

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JULY 28, 2009**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:00 a.m., Tuesday, July 28, 2009, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Wayne Hedani: The meeting of July 28 will come to order. Before we begin the formal portion of our agenda today, we wanted to recognize Commissioner Bruce U`u who had a photograph in the *Maui News*. And the Commission has decided that whoever gets their photograph in the *Maui News* will either pay five dollars or provide refreshments for the next meeting. So congratulations on your celebrity status.

Public testimony will be taken at the start of the meeting on any agenda item in order to accommodate those individuals who cannot be present at the meeting when the agenda item is considered by the Commission. Public testimony will also be taken when the agenda item is taken up by the Commission. Maximum time limits on individual testimony is three minutes. We'll give you a heads up at two minutes, and you'll have sixty seconds to finish up. A person testifying at this time will not be allowed to testify again when the agenda item comes up before the Commission unless new or additional information will be offered. We have a total of 14 people that have signed up for public testimony at this time. So we'd like to go ahead and open it up for public testimony for people that would like to testify at this time. The first person that I have is Kurt Mervis.

The following individuals testified at the beginning of the meeting:

Kurt Mervis - Item D-1, Kaanapali Alii, SMA  
Ronald DeMello - Item D-1, Kaanapali Alii, SMA  
Harry Pearce - Item D-1, Kaanapali Alii, SMA  
Dean Miyashiro - Item D-1, Kaanapali Alii, SMA  
Kevin Shaw - Item D-1, Kaanapali Alii, SMA  
Michael Minor - Item D-1, Kaanapali Alii, SMA  
Mike Murray - Item D-1, Kaanapali Alii, SMA  
Fred Torres - Item D-1, Kaanapali Alii, SMA  
Elle Cochran - Item F-1, Maui Land and Pineapple Co., Kapalua Mauka Phase 1, SMA Time Ext.

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

Mr. Hedani: That concludes the list of people I have signed up to date. Are there any other members of the public that would like to testify at this time? Seeing none, public testimony is closed. Clayton?

**B. Status Report on the Permit Processing and Approval Numbers for Bed & Breakfast Permit Applications. (C. Yoshida for J. Hunt)**

Mr. Yoshida: Thank you, Mr. Chairman, Members of the Commission. Clayton Yoshida, Administrator, Current Planning Division, subbing for the Planning Director, Jeff Hunt, who's taking a brief rest before the final two months of the Commission's Maui Island Plan Review.

The Director wanted me before – we have four public hearing items regarding the bed and breakfast operations in the State agricultural district. And before starting on that, the Director wanted us to present the Department's – a status report regarding our experience with the new Bed and Breakfast Ordinance, which has been – the report has been distributed to the Commissioners.

One, the Department has received 57 applications for bed and breakfast operations since the law was adopted in January of 2009. Four of them have been withdrawn for a variety of reasons. The Department started processing bed and breakfast applications in earnest in March of 2009 after it had to set up the new permit system. It had to address what to do with previously approved bed and breakfast operations, etc. The Department has administratively approved 12 bed and breakfast permits. Has two letters of approval in for the Director's signature, and has recommended approval of four applications that are scheduled for review at today's meeting. Thus, there will be – likely be 18 bed and breakfast permits that have been approved in the five months since the Department started processing applications or roughly, one-third of the 53 applications. Under the previous Bed and Breakfast Ordinance, 14 bed and breakfast permits were approved over a period of 11 years stretching from 1997 to 2008. The Planning Department has spent a large amount of time and is still working with other departments and agencies to establish a template of fair and reasonable conditions of approval for bed and breakfast applications. This delayed the processing times. The Department of Public Works still roughly estimates that 50% of the bed and breakfast permit applications have building permit issues that delay the processing of the applications.

So in conclusion, the Department states that the new bed and breakfast system is much, much faster than the previous system, although people need to recognize that this new system adopted by the County Council does not provide for over-the-counter approvals. Two, the Department believes the bed and breakfast permitting system will be slightly faster in the future due to the continued resolution of issues involving implementation of the new law, although it must be remembered that the Planners have a large load of other planning applications. And three, bringing properties up to code will continue to delay the processing of bed and breakfast applications. So that's the status report from the Department.

Mr. Hedani: Question, Commissioner Starr?

Mr. Jonathan Starr: Yeah, Mr. Yoshida, could you elaborate a little bit on what the criteria the Department is using? And you know, you may ask – you know, I don't know if there's someone else in the room that is more into than you or if you're the expert, on what criteria the Department is using that differs in those in an ag district where we're looking at it. In other words, if an application comes in for two bed and breakfast: one in the ag district where we would see it and one that's not, would the Department still look the same way, you know, at the application, and use the same criteria beyond what – you know, to recommend approval or denial beyond the fact that it's basically, in the ag district?

Mr. Yoshida: Commissioner Starr, with the new law, even if it does allow for bed and breakfast permits in the ag district, we still find that the use is not an outright permitted use in the State agricultural district and thus requires a State Land Use Commission special use permit. And that's why we have these four applications before you today. The authority for issuance of that permit, if it's 15 acres or less, is this Commission, and it requires a public hearing before this Commission. So there may be a lengthier time in processing because the applicant has to notify the adjacent neighbors, the Department has to publish a notice of public hearing 30 days prior to the hearing,

and you have to have a public hearing and make a decision. Once you make that decision, then we can proceed to fully process the bed and breakfast permit, but we can't do that until you have acted affirmatively on the State Land Use Commission special use permit.

Mr. Hedani: Question from Commissioner Mardfin?

Mr. Ward Mardfin; Yeah, maybe I misunderstood Commissioner Starr's question, but I thought he was – well, I'll ask. What – assuming it's not ag property, what criteria does the Department use in approving B&Bs?

Mr. Yoshida: We use the criteria that's specified in the ordinance. And on the first matter, this is going to be the first bed and breakfast permit that comes to the Commission for approval simply – well, because it is located within 500 feet of an existing permitted bed and breakfast operation. So we'll get into the criteria on the first public hearing.

Mr. Hedani: Mr. Mardfin?

Mr. Mardfin: Let me ask it slightly differently. Suppose this was not ag land. Suppose it was a single family dwelling. The Department on its own can approve B&Bs, is that correct?

Mr. Yoshida: We would look – we would circulate the application for agency review. The applicant is required to send out the notice of – well, post a sign, application sign, and send out the notice to individuals within a 500-foot radius notifying them that they have applied for a bed and breakfast permit. If 30% of the neighbors within the 45 days after the notice is sent out are in opposition, then that has – the application has to come to the Commission for their review and approval.

Mr. Mardfin: And if that doesn't happen, then presumably, the Department would say okey, dokey? They'd use the same kind of reasoning that we have in our folder? They'd go through the different criteria and say yes, no, yes, no. And assuming it meets all the criteria, you'd just – you'd approve it?

Mr. Yoshida: Yes.

Mr. Mardfin: Thank you.

Mr. Hedani: Okay. Any other questions? Commissioner Shibuya?

Mr. Warren Shibuya: Mr. Yoshida, the question that I have here is earlier you had 11 of them already pre-approved during 1997 and 2008. Are these term approvals or are these permanent approvals?

Mr. Yoshida: We had – I guess, under Item 5, we had 14 bed and breakfast permits that were issued from 1997 to 2008. With this new legislation, it does have caps on the number of bed and breakfast permits that can be issued in any community plan region on the Island of Maui. On the Islands of Molokai and Lanai, the Planning Commission approves bed and breakfast permit applications regardless of the number of rooms. So the first item was to try to convert the previously approved bed and breakfast and include them in the count. We gave them a choice of

whether they wanted to be approved – I guess the ordinance said they could be approved as currently exists meaning that they would come in for annual renewals, or they could be converted to a full bed and breakfast permit where we could grant time extensions up to five years. So we gave them that choice. Some have chosen to remain with the annual renewals. But we did include them in the count and for purposes of whether there is a legally permitted bed and breakfast operation within 500 feet, and that if there is, then that application has to come before the Commission.

Mr. Shibuya: I find it very interesting that it's a chicken or egg situation. It's whoever applied first and got it approved first that is the actual 500 feet determinate. It's not the fact that we are able to see all of those who are interested within this area and who do we pick and choose. How do you arrive at this sort of—?

Mr. Yoshida: Well, I guess in their deliberations, and the Council spent a good six months deliberating – as you recall, deliberating on this last year. They did come up with the idea of caps for different community plan regions. They did come up with the idea that they didn't want – or I guess they wanted a conscious decision if we're gonna have a concentration of these types of operations in a particular neighborhood that within – I guess they developed this regulation if it's within 500 feet of an existing permitted bed and breakfast operation that it cannot be approved administratively. It has to come to the Commission for their action.

Mr. Shibuya: And my biggest concern is that if you want to share the opportunity, then perhaps you have one-year terms, and then you rotate it among those that are interested within this one area. Is that a possible solution assuming of course they comply with all of the conditions of a bed and breakfast?

Mr. Yoshida: Well, I guess another thing that the new law created was the ability to grant longer periods of time. Under the old law, you could only grant it for one year. Now we can grant it or the Commission can grant the permit for up to three years. And to some degree, you know, if there's not any problems with the operation, that helps to possibly reduce the workload of the Department in terms of having to review annual renewals, which we were doing under the prior bed and breakfast law.

Mr. Shibuya: Thank you.

Mr. Hedani: Okay. Any other questions? Okay. Let's go on to the first item of public hearings on our agenda, Item C-1. Clayton?

**C. PUBLIC HEARINGS (Action to be taken after each public hearing.)**

- 1. MAX and TRACEY LUDWIG requesting a State Land Use Commission Special Use Permit and a Bed and Breakfast Permit because it is located within 500 ft. of a permitted bed and breakfast operation to operate the Hale Makai Bed and Breakfast, consisting of one (1) bedroom in the owner's residence and two (2) bedrooms in the second (2<sup>nd</sup>) farm dwelling located in the State Agricultural District at 266 North Holokai Road, TMK: 2-8-004: 067, Haiku, Island of Maui. (SUP2 2001/0019) (BBPH T2009/0021) (A. Cua)**

Mr. Yoshida read agenda item into the record.

Ms. Ann Cua: Good morning, Mr. Chair, Members of the Commission. I would like to start off with a very short power point in part to tell you why we're here. And Clayton has actually gone through part of what I'm going to be talking about, but being that this is the first B&B application that's coming before you for a public hearing, we wanted to give you some explanation as to why this is gonna eventually become more of the norm than not. So with that, Robyn, if you can get the lights for me?

So just to give you a little bit of background information, way back in April of 2001, a conditional permit and a Land Use Commission special use permit was filed for this property for the operation of a transient vacation rental. And the reason why it was called a transient vacation rental at that time is because there was no provision for bed and breakfast uses to be in the agricultural district. The applicant has always lived on the property in the main dwelling but, you know, that's what it was classified in 2001. The TVR operation was allowed to continue while permits were in process based on previous administration policy. In October of 2007, the County issued letters for all TVRs to cease operation by January 1<sup>st</sup> 2008. The applicants complied with this policy and ceased operation of the TVR. And in January of 2009, as most of you know, the County adopted a new Bed and Breakfast Ordinance. And in March of 2009, the applicants applied for a B&B permit in lieu of the TVR conditional permit as both of the farm dwellings that are located on the property met the definition of a B&B home. And I thought it important to go over what that definition actually is.

A B&B home as defined in the new ordinance is a use in which overnight accommodations are provided to guests for compensation for periods of less than 180 days in no more two detached single family dwelling units one of which is occupied by the owner/proprietor. Each bed and breakfast home shall have bedrooms, one kitchen, and living areas, and shall include no more than six bedrooms for short term rental as specified within the zoning district provisions of Title 19.

So the application before you today is to operate the Haiku Makai B&B on 2.27 acres at 266 North Holokai Road actually, in Haiku. The applicant is asking for a total of three bedrooms: one bedroom in the main dwelling on the first floor, and two bedrooms in the second farm dwelling. As I mentioned, the applicant does live on the property in the main dwelling, and the second farm dwelling is currently unoccupied.

I do wanna go over the zoning classifications because that's what triggers the permits that's before you today. So the State land use classification for this property is agriculture. And as Clayton was mentioning, B&Bs are not outrightly permitted in the State agricultural district. Chapter 205, however, does allow for unusual and reasonable uses through a Land Use Commission special use permit, and that application is before you today. A public hearing is required with the Planning Commission, and you are the authority on the Land Use Commission special use permit.

In terms of County zoning, the County zoning is agriculture as well for this property. The new B&B Ordinance, Chapter 1964, permits B&B homes in the ag district through a B&B permit if it meets certain criteria. This particular project meets Criteria B which specifies the lot has to be created prior to November 1<sup>st</sup> 2008. The property has to be five acres or less. And the applicant or the property has to have a fully implemented and approved farm plan. And, Commissioner Starr, based on your question to Clayton about what are some of the differences between a B&B coming in the ag district and not, that last bullet point, that fully implemented and approved farm plan, that is a

requirement that exist for ag properties that does not exist for residential zoned properties. So that is one other distinction. And what that means is, the applicant submits a farm plan to our Zoning Division. It goes through review. If they're able to approve it— They actually do a site visit to see if that farm plan that's on paper is actually what's in the ground. And if it is, then they issue a letter saying that you have a fully executed farm plan. And that is what we need to be able to continue the processing of the B&B application in the ag district. And as was mentioned before, this is the first bed and breakfast application to come before you for a public hearing. And the reason for that is that there is an approved bed and breakfast within 500 feet from the subject property. Actually, it's right next door.

So this is a location map of the property, and this slide is actually twofold: to show you where the property is located and then to show you the B&Bs within 500 feet. So this is Hana Highway and this is North Holokai Road. This is the 500-foot radius that surrounds the property, which is the properties right here. It's a little hard to see. There's two red dots: one on the subject property and one right here. And you notice the 500-foot radius kinda cuts into this property here. These are pending B&Bs within the 500-foot radius and that's this red dot here. The green dot designates approved B&Bs. And this is the approved B&B for Mr. DeSure. And I think some of you were on the Commission when this application went – came before the Commission in the context of a conditional permit and a Land Use Commission special use permit. I think they came to the Commission twice, actually. So they have been converted to a B&B permit. The conditional permit was converted to a B&B permit. And so they technically, have the first number within this 500-foot area. The Ludwigs would be the second number. That's why they have to come before you and that's if you approve it. Is that clear as mud? Okay.

This is the site plan for the property. Little hard to see. I don't know how to make this bigger, but this is North Holokai Road. This is the main farm dwelling where the applicant resides and where the – where bedroom no. 1 of the B&B's located. This is the second farm dwelling. The second farm dwelling has two additional bedrooms. The driveway leading to parking. This is one parking stall here, another parking stall here. You'll see it better in some other slides. And then the parking stall for the one bedroom in the main dwelling is located here. This is the orchard that exists on the property. When I did my first site visit in 2001, the orchard was already established, so the trees, you're gonna see in another photo, is quite mature. There is a stand pipe located right here. Two septic systems on the property right there.

These are some photos of the property and the fruit trees that exist on the property, and you can see that they are quite mature, and there's a lot of them, and they apparently bear quite a lot of fruit. The one thing the applicant pointed out is that as part of their requirement to serve breakfast to the guests of the B&B, they'll be using fruit from their fruit trees to provide to their guests.

Okay, this is the floor plan of bedroom 1 which is located in the main farm dwelling where the applicants reside, basically, just one bedroom. They're not able to have a kitchen in here because the kitchen is in the main dwelling where the applicants reside. This is a photograph of the main dwelling. So here it is here. The parking stall for the B&B is right here. The B&B – the one bedroom is actually located – when you look at the structure this way, it's located to the side, and this is where the B&B is located on the first floor. And again, that's just bedroom 1.

This is the floor plan for bedrooms 2 and 3. That's located in the second farm dwelling. It has a

living room, kitchen, bathroom. Photographs of the second farm dwelling. You can see, this is one parking stall here on the side of the farm dwelling in this location, and here's the second parking stall.

This is the bed and breakfast notice sign that was posted by the applicant five days prior to submittal of the B&B application. The sign will be removed no later than five days after a final decision is rendered by this Commission. So with that, Robyn, if you could get the lights, I'd like to go into our analysis.

So, I'd like to turn your attention to page 6 of the Department's report. And I am gonna summarize what I feel is the high points because you do have very heavy agenda today. In terms of existing services at the bottom of page 6, the property is serviced by the County of Maui through an eight-inch water line, a stand pipe #265, which I pointed out in the photograph, and a 5/8 inch water meter. And the applicant has indicated that they currently have agricultural water rates. As I pointed out, there are two individual septic systems on the property: one serving the main farm dwelling and the other, the second farm dwelling. In terms of drainage at the top of page 7, the property is located in Zone C as indicated in the Flood Insurance Rate Map. Zone C indicates an area of minimal flooding.

I would now like to take you to page no. 10 of our report, and I do wanna highlight the – some of the policies in the Paia-Haiku Community Plan.

The property is identified for agricultural use in the community plan and it is consistent with a number of community plan policies, and there's two that I wanted to bring up.

The first policy no. 10 says:

Discourage approval of Special Use Permits in the State Agricultural District unless it's necessary to serve the immediate community in remote areas, supportive of agricultural uses, or needed for the use and distribution of locally produced products and services that otherwise do not adversely affect the environment, surrounding agricultural uses, or public safety.

I think as you saw in the slides, the property is definitely supportive of agricultural use. It has been, like I said, from the first time I inspected the property in 2001. They've actually expanded their farming operations since then, and do have some plans to further expand it, and I'll talk about that a little bit later. Secondly, with regard to this comment, as I mentioned, the applicant will be serving fruits that they grow on the property as part of the breakfast to their guests.

The second point I'd like to bring out is item no. 13 under Objectives and Policies. And it says:

Limit visitor accommodations to owner-occupied "bed and breakfast" establishments that are residential in both scale and character. Any proposed "bed and breakfasts" should not be situated near the shoreline so as to avoid the proliferation of this use and subsequent changes in the character of the region's coast.

I have two comments on that. One is, you know, the B&B Ordinance does now provide for bed and

breakfast uses in other zoning districts, and the ag district is one of them with certain provisions like we talked about the farm plan and so forth. And also for this property, it's not situated near the shoreline so it also meets that policy as well.

The only thing I wanna cover on page 11 under County zoning – I've taken you through the zoning and that it complies with Criteria No. B, I just wanna call your attention to the other criteria A and C. I'm not gonna go over them, but just for your information, you know, this is what a project has to meet to be able to be considered a permitted use in the County agricultural zoning district.

I'm now on page 12 at the bottom of page 12 under Agriculture. The Property is classified as C9 by the Detailed Land Use Classification, Land Study Bureau Map. This classification indicates productivity ratings of land with "A" representing the highest rating and "E" the lowest rating, and again, the property is "C."

Now, in the granting of a – or the review of the Land Use Commission special use permit, there are five criteria that needs to be met. And at the start of page 13, I would like to go over that criteria.

The first is that the use shall not be contrary to the objectives sought to be accomplished by Chapter 205 and 205A and the rules of the Land Use Commission. The farm dwellings are on 2.271 acres of land and over 50% of the property is currently being farmed. Agricultural production of the property will continue and the use of the structures for rental purposes will not have a negative impact on said production. The applicant, as I mentioned, intends to serve some of the fruit on the property such as bananas and oranges to the guests of the B&B.

Second criteria, the desired use will not adversely affect the surrounding property. The proposed B&B use is similar to long term residential use in terms of traffic and noise. There is an approved B&B immediately adjacent to this property on a 2.2 acre lot. The two-acre sized lots can adequately accommodate parking for guests, and with the location of the structures on the property, noise should not be an issue.

C. The use would not unreasonably burden public agencies to provide roads and streets, etc. There is no indication that the proposed B&B would place an unreasonable burden on public agencies to provide additional services. Any burden to public agencies from the short term rental use will be comparable or only slightly higher than the burden resulting from a long-term rental. Various County agencies were sent a transmittal of the application and asked to comment. While some agencies commented on the proposal, the Department does not interpret any of these comments to indicate an unreasonable burden for this use.

Subsequent to the May 5, 2008-letter from the Department of Water Supply, the Planning Department and Water Department agreed to not require fire flow calculations or a back flow preventor. The Planning Department is discussing the requirement suggested by the Department of Water Supply for fixture counts, and may revise or delete this requirement in the future. And I'll go over the Department of Water Supply's letter in a little bit.

The Planning Director wanted me to stress one point with regard to this bed and breakfast application that's coming before you. We have standard conditions pursuant to the ordinance that



we, the Department, has been requiring bed and breakfast permits that we approve administratively. And we feel pretty strongly that the conditions of approval imposed on permits by the Planning Commission should be very similar for similar applications as we do in the Planning Department, and we will help you with that.

Criteria D. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established. The land use district boundaries and rules were established in the early 1960's long before the visitor industry was the main engine of Maui's economy. The hotel-resort experience remains the mainstay of the visitor industry, but there appears to be a growing demand for an alternative to that traditional hotel-resort experience. The Council recently adopted Bill No. 3611 which permits B&B uses in the County agricultural district.

The final criteria for granting a Land Use Commission special use permit is that the land upon which the proposed use is sought is unsuited for the uses permitted in the district.

The land is suited for ag uses and is being used as such. However, the parcel is only 2.2 acres and not conducive for large scale agricultural production. The B&B does not preclude continuing agricultural use of the property. The applicant intends to serve fruit grown on property to the B&B guests. And according to Zoning Enforcement Division of the Planning Department, the applicant has a fully implemented farm plan and that is attached. The approval letter of that farm plan is attached as Exhibit 17. The farm plan designates approximately 70% of the property in ag use: 55% of fruit orchard, 5% tropical flowers, and 5% vegetable garden. That's actually 65%, sorry. In addition, the applicant is planning to expand their fruit orchard by 10% in 2011. According to the applicant, their farm generates approximately \$8,500 in income each year.

In terms of archaeological and historical cultural resources, we do have a letter from the Department of Land and Natural Resources, State Historic Preservation Division, Exhibit 16. And they've confirmed that residential development has already altered the land and thus no historic properties will be affected by this proposed undertaking.

In terms of infrastructure and public facilities and services, the Department of Water Supply by letter dated May 5, 2008, requested that the applicant provide fire flow calculations to determine water meter capacity and adequate fire protection. The applicant actually did those calculations, and submitted it to the Department of Water Supply in June of 2009, and those are attached at Exhibit 18. The Department of Water Supply also indicated that a reduced pressure back-flow prevention device may be required. The applicant went ahead and installed that, and received approval from the Water Department in June of 2009. And after he did all of that, because I told him he had to do all of that, you know, the Department, Planning Department, the Water Department, have been having discussions back and forth. And as I mentioned earlier, it's now the position that those are not requirements, but he's gone ahead and done them anyway.

The Planning Department will be recommending a condition of approval that requires the Department of Water Supply to determine that fixture counts for the property are not excessive for the property's water meter, based on domestic and irrigation water flow calculations submitted by the applicant. However, the Department has concerns with this condition and is continuing to evaluate it, and may revise or delete this condition in the future. The Planning Department will

further recommend that prior to renewal of the B&B permit, the applicant provide written evidence of compliance with Maui County Code 16.20 regarding installation of low flow fixtures, including faucets, showerheads, urinals, toilets, and hose bibs for any dwelling used as part of the B&B.

In terms of sewers, the State Department of Health commented that the applicant has satisfied the requirements of the Department of Health. The Department of Public Works had no comments with regard to drainage and/or public roadways.

And in terms of the B&B restrictions and standards, this is basically the criteria that you were asking about whereby we review all B&B permits regardless of where they're at. I don't – do you guys want me to go into all of the criteria? I can. No? Okay, thank you. You read your report. Yeah, because you know why? When I go through the conditions, they're gonna kinda be redundant.

Anyway, as of July – as of today, actually, the Planning Department has received no letters in support of or in opposition to this application request. Are there any questions?

Mr. Hedani: Mr. Starr?

Mr. Starr: What happens to the agricultural water rates?

Ms. Cua: I'm actually not sure about that. They are still farming. They will continue to farm. I don't know about the water rates. I know the real property tax rates are gonna be decided on by the Council in the future. I'm not quite sure about the water rates.

Mr. Starr: If– Mr. Chair?

Mr. Hedani: Mr. Starr?

Mr. Starr: Yeah, if Commission Members say were to feel that it's not really right for someone in the B&B business to be getting agricultural water rates, is that something that could be conditioned by the Commission, or is that outside of our kuleana?

Ms. Cua: Just asking me and I'm not an attorney, I think it's outside because the Planning Department nor the Commission decides – has the authority, I believe, to decide who qualifies and does not qualify for ag water rates, but, James, you wanna help me out there?

Mr. James Giroux: Yeah, I would suggest that you would get direction from the Council. They would pass an ordinance that would either exclude them or include them into the water rate bill in the budget discussion.

Mr. Hedani: So along those lines, ours should be a recommendation to the Council, if we wanted to do anything. Commissioner Mardfin?

Mr. Mardfin: I was very glad to see that they reported agricultural income of \$8,500. Did they pay 4% excise GET?

Ms. Cua: They pay GET and TAT tax.

Mr. Mardfin: You don't pay TAT on agricultural production. TAT is transient accommodations.

Ms. Cua: Right, right, but—

Mr. Mardfin: 4% general excise tax is on agricultural production. It might be actually a half percent rate depending—

Ms. Cua: Oh, I don't know. I'm not sure. Maybe the applicant can – I'm sure they know what percentage they pay.

Mr. Max Ludwig: Good morning, Commission. I'm Max Ludwig. And, yes, we have paid our taxes all along. And I gave Ann a copy of our GET tax form and it's all on record.

Mr. Mardfin: And you have an item for agricultural production. What is it? Is that 4% or half a percent?

Mr. Ludwig: It's 4% is what we pay.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Any additional questions? Commissioner Starr?

Mr. Starr: Yeah, this is, I guess, to the applicant. It looks like you're actually farming on additional property. Am I right with that? That looks like a good thing.

Mr. Ludwig: Pardon me?

Mr. Starr: It looks like you're actually extending orchards onto additional property.

Mr. Ludwig: I would like to. Sometimes it's a problem with neighbors, and CC&Rs, and view corridor-type things. It's not easy to do ag on ag. It's a lot of opposition. It's been a several year lawsuit submitted by my neighbors over my agricultural on my property so— CC&Rs precede any type of County agricultural designation. So just because it's ag doesn't mean that you can do what you want with on it. It's a Catch 22, but – sad, but true.

Mr. Starr: I just wanna compliment that you really are – look like you are . . . (inaudible) . . .

Mr. Ludwig: Oh, yeah. I've traveled far and wide, and interested in botany in college, and found a place where I could plant things that interest me that I've seen throughout the world, and that's what I've done. It's kind of a hobby and it's a very good thing for my family. And I'll do it, continue to do it . . . (inaudible) . . .

Mr. Hedani: Mr. Shibuya?

Mr. Shibuya: I just have a question in terms of the— This is for Ann. In your opinion, the emergency access routes to this property, I'm not familiar where this is located, how far away are these to service this property? I'm looking for standard care.

Ms. Cua: Are you talking about medical facilities? Are you talking about—?

Mr. Shibuya: Emergency services, police, fire.

Ms. Cua: Well, you know, for medical services, it's basically, Maui Memorial Hospital, which that's in Wailuku, and this is in Haiku. So it's quite a ways away.

Mr. Shibuya: How far away? What's the access? Is it easy to get to?

Ms. Cua: Oh, basically, you go from Holokai Road onto Hana Highway. Hana Highway takes you through Paia, and then you head into Kahului, and then into Wailuku. In terms of a fire station, there's a fire station right in Paia. There's one up in Makawao on Makawao Avenue. Police services, police – there's a substation in Makawao. There's also in Paia as well at the – I believe at the community center.

Mr. Shibuya: And the roadway is not commercial. It's actually rural standards would it not? The level of service for this roadway?

Ms. Cua: Yes. There's no curbs, gutters and sidewalks. This is Holokai Road, you're talking about, correct?

Mr. Shibuya: That's correct.

Ms. Cua: Correct.

Mr. Shibuya: I'm looking in terms of the burden upon the community. Once you approve something like this, then there's infrastructure requirements to insure the safety of those that are paying for a hotel, or lodging, or timeshare, or however you wanna do it. It is lodging and it's commercial lodging. And so therefore, there is some responsibility on, I feel, that the County has in terms of providing this. And it is also the responsibility of the commercial owner, the operator, to be providing for something to this effect.

Ms. Cua: Well, you know, we did send the application out for agency reviews. Public Works did not have any comment with regard to the roadways or with regard to drainage. The Water Department did request some requirements which the applicant has complied with. We're gonna impose additional requirements on the applicant in terms of their fixture counts. You know, we've sought the comments. We've got them back. We feel based on what we've received, this application can go forward.

Mr. Shibuya: Okay, and then the last question deals with the CC&Rs. Are there CC&Rs that this property is addressing or have been applicable to?

Ms. Cua: My understanding is that there are CC&Rs for this. Oh, wait, I take it back. Maybe I'll let the applicant, if that has to do with the lawsuit.

Mr. Ludwig: There are no CC&Rs filed with my deed on this property. Chicago Title has just defended me for two years against my neighbors. And they have just dropped the lawsuit against us. There are no CC&Rs associated with my title on this property. I bought the property before the CC&Rs were enacted for the rest of the subdivision.

Mr. Shibuya: Okay, thank you.

Mr. Hedani: Mr. Mardfin?

Mr. Mardfin: First, Ann, I think you did a – I'm glad this was the first one on our agenda. I thought you did a very thorough research analysis, and it helped me with all the rest that you had, but I still have a couple of questions.

Ms. Cua: Okay, go for it.

Mr. Mardfin: And this may take James. Under your conclusions of law for the Land Use Commission special use permit–

Ms. Cua: You wanna ask about that? We haven't actually gotten there yet. I haven't presented it yet.

Mr. Mardfin: Okay, I can hold off on that one.

Mr. Hedani: Commissioner U`u?

Mr. U`u: Question, Ann, you said there's another B&B right next to it?

Ms. Cua: Yes.

Mr. U`u: Is it different owners or families?

Ms. Cua: Different. No relation.

Mr. U`u: No relation?

Ms. Cua: Yeah. It's the DeSures, and I think you might've been on the Commission when they came through the process.

Mr. Hedani: Mr. Mardfin?

Mr. Mardfin: This may go to James, actually, but on page 4 of your report, under Restrictions and Standards, you have an Item E almost at the very top, "The bed and breakfast home shall be in the name of the owner-proprietor, who shall be a natural person and the owner of the real property,"

blah, blah, blah. No bed and breakfast shall be held by a corporation. This is probably for James, but what about a trust? If you held in trust, does that count as a natural person? The reason I asked is because I own some property and we've put in trust with yourself as the sole trustee.

Mr. Hedani: But the B&B owner holds the property as the individuals. When the individual dies, the permit dies with them, right? Next question?

Ms. Cua: I defer that to my attorney. I would think so, but again, I'm not your legalese.

Mr. Hedani: A trust wouldn't die. Commissioner Starr?

Mr. Starr: What I think I've heard is that sometime back, the agricultural property was purchased by some entity. It was subdivided. And then subsequent to that, CC&Rs were put on. Some of the lots were prohibited or made difficult agricultural activity. Now, you know, I don't really think this has bearing on the application before us, but philosophically, is this something that's still going on?

Ms. Cua: I cannot – I have not seen the CC&Rs because there's none that pertain to this property. The one point I need to make about CC&Rs very clearly is that the County has no part in CC&Rs, and we do not enforce any CC&Rs. So while we may ask for copies of them and just have them for general information, we would not put any condition on a permit let's say just because something's in a CC&R. And that can change. It changes.

Mr. Starr: Is there no ability to limit CC&Rs which restrict agricultural activities on agricultural land?

Ms. Cua: I believe because the CC&Rs are done by the association, what mechanism would be there to—? You know, I mean, if the County was a party to it, or if the County had to approve it then – or the State, then that would be one thing, but we have nothing to do with it, and associations can change at any time.

Mr. Hedani: James, you have a comment?

Mr. Giroux: Jonathan, the State Legislature just recently passed a bill that restricts the County from allowing subdivisions that have CC&Rs that are contrary to 205, but anything passed before that is a remnant and I think it's left up to the private owners to have lawsuits. So it doesn't support the policy of 205 to have CC&Rs that restrict it. But currently because of the State law, we do – the County does review CC&Rs prior to subdivision.

Mr. Starr: What if after two years subdivision they enact them?

Mr. Giroux: Well, then they would be contrary to State law and unenforceable.

Mr. Hedani: I have a question, Ann.

Ms. Cua: Sure.

Mr. Hedani: In the 500-foot radius, the map that you showed us showed an existing B&B next door.

Ms. Cua: An existing approved B&B next door.

Mr. Hedani: An approved B&B next door, the applicant, and another applicant that may be pending in the future also within the 500-foot radius?

Ms. Cua: Correct.

Mr. Hedani: So you would have three B&Bs within a 500-foot radius if all of them were approved?

Ms. Cua: Well, three and a fourth. I mean, yeah. This is another one right here, yeah? This is the applicant. That's pending. This is the existing. Just for the Commission's information, you know, back in 2001, I believe both of these people submitted conditional permits, State special permits, back in 2001 and they were both operating for years, I believe.

Mr. Hedani: Do you know what the logic was behind the 500-foot radius? Was it to spread the impacts out or do we care at this point if there's three within a 500-foot radius?

Ms. Cua: Well, you know, I think it was to – my understanding of the whole 500-foot issue – and once you have one to bump the next one up to the Planning Commission review is just to give it little bit more scrutiny, see what kind of public testimony comes out, what kind of infrastructural issues may come out because there may be a point in time where you're gonna say enough. And it will be your call because, again, once you have the first one, the second, and third, they're all gonna have to come before you. And you're gonna begin to hear from the neighborhood. In this particular case, this would be the second one in a 500-foot radius and there's no opposition from the neighbors.

Mr. Hedani: Commissioner U`u?

Mr. U`u: And on that point, at what point would the County recommend denial? Is there a criteria because you just stated earlier that it would be up to the Commission when the Commission has the recommendation by the Department? We generally go on the recommendation by the Department so–

Ms. Cua: That's correct. And I cannot say for sure at what point we would recommend denial. You know, I think in any 500-foot area, we're gonna have to look at the facts. We're gonna have to see, you know, what kind of agency comments have we gotten back; are there anything that, you know – are there any issues that arise with regard to a particular application. And then a big impact is gonna be comments from the community. We have other applications where even the first one, the first application, you know, the community is pouring forth with letters. So I think it's really gonna depend on where you're talking about. We do not have – to answer your question, we do not have any set criteria that if you do this, this, and this, then you automatically – if you are this, this, and this, you're gonna automatically gonna be recommended for denial. We don't have that. It's just, you know, this is a work in progress for us. It's like the agency comments with the Water Department. I feel kinda bad for my applicant because this has been a growing process, and, you know, we get the new legislation. We try – we make an application. We have all these requirements. And then things have just been evolving. Okay, you have to do this. You have to

do that. And so they wanna get scheduled so they do this and that. And then we have more discussions with Water, Public Works, and we're still in discussions trying – everybody's trying to grasp this ordinance with their own codes and laws that they have to enforce, and we're just as a County trying to work together to come up with a one voice instead of four or five voices.

Mr. Hedani: Commissioner U`u?

Mr. U`u: Follow-up. Say we approve the project and they move forward with the B&B, at what point in time they don't have to renew?

Ms. Cua: Well, in this particular case, we're recommending three years. We're recommending that we give them three years. And again, the reason for the recommendation of three years is that there's not been any strong agency input in terms of infrastructure and public services. Also, there's no objections from the neighbors so the Department is recommending three years for both the special use permit and the B&B.

Mr. Hedani: Commissioner Shibuya?

Mr. Shibuya: Before we even heard the application request here, I asked the question, how do we determine which ones do we approve first? Or the ones that we approve first, or then do we take care the second one and deny the third one? Right now we have for the Paia-Haiku area, 88 allotted units. These are not B&Bs, but just units. How many units in this 500 area do you see coming up right now counting the applications that you have right now? This unit has how many—?

Ms. Cua: Three bedrooms.

Mr. Shibuya: Right, three units.

Ms. Cua: Yeah, they're called bedrooms.

Mr. Shibuya: The one that has been approved has how many units?

Ms. Cua: DeSure has either three or four. I didn't do that one. I'm not exactly sure. Three or four. And— Okay, my Planners, who has . . . (inaudible) . . . Maybe three or four here. Sorry, we don't have the numbers.

Mr. Shibuya: I'm trying to do the math and see how we distribute it. And we— I just don't wanna have a hotel zoned area. I see— You understand where I'm trying to go with this. We need to save some for Paia folks too. I just don't want all of the Haiku ones just in this one area, okay? So that's what I need to understand: where are these applications, what's the density look like, how is it distributed. Can you provide that information to me?

Ms. Cua: Okay, sorry. Oh, I'm sorry.

Mr. Hedani: That was a question of if you can provide him the information on the distribution of the approved units.



Ms. Cua: Of the approved units?

Mr. Shibuya: Approved as well as the applications.

Ms. Cua: In the 500-foot area?

Mr. Shibuya: Not necessarily. Of all of the Haiku-Paia area. I wanna see how it's distributed because it's very difficult here. You're gonna be— You've got lefthand going ahead and approving it. This Committee – Commission does not see that. Then all of a sudden, there's exceptions, and we take a look at exceptions. And it's a very disjointed, disproportionate type of view.

Ms. Cua: Does—? I mean, I don't know if this is gonna help you at all, and this is something that when my Director reviewed the report, he added this additional exhibit. Can you look at Exhibit 21? So I don't have it on power point, but if you could just – okay, so if you could just look at me for just a second? So right in the middle, about the middle of this map where it says "A," that's the approved B&B. "PS," that's the pending subject B&B. That's this application before you. This other "P" is the one that I just referred to. So this is within the 500-foot area. But you see all those other "P"s and those other dots? Those are all pending as well.

Mr. Shibuya: And the number of units per?

Ms. Cua: I can't give you that offhand. I'm sorry. Is that something you want today before you make a decision? Or is that something I can give you, or we can provide you at a later meeting, or you want it later on today?

Mr. Shibuya: Later on, I guess, but you know, I think my decision in terms of infrastructure loading has to do with that. Now how many units we're gonna put within this area, and the highway or roadways that are actually supporting this? It's already inadequate. Now we're adding more. I've got a problem.

Mr. Hedani: Any additional questions? Mr. Guard?

Mr. John Guard: Thank you. As a follow-up to Commissioner Shibuya's, I looked at Exhibit 21 and I thought there would've been a lot more, actually. And then on the adequacy, I think a lot of people like to stay at the B&Bs on the North Shore so that they – they're already through Paia Town and they're closer to on the road to Hana when they wanna go there. So you have to look at it as both ways. These guys can go into Paia Town or Haiku Town without going through the main bottlenecks of Baldwin Avenue and say, Dairy Road. So I think it – how you're talking about the left-hand, right-hand, a lot of these people, they don't wanna go through that traffic either so that's why they're trying to stay out of the problem areas.

Mr. Hedani: Additional questions? Mr. Mardfin?

Mr. Mardfin: In one of the other applications we're gonna see today, there's a letter from the Department of Maui – County of Maui, Department of Finance, Real Property Tax Division. And I don't know how much you guys share amongst the different Planners, but there are standards for

bed and breakfasts. And this letter says if it's two buildings, they're basically gonna create one as – for tax purposes, it's gonna be taxed like a hotel. I hope that the applicant is aware of that kind of situation.

Ms. Cua: You know, the applicant is aware of what – like I think all other applicants. They all talk to one another. We're kind of finding that out. And they're really following what's happening with legislation. And so I know my applicant is aware. He's not thrilled and happy about it, but he is aware of where this could go, the position right now, and the fact that it is in the Council's hands in terms of what's gonna happen with ag rates for these B&Bs.

Mr. Mardfin: I just wanted to make sure. It came in, in one application. And the same situation is here and I just wanted to make sure the applicant is aware of it.

Mr. Hedani: Ann, one other question: the approved B&B that already exists, when it comes up for renewal, does that mean he has to come before the Commission because there now is another B&B within 500 feet?

Ms. Cua: We actually just talked about that yesterday. Clayton, you wanna–? I don't believe so, but–

Mr. Yoshida: I guess we're – again, this is a work in progress trying to implement the ordinance, but I believe that they do not because it was issued a – well, we still have to check with the legal folks because they were issued a permit administratively.

Mr. Hedani: Jim, you wanna chime in on this?

Mr. Giroux: I sure hope they run it past us so we can look it over.

Ms. Cua: But it's already been granted and administratively approval. You know, it is the first one coming in and so–

Mr. Hedani: I just asked that question so that we don't get inundated in the future with all of these things coming before us all the time because of restrictions. Commissioner Mardfin?

Mr. Mardfin: You've implied this. Ann, you implied this, but I wanna ask it even more directly. You said no neighbors are objecting. In specifically, the B&B next door, have they expressed any position one way or the other on this?

Ms. Cua: Not to me.

Mr. Mardfin: And your applicant is shaking his head no, so I'll–

Mr. Ludwig: After the ordinance, we've contacted them twice: once about us applying for the B&B permit, and the second notice that has been out for this meeting. They also have a B&B. We've cooperated on the B&B level for many, many years. And we support and help each other.

Mr. Mardfin: That's the answer: you're supporting each other. Thank you very much.

Mr. Hedani: Any additional questions? One last question: the approved farm plan and the actual functioning of the agricultural operations generated \$8,500, which qualifies as an approved farm plan by one section of the County. The other section of the County says you need \$35,000 per year in income in order to qualify as a bonafide agricultural operation. Which is it?

Ms. Cua: Okay, if I could call your attention to—?

Mr. Hedani: I know I saw the word "or," but why do they have one at \$35,000 and the other one at whatever you want to do?

Ms. Cua: Okay, what I can comment is on page 11, the criteria that's listed under County zoning is just that. It's to assist with whether it's permitted in the zoning district or not. And it is "or." It can be— You can have— You can produce \$35,000 in gross sales. That— what we found historically is that's very difficult especially when you have two acres, and then there's B and C. And most that are coming before you are gonna be able to meet B.

Mr. Hedani: Okay, so it's just a quirk in the way the law was written.

Ms. Cua: I mean, yeah, it is the way the law is written.

Mr. Hedani: Mr. Mardfin?

Mr. Mardfin: In partial answer to you, Mr. Chairman, my understanding is that it's a five-acre limit. If you're over five acres, the \$35,000 applies. If you're under five acres, the other one basically applies. I mean, if you had \$35,000, wouldn't argue it, but if you're under five acres, the farm plan applies. And I – the reason I know this is 'cause there's several properties in Hana that are more than five acres and they're stuck 'cause they're not producing \$35,000.

Mr. Hedani: Thank you. Additional questions? Okay, seeing none, do you wanna go to public hearing or do you wanna do your recommendation, Ann?

Ms. Cua: Probably let's do the public hearing first.

Mr. Hedani: Okay, we'd like to open it up at this time for public testimony on Agenda Item C-1. Are there any members of the public that would like to offer testimony on the Max and Tracey Ludwig application? People that I have that deferred on other items, please state your name.

**a. Public Hearing**

Mr. Tom Crowley: I'm Tom Crowley from the Maui Vacation Rentals Association and I appreciate the discussion that you're having today. All very good questions and you're gonna be seeing a lot more of these so it's good to have these things clarified. Some issues came up that perhaps I can give you some insights on.

The one issue about ag water rates, the way that— I looked into this when the whole thing got started, and I thought, well, gee, what are these ag water rates and how do they apply? And they're structured in such a way that the domestic water use is still charged at the domestic rates. The first 30,000 gallons is charged at the domestic rates. It's only when you go over 30,000 gallons which would be for irrigating your fields and so forth that you get that lower rate. So the concern that we're using water for the B&B that's being charged at a lower rate isn't really valid because again, the first 30,000 gallons is being charged at the higher rate, just to be aware of that.

Commissioner Shibuya was asking about the number of units. Just to be clear, there's 88 bed and breakfast applications that can be approved in Haiku-Paia, not 88 rooms. For example, this one has three units or three rooms. That's not three of the 88. It's just one of the 88 that could be approved.

And there was an issue on taxes that came up. The Council recently established a new tax category that all B&Bs and TVRs will be put in. This just happened about two weeks ago. So any approved B&Bs will be put into this new tax category. The rate has not been established for that category yet, but there has been new ones established.

And there was one other issue you guys were just getting into towards the end of the discussion. I think it was—

Mr. Hedani: \$35,000 versus \$8,500.

Mr. Crowley: Okay, and that was answered, the five-acre thing. So I just thought that that would be helpful for you. Thank you.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Seeing none, public hearing is closed. Staff recommendation?

**b. Action**

Ms. Cua: Mr. Chairman, Members of the Commission, the application for a Land Use Commission Special Permit complies with the following applicable standards for an unusual and reasonable use within the State agricultural district as listed no. 1 through 5. In terms of the bed and breakfast permit, the application for a bed and breakfast permit has met all application requirements as outlined in Chapter 19.64.040 as well as the processing requirements identified in Chapter 19.64.050 of Maui County Code. The permit, if approved, will be subject to the restrictions and standards identified in Chapter 19.64.030.

In terms of the Land Use Commission special use permit, the Department is recommending approval of the permit subject to six conditions. The first condition is that the Permit shall be valid until July 31, 2012. The second condition is the standard enforcement condition. The third condition is your standard non-transferable condition. The fourth condition is your liability insurance condition. The fifth condition is your compliance report condition for preliminary and final. And the sixth condition deals with the applicant developing the property in substantial compliance to representations made to this Body.

With regards to the bed and breakfast permit, the Department is recommending that the Commission approve the B&B permit subject to the following conditions. We're recommending the same – to use the same date that the permit be valid to until July 31<sup>st</sup> 2012. The second condition deals with the filing of a time extension request. The third condition that the B&B home shall not be transferred.

Fourth is your comprehensive liability condition. I do need to amend that. On page 5 of the recommendation, the last sentence that says, "Copies of the policies naming the County of Maui as an additional named insured," that last sentence, we've actually replaced that with more specific language. And so I would like to strike that last sentence and add:

A copy of the certificate of insurance naming the County of Maui as an additional named insured shall be submitted to the Department within 90 calendar days from the date of approval of this bed and breakfast permit or prior to starting operations, whichever is first.

And then secondly:

A copy of the certificate of insurance naming the County of Maui as an additional named insured shall be submitted to the Department upon renewal of existing policies and with submittal of a time extension request.

Condition 5. The B&B home is limited to one guest room within the main farm dwelling and two guestrooms within the second farm dwelling.

6. The B&B shall not operate during any times that all owners are away overnight.

7. That the B&B shall make breakfast available to on-site guests, but shall not operate as a food service establishment per the State Department of Health; and no microwave or other cooking equipment shall be permitted in the B&B rooms.

8. That the B&B home operation shall be subject to periodic inspections by County enforcement personnel.

9. The B&B home operation shall be conducted in substantial compliance with representations made by the applicant, and shall continue to meet the restrictions and standards as identified in the ordinance.

10 is the full compliance condition.

11. That the B&B home is subject to revocation by the Planning Director, pursuant to the provisions of the B&B ordinance.

12. The owner-proprietor shall include the number of the B&B home permit in all advertising.

13. That a fire escape plan shall be posted in the interior of each B&B room.

14. That all smoke detectors shall be operable and tested monthly. And I didn't mention, but it is in my staff report that the applicant does have the necessary smoke detectors already installed, as well as the fire extinguishers.

15 deals with the requirement of a fire extinguisher.

16. The B&B home shall be available for biannual fire inspections.

17. That the owner-proprietor shall comply with the conditions of the State special permit.

And 18, The Department of Water Supply shall determine that fixture counts for the property are not excessive for the property's water meter based on domestic and irrigation water flow calculations submitted by the applicant.

And 19, That prior to renewal of this permit, the applicant shall provide written evidence of compliance with the B&B ordinance – excuse me, with the Maui County Code 16.20 regarding installation of low flow fixtures, including faucets, showerheads, urinals, toilets, and hose bibs, for any dwelling used as part of the B&B.

The applicant is also encouraged to maintain fixtures to prevent leaks, prevent over-watering in automated irrigation systems, yada, yada.

In consideration of the foregoing, the Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the July 28<sup>th</sup> meeting; and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on behalf of the Commission.

Mr. Hedani: Commissioners, what's your pleasure? Mr. Starr?

Mr. Starr: I move to accept the recommendation and approve both the special use permit and the bed and breakfast permit per staff recommendation.

Mr. Hedani: Motion by Commissioner Starr, seconded by Commissioner Guard. Discussion? Commissioner Starr?

Mr. Starr: I move to amend to change the time period from three years to five years in both cases.

Mr. Hedani: Is there a second?

Mr. Guard: . . . (inaudible) . . .

Mr. Hedani: Second by Commissioner Guard?

Mr. Guard: Maybe from – to hear from staff?

Mr. Hedani: Do we have a second?

Mr. Guard: I'd go along with it, but we'll see what it—

Mr. Hedani: You need to either second or not second.

Mr. Guard: I'll second.

Ms. Cua: I think we need to comment.

Mr. Hedani: Clayton?

Mr. Yoshida: Mr. Chair, I believe for the bed and breakfast permit, the ordinance specifies that we can issue approval for up to three years.

Mr. Hedani: Mr. Starr?

Mr. Starr: I withdraw my motion – my amendment.

Mr. Hedani: Additional discussion? Mr. Mardfin?

Mr. Mardfin: I have a couple things. Let's start off with one: on the special use permit under no. – on page 3, you have no. 4. For the special use permit you have the one million-dollar insurance policy.

Ms. Cua: Yes.

Mr. Mardfin: Under the bed and breakfast permit, Item no. 4, they have to have a one million-dollar for the B&B. Does this mean a total of two million?

Ms. Cua: No. My understanding is—

Mr. Mardfin: The one million satisfies both?

Ms. Cua: Yes.

Mr. Mardfin: Is that clear in the way this is written? I guess if it isn't, it ought to be cleared up. One million seems reasonable to me.

Mr. Hedani: Mr. Starr?

Mr. Starr: Yeah, question for staff: if we were to approve the Land Use special use permit for six years, would that mean that the renewal of the bed and breakfast permit after three years becomes administrative?

Ms. Cua: We're back to that question again. I can't—

Mr. Hedani: I think if they're not gonna allow us to go to five, they're not gonna allow us to go to six.

Ms. Cua: Well, I think on the B&B, I mean, it's actually – you know, 19.64.060 does say that initial permit shall be valid for a maximum period of three years. That is for the B&B permit. You could grant the SUP for longer. The Planning Department, though, we recommend that you keep the periods the same. It just – it makes it easier for us processing time and I think for the applicant to remember. They're remembering one date.

Mr. Hedani: Mr. Starr?

Mr. Starr: Yeah, I'll – I think I'll not make the attempt this time, but maybe you could look at it. My idea was that if we – you know, to try to reduce workload to staff and the Commission if we could make alternate renewals administrative by making the Land Use six years, and then on the three-year renewal of that becomes administrative, then it would make sense, but we're obviously not there. So perhaps you could look at it the next time around. We could consider doing that. And – you know, would be just to double it up, so every other time becomes administrative.

Ms. Cua: Well, I can definitely tell you that on behalf of my staff we definitely appreciate that line of thinking.

Mr. Hedani: Isn't that the case now, Ann, where once the Commission considers it that the renewal is administrative?

Ms. Cua: For the State special permit?

Mr. Hedani: For the renewal?

Ms. Cua: Again, I believe so, but it's – it is a work in progress. It's something we just brought up at our B&B meeting. We meet every two weeks on B&B issues, and that was one of the topics of the day yesterday. We kinda started exploring.

Mr. Hedani: Additional discussion, Commissioner Guard?

Mr. Guard: Thank you. I mean, I concur with Commissioner Starr, but I guess at this point, it was such a hard fought battle to get to this level. When we went through this a few couple years ago, it was such a split decision at that point. So it might be good just to get the ball rolling in the right direction little by little.

Mr. Hedani: Especially since we're gonna disapprove the approved one when it comes up for renewal and it comes before us, right? Mr. Mardfin?

Mr. Mardfin: Again, I want to congratulate you for your analysis on page 4 and your conclusions on page 5 of 6. I can't say I did a thorough point by point comparison, but I noticed in your recommendations you didn't have a condition about posting the house rules.

Ms. Cua: I didn't?

Mr. Mardfin: You did not, I don't believe, unless I missed it.



Mr. Hedani: It's probably already part of the law.

Mr. Mardfin: On the other hand – well – it's on page 4 of 17 in the analysis. Item Q says "Proprietor shall post house policies." And you did such a generally thorough job with matching them up I thought this might be an omission.

Ms. Cua: Yeah, I need to add that in.

Mr. Mardfin: You need me to make a motion to include that?

Ms. Cua: Please.

Mr. Mardfin: I move that to add a condition about posting house rules consistent with the law.

Mr. Starr: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner Starr to amend to include that provision. Any discussion? All those in favor, signify by saying aye. Opposed, nay.

**It was moved by Mr. Mardfin, seconded by Mr. Starr, then unanimously**

**VOTED: To Amend the Main Motion to Add a Condition Posting House Rules  
Consistent with the Law.  
(Assenting - W. Mardfin, J. Starr, B. U'u, J. Guard, K. Hiranaga,  
D. Domingo, W. Shibuya, L. Sablas)**

Mr. Hedani: Carried. Mr. Mardfin?

Mr. Mardfin: Again, I wanna congratulate you on the analysis and all the conditions and everything. The other ones we're looking at today do not have these things because all we're being asked about is the special use permit, and the other three, the B&Bs, would be accepted administratively?

Ms. Cua: That's correct.

Mr. Mardfin: Back to what we asked at the beginning of the meeting, does the Planning Department basically – all the conditions you've given us are basically conditions that you've put on them administratively when you approve them?

Ms. Cua: Yes. Those are the . . . (inaudible) . . . a story here. You know, from the first permit that got issued to the last permit that we just issued, conditions have for the most part been the same, but maybe we tweaked it a little bit. So what we do is whenever we're doing the next one, we always look at the last one that got approved because that represents where we are in time: any negotiations with any other agencies, any updated standard conditions which we feel should be there. So you know, an approval letter today might look a little different from the very first one that was approved. And one a month from now might look slightly different, but essentially, that's – we've been using the same conditions, and that's why we're saying that whether it's one that we

approve, or one that you approve, it should pretty much be the same based on the same set of circumstances.

Mr. Mardfin: So the conditions that you'll have on them are the same as you're giving us today to approve?

Ms. Cua: Correct, yes.

Mr. Mardfin: So the house rules will be in the new ones for all of them?

Ms. Cua: Yeah, I don't know how I missed that. I'm sorry.

Mr. Mardfin: And there might be others. That's the one I caught.

Mr. Hedani: Ann, in the case of down-lighting, you know, we have a standard down-lighting condition for all permits that have come before us for SMA and other things like that. Do we have a similar condition for B&Bs because it possibly could affect Haleakala?

Ms. Cua: No, we don't.

Mr. Hedani: Is that something that we can add as a condition? Or is that something that you already have codified somewhere?

Ms. Cua: Well, it's not something that we have as a standard condition on a Land Use Commission special use permit because it's usually just a use. And it's not something we have on the B&B permit. Again, it's pretty much the use that we're – the permit is for the use. They're not buildings.

Mr. Hedani: In this case, the Outdoor Lighting Ordinance applies to B&Bs as well as everybody else, right?

Ms. Cua: Yeah, it is what it is. So–

Mr. Hedani: So they would have to comply with that in one way or another?

Ms. Cua: I would say yes, they would.

Mr. Hedani: Okay. Commissioner Hiranaga?

Mr. Kent Hiranaga: Just for the Commission's benefit, B&B Permit Ordinance 19.64.30, Restrictions and standards, Item Q, "The proprietor shall post house policies within each guest room," blah, blah, blah. I don't think we need to add that as a special condition for every application because it's already covered within the ordinance.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor, signify by saying aye. Opposed, nay.

**It was moved by Mr. Starr, seconded by Mr. Guard, then**

**VOTED: To Approve Both State Land Use Commission Special Use Permit and Bed and Breakfast Permit Per Staff Recommendation as Amended.  
(Assenting - J. Starr, J. Guard, W. Mardfin, B. U'u, K. Hiranaga,  
D. Domingo, W. Shibuya, L. Sablas)  
(Dissenting - W. Shibuya)**

Mr. Hedani: Carried. One nay. Thank you. Why don't we take a ten-minute recess?

A recess was then taken at 10:37 a.m. and the meeting reconvened at 10:50 a.m.

Mr. Hedani: The meeting of July 28 will come to order. Next item on our agenda is Item C-2. Mr. Yoshida?

Mr. Yoshida read the agenda item into the record.

- 2. THOMAS A. and VICTORIA A. LEWORTHY requesting a State Land Use Commission Special Use Permit to operate the Leworthy Bed and Breakfast, a 4- bedroom/ 2-bath bed and breakfast in the State Agricultural District at 1444 West Kuiaha Road, TMK: 2-7-012: 030, Haiku, Island of Maui. (SUP2 2008/0003)(J. Dack)**

Mr. Jeffrey Dack: Yes, good morning. Ann Cua gave a very thorough presentation this morning. You obviously have four State Land Use commission special use permit, bed and breakfast applications before you. So I will spare you a lot of the information on standards and things that are Ann went over and try to work specifically on the conditions of this particular application. Certainly, you have any questions of those standards along the way, we're available.

In this case, the applicants' requesting a Land Use Commission special use permit to operate a four-bedroom bed and breakfast home within a primary farm dwelling at 1444 Kuiaha. They have also applied for a B&B permit which would be approved administratively pending approval of the special use permit. The applicable regulations are the same as for the prior permit on the agenda. The property's approximately two acres. All land use designations are agricultural. The surrounding uses are agricultural lands with farm dwellings. The particular property here is located with the main farm dwelling, second farm dwelling, and dirt or gravel driveways and parking areas. The applicant states they devote one and a half acres of their two acres for livestock pasture.

The main farm dwelling lies at the far southeastern edge of the property and at its highest elevation. Down slope and to the west in the largely level main portion of the property lie fenced pastures, the second farm dwelling, and some stands of bamboo. Nearby to the west of the property appears to be a stream, which may flow at least intermittently in a streambed running generally south-north, with this edge of the property mainly covered by bamboo. The property is served by a six-inch waterline and a 5/8" water meter, and individual wastewater systems.

The applicants, Tom and Victoria Leworthy, have prepared a booklet which I expect – I understand

went out with the Commissioners packet. And they'd like to take this opportunity to present the project from that bound packet. And as with most other – with many other permits, I'll return to the analysis after they've made their presentation.

Mr. Thomas Leworthy: Good morning. How you doing? It wasn't so much a presentation other than see if you guys had any questions from the book.

Mr. Hedani: Okay, can you just state your name for the record, please?

Mr. Leworthy: Oh, I'm sorry. Thomas and Victoria Leworthy.

Mr. Hedani: Questions from the Commission? Mr. Starr?

Mr. Starr: Yeah, I'd like to ask about the easement and whether there were any conditions on the easement, and when that was created, because I noticed the property owner whose property has objections.

Mr. Leworthy: When it was created?

Mr. Starr: Yeah.

Mr. Leworthy: I believe when the property was subdivided . . . (inaudible) . . .

Mr. Hedani: Can you use the microphone, please?

Mr. Leworthy: Yeah, I was just gonna get–

Ms. Victoria Leworthy: The easement was created prior to the – our neighbors and myself, and ourselves purchasing the property.

Mr. Hedani: Excuse me, can you pull the microphone closer to your mouth so that we can pick it up on our recorder?

Ms. Leworthy: The easement was created by the prior owner of the two properties: ourselves and our neighbors that we have the easement with. He's looking up the date. We have the actual easement.

Mr. Leworthy: Would you like to see it?

Mr. Hedani: You need to use the microphone because the transcription is gonna come out really garbled.

Mr. Leworthy: Sorry.

Mr. Hedani: Any additional questions from the Commission? Mr. Mardfin?

Mr. Mardfin: Perhaps Commissioner Starr could read out what is going on, if possible, because the applicant didn't really speak into the microphone.

Mr. Starr: Yeah, I have an easement document here which I was gonna pass around after I looked at it. It's for a 12-foot wide access easement for this property.

Mr. Mardfin: Thank you.

Mr. Hedani: Additional questions? Mr. Mardfin?

Mr. Mardfin: I noticed you did something that the previous applicant did not do namely – or at least it didn't include – you went to the Land Court System and did the unilateral agreement and declaration for construction of a farm dwelling. And you did this on January 11<sup>th</sup> of this year. What was the purpose of that?

Mr. Leworthy: I believe that was part of the ordinance. You had to do that. You had to have a farm plan agreement.

Mr. Mardfin: This is for the farm plan, then?

Mr. Leworthy: Correct. That was part of the ordinance for ag lands.

Mr. Mardfin: It says, for construction of a farm dwelling on land zoned ag. Does this mean that you had a farm dwelling and you hadn't gotten a permit for it?

Mr. Leworthy: No, it just – we had to prove that we were using our land for some type of agriculture. We had been using our land for agriculture for approximately three years prior to that. For this B&B ordinance, they require you had a farm plan in place and inspected.

Mr. Mardfin: Thank you.

Mr. Hedani: Additional questions from the Commission for the applicant? Commissioner Hiranaga?

Mr. Hiranaga: Have you implemented the improvements you had stated in your letter to your neighbor Soucek?

Mr. Leworthy: The things that we offered?

Mr. Hiranaga: Right.

Mr. Leworthy: No, they didn't really reply.

Mr. Hiranaga: No, have you implemented them? Have you constructed them: the wire fencing—?

Mr. Leworthy: Oh, no, no. We offered, but we're waiting for a reply from them if they wanted that, and they never replied.

Mr. Hiranaga: Do you plan to still put the fence up?

Mr. Leworthy: If they would like us to.

Mr. Hiranaga: . . . (inaudible) . . .

Mr. Leworthy: Yeah. It wouldn't really cost that much so-

Mr. Hedani: Additional questions from the Commission? Mr. Mardfin?

Mr. Mardfin: I noticed in your Exhibit 32 you referenced that you have a legal vacation condo in Hana since 2003. I presume that's Hana Kai.

Mr. Leworthy: Yes.

Mr. Mardfin: And - but it raised an issue, and I don't know whether it's Corp. Counsel or Planning Department might be able to answer. I had thought there was some sort of restriction on the number of permits you can have. And does that conflict with giving a B&B for the property in Haiku with having a vacation rental in Hana?

Mr. Leworthy: We didn't get a permit for that. It was something that exists for the property itself, so we didn't apply for a permit for that, if that answers your question on that.

Mr. Mardfin: I'd like to hear- Our Corp. Counsel just handed me a document. Maybe the Corp. Counsel could answer the question. I thought there was a limit on one B&B per person.

Mr. Hedani: They only have one B&B. The other one is a TVR, which doesn't require owner occupancy.

Mr. Mardfin: Okay.

Mr. Hedani: Any additional questions? Thank you. Mr. Shibuya?

Mr. Shibuya: This one deals with the actual electrical service within the rooms. Is it 20-amp service or is it 30-amp service to these rooms that are gonna be occupied by the - I guess-?

Mr. Leworthy: It's whatever the current code is 'cause it's a fairly new house. So I'm not sure the exact ampage.

Mr. Shibuya: The reason why I'm asking is because you have a lot of amenities: microwave, and some coffee maker, and things of this nature. I can just see the circuit breaker tripping off now with 20 amps.

Mr. Leworthy: Actually, we did an addition in 2006. And we actually have two circuit breakers: one for each portion of the house. So basically, one for each two-bedroom suite, if you show - if you look at the diagrams. There's a different circuit breaker for each.

Mr. Shibuya: Okay, thank you.

Mr. Hedani: Mr. Mardfin?

Mr. Mardfin: Exhibit 39, this is a little nit picky on my part, but I'm not a nitpicker.

Mr. Leworthy: My wife is a nitpicker for me.

Mr. Mardfin: On the second page, you have 3, 4, and 5 at the top, then you have a paragraph. And then the next paragraph says, "Maui County has instituted rules in their new ordinance such as enforcing quiet hours from 10:00 p.m. to 8:00 a.m." The ordinance says "9:00 p.m.," not "10:00 p.m."

Mr. Leworthy: Sorry.

Mr. Hedani: Mr. Starr.

Mr. Starr: Yeah, could you describe the agricultural activities that you perform on this property?

Mr. Leworthy: Yes, we – I believe it's stated in our booklet here. In 2006, we basically cleared about an acre and a half of – basically, it was falling down eucalyptus trees, bamboo that had gone crazy. And we basically fenced the area for pasture and we have horses.

Mr. Starr: How many horses?

Mr. Leworthy: We started with four and now two have passed away. We have two. According to the State – which I'm sure Jeffrey will go over, I guess that's all our ag land can really do. It's not really – the quality is not up to par. It's a rating of an "E," I believe, the report said, which is really not suited for growing.

Mr. Hedani: Is there any economic value generated from agricultural activity on the property?

Mr. Leworthy: No. We had considered renting out some of our pasture, but we felt it would be a nuisance to the neighbors that we have an easement with to have horse trailers and other people coming down, in addition to our tenants that we already have.

Ms. Leworthy: We had people request that we – they keep their horses on our pasture, but we, again, like my husband said, decided that that might be interference on the neighbors. So it's more of just an expense to us.

Mr. Hedani: Additional questions from the Commission? Thank you. Staff, do you guys want to go to public hearing at this point? Okay, go ahead.

Mr. Dack. The project is in conformance with the goals, objectives and policies of the Hawaii State Plan. It's in the state agricultural district obviously although it's not a use permitted within the state ag district, Chapter 205-6 allows establishment of unusual and reasonable uses in the state ag

district through this special use permit consideration that you're going through now.

The project is in keeping with General Plan objectives and policies. According to the Paia-Haiku Community Plan it's also identified as agriculture and the proposed uses in keeping with the community plan recommendations.

As Mr. Leworthy was mentioning the property is classified as what's referred to as E-96 land classification E as far as agricultural productivity by the Detail Land Classification System of the University of Hawaii from 1967. That classification system includes productivity ratings A representing the highest and E the lowest. So in this case, yes, this is the lowest of those classifications for productivity therefore it's used for grazing. The major existing use as indicated in the study at that time for such a land classification was grazing or forest.

One of the applicant's statements indicates that being situated in a valley the property isn't suitable for growing crops other than grass and bamboo due to ground saturation caused by runoff from higher elevations surrounding the land. Consistent with that evaluation the property is mapped as unclassified by the Agricultural Lands of Importance to State of Hawaii System.

The property is part of a generalized area of higher ground saturation of woodland which does not appear on mapping to be identified explicitly as a gulch but which still extends mauka and makai from the property. Nearby to the west of the property appears to be a stream which may flow at intermittently and a streambed running again, generally north-south.

The applicant supplied a farm plan and unilateral agreement as was being referred to in the questioning showing pasture land on the property and the farm plan has been implemented according to the Zoning Administration and Enforcement Division of the Planning Department.

Certain unusual and reasonable uses within the State Agricultural District other than those for which the district is classified it may be permitted. The department's findings in determining unusual and reasonable use are in the report. Briefing from that, agricultural use of the property will continue and the use of the structures for rental purposes will not have a negative impact on the grazing.

The structures are no less than 200 feet from the nearest neighboring structure and buffered by heavy vegetation. Surrounding agricultural properties will not be affected by the proposed bed and breakfast.

There's no indication that the bed and breakfast would place an unreasonable burden on public agencies to provide additional services.

The parcel's only two acres and is not conducive for agricultural crop production. No environmental impacts are anticipated as there will be no new construction or ground altering activities associated with the project. There's one neighbor immediately adjoining the property who is in opposition to the proposed bed and breakfast therefore staff expects to approve the bed and breakfast permit with a two-year time period as opposed to the three years which is the maximum permitted under the code. Staff suggests the commission provide the same period of time so that future renewals for the Special Use Permit and B&B Permit can be process simultaneously.



On the commissioner's tables each of you have a map showing the location of each of letter writers on this project. As of today's date actually the Planning Department has received two letters in support of the proposed project from two separate neighbors and three letters in opposition from one neighbor. Again, you can refer to that map which shows the locations of the property as those writers represent. Are there any question prior to the public hearing?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I have some concerns with this one and I'd like you to explain how this meets objective and policy 10, which reads, "discourage approval of special use permits in state ag district unless it's necessary to serve the immediate community and remote areas, supportive of agricultural uses or needed for the use and distribution of locally products and services that otherwise do not adversely affect the environment."

Mr. Dack: There are agricultural uses that are occurring on the property. There is the grazing that occurs and this bed and breakfast could be considered supportive of those agricultural uses.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I mean say they had two cats instead of two horses would the situation be the same?

Mr. Dack: I don't think cats would be considered agriculture. Horse grazing is considered agriculture.

Mr. Hedani: Commissioner U'u.

Mr. U'u: The land is classified as E?

Mr. Dack: That's correct.

Mr. U'u: The previous B&B application was classified also an E?

Mr. Dack: C I think it was.

Mr. U'u: Was a C. What is the difference in the classification as one C to one E for clarity for myself?

Mr. Dack: I only have the information on the normal anticipated uses of E. A is prime, the best farm land you could get Central Maui, well-drained, easy to till, just you know, your perfect farming land so to speak. E is the poorest quality again indicated as only suitable for grazing and forestry. And C is somewhere in the middle but unfortunately I don't have that staff report and I don't have that definition but try to extrapolate between those two. It's land that is suitable, works well for agriculture probably better from crops than for others but not of the primest character as Central Maui farm land probably.

Mr. Hedani: Commissioner U'u.

Mr. U'u: To my understanding I thought everything could grow in Haiku but with the amount of rain I know moss and mold grows up there. So hopefully the horses have better luck since you lost two.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Yeah, I'm still on the standard of care kick here. Where is the standpipe on the map here?

Mr. Dack: No standpipe was identified by any of the agencies commenting on the application. We do not know. We don't have a location for the standpipe. It's possible the applicants can answer that question but I didn't have that in a response and agency comments.

Mr. Shibuya: Okay, I've got a little problem with that. Thank you.

Mr. Dack: Sure.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, a question for Mr. Miyamoto. This is – there's a property served by a 12-foot easement and the property owners who own the property with the easement are objecting to the use. You know, I know I've lived with a 12-foot easement and it's a real problem when there's a – if a car gets stalled no one can get in or out, two cars cannot pass. It's difficult for fire and ambulances to get in. I wonder what, if the county has any position as far as approving uses like this on such an easement because I know with an easement like this you can't get subdivision or I think you can get a second farm dwelling, I'm not even sure about that.

Mr. Hedani: Mr. Miyamoto.

Mr. Miyamoto: Thank you Mr. Chair. Regarding the access for this property it's a private access at this point. They do have an easement, a documented easement for the property. It is agriculturally community so it doesn't quite, you know, fall into that higher standard of access, but it is a private access. So the primary concern for us is that first public roadway that it accesses on meet our standards. As far as emergency services, that would have to be referred to the appropriate agencies to respond if that would be adequate enough. That's as much as I can say.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Following up on this, in this document Jeffrey there's a photo showing a gate and it says, "this is a view of the private road leading to our property and the gate to enter our property." There's no page number here, I can't refer you to a page number.

Mr. Dack: That's fine.

Mr. Mardfin: And I'm looking at that fence, how does that fence open? Do you have to buzz in or something?

Mr. Dack: I believe there's – it appears to be remotely controlled. It does have a mechanical controls for opening and closing that. But as far as the actual communication system, whether there's one outside the gate and/or just in the house, I don't recall that. Maybe you could ask the applicants to clarify that for sure I'm certain.

Mr. Mardfin: I will in just a second.

Mr. Dack: Thank you.

Mr. Mardfin: The thing I'm concerned about is if there were a fire would a fire truck be able to get down that driveway and up and through the gate and maybe the applicants can answer that.

Mr. Dack: My visits of the property would have to conclude that gate would probably be fairly easy to open by a fire truck. It's not going to stop a fire apparatus.

Mr. Mardfin: ... smashing through.

Mr. Dack: Yeah, I would say at worst.

Mr. Hedani: Jeff, is the access 12-foot easement is that paved or is that gravel?

Mr. Dack: It's all dirt.

Mr. Hedani: It's dirt.

Mr. Dack: All dirt.

Mr. Hedani: So in the rainy season a fire truck would be able to get through the dirt road or the muddy road in that case to get to the fire?

Mr. Dack: I couldn't speak for the fire, the ability of fire equipment to get in there honestly.

Mr. Hedani: Was there any comments from the Fire Department?

Mr. Dack: No.

Mr. Hedani: None?

Mr. Dack: No.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Yeah, I'm very concerned with that because on the map that you handed out it shows the easement is fairly short. On the map it's a circuitous route and so it gives me a different feel for this whole access thing because here you are, lets say you have a fire the tenants and you are trying to get out and fire trucks trying to get in, somebody's going to have to give. Looking at the

density in the area you're lucky if you're in the pasture area but you're unlucky if you meet up with a fire truck coming head on in the wooded area. Would it not be?

Mr. Dack: It does appear to be only a one-lane driveway as Deputy Director Miyamoto indicated. It is a private driveway. There is at least one location I recall, I think the applicants can sure provide you much better information, there's a least one location for pull outs that I recall in my one visit to the site.

Mr. Shibuya: And absent the standpipe this is asking for trouble.

Mr. Dack: Again, recall that these bed and breakfast homes are considered by the County Council to be residential uses. So we're – I appreciate the line of questioning but as long as they meet standards for a single family residence that should be at least I think in – at least the mind of probably most ...(inaudible)... county, of the ordinance at the council level should be adequate.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: You happen to know when the applicants bought the property?

Mr. Dack: No I don't.

Mr. Mardfin: They're indicating 1994. They did they operate this as a B&B or a TVR at any point between 1994 and the present?

Mr. Dack: I have run across no evidence that it has been in operation. I think this is a new use proposed.

Mr. Mardfin: And I see the applicants nodding their head. Thank you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Do you know if there's a CC&R?

Mr. Dack: I do not know that. We have not come – Staff has not come across any such thing during review of the application that I can recall.

Mr. Shibuya: Maybe you can ask the owner?

Mr. Dack: Yeah, I expect you'll probably want to ask some questions of the owner in a little bit and you can ask them at that time.

Mr. Shibuya: Thank you.

Mr. Hedani: Any additional questions for staff? The property is not subdivided because it's an agricultural subdivision? Is it subdivided?

Mr. Dack: It's a two-acre property. There's no further subdivision of that I'm aware of.

Mr. Hedani: Well, the reason I asked the question is because it looks like a landlocked property without access to a public street, you know. So it's not subdivided, right?

Mr. Dack: I guess I'm confused by the question. A subdivision I'm sure would have had to been processed to create the property. It does have access to a public road through an easement.

Mr. Hedani: Okay. I'm just saying in most cases those subdivisions you're required to meet all of the subdivision ordinance standards and conditions which include improved roadways. You can't have a dirt road leading up to the property or whatever, yeah you know, one way or another.

Mr. Dack: Yeah, I don't know about that. No, sorry.

Mr. Hedani: Mike, do you have any comment on that?

Mr. Miyamoto: Thank you Mr. Chair. Not really knowing the exact history of this property but when you look at the tax map key it looks like this may have been a very small subdivision that occurred, a bigger lot with the lot that provided the easement. So it may have been a one lot into two. So it wouldn't really – they could exercise their waiver because of the small number of subdivisions. Similar to like a family subdivision. So it does, – you know, just from looking at the lot, that's what the condition probably was of the subdivision that some legal access be provided.

Mr. Dack: And I should confirm that yes that – from reviewing the application that does sound like that was the land use history how this came into being.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I know that at least as were about 12 years ago the standard was that you could subdivide if there were an 18-foot wide easement to the second parcel and a 12-foot easement to the final, you know, the flag parcel.

Mr. Hedani: Additional questions? Public hearing.

**a) Public Hearing**

Mr. Hedani: We would like to open it up to the public for comment at this time. Are there any member of the public who like to offer testimony on this agenda item? If so, please step to the microphone and identify yourself.

Mr. David Florence: Good morning. My name is David Florence. I live at 1455 West Kuiaha, Hana side of the road from the Leworthy application. I'm here in support of and to testify for the application for the B&B for Vicky and Tom Leworthy. I have known this family for three-quarters of the almost quarter of a century that I have been in Haiku. I have watched their two daughters from infancy to now near womanhood. They are a healthy, loving, supportive, gracious family and we are fortunate to have them as neighbors. Speaking for my wife who would be here but she is

off island, I know she would support this application and I want to extend my mahalo to this august committee for having allowed me to testify on behalf of these neighbors. Thank you very much.

Mr. Hedani: Thank you very much Mr. Florence. Are there any other members of the public that would like to offer testimony at this time? Seeing none, public hearing is closed. Staff recommendation.

**b) Action**

Mr. Dack: The application for the Land Use Commission Special Use Permit complies with applicable standards for an unusual and reasonable use within the state agricultural district as indicated in the recommendation report and as also had been indicated in the department's report. The Planning Department recommends to the Planning Commission approval of this Land Use Commission Special Use Permit subject to six conditions as I'll summarize.

The first would be that the permit be valid until July 30, 2011.

The second is a condition, standard condition relative to enforcement of violations for Land Use Commission Special Use Permits.

The third would be that permit cannot be transferred with the prior written approval of the commission.

Fourth is the insurance clause as had been discussed in the prior permit consideration that's before you.

The fifth is the requirement for a compliance report to be submitted at the time of a request for any time extension.

And the sixth is the use, that the use shall remain in substantial compliance with representations made to the commission.

In consideration of the foregoing the Planning Department recommends that the commission adopt the department's report and recommendation prepared for today's meeting and authorize the director to transmit said findings of fact, conclusions of law and decision and order on behalf of the commission. Any questions?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Move for denial.

Mr. Hedani: Is there a second?

Ms. Sablas: Second.

Mr. Hedani: Seconded by Commissioner Sablas. Discussion? Commissioner Starr.

Mr. Starr: To speak for the motion I find that the access and provision for fire protection and public safety is marginal and the final straw is the objections of neighbors in close proximity particularly the neighbor whose land has the easement on it. I really don't feel that it's a fair thing to have a property owner who has a long easement running the length of their property with the expectation that the family who's going to use that easement is going to use it for purely agricultural purposes maybe with a farm dwelling on it suddenly have guests and visitors and tourists going up and down it. It's not, you know, it's not safe and especially all it takes is a rent a car to get stuck in the mud and that there's no way in or out of this. So I feel that this is a case where we should support the denial.

Mr. Leworthy: Excuse me, may I comment? I'm not sure what the procedure is.

Mr. Hedani: That would be inappropriate at this point.

Mr. Leworthy: I'm sorry.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I will be voting against the motion to deny. I feel there are – They've offered to install certain improvement with regards to a fence, a sign and upgrading or maintaining the easement that if they implement would satisfy my concerns with regards to the access easement that encumbers the neighbor's property. Both parties when they purchased their property knew that there was existing access easement. So I don't see that being a big issue about cars being stuck.

I guess I have a question for staff if they have the answer. Does the party that's in opposition to the application, do they use this existing easement as their primary ingress and egress or do they have their own driveway?

Mr. Dack: I do not believe that they use it as their primary ingress and egress.

Mr. Hiranaga: Right. So I don't see how that – a car being stuck in that easement would impact the neighbor since they have other ingress and egress options. So I will be voting against the motion to deny.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Just comment. They own a TVR correct in Hana?

Mr. Hedani: I'm sorry?

Mr. U'u: They own a TVR in Hana. That was brought up to my understanding.

Mr. Hedani: I believe so.

Mr. U'u: And now they applying for a B&B permit in Haiku. I'm just – and I know during the process of the B&B debate what we was hesitant, the Council and the commission that we would have mini

operations or one small, you know, people start branching out and starting one small chain kind of sort of and for that is, might be what I'm looking at now. And so I'm still on the fence as to approve or deny. I'm not sure what I'm leaning to, but you know, my point is that is at what point when there's enough that you have in the basket? When you're limited to a certain number be it 88 or be it whatever number was given for the region and you get one in different regions, at what point when you say two is enough or one is adequate?

Mr. Hedani: Commissioner Guard.

Mr. Guard: Thank you. I'll be voting against the motion as well. We came up with the three-year permit just so people could see if there was any major problems or not and I agree with Commissioner Hiranaga on the improvements at hand to fix the road. They shouldn't be penalized because they bought a flag lot because that would be a tough case to prove on all these other people that flag lots are pretty common on Maui. So that be a burden that I don't think we can put on this certain individuals because they bought a lot that is one in from the street and then for Commissioner U'u's concern on the Hana Kai or the TVR I believe that's in the district that allowed vacation rentals prior to '88 or that whole debate about apartment rental zoning. So I think the main issue is people buying up blocks of houses and turning it into a bed and breakfast operation versus someone who bought it as any little investment just to try to come and visit any island. I mean, should we look at people who do it in Las Vegas or California as well that if they own a vacation condo they can't own a bed and breakfast on Maui. I can see if it was two bed and breakfast, one in Haiku, one in Kihei. That was a case that came before us with some other people we didn't have corporations getting into the business. I think they've proven their case and again, it's a small step, it's a three-year application at best and they're going to have to start planning for the renewal even if they get it today.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like to respond to Commissioner U'u. I was the one that raised the issue about whether it was appropriate to have a TVR and a B&B and Corp. Counsel had pointed out to me and I think there was testimony that the restriction is on one B&B per person not a restriction of a B&B and other kinds of operations. I mean, for all we know they could own a entire hotel in Wailuku or something and that wouldn't be a bar. Hana Kai is the only condominium in Hana and what most owners do, I don't know if it's true in this case or not, but most owners will own a unit and then put it on a – there's a vacation pool that they put it into for 11 months a year and they use it maybe one month a year or something like that. This is typical. I don't know if it's true in this particular case. And then for the 11 months it's rented out as a pool of housing on this thing. There is an onsite manager for Hana Kai and so I think the concerns are not such that owning Hana Kai I don't think should be a bar to them having a B&B.

Mr. Hedani: Commissioner U'u.

Mr. U'u: So question if I can ask the applicant how much units do they own in the Hana Kai.

Mr. Leworthy: Just one.



Mr. U'u: Just one.

Mr. Leworthy: It's a one-bedroom condo.

Mr. U'u: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, this is for Mr. Dack. How many letters of opposition did we receive? I like in other applications we've seen we had a map that showed where other B&Bs are and where opposition letters were received. Did we get that?

Mr. Dack: To the first question I think you have three letters of opposition if I recall right, but they're all from one party. All from Ms. Soucek. You do have a map that I handed out on the table this morning that shows the location of the writers of the three letters. Unfortunately I didn't get that in the actual packet itself but it is, was, on the table showing that the Souceks own the property immediately to the east of this site. And then letters, the writers in support are basically across the road from the Soucek property and then to the south, southeast of the subject site.

Mr. Hedani: Commissioner Sablas.

Ms Sablas: I have a question. Should we deny this request? What options do they have? Can they come by and reapply at a later date?

Mr. Dack: Well, I have to look in the ordinance for that. I think there's a limitation in there but I don't think they're barred forever from doing that, but continue the discussion and I'll try to find an answer to that.

Mr. Hedani: I'm sorry, Commissioner Sablas.

Ms. Sablas: Well, just my concern is the voice of objection from an immediate neighbor. I would like to respect that because I'm a long-time homeowner and if I would object to someone coming and putting in a bed and breakfast in my immediate neighborhood for a reason, and I've been there a long time and they approve it, well I would have a problem with that. I would like to recommend that they probably continue to work with the neighbors with the objection and come back again because it's kind of hard when you have neighbors who are huhu against each other in the long term.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, it looks from the map as though the easement for this crosses the Soucek's road twice that it goes across it and then makes a hairpin turn and comes across and crosses their driveway a second time. You know, I really have some concerns. I'd like to know if that's so and also you know whether fencing this easement would really create a, you know, a really dangerous situation because then there's no possible – you know, if you fence it 12-foot wide dirt road and you get some mud in it, there's just no option when you get a mud bog. Am I correct about that crossing driveway for Souceks, the people who are objecting.

Mr. Dack: I'd either like to ask the applicant or suggest you do that because I don't know the site well enough to do that.

Mr. Starr: It's okay.

Mr. Leworthy: Just wanted to go back to a – it's not a dirt road, it's actually crushed rock. And I have it regraded and graveled every two years.

Mr. Starr: Could you answer the question please?

Mr. Leworthy: Yes and to answer your question it doesn't cross it twice, no.

Mr. Starr: Does it cross it once?

Mr. Leworthy: No, it doesn't cross it.

Mr. Hedani: Commissioner Guard.

Mr. Guard: It appears that it just runs along the border of the probably the older property prior to the subdivision.

Mr. Leworthy: Correct.

Mr. Guard: And goes about 12 feet in. I mean, we have – that's a pretty common practice in subdivision across the island I believe. My family had to purchase one similar to that. That was it for the applicant. I was going to respond to Commissioner Sablas. Because this is a difficult one. I mean, we saw another case where one neighbor made enough of a problem to get another application denied but following that that neighbor also went after any individual who had shown support for a project personally. So there is the case where we shouldn't only look at it as one neighbor. If the B&B was the negative aspect you would think the whole neighborhood would be against it. But it's just the nature of people I believe that there is the potential for one person to just not be happy with any neighbor and that's one thing that I learned after ... (inaudible - changing of tape)... around against the people that had actually shown support for the B&B and it's an ongoing thing months after already being denied. Going after, attacking people personally and so we have to take that with a grain of salt that one neighbor unhappy about anything they could just be the neighbor you don't want to have next to you. I don't know the person personally so I'm not saying that's the case, but I've first-hand experience in this with people that I know in any situation and I would hope that on one else. So that hopefully we can look at it that enough people supporting other neighbors that maybe we should look at it from the outside and keep it in context.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, just addressing the concern regarding ownerships of TVRs. You know, if you own a condo at Maui Vista and you own a condo at Lahaina Shores, you are now a multiple TVR owner. Does that make you a bad person? Yeah, you can only have one B&B license, permit, because you have to reside on the property. In the Hana Kai project I became familiar with

because of our recent outing to Hana. – Stay overnight so I went on the internet, you know, Hana Kai is a high rise. It's a condominium. It's not a single family residence. I don't think it's a bad thing to own a TVR in the Hana Kai. So, yeah, we need to understand TVR is any short term rental condominium in Kihei or Lahaina that's allowed to do short term rentals. So there's thousands of them.

Mr. Hedani: Any additional discussion? Commissioner Mardfin.

Mr. Mardfin: I'm leaning toward voting against the motion to deny for a couple of reasons. One, is that the recommendation because there's a letter of opposition they're recommending two-year period not a three-year period. I'm hoping that in that two-year period there'll be – I think the letter of May 3, 2009 from the applicants to the objector where they set up five things that they're willing to do I'm willing to give them two years to give it a shot and trust that the – it probably will not come back to us but trust that the Planning Department will take heed of the neighbor and if there haven't been substantial efforts to placate the neighbor that they might deny it two years from now but I'm willing to give them a chance.

Mr. Hedani: Additional discussion? Ready for the question? Commissioner Sablas.

Ms. Sablas: Can I have an answer to my question before we vote?

Mr. Hedani: Mr. Dack.

Mr. Dack: I looked through the B&B Ordinance twice and I see no limitation on it or limitation on reapplying after a project is denied. No particular waiting period or anything that appears to exist in the ordinance.

Mr. Hedani: I have a question Jeff. In this particular – I'm a little concerned about the liability aspect of the property in terms of fire access and was the Fire Department just an oversight that they didn't respond or is it something they feel they can deal with?

Mr. Dack: Actually I looked back through again and we didn't actually transmit to the Fire Department. The standard – actually the Fire Department has asked us to not transmit bed and breakfast applications to them because they just normally have standard conditions on the escape routes, fire extinguishers, etc., and so they've asked us actually not to transmit and instead apply those standard kinds of provisions and so that's what we did. That's what we did in this case, we did not transmit to them.

Mr. Hedani: So it wasn't an oversight?

Mr. Dack: No.

Mr. Hedani: It was intentional.

Mr. Dack: As I indicated, the department has asked us to not transmit to them so we were respecting that request. That's the standard –

Mr. Hedani: My concern is that coming from the visitor industry when you're responsible for the safety of the guests that come onto your property you have a higher standard of expectation, they have a higher standard of expectation of safety when they rent a property from you for overnight accommodations. And to me, if we did not transmit it to the Fire Department the county would have contingent liability if someone were to be injured or killed as a result of a fire which resulted in access not being possible because the conditions were not accessible.

Mr. Dack: Well, possibly the department can get back in contact with the Fire Department and see if they wish to have us transmit them.

Mr. Hedani: Right. My concern would be whether or not it could be paved so that they could have paved access or something so that the Fire Department can get to wherever they have to get to. Commissioner Hiranaga.

Mr. Hiranaga: I believe the Fire Department would not have a problem accessing the dwelling because it is a downhill access. They may have a problem getting back up but you know, as far as responding to a call, I'm pretty sure they can get down and it's probably 20 minutes from Paia Fire Station to the home so I don't think they'll be there – they'll be there to put the fire out so that again, to stop others structures from catching on fire but – and if they're not expressing concern - it may take them a while to get the truck back up.

Mr. Hedani: Okay. Commissioner Mardfin.

Mr. Mardfin: I was just going to say that, I was going to ask where the Fire Department is located in respect to them but my colleague just answered that it's like Hana, you know, the place is going to be gone by the time they get there and you just accept that as one of the costs – it sounds like there's plenty of room for any guests to evacuate the house and protect the lives and safety.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just one other statement. I'm not sure maybe the Makawao Fire Station might be able to beat the Paia Fire Station I'm not exactly sure but it would be a close call.

Mr. Hedani: Additional discussion? Ready for the question? Okay, all those in favor of the motion to deny signify by raising your hand. Three. Opposed same sign. One, two, three, four five.

**It was moved by Mr. Starr, seconded by Ms. Sablas, and**

**The motion to Deny the State Land Use Commission Special Use Permit Failed.  
(Assenting - J. Starr, L. Sablas, W. Shibuya)  
(Dissenting - K. Hiranaga, B. U'u, J. Guard, W. Mardfin, D. Domingo)**

Mr. Hedani: Motion is lost. What's your pleasure? Commissioner Guard.

Mr. Guard: Motion to approve as recommended by staff.

Mr. Hedani: Is there a second?

Mr. Mardfin: Second.

Mr. Hedani: Seconded by Commissioner Mardfin. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I would like to offer a friendly amendment with another special condition that Items 1, 2 and 3 in the applicant's letter dated May 3, 2009 also be required as part of the their permit which is basically to erect a fence, put up a sign indicating it's a private driveway and that they continue to regrade and gravel the ...(inaudible)... easement.

Mr. Hedani: Is there a second?

Mr. Guard: Second.

Mr. Hedani: Seconded by Commissioner Guard. Discussion? Commissioner Mardfin.

Mr. Mardfin: I like the intent of it, the only problem is if the neighbor objects to this, actively objects to it I'd hate force one other thing down her throat. If it were to be actively pursues these options rather than must do, it strike me as a little bit more neighborly.

Mr. Hedani: Commissioner Guard.

Mr. Guard: In reading it maybe the maker of the motion would want to take out Item 2.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Okay, I'll amend my motion to just Items 1 and 3 of your letter dated May 3<sup>rd</sup>.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Fencing that 12-foot easement is just going to make it a lot more dangerous because at least now by trespassing outside of the easement it might be possible to get around some either a stuck vehicle, but once you fence it, it means that when a vehicle or anything gets stuck there or there's any you know, stream flowing across it in heavy rain, there's just no way and you know, although it may be possible to get in, you know, an ambulance isn't going to probably get out of that thing when it's raining really hard.

Mr. Hedani: Commissioner Guard.

Mr. Guard: I haven't been to the property so maybe Jeffrey or the applicant would know, ideally we could just fence the side on the neighboring portion I don't know if that's north or south, we don't have to fence both sides there's one that goes to a friendly neighbor and to the person in opposition, correct? The driveway has two sides to it. So possibly they could fence the side to keep people off of the is it the Soucek property or maybe the applicant could tell me if it's already fenced.

Mr. Leworthy: It's not already fenced, but that was my intention by offering that because that seemed to be one of her concerns, but they didn't reply.

Mr. Guard: Okay.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Question for the applicant, do you have any objection to those two new conditions regarding the fencing and the gravel?

Mr. Leworthy: The graveling we've been doing since we've owned the place. Every two years we regrade it and regravels. It's very expensive but it's worth it for fire protection and ambulances if they did come down because we've had long-term renters for the past – since we've owned pretty much or since we built the cottage – since we built the main house in 2001, we've had renters in our cottage, long-term tenants.

Mr. Hiranaga: Again, my question is do you have any objection to us putting these two special conditions?

Mr. Leworthy: No, not at all.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Any additional discussion on the amendment? Commissioner Mardfin.

Mr. Mardfin: Would the maker of the motion have any objection to adding "with the consent of the neighbor"? If the neighbor doesn't want it you're going to do it anyway.

Mr. Hiranaga: It's an access easement. I think it's a permitted activity on their access easement. If you're going to make it a condition that the person who opposes the permit give their consent, I'm not sure how successful they would be in getting that consent. Because if they refuses to consent then they can't comply with the special condition which means they won't get the permit.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, this is a question for the applicant. Where the driveway is is that on the easement or is it someplace completely different from the easement.

Mr. Leworthy: Their driveway?

Mr. Starr: No your driveway through their property.

Mr. Leworthy: That is our easement.

Mr. Starr: Is this the map of the easement?

Mr. Leworthy: Yes. The two lines on the right.

Mr. Starr: The driveway runs like this and then crosses their driveway and then hooks back.

Mr. Leworthy: Correct.

Mr. Starr: So it does cross their driveway twice.

Mr. Leworthy: No, what that's crossing is that's the electrical easement that we have going through there. We have an electrical easement and water easement both all being like 15 feet wide, 10 feet wide that all goes through their property. So those lines you're talking about is the electrical and water easement.

Mr. Starr: But it doesn't run along the edge of the property, it kind of zigzags through their property.

Mr. Leworthy: The rest of it is all hill, but yes. To the right there is all hill.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm unclear. Lets not worry about water or electricity. Can you describe on this map where the driveway easement goes?

Mr. Leworthy: Can I grab that? Now your question one more time.

Mr. Mardfin: I don't care about electricity or water at this point. Show me how cars come in.

Mr. Leworthy: The – right here, and this is our property.

Mr. Mardfin: Where does your neighbor go out?

Mr. Leworthy: They use the same easement going out. Their house is located in the middle of their – they use the same easement and then they come, their driveway is maybe 30 yards in front of our –

Mr. Mardfin: So if you block that then they are blocked in.

Mr. Leworthy: If we blocked?

Mr. Mardfin: If the road, if the driveway gets blocked then your neighbor's blocked in.

Mr. Leworthy: You really can't block the driveway because the easement's 12 feet wide and then it has probably 20 feet combined each side and it's all flat.

Mr. Hedani: Not if it's fenced in.

Mr. Leworthy: Not if it's fenced in.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: I have three different maps, three different versions of the driveway. I don't know which to believe. I'm looking at the Google map and that's to me I would take the Google map over some hand scribed stuff that gives me almost like a short dogleg type thing where as the Google map shows there's a hump there.

Mr. Leworthy: We did the Google map too so it's our –

Mr. Shibuya: So this is manufactured?

Mr. Leworthy: We did that line, not the actual photograph, but the line we did to show the easement. So we may have been off on the line. We just wanted to give some perspective when we had those photos and the photos were more to show the clearing that we've done on the agriculture.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: So this actual easement is actually used by the other owner?

Mr. Leworthy: And we take care of regrading and regravelling every year with no expense to them.

Mr. Shibuya: Okay, because there's some complaint about the breaking down of the I guess the embankment and erosion of that area.

Mr. Leworthy: Yeah, I'm not sure what they're referring to with that because like I said, we regrade and regravel every two years.

Mr. Shibuya: Okay, thank you.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: As long as we're on that Goggle map, how did you get a May 2004 satellite view and the bottom of the Google map says 2008?

Mr. Leworthy: Let me talk to – my wife is the computer expert here.

Mr. Mardfin: Picture one says 2004 and at the bottom here I think it says 2008 if I'm reading it correctly.

Ms. Leworthy: On the right side it says Google 2009 because that's I guess their thing but if you look at the bottom left the really small print it says imagery date May 27, 2004 on the bottom left of that picture.

Mr. Mardfin: Ah, thank you.

Ms. Leworthy: I saw that too.



Mr. Hedani: Additional discussion? What we're reviewing is the amendment to add Conditions 1 and 3. Any further discussion? All those in favor of the amendment signify by saying aye. Oppose nay. All those in favor signify by raising your hand. One, two, three, four, five. Opposed same sign. One, two, three.

**It was moved by Mr. Hiranaga, seconded by Mr. Guard, then**

**VOTED: To Add Two Additional Special Conditions, Conditions 1 and 3 From the Applicant's Letter Dated May 3, 2009.  
(Assenting - K. Hiranaga, J. Guard, B. U'u, W. Mardfin, D. Domingo)  
(Dissenting - W. Shibuya, L. Sablas, J. Starr)**

Mr. Hedani: Motion is carried. Any additional discussion on the main motion? Ready for the question? All those in favor signify by raising your hand. One, two, three, four, five. Opposed same sign. One, two, three.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit with Conditions, as Amended.  
(Assenting - J. Guard, W. Mardfin, K. Hiranaga, B. U'u, D. Domingo)  
(Dissenting - W. Shibuya, L. Sablas, J. Starr)**

Mr. Hedani: Motion is carried. Thank you. Okay, it's five minutes to 12:00. We're going to go ahead and take a break for lunch at this point and then reconvene at 1:00 p.m. Thank you.

A recess was called at 11:55 a.m., and the meeting was reconvened at 1:00 p.m.

Mr. Hedani: Meeting of July 28<sup>th</sup> will reconvene. Next item that we have on the agenda is Item C-3.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, before we proceed, someone just brought I believe it's a typo on our agenda today to my awareness and I just want to clarify and this relates to the Lahaina meeting of the comprehensive plan which I believe is on August 4<sup>th</sup> and the agenda under Item F-9 states it as being August 5<sup>th</sup>. I'd just like to clarify that that is a typo.

Mr. Hedani: That's right. The next meeting will be on August 4, 2009 in Lahaina at 1:30 p.m. Thank you. Item C-3, Mr. Yoshida.

Mr. Yoshida read the agenda item into the record.

**3. ALFRED and SHARON LAPETER requesting a State Land Use Commission Special Use Permit for the proposed Horizon of Gold Bed and Breakfast to use**

**4 bedrooms in the State Agricultural District at 114 Keoawa Street, TMK: 4-2-008: 016, Kapalua, Lahaina, Island of Maui. (SUP2 2009/0004 ) (D. Dias)**

Mr. Danny Dias: Good afternoon Chairman Hedani, Members of the Commission. To be honest I wasn't really planning on doing much of a presentation since the applicant has a power point that they've prepared, but right now we're having technical difficulties so I'll give a little information on this project.

Before I get into that though over the lunch break we placed in front of each of you four documents and they're basically the CC&Rs for the Honolua Ridge subdivision and I believe, and Plantation Estates. Honolua Ridge and Plantation Estates. I believe there's going to be a fair amount of testimony regarding CC&Rs and as Ann Cua mentioned in her presentation that's not really the county's jurisdiction that's more of a private matter. Commissioner Shibuya though did ask for a copy of those so it's only fair we hand them out to all of you but I just want to reiterate that's something that's between property owners and their association and not something that the county does or should get involved in.

Having said that, just a quick overview of this project. It's located in West Maui, in Kapalua to be specific. The property itself is a little over four acres in size. There's two dwellings on the property. There's a main dwelling that has four bedrooms, four and a half bathroom, kitchen, living area, three-car garage and that's where the B&B operation is going to take place. If this B&B permit is approved then the owners will move in the accessory dwelling which is located above the main dwelling and that has two bedrooms, kitchen, bathroom and a two-car garage.

As far as land use designations it's in the State Ag District, community planned as Agricultural and it's zoned Agricultural by the county and it's outside of the Special Management Area. With respect to ag, like I said earlier this property is four acres in size. There has been a farm plan that was approved for this property. About half of the property is in ag conservation and the reason for that is, well, for one that's allowed and the second reason is I believe the terrain for a large portion of this property is pretty hilly, has a lot of trees and so forth. The remaining two acres, about one acre you know you have your dwellings and related improvements and the final acre is where the applicant has planted a large amount of fruit trees along with Cook Pines and some other things.

So if we could just hold on for a minute or two I believe the presentation is about ready.

Mr. Hedani: Mr. Dias, like a good Marine adapt and overcome.

Mr. Dias: Okay, I'll continue talking about the project. Father is a Marine so I know what you're talking about. Okay, I'll get more into the description. As far as operating the bed and breakfast like I mentioned earlier the applicant plans to rent four bedrooms in the main dwelling. It's important to note that this is going to be rented to a single group at a time. So unlike some B&Bs where you have four rooms and there's four complete strangers renting each room individually. At this bed and breakfast it's only one party at a time so you know in some cases you may have three rooms that are actually empty which we appreciate. I that it adds more cohesiveness I guess and you know, to an extent minimizes certain problems that you may have within that type of operation. Obviously breakfast will be served daily. Breakfast items will include fruit from the property along

with items like muffins, bagels, hot coffee, tea and so forth. So with that I'll hand it over to the applicant. I apologize for the difficulties.

Ms. Kim Skogg: We apologize for the technical difficulties, but my name is Kim Skogg. I'm with Munekiyo and Hiraga and we're for the State Land Use Commission Special Use Permit for the proposed Horizon of Gold Bed and Breakfast and the applicants are Alfred and Sharon Lapeter and they are here, right here with us today. I also have Gwyn Hiraga here from our office.

I know this is probably hard to read but just for regional context the subject property is in Kapalua on the northwest side of the island quite a ways mauka of Honoapiilani Highway and this is the subject property. Like Danny said it's a little over four acres. This is actually in the Honolua Ridge subdivision which is separate from the Plantation Estates, separate but neighboring to that subdivision and access is via this roadway right here. I'll just point out that this land over here is all conservation land. It's part of the West Maui Forest Reserve. And up here is Honolua Ridge Phase 2 and some ways up the road there's a hiking trail actually and most of these lots are actually vacant lot. I'll get to this in another slide but these two lots are the only lots besides the Lapeter's property that have houses on them.

So this is kind of a birds eye view of Honolua Ridge and Plantation Estates. This is what you saw on the previous map right here Honolua Ridge. This is all Plantation Estates down here and the gray shaded area is actually gulch. So I guess these are two properties with houses on them. This is another property with a house on it. The rest are vacant and actually because of how the land is you can't really see the Lapeter's house from either of these other houses nor can see the Lapeter's house from any Plantation Estates really. Oh, sorry, and also access from Honoapiilani Highway is on this road right here which goes, sorry my hand's shaking, but that's the access road.

Mr. Hedani: Kim, can you stop your hand from shaking?

Ms. Skogg: I'll try but I don't know. So this is the site plan of the property itself. This is the Keoawa Street right here. The forest reserve is all over here. Again, the neighboring properties are vacant and there's gulch that goes along down here. This is the main dwelling right here. This is the accessory where the Lapeters will be living. The main dwelling will be the bed and breakfast and as part of their farm plan which was approved back in 2005 they put over half of their property into ag conservation and so that is represented by all of the gray shaded area. And actually since they've been thinking about running a B&B they thought about what they can do besides do ag conservation. So they've actually – earlier this year they started planting an orchard with a variety of fruit trees. Ms. Lapeter has always had some lemons, limes, papayas growing so to plant an orchard was kind of a natural extension of that. Oh, sorry, while we're on this slide, sorry, I'll just point out there's a fire hydrant right in front of the accessory and there's another fire hydrant down in this corner.

So to give you an overview, the property's just over four acres. It's 2.14 acres was put into ag conservation and like I mentioned in thinking about how they're going to run their bed and breakfast they've actually added over an acre in orchard or planted area and the plan is to – you know, as the bed and breakfast is running they want to expand this area and add more trees.

So in terms of the homes there's the main dwelling which will be the bed and breakfast house. It's four bedrooms, four and a half bathrooms. The guests will have the run a kitchen, office, a living area and a laundry room. The Lapeters like Danny mentioned they'll move into the accessory dwelling. It's two bedrooms, two bathrooms, a kitchen and a living area and a laundry closet.

So in terms of the actual operations of the bed and breakfast the plan is to rent the four bedrooms of the main house as a package to single groups at a time. So instead of having you know, four different people from wherever who don't know each other running around they're going to have – you know, the idea is to have maybe a family comes here altogether, a group of friends or something, so the thought behind this is that traffic should be kept a minimum because it's one group going anywhere at a time. Everyone knows each other. There shouldn't be any problems. There is enough parking on site for over four vehicles which I'll get to in another slide. There's no social gatherings without the prior written consent of the Lapeters. So there's not going to be any parties thrown here without anyone knowing. Quiet hours will be from 9:00 p.m. to 8:00 a.m. and this all part of house rules which are posted in every bedroom.

And like I mentioned this is a slide that shows parking. This is part of the main house right here. this is the driveway to the main house and you'll there's a car here, a car here, a car here, a car here and there's plenty of extra room should there be any more cars. And as far as where the Lapeters will be staying there's a two-car garage and there's actually room for parking outside of the garage as well.

I know this is kind of dark but this is showing – this is Keoawa Street right here and I'll note that it's a quality roadway. It's well up to standard. This is the driveway to the main house and this is part of that ag conservation area that takes up a lot of their property. It's just trees. It's pretty wild vegetation but the idea behind this is to prevent erosion along the slope yeah.

This is the driveway to the accessory which is just a little bit up the road actually. This what you're seeing is the garage of the accessory and again, this is all that trees of the ag conservation area and behind where this photo is taken is all that West Maui Forest Reserve.

Oh, and while we're on this slide, sorry, I'll add that the Lapeters are actually in the process of having three windmills or wind turbines put in and they'll be put in like kind of here, here and here and once those are installed those will actually take care of all the electricity needs for the property which is pretty neat and the model they're going for it's supposed to be a really quite model. It will be painted green and everything.

So just to reiterate it's just over four acres, 2.14 acres in ag conservation and just over an acre in planted area which will expand over time.

So in terms of the orchard the fruits that they have are a variety of citrus, lemon, lime, orange, tangerines, grapefruit and in addition to that they have avocado, banana, kumquats, lychee and papaya and the plan is to serve, you know, the fresh fruits that they have or that they gathered and will be served for breakfast. Because there is going to be some amount of surplus, the rest they will donate to the Na Hale O Wainee Resource Center. In addition to that they have some Cook Pines and once those reach maturity those will be sold for landscaping purposes.

So to give an idea of where the planted are, again the gray shaded area is the ag conservation. These cross hatch areas, I know they're little bit hard to see, but there's three areas and that's where all the trees are planted and again over time those will expand.

So this is a photo showing kind of the southwest corner of the property and again, this is all that conservation area. It's pretty wild. Yeah, this is – the main house is about here. The accessory would be behind where this picture was taken.

This is kind of a close up. This is all that conservation area. There's bananas and papayas down here. This is in one corner of the property. I know these trees are kind of young looking because this orchard is relatively new. The house is only under two years old. So until the trees reach maturity obviously they won't bear fruit so until they do bear fruits they'll get fruits from a local vendor and then once these actually grow things then those will be provided for breakfast.

So this is kind of facing the conservation area on the lower portion of the property. This is avocado, lychee and there's papaya in the background. This is that same picture looking the other way. This is the West Maui Forest Reserve in the background and along here there's banana and there's a variety of citrus. There's avocado and lychee also.

So in terms of the request of the SLUC Special Use Permit, the income from the bed and breakfast will support the upkeep of the property and the continuance of the ag operations and eventually the expansion of the ag operations. Guests of the bed and breakfast will have the opportunity to tend the orchard. You know, they'll help with pruning, weeding, harvesting once the fruits comes. Fresh fruits will be served for breakfast to the guests and donations of any extra will be made to the Na Hale O Wainee Resource Center. That's it. So if you have any questions?

Mr. Hedani: Questions from the Commission? Kim, ag conservation is that – was those Acacia koa in the ag conservation zone?

Ms. Skogg: I believe there's some. I didn't look closely but it's a mix of all kinds.

Mr. Hedani: Because I was just going to say the most valuable trees that they have on the property are the ones in the ag conservation if it hasn't been irrigated. Commissioner Starr.

Mr. Starr: Yeah, does the Lapeters own or a family trust own any other residential houses in the Kapalua area?

Ms. Skogg: No they do not. This is the only one.

Mr. Hedani: Additional questions? Commissioner Hiranaga.

Mr. Hiranaga: What is the size of the water line fronting the property?

Ms. Skogg: Just a second. We don't have the specs on the waterline but it's a private water system that serves the property. They have one meter for irrigation and one meter for domestic purposes. Does that answer your question? No.

Mr. Hedani: Danny can you check on that? Commissioner Mardfin.

Mr. Mardfin: When did the applicants buy this property?

Ms. Skogg: The property was purchased – Can I have him answer, Mr. Lapeter.

Mr. Alfred Lapeter: Thank you Commissioners, the property we purchased in 2005 and it took us about two years to build the home and it was completed about August of two years ago.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: At the time you bought it, what if anything did the sellers of the property say you could do in terms of B&Bs and transient vacation rental?

Mr. Lapeter: When I bought the property and I was the original owner from the Kapalua Land Company I was given the – Honolua Ridge agreement which references the state codes, the State Statute 205 which shows the allowable uses of in ag properties such as horses, chickens, wind turbines, but at that time B&B and a TVR was not allowed in there. And subsequently that has been allowed subject to this meeting today and that's why we're here.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: On page 4 of this report it says, "the applicants have previously accommodated guests at the subject property, however the county issued three requests for service on the subject property." Would you explain to me what request for service was and does that mean that you were operating improperly?

Mr. Lapeter: Yes, if I may answer that. When I bought the property and when we built it I was not aware that you could not have transient vacation rentals in Kapalua and probably seven or eight of the homes were probably renting at the time. I never knew about it and nobody ever told me you couldn't and the county sent me a letter and I think you'll see that those three things were the same letter sent on the same day. I just received one letter. I think it showed up three times, but I received one letter and we stopped and then when this law passed we decided to apply.

Mr. Mardfin: So when did you stop?

Mr. Lapeter: When I received the letter which I think was a year ago some time in 2008.

Mr. Mardfin: Never mind, it's says it here, February 2008.

Mr. Lapeter: Yeah, it's been a while.

Mr. Mardfin: Thank you.

Mr. Hedani: Danny you have an answer to Commissioner Hiranaga's question?

Mr. Dias: I was told 2-inch water line to the property.

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

Mr. Hiranaga: I know that this is not Public Works area of expertise but a 2-inch water line seems awfully small. County standards are typically 8-inch or 6-inch for residential, 4-inch for agriculture, 2-inch seems awfully small. You said fronting the property, not to the house.

Mr. Lapeter: It's my understanding it's much bigger than 2-inches. I think it's either 4 or 6 because that line in the street services many homes then offshoots but I don't know the exact amount, but I remember seeing it when it was under construction and it was much bigger than 2 inches.

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

Mr. Mardfin: Kimberly Skogg said that you plan to rent if this is approved, you plan to rent the four bedrooms a package. How would that be enforced by – I mean, after-the-fact, how would the Planning Department know whether you were adhering to that?

Mr. Lapeter: Well, it was my understanding that under the B&B ordinance I could rent individual bedrooms. We just plan to just rent the single groups. That was just our plan. Nobody had told us we had to because the ordinance permits us to do bedrooms. We just said, we're gonna just do single groups. I think it just works better for that type of a property that way they have the run of the entire house. But I don't know how to enforce that.

Mr. Hedani: Kimberly, does the drainage from this particular property end up in Honolua Bay?

Ms. Skogg: I don't have an answer to that.

Mr. Hedani: And my follow up question to that is you know, I noticed that there are exposed area of exposed soil in the photographs and Honolua Bay as you know has lost a tremendous amount of coral due to siltation, so the question is has anything been done to reduce or minimize runoff coming from the property that might result in siltation in the bay?

Ms. Skogg: I'll have Mr. Lapeter answer that.

Mr. Hedani: Please.

Mr. Skogg: If you refer to or look at the pictures where you see bare soil that is where the new trees were planted and that will grow. But expect for those places where the trees were just planted there is no exposed soil. We actually part of our farm plan is the beginning of the gulch or the gully from the Planning Department whoever came out had asked us to plant some groundcover at the top of the ridge so it would go down to even help that situation and we have. I think one of the pictures might show it, it's just very difficult to see. But there is no exposed soil except where those trees were planted and that will grow in and not be exposed.

Mr. Hedani: Thank you. Commissioner Starr.

Mr. Starr: This is for Mr. Dias. Where are the properties that objected to this?

Mr. Dias: It's in the report, it's kind of crude map but if you look at towards the ending right before the recommendation, Exhibit No. 32 there's sort of a numbered map kind of showing the letters of testimony where they live in relation to the Lapeter's property and the two people that objected if you look at No. 14 and 55, No. 55 on this outside of the 500-foot radius and No. 14 is actually the property right next to the Lapeter's property however, that conservation area with all the trees sort of separates the two properties.

Mr. Hedani: Additional questions from the commission? Commissioner Hiranaga.

Mr. Hiranaga: The greatest issue I see with this application is the letter from Sergio Alvarez dated March 11, 2009 where he states, we feel that this violates our CC&Rs by allowing short term rentals." And then we look at the letter from Plantation Estates Lot Owners Association which says that, "CC&Rs of the subdivision – the board does not recognize their duty to enforce the CC&Rs of the subdivision and will require that any rental activity meet the minimum duration and any other applicable provisions." And so – and the CC&Rs for Plantation Estates page 7 at the third to the last sentence, "for residential purposes only and not for transient accommodation purposes." And then if you look at the top of page 8, "transient accommodations is defined as rental accommodations of 30 days or less." So I'm not opposed –

Mr. Lapeter: May I answer –

Mr. Hiranaga: I'm still speaking. I'm not opposed to the application for a B&B permit as long as the minimum duration is 31 days or more and the reason for that is because I also live in a subdivision where we have CC&Rs which restrict rental agreements for less than 31 days and I do not want to place a burden on the association to go to civil court to enforce their CC&Rs because I would not appreciate if someone was granted a permit which was in violation of my CC&Rs because then we would have – the association would have to go to civil court to enforce and I believe all lot owners received copies of these requirements before they purchase the lot, anyway I hope they did. I'm a little confused by Maui Land and Pineapple's letter of endorsement since they are the ones that created these CC&Rs. That's my greatest issue is that it is contrary to the recorded CC&Rs for the subdivision?

Mr. Lepeter: Okay, may I respond to that Commissioner?

Mr. Hedani: Mr. Lepeter.

Mr. Lepeter: Yes, I think you're referring to the original CC&Rs. In 2004, the first, I'm sorry, the second amendment to the CC&Rs were recorded and I think you all have a copy of that. Honolua Ridge is a subdivision that was enacted after the Hawaii Revised Statute 205-4.6 before 2003 CC&Rs could restrict ag usage on property. My understanding is when the state passed that law the intent was that the state was trying to stop CC&Rs from restricting agricultural properties. So that if had an agricultural property that was developed after 2003, regardless of what the CC&Rs stated, you were allowed to do whatever was allowed in a ag subdivision. For example, in our subdivision the CC&Rs say you can't have horses, but in Honolua Ridge because we were under



the Hawaii Statute 205 we can have horses, and in the second – if you want to look at page 3 of the second amendment to the CC&Rs, Section G, it's quite clear and if I may I'd be more than happy to read it, it's one paragraph. No? Okay. But if you look at that it shows that the CC&Rs cannot restrict any ag usage of any kind. And that the ag usage cannot be subservient to the CC&Rs.

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

Mr. Hiranaga: I guess I missed something. How does that apply to the 31-day minimum duration requirement?

Mr. Lepeter: May I respond to that?

Mr. Hiranaga: Yeah, it's a question to you.

Mr. Lepeter: Yes. The 31-day is in the original CC&Rs. Now the B&B is allowed in our subdivision. The statute states that the B&B is a overnight accommodation up to a 180 days. It does not state it's an overnight for 31 days. Overnight means to be one night, two nights, five nights, any time frame and that is what the statute says, the ordinance, I'm sorry.

Mr. Hedani: Thank you. Any other questions? Commissioner Mardfin.

Mr. Mardfin: I wasn't going to get into this but you've kind of opened the door on this. Are you taking the position that the county or state legislation automatically cancels out CC&Rs that might be more restrictive?

Mr. Lepeter: No, I'm just referring the statute and what the wording is in State 205.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Mr. Lepeter on the CC&R, Section 4M, I ain't going to read this thing, no commercial activity. "No commercial activity is permitted on any lot except for the sale of lots by the respective owners thereof other agents and any agricultural activity within the agricultural activity basement easement on each lot that may be required by Chapter 205 Hawaii Revised Statutes and permitted by this declaration."

Mr. Lepeter: That's the original CC&Rs you're reading from because the second amendment counter. They did a second amendment just for that reason. The original CC&Rs were when it was from just Plantation Estates. Honolua Ridge is a separate subdivision.

Mr. Shibuya: It says amendment to declaration of covenants and conditions.

Mr. Lepeter: First amendment or second amendment? Because the second amendment is the one that's specifically regards the Honolua Ridge subdivision annexation to the homeowners and the Hawaii Statutes.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah is this a gated, I won't say community but a gated subdivision?

Mr. Lepeter: Yes.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: This is what I was going to get to before, in your letter of May 8, 2009 to the State of Hawaii's Department of Business Economic Development and Tourism, on page 2, third or fourth paragraph down depending on how you count you said, "we anticipate the cultivation over the next year will yield approximately \$5,000 worth of produce with higher yields in coming years as our orchard matures." How did you get that \$5,000 number?

Mr. Lepeter: We took the number of trees there's about 75 trees some are already bearing fruit and some had been planted a year ago and we just took an estimation although we don't plan to sell the fruit we plan to donate it to the shelter in West Maui and serve it. I just took a guess because the banana trees as they have a crop, they multiply, they split and we have a lot of trees and we already have fruit now but we don't plan to sell it. We plan to donate it.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Actually this is a question for Corporation Counsel. Do you agree with Mr. Lepeter's interpretation of the change to HRS 205 prohibiting agricultural activities and the CC&Rs prohibiting agricultural activities? Do you agree that transient accommodations is an agricultural activity protected by this interpretation of HRS 205?

Mr. Giroux: I don't know if that's what Mr. Lepeters was saying.

Mr. Hiranaga: Oh, what was he saying maybe you can explain it better because I couldn't understand his argument.

Mr. Giroux: I'm seeing a conflict between 205 and I guess their old CC&Rs. So I mean, how they're interpreting what's allowed I think is still going to be in the realm of what is their homeowner's association going to tolerate as far as what they see as an agricultural activity.

Mr. Hiranaga: Well, in their letter dated February 16<sup>th</sup>, homeowner's association says, "require that any rental activity meet the minimum duration and any other applicable provisions." And the minimum duration stated is 31 days.

Mr. Hedani: Mr. Lapeter do you have a problem with the 31-day requirement?

Mr. Lepeter: Minimum 31 days I would rather be able to do overnight accommodations but if the commissioners will not allow that you know, again, I was under the impression that the new ordinance was – for B&B was overnight accommodations.

Mr. Hedani: Is that a yes?

Mr. Lepeter: No, that's – I would not object.

Mr. Hedani: Okay. Additional discussion? Commissioner Mardfin.

Mr. Mardfin: On that same letter I was referring to earlier on the last page, page 3, you say, "with respect to property values B&B permits are non-transferrable and as such the approval of our B&B permit request can have little effect on the value of our property." In Honolulu it the previous actions by the developers who created this and neighboring subdivisions that contributed to the escalated property values. I'm just kind of curious why you think that if you're allowed to have B&B operations that generate significantly more income than an agricultural operation would you think it will have no value on your property.

Mr. Lepeter: And the reason I think that is because that permit is not transferrable and the next person may or may not be able to get one, may not want to get one and the 88 that are allowed on the west side I think that's the number, may be filled. So there's – once I sell the property that permit is gone. So I don't feel it adds any value. It adds value to me but not in a sale because I'm not transferring that permit.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'm kind of intrigued by a picture in Exhibit B of the photos of the wind turbines. I mean I've been living with and at times building wind mills for about 30 years and you know, it's – you know, I see these three things which are below the tree line and we're told that you intend to generate all of the power that you utilize in this house – you know, in both of these structures with these wind mills. It sounds like you've made a great scientific breakthrough. So I'd like you to describe them and tell us what output is going to be and what kind of magic ...(inaudible)... they run on.

Mr. Lepeter: First of all, where we're located we have a lot of wind predominant tradewinds all the time and the tradewinds are coming from the northeast going towards the southwest. The trees are to the southwest. It's very windy in that location because it's pretty unexposed. Those turbines and they're not a fan type but you have pictures of them. They kind of look like a mushroom almost will work whichever way the wind is blowing. What they tell me and again, it's a work in progress. They tell me that each should generate about \$500 of electricity per month per turbine. Again, I hope not getting a sold a bill of goods but that's what they're telling me.

Mr. Starr: If you get \$5.00 worth of electricity out of them below the tree line I'll be amazed.

Mr. Lepeter: Well, again, part of it will extend. We haven't decided how high they'll be but they will be –

Mr. Starr: So this isn't an actual picture then?

Mr. Lepeter: Oh no, no, that is a photo shop of what it would look like. No, they're not up yet.

Mr. Starr: It says photos of wind turbines.

Mr. Lepeter: I'm sorry, it is a photo shop of projected turbines. Sorry.

Mr. Hedani: Mr. Lepeter, are the wind turbines approved in the subdivision?

Mr. Lepeter: That brings up another, that's why they're – it brings up another good question. The CC&Rs do not allow wind turbines. The Section 205 allows wind farms and wind tunnels so that's why they're not up yet. We're working on that with the homeowners to see if we can reach an agreement.

Mr. Hedani: I see.

Mr. Lepeter: But the original CC&Rs do not allow it. 205 does show wind turbines or wind farms as an approved ag use.

Mr. Hedani: Additional questions? Okay, thank you very much. We want to go to a public hearing first or you want to make your recommendation first Danny?

**a) Public Hearing**

Mr. Hedani: Why don't we open it up for public hearing at this point. Are there any members of the public that would like to offer testimony on this agenda item. I have several people that have actually signed up. The first person that I had signed up was Mr. Sergio Alvarez.

Mr. Sergio Alvarez: Good afternoon Members of the Commission. My name is Sergio Alvarez. I live at 602 Honokohau, Kapalua. First of all, thank you for the opportunity to be before you and I think I have a letter in the record. If I might take a moment either correct or expand on some of the representation that was done for you.

One, it was stated that there are no closer homes than those two that she pointed. One directly on the other side and I own two properties and I live there. So there are homes closer than the ones that were pointed out.

Two, they pointed out that the Honolua Ridge is a totally different association from Plantation Estates. That is true today but they've been negotiating for over a year now and they're about to be annexed into our association.

Three, they talked about the setbacks and so on. Most of the setbacks that were shown to you are unusable setback requirements by the community and they fail to show you that there's two, par 3 golf holes on their property which I as the only downwind homeowner and I take Mr. Lepeter's word that he has not so-called rented the unit since January 2008, either that or he's having a lot of friends that are coming over with children and so on all the time because we're getting noise day and night coming from their property and we're directly downwind from them. So I don't know if he is actually renting it or not.

And lastly is my understanding was, again, I've been a developer for 35 years and I've built all over the United States tens of thousands of units. We have a – any time there's a statute passed usually it's most restrictive either that one or the association's rules those are the ones that control.

And lastly I just want to say that we have private roads and I have to pay a fee to maintain those private roads and I and the other homeowners would hate to be paying a fee to maintain roads that are benefitting other homeowners for a commercial use. Thank you very much.

Mr. Hedani: Thank you very much Mr. Alvarez. Question from Commissioner Hiranaga, Mr. Alvarez. Question from Commissioner Hiranaga.

Mr. Alvarez: Yes Commissioner.

Mr. Hiranaga: So this document second amendment to the declaration for Plantation Estates and this other document supplement the declaration of CC&Rs for Plantation Estates these are not executed and recorded at this time? Negotiating to annex Honolua Ridge, has it been annexed?

Mr. Alvarez: It has not been annexed but they do have a permit to use our private roads to get to their property.

Mr. Hiranaga: I guess my question is –

Mr. Alvarez: The testimony behind mine that may be able to answer that better.

Mr. Hiranaga: Because the restriction on the minimum rental, minimum term is for the CC&Rs and the Plantation Estates.

Mr. Alvarez: Yes.

Mr. Hiranaga: So I don't know if this applies to Honolua Ridge. I mean, you're negotiating but it hasn't been executed.

Mr. Alvarez: I don't know if it applies or not. But I think that since their access and use is through our property whatever impact, whatever they're allowed to do by the default basically impacts us because their access is through our property.

Mr. Hiranaga: Thank you.

Mr. Alvarez: Thank you.

Mr. Hiranaga: Commissioner Mardfin.

Mr. Mardfin; Wait Sir.

Mr. Hedani: Mr. Alvarez, another question. Commissioner Mardfin.

Mr. Mardfin: I can't find it here, otherwise I would have cited it but my impression was that the Planning Department's position is that B&Bs are not commercial activity.

Mr. Alvarez: You know, I'm just speaking as a homeowner. I haven't had the privilege to read and interpret what you passed.

Mr. Mardfin: It wasn't us, it was the Council.

Mr. Alvarez: I understand.

Mr. Mardfin: Thank you.

Mr. Hedani: Thank you very much Mr. Alvarez. I'm sorry I skipped over one individual that signed up earlier on the Lepeter application and that was Mr. Joel Greenfield.

Mr. Joel Greenfield: My name is Joel Greenfield. I live at 222 Plantation Club Drive in Plantation Estates. I am not within the boundaries of Mr. Lepeter's property but I am a neighbor. By way of correction to the presentation that was given earlier, by document which I have here, the second amendment has been recorded and in Section I, page 6 –

Mr. Hedani: Can you use the microphone please?

Mr. Greenfield: "For the purposes of administration, management use and regulation of the entire project including annexed Honolua Ridge lots the total area shall be treated as a part of a single project all of which shall be subject to the provisions of the declarations, articles and bylaws of the association." This is a recorded document. So the second amendment does include actually Honolua Ridge.

What not has been resolved yet is the use of the roads. The annexation has taken place and that is dated May 2004. Anybody in Honolua Ridge is subject to the bylaws and conditions of the CC&Rs by way of that document.

I appreciate giving the time and I'm a little nervous up here so I hope you'll forgive me and I would like to quote some of the things that have been out in the public. On January 7, 2009 the following press release issued by Maui County quoted Mayor Tavares who said that this new bill is a great result of collaboration between the Administration, the Council and the community that this new law reflects the wishes of our community through the correct process of legislation. Council members, department and staff and members of the public worked hard to find a way to help businesses comply with community plans and remain mindful of concerns of neighborhoods that would be impacted by a bed and breakfast operation.

The new ordinance 3611 under Chapter 4, 19.64 very clearly outlines this and specifies the purpose and the intent of the ordinance.

Mr. Hedani: Mr. Greenfield.

Mr. Greenfield: Yes.

Mr. Hedani: There's a three-minute requirement on public testimony.

Mr. Greenfield: All right. And reads as follows. The purpose of this chapter is to establish a permitting process and appropriate restrictions and standards for bed and breakfast homes to allow small businesses local opportunity participate and benefit from tourism to provide a visitor experience and accommodation –

Mr. Hedani: Mr. Greenfield, thank you.

Mr. Greenfield: That's it?

Mr. Hedani: Time's up.

Mr. Greenfield: That's three minutes? That was not even close.

Mr. Hedani: I'm sorry. That was the two-minute warning. You have 30 seconds more. Go ahead.

Mr. Greenfield: And it has to retain the character of the residents and neighborhoods. There are no words such as "if" or "or" or "either" in the language. You must follow the law as it is written. It is for the courts to make interpretation. Therefore I believe you bound to deny any applications for B&B in Plantations Estates which the development that this commission approved gated private. We have an expectation of privacy, noise control for our streets and control of access to our development by others. There cannot be a presumption that any B&B would have a positive impact on the character of our neighborhood. That is for the applicant to approve.

Mr. Hedani: Time's up.

Mr. Greenfield: Gentlemen, I'm asking for another 15 seconds.

Mr. Hedani: Commissioner Starr.

Mr. Starr: And what were you going to say to finish up?

Mr. Greenfield: Considering the nature and character of the development this commission's presumption has to be that any B&B or commercial enterprise would have a negative impact on the development and especially upon neighbors who are represented here. You're charged with a higher duty beyond the approval of a license. You're bound to protect and defend the property rights already granted to other property owners such as myself. We have an expectation that you will do just that and I respectfully request that you deny B&B licenses in this development to benefit only a few at the expense of others. The law requires that you do that.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: If the B&B permit is granted with a condition that the minimum term be 31 days or

more it basically meets one of your criterias of your CC&Rs. The other question is whether the B&B in the ag residential area is a commercial activity which I don't really care to debate. That can be debated I guess in a court of law. But with a restriction of 31 day minimum that would comply with a portion of your CC&Rs.

Mr. Greenfield: It would comply with a portion of it but not the commercial activity part of it.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Additional questions? Thank you very much Mr. Greenfield. Next person to testify is Mr. Atom Kasprzycki.

Mr. Atom Kasprzycki: Hello, my name is Atom Kasprzycki. I was born and raised here, grew up here and I'm fortunate enough to have a home in this neighborhood in Honolua Ridge. You know, I support the B&Bs in this neighborhood for a few reasons. I think it can bring families to this neighborhood that might not otherwise have the opportunity to come up and enjoy the lifestyle there and the views. I think it provides a small number of jobs for people, maintenance, cleaners, etc., small but it's there. I think there's some tax benefits that the respective agencies will benefit from being able to tax income that the vacation rentals and B&Bs benefit or excuse me, bring in.

Sorry, I'm little nervous too, myself here. At the end of the day, you know, for me I design custom homes. My business has slowed quite a bit in this time and it's been a challenge for me to be creative and pay my bills. I'm doing everything I can. I've laid people off my company to try to keep the overall income up. I have interest in possibly exploring the B&Bs because for me it would be a way that I could offset the cost of my home and also compensate for the loss of income. So it's not about me, but it is about these guys here and I do support it. I think there's a bigger picture than what's been talked about. You know, at the end of the day it is ag land, it's all ag land gate or not. But thank you.

Mr. Hedani: Thank you Mr. Kasprzycki. Any question from the Commission? Thank you very much. Next person to testify is Mr. Patrick Mifsud.

Mr. Patrick Mifsud: How you guys doing today? I'm from Michigan and me and my wife came here 20 years ago on our honeymoon. We loved it, feel in love with Hawaii. It's a beautiful place.

Mr. Hedani: I'm sorry can you state your name for the record?

Mr. Mifsud: I'm sorry. My first name is Patrick and my last name is Mifsud and again me and wife, we got married and we came here 20 years ago on our honeymoon, feel in love with the place and been coming back since then. We really – I own two properties in the neighborhood just down the street from Lepeters, from Al. I support the ideas. I love to stay in his house as a bed and breakfast. I would not be able to afford it for 31 days so I am against the 31 days. Bed and breakfast is supposed to be, I thought, I've always heard for a few days but when I go on vacation whether it's Italy or here or there I stay in a house. I could bring my in-laws, I could bring my parents, my kids. Right now my daughter is going to NYU from New York, brought her boyfriend down. So we bring the whole family and keep it as a family thing. Obviously family is a big,



important to me and to be able to stay in a house and keep everybody together instead of going to hotel and in separate rooms. Right now you could be at pool side and really have some family time. So I do support this. Thank you.

Mr. Hedani: Thank you very much. Questions from the Commission? Question from Commissioner Mardfin.

Mr. Mardfin: You say you own two of the lots in this subdivision? Do you plan to do a B&B with them?

Mr. Mifsud: I haven't decided what I'm going to do with them. They're right below his lots but I haven't decided but just like the last person just spoke, I mean, times are tough. I own a limousine operation in Michigan and obviously you know Hawaii is having a hard time, but obviously Detroit is having a lot harder time than you guys. So yeah, my plans were to develop the homes and actually live in one of them and maybe do something with the other one but times are really tough right now. I'm just trying to pay my bills.

Mr. Mardfin: Thank you.

Mr. Hedani: Okay, the next person to testify is Mr. Steven Gatchell.

Mr. Steven Gatchell: Aloha, thank you all for allowing me to be here today. My name is Steven Gatchell. I grew up here in Hawaii. I'm a builder, I'm in real estate, I've had various business. I still own various businesses in Hawaii. I raise a family here and I am an owner in Honolua Ridge. I have a lot, Lot 10 which is just down from Lepeters. I don't have the money right now to build on it but I hope someday to build on it and have my father who is now 80 retire there.

When I first built there I wanted to do ag on the property. I spoke with the president at the time and he said, you obviously didn't read through your CC&Rs very well. When I read through the CC&Rs, the big ag thing up there was pine trees exactly 50 feet from one and other and the county in its wisdom, thank God you have wisdom saw through that roust and allowed for true ag use. Thank you. Thank you for that. There was an amendment there.

The current Plantation and Honolua CC&Rs are a travesty against ag use. They were made to make ag lands resort lands, a playground for the rich and famous. Some of us, like myself, actually need to supplement our expenses with ag or bed and breakfast use. We're not all just real rich guys flying in here on our G5's.

The definition in use of lands not just as ag lands must change from time to time. Everything in life changes. Hawaii ag lands were once used primarily for sugar and pineapple. If the folks who owned this land outright could not make economic sense we should all know in our hearts that the cost of our ag lands today must be supplemented somehow unless we are all just simply rich and famous which we're not.

The process of law is organic. It changes. We should all be thankful for that. This is the process we are using here today to insure that land use remains organic and nature and that our lands

continue to be used for its intended use, best use. Thank you.

Mr. Hedani: Thank you very much. Questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: I wanted to ask a very direct question. Would you be in favor of this B&B being allowed?

Mr. Gatchell: I am. I'm sorry to say that, I am here in support of the Lepeters and they Mayuiers definitely. Thank you for asking me that. It slipped my mind. Thank you Commissioners.

Mr. Hedani: Thank you very much. That concludes the list of people that have signed up. Are there any other individuals in the audience that would like to testify at this time? Please step to the microphone and state your name for the record.

Mr. Roy Sakamoto: Good afternoon. My name is Roy Sakamoto and I'm here representing three owners in the Plantation Estates. None of these three owners are within the 500-foot radius of the Lepeters property. However, I feel compelled to offer my testimony to you.

Under the new ordinance 19.64.010, and I don't have to read the whole thing to you but the general purpose of this is to ensure that the general character of a neighborhood is not changed. And it goes on and it further clarifies itself a little bit more in 19.64.030, "no bed and breakfast home shall create any impact greater than those there to for existing in that district and shall conform to the character of the neighborhood." It is my firm belief and the belief of the owners that I represent that allowing a bed and breakfast operation changes the character of the neighborhood significantly whether we're talking land values or life values. It is our bonded opinion that it changes the character of the neighborhood in this particular case. Thank you.

Mr. Hedani: Thank you. Question from Commissioner Mardfin.

Mr. Mardfin: I want to ask you the same directly. Are you then opposed to this B&B?

Mr. Sakamoto: I'm opposed, yes.

Mr. Hedani: Thank you very much Mr. Sakamoto. Are there any other individuals in the audience that would like to testify at this time? Seeing none, public hearing is closed. Mr. Dias.

**b) Action**

Mr. Dias: Thank you Chair Hedani. As far as our recommendation I'd like to make a quick amendment. Well, basically the second to the last page, Condition No. 1 it states, "that the Land Use Commission Special Use Permit shall be valid until July 31, 2012." The department is recommending that be changed to "2011" due to – well, as of when this report was written the two complaints that came in. So we feel two years is sufficient given those two complaints.

Having said that, the department feels that the application for a Land Use Commission Special Use Permit complies with the applicable standards for an unusual and reasonable use within state

agricultural district and that's listed in the recommendation as 1 thru 5, I won't read those to you. And the Maui Planning Department recommends to the Maui Planning Commission approval of the Land Use Commission Special Use Permit subject to six conditions and in consideration of the foregoing the department recommends that the commission adopt the department's report and recommendation prepared for the July 28, 2009 meeting and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on behalf of the planning commission.

Mr. Hedani: Commissioners, what's your pleasure? Commissioner Starr?

Mr. Starr: Move for denial.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Commissioner Starr.

Mr. Starr: Yes, I have some comments to make and you know, they may be a little bit off track on the B&B issue but it's still a very meaningful and emotional issue for me. Four years ago this was planted out and productive ag. It was in pineapple and it was yielding, it was good land.

Six, seven years ago Honolua Bay was our true gem on Maui. This was the place that people who spent time in the water felt was going to be our Hanauma Bay. It was going to be the great spot for people to come and snorkel and enjoy. You would go there and the bottom was just covered with live coral. There were schools of fish it wasn't one or two fish, there would be schools, there would be thousands and thousands of many varieties of fish in that bay. You'd see things you'd hardly see anything. You'd see you know, 50 ulua in a school. You'd see dolphins. You'd see small silver fish sardines, but millions of them. It was incredible and the coral was beautiful. It was really wonderful and then they started building this thing and it's tanked. It's gone. You know, there's I think, 10 to 20% coral coverage and the schools of fish are gone. I remember about three years ago right after I got on the commission going snorkeling there had some visitors from the mainland. Made the long trip up there and the whole floor of the bay was just covered in mud, in brown mud. You know, to top it off on top the mud eucalyptus leaves covered everything. Every wana had these eucalyptus leaves glued to them and there was just a sea of eucalyptus leaves and there were no fish for the first time since I've been coming there since the early - late '60's even there hardly any fish there.

You know, it was one of my first commission meetings and we had a Maui Land and Pine person testifying about a project they were doing around there and I mentioned that and they said, well it's not our kuleana we sold the land to Honolua Ridge. They're doing construction up there. So I went and tried to drive up there to see what was going on and there was a guard at the gate and the guard said no, public can't go up there, you know, besides it's going to be a gated community. It is a gated community and you know, I feel like there's a lot wrongs been done and now we're going to add onto it, a creation of animosity between the people who are trying to live there. It's just - you know, it's a bad thing, it's a horrible thing and I just don't want to do anything to make it even worse

at this point.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I'm just going to be supporting the motion because primarily we are talking about people who have invested in a private area and these folks had an opportunity to do this. They had the opportunity to purchase in large communities where we have ohanas and things of this nature but they chose to have this private quiet area and I'd like to respect that. They have the infrastructure it's not a problem. They can absorb and have the standard of care for their tenants if they wanted to. However, their choice was, ...(inaudible)... in the beginning it was going to be a gated community, and oh, by the way they added another community to it. And so this is another problem. Their gated community is private for them. And I'd continue to respect that.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I will be voting against the motion to deny. I believe CC&Rs state that transient accommodations shall be 31 days or more. So if this motion fails I will be making a motion to approve with a new specific condition mandating that the minimum duration shall be 31 days or more. Their CC&Rs do not prohibit a B&B operation. It addresses a term of the duration of the stay and does not prohibit B&Bs. Just because you're a gated community, gated communities are created because they do not want to dedicate the roads to the County of Maui. That's the decision of the developer at that time and people bought into it. People read the CC&Rs hopefully they all understand there's a 31-day duration minimum but it does not in any where that I know of, the CC&Rs prohibit B&B permits. So I'll be voting against the motion to deny.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: We heard some testimony that this would interfere with the enjoyment of the community by some of the neighbors. And I've been looking through here and I don't see anything in the analysis maybe I'm missing it and I'd appreciate if somebody would point it out for me. I don't see anything in the analysis where the not changing the nature of the neighborhood is listed in here is something that is up for analysis. If somebody could find that I'd sure like to know about it. I do see in here the closest I got was where it talked about land use in the West Maui Community Plan on the bottom of page 10, it says under land use goal, "an attractive well-planned community with a mixture of compatible land uses in appropriate areas to accommodate the future needs of residents and visitors in a manner that provides for the stable, social and economic well-being of residents and the preservation and enhancement of the region's open space areas and natural environmental resources." That's the closest I see to it.

On the next page 11, it says under economic activity, I'm an economist, "on the other hand, a diversified economy that provides a range of stable employment opportunities for residents," and we have some letters saying that jobs are in jeopardy if this doesn't get approved. So there's an economic activity goal to be listened to and I heard talk about stable neighborhoods but I can't see that anywhere in here as directly as it is stated. Somebody could help me out I'd appreciate it.

Mr. Hedani: Additional discussion? Commissioner U'u.

Mr. U'u: Yeah we heard comment from the first B&B application today and I think was by Ann Cua stating that you know they don't particularly look at the CC&Rs if I'm not mistaken and that was said to me from the first meeting. So that's some clarity for me saying that you know, even it's there, it's not so I'm no judge, I'm no attorney but that was told me first thing in the morning. I know we up there for foreclosures in the nation. I think fifth in the nation. I think Lahaina is ranked sixth, I think Kihei is ranked third and during bad economic times like we facing now I think we gotta get some leeway on stimulus package too. Some of the people who cannot afford houses whether it be in my neighborhood of Paia or Kapalua. It's amazing to know that get regular humans in Kapalua suffering just like anybody else. But I going be voting against motion. I understand where Commissioner Starr is coming from but I don't think this house is individually to blame for Honolulu. But I'll be – you know, I don't know where I'll be, how's that, 31 days, I mean, denial. It's a process that we're dealing with right now and it's kind of a new process for you guys and also for the commission. So thank you for you guys time.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: There's a argument that was brought out by the testimony in terms of fairness. The fairness in which the property owners are assessed for the road and the maintenance of the road and yet you have commercial use of it by one or two or few other property owners and yet these people are not assessed any differently than the other property owners. So you have a commercial element of unfairness and I think if you treat it correctly, appropriately then it can be acceptable. In this particular case, they just want an exception and this exception is not addressed in terms of fairness to the others that do not have this opportunity.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Thank you I'll be also voting against this measure at that the time. I believe we could at least start with the 31 days and then the testimony about the private entry that has some weight and I don't know if they – if people pay a different amount if you have 10 yard men in your yard versus one and maybe you're the guy that has to do your yard yourself. You get a discount of the gate entry fees. I'd be interested to see how that works. If you gotta watch someone come in with the pool cleaner, the whole yard crew every day. Are they paying more money to use that road. I mean, they have a house, it might have two cars just like any other house. So the business residential I think again, I'm not going to get involved with that part so I'll be voting against it and if they want to start with the 31 days I'd probably support that.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I may have found what I was asking somebody else to supply for me. I went back to the first document we looked at today because it had the – we we're looking at special use permit in this case it did have the B&B permit restrictions and standards. And it says, "bed and breakfast homes shall be subject to the following restrictions and standards." And then on page 4 of 17 it says, "N. No bed and breakfast home shall create any greater – any impact greater than those theretofore existing in that district and shall conform to the character of the neighborhood." And it seems to me that we've heard testimony that the character of the neighborhood would be changed. Now we're looking at a special use permit but the Planning Department has essentially told us that

if the SUP is passed then they'll sort of automatically approve the B&B.

Mr. Hedani: Additional discussion? Ready for the question? Mr. Yoshida.

Mr. Yoshida: Yes, again Mr. Chairman, what is before you is the State Special Use Permit and the criteria listed on page 3 of the report as to whether this is a unusual and reasonable use. Again, the county does not enforce private CC&Rs.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm not suggesting we enforce CC&Rs. I buy the Planning Department's position that that's none of our business. And I'm not paying attention to that. I am paying attention to a B&B permit requirement that the character of the neighborhoods not be changed.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, to me to give a Special Use Permit this is an entitlement. This is not something that's as of right. And I feel really strongly that the main criteria or a main criteria should be about the community where it's located. And if this project or any other B&B is going to create contention between neighbors I really feel that it's wrong to give that entitlement to people who've been living there and have concerns. So you know, I'm one who feels if no one else has a problem with it then usually I will go along with it. But where there is contention I really feel that that's our job. That's why it comes before a commission instead of just goes through staff to actually judge the feelings of the people living around it and see if it will change their lifestyle and if changes the surrounding lifestyle of the people who live in houses in that community then that's where we're earning our pay here.

Mr. Hedani: Commissioner U'u. Commissioner Hiranaga.

Mr. Hiranaga: I have a question for staff. So if this Special Use Permit was approved then staff would apply the B&B test to see whether it's brought back to the commission or not regarding the notice and letters of opposition?

Mr. Yoshida: I guess the threshold of the 30% of the neighboring landowners being in opposition within 45 days after the notice of application was mailed to them has not been met and there's no – and the other test is whether there is a permitted B&B operation within 500 feet. So basically this could be approved administratively but the applicant needs both permits in order to operate.

Mr. Hiranaga: So you would apply the test to see whether it would come back to us or not? I mean, there's criteria that has to be met to determine whether it's approved administratively or not.

Mr. Yoshida: Yeah, the criteria has to be met.

Mr. Hiranaga: You haven't applied that criteria yet until after the SUP is approved?

Mr. Yoshida: That's correct. We're waiting for a decision from the commission on the Special Use

Permit.

Mr. Hiranaga: Right.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: My final comment and I think I may have said this before, you know, I live in a subdivision that also prohibits short term rentals of less than 31 days and if someone came in and applied for a B&B permit which was granted by the county I am almost certain we would end up in Civil Court as an association opposing this permit. And so I don't want to place that burden on these private individuals but I'm not opposed to a B&B that meets the CC&Rs. So if someone in my subdivision applies for a B&B permit and agrees to 31 days, you know, we wouldn't be challenging that. But we would be opposed to someone who's doing a two or three-day B&B.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I wanted to ask Corporation Council a question. My question is, we have an SUP before us and yet it's tantamount in practice I believe to granting a B&B. Can I use considerations of B&B analysis in voting for the SUP or am I precluded from doing that?

Mr. Giroux: I wouldn't say you're precluded. It's just that in your final analysis you've got to tie that into the criteria on page 3. You've got to work that into your – it's gotta affect this analysis. So if it doesn't work with your unusual conditions, trends or something, you've gotta come up with the language that ties the two together.

Mr. Hedani: Go ahead Commissioner Mardfin.

Mr. Mardfin: Then on page 2 of our conclusions of law, Item 2, it says, "the desired use will not adversely affect surrounding property." Our planner has written that under compliance, "the proposed use is unlikely to adversely affect the surrounding properties." Yet we have heard testimony that they feel it will adversely affect the surrounding properties. So I could vote for denial on the grounds that I disagree with the conclusions of law as recommended by the Planning Department?

Mr. Giroux: Yeah, it's kind of hybrid of fact and law, but it can be seen as a conclusion of law if the facts show that that's not accurate.

Mr. Hedani: Additional discussion? Commissioner Guard.

Mr. Guard: I believe if my memory serves me correctly, one of the testifiers has rented this property and is actually an owner of land in the subdivision? Like to rent it? Oh, okay. Here you have an owner who would like to rent a house like that and hopefully would one day want to build a home like that. I feel like the mixed use is discussing someone building an actual in a neighborhood to really try to change the characteristic of the neighborhood from my interpretation of this going on for a few years. So excuse me, I kind of heard that wrong then so. But on that same note to Mr. Alvarez and I think he had some pretty good testimony and his questions I believe would be

addressed on the parking problem. Some of the people that would be renting this property are probably fairly high net worth individuals or groups so I don't think security is necessarily going to be a problem when all of these guys have multiple people coming in everyday to do housekeeping, probably computer work, audio/visual guys, pool heating/cooling you name it. So on that note I don't think we're compromising the integrity of the security system of the neighborhood. And what was the third thing on his list and then talking about the kids. One person to testify that he lives up there with a family you're going to run into that. I mean, there's going to be people with money that can have kids that like to play in the pool. So whether they're there everyday. I mean, you get a water rat he's going to be in pool with his friends everyday. So I would rather maybe take the chance that half the time you might not have people that want to be in the pool that they like to go out to dinner instead or they play golf so then they're not even on property in the pool and making noise. So ideally the 30 days that's what the house rules are for and that's what the short time period for the permit is for so that if it's a ongoing problem those people can come back. That's my kuleana. So again, maybe we can go to this vote and move on from there.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor of the motion for denial signify by raising your hand. One, two, three, four. Opposed same sign. One, two, three, four, five.

**It was moved by Mr. Starr, seconded by Ms. Sablas, and**

**The Motion to Deny the Land Use Commission Special Use Permit was Lost.  
(Assenting - J. Starr, L. Sablas, W. Mardfin, W. Shibuya)  
(Dissenting - K. Hiranaga, B. U'u, J. Guard, D. Domingo, W. Hedani)**

Mr. Hedani: Motion is lost. Commissioners, what's your pleasure. Commissioner Hiranaga.

Mr. Hiranaga: Okay, I'll make a motion to approve with an additional condition that the minimum duration shall be 31 days.

Mr. Hedani: Is there a second?

Mr. Guard: Second.

Mr. Hedani: Seconded by Commissioner Guard. Discussion? Mr. Dias.

Mr. Dias: If I can just interrupt for a little while. As far as the 31 days can the department suggest that we perhaps do something a little looser so that we're not stuck with a specific amount of days. CC&Rs from what I understand can change at any time. And so, you know, if they were to change the next month, then I see us having to come back yet again. So I would suggest that perhaps we do a condition says, "that the applicant shall not rent out the property more than their homeowner's association allows." Or something along those lines just so that we're not potentially coming back.

Mr. Hiranaga: I could suggest, the B&B permit shall – this is strange, you know, they define transient accommodations in their CC&Rs and transient accommodations shall mean rental accommodations of 30 days or less. So you refer the transient accommodation term that's provided



in their CC&Rs and if in the future the declaration is amended to redefine transient accommodations then we wouldn't be locked into a specific number of days.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: While I appreciate what Planner Dias is suggesting I like the original position of Commissioner Hiranaga because I don't think we should referring to CC&Rs. The Planning Department's position is that it's not relevant to us. I agree it's not relevant to us and Commissioner Hiranaga is suggesting a specific number of days irregardless of what CC&Rs say and so I think it's a defensible position.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess the permit, the permit's for a specific period of time so if they come back for renewal and the declaration has been amendment to a different term whoever is approving that be it the director or the commission can make that change. So I guess I'll stick with the 31 days.

Mr. Hedani: Over Mr. Dias' vehemently suggestion.

Mr. Dias: Just to address Commissioner Mardfin comments, I think the reason why we're referring to the CC&Rs because well technically that's where Commissioner Hiranaga is getting that time period. He is getting it from the CC&Rs as far as I know.

Mr. Hiranaga: Does Corporation Counsel wish to comment?

Mr. Hedani: Commissioner Mardfin.

Mr. Giroux: I will, I will, I'm sorry.

Mr. Mardfin: That may be from where Commissioner Hiranaga got the number. How he came up with that through divination is immaterial, 31 days is a number. If he leaves it at that we just do the number and then that way we're not doing an impermissible or at least not recommended position of referring to CC&Rs.

Mr. Hedani: Corp. Counsel.

Mr. Giroux: I was just going to say you're kind of caught in a catch-22 because the law was quoted correctly that whatever it is you're always stuck with the least restrictive when dealing with CC&Rs. I mean, that a most restrictive. So I think you gotta figure out what you wanna do and then go with one of them.

Mr. Hiranaga: I'll stick to the 31 days because it does come up for renewal and it can be modified at that time.

Mr. Hedani: Additional discussion? Commissioner Guard.

Mr. Guard: Danny is there significant parking so that on-street parking would not be a problem in the neighborhood? Is there a big garage, is enough parking.

Mr. Dias: Yeah, I believe there's a –

Mr. Guard: And that's in a requirement anyway that they can't park on the street just for general public for bed and breakfast.

Mr. Dias: Correct.

Mr. Guard: Thank you.

Mr. Hedani: Additional discussion?

Mr. Hiranaga: Could you ask him to read the condition?

Mr. Hedani: Danny, can you read the condition back please?

Mr. Dias: Okay, that the applicant shall not rent out the bed and breakfast for a period less than 31 days.

Mr. Hedani: Is that acceptable to the applicant? You don't have to occupy it for 31 days, you just have to rent it for 31 days. Ready for the question? All those in favor of the motion to approve as amended, signify by raising your hand.

Mr. Mardfin: Are we voting on the amendment?

Mr. Hedani: No, the motion was to approve with an additional condition of 31 days restriction. So it's the actual motion that we're voting on at this point. All those in favor signify by raising your hand. One, two, three, four, five. Opposed same sign. One, two, three, four.

**It was moved by Mr. Hiranaga, seconded by Mr. Guard, then**

**VOTED: To Approve the State Land Use Commission Special Use Permit with Conditions, as Amended With Additional Condition of "that the applicant shall not rent out the Bed and breakfast for a period less than 31 days."  
(Assenting - K. Hiranaga, J. Guard, B. U'u, D. Domingo, W. Hedani)  
(Dissenting - W. Mardfin, W. Shibuya, L. Sablas, J. Starr)**

Mr. Hedani: Motion passes. Thank you. Take a 10-minute recess.

A recess was called at 2:29 p.m., and the meeting was reconvened at 2:39 p.m.

Mr. Hedani: Commission is back in session. Next item that we have is Item C-4. Mr. Yoshida.

Mr. Yoshida read the agenda item into the record.

**4. RONALD and KAREN MAYUIERS requesting a State Land Use Commission Special Use Permit in order to operate the Hale Amakihi Bed & Breakfast, a three (3) bed and breakfast home in the State Agricultural District at 212 Plantation Club Drive, TMK: 4-2-005: 021, Kapalua, Lahaina, Island of Maui. (SUP2 2005/0012) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good afternoon Honorable Chairperson and the other Members of the Maui Planning Commission. The item before you currently is in the matter of Ronald and Karen Mayuiers to obtain a State Land Use Commission Special Permit to operate their bed and breakfast in the county agricultural zoning district on approximately two acres of land located at 212 Plantation Club Drive in Lahaina, Maui, Hawaii.

The presentation I've prepared first off will give an overview of this application. I believe the commissioners today are rather familiar with the process by which we're going to review this application. I think this presentation will give a bit of a personal look into the specific bed and breakfast application and for the convenience of each of the commissioners there was a prepared booklet by the applicant that was done in color that will replicate the information that I'm to present at the moment.

Looking at the screen here is a picture of the Hale Amakihi Bed and Breakfast named after a special bird of Hawaii that has very bright red feathers. This is the personal home of Ronald and Karen Mayuiers as indicated at 212 Plantation Club Drive.

...(inaudible-not speaking directly into microphone)... indicated in the middle of the green circle is the 500-foot radius.

Mr. Hedani: Kurt, can you use the microphone please.

Mr. Wollenhaupt: The rose colored area is the area that the Mayuiers currently have as their residence. This indicates its location within the gated Plantation Estates community in Kapalua.

With regards to the zoning the reason that we are here today is that this application is in the State Land Use Agricultural Zone also zoned for West Maui Agriculture, County zoning is Agriculture and it is outside of the special management area located in the Plantation Subdivision of the Kapalua Resort.

Ron and Karen have an implemented farm plan that was approved by the Zoning and Administrative Division here with the County of Maui. They're nine-year full-time residents of the Kapalua area. Their proposal today is for a three-bedroom bed and breakfast in a home of approximately 4,000 square feet. This is a four-bedroom house of which three would be proposed to be rented out under the bed and breakfast terms.

The applicant has met the requirements of the bed and breakfast application with the proper posting of the signage. Notification of all the residents within 500 feet with the notification period of 45 days

and there were a number of letters that were received. There was a map that I gave you out that looks at those letters that were received both in support of the project and in conflict of the project. As indicated this was an approved farm plan. I think that it's important that the Mayuiers have a special interest in nurturing of the corps, the conservation and indeed the education of the bed and breakfast guests. Finally this project does preserve the agricultural nature of this community.

They are dedicated to the stewardship of the property and the land. That is one of the bright lights that we're looking for this special use permit. The five terms on page 5 of the report that looks at the general ...(inaudible)... and requirements for a special land use permit. I think it's important to note that Mr. Mayuiers is owner-occupation personally growing, cultivating and harvesting the crops. This isn't as one might think just a gentleman farm that someone comes out from the outside and does all the work. Mr. Mayuiers actually does the work.

This is a view of the area. Again, indicating their private home, indicating some of the views from their home and also there's an indication here that they're next to the clubhouse for Plantation Estates. This does bring up issues that have been previously mentioned today about the character of the community. This community indeed is the area that I believe Mercedes Benz was the last golf supporter for the large Mercedes Benz Golf Tournament which brings in many thousands and thousands of people. So this is a community that is not necessarily unaware of having lots of people on their property at different periods of time. So this character of this community yes it is indeed a high end residential, however they do have other activities that occur throughout the year that do change the tone and tenor of this community.

This is improved and implemented farm plan. It shows a variety of crops ranging from trees to fruit crops to flowers. Some of it is in conservation somewhat similar to the last application. So there is indeed a dedicated – a dedication from the applicant that this farm operation is indeed part of their legitimacy for their application today. Again, the farm plan detail is better seen in your application however includes an enormous variety of flowers, plants, shrubs, trees similar to those of other applications you've seen today.

This just simply shows that this is a hands-on operation by Mr. Mayuiers. It indicates that he does have the equipment to operate the farming operation.

This shows the evidence that this is an actual operation with the growing of the banana plants, different flowers on site and different foliage and in conservation area. Here are some of the different crops that are on there again showing fruit trees and flowers. Again, evidence of the operation. Again, showing some of the implemented fruit crops that are on site, flower crops, the farm operations. This is some of the equipment. I've been out there it actually is stored on site so this is not an operation that someone comes in and does it second-hand.

Again, this is a proposed bed and breakfast on agricultural land that just shows the house and pool, the house from another perspective. This is just a scene that the applicants do thank you for your time today. That brings us I guess to as I was mentioning before sort of the five, if you will, bright lights that one has to look at in looking at special land use permit.

The first one being that are unusual and reasonable uses within the agricultural and rural district.

That they're not contrary to the objectives sought to be accomplished under Chapter 205. We've had a lot of discussion today. I, of course, I want to be somewhat brief here. Allowing the short term rental in addition to the already approved longer term rental over a 180 days does not appear to greatly effect the community. It certainly would be doubtful that that would affect the agricultural purposes of this community.

The second point would be that the desired use would not adversely affect surrounding property. We've had much discussion on this. It would seem unlikely that the rental out of the bed and breakfast would affect agriculturally a significant change to this community. I have mentioned before that this property, this area is used for large golfing exhibitions. There are quite a number – the restaurant next door to this property is open to the public which anyone can attend so there is a considerable amount of traffic right next door to this property. You've had discussions from the last case wondering about how bed and breakfast would affect the property I'm sure you'll be talking about that again.

As for number three, which would unreasonable burden public agencies to provides roads and streets, again, this is a private gated community. As to whether or not having a number of people staying at a bed and breakfast greatly effects, in a realistic term road use, sewer use, again it would be unlikely to significantly affect it. That again is for the discussion in just a couple of moments.

In deed this area has ended on a lot of change from pineapple fields in the past to now an upscale gated resort community on agricultural land. However, one does recognize that in the West Maui area there is a certainly a tourism is a major component of the market out there. And this represents another type for the individual that may not want to stay at the Ritz-Carlton, may not want to stay at one of the upper scale resorts but may want more the private home-based type and that does address some of the West Maui Community Plan's objectives by having alternative vacation oriented uses for a bed and breakfast such as the Mayuiers are looking to have approval for.

Finally, the land upon which the proposed use is sought is unsuited for uses permitted within the district. Well, I'm from Iowa and I look at agriculture at little differently but I do understand that it would – on a two-acre plot of land in a very upscale subdivision it would be difficult to bring it back to the original intent of the large pineapple fields. So consequently this application does help to continue at least much of the agriculture feeling that can be there in addition to having a sense of conservation, a sense of having agriculture there and as indicated before Mr. Mayuiers would like to help educate his guests as to the importance of agriculture for the area.

That being said, I think that sums up much of the discussion so far with this proposal.

Mr. Hedani: Questions for staff? You want to go to public hearing then?

**a) Public Hearing**

Mr. Hedani: I would like to open it up for public testimony at this time for any members that would like to offer testimony on this agenda item. Please step to the microphone and state your name.

Mr. Roy Sakamoto: My name is Roy Sakamoto. I represent within the 500-foot radius of this property three owners all of whom oppose this strenuously. Again, I beg to differ with the gentleman from the Planning Department. The Mercedes soon to be SBS Golf Tournament is a commercial venture that's one day – or one week out of the year. What we're looking at is an enterprise, a commercial operation if you will, and I don't want to bring in the 600-pound commercial gorilla into the conversation but be that as it may, the Mercedes the old Mercedes the soon to be SBS Open is a one-week venture. The owner of the golf course is also against this application. He owns a property two doors, two lots away. I also represent the owners of the adjacent lot and they are vehemently against this.

Yes, West Maui does need additional vacation facilities. Unemployment is high. We've got many, many problems in terms of economic issues. However, why aren't these people staying elsewhere? Why aren't we doing better facilities? Sure a bed and breakfast experience is a great experience but you're ruining the very nature of the subdivision by allowing a bed and breakfast. You've already done one on the previous application and I think you change the very, very nature of the whole subdivision by allowing transient vacation rentals which you are doing now with or without a permit I don't know, and converting this into a bed and breakfast. So that is my testimony.

I appreciate your efforts. You are facing a very, very tough task and my hat's off to all of you.

Mr. Hedani: Thank you very much. Questions? Commissioner Guard.

Mr. Guard: Thank you. You've done a lot of I guess transactions or know a lot of owners and maybe live there yourself, are there people that are doing vacation rentals there and have been for the past few years as some members have stated previously?

Mr. Sakamoto: Yes there are.

Mr. Guard: And those people feel that that's already bringing down the neighborhood?

Mr. Sakamoto: I've got to say the association has been very lax in enforcing the CC&Rs. There's a movement afoot now with the bed and breakfast applications and so forth. But the feeling has been to turn the other cheek whether it's right or wrong and I know the owners that have been objecting are not the ones that cause waves, you know. So, you know lets – unless it's right next door to us which in this case it is.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: We received a Maui Planning Department addendum with a map showing results of the notice and within the 500-foot buffer I see two properties. I thought you said there were four?

Mr. Sakamoto: There are three.

Mr. Mardfin: There are three?

Mr. Sakamoto: The two adjacent lots plus the closing of the Plantation Golf Course which is also

one of my clients, TY Management. So that's the third.

Mr. Mardfin: And where would that be on this map? So it was marked in support by?

Mr. Sakamoto: Okay, referring to the plat map, the land use permit map, the areas in red are the two lots that, the first one immediately adjacent to the applicant is owned by T & H Moana Corporation for which I'm Managing Director. The second lot is TT&Y Holdings for which I am Managing Director and then basically all of the areas shaded in green is the golf course, the Plantation Golf Course owned by TY Management and I represent them also.

Mr. Hedani: Commissioner Starr.

Mr. Starr: In these locations you mentioned Mr. Sakamoto, are there any people living there or all they all offshore entities?

Mr. Sakamoto: There is a resident, part-time resident two doors away within the 500-foot perimeter.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: We only have a couple of letters of objection. Did they just not write a letter?

Mr. Sakamoto: You should have letters of objection one from TTY and one from T & H Moana.

Mr. Mardfin: I have one from T H Moana is that one?

Mr. Sakamoto: T & H Moana, right.

Mr. Mardfin: And I have one from TTY Holdings.

Mr. Sakamoto: Right.

Mr. Mardfin: And am I supposed to have one from the golf course?

Mr. Sakamoto: No. That was not submitted. It was an afterthought I'm sure.

Mr. Hedani: Additional questions for the applicant or for the testifier? Commissioner Hiranaga.

Mr. Hiranaga: We received multiple letters from Maui Land and Pine dated April 13, 2009 supporting the application. So I'm assuming when they wrote this letter they owned the golf course or did the transaction happen before?

Mr. Sakamoto: We actually closed, was the end of March. I don't know the exact date but towards the end of March. So as of April 1<sup>st</sup> they were no longer owners of the golf course.

Mr. Hiranaga: Because you know, this map which is in green is showing people in support. So it's showing that the golf course is in support of this petition which is Maui Land and Pine.

...(inaudible)... letter dated –

Mr. Sakamoto: Has not been since April 1<sup>st</sup> or end of March.

Mr. Hedani: Additional questions for the testifier? Thank you very much Mr. Sakamoto.

Mr. Sakamoto: Thank you.

Mr. Hedani: Are there any members of the public that would like to testify at this time, please step to the microphone and state your name for the record.

Mr. Joel Greenfield: My name is Joel Greenfield, you heard me before. There's no question in my mind that you have a very tough task in front of you and including or not including CC&Rs as part of your discussion is obviously a legal question that will come up at some time later on. But to presume that the character and a nature of a subdivision would not be changed by a addition of a B&B that never existed before is a presumption that I don't believe you can make by law. The character automatically changes and you are bound under your own written laws to protect and defend our rights as property owners. You do not have the right to make a judgement as to whether the character would change when there is nothing there that exists that is comparable to what a B&B creates. Because under this law if you allow these B&Bs to exist as long as they're 500 feet apart we could have 20 B&Bs up at Plantation Estates and Honolua Ridge and everybody would be entitled to operate them and that is not the intent of the parties that sold lots to us, that the owners who bought them in prior years. We have an expectation to protect our rights and our rights came before the B&B rights and our Maui County taxes which are considerable are based on those values being maintained. I do not see those values being maintained with an influx of potential B&Bs and the wild, wild west you're going to create up in a development where almost all the lots are 500 feet a part after you get past one lot especially in Honolua Ridge. So I think that you're opening up and I realize from a standpoint of legal issues that you're ready to pass that on possibly to the private courts, but I think that there is a higher calling that you all have to answer to and that is that neighbors should not be impacting the rights of other neighbors when they've signed agreements to that effect. And I see this as an impact on my life, on my time there and on the values of my property. Thank you.

Mr. Hedani: Question. Commissioner Hiranaga.

Mr. Hiranaga: Do you see a difference between someone who does 31-day rental agreements and does not obtain a B&B permit. Just does 31 days rental agreement.

Mr. Greenfield: Absolutely.

Mr. Hiranaga: You see a difference.

Mr. Greenfield: And the difference is that before it wasn't a matter of law. They did it because they got away with it and the association may have turned a cheek. Now by way of the new ordinance you are giving license to create B&Bs all over the development and you cannot argue with that. That's what the law says. As long as they're not 500 feet apart you can do that. Well, I object to



that. That's not what I bought my property for.

Mr. Hiranaga: So if someone did a one-year rental agreement you would not object to that?

Mr. Greenfield: No, I would not. That is permanent home ownership and it was only to one family yes, I don't have a problem with that.

Mr. Hiranaga: Or six unrelated individuals.

Mr. Greenfield: Six unrelated individuals, I don't ?

Mr. Hiranaga: Individuals.

Mr. Greenfield: I'm not prepared to make a comment as to that.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Mr. Greenfield, I just wondered were you part of the activity which amended the CC&Rs? You originally purchased it under the original CC&Rs and later on it changed twice. Can you give me some background on that?

Mr. Greenfield: Yeah, the amendments which have occurred. I don't remember whether I voted on the first one because I was out – I might have been out of town but I can tell you from the originals to the first amendment to the second amendment the idea of no commercial activity or no B&Bs have never been altered. The original documentation of the CC&Rs have never been changed as it relates to transient vacation rentals and their definition. They have been in fact restated as unchanged through all the amendments and that's a matter of the board to, commission to review with the documents that have been gone through the courts system.

Mr. Hedani: Thank you very much. Any additional questions? Thank you. Are there any other members of the public that would like to offer testimony please step to the microphone and identify yourself for the record.

Ms. Elle Cochran: Hi my name is Elle Cochran and I do live in the Honolua area but not in the gated community. I live in Honolua Valley. You know minding my own business, totally off the grid. And you know, I sympathize with Jonathan Starr's comments about this area originally being beautiful pineapple fields, agriculture, you know, what it was made to be and then it turned into this real estate thing with these supposed fake farm ag lots and now the people living there are having a hard time paying their bills and living the lifestyle they're accustomed to and wanting to turn it into a commercialized bed and breakfast area. You know I do have a problem with more impact on that bay that is already suffering and dying. More traffic, water usage in Honolua. The aquifer is I think at the maximum at this point. There's all these other plans you can see on the map there that are on the burner and now there's going to be that much more usage. You know, I think the 31-day plus, you know, rental helps the you know, the comings and goings. I work at a property which

used to be hotels. You had people coming and going on a daily basis, it turned into time share to one, two, three-week, you know, time shares where some people don't get a car. You know, that puts less traffic impacts and what have you use, you know. So I think there is a difference if you add in that 31 days and you know, I'm kind of torn because some of the people that testified today are friends and they do have land up there in Honolua Ridge, Plantation Estates and I understand the economy is down. It's affected me. And they need to find an alternative way to make ends meet.

You know, but these were supposed to be ag lots, ag growing orchards, you know, and things like that, now they're turning into B&B commercialized and how they justify ag is they're going to grow the papayas and bananas to feed the guests of the B&B. You know, I don't know it's kind of twisting things around in my mind. But it's a tough call I think on everybody's end. But for me, it's sad to see these gated communities just pop up all around me where, you know, where I live I struggle to get water everyday. I'd love to grow ag. I'd love to have lo'i but I have no water. I have wind, I have solar and rain catch. The gentleman who is going to have three windmills to provide service to his land awesome. And yes, I would like to learn how you're going to do that because I struggle with that everyday. And if there's a good way of doing it I'd like to learn. But anyways I just felt compelled to come up here and share my manao being that I am surrounded by these gated communities and you know, I struggle to live where I live. So anyways, thanks for your time.

Mr. Hedani: Thank you Elle. Questions? Any other individuals wishing to testify please step to the microphone and identify yourself for the record.

Mr. Sergio Alvarez: Thank you. My name is Sergio Alvarez. I'm a quick learner so I know what happened 45 minutes ago so I get a feeling where this is going. At a minimum, I believe that the 31-day requirement however, I don't see what will prevent someone from challenging that and then you're opening a whole other can of worms. So I think that now that you opened the floodgates maybe my application will be in next week so will my neighbor because we are 500 feet apart. And so the character is going to be changed whether I do it or somebody else does it. But at a minimum, you've now created and I don't know what the position of some of the other homeowners will be on a legal basis including my own, but at a minimum 31-day has to have some meat to it. So who is going to enforce that? Questions?

Mr. Hedani: Thank you very much Mr. Alvarez. Commissioner Guard.

Mr. Guard: I'll answer your question first. I know a lot of other associations do it somehow, I mean the policing may be one thing but I'm sure you can see if the cars change every other day and whatnot and it is only a two-year permit that they're requesting. So if people see that, sorry to say it's this department that probably gets hammered with the news that hey, they're renting it out to 15 different groups in a month. Correct? That's what the time period is for. It's not like a life benefit to them.

Mr. Alvarez: I understand that, but I don't live a socialist, not a communist country so I'm not there to be turning people in. So I expect everyone to follow the rules, but if they don't, I'm not going to be policing force because that's not my job. Thank you.

Mr. Guard: Okay. And then second, I guess just for your own, I don't think everyone in the subdivision will be able to apply for a bed and breakfast permit because you have to be an owner-occupant living on site full time and that's the other requirement. So I think that's going to help, that should alleviate some fears from most of the owners that don't live there full time.

Mr. Alvarez: I understand that.

Mr. Guard: That it's not a transient vacation rental. You have to be living on property.

Mr. Alvarez: And again, I love the ag requirement. I have an approved ag plan. There's four banana trees and four citrus trees and they certified that. You know, those things are becoming a bit of a joke. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, Mr. Alvarez. I was just curious where you got the information about the 500 feet apart being a criteria because all it does is it kicks up the level of scrutiny one notch but theoretically every single house in a row could be a B&B.

Mr. Alvarez: Thank you. I miss spoke, yes.

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony, please step to the microphone and state your name for the record.

Mr. Al Lepeter: Thank you. My name is Al Lepeter and I was up here a few minutes ago. I am a neighbor of Mr. And Mrs. Mayuiers and I'm in support of their B&B application. I think there's a need. There's very limited B&B experiences in that area and I welcome to have them to have a B&B also like myself. Thank you.

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony, please step to the microphone and identify yourself for the record.

Mr. Atom Kasprzycki: Hello again, my name is Atom Kasprzycki. I am a resident up there. I'm not going to repeat everything I went through before but I did feel it was important to kind of point out a couple things that may or may not have some value to you or not. One thing, my experience with the past golf tournaments and I do play golf, I watch the tournament, the golf channel appears to be during the tournament filming a lot of coverage from a home up there and I'm assuming that home's being rented during the time, I might be wrong. But that's one point that interest me. And the second point of the privateness of the neighborhood which I do respect, I mean I don't wish that anybody getting a permit up there rents to a bunch of – a fraternity group that's going to be up there partying and tearing it up. I like the idea of families and quiet and enjoyment up there. But something else that does happen up there and it may or may not be right, it doesn't bother me but Kapalua Adventure Center or a part of them they actually take – shuttle up hiking groups which is cool, I think it's cool, public hiking groups up to the top. They drop them at the top of the trail, they hike and then they come back down. Sometimes they're shuttled, sometimes they aren't, but that is something that as far as I know is allowed and it's a van load of people that gets dumped off at

the top. So you know, that's one other little piece I thought may have some value to you guys making your decision. Thank you.

Mr. Hedani: Questions from the Commission. Thank you very much. Are there any other members of the public that would like to offer testimony? Please step to the microphone and state your name.

Mr. Patrick Mifsud: My first name is Patrick, last name is Mifsud and I just want to emphasize again, when a family comes out here to Hawaii they come from long places. From Michigan it's like about 13 hours to get here, you want to enjoy some time with your family. I think it's what it supposed to be about it, about family and growing up and that kind of thing so it's really important that you keep your family together and have the intimacy with your family. About the 500 feet and the noise level and that kind of stuff. Obviously when they bought those houses near that clubhouse, we all know guys can have a good time and have a few beers on the golf course, so at that point they would know that there's going to be a little bit of loudness over by that golf course. So I don't feel for them at all. They bought their lots right there, but again, I do have a lot and I do support this. Thank you.

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony? Seeing none, public testimony is closed. Department recommendation.

**b) Action**

Mr. Wollenhaupt: Good afternoon Members of the Maui Planning Commission. The applicant, I've discussed with the applicant and there would be a added condition to be repeated at the moment. That added condition would be, "that the applicant shall not rent out the bed and breakfast home for period of less than 31 days." That is an agreement with the applicant, but I have spoken with him so that would be Condition No. 7 under the recommendations.

The other change would be that on recommendation No. 1, that the Land Use Commission would grant a Special Use Permit valid for two years. This would be to July 31, 2011 being cognizant that there have been some concern with the community.

Consequently, with those two modifications the application for the Land Use Commission Special Use Permit complies with the applicable standards for unusual and reasonable use within the State Agricultural District as noted in the five points that are outlined in the recommendations, excuse me, that are outlined in the conclusions of law and the recommendations are as written with the addition of recommendation No. 7 as previously stated for the 31 minimum period day rental and also for the validation of this permit to coincide with the ending date of July 31, 2011.

Consequently, in consideration of the foregoing, the Maui Planning Department would recommend that the Maui Planning Commission adopt the Planning Department's report and revised recommendations prepared for the July 28<sup>th</sup> meeting and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on behalf of the planning commission. Thank you.

Mr. Hedani: Commissioners? Commissioner Mardfin.

Mr. Mardfin: I have a question. My question is on this map that was given to us there was testimony earlier that a lot of the green should be red and at the time that testimony was being done I thought I saw a look on your face like you wanted to make a comment. Would you like to make a comment now?

Mr. Wollenhaupt: The comment, that they used the current land from Department of Real Estate on the ownership on it and the department was in receipt of all letters, they were actually in your packet. With regards to the notice of the hearing of the special land use, we had one letter support. That is the extent of the notice of the hearing today. We had one letter supporting this project. With regards to the bed and breakfast application process which was previous process that had a 45 day extension period that ended, at that point in time there were 15 individual properties notified, six of them did support it, two of them did oppose it and at that point in time the map did reflect the reality of the ownership situation.

Mr. Mardfin: Thank you very much.

Mr. Hedani: Commissioners, what's your pleasure?

Mr. Guard: Move to approve as recommended.

Mr. Hedani: Motion by Commissioner Guard as recommended. Is there a second? Seconded by Commissioner Hiranaga. Discussion? Commissioner Mardfin.

Mr. Mardfin: I'd just like to point out one thing at least in my mind that distinguishes this from the previous one. There's seems to have been a long term commitment to agriculture on this property And I, over many years and with a much more intensive use than on the previous one and in my mind that tends to make a difference.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor signify by raising your hand. One, two, three, four, five. Opposed same sign. One, two, three.

**It was moved by Mr. Guard, seconded by Mr. Hiranaga, then**

**VOTED: To Approve the State Land Use Commission Special Use Permit with Conditions.  
(Assenting - J. Guard, K. Hiranaga, B. U'u, W. Mardfin, D. Domingo)  
(Dissenting - W. Shibuya, L. Sablas, J. Starr)**

Mr. Hedani: Motion is carried. Thank you. Mr. Yoshida.

Mr. Yoshida: Under Unfinished Business we're still in West Maui but we're changing the type of application now to Special Management Area Use Permit.

Mr. Yoshida then read the agenda item into the record.

Mr. Hedani: Mr. Abbott.

Mr. Starr: Mr. Chair, could we get a short recess while they set up?

Mr. Hedani: Okay, we'll take a five-minute recess.

A recess was called at 3:18 p.m., and the meeting was reconvened at 3:25 p.m.

Mr. Hedani: Mr. Abbott, dazzle us with your performance.

#### **D. UNFINISHED BUSINESS**

- 1. KAA NAPALI RESORTS AOA requesting a Special Management Area Use Permit for Kaanapali Alii Resort Improvements consisting of a) improvements to existing drainage facilities; b) addition of a 1,200 sf swimming pool and a 155 sq. ft. keiki pool as well as a new pump station; and c) the addition to the 2nd story to the administration building to create a fitness complex at 50 Nohea Kai Drive, TMK: 4-4-008: 022, Kaanapali, Lahaina, Island of Maui. (SM1 2008/0012) (T. Abbott) (Public hearing was conducted on June 23, 2009 and further review was done on July 14, 2009.)**

Mr. Thorne Abbott: Good day Commissioners, very nice to see you here and finally I get the opportunity to present on the Kaanapali Alii and have some discussion. This is SM1 2008/0012. I'm the staff planner Thorne Abbott. Zoe Norcross and I just recently published a paper together for the Coastal Zone Conference about managed retreat that was well-received by our colleagues both federal, state and internationally. And some of the elements of managed retreat that we're doing that some of our other coastal states aren't doing is basically moving out of harms way when you have the opportunity. You can work on kind of incremental moves, you can tear down a whole resort and start over but that's pretty capital intensive. So this is an example in my opinion of any opportunity. A window has opened up here, they're doing some renovations and we worked with the Kaanapali Alii for a long time trying to get them to move inland as much as they feasibly can rather than take their investment and dump it all into structures that are in harms way. There are limitations but over time, incrementally you move in. However, –

Mr. Hedani: Mr. Abbott, since you've been recognized nationally, now you join the ranks of Commissioner U'u and you would have to contribute \$5.00 or provide refreshments at a future meeting.

Mr. Abbott: Okay, I'll hit up Zoe for \$6.00 of that. This is not about sins of the past. This is about taking advantage of what we have today. There's lot of things that have happened in the past that aren't really good things and you're going to see some ugly shots here. So here's the shoreline and here's the Kaanapali Alii and here's this beautiful wide beach in March and here it is in July. You can see how the wave changes in its direction.

There have been numerous temporary responses. These are ugly, unsightly, they cost a lot of money and it hurts their revenue. You know, we sell beautiful, golden beaches and we want to keep them that way and that's why your shoreline rules are so aggressive and support moving incrementally or where you can out of harms way. There's a lot of transport between the Alii and

down to the Sheraton. The season changes and all the sand comes back. It's mostly moving back and forth this way but in dramatic fashion. Now the important reason to note that is we do have our long term erosion rate trends. There's the Alii here, here's their pool and there's about a foot of erosion at this site. However, the long term erosion trends are based over a hundred years and they're not necessarily going to totally capture that seasonal event of moving sand from the Alii down to the Sheraton and the Sheraton back to the Alii. So these little squiggly lines here these aren't shoreline positions those are the tow of the beach or the makai extent of the sandy beach. The shoreline position is the highest wash of the waves during the highest tide of the year. And as you just saw from the previous shot that's basically the sidewalk.

So here's another shot. Here's where the most makai extent of the beach has been. You can see it varies tremendously. Basically this is sand spit up there but the shoreline is basically right along this mauka extent right there. So if we look at that and put in context of what they're proposing to do, this red line is the shoreline and they did the shoreline, the state certified the shoreline during November which is you know, the most – the time of year when the beach is going to be its skinniest. Okay. So that's a good thing. And that's where we're measuring the setback from. We're not measuring it from out here. This is obviously going to shift up and down quite a bit but we're measuring from here.

So if we measure 50 years of erosion we're basically at this blue dotted line and you can see their existing pool is right in there. If you look at the orange dashed line that's a hundred years of erosion. It's also the maximum setback of a 150 feet. What they're proposing is their new pool is outside of the maximum setback area. It's outside of a hundred years of erosion. If their pool is still there and the hotel's there in a hundred years good for them. I really doubt it will be because by then I'm sure they're going to remodel about three or four more times. But this is an opportunity to move inland. Get the heck out of the way as much as possible.

They do want to take the existing pool and pull back, mostly the pool deck which is slippery, it's not very nice. I've been there on weekends, the pool's very small and very jammed with kids. You wouldn't want to be in there as an adult. The kids love it, but it's just a little too crowded. So they want to redo that pool deck and also put in a lot of drainage in that area because right now it's impervious surface, but if you put drains in it, they can convey that to their drainage system and reduce, basically reduce the impervious surface area.

So with that, I'll turn it over to the consultant and I believe you got some packets of information that you had requested. I hope that gave you some opportunities to read through that. You heard earlier this morning I believe nine people testified in support. We also have four letters in support. You probably did not get copies of those four letters. They're from Harry Pierce, Kevin Hamm and a Robert Cartwright. All three were residents and they all recommend support of this. They also pointed out that the Board of Directors voted on this and unanimously approved it. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, Mr. Abbott, this is not to specifically attack this project.

Mr. Abbott: I understand.

Mr. Starr: But I know you just came from this conference where you presented where I'm sure you've heard the latest, greatest, you know, I know there's been a lot of new knowledge bringing brought to the field between sea level rise, global warming and the fact that you know, our sand factory is closed because our reefs are – just a fraction of our reefs are alive and all of our sand is made from either coral or shellfish broken down. Are there – has there been a change in the projection of what we're going to be looking at in the next 50 or 100 years based on global warming and the coral situation? I know the transects are based on past history. Future history may be different.

Mr. Abbott: Yes. Very good question. Thank you for pointing that out. Basically every time they come out with a study, the study show – they have a project and then the projection just gets higher and higher and higher. So it's kind of our worst case scenarios keep being realized as far as the projections. In Hawaii, fortunately for us Hawaii the only thing that's really going to affect us is the thermal expansion of the water. In other words, when you boil a pot of water you know how it increases in volume and it can boil over if you leave the lid on it, right? We don't have to worry about the glaciers melting, ice sheets melting those kinds of things, they don't really affect us. It's basically just the temperature of the ocean increasing and the water expanding.

How that relates to this project is that yeah, we're going to have more troubles in the future and that's why any opportunity we have if we can get them to move inland it's better. I will say this. I think Mr. Halpin and Mr. Altier are probably at this juncture the most aware people of sea level rise and ocean dynamics and how that's going to affect them and they've made great strides in trying to bring people out here to consult not on just this project but all of Kaanapali Beach to come up with some solutions, long term, long term solutions. Commissioner Mardfin. Does that answer your question Mr. Starr?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like direct answers so I'm going to ask – I think I know where you are on this. By showing the new pool set back twice as far as required you're basically saying they're handling the managed retreat issue. Is that correct?

Mr. Abbott: Correct.

Mr. Mardfin: So you're basically in favor of what they're doing.

Mr. Abbott: I think this is an example of managed retreat.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: That was a long term type of question. Are we actually starting to grow or are we taking any initiative to grow coral in areas at least in where areas where we have sand erosion and beach erosion?

Mr. Abbott: There are efforts internationally to restore coral reefs primarily from bleaching events.



Branching coral you can do pretty well as far as transplanting that or getting it to grow. Putting out artificial reef substrate, big concrete things with holes in it, that works pretty good as well, but that's going to be a gnat's eyelash compared to the problems we're going to face in the future. The biggest problems we're going to face is not so much beach erosion what we're going to face more quickly is failure of our storm drains, failure of septic systems because as the sea rises the water table rises. So that's a important thing to consider.

Mr. Shibuya: Yeah, a fellow commissioner does not like my solution of using tetra pods so I'll have to defer my use of tetra pods. Thank you.

Mr. Abbott: Maybe for Lanai at the harbor there. I think that might work for that.

Mr. Hedani: Okay, as previously noted the Chair is going to be recusing himself from voting on this item because the applicant is a member of Kaanapali Operations Association Inc. Any additional questions for staff? Commissioner Starr.

Mr. Starr: Yeah, I just want to mention I appreciate that presentation. I appreciate the comment that the applicant is aware and looking at this. I did have a concern when I looked at the original package and original presentation that it seemed to be pretending that there were no problems there. The pictures we were getting all showed a big, white, wide sandy beach and that all was good in paradise and I have a much easier time dealing with it with the knowledge that at least we're aware that there are very serious issues, that this is ground zero for our beach erosion situation here on Maui.

Mr. Abbott: Thank you very much for that.

Mr. Hedani: Okay, well we took testimony this morning there were several people that deferred testimony this morning and do you want to go ahead and take additional public testimony at this time Thorne?

Mr. Abbott: Yes, that would be fine.

Mr. Hedani: Up to the commission because we actually closed the public hearing last time but we did take testimony from eight or nine individuals this morning. I had two people that have not testified Mr. Bill Rosentrator and Tom Dunnion. Shall we open it up for public testimony?

Mr. Abbott: We could do that. Would you like them to see the project first in its full entirety?

Mr. Hedani: Go ahead.

Mr. Abbott: The applicant suggests we let the individuals testify probably because they've been waiting a long time.

Unidentified individual in audience could not be heard on recording.

Mr. Hedani: Fine. Go ahead with the presentation.

Mr. Chris Hart: Thank you Mr. Chair, Members of the Commission. My name is Chris Hart of Chris Hart and Partners and we appreciate the opportunity of being able to come before you as unfinished business. This item was originally heard by the Maui Planning Commission on June 23rd that was the date of our special management area public hearing which was closed. Then as a result of that hearing there was request on the part of the commission for transmittal of certain clarifying information. So on July 7th we did a transmittal to you, I'm sorry, July 1st and also on July 7th. I'm assuming that all of you have a copy of that information. Then again on July 14th we were on the agenda as unfinished business and then of course, we were deferred till today's meeting which is July 28th. So we do appreciate the opportunity of being able to be before you.

Our project team which we do have present here Mark Altier is the General Manager of Kaanapali Alii, Jeff Halpin is the Managing Agent of Classic Resorts, Fred Loesberg is our architect, Shelly McKelvey is the landscape architect, Trang Nguyen is the civil engineer, Gilbert Keith Agaran is our in-house counsel and my name is Chris Hart as planning consultant and with me is Matt Slepik of our firm who has been the planner on this project.

This is the location of our project which Thorne has also identified to you in the context of the Kaanapali Resort, the Maui Ocean Club Marriott project is immediately to the south. The Westin Hotel is immediately to the north.

The project involves several improvements to the Kaanapali Alii. The Kaanapali Alii was constructed in 1982. It's 27 years old and it has been the intention of the AOA, the owner's association to undergo improvements to this project and they have been working on the improvements, the various improvements for many years. And the compiling of the special management area permit application is the result of that process.

The first is drainage improvements to the existing storm drainage system. The second is pool area improvements, new landscape planting, replacement of pool deck, new pool and spa, an expansion outside of the or mauka of the 150-foot shoreline setback. A new fitness center which involves - it is a new building but essentially it's an addition to the existing administration building with a second story fitness center. The project involves essentially really no expansion or intensification of or changes of the uses that currently exist.

The improvements shows, No. 1 actually identifies the areas where the drainage improvements are going to be constructed. No. 2 identifies the pool improvements. No. 3 identifies the administration fitness center building.

The questions from our previous meeting first regarding the drainage improvements. These improvements actually eliminates storm runoff that actually a portion of it did actually sheet flow into the ocean during heavy rainfalls. Now you remember this project was designed and built back in 1982 and so the basic flood hazard district ordinance of the county had not been as restrictive as it is today. Currently, we're proposing to retain 70% of the storm runoff or storm water on site in improved drainage retention areas. The additional 30% will be transmitted by a forced main as into the storm water resort lagoon which is actually mauka of the property and it actually is a water feature within the Kaanapali Golf Course So that the result is a hundred percent of the storm water will be retained on site or within the resort infrastructure.

Now this is kind of a - this is definitely an example of the current condition at Kaanapali Alii and basically points out the kind of more informal approach to disposal of storm runoff that existed perhaps in the early '80's.

The questions from the previous meeting No. 2, the pool area improvements. There's new 1,200 square foot swimming pool and a 155 square foot keiki pool, a new spa pool and a new pump station mauka of the shoreline setback. Pool decking repair and replacement, 2,200 square feet involves some work within the shoreline setback which would be makai of the 150-foot shoreline setback.

This slide we put together is basically identifies at the top replace and placement minor structures to the legally nonconforming permitted pool that exists makai of the 150-foot shoreline setback. This line actually is the 40-foot setback that was actually in existence at the time of the construction of the project. 150-foot setback of course is the setback, the average lot depth setback that is the setback today.

Essentially I just wanted to point out that the rules that would be the shoreline setback rules establish nonconforming structures or activities as a structure or activity which was legally existing within the shoreline area and which received a building permit prior to June 16, 1989, and again, we indicated to you that this project was built in 1982. So the pool permit and the building permits were received prior to June 16, 1989.

The additional questions from the previous meeting, the pool area improvements, we're proposing to decrease the hardscape of the pool area by 10% this would be through the addition of planted areas. We're also going to increase the pool decking porosity by 400% and this is by increasing the number of pool drains or deck drains in order to make the pool deck more porous from four to sixteen drains and that of course will be connected to the new drainage system and disposed of. Replacement of existing walkways within -- basically within the resort, Kaanapali Alii Resort with sandset pavers.

Also, our intention is to reduce the irrigation water demand by 30 to 40% and this would be through a process of using drip irrigation in the groundcover and shrub areas and also by redoing the basic irrigation control computers so that they become more efficient in the use of water.

Additional questions from previous meeting, the fitness center is going to be as we indicated to you LEED Silver. Other green improvements include energy efficient lighting and automatic AC shutoffs. These to match recent upgrades to energy efficient chillers, cooling towers, heat pumps and boilers. No impacts to view planes or visual character of the resort will result. And again, our architect is Mr. Fred Loesberg and this building has been carefully considered and basically is consistent and compliments the buildings or the architectural design of Kaanapali Alii.

Regarding beach access beach access ways are located immediately to the north and south along the property boundary of Kaanapali Alii Resort. There are also 11 beach access parking stalls in site and there are additional beach parking stalls on neighboring properties, adjacent neighboring properties. This slide shows the beach access on the north side of the property and the south side and the actual location of the beach access parking.

Also resident views, the impact of the proposed pool area spa is obscure at best. This was a concern by certain residents.

This essentially is meant to basically show the views from unit 414 and unit 416, Mr. Dunnion and Mr. Rosentreter, both of them testified at the meeting on June 23rd. This would be the new spa. This is the view from - this actually shows, I'm sorry; this actually shows the heights the top of the deck at the proposed spa and the top of the rock wall at the proposed spa. These were actually identified on an existing plumeria tree by the testifiers.

And this would be looking at the spa from Unit 414 essentially this is the plumeria tree. This is actually the height of the spa. This is essentially the view from unit 414 the lanai. This is looking at the spa from unit 416 which actually is right here and the important point is that there is a lot of foreground foliage; also it's important to note that the height doesn't impair the view of the ocean beyond.

Basically the issue of resident views I think it's important to realize that as far as the special management area permit is concerned the public hearing was closed on June 23rd and this issue is a civil matter to be dealt within the context of the current mediation process that's ongoing between these owners and representatives of the AOA.

This is a shovel ready project. The resort is prepared to proceed upon receipt of its approvals. It's something that's been ongoing for many years. The financing is in place and it's going to be imperative to move forward and certainly there are individuals in the construction industry that are interested as well as the workers who are employed at the Kaanapali Alii. Construction is anticipated to employ 90 to 100 workers for a period of four to five months. Thank you very much.

Mr. Hedani: Questions from the commission? Commissioner Mardfin.

Mr. Mardfin: First I'd like to thank you for my concern that you resolved at least in part in Figure F and G dealing with the parking and beach access. But that's not what I'm going to ask about now. In Figure I and I guess J and K, same issue would take place, you're showing what it would look like from their apartment. Now that depends on the height of the camera to some extent. If you put the camera down at one foot above the ground it's going to block off a lot. If you put it up at 12 feet, it's not going to, you know, you're going to be looking over everything. How - what was the height of the camera ... (inaudible)... the floor of their building.

Mr. Hart: Thank you Commissioner Mardfin. I agree with that. Obviously if we were sitting down the elevation of your eyes is approximately feet above the grade. In this particular as I understand it from Mr. Altier, the individual was basically, the pictures were taken in a standing position. So you were standing up. So it probably be another, at least another two feet or so or a foot and a half to two feet.

Mr. Mardfin: So in Figure I the sea would be blocked if they were sitting down? Probably.

Mr. Hart: Personally I feel that but I can't really answer that, you know, absolutely. Okay.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, actually I think this is a question for Mr. Mardfin, I'm sorry for Mr. Abbott. What happens, say we get a hurricane pass by close next year, and it comes and it takes out the walkway, it takes out half the existing swimming pool.

Mr. Abbott: What happens? Good question. I think the beach would definitely you know based on previous history the beach would probably erode away back to the sidewalk. The management at Alii and the DLNR, Office of Coastal and Conservation Lands, Sea Grant Extension Agents as well as several consultants and myself all got together we've been to the site numerous times. And basically if a habitable structure is eminently threatened, that is the ocean is 20-foot away you can put up shoreline hardening. So you could have - instead of ugly sandbags that we did last time they could put in steel plates, they could put in a seawall, they could put in anything that would protect their habitable structures. Now as it turns out the sidewalk is about six-foot wide and the sidewalk and most mauka extent or most inland extent is about 16-foot away from that corner building on the far south end. So that's 22 feet total. So one of the Alii's suggestions has been if we had a big event we should be able to put in some kind of temporary, something along the sidewalk that was temporary like plates or something like that that we could install and then pull out again very easily, quickly within a day or so and that would protect the buildings.

Now your question is what would happen to the pool and everything else? The pool even the existing pool is more inland than that first building to the south. So if they're going to protect the building to the south which they could legally do then the pool and all the improvements they're doing would also be protected. Does that answer your question, Sir?

Mr. Starr: Why is it that a home that gets severely damaged by the natural action of the ocean cannot be rebuilt but a hotel can be protected by steel plates and repaired?

Mr. Abbott: Let me comment.

Mr. Starr: Or swimming pool or whatever.

Mr. Abbott: Okay, any legally habitable structure whether it be a house or a condo or a hotel if the oceans within 20 feet they can protect it. That's what your shoreline rules allow. Rebuilding if it was damaged they couldn't rebuild Now would I ideally like them to do what some of the other resorts have done which is knock down the whole thing and rebuild inland, heck yeah, that would make all our lives a lot easier but that's not something we can - you know, that's not practical for them right now. So this is kind of an incremental move inland. It was built back in the day and was too close to the ocean. The second thing is you mentioned about putting in plates. They put in steel plates at one time. They have looked at proposals for different kinds of temporary shoreline protection that would not be as invasive, not be as intrusive and you know, would be from a view plane standpoint more appropriate for their location. But there are also, you know, basically they're doing a long term plan with all the hotels there about how we're going to keep this beach for a long time. Does that?

Mr. Starr: When it does come down to the choice between having a beach and having structures there who wins?

Mr. Abbott: Well, according to your rules legally they can repair what exists there and their new improvements are outside of the setback area. So I hope that answers the question.

Mr. Hedani: Additional questions? Seeing none, we'd like to open it up for public testimony and I have two individuals that have signed up earlier that requested to testify when this agenda item came up. First person is Bill Rosenmeyer.

Mr. Bill Rosentrater: You'll get it right yet, Bill Rosentrater.

Mr. Hedani: Oh, my apologies.

Mr. Rosentrater: That's okay. It gets murdered all the time. It's an old Hawaiian name. Basically I'd like to defer to Mr. Dunnion because his - the intrusion on his view and his effect is much greater than mine. Can I defer my three minutes to him?

Mr. Hedani: We don't sell, we don't trade, we don't auction minutes. I'd use your three minutes if I were you and the minutes are ticking right now.

Mr. Tom Dunnion: Can I at least have a minute to put up the - tape something up before we start?

Mr. Abbott: Say your name and speak into the microphone.

Mr. Hedani: Time's up Tom. I'm just kidding.

Mr. Tom Dunnion: Good afternoon, my name is Tom Dunnion, this is my second visit to you folks and I appreciate your hearing me. I've been at the Alii for about 20 years; I've served on the board at one time. In fact I started some of this project to get this ball rolling and help the Alii.

My concern is threefold. Number one, have they really fully documented what they're doing? Now everything I saw was real pretty but did you see any elevations? They sure weren't there. Number two, have they followed the law. And number three, have they done, have they really worked in good faith with this owner?

Last time I was here I said hey, we're going to mediate this, this is great. I brought in a mediator from Oahu, a retired judge. We had an attorney and they said, oh Mr. Dunnion, you're so different from Mr. Rosentrater. In fact you're here and he's there so why don't you come back at a later time. They all got on a plane and took off left me sitting in the room never mediated with me and if this is an act of good faith, I heard last time hey, are these people trying to hide something, there's something wrong with this picture. And I think you can see by looking there and looking here we put up a demonstration and of course they ran out you gotta tear that down. No, you can't show the judge this. Don't put this up for the judge because people might get hurt. They're trying to hide something folks. This is my unit. I've owned it a long time. All I've asked is look if you have to have an elevation that you didn't show you elevate it by two feet not by three feet, not by four feet, not by five feet but this intruded into my front lawn and I'm going to be looking directly at a Jacuzzi and people smiling back at me and I will lose my view. I've done everything I can to work with these folks. I tried to mediate it, they won't do it. We've talked about contentiousness amongst neighbors.

I don't want to have to fight these people which is why I'm asking that all you do if they have to have an elevation, two feet is fine. Look at that pretty picture. There's no elevations there. They can still have it, but not, please not like this.

Mr. Hedani: You need to speak into the microphone.

Mr. Dunnion: I'm sorry. This is what I look at now and this was done by an engineer, we came out and we scoped it, this is exactly what I'm going to be looking at. Everybody that walked by said, oh my God that thing is huge and it is.

The other thing is state law. Hawaii Revised Statute 514-B140 is very clear; no one may make or allow any material addition or alteration without first obtaining written consent of 60% of unit owners.

Mr. Hedani: Two minutes Tom.

Mr. Dunnion: And consent of all unit owners whose units are directly affected. It's their position that my unit is not directly affected. I mean anybody can see that it is. So all I'm trying to do is work in good faith with these people and all I'm asking this board to do is say two things. Approve it subject to no more than two feet of elevation or if you do want to approve it I'd say it defer it until they want to sit down and mediate with me and try and work this thing out. Gentlemen, thank you for your attention.

Mr. Hedani: Thank you very much. Questions? Thank you very much Tom. Are there any other individuals that would like to offer testimony at this time? Please step to the microphone and identify yourself for the record.

Mr. Sergio Alvarez: I'm O for 2 with you today so, I wasn't planning to speak. I didn't have my name down on this but I am a multiple unit owner at the Kaanapali Alii. At the time that this was being requested I was - my vote was sought because I had multiple units. I understand that the vote was stated to you this morning. By the way that was a board member who came up and only identified himself as a homeowner. And some of the letters that you received in support are also from board members who identified themselves as homeowners.

I was told that my vote was solicited and I had an agreement that the spa area will be the same elevation as the existing pool. So - and I understand that this thing was approved by the super majority plus one and if anything I can do to take my vote back I will do it. I'm going to look at the legal ramifications of my vote being counted as positive when they're not doing what they said they would do.

And further, I think that this board will - is their intent to basically run over Mr. Dunnion and not negotiate with him in any way, shape or form? I've had similar experiences with this same board which I'm now at the State Supreme Court litigating and I think as a homeowner whose probably whose vote took it over the top if I can take it back, I'm going to take it back because this is not what I agreed to have and I think that at a minimum you should delay this until Mr. Dunnion has been addressed and satisfied and not just pushed aside because that's exactly what they did to him the other day. He tried entering the room and they wouldn't allow him to enter the room. They basically

shrug him off and threw him out and I, like I said, I wasn't here to do this, but I'm an owner there. I own multiple units there and I do not like what I saw here today. Thank you very much.

Mr. Hedani: Thank you. Question Mr. Alvarez. Questions from Commissioner U'u.

Mr. U'u: So what is presented to us and what was distributed to the folks at Kaanapali Alii is different?

Mr. Alvarez: What was distributed to us is not what is there today because the updates were never presented to us. But in a meeting between myself and board members I was assured, I had several conditions or several concerns. One was this building up in front which is literally sitting over the sidewalk and I've never been happy about that but that's not what's being addressed here. Two, is that I knew that several of the owners and by the way, Mr. Dunnion is impacted by two units. He not only has the ground floor unit but he has a unit four levels above that that's also impacted by the noise and so on but that hasn't been brought up. And then when I met with some of the board members and they sought my vote because at the time I had four votes there I said I will do it if Mr. Rosentrater and Mr. Dunnion are assured that the level of the spa is at the same level as the pool because all the testimony you heard here this morning were from employees and/or board members. And I fully - look I'm in the construction business I know that times are hard, but here we're trying because of a short-sightedness of bad economic times right now we have something that's shovel ready we're trying to shove something that's going to last there for as long as the project is another 20, 30 years and I think it's unfair to the owners and certainly unfair for someone like myself who was promised something and that's not what I saw here today. I haven't had any involvement. I have seen nothing, nothing since the original concept and that's the concept that multiple people had objected to and nothing has ever been brought to us as a revised documentation.

Mr. U'u: One more question.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Question. Is any of the units that the board members own would the view be hindered?

Mr. Alvarez: Absolutely. Like I said, I'm just speaking to - I've been a registered architect for 35 years and a real estate developer for 35 years. So I'm speaking from a lot of knowledge and their views are being impacted, their privacy is being impacted. Everything about it is being impacted.

Mr. Hedani: Commissioner U'u.

Mr. U'u: No, no, the question was the board members.

Mr. Alvarez: Absolutely not.

Mr. U'u: Wouldn't be affected the views?

Mr. Alvarez: No.



Mr. U'u: None.

Mr. Alvarez: No. I mean, this is - if they owned those units in fact a board member I had a second ... (inaudible)... said, Mr. Dunnion your unit is actually going to go up in value so why are you putting up this fight for? So none of these board members have any direct impact. I believe that none of them actually look at the courtyard. Maybe one does. The rest look to the mountain side or to the adjoining properties.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: What floor are your four units on?

Mr. Alvarez: I am on the fourth floor right at the building that is in danger here that Commissioner Starr was talking about and I at the time owned multiple units on the ninth floor. So I was not directly impacted.

Mr. Mardfin: So your views aren't going to be changed?

Mr. Alvarez: No. No sir.

Mr. Hedani: Any other questions from the Commission? Thank you very much - I'm sorry, Commissioner U'u.

Mr. U'u: One more question. How many units will be possibly affected, affecting the view planes?

Mr. Alvarez: The view plane it's practically only these two units because they're directly in front of the improvements. ... (inaudible- changing of tape)... Until a settlement is made with both because if you approve it no settlement will ever be made or attempt to settle with Mr. Dunnion. Thank you.

Mr. Hedani: Thank you very much Mr. Alvarez. Are there any other members of the public that would like to offer testimony at this time?

Ms. Elle Cochran: Aloha again Commissioners. My name's Elle Cochran. I just want to comment on Mr. Abbott's you know addressing the sea level rise. I think that's great that companies like Alii are looking into this and preplanning their improvements on their properties. I work next door at the Marriott and you know the sea level rise, erosion of the beach naturally affects that boardwalk and things are deteriorating really bad and so to plan ahead like this I think is awesome in mitigating their drainage problems, excellent, you know it was built in a time when these things weren't an issue but yes, it does affect the environment and obviously our economy is our environment especially in this resort area and thank you Mr. Hedani for recusing for you know conflict you do work in the Kaanapali area .

I also like the fact that this project will give 90 to 100 jobs to out of work workers but I do pray that they do go to our local workers and not out of state or even outer island. I see cars and trucks at different job sites with out of state license plates on them and also see people flying in and out out of our airports to commute in and out for jobs. So you know, I kind of wonder why do we have

unemployment here on this island when we have people from outside coming in to do these jobs. And in the end Commissioner Starr, I believe that Mother Nature will win in the end on everything built along the shoreline. So you know, that's definitely well past our life spans. But with that I just wanted to comment a little bit on this project. Mahalo.

Mr. Hedani: Thank you very much Elle. Any other members of the public wishing to testify? Seeing none, public testimony is closed. Staff recommendation.

Mr. Abbott: Staff recommends approval subject to 22 conditions. There is one comment I want to read. I think this is important to keep in mind regarding view plane obstructions. This is from HRS 205A - 26, Special Management Area Guidelines, Section 3, Subsection D, says, "the authority," that's the commission, "shall seek to minimize where reasonable," D "any development which would substantially interfere with or detract from the line of sight towards the see from the state highway nearest the coast." We don't protect private views. And if there was a misrepresentation made by the applicant to their owners then I think that's something they would seriously consider but I defer to Corp. Counsel about the precedent of if you determine that you don't want to approve this project denying it based on a view plane issue which is a private view plane issue and I bring this up because I get calls weekly, sometimes daily of people wanting to use the SMA law, I'm sorry, the SMA rules and the Coastal Zone Management Act because their private use have been impacted by a neighboring property. I just wanted to clarify that if I may.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I know on projects in the past where different hotels or different condo units was impacted by the view planes and they settled prior. So even though you're saying it should be from the state highway there was instances where it was brought up by adjacent neighbors. I get one ocean view from my house I'll be really upset if somebody build in front of me, very upset and I can understand the frustration.

Mr. Abbott: Me too, I'd be upset too.

Mr. U'u: That's my, you know, that's what I like to look at. That's my homes, that's the ocean and – but what you saying is that we cannot use the view plane but it's been brought before by testimony, it's brought up before by other condo units who's been affected so in essence what you're saying what they did was wrong but it got mitigated. So –

Mr. Abbott: You'll recall we had a intervention on one of my projects where they didn't want people to dance hula or play Hawaiian music on a rooftop and one of the outcomes of that was that those people can now eat at that resort's restaurant with a 10% discount.

Mr. U'u: Not 15, kidding.

Mr. Abbott: I don't disagree with you at all, I would be very upset if I spent a lot of money on a unit and something blocked my view and there are legal ways of dealing with that. But the commission's the SMA guidelines say you're supposed to protect public coastal resources and views that are public, yes. Views that are private, I'd defer to Corp. Counsel because I just would hate to see – I

want to make sure we don't set a precedent where we're setting ourselves up to suddenly have a lot of these coming in. There are other factors in this particular proposal that I think are warranted for debate and discussion as well that we might be able to hang our hat on.

Mr. U'u: Is there anything the applicant can do? If there was no problem with the residents whose view is being blocked I would have no objection. Can they remedy something or has that been talked about to lower the height?

Mr. Abbott: Let me ask –

Mr. U'u: And if there's no problem of a view plane obstructed I've got no problem also.

Mr. Abbott: I'd be more than glad to invite the applicant to speak to that.

Mr. Gil Keith Agaran: Good afternoon, I'm Gil Keith Agaran. I'm the lawyer for the applicant. I just wanted to maybe just respond directly. I think what we're talking about here is we are talking about condo and under Hawaii law, condos now are required to mediate disputes within the condominium. I think Mr. Rosen – sorry about that

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

Mr. Agaran: So there have been requests for mediation made by both of them. I believe that the mediation session with Mr. Rosentraiter did go forward. The mediation with Mr. Dunnion as he indicated did not go forward and has not been scheduled yet and needs to be scheduled. But the process is there. It's all condominiums are mandated to mediate these types of disputes within a project between owners and the AOA and that's the process that would happen here.

Mr. Hedani: Commissioner Starr.

Mr. Starr: You know, although I understand what Mr. Abbott said that it's not really within the SMA purview and that it is an internal matter I do feel that it's better if we create solutions that don't cause strife and don't cause you know, ongoing incurable animosity. And what I see as the issue here is something that I'm bit confused of because I've seen pictures that show a view plane that I believe...(inaudible)... were taken from I would guess the balcony railing of the first floor apartments where it did not look like the new construction was going to block the view of the ocean but only block the view of some ferns and other plantings that that would be replaced with a different landscape planting. However, we've heard from the applicant that that's not the case and I'm wondering if we can get some clarification from the applicant and so we can know whether there is an issue. Because if, you know, they will not be able to see the ocean where they could before that might be a matter of concern or that's not an issue. Can we get architectural elevations or something to clarify this?

Mr. Jeff Halpin: Commissioners, my name is Jeff Halpin, I'm part of Classic Resorts, the managing agent. We do have another display that we have that shows another perspective. But I think what we have here is a good faith disagreement with Mr. Rosentraiter and Mr. Dunnion that I'm here to do a he said, we said kind of thing. I can just tell you what the status is that there was a mediation

last week with Mr. Rosentraiter. There was a tentative agreement which made an adjustment I'm not at liberty to disclose the exact terms of that but that did take place but it's not been finalized therefore I can't give you details, but there was an agreement. The board has agreed to mediate with Mr. Dunnion as well and that is as Mr. Agaran said has not been scheduled.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Can you explain to me why the two mediations weren't done together jointly?

Mr. Halpin: I can't – I mean, I can just tell you what the board's position was that the board felt that first of all, I guess there was an opportunity to have them scheduled at one time together but that didn't – I mean, Mr. Rosentraiter filed for mediation first and then Mr. Dunnion asked to tag along with Mr. Rosentraiter's mediation. On the advice of counsel to the board the counsel suggested to the board that the two mediations be handled separately so the board took their counsel's advice.

Mr. Hedani: Commissioner U'u.

Mr. U'u: So there is still one meeting scheduled?

Mr. Halpin: There's –

Mr. U'u: Or some type of mediation?

Mr. Halpin: To my knowledge it hasn't been scheduled but it's been agreed to by the association.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, can you give us the actual elevations of the lower floor units and of the new construction?

Mr. Halpin: Mark Alteir who's our general manager is the one who took the pictures in Mr. Hart's presentation and is very familiar with the elevations.

Mr. Starr: Can he give it to us about, you know, in – off of some datum whether it's sea level or something else?

Mr. Mark Alteir: Good afternoon, Mark Alteir, I'm the general manager at the Kaanapali Alii. Elevations in terms of sea level existing pool deck – our existing pool deck which is the - by the children's pool here, the lower pool. This elevation here is a 10'7" and then you step up 18 inches to the first raised area and then up 54 inches so the – from 10'7" to the 54 inches is the top of deck on the raised jacuzzi. This raised jacuzzi area is 44 feet long by 32 wide, the raised area.

Mr. Starr: Are there plantings above that? What's the highest point?

Mr. Alteir: The planting, the planter on this side of the raised jacuzzi which is in the area of Mr. Dunnion and Mr. Rosentraiter's unit is also at 15'2" same height as his deck. There's a planter there

for green –

Mr. Starr: And what's the floor of their unit?

Mr. Alteir: Mr. Dunnion's and Mr. Rosentraiter's are right at 12 feet elevation.

Mr. Starr: So approximately 3'2" higher, in other words, railing height?

Mr. Alteir: Correct.

Mr. Starr: Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Personally I don't believe it's in our purview to be mediating a civil matter between the board and a private condo individual and I'd like the Corporation Counsel to provide us some insight as to if we should be spending time discussing this issue about how high a berm should be two feet, three feet, four feet?

Mr. Hedani: Jim.

Mr. Giroux: You know, I'm not going to cut off discussion. I think the chair if he can feels that you guys are going off of you know, the board's work at hand I think the chair can rein in discussion of but you've got to look at your rules 205A the policies and objectives and as far as what you can discuss you can discuss anything. I mean you guys have managed to do that. But as far as what you are going to actually rule on it has to be within the purview of 205A.

Mr. Hedani: Corp. Counsel just punted. Any further discussion? Questions for the applicant?

Unidentified individual in audience speaking and not audible due to not speaking into a microphone.

Mr. Hedani: I'm sorry, the current discussion is basically between the commission and staff at this point. The public hearing portion has been closed. Thorne.

Mr. Abbott: Staff recommends approval with 22 conditions. Originally you were provided for the June 23<sup>rd</sup> meeting a list of 22 conditions. We revised those on June 22, 2009 with a one-page memo which basically revised the verbiage for Condition 21 that says – the new revised language would be, "that water conservation measures such as updated irrigation control systems and drip irrigation for trees, shrubbery and groundcover shall be fully implemented."

Condition 22 is the same verbiage but was actually renumbered because I had mistakenly numbered it 21. And basically what that says, "that the applicant shall retain, store and/or stockpile any clean beach quality sand that is excavated from the site. Excavated clean sand shall be used for future beach conservation and nourishment activities. Compliance with condition shall include a report and photographs illustrating subsurface soils and cross sections of areas excavated. Where applicable sieve analysis of clean sand indicating that silt content and grain size shall be

provided to the department.” Thank you.

Mr. Starr: I have a question before we –

Mr. Hedani: Commissioner Starr.

Mr. Starr: This is regarding the beach parking and I know I’ve tried to park there a number of times middle of day, early, early morning, late afternoon, I’ve never been able to and it really seemed that during the day there were a lot of pick up truck type vehicles, people working in the resort at night it looked like they were rent a cars from people staying there and I want to understand what the program is to make that available for beach goers and to enforce that and if there’s anything we need to do to help make sure that those spots are available for beach goers coming in from outside.

Mr. Abbott: I’ll let the applicant speak to that. There aren’t any requirements for additional parking based on what they’re proposing their proposed improvements. It’s hard to regulate an area that’s open to the public you know, as far as parking and who parks there. So I don’t even think the police necessarily check if it’s rental cars and that kind of thing.

Mr. Starr: It may be a resort thing. We may be able to call on some expertise here on the commission if we could, if the Chair would like to jump in. What can we do?

Mr. Abbott: I think the applicant would like to speak to this.

Mr. Hedani: Basically all of the beach access parking stalls within the Kaanapali Beach Resort are areas that were required by the county and it’s actually in the county’s purview to enforce as they see fit relative to those parking stalls, but just as Thorne just mentioned members of the public are members of the public. The only thing the resort can do is restrict employees from not using those stalls for personal parking but Mark you have some comment?

Mr. Alteir: Yes, Mark Alteir. To answer your question Mr. Starr, there are 11 parking stalls there. We maintain the lot, clean it, secure it, our security cameras are focused on that lot so that we can go after any vandals that may usually something happens on the beach they run down the beach access and they go. We’ve actually used our camera system get their license plates before. But the lot is open for the public. We have had challenges with beach vendors that running surf operations off of that point that come in and park in the morning and we’ve had our challenges with trying to enforce it with the county and/or Maui PD because when they come out to respond to a call we’re told that it’s a private lot and it’s our responsibility. So when we call for a tow truck to tow as long as the truck is there and hooked up to the car then they’ll deal with it otherwise if the owner of the vehicle comes back and the tow truck has not started then we, the property are responsible to pay for that tow even though the perpetrator can go away with his car. So it’s been a real challenge to keep up that lot. We’ve done everything possible to – it’s got signage, proper signage, and we again maintain it and clean it and try to keep only beach goers parking there as much as possible.

Mr. Hedani: Commissioner Starr, I personally have photographed commercial people operating out of the lot and nearly come to physical altercations with some of those people in terms of trying to

preserve access for the general public for those parking stalls.

Mr. Starr: Yeah, I don't want to blame any of the resort people because it's not their fault. ...(inaudible)... provided something. I don't think we have the mechanism that we need and I don't know what it is maybe some office, some booth somewhere where you know a beach goer can go get their pass you know four-hour pass or whatever or something. I hope that in the future maybe this is something we can look at.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Question Mr. Alteir. I've been fortunate the last – twice I went there had parking so was good for me. But when you start the project can you – do you have parking for the construction workers?

Mr. Alteir: Yes sir. And beach parking will be open. It won't be affected in any way.

Mr. U'u: So would somebody be monitoring the public beach parking to assure us that the construction workers are not parking there.

Mr. Alteir: Absolutely. We – All contractors that are on property will have a parking pass that they would put in their windshield and we dedicate places for them to park and so we are well aware where they park when they're on property.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, move for approval with the staff recommendation.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. U'u: Second.

Mr. Hedani: Second by Commissioner Domingo. Discussion? Commissioner Starr.

Mr. Starr: At first I was kind of pained by this because I know the issues of the shoreline there but I do think their applicant has come to grips with the problems and is making an attempt to try to do some good and they are doing more good than – and I can't really see any new harm being created so I'm supporting it.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor signify by saying aye. Opposed nay.

**It was moved by Mr. Starr, seconded by Ms. Domingo, then**

**VOTED: To Approve the Special Management Area Use Permit with Conditions.**

**(Assenting - J. Starr, D. Domingo, K. Hiranaga, B. U'u, J. Guard,  
W. Mardfin, W. Shibuya, L. Sablas)  
(Recused - W. Hedani)**

Mr. Hedani: Carried. Thank you.

Mr. Abbott: Thank you very, very much Commissioners.

Mr. Hart: Thank you very much Commission.

Mr. Yoshida read the next application into the record.

- 2. MR. VINCE BAGOYO, JR. on behalf of MAUI WAIOHULI PARTNERS requesting a Special Management Area Use Permit for the Hoonani Subdivision in order to subdivide to create 28 single-family residential lots and a larger lot to include the drainage retention basin for property situated on Hoonani Street at TMK: 3-9-001: 007, Kihei, Island of Maui. (SM1 2008/0024) (J. Buika) (Public hearing conducted on May 12, 2009)**

Mr. Hedani: Jim you're ready to go?

Mr. Jim Buika: Yes I am.

Mr. Hedani: Go ahead.

Mr. Buika: Thank you very much. My name is Jim Buika. I'm a staff planner with the Planning Department. The purpose of today's agenda item is to review the Hoonani Subdivision for a SMA Use permit approval. Before I begin I'd just like to let you know that the Exhibit 10, there is an Exhibit 10 with your packet that was handed out this morning that replaces the Exhibit 10 in the report.

I have with me today Vince Bagoyo who is the consultant on the project. Phillip Rowell who is the traffic consultant. Wayne Arakaki who is the engineer on the project and Roderick Fong who is representing the Waiohuli Partners ownership group on the project.

As background very quickly on May 12, 2009 the project was presented to you, a public hearing was conducted and the commissioners began deliberations and questioned the applicant. At the time, the Planning Department recommended deferral of the project to you, the Maui Planning Commission in order address outstanding concerns of the Planning Department, the Police Department and the U.S. Fish and Wildlife Service for potential environmental impacts.

Today's meeting is a scheduled continuation of the deliberations for the Hoonani Subdivision which has now amended the applicant from 28 lots to 27 lots. It's in Central Kihei mauka of South Kihei Road at the end of Hoonani Street. The parcel is 12.88 acres on vacant land in Central Maui and they're only proposing to build 27 units on it. So this first slide is just to orient you to the parcel that we're talking about in Central Kihei with the arrow there. It is vacant. And we had presented the



project to you earlier. Also on May 12<sup>th</sup>, we had a consultant who did a detailed two-year study for the FEMA, Federal Emergency Management Agency, confirming that there would be with this project there would be no rise in the flood elevation in the area. It is Waiopuilani Gulch area and there is a significant amount of mitigation that will be built into this project for these homes that I can summarize later.

So as far as the proceedings today there were six outstanding issues from the May 12<sup>th</sup> meeting that I can list and kind of go through those very quickly to tick them off if that's okay with the chair? Thank you.

Referring to Exhibit 25, that's our letter that kind of is the response from the May 12<sup>th</sup> meeting that outlines the various issues that still needed to be resolved with the project and I'll summarize them very quickly here from that Exhibit 25. The commission and the department requested first a letter of concurrence from the Police Department regarding site design and traffic impacts. We do have that concurrence letter.

Two, the Planning Department requested alternative site designs to comply with the department's concerns and the commission's concerns for life/safety issues related to evacuation from the flood zone and the lot density in the flood plane and we have received those alternative site designs. I'll show you the preferred, the new preferred site design in the moment.

Three, we also requested a letter of concurrence from the U.S. Fish and Wildlife Service regarding potential impacts to endangered species and we do have that letter of concurrence from the Fish and Wildlife Service.

Fourth, we had asked for a letter of concurrence from the Kihei Community Association showing the various site design options to them and they were pleased with the project. They have no problems with it. The letter of concurrence is also in your packet.

Five, there was a density issue concern of the Planning Department. They are only building 28 lots and they have agreed, the applicant has agreed to reduce it to 27 lots. So there is some density reduction there.

There was one other commission request that there's a Hoonani Street drainage that goes makai of the actual project that the applicant had agreed to hard surface that drainage channel out to South Kihei Road. The commission had asked for a grass option in there. We have discussed it with Public Works and they insisted on it being hardened. The applicant is easy on way or the other. So whatever you decide.

Mr. Hedani: Jim, I'm getting a question from Commissioner Hiranaga.

Mr. Hiranaga: The list you're going down is in our packet?

Mr. Buika: Well, it's in – the issues are listed in Exhibit 25, but the list is not in the packet. What I've done is tried to –

Mr. Hedani: He's extracting the items that we had raised as issues.

Mr. Buika: They are all in Exhibit 25.

Mr. Hiranaga: Of the amended report?

Mr. Buika: Of the amended report yes. That is the letter that kind of was generated from this. From the May 12<sup>th</sup> addition or meeting. I'll show you – so the preferred alternative site design is this slide here which actually if I can manipulate this and the mike at the same time.

Mr. Hedani: Maybe if we can try to speed the presentation up a little bit Jim.

Mr. Buika: This is the alternative site design is lets see it's in Exhibit 27 and what it does is it has taken out a lot and it has created two additional roadway exits and actually a third private road exit out of the subdivision onto – to the south to Namau Street which is on the bottom of the picture and I'll flip to the next slide which shows the evacuation routes here. So you can see to the south there will be two evacuation routes. There's another private road that parallels those two and it goes out to the north-south collector road. So both the Police Department and the Planning Department are satisfied with that – with this option here. It also eliminates all of the flag lots. The original site design had 11 flag lots, police was unhappy with that. There are no flag lots with this option and the police concurred that this is a much better option. Those letters are in there. The letter of approval from the Police Department is Exhibit 30 and also Exhibit 31 is the – Exhibit 30 is regarding the traffic impact assessment report and Exhibit 31, again, letter from the Police Department is the review and concurrence for the preliminary site plan that I'm showing you here. They have no objections to it.

As far as the endangered species as I said we did on June 10<sup>th</sup> we did a site visit with Dawn Greenly from the U.S. Fish and Wildlife Service Honolulu and we discussed all of the issues. There are three potential endangered species and all of those issues will be mitigated very well to the satisfaction of the Fish and Wildlife Service.

Again, the public participation on June 30<sup>th</sup> the applicant met with the Kihei Community Association and gained approval for the project. They were very happy with the affordable housing component of it and also the bike path that will go through the drainage channel.

Mr. Hedani: Do you want to touch on your recommendation again?

Mr. Buika: Sure. Our recommendation is that we will, we do recommend approval for the Special Management Area Use Permit subject to 15 standard conditions and 34 project specific conditions. I don't know if you want me to – I won't go through any of the recommendations but there are some changes to them. Do you want the recommendations already or do you want to have any further discussion or questions Chair?

Mr. Hedani: Any questions from the Commission? Commissioner Starr.

Mr. Starr: In addition to questions we should have public testimony before we have a

recommendation. There was a long discussion at the last meeting about the fact that the culvert under South Kihei Road is undersized and that when there is a large rain event it creates flooding which has a potential to be really life threatening and certainly can take away a lot of property. I know we had asked what could be done to ameliorate that and I haven't heard any answer to anything that will get the water down and under South Kihei Road. In fact, you know, by keeping the drainage hardened and making it more constrained we may be making it worse.

Mr. Buika: Well, maybe hardened is the wrong adjective. It is kind of rip rap that will improve the sediment capture as water comes downstream there is a one and a half acre retention basin that will be developed on the property. The property again is 12.88 acres. They're developing less than half so they do have the luxury of taking an acre and a half, I think it will be about 16 feet deep, 310,000 cubic foot volume. There will be both pre and post drainage retention on site. I think there will be a lot of sediment captured here. So it certainly there is a major flooding problem there. It can't be all solved by one parcel here. I think the Planning Director – the Planning Department feels that the applicant bent over backwards to come up with some good mitigation solutions which I haven't even gone through yet. But – so there will be – there will be no increase in flooding due to this project according to the FEMA hydraulics study and also there will be more than adequate retention of all pre and post development here on site. So there will be some reduction in the flooding. It won't solve the flooding problem in the area.

Mr. Hedani: Commissioner Starr.

Mr. Starr: What happens with a 50-year storm? I understand, I believe that they're going to retain and pre and post on the onsite but how about the offsite? What does a 50-year storm do?

Mr. Buika: The offsite meaning upstream or downstream?

Mr. Starr: What's coming from, coming down the mountain.

Mr. Buika: Yes, okay. I'll have Wayne Arakaki who is the engineer on the project discuss that.

Mr. Wayne Arakaki: Name is Wayne Arakaki, I'm a engineer for this project. As far as offsite runoff is concerned, the detention pond that we're going to design and build is actually more than what the subdivisions require. So whatever offsite runoff that comes to property it's going to lessen the effect downstream properties. This is just one project. I don't see how we can take care of the problem you know, the existing problem. But we can reduce the amount of runoff with what property that we have.

Mr. Starr: My concern is with the cumulative effect of constraining that offsite runoff you know by narrowing and I just really have a concern that it's going to create a disaster. It's going to ...(inaudible)... South Kihei completely.

Mr. Arakaki: We're not narrowing the flow. What we're doing is we're taking one existing ditch that parallels Hoonani Street and we're going to harden that surface, but when you say narrowing is that we're not increasing the height of the ditch. It's going to be still be the same level but we're going to create a deep dry well to capture more water but the elevations surrounding the area will still

remain the same. So when you say narrowing I don't think that's correct.

Mr. Hedani: Commissioner Starr.

Mr. Starr: You know, I'm actually looking at an aerial photo from – at one time that was maybe a hundred yards wide. And now it's going to be from a 100 yards wide it's going to be, what maybe 10 yard wide?

Mr. Arakaki: If it's 10 yards wide you know, we're not changing the elevations in the surrounding area. We're just making it deeper. So if anything the water should capture more in that particular area but the elevations around it is still existing, we won't touch those.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I'm trying to understand the drainage report. So you're saying that predevelopment and post development is 21.5 cfs.

Mr. Arakaki: Whatever the report says. ...(inaudible)... for the onsite.

Mr. Hiranaga: Right. And you're capturing 14.8 so 6.7 continues to flow to the ocean. I'm just trying to understand this report here.

Mr. Buika: It's opposite. It's opposite Commissioner Hiranaga. It will contain 6.7 more than the runoff is. It's a benefit of 6.7.

Mr. Hiranaga: Want to look at your report?

Mr. Hedani: So Jim what you're saying basically is the existing runoff plus an additional 6.7 cubic feet per second?

Mr. Buika: Yes. What exhibit is that?

Mr. Hiranaga: Preliminary drainage soil erosion report. It says total approximate decrease of runoff due to development 21.5 minus 14.8 equals 6.7.

Mr. Arakaki: What is it is it's based on the existing conditions and then after the development is installed, is completed then we should have a decrease of runoff flowing downstream and it's based on you know the existing ground in that area is not grassed, it's all exposed. So you know, there's tendency for more runoff to flow downstream. Whereas if you were to put ponds whether you retain water you get additional grassing in that three acres and all that, then you would retain more water so that's why there's a decrease in runoff on downstream properties.

Mr. Hiranaga: So what does the 21.5 represent?

Mr. Arakaki: 21.5 is actually the pre conditions, the predevelopment conditions.

Mr. Hiranaga: And what is the 14.8?

Mr. Arakaki: After development.

Mr. Hiranaga: So what does 6.7 telling?

Mr. Arakaki: That there would be less runoff flowing downstream because of the –

Mr. Hiranaga: But right now undeveloped 21.5 flows downstream?

Mr. Arakaki: That's right.

Mr. Hiranaga: So after development only 6.7 will –

Mr. Arakaki: No, 14.8 is post development. 14.8 is after development, but there's a decrease of 6.7 cfs.

Mr. Hiranaga: So 14.8 will flow into the ocean instead of 21.5?

Mr. Arakaki: That's right. Well actually it will flow into the detention ponds.

Mr. Hedani: It will go into your detention basin.

Mr. Arakaki: Yeah, would go into the detention basin that's right.

Mr. Hiranaga: So nothing leaves the project?

Mr. Arakaki: That's right.

Mr. Hiranaga: Onsite runoff nothing leaves the project.

Mr. Arakaki: That's right.

Mr. Hiranaga: So you're providing additional capacity?

Mr. Arakaki: That's right.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin; I'd like to ask the planner, if you'd look at Exhibit 29, 29 is the Kihei Community Association letter and it has four concerns. I want to focus on the forth one. They're asking, that you consider putting the affordable lot contribution into providing several lots to a qualified nonprofit rather than reducing the price on 40% of the lots. This will spur the development of affordable lots. The response from the consultant on two pages later says, applicant has no objection to selling the affordable lots to a qualified nonprofit agencies at a price consistent with and in compliance with Chapter 2.96 Residential Workforce Policy, blah, blah, blah. Those sound like different words and

it sounds like they have different meanings but I can't figure out what the difference is. Would you explain it to me? It sounds like they're not saying yes, we will to the Kihei Community Association. It sounds like they're saying well, we'll do this.

Mr. Hedani: Mr. Bagoyo.

Mr. Buika: They are saying the same thing but I'll Vince Bagoyo, consultant, answer the question.

Mr. Vince Bagoyo: My name is Vince Bagoyo. Thank you Commissioner. Good afternoon. Yes, I actually attended the KCA meeting and they were very pleased with our presentation and what we have discussed is that the applicant will not have any objections to selling the affordable units to a nonprofit agency but it must be approved by the Department of Human Concerns and consistent with the price that is within the affordable housing ordinance.

Mr. Mardfin: Is that different from what the community association asked aside from the fact that you're making sure that's ..(inaudible)... but are you putting the contribution to providing several lots to the qualified nonprofit rather than reducing the price on 40% of the lots?

Mr. Bagoyo: We're saying the same thing.

Mr. Mardfin: You are?

Mr. Bagoyo: Yeah.

Mr. Mardfin: Okay, I'll take your word for it. I don't understand it but I'll take your word for it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'm still confused about this drainage report because we have a statement,  $Q = 21.5$  cfs existing runoff before development and then we have  $Q = 14.8$  cfs runoff due to development. So to my – in my book that means that you add those two together. You have the predevelopment runoff and then you have the new runoff that comes from the new hardscape and new pervious surfaces such as roofs. So what you're doing is you're subtracting those two but it should be – you should be adding them. So instead you should end up with 21.5 and 14.8 which would give you 36.3 of post development runoff and I don't see any mention of how much of that 36.3 is capable of being retained for how long in the basin.

Mr. Arakaki: Wayne Arakaki, engineer. You know given the original area you know where there is no improvements, again we're looking at a property that's virtually without any vegetation. It's just dirt and gravel. So when there's heavy runoff there's no retention on the property everything just flows. So that's why I'm saying –

Mr. Starr: And there's no infiltration either?

Mr. Arakaki: Well, there may be some percolation but the percolation is minimal because of the hard surface of the dirt. It's not like it's retained by grass or foliage or even a pond. There's just a

I guess a dirt swale or ditch that goes through the property. Now represents that 21.5 cfs of water. Now can you imagine if you were to retain the water on the property and when I say retain the water I'm talking about a detention pond, grass growing, trees growing, flatter areas where they can pocket the water. So that would decrease the runoff that's coming down. That's when it's final that 14 something cfs that's after development. Now if you subtract the original from the developed condition there is a decrease of runoff. That's what I'm saying in my report. Now all of that runoff is being directed to the detention pond for a size of this type of subdivision we are constructing a one and a half acre detention pond which is really oversized. So that's why I'm saying that the runoff on site will be absorbed on this particular drywell or detention pond but also it's going to absorb some of the offsite water that's coming down to the property. So that's why runoff on the lower properties or even the adjoining properties will be lessened. So this development has a positive reaction or effect on runoff in this area.

Mr. Starr: Okay, so -

Mr. Hedani: Wayne, I personally think what you're doing is good or what the project is doing is good because if it holds the sediments that are in the runoff that's coming from offsite areas longer so that you don't have that sedimentation running off into the ocean is that correct?

Mr. Arakaki: That's right.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So what is the approximate retention capacity of your retention basin that you're proposing?

Mr. Arakaki: 310,000 cubic feet of water. And this particular detention pond we're going to be installing a rocky subsurface so that way it will increase the percolation into the ground. So that will be another consideration that will be, also be noted on the drainage report to the county. We will take percolation into consideration also.

Mr. Hedani: Wayne did you solve the problem of all of the water coming off of Haleakala?  
Commissioner Hiranaga.

Mr. Hiranaga: One of my concerns about this large retention basin is the future maintenance to remove sediment as it accumulates and you're trying to do a fairly affordable project which means that the buyers may have limited resources to fund the periodic maintenance that's required. So I'm just wondering what assurances do we have that the subdivision or the association won't allow the basin to fill up and deteriorate so that when in fact a major storm comes in it can no longer perform as it was designed.

Mr. Arakaki: Well, I think that's a business thing but I can tell you that on previous detention ponds that I worked in some of the association have selling their top soil that they get from the detention ponds.

Mr. Hiranaga: Maybe Vince can answer my question.

Mr. Bagoyo: Yeah Commissioner Hiranaga one of the requirements in addition to the onsite improvements we are also required to maintain and improve the existing drainage within the Hoonani Street and I think as noted by Commissioner Starr, you know, one of the concerns currently the reason that you have ongoing flooding when there's rain coming down is because that Hoonani drainage not currently being maintained.

With respect to the cost of maintenance, it will be part of our CC&Rs that the homeowners will have to make it as part of their maintenance fee. I think one of the things that I discussed with the owner is to perhaps the affordable housing component and the market component you know will have some kind of a sliding scale that lessen the financial burden. So that's something that we need to look at.

Mr. Hiranaga: My concern is if the association becomes defunct and they stop maintaining it, it becomes a huge liability. So I feel that some type of assurance has to be made that the association does not become defunct because you know in hard times you get these bills from the association pay "x" amount a year and nobody likes to pay those.

Mr. Bagoyo: Yes, I realize that because I also at one time was part of an association here in Wailuku and the options, it's a legal options that the homeowners will have to take. As you know, one is a very hard option which is foreclosure but you don't want to take that option. But I think the initial owner will have to, for example, I think the applicant will own until it's sold, he will have to maintain the drainage. But once everything is sold then it's going to be the responsibility of the homeowners like any other homeowners association.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm wondering if the department has any concerns since this project is being – it's proposed in a flood zone that the health and safety of people downstream be protected more than if it was not built in a flood zone because the retention basin only works if it's been dredged out periodically to remove the accumulating sediment.

Mr. Hedani: Jim, is the developer willing to accept the position of maintenance of the detention basin going forward into the future in terms of rights to the top soil that accumulate in there?

Mr. Buika: Everything except for the last sentence. I didn't understand what you were saying about the –

Mr. Hedani: I'm saying that is he interested in reassuring the homeowners or backstopping the homeowners in terms of maintaining the detention basin through selling the top soil inside of the detention basin from time to time?

Mr. Buika: I'll have the owner's developer answer that question if you don't mind. Mr. Roderick Fong.

Mr. Hedani: Mr. Fong.



Mr. Roderick Fong: My name is Roderick Fong part of the partnership with Waiohuli Partners. Thank you Mr. Commissioner. We will because probably own the remaining part of the property I believe we're going to be part of the partnership for a long time and with that, I believe we should at least share in a partial percentage, maybe 50% because it looks that way, but I don't know all the legal situations we're doing on CC&Rs and having part responsibility, but you know, as someone who lived here my whole life and we will live here the rest of my life we probably be responsible for this property for a long time and we try to assure them that we will be there because we're a construction company too we'll have the equipment to take care and maintain that reservoir. Thank you.

Mr. Hedani: Any other questions for the applicant? Did that address your concern Commissioner Hiranaga or you wanted a comment from the department?

Mr. Hiranaga: I'm not sure if it addressed by concern. I'm just wondering if the department has a higher concern since it is a flood zone versus a project that's not in a flood zone that this drainage system does not fail in the future be it 40 years from now when the developers are all long and gone and everybody goes oh what happened there.

Mr. Hedani: Jim.

Mr. Buika: I'd like to answer that Commissioner Hiranaga. The FEMA flood study shows that in a 100-year storm not a 50-year storm but a 100-year storm there's potential for one foot to about two and a half feet of running water cross that property right now from the study. The homes will be elevated on concrete piers a minimum the applicant has agreed to raise the homes plus two feet above the 100-year flood elevation. So every one hundred years there potentially could be water running two feet below the base flood elevation of those homes there. So potentially some of the homes will be three to four and a half feet elevated on piers so that the department does feel comfortable that life safety will be minimized. Obviously wherever there's a flood there is a risk to life but it will be minimized and especially with the alternative site design with two additional exit routes, evacuation routes out to Namauu Street which will empty out onto the north-south collector road mauka of the project out of the flood plane we feel confident that the homeowners will be well protected.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm more concerned about the people downstream not the people that are in the project to be proposed. If the basin is not maintained properly it will not function and all that water's going to go downstream.

Mr. Buika: True but we have a commitment from the owners and we put it into the CC&Rs that the retention basin will be maintained and the drainage channel will be the responsibility of the homeowner's association. That's all we can do. I mean, we cannot predict the individual actions of individual homeowners into the future.

Mr. Hiranaga: Or maybe a bond? Has that been thought of the developer putting up a bond so that if the homeowner's association is defunct and fails to perform their duties that we just don't look

around with our hands in our pocket? The only concern is because it is a flood zone. If it was outside of a Zone C then it wouldn't be concern but this is a sensitive area they're trying to develop.

Mr. Buika: No doubt about it.

Mr. Hiranaga: So I think there's a higher standard.

Mr. Buika: Sure and there is tremendous mitigation protection built in and if you want to address the bond I don't know, I personally don't know what the implications of the bond are.

Mr. Hedani: Commissioner Guard.

Mr. Guard: It sounded like isn't the situation better than it is than if it was left vacant. So I would think the drainage system even with grass and trees is going to be better than it is currently.

Mr. Hedani: I think what Commissioner Hiranaga is addressing is a possibility of a breach from the retention basin that would send 300,000 gallons downstream all at once.

Mr. Hiranaga: ...(inaudible - not speaking into the microphone)...

Mr. Guard: It would go back to how it was right now.

Mr. Hiranaga: ...(inaudible - not speaking into the microphone)...

Mr. Guard: But I thought they said it was actually going down anyway because of the grass and the trees on site.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I had some concerns before even with the assumption that this basin would be maintained. I have greater doubts now since it seems like it's not going to get turned over to the county, it's just going to kind of be in limbo. Recently, well, a few years ago in Lahaina the county got hit with I believe it's a million and a half dollar lawsuit that related to the maintenance of a drainage basin that left as an orphan entity like this. For me to feel a little more comfortable I was going to suggest a bond but Commissioner Hiranaga beat me to it that perhaps a \$2 million bond that would be there to help make sure that this gets maintained would go a long way toward making me feel a little more comfortable. So I'd like to know if the applicant would be willing to –

Mr. Hedani: I think Vince has already retained the rights to all the top soil in the future.

Mr. Bagoyo: I think the concerns for the bond is that it becomes perpetual. If there is a sunset perhaps the applicant may be able to work something out with the Planning Department. But normally for associations, normally the developer or the owner, in this case it's Maui Waiohuli they normally put a what we call a corpus which is a fund for the initial maintenance of that project so that they have something to use and perhaps that's something that we could work something out with the Planning Department and come up with some you know, fairly reasonable amount that will

not be a burden to the potential buyer. And so, you know, I think the idea is to kind of work something out and you know, the owner they're not a typical developer they're an old kamaaina family. They're going to be here for a long time. They've been here for generations.

Mr. Hedani: Commissioner Starr.

Mr. Starr: You know, I do think we need to find a permanent solution. The only entity that we know is going to be here is the County of Maui and so I would want to see a bond that stays in place until the applicant is maybe able to work something out with the county - where the county is willing to take over the maintenance of it and I have no idea what that would take but that's the only ongoing situation that I would feel comfortable with say a \$2 million bond that remains in place until and unless the county agrees to take over responsibility and maintenance for that.

Mr. Bagoyo: Well, the concerns that I have there Commissioner Starr is that in fact the county is staying away from, they're turning it over to us the county owned drainage for us to maintain. I think there's some fairness that we need to also keep in mind and also the Hoonani existing drainage is a county owned drainage and so they've asked us to maintain that and I think the applicant was generous enough to say yes we will through the homeowners association. So I think for a bond that it's going to - doesn't have any sunset dates it becomes some problems for -

Mr. Hedani: Well the cost of the bond would be something you would pass onto the home purchasers initially.

Mr. Bagoyo: Continuously pretty much.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I find Commissioner Starr's and Commissioner Hiranaga's suggestion about a bond intriguing but right now we're flying in the dark. We don't know how much would be needed. I mean \$2 million probably was picked out of thin air and we don't know what the cost of that might be. I mean, it might be you know a tenth of a cent on the dollar it might be really cheap. We don't have the information as to how much of a bond would be necessary and what the cost of a bond would be for you know, this ...(inaudible)... money so a dollar ten years in the future is worth less than a dollar today. So might not be all that expensive, on the other hand it might be and without knowing it's hard for me to. I mean, I understand their concern, I think they've got a good concern and potentially a good solution but we just don't have enough information in this room right now. We'd need a banker or somebody or an insurance company that would tell us what's going on.

Mr. Bagoyo: Normally the bonds is normally 10% of the total cost and that's why you have to pay. So you know assuming that the cost is just through a number, \$200,000 to maintain, you know 10% of that is going to be your bond cost. That's what you normally pay. If you can get a bond for that.

Mr. Mardfin: Is that 10% a year?

Mr. Bagoyo: Yeah. It's the total cost.

Mr. Hedani: Okay, any other questions for the applicant? What's your pleasure commissioners? You want to open it for additional questions? Public hearing?

Mr. Mardfin: Just a statement if it's 10% a year I don't see how it works because the year that they can't maintain the system is the year they stop paying for the bond so there's a real problem here down the road. It's basically – I don't understand. I understand the issues I just don't know what the solutions are because don't have enough financial information in this room right now.

Mr. Hedani: Let me ask a practical question to the applicant. You have a drainage basin, retention basin which is a big hole in the ground and maintenance of it would require excavating whatever fill ends up accreting in the retention basin. As a construction company do you have – as a construction company do you have an estimate as to what it would cost to clean the basin out in today's dollars? I mean are we talking \$2 million or a \$100 thousand or \$50 thousand?

Mr. Fong: Oh to clean it up it probably take three days with about three guys you know, and just maybe the hauling which like you've mentioned before it would probably be something that you can sell.

Mr. Hedani: So estimate of cost would be just a ballpark.

Mr. Fong: About \$10 thousand.

Mr. Hedani: \$10 thousand.

Mr. Fong: To get it cleaned up.

Mr. Hedani: And you could probably sell it for more than \$10 thousand?

Mr. Fong: Oh yeah. Well, I don't know if you can sell it but I think your net cost would be \$10 and whether you give away the top soil or at least get it for the trucking costs you know.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah but the numbers we need to be dealing with are the numbers that are generated if it's not maintained and if it causes flooding and there's loss of life or say South Kihei Road gets wiped out because of it or even you know like in Lahaina where two or three houses got damaged and those are the numbers which are certainly you know, above a million dollars.

Mr. Fong: I'm sorry, Roderick Fong. Would you consider setting a time on that like every year that there's a some type of maintenance that goes into it?

Mr. Starr: To me the problem is in the long run because you know, like the one in Lahaina was 15 years after it was constructed by someone and wasn't maintained – you know, maybe they maintained it for 10 years and then 5 years they didn't and there were appliances in there that rushed in and blocked the culvert and the next thing you know it's damaging homes. So I think it has to be either perpetual or there has to be a mechanism for the county. I mean there's a reason

why the county is saying that.

Mr. Fong: I mean, we would be – if something happens we would all be involved I guess whoever's left around that's responsible.

Mr. Hedani: I think if that happened the county would automatically be involved because they're responsible for the things under South Kihei Road and anything that's makai of South Kihei Road as well. Commissioner Mardfin.

Mr. Mardfin: James, under the recommendations you have standard condition no. 7, with a \$1 million policy. Does that cover this sort of thing?

Mr. Hedani: Mr. Buika.

Mr. Buika: Yeah, I'm looking at it. Well, this is a \$1 million bond naming the county as insured. Insuring and defending the applicant and the county against any and all claims for property damage, personal injury, death arising. I don't think this has anything to do with cleaning out the basin.

Mr. Hedani: Okay, any other questions for the applicant? Commissioner Starr.

Mr. Buika: James you have any comments, I defer to you, our Corporation Counsel.

Mr. Giroux: Yeah I think I mean if there was damage because of and they could relate it back to the permit that that's the purpose of this, you know, if there was you know third party damage we would be defended and indemnified and insured up to a million.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, two things are rapidly becoming apparent to me. One is that I don't think we can resolve this today unfortunately and the second is that I have a meeting going on in my house and I need to get over there. I would be – I'd like to move to defer this item.

Mr. Hedani: Is there a second?

Mr. Mardfin: Second.

Mr. Hedani: Seconded by Commissioner Mardfin. Discussion? Personally I would prefer not to defer it because they have been pending since May 12<sup>th</sup> and all the issues that the department raised at the request for deferral had been answered to the department's satisfaction and you know, if you have to go, I would say go. Commissioner Mardfin.

Mr. Mardfin: Speaking to the motion, I prefer not to defer it too but Commissioner Hiranaga and Commissioner Starr have raised some serious issues and I don't think we have the information at this time to resolve them and I would prefer to solve it but I don't think we have the knowledge right now.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Well, I'd be voting against the deferral because I've missed enough meetings so I figured I better stay around. This is was James, I mean, I'm kind of perplexed on the basin theory that if it's a basin now filling up with Kula silt but if you actually make the hole deeper and it can hold more silt that you're now going to take on that liability for when it's from Kula on down. So I just don't see how if even at the worst case that basin fills up it's not gonna then go above and become a dam it's going to go back to how it was theoretically and again, it's from people mauka of the highway that have the better dirt I would think, silt.

Mr. Hedani: So the question for James is?

Mr. Guard: Is there really that responsibility of a single property owner to keep dredging out other people's dirt?

Mr. Giroux: I think I was addressing the fact that the county with the existing condition would be you know, indemnified up to and insured up to a million with the condition as it is now. As far as their liability, I mean, that's for the people who get injured. They're going to have to prove that in the courts that they are indeed liable. I mean liability is – when you get sued there's liability and damages both of those need to be proved in a court of law, but it's included in the complaint. The complaint's filed, hey you know you're responsible and this is how much damages I want. Both of those need to be proved in court or settled upon.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Under the project specific requirements page 11, item no. 42, it reads that all private infrastructure included but not limited to roads, utilities, drainage systems and so forth shall be regularly maintained by the homeowners association. Evidence of compliance with this condition shall be filed with the Maui Planning Department within 30 days of the issuance of filed subdivision approval. That's satisfactory.

Mr. Starr excused himself at 5:25 p.m.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: My concern is not immediate it is say 40 years from now. And the association is defunct, they no longer maintaining it and it's been neglected for 20 years and all of a sudden you have this 100-year storm and the basin has been you know, neglected and all of this debris is going to go downstream. Well, the county's indemnified because the developer has this \$1 million insurance policy so the people that have been injured are going to sue the homeowner's association. Is that what we really want? Don't we want assurances that the basin will be maintained for – in eternity because they've created this situation by developing this lot. They've created a remedy which is the basin but there's no assurance that that basin will be maintained for eternity. Everybody's going to be pointing fingers at each other if it fails. My concern is because this is supposed to be – is being created as an affordable project for lower income people and you know, one of things when you're strapped for money is you stop paying your association dues. So

that's my concern. You know you've created this remedy but there's no assurance it's going to be maintained and the people who are damaged are downstream not the project, people downstream.

Mr. Hedani: Motion on the floor is motion to defer. Any further discussion on that? All those in favor signify by saying aye. Opposed nay. Those in favor of deferral please raise your hand, one two, three. Oppose same sign, one, two, three, four, five.

**It was moved by Mr. Starr, seconded by Mr. Mardfin, and**

**The Motion to Defer the Matter was Lost.**

**(Assenting - W. Mardfin, K. Hiranaga, L. Sablas)**

**(Dissenting - B. U'u, J. Guard, D. Domingo, W. Shibuya, W. Hedani)**

**(Excused - J. Starr)**

Mr. Hedani: Motion is lost. Commissioner U'u.

Mr. U'u: Comment. I would hate to maintain anything for eternity. That's a very long time. I don't know how you put the burden on the individual who's capturing runoff from adjacent properties. And when we're talking about building for affordable homes but yet they cannot pay the dues and that makes it wrong where they you know they strapped for cash, so we dammed if you do, dammed if you don't kind of deal. That's I cannot hold anybody responsible for maintaining something for eternity when right now it's going to improve something. So I'm not – I'm okay if we hold every single project like that whether they got money or not to eternity, I mean can we make that a standard condition, I don't think so. So I wouldn't apply it to this project.

Mr. Hedani: Jim, is there a way to require a bond to be paid by the homeowners on an annual basis?

Mr. Buika: I have no idea. I can't answer that question.

Mr. Hedani: Does the applicant have a comment on that?

Mr. Fong: Roderick Fong, Chairman. First of all, I'm listening to this situation about a defunct homeowner's association. I would think as long as most of the homeowner's there might be individual foreclosures or whatever but most of the homes are there being maintained, they're using the property how – I don't know the situations of the defunct association because it would run with the land as soon as they buy there would be association with the land and it would continue forever. So do you know the situation of how it becomes defunct?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Prime example. Kahului Town Association, I think they're pretty defunct. It's almost every house in Kahului is supposed to pay \$2 a year to KTA. I'm wondering how many people do that.

Mr. Hedani: It's because the \$2 was too low. Commissioner Shibuya.

Mr. Shibuya: This question is for legal counsel. In the state law I understand that if water comes into your property you are responsible for handling that water before it goes into your neighbor's yard somehow you have to manage it. And if it causes problems in your neighbor's yard then you suffer the consequences. Is that the case James? I'm trying to make an analogy from that to this?

Mr. Giroux: I think the law is if you redirect it you can cause any harm.

Mr. Shibuya: You cannot cause?

Mr. Giroux: Yes. So the issue is of redirecting.

Mr. Shibuya: Right, redirecting to mitigate or solve the problem right? If you're taking the steps and in this particular case you've actually – the developer has taken steps to mitigate it and redirect it and try to minimize the effect so you have done what you can do engineering wise and everything so I don't see a problem right now. I see the problem in terms of maintenance but we've levied it upon the homeowner's association under these conditions.

Mr. Hedani: Commissioner U'u.

Mr. U'u: You know it's late, running out of snacks, the sushi part –

Mr. Fong: Mr. Hedani, I didn't answer your question I'm sorry, but it had to do with the homeowners continue on insurance on that – what was?

Mr. Hedani: The question was whether or not you could pass onto the homeowners the obligation to maintain a bond in perpetuity to maintain the reservoir or to maintain the retention basin? So that as part of their dues or whatever, chip in on a bond that they would buy to cover the cost of maintaining a detention basin.

Mr. Fong: Yeah, again, like it said, the experts, I would have to probably talk, I would think that we could because like I said when we were talking about \$10,000 to maintain in a year and then we can I think that's affordable it's just – if I call up my insurance agent right now and talk to him about it whether it would be a situation where that's –

Mr. Hedani: I know you can do it now for free because you can move the construction stuff yourself.

Mr. Fong: Yeah, I know.

Mr. Hedani: Commissioner U'u.

Mr. U'u: The question was brought up by Corp. Counsel if he's redirecting the flow and I think the answer is no. So I think that's moot.

Mr. Hedani: Commissioner Hiranaga.

Mr. U'u: I'd like to make a motion to approve after public testimony.



Mr. Hiranaga: The runoff generated from the development also enters the retention basin is that correct?

Mr. Fong: Correct.

Mr. Hiranaga: So it's not only downstream flow going into the retention basin.

Mr. Fong: Correct.

Mr. Hiranaga: It is the additional runoff created by the development. So there is redirection of flow into the detention basin from the project.

Mr. Hedani: Okay, can we go to public hearing? I think we've beat this one to death already. Are there any members of the public that would like to offer testimony on this item? Seeing none, public testimony is closed. Commissioner U'u.

Mr. U'u: Motion to approve.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Mr. Shibuya. Discussion? Ready for the question? All those in favor signify by saying aye. Opposed nay. One nay.

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

**VOTED: To Approve the Special Management Area Use Permit with Conditions.  
(Assenting - B. U'u, W. Shibuya, J. Guard, W. Mardfin, D. Domingo,  
L. Sablas)  
(Dissenting - K. Hiranaga)  
(Excused - J. Starr)**

Mr. Hedani: Motion is carried. Thank you.

Mr. Buika: Thank you.

Mr. Hedani: It's 5:30, do you want to cover the rest of the agenda or defer?

Mr. U'u: Motion to defer.

Mr. Hedani: Motion to defer by Commissioner U'u.

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Objected to Mr. Yoshida. You have 30 seconds

Clayton.

Mr. Yoshida: If you could defer the items except for F-2 designation to the Hana Advisory Committee of Council Resolution 09-60. Our Deputy Director is prepared to address you on Item 3 on the HCPO Conference.

**F. DIRECTOR'S REPORT**

**2. Designation of the Hana Advisory Committee to the Maui Planning Commission to provide comments on the following proposed legislation:**

**MR. JEFFREY S. HUNT, Planning Director transmitting Council Resolution No. 09-60 containing:**

- a. **A draft bill entitled " A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.08 MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS".**

**The purpose of the draft bill is to permit affordable accessory dwelling units on lots of 6,000 square feet or more in residential districts.**

- b. **A draft bill entitled "A BILL FOR AND ORDINANCE AMENDING CHAPTER 19.35 RELATING TO ACCESSORY DWELLINGS."**  
**The purposes of the draft bill are to: (1) permit affordable accessory dwelling units on lots of 6,000-7,499 square feet; (ii) increase the maximum gross square footage of accessory dwelling units; and (iii) require that accessory dwelling units built on lots of 6,000-7,499 square feet remain affordable." (RFC 2009/0215) (J. Alueta)**

Mr. Hedani: Is there a motion to defer to the Hana Advisory Committee?

Mr. Mardfin: So move.

Mr. Hedani: Motion by Commissioner Mardfin. Is there a second? Seconded by Commissioner Shibuya. All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Ask the Hana Advisory Committee to Provide Comments on the Proposed Bills.**  
**(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, B. U'u, J. Guard, D. Domingo, L. Sablas)**  
**(Excused - J. Starr)**

Mr. Hedani: Carried. Thank you. HCPO.

**F. DIRECTOR'S REPORT**

**3. 2009 Hawaii Congress of Planning Officials (HCPO) Conference - September 23-25, 2009, Sheraton Waikiki Hotel**

Mr. Yoshida: Yes, we have our Deputy Director here Kathleen Ross Aoki.

Mr. Hedani: Kathleen we're disappointed that you didn't join us all day.

Ms. Aoki: I was listening to you from my office so I was here in spirit.

Mr. Hedani: We don't bite we promise.

Ms. Aoki: I promise I was listening to you upstairs. Yeah, I was asked I guess you folks put this on the agenda questions have come up regarding I guess the difference this year on who the department is sending.

Mr. Hedani: 30 seconds Kathleen.

Ms. Aoki: The bottom line is our budget was cut and we only have funds to send two people each of the planning commissions and we are not sending any of the chairs or vice-chairs of any of the other commissions which we used to do. So if there's any questions, I'm happy to answer them.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: We gave the director several suggestions to discuss with his staff two weeks ago and you don't have answers for those suggestions?

Ms. Aoki: If the suggestions were whether or not we could pay for just the registration fees is that one of the suggestions?

Mr. Hiranaga: No, one was we would pay for our own air travel.

Ms. Aoki: Okay, the answer's no.

Mr. Hiranaga: Why?

Ms. Aoki: We don't have the budget.

Mr. Hiranaga: But you have the budget for the two that are going.

Ms. Aoki: Right.

Mr. Hiranaga: So if they gave us that expenditure for air travel, couldn't you possibly send more

commissioners? We're not saying all commissioners, more commissioners.

Mr. Hedani: What he's saying is that the equivalent amount of money spread amongst more commissioners to allow them to attend if they pick up their own air travel.

Ms. Aoki: Okay, the air travel is about \$200 –

Mr. Hedani: As long as it doesn't exceed the equivalent of sending two commissioners full expense covered for –

Ms. Aoki: I think the thing is what becomes difficult is the County Charter which requires us to pay per diem and expenses for board commission. It becomes a complication. I can just tell you that that I've talked to the Finance Director about it and to start saying well, we won't pay for this but we'll pay for this and getting agreements and having the situation where commissioners come back and say well now I do want to get compensated for something. I actually haven't looked into that. I can tell you air fare is probably about \$180 - \$200 round trip so that's one. That doesn't even cover the cost of one registration.

Mr. Hiranaga: I had hoped that the Director would have spent the past two weeks looking at this in more detail that what you are offering us.

Ms. Aoki: I can tell you Kent that I have been spending hours on this, hours, ridiculous amount of hours on HCPO and who we're going to send, who we're not going to send, the money we have, the money we don't have.

Mr. Hiranaga: The other question I have why are you sending the chair and co-chair of Lanai and Molokai. When you look at the population represented by those boards in comparison to Maui why don't you consider sending only the chairs from Lanai and Molokai and sending more people from Maui because the population that we represent is vastly greater than Molokai and Lanai.

Ms. Aoki: I can appreciate your question but I'm not going to dismiss the value of the chair and vice-chair of the other planning commissions.

Mr. Hiranaga: I didn't say the chair, I just said the –

Ms. Aoki: The vice chair.

Mr. Hiranaga: So that's not something you won't consider?

Ms. Aoki: No. No.

Mr. Hedani: Bruce, just for your information I offered that they can pull the lottery for the chair's position because I'm not going since I'm not going to serve beyond April of next year. The original offer was for the chair and vice-chair to go HCPO and everybody else would be excluded.

Mr. Mardfin: What was the –

Mr. Hedani: They would have to arm wrestle to figure out who gets that seat.

Mr. Mardfin: What was the response to your suggestion that you'd waive your ability to go?

Mr. Hedani: It was accepted.

Mr. Mardfin: Was accepted, oh.

Ms. Aoki: So it will be up to this commission to decide how they're going to figure who's going to go. You guys can figure that out whether it's pull straws or pull numbers.

Mr. Hedani: Okay, having beaten that to death we are going to go ahead and defer all of the rest of the items on the agenda to –

Mr. Yoshida: Mr. Chair, I guess in planning the August 11<sup>th</sup> agenda I guess for –

Mr. Hedani: I know the Wailea Fire Station has been waiting for like three months.

#### **D. UNFINISHED BUSINESS**

- 3. COUNTY OF MAUI, OFFICE OF THE MAYOR, requesting a Special Management Area Use Permit for the proposed South Maui Emergency Ambulance Station consisting of a single-story, 1,500 square foot building for the South Maui Emergency Ambulance Station and related improvements at 300 Kilohana Drive, TMK: 3-9-038: por. of 026, Kihei, Island of Maui. (SM1 2006/0024) (L. Callentine) (Public hearing conducted on June 9, 2009.)**

#### **F. DIRECTOR'S REPORT**

- 1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following request:**

**MS. PAM ENGLISH of MAUI LAND & PINEAPPLE COMPANY, INC. requesting a 2-year time on the Special Management Area Use Permit and Phase II Project District Approval to initiate construction of the Kapalua Mauka First Phase including the 51 lot Mahana Estates Subdivision, redesigned golf course, a clubhouse, a driving range, a 22 unit Mauka Village project as well as on-site and off-site utility improvements at TMK: 4-2-001: 042 (por.), 4-3-001: 006 (portion), and 4-3-001: 008 (portion) pertains to PH2 2006/0004 and TMK: 4-2-004: 036 (portion) and 4-2-004: 037 (portion) pertains to SM1 2006/0013, Kapalua, Lahaina, Island of Maui. (G. Flammer)**

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

Mr. Hedani: The next person to testify is Elle Cochran.

Ms. Elle Cochran: Good morning, Commissioners. My name's Elle Cochran, and I'm here to testify on the two-year time extension on the Maui Land and Pine SMA Use Permit of their phase two project. Initiation of this construction of Kapalua Mauka's first phase to move the current construction initiation from November 30<sup>th</sup> 2009 to November 30<sup>th</sup> 2011, just kinda curious what happens if the State isn't met. And their reason is current economic recession and slow down of housing market. I hear every day how our – you know, our local people are looking for housing, but I guess that's for the affordable, and this particular project and first phase, 20% of the 51 single homes will be for full-time residents. The other 80% is slated to be second homes or vacation-type homes for mainly the visitors. And the request also states that MLP has not initiated construction but has made a lot of progress on the conditions that are – many conditions imposed on this project. And I've been through those. There's the latest annual report of the LUC Docket A03-741. There's ten particular conditions there that have not been met. And a lot of them are quite substantial and important ones I think should have been done or should be working on. I'll just breeze through them really quickly.

Petitioner shall contribute to the development, funding, and/or construction of public school facilities. The agreement was dated 2003. It's quite a few years back. Unidentified finds, petitioner shall stop work in the immediate vicinity of sensitive areas. OHA questioned if all archaeological sites have been discovered. Air quality monitoring, no action has been taken there. Notification of potential aircrafts to perspective buyers, notification of potential nuisances such as odor, noise, dust pollutions. You know, they have not notified any perspective buyers.

Mr. Hedani: Two minutes. Elle, you have 60 seconds to wrap up.

Ms. Cochran: Access rights, water conservation, energy measures. And I'm just – you know, this project was said it was gonna bring kinda a lot of money to the economy, wages, and taxes of the County, and short and long term jobs, but over six years later, today, they cannot even uphold these promises, you know, but yet, we have so many projects on the burner that want to get approvals and pushed forward. So it's just – I'm just – you know, and I just wanna recall last week's – ask of the Company that they wanted to remove sensitive lands from this particular project. I strongly suggest not doing that. As of yet, we've got a lot of impacts on our watershed, on our oceans, our marine life due to this company's lack of, you know, sensitivity. So I just wanna make sure you folks keep that in mind. It's very important. Mahalo.

Mr. Hedani: Thank you very much.

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

Mr. Yoshida: D-3 the South Maui Ambulance and F-1 on the Kapalua Mauka SMA if that can be deferred to the August 11<sup>th</sup> meeting and we put it on at 1:00 p.m. so people can plan their lives. Wherever we are in the agenda at the 1:00 p.m. we're going to consider the South Maui Ambulance SMA and the Kapalua Mauka time extension request.

Mr. Hedani: Is there a motion to that effect? Commissioner Shibuya.

Mr. Shibuya: So move.

Mr. Hedani: Second?

Mr. U'u: Second.

Mr. Hedani: Seconded by Commissioner U'u. All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Defer Items D-3 and F-1 to the August 11, 2009 Agenda at 1:00 p.m.  
(Assenting - W. Shibuya, B. U'u, K. Hiranaga, J. Guard, W. Mardfin,  
D. Domingo, L. Sablas)  
(Excused - J. Starr)**

Mr. Hedani: Carried. Thank you. Okay, Commissioner Shibuya.

Mr. Shibuya: We're having a community outreach in Kula, I mean Upcountry and this is on September 2<sup>nd</sup> I believe and just wanted to feel if you are interested in having some kind of tour in the morning something very similar to what we had in Hana to educate the members on concerns that may come up like Haliimaile, Kamole Weir, ...(inaudible)... Makawao Town, St. Joseph Church and Pukalani Square. That sort of thing. Go up to the agricultural park that sort of thing. If you're interested I have some interested people who would like to help me work it out.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd just like to say I think that's a wonderful idea and I hope we can work it out.

Mr. Hedani: Is everybody up for that? Commissioner U'u.

Mr. U'u: I would care not to comment now because I cannot guarantee you my schedule on that day. It's hard enough making the meetings I'll be honest. But if time allotted that I can get away I would.

Mr. Hedani: So it would be like a 10:00 a.m. thing again?

Mr. Shibuya: Probably because of the limited time and the distance between the places. Probably 8:30 - 9:00 a.m. and then we come back by noon.

Mr. U'u: Probably not for me.

Ms. Domingo: What day is that? Wednesday.

Mr. Hiranaga: I don't believe I can commit to attending it.

Mr. U'u: I'll commit to bringing a snack.

Mr. Hedani: Lori what's your feeling?

Ms. Sablas: As much as I'd like to I kind of am familiar with some of the projects having served before in CRC and if we do start as Commissioner Shibuya suggested at 8:30 a.m., our meetings usually run past 8:00 p.m. It's going to be long day. I'd like us to be fresh in my minds when we discuss really important issues because it's gonna just be a long day.

Mr. Hedani: Commissioner Domingo.

Ms. Domingo: I think it's going to be a long meeting.

Mr. Hedani: Thank you Commissioner Shibuya, maybe we'll just pass on that. You can take Ward.

Mr. Mardfin: Perhaps Warren and I can go together. If it's two people it's not sunshine law problems.

Mr. Shibuya: Right, we can work it out whenever you come. Let me know when you're going to arrive.

Mr. Hedani: Clayton anything else?

Mr. Yoshida: I guess the last thing we'd have to report is that Robyn is leaving us after August 3<sup>rd</sup>. She'll be working for Orlando Davidson at the State Land Use Commission office. She'll be moving back to Oahu. She's originally from Oahu. And so if you see the letters from Dan Davidson, if you have any questions contact Robyn.

Mr. Hedani: Please express our appreciation for Robyn for her hard years of work with the commission. I've enjoyed working with her. With that, we're adjourned. Thank you.

**E. APPROVAL OF THE ACTION MINUTES OF THE JULY 14, 2009 MEETING**

**F. DIRECTOR'S REPORT**

**4. Planning Commission Projects/Issues**

**5. Discussion of Future Maui Planning Commission Agendas**

**a. August 11, 2009 meeting agenda items**

**6. EA/EIS Report**

**7. SMA Minor Permit Report**

**8. SMA Exemptions Report**

**9. Special Maui Planning Commission Meeting on the Maui Island Plan Review**



**- August 5, 2009, 1:30 p.m., Lahaina Civic Center, Lahaina, Island of Maui**

The remaining items were deferred due to the lateness of the hour.

**G. NEXT REGULAR MEETING DATE: August 11, 2009, 9:00 a.m.**

**H. ADJOURNMENT**

The meeting was adjourned at 5:45 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Present**

Wayne Hedani, Chairperson  
Bruce U'u, Vice Chairperson  
Donna Domingo  
John J.B. Guard IV  
Kent Hiranaga  
Ward Mardfin  
Lori Sablas  
Warren Shibuya  
Jonathan Starr (excused at 5:25 p.m.)

**Others**

Clayton Yoshida, Planning Department  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works