

PLANNING COMMISSION
COUNTY OF HAWAII

HEARING TRANSCRIPT
JANUARY 15, 2009

A regularly advertised hearing on the applications of **HAWAIIAN RAINFOREST WATER CO. LLC (SLU 08-000021/REZ 08-000085)** was called to order at 9:10 a.m. in the Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawaii with Chairman Rodney Watanabe presiding.

PRESENT: Rodney Watanabe
Lani Bowman
Takashi Domingo
Frederic Housel
Shelly Ogata
Rell Woodward

ABSENT & EXCUSED: C. Kimo Alameda
Andrew Iwashita

Ivan Torigoe, Deputy Corporation Counsel
Daryn S. Arai, Acting Planning Director
Norman Hayashi, Staff Planner
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner

And approximately 14 people from the public in attendance

**APPLICANT: HAWAIIAN RAINFOREST WATER CO. LLC
(SLU 08-000021/REZ 08-000085)**

- a. State Land Use Boundary Amendment from the Agricultural to the Urban District for 10.373 acres of land.
- b. Change of Zone from an Agricultural 20-acre (A-20a) to a Limited Industrial 1-acre (ML-1a) district for 10.373 acres.

The property is located on the southeast corner of the E. Milo Street – Railroad Avenue junction, in the vicinity of the current HELCO Keaau power plant site, Keaau, Puna, Hawaii, TMK: 1-6-3: 18 and 23.

WATANABE: Agenda Item No. 1, the applicant is Hawaiian Rainforest Water Co. LLC. This is a State Land Use 08-000021 and REZ 08-000085. With that I guess I'll turn it over to Mr. Darrow.

DARROW: Thank you, Mr. Chairman. I'll be brief on this first application. This is a continued hearing, continued by our Chairman, to allow time for the applicant and Shipman to be able to resolve some issues regarding access to the proposed subject property. At this time the applicant and representatives from Shipman are present. With that, are there any questions?

WATANABE: Fellow Commissioners, do we have any questions? I think we're all kind of fairly familiar with this. You know, I do have like three people here that have signed up to

testify; and I know Mr. Fuke that you have some summaries to produce. Would you like to go first with the summary of the negotiations. And for formality could I swear you in. Do you swear or affirm to tell the truth now before the Planning Commission?

FUKE: I do.

WATANABE: And, of course, name and address.

FUKE: Sure. Good morning, Mr. Chairman and Members of the Commission. My name is Sidney Fuke. I'm a planning consultant assisting Hawaiian Rainforest with this rezoning application. My business address is 100 Pauahi Street, Suite 212, Hilo, Hawaii.

Thank you, Mr. Chairman. You know, regrettably after probably about four to five weeks of active negotiation with representatives of W. H. Shipman, you know, the understanding basically kind of fell apart. So, you know, regrettably we could not reach any sort of an agreement. And the applicant has thus requested that it, you know, that it be given the opportunity to proceed with the current applications before you. Having said that, I'd like to just generally kind of like reiterate some of the points behind this particular rezoning application. The applicant bought the property in 2007. His initial plan was to, and still continues to be, to not only renovate the existing abandoned warehouses in that area but to rent or lease out those buildings for some sort of light industrial uses. In addition to that he also wants to, he has a permit for a waterwell and wants to do a bottling and beverage facility on this site. He had, prior to his purchasing the property back in 2007, one of his associates sought and received an opinion and a letter from the Planning Director at that point in time attesting that procedurally the way to go through the entitlement process would be not the special permit but to go through the rezoning; and this is predicated upon the site's designation as Industrial. And so, you know, with that letter, in reliance of that letter, then the acquisition was made. He had also early part of last year applied for and then subsequently was qualified by the State and the County as an enterprise program; and this enterprise program, you know, enables the applicant to get certain tax relief in exchange for generating, assurance of generating "x" number of jobs. And I think that the Commissioners are well aware of the current state of the economy; and this being on this enterprise program, which was also endorsed by the County, you know, I think speaks volume relative to the importance of the program, I mean, the development of this nature.

Basically all of the required infrastructure, whether it's like wasterwater system, you know, the access, the archaeological issues were addressed in the application that I provided you earlier. So in the interest of not being redundant I'll just kind of like pass on that. The residual issue, of course, you know, just dealt with the question about the legality of the access. And, you know, to that, you know, I'll have to defer to the applicant's attorney, Paul Sulla, you know, who at some point in time would like to address that in a little bit more detail. I would like to, however, apologize to the Commission for having to bring this access question, you know, before this Commission because it's my belief that the proper body to make a determination on this access is really like not the Planning Commission or the County Council, it's really, if there is some question regarding the legality of the access, then the appropriate body really should be the courts.

Finally, that's about it, I think. So I'll just kind of open ourselves up for any questions. And then -.

WATANABE: Okay. Mr. Woodward?

WOODWARD: At our last meeting when this was addressed, one of the attorneys for your client essentially stated that there was access given some time in the 1930s and then it should be a slam dunk, that there were a few little technical things going on and the title company should clear it up. Where are we with that?

FUKE: Very good question, Commissioner Woodward. I'd like to defer that to Mr. Paul Sulla who's right in the back.

WATANABE: Well, Mr. Sulla you did sign up as someone that would testify. So maybe you could provide that now. So let me swear you in. Would you raise your right hand, please. Do you swear or affirm to tell the truth now before the Planning Commission?

SULLA: I do.

WATANABE: And would you speak into the mike please; and name and address first, and then if you could respond to Mr. Woodward's question.

SULLA: My name is Paul Sulla; and I have my practice on 2061 Kalaniana'ole Road here in Hilo. I'm an attorney for the applicant, the Hawaiian Rainforest Water Company.

WATANABE: Would you like to respond to Mr. Woodward's question regarding where are we with the determination of access?

SULLA: Okay, certainly. First off, just the nature of the concern is that I understand in access and easements situations there are really three kinds of roads, really. There's a private-private road, there's a private-public road, and then there are public roads. And this category of this road is really in the private-public road, because everybody in the public has had access through that and can drive through there. There's no restrictions on it; and that has been going on since the development of the land. So we're dealing with a technical issue here having to do with the private landowner that still holds title to the road and, you know, is working on maintenance issues and all that. Those have not been the problem. And so what has been the problem was that the easement that was granted to this parcel, to both parcels, failed to be carried forward in deeds, subsequently in the chain of title through poor draftsmanship and, also, surprisingly by error in the Land Court allowing a parcel to be reconveyed without carrying forward the easement. Now this is what the Land Court is for, is to protect that sort of stuff. So the Land Court will ultimately have to correct the absence of that grant being carried forward by the predecessors, that includes my client. So we have the title company, we have an attorney in Ashford and Wriston in Honolulu, name is Wayne Nasser, who has been preparing it, for getting it ready to file to the Land Court, a petition to correct their mistake and to have this straightened out. This was not an issue that we felt to be a major one because our insurance carrier, Fidelity, affirmatively insured over it based upon the earlier deed and knowing that we have that right. It's just a technical defect in the title. So that's essentially where we stand with it. And we also want to note that that earlier 1938 deed is recognized by Shipman as valid and they recognized that it was granted earlier, and that under that 1938 deed there were some restrictions that they haven't sought to enforce upon us, and we've agreed to them. But in the situation we are now in,

it's that we can't have things go two ways, you know. The easement was granted in that deed by Shipman. The restrictions were put on that parcel by Shipman. If Shipman wants to enforce those restrictions which we've agreed to they should also recognize that we have an easement. However, this is a technical issue that they're using with us; and with regard to the negotiations, they've used it to put the applicant in a position where we can't go forward in agreement with them.

WATANABE: Yes. Follow-up?

WOODWARD: When do you anticipate that this will be settled?

SULLA: We feel that this is a technical non-issue that is being used to block the application. What we are doing is filing this matter with petitions with the Land Court. We were told it may take up to six months to clear, because Land Court is not as quick as we'd like. We still don't even have our transfer of certificate of title. We don't have our TCT from Land Court yet. So this is the problem. Land Court is four or five months behind doing anything. So we're going to have our Honolulu attorney who's going to press very hard. The insurance company is very aware of the concern. The cost has already incurred and we're assured that this is going to take place and be done within six months, but it could go as long as a year.

WATANABE: I think I kind of know where you're headed, Mr. Woodward. And, you know, potentially we could condition a recommendation. In this case it's not an approval because it's a zoning change as well as a land use change. So we could potentially condition our recommendation upon receiving legal access to the property. And so it doesn't necessarily mean that we're dead in the water today.

WOODWARD: That would be fine with me.

SULLA: That would be fine with the applicant also because we know we have a further procedure that we have to follow; and during that time we would have the access issue cleared, and it's a condition that we intend to have cleared up.

WATANABE: Yes. Mr. Domingo, you -?

DOMINGO: Yes, Mr. Chairman. From the conversation that I've heard and the statement that you've made, permit me if I'm wrong, just tell me if I'm wrong, it is my understanding that it's just a matter of formality that this will be resolved by the Land Court in its final decision?

SULLA: Yes. That's essentially it because the grant was already made by Shipman and it's on record in 1938. Then there was a subdivision, it was carried forward on a few deeds and then it got dropped off by Puna Sugar when it conveyed back. And in that case, I mean, I've been a title conveyance person for 35 years and I would not have a problem with the title, just as Fidelity didn't have a problem with the title. The problem, however, is the Land Court in Hawaii which is, has to have these formalities covered, and has to go and review it. And as I said we still don't have our TCT from the conveyance a year ago. So obviously we've got to sit there. I've been with the Land Court here in Hawaii, you really have to press on it, you have to stay with them, and squeaky wheel to get there. So that's what we're against. There really is no

impediment to getting that. Shipman may feel that they can object, but still the bottom line is that they've already conveyed it and they've obtained whatever they had to obtain back to give us the complete title. So that's what we feel, we agree, suspect.

DOMINGO: You don't have any kind of a letter or affidavit that would indicate that what you're saying is in fact a fact for us to consider?

SULLA: Well, I can provide that; and our attorney Wayne Nasser has provided that and detailed it to the objecting parties here; and they've seen that. So we can provide that very easily for you, whatever. Well, what we have are opinions of title by the attorney in Honolulu who's working for Fidelity Insurance and can outline what is going to happen and why. We can get whatever is required to satisfy, to make comfort with the Commission.

WATANABE: Thank you, I appreciate that. On the other hand I think this body would prefer to stay out of the access issue and focus on the land use issues; and one way of doing that is conditioning the approval or the recommendation; and then we'd stay completely out of the legal access issues. Yes, Mr. Fuke.

FUKE: Mr. Chairman, pursuant to that, I think if I can just kind of amplify a little bit, you know, in terms of the process. Because, you know, notwithstanding whatever recommendation that the Planning Commission may offer, the process, you know, of this application would require at least like maybe three or four months of hearing before disposition before the County Council. And assuming that there's like a favorable disposition on the application before the Council, then prior to establishing any use on the property the normal procedure requires that the applicant submit plans to the Planning Department for plan approval review. So pursuant to that like what I, you know, if the Commission is so inclined there could be like a condition that would read something along this line, and it would read like, "Final plan approval for any uses on the subject properties shall not be issued until proof of access meeting with the approval of the Corp. Counsel has been demonstrated."

WATANABE: Okay. Did everybody get that? So what Mr. Fuke is suggesting is we could add a condition if we are so inclined that would require legal access to be established prior to issuance of final plan approval. Okay? Is that satisfactory? Mr. Hayashi, do you have something?

ARAI: If I may.

WATANABE: Oh, Mr. Arai.

ARAI: I would not support such an amendment, that is deferring something as substantive as access or availability of access down to the individual plan approval review. When you get down to plan approval review, that's about, that's just before when you're ready to build; and we shouldn't be having to determine on a case-by-case basis whether legal access is available. I'd rather have something as substantive as availability of access addressed more at this level than at plan approval.

FUKE: Mr. Chairman?

WATANABE: Yes.

FUKE: I can appreciate what Mr. Arai is saying; and, you know, to ask the Planning staff to kind of make the determination on whether proof of access is or is not there is kind of unfair. And that's why the way that I had proposed would be, you know, we would have to submit proof to the Corporation Counsel, you know, the County's attorney, they would then in turn make the determination whether access is available.

And if the attorney concludes that there is, then in my mind what would be appropriate is to have the Planning Department confer with the Corporation Counsel and say like, you know, if access available. And if the conclusion is yes, then fine, process it. If you don't then you've just got to wait.

WATANABE: Let me ask the Director then, I guess your concern may be that we're utilizing scarce resources to work on a plan that ultimately might not go through because of an access issue. But then you're also aware that there is a significant amount of time that will pass, yeah, prior to even the Council making a final decision. After all this body will only make a recommendation. So in the interest of time to move this process along would you be willing to craft a decision whereby maybe you would not commit those resources to actually working the plan approval until such time that access is determined, but that would not preclude the applicant from proceeding through the process of getting final approval. As I indicated earlier, you know, we are not the final step. If we were the final step I think everyone would be more inclined to say, okay, we'll just wait till we have the access issue resolved. But we all know that it may get tied up quite a while at Council.

ARAI: Well, first of all, let me say that when we get down to the plan approval stage there should be a reliance that the property is ready to accommodate any proposed use, meaning availability of water, sewer, electrical, access. But at the same time this is a unique situation. And before I answer the rest of your question, is it okay if I ask Mr. Sulla a few questions?

WATANABE: Oh, sure.

ARAI: Mr. Sulla, about how long do you think the Land Court will take to respond to your petition?

SULLA: As I stated to Mr. Domingo I believe that we can have this completed within six months. To respond to the petition, respond as soon as we file, the process starts with the Land Court. And so then their readers have to review it and follow the petition along, and go through it. And their procedures sadly are slower, that's why it would take so long. Normally this would be very quick because it's black and white, the record is very clear in black and white. But because of the land court procedures we think it might take us six months. And during that time the applicant is continuing somewhat in improving the property. Regardless of what happens here, he's going to have to use it; and he has got a very large investment at stake here and he would like to keep on his timing. So that is happening. But as far as going forward with the plan review, the portion of the resources of the Planning Department, I agree with Mr. Fuke here that that would be something we would be agreeable to, to hold off on that unless we had

that access resolved by that point. But let us continue with the process so that we can continue to have this working sort of parallel track.

ARAI: Obviously to resolve this issue with the Land Court could probably take half a year which would go beyond the period where the Council could probably act on this change of zone request. So to delay it for that period of time may be an extreme hardship upon the applicant. I am willing to consider a compromise position which is probably to offer our support conditioned upon they continue to attempt to resolve the access issue.

WATANABE: Prior to Council's approval?

ARAI: Well, that was originally my hope, that we could move this application forward with such a condition that the access continue to be worked on; but I was really hoping that prior to Council taking action that a resolution be in place and that would afford, I'm not sure how long it takes, but maybe another three or so months to go through the Council process. I need to chew on this a little bit more before I make a decision.

WATANABE: Okay. Mr. Fuke, you have something to add?

FUKE: Yes. It's more like just following up on Mr. Arai's concern which I can understand, you know, not wanting to burden the staff. But, however, I would like this access question in the same way as like if you have like an archaeological report and then the archaeological report says that there's a burial on the property. So I don't believe that the Commission would not take action because there's a burial on the property. However, there would normally be conditions that would say prior to receipt of plan approval that you would have to have an approved burial treatment plan or burial preservation plan. And the proof of that is the submittal of that plan plus the letter from the DLNR-SHPD or the Hawaii Island Burial Council. And, you know, with that then it's proof to the Planning Staff as they review the application that this is a burial site and this is how we accommodate that. So likewise, you know, the hope was to be able to provide evidence, simplified evidence, along those lines to the staff in conjunction with the plan approval process.

WATANABE: Okay, we do have two other witnesses that have signed up to testify. So if there are no other questions of the applicant's representatives maybe both parties can mull over a potential condition while we take testimony and see how we move along with that. And maybe we can resolve this a little later on. Okay? So you may seated. Or, Mr. Sulla, did you plan to provide further testimony than you've already provided?

SULLA: I would just request if I could have the ability to speak following the comments of the other parties, just because there may be issues that are stated that I'd like to have comments on.

WATANABE: Typically the applicant's representatives would have an opportunity to rebut.

SULLA: Okay. All right. Well, that's all I need.

WATANABE: And so you may be seated; and let's see what comes out from Mr. Yeh and whomever else that may -.

SULLA: Certainly. But just to further answer to help the committee, we do have documents that establish this easement. We can present that, we can present the entire report which would at least demonstrate to everyone what kind of issue it is. I think the Commission even is not going to resolve it but should at least be aware of what it is.

WATANABE: Yeah, I don't doubt the validity. On the other hand, I don't think we're really qualified to make determinations on legal access, yeah? So I think we'd probably want to defer that to the court system.

SULLA: Okay.

WATANABE: Thank you. Okay, I have two others. I have Bill Walter and Mike Moore who have signed up to testify on this subject. So I did see Mr. Walter around earlier. Is he still here?

MOORE: Good morning, Mr. Chairman and Members of the Commission. My name is Mike Moore. Bill had to go to a meeting. He thought it was at 10, but, so -.

WATANABE: Okay, so he won't be able to -?

MOORE: He may be back after he attends that meeting. But in the meantime he's not here.

WATANABE: Okay. Can I swear you in then, Mr. Moore. Would you raise your right hand. Do you swear or affirm to tell the truth now before the Planning Commission?

MOORE: I do.

WATANABE: Thank you. And then full name and address for the record.

MOORE: My name is Michael Moore. I'm an attorney with Tsukazaki, Yeh and Moore. Address is 85 West Lanikaula Street, Hilo. Unfortunately Mr. Yeh who I know was entertaining you previously had to go to Honolulu today so I'm -.

WATANABE: Pitch hitting?

MOORE: Yeah. So I would like to address the access issue. There are both legal and planning aspects to it. So it's not just a matter of whether or not there is legal access. But I think there are also some planning issues, and this Commission should consider them. Let me address both very briefly.

The legal issue is not as simple as Mr. Sulla made it out to be. Okay? And I, actually he's aware of certain facts that he didn't share with you today; and those facts are that when Shipman granted this easement to Olaa Sugar back in 1938 there were three areas along Milo Street that were railroad rights-of-way that belonged to the Hawaiian, what was it, the old Railroad

Company. Shipman didn't own those railroad rights-of-way. So these are, there are three breaks in Milo Street that title is in question. Now I don't want to bore you with that. But, in effect, Shipman did not own those railroad rights-of-way so they had no legal ability to convey an easement over those railroad rights-of-way. And it's a legal issue; and frankly I don't think the Land Court can resolve it. I think it's going to have to be resolved in Circuit Court, if it goes that far.

I would like to let the Commission know that Shipman has been negotiating with the applicant since the last Planning Commission hearing to try to resolve these issues in a good faith manner. So it's not that Shipman is attempting to deny the applicant any use of its property. But Shipman has some serious concerns, one of which -. And shifting from the legal issue which I know you guys don't have the authority to resolve, but getting to the planning issue which is your jurisdiction, Milo Street is not adequate to handle Limited Industrial uses. As I understand it for Limited Industrial you need a 60-foot right-of-way and at least a 32-foot wide paving. Milo Street varies in width, the paving somewhere in the 20-foot range. So Shipman as the owner of the roadway has serious concerns with respect to liability, safety, if the use in that area is increased to Limited Industrial 1-acre, which means you could have 10 separate Limited Industrial lots on this property. And it's a real concern on Shipman's part.

The other aspect of it is, I think Mr. Yeh has gone over this and I don't want to belabor the arguments that Shipman has presented, but the Community Development Plan designates this area for Agriculture, not Industrial. And the infrastructure is inadequate to have this area utilized for Industrial uses. It appears Commissioner Woodward would like to ask me a question.

WOODWARD: Only if you are through.

MOORE: No, I'm fine.

WOODWARD: Okay.

WATANABE: Go ahead, Mr. Woodward.

WOODWARD: Chairman, thank you. What is the acreage of the Shipman Industrial Park?

MOORE: I don't have that, I can get that information to you. You're talking about the Shipman Business Park?

WOODWARD: Right.

MOORE: Yeah. No, it's, I don't know. Unfortunately Mr. Walter is not here.

WOODWARD: Okay.

MOORE: But we can get that information to you.

WOODWARD: Well, let me just ask a pointed question. This is right across the street from where the Shipman Industrial Park is; and I get the impression that perhaps this is

protecting turf, that is we don't want any competitors, more than it is a planning issue. How would you respond to that?

MOORE: No, I think Shipman is trying to be a good steward of that, the Keauau area. And the Shipman Business Park does provide ample lands for Limited Industrial uses. As far as there being a selfish motive I could not speak to that. But I think that Shipman is actually concerned about overall long-term planning and that this area is not appropriate for expansion of Limited Industrial uses.

WATANABE: It doesn't seem like -. Mr. Domingo, do you have a question to pose?

DOMINGO: Yeah, just one question here. I heard that in the conveyance of the property to the present owners that you folks did not convey the legal easements to them. Is it because you're not actually the legal owners to the easements?

MOORE: No, I -. The chain of title went down to various owners to the applicant. Shipman was the initial grantor but over the years it has been through several different owners. And I agree with Mr. Sulla that the fact that the easement was not listed on the TCT in subsequent conveyances is not legally a problem. I mean it can be remedied. But I did want to point out to you the fact that those railroad rights-of-way are intersecting Milo Street. That is a definite legal issue.

WATANABE: Okay. I have a follow-up to that because I guess you implied there are maybe three sections of Milo Street where in your opinion technically Shipman never had the ownership to that property to convey easement.

MOORE: They didn't have the ownership at the time of the 1938 deed. They subsequently, the road operated up till 1946 and then subsequently Shipman obtained title to those rights-of-way. But there has never been any conveyance of an easement over those rights-of-way.

WATANABE: So you're testifying now that Shipman sold the land in 1938 with defected easements and no access? That's what you're saying?

MOORE: No, there was -.

WATANABE: Somebody sold the land.

MOORE: Yes.

WATANABE: You testified that there are three portions of Railroad Avenue, I mean, Milo Street -.

MOORE: Yes.

WATANABE: That you never had the rights to.

MOORE: Yes.

WATANABE: But you sold the land with access?

MOORE: Yes.

WATANABE: How were they going to get there?

MOORE: It's not a practical issue, it's a legal issue.

WATANABE: We're really dancing around this issue but access is practical. I'm sorry, you can't have it both ways. If you sold the land in 1938 and you said, don't worry, Mr. Buyer, you have access but you never owned the right, full rights, to all of the land to which you provided access over, what happened? Do you follow me?

MOORE: I follow you.

WATANABE: Huh?

MOORE: I follow you.

WATANABE: Something is wrong.

MOORE: Yes.

WATANABE: But it's not an issue that the applicant created. He certainly had nothing to do with the 1938 transaction.

MOORE: Correct.

WATANABE: This is a tough argument you're producing. Even for a lay person for me, I mean, you know -.

MOORE: It's, you know, Mr. Watanabe, I'm not presenting that argument, me, as a basis for denying the applicant. I think that's a planning decision. Okay? I'm just pointing out the facts, that there is this problem legally with respect to access that needs to be resolved. And, in fact, as I mentioned, Shipman has been trying to get this thing resolved with the applicant, you know, almost daily since the last Commission hearing. And we've been negotiating with the applicant and actually came very close up until last night in negotiating a settlement with them. So it's not that Shipman is being obstinate against the applicant. We've been cooperating with them and acting in good faith with them in trying to resolve these issues. So it's not like we're, you know, just -.

WATANABE: All right. And I realize you're pitch hitting too, so I'm not going to shoot the messenger (jokingly).

MOORE: Thank you.

WATANABE: Yes, Mr. Woodward.

WOODWARD: Mr. Chairman, I would just reiterate, to me, this doesn't pass the smell test. It smells to me a lot like Shipman is protecting their interests and they don't want a competitor, period.

MOORE: That's fine if you have that belief; but you still need to, I think, consider this from a planning perspective.

WATANABE: Yes. And to that end, as you know, this is a continued matter and we did address some of the infrastructure adequacy issues which were also presented by Mr. Yeh and testified to by Mr. Walter. And that is not to say that we are disregarding any of those issues. It's my understanding that those are some of the key issues that were being discussed during this five week or so period where the negotiations were on-going. As you indicated earlier you came very close. Maybe you can share with us if the infrastructure issues were a hold-up.

MOORE: No.

WATANABE: Did that create a bottleneck?

MOORE: No.

WATANABE: So, so does that imply that the applicant is willing to improve the infrastructure to the extent that Shipman is satisfied that it's not a liability issue?

MOORE: Well, if I may share, I don't know. But I think yes, I can say yes, that that was not a problem.

WATANABE: Maybe, maybe I see, thank you, Mr. Fuke.

FUKE: Oh, okay.

WATANABE: Maybe we can, again, -.

FUKE: It's really like in deference to -.

WATANABE: Mr. Moore is pitch hitting so, you know -.

FUKE: Yeah, I understand that.

MOORE: Although, Mr. Watanabe, I have been involved with Mr. Yeh in this matter so it's not like I'm coming in fresh.

WATANABE: I'm not trying to diminish your capacity.

MOORE: Yeah, so I am very familiar with the substance of what has been going on.

FUKE: You know, like there were multiple issues and, you know, I don't want to go into all of the issues. But specifically as it relates to the access and liability question that

Mr. Moore raised, those were negotiated upon. So we did have a clear understanding between Shipman and the applicant. There were other issues relating to like land use restriction, compensatory arrangements. You know, those were the things that were like the bottleneck. But the primary issue that Mr. Moore raised relative to access, liability, improvements, so on and so forth, those were resolved very quickly.

WATANABE: Those were resolved very quickly?

FUKE: Correct.

WATANABE: So I assume then that if this application is to proceed in any manner that the applicant remains willing to provide that same level of improvement to the infrastructure such that we don't have, shall we say, liability or safety issues?

(Mr. Fuke had a short discussion with Mr. Sung at this time.)

FUKE: I'm sorry, that was the applicant so I just had to get confirmation from him. Mr. Sung is saying that, you know, if the County requires that, whatever was negotiated and made part of the condition, then he will abide by that.

WATANABE: And that's something, we don't have access to that. There were separate negotiations, yeah? So you would be willing to provide the County with -?

FUKE: With that kind of information relating to liability and improvement requirements, yes.

WATANABE: Yeah, yeah, okay, okay. Thank you very much. Do we have further questions for Mr. Moore, or any further questions? You have any final statements you care to make, Mr. Moore?

MOORE: No, Mr. Chair. I think we've covered it.

WATANABE: Thank you.

MOORE: Thank you.

WATANABE: Okay.

HOUSEL: Mr. Chairman?

WATANABE: Yes, Mr. Housel.

HOUSEL: I had a question. Are you still negotiating or have you completed the negotiations?

MOORE: Shipman is still willing to negotiate. But it's up to the applicant. The applicant broke off negotiations yesterday. But Shipman is still willing to go to the table. So it's up to, you know, it requires two to tango.

HOUSEL: Do you feel that there is an impasse that you can't get beyond?

MOORE: We were very close, and I think there could be a resolution.

HOUSEL: So you would be willing to negotiate, continue negotiating?

MOORE: Oh, yes.

WATANABE: Thank you. Actually I see Mr. Walter just got back from his meeting. So maybe you can be seated, Mr. Fuke, because he did, Mr. Walter did sign up to testify. And so if you still care to provide testimony, this would be your opportunity. Let me swear you in. Do you swear or affirm to tell the truth now before the Planning Commission?

WALTER: I do.

WATANABE: Yes; and then, of course, name and address.

WALTER: My name is Bill Walter. I live in Keaau, Hawaii. Please excuse me. I, we believe that negotiations were near enough to resolution; and we found out at 8:30 this morning that the other party didn't wish to complete negotiations at this time. Otherwise I could have scheduled and been here; but I had another meeting that had been previously scheduled, so I apologize for that. And I come in, and I probably will be a little bit redundant.

But let me say that our concerns are, there are two concerns essentially. The first has to do with a safety concern. I'm sure Mike has covered that and possibly Sid. The roads are not, in our opinion, adequate for an ML zoning. An ML zoning requires, the Code calls for 60-foot wide right-of-ways of which 40 feet are paved. The road today is 20 feet paved, has a 40-foot right-of-way. It would be very difficult to pave that entire 40 feet. We haven't measured it but you come right up, I think you will go beyond fences on either side if you tried to do that. But it would be difficult to provide that. So if you give a zoning that's wide open, and following that the park, which his request was ML-1, gets filled out, you then have a lot of potential industrial uses that will be using that road. And we just have, we hold the liability on that; and we feel more than liability, we feel a responsibility because we own that road. So we feel that the road is not adequate. County Code seems to validate that.

Our secondary concern is that we have about 5,000 acres of agricultural uses below that area. Agricultural theft is a very major problem. We have spent tremendous monies in 2008 adding gates, keeping them locked, and so on, to try to keep ag theft under control. It is not under control. The more people we draw into this area the greater the risk, the greater the problem that we anticipate for agricultural theft. And that's our concern. So we worked through this agreement; and it's all tied together. So, you know, whatever uses, part of it, if I can go into it legally, you know the uses and the improvements were tied together. If you give the zoning, then that breaks that tie, at which point my own opinion would be that, that point, County requirements for appropriate access will come into play.

WATANABE: Mr. Woodward.

WOODWARD: Let me ask you, Mr. Walter, how large is the Shipman Business Park?

WALTER: Shipman Business Park is zoned for 488 acres. It is not all developed. We do it, we do this in phases. It's maybe 35 to 40 percent subdivided. We have a lot of room to grow and go in the business park.

WOODWARD: Okay. Well, that brings up my other question. These guys are looking at a 20-acre development. You have 480 acres of which a good part is not currently developed and you want to expand.

WALTER: Yes.

WOODWARD: So it brings up to me the question of are you just protecting turf?

WALTER: I think that's a fair question, Rell, and I'm glad you asked that. If we were protecting turf then we never would have gotten to the point in agreements that we had gotten to. In the long run, this is actually 10 acres. It's not 20 acres. He's using that for some light industrial uses that don't cause safety issues, that don't cause the potential theft issues that we're concerned about. We went through that carefully and we felt like these uses are not going to impact those two issues. Any use, any use impacts demand on the business park. And we, you know, we're not going to look at that. And when you look at the size of the park and the number of acres he has asked for, you know, 10 acres is less than one phase of our park. It really is not the kind of thing that, it makes no sense for us to come out and try to stop uses of small pieces like this. It does what are, one of the drivers for us is we don't want to look like bullies, that we're just trying to lock out all competition. And that's one of the reasons we had hoped that negotiations would be complete, and that the safety and theft issues would be well taken care of, and we could just move on. But, you know, negotiations are broken off, for what reason we really don't know. And so, you know, there we are. We remain with the safety issues. And I would point out as I did last time that there is another applicant who came through very recently for a water bottling facility within a quarter mile of him and we made no objection to that. You know, that's fine. But we have also gone to users, the school wanted to put in a cross-walk. As I pointed out the last time, we insisted that they have an engineer who could certify it because we have a safety concern.

WOODWARD: All right. Well, I appreciate your frank answer. Thank you very much.

DOMINGO: Mr. Chairman?

WATANABE: Okay, yes. Mr. Domingo.

DOMINGO: In regards to your safety concerns and the road width, is it not common knowledge that when they come for plan approval that the Department would look at all these issues and thereby impose any restrictions that would be addressing the safety issues? And then if that is done then Public Works will then recommend the improvements that need to be made?

WALTER: I'm not certain that that would happen. Remember the road that they are on is a private road that we own; and the liability falls to us, as does the maintenance. So whether Public Works would come forward and insist on improvements on a private road is, you

know, it's not clear to me that they would. What you have in front of you does not include something that Public Works has made requirements on to this point. So -.

WATANABE: You also mentioned that agricultural theft. Are you saying that if this measure goes through that agricultural theft would increase in the vicinity?

WALTER: My concern is that it would. And the reason for that is that right now you don't, there is no business reason or a particular reason for someone to come down into that area. They may come for schools, they may, you know, there are few reasons to come in there. But in general the population does not come into that area. The more people you have, casually or for whatever reason, pull into the area -- and this would pull people into the area -- that's the more people who become aware of it, and the greater probability that some of those people will then say, hey, you know, look at what's beyond this, let's go for it. So, you know, that is a set of assumptions on my part. I believe they're reasonable. And all I can tell you is that indeed agricultural theft throughout the County is a problem. It is certainly a problem to us and our lessees.

DOMINGO: On the other hand, you know, as I look at it, any thief planning to conduct that illegal act will certainly not go where there is heavy traffic or where people would go. They'd look at a place where, you know, less amount of people travel and less people would be present. And that's what, that's the way thieves react. And I think your argument that this will certainly encourage agricultural theft with the reasons you've given doesn't sit well with me; and I tend to disagree with that.

WALTER: Yeah, good point; and I appreciate that. Let me clarify on that point. Yeah, certainly if there's a certain level of traffic, while the traffic is there, people going forward to break in and steal things or cause vandalism is likely to be reduced. The issue is that what happens after, say, 6 o'clock at night when it's closed? What happens on Sundays when people have come down and became aware of it? Business Parks are likely to be, as with most of the industries in Hilo, are very quiet, probably few if any people there; and it's at that point that we have the concern. It's those after hours where people become aware of it.

DOMINGO: So what you're saying is that this development will bring people into that particular area thereby exposing the lands below this development? For people who have the mind to steal, they would be more informed of what's down there, thereby it'd be easy for them to go down because they know what they're going after, what they're going to steal?

WALTER: Yes. In essence that's true. It's what happens after the park is closed, and the familiarity with the area. As I say, most people have no reason to go into that area today and are not particularly aware of what's going on.

DOMINGO: What preventive measures have been taken now since the night thefts and since the lands below there belong to Shipman and leased to farmers, I guess?

WALTER: Good question; and, again, I appreciate it. I can tell you that within the year 2008 we spent considerable monies rebuilding gates throughout our agricultural area, resetting rules so that now all of our gates are kept closed 24/7, even during the day which is a pain, you know, to our agricultural lessees. It's a pain to me cause I live at the end of all that.

But we have made a point of keeping those closed. We have met with all of our lessees in different groups to talk with them about the theft problem to come up with ideas. We've met with the prosecuting attorney, we've met with the Police Department. We've had some times where we've had the Police Department assist us in being available, or setting up times when they would be hidden in our area so that we could try to find people who are at theft. Our own patrols through the areas have increased. So we have done all of that throughout 2008. It has had some help. But, again, if, you know, the economy deteriorates we're probably not ahead of the power curve. And it's a matter of, you know, holding back and saying, hey, you know, we -. Again, I would like to stress that there were many other uses that were suggested that we said, yeah, you know, the traffic is going to be minimal for that, we don't, you know, we're not into that. But if you open it up to all of the zoned, all of the uses available, then you start getting some real theft problems as you do infrastructure.

WATANABE: Okay.

DOMINGO: May I -?

WATANABE: Okay, go ahead.

DOMINGO: My feeling is regardless of this or any application that does go through which would essentially use those lands adjacent or in that vicinity, that the issue of theft would be, that's already being addressed by Shipman by installing all of those preventive measures, and that, those measures that have been put into place today discourages or prevent people from going down to the property. And if any development comes in there that would certainly not change the situation because you have those measures in place already.

WALTER: Well, it discourages it. But, you know, frankly speaking you have a gate and it's, you know, people actually have gone through the extent of cutting through our gates. They do that, they come around the gates. We have about in round numbers 14 or 15 miles, excuse me, probably 12 miles of access to the property. And so it doesn't take much to figure out, you know, the weak links in there. And so, you know, it's just a matter of familiarity and, again, there are many uses that don't impact that and there are some that do.

WATANABE: Okay. I'd kind of like to get back on to some of the other issues because safety and adequate infrastructure certainly is within the realm of land use considerations. And to that end we have earlier testimony by both Mr. Moore, as well as Mr. Fuke, etc., that the negotiations did not break down over infrastructure adequacy, meaning that the applicant was willing to provide adequate infrastructure to Shipman's satisfaction. And I'd like to have confirmation from you that basically that wasn't the stumbling block.

WALTER: Well, let me clarify something. You know, these things are all linked. And so there was a willingness to provide adequate infrastructure that was linked to the uses that would be there; and those uses that would be there were much less than are in the ML zoning. Our opinion is that if you go to just wide open ML zoning that you then, I am not confident that the zoning that would be required typically Public Works or by the County for such zoning would be provided or could be provided. To begin with the right-of-way there is only 40 feet of which only 20 feet is paved. It would require the applicant to somehow buy the extra 20 feet in a situation where -. Again, the background is that much of this was under plantation days and

buildings, some of the buildings are built fairly close to the road. In fact, if you go on Keaau Road we have a papaya processing plant that is virtually smack on the road. So part of the, that was handled under the negotiations. But if you throw out one part of it then you set in question the other part also, in our opinion.

WATANABE: Okay, could you then share with us at what point you feel the negotiations broke down, where, what was the bottleneck, okay, related or not, whether it's limited uses -. Because I do recall from your earlier testimony at the previous meeting that you were looking at restricting usage, and you were certainly concerned about liability because it's a privately owned road -- all valid concerns, yeah. At what point did those negotiations break down?

WALTER: Well, it broke down, as far as I could tell, 8:30 this morning. So I'm hearing that from counsel and talking a little bit with the other party, that there were a couple of issues, one of which did deal with restriction of uses. And again the issue, to me, there is the restriction of uses, and I thought we had agreed down to basically the square foot. But at some point I understand the feeling was, well, nonsense, I'm going to do whatever I want to do. Well, do whatever I want to do doesn't take care, doesn't mean that we're going to get adequate infrastructure. Cause I think it's very difficult if not impossible to get, for instance, a 60-foot right-of-way and get it paved. And, if you did, I still am concerned, maybe I shouldn't be, but, you know, I'm still concerned that we have schools on both sides of this road and you're now going to introduce a fair amount more industrial traffic. You've got a playground on one side and the elementary school on the other. I think that's a problem. But -.

WATANABE: Mr. Woodward?

WOODWARD: Yeah, I just had a question, Mr. Walter. It's something you said just a few minutes ago about building a 40-foot road. What is the width of the easement?

WALTER: The easement is, the right-of-way is 40 feet of which 20 is paved. When you go beyond that 20 feet, you start running into some physical problems that can be problematic. For instance, you have telephone poles or power poles that you start to run into -. People have placed fences because, remember, it's a private road. So people have placed, from what I can tell, their fences. And their parking area is close to buildings that you're going to start to run into -. And if you're going towards Hilo, again that was all part of the agreement. But if you go towards Hilo you have a problem of a hill which is blind and you also have a couple of bridges that are only 20 feet wide which would have to be rebuilt. And, one last thing, again, you have this agricultural processing plant that is within several feet of the paved road.

WOODWARD: Okay. Well, since I serve on the board of two road maintenance corporations, I can tell you that the easements belong to the public. They don't belong to the landowners. And if people put things up there you don't have to buy. You already own the easement. So you mentioned something about you have to buy that extra easement, well, that's not true.

WALTER: Can I clarify?

WOODWARD: Sure.

WALTER: The County requirement as I understand it in talking to Daryn earlier is a 60-foot wide right-of-way from, in this case, 130 down to the property. The current right-of-way infrastructure is only 40 feet.

WATANABE: Correct me if I'm wrong because from the previous meeting it was my impression that it's a relatively short distance from the public highway to the subject parcel. I'm not talking about anything beyond that subject property. It was my understanding that we were talking about a very short distance from, again, the public highway to this subject parcel. I realize the subject parcel is not a corner lot.

WALTER: It is a corner lot.

WATANABE: Oh, it is?

WALTER: It is a corner lot.

WATANABE: So we're not traversing very much from the property.

WALTER: It's about, and I can only guesstimate on this, coming from 130 on Milo it's probably in the neighborhood of down to where the second entrance would be somewhere between a quarter and a half a mile. Going the direction of along Keaau Road and Shipman Road, it is longer and it may be somewhat in excess of half a mile.

WATANABE: So conceivably if you have one access on to Milo Road then they could give the County or create an additional 20-foot easement without affecting anyone else; and obviously traffic would not head towards Hilo because they couldn't get past that 15- or 20-foot bridge anyway. So they would go out towards -.

WALTER: Well, they can get -.

WATANABE: Is that correct?

WALTER: No. To begin with, again, the easement is not today owned by the County of Hawaii.

WATANABE: Right.

WALTER: It's a private right-of-way.

WATANABE: Right.

WALTER: So, I mean you could, let's say you have, taking a middle point, 3/8 of a mile getting to one access on Milo Street, he would have to buy 10 feet on either side in rough numbers and then do whatever, improve another 10 feet on each side to bring it up to 40 feet; and that would be a wider easement. However, going across the bridges and what not, those roads are still 20 feet. People use them all the time. And so his people could come out of Milo Street, hang a right and go to those roads. I mean, there's nothing to physically prevent them from

doing that. And if they're going towards Hilo and decide that they'll take their chances with the light then, you know, that may happen or if they see, you know, a backup at the light.

WATANABE: Yeah, I'm conjecturing on a reasonable person.

WALTER: Well, if only we all were.

WATANABE: Yes, Mr. Woodward.

WOODWARD: Thank you, Mr. Chairman. Well, again, we get back to the same point. You've got a 20-foot road, you've got a 40-foot easement, nobody has to buy anything. That's the easement. And if, in fact, they have rights for access then that easement should be included. So what are we talking about having to buy 10 feet on either side? Where does that come from?

WALTER: Okay, let me point out two things. In the first place, the supposed access is not on his title. So whether or not he has access is also in question. That has not been resolved. The second is the reason I'm saying you have to buy 10 feet on either side is I'm saying that if you go with this zoning then certainly one would expect that he should bring this road up to what would be the County's standard. The County's standard is 60 feet, not 40 feet. So you'd have to buy an additional 20 feet, however you chop that up to get that roadway up to the County standard. That's wherein the 20 feet comes from. Is that clear?

WATANABE: Okay. It's clear. And what I was pointing out is that if the County so desired they could indicate that, you know, you will have only one access from this property, it'll be 200 feet from the intersection, and I don't care how you get the 60 but find it. You see what I'm saying? So what I'm implying is if it's a corner lot we wouldn't require someone on a corner lot to improve a 10-mile road.

WALTER: Yeah, neither did we.

WATANABE: Yeah.

WALTER: Neither did we.

WATANABE: And so that's all I am implying. It's workable, you know. But nevertheless we -. Ms. Bowman, it looks like you have a question.

BOWMAN: Yes. I have for quite a while. I'm a little confused. If we look at the map provided by M&E Pacific, and maybe I'm backwards, but it does not match the zoning map. And my concern is because I have questions about the traffic study and, now I lost my page. Ulupono is the light blue on this map? Could you help me staff?

WALTER: That's accurate.

BOWMAN: Okay. But according to the map I have, we have in our background, the project is like on the other side of the road. Could somebody help me please.

WALTER: You want me to point out what you've got here on the left?

DARROW: Ms. Bowman, are you looking at the map -?

BOWMAN: Oh, okay. Okay, and Milo, okay. Is that Ulupono the other purple, that -?

DARROW: Correct.

BOWMAN: And that is not developed yet?

DARROW: There is at this time a credit union on the corner. I do not believe that there are other developments within that property, correct me if I'm wrong.

BOWMAN: Okay. Forgive me cause I didn't -. And Puna Sugar Company Mill land is what, the light green?

WALTER: Green.

BOWMAN: And is there anything happening there?

WALTER: Power plant.

BOWMAN: A power plant, okay.

WALTER: Actually the light green is not. I believe the ex-Puna Sugar would be the dark green, between the light green and the purple.

BOWMAN: Okay. I'm just trying to get a feel for what -. You know, we're talking about access, and the issue of the road, and what other kinds of uses will be eventually there, because it does say in the traffic study that the Ulupono Town Center has 12 undeveloped lots, totalling 9.55 acres that are zoned MCX. So that's mixed use. I'm just trying to get an idea for future use. The other thing, and I assumed that the schools have been notified of this; and there's nothing, I don't see any testimony from the schools. I know it was brought up that it would increase the traffic. But I would think -.

WALTER: My understanding on that, to break in for a second, I did talk to the principal or headmaster, and my understanding is that the elementary school operates on a special use permit and his understanding of that special use permit was that they were not to make comment on any traffic-related issues that may come up on Milo Street. So they have not, they didn't. That is what he told me. Whether that's accurate or not, I can't tell you. But that would explain in part why they're reticent to make any testimony.

BOWMAN: Would that be a requirement by the -? I mean could the Director -?

WALTER: I'm just repeating what the headmaster believes to be the case.

BOWMAN: Well, I think that should be clarified because I don't think that would be a requirement for a special use permit. Do you?

ARAI: It is not a requirement for people or adjoining landowners to testify either in support or against a particular project. And so it's really at their discretion. It's just that they should be afforded the opportunity to comment if they so desire.

WATANABE: I think what Mr. Walter was alluding to, he was implying that based on the information that he got, he's not testifying that it's true, based on the information that he got that the County in their special use permit put a condition in there that restricted them from objecting to traffic concerns. If it was in there, from my past experience it would be an unusual condition. But, you know, you certainly have more experience than I do.

ARAI: Well, I'm not familiar with that special permit. Maybe Norman, could you clarify?

HAYASHI: Yeah, I don't know what the exact conditions of that particular special permit are. But as you said it is, if it were imposed it is an unusual condition. I doubt it, I doubt if the Planning Commission did in fact impose such a condition.

WATANABE: I think the other thing we should recognize is that Keaau is a small area. I would assume that the majority of the students attending those schools live in relatively close proximity to the area. I assume that as their parents bring them to the site that they're going to see a 3-foot by 4-foot sign that describes what is being applied for, etc. And so the general public, whether they are notified by mail because they're within 500 feet or not, typically should be aware. And so if the parents themselves had any individual concerns I would think we would have gotten some letters to that effect.

BOWMAN: Well, I just want to maybe comment on that. I know a lot of times things that are given to the administration does not get to the parents. I'm not talking in any way -. But that's besides that. Again, the gray area is, what is that zoning between Ulupono -?

DARROW: That would be ML, Light Industrial.

BOWMAN: ML, Light Industrial. Well, how many acres?

DARROW: I'm not sure exactly how many acres; but it appears to be between 10 and 20 acres.

BOWMAN: I mean ML, wait. Isn't the applicant asking for ML-1?

DARROW: Correct.

BOWMAN: Is that ML-1 or you don't know?

DARROW: Well, I'm going to look right there.

BOWMAN: Oh, okay, sorry -.

WOODWARD: Well, let me, if I could just interject. Right now that area is zoned Agricultural. But if you look at the LUPAG Map, it says Industrial, which includes things such

as manufacturing, processing, wholesaling, large storage and transportation facilities, light industrial and industrial, commercial uses. So the green is actually zoned Agricultural but it's right across from the Helco Plant. It's not far from Shipman's facility. And -.

BOWMAN: I'm asking about the gray.

WOODWARD: Okay.

BOWMAN: But thank you.

WALKER: Gray I believe is essentially the power plant.

DARROW: Commissioner Bowman, the gray area is Light Industrial 20 acres, 20,000 square feet, ML-20.

BOWMAN: Thank you.

DARROW: The light green is Agricultural 5 acres.

BOWMAN: What is there in the light green now? Sorry.

DARROW: I'm not sure. That might be part of the Helco Plant. But the ML Industrial area is where the majority of the plant uses are located.

BOWMAN: Thank you.

WATANABE: Okay. Ms. Ogata?

OGATA: Yes. I have a question. Or maybe if we can get more orientation because the map is not very clear. I hardly ever go down that road and if I do it's to that credit union that's right on the top corner in that purple area. So I never go past that, oh, yes, I guess I've been to the school once. But where exactly is the school on this map? Because I know that if you go down that road if you stop at the school, you wouldn't go past the school to see other things or, I don't know. I mean if your child goes to the school you would stop at the school and then come back out. So -.

DARROW: The school is located on the property right here.

OGATA: Right there?

DARROW: Correct.

OGATA: Okay, okay.

WATANABE: Okay. Do we have any further questions for the testifiers?

HOUSEL: Chairman?

WATANABE: Yes.

HOUSEL: I have one question. We're talking about traffic and increased traffic. Have you reviewed the M&E Pacific Traffic Analysis Report?

WALKER: I've only glanced at it. My understanding is it focused primarily on the water bottling plant use. I know when the Police made their report it was based on the water bottling plant as well.

HOUSEL: Okay. Have you read the conclusions of the report?

WALTER: I have not read them recently.

HOUSEL: Okay. The way I read the conclusions which were presented were that this would not present a dramatic increase in the amount of traffic on Milo Street. And the conclusion is that it would not be, you know, an increased safety hazard. Do you dispute that?

WALKER: Yes. We dispute it on the basis of the zoning -. If you look at all of the possible uses in the zoning, if I tell you today that I'm going to do x, y, and z but I have zoning that lets me do 1, 2, and 3 additionally, the 1, 2, and 3 may very well occur. There's nothing to stop them, at which point the traffic count and the traffic study become invalid. And that's why we think a special use permit that would lock those in made more sense.

WATANABE: Do we have any further questions?

HOUSEL: Thank you.

WATANABE: Ms. Bowman?

BOWMAN: Yes. That is my concern also. I know with another rezoning we had in Downtown Hilo although the applicant, you know, one of the small businesses, by granting the zoning it didn't limit it, it could have, you know, been a 7-Eleven or whatever. So I think I have the same concerns. And I know, I think we asked this at the last meeting if it is a bottling plant -- and I know, I think the applicant desired more uses -- would they go for a less dense -? I mean -.

WATANABE: Well, okay, that will require, you know, both the Department's as well as the applicant's response. And we've heard a lot and there's a lot to chew on. I'd like to kind of finish up the questions that we have outstanding for the testifiers, take a break, and allow then the applicant and the applicant's representatives to come up and respond to some of what has been discussed. And possibly during that break we would have a little more time to digest the amount, you know, all this information that has come in. And I don't necessarily want to rush to a decision just -. Is that okay? Does that sound like a plan? So do we do have any further questions for the applicant?

WOODWARD: The only question I have -.

WATANABE: Yes?

WOODWARD: We've got all the testifiers that have signed up?

WATANABE: So far I have them all. I only had three; and Mr. Walter because of the meeting came a little late, but he also had an opportunity. So, yes, we've addressed all of the testifiers. So if there are no further questions for these testifiers, thank you for your testimony, yeah. And let's take ten minutes and we'll have an opportunity again to chew on the information that we've had. We'll reconvene in ten.

RECESSED The Chair called a short recess at 10:32 a.m.

RECONVENED The meeting reconvened at 10:50 a.m.

WATANABE: Let's reconvene. So, Mr. Fuke and Mr. Sulla, I did indicate you'd have a chance to rebut and here's your opportunity.

FUKE: Okay, thank you very much. In the interest of time, I'll make my comments very brief. There were a number of issues that were raised by the other parties. You know, one dealt with the community development plan issue; and I think we've tried to make a case in the application that the plan is, the project is consistent with the CDP, notwithstanding, you know, the fact that it may not be specifically identified on the map itself. But I think what was important to kind of point out, which in my previous submittal to the Planning Commission was the General Plan document which says that on maps like this here, you know, where there's any conflict, that the General Plan is controlling.

The other issue, you know, related to like the traffic. And I think that in response to Commissioner Bowman's question, I mean, as well as Commissioner Housel I think, so, you know, we waited for the traffic study. The traffic impact study contrary to what was noted by Mr. Walter did address the warehouse, the use of the warehouse. It did not talk only about the bottling facility. And based upon the total analysis then it offered, you know, its conclusion. I just kind of wanted to make that clear.

As far as the school testimony, it's my understanding that the applicant did personally meet with representatives of the school and, you know, for its own reasons the school, you know, elected not to testify. And I would suspect that non-testimony would be indicative of more a silent consent rather than a silent objection. Cause normally, you know, you hear objectors coming up much more than you do supporters.

The other issue is like relating to, you know, there's this constant argument being made about like, you know, you need a 60-foot right-of-way for this kind of project, so on and so forth. I mean the provision that was cited is accurate; however, that refers to when and if you propose to subdivide the property. Now if you use that logic that Mr. Walter and his attorney were making, if you use that logic to say that, you know, you shouldn't approve it because the right-of-way, you know, leading to the property is inadequate, so on and so forth, then it would stand to reason that for the most part you can't approve any rezoning in this county. You know, you look at Kaumana Drive, for example, it's a major collector. That right-of-way varies from 40 to 50 feet. If you look at the two other applications that's going to be following this, and I'm going to be here before you again, but on Manono Street, it calls for a collector street. Hualani Street for example is a regular street, but Hualani Street has a right-of-way of 40 feet. Manono Street has a

right-of-way of 50 feet. And so what the Department does as conditions of approval, they require additional right-of-ways. So what you do is you incrementally secure the added and the needed right-of-ways. But if you use that logic to say you don't have enough right-of-way, then I would venture to say none of the rezoning applications that have been considered by the Commission recently, you know, could be favorably considered.

Having said that, you know, relative to, and I won't go down the theft issue cause I think that it was well covered, I think, by Commissioner Domingo. But on the issue of the road improvements, I would like to kind of suggest, and Mr. Sung the applicant stated that, you know, the improvements that were negotiated with Shipman prior to the negotiations falling apart, he's still willing to make all of those improvements. Now I don't have that specific language before me. However, I did come up with something during the break that generally kind of reflect, could be reflective of that kind of improvements. And it would read something along these lines, "Prior to issuance of occupancy permit, traffic mitigation improvements such as signage and shoulder improvements within the existing right-of-way and between the subject site and through the school site identified by tax map key," and I'll leave that blank cause I don't have it with me, "shall be made. Said improvements shall meet with the approval of the Department of Public Works." Now generally the kinds of mitigation that we were talking about during the negotiations dealt like with making sure that, you know, there is adequate site distance, making some shoulder improvements so that it would not, you know, there will be minimal conflict between the children, the students, and, you know, that activity and any uses below that area, putting up signage, those kind of things, and, you know, coming up with specific plans and, you know, submitting it to the County. So that, I think, pretty much like summarizes the proposed mitigation that we were talking about. But I don't know, that's my part. Now I don't know whether Mr. Sulla wants to -.

WATANABE: Mr. Sulla?

SULLA: Yes.

WATANABE: You have something to add without getting overly technical?

SULLA: I hope to and I hope to be very brief. I know we've had a long time with this and a lot of things have been already said. And just to in some ways summarize some of the things that have gleaned through here, it's that there has been a statement that there has been no attempt to deny use in the negotiations, but then their, in that question, in the same situation, the negotiations have been broken down over that, and a few other things that have been sort of testified to. So what has happened is the special use permit route has been shown to be more restrictive than others would have; and we felt there is some sort of a problem because traffic and safety has never been a problem in our negotiations, we've agreed. We've had lots of talks about that in different ways. We even approached and tried to come up with ideas for better security if that was a concern. So it has never been these concerns that have been holding us back. Negotiations have been difficult with the timing back and forth, and it came in the last minute that we didn't reach an agreement. Mr. Sung was flying yesterday, and I know in good faith they attempted to. But the problem was, is that I think there's a breakdown of confidence in whether we can reach an agreement that's permanent. It keeps changing for us, and I know they can say the same. So in that case two parties always, it's either two parties are going to make a deal or they're not.

And at this stage we have concerns of why the Shipman would have no problem with the earlier, another bottling plant that's going to go up there in 30 acres and use the same roads and didn't have the restrictions, didn't have the problems that we're having, which seems to be our site is just as well suited for. And we don't know why we're being singled out to have to sort of do some dances we don't feel are necessary or actually fair. But we're going to continue to negotiate as we do this. But we're going to ask the Commission if it would grant this with the condition that we solve the problem of the legal easement. It's a technical problem and there is one legal issue involved about that portion of the road. You see, the roadways in three parts were intersected by the railroad roads. And so there's little sections in our, that weren't owned by Shipman when they granted it; but under the law when you grant something, when you promise somebody something and you don't have it and later obtain it and that party relied upon it, under law, that's an automatic. You're granted. That's called promissory estoppel. Now if that becomes a Circuit Court action, then so be it. But we're not, it shouldn't be the Planning Commission to stop us now; and let us deal with the condition that we have to do to satisfy that part and parcel. And so we want that opportunity to do that.

WATANABE: Okay. Do we have any further questions for the applicant's representative? Ms. Bowman.

BOWMAN: If you get that ML-1, that would allow you ten different endeavors eventually, right?

FUKE: Can I answer that question?

WATANABE: Sure.

FUKE: The ML-1, the one it refers to, you know, should the applicant decide or the property owner decide to subdivide the property, then each of the respective lots would have to have a minimum of 1 acre. So the property across the street is like, I think it was ML-20. So what that means is that if that person wanted to subdivide it, then each lot would have to have a minimum of 20,000 square feet. So at this point in time Mr. Sung has no plans on subdividing the property; and I think one of the proposed conditions that the staff had suggested was that the existing lot be consolidated, correct.

BOWMAN: Okay. And then just correct me or help me, then if they did come in for a subdivision obviously the road would be, the access would be another major issue?

WATANABE: Not necessarily.

BOWMAN: I mean as far adequate access is what I'm saying.

WATANABE: Not necessarily. As I indicated earlier, you know, when they subdivide, you could say that everyone would cross, traverse the properties within that 10-acre area and have only one access to Milo Road, in which case -.

BOWMAN: Right.

WATANABE: You know, then you don't have an issue. All you're doing is reducing -.

BOWMAN: Well, the issue still would be Milo Road. The issue would be -.

FUKE: Can I maybe amplify upon that and maybe Mr. Arai can further corroborate or not corroborate. Until Milo Street is dedicated to the County, it'd still be considered like a private road. And so should there be a subdivision of this 10-acre site, then within the 10-acre, you know, all of the requirements that Mr. Walter or others were talking about, 60-foot right-of-way so on and so forth, they would have to be complied with. But because the property fronts a private road, then it would be at the discretion of the Planning Director upon advice of the Public Works whether additional improvements would have to be made. Can you confirm that?

WATANABE: Mr. Arai.

ARAI: That is true in a sense that normally the full standards, the 60-foot minimum width, are normally imposed within interior subdivision roadways. Because no roadways are being designed for this particular project the Planning Department will use its discretion in consultation with Public Works to determine the level of improvements that we think is appropriate and commensurate with the scale of the project to be provided along say the Milo Street frontage. It doesn't necessarily mean that we will ask that the full burden will be placed on the applicant to provide a full 60-foot width, curbs, gutters and sidewalks, or whatever. We may make them only do like a portion of it; and maybe the full width can be accommodated later by a future road widening, or easement, or something. But, again, we always strive to attempt to meet the County's standards, but there has to be a practical implementation of those improvements.

BOWMAN: Thank you. And so, and forgive me for, but I really want to get a long term -. So there are eight existing warehouses, right, and some of the warehouses are going to be the bottling plant and then the others you're going to rent or lease. So your traffic study, I'm trying to understand it, is based on -?

FUKE: It's 60,000 square feet of warehouse space.

SULLA: Sixty five.

BOWMAN: Sixty five thousand square feet of warehouse space, which would include about how many businesses? I'm just trying to get a feel cause your traffic study says that there's, I think, a.m. there's like 27 cars, p.m. 45. I'm just trying to think if that's realistic. I just am concerned with the density and the traffic on an already narrow road.

FUKE: Can I answer that?

WATANABE: Sure.

FUKE: The traffic study was predicated upon like all of the, you know, the anticipated uses. And what the, you know, based on 60,000 square feet of warehouse space and, you know, they're going to be within whatever is allowed within the ML zone, except like a

home improvement center, for example, like a Home Depot or whatever have you. And the traffic engineers, they utilize, there's a certain table that's associated with the number of traffic generation by square foot for certain types of uses; and that's how they had arrived at that conclusion.

The other thing, too, I would like to kind of point out is that the staff's preliminary recommendation has a condition, and I'd like to read that to you. It's Condition I which says that "Should the applicant develop a land use that would generate significantly more trips than what was described in the traffic impact analysis report, a revised TIAR shall be submitted for review and approval by the Department of Public Works. The applicant shall implement at no cost to the County any transportation improvements deemed necessary by DPW." So there is like a, in the event like, you know, whatever was represented here proves to be obsolete, then there is an additional safeguard on the part of the County to require -.

ARAI: And, Mr. Chairman, if I -?

WATANABE: Yes.

ARAI: Just as a reminder to everyone, the recommendation has not been put on the floor.

FUKE: I'm sorry.

ARAI: I mean the Department had not introduced a formal recommendation on this project. So we shouldn't be discussing particular conditions.

FUKE: I apologize.

SULLA: Could I just address one point to clarify on the use. In the discovery of all this, the 1938 date has this interesting fact: First of all, we're relying upon it for the easement and we've discussed there's a grant of easement in that. And we found also there are restrictions that we weren't aware of as clearly. But they're actually going to, according to Shipman, be applicable to us; and that has to do with any kind of high density retail use is restricted under that 1938 restriction, that's already in our deed. So we're not going in that direction, has no intention of going in that direction, to compete or to go against that restriction. So it's not really an issue for us because we weren't going in that direction, don't intend to. But it's just an interesting example about how that 1938 deed really covers all these points already before us. And so we can clarify -.

WATANABE: Okay. Do we have any further questions? It doesn't seem like it. You may be seated then. And then, let's see, Mr. Arai, I don't know where this is headed, obviously, yeah. We don't have a motion on the table yet; however, I know you have been working on a condition with regard to the access issue should the need for that condition arise. And earlier you clarified that really the Department has not put forth this recommendation officially yet. So let me ask you couple of things. Based on all of the testimony that has occurred today, as well as the previous meeting, would you be willing to stand behind this recommendation with, or the previously proposed recommendations, with an added condition that would address the access issue?

ARAI: I guess you saw me working feverishly in the background, right? Based on the testimony presented I believe I would be comfortable at this time to offer a recommendation to the Planning Commission; and that recommendation would be a favorable recommendation, subject to, however, conditions of approval. At this point in time I would, if it's okay with you, Mr. Chairman -- I know that the recommendation was previously distributed to all of the Commissioners -- and I need to confirm if whether or not this recommendation was also offered to the applicant and maybe even Shipman.

FUKE: Mr. Chair?

WATANABE: Yes, Mr. Fuke.

FUKE: On behalf of the applicant, yes, the applicant has received the recommendation of the Planning Department -.

WATANABE: Okay, please remain there because I'm sure we have an added condition that we'd certainly want your input on this as the applicant's representative. And maybe this is a good time to review -.

ARAI: Well, before we go any further, for the record, I guess, I would like to note that we are offering a favorable recommendation; and that recommendation was previously distributed to you; and I think it carries the date of 12/01/08. We could also make sure that Shipman, a representative from Shipman, has a copy of this recommendation report. Is it -?

WALTER: I don't -.

WATANABE: Sharon is taking it over.

ARAI: Maybe we need to give them a few moments to look it over before we start.

WATANABE: Well, while we're on that though, you know, and I don't know if this would even fly with the Commission because obviously we haven't deliberated at all on this. To that end if this is going to be adopted I assume that you're going to remain firm on your stance with regard to the access issue; and we had been discussing an added condition to this. So while Shipman is looking over the now proposed recommendation would you care to share with the applicant's representative?

ARAI: Sure. In a moment. If I could defer to Mr. Hayashi.

HAYASHI: Mr. Chair, I believe the representative for Shipman was afforded the, was provided with a copy of the proposed recommendation at the previous meeting, although we did pull back the recommendation prior to the hearing. And I think Mr. Yeh did have an opportunity to review the proposed recommendation at that time.

WATANABE: Okay. So, the record then will reflect they have had an opportunity. Do we want to at this point discuss then the added condition, or any revisions to the conditions?

ARAI: Sure, thank you, Mr. Chairman. And I should also note that the recommendation also includes the recommendation for the State Land Use Boundary Amendment that accompanies -.

WATANABE: That's correct, right, right.

ARAI: Right. So at this point I'm not offering or suggesting any amendment to the State Land Use Boundary Amendment -.

WATANABE: Right.

ARAI: Conditions. And I'll be focusing all on the change of zone conditions. What I was looking at is condition, proposed Condition K on page 2 of the recommendation report where it reads, "Access from the subject properties over Railroad Avenue shall be restricted until the applicant provides evidence of access rights meeting with the approval of the Planning Director." That condition in its entirety should be struck out and replaced by the following condition, and I'll try to read it slowly: "Appropriate proof of access from the subject property over Railroad Avenue shall be submitted to the Planning Department prior to the issuance of final plan approval of any new use or new structure on the subject property."

WATANABE: Oh, so for new use or -.

ARAI: New structure. And part of the, let me elaborate, part of the reason for this is that we recognize that there are existing uses and structures on the property and, you know, we're not going to be in a position at this time to restrict access to any uses. Those uses are there, they're operating today probably, and we're not going to be in a point to restrict access to those existing uses. And this affords the applicant the opportunity, along with Shipman, to hopefully resolve the concerns regarding legitimate access to the property.

FUKE: Mr. Chairman, I think that -?

WATANABE: Yes.

FUKE: Maybe Mr. Sulla can explain. There's like two different issues, the Railroad is on one side of the property; and then the other one is the Milo Street extension which is not necessarily the Railroad Avenue.

SULLA: Could I just add one -?

WATANABE: Sure.

SULLA: Just so we're clear here. The Railroad Avenue runs this way; and the Milo Street comes this way. We're really only focusing on our Milo Street access and we're probably not going to pursue the rights-of-way through the Railroad Avenue access. So that this condition, we'll not even try to meet that condition cause we're not attempting to access on that road, Avenue.

WATANABE: Okay. May I suggest that we add to that and/or Milo Street which then would address that. And in the event you change your mind and decide you're going to go toward Railroad, it still applies.

SULLA: Yes. But I'm not making representations of our rights-of-way on Railroad Avenue, to be clear here.

WATANABE: Yeah, I understand that.

SULLA: That's a different animal. Milo Street is the one that we have the access and the technical problem. And we know we're going to have it clarified with no problem.

WATANABE: Yeah, so we'll revise that condition if everyone is in agreement.

FUKE: You could possibly still leave Condition K and just add a new condition as what Mr. Arai is saying and just change Railroad Avenue to Milo Street.

SULLA: Yeah, just change it to Milo Street and then it will be applicable because what we've talked about is waiting to have that -.

ARAI: You indicated that we should leave Condition K as written?

SULLA: Leave Condition K because there's a possibility in our applications and in our negotiations that we may get Railroad Avenue still. That's up in the air but it's a little more of a long-shot for us right now. What we would like to do is leave it because it doesn't harm us, but the condition really should apply to Milo Street, only that you're attempting that now.

WATANABE: Which would be like a new Condition L and everything else relettered?

FUKE: Correct.

HAYASHI: Mr. Chair?

FUKE: Yes.

HAYASHI: I think there needs to be some clarification as to what, how they're getting to the property, whether they do have access rights over Railroad Avenue or is the problem Milo Street? So we need to -.

WATANABE: It's my understanding that the problem is Milo Street, but I'll defer to the applicant.

HAYASHI: Because staff was under the understanding that it was Railroad Avenue that was the problem, that they had no access traversing across Railroad Avenue to get to the property.

FUKE: You are correct, you are correct. And then the -.

HAYASHI: And that is why we included Condition K, or I, or whatever the condition -.

FUKE: Correct, you are correct. And so the other issue relates to the Milo Street Extension which serves as the primary access to the property; and so that's the issue right now.

HAYASHI: I think as far as we're concerned the issue is with Railroad Avenue, whether you have access traversing Railroad Avenue.

SULLA: That's a similar concern. That's one of the three parts that have come up that Attorney Moore presented. That is a little more of a difficulty because how do we traverse it? Well, since, two reasons. One, Shipman has obtained access to it so therefore the issue that I discussed was called promissory estoppel where they agreed to convey it to us. We have access, we've been using it, and now they obtained the rights to it; so essentially they're foreclosed or they're estopped from claiming we can't have it. But that's a legal situation that -.

WATANABE: Okay, so this is one of the three issues, that theoretically in 1938 they provided easement over it but it was an imperfect easement because technically they did not have the ownership rights to provide an easement to it. Now, however, they do have?

SULLA: Yeah. At that time they didn't, but they've since subsequently obtained it.

WATANABE: Okay, okay. So it was brought up in an earlier discussion. But overall the real thrust as far as infrastructure adequacy, safety, etc., it has been in reference to Milo Street, right?

SULLA: Correct.

WATANABE: Okay.

HAYASHI: Yes, we understand that.

WATANABE: Okay.

HAYASHI: And the concern we had is it was brought up that they don't have the right to traverse Railroad Avenue to get to their property, which is along Milo Street.

SULLA: Okay. In that regard then it's a two-part problem. We have the access, the technical access issue of the Milo Street, and then we have the access or crossing, traversing Railroad Avenue and the other parts. So it's a double-type of approval that we have to show, and which we will or are attempting to do.

WATANABE: Mr. Hayashi, then in that case it's likely that we should retain and, just for the record, it is lettered K, right now.

HAYASHI: Well, you can either retain it or -. But I think the Director indicated the alternate condition; and perhaps that condition could be further amended to say "Railroad Avenue and/or Milo Street."

WATANABE: Okay. And that suits me fine. Do the parties agree?

SULLA: That's okay. That's okay with us.

WATANABE: So then we would revise the entire K to read exactly what Mr. Arai stated except that we would insert after "Railroad Avenue," "and/or Milo Street," right?

SULLA: No problem.

FUKE: That's fine.

WATANABE: So that covers both issues.

FUKE: So I want to kind of like get an understanding just for the record. And so if I'm hearing what Mr. Arai is saying, it's that there are some existing uses and there are like some, there may be some proposed uses that's consistent with the existing agricultural zoning, and so the restriction would not apply to those existing uses or those uses that are presently allowed under the Agricultural zone. Or are you just saying any new use, regardless of current zoning or new proposed zoning?

ARAI: The requirement for plan approval only applies to new uses that would be introduced once the zoning, if the applicant is successful in getting the zoning put into place. So whatever is there now I suspect has gone through the proper review and approval processes. We won't be revisiting those existing uses.

WATANABE: For clarification, Mr. Fuke, I think in the stricter sense it means only what is existing. Any new use, you know, you have to clear up this access issue on both roads, Railroad as well as Milo. Right?

SULLA: With regard to an access, basically, yes.

WATANABE: Right. Right, right, right, just access.

SULLA: Okay. All right, okay.

WATANABE: Strictly access, this condition is strictly related to access, legal access.

SULLA: But just to be clarified – it's not requiring us to get access over all of Railroad Avenue?

WATANABE: No, no, no -.

SULLA: Okay. That's all I wanted to make clear.

WATANABE: No, no. Access to your property, legal access, that's all.

FUKE: Basically there has to be a breach over Railroad Avenue.

WATANABE: Right, right, exactly. And I realize it's a very limited area. We're not talking ingress/egress. Yeah?

FUKE: Right.

WATANABE: Okay, Mr. Woodward.

WOODWARD: I think we've gotten down to why does the chicken cross the road.

WATANABE: Well, let me make sure, before we entertain a motion I suspect you're ready to make a motion.

BOWMAN: I have a question.

WATANABE: Yes.

BOWMAN: Just so I can be sure, what is operating out of there presently? What kind of -?

SULLA: It was run down and it was not used for a considerable amount of years. Prior to that it was used for agricultural purposes. They had an auto repair, heavy equipment repair in there, and they had a lot of these different uses for the sugar. Puna Sugar used it all for Puna Sugar.

FUKE: What uses are there now?

SULLA: Now, presently it's in renovation. I think there is some storage, some agricultural storage going on, some agricultural products in one area; and generally it's all renovations as he's putting a lot of money into all the improvements now.

BOWMAN: This is my concern because I think it's kind of ambiguous with the new, with the acting director's new requirement, because it says before any new use, new use. So all of these will be new uses.

WATANABE: That's right. So he can continue with the renovations, right?

BOWMAN: Okay.

WATANABE: But until, once he tries to sublet to someone else or tries to use it for -.

BOWMAN: Okay, the bottling or anything?

WATANABE: He needs plan approval. But before he can get plan approval he has to prove that he has legal access.

BOWMAN: The access, okay.

WATANABE: It's not convoluted in any way, I don't think.

BOWMAN: Okay. I was not sure if there were any present uses at this time. So what's happening now is just the renovation to create these opportunities?

SULLA: Well, I think that actually there were existing uses that were not being pursued and he started to pick some of those up in terms of having some storage there for some agricultural products, storing some papaya puree there, and things like that. So that was the use of the property. When he acquired it it just had fallen by the wayside. Ag is the present use it has. So -.

BOWMAN: Okay. I'm just trying to clarify. Good. Thank you.

WATANABE: Okay. It sounds like some of us are ready to entertain a motion. But before we do that, let me ask the Director if he has additional conditions or concerns that, you know, we might want to visit now?

ARAI: Thank you, Mr. Chairman. One statement that I would like to offer the Commission and if you do decide to forward a favorable recommendation to the County Council, I would like this statement to be included in your recommendation to the Council. And that statement would read, "Testimony both in writing and verbally was presented during the Planning Commission hearing on this particular application that raised the question of whether legal access exists to the subject property over and across Railroad Avenue and Milo Street. This issue remains unresolved, but there remains an opportunity for the applicant and the objecting party to resolve this issue," end of sentence. I wanted to include that just to prompt the Council that -.

WATANABE: Yeah, okay.

ARAI: Yeah, and not send something up without letting them know.

WATANABE: Right. And that's a good heads up, I think. I don't think anyone would object to that. Do we have any further, though, revisions to any of these conditions, inclusive of now, you know -? Cause we have to address the State LUC. And is there any proposed revision to that?

ARAI: At this point I'm not looking at any further amendments to the recommendation on the State Land Use Boundary Amendment.

WATANABE: Okay, okay, thank you. Then, yes, Mr. Domingo.

DOMINGO: Mr. Chairman, in regards to the suggestion by the Planning Director and in deference to what he's suggesting, I think it's a common practice that the minutes of the Commission and proceedings of the Commission are sent to the Council with a recommendation. And what we're doing through the suggestion is highlighting one of the issues, yeah. And although it may not be a precedent, or I don't know if we've done this in other applications, but I think if we're doing this I think it's okay, it's fine. It's for the benefit of the Council people to know that this is a particular issue of concern among the residents, among those adjacent to the

property, that they be notified of this. I have no position to it. But I'd just like to mention that this is, what we have to do is something that we have not done in every other application that has come before us.

WATANABE: Yes. And I think admittedly this particular set of circumstances is rather unusual in that typically legal established access is not a question. So maybe it's fine. I don't think it will be precedent setting in that regard. And if we have nothing, well, we can continue this discussion in deliberation. I suspect -. Mr. Hayashi, do you have something to add?

HAYASHI: Yes. It was just brought to my attention, on page 3 of the recommendation, if you look at the second sentence.

WATANABE: Page 3 of the land use or -?

HAYASHI: Oh, Page 4, I'm sorry, on the State Land Use Boundary Amendment. And it states the Land Study Bureau's Overall Master Productivity Rating is class "C" or "Fair" and Unclassified. And the next sentence says "While the potential for agricultural uses may exist, the soil conditions within the site and surrounding area would preclude such agricultural activities from being conducted." I would suggest that that particular sentence be deleted.

WATANABE: Deleted?

HAYASHI: Yes.

WATANABE: Okay. Are we all clear on that one then, a rather minor revision? Okay, we would entertain a motion then. Let's begin with the Land Use Boundary Amendment Application SLU 08-000021. Is there anyone that cares to propose a motion or make a motion? Mr. Domingo?

DOMINGO: I move for the adoption of State Land Use Boundary Amendment SLU 08-000021, that would be the State Land Use Boundary Amendment, from the Agricultural to the Urban District for 10.373 acres of land, I move for the approval.

WATANABE: A favorable recommendation forwarded to Council?

DOMINGO: Yes, a favorable recommendation.

WOODWARD: I assume that you're going to include the revisions -?

DOMINGO: Oh, yes.

WOODWARD: That Mr. Hayashi -?

DOMINGO: Oh, yes, yes.

WOODWARD: All right, then I will second it.

WATANABE: Okay, it has been moved and seconded to send a favorable recommendation on the State Land Use Boundary Amendment as amended. Any further discussion on this matter? Yes, Ms. Bowman.

BOWMAN: Just for the record, I will vote for it, but I am very concerned about the present state of the road and the density issue that added traffic may have. So I just want to voice my opinion on that. Thank you.

WATANABE: Thank you. Any further discussion. Mr. Darrow?

DARROW: Thank you, Mr. Chairman. The motion before us is to approve the State Land Use Boundary Amendment with the deletion as described on Page 4 of the recommendation. With that I'll take the roll call. Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: Commissioner Bowman?

BOWMAN: Aye.

DARROW: Commissioner Housel?

HOUSEL: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: And Mr. Chairman?

WATANABE: Aye.

DARROW: The motion passes six to zero.

WATANABE: Okay. We have a second part to this, and this would be the Change of Zone Application. Mr. Domingo?

DOMINGO: Mr. Chairman, I move for the Commission to send a favorable recommendation to Council for the approval of the Change of Zone from Agricultural 20-acre to a Limited Industrial 1-acre district for this said parcel.

WATANABE: And with the revised Condition K as discussed?

DOMINGO: Yes, with the revised Condition K as discussed, and with inclusion of the Planning Director's statement.

WATANABE: Thank you.

WOODWARD: Second.

WATANABE: Okay, it has been moved and seconded. Do we need to discuss this any further? Mr. Darrow.

DARROW: Thank you, Mr. Chairman. With that I'll take the roll call. Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: Commissioner Bowman?

BOWMAN: Aye.

DARROW: Commissioner Housel?

HOUSEL: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: And Mr. Chairman?

WATANABE: Aye.

DARROW: The motion passes six to zero.

WATANABE: Thank you. So you'll be informed in writing. And good luck with your access issues.

FUKE: Thank you very much for your understanding.

SULLA: Thank you very much.

The discussion ended at 11:32 a.m.

Respectfully submitted,

Sharon M. Nomura, East Hawaii Secretary

