

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

Council Chamber

October 19, 2011

CONVENE: 1:32 p.m.

PRESENT: Councilmember Robert Carroll, Chair
Councilmember Mike White, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Donald G. Couch, Jr., Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member(arr. at 2:53 p.m.)

EXCUSED: Councilmember Elle Cochran, Member
Councilmember G. Riki Hokama, Member
Councilmember Danny A. Mateo, Member

STAFF: Kirstin Hamman, Legislative Attorney
Pauline Martins, Committee Secretary

Morris Haole, Executive Assistant to Councilmember Carroll

ADMIN.: James Giroux, Deputy Corporation Counsel, Department of the Corporation
Counsel
Michele McLean, Deputy Director, Department of Planning
Gina Flammer, Planner, Department of Planning
Clayton Yoshida, Planning Program Administrator, Current Planning
Division, Department of Planning
Danny Dias, Planner, Department of Planning
William Spence, Director, Department of Planning
David C. Goode, Director, Department of Public Works
Paul Meyer, Deputy Director, Department of Water Supply

OTHERS: Dolores Bio
Rory Frampton, Project Manager, West Maui Land Company Inc.
Erin Mukai, Munekiyo & Hiraga, Inc
Karlynn Fukuda, Munekiyo & Hiraga, Inc
Plus (16) other people

PRESS: *Akaku Maui Community Television, Inc.*

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CHAIR CARROLL: . . . (*gavel*) . . . This Land Use Committee meeting of October 19, 2011 will come to order. We have with us this morning Council members, Mike White, our Vice-Chair.

VICE CHAIR WHITE: Aloha, Chair.

CHAIR CARROLL: Our Council Vice-Chair, Joseph Pontanilla.

COUNCILMEMBER PONTANILLA: Good afternoon.

CHAIR CARROLL: Mr. Couch.

COUNCILMEMBER COUCH: Good afternoon, sir.

CHAIR CARROLL: And Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon.

CHAIR CARROLL: Excused at this time are Danny Mateo, Elle Cochran, Riki Hokama and Michael Victorino, who might be joining us later. And for our Department of Corporation Counsel we have James Giroux. For our Executive representatives we have Michele McLean and Will Spence--our Planning Director will be joining us later--Clayton Yoshida, Administrator, Department of Planning; Gina Flammer, Planner, Department of Planning; Danny Dias, Planner, Department of Planning; Paul Meyer, Director [*sic*] of Water Supply; and David Goode, Director of Public Works.

For our applicant representatives we have Roy Figueroa, Makawao Congregational, Congregation of Jehovah's Witness; Carolyn [*sic*] Fukuda, Principal, Munekiyo & Hiraga; Erwin [*sic*] Mukai, Associate, Munekiyo & Hiraga; and Rory Frampton, Frampton, Project Manager, O.W. Ranch.

The Committee Staff we have Pauline Martins and Kirstin Hamman.

We have three items on the agenda today, LU-10, District Boundary Amendment and Establishment of Zoning for the Makawao Congregation of Jehovah's Witnesses (Haiku); LU-12, Conditional Permit Amendment to Allow O.W. Ranch, LLC to Operate a Transient Vacation Rental and Conduct Special Events Within the County Agricultural District (Kula); and LU-11, Community Plan Amendment and Change in Zoning for the Proposed Heritage Hall at 297 Baldwin Avenue in Paia. We will now accept public testimony on, on all three items. Those wishing to testify should sign up at the table outside. Testimony is limited to three minutes with one additional minute if you need to conclude. Testifiers, please state your name for the record and if you are representing an organization, please let us know what organization you are representing. Ms. Hamman?

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MS. HAMMAN: Mr. Chair, the first person to testify is Delores Bio and she will be testifying on Land Use Item 11.

... **BEGIN PUBLIC TESTIMONY** ...

... *(Short pause while Ms. Bio approached the podium.)* ...

MS. BIO: It's so nice to know that I'm the first on the list. Well, Council Chairman and Council, even if you're just four, you, you all look good. I'm with Heritage Hall. I'm Delores Bio and the purpose of we being here really is to which we'll have our speaker to talk on behalf of our zoning and many other things, but I'm just really giving it very brief that we're looking of many things that we're gonna be doing. Right now so far it's going pretty good. Then we're gonna have to think a little bit harder of our funding, having our funding, but we leave it up to the Lord that we will have that and the help of all our people who will be helping us. We have faith, we have the big man above, but yet we have all of you and we would like to thank every one of you who have met with us, spoke with us and it was great. Thank you very much.

CHAIR CARROLL: Thank you. Any questions for the testifier? Seeing none, thank you. Ms. Hamman?

MS. HAMMAN: Mr. Chair, Ms. Bio was the only person signed up to testify.

... **END OF PUBLIC TESTIMONY** ...

CHAIR CARROLL: Is there anyone else in the audience, in the gallery that wishes to give testimony? Please come forward at this time. Seeing none, if there's no objection, we will close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Public testimony is now closed.

LU-10 CHANGE IN ZONING FOR THE MAKAWAO CONGREGATION OF JEHOVAH'S WITNESSES (HAIKU) (C.C. 11-207)

CHAIR CARROLL: Members, the Committee is in receipt of a proposed resolution entitled, "REFERRING TO THE PLANNING COMMISSION DRAFT BILLS TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION AND ESTABLISH ZONING FOR PROPERTY SITUATED AT 1550 KOKOMO ROAD, HAIKU, MAUI, HAWAII, FOR THE MAKAWAO CONGREGATION OF JEHOVAH'S WITNESSES INC.". The purpose of the revised proposed resolution is to refer to the Maui Planning Commission draft bills to amend the State Land Use District Classification from Agricultural to Rural and to Establish P-1, Public/Quasi-Public District zoning for the subject property to allow the, for the existing church

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facility. The Committee met on this item briefly on September 14, 2011, but the item was deferred to receive a revised resolution to incorporate the Draft District Boundary Amendment bill. At the September 14th meeting, the Committee received a copy of the land zoning map, and today, Councilmember White has provided the Committee with a copy of the Land Use District Boundary map which is on your desk. Because Councilmember White initiated the proposed resolution, I will now ask him to make brief remarks. Mr. White?

VICE-CHAIR WHITE: Thank you, Mr. Chair. And thank you for bringing this to the Committee. This is a, this is a congregation that has been using this church for 20 years and it's certainly time for us to give them the proper zoning. They've had to keep getting Special Use Permits of varying lengths ranging from three years to five years and I believe the last one was ten years. So the request that they've brought forward is just to have everything come into compliance by us changing the zoning and, and providing them an opportunity to move ahead without having to come back here for future approvals. So I'd appreciate your bringing this forward. Mahalo.

CHAIR CARROLL: Thank you. Members, any further discussion on the bill before us? Seeing none, I will entertain a motion to recommend ADOPTION of the reviewed proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION DRAFT BILLS TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION AND ESTABLISH ZONING FOR PROPERTY SITUATED AT 1550 KOKOMO ROAD, HAIKU, MAUI, HAWAII, FOR THE MAKAWAO CONGREGATION OF JEHOVAH'S WITNESSES INC."

VICE-CHAIR WHITE: So moved.

COUNCILMEMBER PONTANILLA: Second.

CHAIR CARROLL: It's been moved by Mr. White, seconded by Mr. Pontanilla. Discussion? Seeing none, all those in favor of the motion, please signify by saying, "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried, five "ayes", no "noes", and the four Members excused.

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VOTE: AYES: Chair Carroll, Vice-Chair White, and Councilmembers Baisa, Couch and Pontanilla.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Cochran, Hokama, Mateo, and Victorino.

MOTION CARRIED.

ACTION: ADOPTION OF REVISED RESOLUTION.

LU-12 CONDITIONAL PERMIT AMENDMENT TO ALLOW O.W. RANCH LLC TO OPERATE A TRANSIENT VACATION RENTAL AND CONDUCT SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT (KULA)(C.C. 11-269)

CHAIR CARROLL: The next item on our agenda. The Committee is in receipt of a proposed bill entitled, "A BILL FOR AN ORDINANCE GRANTING O.W. RANCH LLC AN EXTENSION OF A CONDITIONAL PERMIT TO ALLOW THE OPERATION OF A TWELVE-BEDROOM TRANSIENT VACATION RENTAL AND TO CONDUCT SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT TAX KEY NO. (2) 2-2-001:017 (POR.), 1373 THOMPSON ROAD, KULA, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from O.W. Ranch LLC for a 10-year extension of its Conditional Permit to operate a 12-bedroom transient vacation rental and conduct special events within the County Agricultural District on approximately 17.367 acres located at 1373 Thompson Road, Kula, Maui, Hawaii.

CHAIR CARROLL: I have asked that Mr. Frampton provide the Committee with a brief PowerPoint presentation. We will go into recess for two minutes while we lower the screen and then reconvene for the presentation. This Committee now stands in recess. . . . (*gavel*) . . .

RECESS: 1:41 p.m.

RECONVENE: 1:45 p.m.

CHAIR CARROLL: . . . (*gavel*) . . . This Land Use Committee meeting of October 19, 2011 will come to order. I will now turn the time over to Mr. Frampton.

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... *BEGIN PRESENTATION* ...

MR. FRAMPTON: Thank you Mr. Chairman. My name is Rory Frampton, representing O.W. Ranch LLC as their land planning consultant, and with me today we also have their attorneys, Mr. Tom Welch and Mr. Gideon ...

CHAIR CARROLL: Excuse me, I'm sorry, I'm sorry, Mr. Frampton, and to the general public, I'm sorry I cannot reconvene the meeting ... (*inaudible*) ... Let's try again. ... (*gavel*) ... This Land Committee Meeting of October 19, 2011 is now called back to order. We will now turn our time over for the presentation by Mr., from Mr. Frampton. Mr. Frampton?

MR. FRAMPTON: Thank you, Mr. Chair. My name is Rory Frampton. I'm the land planning consultant for O.W. Ranch LLC. And with me today, we have legal counsel for O.W. Ranch LLC, Tom Welch and Gideon Kaufman and also Hugh Starr who also helps represent the client on Maui. I want to, I'm just going to give a real brief overview of the project in terms of its location and what exists on the property and some of the recent renovations that have taken place. And I understand Gina, from the Planning Department, is here today and can provide you with additional regulatory background information as needed.

The, the project is located in Upcountry Maui just past Keokea. It's shown here on the map by the letter "A". It's about a mile and a half past the Kula Hospital. This map shows it in a little bit more detail. Thompson Road runs mauka and roughly parallel to the Kula Highway that runs out to Ulupalakua, and Thompson Road starts right off the access road to Kula Hospital.

The, this is the original site plan of the property. All these structures were legally built by the Thompson Family in the '60s and '70s and the, there's five major structures with the plantation home, the foreman's cottage and other auxiliary facility, structures nearby the main house as well as the paniolo bunkhouse which is in the back of the, sort of the back mauka portion of the property.

This shows the original nine-acre project site that was mauka of, of Thompson Road, and I'll show you in a...in a later slide, a slight addition to the size of that property. So in terms of the land use history, as I mentioned it was the site, site of the Thompson Ranch which was established in 1902. It was a horse ranch, an operating horse ranch. But they had a history of, of doing recreational activities, and you know, week-long summer camps, as well as short-term trail rentals, I mean, short-term rentals and trail rides. And as I noted earlier, they were all, the structures have building permits in conformance with the then in, in effect the State Land Use Law.

Silver Cloud Guest Ranch started in the early '90s by Mr. Mike Gerry. It, it got Planning Commission approval in '95 and subsequent approvals from the, additional approvals from the Planning Commission as well as the County Council, and again, it was for a 12, a 12-room

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transient guest rental operation as well as to...the permit allowed them to conduct special events with certain limitations that were provided in the permit.

O.W. Ranch LLC purchased Silver Cloud Guest Ranch in 2003. Unfortunately in 2003, it became apparent that those previous approvals that Mr. Gerry had got for Silver Cloud had expired. So O.W. Ranch applied for and obtained new permits. That's what's here before you today is the Conditional Permit that was granted back in 2005, and they also needed a Special Use Permit because it's in the State Agricultural District. The, when, when we realized that the permits had expired, no further rental operations occurred, so the rental operations ceased in, in, in anticipation of getting the new permits but also in, in anticipation of renovations that the owner wanted to do to the property. Those renovations and the actual, the approval process for the renovations were quite, became quite complicated, because the old structures that were built in '60s and '70s didn't really comply with today's laws. So some of the big ones were Fire and Water Codes as well as wastewater disposal. But the, all these approvals were, were obtained for the renovations, and it looks like the project's going to be wrapped up either sometime either late this year or early in 2012.

Some of the major improvements or upgrades included the water system. The water system up in that area was really antiquated and it didn't meet the needs of the existing properties, neighboring properties, as well as the subject property. There were bottlenecks and inadequate sized lines so the applicant did improve 2,700 feet of offsite waterline improvements and, and they had to relocate some meters for other property owners in the area as well as put in fire hydrants. So that was quite an extensive bit of offsite work. Onsite, they replaced three older cesspools, one of which was partially collapsed with three new individual wastewater disposal systems that in compliance with Department of Health and EPA requirements. And as I mentioned earlier, the parcel was consolidated with the neighboring parcel, and so the original project site which was or the original parcel which was nine acres is now approximately 17 acres.

Here's some photos that just kind of show what it looks today or this was taken on Saturday. This is looking from Thompson Road back up mauka towards the main structure here and some of the ancillary structures to the side. This is just a closer-up version from the same angle. This is, shows the one, one of the cottages, the foreman's cottage and you can kind of see some of the, what the renovations basically tried to tie everything in with a common architectural theme. The paniolo bunkhouse is furthest along. I like this picture because it kind of connotes [*sic*] what they're trying to achieve with full buildout. So the landscaping has kind of been put in place here and it's very simple, subtle. Been really meant to kind of preserve that open space feeling with buildings surrounded by green lawns and pastures up in the area.

I will, these are just some other photos showing the site and from different angles and the environmental, I mean or the landscape plantings, and I do want to point out that all of these structures are in the exact same footprint and same exterior dimensions as the original structures that we saw on the first site plan that I showed you. So here's, here's the site plan with Thompson Road running along the makai boundary. The original nine-acre piece was here on

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the left, and it was expanded by consolidating it with the neighbor ... neighboring parcel 135 so that it now encompasses this larger 17-acre parcel. And on that 17-acre parcel a large portion of it is currently being grazed by cattle with, through an agreement with Haleakala Ranch. They have an, an agreement to graze cattle on the property. I do have a aerial photo if we need to, if we need to get into any further discussions about neighboring properties. The property is largely surrounded by vacant pasturelands to the makai side, Makawao side and Haleakala or mauka side with a few residential structures on Kamaole Road. And just for scale purposes again this red outlined parcel is 17 acres in size. So a lot of the parcels in the vicinity are, you know, much larger than the two-acre minimum Ag size parcels.

This was the original parking plan when the ... when the parcel was just the nine acres. So here's Thompson Road on the bottom side of this diagram and the access leading up to the property with the required parking along the boundary, the former boundary and overflow parking onsite right in front of the structure. And with, with the larger parcel size, we've, we've actually changed the parking layout so that it can occur to the Makawao side of the property, and the overflow parking would occur in that area. And it really takes advantage of some of the open flatland just to the, abutting or now abutting the project site, and it, and it kind of frees up the front of the property not -- so that you don't have to put a lot of automobiles right in front of the main entrance to the property. This site plan again, these, these figures, these dark shaded figures are the structures that were on the original site plan and they have not changed at all. That concludes my presentation, and of course, we'll be available if you have any questions.

... END PRESENTATION ...

CHAIR CARROLL: Thank you. This Land Use Committee Meeting will stand in recess for two minutes. ... *(gavel)* ...

RECESS: 1:53 p.m.

RECONVENE: 1:56 p.m.

CHAIR CARROLL: ... *(gavel)* .. Land Use Committee Meeting of October 19, 2011 is now back in session. Members, usually the Chair would wait until there was some discussion before he made, asked for any amendments from the floor, consideration of amendments on the floor. However, I'm going to do this right off in the beginning over here, because I feel it's important and we can get it out of the way. And the amendment I'm going to be asking for from the floor is self-explanatory. The Chair will entertain a motion to amend the proposed bill by replacing the phrase, "12-bedroom transient vacation rental", with "11-bedroom transient vacation rental" in the title of the bill and Section 1 of the bill. Mr. White?

VICE CHAIR WHITE: So move, Chair.

COUNCILMEMBER PONTANILLA: Second.

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CHAIR CARROLL: It's been moved by Mr. White, seconded by Mr. Pontanilla. Discussion?
Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Yeah, just an explanation why the reduction from 12 to 1 [*sic*]?

CHAIR CARROLL: The original proposal was from -- or if you want, I can have the Department do it, explain it to you.

COUNCILMEMBER PONTANILLA: Sure.

CHAIR CARROLL: That they have credibility than me.

MS. FLAMMER: Thank you for the question. When the applicant remodeled, they remodeled down from 12 to 11 bedrooms. I believe they took one of the buildings and reduced the bedrooms by one.

COUNCILMEMBER PONTANILLA: Good, just took out one bedroom.

MR. FLAMMER: Yeah, we can have the applicant give us more details if you're interested.

CHAIR CARROLL: Thank you. Any further discussion? Hearing none, all in favor of the motion, please signify by saying, "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Let the record show the motion, carried five "ayes", no "noes", and four excused.

VOTE: AYES: Chair Carroll, Vice-Chair White, and Councilmembers Baisa, Couch and Pontanilla.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Cochran, Hokama, Mateo and Victorino.

MOTION CARRIED.

ACTION: AMEND.

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CHAIR CARROLL: The floor is now open for discussion. Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Along with that motion then you probably want to inside, in the body of the bill, you also, it says, "for the operation of a 12-bedroom transient vacation rental", so you may want to change that to 11 as well.

CHAIR CARROLL: I think that was included that Section 1 of the bill, but however, if there's no objections if the Committee will allow Staff to make any of the needed changes if there's any place in the bill which this is noted.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (RC, MW, GB, DC, JP)

ACTION: NONSUBSTANTIVE REVISIONS.

CHAIR CARROLL: Thank you. Did you have anything else, Mr. Couch?

COUNCILMEMBER COUCH: Yes, I, I was reading through all the conditions. Everything looks fine. But being the Chair of the Planning Committee and we're talking about short-term rentals and part of the discussion not in the Committee itself but leading up to this is talking about how we are going to tax short-term rentals. And right now the Code in 3.48, I believe or 85 says that short-term, I mean transient vacation rentals and B&Bs shall be taxed at Commercialized Residential. And the issue I have with that is that Commercialized Residential was built for people who are required to live in their own homes and aren't allowed to get the homeowner's exemption. This is a short-term vacation rental or short-term rental where no one is going to be required to live, no one who owns the home is gonna be required to live there so as it is going to, as it in all other short-term rentals. So my question or concern actually would be, I'd like to add a condition in here to say that, that this property will be subject to the Commercial tax rate as opposed to Commercialized ...

CHAIR CARROLL: Would you please phrase that a motion?

COUNCILMEMBER COUCH: Yeah, I'd like to move to add a condition that says that this property shall be subject to the Commercial, Commercial tax rate.

CHAIR CARROLL: Been moved by Mr. Couch. Do we have a second?

COUNCILMEMBER BAISA: Second.

CHAIR CARROLL: It's been seconded by Ms. Baisa. Discussion? Mr. Couch followed by Mr. Pontanilla followed --

COUNCILMEMBER COUCH: Yeah, and the reason I bring that up is this isn't quite a hotel because they don't get all the amenities, they don't get a restaurant or they don't retail sales, but it's also certainly not a B&B because the owner of the property doesn't live there. So I don't, I don't

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think, if this were not, if we didn't have that special tax rate, this would fall into Residential which is higher than the Commercialized Residential. However, this isn't Residential use, this is a Residential use, but it's also a Commercial use, so my thought is to put it in the Commercial tax category, little bit higher than Improved Residential or what we call now Residential. So it's just a place to put it without defining a new, a whole new category and if that's okay with the Budget Chair?

CHAIR CARROLL: He will be on next.

COUNCILMEMBER COUCH: Yeah.

CHAIR CARROLL: Thank you. Mr. Pontanilla? Followed by Mr. White.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. Maybe the Planning Department...I don't see anybody from Real Property here. What is the present tax rate for this one particular property?

CHAIR CARROLL: Yes?

MS. FLAMMER: It's Commercialized Residential.

COUNCILMEMBER PONTANILLA: Right now?

MS. FLAMMER: Right now, yes.

COUNCILMEMBER PONTANILLA: Prior to being Commercialized Residential?

MS. FLAMMER: I don't, that I don't know. Maybe the applicant would know.

COUNCILMEMBER PONTANILLA: Okay, maybe we should ask the applicant?

MS. FLAMMER: Hold on.

. . . (long pause while Ms. Flammer/Ms. McLean look for it.) . . .

MR. GIROUX: Chair, would you like Corporation Counsel to comment on the proposed motion?

COUNCILMEMBER PONTANILLA: Please, Corporation Counsel.

MR. GIROUX: Chair? You're the Chair now.

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CHAIR CARROLL: I'm going to call a short recess. Recess. . . . (*gavel*) . . .

RECESS: 2:03 p.m.

RECONVENE: 2:05 p.m.

CHAIR CARROLL: . . . (*gavel*) . . . Land Use Committee meeting of October 19, 2011 is now back in session, and I'm going to call on Mr. Giroux. Mr. Giroux?

MR. GIROUX: Thank you, Chair. I just wanted to chime in before you spend any more time on this, but I, I just strongly advise that, that we stay away from taxation, taxation type conditions in a land use ordinance of this type. This is a Conditional Permit. The budget, and we go through the budget session and we create the budget using a very open, public process with notice and, and such. The, the policy has been created already as far as how the County taxes its people. If we go and piecemeal through every land use decision and change the County policy, we're gonna be exposed to a situation where we're treating similar properties with disparate taxation, and we really wanna avoid that in this process.

CHAIR CARROLL: Thank you. Mr. Pontanilla, the floor was yours before we took a recess.

COUNCILMEMBER PONTANILLA: Okay, you know, I take the advice from Corporation Counsel really seriously, because we've ended up in, too many times in court trying to prove something that, you know, is not right. And for this matter here, I, I, you know, I know the intent of the maker of the motion, but at this time, you know, with the advice of Corporation Counsel, we should remain the same. Like you said, you know, we have others that might come before this body here, and we're, we're going to be doing this as we go along. And the budget is set based on the, the information that we received from our Finance Department. So with that, Chairman, you know, I'm going to vote against the amendment.

CHAIR CARROLL: Thank you. Mr. White followed by Mr. Couch. Mr. Couch, Mr. White has given you his time.

COUNCILMEMBER COUCH: Okay, thank you, and I understand Budget Chair Pontanilla's comments. The only thing that I have a concern about is because of, I believe it's 3.48, and I was just trying to look it up, is that this will be taxed at a much lower rate than people who are renting out their homes as long-term. Now if we can't do it in this, in, in, this ordinance here by, by advice from Corp. Council then we need to work on 3.48. But you know, when that's going to happen and I understand because we've got so much things going on with the budget right now. Is there a way that I can, I guess, I can ask Corp. Counsel, is there a way we can kind of do a conditional condition? It's one of those things where right now it's going to be taxed unfairly because of the language in the Tax Code says it shall be Commercialized Residential.

CHAIR CARROLL: I'll ask Corporation Counsel. However, from his opinion the first time it would still put us in the same light, but Corporation Counsel?

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MR. GIROUX: Yeah, I, I, I think the proper venue would be in, in a budget amendment, and that's where, you know, you create the tax categories, and once you create the tax categories then everybody knows where they fit into that. In, again, I'm, I'm not the budget guy but my understanding is that they, they look at the best and highest use. So whatever the use is, is what they would be looking at.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: That is normally the case, but not in the Code, that these three types of, of, uses are specifically set out in the Code, that it shall be Commercialized Residential, and I don't think that anybody on this Committee wants that to, to be the case. Now is there a way we can, and, and it's not a budget issue, and in fact it's a ordinance issue on 3. ... I believe it's 3.48 I, I can't quite find it right now.

MR. GIROUX: Yeah, I, I understand what you're saying, but again it, it highlights my, my point that it's, it's an issue that was established through the policymaking body --

COUNCILMEMBER COUCH: Okay.

MR. GIROUX: -- which must be changed through the same venue.

COUNCILMEMBER COUCH: So you're saying that the way to change it is to go, fix 3.48 ASAP?

MR. GIROUX: Yes.

COUNCILMEMBER COUCH: Okay, I can live with that.

CHAIR CARROLL: Mr. Pontanilla followed by Mr. White.

COUNCILMEMBER PONTANILLA: Thank you. I, I do have a proposal from the Real Property Tax Division to correct the situation and go back to ...*(inaudible)*... So I'll bring it forward. Thank you. Just to let you know.

CHAIR CARROLL: Mr. White?

VICE CHAIR WHITE: Thank you, Mr. Chair. As I've stated before, I, I really support this, this growth of additional visitor opportunities, both geographically and, and with a diversity of product. So I, I fully support the Department's drive towards the, the short-term rentals and I would support inns, I support this as well. At the same time, we do need to work on our, our tax issues, because my owner in Kaanapali owns a 19-room inn and even though when we weren't a Hotel-zoned property we were taxed at the Hotel rate. And I'm not suggesting that this particular operation should be taxed as a hotel, but it should certainly be taxed at more than the, than the

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Commercialized Residential. So I, I agree with the maker of the motion, but I, I also realize this is not the place to do it. So ...

CHAIR CARROLL: Thank. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much Chair, and I am very grateful for this discussion, 'cause I think it's very relevant and it will help us as we work on the short-term rental issue too, that we realize and as, as there is a group right now working on tax particularly on Ag, Ag-zoned land, this is also very relevant to that. But I understand Member Couch's request and I understand Mr. Giroux's advice, and I don't think we have a choice but to, you know, abide by the Corporation Counsel's opinion. I'd like to see this taken care of ASAP and I'm happy to hear Member Pontanilla say that he'll be bringing that forward. You know, if you look at the tax records on this property, it's kind of interesting it's gone from Hotel, it's been Ag, it's been Commercialized Residential. I mean, it's been a number of things and yet it's been a number of years since actually there's been a visitor on the property. So it's a unique situation and I'm glad that we're discussing it. It's important that we discuss these things. Thank you.

CHAIR CARROLL: Thank you. Mr. Couch?

COUNCILMEMBER COUCH: Mr. Chair, I'd be happy to withdraw the motion when I ... since I've heard that the Budget Chair is willing to pick this up ASAP. That is the proper place to do it. I just wanted to not have a gap in there, but this is something we're gonna work on anyway so I'd be happy to withdraw the ...

CHAIR CARROLL: If there's no objection, the motion is withdrawn.

COUNCIL MEMBERS VOICED NO OBJECTIONS

CHAIR CARROLL: Motion is withdrawn. All right, Members, further discussion? And I do have one more proposed amendment, but Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: No, that's the only concern that I had, Chairman.

CHAIR CARROLL: Thank you.

COUNCILMEMBER BAISA: Chair?

CHAIR CARROLL: Any further discussion before the Chair, Ms. Baisa?

COUNCILMEMBER BAISA: Are we going to have the consultant--I guess it's Mr. Frampton--discuss any of the areas with us? There's several other issues that pertain to this kind of an operation that and we might want to discuss. One would be water, another a property manager, that kind of, those kinds of issues, are we going to have that opportunity?

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CHAIR CARROLL: If you request Mr. Frampton, I will request Mr. Frampton.

COUNCILMEMBER BAISA: I would like to discuss this, and I'm sure Mr. Frampton can help, can help.

CHAIR CARROLL: If there's no objection, I will call Mr. Frampton to the podium. Mr. Frampton, please identify yourself at the microphone.

MR. FRAMPTON: Thank you, Mr. Chair and Member. I'm Rory Frampton, consultant for the applicant.

CHAIR CARROLL: Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Mr. Frampton, for being here. I guess you know that timing is everything?

MR. FRAMPTON: Yes.

COUNCILMEMBER BAISA: And you're here when we're in the height of the discussions that we've been having here for hours and hours about short-term rentals and particularly about Ag taxes and these kinds of things. So I think it's really important that we're clear and that the public understands what is involved in this application. For one thing, it's Ag. So can you describe the Ag activity?

MR. FRAMPTON: Yes, as I mentioned during the PowerPoint presentation, there is a substantial acreage of the property that's currently in grazing or it's being grazed right now by Haleakala Ranch, and the intent is to keep it as grazing pastures.

COUNCILMEMBER BAISA: Okay, but the income derived goes to Haleakala Ranch?

MR. FRAMPTON: Correct.

COUNCILMEMBER BAISA: Okay, well that's an interesting situation as far as Ag exemptions. So be interesting to look at. The other thing is water. You know, everything that's built Upcountry, anybody proposes to do anything Upcountry, water becomes an issue. Can you explain that you have enough water and that you're going to not use any more than is being used or that kind of situation that people keep asking us about?

MR. FRAMPTON: Yes. The, the ... as I mentioned earlier too, all the structures on the property were legally constructed, and, but they were done at a time when the requirements weren't as let's say as stringent in terms of the water meters and what's, what were, what was allowed to be put on a single water meter. So as part of the renovation process, the applicant utilized two existing meters that were in place, and they've, they've renovated the buildings, incorporated low-flow fixtures and actually removed a few fixtures in order to be in compliance with the current Code

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and the current rules of the Water Department. So through the...recent renovation project the applicant has been, has brought the facility into compliance with the water meter requirements, and it's with the two existing water meters that were in place. We didn't have to get new water meters.

COUNCILMEMBER BAISA: Good. The last, the other thing I wanted really to ask you about because we had a lengthy discussion here the other day almost three hours talking about property managers and how that phase of this would be handled?

MR. FRAMPTON: Okay. Right now it's anticipated...well, there's two options that are likely to happen. One is that there would be an onsite manager in one of the, in one of the units. The other is that the, the client also owns an abutting property and on the ... they would have the onsite manager either on the subject property or at the abutting property. So they're, they're very much wanting to see, you know, someone that's going to be there fulltime managing the property in very, either on the site or right next to it.

COUNCILMEMBER BAISA: That sounds good because we want to make sure that somebody's close by, particularly since it's so far out. Of course, there's no neighbors to bother from what I can figure out looking at the maps unless they're cows, and there's a few homes, but not, not a whole lot of them.

MR. FRAMPTON: That's correct, yes.

COUNCILMEMBER BAISA: Okay, the other question that comes up in this discussion of management is the payment of taxes. And would the property manager have the responsibility of collecting the, the rentals and reporting and all that stuff? Who gets that job?

MR. FRAMPTON: That, that it's likely to be the project manager, the onsite project manager, but it hasn't been figured out in quite, in that detail yet. But the applicant is aware that all State GET taxes and the transient accommodation taxes will need to be paid. And I just might add, I know it's not relevant to this applicant, but the prior applicant, Mike Gerry, while he ran the facility, he always made a special point to mention that he had always been in compliance with TAT and GET tax requirements.

COUNCILMEMBER BAISA: One last one. Can you describe Thompson Road? What is it? Is it a trail, is it a road, is it paved, what is it?

MR. FRAMPTON: It's a good question. It's a County road. And it, and its pavement width varies, but it has the requisite right-of-way width. The road is a little narrow, but it does provide for, I mean, just by the narrowness of the road people tend to travel rather slow but it's a County road.

COUNCILMEMBER BAISA: And ...

MR. FRAMPTON: And, and it has pavement.

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COUNCILMEMBER BAISA: No problem with fire access?

MR. FRAMPTON: We did not encounter any during the permit review process and a truck can make it out there.

COUNCILMEMBER BAISA: Okay. Well, I think those were the things that I thought really needed to be discussed, and one last one and I'm done, end of my list, I promise. Special events, you know, we have a lot of discussion here about people coming in wanting permits for various things to do on either Residential land, Ag land or whatever to do special events, and there's a lot of concern about what kind of traffic that causes or, you know, people being loud and doing all kinds of crazy things in special events. Can you kind of tell us about the limitations or what is planned?

MR. FRAMPTON: Yeah, well the limitations are in the special permit requirements that, and by the way the special permit requirements have a lot more detail, there's a lot more of them and there's a lot more details in --

COUNCILMEMBER BAISA: I've spent hours reading.

MR. FRAMPTON: Yes.

COUNCILMEMBER BAISA: I just want to be sure, Mr. Frampton, that the viewing public and those who are really concerned about this subject...you know, short-term rentals are a matter of great interest to everyone, and they seem to just be a magnet for people to say, oh my God, that's going to ruin my lifestyle. So I think it's important that we discuss some of these issues so that people will be reassured.

MR. FRAMPTON: Okay, the limitations are that it can't exceed a hundred people, that it can't go past nine o'clock at night, and that all parking shall be managed onsite. So traffic circulation, parking should be managed onsite. From a practical standpoint, the, the, under the former operations under Silver Cloud Ranch, there had been a number of special events and other types of things conducted on the property, and they had always ran it very well and there were never complaints, never complaints received by the County. So it is, these special events have been occurring historically on the property and they haven't had problems, and it was, the previous owner helped develop these conditions and they've carried through to this project, and complying with those conditions that were put on here did a, and a large, did a large part in making sure that the impacts were minimized.

COUNCILMEMBER BAISA: Thank you very much. I don't know if others have questions, Chair?

CHAIR CARROLL: Thank you. Mr. White --

VICE CHAIR WHITE: Thank you, Mr. Chair.

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CHAIR CARROLL: --followed by Mr. Pontanilla.

VICE CHAIR WHITE: Mr. Frampton, I don't see any floor plans in the presentation, so can you share with us where the, is this going to operate like a bed and breakfast with a dining facility? Is the dining facility going to be available for lunch and dinner, or how are -- are the people going to have to go back down to Grandma's for breakfast and ...

MR. FRAMPTON: No, there'll, there'll, there will be a kitchen facility in the main house and that's basically how it was operated under Silver Cloud. Was that their, the main kitchen for breakfasts and, and other meals were in the main house. The old paniolo bunkhouse actually was permitted to have kitchens, separate kitchens at each unit, but with the renovations, they, they downsized it, the, the number of units, and they took out the kitchens. So there's really just that one major permitted kitchen in the main house, but that's where the meals will be prepared and as part of the Special Permit requirements, there'll need to be a Department of Health certification obtained for the commercial kitchen.

VICE CHAIR WHITE: Could, could you provide us a floor plan for that main house? Is there one somewhere in ...

MR. FRAMPTON: I, I, I could but there's not one, there's not one in the materials that you have.

VICE CHAIR WHITE: Yeah, I just, I just looked and I couldn't find one.

MR. FRAMPTON: Yeah, there's not one in the materials.

VICE CHAIR WHITE: You don't need to provide it now but I would appreciate if you ...

MR. FRAMPTON: Okay, we certainly them available, yes.

VICE CHAIR WHITE: Chair, if we can request that to be provided to the Committee, I would appreciate it.

CHAIR CARROLL: The Staff will make sure one is available to all the Members.

VICE CHAIR WHITE: Thank you.

CHAIR CARROLL: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. I think I asked Planning Department the number of rooms from 12 to 11, and the one room that was removed is it in the main house or one of the units of, one of the paniolo units?

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MR. FRAMPTON: Yeah, there are actually...one, one unit was removed in the main house and an additional unit was removed in the paniolo bunkhouse but, which actually takes it down to ten. However, the foreman's cottage has an opportunity to, to be rented out as two so that takes it back up to 11. So we're comfortable with the 11, the change to accurately reflect the 11-room availability.

COUNCILMEMBER PONTANILLA: Thank you. And the wastewater system is it in compliance with DOH?

MR. FRAMPTON: Yes.

COUNCILMEMBER PONTANILLA: Okay. Thank you.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Thank you. Mr. Pontanilla brought up a good question on the number of rooms. Are you every anticipating it going back to 12?

MR. FRAMPTON: No.

COUNCILMEMBER COUCH: Then ...

MR. FRAMPTON: So the, I'm sorry, so the change to 11 that was recommended by the Chair is acceptable.

COUNCILMEMBER COUCH: Okay, I guess this is for Corp. Counsel or the Planning Department or whoever. In the project specific conditions in the original, it also, Condition No. 7 says, "shall be limited to 12 rental units". Shall we, do we need to move that to 11 as well, or can we just kind of leave that there? If you look in the actual...

COUNCILMEMBER PONTANILLA: Your March 7, 2011.

MS. MCLEAN: Mr. Chair, if I may? You're referring to the State Special Use Permit conditions?

COUNCILMEMBER COUCH: Yes.

MS. MCLEAN: Um ...

COUNCILMEMBER COUCH: And, the one I was looking at was the original conditions on June 23, 2004.

MS. MCLEAN: The only permit that's before this body is the Conditional Permit. The State Special Use Permit was approved by the Planning Commission. So the Council doesn't have a role in amending that permit.

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COUNCILMEMBER COUCH: Well it says, the State Special, State Land Use Commission Special Use Permit and Conditional Permit. So it's our Conditional Permit as well, right?

MS. MCLEAN: Right. The, the applications were processed concurrently and final decision-making authority on the State Special Use Permit was with the Planning Commission and then --

COUNCILMEMBER COUCH: Okay.

MS. MCLEAN: --what, what was transmitted to the Council was the Planning Commission's recommendation on the Conditional Permit.

COUNCILMEMBER COUCH: Okay, so, so that, that condition is not for the Conditional Permit, that condition's for the Special Permit?

MS. MCLEAN: Correct.

COUNCILMEMBER COUCH: Okay.

MS. MCLEAN: Correct.

COUNCILMEMBER COUCH: All right. Thank you.

CHAIR CARROLL: Further discussion? Any questions for Mr. Frampton so I can let him go? Thank you.

MR. FRAMPTON: Thank you.

CHAIR CARROLL: Further discussion? All right, Members, the Chair has something I'd like to bring to your attention. The, your Conditional Use Permit is good for ten years. Usually it's five years and the first one was five years. However, there was no operations going on at the time of this past five years because renovations were conducted. I have concerns that there was no chance to evaluate and going to ten years might not be appropriate. I will turn that open to discussion on the floor and if somebody wants to make a motion to change ten years to five years, the Chair would accept the motion and have discussion.

COUNCILMEMBER BAISA: So moved, Chair.

COUNCILMEMBER PONTANILLA: Second.

CHAIR CARROLL: It's been moved by Ms. Baisa and seconded by Mr. Pontanilla. Discussion? Ms. Baisa?

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COUNCILMEMBER BAISA: Well, you know, it, I, I, I hear what you're saying. I hear that you're saying that you feel that because this is a relatively...even though it's an old, it's a new operation, and until it's up and running, we assume everything's going to be all right but we don't really know. So you're suggesting that a lower amount of time than ten would be better. So I, I understand where you're coming from and I think it's worthy of discussion.

CHAIR CARROLL: Thank you. Mr. Couch?

COUNCILMEMBER COUCH: Thank you. Since it was moved, we, we, we really didn't because of the language is weird, I'd like to make a friendly amendment instead of saying, that the Conditional Permit shall be valid until April 8, 2020...

CHAIR CARROLL: That is the time of ten years that's why. Five years would change it to the date from five years from now.

COUNCILMEMBER COUCH: I understand. And they said that they anticipate completion December of this year which is 2011. So if you add five years to that it would be 2016. So I'd like to put December 31, 2016 as the date if that's okay with maker of the motion?

CHAIR CARROLL: Any objection to that?

COUNCILMEMBER BAISA: Chair, I think that what I heard was they're trying for December but it may be next year so it will probably be '12. So '12 and 5 would be '17.

COUNCILMEMBER COUCH: Okay, so I, I, April 8, 2017. Is that all right?

COUNCILMEMBER BAISA: Yes.

CHAIR CARROLL: Ms. Baisa?

COUNCILMEMBER BAISA: Yes.

CHAIR CARROLL: Is there any objection to changing it to that date?

UNIDENTIFIED SPEAKER: Nope.

CHAIR CARROLL: Anything further? Mr. White?

VICE CHAIR WHITE: Thank you, Mr. Chair.

CHAIR CARROLL: And we have a motion on the floor.

VICE CHAIR WHITE: Right. I understand the interest in changing it back, but you know, having gone through the process of applying for permits with the County in many different ways, I would feel

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this is an appropriate change if their neighbors were other than cows. So I'm, I'm not going to support the amendment, but I appreciate the makers' interest in bringing it forth. I just, you know, this is not a friendly process. And so, I just can't support it.

CHAIR CARROLL: Thank you. Any further discussion of the motion on the floor? Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: I, I, I know your intent, and what we've, we've done to some projects was to provide this Council an annual report in regards to the progress of, you know, the renovation. In this case here, the renovation, so that at least give us an idea when this thing is going to finish. So, it's a comment.

CHAIR CARROLL: Any further discussion before I call for the question? Mr. Couch?

COUNCILMEMBER COUCH: Thank you. If I understand Mr. Pontanilla right, he's looking for possibly adding a condition to have a annual compliance report?

COUNCILMEMBER PONTANILLA: Yeah, if, if the five years don't go, then an annual compliance report.

COUNCILMEMBER COUCH: My question to Corp. Counsel ...

CHAIR CARROLL: Any objection to adding that to the ... I don't know...

COUNCILMEMBER COUCH: Not, not yet because ... we don't know about the five-year thing yet.

CHAIR CARROLL: Yes, we do not know. But we're just...

COUNCILMEMBER COUCH: The question I have then would be if it was still at ten years or actually it's going to be 17 years, Corp. Counsel, if we allow it to...April 8, 2020 with an annual compliance report, if for some reason it falls out of compliance or we find that no, we don't want it go to 2020, is it going to be very difficult to rescind that? I've heard over and over again through all the Planning Committee meetings that once a permit is given for a certain length of time, it's very difficult to rescind it. Is that the case here?

CHAIR CARROLL: Mr. Giroux?

MR. GIROUX: Chair, give me a second to flip to that section, but from the top of my head my understanding is there, there probably has to be a due process hearing before, before the rescission, but let me, let me flip to the chapter that has that.

CHAIR CARROLL: You need some time, Mr. Giroux?

MR. GIROUX: Just a few seconds.

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CHAIR CARROLL: Okay, I'm not going to call a recess, just take him a minute to do this. I don't want to lose anyone.

MR. GIROUX: I'm in the general neighborhood now.

CHAIR CARROLL: And, Members, if this motion fails, I also have one more motion that I'd like to propose.

MR. GIROUX: Chair, I'd, I'd just like to point the Members to 19.40.080 and that talks about the conditions, amendments, and modifications. The process described as a, as a process of, of rescission that would go through the Planning Commission for, and the due process hearing would be done in front of the Planning Commission.

COUNCILMEMBER COUCH: So we would, we, as a Council, wouldn't have any say in it then? Is that what you're saying?

MR. GIROUX: Well, you would make comment but the, the way it reads, maybe I should just read it into the record. It says, "The Commission on request or on its own initiative may recommend action to revoke any Conditional Permit or amend or delete any terms, conditions and time stipulations of such Conditional Permit if such action is deemed necessary to effectuate the purpose and intent of this chapter." So upon request would, I mean, you, you could probably, there could probably be some type of communication between this body and, and the Commission. But usually it's the Planning Director who would take up that initiative usually because of the enforcement arm being in Zoning and Enforcement that the, the Director would usually traditionally take up that initiative.

COUNCILMEMBER COUCH: Right. But our, our concern would be if we were going to do a compliance report, what good is it going to be if we find that they're out of compliance and we don't want to go for the five year... I mean, we want to do something inside the ten years?

MR. GIROUX: If you look at 19.40.110, it has a section called "reporting", and it states that, "the Department of Public Works shall submit to the County Council quarterly reports on the status of all Conditional Permits." So that's kind of, you know, the, the FYI...throwing David to the ...

COUNCILMEMBER COUCH: But again, A, B, A, why is it in the Public Works Department since this is Planning permit but that's another whole story.

MR. GIROUX: Yeah.

COUNCILMEMBER COUCH: But B is, so what, they give us a report, it says...it's a bad report, I'm, I'm not saying that this property would do that, but I mean, if we get a report and it's not to where our liking, so what? There's nothing in there that says what we can do.