

PLANNING COMMISSION  
COUNTY OF HAWAII

HEARING TRANSCRIPT  
AUGUST 31, 2007

A regularly advertised hearing on the application of **STANFORD CARR DEVELOPMENT, LLC (SMA 07-000019)** was called to order at 3:24 p.m. at the King Kamehameha's Kona Beach Hotel, 75-5660 Palani Road, Kailua-Kona, Hawaii, with Chairman William Graham presiding.

PRESENT: C. Kimo Alameda  
William Graham  
Andrew Iwashita  
Alvin Rho  
Rodney Watanabe  
Rell Woodward

ABSENT & EXCUSED: Takashi Domingo  
Shelly Ogata  
Rene' Siracusa

Ivan Torigoe, Deputy Corporation Counsel  
Christopher Yuen, Planning Director  
Norman Hayashi, Planning Program Manager  
Phyllis Fujimoto, Staff Planner  
Jeff Darrow, Staff Planner

And approximately 18 people from the public in attendance.

**APPLICANT: STANFORD CARR DEVELOPMENT, LLC (SMA 07-000019)**  
Special Management Area Use Permit to allow the development of 691 residential units, 284 hotel units, 3 golf holes and related support facilities within the Mauna Lani Resort. The project site is located makai of the Queen Kaahumanu Highway, within the existing Mauna Lani Resort, Kalahuipuaa, Anaehoomalu and Waikoloa, South Kohala, Hawaii, TMK: 6-8-1: 54 and 6-8-22: 10.

GRAHAM: Will the Planning Commission return to session? Right now we are taking up Item No. 12, New Business, on our agenda for the day. This is an application for a Special Management Area Use Permit by Stanford Carr Development, LLC to allow the development of 691 residential units, 284 hotel units, 3 golf holes and related support facilities within the Mauna Lani Resort. This project is located makai of the Queen Kaahumanu Highway, and it's within the existing Mauna Lani Resort at Kalahuipuaa, South Kohala, Hawaii. We have several applications for a contested case hearing, several applicants requesting a contested case hearing on this particular application. So generally what we'll do is decide upon their standing of those applicants before we deal with the content of the application at all. Jeff, do you want to steer me in any way on that, or -?

DARROW: That sounds great.

GRAHAM: Okay. Jeff, how about giving a little background first, and get us in the mood?

DARROW: I've been requested by the – I'm going to keep this short and sweet – the applicant has requested -, they brought quite a bit of material so they will be giving a very detailed presentation. Basically I'll kind of just summarize the project itself, and give you a location.

The area of this application is within the South Kohala District. For reference, we are looking at Queen Kaahumanu Highway running in a north-south direction. We're looking at the Waikoloa Beach Resort area, as well as the Mauna Lani Resort area. The application location is identified by this orange dot in this location. Access to this area is from Queen Kaahumanu Highway to Mauna Lani Drive, and you would come to the intersection of North Kaniku Drive, and then also the application runs along Ho'ohana Street; and that's identified in this particular area. This red line running in a north-south direction in the middle of Queen Kaahumanu Highway is the SMA line; everything makai of that line falls in the Special Management Area.

The applicant, Stanford Carr Development, LLC, is requesting a Special Management Area Use Permit to allow the development of 691 residential units, 284 hotel units, 3 golf holes and related support facilities.

As you mentioned, Commissioner Graham, that we do have four petitions for standing in a contested case hearing that we've received. Exhibit No. 13 is a petition for standing from Richard Gilroy; Richard Gilroy is a resident of the Villages at Mauna Lani. We have Exhibit 14, which is a petition for standing from the Villages at Mauna Lani Association of Apartment Owners. We have a petition for standing from the Mauna Lani Resort Association; this was received on August 22, 2007, after the application was submitted to the Planning Commission. These three applications were received timely, notarized, as well as with the proper filing fee. Our last petition that we had received was from Mr. Robert Batinovich, and this was received on August 24, 2007; the petition was not notarized and it was filed without a proper filing fee.

GRAHAM: Thank you, Jeff. I would also want to just make it known we do have four people signed up to give public testimony, we'll be taking that shortly. And the applicant would like to make a little presentation to us here today, which I think we'll probably also be able to accommodate. But our first item of business is to decide on the contested case requests which we have. Mr. Torigoe, could you give me any direction as to how we might process these four at this time, individually or whatever you think?

TORIGOE: Thank you, Mr. Chairman. As you notice, it's an SMA Use Permit application, which is considered a contested case, and so falls under your Rule 4 procedures. Your Rule 4-7 requires that upon receipt of a written request to intervene, the Commission, at the first meeting, shall hold a hearing on the matter, and if the movant can demonstrate that their interest is clearly distinguishable from that of the general public, or they have some property interest in the land or lawfully reside on the land, or if they do not have an interest different than the public generally, that the proposed action will cause them actual or threatened injury in fact, or if they are persons who are descendants of native Hawaiians who inhabited the Hawaiian islands prior to 1778, who practiced rights which were customarily and traditionally exercised for subsistence, cultural or religious purposes, then they shall be admitted as parties. And the Commission will grant or deny such written request prior to any further action on the matter. And any denial is appealable to the Circuit Court. So after establishing the parties to the proceeding, the Commission can either proceed, or upon written request by any party and for

good cause, continue the matter to a more appropriate time and date. So basically you need to take up each of the petitions individually and make the determination whether they are eligible to intervene as parties.

GRAHAM: All right. Commissioners, is that all clear? So maybe we'll start with Richard Gilroy, or maybe -. Should I bring them forward one at a time, you think? Is Richard Gilroy here today? He does not appear to be present.

ALAMEDA: Chair?

GRAHAM: Yes.

ALAMEDA: Sorry to interrupt. What kind of action are we supposed to take with these contested proposals?

GRAHAM: Generally, what's before us is to accept them as intervenors in a contested case hearing or not accept them. So generally they would come forward and give us a few words on why they are intervening, and we would make a decision based on our Rules as to whether we accept them as intervenors.

ALAMEDA: Right. That's what I thought. But since he is not here, how do we proceed?

GRAHAM: I think we proceed, we go ahead with just what we've got from him in writing.

ALAMEDA: Okay.

GRAHAM: I might ask the applicant if you have any position that you would take on this particular intervenor or any of the other intervenors. Maybe it would be wise to just speak to that whole issue first, so you don't have to keep coming forward. Thank you.

LIM: Thank you, Mr. Chairman.

GRAHAM: Mr. Lim, you were sworn in before, that's fine.

LIM: Thank you. Steve Lim representing Stanford Carr Development, LLC for the development of the M sites at Mauna Lani. Our position on the first three contested case requests, which is by Mr. Richard Gilroy, the Villages at Mauna Lani Association of Apartment Owners, and the Mauna Lani Resort Association, is a general objection to their standing based upon failure to meet the conditions for standing in the Planning Commission Rule 4 relating to Contested Case. With respect to the fourth intervenor, Mr. Batinovich, we file our formal objection with the Planning Commission, which basically raises the issues of the defective filing because of the no filing fee and failure to notarize his statement, which Mr. Darrow raised already. We would maintain these objections for all four of these interventions. Thank you.

GRAHAM: Thank you, Mr. Lim. So I think the Commissioners should maybe look closely at what we have received from Mr. Gilroy on our first intervenor's request, and then one of the Commissioners could make a motion one way or the other. Since Mr. Gilroy is not here, and yet Mr. Gilroy asserts he is a resident within the Mauna Lani Resort and all, I believe Mr. Torigoe suggests that maybe we move onto a different intervenor, and have a little more background therefrom for evaluating Mr. Gilroy's application. Could I start with the Mauna Lani Resort Association? And I think Mr. Vitousek is representing them. Mr. Vitousek, would you swear or affirm to tell the truth on this matter before the Hawaii County Planning Commission today?

VITOUSEK: Yes.

GRAHAM: Thank you. Could you give your name and address, and then carry on?

VITOUSEK: Yeah, sure. Randy Vitousek. My business address is 75-170 Hualalai Road, Suite 303B. Okay, so, we have filed the petition to intervene or to request a contested case hearing on behalf of the Mauna Lani Resort Association. The Mauna Lani Resort Association is the duly constituted master association for the Mauna Lani Resort. It's the formal association that's created to own and manage many of the common areas within the resort; the roads, the trails, the beach access – they are even, are currently or will soon be responsible for owning and maintaining some of the historic areas of Mauna Lani. And the Resort Association owns land adjacent to and in the immediate vicinity of the project in terms of the roadway. The Resort Association has a direct interest in the quality and accessibility and use of the coastal areas of the Mauna Lani Resort because they manage the public access and the resident access. The members themselves utilize the coastal areas for recreational purposes. And the Resort Association itself owns and, like I said, actually owns and is responsible for the roadways, many of the beach areas. And so it has an interest as an adjoining land owner. It also has a representative interest as the duly constituted association for all of the residents of the Mauna Lani Resort. So I think that based on that and based on the criteria for standing as articulated in Chapter 91 and in the Planning Commission Rules, the Resort clearly qualifies as having an interest that is clearly distinguishable from the general public. This is the only resort association; it's specific to this resort. This project will be a member of the Resort Association. And you know, you should also be aware, Members of the Commission, that it is a Resort Association, and its role is not to prevent development within the resort; the role is to try to ensure that the development occurs in a way and is subject to conditions, which may be imposed by the Commission to mitigate potential adverse impacts on the coastal zone, which are also in the interest of the Resort. So we would request that standing be approved, and we would request that the Commission, pursuant to Rule 4-7(d), continue the hearing to more appropriate time or place. I'm submitting a written request for the continuance because that's what the Rule requires.

GRAHAM: Excuse me, Mr. Vitousek. You are submitting a request as to -.

VITOUSEK: Yeah, Chairman Graham, Rule 4-7 says that if the Commission decides to grant a contested case hearing, it has the option of going forward with the hearing or continuing the hearing to a later date, if there is a written request to continue it. And so what I have done is submit a written request to continue the contested case hearing to a later date.

GRAHAM: Thank you. Mr. Lim sort of objected to yours and the others' inclusions as intervenors based generally on Rule 4, he said. Do you have any particular response to what he had to say there?

VITOUSEK: Yes. I think that the criteria for standing in Rule 4, whether the applicant has an interest in the subject matter of the application, which is clearly distinguishable from the general public, and I think that based on what we submitted in our application for standing and what I've represented to the Commission today, that we clearly and unquestionably meet the criteria for standing to intervene or standing to request a contested case.

GRAHAM: Thank you. Do we have any questions, Commissioners?  
Commissioner Watanabe?

WATANABE: I just have a question for Jeff. This is one of the intervenors or potential intervenors that did file in a timely manner with the notarized form and the filing fee?

DARROW: Yes.

WATANABE: Thank you.

GRAHAM: Okay. Any other questions from the Commissioners? Well, I'll be open for a motion for either accepting or not accepting this intervenor.

IWASHITA: Chair?

GRAHAM: Commissioner Iwashita?

IWASHITA: Is it appropriate to allow the applicant to respond in any way to the intervenor's presentation?

GRAHAM: Mr. Lim, if you have any further comments to make regarding this specific application?

LIM: We have nothing further.

GRAHAM: Thank you. Commissioner Watanabe?

WATANABE: I move to grant standing to – oh, I forget, which one now, what is it – Mauna Lani Association?

GRAHAM: Mauna Lani Resort Association.

WATANABE: Mauna Lani Resort Association in this SMA for Stanford Carr.

GRAHAM: Thank you. Do we have a second?

RHO: Second.

GRAHAM: Seconded by Commissioner Rho. Is there any discussion on the motion? Jeff?

DARROW: Thank you, Mr. Chairman. The motion before us is to grant standing in a contested case hearing to the Mauna Lani Resort Association. With that, I'll take the roll. Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes, six to zero.

GRAHAM: Thanks. Mr. Vitousek, so you have been granted standing. Did you have something to say?

VITOUSEK: Yeah, thank you. In so far as it's going to be a contested case, we object to any presentation by the applicant because it doesn't follow the criteria for submitting exhibits or presenting testimony in a contested case. I don't know, I mean once you've decided that a contested case is proper, then there are rules under Rule 4 that you have to follow in presenting evidence and allowing cross-examination, offering a certain number of copies of exhibits and giving a notice to the public of a contested case hearing, which has not been done. So I would object to any further offering of evidence by the applicant in this hearing. Thank you.

GRAHAM: Thank you, Mr. Vitousek. Could you stay there a minute, please?

VITOUSEK: Sure.

GRAHAM: Did you have something, Commissioner Iwashita?

IWASHITA: Are we going to proceed into the request to continue this matter, or -? I guess the other thing we need to consider is -.

GRAHAM: Yeah, we have others to deal with.

IWASHITA: Hearings officer.

GRAHAM: Well, we'll come to that, if it will be. Mr. Vitousek, also I want to just ask you, since we started off with Mr. Gilroy's a potential intervenor and he is not here. Do you have anything to add to, whether he is a member of the Resort Association or whether he in fact resides at the Mauna Lani? Do you have any information for us?

VITOUSEK: I'm sorry, I don't.

GRAHAM: Okay, thank you.

VITOUSEK: I mean I'd heard that he is a resident of one of the projects there, but I really couldn't represent you on personal knowledge one way or the other.

GRAHAM: Thank you.

VITOUSEK: Is that it?

GRAHAM: That's it.

VITOUSEK: Thank you.

GRAHAM: Our second intervenor would be the Villages at Mauna Lani, potential intervenor. Could you come forward, sir? Would you raise your right hand, and do you swear or affirm to tell the truth on this matter today before the Hawaii County Planning Commission?

KLEKNER: I do.

GRAHAM: Thank you. Could you address the Commission now, and start with your name and address?

KLEKNER: My name is Michael Klekner, spelled K-L-E-K-N-E-R, and I reside at 68-1025 North Kaniku Drive, No. 624, at the Villages at Mauna Lani. I'm a member of the Association's Board of Directors, and currently serve as the secretary, and I've been asked to represent the Association in this proceeding. And just to answer your previous question, Mr. Gilroy is a member of our Association of the Villages.

GRAHAM: Could you give us a little more explanation of why you qualify under Rule 4 as being distinct from the general public and such things?

KLEKNER: Yes. In order to access Site M, you need to pass our front entrance. Most of the project will directly affect our 130 units. We are makai of the location; if there is a runoff issue, it's going to run off onto us first. If there is a traffic congestion issue, our people will not be able to enter into our Villages. We are distinct from any other association, sub-association within the Mauna Lani Resort area. I know Mr. Lim has raised a general objection, and that might be fine for a development or an association on South Kaniku Drive; but for our particular Association and our particular locations, we have a direct interest in the outcome of these proceedings, and should be granted intervenor status. Thank you.

GRAHAM: Thank you, Mr. Klekner. Any questions from the Commissioners? Will we be open for a motion on the part of any of the Commissioners? Commissioner Watanabe?

WATANABE: Thank you. I move to grant standing to the Villages at Mauna Lani – it's Association, right?

KLEKNER: AOA the Villages at Mauna Lani. Yes, sir.

WATANABE: Association in the SMA application 07-000019.

IWASHITA: Second.

GRAHAM: Okay. Moved by Commissioner Watanabe, seconded by Commissioner Iwashita, that we grant standing to this intervenor.

WATANABE: May I add to that?

GRAHAM: Go ahead, Commissioner Watanabe.

WATANABE: Since Michael has indicated or validated that the first gentleman, he is a member of your Association, could we add that individual to this also as an intervenor?

GRAHAM: Well, we -.

WATANABE: We want to take that separately?

GRAHAM: I'd like to take it separately, but I might question Mr. Klekner about it before he leaves. Okay?

WATANABE: Okay.

GRAHAM: So we have a motion that has been seconded for an inclusion as an intervenor of this party. Any further discussion before we take a vote on the motion? Jeff?

DARROW: Thank you, Mr. Chairman. The motion before us is to grant standing in a contested case to the Association of Apartment Owners, Villages at Mauna Lani. With that, I'll take the roll. Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes, six to zero.

GRAHAM: Thank you. Mr. Klekner?

KLEKNER: Yes, sir.

GRAHAM: I need to probably clear with Mr. Torigoe, but I'm thinking if we do deal with Mr. Gilroy as a separate intervenor, it's, certainly the question might arise as to whether you folks would perhaps consolidate your intervention or anything like that. Do you have any words to say on that at this point?

KLEKNER: I've not had any communications with Mr. Gilroy. I cannot represent to this Commission that I can negotiate anything, if you will.

GRAHAM: Okay.

KLEKNER: I will say that he is a member of our Association; and that is the only representation that I can make.

GRAHAM: So you are not aware whether he knows that you are intervening or not. You don't even know that?

KLEKNER: I do believe he knows because it is general knowledge within the Association that – you know, the membership – that the Association was going to take the action it has done.

GRAHAM: Okay, thank you. Mr. Lim, do you have anything?

LIM: Yes. We had, through this, the Stanford Carr Development representatives spoken with Mr. Gilroy just one time, I think; he indicated to them that he was probably going to be relying on the Villages Association of Owners to carry the ball. But I think for purposes of procedural reasons, we would suggest that the Planning Commission approve standing for Mr. Gilroy as he, you know, we understand he does live in the Villages, he's paid his fee, he made his filing on time, so I think we would suggest that the Commission approve standing for him. And we can work it out with him during the hearing process as to whether he wants to take an active part or not.

GRAHAM: All right. Thank you very much. Thank you, Mr. Klekner. So we have approved standing for the Mauna Lani Resort Association and the Villages at Mauna Lani, and we now have two more remaining. First one would be Mr. Richard Gilroy who we understand is a member of the Villages at Mauna Lani; he has paid his fee and filed a timely application, but he's not here before us today. Do I have any motion on behalf of the Commissioners? Yes, Commissioner Watanabe?

WATANABE: I move to grant standing to Mr. Gilroy in the SMA Use Permit 07-000019.

IWASHITA: Second.

GRAHAM: Thank you. Seconded by Commissioner Iwashita. Any discussion amongst the Commissioners? Jeff, could you take the roll call?

DARROW: Thank you, Mr. Chairman. The motion before us is to grant standing in a contested case to Mr. Gilroy. With that, I'll take the roll. Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes, six to zero.

GRAHAM: Thank you, Jeff. And our fourth application for intervenor status in this matter is by Robert Batinovich. His address is on North Kaniku Drive, Kamuela; so North Kaniku Drive would be the road in front of the parcel, I believe. And the letter we have from the Planning Department, we know that the \$100 filing fee and notary were not included in the petition. And we have Mr. Batinovich's letter to the Planning Commission. Do I have any of the Commissioners who would care to make a motion on whether we grant standing?

WATANABE: Is he present, or -?

GRAHAM: No, he is not present. We've called for him before.

WATANABE: Oh, okay.

GRAHAM: Commissioner Watanabe?

WATANABE: I move that we deny standing for Robert Batinovich due to improper filing.

ALAMEDA: Second.

GRAHAM: And seconded by Commissioner Alameda, that we deny standing. Do any of the folks who are currently granted standing as intervenors have anything further to say on this matter? I think Mr. Lim addressed before. No. Okay. Commissioners, anything further? Okay. Jeff, would you take the roll call on a vote to deny standing?

DARROW: Thank you, Mr. Chairman. The motion before us is to deny standing in a contested case hearing to Robert Batinovich. With that, I'll take the roll. Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes, six to zero.

GRAHAM: All right. So we do have three intervenors. In a minute we're going to take up the issue of whether we're going to get a presentation here today or not. We also will take public testimony today. But I think first we need to decide what we're going to do about the contested case hearing that will be held. Commissioner Iwashita?

IWASHITA: I would suggest, or be willing to present a motion pursuant to Rule 4-7 (f) that this matter be referred to a hearings officer.

WATANABE: I second.

GRAHAM: All right. So moved by Commissioner Iwashita, seconded by Commissioner Watanabe, that the contested case hearing be conducted by a hearings officer contracted by the Planning Department.

IWASHITA: Yes. I'm assuming that we have funds to take care of that.

GRAHAM: Mr. Yuen, is that all right?

YUEN: Yes. We are still early in the fiscal year, so we still have some money.

IWASHITA: I hope then this one doesn't use up all of those funds.

GRAHAM: Mr. Torigoe?

TORIGOE: Thank you, Mr. Chairman. One thing about farming it out at this point, as we know the applicant has asked to make a presentation today, and there is an objection to that. At this point, as Mr. Vitousek noted, anything that is presented on this thing ought to be considered in context of it being a contested case hearing. So if you were to vote right now to just to farm it out, then you've got the issue about whether you are going to hear – that's a further issue, I guess, to add – whether you're going to hear the presentation today. So maybe we've got to talk about whether you're going to allow for a presentation today, before you take the action to farm it out.

GRAHAM: And am I understanding correctly that the nexus between the farming it out and the presentation is that maybe it would be less acceptable to have the presentation, if we're going to farm out the contested case hearing?

TORIGOE: Right. Basically, if the motion passes right now to say that you're going to send this matter to a hearings officer to have the contested case hearing, then that would pretty much terminate your further activity on the matter today.

ALAMEDA: Mr. Chair?

WATANABE: With that in mind I'll withdraw my second.

GRAHAM: Commissioner Alameda? Hold on a second.

ALAMEDA: Just in my mind, to me the complexity and the content of this application, it is without question that I would prefer to farm this out.

IWASHITA: Can I? Can I suggest -?

GRAHAM: Commissioner Iwashita?

IWASHITA: Given Mr. Vitousek's written request to continue this matter in compliance with the Rule, I guess, I'd like to get the applicant's response to that, whether they would agree or still want to pursue making a presentation today.

GRAHAM: Thank you. Mr. Lim, would you care to comment on what we are discussing right now?

LIM: Thank you. We had wanted to make the presentation because we felt that would be a good way to introduce the project to the Commission. I think sometimes when you come in on a contested case hearing basis and give the presentation, it gets all chomped up. But I think what we are faced with now is an objection by at least one of the intervenors, and for safety purposes we would waive our presentation. And our position on continuance is that we don't have any objection to the continuance.

GRAHAM: Thank you, Mr. Lim. Commissioner Alameda?

ALAMEDA: That sounds good to me.

IWASHITA: To go back to my motion, I'd like to refer to hearings officer.

GRAHAM: Okay. So we do have a motion on the floor by Commissioner Iwashita, seconded by Commissioner Alameda (sic), that we use a hearings officer to hear this contested case hearing. And obviously this would take place at a future date, and not today. Any comment on that? All right. Jeff, could you take a vote on that motion?

DARROW: Thank you, Mr. Chairman. The motion before us is to hire a hearings officer to conduct the contested case hearing. With that, I'll take the roll. Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Watanabe?

WATANABE: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

GRAHAM: Aye.

DARROW: The motion passes, six to zero.

GRAHAM: Okay, thank you. We're going to get the public testimony still today because we always take public testimony on any of the items on the agenda. I know in the past we've had contested case hearings where it sometimes feels like the intervenors are dealing with more narrow issues or not dealing with all the issues that the Commission might want to deal with. So I personally had a couple of requests that I would like to make as far as what I would like to see added as the evidence for the contested case hearing. If it's all right with the Commissioners, I'll just say that at this time.

Two things: One for the applicant and one for the Planning Director. Given that we are talking about an SMA Use Permit, and that impacts on the near-shore ocean is obviously a prime concern in something like that; on your application to the Planning Department, as I looked through the various appendices, you had one regarding the ocean water quality by Marine Research Consultants which had a lot of data on the condition of the water quality. And when it came time to make the conclusion as to what the impact might be, he referenced impacts to the groundwater as shown in a further study for this project done by Tom Nance on the groundwater quality, but amongst all the appendices, I didn't see you listed the particular appendix which included Tom Nance's study. So I presume the Planning Department never got that study, even though it was referenced as the conclusions given by this Marine Research Consultants. So I would ask that you please include that study in your material for the contested case hearing.

And one other for the Planning Director, again with regard to the coastal water quality and all, on all of these applications we have lots of sort of supporting agencies that the application get sent out to for comments – Public Works and all that – about different aspects, but there is no agency or disinterested party that really comments to us on coastal ecosystems, coastal water quality. And so since we don't have that of any disinterested party, the only particular documentation I

know that addresses that specifically in this area is this 2006 document prepared by the Marine Science Department of UH Hilo, called the Review of Coastal Monitoring Data for Developments in West Hawaii. And it in fact specifically addresses monitoring data at Mauna Lani amongst others. So I would ask for the Planning Department to include this in their material for the Planning Commission, as we consider this application, and include any particular analysis they chose to make of what's included here. Is that all right, Mr. Yuen?

YUEN: That's fine.

GRAHAM: Thank you. That's all I have for further request. Mr. Torigoe, are we okay to go forward with public testimony now? Is there anything else we should clear up?

TORIGOE: No. I think that's it, unless the parties have something else that they feel should be addressed.

GRAHAM: All right, thank you. So I have four testifiers: Michael Klekner – I think you already spoke on behalf of the, your question for intervention, so I don't think you need to speak any further at this point because you'll have a plenty of opportunity in the contested case hearing. Is that all right?

KLEKNER: Yes.

GRAHAM: All right. So I have three others, and maybe all three of you could come forth: Mel Malinowski, George Robertson and Earl Fujikawa. Thank you all. Could I swear you in at this point? Do you swear or affirm to tell the truth on this matter today before the Hawaii County Planning Commission?

TESTIFIERS: I do.

GRAHAM: Thank you. I'll start with Mr. Malinowski. If you would start with your name and address, and then go ahead and address the Commission with your testimony. But you do realize that we are not going to be carrying forward, making any decision today, but we would like to hear your testimony.

MALINOWSKI: My name is Mel Malinowski. I live at 708 Kahili Place at the Villages at Mauna Lani at the Mauna Lani Resort. My concern about this project is that it is an urban density project that is trying to be injected into the Mauna Lani Resort on the last remaining parcel. It's just not appropriate to the way the Mauna Lani Resort has been developed, and it's quite a shock. I think the reason that you are seeing universal rejection of this and lack of support of this among the Mauna Lani community is because it is totally out of character for the Mauna -, the whole way that the Mauna Lani Resort was developed. From the start the Mauna Lani Resort was begun with the mission statement from the Brown family, who owned the property, and Tokyu Corporation; and in that mission statement they said that they were going to take care of this place and develop it in a low-impact appropriate manner. And that has been done so far for the past 20 years. They've done a really quite good job of taking a piece of important real estate in South Kohala and doing a good job developing it. Now Stanford Carr is proposing that you allow them to essentially double the density of the resort on a small chunk of land, only 150 acres, which is a small chunk of the whole resort. And this will have a

huge impact on it. The Mauna Lani Resort was not developed to have a high density of use. If you look at the roadways, the way they were designed, they are not like the Waikoloa Resort; for the Waikoloa Resort has wide parkways with separated walkways for pedestrians. The Mauna Lani Resort has none of that; it wasn't intended to be developed in that way. So it's really inappropriate. This project would perhaps be appropriate in Honolulu or in Kihei on Maui or perhaps in Kailua-Kona, but to put it at the corner of the Mauna Lani Resort is going to ruin 20 years of careful development in South Kohala. And frankly, this developer appears to be taking this parcel and simply subdividing it and flipping it. And if you give him the right to do this, it's like you are giving him a gift of millions of dollars. And then they will walk away, and the Mauna Lani Resort, the people of those of us who live there will have to live with this for the next 50 years, next 100 years. It will change the character of the Mauna Lani Resort. So I urge you to really take a hard look at this. The densities that are being proposed, the heights for the residential units, are above those that are in use in that area at the resort. They're proposing three-story tall condominiums and there are no three-story tall condominiums on that whole side of the resort, nothing like that there. The densities of actual use that they will have, because of this being a timeshare type of use, are actually going to be higher than the unit numbers that you are being presented with. So the impacts on the local beaches are going to be substantial. Right now, for example, virtually the only beach area that the owners at the Mauna Lani Resort get to use is a little beach called Beach Club. It has limited parking; there are I believe about 50 parking spaces; there is no room for expansion. It's a little tiny enclave beach with only 75 yards of beach front; there are 100 beach chairs out there. And right now at peak usage times with just the people are using it now, it's crowded. And if we put this sort of a development there, with timeshare people coming to use it, which is going to be a higher density of use even in a normal use that's being used right now around the resort, it's going to be like Coney Island. There will be two to three times as many people going into the water, two to three times as much suntan lotion. The reef at the Mauna Lani Resort at Makaiwa Bay is one of the finest reefs in Hawaii. My wife and I have spent thousands of hours in our work in the reefs around Hawaii, and it is one of the finest reefs that we have. And it's important that we not grant someone the right to do something that will permanently affect that kind of resource. This is the way you get to the things that have happened badly on Oahu or in portions of Maui where the conditions have been degraded. So I urge you to think very, very carefully before you give Stanford Carr Associates (sic) the entitlement to do this. At the very least they should -. This parcel will get developed; I think no one feels that it won't be. But it should be developed at an appropriate density and in a way consistent with the whole design of the Mauna Lani Resort, which actually would be at about a third to half this density.

GRAHAM: All right. Thank you, Mr. Malinowski. Hold on a second. Do we have any questions from the Commissioners? I might just point out to you that before this Commission what's the issue is a Special Management Area Permit, which falls within the Hawaii Coastal Zone Management laws. So a lot of things like density are generally controlled by the Zoning Code, and they are not here for a zoning change. So there are certain issues which are in our purview to decide and other issues which may concern you and some others, which are really not on the table for us to decide. So just be aware of that. Thank you. Mr. Robertson, would you give your name and address first, please?

ROBERTSON: My name is George Robertson. The address is P. O. Box 44490, Kawaihae 96743. And I'm here today to speak on behalf of the Puako Community Association, and also personally I'm a 30-year-plus resident of Waialea Bay which is, my home overlooks the

Mauna Lani Resort; I can see it in a distance. And I've been on the Puako Community Association Board for probably 20 years or more. And I'd like to read the testimony that Rob Shallenberger dropped off this morning from the Association. Another thing, just on a personal basis, I'm a native Hawaiian; my ancestor, I descend from the Davis family that owned Waikoloa, George Hueu Davis being the grantee I believe of Waikoloa. So I have a personal family connection to the land where this project is being developed.

Let me review the testimony of the Puako Association, and I won't read it all. We see possible negative impacts upon our communities and shoreline. First, the proposed development is huge for this small area. It's five times the size of Puako in terms of units. The density is out of line with the existing resort, not to mention our quiet seaside communities at Puako and Waialea Bay. Right now our limited beach space is overcrowded at Hapuna, Puako, and Waialea Bay. The parking lots are full and our beach accesses can't support present use. The developer should be required to improve beach facilities and access south of Paniau and Holoholokai Beach Park – that's property on the resort, that's south of Puako. We fear overuse of the Ala Kahakai trail and damage to our petroglyph field. Second, the infrastructure can't support this development. We'd like to know what happened to concurrency that's been talked about. Where is the infrastructure that's going to support this in terms of roads and accesses? We feel that an additional road must be constructed to allow exiting this site, and we'd like to be able to connect to that exit as another escape route for Puako. Right now we are stuck with one way out. Essentially we do have an escape route that goes behind the Catholic Church, but it's not really adequate; people to the south of the Catholic Church, if they are cut off, they can't get out of the community. So we need help in that area, and possibly with the additional access road to Queen K., that would help us. Our big concern is what the effect of this development might have on the reef and near-shore waters. We are worried about wastewater getting into the groundwater. My understanding is that the Mauna Lani Services Company is going to start injecting wastewater into an injection well, rather than, what they've been doing in the past is spreading the effluent out on the flats behind Puako, watering a plantation back there. And with the injection well we're very concerned that the water is going to get to the shoreline. And I was recently given an article that was in the Maui Times, I think, about algae blooms being associated with injection wells. So apparently there're studies being done, this is occurring on Maui; so there is a connection between injection wells and algae blooms in off-shore waters adjacent to these wells. That's a big concern for us, and should be a big concern for the Mauna Lani as well. Our last concern is housing. Where is the affordable housing going to be for workers, if any? Will it be built in a reasonable driving distance from the resort for the people that are going to work here? So those are questions we'd like some answers for. Thank you very much.

GRAHAM: Thank you, Mr. Robertson. Any questions from the Commissioners? All right. Mr. Fujikawa, would you start with your name and address, please?

FUJIKAWA: My name is Earl Fujikawa. I live at 75-422 Hoene Street in Kailua-Kona. The reason why I'm here for, I'm not geared up for any long talk. I do represent Stanford Carr Development. I am his employee. My position there with the company is Senior Construction Manager. For the past three years I've been assigned to the Mauna Lani projects that include the Fairways, the Kulalani, Nohona Kai and the M Site. I am there acting as almost like a resident; I know the general condition of the living standards there. I do work six days a week, 11 to 12 hours a day. So I do know the every condition you can think of. So I'm here on hand as a witness to any of your question. Thank you.

GRAHAM: Thank you, Mr. Fujikawa. Do we have any questions from Commissioners? All right. Thank you all for your testimony today. Before we leave and before we conclude the matter, I also -, it occurred to me as we were going through this. For Mr. Vitousek, Mr. Klekner and Mr. Lim's benefit, I myself worked at the Mauna Lani Resort from 1988 to 1992, but not as an employee; I was like a contract worker working on their computer systems at the resort. And it was like not quite half-time work, but it was substantial work. So I just want to let you be aware of that. Okay. Is there any other matter, Mr. Torigoe, we should take up today?

TORIGOE: No.

GRAHAM: All right. Thank you all for participating.

The discussion ended at 4:15 p.m.

Respectfully submitted,

Noriko Sauer  
West Hawaii Secretary