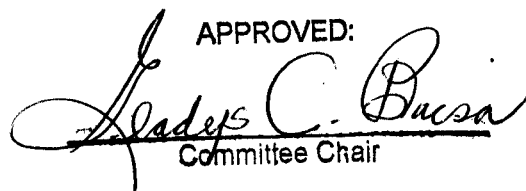


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LAND USE COMMITTEE
Council of the County of Maui
M I N U T E S
Council Chamber
September 2, 2009

APPROVED:

Committee Chair

1 CONVENE: 1:30 p.m.

2 PRESENT: Councilmember Gladys C. Baisa, Chair
3 Councilmember Michael J. Molina, Vice-Chair
4 Councilmember Jo Anne Johnson, Member (arr. at
5 1:38 p.m./left at 4:07 p.m.)
6 Councilmember Sol P. Kaho'ohalahala, Member
7 (arr. at 1:44 p.m.)
8 Councilmember Danny A. Mateo, Member
9 Councilmember Bill Kauakea Medeiros, Member
10 Councilmember Wayne K. Nishiki, Member
11 Councilmember Joseph Pontanilla, Member
12 Councilmember Michael P. Victorino, Member (left
13 at 3:32 p.m.)

14 STAFF: Carla Nakata, Legislative Attorney
15 Scott Kaneshina, Legislative Analyst
16 Pauline Martins, Committee Secretary

17 Lei Kihm, Executive Assistant to Councilmember
18 Medeiros

19 ADMIN.: Michael Hopper, Deputy Corporation Counsel,
20 Department of the Corporation Counsel
21 Clayton Yoshida, Planning Program Administrator,
22 Current Planning Division, Department of
23 Planning
24 Danny Dias, Planner, Department of Planning
25 (Item No. 33)
26 Patrick Matsui, Planning and Development Chief,
27 Department of Parks and Recreation (Item
28 No. 33)
29 Kurt Wollenhaupt, Planner, Department of Planning
30 (Item No. 13)

31 OTHERS: Dennis Nunez
32 Mark Anderson
33 Cade Clark
34 Mel Ugale
35 David Ichimura
36 Walter Naki
37 Bill Castor
38 Jill Laffin
39 Gary Chow
40 Leimann Naki
41 Van Fischer
42 Iris Peelua
43 Theodore Davis
44 Mich Hirano, Munekiyo & Hiraga, Inc.
45 Erin Mukai, Munekiyo & Hiraga, Inc.
46 William B. Moffett, Managing Member, Kahana

1 Nui LLC
2 Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc.
3 B. Martin Luna, Carlsmith & Ball, LLP
4 Plus (21) other people

5 PRESS: Akaku: Maui Community Television, Inc.
6 -----

7 CHAIR BAISA: (Gavel.) Good afternoon, everyone,
8 and welcome to the Land Use Committee meeting of September
9 2nd. It is 1:30 p.m. And we have a quorum present, so we're
10 ready to go. I am your Land Use -- Land Use Committee Chair,
11 Councilmember Gladys Baisa. And here today with us we have
12 Members of the Committee: Member Bill Medeiros.

13 COUNCILMEMBER MEDEIROS: Aloha, Madam
14 Chair.

15 CHAIR BAISA: Good afternoon, Bill.
16 Member Wayne Nishiki.

17 COUNCILMEMBER NISHIKI: Good afternoon.

18 CHAIR BAISA: Afternoon.
19 Member Joe Pontanilla.

20 COUNCILMEMBER PONTANILLA: Good afternoon.

21 CHAIR BAISA: Thank you.
22 And Member Michael Victorino.

23 COUNCILMEMBER VICTORINO: Aloha and good afternoon,
24 Chair.

25 CHAIR BAISA: Thank you very much.

 And also with us we have Vice Chair of the Committee
Mike Molina.

1 VICE-CHAIR MOLINA: Good morning, Madam Chair.

2 CHAIR BAISA: And also our Council Chair and Member
3 of this Committee Danny Mateo.

4 COUNCILMEMBER MATEO: Good afternoon, Chair.

5 CHAIR BAISA: Welcome home, Mr. Mateo.

6 COUNCILMEMBER MATEO: Thank you.

7 CHAIR BAISA: And, once again, congratulations on
8 your honor.

9 COUNCILMEMBER MATEO: Thank you. Thank you very
10 much.

11 CHAIR BAISA: We also have with us today and excused
12 for the moment: Member Jo Anne Johnson is excused, Member Sol
13 Kaho'ohalahala is also excused.

14 Also with us today from the Department of the
15 Corporation Counsel we have Michael Hopper.

16 MR. HOPPER: Good afternoon.

17 CHAIR BAISA: Good afternoon.

18 And from the Executive Branch we have Clayton
19 Yoshida, the Planning Program Administrator, Department of
20 Planning.

21 MR. YOSHIDA: Good afternoon.

22 CHAIR BAISA: And also with him is Danny Dias,
23 Planner from the Department of Planning.

24 MR. DIAS: Good afternoon, Madam Chair.

25 CHAIR BAISA: Good afternoon, Mr. Dias, and welcome

1 to the Land Use Committee.

2 We also have with us my regular Committee Staff and
3 the folks that get everything done around here: Pauline
4 Martins, the Committee Secretary; and Carla Nakata, our
5 Legislative Attorney.

6 We also have a bunch of folks that will be helping
7 us with this. We have Francis Cerizo, who will be joining us
8 from the Department of Planning. He's a Planner. Pat Matsui,
9 Planning and Development Division Chief, Parks and Recreation.
10 Mike Miyamoto, Deputy Director of Public Works, who will be on
11 call. Kurt Wollenhaupt, Planner from the Department of
12 Planning. And Ellen Kraftsow, Planning Program Manager of the
13 Department of Water Supply will be on call.

14 I also have with us applicant representatives. On
15 Land Use 33 on behalf of the Parks Department we have Mich
16 Hirano, the project manager from Munekiyo & Hiraga; Erin
17 Mukai, project manager from Munekiyo & Hiraga. And on Land
18 Use 13 we have William "Buzz" Moffett, the applicant
19 representative, the proposed permittee; Gwen Hiraga of
20 Munekiyo & Hiraga; and B. Martin Luna of Carlsmith & Ball,
21 LLP.

22 Public testimony will be accepted starting in a few
23 moments. Those wishing to testify should sign up at the
24 secretary's desk here if you haven't already done it.
25 Testimony will be limited to three minutes. I ask you to

1 please observe that time. We have a lot of testifiers and a
2 lot of work to get done if we're going to try to get out of
3 here like we try for 4:30 this afternoon having completed our
4 work. Also, testifiers, when you come up, if you would please
5 state your name for the record and indicate who you are
6 representing if you're representing someone besides yourself.

7 Also, Chair would like to ask everyone in the room
8 if you would please, if you have something that makes noise,
9 whether it's a Blackberry or a pager or whatever it is, a cell
10 phone, could you please put it on the silent mode so that we
11 will not to have music competing with whatever is going on.
12 We thank you very much for taking care of that.

13 Members, today we have two items on our agenda:
14 Land Use 33, which is Pa'ani Mai Park in Hana, and Land Use
15 13, a Conditional Permit For a Transient Vacation Rental Known
16 As Kahana Nui Villas in Kahana.

17 The Committee will now accept public testimony, so
18 we are ready to do that. And we'd like to start with our
19 first testifier who has signed up, and I believe it's
20 Dennis -- I can't really read the name. Is it Munez?

21 MR. NUNEZ: Nunez with an "n".

22 CHAIR BAISA: We'll hear him when he comes up and
23 he'll tell us exactly how to say that correctly. And the next
24 testifier will be Mark Anderson.

25 ...BEGIN PUBLIC TESTIMONY...

1 MR. NUNEZ: Good afternoon. My name is Dennis
2 Nunez. I represent myself.

3 CHAIR BAISA: Thank you.

4 MR. NUNEZ: I'm a neighbor of Buzz. I live right
5 across the street from Kahana Nui. I've known Buzz for a long
6 time. We've never had any problems with the house. Buzz
7 actually let's us use it.

8 CHAIR BAISA: Mr. Nunez, would you please get close
9 to your mike. You know, this needs to be recorded. It's
10 really important.

11 MR. NUNEZ: Okay. Sorry about that.

12 CHAIR BAISA: Thank you.

13 MR. NUNEZ: Is that better?

14 I've been a friend of Buzz for a long time and I
15 live right across the street from Kahana Nui. We've never had
16 problems. Buzz lets us actually use the house quite often for
17 barbecues. Lets our kids swim there and the beach is open any
18 day of the week for us to go fishing, you know, basically
19 whatever we want to do. So it's -- it's a good thing that --
20 that we're having this meeting.

21 CHAIR BAISA: Thank you very much.

22 MR. NUNEZ: Thank you.

23 CHAIR BAISA: Members, questions for our testifier?

24 If not, thank you very much.

25 MR. NUNEZ: Thank you.

1 CHAIR BAISA: Our next testifier is Mark Anderson.
2 And Mark will be followed by Cade Clark.

3 MR. ANDERSON: Good afternoon, everybody. My name
4 is Mark Anderson. I grew up in Lahaina. I went to school
5 with Buzz from -- I think pretty much kindergarten, Kam
6 Third. And, you know, we've known each other since we were
7 kids like brothers. But his house has been really good. I
8 mean, we've got a chance to meet all the Molokai people,
9 various other people. We go fishing there. We go diving.
10 And I have two children that also have swam there for years in
11 the pools and just around there. And, you know, we've
12 actually camped over and ulua fished there. It's been really
13 nice. And it's been a blessing, all in all, 100 percent. And
14 thank you. If that's all right.

15 CHAIR BAISA: Thank you very much.

16 Any questions for our testifier?

17 If not, our next testifier will be Cade Clark and he
18 will be followed by Mel Ugale.

19 MR. CLARK: Hello and good afternoon. My name is
20 Cade Clark. I'm representing myself. I actually take care of
21 the property here for Buzz. I've been doing it for a couple
22 of years, three years or so. Ever since this happened, it's
23 taken away from my income. I have three kids, I'm married,
24 and I live right up in Napili. And he's the best boss I've
25 ever had and I would like to keep it that way. And it's a

1 really good thing. Everybody, these are like my family, more
2 than friends. And I guess that's all I got.

3 CHAIR BAISA: Thank you very much.

4 Members, questions for the testifier?

5 If not, Cade, I would like to ask you a quick
6 question. You mentioned in your testimony that you were
7 making a small income and ever since this happened, you lost
8 it. What happened?

9 MR. CLARK: Well when -- ever since the TVR, it
10 takes away from, you know. I'm not -- I was there more.
11 People come in, they really enjoy the house, the people when
12 they rented it out, you know. It's a big family thing. I
13 think a lot of -- certain people come to the island to stay in
14 hotels and this and that. There's a certain amount of people
15 that come here as a family that want to be together and --

16 CHAIR BAISA: So what I'm understanding is ever
17 since it was closed at the request of government --

18 MR. CLARK: I don't -- Yeah. It cut all of, like,
19 the yard, the maintenance, everything quite down a lot.

20 CHAIR BAISA: Okay. And, Members, any other
21 questions?

22 If not, thank you very much.

23 Our next testifier is Mel Ugale, and Mel will be
24 followed by David Ichimura.

25 MR. UGALE: Good afternoon. My name is Mel Ugale.

1 I'm here representing myself on behalf of Buzz Moffett and the
2 Kahana -- Kahana Nui. Excuse me. I just want to bring up
3 some points about -- with the Kahana Nui, I remember when I
4 was really young and that beach was pretty wide open for us to
5 surf and everything out in front of that place. It keeps all
6 the kids busy, off the streets, always in the water surfing,
7 fishing, whatever you want to feel like. And besides that,
8 we're always getting together on special occasions, like
9 Christmas, birthdays and everything right in that area. And
10 for how long I've known Buzzy, he has been a great person,
11 very giving to the community and being active and the
12 community always returns to him. Thank you.

13 CHAIR BAISA: Thank you.

14 Members, questions?

15 If not, thank you very much.

16 MR. UGALE: Okay.

17 CHAIR BAISA: David Ichimura. And David would be --
18 will be followed by Walter Naki.

19 MR. ICHIMURA: Hi. My name is David Ichimura. I'm
20 born and raised Lahaina, Maui. I know Buzz for a long time
21 and I hang out at the house, do a lot of fishing and diving,
22 and moored my boat in front of the house. And the house would
23 be a great loss.

24 CHAIR BAISA: Thank you very much.

25 Members, questions?

1 Seeing none, thank you very much.

2 Our next testifier will be Walter Naki. And Mr.
3 Naki will be followed by Bill, Bill Castor.

4 MR. NAKI: Yeah. My name is Walter Naki. I'm a
5 fisherman from Molokai. I've been coming to Maui to fish the
6 tournaments for 30 years. And in those 30 years I have rented
7 out hotels every year, but in the last four years we've been
8 using Buzz's house. He has opened up that house to me and my
9 fishing team. And in those last four years, our team members
10 and our families have started to come and use that house on
11 our vacations, shopping and all that stuff. So I'm a firm
12 supporter of Buzz's home.

13 CHAIR BAISA: Members, questions for Mr. Naki?

14 Seeing none, our next testifier is Bill Castor. And
15 Bill will be followed by Jill Laffin.

16 MR. CASTOR: Good afternoon, Councilmen. My name is
17 Bill Castor. I live on Molokai. I'm a firefighter. I'm here
18 to -- with Buzz Moffett. And for these past years he's been
19 letting us come to his house for canoe clubs, for paddling
20 this island and staying and all my team members up there. And
21 just want to support him. Thank you.

22 CHAIR BAISA: Thank you very much, Mr. Castor. And
23 thank you for all the work that's going on on Molokai and we
24 wish you all well.

25 MR. CASTOR: Thank you.

1 CHAIR BAISA: Members, questions for Mr. Castor?

2 Thank you.

3 Our next testifier is Jill Laffin. And she'll be
4 followed by Gary Chow.

5 MS. LAFFIN: Hello.

6 CHAIR BAISA: Good afternoon.

7 MS. LAFFIN: My name is Jill Laffin. Thank you,
8 Council Members, for hearing us today. I'm a personal friend
9 of the Moffett family for 18 years now, but for the past five
10 years I am the on-site overseer if they have -- are on
11 vacation or off island on business. I am there to -- for any
12 problems that the guests may have. There is somebody on site.
13 Thank you.

14 CHAIR BAISA: Thank you very much. Just a moment.

15 Any questions for our testifier?

16 Seeing none, thank you.

17 Next testifier will be Gary Chow, followed by
18 Leimann Naki.

19 MR. CHOW: Aloha, Council Members. My name is Gary
20 Chow and I presently reside in Hana. And I've known Buzz for
21 several years now and I'm here also in support of Buzz and his
22 venture. I guess I just want to say that he's been very
23 generous, obviously, to a lot of people off island, but even
24 to the people of Hana. See, everybody goes to Hana to relax,
25 but we come out here to relax.

1 (Laughter.)

2 MR. CHOW: So sometimes hotel rooms and places like
3 that are not available to us, but Buzz has been gracious
4 enough to allow myself and my family to use his home and stay
5 there. And as far as I know, anybody that needs access to the
6 ocean, he also allows that, which is, I think, real important.
7 Thank you.

8 CHAIR BAISA: Thank you very much.

9 Members, questions for Mr. Chow?

10 Seeing none, thank you very much.

11 Our next testifier is Leimann Naki, and he'll be
12 followed by Van Fischer.

13 MR. NAKI: Aloha.

14 CHAIR BAISA: Aloha.

15 MR. NAKI: Aloha _____. Good afternoon,
16 Councilmen. And I met Buzz last year and -- well, twice, earlier
17 with my brother. He introduced me to -- well, they call
18 him Buzz, anyway. And we stayed there, visit him. It's a
19 nice place, first of all. Secondly was in the month of --
20 last year in May they had the canoe carving held at Lahaina
21 and we had a carver, Hanapii, I stayed with him at Kapalua.
22 But then there was another carver, his name is Chief Miko,
23 and he was staying at Buzz area, so I went and stayed there
24 for a night. And I enjoyed myself, had a barbecue there. And
25 as my brother said earlier, that we come and we stay at other

1 hotels, this and that, you know. We paddle many races here on
2 Maui. We competed here in the '70s and '80s, yeah, and so --
3 Anyway, Buzz, he has a nice place and we enjoy it there. Cook
4 out, barbecue and so forth. Mahalo.

5 CHAIR BAISA: Thank you very much.

6 Members, questions?

7 Seeing none, thank you very much.

8 Chair would like to note the attendance of
9 Councilmember Sol Kaho'ohalahala. Thank you.

10 COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair.

11 CHAIR BAISA: Our next testifier is Van Fischer.
12 And Mr. Fischer is the last person who signed up to testify
13 before the meeting today. If there's anyone in the audience
14 who is so moved and would like to testify and hasn't signed
15 up, it's okay, you can come up and we will do the paperwork
16 later.

17 So, Mr. Fischer, if you would go ahead.

18 MR. FISCHER: My name is Van Fischer. I'm here
19 representing myself. I live in the Kahana neighborhood and
20 I've known Buzz for about ten years. I think, as you can tell
21 by the testimony here, there's no doubt that there is, you
22 know, wholehearted community support for this application.
23 This property being a vacation rental is of benefit to those
24 of us who live in the Kahana area as well as people, you know,
25 all over Maui and from Molokai.

1 I can tell you as somebody who spends a lot of time
2 down at this house that I see way more people from the islands
3 here than I do, you know, tourist family from the mainland
4 that come and use the property. But when we have the tourist
5 family from the mainland that come, they seem to integrate
6 right in with all of the island people that are here. When
7 they're there, it's not like all of a sudden the gates close
8 and it's like a private compound. Buzz is still down there
9 fishing. The Molokai guys are still coming in their boats and
10 still coming in. It's not unusual, I'm sure, for them to come
11 in and find some guys from Molokai in the pool. It's just the
12 way that it is.

13 Buzz really operates this as an extension of his own
14 home. As I'm sure you know, Buzz's sleeping quarters are
15 across the street, his house. But if you've seen Buzz's
16 house, it's really a small compound of bedrooms and such that
17 this is really -- essentially is his living room. When he
18 entertains, when we have friends and stuff over, he's always
19 calling me up saying, you know, come over to the house. Well,
20 I immediately know that I'm going to that house, not his house
21 on the other side of the street. So I think that even though
22 they're separated by a road, I mean, they're really one
23 compound, the way that Buzz has it.

24 Over the years there have been so many groups that
25 have benefited from Buzz and his hospitality and generous

1 nature in operating this. I know that -- that myself, as a
2 member of Kahana Canoe Club, am only one of many who put the
3 tap on Buzz for money for donations. I know Maui Prep, the
4 Carden Academy, Pop Warner Football, Public Radio have all
5 been knocking on Buzz's doors for years and Buzz has
6 graciously helped them all out.

7 I know that many people have come and stood up here
8 and testified, but I think there are more people that came by
9 boat today from Molokai. I would like to ask them all to
10 stand up, if they would, to show their support. These people
11 all -- these all people all crammed on to a small boat and
12 came over here today. They left an equal number standing on
13 the beach because Buzz didn't have time to take his boat to go
14 get 'em. So right now plenty more people on Molokai are
15 wishing they could be here to show their support.

16 I know these are hard decisions to make and I know
17 that you all have the codes and the rules to go by, but I hope
18 that you can find a way to -- to allow this to continue. It's
19 been a long-time benefit to the community. And I think to
20 lose this home, you know, and have it, you know, be turned
21 into a single-family residence where it would be just one
22 single person living there, I think would be a -- a huge loss
23 to not only our Kahana neighborhood, but to Molokai as well.
24 Thank you.

25 CHAIR BAISA: Thank you very much, Mr. Fischer.

1 Any questions for the testifier?

2 MR. FISCHER: Thank you.

3 CHAIR BAISA: If not, thank you very much.

4 I see another person approaching. Again, the Chair
5 will invite you, if you haven't signed up and you would like
6 to sign up or just make -- just come forward, go to the podium
7 and we'll get the paperwork after.

8 If you'll tell us your name, please, and go ahead.

9 MS. PEELUA: Aloha. My name is Iris Peelua. My
10 husband and I own a home in Kahana and we are neighbors to
11 Buzz Moffett. We have family from Molokai that constantly are
12 here on Maui and Buzz is a gracious family member of ours. He
13 opens the door for all of us from -- from our babies to our
14 kupunas, so -- and to the cultural thing all in Kahana. So,
15 again, I'm just here in support of Buzz and mahalo.

16 CHAIR BAISA: Thank you very much.

17 Members, questions for the testifier?

18 If not, would you please do the paperwork.

19 Anybody else? Would you please come forward.

20 You know, I never --

21 MR. DAVIS: Good afternoon.

22 CHAIR BAISA: Hang on a second.

23 You know, I really don't want you folks to feel
24 intimidated. You know, I often have people tell me, I'd like
25 to testify, but I've never done this before and I'm afraid.

1 Please don't be afraid or shy or whatever. This is your
2 opportunity to express your feelings and it shouldn't be
3 intimidating. You come and you share your manao and we'll
4 listen to you. So if you want to come up, don't be afraid.

5 Go ahead, please.

6 MR. DAVIS: Okay. My name is Theodore Davis.
7 I live Molokai. And I've been coming Maui like for years and
8 years and -- And my good friend Buzz always helping out, you
9 know, us people from Molokai and -- and he always been there
10 for us, you know, every time. So I just want to say it,
11 Members, you guys do you guys' thing and hopefully Buzz can
12 get his house, you know, maintain his house again. Thank you.

13 CHAIR BAISA: Thank you, Mr. Davis.

14 Any questions for the testifier?

15 If not, please do your paper.

16 Anyone else feeling so moved?

17 Seeing no one else coming forward, Members, I
18 believe that this ends our public testimony for you for today.
19 With no objections, the Chair would like to close public
20 testimony.

21 COUNCIL MEMBERS: No objections.

22 CHAIR BAISA: Thank you very much. And I would like
23 to thank the testifiers for your succinct testimony.

24 ...END PUBLIC TESTIMONY...

25 LU-33 PA'ANI MAI PARK (HANA) (C.C. No. 08-60)

1 CHAIR BAISA: This afternoon, Members, the first
2 item on our agenda is Land Use 33. Before the Committee are
3 proposed bills to grant a District Boundary Amendment from
4 Agricultural to Urban, a Community Plan Amendment from
5 Multi-Family to Park, and a Change in Zoning to establish PK-2
6 Community Park District zoning to facilitate the proposed
7 expansion of the -- and improvements to Pa'ani Mai Park in
8 Hana.

9 The Chair has also posted a draft resolution to
10 refer to the Maui Planning Commission a draft bill to
11 establish PK-1 Neighborhood Park District zoning for the
12 subject 2.946 acres to allow the Committee options in
13 considering the zoning that may be appropriate for the
14 property. This option was posted once the Committee was made
15 aware that the proposed PK-2 Community Park District zoning
16 requires a minimum lot of 25 acres under Section
17 19.615.030(C)(1) of the Maui County Code, and ties that
18 development standard to uses and facilities located on any
19 zoning lot in the district. I expect that this requirement
20 and the Committee's alternatives will be fully explored during
21 our meeting today.

22 I have asked the applicant's consultant, Mich Hirano
23 of Munekiyo & Hiraga, to provide us with a short PowerPoint
24 presentation. The Members received a printout of the
25 presentation at the Committee's August 19th meeting. At that

1 meeting the Committee ran out of time to consider this matter
2 and deferred it. A copy of the presentation should be in your
3 binders, so if you'll please try to identify that, folks.

4 The meeting will be in recess for two minutes to
5 prepare the chamber for the PowerPoint. The meeting is now in
6 recess. (Gavel.)

7 RECESS: 1:51 p.m.

8 RECONVENE: 1:55 p.m.

9 CHAIR BAISA: (Gavel.) Will the meeting please come
10 back to order.

11 Mr. Hirano, would you proceed, please.

12 ...BEGIN PRESENTATION...

13 MR. HIRANO: Thank you, Chair Baisa. And good
14 afternoon, Council Committee Members. My name is Mich Hirano
15 with Munekiyo & Hiraga. And I would like to just present the
16 PowerPoint for the proposed 1.9-acre expansion to the Pa'ani
17 Mai Park.

18 The Pa'ani Mai Park, there's -- the existing park is
19 located to the north of Hana Highway just as you enter Hana
20 Highway -- or as you enter Hana. The existing park is
21 approximately 1 acre and the proposal is to expand the park by
22 approximately 1 point -- 1.9 acres and to do improvements to
23 the park.

24 This is existing park. It's parcel 1 of Tax Key No.
25 1-4-006, Parcel 1. And the addition to the park is an

1 L-shaped piece that is approximately 1.9 acres -- I'm sorry,
2 the existing park is Parcel 20 -- I can't read it, Parcel 25,
3 and the expansion is Parcel 1, and it's a 1.9-acre, L-shaped
4 parcel.

5 The existing park is a very small park. It's a
6 neighborhood park used by the neighbors and the adjacent Hana
7 Ranch Subdivision. As you can see, it has a comfort station
8 that was built in around 2001. It has a park bench, grass
9 area and landscaping and a small swing set.

10 The proposed expansion is to increase the park size,
11 add this piece to the existing park, build out some park
12 pathways. There's a proposed skateboard park, a play area.
13 Access to the park will be actually from Kauiki Street, which
14 is the subdivision road into Hana Ranch Subdivision, and come
15 out through Noenoe Place and access the park in the eastern
16 portion of the property. And build a parking area and a
17 pavilion, which would be an open pavilion with restroom
18 facilities. Still keeping the existing park facilities
19 current and open as well, the comfort station in this
20 location.

21 This is a section of the pavilion. So the restrooms
22 will be in this area. And then there will be an open picnic
23 shelter area for the pavilion. And then up slope towards Hana
24 Highway would be the open play area and grass fields.

25 This is an aerial view of the existing park and the

1 proposed expansion area. I'd just like to point out with this
2 photograph that the -- this is Kauiki Place. This is the
3 access into the subdivision. This is the subdivision, the
4 Hana Ranch Subdivision. This is Noenoe Place, this road. And
5 there's a right-of-way, an old government right-of-way that
6 goes right out to Uakea Street. So the idea would be to
7 access the park in this -- by improving the old government
8 road and have an access road into the park. And this road
9 will be gated so that it will be able -- closed at night and
10 opened in the mornings.

11 I'd just like to show the Committee Members some of
12 the existing photographs around the park area. This is the
13 existing comfort station. There's a gate along Hana Highway
14 and a -- I guess an ADA access path into the existing comfort
15 station. As you can see, it's well maintained, very nicely
16 grassed area.

17 This is the swing set off into the eastern portion
18 of the site.

19 This is looking from the park on to Hana Highway.
20 This is Hana Highway. It's very narrow at Hana Highway at the
21 park, as you can see. There's some parking off the highway.
22 This is a road -- the gate into the park. But because of the
23 narrowness of this area, the limited sight distance on this
24 highway, when we did the environmental assessment for the
25 project, many of the community members wanted an alternative

1 access to the park and not have their children have to go
2 along the narrow highway to access the park.

3 This is a picture of the roadway into -- the new
4 roadway into the park or the -- the proposed driveway into the
5 park. The roadway will follow the existing kind of utility
6 lines and it'll go along there. And just past this telephone
7 pole the driveway will go up into the parking lot of the new
8 park.

9 Again, this is looking at Noenoe Place. This is the
10 roadway -- the existing government access that will be
11 utilized to put the driveway along that right-of-way and
12 access the park. And as you can see, right now that area is
13 heavily kind of treed, but the park boundary is just past this
14 telephone pole.

15 The existing land use entitlements that are on the
16 properties, Parcel 25, which is the existing park, the State
17 Land Use is Agricultural, the Community Plan is Park and the
18 zoning is Interim. Parcel 1, which is the piece that will be
19 added to the park, the 1.907-acre piece, the State Land Use
20 designation is Agricultural and the Community Plan designation
21 is Multi-Family and the zoning is Park.

22 Now, recently -- I would like to just give a status
23 of the action items that have been taken on the application.
24 The final environmental assessment for the project -- Because
25 it involves County lands and County funds, it triggered an

1 environmental assessment. And that was -- the final
2 environmental assessment was published in the Environmental
3 Notice on November 23rd, 2008.

4 Council referred the -- Council initiated District
5 Boundary Amendment, Community Plan Amendment and the Change in
6 Zoning to the Maui Planning Commission on November 28th. I'm
7 sorry, in November 2008.

8 The Maui Planning Commission designated the Hana
9 Advisory Committee as the public hearing body. And the Hana
10 Advisory Committee recommended approval of the District
11 Boundary Amendment, Change in Zoning and Community Plan
12 Amendment to the Maui Planning Commission. Part of that
13 action was also to recommend approval of the Special
14 Management Area because the park does fall in the Special
15 Management Area zone.

16 The SMA approval for that would be going back to the
17 Maui Planning Commission after Council takes action on the
18 District Boundary Amendment, Change in Zoning, Community Plan
19 Amendment.

20 The final subdivision will be carried out after the
21 entitlements are approved. And then the land transfer,
22 because the additional property is owned by Hana Ranch, will
23 be transferred to the County upon completion of the final
24 subdivision approval.

25 When this matter came back to the Land Use

1 Committee, there was a clarification that was requested
2 regarding the PK-2 Park designation. And you have had that
3 correspondence from the Committee Chair in your package. It
4 was in early August. And the matter for the clarification was
5 that the Department of Planning and Department of Parks first
6 discussed the PK-1 and PK-2 Park zoning districts. The PK-1
7 Park District has a minimum lot size standard of 2 acres, but
8 it does not permit skateboard use. And the PK-2 Park standard
9 permits skateboard use, which was the primary sort of
10 improvement that the community of Hana wanted on -- for the
11 park, but the PK-2 Park is a regional -- or, sorry, a
12 community park designation and it has a minimum lot size
13 standard of 25 acres. So the actual Pa'ani Mai Park with its
14 expanded area of approximately 3 acres was falling kind of
15 between these two designations. It had the PK -- it had the
16 size for the PK-1 Park, but the use was not permitted. And it
17 also had the -- in the PK-2 Park, it had the permitted use of
18 a skateboard, but it didn't meet the minimum lot size.

19 And prior to this coming back to the -- this body
20 for deliberation, the Department of Parks and Department of
21 Planning had met to discuss these standards of zoning and I
22 think have come to the conclusion and would like the Committee
23 to consider taking action on the Land Use District Boundary
24 Amendment to change the designation from the Agricultural
25 District to the Urban District. And also take action on

1 Parcel 20 -- on Parcel 1 for the Community Plan Amendment to
2 change that designation from Multi-Family to Park. But to
3 defer action on the Change in Zoning, leave it at Interim
4 until -- and the Department of Planning will initiate an
5 ordinance change to the Park standards to relax the minimum
6 standard for a PK-2 Park.

7 The Planning Director will initiate a code amendment
8 to make modifications and revisions to the Park District
9 standards in the Maui County Code. And upon Council reviewing
10 and approving the Park District amendment -- code amendment,
11 which will then allow the PK-2 Park to go forward, then the
12 matter will come back -- at least the Change in Zoning
13 ordinance will come back to this body to take action on the
14 Change in Zoning at that time.

15 So the land use entitlements for the park today
16 would involve for Parcel 25 a State Land Use District Boundary
17 Amendment to change the State Land Use District Boundary from
18 Agricultural to Urban for both Parcels 25 and Parcel 1. For
19 the Community Plan Amendment action, Parcel 25 is currently
20 Park designated, so there's no action required there. But
21 Parcel 21 would change the Community Plan designation from
22 Multi-Family to Park. And, again, the Change in Zoning would
23 be deferred until the Parks standards can be amended through
24 the ordinance, and then come back and be changed at a later
25 date to PK-2. And this procedure would allow the project to

1 proceed through the building permit stage and as well proceed
2 through the subdivision stage. Because currently Interim will
3 allow the skateboard use at the park and does not have a
4 minimum lot size.

5 So that's the presentation. So if you have any
6 questions, I'm here to answer questions. Pat Matsui, Chief
7 Park Planner, is here, as well as representatives of the
8 Department of Planning. Thank you.

9 ...END PRESENTATION...

10 CHAIR BAISA: Thank you, Mr. Hirano. We'll take a
11 short recess while we restore the screen to where -- and we
12 can take questions then. Meeting is in recess. (Gavel.)

13 RECESS: 2:09 p.m.

14 RECONVENE: 2:10 p.m.

15 CHAIR BAISA: (Gavel.) The meeting will please come
16 back to order. Before we get into questions and answer, the
17 Chair would like to ask Mr. Matsui if he would please make
18 comments from the Parks Department. Mr. Matsui.

19 MR. MATSUI: Thank you, Chairman. We're coming to
20 you right now for your actions on the zoning, Community Plan
21 Amendment and the District Boundary Amendment to enable us to
22 move forward on planning and developing the first phase of
23 construction for the Pa'ani Mai Park, which is the skateboard
24 park.

25 Over the past years we've been having CIP

1 appropriations and we've started the planning. We did a
2 master plan. Now we want to move ahead. The community has
3 indicated their priority is a skate park, so we're here now --
4 We need these entitlements in order for us to proceed with the
5 skate park. The other issue is for us to complete the
6 subdivision so that the land can be turned over to the County
7 from Hana Ranch.

8 CHAIR BAISA: Thank you very much, Mr. Matsui.

9 And now we'll have comments from Planning and then
10 we'll get into our discussion. Mr. Yoshida? Or is it Mr.
11 Dias?

12 MR. YOSHIDA: Thank you, Mr. Chair. Madam Chair.
13 I'm subbing for the Planning Director, Jeff Hunt, who is with
14 the Planning Commission for an afternoon meeting out in
15 Upcountry as they complete or try to complete their work this
16 month on the Maui Island Plan.

17 The Department would add that we have scheduled
18 meetings with the Parks Department to start revising the Park
19 District standards. Our initial thought is to revise the
20 minimum lot sizes to make them guidelines rather than strict
21 regulations. The Staff Planner for this request is Danny
22 Dias.

23 CHAIR BAISA: Mr. Dias.

24 Thank you, Mr. Yoshida.

25 MR. DIAS: Thank you, Madam Chair and Members of the

1 Land Use Committee. I want to just briefly go over the public
2 hearing and permitting process that this project has gone
3 through from the last time this Committee heard this item,
4 which was on November 7th of last year.

5 As you may recall, the Committee referred this item
6 to the Maui Planning Commission for a public hearing, and
7 subsequently the Maui Planning Commission referred the public
8 hearing to the Hana Advisory Committee. That meeting along
9 with a site visit of Pa'ani Mai Park occurred on January 22nd
10 of this year and the meeting was held at Helene Hall in Hana
11 Bay. There was a relatively small crowd that attended the
12 meeting with two members of the public providing verbal
13 testimony. Their testimony was neither in support or in
14 opposition of the park expansion, but, rather, about traffic
15 flow in and out of the park.

16 After discussing the project, the Hana Advisory
17 Committee unanimously recommended that the Maui Planning
18 Commission recommend approval of the Community Plan Amendment,
19 State District Boundary Amendment, Change in Zoning and
20 Special Management Area use permit.

21 After the public hearing was held in Hana, the
22 project went before the Maui Planning Commission for review,
23 and that meeting was held here in Wailuku on February 24th of
24 this year. There were no members from the public that
25 provided testimony on the project and the Maui Planning

1 Commission unanimously voted to recommend that the Maui County
2 Council approve the Community Plan Amendment, State District
3 Boundary Amendment and Change in Zoning. The Planning
4 Commission also deferred the Special Management Area use
5 permit pending Council action on these land use items.

6 That, essentially, is the process in which this
7 project has gone through from the time this Committee last
8 reviewed it. And that concludes our summary. Thank you,
9 Madam Chair.

10 CHAIR BAISA: Thank you very much.

11 Before we open the discussion, the Chair would like
12 to call on the District Council Member, Bill Medeiros, for
13 comments.

14 COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. My
15 first comment is I want to thank you, Madam Chair, for
16 scheduling this very important item for the community of Hana
17 and the rest of East Maui. The community appreciates you
18 allowing this item to be on your agenda.

19 Just a little brief history about this particular
20 park. When I went around the community to ask them what were
21 their priorities they would like to see me work on, and, of
22 course, the first priority was a dialysis home, which we were
23 able to complete. The next were for affordable housing both
24 for kupuna and for the median income people of Hana that would
25 be the low to middle income. And then the next one for the

1 youth was for a skate park. And currently there's no way --
2 no area safe for the youth of Hana that are skateboarders to
3 go to practice, to improve and to enjoy their sport, so we
4 find them on the streets. And the police, of course, doing
5 their duty to enforce the law have, you know -- has told the
6 young skateboarders they cannot skate on the streets. And so
7 they have really been frustrated that they cannot enjoy their
8 sport. So in meetings in Hana that we have been able to hold,
9 many people came out and said that they've been waiting for a
10 long time for a skate park.

11 And so henceforth, Madam Chair, this is why we're
12 trying to proceed with the plans for the skate park. And we
13 have been fortunate to be given property to do this expansion
14 by the Hana Ranch Company. And the community just appreciates
15 that this project is ongoing and thanks you, Madam Chair, for
16 this opportunity to have it heard in your committee meeting.
17 Mahalo.

18 CHAIR BAISA: Thank you very much, Mr. Medeiros.
19 The Chair is most happy to help get some good, constructive
20 activity to the youth of Hana and to the entire community. I
21 think it's very important. Their choices are limited.

22 Members, any discussion on the issues before us in
23 regards to the park? Member Johnson.

24 COUNCILMEMBER JOHNSON: I just had one question
25 about the -- from Mr. Matsui about the timeline for the skate

1 park. And, hopefully, it will be sooner than Lahaina's is
2 taking.

3 CHAIR BAISA: Mr. Matsui, if you could help, please.

4 MR. MATSUI: We did have an appropriation in this
5 fiscal year beginning July 1st and part of it would be -- go
6 to construction. We're going to be meeting with the
7 community. It's going to have to be a self-help kind of
8 thing. Things are expensive in Hana. But they've expressed
9 their willingness and desire, actually, to come forward and --
10 and do a community-build kind of thing. So we've set aside
11 like \$100,000 to -- so we can buy materials to get them
12 started on it.

13 We've had some experience with other skateboard
14 projects that we can look at different designs that -- that we
15 could bounce off of them and -- and see their reaction. So
16 that's our next step, is to schedule meetings with the skate
17 park groups.

18 COUNCILMEMBER JOHNSON: And -- and will it be of
19 materials -- because I know that's a very wet area, will it be
20 similar in terms of its construction to what's going in in
21 Lahaina?

22 MR. MATSUI: We're looking at -- Over the years
23 we've found concrete is your best. It lasts the longest and
24 the least amount of maintenance on it. So we're looking at
25 concrete ramps and concrete.

1 COUNCILMEMBER JOHNSON: Okay. Thank you.

2 CHAIR BAISA: Members, additional questions? Member
3 Nishiki.

4 COUNCILMEMBER NISHIKI: Yeah. Pat, are you working
5 with someone that has built this before?

6 CHAIR BAISA: Mr. Matsui.

7 COUNCILMEMBER NISHIKI: You know, different parks
8 with concrete have different maneuvers and activities that
9 they do, and so I'm just curious whether or not you have
10 somebody professional so that we don't make mistakes.

11 MR. MATSUI: We haven't -- Okay. We haven't
12 specifically for this project, but we've -- we have a
13 consultant from the mainland who's done the Lahaina project.
14 And we've just completed plans, we're still trying to tie up
15 the Federal funds on this so we can go out to bid on it. So,
16 you know, we're looking at -- you know, looking at using that
17 type of construction. It's concrete and -- and -- for the
18 Hana one.

19 COUNCILMEMBER NISHIKI: And what was the -- I know
20 Hana is going to use a lot of community help, but what was the
21 quote that this gentleman or company gave you?

22 MR. MATSUI: The one in Lahaina, we have 500 County
23 funds and 450,000 Federal funds, so we're looking at close to
24 a million dollars. That also includes, you know, some
25 lighting, sidewalks, handicap accessibility, landscaping,

1 irrigation and grassing.

2 COUNCILMEMBER NISHIKI: Okay. Because now you're
3 modeling this for Hana and Hana has got 100,000, but they've
4 got community help. So there's nothing worse than to have
5 something that monies can't buy or monies cannot complete. So
6 what's the difference, the area that this park is going to
7 encompass so, therefore, this may be a mini model?

8 MR. MATSUI: Yeah. We would have to build it
9 incrementally. From the Lahaina one, it seems that the more
10 beginner type of skate park facilities are cheaper to build.
11 And as you get more advanced, it gets more expensive. So, you
12 know, initially we'll start for the -- for the beginner type
13 and -- and it's going to be done incrementally, you know. And
14 we're going to work together with the group on -- on how far
15 they can stretch the money and -- and I'm pretty sure we'll
16 probably be coming back subsequent years for more money.

17 COUNCILMEMBER NISHIKI: Anyway, Bill, I guess --

18 CHAIR BAISA: Mr. Nishiki.

19 COUNCILMEMBER NISHIKI: -- we've got 100,000, so,
20 you know, I don't know what --

21 CHAIR BAISA: Mr. Nishiki, would you use your mike,
22 please.

23 COUNCILMEMBER NISHIKI: Oh, I'm sorry. I'm sorry.
24 I'm sorry. No, it's just that, you know, when you talk about
25 close to a million and now Hana with 100,000, Pat, I'm just

1 really curious what that's going to really buy realistically.
2 And I -- you haven't had that meeting with Hana, but I think,
3 Bill, that would be a real important question to ask. I mean,
4 it seems like they're just getting crumbs.

5 CHAIR BAISA: Mr. Nishiki.

6 COUNCILMEMBER PONTANILLA: Wayne.

7 COUNCILMEMBER NISHIKI: Oh, I'm sorry.

8 CHAIR BAISA: Will you please use your mike?

9 COUNCILMEMBER NISHIKI: Yeah. I -- It seems like
10 Hana is getting crumbs and so I'm just kind of curious what
11 they're going to really get, Madam Chairman, you know. It
12 would be disappointing that -- for all that we've said, that
13 whatever 100,000 buys --

14 How much does planning and design cost?

15 CHAIR BAISA: Mr. Matsui.

16 MR. MATSUI: For the skate park, we're looking at a
17 kind of in-house design, taking some from what we've learned
18 from Lahaina. We've done something in -- at Kalama Park. So
19 just putting that all together. We didn't want to spend money
20 on consultants, you know, that's -- that's expensive.

21 COUNCILMEMBER NISHIKI: Well, that's really
22 refreshing to hear from government.

23 CHAIR BAISA: Maybe we're learning.

24 COUNCILMEMBER NISHIKI: You know. Man.

25 CHAIR BAISA: Thank you, Mr. Nishiki.

1 Mr. Medeiros, your turn to get a word in.

2 COUNCILMEMBER MEDEIROS: Yeah. I just wanted to add
3 some information that may be helpful. When -- one of the
4 community meetings that we had on the skate park, we had a
5 couple professional skateboarders that were associated with
6 professional skateboarding come to the meeting. They live in
7 Hana temporarily or, you know, from time to time. And they
8 said if there's a commitment to build a skate park, they would
9 go out and fund raise, also. And we're -- and because nobody
10 can commit to funding until you say, okay, we're going to go
11 ahead and do this, they said as soon as we're ready, they'll
12 be helping the community do that. And we also have some very
13 well-known residents in Hana that we would like to also see if
14 they would help.

15 So I think, as Mr. Matsui said, the plan is to build
16 it incrementally and to go get our funding as we go along.
17 Hana has made a commitment through many of the professional
18 companies in Hana, construction and so forth, that they want
19 to come forward and help build this, too. As much as the
20 Parks or County government will allow them to do, they're
21 ready, willing and capable and have the equipment to do so.
22 So we have some really good feelings about this project. We
23 know if the County had to fund it totally, it is an expensive
24 project, but we think we're going to get supplemental funding
25 from the community through fund raising and through some of

1 our more, you know, famous residents. But thank you for
2 letting me offer that, you know, added information.

3 CHAIR BAISA: Thank you very much. Those of us who
4 attended the hearing in Hana heard that -- those folks step
5 forward. And we were very impressed with their offers of
6 assistance and their credentials. I mean, it's mighty
7 impressive. I think what we need to remember here today is
8 without any of these entitlements, none of this can go
9 forward. So what we're trying to do today is very important
10 if we have the desire to move this ahead. So this is kind of
11 the first step.

12 Any additional comments?

13 VICE-CHAIR MOLINA: Chairman.

14 CHAIR BAISA: Vice-Chair Molina.

15 VICE-CHAIR MOLINA: Thank you, Madam Chair. And,
16 you know, Councilmember Medeiros did refresh our memories. I
17 recall during the budget hearing in Hana we did have a young
18 man who came out there and publicly stated that he and others,
19 I guess, would make an effort to help raise funds to establish
20 a park. And I'm hoping it'll be a very good park, you know,
21 something that the Hana communities, I'm sure, would be very
22 proud of.

23 Question for Director Matsui with regards to the
24 issue of monitoring skate activities. Has -- have you been
25 approached by any groups that would like to, I guess, assist

1 the County with helping monitor activities in the park?

2 CHAIR BAISA: Mr. Matsui.

3 Sorry. Mr. Molina, were you done?

4 VICE-CHAIR MOLINA: Yeah, I'm done. I'm ready to --

5 CHAIR BAISA: Okay. Thank you.

6 MR. MATSUI: We haven't gotten that far. Right now
7 we're focusing on building the park or the skate park.

8 VICE-CHAIR MOLINA: Okay. Well, I would hope that
9 the Department starts to at least put the word out as soon
10 as -- well, as soon as the rezoning is passed, assuming it
11 goes forward, that we can get some groups to assist the County
12 with the monitoring activities so we don't get any, you know,
13 inappropriate activities that occur in the park. Even though
14 it's in Heavenly Hana, you know, nowadays you got all kinds of
15 things that can occur no matter where on Maui. So we want to
16 make sure that we want to avoid any potential lawsuits down
17 the road and whatnot. We want to make sure it's safe, so --

18 And one more question with regards to lighting.
19 Because Hana is such a rural area, I would hope that that
20 issue is addressed. Is it the intent of the Department to
21 keep it open at night, too, and about roughly how long? Would
22 it be standard like the other parks, ours?

23 CHAIR BAISA: Mr. Matsui.

24 MR. MATSUI: We haven't gotten that far. You know,
25 lights, you know, there's two kinds of lights. Security

1 lights, which is kind of low level. The other one would be
2 sports lighting, which is a higher level, which is a lot more
3 expensive. So, you know, right now we're looking at just
4 building a skate park without the sports lighting aspect.
5 That may come in the future, you know, as it gets more
6 popular.

7 VICE-CHAIR MOLINA: Okay. Well, I hope the skate
8 park out in Hana gets the same like the other parks in Maui
9 County. And as Mr. Nishiki put it, you know, we don't want
10 some of our other communities getting only crumbs, if you know
11 what I mean. So I would hope down the road that we can
12 provide that type of lighting, sports lighting, because that
13 will address some of the outdoor lighting concerns, especially
14 out in that community. Everybody loves the dark skies and we
15 don't want something that's real obtrusive at night.

16 Anyway, thank you, Mr. Matsui. Thank you, Madam
17 Chair.

18 CHAIR BAISA: Thank you, Mr. Molina.

19 Member -- Chair Mateo.

20 COUNCILMEMBER MATEO: Thank you, Madam Chairman.
21 Both the Planning Department and Department of Recreation
22 requests deferred action in the Change in Zoning amendments
23 until amendments to Park District standards are completed.
24 And it further indicates that it is going to be through the
25 planning director, who will initiate the -- the so-called

1 amendments to make modifications and revisions to the Parks
2 standards in the County Code. Has the Department of Planning
3 already initiated this process or is this something that can
4 be expected like -- Can you give us a timetable when? Because
5 it just seemed the total request came in with a three-pronged
6 approach and we're really not engaged in the full extension of
7 our responsibilities because we are asking asked now to defer
8 a specific component. Can the Department of Planning give us
9 a timetable as to the Planning Director's intent?

10 CHAIR BAISA: Mr. Yoshida.

11 MR. YOSHIDA: Council Chair Mateo, we had scheduled
12 a meeting with the Parks Department for this week to try to go
13 over the district standards, but that had to be rescheduled to
14 next week. We do have to go to the three Planning Commissions
15 for their public hearing and input. So I would say going
16 through that process, probably within, oh, 90 to 120 days.
17 But we feel that even with the Interim zoning in terms of the
18 SMA, the project -- this project can still move forward --

19 COUNCILMEMBER MATEO: Okay.

20 MR. YOSHIDA: -- for that. So we would not want to
21 delay this project.

22 COUNCILMEMBER MATEO: Okay. Thank you, Mr. Yoshida.

23 And to the Parks Department, it was represented that
24 the next phase that you would be engaged in would be the
25 building permit process. Can you give us a timetable of -- of

1 that projection?

2 CHAIR BAISA: Mr. Matsui, please.

3 MR. MATSUI: Yeah. It's hard to give a timetable.
4 We do need an SMA permit, we need the subdivision, we need the
5 land to be turned over. But, you know, we're going to do the
6 planning simultaneously with this. So, you know, the building
7 permit will be further along the line until -- you know, we'd
8 have to do a master plan and then detailed plans on it, so,
9 you know. But that's going to be a while. But, you know,
10 it's hard for me to give you a timetable, but we're going to
11 do it concurrently with all of the other -- the SMA and all
12 those.

13 COUNCILMEMBER MATEO: So by the time Planning
14 Department provides us or provides you with the revision in
15 code, the 90 to 120 days, then that will coincide with your
16 plans to actually get the building permit in process so you
17 can actually start the project?

18 MR. MATSUI: That would be our intent, yes.

19 COUNCILMEMBER MATEO: Okay. It kind of scares me
20 when we're only talking intent because intent is difficult to
21 prove. So, you know, we need to know whether or not this
22 community is in line to actually look in the near future to
23 this park, or are we looking long term? And I think the
24 intent was, you know, an immediate turnaround with this
25 particular park. And I'm not hearing an immediate turnaround.

1 I'm hearing it's coming and it's that scenario of its coming.
2 And I don't want to put you on the spot because you've got to
3 deal with County permitting requirements and that does provide
4 a problem. So I understand, but I -- I wish the two
5 departments would be able to reach or resolve so the project
6 can -- can move on a more timely -- timely manner.

7 Thank you, Madam Chair.

8 CHAIR BAISA: Thank you, Chair Mateo. Members?
9 Member Pontanilla.

10 COUNCILMEMBER PONTANILLA: Yeah. Just a fast
11 question for Mr. Matsui. I know we've allocated some funds in
12 this year's budget to do the skate park. You mentioned about
13 Federal dollars?

14 MR. YOSHIDA: That's Lahaina.

15 COUNCILMEMBER PONTANILLA: Oh, that's Lahaina.

16 MR. MATSUI: That's Lahaina, yeah.

17 COUNCILMEMBER PONTANILLA: How about this project?
18 No requests?

19 MR. MATSUI: Yeah. We haven't applied for any
20 Federal funds.

21 COUNCILMEMBER PONTANILLA: Could be?

22 MR. MATSUI: That could be a possibility.

23 COUNCILMEMBER PONTANILLA: Yeah. If we could look
24 into that, you know, because you talk about future phases,
25 yeah, that hopefully you can achieve in getting some Federal

1 monies to expand this skate park.

2 Thank you, Chairman.

3 CHAIR BAISA: Thank you.

4 Members, any additional questions or discussion?

5 Member Medeiros.

6 COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. I
7 just wanted to add in the presentation Mr. Hirano pointed out
8 the narrowness of the road that goes by the park, which is
9 State highway. The State Highway is doing some work on that
10 road currently and we have spoken to State Highways to see
11 what they can do to incorporate in their road improvements to
12 make that area as safe as possible as far as width, guardrails
13 and so forth. So the engineer has been talking to us and it
14 seems like they're going to try and accommodate whatever they
15 can in their project to do that. So I just wanted to add that
16 information. Mahalo.

17 CHAIR BAISA: Thank you.

18 Any additional discussion? If not, the Chair would
19 like to make a recommendation.

20 COUNCIL MEMBERS: Recommendation.

21 CHAIR BAISA: Members, the Chair will first
22 entertain a motion to recommend passage on first reading of
23 the proposed bill entitled, "A Bill For an Ordinance to Amend
24 the Hana Community Plan and Land Use Map From Multi-Family to
25 Park For Property Situated At Hana, Maui, Hawaii For the

1 Proposed Expansion of and Improvements to Pa'ani Mai Park."
 2 You may notice that the listing of these bills is different,
 3 that we had the District Boundary Amendment first. But we've
 4 been advised by Planning at our first meeting this year that
 5 we should deal with the Community Plan Amendment first, so
 6 that's why we're taking them in this order. And the Chair, of
 7 course, will call on the area representative.

8 COUNCILMEMBER MEDEIROS: Yes, Madam Chair. You
 9 know, reading that, I move for that motion, Madam Chair.

10 VICE-CHAIR MOLINA: Second.

11 CHAIR BAISA: Thank you very much. We have a motion
 12 made by Member Medeiros and seconded by Member Molina to
 13 approve the bill. Any discussion?

14 Seeing none, the Chair will call for the vote. All
 15 those in favor, please say aye.

16 COUNCIL MEMBERS VOICED AYE.

17 CHAIR BAISA: Opposed, no.

18 VOTE: AYES: Councilmembers Johnson, Kaho'ohalahala,
 19 Mateo, Medeiros, Nishiki, Pontanilla, and
 Victorino, and Vice-Chair Molina, and Chair Baisa.

20 NOES: None.

21 ABSTAIN: None.

22 ABSENT: None.

23 EXC.: None.

24 MOTION CARRIED.

25 ACTION: FIRST READING OF BILL TO AMEND THE HANA COMMUNITY PLAN AND LAND USE MAP.

1 CHAIR BAISA: The motion is carried. Please mark it
2 Unanimous with nine votes in favor. Thank you very much.
3 The Chair will now entertain a motion
4 to recommend passage on first reading of the proposed bill
5 entitled, "A Bill For an Ordinance to Amend the State Land Use
6 District Classification From Agriculture to Urban For Property
7 Situated At Hana, Maui, Hawaii For the Proposed Expansion of
8 and Improvements to Pa'ani Mai Park."

9 COUNCILMEMBER MEDEIROS: Madam Chair, I so move.

10 VICE-CHAIR MOLINA: Madam Chair, I second the
11 motion.

12 CHAIR BAISA: We have a motion by Member Medeiros,
13 seconded by Member Molina to approve the bill. Any
14 discussion?

15 Seeing none, the Chair will call for the vote. All
16 in favor please say aye.

17 COUNCIL MEMBERS VOICED AYE.

18 CHAIR BAISA: Opposed, no.

19 VOTE: AYES: Councilmembers Johnson, Kaho'ohalahala,
20 Mateo, Medeiros, Nishiki, Pontanilla, and
Victorino, and Vice Chair Molina, and Chair Baisa.

21 NOES: None.

22 ABSTAIN: None.

23 ABSENT: None.

24 EXC.: None.

25 MOTION CARRIED.

1 ACTION: FIRST READING OF BILL TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION.

2 CHAIR BAISA: Chair will mark it carried with unanimous
3 vote of nine ayes. Members, the Chair would also like to
4 ask the body how it would like to proceed on the Change in
5 Zoning. Member Medeiros.

6 COUNCILMEMBER MATEO: Madam -- I'm sorry.

7 CHAIR BAISA: As the Member initiating the matter,
8 would you like to state your recommendation.

9 COUNCILMEMBER MEDEIROS: Yes. Mahalo, Madam Chair.
10 And as we have heard from the presentation by the consultant
11 and also the comments by Planning and the Parks Department,
12 Madam Chair, I'm -- am I correct to understand you're
13 referring to the Change in Zoning?

14 CHAIR BAISA: Yes. A move to defer.

15 COUNCILMEMBER MATEO: Yeah. So, Madam Chair, I
16 would move to recommend that we defer the Change in Zoning
17 until the Planning Department and the Parks Department can do
18 the amendments to make it so that the park can proceed at this
19 time.

20 CHAIR BAISA: Thank you very much, Member Medeiros.

21 Is there any concern? Otherwise, the Chair will
22 accept the recommendation.

23

24

25

1 COUNCIL MEMBERS VOICED NO OBJECTIONS. (DM, JJ, SK, BM, WN, JP,
2 MV, MM, GB)

3 ACTION: DEFER.

4 CHAIR BAISA: Thank you very much. The matter will
5 be deferred.

6 Members, that concludes our first item for today.
7 The Chair suggests that we take our afternoon break, a little
8 ten-minute break, and we come back and then begin on the
9 second item on our agenda. The meeting is now in recess.

10 Thank you, everyone. (Gavel.)

11 RECESS: 2:38 p.m.

12 RECONVENE: 2:51 p.m.

13 CHAIR BAISA: (Gavel.) The meeting of the Land Use
14 Committee will come back to order, please. Thank you,
15 Members, for your quick recess and for showing up on time.
16 Thank you very much.

17 LU-13 CONDITIONAL PERMIT FOR A TRANSIENT VACATION RENTAL KNOWN
18 AS "KAHANA NUI VILLAS" (KAHANA) (C.C. No. 09-45)

19 CHAIR BAISA: Members, the second item on our agenda
20 is Land Use 13. Before the Committee is a proposed bill to
21 grant William Moffett a three-year Conditional Permit to
22 operate a single-family residence as a transient vacation
23 rental known as Kahana Nui Villas on approximately 12,818
24 square feet within the R-3 Residential District at 4591 Lower
25 Honoapiilani Road, Kahana, Maui, Hawaii.

1 I have asked the applicant's consultant, Gwen Hiraga
2 of Munekiyo & Hiraga, to provide us with a short PowerPoint
3 presentation. Members, you have been provided a printout of
4 the presentation for your reference. The meeting will be in
5 recess for two minutes to prepare the chamber for the
6 PowerPoint. Meeting is now in recess. (Gavel.)

7 RECESS: 2:52 p.m.

8 RECONVENE: 2:53 p.m.

9 CHAIR BAISA: (Gavel.) The meeting will come back
10 to order. Ms. Hiraga, if you would proceed with the
11 PowerPoint, please.

12 ...BEGIN PRESENTATION...

13 MS. HIRAGA: Good afternoon, Members of the Land Use
14 Committee. My name is Gwen Hiraga and I'm representing the
15 applicant, William Moffett, on his Conditional Permit
16 application for a short-term vacation rental located at 4591
17 Lower Honoapiilani Road.

18 Before we get into the PowerPoint, I did want to
19 introduce Mr. Moffett, who just wanted to say a couple of
20 words. Not to exceed one minute. We rushed for time.

21 MR. MOFFETT: Hi. My name is Buzz Moffett. And I
22 just wanted to thank all my friends that have come to support
23 me today. You know, I really appreciate it, guys, and, you
24 know, you guys are the best.

25 I also wanted to just let -- let the Members know,

1 you know, this is a culmination of a process that I started in
2 2001. We -- we applied for the Conditional Use Permit in 2002
3 and had always from the very beginning of this operation tried
4 to be in full compliance with all the regulations. And I'm
5 really happy that we're here and that one way or another it's
6 going to be, you know, put to bed. And I want to thank all of
7 you for your consideration.

8 MS. HIRAGA: Okay. Okay. The subject property is
9 located in Kahana off of Lower -- Oh, what happened here? My
10 battery just died. Okay. Off of Lower Honoapiilani Road.
11 And -- Yeah. No more, yeah? Okay. Sorry. My laser pointer
12 ran out of batteries. It's okay. Okay. All right. Got it.
13 Okay. Next slide. No, still.

14 Okay. Mr. Moffett's property is located right here.
15 This is Lower Road, Kahana Stream, Kahana, and the park. This
16 is the stream down here.

17 Okay. As Chair Baisa mentioned, the parcel size is
18 12,818 square feet. The zoning for the property is R-3
19 Residential. The property consists of a residence
20 approximately 4,000 square feet in size. It is a
21 four-bedroom, four-and-a-half bath residence. Parking is
22 available for five vehicles. Surrounding uses of -- around
23 the property include to the north, single-family residences;
24 to the south, the Kahananui Stream and Kahana Village
25 Condominium. It is an Apartment-zoned property that has

1 short-term rentals. East of the property is Lower
2 Honoapiilani Road, Kahananui Park and Kahananui Stream. And
3 west, of course, is the ocean, Pacific Ocean.

4 This is -- The next few slides are photos of the
5 property. The first photo is a view from the property -- or
6 to the property from Lower Honoapiilani Road.

7 This is Kahananui Park. The stream runs
8 approximately here and enter into the driveway off of Lower
9 Road.

10 Once you enter the driveway, there is like a
11 circular paved surface and that is where parking -- the
12 parking area is located. And as I mentioned, there is --
13 parking is available for five cars.

14 This is a view from the ocean showing Kahananui
15 Stream. And it's kind of difficult to see, but it is a -- the
16 stream is right here. Kahana Village is to the right and the
17 vacation rental is to here.

18 Another view from the beach of the property. And
19 this is the stream and the lounge chair is where Buzz's
20 property is.

21 This photo is a view of the ocean from the lanai or
22 deck of the home.

23 This is the house, the Kahananui Stream again, and
24 the vacation -- the short-term rental of Kahana Village.

25 Again, another closer shot of Kahana Village, the

1 stream, and the residence would be here.

2 This is a site plan of the property: Lower
3 Honoapiilani Road; parking, we saw that circular; the home
4 itself; and a swimming pool.

5 The house plan. This is the first floor plan.
6 There are two master bedrooms, a dining/living area and
7 kitchen and entrance.

8 The second floor house plan consists of three
9 bedrooms, the two bedrooms on each side and another bedroom
10 here. Making a total of five bedrooms.

11 This is a slide of the subject property. This is
12 Lower Road. This is the property. The stream is here.
13 Kahana Village is here. And across here is, again, the stream
14 and the park, Kahananui Park. And the reason why I showed
15 this is Buzz's property -- Buzz lives in this -- on this
16 parcel right here.

17 Okay. Some of the project highlights. The
18 applicant or Kahana Nui makes a positive contribution to the
19 visitor industry by offering a private and peaceful
20 alternative to Maui's hotels, condominiums and resorts. As a
21 private family home, Kahana Nui provides the unfulfilled need
22 of a perfect location for a family to travel together and to
23 enjoy the comfort and ease of staying at a home. The
24 residence is rented as a single unit. He does not rent
25 individual bedrooms. The majority of the guests are families

1 with an average stay of two weeks. The minimum stay is one
2 week.

3 Mr. Moffett is a member of the Chamber of Commerce,
4 the Maui Visitors Bureau, Maui Hotel and Lodging Association.
5 When he is in operation or when he was in operation, he did
6 employ one full-time and three part-time nearby residences as
7 well as -- residents, as well as many local subcontractors on
8 a monthly basis.

9 The operations manager, of course, is Mr. Moffett,
10 who is the owner and applicant. He lives across the street
11 from the project site at Lower Honoapiilani -- at 4560 Lower
12 Honoapiilani Road. And this is approximately 225 feet away.
13 While he was in operation, he was on call 24 hours a day.

14 A site visit was conducted with the Planner and
15 Operations Manager in October of 2008. The Maui Planning
16 Commission did recommend approval of this Conditional Permit
17 application at its meeting of November 10th. And more
18 recently, just this week, the -- another site visit was held
19 with the Planner and Operations Manager.

20 In terms of project benefits, the applicant has been
21 a good neighbor to the community and, you know, it's evidenced
22 by the overwhelming support that he's had at the Planning
23 Commission and today. He does offer no-cost vacation
24 accommodations for fund raisers for local schools and
25 community organizations.

1 Mr. Moffett has allowed the use of his home free of
2 charge to: East Molokai residents, as we mentioned earlier or
3 and as testified by these individuals; the active military --
4 active duty military personnel have also been accommodated on
5 the property while visiting Maui with family members; and the
6 members of the Hawaiian Canoe Builders Team during the
7 Festivals of Canoes; and as one of the testifiers indicated,
8 their canoe club will be staying there this month. The
9 property is made available to local fishermen who have
10 historically fished this area and providing beach access to
11 the beach fronting the property.

12 As a final note, Mr. Moffett voluntarily
13 participates in the summer maintenance and cleaning of the
14 Kahananui Stream. And this he does every year in a routine
15 cleanup of the stream of brush and debris and, you know,
16 disposal of the green waste at designated locations.

17 I wanted to note that at the Planning Commission
18 meeting Mr. Moffett did receive several letters of support and
19 I think there were a total at the end of the meeting some 56
20 to 58. And what we -- This shows the location of the
21 transient vacation rental and where Mr. Moffett lives. And
22 all of this brownish color are the individual lot owners that
23 have actually submitted testimony. And additional testimony
24 from individuals within a mile and out of the mile, of course,
25 our support from the Molokai East End residents. There were

1 no letters of opposition received.

2 That concludes -- Before we conclude our testimony,
3 our presentation, there is a final piece of the presentation
4 that will be done by Mr. Luna.

5 CHAIR BAISA: Mr. Luna, please.

6 MR. LUNA: Madam Chair, Members of the Committee, my
7 portion is to just explain that there are several conditions
8 that were recommended by the Maui Planning Commission and we
9 would like to request that the Council consider revising three
10 of those conditions. I think the -- the proposed revisions
11 have been passed out to -- to you folks. And we're prepared
12 to explain each one at this time or, if you prefer, when
13 you're in discussion. What would you prefer, Madam Chair?

14 CHAIR BAISA: Mr. Luna, you might mention them and
15 then we will discuss them when we get to doing the conditions.

16 MR. LUNA: Okay. The Condition 7 in the Planning
17 Commission recommendation was to have an on-site manager. And
18 I understand that in the past the Council has had -- has
19 approved Conditional Use Permit for transient vacation rentals
20 without an on-site manager. So we're requesting that -- that
21 there not be an on-site manager, but be -- mainly because Mr.
22 Moffett, who is the applicant, lives approximately 300 feet --
23 his house is approximately 300 feet from the actual property
24 that's being rented. And so he is on call 24 hours a day,
25 seven days a week and, in fact, goes to the property at least

1 twice a day when he's here on Maui. And when he's not here,
2 he has -- a young lady testified earlier that she will be
3 substituting for Mr. Moffett and will be living on site at Mr.
4 Moffett's house. Not on the property that's being rented, but
5 on -- in Mr. Moffett's house, which is 300 feet away. So
6 we're asking that because he's in such close proximity, that
7 that condition be modified.

8 The second condition -- And, also, to give some
9 notice to anyone that might have -- that might not know Mr.
10 Moffett -- although he has been living there for many years,
11 so the neighbors all know him, but if there is anyone that may
12 not know him, we're willing to put a sign at the property
13 to -- for anyone that may want to call and have something to
14 say about the operations of the -- of the transient vacation
15 rental and have Mr. Moffett's telephone number as well on the
16 sign.

17 On Condition 8, Mr. Moffett has had local fishermen
18 and others in the area pass through the property to access the
19 ocean on the west side of his property and -- and he's willing
20 to continue to do that. What we wanted to do was just clarify
21 that provision because it's -- it's not going to be a public
22 access way. It's -- it's an access for people that have been
23 using it for years that -- his friends that he know and can
24 trust to go through the property without any problems. So
25 that's -- that's the reason for the clarification.

1 And then the last condition is also another
2 clarification that the -- that the TVR will still be made
3 available for community nonprofit groups to have as an auction
4 item to fund raise for their nonprofit organizations. And Mr.
5 Moffett is more than willing to do that. He's been allowing
6 that for years and it's just continuation of what he has -- he
7 has been doing.

8 Thank you.

9 ...END PRESENTATION...

10 CHAIR BAISA: Thank you very much, Mr. Luna.

11 We're going to recess the meeting now so that we can
12 restore the -- put back the screen and put on the lights. And
13 then we will proceed with the discussion. Thank you. Meeting
14 is in recess. (Gavel.)

15 RECESS: 3:08 p.m.

16 RECONVENE: 3:10 p.m.

17 CHAIR BAISA: (Gavel.) Meeting will please come
18 back to order. Thank you for the presentation and the
19 comments. Before we get into discussion, I would like some
20 opening remarks from Planning, please.

21 MR. YOSHIDA: Good afternoon, Madam Chair, Members
22 of the Committee. The Staff Planner for this item is Kurt
23 Wollenhaupt, who took over the project from Robyn Loudermilk,
24 who left the Department last month to relocate to Oahu to work
25 for a State agency.

1 CHAIR BAISA: Mr. Wollenhaupt.

2 MR. WOLLENHAUPT: Thank you, Madam Chair. A
3 pleasure to be here today. As indicated by Mr. Yoshida, I
4 took over the project from Ms. Loudermilk, who left about a
5 month ago, so I have not had the sometimes organic feeling of
6 working on a project from the very beginning, understanding
7 the dimensionality of it within the Planning Commission. But
8 I have read the project file and I'll briefly outline what's
9 happened to date.

10 Again, this was an application requested by Mr.
11 Moffett for a Conditional Permit to allow a single-family
12 residence to operate as a transient vacation rental, otherwise
13 known as a TVR. At the Planning Commission meeting the
14 Department's original recommendation was to recommend denial.
15 This was indicated because of looking at Chapter 19.37 of the
16 Code in which, except as provided in that section, vacation
17 rentals are prohibited except in a Hotel District otherwise.

18 The applicant then filed a Conditional Permit. That
19 being the case, the Conditional Permit looks at specific and
20 unique applications, this being a TVR, and its implications
21 for the peace and harmony of a Residential District. At that
22 time the Planner and the Department did recommend denial of
23 the project based on these reasonings.

24 Subsequently the project went to the Maui Planning
25 Commission. The Commission deliberated. Approximately

1 halfway into the Commission's deliberation there was a motion
2 to recommend approval of the project as submitted with no
3 on-site property manager. That motion at that time was three
4 to three; therefore, it did not carry. Subsequent to that
5 there was then discussion during the Maui Planning Commission
6 meeting which resulted in the conditions of approval, that
7 condition being there would be an on-site property manager.
8 After the vote was taken at that point of time, there was a
9 unanimous recommendation and subsequent -- subsequent -- a
10 report was written to your Commission today in order to
11 recommend approval.

12 We've already heard that some of the conditions have
13 been requested to be modified by the applicant. And that
14 brings us up to date. There have been no letters, no phone
15 calls of opposition to the project that the Department has
16 received. Thank you.

17 CHAIR BAISA: Thank you very much, Mr. Wollenhaupt.

18 Members, in order to have an orderly discussion of
19 this, the Chair would like to start with the conditions that
20 have come with the recommendation from the Planning
21 Commission. And I think that we might as well dive into the
22 toughest one first, and that is Condition No. 7 that there
23 shall be a property manager living full time on the property.
24 Discussion, Members? Member Molina.

25 VICE-CHAIR MOLINA: Thank you, Madam Chair. If

1 there are no objections, could we have the applicant or the
2 applicant's representative to the front?

3 CHAIR BAISA: Absolutely. Members, any -- any
4 objections?

5 COUNCIL MEMBERS: No objections.

6 CHAIR BAISA: No objections. Would you, please.
7 You're asking for Mr. Moffett?

8 VICE-CHAIR MOLINA: Either Mr. Moffett or Ms. Hiraga
9 or both.

10 CHAIR BAISA: Okay. Maybe both of them.

11 VICE-CHAIR MOLINA: Yeah.

12 CHAIR BAISA: It will save time if we don't have to
13 run up and down getting the right person.

14 COUNCILMEMBER PONTANILLA: Chairman, before you
15 go --

16 CHAIR BAISA: Yes.

17 COUNCILMEMBER PONTANILLA: -- any further, so we're
18 going to discuss the conditions that were presented to us
19 prior to making a motion --

20 CHAIR BAISA: Yes.

21 COUNCILMEMBER PONTANILLA: -- in regards to the
22 zoning?

23 CHAIR BAISA: Yes.

24 COUNCILMEMBER PONTANILLA: Okay.

25 CHAIR BAISA: We'll follow our new procedure.

1 COUNCILMEMBER PONTANILLA: Okay, fine.

2 CHAIR BAISA: Which is, you know, taking amendments
3 as we go and then later on taking the motion as amended.

4 COUNCILMEMBER PONTANILLA: Okay. Good. Thank you.

5 CHAIR BAISA: Okay. Mr. Molina?

6 VICE-CHAIR MOLINA: Okay. Thank you, Madam Chair.

7 Good afternoon, Mr. Moffett and Ms. Hiraga. Thank
8 you for your -- for your information for us to consider these
9 conditions or revised conditions. Now, currently what you're
10 requesting from us is to -- I guess on Condition 7 and that
11 you, Mr. Moffett, that you shall reside within 500 feet of the
12 property and shall be available 24 hours a day, seven days a
13 week to oversee the TVR use of the property. Has there been
14 any consideration as well for rather than, you know, doing it
15 this way, maybe just submitting an annual report to the
16 Department just so there's still some accountability? And I
17 guess if you could kind of further expound on not only your
18 proposed amendment, but also the consideration of an annual
19 report.

20 MS. HIRAGA: On behalf of the applicant, we would
21 be, you know, happy to submit an annual report to address each
22 condition to show compliance. And, also, you know, if -- if
23 there is any complaint during the year, the Department would
24 be the first one to receive complaints. So we would be happy
25 to have another condition requiring annual reporting.

1 VICE-CHAIR MOLINA: Okay. And I make mention of
2 this because, as Mr. Luna had mentioned, we did have one TVR
3 application last year in which the property owner resided, you
4 know, near or next to the TVR, so this is not something that's
5 totally new.

6 And I note here that signage -- an additional
7 condition that signage shall be posted at the property stating
8 the name and contact number of the property manager. When I
9 looked at your presentation, looking at the view from the
10 road, where, approximately, would you look at locating the
11 sign?

12 MS. HIRAGA: First of all, I think that the signage
13 would have to be worked out with the Planning Department. It
14 is -- The property is located in the SMA and we would have to
15 follow whatever the County's sign --

16 MR. YOSHIDA: Ordinance.

17 MS. HIRAGA: -- sign requirements are. So it should
18 be visible, to, you know, people, so that they can see it.
19 And I think it's, you know, a good idea to show the name and
20 contact number of anybody that may have a question or a
21 complaint.

22 VICE-CHAIR MOLINA: Okay.

23 MS. HIRAGA: So we'll work it out with the
24 Department of Planning unless --

25 VICE-CHAIR MOLINA: So you wouldn't be incorporating

1 this as part of Condition 7? Just totally as a separate
2 condition as far as the signage?

3 MS. HIRAGA: What -- whatever is the preference of
4 the Committee. We will -- can either put it as part of -- We
5 would be agreeable to part of Condition 7 or as a separate
6 condition.

7 VICE-CHAIR MOLINA: Okay. Thank you.

8 Thank you, Madam Chair.

9 CHAIR BAISA: Thank you, Mr. Molina. The Chair's
10 recommendation is that we include it in 7. It would just be a
11 continuation of the idea of supervision, who's in charge and
12 who do you go to if something is not the way it should be.

13 Members, additional -- Member Medeiros.

14 COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair.

15 While the applicant and the consultant are up there,
16 I just need to ask like both Planning and them. Can -- so can
17 I ask Planning along with them?

18 CHAIR BAISA: Go right ahead.

19 COUNCILMEMBER MEDEIROS: Okay. Planning, can you
20 give us more information on the reason why the on-site
21 property manager was a condition required? And help me
22 understand that transient vacation rentals do not require an
23 on-site manager, whereas B & B's do; so what was the rationale
24 to have an on-site manager?

25 CHAIR BAISA: Planning.

1 MR. YOSHIDA: Councilmember Medeiros, while the
2 Director is not here, he would want me to say that the --
3 relative to this topic that the existing Code prohibits
4 transient vacation rentals outside of Hotel Districts;
5 however, the Code allows for bed-and-breakfast operations
6 outside of Hotel Districts and does not consider a bed and
7 breakfast as a transient vacation rental. Thus, for
8 conditional permits, the Department's position is that the
9 more similar the proposal is to a bed and breakfast, the more
10 likely will be the Department's support. And, likewise, the
11 farther from a bed-and-breakfast operation, the less likely.

12 In the case of no manager on site, the Department
13 believes that this is too much towards a transient vacation
14 rental that is prohibited by law and not enough towards a
15 bed-and-breakfast operation. And, thus, we initially
16 recommend denial of the proposal. If the prohibition
17 regarding transient vacation rentals were to be changed, then
18 the Department's position would likely change. Under the
19 bed-and-breakfast legislation that the Council worked on, you
20 know, you have to have an owner/operator. You cannot have a
21 resident manager.

22 COUNCILMEMBER MEDEIROS: Okay. And --

23 MR. YOSHIDA: But in the case of the Star Lookout
24 TVR which the Council dealt with earlier this year, they do
25 have an on-site manager, and that was one of the reasons why

1 the Department supported that particular application over
2 other applications which did not have an on-site manager or an
3 owner/operator.

4 COUNCILMEMBER MEDEIROS: Okay. Thank you, Planning
5 Department. But we are talking about this particular
6 application, and so the applicant has -- as they have just
7 stated today that they're in very close, close proximity and
8 are available 24 hours a day, seven days a week. And this is
9 an application for a Conditional Permit, as we see. So I
10 think that that clarifies for me, Madam Chair, you know, the
11 applicant's willingness to be available in a very close, close
12 proximity to operate it as TVR. Mahalo.

13 CHAIR BAISA: Thank you very much.
14 Member Pontanilla.

15 COUNCILMEMBER PONTANILLA: Thank you. Just for my
16 clarification, what you just mentioned in regards to this
17 particular application and your response regarding the
18 Planning Director's -- why a manager on site is required, is
19 there a -- Well, my question to you is that we approved a TVR
20 in a residential subdivision where the manager live off site.
21 Is there any differences other than the zoning?

22 CHAIR BAISA: Planning?

23 MR. YOSHIDA: Well, I guess we would prefer that --
24 well, the more -- the closer the operation is to a bed and
25 breakfast, the more likely we are to support it. And --

1 COUNCILMEMBER PONTANILLA: So what you're telling
2 me, if this was almost similar to a B & B, the Department will
3 more likely support the TVR?

4 MR. YOSHIDA: That's correct.

5 COUNCILMEMBER PONTANILLA: But it's different type
6 of operation; am I correct?

7 MR. YOSHIDA: It is a different type of operation
8 because it's not an owner living on site operating the
9 business.

10 COUNCILMEMBER PONTANILLA: So it's different?

11 MR. YOSHIDA: Yeah.

12 COUNCILMEMBER PONTANILLA: Thank you.

13 MR. YOSHIDA: In some cases they have like an
14 on-site manager, whether it was the Star Lookout or the
15 Kathleen Gildred operation in Maui Meadows, you know, they
16 have somebody that's accountable if people have complaints
17 about guests staying in the operation.

18 COUNCILMEMBER PONTANILLA: What is the parameters
19 for a Conditional Permit?

20 MR. YOSHIDA: Well, I guess it's supposed to be for
21 a use that's similar to that which is permitted within the
22 district. But since we've proposed the bed-and-breakfast/
23 transient rental legislative package to the Commissions in
24 October of '97, we are more supportive if there is an on-site
25 manager and less supportive if there is not.

1 COUNCILMEMBER PONTANILLA: Thank you. Thank you,
2 Chairman. The reason why for my questioning is kind of
3 confusing, yeah. And here, you know, we have two different
4 type of business with two different type of -- I would
5 consider two different type of ordinance. Should be. So
6 thank you.

7 CHAIR BAISA: Thank you very much, Mr. Pontanilla.
8 I think one of the things that is very unique about this
9 particular application is the way that it's operated. You
10 know, normally people would be renting out individual rooms to
11 individuals or couples. So in a five-bedroom operation, you
12 could potentially have five unrelated couples or whatever and
13 a lot of people and cars. But their practice has been to rent
14 to families, so you have one family in the TVR for a week or
15 two and usually arriving in one car because five -- you know,
16 family going to come in one car, or maybe possibly two, but
17 all one family staying in the TVR at one time. So this is a
18 very unique situation.

19 Member Nishiki.

20 COUNCILMEMBER NISHIKI: Thank you. Just for general
21 location, is this the old Billy Irvine house?

22 MR. MOFFETT: No.

23 COUNCILMEMBER NISHIKI: Okay.

24 MR. MOFFETT: No, it's not.

25 COUNCILMEMBER NISHIKI: Okay. Planning Department,

1 right now we allow B & B's, Clayton, with the owner able to
2 live in the same house. Okay? But we've also allowed a
3 detached unit to be also part of the B & B ordinance. Is that
4 true?

5 MR. YOSHIDA: That's correct. As long as the
6 owner/operator lives on the property.

7 COUNCILMEMBER NISHIKI: Okay. Now, the thrust of
8 why the Planning Department denial was based on 19.37.010,
9 which is Hotel District and what else?

10 MR. YOSHIDA: I believe it's 19.37 relating to time
11 share plans.

12 COUNCILMEMBER NISHIKI: Okay. Okay. So now the
13 Planning -- Planning Commission said in Condition 7 that there
14 shall be a property manager living full time on the property.
15 Okay? So the main thing was a property manager there, I would
16 think, so that if there is any concern raised, that that
17 person would be there. The other has to be that it says full
18 time on the property. So Planning Commission, not the
19 Planning Department, wanted a full-time property. Was that
20 the discussion that occurred, or were any of you there during
21 that discussion?

22 MR. YOSHIDA: I believe there was earlier
23 discussions earlier in the day with the Commission and
24 essentially as proposed they were deadlocked like three to
25 three.

1 COUNCILMEMBER NISHIKI: All right. Okay.

2 So, Gwen, my question is: Did you say that if we
3 had a manager such as Mr. Moffett and your reasoning today is,
4 oh, he's living so many feet away, so, therefore, you should
5 approve this? Did you ask the Planning Commission if that was
6 okay, and they said no and so, therefore, they made that
7 condition?

8 MS. HIRAGA: What we presented -- Councilmember
9 Nishiki, in response to your question, we presented the
10 application as a Conditional Permit for a transient vacation
11 rental. And we noted that the owner/applicant does not live
12 on the property. And we showed that same slide that I showed
13 today about the distance from where the vacation home is to
14 Mr. Moffett's property. That's what we had represented to the
15 Commission.

16 COUNCILMEMBER NISHIKI: And that was not acceptable?

17 MS. HIRAGA: To the Commissioners, no, not to all of
18 them. There were a couple of Commissioners that felt pretty
19 strongly about that, yes.

20 COUNCILMEMBER NISHIKI: Okay. I guess -- And,
21 Clayton, let me ask you this: The reason why you want
22 somebody there is to what? To do what? What's that
23 responsibility?

24 MR. YOSHIDA: I think if you have an on-site
25 manager, then it would be more responsive if neighbors had

1 complaints about the operation.

2 COUNCILMEMBER NISHIKI: Noise, whatever?

3 MR. YOSHIDA: Parking in somebody's property.

4 COUNCILMEMBER NISHIKI: Okay. And even if that
5 person -- even if that person were there -- And I think that
6 maybe this man travels a lot or he's got a second home
7 somewhere else. That even if he now says that they're going
8 to put signage so you can call, even if he said that, and I
9 guess we'd have to believe him, that he was available 24 hours
10 and when he's gone, he'd have somebody else to replace him, I
11 think it was that lady there that testified; that within
12 proximity is not acceptable? The fact that there's going to
13 be someone there 24 hours, you know, I -- I don't know how
14 quickly somebody can respond from where they are compared to
15 if they're there. Okay? But isn't that quick enough?
16 Because you -- now you have a notification of if there's a
17 complaint, call this number. Compared to no manager there.
18 Normally I would go there and say, Hey, shut up. Take care of
19 this noise. That's not acceptable?

20 MR. YOSHIDA: Well, I guess the -- initially the
21 Department did recommend denial.

22 COUNCILMEMBER NISHIKI: Yeah, yeah. Okay, okay.
23 So, so I know you've got to stand by that. I guess it's up to
24 this Members here to -- to make that decision.

25 Anyway, for me, Madam Chair, that close is

1 acceptable. I think maybe you got to go beyond that, but, you
2 know, your -- your noise complaint would be with your
3 adjoining neighbors. And I think that for me if the condition
4 were to stand, we'd -- I would ask you that you leave your
5 number there with them, being that it seems like when you
6 contacted all your neighbors, nobody had any problem,
7 including that condo that's on that -- on the Lahaina side.
8 Anyway, that's for that item, Madam Chairman, and I just want
9 to move on after that because I got big problem with the
10 public access.

11 CHAIR BAISA: Thank you, Mr. Nishiki.

12 Members, any additional -- Member Mateo.

13 COUNCILMEMBER MATEO: Chairman, thank you very much.
14 I don't really have an issue with Condition No. 7 because it
15 is more subjective than anything else. Because this body
16 already approved other TVR's that does not have this
17 particular requirement as a condition. So this, to me, is a
18 moot item and we address each item independently based on its
19 own merit. And the fact that the Department chose to
20 recommend denial on an ordinance that virtually does not exist
21 yet in its entirety is, again, a subjective call. It is not a
22 B & B ordinance. TVR's was a separate -- a separate
23 commodity. And the whole issue and the reason for the
24 separateness is because a good amount of the TVR operators
25 were offshore people. And finally we have a TVR that lives

1 across the street. So it is somebody's call. And I, for one,
2 do not look at Condition 7 as an item that really needs to be
3 there. Thank you, Madam Chair.

4 CHAIR BAISA: Thank you very much.

5 Members, any additional comments about this or are
6 you ready for a recommendation?

7 COUNCIL MEMBERS: Recommendation.

8 COUNCILMEMBER KAHO'OHALAHALA: Chair.

9 CHAIR BAISA: Yes.

10 COUNCILMEMBER KAHO'OHALAHALA: Yeah. I do want to
11 comment on this item.

12 CHAIR BAISA: Would you, please.

13 COUNCILMEMBER KAHO'OHALAHALA: You know, while there
14 does not exist a TVR bill at the moment, what I'm hoping that
15 will not occur is that for those that are before the Council
16 and we seek to -- to address them as a -- as they come, I hope
17 that we will not be setting some precedent that will now at
18 some later date become precedent that will affect legislation.

19 So that while the intent for this was not to allow
20 TVR's necessarily within the residential area and that the
21 concern was absentee owners, we're now bickering about how far
22 that person can be to somehow justify whether or not that's
23 allowable or not. And I'm just looking at if we look at a
24 policy decision, it would be very cumbersome for this body to
25 be talking about a policy which is going to justify a TVR

1 operation perhaps by the distance that one person is from that
2 TVR location. So that we'll be talking about all this varying
3 distances because we've set some precedent in terms of how
4 we're trying to deal with this one individual application.

5 So I just want to make for the record known that I
6 hope that this is not going to be the kind of reason in which
7 we will be using later on in trying to deal with TVR
8 legislation to say, Well, we allowed one to be 200 feet away
9 and then we let one be 300 feet away, maybe we should do it
10 between a thousand and 500 feet. You see? It becomes very,
11 very difficult and I don't think that's good for policymaking.

12 So I just want to make note that while this
13 discussion has many different kinds of concerns, my main
14 concern is that when we finally have to deal with this, that
15 we won't fall back on these kinds of decisions made today as
16 the reason for good policymaking. Just my comments. Thank
17 you.

18 CHAIR BAISA: Thank you very much. Chair
19 understands that this is a little awkward because we don't
20 have legislation and encourages everyone that we get it done
21 quickly so we won't find ourselves in this awkward position of
22 trying to make ad hoc legislation.

23 Any more comments on this particular condition?

24 If not, Chair would make a recommendation or
25 entertain a motion if someone would like to make one.

1 COUNCILMEMBER PONTANILLA: Madam Chair.

2 VICE-CHAIR MOLINA: And what is that -- Oh.

3 CHAIR BAISA: Member Pontanilla.

4 COUNCILMEMBER PONTANILLA: No. I'll defer to --

5 CHAIR BAISA: Member Molina.

6 VICE-CHAIR MOLINA: Yeah, thank you, Madam Chair.

7 So what is your recommendation, your motion that you would
8 like to hear?

9 CHAIR BAISA: The recommendation is to accept the
10 revision as proposed by the applicant.

11 VICE-CHAIR MOLINA: So move, Madam Chair.

12 COUNCILMEMBER MEDEIROS: Second.

13 CHAIR BAISA: Members, we have a motion by Member
14 Molina and a second by Member Medeiros, and that would be to
15 change Condition 7. And the Chair would also suggest, Member
16 Molina, if possible, and Member Medeiros, if we could include
17 the piece in regard to the signage, also. So the whole thing.

18 VICE-CHAIR MOLINA: So would you like that in the
19 frame of a motion, Madam Chair?

20 CHAIR BAISA: Would you, please.

21 VICE-CHAIR MOLINA: Okay. Madam Chair, I move that
22 we amend Condition 7 to add the following language, "that
23 signage shall be posted at the property stating the name and
24 contact number of the property manager."

25 COUNCILMEMBER MEDEIROS: Madam Chair, I second the

1 motion.

2 CHAIR BAISA: Thank you very much. So now the whole
3 motion would read that -- instead of what exists now in
4 Condition 7 that says that "there shall be a property manager
5 living full time on the property," that we will substitute
6 instead that "William Moffett or his designated property
7 manager shall reside within 500 feet of the property and shall
8 be available 24 hours a day, seven days a week to oversee the
9 transient vacation rental use of the property. That signage
10 shall be posted at the property stating the name and contact
11 number of the property manager."

12 Discussion? Member Nishiki.

13 COUNCILMEMBER NISHIKI: And -- and I think Sol
14 brings up a good point that personally I would -- I would need
15 to look at. But I think that the concern of not having an
16 ordinance and if -- not "if." What Mr. Mateo states about
17 what we've passed in the past may not be as consistent as
18 perhaps what we're trying to do here, but I -- for me, that
19 deadlock with the Planning Commission shows me that, you know,
20 it could have gone either way, so there was concern about this
21 circumstance. So, therefore, for me, I -- I thought that
22 perhaps some kind of concern that they may have wanted to be
23 addressed is now addressed. But, you know, I thank Sol for,
24 you know, giving me a heads up on looking at it maybe
25 differently. But at the same time if we're going to pass

1 something out, I would not feel like I want someone there to
2 be of a policeman should we have nothing that you do, but you
3 have unruly guests. Thank you.

4 CHAIR BAISA: Thank you, Mr. Nishiki. The Chair
5 would like to also share something with you and have it in the
6 record. I think it's really important. You know, realizing
7 how difficult these kinds of decisions are, the Chair took it
8 upon herself this weekend on Sunday to make a visit to the
9 site so that I could see for myself where this is and how it
10 fits into the surrounding area and the community and the
11 logistics of Mr. Moffett's home in relation to the TVR.

12 And it's a very private spot. On one side you have
13 the Kahana Condos and on the other side there's just a big
14 single-family home that is very, very quiet. And it's a
15 neighbor that was here today to testify. And then the beach
16 and the street. And Mr. Moffett is just a little kitty corner
17 up on the other side of the street away from the TVR. He
18 rides a bicycle in between and I think it would take him maybe
19 two or three minutes to get from where he is to the front door
20 of the TVR.

21 The other thing is I also took it upon myself to
22 replay the meeting at the Planning Commission and I watched it
23 Sunday night in its entirety to refresh my memory about
24 what -- what went on there. And I watched all this discussion
25 about manager, no manager, where it was and all the testimony

1 and everything. It was very interesting because initially the
2 Planning Department had recommended denial, but then they saw
3 all the testimony, they heard all the discussion, and at the
4 very end one of the Commissioners asked it's a -- if with the
5 conditions, would the Planning Department be amenable to
6 approval. And the Planning Director, Mr. Hunt, says, "Yes,
7 because there is a lot of support and the owner lives in the
8 neighborhood," quote. I just wanted to share that with you so
9 that you would know that.

10 Yes, Member Molina.

11 VICE-CHAIR MOLINA: Thank you, Madam Chair. You
12 know, I can certainly understand the concerns of some members
13 with regards to this potentially being precedent setting. And
14 at the same time, the amendment here is being initiated by the
15 applicant, so I think that should be noted for the record.
16 And every TVR or bed and breakfast application -- you know,
17 the proverbial one size doesn't fit all. So the applicant is
18 apparently comfortable with having this included in their --
19 as part of their conditions, although it was actually
20 initiated at first by the -- I guess the Department. But the
21 amendment here, again, is being initiated by the applicant or
22 proposed by the applicant. So if they can live with it,
23 then -- then I guess, you know, for me, I can live with it as
24 well. So thank you, Madam Chair.

25 COUNCILMEMBER MEDEIROS: Chair.

1 CHAIR BAISA: Member Medeiros.

2 COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. I
3 just wanted to add that having been in charge of County
4 highways in West Maui and Lower Honoapiilani Road is a County
5 road, I am very familiar with the property. We have done,
6 when I was there, a lot of work on Kahananui Stream, both
7 culvert work and in the stream itself. And I think as you
8 describe, Madam Chair, it is a pretty isolated property that
9 is bordered by the stream and the residence next door, who
10 testified in support. Otherwise, it's the road, the park.
11 And knowing where Mr. Moffett resides in conjunction with
12 where the property is, it is very close in that area, you
13 know, because of my familiarity with that.

14 And I think, you know, we did a lot of work there
15 because we had to do stream cleaning and stuff. And, you
16 know, my understanding is Mr. Moffett volunteers to do that
17 now. So I think he's a, you know, responsible property owner
18 in that area.

19 So I just wanted to add that for consideration by
20 the other members so they pretty much know, as you have
21 described, how the property is situated. Mahalo, Madam Chair.

22 CHAIR BAISA: Thank you, Member Medeiros.

23 Any additional discussion?

24 COUNCILMEMBER PONTANILLA: Chair.

25 CHAIR BAISA: Member Pontanilla.

1 COUNCILMEMBER PONTANILLA: I'm going to be
2 supporting the amendment. And if I may ask a question of
3 Corporation Counsel here?

4 CHAIR BAISA: Please. Go ahead.

5 COUNCILMEMBER PONTANILLA: This is a three-year
6 Conditional Permit that's going to come up for renewal at that
7 time. So if we do come out with a new legislation in regards
8 to TVR, will this Conditional Permit and all the other ones
9 that we have need to abide with the new ordinance that --
10 should it pass in regards to TVR's?

11 CHAIR BAISA: Mr. Hopper.

12 MR. HOPPER: Well, since you're talking about a
13 theoretical ordinance --

14 COUNCILMEMBER PONTANILLA: Yes.

15 MR. HOPPER: -- Member Pontanilla, you would need to
16 deal with that in the ordinance. You would need to say in the
17 ordinance --

18 COUNCILMEMBER PONTANILLA: At that time.

19 MR. HOPPER: -- how existing conditional permits
20 would be treated, if they would either be exempt from the new
21 law or if they -- you know, like B & B permits, some
22 conditional permits could be converted to bed-and-breakfast
23 permits. So that's all up to you as a Council whenever you
24 look at that new law.

25 COUNCILMEMBER PONTANILLA: Okay. Thank you.

1 And, Chairman, again, you know, this is a three-year
2 Conditional Permit, so, you know, there's more discussions
3 three years from now. Thank you.

4 CHAIR BAISA: Thank you very much.

5 Member Kaho'ohalahala.

6 COUNCILMEMBER KAHO'OHALAHALA: Chair, thank you.
7 And I just want to add my last comments about -- my statements
8 about precedent setting. And while the Chair has also visited
9 the property and said that she's reviewed the -- the tapes,
10 I'm reading off of here, and this is what Chairman -- Director
11 Hunt says. And, Madam Chair, I would like to just read that
12 section so --

13 CHAIR BAISA: Sure. Go ahead.

14 COUNCILMEMBER KAHO'OHALAHALA: Just to be clear that
15 this isn't just myself that's trying to raise an issue of
16 precedence. The Chair says, and he was asked the question by
17 Commissioner Mardfin, "You asked if we could recommend
18 approval on this. I said earlier we don't like the idea of
19 people coming in with the TVR's and then we change them. And
20 I hope this isn't setting a precedent, but I think we can rely
21 on the circumstances on this particular individual application
22 that there's a lot of support."

23 So the -- I think the issue here was whether or not
24 we are, in fact, creating other kinds of precedent and the
25 Department and the Director made clear. And so I just wanted

1 to reiterate that, that we are at some point going to have to
2 deal with -- with the TVR bill. And I am just making the
3 statement for the record that these kinds of actions taken
4 today are not intended to set precedent for policies that we
5 have not yet made. So when that discussion comes, I hope I
6 will not hear that, well, we did it at X and X time and X and
7 X, and so, therefore, we should begin to consider allowing
8 them. So I just want that for the record to be known, that in
9 trying to be consistent, I want to be clear that even the
10 Director made the statement in the record.

11 So I appreciate your -- your comments and I just
12 wanted to add that in my last discussion. And I will be
13 supporting the motion, yeah.

14 CHAIR BAISA: Mr. Kaho'ohalahala, thank you very
15 much. We are aware that everything we do here may be used
16 against us, but, you know, we have to do some things. We
17 cannot just sit here twiddling our thumbs waiting for
18 whenever. And, you know, it's very difficult. These are not
19 easy decisions. And I'm sure everyone realizes that, that
20 it's a very tough thing for us to sit here and make these
21 kinds of decisions aware that everything we do has
22 ramifications.

23 But I think when we weigh this and we look at it and
24 we look at the support of the community and the situation, we
25 make the best decision we can. But at least we're trying to

1 do something. And I think that I applaud this Committee for,
2 you know, what we try to do here and I really appreciate that.

3 Member Nishiki.

4 COUNCILMEMBER NISHIKI: Yeah. And -- and sometimes
5 when I listen and someone brings up something, I don't hear a
6 clear reason. And I think in this one, Gwen, and if I -- if I
7 didn't hear correctly, then correct me, but I'm going to ask
8 the question. Is there a reason why this applicant cannot
9 provide an on-site manager? Is it because it's -- they'd have
10 to live in that same house area or what? What is the -- what
11 is the reason?

12 MS. HIRAGA: Councilmember Nishiki, let me explain
13 it this way: The applicant lives across the street. He is
14 not able to live in that house. He has a wife and two
15 children. Of course, he could possibly have his assistant
16 live in one of the rooms, but that's not the most ideal for
17 the type of rental it is where the unit, excuse me, is rented
18 as an entire home to a single family. So, you know, in
19 response to your question, yes, it could be a possibility that
20 he would have a person live in one of the bedrooms, but that's
21 not the ideal situation for this particular application.

22 COUNCILMEMBER NISHIKI: Okay.

23 CHAIR BAISA: Any additional comments? Yes, Member
24 Kaho'ohalahala.

25 COUNCILMEMBER KAHO'OHALAHALA: Okay. Madam Chair,

1 again, on the motion, only because in trying to -- to make my
2 point about how we're going to move -- the distances --

3 CHAIR BAISA: Yes.

4 COUNCILMEMBER KAHO'OHALAHALA: -- you know, vary.

5 CHAIR BAISA: Sure.

6 COUNCILMEMBER KAHO'OHALAHALA: It's been brought to
7 our attention and in all of the information here that the
8 applicant is only, what, 225 feet from house to house. Is
9 that correct? But, again, in the recommendation for the
10 amendment here, we have now changed that to become 500, so
11 we're doubling the distance.

12 CHAIR BAISA: We can explain.

13 COUNCILMEMBER KAHO'OHALAHALA: So I think if
14 we're -- our intent is to be specific to the applicant, then
15 there's no reason why then we should vary that to doubling the
16 distance. Because that -- that, to me, is moving in that
17 direction that I'm hoping that we're not moving. So why,
18 then, 500 versus the 225 feet?

19 CHAIR BAISA: We can explain.

20 COUNCILMEMBER KAHO'OHALAHALA: Yeah, okay.

21 CHAIR BAISA: Ms. Hiraga, would you, please.

22 MS. HIRAGA: Yeah. Councilmember Kaho'ohalahala,
23 the reason why we had indicated 500 feet is because as part of
24 the Conditional Permit application, we had to notify
25 landowners and lessees within 500 feet. So that's the reason

1 why we said 500 feet, so at least the immediate and
2 surrounding neighbors within that notification area would at
3 least be covered. The property manager or the owner,
4 actually, is the -- the 225 feet is from property to property,
5 but from property to his actual home is an additional 155
6 feet, so the total comes to approximately 380 feet away.

7 COUNCILMEMBER KAHO'OHALAHALA: Okay. I would
8 understand and think that the -- that notification would be a
9 proper. But, again, to be more specific and to demonstrate
10 that we're dealing with a specific application, perhaps we
11 should be looking at the notification at 500, but the exact
12 distance should be more consistent with what you're -- you're
13 presenting to the -- to the Council.

14 CHAIR BAISA: Chair has no problem with that. I
15 think it's reasonable since we're making a specific,
16 case-by-case thing here and that is the case.

17 COUNCILMEMBER KAHO'OHALAHALA: Because I -- what
18 could happen is someone would come by and say, I live within
19 500 feet, now, of -- you know. And then what is -- what is
20 the distinct here? Well, you've already allowed a 500 feet.
21 But if we pin it to the exact applicant's distance, then we're
22 dealing with numbers that are real numbers based on the
23 information given us and it's not this arbitrary number of --
24 And it's nitpicking, but I -- that's where I'm saying that
25 that's going to be the kinds of discussions we're going to

1 have. So perhaps I would offer an amendment to the motion to
2 include the specific distance that is being offered to us in
3 information by the applicant to be the distance between the
4 properties themselves and notwithstanding the 500 feet for
5 notification.

6 CHAIR BAISA: Ms. Hiraga, can you give us that
7 number? I know you have the figures.

8 MS. HIRAGA: 380. I had indicated that the distance
9 was 380 feet. And this is from property --

10 CHAIR BAISA: To the owner's house?

11 MS. HIRAGA: To the owner's house. Property to
12 property is 225 feet, plus he has a driveway.

13 COUNCILMEMBER KAHO'OHALAHALA: Okay. So we're doing
14 land to land.

15 MS. HIRAGA: Yeah.

16 COUNCILMEMBER KAHO'OHALAHALA: And then we're doing
17 house to house.

18 MS. HIRAGA: Yeah. So I don't know what you want to
19 use. Because the questions that were asked of us from the
20 Planning Department was what is the distance from the vacation
21 rental property to Mr. Moffett's property.

22 COUNCILMEMBER KAHO'OHALAHALA: Okay.

23 MS. HIRAGA: Secondly, what is the distance from the
24 vacation rental property to Mr. Moffett's residence. So, you
25 know, we have that information. It is 380 feet. And I don't

1 know --

2 MR. MOFFETT: Say shall reside at 4560.

3 MS. HIRAGA: Well, do you want to use his --

4 CHAIR BAISA: I think property to property is
5 sufficient.

6 COUNCILMEMBER KAHO'OHALAHALA: I would say property
7 to property would be sufficient.

8 MS. HIRAGA: Okay.

9 COUNCILMEMBER MEDEIROS: 225.

10 CHAIR BAISA: So it's how much?

11 COUNCILMEMBER MEDEIROS: 225.

12 MS. HIRAGA: Property to property?

13 CHAIR BAISA: Yeah.

14 MS. HIRAGA: 225. Or if you want to use his home
15 address as the location, then that's fine that the --

16 CHAIR BAISA: Mr. Hopper, are you wanting to offer
17 some help?

18 MR. HOPPER: Just that the way that the condition is
19 worded it says that "the property manager shall reside within
20 500 feet of the property." "Within" means that the person
21 actually lives within that area. I don't think that to the
22 tip of their property or the other -- I just don't want to put
23 them into noncompliance with the condition. If you know where
24 the person is actually living, the phrasing appears to say --
25 You could say within a parcel 225 feet from the property if

1 you wanted to get -- if you wanted to use that language and go
2 with 225. But I would recommend that the way it's currently
3 worded that you do include the area that the -- the
4 property -- that the person is actually living in.

5 COUNCILMEMBER KAHO'OHALAHALA: Okay.

6 CHAIR BAISA: Okay. Mr. --

7 COUNCILMEMBER KAHO'OHALAHALA: I would --

8 CHAIR BAISA: Mr. Kaho'ohalahala, try again.

9 COUNCILMEMBER KAHO'OHALAHALA: Then I would move
10 that the language indicate here a distance of 225 -- well,
11 you're trying to include the -- "reside within the area of 225
12 feet," is that --

13 MR. HOPPER: Well, I mean, he -- he resides on a
14 parcel within 225, but he doesn't actually reside within 225
15 feet --

16 CHAIR BAISA: Correct.

17 MR. HOPPER: -- of the property. So that's -- and
18 this says, "he shall reside within 225," so I would want you
19 to just be sure that -- that the area he lives in be the
20 actual physical place that he lives, and that's within 500
21 feet of the vacation rental. I mean, or we can change the
22 language around to say "within 225 feet" -- "on a parcel
23 within 225 feet."

24 COUNCILMEMBER KAHO'OHALAHALA: Okay. "On a parcel
25 within 225 feet."

1 CHAIR BAISA: Okay. Staff, do we have that? Carla,
2 you got it?

3 Okay. Do we have a second?

4 COUNCILMEMBER NISHIKI: Second.

5 CHAIR BAISA: We have a second. We have a motion by
6 Member Kaho'ohalahala, seconded by Member Nishiki. Any
7 discussion? Member Molina.

8 VICE-CHAIR MOLINA: Thank you, Madam Chair. Just a
9 question to Corporation Counsel as it relates to the
10 amendment. I know we're talking footage, but could the
11 address be sufficient as well, as well as the footage?

12 CHAIR BAISA: Mr. Hopper?

13 MR. HOPPER: Member Molina, it's really up to the --
14 up to the body. If you wanted to say that the property
15 manager shall reside at a specific TMK, you could do that as
16 well. However, if -- if he moved across the street or
17 something, then he wouldn't -- he would have to get this
18 amended. So it just depends on your language, whatever you
19 would want to be sufficient. You could have no property
20 manager, no one living anywhere near it, or someone living on
21 the property or next to it, you know, whatever you as a body
22 decide would be sufficient for you.

23 VICE-CHAIR MOLINA: Okay. Thank you, Mr. Hopper.

24 Madam Chair, we've got a lot of options, but, you
25 know, I was just curious. Thank you.

1 CHAIR BAISA: Okay. Member Medeiros.

2 COUNCILMEMBER MEDEIROS: Mahalo, Madam Chair. Yeah,
3 I can understand Member Kaho'ohalahala's expressions. My only
4 concern is if you narrow it down to 225, how accurate is that
5 measurement? You know, did a surveyor do it or -- Because if
6 that's not accurate, they can be in noncompliance if we set
7 that number.

8 CHAIR BAISA: After all of this.

9 COUNCILMEMBER MEDEIROS: Yeah. So I don't think we
10 should set a number that specific because that would
11 jeopardize the applicant. You know, even -- I have to tell
12 you this, you know: In Hana, in surveys that I have been
13 familiar with, property lines change a little over time just
14 because of the way the earth is. So to set it at 225, it
15 scares me that, you know, he may be in noncompliance next
16 year.

17 CHAIR BAISA: That may be a little tight.

18 COUNCILMEMBER MEDEIROS: Right. To me it's too
19 tight.

20 COUNCILMEMBER KAHO'OHALAHALA: Madam Chair.

21 CHAIR BAISA: Member Kaho'ohalahala.

22 COUNCILMEMBER KAHO'OHALAHALA: It's not the intent
23 of this amendment to -- to prevent the applicant from moving
24 forward. This is my point: That the fact that we're even
25 discussing distances from an applicant to the TVR, it becomes

1 problematic. Now we're talking about the earth shifting and
2 then the distances change. So all I'm saying is that this is
3 going to be a problem for us in policymaking and only because
4 this is a specific instance. And the idea of setting
5 precedent, I hope, is the point of trying to make an amendment
6 that's more specific to the applicant itself.

7 Whatever that number is that you want. We're using
8 your numbers. We're not trying to make up these. So all of a
9 sudden we don't know if the numbers are exact and they're not
10 going to touch land to land, so --

11 CHAIR BAISA: Members.

12 COUNCILMEMBER KAHO'OHALAHALA: So I want to get away
13 from that. We'll take a number that's comfortable, but I want
14 to make it applicable to you and this is what you're saying
15 and that's what we're dealing with and we're not dealing with
16 some arbitrary decision that somehow just encompasses a
17 general area. Okay? So --

18 CHAIR BAISA: Members, we have an amendment on the
19 floor and it involves a very specific number. The Chair will
20 call for the vote up or down and then go back to where we
21 started and then we can go from there. Yes.

22 COUNCILMEMBER KAHO'OHALAHALA: Madam Chair, then
23 just in clarification, is that number something that is
24 acceptable to you as the applicant?

25 MS. HIRAGA: The 225?

1 COUNCILMEMBER KAHO'OHALAHALA: Yes.

2 MS. HIRAGA: Yeah, 225. Are you sure that's the
3 exact distance?

4 MR. MOFFETT: No. It's close.

5 MS. HIRAGA: It wasn't surveyed.

6 MR. MOFFETT: It wasn't surveyed.

7 MS. HIRAGA: But he measured it out himself, so --

8 CHAIR BAISA: That might be risky.

9 MR. MOFFETT: Yeah.

10 COUNCILMEMBER NISHIKI: Twelve-foot measure.

11 (Laughter.)

12 COUNCILMEMBER KAHO'OHALAHALA: You know, when you
13 bring information to us and you put those numbers in your
14 documents here and then at this juncture you say, Well, I'm
15 not really sure, you know. So that's my point. If it's
16 specific to you and that's what you say, then you tell us what
17 that number is. That's what I was asking. I'm trying to make
18 it, you know, become your application that we're dealing with
19 here and your numbers, so (pause) --

20 MR. MOFFETT: Is there a chance that we could just
21 use my house address?

22 CHAIR BAISA: That's a --

23 MR. MOFFETT: You know, then it's specific to me.

24 CHAIR BAISA: That's an alternative.

25 MR. MOFFETT: You know, just say that "manager shall

1 reside at 4560 Lower Honoapiilani." That's good. I'm not
2 moving.

3 COUNCILMEMBER KAHO'OHALAHALA: Okay.

4 CHAIR BAISA: I think that's a very reasonable --

5 COUNCILMEMBER KAHO'OHALAHALA: Chair, if you will
6 accept that as a -- as an amendment, then I will -- I will
7 withdraw and --

8 COUNCILMEMBER NISHIKI: Withdraw my motion.

9 CHAIR BAISA: Okay. Mr. Kaho'ohalahala, would you
10 try again.

11 COUNCILMEMBER KAHO'OHALAHALA: Okay. That this
12 applicant in the Condition 7 then be amended to include the
13 address, which is --

14 MS. HIRAGA: "Shall reside" --

15 COUNCILMEMBER KAHO'OHALAHALA: "Shall reside at" --

16 MR. MOFFETT: 4560.

17 COUNCILMEMBER KAHO'OHALAHALA: "4560."

18 MR. MOFFETT: Lower Honoapiilani.

19 COUNCILMEMBER KAHO'OHALAHALA: "Lower Honoapiilani."

20 CHAIR BAISA: Second?

21 COUNCILMEMBER NISHIKI: Second.

22 CHAIR BAISA: Thank you very much. We have a motion
23 and second. And I think we all know why we're doing it. Any
24 more discussion?

25 VICE-CHAIR MOLINA: Madam Chair, just for the

1 record, could we read the whole amendment, you know, for the
2 record? Read that into the record.

3 CHAIR BAISA: Right. "That William Moffett or his
4 designated property manager shall reside at 4560 Lower
5 Honoapiilani Highway" --

6 COUNCIL MEMBERS: Road.

7 CHAIR BAISA: "Road." "Road," sorry. "And shall be
8 available 24 hours a day, seven days a week to oversee the
9 transient vacation rental use of the property. Signage shall
10 be posted at the property stating the name and contact number
11 of the property manager." But the amendment piece is only
12 "shall reside at" -- by deleting "within 500 feet of the
13 property" and changing that to "4560 Lower Honoapiilani Road."
14 Okay? So that's the amendment for now.

15 All those in favor, say aye.

16 COUNCIL MEMBERS VOICED AYE.

17 CHAIR BAISA: Opposed, no.

20 VOTE: AYES: Councilmembers Johnson, Kaho'ohalahala,
21 Mateo, Medeiros, Nishiki, Pontanilla,
Vice-Chair Molina, and Chair Baisa.

22 NOES: None.

23 ABSTAIN: None.

24 ABSENT: None.

25 EXC.: Councilmember Victorino.

1 AMENDMENT CARRIED.

2 ACTION: REVISE CONDITION.

3 CHAIR BAISA: Motion carried, unanimous. And please
4 note that one person who's excused, Mr. Victorino.

5 Okay. Now, back to the motion. Any more discussion?

6 If not, the Chair will call for the vote. And we
7 just read it, so I think everybody understands what the
8 amended motion is. Any questions?

9 If not, all those in favor, please say aye.

10 COUNCIL MEMBERS VOICED AYE.

11 CHAIR BAISA: Opposed, no.

12 The motion is carried. Again, with eight ayes and
13 one member excused, Member Victorino. So that is Condition No. 7.

14 MS. NAKATA: Excuse me, Madam Chair.

15 CHAIR BAISA: Yes.

16 MS. NAKATA: I believe the last vote was on the
17 amendment and that was to add the signage language.

18 CHAIR BAISA: Yes.

19 MS. NAKATA: So you're back to the main motion --

20 CHAIR BAISA: Oh, one more.

21 MS. NAKATA: -- which is to substitute Condition 7.

22 CHAIR BAISA: Okay. Would you read the motion again
23 so we all know what we're voting on.

24 MS. NAKATA: The motion was to substitute the
25 existing Condition 7 in the proposed bill with the language

1 that the Chair -- that the Chair just read, "That William
2 Moffett or his designated property manager shall reside at
3 4560 Lower Honoapiilani Road and shall be available 24 hours a
4 day, seven days a week to oversee the transient vacation
5 rental use of the property. Signage shall be posted at the
6 property stating the name and contact number of the property
7 manager."

8 CHAIR BAISA: Okay. Members, you know what we're
9 voting on. All those in favor, say aye.

10 COUNCIL MEMBERS VOICED AYE.

11 CHAIR BAISA: Opposed, no.

12 VOTE: AYES: Councilmembers Johnson, Kaho'ohalahala,
13 Mateo, Medeiros, Nishiki, Pontanilla,
Vice-Chair Molina, and Chair Baisa.

14 NOES: None.

15 ABSTAIN: None.

16 ABSENT: None.

17 EXC.: Councilmember Victorino.

18 AMENDMENT CARRIED.

19 ACTION: REVISE CONDITION.

20

21 CHAIR BAISA: Motion carries with eight ayes and one member
22 excused, Member Victorino. And that concludes Condition No. 7.

23 Okay. Let's get to the rest of the
24 conditions. There are a number of things we're going to need
25 to handle, folks, and one of the first things we have to

1 handle is in the title of the bill and the address says "4591
2 Honoapiilani Road," and the Chair would like to entertain a
3 motion to change or amend that address to include "Lower
4 Honoapiilani Road."

5 VICE-CHAIR MOLINA: Madam Chair, so move.

6 COUNCILMEMBER MEDEIROS: Madam Chair, second.

7 CHAIR BAISA: Thank you very much. We have a motion
8 by Member Molina, second by Member Pontanilla to change the
9 address to include "Lower Honoapiilani Road." Any discussion?

10 MS. NAKATA: Madam Chair, and this would also be in
11 the text of the bill.

12 CHAIR BAISA: And throughout the text of the bill.
13 Is that okay?

14 VICE-CHAIR MOLINA: No objection.

15 CHAIR BAISA: Thank you very much. I think we all
16 understand that it's just an omission that we need to fix.

17 All those in favor, say aye.

18 COUNCIL MEMBERS VOICED AYE.

19 CHAIR BAISA: Opposed, no.

20 VOTE: AYES: Councilmembers Johnson, Kaho'ohalahala,
21 Mateo, Medeiros, Nishiki, Pontanilla,
Vice-Chair Molina, and Chair Baisa.

22 NOES: None.

23 ABSTAIN: None.

24 ABSENT: None.

25 EXC.: Councilmember Victorino.

1 AMENDMENT CARRIED.

2 ACTION: REVISE CONDITION.

3

4 CHAIR BAISA: The motion carries again with eight eyes
5 and one member excused. Members, let's get to the rest of the
6 conditions that were proposed. You have the sheet in front of
7 you. Condition No. 8, if you'll look at it as it exists, it
8 says that "Public access to and from the shoreline over the
9 property shall continue to be available to fishermen and the
10 local general public." We had a lot of discussion about this
11 making sure that we understand what that meant. And it was
12 kind of interesting as to how you would define the "local
12 general public." And the revision that has been suggested is
13 that "William Moffett shall continue to allow access to and
14 from the shoreline over the property to those currently using
15 said access."

17 And that is the proposed revision that the Chair
18 would like to recommend, and the Chair will explain why.
19 There is public access very close to this parcel. There are,
20 you know, these signed public accesses with the blue signs
21 very close by. And what has been going on for a very long
22 time is Mr. Moffett has been very generous in allowing local
23 fishermen and people who live nearby to traipse through the
24 property to the beach. And that is the part that we would
25 like -- that he would like and we would like to see preserved.

1 Because we don't want now that he gets a TVR permit that that
2 is cut off. But it doesn't mean that we want everybody to be
3 traipsing through his property because there is public access
4 right close to it. So that's the matter that we need to
5 discuss.

6 VICE-CHAIR MOLINA: Chair.

7 CHAIR BAISA: Yes.

8 VICE-CHAIR MOLINA: Question.

9 CHAIR BAISA: Yes.

10 VICE-CHAIR MOLINA: Question for Corporation
11 Counsel. Mr. Hopper, related to the proposed Condition 8 from
12 the applicant as it reads, any issues with potential either
13 discrimination or additional exposure to the applicant?
14 Because if this is being put in writing that he's going to
15 allow additional access, well, to certain groups or people,
16 would that potentially affect his homeowner's insurance?

17 MR. HOPPER: As far as insurance issues are
18 concerned, that's between the homeowner and his insurance
19 company. But the -- the condition as worded, I don't see it
20 as an enforceable condition by the Planning Department. I
21 mean, it basically says "to those currently use said access."
22 We don't know who those people are. I would want to see a
23 list of specific people attached as an exhibit to this;
24 otherwise, I can't really -- I could not really advise the
25 Planning Department on how to enforce that condition. This --

1 you know, someone could say, Oh, that's someone who was using
2 access currently at the time that you granted the permit, so
3 I've denied access to that person. I don't see a way how the
4 Planning Department could enforce this condition as a County.
5 It's not to say that it doesn't mean well as a condition, but
6 I just don't see how it can be enforced by the County,
7 frankly.

8 VICE-CHAIR MOLINA: And your opinion on the Planning
9 Commission's Condition 8? Any comments on that one as well?
10 Is that also something that may not be enforceable as well?

11 MR. HOPPER: Well, the -- the phrase "local general
12 public" is -- I would strike "local." "General public" would
13 be -- I would understand that to mean the public. But if the
14 applicant has a problem with that, we may need to discuss that
15 further because that would basically be, you know, sort of
16 creating an easement across their property by a condition,
17 which can -- you know, the -- the Planning Commission has done
18 in certain cases for SMA permits and -- but that's sort of for
19 very specific situations. And I would want to speak with you
20 a bit more about doing that if it's something the applicant
21 does not favor because it's, you know, leaving -- leaving
22 someone's property open to the general public, there's certain
23 issues that I want to discuss with you, you know, as far as
24 they relate to, you know, the Hawaii State Constitution and
25 the access rights granted under that as far as we could phrase

1 that condition. I think that you've done that in other
2 projects, Wailea 670 being an example, so we could look at
3 wording.

4 But, you know, if this condition is one the
5 applicant can live with as "general public," striking "local,"
6 then I think that that's an okay condition. That basically
7 means that you have to allow access to the general public.
8 But if the applicant is not okay with that condition, there's
9 ways that if you wanted to involuntarily impose a condition,
10 that we could discuss, but I think it would have to perhaps be
11 a bit narrower than it's phrased here.

12 VICE-CHAIR MOLINA: So in -- to summarize, then,
13 basically, the applicant cannot be selective as to who goes on
14 to his property? I mean, cannot just say, you know, to only
15 certain groups if he is going to make it accessible?

16 MR. HOPPER: Oh, no. I'm talking about a condition
17 is very different than what the applicant -- With no
18 condition, the applicant can -- obviously can allow whomever
19 he would like --

20 VICE-CHAIR MOLINA: Right.

21 MR. HOPPER: -- to go over that property. There's
22 not a condition required for that. Which is why I guess I'd
23 say Condition 8, it would be very difficult for the Planning
24 Department to enforce that condition, but it certainly
25 wouldn't limit the applicant in saying -- I mean, obviously

1 you can allow your -- you know, whoever you want to to walk
2 over your property and say someone else, you don't want them
3 there, you can exclude them. I mean, that's -- that's the
4 case generally.

5 VICE-CHAIR MOLINA: Okay. See, Madam Chair, I think
6 by memorializing this, putting this in writing, then, kind of
7 opens up the applicant to a lot more exposure, potentially. I
8 mean -- and already -- as you stated, we already have a legal
9 access which is near the area where the applicant lives. So
10 I'm just kind of wondering if this condition should even be
11 put in here at this time. So, anyway, food for thought, Madam
12 Chair.

13 CHAIR BAISA: Yes. Members, any addition -- Member
14 Nishiki.

15 COUNCILMEMBER NISHIKI: I was looking at the
16 Planning Commission condition and it says, "That public access
17 to and from the shoreline over the property shall continue to
18 be available to fishermen," and then in it it says, "local
19 general public," of course. Corporation Counsel is arguing
20 that point. When I read that, I -- I think that this has been
21 ongoing, because it "shall continue to be available." So, Mr.
22 Moffett or Gwen, is that true?

23 CHAIR BAISA: Ms. Hiraga.

24 MS. HIRAGA: Yes, Councilmember Nishiki, that is
25 true. Mr. Moffett did speak at the Planning Commission

1 meeting about how he allows his neighbors, the local fishermen
2 nearby, to come through his property to fish and he would like
3 to continue it. And so the Commission came up with this
4 condition that would require him to continue this practice.
5 It was never the intent that the access be for the general
6 public, but he wanted to, you know, accommodate his fishermen
7 friends that have traditionally gone through his property.

8 And, Buzz, you can say more.

9 MR. MOFFETT: Yeah, it --

10 CHAIR BAISA: Mr. Moffett.

11 MR. MOFFETT: It -- where my -- where the property
12 is, there's beach accesses on both sides. And right where my
13 property is is a good spot for throwing net. And so there's a
14 certain -- a few guys that would come through and throw net.
15 It's just closer for them to walk. And I never had a problem
16 with it. It's not the ideal spot for people to go to the
17 beach because the beach right directly in front of it, you
18 can't swim because there's rocks. And there's a good swimming
19 beach just right on the other side of the property. So if
20 they're going to go swimming, lay on the beach; they're going
21 to go the other way, anyway. There's just a few guys that
22 come down and -- and throw net and -- and, you know, it's
23 never been an issue. I didn't mean to turn it into an issue
24 by even mentioning it at the -- at the Commission --

25 COUNCILMEMBER NISHIKI: All right.

1 MR. MOFFETT: -- hearing. But, you know, it's
2 something I wouldn't stop. I would never consider stopping
3 it, anyway.

4 COUNCILMEMBER NISHIKI: Yeah. And -- and, you know,
5 there's two points to this, Madam Chair, and I have really
6 changed my mind about stuff like this now. You know,
7 sometimes you allow too many people to come and then they
8 abuse it and they create a Waikiki. This situation may be
9 the -- it's not that way. Or they go into the water -- even
10 surfers, they give surf lessons, they go and the guys that
11 taking lessons, they just bust up the coral. I remember Uncle
12 Harry Mitchell told me this, you know. These guys, they're so
13 insensitive. They're busting up the haole that the fish live
14 in -- the fish lives in by stepping all over the coral. And
15 then, finally, you fish out the area. And I think this area
16 was pretty much a good lobster area and -- and stuff like that
17 when I used to talk to -- But, anyway, Irvine and even -- But
18 so that's the concern, you know. You come out, people that --
19 You cannot educate them. They're just going to do it and
20 they're just going to take.

21 Now, I still believe that people should have access,
22 so where are these accesses? How far away from your property?
23 And is there something that they may have to jump on rock or,
24 you know, whatever to -- to get to this area that is now
25 fronting your property, or is it just a rocky shoreline?

1 MR. MOFFETT: Okay.

2 COUNCILMEMBER NISHIKI: How far is it from your
3 property?

4 MR. MOFFETT: Mr. Nishiki, the -- to the south is
5 the Kahana Villages Condominium.

6 COUNCILMEMBER NISHIKI: Okay.

7 MR. MOFFETT: And I believe it has about 300 feet of
8 frontage, maybe a little bit more, and there's a beach access
9 directly next to it that empties straight on to the sand.
10 Okay? So there's --

11 COUNCILMEMBER NISHIKI: And they can wake along the
12 shoreline to your area?

13 MR. MOFFETT: Yes, yes.

14 COUNCILMEMBER NISHIKI: No problem?

15 MR. MOFFETT: No problem. No rocks. All sand.

16 COUNCILMEMBER NISHIKI: Okay.

17 MR. MOFFETT: Okay.

18 COUNCILMEMBER NISHIKI: And that property is
19 adjacent to you, but --

20 MR. MOFFETT: It's on the other side of the stream.

21 COUNCILMEMBER NISHIKI: Okay. So that's not too
22 far.

23 MR. MOFFETT: Yeah.

24 COUNCILMEMBER NISHIKI: And then where --

25 MR. MOFFETT: On the other side is the Lower

1 Honoapiilani Road meets the shoreline two lots to the north.
2 And so that would be approximately probably 300 feet the other
3 way. And -- and there's beach straight -- straight ahead
4 beach access there and that's the better swimming area. And
5 so --

6 COUNCILMEMBER NISHIKI: Okay.

7 MR. MOFFETT: So it's on both sides.

8 COUNCILMEMBER NISHIKI: That -- that access is how
9 far? It's a County access with access with signs?

10 MR. MOFFETT: No. That one is just the road meets
11 the beach and there's nothing on the ocean side, you know.
12 It's one of those areas where the road just goes right up to
13 the beach and so I guess it -- I guess it would be State,
14 State land along the ocean and then the road right next to it.
15 And -- and it's straight down to sand right there. Yeah.
16 It's right across from the -- where the Smiths live in Kahana,
17 where Mr. Takahashi used to hang out, they hang out drinking
18 beer there the evenings and --

19 COUNCILMEMBER NISHIKI: Okay. Okay. Anyway, it
20 seems, Madam Chairman, that there's two accesses, and so I
21 would -- Wow, it's really hard. I mean, you want to allow
22 your friends to -- You can allow your friends. Even without
23 this language, you can allow your friends. So, wow, it's --
24 this is unusual for me, but I would take it away.

25 CHAIR BAISA: Mr. Nishiki, I think that's where it's

1 going because, you know, the access is there.

2 COUNCILMEMBER NISHIKI: Okay.

3 CHAIR BAISA: Also, all of his friends, I have a
4 feeling that they can shout out to us the code for the gate.

5 (Laughter.)

6 CHAIR BAISA: I've been told they all know it. So
7 it's kind of an interesting thing, you know. When I went out
8 there the other day, I took my husband, of course, who is a
9 net fisherman who is very interested in the logistics of all
10 of this 'cause, you know, like -- like you, he has a great
11 affinity for the beach and a great concern about being a net
12 fisherman wanting to have access to the beach.

13 In the short time we were there, there was a turtle
14 that came in and was almost on the sand right in front of
15 this. And it was just so beautiful to -- and you could see
16 the fish, you know, out in the water. And this is a very
17 precious place to the -- the guys who go there.

18 COUNCILMEMBER NISHIKI: Yeah.

19 CHAIR BAISA: And I -- I understand what you're
20 trying to say about it's very difficult because once there's
21 too much access, then the fishing grounds are -- are
22 decimated. But, you know, we understand public access is
23 really important.

24 But I wanted to be sure that this condition was
25 clearly understood that if it was there that, that this could

1 be -- mean that the public, the general public would have
2 access through the property. And we need to be careful,
3 because there is one -- well, on the Lahaina side there is a
4 public access with the sign and the way to get to it. And the
5 other one where the road comes right down, you can -- you're
6 right there and you just walk in front. There's no barriers
7 to walking in front of his house.

8 Member Kaho'ohalahala.

9 COUNCILMEMBER KAHO'OHALAHALA: Yeah. Just a
10 question for the applicant.

11 CHAIR BAISA: Sure.

12 COUNCILMEMBER KAHO'OHALAHALA: Are you familiar with
13 any of the Piilani Trails?

14 MR. MOFFETT: Well, I've -- I've heard about them
15 and I believe that there are some up north further, but not --
16 not in my area, no.

17 COUNCILMEMBER KAHO'OHALAHALA: Okay. So you're --
18 you can say that Piilani's Trails do not go to -- to your
19 specific area?

20 MR. MOFFETT: I'm not aware of 'em.

21 COUNCILMEMBER KAHO'OHALAHALA: Okay. That would be
22 the only thing, Madam Chair, is that I think at some point in
23 time -- I think there's an effort to look at the traditional
24 trails and Honoapiilani refers to all of Piilani's Trails to
25 connect all of those bays along that west side of Maui. And I

1 know that one kupuna is working toward reestablishing some of
2 them. They may bring to mind some of those public accesses
3 that deal with traditional access, of which you might come
4 into play with -- with past kind of access issues and then we
5 would have to be dealing with -- with access in a very
6 different way irregardless of what's -- what we're doing
7 today.

8 But I'm just wanting to know if you're -- you're
9 familiar with Piilani and the -- the fact that these are
10 connected by some trails that would be along with that
11 possible traditional gathering places or fishing places that
12 would be attached to those trails. So that might be something
13 you might want to get some --

14 COUNCILMEMBER MEDEIROS: Research.

15 COUNCILMEMBER KAHO'OHALAHALA: -- information on.
16 Yeah. Thank you.

17 CHAIR BAISA: Member Medeiros.

18 COUNCILMEMBER MEDEIROS: Madam Chair, yes, mahalo.
19 I would agree with my colleague, Mr. Molina, and even as Mr.
20 Nishiki has hinted. I think for me, the safest is for the
21 applicant to continue what he already has, an arrangement with
22 friends and fishermen. To take out this condition and let him
23 continue his practice of how he allows fishermen through his
24 property.

25 CHAIR BAISA: The Chair will entertain such a

1 motion.

2 COUNCILMEMBER MEDEIROS: I'm going to yield to
3 Member Molina, since he brought up the point first.

4 CHAIR BAISA: Member Molina.
5 Thank you, Member Medeiros.

6 VICE-CHAIR MOLINA: All right. Thank you. Thank
7 you, Member Medeiros.

8 Madam Chair, I move to delete Condition 8.

9 COUNCILMEMBER MEDEIROS: Second the motion.

10 CHAIR BAISA: It's been moved by Member Molina,
11 seconded by Member Medeiros to delete Condition No. 8 for the
12 reasons I guess we've all talked about. Discussion? Member
13 Molina.

14 VICE-CHAIR MOLINA: Yeah. Thank you, Madam Chair.
15 Yeah, I propose this deletion, you know, along with Member
16 Nishiki and Member Medeiros. It is a tough one, but at the
17 same time I was thinking of a potential scenario that could
18 occur, you -- Mr. Nishiki and I had an earlier conversation
19 today. We were talking about what it was like in the old days
20 and when you have, you know, people who have come from other
21 places and, you know, they go on to your property or they go
22 the ocean and they get hurt. And people who have not grown up
23 here, the first thing they think about is if they get hurt,
24 sue, the three letter word sue. And, you know, let's say a
25 visitor observes one of Mr. Moffett's friends going through

1 his property to the beach. Inadvertently they may just follow
2 along, then they get hurt on his property. And, guess what,
3 this condition is left in like that, if they hire a clever
4 lawyer -- I mean, not to scare you or anything, Mr. Moffett.
5 And I appreciate your aloha. That's good. That's good, but
6 you never know nowadays. People could find -- a clever lawyer
7 could find this condition if it's left in as is and say, hey,
8 you know what, you opened up this place to access by the
9 way -- you know, he could be exposing himself.

10 So I think just for the protection of the applicant
11 and being that there already is public access and this is not
12 officially access to the public, I think for all intents and
13 purposes, I think it's best we leave this condition out, Madam
14 Chair. Thank you.

15 CHAIR BAISA: Any additional discussion? Member
16 Nishiki.

17 COUNCILMEMBER NISHIKI: Yeah. And -- and I'm going
18 to show my age, but, you know, I was telling Michael today, I
19 said when I was growing up -- when I was growing up, you know,
20 we never think like that. You know, it just -- just because
21 we grew up and we know everybody. But sad to say, Maui is not
22 like that anymore. And, you know, even when we deal over
23 here, we get threats from people. I know even tomorrow at our
24 next meeting, one -- I'm not going to say his name, but is
25 threatening sue job, you know. And I don't know how I'm going

1 to tell him, but that is something.

2 And so, you know, thanks for your aloha, you know.
3 It's like, you know, when I see this kind of people here,
4 it -- it only -- you know, and a lot of people, it only makes
5 me know who you are by this, but I don't know you. Okay.
6 Mahalo. Thank you.

7 CHAIR BAISA: Mr. Pontanilla.

8 COUNCILMEMBER PONTANILLA: Thank you, Chair. I'm
9 going to be supporting the motion. And I'm glad you went out
10 there to take a look and found that one public access and, of
11 course, the other one near the shoreline. You know, people
12 can use the public access and then they can, you know, go
13 north and south of the beach with no discrimination. So, you
14 know, at least the people here in Maui County do have access
15 to that area.

16 And for the property owner, you know, I'm glad to
17 see that, you know, he let local fishermen in the area to
18 utilize his property as a shortcut to the fishing ground. So
19 going to be supporting the motion. Thank you.

20 CHAIR BAISA: Thank you very much, Members.
21 Members, are we ready for the question?

22 VICE-CHAIR MOLINA: Call for the question.

23 CHAIR BAISA: All those in favor say aye.

24 COUNCIL MEMBERS VOICED AYE.

25 CHAIR BAISA: Opposed, say no.

1 VOTE: AYES: Councilmembers Kaho'ohalahala, Mateo,
2 Medeiros, Nishiki, Pontanilla, Vice-Chair
Molina, and Chair Baisa.

3 NOES: None.

4 ABSTAIN: None.

5 ABSENT: None.

6 EXC.: Councilmembers Johnson and Victorino.

7 AMENDMENT CARRIED.

8 ACTION: DELETE CONDITION NO. 8.

9

10 CHAIR BAISA: The Chair will mark seven ayes and two members
11 excused; Member Johnson and Member Victorino. The motion carries and
12 Condition 8 will be deleted. Members, Condition 9 also bears some
13 looking at. As it reads right now, it says, "That the
14 existing dwelling shall continue to be made available for
15 overnight use by community organizations when not rented for
16 transient vacation rental use." And the person who raised the
17 issue about this was myself, because I felt that it was not
18 carefully worded and it might open the door. You know, there
19 are hundreds of nonprofits on Maui and all kinds of community
20 organizations. And I think -- I thought it was a little too
21 broad, that it needed to be more specific to accommodate what
22 was the intent. The intent was that Mr. Moffett in the past
23 has made this property available to community organizations
24 because what they do is when they have a silent auction, they
25 would auction off a night in Mr. Moffett's beautiful TVR as a

1 prize and sell it and make money for the organization.

2 I wanted to be sure that there was some kind of
3 limitations because, you know, with all of the community
4 organizations wanting this, he might never be able to have
5 paid guests. So I suggested that we might want to look at it
6 a little more carefully and word it more carefully. And then
7 the revision that has been suggested is: "That the existing
8 dwelling shall continue to be made available for overnight use
9 by nonprofit community organizations as an auctioned item for
10 fund-raising purposes when not rented for transient vacation
11 rental use."

12 And it's my understanding from Mr. Moffett that your
13 occupancy is about 60 percent, 50 percent?

14 MR. MOFFETT: Yeah, when we were operating --

15 CHAIR BAISA: When you were operating.

16 MR. MOFFETT: When we were operating, yeah. Yeah,
17 right. It -- it got a little bit above that, but I don't
18 think we ever made 70 at the best of times.

19 CHAIR BAISA: So there is a considerable amount of
20 time where this could be used by those nonprofit
21 organizations, but I felt we might want to quantify it a
22 little bit more by being more specific. And that's what this
23 amendment -- suggested amendment is about.

24 COUNCILMEMBER NISHIKI: Madam Chair.

25 CHAIR BAISA: Yes.

1 COUNCILMEMBER NISHIKI: You know, you -- you -- in
2 your testimony, again, you say that this is what you do for
3 the community, okay, and that's -- that's nice. And I don't
4 know if the Commission asked you the question, if you mind,
5 that, putting in this condition, Madam Chair, you know. But I
6 don't know if I want to do this and, you know, all kind
7 nonprofits going to pile on him again. You know, it's like he
8 does it, let him do it. Yeah? But don't have to advertise
9 for him. This is not one community center, you know. And --
10 and that's all.

11 CHAIR BAISA: Member --

12 COUNCILMEMBER NISHIKI: I just -- I just rather
13 eliminate it.

14 CHAIR BAISA: Thank you. Mr. Moffett.

15 COUNCILMEMBER NISHIKI: It's nice.

16 CHAIR BAISA: Any reaction?

17 MR. MOFFETT: Yeah. They -- I don't understand why
18 it's in here. I'm not going to change, you know. I am who I
19 am. I'm going to continue operating and -- and supporting the
20 community like I always have.

21 CHAIR BAISA: Again, we have these recommendations
22 from the Planning Commission, Members, and it's our
23 discretion, you know, how we want to handle them, but I did
24 have some concerns like you, Mr. Nishiki.

25 COUNCILMEMBER NISHIKI: Thank you.

1 CHAIR BAISA: Member Molina.

2 VICE-CHAIR MOLINA: Thank you very much, Madam
3 Chair. Well, you know, like I said, we have some options to
4 consider, but Mr. Nishiki does have a point. I have never
5 seen any condition like this applied towards any of our other
6 applicants for TVR's and bed and breakfasts. So, Madam Chair,
7 I move to delete Condition 9.

8 COUNCILMEMBER NISHIKI: Second.

9 CHAIR BAISA: Members, do we have a motion by Member
10 Molina and a second by Member Nishiki to delete Condition No.
11 9. Any discussion? Member Mateo.

12 COUNCILMEMBER MATEO: Chairman, thank you. I am
13 going to support the motion on the floor. Mr. Moffett will
14 continue to do what he's been doing for the community and I'm
15 ready for the question. Thank you.

16 CHAIR BAISA: Any additional discussion?

17 COUNCILMEMBER MEDEIROS: Madam Chair.

18 CHAIR BAISA: Member Medeiros.

19 COUNCILMEMBER MEDEIROS: Yes. I'm going to support
20 the motion, too, and looking at the support that we have in
21 the gallery from people that have been graced by Mr. Moffett's
22 generosity and aloha to have access to the property, I think
23 this is a good motion to delete the condition. Mahalo, Madam
24 Chair.

25 CHAIR BAISA: Any additional comments? If not, all

1 those in favor of the motion say aye.

2 COUNCIL MEMBERS VOICED AYE.

3 CHAIR BAISA: Opposed, no.

4 VOTE: AYES: Councilmembers Kaho'ohalahala, Mateo,
5 Medeiros, Nishiki, Pontanilla, Vice-Chair
Molina, and Chair Baisa.

6 NOES: None.

7 ABSTAIN: None.

8 ABSENT: None.

9 EXC.: Councilmembers Johnson and Victorino.

10 AMENDMENT CARRIED.

11 ACTION: DELETE CONDITION NO. 9.

12 CHAIR BAISA: Motion carries with seven ayes and
13 two members excused; Member Johnson and Member Victorino.

14 Okay. That takes care of No. 9.

15 Number 10. This is not on the list of -- that was
16 given to us by the applicant, but we still need to do some
17 things here. No. 10 says, "That parking shall continue to be
18 provided on site." We would simply like to add that "all,"
19 the word "all parking shall continue to be provided on site."
20 And I have discussed this with the applicant, and he's
21 amenable to that.

22 VICE-CHAIR MOLINA: Okay. Madam Chair?

23 CHAIR BAISA: Yes.

24 VICE-CHAIR MOLINA: Move to amend Condition 10 to
25 add the word "all" and to read as follows: "That all parking

1 shall continue to be provided on site."

2 COUNCILMEMBER MEDEIROS: Second.

3 CHAIR BAISA: We have a motion by Member Molina and
4 a second by Member Medeiros to amend that condition to include
5 "that all parking." Any discussion?

6 All those in favor, please say aye.

7 COUNCIL MEMBERS VOICED AYE.

8 CHAIR BAISA: Opposed, no.

11 VOTE: AYES: Councilmembers Kaho'ohalahala, Mateo,
12 Medeiros, Nishiki, Pontanilla, Vice-Chair
Molina, and Chair Baisa.

13 NOES: None.

14 ABSTAIN: None.

15 ABSENT: None.

16 EXC.: Councilmembers Johnson and Victorino.

17 AMENDMENT CARRIED.

18 ACTION: REVISE CONDITION.

19 CHAIR BAISA: Motion carries with seven ayes, two excused;
20 Member Johnson and Member Victorino. To Condition No. 12 -- We're
getting there, folks -- that, "That all smoke detectors shall be
21 operable and tested by the owner or on-site manager. Older
22 homes that were not equipped with hard-wired smoke detectors
23 must be battery operated at minimum. A smoke detector shall
24 be installed in each sleeping area. A log of monthly testing
25 shall be maintained by the owner." We'd like to revise the

1 second sentence to make it grammatically correct. That's all
2 we're doing. So that it will say, "Older homes that were not
3 equipped with hard-wired smoke detectors must," delete "be"
4 and insert, "have battery-operated smoke detectors installed
5 at a minimum."

6 VICE-CHAIR MOLINA: Madam Chair.

7 CHAIR BAISA: That's a very simple -- simple
8 grammatical thing.

9 VICE-CHAIR MOLINA: Madam Chair, move to amend
10 Condition 12 as stated by you.

11 COUNCILMEMBER MEDEIROS: Second.

12 CHAIR BAISA: Thank you very much. We have a motion
13 by Member Molina and a second by Mr. Medeiros. Does everybody
14 understand this, this change? Member Kaho'ohalahala.

15 COUNCILMEMBER KAHO'OHALAHALA: In discussion, Madam
16 Chair.

17 CHAIR BAISA: Yes.

18 COUNCILMEMBER KAHO'OHALAHALA: I'm curious as to why
19 the older homes is a section within this. Is your home
20 considered an older home?

21 MS. HIRAGA: No.

22 MR. MOFFETT: No.

23 COUNCILMEMBER KAHO'OHALAHALA: Okay. So it doesn't
24 make sense that we're making reference to something that's not
25 part of the applicant in a condition, so --

1 CHAIR BAISA: Staff?

2 COUNCILMEMBER MOLINA: Delete the second sentence.

3 MS. NAKATA: Would the Committee prefer to delete
4 the sentence all together?

5 CHAIR BAISA: Would you like to delete the sentence?
6 Because it's not an older home. This is not that old. I'm
7 much older.

8 (Laughter.)

9 COUNCILMEMBER KAHO'OHALAHALA: Madam Chair, yeah. I
10 don't know what the intent of this language in here was, if
11 the applicant's home is a newer home and that we're making
12 reference to something that does not exist, so I would move,
13 then, to amend and remove that sentence.

14 CHAIR BAISA: Thank you.

15 COUNCILMEMBER MEDEIROS: Second.

16 CHAIR BAISA: Thank you very much. We have a motion
17 by Member Kaho'ohalahala, seconded by Member Medeiros to
18 delete that sentence 'cause it really doesn't apply to this
19 building. It's not an old building.

20 MS. NAKATA: Madam Chair?

21 CHAIR BAISA: Yes.

22 MS. NAKATA: Was the earlier motion to amend
23 withdrawn?

24 VICE-CHAIR MOLINA: Madam Chair, move to withdraw
25 the earlier amendment.

1 CHAIR BAISA: Okay. Second?

2 COUNCILMEMBER MEDEIROS: I withdraw my second.

3 CHAIR BAISA: Okay. Go on. So now we have a new
4 one.

5 COUNCILMEMBER KAHO'OHALAHALA: Madam Chair, I move
6 to amend Condition 12 by deleting the second sentence
7 beginning with "Older homes."

8 COUNCILMEMBER MEDEIROS: I second.

9 CHAIR BAISA: Do we have a second?

10 Discussion? If not --

11 COUNCILMEMBER NISHIKI: Madam Chair.

12 CHAIR BAISA: Yes.

13 COUNCILMEMBER NISHIKI: Yeah. As we go down 'cause
14 we went all the way through 19, Mr. Moffett, if you have any
15 objections, please raise your hand or something; otherwise, we
16 just --

17 CHAIR BAISA: We're assuming that you're okay with
18 it.

19 MR. MOFFETT: Okay.

20 COUNCILMEMBER NISHIKI: Thank you.

21 CHAIR BAISA: Just call out and say stop. Okay.

22 Members, all those in favor of the motion, say aye.

23 COUNCIL MEMBERS VOICED AYE.

24 CHAIR BAISA: Opposed, no.

25

1 VOTE: AYES: Councilmembers Kaho'ohalahala, Mateo,
2 Medeiros, Nishiki, Pontanilla, Vice-Chair
Molina, and Chair Baisa.

3 NOES: None.

4 ABSTAIN: None.

5 ABSENT: None.

6 EXC.: Councilmembers Johnson and Victorino.

7 AMENDMENT CARRIED.

8 ACTION: REVISE CONDITION.

9 CHAIR BAISA: Motion carries. Seven ayes and no noes.

10 Members, what else do we need to take care of?

11 Staff, have -- have I overlooked anything?

12 Members, I do want to call one more thing to your

13 attention before we take a final vote on this, and that is

14 that the Conditional Permit request is for three years and I

15 want everybody to be aware of that. Is there any discussion?

16 Do we have to vote on that, Staff?

17 No. It's part of the bill. Okay.

18 MS. NAKATA: Excuse me, Madam Chair?

19 CHAIR BAISA: Okay. That's the end of my -- Member Molina.

20 VICE-CHAIR MOLINA: Yeah. Madam Chair, when you deem it appropriate,

21 I would like to just ask the applicant a question regarding Condition 15.

22 CHAIR BAISA: Yes. Go ahead right now.

23 VICE-CHAIR MOLINA: Okay. Thank you.

24 Ms. Hiraga and Mr. Moffett, Condition 15 states that

25 "William Moffett shall not own or operate another transient

1 vacation rental in the County of Maui." And I'm wondering,
2 did you make somebody mad in the County? I mean, can you
3 explain that condition, why it was proposed?

4 MR. MOFFETT: Yeah. I have no idea. They -- you
5 know, a lot of these things, obviously you can see they were
6 added in and they didn't make a lot of sense to me when it
7 happened, but it happened very quickly. I think that a lot of
8 these conditions were added from other applications and they
9 just kind of plugged them all in and -- and voted. So I have
10 no idea why that -- why that was added. I don't own another
11 one and --

12 VICE-CHAIR MOLINA: Okay. Madam Chair, can I ask
13 the Planning Department their response, please? Mr. Yoshida
14 or Mr. -- sorry if I -- Mr. Wollenhaupt. Can I -- can I get
15 your opinion on that condition being put in? Because I
16 haven't seen a condition like that in other applications as
17 well. Does the Department have concerns if that condition was
18 deleted? Department?

19 MR. WOLLENHAUPT: I wasn't the one that did that,
20 that wrote together. I think there might have been some
21 concern from a theoretical standpoint that you'd have a -- one
22 person perhaps from the mainland begin to operate a number of
23 these all across the County. And so there was maybe a
24 philosophical discussion just in general to limit the number
25 of people who have that amount of control over the TVR

1 industry. And probably there was some boilerplate issues that
2 might have been in the past that just goes into here. So that
3 might have been some background on it. I'm not sure that --
4 Again, it's at your purview to make the discussion and the
5 conditions fit the particular situation, so I'm not sure the
6 Department would have any problem deleting this one for this
7 particular case.

8 VICE-CHAIR MOLINA: Because either way, if Mr.
9 Moffett wanted another transient vacation rental someplace, he
10 would still have to come back to the Department and the
11 Council anyway; right?

12 MR. WOLLENHAUPT: That's correct.

13 VICE-CHAIR MOLINA: And they're already on record,
14 assuming if this passes, as having one. So my just general
15 concern is, Madam Chair, it's like where we're sort of tying
16 the hands of the -- an applicant. It seems somewhat
17 discriminatory, especially when I have never seen a condition
18 placed like this in other applications. So, again, food for
19 thought, Madam Chair. I would have no problems deleting this
20 condition.

21 COUNCILMEMBER PONTANILLA: Chairman?

22 CHAIR BAISA: Yes, Mr. Pontanilla.

23 COUNCILMEMBER PONTANILLA: You know, I kind like the
24 idea of having Condition 15 remain. And the explanation by
25 Planning Department is something that we need to be -- need to

1 consider in regards to -- you know, maybe not Mr. Moffett,
2 but, you know, offshore people buying properties over here
3 and, you know, run it as a transient vacation rental. And I
4 think the Planning Department is -- not Planning, the Planning
5 Commissioners probably is cautioned about that kind stuff.

6 So for me, 15, it's not going hurt Mr. Moffett, but
7 it, you know, creates something for the County of Maui, you
8 know, telling people that buying into Maui that, you know,
9 this is -- although it's a business, but don't make it, you
10 know, something that, you know, you're going to buy two,
11 three, four properties and run it as transient vacation
12 rentals.

13 And Mr. Molina brings out a good point in regards
14 to, you know, the need to come out and apply for a TVR permit,
15 but I think the language like this, you know, will deter
16 future people from going more than one TVR.

17 CHAIR BAISA: Thank you. If my memory serves me
18 correctly, and maybe Planning can help me, I think in the B &
19 B ordinance we put in the limitation of one per permittee,
20 because we wanted to kind of, you know, keep things under
21 control. So it's in there.

22 Member Molina.

23 VICE-CHAIR MOLINA: Yeah. And that's a good point
24 to bring up, Madam Chair, but we don't have a TVR ordinance,
25 too, yeah, right now. So that's why it kind of complicates

1 matters more. So, I mean, you know, whatever. It's just that
2 it seems so unusual to see this condition put in and being
3 directed towards this applicant.

4 CHAIR BAISA: Applicant, any concerns --

5 MR. MOFFETT: No.

6 CHAIR BAISA: -- in leaving it in?

7 MR. MOFFETT: No. I don't have any plans to operate
8 another one. Just trying to survive one.

9 CHAIR BAISA: Mr. Molina, can you live with it?

10 VICE-CHAIR MOLINA: Yeah. Whatever, Madam Chair.
11 Go with your recommendation.

12 CHAIR BAISA: Thank you. Chair recommends we leave
13 it in unless somebody has strong feelings.

14 COUNCIL MEMBERS VOICED NO OBJECTIONS.

15 CHAIR BAISA: Thank you very much.

16 Okay. We have one -- one more to go and then we're
17 at the end. Condition No. 4. In Condition No. 4 it's about
18 insurance. We just want to make A technical amendment. It's
19 really nothing major. That we'd like to add where it says,
20 "That William Moffett, his successors and permitted assigns,"
21 we would like to insert the words, "and on-site property
22 manager" in the event --

23 That's what we're adding?

24 MS. NAKATA: "And any property manager."

25 CHAIR BAISA: "And any property manager shall

1 exercise reasonable due care." We want to add that in there.

2 VICE-CHAIR MOLINA: Madam Chair, move to amend
3 Condition 4.

4 COUNCILMEMBER MEDEIROS: Second.

5 CHAIR BAISA: Thank you very much. We have -- I see
6 Corp Counsel giving me the look or --

7 MS. NAKATA: Actually, that phrase would get added
8 in three different places in that condition as appropriate.

9 CHAIR BAISA: In this same condition, throughout
10 this condition wherever it says "successors and permitted
11 assigns," we're adding in "and any" -- "and any on-site
12 property manager." Is that what it is?

13 MS. HIRAGA: No, not "on site."

14 MR. MOFFETT: No, not "on site."

15 CHAIR BAISA: Repeat. Help me. I'm getting to the
16 end of this. I'm tired.

17 MS. NAKATA: "And any property manager."

18 CHAIR BAISA: "And any property manager."

19 MS. NAKATA: Since it's not an on-site manager.

20 COUNCIL MEMBERS VOICED NO OBJECTIONS.

21 CHAIR BAISA: Okay. Does everybody understand what
22 we're doing?

23 VICE-CHAIR MOLINA: Could we -- Madam Chair, could
24 we again restate the insertion of the --

25 CHAIR BAISA: I'm going to ask Staff to do that,

1 please. We need to be very clear what we're approving because
2 you know how this is, it comes backs and bites us.

3 MS. NAKATA: I believe there would be three
4 locations where the phrase "and any property manager" would
5 get added into Condition No. 4. The first would be right at
6 the very start of the condition, "That William Moffett, his
7 successors and permitted assigns," and then we'd add in the
8 phrase "and any property manager."

9 COUNCILMEMBER MEDEIROS: Madam Chair?

10 CHAIR BAISA: Yes. Yes, Mr. Medeiros.

11 COUNCILMEMBER MEDEIROS: So I'm assuming they're
12 going to clean up the grammar in it, because we've got two
13 and's where you can take out the comma at the end and then add
14 the last one.

15 CHAIR BAISA: Right.

16 COUNCILMEMBER MEDEIROS: That's the last sequence
17 of -- because it's -- you're saying -- Where am I? You're
18 saying "his successors and permitted assigns and property
19 managers." Why wouldn't it read, "his successors, permitted
20 assigns and property managers"?

21 MS. NAKATA: That would probably be fine. It would
22 be "and any property manager" would be the phrase added in.
23 And we can make grammatical corrections.

24 COUNCILMEMBER MEDEIROS: Okay. Thank you.

25 CHAIR BAISA: Thank you. And the Chair will -- the Chair will

1 also ask for the Committee if it's okay if we permit Staff to
2 make technical, nonsubstantive revisions in the work that
3 we're doing today.

4 COUNCIL MEMBERS VOICED NO OBJECTIONS. (DM, SK, BM, WN, JP, MM,
5 GB)

6 ACTION: NONSUBSTANTIVE REVISIONS.

7 CHAIR BAISA: No objections. Thank you. Okay.

8 MS. NAKATA: But there would be three places within
9 that condition where the phrase would be added.

10 CHAIR BAISA: Correct. So there are three places
11 where we're going to be making this amendment. All those in
12 favor, say aye.

13 COUNCIL MEMBERS VOICED AYE.

14 CHAIR BAISA: Opposed, no.

17 VOTE: AYES: Councilmembers Kaho'ohalahala, Mateo,
18 Medeiros, Nishiki, Pontanilla, Vice-Chair
Molina, and Chair Baisa.

19 NOES: None.

20 ABSTAIN: None.

21 ABSENT: None.

22 EXC.: Councilmembers Johnson and Victorino.

23 AMENDMENT CARRIED.

24 ACTION: REVISE CONDITION.

25 CHAIR BAISA: Motion is carried again with seven ayes and
two excused; Member Johnson and Member Victorino. Staff, is there

1 anything else we need to take care of before we get to the motion?

2 I don't want to leave something out.

3 MS. NAKATA: Not that I'm aware of.

4 CHAIR BAISA: Thank you very much.

5 Members, with your permission, the Chair would like
6 to make her recommendation.

7 COUNCIL MEMBERS: Recommendation.

8 CHAIR BAISA: Members, the Chair will entertain a
9 motion to recommend passage on first reading of the proposed
10 bill entitled "A Bill For an Ordinance Granting William
11 Moffett a Conditional Permit For the Operation of a
12 Single-Family Residence As a Transient Vacation Rental Within
13 the R-3 Residential District For Property Situated At 4591
14 Lower Honoapiilani Road, Kahana, Maui, Hawaii," incorporating
15 any amendments made at today's meeting and to file County
16 Communication No. 09-45.

17 VICE-CHAIR MOLINA: So move, Madam Chair.

18 COUNCILMEMBER MEDEIROS: Second.

19 CHAIR BAISA: Thank you very much. The Chair has a
20 motion by Member Molina and a second by Member Medeiros.
21 Members, any comments? Member Molina.

22 VICE-CHAIR MOLINA: Thank you, Madam Chair. Just
23 want to thank the applicant for going through the process and
24 thank you for really giving back to the community. This is
25 something that we seldom see from applicants and kind of

1 bending over backwards on a lot of things. So good luck to
2 you and certainly appreciate you being here.

3 Thank you.

4 COUNCILMEMBER PONTANILLA: Chairman?

5 CHAIR BAISA: Any additional comments? Member
6 Pontanilla.

7 COUNCILMEMBER PONTANILLA: Thank you. I will be
8 supporting the motion. I just want to make a comment on
9 Condition No. 16, you know, notify -- telling the applicant
10 that he shall inform the Department of Finance, Real Property
11 Tax Division that he is operating a transient vacation rental
12 on the subject property. And I think this is a very good
13 condition to all applicants in the near future. Thank you.

14 CHAIR BAISA: Thank you, Mr. Pontanilla. And the
15 Chair would also like to inform the Members that this
16 applicant does not have a homeowner's exemption and that he
17 pays an incredible amount of tax on this property. It blew my
18 mind when I saw what it was.

19 Any other comments? If not, the Chair will call for
20 the vote. All those in favor, please say aye.

21 COUNCIL MEMBERS VOICED AYE.

22 CHAIR BAISA: Opposed, no.

23

24

25

1 VOTE: AYES: Councilmembers Kaho'ohalahala, Mateo,
2 Medeiros, Nishiki, Pontanilla, Vice-Chair
Molina, and Chair Baisa.

3 NOES: None.

4 ABSTAIN: None.

5 ABSENT: None.

6 EXC.: Councilmembers Johnson and Victorino.

7 MOTION CARRIED.

8 ACTION: FIRST READING OF REVISED BILL AND FILING OF
9 COMMUNICATION.

10 CHAIR BAISA: Members, the motion is carried with
11 seven ayes and two members excused; Member Johnson and
12 Member Victorino. Members, the Chair would like to thank
13 you very much for your diligent work today. I would like to
14 thank the administrative representatives and my staff. And I
15 would also like to thank the applicant. It's been a pleasure
16 to work with you in trying to bring the application to the
17 floor. You've been very cooperative and I certainly
18 appreciate working with people that are cooperative. So the
19 best of luck to you.

20 And, everybody, thank you very much. Have a nice
21 evening. This meeting is adjourned. (Gavel.)

22 ADJOURN: 4:44 p.m.

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C E R T I F I C A T E

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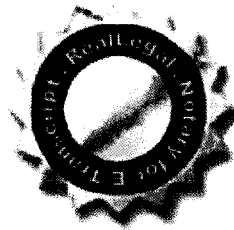
STATE OF HAWAII)
) SS.
CITY AND COUNTY OF MAUI)

I, Sandra J. Gran, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 18th day of September, 2009, in Maui, Hawaii.

Sandra J. Gran



Sandra J. Gran
Hawaii CSR 424
Notary Public for Hawaii
Commission No. 200-198
My Commission Expires: 5/14/12