matin: Did you wish the rest of the report that I was called to make?

Mr. Hedani: Why don't we move onto finish the rest of the presentation?

Ms. Matin: On the financial?

Mr. Hedani: With Gwen.

Ms. Matin: You're moving to the next agenda item?

Mr. Hedani: They're tied together, right Gwen? No?

Ms. Matin: No.

Mr. Hedani: Okay.

Ms. Matin: I have the additional items listed that were covered under the settlement agreement requiring contributions that was what I was notified to be to do.

Mr. Hedani: Okay.

Ms. Matin: Did you wish that?

Mr. Hedani: Please proceed.

Ms. Matin: All right, the dunes preservation policy was an item in the settlement agreement that requires annual sand replenishment surveys, design bridges, consultant by Sea Engineering, vegetation on the dunes, plaques on the bridges, handouts about the purpose of the dunes preservation, tree replacement within the dunes, cutting and trimming within the dunes, and the wetland –

Ms. Suyama: Ms. Matin, may I interrupt you?

Ms. Matin: Yes.

Ms. Suyama: The requirement of the commission in terms of the annual report is limited to the disbursement of the funds in the settlement agreement. What you're talking about is not the funds that were distributed or had to be disbursed. So that is the matter before the commission at this time.

Ms. Matin: Those are in the settlement agreement to be disbursed --

Ms. Suyama: – They may be in settlement --

Ms. Matin: – Which is what I understood your letter requesting appearance to be addressed.

Ms. Suyama: The disbursement was – the disbursement the commission was interested in was the monetary disbursement that had to take place. The monies that were to be given to traffic mitigation improvements, the monies that were supposed to be given for the community needs, and I think that's what their obligation to the commission is. How is the monies being spent? Not whether there's other portions of your settlement agreement such as compliance to the drainage master plan, etc. That is separate issues that are not before the commission today.

Ms. Matin: All right, then you don't wish the recitation of the entire settlement agreement pay outs.

Ms. Suyama: No.

Ms. Matin: The provisions that required pay outs.

Ms. Suyama: No.

Ms. Matin: Just the benefit fund and that was it?

Ms. Suyama: The ones that were specific monetary contributions that the developer had

to do as part of the settlement agreement. That's what the commission wanted to –

Ms. Matin: That's what I'm trying to do. There were numerous provisions in the settlement agreement.

Ms. Suyama: There were numerous provisions but they did not have the monetary value that was placed on them similar to the traffic, you know, mitigation that was required. There is specific monetary requirements that were identified. The community needs, there was specific monetary contribution that were identified and the commission wanted to be appraised throughout the whole project as to how those monies were being disbursed finally by the developer to the various organizations. And that's what the limitation is to.

Ms. Matin: There were additional amounts to be paid out for the park improvements and on traffic itself, there were additional items, the acceleration and deceleration lanes, the turning and stacking lanes on Honoapiilani Highway and the extension of the widening of lower road. The –

Ms. Suyama: Can we ask you to just limit yourself to how the monies were being disbursed?

Ms. Matin: You're referring only to monies paid to WMPA? Do you wish to also –

Ms. Suyama: Or to any other organization because there were monies that had to be given to the Lahainaluna Foundation, etc. There were monies that had to be given in terms of doing traffic improvements whether it was where they paid the specific improvements that were identified or they had to give the monies to some other organization.

Ms. Matin: All right. The bypass, \$250,000 was designated for the bypass north. It was not in any way designated for a southerly bypass contribution nor a Lahaina Town contribution. We had the Mill Street extension which basically dealt with Lahaina. We had the light changes, but when you get up to the area where this impact was occurring there was nothing that was mitigating the local traffic impact. That was designated for the bypass north in hopes that we could call out easements, begin actually defining the easements that had to be purchased, and make some estimates on getting the bypass from Keawe out to Honokowai Road where we have the impact. We have all of the time shares being developed there. All of the traffic is coming there. It's already there with construction work, but no hope of anything on the bypass north. What our intent was was to secure the line for that bypass north in the future because numerous developments are being approved which in – come up right to that and perhaps pave over it. If the easements were at least reserved, it would be available for the future. And that was the designation.

Ms. Suyama: Okay, could I clarify something? So when you're saying about the design

fees for the Lahaina Bypass road, you're talking about the fees are supposed to be for the bypass north of Keawe Street --

Ms. Matin: Precisely.

Ms. Suyama: – And limited to that information – I mean, to that specific project.

Ms. Matin: Precisely.

Ms. Suyama: So that when Mr. Sewall is saying that to go before the Bypass Maui Committee as to how that money, that \$250,000 should be spent, what you're saying it's already designated for a specific project and it should not be redesignated for any other project.

Ms. Matin: Precisely.

Ms. Suyama: Precisely. So in other words, there's no sense in this commission asking the Lahaina Bypass Maui how to expend that \$250,000 fund because as part of the settlement agreement it has already been designated.

Ms. Matin: Correct.

Ms. Suyama: That's correct. Okay.

Ms. Matin: However when I appeared last year, Chairman Hedani asked if it could be used if a north and south study of some nature perhaps calling out easements or condemnation proceedings or something of that nature was on the table and I thought that was a wonderful idea. We're simply concerned and the purpose of this additional contribution is to maintain easement space and secure that easement space so that we can have a bypass north eventually. Otherwise, it's gone to development, there's no way of getting it.

Ms. Suyama: So what you're saying is that if there are easements that should be obtained, they should be limited to the north portion of the bypass?

Ms. Matin: For that 250K.

Ms. Suyama: Okay, that clarifies things.

Mr. Hedani: Maybe what you can do for me Ms. Matin is to just cover the portion under WMPA on the paid to date, \$124,000?

Ms. Matin: Certainly. The reimbursement of attorneys' fees. We had two donors who

requested their money be reimbursed to them which we fully refunded to them. We did not get a cost reimbursement, only attorneys' fees. The cost ran 25%. We nevertheless, of course, returned 100%. Both of those donors were contacted along with all other donors and asked because of the attorney fee reimbursement, do you wish your donation returned to you? All of them at that time said, no, please leave it with WMPA, continue the work. We did have two donors subsequently contact us, both have emergency situations, one was a financial emergency, the other was a family health issue that required finances. They were refunded. We do not double dip. If we get reimbursement of fees we offer it back to the donors.

Mr. Hedani: What was the amount of those donors?

Ms. Matin: The two were \$15,000. One was 10 and one was 5.

Mr. Hedani: So \$15,000 were returned to those donors?

Ms. Matin: Yes, the remainder of the donors wished that it be kept in WMPA.

Mr. Hedani: And the \$85,000 balance plus the – Well, the \$24,000 in attorneys' fees were paid to the attorney and the \$85,000 in contributions remains in some fund?

Ms. Matin: Yes, actually it does. And the expenditures to date, categorizing those would be attorneys' fees for the non profit that's still sitting here for the work ...(inaudible)... as well as the additional work to come which will include doing the 501(c)(3) and the minutes which would include the new directors.

A portion went to some community benefit items. The Hawaiian immersion classes over at Princess Nahienaena, some school supplies, class supplies were provided to them. Some went to the Honokowai channel clean up where there was some reef contamination. A study and comment on EPA requesting reduced standards for the shoreline. A small amount for the effort to save the West Maui Airport which was successful and was hugely popular with the local community. We were thanked very much for efforts in maintaining that airport. Some of it went to lets see, a small amount we had started on the Honokowai Park clean up project. Some initial funding went to that, very little. It turned out that Parks Department under chairmanship of Councilmember Joanne Johnson stepped up to the plate. Their initial plans were fairly basic, they then expanded those. We have a few things that we have remaining to do there and the preparatory work has been done. Lets see, some attorney's fees related to things such as the dunes breaches that occurred and the drainage problems.

Mr. Hedani: Okay, would it be possible for us to give us an accounting of the \$100,000 and provide us with a summary?

Ms. Matin: That's what I'm attempting to do now.

Mr. Hedani: In writing.

Ms. Matin: You wish it in writing?

Mr. Hedani: Please.

Ms. Matin: Okay.

Mr. Hedani: Are there any other questions from the commission at this point?
Commissioner Starr.

Mr. Starr: Yeah, I think there's some doubt put about the request letter to the Bypass Now. It would be my preference to continue that, however, to just add wording that this money is intended to begin the process for planning a northern area bypass. You know, I think they're the best agency to actually get something done with it.

Mr. Hedani: Mr. Luna. Martin.

Mr. Luna: May I read what the actual document says?

Mr. Starr: Please, yeah.

Mr. Luna: "In addition the developer will provide a contribution of \$250,000 toward design studies of the Lahaina Bypass Highway north of Keawe Street intersection or for other studies related to the Lahaina Bypass north of Keawe Street and deemed appropriate by the Maui Planning Commission." So it's not one way period.

Mr. Starr: Okay, so why don't we – put that wording in the letter saying this is the wording, would you please advise where you think this should go.

Ms. Freitas: Exactly.

Mr. Hedani: Okay. Thank you. Gwen are you done? Commissioner Guard.

Mr. Guard: Just on a side note, if we're going to get that writing maybe we could have actual monetary figures instead of "some here, some there." I think for a 501(c)(3) about to get \$500,000 it might be better to itemize those numbers on a spreadsheet instead of, I gave some money to this guy, some to this group.

Mr. Hedani: Commissioner U'u.

Mr. U'u: And to add to that, my kids can give me a better summary on how their allowance was spent. So I expect much more out of you. Some doesn't mean much.

Ms. Matin: I understand.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: This is for Colleen. Colleen, when, lets say this \$500,000 is going out, when they decide on if any money is going to be given and what it's going to – don't they know what the money is for? They just arbitrarily give them \$500,000? And they come in with a punch list that's silly actually. Is that what the \$500,000 is going to do or is there some reason that these people have to give that money and it's going to good use.

Ms. Suyama: It was stated as community needs, and the purpose of the committee was to decide what those community needs were going to be and that's why you have to set it up as a non profit organization because then you're subject to auditing requirement so that you need to tell the government how did we spend the money that we received so that it's spent for the purposes for what the organization was set up for. That's why the bylaws and the incorporation of the organization is important as well as having a board that basically oversees the organization so it's not left in one person's hands.

Ms. Freitas: Well then explain to me if that isn't set up yet, who is it that determined what was going to be needed and come up with a figure?

Ms. Suyama: That's why I said, without the committee being set up, the monies cannot be disbursed to the organization.

Ms. Freitas: But how do they even get there? Who decides that we're going to need this if the committee isn't formed yet? They've already said \$500,000, we already know it's going out. So who came up with that number?

Ms. Suyama: Because it's a private settlement agreement between Intra West and West Maui Preservation Association they decided to create this committee. They decided what the purpose of the monies were going to be, they decided a mechanism by which they were going to select the committee members for this organization to oversee. So it's not the County of Maui or it's not the planning commission that set up these requirements. It is the settlement agreement which is the private agreement between West Maui Preservation Association and Intra West that set this up. Only what the commission wanted to know was, okay we know all this monies are going to be disbursed. We just want to be kept informed as to how the final disbursement of the monies take place. And that's why they ask for annual reporting to occur because this was a lot of money. This was, you know, these were, multimillion dollar funds that were going to be distributed. But it's still between

Intra West and West Maui Preservation Association.

Ms. Freitas: Okay, so just one follow up. So there is this organization already. So what is the new organization that they're saying needs to be formed to disburse these funds?

Ms. Suyama: Because it was supposed to be an independent organization to be created.

Ms. Freitas: It's a separate one. Okay.

Ms. Matin: Commissioner Guard you asked for an accounting and I think your question indicates that you believe that WMPA has some control over the benefit fund of \$400,000. We do not. We are to set it up. One of the purposes of the \$100,000 that was paid to WMPA was to use for the attorney's fees which we have done to set it up and we will continue that. The benefit fund, the \$400,000 is going to be an entirely separate entity. WMPA has no control over that. We simply set it up. What the settlement agreement states is that it's to be used only for projects and goals such as land acquisition, improvement of coastal resources, recreational improvements, roadway improvements, scholarships, native Hawaiian cultural purposes and other appropriate benefits to the North Beach West Maui Community.

Mr. Hedani: Ms. Matin, thank you very much.

Mr. Guard: You could just follow that diagram and you turn in number figures. You can imagine how it would look if it said some here, some there.

Mr. Hedani: Commissioner Guard.

Ms. Matin: Yes, but that's only to the \$100,000 that's all I have control over.

Mr. Hedani: I think we need to move along at this point.

Mr. Starr: Yes, here, here.

Ms. Freitas: Yes.

Mr. Hedani: Gwen do you have any other comments to offer?

Ms. Hiraga: We have two annual reports, right. So I believe we just got through with the West Maui Preservation Settlement Agreement and then we have the Fox annual report. But I believe Mr. Buchanan wanted to speak on the next item maybe?

Mr. Hedani: Who are we representing?

Mr. Buck Buchanan: I'm representing members of the Hawaiian community, the seniors.

Mr. Hedani: Okay, why don't we hear your second presentation on the Fox Settlement and then we can open it up for additional testimony.

Mr. Buchanan: It's just a simple recommendation on the –

Mr. Hedani: Okay, step to the microphone.

Mr. Buchanan: My name is Buck Buchanan as I told you earlier. This is a typical thing with a delay that's involved like this and realize this is private money coming from a different source but the government has an obligation once this interest is shown to make sure that it's done. That delay is unconscionable in my opinion and for the benefit of people who are expecting it or needing it. I would say, put a short deadline on production of that or recommend that they remove those people from the section and do it.

Mr. Hedani: I'm sure there are a lot of 501(c)(3) organizations that could use \$500,000 in West Maui?

Mr. Buchanan: There certainly are. Thank you very much.

Mr. Hedani: Gwen.

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

Mr. Hedani: Any other members of the public that would like to offer testimony at this time, please step to the microphone and identify yourself for the record.

Ms. Patricia Nishiyama: Aloha ka kahiaka. Good morning. My name is Patricia Nishiyama from Lahaina, Maui. I'm representing Na Kupuna O Maui. Na Kupuna O Maui is concerned about the status of the settlement agreement between West Maui Preservation Association called WMPA and various Kaaanapali north shore properties.

The bizarre understanding that there was a settlement between Intra West and Starwood following an intervention by West Maui Preservation Association. West Maui Preservation Association was given a significant amount of funds, \$400,000 for the community. West Maui Preservation Association was to establish a non profit and select a board of directors representative of the West Maui community.

At this point we have not heard of any actions been taken to come within the terms of the agreement by West Maui Preservation Association and would like an update from the Maui Planning Commission. Thank you. That's why I'm here.

Mr. Hedani: Questions for the testifier? Seeing none, thank you very much Patty.

Ms. Nishiyama: Mahalo.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? If so please step to the microphone and identify yourself for the record.

Mr. Buck Buchanan: My name is Buck Buchanan. I live in Lahaina and I the leader of a group that intervened with respect to North Beach back in the '90's, and that was settled finally after a long period of time and litigation and so forth. The concept of the settlement was reduction in the number of buildings in the four principal areas there from what it had been originally approved by the Council and also some other provisions about permanency and so forth, and this of course, the 150-foot setback.

Fortunately, I'm still able to get around and look at things and see things and it seems rather typical that many of the hotel builders in North Beach stretch their luck a little bit with respect to the public area, the 150-foot setback and that troubles me. There have been others – these other interventions since then over smaller details. The original one was over the whole area. And I have not participated in those others as an active person.

But I do confer with building people, groups that are building their buildings and the hotels and advise them on whether they should do this, that or the other thing. We're trying to get uniformity which keep it as simple as possible and as open as possible to the public. And the public as you know, has a large area in the middle of the North Beach area that fortunately we were able to preserve and – we've had difficulty with access problems and so forth there. But we get generally very good cooperation from the builders once we tell them what they're doing may be a little bit questionable or needs to get changed or something.

At the same time, there are people, most of whom seem to be living on the north end of the North Beach area that have found difficulty, faults...(inaudible)... call us out sometimes and make it more difficult to work with the developers sometimes. Not that I have pity for the developers, don't misunderstand me, it's just that a deal is a deal and they cooperate properly with me, but sometimes some people feel that that isn't the right way to do it and so there's a ongoing kind of difficulty and problems.

Mr. Hedani: Three minutes Buck if you can wrap up in a minute?

Mr. Buchanan: I will very quickly. So one of the problems I have seen and I have done more than try to resolve them and that is that the use of monies that developers have, you know, committed. And this is where we are here today. It's a difficult thing to do but they do need guidance and I'm glad your organization is here and you people are on it so that

you can call the shots and they need to be called and I ask that you do that. Get things straightened out for our host native Hawaiians especially. They're a great group and of course, they have problems within themselves, but we need to do as much as we can to help them. So thank you very much.

Mr. Hedani: Okay, any questions for the testifier? Commissioner Iaconetti.

Mr. Iaconetti: About the guidance that you spoke of, it's supposed to be coming from where?

Mr. Buchanan: Well, it needs to come from some place and so I stand up and try to give them some guidance. We don't have any ongoing organization. We started out with six people in the original intervention and three people backed out in the settlement days. So basically with the help of Aunty Patty and a few other people to let me know when something is askew or looking askew we can get those things resolved pretty well. It's not a organization of any kind, we could call an organization. And I'm not part of these funds that we're talking about here today.

Mr. Iaconetti: Correct me if I'm wrong, but wasn't there supposed to be set up a committee to oversee the disbursement of these funds?

Mr. Buchanan: Evidently so. As I understand it, I think that some of the people involved like Charlie felt that it would be taken care of somehow or another and he's moved off island now. And he helped out in the original thing. But, you know, these issues come up because people disagree and ultimately sometimes ends up in a situation where you people have to resolve it or help resolve it and I ask you to look into it and carefully weigh it out. Keep in mind please our host communities, our native Hawaiian people and their needs and they should be paramount in my opinion.

Mr. Iaconetti: Correct me, I don't know whether this is legal or staff, but I was under the impression that a committee or a group was supposed to be established that oversaw the disbursement of these funds. As a matter of fact, I volunteered to serve on that. I have yet to hear anything about any group supervising this. Is there one?

Mr. Yoshida: Well, maybe we can get to that when we actually get to that agenda item.

Mr. Iaconetti: All right.

Mr. Buchanan: I wish you will. I hope you can study it well enough to make some decisions that will be helpful. I don't think the present situation is helpful nor is it constructive in the long run.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Are you a part or was a former part of WMPA?

Mr. Buchanan: No.

Mr. U'u: No. Ever was?

Mr. Buchanan: No. I'm not a big joiner. Thank you very much.

Mr. Hedani: Thank you.

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

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

Condition No. 32 of the subject SMA approval states:

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

The Commission may review the annual report.

Ms. Gwen Hiraga: Gwen Hiraga again. The next report deals with the disbursement of funds for the settlement agreement with intervenor, Charles Fox. And again, it was the same condition that an annual report be filed with the planning commission on the disbursement of funds in the settlement agreement for information.

This one is relatively simple. And basically it -- the settlement agreement asked or provided that the developer shall donate \$500,000 to the Lahainaluna High School Foundation in the following installments: \$100,000 to be placed in the general endowment upon SMA approval. And that was done, \$100,000 was deposited in March 2005. And additional hundred thousand per year for four consecutive years following. So additional hundred thousand payments were made. \$100,000 in March 2006 and another \$100,000 in March of this

year. And that's it.

Mr. Hedani: Any questions for Gwen?

Mr. U'u: Good job.

Mr. Hedani: Thank you very much. Any other questions or comments or anything from the commission? Thank you very much for the annual accounting. I think you have the commission's compassion for your situation and we'll look forward to resolution of the final expenditures as expeditiously as possible and with that, we'll move onto the next item.

3. INTRAWEST requesting a Step 3 Planned Development Approval for the Hokulani (South) and Konea (North) Enclaves at the Honua Kai Project on Lot 4, Kaanapali North Beach Subdivision, TMK: 4-4-014: 006 and 008 and 4-4-001:010, Kaanapali, Island of Maui. (PD3 2006/0003) (C. Suyama)

The Commission may take action on this request.

Ms. Suyama: The next item is Intrawest requesting a Step 3 Planned Development Approval for the Hokulani and Konea Enclaves, actually this is a mistake in the agenda, it's actually only the Konea Enclave because the Hokulani, the south enclave has already been approved by the commission. Enclaves at the Honua Kai project on Lot 4, Kaanapali North Beach Subdivision.

A report was prepared for the commission dated March 13, 2007. If you go down to page 4 of the analysis, page 4, you have the description of the development. The applicant is requesting Step 3 Planned Development Approval to construct the Konea North Enclave and parking which is identified as Exhibit C.

The Konea North Enclaves consist of underground parking and seven to ten levels of apartment hotel units with the higher levels located on building plan NE-A. The full construction plans are available for review. They are on the planner's table. Those two bound drawings are the complete plans, construction drawings for the Konea Tower.

In accordance with the Planned Development requirements, the applicant has submitted the unified site and building program for the site development which consists of construction drawings.

The applicant has also indicated that financing remains the same and a revised timing program has been submitted for the project. The Maui Beach Resort Limited Partnership has invested cash equity in both land and development costs to and will be obtaining third-

party construction financing. All financing will be secured with presale contract to the condominium units.

Also included in the table is the current phasing of the proposed project. Right now they are in – are proposing Phase 4B which is the construction of the North Enclave. Phase 1A was the initial site development for the south enclave which was approved by the commission on June 14, 2005. Phase 1B, 2A, 2B and 2C was approved by the commission on December 13, 2005, and now they're asking for Phase 4B which is the North Enclave, the Step 3 approval.

The construction plans for the Phase 4A and 4B development are essentially in accordance with sketch plans approved by the commission. The proposed project meets the requirements of the Step 3 Planned Development approval, and the recommendation of the department is to approve the Step 3 Planned Development.

Mr. Hedani: Questions for staff? Commissioner Iaconetti.

Mr. Iaconetti: I assume that at this point any attempts at stopping the concrete buildings that are totally blocking off the view of the ocean, it's too late at this point. We can't do anything about that at this point, can we?

Ms. Suyama: No, because you're right now in the Step 3 is actually reviewing the final construction plans prior to getting building permit. It's a ministerial function of the commission.

Mr. Iaconetti: I don't know how many of the other commissioners have driven on that road on the highway looking at what is being built there in North Beach and keep from becoming totally nauseated. It is terrible. It is a concrete mass that keeps anybody from seeing anything near the ocean. There is this one Lot 3 that allows you to get a glimpse of it as you drive by, but the rest of it is concrete. It is – I think it's a shame that it was ever built and I'm sorry that we didn't try and stop it before now. I appreciate the fact that they've donated or will be donating a lot of money to help other projects in West Maui, but this development is terrible and I don't know whether anyone else has driven by there recently, but I can't say enough about it.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Can I just say something to back that up? There is a thing, private property rights and it is hotel zoned. Okay, but putting that aside, Colleen I had heard that there were only four parcels left that are hotel zoned that are vacant. Would you know that or is that true?

Ms. Suyama: You're talking in terms of the whole county?

Ms. Freitas: Yes.

Ms. Suyama: I really don't know for sure, but I doubt it.

Ms. Freitas: You doubt that that would be true?

Ms. Suyama: I doubt if that would be true.

Ms. Freitas: Because it was explained to me that that's all that was left that wasn't already, you know, plans. And that from then on, everybody would have to get a change in zoning. So if there were any more hotels wanted that you'd have to go change the zoning.

Ms. Suyama: Right, I could follow up with our Long Range Division who's been keeping track of the land use allocations as to whether there are only four lots available.

Ms. Freitas: Okay, because that's what you would want to watch, you know.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, I'm sorry that I was not on the commission at the time this went before the process because I feel that these massive things are totally unsuitable for shoreline development and they're much too close to the ocean and I understand they're even having some problems with water intrusion in some areas of this project. Although I was not there at the time to voice my opinion, I have not really had the opportunity to examine in detail the construction drawings. I understand they're available for us at this meeting but it's kind of difficult to go through all the details of that in our free time in this meeting, so I believe that I'll be in opposition to the measure here today.

Mr. Hedani: Other discussion? Does the applicant have any comments that you would like to offer?

Mr. Steve Sewall: Well I understand Dr. Iaconetti's concern, but I think what you're looking at right now is Lot 1 and 2 and not necessarily Lot 4.

Mr. Iaconetti: No, I'm looking at 4.

Ms. Sewall: Because 4, we've only got a small piece of our building up and it's like at level 5 right. But – and if you look at our site in defense of our site, we've got by far the largest site, 40 acres. We've got under 20% of site coverage on our site. So I think what you're going to see on our site is quite different than what you see on Lot 1 and 2 where the

majority of the site was at considerably more coverage than what we've got. But I still understand your concerns and clearly on our site, some of those things we tried to address. I mean, our buildings are spaced and there are some view corridors between our buildings to the water, but you know, when you put buildings up like that there are strict corridors that you have to look down and as you drive down the road, I can understand your concern that, you know, you've got to be at specific points to be able to see through those view corridors even if you're at the open space that's been Lots 2 and 3. I mean, those are concerns. We tried to address some of those concerns, but at this point as Colleen is saying, I mean, we're kind of at the final – this is really just an approval that our working drawings basically match what was approved as an SMA. So if you're now telling us that you're going to not approve that, you're in essence telling me that my working drawings don't match the SMA and you're going to have to explain to me why that is, right.

Mr. Hedani: Any discussion from the Commission? I have a question actually for Intrawest. I like the fact that the setback, the high-rise building from the highway and you have low-rise buildings on the highway side of the project actually, right?

Mr. Sewall: Yes.

Mr. Hedani: I am concerned about the appearance of the massiveness of the high-rise building itself. As far as I'm looking at this point at whatever is the potential mitigating measure for the appearance of the building itself. The colors of the building is that something that you've finalized at this point and understand. Is it all going to be – I guess, let me back up, part of the problem that I see in North Beach is that the colors of the buildings appear to be mono colors so the entire building reads as one building. The best example that I saw of like a layering of the building was the Marriott when it was first built in the South Beach section of the resort where they had a six or eight-story building and by layering color bands across the project itself it looked like three or four stories instead of eight stories. Have you folks considered anything like that in terms of implementation for your project?

Mr. Sewall: Well, that's actually exactly what we've done. So if you go and look at the buildings which are on display in our sales center and they're good sized models, you can see how we have colored the buildings and we clearly have picked a bolder color for the base and more of a neutral color for the middle part and then the top floor of the building tends to be accented as well to try to do exactly that, to break it down, and we've used, you know, I guess if you want to describe them more earth tones to do that. There was a lot of response to the pink that's out there. So that's what we tried to do, both buildings are similar in family and that kind of thing. And we have put across the whole kind of roadside, highway side of our site is all developed with 72, two-story town homes. So there'll be quite a low scale between our buildings – with the buildings you see today and the highway itself.

Mr. Hedani: So from a visual standpoint, it's more like looking at the Mahana than looking at say Lot 2 at North Beach?

Mr. Sewall: Correct, correct. I mean, we're a long ways away from the highway with the two buildings that we've got and there will be, of course, a lot more landscaping added in there and over time it will grow up, but it's quite a – it's a low scale residential development between the highway and where you see our buildings being built today.

Mr. Hedani: Same North Beach Doc, but we're beating on the wrong person. Okay, additional comments? What's your pleasure?

Mr. Starr: Public hearing.

Mr. Hedani: Are there members of the public that would like to offer comments at this point, step to the microphone and identify yourself. Three minutes.

Mr. Lance Collins: Thank you. Good afternoon. My name is Lance Collins and I am the attorney representing intervenor, West Maui Preservation Association in this matter. Ms. Suyama is right and I'm sure if you speak your attorney he will concur that you folks are allowed to deny this application. I would actually recommend that you folks defer it for the following reasons that the Step 3 is a substantial variation, substantial changes from the Step 2 approvals. And in addition, there's also a number of things that are inconsistent with the SMA approval at the Step 2 process. So actually approving it at this time would be inappropriate.

First, the original SMA Step 2 condition limited the number of units to 700 and the last public report for the condominium that was filed by Intrawest states that the number of units are 714 and I have it somewhere if you'd like to look at it.

Next the first Step 3 approval that you folks granted last year only provided grading for the south tower, and the fill surcharge related to that. However, the entire lot which is way more than 20 acres in size was graded including the northern part has already been graded without approval from you folks.

In the first Step 3 you folks adopted a sequencing where the south tower would be done then the town houses and then the north tower, yet the town houses aren't being built at all. That's being skipped and now the north tower is being down. So the sequencing that this commission already approved isn't being followed and that's fairly substantial. The point for that was, because there had to be an updated traffic report after the south tower had been built to see how it actually impacted the neighborhood and that can't be done if the south tower hasn't even been – I mean, they've already said, it hasn't been built yet and so the whole point of adopting that sequencing was for that.

Next, after the south tower was built, the park was supposed to be opened up and yet the park hasn't been opened up, the south tower hasn't been built yet and that was part of the sequencing.

Additionally, in the first – excuse me, in the original SMA Step 2 there's supposed to be a building step back for the makai building. It's second floor, fourth, six floor, seventh floor and as you see in your drawings now, it's a block. It's like a big compound. So it's not even going with how your original SMA Step 2 approval. It's not consistent with the sketches that they provided previously.

Additionally, there's some drainage issues. The drainage based on the small footprint from the multistory parking it's now surface parking and it's much bigger. They haven't updated their drainage and it's critical because, you know, the structure changes the flow of the drainage and – since I have a short amount of time –

The next thing is that in the original sketch, the beach café was a small structure and now it's a full service restaurant. There's issues regarding the lighting and the sound.--

Mr. Hedani: Three minutes, if you can finish up Mr. Collins.

Mr. Collins: Sure. And finally, part of this proposal in the Step 3 leaps into Lot 3 and there is no SMA approval for that area at all. So you'd be approving the Step 3 when in fact there's no SMA approval for a portion of it because it goes into Lot 3 and that we're talking about Lot 4 and we are intervenors in Lot 3 and that hasn't – there's been no SMA approval. This application is incomplete. It violates your previous approvals and there's a substantial change from the sketches. And at the minimum you folks should defer this to address those issues and maybe even have a site inspection and there's some problems with the staff report on page 5.

Mr. Hedani: Thank you very much. Any other members of the public that would like to offer testimony at this time? Martin, are you offering testimony?

Mr. Martin Luna: Yes.

Mr. Hedani: Okay.

Mr. Luna: Mr. Sewall will be addressing the alleged discrepancies between the SMA and the Step 3 plans. What I'm addressing is the – one of my – well, in my letter I address three of the letters that Mr. Collins had written with respect to three matters that were pending here before the planning commission.

And the first item on my letter is for this Step3 Planned Development Approval. Number

2 and 3 are the ones that have already been done by this commission. And what is significant is Mr. Collins, I don't know if you seen the letter but it was sent to the department and that particular letter claims that there was no proper notice given to them, them being West Maui Preservation and their attorney.

I wrote Ms. Matin on November 21, providing them with a draft of the application for Step 3 approval. The application itself was filed on December 22nd. I wrote Ms. Matin on December 28th, provided her with a copy of the application and told her that it had been filed. I don't know if Ms. Matin told her lawyer that.

But as far as notice is concerned, they had more than adequate notice of this proceeding way before this matter was scheduled and this brings to my, I want to conclude that a lot of the matters that he, Mr. Collins stated in his letter are general in nature, nothing was specific. There were no specific provisions of the SMA rule or of the Rules of Practice and Procedure of this body that he cites as being violated by the lack of notice or alleged lack of notice. So when he testifies here and – I was really appalled when he said that they had been in constant communication with Intrawest regarding the 501(c)(3). This was the first time we ever saw the document that supposedly is the organization that's being formed and it has not even been filed with the regulatory DCCA in Honolulu. So without having it filed and registered they can't even apply for a 501(c)(3). So Step 1 is they got to approve the document, Step 2 is to file it and Step 3 is then to go to 501(c)(3). How long that will take I don't know. But I don't think it was Mr. Welch's fault in this matter because if he did the documents in 2005 then West Maui Preservation Association should have moved along much faster in the last two years. Thank you

Mr. Hedani: Any other members of the public offering testimony at this time? Okay, any comments from the commission? Commissioner Freitas.

Ms. Freitas: This is for Colleen. Colleen, if they didn't do what they were supposed to do, why would you recommend that we approve it?

Ms. Suyama: The application came into the department. We reviewed it in terms of what was on the SMA drawings and they are in compliance.

Ms. Freitas: Good. Thank you.

Mr. Hedani: Additional discussion? Commissioner Iaconetti.

Mr. Iaconetti: Would it be appropriate to get someone to review the original documents and the differences that Mr. Collins has pointed out?

Mr. Hedani: It's already been done.

Mr. Iaconetti: By whom?

Ms. Freitas: Colleen.

Ms. Suyama: By staff.

Ms. Freitas: That's what I just asked here.

Mr. Iaconetti: By staff. So that in essence you're saying that what Mr. Collins is saying is totally incorrect?

Ms. Suyama: It's incorrect. We reviewed the application in accordance to the SMA plans which are preliminary plans that were given. Some of the changes when they said, you know, the building's not stepping back, some of those changes occurred because of the settlement agreement. Originally the buildings step further – in terms of the heights of the buildings there were more steps to the buildings but because they had to move the building another I believe 40 or 80 feet back, they had to go vertical so there's less of a step. But if you read the drawings, the drawings is stepped but is not as distinct as it was originally in the original plans that were submitted and that's all in accordance to what was finally approved by this commission as part of the revisions to the settlement agreement.

Mr. Iaconetti: What about the questions about drainage, the question about building on Lot3?

Ms. Suyama: Lot 3, the parking on Lot 3 was originally owned by Intrawest, and when they came in that off site parking was part of the approval as overflow parking. So there is an area –

Mr. Iaconetti: And the commission approved that?

Ms. Suyama: The commission approved it. Commission reviewed it and the commission approved it.

Mr. Iaconetti: And the drainage questions?

Ms. Suyama: The drainage were addressed during the time of the SMA application. There's a drainage master plan that they need to follow as part of the subdivision, the original subdivision settlement agreement and the analysis was done during the SMA time that preliminary drainage report was in accordance with the master drainage plan that was established for North Beach.

Mr. Iaconetti: What about the sequence of the buildings, the sequence that was brought out

today by Mr. Collins?

Ms. Suyama: There are some general sequences that were identified in the SMA permit. When they talk about the North Beach Park has to be done, the south enclave was reviewed, the south enclave is currently under construction. One of the conditions of the south enclaves is that they will not be issued a certificate of occupancy until the North Beach Park is constructed and completed. So they know they're under that deadline. They have a preliminary compliance report in which they've done certain things before getting their building permit. Before they get final certificate of occupancy, all the other factors that need to be completed like the construction of the North Beach Park has to be completed before we do the final compliance report which grants them the certificate of occupancy. If the North Beach Park is delayed, the certificate of occupancy is going to be delayed. They're not going to be issued one.

The other thing is when they came in for the Planned, Step 3 Planned Development for the surcharge it included the master grading as part of the grading plan as well as the surcharge. The surcharge is setting up the foundation for the south enclave, but it also included the mass grading of the lot. That was done as the first phase, 1A.

Mr. Iaconetti: So that, may I continue?

Mr. Hedani: I was just going to add there's a timing difference between the time that you start construction and you get your certificate of occupancy that can last two years and during that two-year interim you know, you have the opportunity to complete the park improvements and other things in sequence before they get their certificate of occupancy.

Mr. Iaconetti: But once, once they ask for the certificate of occupancy, the building is built. We can do nothing about it except look at an empty concrete monster rather than one that's filled with patrons. So I don't see where that's a detriment in any way. If you've already built the thing, whether it's occupied or not, is important to the developer because he's losing money. But it isn't helping anything else.

Ms. Suyama: And that's why they're trying to do the sequencing. They did the Nunes EA, you know, which the commission had adopted because one of the requirements for them to complete the North Beach Park is that they need to do the land exchange with the Nunes Family so that they could have a completed, you know, a contiguous park that would serve the public better than having a divided park. So that's one of the things. We are looking at scheduling the Nunes community plan amendment, change in zoning for the North Beach Park in some time in May, the first meeting in May. Hopefully we can get through the planning commission, get it up to the Council, when the Council is ready to resume deliberations in the Land Use Committee because they would be – right now they're going to be held up with the budget reviews, but some time in June or July we're hoping to get

the applications up to the Council so that the Council can act on the application. Once that's completed, the timing would be the application would come back, the SMA application that was bifurcated dealing with the North Beach Park and the Nunes property would come back to the commission and the commission would then act on it on the park itself and then construction could then proceed on the North Beach Park. So it's a matter of trying to time all the sequences together and they understand the problems that they are facing with if the North Beach Park is not constructed concurrent with the south enclave.

Mr. Hedani: Additional questions or discussion? Commissioner Starr.

Mr. Starr: I would prefer to take a site inspection of this and get a clear understanding of these issues especially regarding the parking and the setback issues before we act on it. This is a very massive and a very important project and one that we'll all be living with for a long time. It would be my preference to defer the item to take a site inspection for those of us who really weren't here at that time and, you know, I apologize but I just don't know enough to be able to act on it. I would like to be able to take a site inspection and look at these issues.

Mr. Iaconetti: If that's a motion, I'll second it.

Mr. Starr: That is a motion that we defer pending a site inspection.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: I'm just wondering what purpose it would serve because the idea – what's supposed to happen here from what I understand is we're just supposed to make sure that they did what's been approved and seeing a site inspection isn't going to tell you anything. It's telling you here that they're doing what they're supposed to do. So I mean, if you go out there, even if you don't like something, you can't tell them they can't do it. It's already been approved. You're just supposed to make sure that that's what they do. You can't change anything.

Mr. Starr: I do think that we would give us time to examine these issues and examine them on the ground which is a lot more.

Mr. Freitas: For the purpose of what?

Mr. Hedani: Okay there's a motion to defer and there's a second by Commissioner Iaconetti? Discussion on the motion? Ready for the question?

It was moved by Mr. Starr, seconded by Mr. Iaconetti, and

**The Motion to Defer the Application Pending a Site Inspection was Lost.
(Assenting - J. Starr, W. Iaconetti)
(Dissenting - S. Freitas, B. U'u, J. Guard, K. Hiranaga)
(Excused - P. Eason, J. Amarin)**

Mr. Hedani: Motion is lost. Discussion?

Ms. Freitas: I have a motion.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: I move to approve as recommended by staff.

Mr. Hedani: Is there a second? Motion dies for lack of a second. What's your pleasure?
Mr. Sewall, you have some comments to offer?

Mr. Sewall: I understand, I mean, this is a big complicated project and I continually get barraged by accusations that I am always found guilty before I have to prove myself innocent. I know that a number of people on the planning commission weren't there through this process of the approval or understand what we went through to get to the point we're at today. And you know, maybe the way for me to start is go through the list of things that I've just been accused of, of not conforming to just to give you guys an idea what maybe some of those things mean.

With respect to the 700 units, that is my limit. We only have 700 units on the site. It may be that what Mr. Collins is mistakenly looking at is that on our condo docs you basically set out each unit as – these are all free hold pieces of property so there's no time share on our property but we do have some small shops and gift shops and that kind of thing. Well, those in our condo docs because they are actually an entity that somebody else will lease actually are defined as a unit. But we only have 700 residential units on the site, right.

Grading approval, basically I think Colleen dealt with that quite adequately.

Townhomes and this whole kind of sequencing, yes, my SMA does require us to do another traffic evaluation after 24 townhomes are complete. With respect to the phasing, yes, the first phase is under construction. We're now talking about the second larger building right now as far as approval, but it takes far, far less time for me to build those townhomes. So what will happen is that, the first building is under construction, the townhomes will be complete before the north building we're talking about right now will actually be done because it takes about three years for me to get there. So in the sequencing of the approvals it's just getting us to the sequence of what was laid out in the SMA and when we get to the 24 townhomes or when the occupancy of that takes place, we will initiate the

traffic study as you guys requested as part of my SMA. So it's not like we're in any deferring that process or we will build the south building before that actually happens.

North Park completion, this is a settlement agreement condition that the water portion of North Park has to be complete before the Building Department will give me occupancy. You know, we're sequencing that so that it does happen at that point in time. The Nunes portion, North Park we're hoping will be completed the same point in time but I still have to go through the community plan change to make that happen. So again, it's just sequencing. I'm not trying to defer. We're trying to get it done as quickly as we can. That existing piece where the first portion of the North Park will have, you know, washrooms and that kind of stuff in it, very similar to what's in Kahekili Park.

The drainage, you know, we basically have conformed with the drainage as per the SMA. I don't know that there's anything that's different in my footprints or anything else. It was generally laid out in the SMA. We have gone through more, you know, detailed studies of that. It's all basically in conformance with how much surface retention we're required to do, how much underground retention we're required to do and how much offsite retention that was also – had to buy from Kaanapali Development Corporation.

The Beach Café which came up again today, is not part of the SMA that we're talking about, the PDP Stage 3 that we're talking about today. We will come back with that at a later point in time and you guys will get a chance to look at that one when we do come back. So you know, those are all issues but they tend to get in the way of what we're really here doing and I think we're in conformance with that's the intent of the SMA. You can go to the site and look at what's there but you're going to see a piece of a building that we've started. You're going to see a lot of site that's just bare dirt and I don't know how that's going to allow you to judge any better whether our SMA conforms with that set of drawings that's sitting on the table today.

Mr. Hedani: Okay, questions for Mr. Sewall? Thank you. Gentlemen and ladies what's your pleasure? Commissioner Freitas.

Ms. Freitas: Well, I'm not going to restate my motion because you know what it is, so what I suggest is that we find out what the problem is with the other commissioners so whoever is out there can address them so we can find out what's going on. You know, I move that we approve.

Mr. Hedani: Okay, I think what we need to clarify here is what we're here to do today is Step 3 of the process. It's a Step 3 approval.

Ms. Freitas: And that's my motion.

Mr. Hedani: And the Step 3 approval is pretty much ministerial. It's making sure that the plans received and were reviewed and plan checked by the department conform to the plans that were approved in prior Step 1 and Step 2. That's the only purpose of the Step 3 approval. It's not to debate the validity of the building or whether or not it should be a park ... (inaudible) ... instead of a building. It's to confirm whether the construction plans as presented represent the plans that were approved in Steps 1 and 2. Reliance on -- personally I rely on the department and the department's professionals review the plans and to make an informed decision on whether or not there's conformance with the prior plans that were submitted. To act in opposition to the department's recommendation at this point on a Step 3 approval is a problem to me and it should be a problem to each one of you too.

Ms. Freitas: It should be.

Mr. Hedani: From the standpoint of you don't follow the department's recommendation and you proceed then you proceed basically on your own recognizance from a liability standpoint. We can go into executive session if you want to discuss that, but that would be the only comment that I can offer as guidance at this point. We don't want a repeat of the Montana Beach situation. We want to make sure that the plans that are approved, are in accordance with the plans that were submitted prior. I've heard comments today that as a layperson when I look at plans and they say, the buildings are not stepped and is one massive block, I can see from the plans that are submitted and they are sitting on my desk here today that the buildings are stepped and they're basically stepped up to the level that -- to the levels of the upper levels. And so to my -- from my lay interpretation of what I'm looking at, what I heard today and what I see on the paper are two different things. Commissioner U'u.

Mr. U'u: I'll second.

Mr. Hedani: So motion by Commissioner Freitas, and a second by Commissioner U'u to approve. Discussion?

Ms. Freitas: I want to thank you for that. That was really good. I mean, you said what I couldn't because I'm too hot about it. And also, you know, to Colleen because all I basically said was, Colleen, do you support this and did you do this? And she said, yes. And I respected that and I held you to that. I'm glad that you did though from Doc, you know, give more detail, but thank you for that. Because sometimes it's kind of hard to know what's going on, you know, when you see this come up. And when you're new it's very difficult. So anyway, thank you for that.

Mr. Hedani: Additional discussion? Are you ready for the question? The sun's going to rise tomorrow morning whether you vote aye or nay.

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

**VOTED: To Accept the Recommendation of Approval of the Step 3
Planned Development Approval.
(Assenting - S. Freitas, B. U'u, K. Hiranaga, J. Guard, W. Hedani)
(Dissenting - W. Iaconetti, J. Starr)
(Excused - P. Eason, J. Amarin)**

Mr. Hedani: Motion's carried. Thank you. We'll take a five-minute recess.

A recess was called at 5:00 p.m., and the meeting was reconvened at 5:07p.m.

Mr. Hedani: Okay, the Commission is back in session.

- 4. MR. DON FREEMAN of THE JOSLIN GROUP on behalf of WDI HAWAII, INC. to obtain an Off-Site Parking Approval for 20 parking stalls located at the existing paved parking lot of the Lahaina Restoration Building located at 656 Front Street, TMK: 4-6-008: 007, Lahaina, Island of Maui in order to meet the required parking for the new Tony Roma's Restaurant located inside the Kishi Building at 736 Front Street, TMK: 4-6-009: 057, Lahaina, Island of Maui. (OSP 2006/0003) (D. Dias)**

The Commission may take action on this request.

Mr. Danny Dias presented a summary of the Maui Planning Department's Report.

Mr. Hedani: I'm sorry, could you go over the correction again?

Mr. Dias: I'm sorry condition no. 2 if you look about half way down.

Mr. Iaconetti: Page 7.

Mr. Dias: Sorry, page 7. Let me just read the whole condition.

Mr. Hedani: Okay, I found the 60 days.

Mr. Dias: Okay, yeah. Amend that to 180 days.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: You know where they're getting their stalls, who'd you say it was, I'm sorry.

Mr. Dias: Lahaina Restoration Foundation.

Ms. Freitas: How many do they have left?

Mr. Dias: Well, there's --

Ms. Freitas; That they can rent?

Mr. Dias: That they can rent, 21 left.

Ms. Freitas: More?

Mr. Dias: 21 more. I think they have a total of 61 and there's three I think the Plantation Inn, Diamond Art Gallery and then Tony Roma's are taking.

Ms. Freitas: Oh, okay, are all renting.

Mr. Dias: Yeah.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Are these stalls that they are renting going to be signed so that no one else can use them other than patrons of the Tony Roma Restaurant?

Mr. Dias: I believe Tony Roma's they have that option. I think before the commission and the department used to recommend that that they do mark it but I think businesses in Front Street had a problem with that because you have certain, like if you take a bank for instance, they're only open to say 4:30 p.m., and if you mark it that nobody else can use it then at night you know, when the restaurants and stuff open then those are empty stalls that are possibly needed. So it's actually the businesses in Front Street and the department and members of the commission felt that, you know, we should just leave it unmarked.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Does the Lahaina Restoration Foundation have enough stalls to conduct their own business?

Mr. Dias: I believe so, yes.

Ms. Suyama: Just for clarification, the Lahaina Restoration Foundation, the buildings and the businesses were established prior to a requirement for parking in the historic district.

So they're all existing non-conforming. But there are stalls I know in the back that's dedicated to the Restoration Foundation.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: According to this chart on page 6 of the report, it has 20 stalls for the restaurant. Diamond Art Gallery which is opened at night has 16. Pioneer Inn which is opened all the time has five. So this idea that you will leave a lot of empty stalls if you designate 20 stalls with Tony Roma's Restaurant sign on it I don't think that holds water because the other two places that are utilizing a lot of space are always opened at night anyway. It's not like they're going to, what? I mean, everything over there is functioning at night. So the stalls that are being delegated to Tony Roma's will be occupied by people going to the Diamond Art Gallery or Pioneer Inn or people that are just walking up and down the street and these are not stalls that are not utilized after a certain hour.

Mr. Dias: I understand your point, I think, I believe they can mark their stalls should they choose to do so because they're renting them out, they're paying for, it's an option that they can do. But I think the problem was having, you know, the commission or the department force them to do that. I think that's where the problem was.

Mr. Hedani: It's actually the reverse situation. With Tony Roma's being open for lunch and dinner or just dinner?

Mr. Dias: He said they're not going to be open in the morning. Lunch and dinner as he said.

Mr. Hedani; So it's only open for lunch and dinner.

Mr. Dias: Correct.

Mr. Hedani: So if they were to mark all of those stalls then you wouldn't be able to get utilization for the morning period.

Mr. Dias: In the morning correct, yes.

Mr. Iaconetti: May I? Does that mean that the parking there would be validated by Tony Roma's so that there would be no cost to the patron?

Mr. Dias: Let me let the applicant answer that question.

Mr. Hedani: If you could state your name for the record please?

Mr. Don Freeman: I'm Don Freeman. I'm with the Joslin Group representing Tony Roma's.

We're actually looking for an offsite parking approval. We have a designation that those parking spaces are going to be available and this building was there for 30 -- basically the 1930's. It is sandwiched in between BJ's Pizzeria and the Lahaina Store. We're in a historical district and are trying to comply to maintain that historical frontage.

Now as far as the way the parking issues were handled. Currently these stalls are leased through Keoki Freeland at Lahaina Restoration which is actually of all the places to try to get parking that is the best place to be because the money stays within the Lahaina and assist other areas in Lahaina at that time. I have not seen stalls specifically marketed anywhere in Lahaina for any particular, any particular establishment so it must be --

Mr. Hedani: Don, the only question is whether or not you're going to validate.

Mr. Freeman: I understand. I do not, I do not believe that the stalls would be marked specifically for Tony Roma's.

Mr. Hedani: Are you going to validate the parking for your customers?

Mr. Freeman: That would be a question -- We could validate -- he would acknowledge that.

Mr. Hedani: Okay.

Mr. Iaconetti: well, that will be in the conditions?

Mr. Hedani: It's up to you. Commissioner Hiranaga.

Mr. Hiranaga: Looking at the photographs provided, there's a receptacle in photograph no. 10. Is that where you deposit the parking fee so that there is no attendant for this parking lot, is that correct? It's an unattended parking lot.

Mr. Hedani: Looks like an unattended.

Mr. Freeman: That is correct. I believe.

Mr. Hiranaga: I guess for myself, the purpose of requiring offsite parking because there is no onsite parking is to try to minimize the burden on other -- on street parking and to other facilities because when people want to go somewhere, they need to park and if they can't find parking they kind of figure out or they'll use their imagination to park wherever they want. So because Tony Roma's is going to create a clientele. There's a requirement to provide off street parking. I feel that those stalls should be marked for Tony Roma use only. They're paying a hundred dollars a month for each stalls. If they're not marked then there's no one there controlling who parks where and all the stalls could be filled by non Tony

Roma people that are putting their dollar or two dollars in that little box. And yet, the Historic Foundation is collecting a hundred dollars per month for those stalls. So it may not relieve the parking issue created by the Tony Roma's. And I think it should be the same for art gallery and Pioneer Inn. It should be marked. There is no attendance so enforcement will be another issues but it will kind of alert people that hey, these parking stalls are for Tony Roma.

Mr. Hedani: Do we know for certain that it's not attended?

Mr. Freeman: I do not. I can tell you it's not attended.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: With the signage that Mr. Hiranaga was stating, you could put that this space is reserved for Tony Roma from a certain time at night to another time so that people utilizing it when they should be using it for your patrons will know that it is reserved for that particular time.

Mr. Freeman: I understand that it could be reserved for that particular time, but if lets say the restaurant is closed, then all of those places are now currently unusable for any other businesses on Front Street and that includes the people coming in from the dock or going fishing. Those parking lots are utilized for all of those purposes. And to try to specify that parking stalls specifically to a place and lets say they're not having a good day then you have a issue that you're punishing other people.

Mr. Hedani: I guess the question at that point becomes can you make sure that the people that parked in that stall go to Tony Roma's.

Mr. Iaconetti: Yeah.

Mr. Hedani: So do you assign somebody to follow them to the restaurant to make sure they sit down. Commissioner Iaconetti.

Mr. Iaconetti: I've got a question that's really none of my business but with the empty restaurants on the west side, is there some reason why you didn't choose W&M or the one out in Napili. I mean these places have been empty for a while and they're very nice locations. Why the middle of Lahaina?

Mr. Freeman: It is a historical area. We want to keep it the way it is. You don't want a bunch of empty buildings in Lahaina, then they just become decrepit and fall down. So we want to keep -- I think we want to keep Lahaina the way it is and you also -- it's also foot traffic area. Everybody knows an awful lot of that traffic comes in off the ships and walk up and

down Front Street. People shop, they park at one end, move to the other. That's what Lahaina is all about and trying to change that I think is -- would be pretty hard at this point. I really do. I mean, there are other places in other -- other places available and I'm sure those places will be rented also. This particular one though I think suits, it's a good place for Lahaina. It's done wonderful things with the building, Ken ... (inaudible)... and Diamond Head Art Gallery as far as bringing that building back from what it used to be like. So I would -- hopefully that help us out and lets get this building working again for us.

Mr. Hedani: Other discussion? Mr. Hiranaga.

Mr. Hiranaga: I just wanted to stress again, I feel a marking of these stalls are important. Of course, enforcement is another issue. There's no one there to enforce it but it may deter some people from not parking there who will not be going to Tony Roma's and may free up some stalls which will help Tony Roma's get more customers. So you mark them but you know, enforcement, probably won't be any enforcement. It's more of a way to deter other people from parking there, to free up space so people will say hey lets go to Tony Roma's they'll find a parking space.

Mr. Freeman: I could talk to Keoki. This is -- basically there'll be a unilateral agreement signed between the two TMK basically connecting them together. That's what they're there for. Now like I said, I have not seen any other parking places and other people on Front Street must have parking somewhere. We know where three of these are right now. Lahaina Diamond Head -- as far as getting that mark that would be something that would have to be brought up with that.

Mr. Hedani: Thank you Don.

Mr. Hiranaga: And to clarify I think, you know, enforcement would be between the lessor and lessee. We're not going to get involved in enforcement, but I think it would be beneficial to the restaurant to have those stalls marked.

Mr. Hedani: Any other discussion? Ready for the question?

Mr. Starr: Public hearing. Are there any members of the public that would like to offer testimony at this time? Seeing none, public hearing is closed. Commission what's your pleasure?

Mr. Starr: Move to approve.

Mr. Hedani: Moved to approve by Commissioner Starr.

Ms. Freitas: Second.

Mr. Hedani: Seconded by Commissioner Freitas. Discussion?

Mr. Hiranaga: I'm not sure procedurally when it's the appropriate time to make the request for proper marking of the stalls.

Mr. Hedani: Now would be the time.

Mr. Hiranaga: So it would be an amendment to the motion?

Mr. Hedani: Right. To add a condition that it be marked and that the hours of operation be designated.

Mr. Hiranaga: I would make a motion to amend the motion with this additional condition?

Mr. Hedani: Maker of the motion and the second, do you folks concur with incorporating that as a condition?

Mr. Starr: No, I'll be voting against something like that.

Mr. Hedani: Is there a second to the motion?

Mr. Starr: The amendment.

Mr. Hedani: Is there a second to the amendment?

Mr. Iaconetti: I'll second the amendment.

Mr. Hedani: Seconded by Commissioner Iaconetti.

Mr. Starr: Can I speak?

Mr. Hedani: Discussion. Commissioner Starr.

Mr. Starr: I speak against the amendment, you know, in a place where parking is tight. Marking specific stalls like that is taking stalls out of circulation and making it harder in the peak time for people to find parking and then having spots sit empty and unused. It's more efficient for it to be a rotating shared type of ...(inaudible)...

Mr. Hedani: Other discussion? Commissioner Hiranaga.

Mr. Hiranaga: Question for staff. What is there the requirement then that there be offsite

parking if there is no -- it's not marked. The only people that know that there's offsite parking for Tony Roma's is the lessor, lessee of the parking lot. So even require offsite parking?

Mr. Hedani: From my perspective I think, from my perspective I think the requirement to verify the offsite parking limits by the Foundation would be to make sure the Foundation isn't renting the same stall over four times in a row at a hundred dollars a pop, right? That they still do have 21 stalls in effect that are still available.

Mr. Starr: You know, I'm involved with it similarly in Wailuku and Waimea, but you know, when you create a business it's your duty to put a certain number of spots into the pool you know that goes with the business. And I think that's what the requirement is whether they be, you know, as long they're real spots whether they be marked or not is a moot point. They're adding 20 spots to the inventory, you know, that's what they're required to do under the law.

Mr. Hedani: The staff recommendation is that the stalls may be marked by the applicant.

Mr. Dias: There is no recommendation that it may be marked. I initially had that that it would be marked and the Planning Director, Jeff Hunt, being the former West Maui planner, said no, take those out and he was really strong about that. I don't really know, I mean, I can't really talk about his specific reasons, but I believe it's because if you want to go to say, Tony Roma's, if you have it marked and you have to figure out exactly where are these marked stalls and find where it is and it kind of creates sort of a mess I think.

Mr. Hedani: And teaching a tourist to park in a stalls that's marked specifically for a use is a total -- I'm sorry I withdraw that. Additional discussion?

It was moved by Mr. Hiranaga, seconded by Mr. Iaconetti, and

The Motion to Amend the Motion to Add a Condition to Have the Stalls Marked was Lost.

(Assenting - K. Hiranaga, W. Iaconetti)

(Dissenting - S. Freitas, J. Starr, J. Guard, B. U'u)

(Excused - P. Eason, J. Amarin)

Mr. Hedani: Okay, the Amendment is lost. Main motion, discussion?

It was moved by Mr. Starr, seconded by Ms. Freitas, then

VOTED: To Accept the Recommendation of Approval of the Offsite Parking Approval.

**(Assenting - J. Starr, S. Freitas, K. Hiranaga, J. Guard, B. U'u,
W. Iaconetti)
(Excused - P. Eason, J. Amarin)**

Mr. Hedani: Carried. Thank you.

E. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

Ms. Suyama: In terms of project, the draft Environmental Assessment for the West Maui Hospital has been circulated to the commission members. It will be placed I believe on the next agenda for commission input to the draft EA.

2. Status of the Kahoolawe Site Inspection

Ms. Suyama: In terms of the status of the Kahoolawe Site Inspection I don't have any status to report to the commission today.

- 3. Planning Department's Follow-Up Report on Matters raised by the Maui Planning Commission on the February 27, 2007 Director's Report**
- 4. EA/EIS Report**
- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report**

Ms. Suyama Regarding the follow up report, there is a memorandum in your packet in which Dr. Iaconetti had asked about three projects that was on the past report and we summarized what the applications were in accordance to what your concerns were. And we are in the process of having staff members looking at the report format to make it more I guess, utilizable by the commission and that's going to take a little bit longer to do. So you can see that the reports that you got today for the EAs, SMA are in the same format as the report from last week, the last commission meeting. So if you have any concerns about those, I'll relay it.

Mr. Hedani: Any questions from the commission on any of the items 1 though 6. Commissioner Iaconetti.

Mr. Iaconetti: What is the status of the Hyatt Regency addition?

Ms. Suyama: I'm not sure. I can report back at the next meeting.

Mr. Hedani: I know they haven't gone throughout architectural review process yet. We only

received from our internal review a preliminary conceptual meeting but we haven't received firm plans yet.

Mr. Iaconetti: Can I continue?

Ms. Suyama: Sure.

Mr. Iaconetti: I'm a little concerned about and confused about the short term rentals. This is on page, what, 6, and they're transient vacation rental in Napili. I thought the vacation rental, transient vacation rentals had to be within a hotel area. Is this within the hotel area?

Ms. Suyama: I do not believe this is in a hotel area and that's why probably it's open. What happens is that when an SMA permit is required in conjunction with a transient vacation rental, we hold off processing the transient vacation rental through the SMA until they get whatever necessary land use permits whether it's a bed and breakfast permit or whether it's a conditional permit from the Council. And until that's granted we hold off processing because then we cannot determine in an SMA that it's in compliance with zoning.

Mr. Iaconetti: So these places are being utilized for short-term rental even though they have not yet been permitted?

Ms. Suyama: It could be the case, yes.

Mr. Iaconetti: And what do we do about it?

Ms. Suyama: We are in the process in terms of the department looking at enforcement, you know, how we're going to start doing enforcement because the previous two administrations it was a no enforcement basically. When an application came in they were given, you know, we weren't enforcing it.

Mr. Iaconetti: Are we any closer to getting enforcement? Is there any way we're going to get enforcement?

Ms. Suyama: I think we eventually will get enforcement through the department. However, enforcement is not a very easy issue. You need to work with the Corporation Counsel, the Enforcement Division as to how to do the process.

Mr. Iaconetti: You have to go out there and see if they're being utilized. If they are being utilized and not permitted then there should be enforcement.

Ms. Suyama: Right. But there is a way to do enforcement. You cannot just go blanket out there and start enforcing people with violations. You have to have a systematic system in

doing it. It's been waiting -- people have been waiting for a long time, but through this administration we're looking at how to do it.

Mr. Hedani: And I think you have a staffing issue that you have to solve too, relative to enforcement.

Mr. Iaconetti: That doesn't make sense to me, I'm sorry. I mean, if somebody has applied and you go out there and find out that they're already doing this and you don't do anything about it, all it takes is a visit out there and find out if they are in fact renting on a transient basis.

Mr. Hedani: There are 900 of them out there.

Mr. Starr: That we know about.

Ms. Suyama: We are looking at the enforcement issue within the department. It's not like we're not doing anything about it.

Mr. Hedani: Well, I think that's the feather in the department's cap if you're actually starting work on it. Any other questions or discussion on the Items 1 through 6.

Mr. Iaconetti: Could we get a little more information on the Cliff House and what's going on there?

Ms. Suyama: You want more specific information. Basically they're just repairing the building.

Mr. Iaconetti: Okay.

Mr. Hedani: Colleen, you know what I would suggest is on the areas where any of the commissioners have questions on the minor permits or exemptions to have the assigned staff person present at the next meeting so they can cover the questions.

Ms. Suyama; You know what would help the department too though, you know after you get your agenda, you see some of these things that you want clarification maybe calling you know, myself or Clayton which permit that you have some concerns on.

Mr. Hedani: Then we can have the staff ...(inaudible - changing of tape)... well, actually they could show up at the tail end of the meeting.

Ms. Suyama: Well, it just makes it difficult because you know, the staff is actually at One Main Plaza.

Mr. Hedani: Any other questions?

Mr. Iaconetti: Are we going to eliminate Kahoolawe now that Suzanne's leaving?

Mr. Hedani: Now that Suzanne's coming off of the commission we can go to Kahoolawe finally. One last comment for Colleen actually, since we're on the subject of enforcement, if we can have someone casually drive from the County Building to Napili and see if there are sign violations along the way.

Mr. Iaconetti: I've already asked that.

Mr. Hedani: Because I think there are probably about a 150 signs that shouldn't be up there.

Mr. Iaconetti: I've already asked Clayton to do that. I don't know whether you've gone out as far as Kapalua, but Kapalua's hotel area which is all fenced off with high walls which is fine, it's probably keeping dust away. They now have 10'x8' at least pictures screwed into this wall along the highway. I've been told this is not a billboard. Okay, it isn't a billboard, but still I don't think that's legal and Clayton's going to have somebody go out there and look at it. But these are big signs.

Mr. Hedani: Okay, we'll have them check.

F. NEXT REGULAR MEETING DATE: MARCH 27, 2007

G. ADJOURNMENT

The meeting was adjourned at 5:34 p.m.

Respectfully submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Jonathan Starr, Vice Chairperson
Kent Hiranaga

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John Guard
Bruce U'u
Suzanne Freitas
William Iaconetti
Patti Eason (excused at 4:00p.m.)

Excused
Johanna Amarin

Others
Colleen Suyama, Planning Department
Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works and Environmental Management

