

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JANUARY 10, 2012**

Accepted: 4/24/12

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:04 a.m., Tuesday, January 10, 2012, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Chair Hiranaga: ... January 10, 2012 and this is the Maui Planning Commission meeting. All Commissioners are present except Mr. Lay who has been excused. At this time, I'd like to open the floor to the public for public testimony regarding any agenda item. I have a list here. You can indicate whether you wish to provide your testimony or wait for the agenda item to be called upon. Please limit your testimony to three minutes. First individual is Matthew Murosko.

The following individuals testified at the beginning of the meeting:

Matthew Murosko - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Mike Moran - Item C-2, Towne Development of Hawaii, Inc., SMA Time Extension
Noah Schuster - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Mahealani Ventura - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Dana Patula - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Brendan Bouey - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Sandi Stoner - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Avi Elkayam - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Jason Workman - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Gel Cohen - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Andrew Beerer - Item C-2, Towne Development of Hawaii, Inc., SMA Time Extension
Nicholas Bedworth - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Ray Slayton - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Gabriella Moliné - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Tom Feltz - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Sue Feltz - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Neal Hoptman - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Frances Lindsey - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Leslie Bruce - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA
Alexa Hatton - Item B-1, B-2, Soulspace Ranch, LLC, SUP2 and DBA

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

Chair Hiranaga: Anyone else wishes to provide testimony on any agenda item at this time, please come forward. Seeing none, public testimony is now closed. Director.

Mr. Spence: Good morning, Commissioners and Happy New Year.

Commission Members: Happy New Year.

Mr. Spence: We're on Agenda Item B-1. This is Soulspace LLC requesting a State Land Use Commission Special Use Permit for the Fred Baldwin Memorial Home and College of Yoga, Metaphysics, Water Sports, and Hawaiian Culture and Swimming Pool Facility in the State Agricultural District. No. 2, as well, is Soulspace Ranch LLC requesting a District Boundary Amendment from State Agricultural District to the State Rural District for the same facility. Our Staff Planner this morning is Livit Callentine.

B. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. SOULSPACE RANCH, LLC requesting a State Land Use Commission Special Use Permit for the Fred Baldwin Memorial Home and College of Yoga, Metaphysics, Water Sports, and Hawaiian Culture and Swimming Pool Facility in the State Agricultural District at 1813 Baldwin Avenue, TMK: 2-5-004: 007, Makawao, Island of Maui. (SUP2 2010/0010) (L. Callentine)**
- 2. SOULSPACE RANCH, LLC requesting a District Boundary Amendment from State Agricultural District to State Rural District for the Fred Baldwin Memorial Home and College of Yoga, Metaphysics, Water Sports, and Hawaiian Culture and Swimming Pool Facility at 1813 Baldwin Avenue, TMK: 2-5-004: 007, Makawao, Island of Maui. (DBA 2010/0001) (L. Callentine)**

Ms. Livit Callentine: Good morning, Chair and Members of the Commission. Haoli makahiki hou. Livit Callentine, Staff Planner, assigned to this Special Use Permit and District Boundary Amendment applications for the Soulspace Ranch, College of Yoga, Metaphysics and Water Sports Training. The project TMK is 2-5-004: 007. The applicant has a consultant here today, Chris Hart and Partners and I am going to turn the mic over to Chris and his team now for a description of the project. And when they're complete, I'll come back and provide the Department's analysis and later our recommendations. Thank you.

Mr. Chris Hart: Good morning Mr. Chair, Members of the Maui Planning Commission. Happy New Year as well. My name is Chris Hart, Chris Hart and Partners and we have a PowerPoint presentation we would like to present to you. This is the Fred Baldwin Memorial Home and the --it's intended to be a College of Yoga and Metaphysics. And as was mentioned, we are seeking a State Land Use Commission Special Use Permit in the State Agricultural District for a parcel less than 15 acres. Now the intention of the Special Use Permit in the, in the context of the original application was to serve as an interim bridge between the establishment of the use a, and basically an existing non-conforming dormitory use and the completion of the renovations until the time when we would receive legislative action by the Maui County Council for the State Land Use District Boundary Amendment from Agriculture to Rural also for a parcel less than 15 acres.

The project team, Soulspace Ranch, the applicant, and you've met Xorin Balbes. Chris Hart and Partners, we have been involved in the permitting. I'd like to say that, you know, from the time that we were first introduced to Xorin through our attorney, we'll introduce, we had an opportunity to check his website and I'm, I'm a fan of Frank Lloyd Wright and one of the things in Los Angeles he has actually restored an old Frank Lloyd Wright home and he's a amazingly creative man. Wayne Arakaki is our engineer. He did the engineering and drainage report. Phillip Rowell and Associates is our traffic engineer. He did a traffic engineering report. Pacific Legacy is our archaeologist. I

might mention that Paul Mancini is our attorney and he'll be available to provide clarification on the issues that could come up in the context of this application.

Again, our objective is to obtain a State Land Use Commission Special Use Permit in the Ag District for the operation of an educational facility. Also, to obtain a recommendation for approval from the Maui Planning Commission to the County Council for a State Land Use District Boundary Amendment from Agriculture to the Rural District.

We want to give you a little bit of background about how the Fred Baldwin Memorial Home actually came to be. In the upper right-hand corner is, is Fred Baldwin, Fred C. Baldwin and it's our understanding that he passed away and in the lower left-hand corner is Henry Perrine Baldwin, who established the Fred Baldwin Memorial Home. Now in the context of this historical map, the home was actually constructed in 1911. So at this point, you know, it actually is a facility on Maui that's, that's essentially a 101 years old. It's been in our community for that period of time. Also, the architect that was hired is a man by the name of Harry Livingston Kerr and he's done some significant buildings on Maui. This was the Bank of Maui in Lahaina which is now essentially a gallery. Also, the Maui County Courthouse in Wailuku which is built in 1909, and this is the courthouse building in its restored form in 2008. The Fred Baldwin Memorial Home, the preresoration view, this is in 2009. Now the facility has existed again for over 100 years here on Maui, and this is a view of it back in 1922. These are some historic interior views from 1946, and there's some additional historic views of the interior from 1946. And again, these are some exterior views of the home in 1958. This is a site plan that was actually prepared by an appraiser back in the 1980's, and this is basically a historic view from the air in 1950. These are views of the, of the property in 1980.

Now, the State and National Register of Historic Places, you know, has been involved in this process. Again, the building has been present here on Maui for over a 100 years. And due to the historic significance of the Fred Baldwin Memorial Home, the applicant initiated a process of adding the facility to the State and National Register of Historic Places. In this process, the applicant has worked with the County of Maui, Department of Planning, Long Range Division, and Stan Solamillo is the Planner who assisted and worked with us on this project. The State Department of Land and Natural Resources, Historic Preservation Division, Architecture Branch and the National Park Service.

The existing land use designations, the State Land Use Classification is the Agricultural District. The Paia-Haiku Community Plan is Public/Quasi-Public, and I might add that the Paia-Haiku Community Plan, you know, actually going back to 1983, identified this site and other sites in the area as Public/Quasi-Public. So that's essentially a period of now 29 years. The County Zoning is Interim. The Flood Zone Designation is C, area of minimal flood hazard and the existing nonconforming use as a dormitory facility.

I'd like to just point out two things. First of all, the dormitory facility use was established as an existing nonconforming use going all the back to its inception when it was a home for the elderly back in 1911. All the way through the dormitory use--well actually, as a convalescent home for returning veterans from World War I, as a dormitory for Maui College and Maunaolu College and then of course, as a dormitory for Maui Land and Pine agricultural workers. So it's been in use as a essentially a multi-unit facility and gathering place, housing facility for numbers of people over

time. And at the time of its highest use as an agricultural dormitory facility there was many as 140 people living on the site. The County of Maui, Department of Planning has verified the existing nonconforming dormitory use which is occurring on the site. The existing and nonconforming dormitory facility is entitled to host participants in on site agricultural activities as well as off site educational and/or agricultural facilities. One other point I'd like to make is that the Planning Department also had informed us that the Island Plan which is in the process of being considered for adoption by the Maui County Council identifies this area as a Rural Service Center.

In the context of the special permit criteria subject to this section, the County Planning Commission may permit certain unusual and reasonable uses within the Agriculture and Rural Districts other than those for which the district is classified. Our special uses in terms of the pending applications, the uses would be under the Special Use Permit, educational programs, yoga, water sports training, metaphysics, cultural and ceremonial practices. Proposed structures on the site would be a classroom facility, a pool facility, parking area and associated improvements. And in the context of the District Boundary Amendment, the uses would be public/quasi-public uses will be permitted in the State Rural and Maui County Interim Zoning Districts. Structures would be public/quasi-public facilities will be permitted in the State Rural District and Maui County Interim Zoning District.

Now the project scope items. The existing and nonconforming dormitory use. Essentially the property is zoned County Interim and it's been zoned since the 1950's. It's designated State Agriculture District since 1961, which was the adoption of the State Land Use Law. It's community planned Public/Quasi-Public as I said, since 1983. Now this allows for accommodation of participants in an on site ag programs participating in off site ag or educational programs. That would be in the context of the existing nonconforming dormitory use.

Now in terms of the pending land use applications before the Maui Planning Commission, a Special Use Permit would be to allow public/quasi-public educational uses on site, yoga, water sport training, metaphysics, cultural ceremonial practices, public/quasi-public support facilities, classroom facility, pool facility, parking area and associated improvements. In terms of the District Boundary Amendment, it would be public/quasi-public uses and facilities permitted in the County Interim Zone, State Rural District commonly--community planned, proposed zoning, Public/Quasi-Public. The intent of the District Boundary Amendment to Rural would be a special permit would be required--excuse me, would not be required, no. I'm sorry.

Project profile. The access from Baldwin Avenue via a private driveway. The land area is 5.66 acres. The facilities, the existing dormitory and duplex structures, proposed classroom and pool facility. This gives us a sense of the location, the Fred Baldwin Memorial Home. I might also add that in the context of the passing of Fred Baldwin there was a creation of a Fred Baldwin Memorial Park right at this curve. It's called Rainbow Park by a lot of people, but it's right close by. This is an aerial view of the area. This is our site, project site 5.6 acres. Makawao Union Church is located here. This is the area of the Maui Farm, the Hawaii Job Corps, Aloha House, Maui Youth and Family Services. This, I might add, is Haliimaile which is a community right close by. This of course, is Baldwin Avenue. An aerial of the property, of the project site. Right next door is Maui Youth and Family Services. This, this area of Baldwin Avenue has evolved over time. It's also important, I mean, of course this facility going back more than a 100 years as a multi-unit facility, a gathering facility. I might also add that in the context of how things have evolved over time. Upper Paia used to be a significant community, and of course, you see remnants of Holy Rosary

Church, Makawao Union Church, Paia School, the gymnasium, those facilities are existing and they, they were public/quasi-public uses within Upper Paia. This again, shows the Fred Baldwin Memorial Home. This provides a little bit of a chronology again. It was constructed in 1910. It was used as a convalescent home, later as a dormitory over the next 102 years. Maui Land and Pine used it as a dormitory and it did house up to 140 employees from Micronesia. Current owner worked with the State Historic Preservation Division, the Planning Department, Department of Public Works to restore the 24-room as an existing and nonconforming dormitory use. This essentially shows--is our community plan map. Again, this map goes back, this is the 1995 map, but these uses, identification of the public/quasi-public uses go back to 1983 now for a period of 28 years. This is Makawao Union Church again, Maui Youth and Family Services, the Hawaii Job Corps, Aloha House, Maui Farm, project site that shows the Fred Baldwin Memorial Home. It shows the site of the proposed classroom building. It shows the site of the proposed swimming pool which would be in, basically in the courtyard area. And it shows the access driveway together with the parking on site. These are some restoration, prerestoration photos. This is the kitchen prior to restoration. Of course, this is the restoration of the kitchen and these are restoration photos of the Fred Baldwin Memorial Home now. This is a, basically an artist proposed rendering, but it was basically 1913 Baldwin proposed studio building. This is a--swimming pool structure.

The Special Use Permit criteria. The use, the proposed use is not contrary to the objectives of Chapters 205 and 205A, Hawaii Revised Statute and the Rules of the Maui Planning Commission. The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205 and 205A, Hawaii Revised Statutes. The use would not adversely effect surrounding property. Based on Maui Land and Pine records, the facility as we have said has housed as many as a 140 residents in recent years. The proposed use will be a low impact. Operations are not anticipated to be significant to neighboring property owners. The applicant will cooperate with neighboring property owners to ensure that any potential impacts due to operations can be mitigated. The use would not unreasonably burden the public agencies to provide roads and streets, sewers, water, drainage and school improvements and police and fire protection. The project has undergone agency review, comment and response process. It has been concluded that an unreasonable burden will not be placed on public agencies to provide roads, streets, sewer, water, drainage and school improvements, the police and fire protection as a result of the proposed project.

Unusual conditions, trends and needs have arisen since the District Boundary and Rules were established. The subject parcel has been designated Public/Quasi-Public in 1983, and in 1995, in the Paia-Haiku Community Plan. Subject parcel is designated as being within the County Interim Zoning District and has never been in the County Agricultural Zoning District in terms of the County zoning.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The parcel is identified as being within the Interim Zoning District. Public/quasi-public uses are permitted in the Interim Zoning District. The Fred Baldwin Memorial Home was constructed in 1910. The structure is located in the middle of the parcel and consumes the majority of the land area.

Conclusion. In consideration of the foregoing analysis it is verified that the proposed uses and structures are appropriate for the granting of a Special Use Permit from the Maui Planning

Commission. As far as, the State Land Use District Boundary is concerned. The parcel is designated Public/Quasi-Public in the 1983 and 1995 Paia-Haiku Community Plan. Public/quasi-public uses are permitted within the County's Interim Zoning District. Public/quasi-public uses are permitted in the State Rural District. With a District Boundary Amendment to Rural, the applicant will be permitted to operate public/quasi-public uses as called for in the 1995 Paia-Haiku Community Plan.

The requested Special Use Permit and District Boundary Amendment to Rural meet the criteria of the State and the County. Agency comments verify the environment and public infrastructure will not be unduly burdened or damaged. The applicant will remain in communication with neighboring property owners and will work to mitigate any potential impacts which may result from operation.

We respectfully request approval of the subject Special Use Permit from the Maui Planning Commission for the Fred Baldwin Memorial Home College of Yoga as an unusual and reasonable public/quasi-public use in the State Agricultural District. Along with a recommendation to the County Council for approval of the requested State Land Use District Boundary Amendment to Rural. Special thanks again go to the County of Maui, Department of Planning, Cultural Resource Planner, Mr. Stanley Solamillo for assistance with historic materials and graphics. We thank you very much.

One point, I'd just like to make in addition is that there were comments about the type of visitor experience that individuals actually come to Maui to, to basically partake and/or share in. Maui as a place, I've lived here for quite awhile now and is known all over the world and people who live here, live here because spiritually they feel, they have a good sense of well-being about being here. I, I believe that people come to Maui to go to, you know, the Hyatt Regency and sit in a chaise lounge by the swimming pool, but they also, there are a lot of people that come here for renewal. And I'm not saying that sitting by the swimming pool on a chaise lounge doesn't renew you, but there are parts of Maui that really touch people's hearts and there's a holistic renewal that goes on and regeneration that goes on in people's lives. Hana is one place where that happens. People who go to the crater find that. I feel having a network of facilities, places, where this can take place is good for our visitor economy. It's good for Maui. It's good for all of us. It just happens that this facility has been in our community for over a 100 years. It was built, you know, basically out of recognition for a person who passed away in the Baldwin Family, but built for a good purpose to provide an opportunity for people who retire from the plantation to be able to have a retirement home and then of course, it progressed as a result of World War I as a convalescent home and it's been used for other facilities, but it's always been used as a multi-use place to gather and I definitely believe in the context of our land use guidance system that the, the use that's being proposed basically a holistic place for renewal and education is justified and I, I really would ask you to think of it that way in that context. Thank you very much.

Chair Hiranaga: Thank you, Chris. Livit, you're gonna provide staff analysis at this time? Livit, do you think we should take a recess at this point or wait till after you're done with your analysis? How long were you planning to take?

Ms. Callentine: You know, I think it might be good to take a quick, a quick break, yeah.

Chair Hiranaga: So we'll take a ten-minute recess.

A recess was called at 10:20 a.m., and the meeting was reconvened at 10:33 a.m.

Chair Hiranaga: When you're ready.

Ms. Callentine: Oh, thank you. Thank you, Chair. So the Department of Planning, I put together a little slide show to show you some of the images that have been created on the project that you didn't see in Chris Hart's slide show. In this title slide you will see several different names, and so if you hear those different names throughout testimony and so forth, it's really the same entity. The actual, technical applicant on the, in the record, our record is Soulspace Ranch LLC. The intent is that there would be, there have been created two organizations beneath that umbrella, Soulspace Ranch LLC, one of which is the Soulspace Institute which it would be a college and the other one being Soulspace sanctuary which is the dormitory. And then I guess, so I'm not sure about these other names, but I know they have been used. So if you hear them, I believe they're talking about the same entity.

Okay, so with Xorin's permission, I've lifted some of the photographs from his, one of his photographer's website. So this is, this is the view of the main, the central area of the dormitory. One thing that impressed me is the extensive landscaping that has been done around the project. There's probably, well, there's many plantings, I don't know what they are. I can't tell you what they are, but if you had questions about it, I'm sure you could, you could ask the applicant or his consultants. Just wanted to show you some of these, looks like this is a nursery area for staging planting. This is the, this is one, one room in the lobby. I'm not sure what it's actually called. I'm not gonna describe anything in it because I'm not a designer and I couldn't tell you what the finishes are, but this is another room, dining room. This is one of the typical bedrooms and this is another one, very similar. A typical bathroom with a walk-in shower and this is a picture of the dining hall. And I believe this is the room to the, to the, yeah, to the right of the kitchen, right of the dining hall, yeah, where, where it looks like, you know, some of the yoga classes will be held. And so I just wanted to, to show you that quickly and now, we can have the lights again.

So the Department has analyzed the project and as far as the land use goes, the project is consistent with the State Hawaii Plan. For the Special Use Permit, the proposed educational use is not consistent with the State Agriculture District, hence the need for a Special Use Permit, under Chapter 205 and 205A and Rules of Land Use Commission as we know certain unusual and reasonable uses within Agriculture and Rural Districts other than those for which the District is classified and maybe permitted. The Department concurs with the applicant's determination that the proposed use qualifies as unusual and reasonable use and finds that use is not contrary to the objectives sought by Chapter 205 and 205A. That the desired use will not adversely affect surrounding property. That the use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements and police and fire protection. That unusual conditions, trends and needs have arisen since the District Boundaries and Rules were established and that the land upon which the proposed uses sought is unsuited for the uses permitted within the District. The proposed use complies with County General Plan and the Paia-Haiku Community Plan. However, the community plan does have a statement that it requires a Special Use Permit for public/quasi-public uses in the State Rural District. But the community plan also requires the adoption of rules to implement this objective. And those rules have not been adopted. The Department understands that the reason this item was put into the community plan language at the time it was crafted is that if you had a public or quasi-public project in the Rural

District in the Paia-Haiku Community Plan and it was not in the Special Management Area, it would not undergo any form of public review. There wouldn't be a trigger for public review. So today, we're engaging in a public hearing on this item so this project is undergoing public review. So, that's something for you to consider and discuss whether you feel that a condition needs to be placed on this--whether it would be appropriate or not for there to be a continuing requirement for a Special Use Permit and whether the community plan actually requires it. And I see my--our attorney's shaking his head so I'm sure he'll have comments later.

So if I could just continue with -- okay, so as far as the District Boundary goes, we review the District Boundary Amendment request under Land Use Commission Rules and Hawaii Administrative Rules. The Rural District are areas consisting of small farms provided the areas may not be included if their inclusion will alter general characteristics of the area. Activities or uses be characterized by low density residential lots of not less than one-half acre and a density of not more than one single family dwelling per half-acre in areas where city-like concentrations of people, structures, streets and an urban level of service are absent, and where small farms are intermixed with the low density residential lots and it also includes parcels of land which are surrounded by or contiguous to this district and are not suited for low density residential district uses or for small farms or agricultural uses. So the proposed request is in an area that contains a mixture of uses including public/quasi-public uses, an elementary school, community center, churches, ballfield and single family residential subdivision and agricultural lots.

The inclusion of the property in the Rural District will not alter the general characteristics of the area. The build out plan for the project is to construct an educational facility and healing retreat center. Carrying on the historic use of the property as a dormitory facility for 24 guest rooms. Each room occupies far less square footage than a typical single family dwelling so there is no further expansion of the guestroom facilities will be permitted. The property is not contiguous to other State Rural District lands and is mostly surrounded by or adjacent to lands that are in State Agriculture District. However, within a quarter mile of the property there are two other, at least two other parcels in the Rural District. And additionally, just under a mile from the property is a residential subdivision consisting of lots in two-acres in size in the town of Haliimaile about two, a little over two miles away in the State Urban District. As I said, the community plan designates the property for public/quasi-public use which is a more intense use than the Rural designation the applicant is seeking. Thus, the reclassification to Rural will bring the land use district in more consistency to the community plan.

However, we have that question of the community plan requiring a Special Use Permit. The reason that's thorny is because public/quasi-public uses are permitted in the State Rural District. How can the County say, well, if this is a permitted in the State District that they get their boundary amended to, how can we make them have a Special Use Permit when the State doesn't require a Special Use Permit? And as I stated earlier, this project is undergoing public review at this time.

Through a series of analysis of determination prior to submitting an application, the applicant's consultants met with members of the Department of Planning, Zoning and Enforcement Division, and were able to establish and determine that this proposed use as a college would be a quasi-public use.

There were quite a number of agency comments, not a lot that were substantive that have not been

addressed. Department of Water Supply commented that the applicant's engineering consultant is working at this time on required water system improvements which will include a water line extension, a private fire line, fire hydrants, a new water meter lateral and backflow prevention devices. Department of Environmental Management requested that the applicant submit calculations and location of grease trap interceptor and details of the proposed business to support calculations. Now in this one, the Department did not receive a reply to this comment. So that's kind of an outstanding issue, but those, those items will have to be addressed at the building permit level. Department of Fire and Public Safety commented that all buildings must have approved water supply for fire protection and other life safety requirements. And the applicant replied that this would all be verified during building permit, building permit review. The applicant has also proposed to construct an on site drainage system to capture the increase of runoff for the proposed studio building which the drainage reports prepared by Wayne Arakaki state will provide for storage capacity of just under 2,000 cubic feet.

The Department of Health requested a wastewater system site plan which the applicant provided. The applicant also engaged Wayne Arakaki to prepare engineering reports. The reports stated that there is an existing individual waste system and it has been upgraded to EPA standards and that it would require no further upgrades. According to the reports there are 17 septic tanks with a total capacity of 21,250 gallons and a dry well will be installed to capture discharge from the swimming pool and additional runoff from the studio facility. The Office of Planning did not object to a District Boundary Amendment, but had concern about reclassifying the property to Urban which was the initial request. Office of Planning stated that the Rural District classification would be more consistent with the County designations subsequently the applicant amended the District Boundary Amendment and requested Rural rather than Urban. The Department of Agriculture submitted comments similar to Office of Planning with the same recommendation. Again, the applicant went to quite a bit of trouble to amend their application. The Department applauds the historic preservation and adaptive reuse of buildings that might otherwise fall to ruin. That's, we really appreciate this. The existing dormitory predates our State zoning and community plan regulations.

The applicant stated in a meeting that he would be offering a discounted price for classes and lodging for kamaaina, but I haven't seen that advertised. It may be, you know, unadvertised but that has been stated to the Department and the question I believe is going to be on your minds is is this project a dormitory use, existing nonconforming dormitory or is this a hotel? And I've certainly asked myself that question as well. I have to go back to the designation and determination that this dormitory is an existing, nonconforming use and that it was used over time to house plantation executives, students from the college nearby that was there, the plantation workers and -- so as long as the dormitories continue to support one of those historic uses we feel that it meets the qualifications and with the right mitigation and conditions requiring in perpetuity this requirement and restriction, we support this project.

The Department received prior to this morning, six letters or--and email messages from one of the neighbors and this was expressing concern about the project. Last night, I received a stack of about 11 letters in support of the project and we've received a whole bundle of other supporting letters this morning. I haven't had time to count them. So I don't know how many there are there, but you've heard the testimony I'm sure we'll hear more testimony. This concludes the Department's analysis of the project.

Chair Hiranaga: Thank you, Livit. Before I let you go, if you could just define for us what is public/quasi-public, and also, if you could define what hotel is and what a dormitory is?

Ms. Callentine: Okay, for your first question which was what is public/quasi-public or quasi-public facility and this means a use conducted by or a facility or structure owned by--owned or operated by a nonprofit religious or eleemosynary institution which provides educational, cultural, recreational, religious or other similar types of public services and then you asked --

Chair Hiranaga: Okay, I'm not gonna pretend to know what eleemosynary is.

Ms. Callentine: It's charity. I looked that up too. It's charitable organizations.

Chair Hiranaga: Okay, thank you.

Ms. Callentine: I know, I don't know how to pronounce -- okay, then you asked and remind me if I've missed it, then you asked --

Chair Hiranaga: Definition of hotel.

Ms. Callentine: Definition of hotel, a hotel or a motel means a transient vacation rental other than a bed and breakfast home containing lodging or dwelling units. Title 19, Chapter 19.04 does not define a dormitory. Yeah, we don't have a codified definition of dormitory. I did some of my own research looking through various different dictionaries and generally speaking a dormitory is a facility that is--provides housing for students. Could be off site or on site the college like we have a dormitory in Kahului that's off site from the Maui Community College but it was constructed to be dormitories for students. I'm not sure what it's being used for now, but that's the standard accepted definition of a dormitory. Was there another one you wanted?

Chair Hiranaga: Okay. So at this time, I will open the public hearing. Is there anyone that has not testified earlier that wishes to testify on this agenda item, please come forward? Seeing --

The following testimony was received at the beginning of the meeting:

Mr. Matthew Murosko: Aloha, Council. My name's Matthew Murosko. I live in Haiku and I'm in support of Xorin's project here, Soulspace Ranch/Lumeria Maui. He's done an amazing job restoring historic structure from 1909 that Frederick Baldwin had built. He's employed numerous local craftsmen and artisans and continues to employ local people. In this down economy that we had it's pretty amazing that he's put the amount of capital into this project and has had this vision to restore this building. He's creating commerce and he's creating travel for the island. I also work with Mr. Balbes as a cultural liaison and I'm in charge of putting our syllabus together for all of our Hawaiian programs that we'll be having on property and off property. So that's what I have to say. So I support this project and his vision and what the good it's gonna do for our island of Maui.

Mr. Hiranaga: Thank you. Questions, Commissioners? Commissioner Mardfin.

Mr. Mardfin: You say you're in charge of the Hawaiian programs?

Mr. Murosko: Yes, in putting together Hawaiian programs for on property and off property.

Mr. Mardfin: And how long will they last in time period for the participant?

Mr. Murosko: It depends. We have numerous programs. Some will be on property that will be-- involve Hawaiian botany classes, some will involve music, some will involve hula. So we're putting this syllabus together right now.

Mr. Mardfin: Are they one-day things or two-day things or...

Mr. Murosko: It's a seven, it's you come to the property for seven days so that there's numerous programs that you can enroll in. For example, there might be an on property botany class with where I'm gonna read a letter here from Maui Cultural Lands where Puanani ... (inaudible)... Lindsey will come. We have six acres. We planted a numerous amount of Hawaiian native plants.

Mr. Mardfin: So it's a six-day, a seven-day program?

Mr. Murosko: Seven-day program, yeah. And then there is -- yeah, so what, there's also we'll be taking people off property too. They can go and volunteer into Maui Cultural Lands, they can go down to the ... (inaudible)... Coastal Refuge and help restore that, can go to Kukui Puka Heiau and out to Piilani Hale Heiau in Hana.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Next individual is Ekolu Lindsey.

Mr. Murosko: I would like to read Ekolu's letter. He couldn't be here. He had some other things.

Chair Hiranaga: No, that's not permitted. You can submit written testimony.

Mr. Murosko: Who do I submit it to?

Chair Hiranaga: Noah Schuster.

Mr. Noah Schuster: Good morning. Thanks for having me.

Chair Hiranaga: Please identify yourself.

Mr. Schuster: My name is Noah Schuster. I'm here to talk about educational agriculture. I live up in Keokea on Thompson Road and it's a beautiful area. I've also had the pleasure of working down at Soulspace and Lumeria on Baldwin. I'd like to just supply a little information on how I wanna further the education of everyone in agriculture and sustaining our land, our valuable resources and mostly just thank you for having me here this morning.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Next Mahealani Ventura.

Ms. Mahealani Ventura: Aloha, ...(individual spoke in Hawaiian)... Good morning to you all and happy new year. How's everybody?

Chair Hiranaga: Please identify yourself.

Ms. Ventura: Mahealani Ventura. I'm here on behalf of the Ad Hoc Conciliation Commission of Ko Hawaii Pae Aina, a Human Rights Commission. We are registered with the United Nations, Department of Economic and Social Affairs. We are also a member of the International Peace Commission with United Nations and we are very pleased to present our support on behalf of human rights, our concerns and conciliation and also change and benefit to a community. We are an island community. We support the Soulspace Ranch LLC, your Items 1 and 2 of your agenda here today. We appreciate the time that you give us to kuka, akuka malu, talk story about this because we have observed changes and we also have the important job, volunteering of course, to report and observe on human rights, changes and improvements that happen on this island and also throughout the archipelago. And we've observed the wonderful, wonderful improvement and change that Soulspace Ranch has brought to that space that used to be used as the dormitory for Maui Land and Pine, yeah. It was also cleaned up by the proprietor and the staff and male kokua and kako`o and that come in and what to see the improvement to our community and also share in the benefits that bring health, that bring economic change and that address healing through these cultural projects and programs. And myself personally I hope to be a part of that and bring my ohana to Soulspace Ranch aka Lumeria which is what we know in our culture as mu. Bringing it back to source and bringing healing to the island and particularly in such a way that has changed the whole scape of the gulch and everything. You folks remember what it used to look like over there? Have any of you been there actually to--I mean, you've been to the property, right, yeah, no, yeah?

Chair Hiranaga: Please don't address the Commissioners.

Ms. Ventura: Oh,oh, okay, kala mai. What you'll see is a change that you can't believe if you've seen old pictures of what it once looked like and what it looks now and what it's going to be I'm sure that you will support it. So we do advocate for your support and granting of the necessary approvals and permitting. That's what I have to say and I do have some business cards here, may I approach the secretary or someone?

Chair Hiranaga: No, you can give it to Staff here. Questions, Commissioners?
Commissioner Mardfin.

Mr. Mardfin: Aloha.

Ms. Ventura: Aloha.

Mr. Mardfin: Did you say you're employed by the U.N.?

Ms. Ventura: No, no. We are a voluntary commission that is registered with the United Nations Department of Economic and Social Affairs. We're also a member of the International Peace Commission.

Mr. Mardfin: Who, who owns this Commission or how is this, you say you belong to a Commission?

Ms. Ventura: Correct.

Mr. Mardfin: And what is the Commission? Just read it to me.

Ms. Ventura: It's the Ad Hoc Commission Conciliation Commission of Ko Hawaii Pae Aina.

Mr. Mardfin: And how many people are a member of this commission?

Ms. Ventura: Six on the board and we have varying numbers of volunteers from the community.

Mr. Mardfin: And was when was this, when was this --

Chair Hiranaga: Commissioner Mardfin, allow her to finish her statement before you ask her a second question.

Mr. Mardfin: Go ahead, finish please.

Chair Hiranaga: Thank you.

Ms. Ventura: Varying amounts of volunteers from the Community. We partner up with conscious groups such GMO Free Hawaii, the Maui Sky Watchers, the huis, the Hawaiian huis.

Mr. Mardfin: When were you established?

Ms. Ventura: October of 2011.

Mr. Mardfin: Oh, so very new, just three months old.

Ms. Ventura: No, we've been established before that. About six months before I was a Human Rights Task Force and we through an application process with UNDESA, United Nations Department of Economic and Social Affairs.

Mr. Mardfin: Are you a 501(c)(3)?

Ms. Ventura: No, not--it's not required in that capacity, but we do have one on behalf of Indigenous Peoples Rights and that's ...(inaudible)... Akau which is not directly affiliated with this commission.

Mr. Mardfin: Thank you.

Ms. Ventura: You're welcome.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you.

Ms. Ventura: Mahalo.

Chair Hiranaga: Gonna try this, go my best effort, Dua Pastula?

Ms. Dana Pastula: Good morning, Commissioners. My name is Dana Pastula. My husband and I live at 1900 Baldwin Avenue. We are neighbors of Xorin. First, I'd like to say that what had Xorin and Jason have done at the former Baldwin Estate is a beautiful job in renovating and restoring the structure. Second, I'd like to say that I believe that there is an ...(inaudible)... business that our travelers that are looking for a different experience other than sun and surf. You know, they're looking for a spiritual, peacefulness and educational. And third, I just want to acknowledge that having Xorin as an artist, designer and a developer choosing Maui or Makawao to, to restore a historical structure is really a wonderful thing for Maui. I had asked at one time Xorin's contractor ...(inaudible)... and I ask him why did you paint the exterior this color. I'm sorry, Xorin, but really that's not my favorite color, and his answer to me was because it was once the color of the building. So here again, he's, you know, restoring it to its former glory and it's just something that will be, something that we will be proud of to be in Maui and it's a unique place to be. So thank you very much for your consideration and thank you for your time.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Brendan Bower, Bowie?

Mr. Brendan Bouey: Aloha, good morning, Commissioners. My name's Brendan Bouey. I reside at 1951 Baldwin Avenue, my hanai family's homestead. Just wanted to mention for our family that we've been in that area for--since about 1860, seven generations now. Family graveyard in Cane Field 200 across the street. Lots of roots in the area. It's always been a unique parcel or small area of Maui consisting of about ten properties and it's always been that different mix between residential, educational, health and well being like up at Maunaolu College, Aloha House, the youth center next door used to be our great-grandfather's house. And just, when I finally saw them taking care of the old Baldwin home I was just anxious to find out about it and Xorin and Jason were so gracious to invite us down, show us the place, what he has in mind, very open with the public, with the neighbors, the planning process, nothing to hide. It's gonna be a beautiful project and I just stated in my own way what I felt about the project and sent it, that statement to my friends, families and neighbors and the result was 11 letters that you should have just for, for the project and hoping that you will encourage the project to go forward and support it in the future. Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Sandi Stoner.

Ms. Sandi Stoner: Good morning, I'm Sandi Stoner. I'm here as an individual not a partisan organization, although I am a long-term member of an organization which is a neighbor to Soulspace, Hui No`eau, and that's how I became acquainted with Soulspace because they have reached out to be part of the community. They've reached out to make associations and how we can work together educationally and in support of the local culture and just the sheer generosity of opening the home. I was allowed to give a party, Christmas party for the staff and faculty and board of the Hui. Everything was totally opened up for us there to see this beautiful project and nothing was asked in return. I'm here totally on my own and to say it's been a pleasure. I've had several opportunities to work with Xorin, now. I'm acquainted with the classes they're going to do. The beautiful planting they have done there. I just think that, I just hope we have more projects like this on Maui. It's absolutely beautiful, it's contained, it's ...(inaudible)... Thank you. Any questions?

Chair Hiranaga: Questions? Commissioner Mardfin.

Mr. Mardfin: How are you related to the programs?

Ms. Stoner: To which program? This program?

Mr. Mardfin: You said the courses.

Ms. Stoner: Oh, well, I'm a member of the Hui. I'm not here officially representing --

Mr. Mardfin: No, no, no. For, you said you were familiar, I believe you said --

Ms. Stoner: I'm familiar with the courses they're doing by being told about them by going down and observing and getting an understanding of what they want to do with native planting, you know, I'm familiar.

Mr. Mardfin: Okay, thank you.

Ms. Stoner: Anything else?

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you.

Ms. Stoner: Thank you.

Chair Hiranaga: Avi Elkayam.

Mr. Avi Elkayam: Good morning, my name is Avi Elkayam. I own a yoga studio in Paia and I live for last 15 years in Maui. And the reason I'm here is to, just to talk about the economic, you know, for Soulspace. What's happening in the North Shore part over, over Maui, we don't have any facilities to bring small groups between 20 to 40 people and have a nice retreat for them. This place basically, you know, build in a, in a great way to host this people and I think you know, for the tourism for Maui what's happening for last, you know, ten years coming here for healing and looking for that process, you know, for, you know, have a place in the North Shore. We don't have any place legally to facilitate that healing. We tried to organize retreat for the last few years in Maui in the North Shore, but since you know, all the small bed and breakfast don't have, you know, the capacity or facility to hold this people. And I think what Xorin build here with Jason is to bring education and, and can hold a space for that people. And I just hope you going approve it.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin.

Mr. Mardfin: You talked about a retreat. How, how long would a retreat such as this last?

Mr. Elkayam: Usually the retreats, the market of the retreats what's happening all around the islands or around the world basically, it's happening between a week to two weeks and ...

Mr. Mardfin: Thank you.

Mr. Elkayam: Thank you.

Chair Hiranaga: Any other questions? Seeing none, thank you.

Mr. Elkayam: Thank you.

Chair Hiranaga: Jason Workman.

Mr. Jason Workman: Council, thank you for your time. My name is Jason Workman. I have given the past two and half years of my life, blood, sweat, and tears to refurbish this property, the aina of the land which I'm deeply moved by. I've been a visitor to your beautiful island for 20 years and my life is here now. I offer my service to the community, to the education, anything I can do to further this. Thank you for your time.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin.

Mr. Mardfin: What is your relationship to this project?

Mr. Workman: I'm one of the owners and proprietors there.

Mr. Mardfin: You're one of the owners?

Mr. Workman: Yes, sir.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you.

Mr. Workman: Thank you.

Chair Hiranaga: Gel Cohen.

Mr. Gel Cohen: Good morning. My name is Gel Cohen. I'm a project manager for few construction companies on Maui and landscape company owner for last six years. I have built and helped building and restoring Baldwin Memorial Home and I just wanna say that from the moment I met Xorin, he had intention to help the community. And I know, I'm sure you guys know how hard the economy is and how difficult it is to get work at the moment and I represent pretty much around 60 employees that are thankful to be able to work on that project for a full year, give their heart and soul into it and saved homes for few of my guys that work with me because the economy. So I support a 100 percent what they're doing because I see more potential and more work for the island which we need to live basically. So, if you have any questions, please?

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Nicholas Bedworth.

Mr. Nicholas Bedworth: Yes, good morning. My name is Nicholas Bedworth, resident of Haiku. I'm a software development consultant here on Maui. And for several months or last couple of years I've been driving up Baldwin Avenue and I've watched the miraculous restoration and

improvement in the quality of the parcels in question. With the capital investment that's been made by the Soulspace organization. And also, very dear to my heart is another local organization that has around 400, 500 members in the State of Hawaii. We have been looking for decades for a facility such as Soulspace where we can conduct residence courses, duration typically a weekend, a couple times a year about one week long and the subject matter of the courses is personal development. The full potential of the individual, perfect health based upon growing organic herbs on the land where the people live. And so the Soulspace organization provides us with space to hold our courses and this is just a Godsend for us. There's quite a need for it and naturally people will be coming from the other islands to Maui to enjoy the facility here. So I'm, I'm just delighted that this is available to us. Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Ray Slayton.

Mr. Ray Slayton: Good morning. My name is Ray Slayton. I appreciate the opportunity to speak to you. I'm developing a program that will be offered at--along with my partner, Gabriella Moliné, who will speak after me that deals with the metaphysical aspect that will be offered at Soulspace. It's a wonderful location. It has amazing mana and we're looking forward to not only sharing the space with people that people that visit the island that may be for a week, ten days or up to two weeks, but also with local people and our specialty is relationships. We all need this. So we find it an amazing location. It offers many opportunities for people to come and to stay in a location that provides the atmosphere to connect. Thank you. You have any questions?

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Gabriella Moliné.

Ms. Gabriella Moliné: Hello, thank you for the time. My name is Gabriella Moliné and I'm partner of Ray Slayton, we both own, co-own, The Institute for Human Relationship Kinesis. I have been coming to Maui as a visitor for almost 30 years now. I have been driving up the road from Paia up to Makawao many times always wondering what this building is and imagining a place where we could actually fulfill what we came for to teach people about relationships which is basically the core of everything. So we met Xorin and Jason and we watched them transform this building with heart and vision that I have not seen before. We, at this point are only able to bring a very small number of people to Maui which is actually the space that we have. With Soulspace, we would have to the chance to bring 40 people at a time. We always bring high-end clients from all over the world to this island. In this case, we would have the chance to teach 40 people at a time for a 7-day or 14-days program in a place that actually facilitates what we need to do. And not only the high-end clients could come, we could even teach Hawaiian people what they have lost on this island which is the aloha spirit. Thank you.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Next to testify is Xorin Balbes. Mr. Balbes, you're the applicant, so you will have an opportunity to during the presentation by your consultants to contribute as much as you want.

Mr. Xorin Balbes: Okay, then I'll wait.

Chair Hiranaga: Tom Feltz.

Mr. Tom Feltz; Morning. My name's Tom Feltz. I'm here in support of Soulspace. I represent a

firm that is owned by myself, Special Connections that does consulting and training and facilitating of various different courses ranging from management to leadership to relationships. And we have discovered that Soulspace as a place that we would like to be able to have the opportunity to work with them through education and expanding the education scope that is currently being allowed there. We bring in various different people from different places, but as far as a speakers bureau to assist in the further development of empowerment and education. Questions?

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin.

Mr. Mardfin: You talked about expanding the educational opportunities that are currently being offered there? What are currently being offered?

Mr. Feltz: It's my understanding that there were certain restrictions as far as what, what classes could be offered there having to do with agriculture and things. We wanted to be able to make sure that those--if there was any restrictions on educational parameters that those would be expanded to be unlimited.

Mr. Mardfin: Are you aware of classes currently being held there?

Mr. Feltz: No, not, not specific classes. I don't think it actually has come on line.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Any other questions? Seeing none, thank you. Sue Feltz.

Ms. Sue Feltz: Good morning. I'm Sue Feltz. I helped create this that you get in your mailboxes three times a year, Continuing Education. I found Xorin because, my department, I'm not speaking for the college, but I'm speaking for Continuing Education, we literally were looking for a space where we can have, we're expanding to hopefully week-long retreats to work with work force development which is our charter to teach local people and to assist with education on this island. And so I read the article in the paper about what Xorin has done and we were looking for that very type of place and went up to visit and we are very interested in doing that.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin.

Mr. Mardfin: I'm sorry, did you say you work for Maui College?

Ms. Feltz: Yep. I put this together.

Mr. Mardfin: So you're an employee of Maui College?

Ms. Feltz: I am an employee of Maui College.

Mr. Mardfin: Is Maui College officially doing this collaboration or are --

Ms. Feltz: My department, Continuing Education, we are looking for literally a space such as what Xorin has created. I do not speak for the College, the credit side as a whole. Continuing Education

is literally looking for this kind of space and it appeared.

Mr. Mardfin: Isn't there a sufficient space at Maui College itself?

Ms. Feltz: Not to do these kinds of retreats. We're looking for a place where we can bring groups of people and we, we have a Woman's Entrepreneurial Leadership Program that we're trying to put together for the Fall. And we want a place where it is quiet and peaceful and we can focus on leadership skills of people in our County.

Mr. Mardfin: Is the problem housing?

Ms. Feltz: Partly. Because we don't have access to the dorm space the way we'd like to but the real challenge has been to find a place where we can just isolate and focus solely on a specific idea or process that we are trying to teach. Obviously we do massive classes that are at the college and around the communities, but we are expanding, our department only to, to also now do week-long retreat kind of programs. So that's how I found Xorin because we were looking for it.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions, Commissioners? You have your hand up? Commissioner Shibuya.

Mr. Shibuya: Thank you very much, Ms. Feltz. I was just wondering, there's other State facilities such as high schools and these other campuses as well as hotels. Of course, hotels you have a higher fee attached to it. Have you inquired in terms of the cost that would be involved with this Soulspace?

Ms. Feltz: Yes, and that's one of the reasons when I went a week or so ago, that's what we were trying to find out and we've been going back and forth now as to the cost and they will have to be negotiated with us because we are, we are attempting to serve our local folks so sometimes we might have to strike some deals with Xorin. I don't know, but yes, I've looked at the costs and we will look at the structure of what we can charge for tuition. Some of our programs are grant programs which can help cover some of those costs. But all that would need to be negotiated, yes.

Mr. Shibuya: And these are not available in terms of our State facilities?

Ms. Feltz: No.

Mr. Shibuya: Or County facilities?

Ms. Feltz: Not, and, and we do--we do use schools and high schools. We'll use any place we can teach, but this is unique in that it's a way to get people in one place isolated and that's the focus. We do actually use hotels. A lot of the hotels will give us space sometimes for some of our conferences, but there are challenges because then there's the busyness of the hotel. And particularly for the Women's Leadership Program that we are trying to put together, we wanted something that was specific that's quiet, that's peaceful and the total focus would be on that agenda rather than being here--these are for, these are for local people. It's not for tourists. These are for

people who wanna focus on a specific skill. So it does meet, it wouldn't meet the needs of all of our program, but it would meet the needs of some that we are trying to put together, yes.

Mr. Shibuya: Thank you.

Ms. Feltz: You're welcome.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Neal Hoptman.

Mr. Neal Hoptman: Aloha, my name is Neal Hoptman. I'm a visitor to your beautiful island here for the last three weeks. An independent international consultant to educational retreat centers and I've been working with the team at Soulspace Ranch to help them become aware of some of the educational retreat centers in the world, what they're offering, how they integrate indigenous knowledge and wisdom into their retreat centers and I'm very confident that if things proceed in the direction that the Soulspace team would like them to proceed that this will be a world class facility. That Maui will become known for offering some very innovative programs that will allow the local community as well as inter-island and international visitors to be exposed both to the Hawaiian culture as well as to the area of wellness, well being in the broadest sense of the word. I think that the programs can be one-day programs. They can involve community members from the local community to experience these teachings and knowledge as well as well as a longer duration. Thank you very much.

Chair Hiranaga: Questions, Commissioners? Seeing one, thank you. Frances Puanani Lindsey.

Ms. Frances Puanani Lindsey: Good morning. I come in support of this project and if all of you have an opportunity to go see this building, I would suggest you come up and experience this yourself. It's a wonderful place to be. I met my husband while I was going to Maunaolu College while he was a resident there at the Baldwin House. It's amazing what Xorin had done taking this building that's been used over the years with such historical background and has given it new life. The feeling of tranquility and peace, just being there for your spirituality as well as time for you to do your own meditation, this is the place to go. We have a relationship, working relationship with Xorin. And Maui Cultural Lands mission is to--I need to reference some of this my son wrote today, it's to restore and protect and bring the Hawaiian culture back and Xorin has offered to work with us of bringing the people in from not only our local people in the project but everyone who is involved internationally as well as nationally and they will come and work in our valley also so they can understand our working relationship and the mission to restore and bring the vision back for Hawaiian culture. Our values, our basic values that was started by husband is aloha and malama and I carry on this work today. So I will be doing a walking tour at the site there with groups that come in so they can understand the medicinal use of our native plants. And Xorin has incorporated much of our endemic plants on his property. So I am impressed and excited about all he is offering all of us. And I'm gonna close so you understand Maui Cultural Lands has been going on for last 12 years, and since my husband's been gone two and a half years, I carry on the work and my son, Ekolu, Edwin Lindsey, III is the President and we enjoy the relationship that we have with Xorin. We've brought his crew up so they can understand the work that we're doing. And in closing, a statement that my husband is known for so, people who help the land and the culture who give unselfishly for the sake of the land, they are the heros, the real warriors. And I look forward to working on this project with Xorin and again, I invite all of you up so you can understand the peace

and tranquility that the place has to offer.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida.

Ms. Wakida: Good morning, thank you for coming. So you're seeing this as a--for you and for the work that you do in the valley as a sort of partnership?

Ms. Lindsey: Yes.

Ms. Wakida: And so they--you're looking for him and his crew or his associates to come and give back to your kuleana?

Ms. Lindsey: That's the working relationship that we have. We've already brought his working group, the staff in so they can understand what we do. And then the working relationship we'll have with them, I will be doing a walking tour almost on a weekly basis for all groups that come in or someone from our staff, Maui Cultural Land staff, will be there to help that. It's a working relationship so they can understand our Hawaiian culture.

Ms. Wakida: You're, you're expecting this relationship to continue on down the future once this, should this project get off, should SoulSpace get off the ground?

Ms. Lindsey: Yes, yes.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Is there anyone else that wishes to provide testimony at this time regarding any agenda item, please come forward?

Ms. Leslie Bruce: Good morning, Commissioners. My name is Leslie Bruce. I participated in the Haiku Community Plan, Paia-Haiku Community Plan and it prohibits hotel development within its region.

Chair Hiranaga: Leslie, could you speak more into the microphone, please?

Ms. Bruce: SoulSpace Sanctuary is a hotel. The Paia-Haiku Community Plan prohibits hotel development within its region. This application for a district boundary changes should be denied. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya.

Mr. Shibuya: Leslie Bruce, thank you very much for serving on the General Plan Advisory Committee in developing and drafting the Maui Island Plan. I also wanna ask you, can you relate long time ago culture since I know you live close by, the type of culture that they had with these dormitories. The ...(inaudible)... that lived there?

Ms. Bruce: When the old men were there they were all haoles and they were former employees of Alexander and Baldwin, and they were cared for and given a free plot at the Makawao Cemetery

after they died and many names you would recognize are on that plot. And after that, it has been used for large groups of Maunaolu students, the men lived there and the, the people from Thailand, who were pineapple workers and my Micronesia. And we had very good relations with those people because when the noise got too loud for us, although we are two doors away, we were given numbers to call and people would come and close down the parties if it was late at night. So the place as functioned very effectively in the past and it was never a grand hotel. It was a very simple kind of place.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Ms. Bruce, you refer to this as a hotel. The applicants don't refer to it as a hotel, they refer to it as a college with dormitory space. Well, they sort of say that then they say they're guest rooms so that's getting away from dormitory a little bit. What makes you think that it's a hotel in violation of the Maui--the Haiku Community Plan as opposed to being what they purport it to be?

Ms. Bruce: When you see these rooms, none of them look like dormitories. They look like hotel rooms, they have private baths and the accommodations are very elegant like a retreat resort.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, anyone else wishes to testify at this time on any agenda item please come forward?

Ms. Alexa Hatton: Good morning, my name is Alexa Hatton. Thank you for the opportunity to speak. I've been a Maui resident for 23 years and have encountered a dream that Xorin with his vision and capability has been able to make a reality. I also would be in a position of coordinating the educators at the programs to enable us to take advantage of the tremendous resources we have here on Maui. I have always felt Maui because of its unique qualities has been able to attract masters of their craft and this would be a chance to share those with the people within the community and internationally by drawing them here to learn of the treasure of the Hawaiian culture, to catch this wave of the farm to fork movement of investigating our food, where it comes from and how we can all be nurtured in a, in a deeper way. And it would be my privilege to be a part of this vision and I would hope that we could get your support because Xorin is a job creator and that is something we need everywhere in this country. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: Did I hear you to say that you're an employee of this organization?

Ms. Hatton: No, no, I'm not an employee. I would be working with them to coordinate the educators and the program. At the moment, I'm employed elsewhere.

Mr. Mardfin: But you expect to be employed by them?

Ms. Hatton: I would hope to be employed, yes.

Mr. Mardfin: Thank you.

Ms. Hatton: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you.

This concludes the testimony received at the beginning of the meeting.

Chair Hiranaga: The first individual is Dick Mayer.

Mr. Dick Mayer: Mr. Balbes was ahead of me on the list? No, okay. Thank you, Commissioners. My name is Dick Mayer. I'd like to read from the testimony. There are some serious issues regarding the Soulspace application for a SUP in Ag District--in the Ag District and LUC Boundary Amendment that I have. Number one, the facility has every appearance of looking like and operating as a hotel which definitely would not be allowed on this land parcel. It has expensive rooms sold on a daily basis. It has an exclusive dining room. It offers classes and activities, Hawaiian culture, water sports, visits around the island very much like those being offered at a number of Wailea hotels. What are the minimum length of stay in a so-called dormitory? What are the nightly rates to stay in the dorm? Why are they set on a daily basis instead of for the length of the academic program? At the very least, it is a very large TVR, transient vacation rental that would not be allowed at this scale on this property and in this community plan district.

Number two. There is no clear indication how the facility will be owned, managed or taxed. Is it an LLC, a nonprofit? Does it have a nonprofit tax license? Why does this application have so many names? Soulspace LLC, et cetera, et cetera, et cetera. What is the name of the property owner? Who gets the SUP?

C, if it is a nonprofit who are the board of directors, the officers?

D, if there were a problem, who is the responsible manager?

E, what taxes will be paid? County property taxes at a hotel property tax rate, at a rural residence property tax rate or an agricultural property tax rate? Will a nonprofit avoid State income taxes? If granted college status, could every Wailea hotel claim that it's also to be a college for County property tax purposes since they offer courses as well? And how could Maui County say no after this precedent?

Number 3, other than a list of potential activities and classes, there is no indication that this is a college. There is no mention of academic administrators, but there is a professional chef. There is no indication of entry requirements and academic calendar, a coherent curriculum with course lengths or requirements, general academic requirements, course prerequisites, accreditation standards, et cetera. Does it have accreditation from whom? What are the tuition fees? What are the length of dates, terms? What are the positions, the names of the academic administrators, how are they qualified or credentials will be given? Who will manage the academic curriculum? There's nothing that would let someone know that this is a legitimate college as being stated in the application. Will the same people who manage the reservations and staff of the hotel also be in charge of administrating the college?

And now for the legal part that I think is important. The Paia Community Plan which determines land use decisions in this area has several very specific statements that directly address and would limit the proposed application. It says, on Page 14, No. 3, "prohibit hotel resort development within this region." It doesn't say maybe. It says prohibit. Page 15, Item No. 10, very clearly, "discourage approvals of special permits in State Ag and Rural Districts." Both Ag and Rural District, "unless," and they give three reasons, none of which are met by this application. And Page 16, No. 13, "limit visitor accommodations to owner-occupied bed and breakfast establishments that the residents in both, in both scale and character." So it's very clearly that this would not meet the Maui--the Paia-Haiku Community Plan. And the plan as stated in No. 5, is required that your Commission follow that plan exactly.

There are other questions and issues. What was stated and promised in the numerous applications for this project? The actual formal application for this District Boundary Amendment and the State Special Use Permit are not contained in your staff report. What is the applicant--what are they promising? Will the hotel be allowed to operate before the County Council approves the District Boundary Amendment?

Chair Hiranaga: Please conclude your remarks.

Mr. Mayer: I will, with the last item. Grandfathering. A use implies that a nonconforming use would be continued in a similar manner as a dormitory for agricultural workers. When the Planning Commission grandfathered the dorm was it misled into believing that the dorm would not be converted into expensive hotel type facility? And I have two attachments that you'll see there which are advertisements that are on the web, the last page, very last page, and the next to the last is the Maui News article describing this in very much hotel like terms.

Chair Hiranaga: Questions Commissioners? Seeing none, thank you. Next testifier, Trip Lynch.

Mr. Trip Lynch: Morning, Mr. Chair, Planning Commissioners. My name is Trip Lynch. My wife and I are permanent Maui residents, voters and taxpayers. Our home over the past five years is located immediately makai of the subject property. We admire the extensive renovations to the structures next door.

It is very clear to us that our neighbor believes passionately in the project and has invested very heavily to make it happen. However, the parcel in question is designated for public, and quasi-public use in the Paia-Haiku Community Plan and consistent with that designation. I would like to see the parcel used as a benefit to the community clearly the intent, not just part-time, not occasionally, but all of the time as is the case with the immediate neighbors, Aloha House, Job Corps and Youth and Family Services run by the County. Additionally, the community plan on Page 15, as Dick Mayer mentioned, specifically discourages Special Use Permits in State Ag Lands unless the intended use provides substantial benefits to the community. I have not seen any evidence of the local community either wants or needs the intended services. However, if the Commission decides to issue a Special Use Permit, I strongly urge that it be of short-term duration, two-years or less giving our neighbor, my neighbor, a clear opportunity to demonstrate the benefits. There, there could be many. I would like to see them demonstrate.

Further, the Planning Commission in my opinion should impose three conditions prior to approving

any Special Use Permit. Number one. It should remain as a fully licensed and accredited educational facility. Number two. It should never operate as a vacation rental. And Number three, which relates to the document I just distributed, permanent on site classrooms must be provided. As the project stands today, there are only temporary on site classrooms easily converted back to their originally intended use as restaurant dining and conference rooms. The community plan specifically prohibits hotels as previously mentioned, it specifically prohibits hotels and resorts and if you look at the document that I got yesterday afternoon off the web, this project clearly resembles a hotel without the, without the addition of the classroom facilities.

On the District Boundary Amendment, I am not personally opposed to the District Boundary Amendment from Agricultural to Rural provided it is accompanied with a Special Use Permit. The Staff Planner referred to the issue of the community plan. The community plan clearly requires a Special Use Permit for a school, for a public/quasi-public use in State Rural. Maui County Statutes require a commercial business on State Rural to have a Special Use Permit. At the announced rates, room rates and using a conservative assumption of 50 percent occupancy and not allowing any income whatsoever for the restaurant or for the ancillary activities, this project should generate \$2.3 million a year in revenue, clearly a substantial commercial enterprise.

Chair Hiranaga: Okay, please conclude your comments.

Mr. Lynch: There is scant evidence to support the public/quasi-public use called for in the community plan. So I urge a Special Use Permit of two years or less requiring the venture to proceed. Thank you very much.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin.

Mr. Mardfin: Mr. Lynch, I think I have a letter from you dated August 18, 2011? I'd like to ask you some questions about that letter?

Mr. Lynch: Yes, sir. Go ahead.

Mr. Mardfin: You say, first paragraph says you have reservations. You, in defense a somewhat hostile response the owner said he would be building classrooms now if he could afford to but resources were stretched to the limits and he was unable to do so. He mentioned his arrangements to out source classrooms to the studio in Haiku. And then he said something--then you wrote, as to our concerns about urban land use designation for five and a half acres, this is back when they were going for Urban rather than Rural.

Mr. Lynch: Right.

Mr. Mardfin: But you said, you report, you expressed your concerns surrounded by thousands of actively farmed sugar cane acres. The owner said emphatically that he, and this is a quote mark you have, "is going to get what he wanted and if we didn't like it we should move." Understandably --

Chair Hiranaga: Mr. Mardfin, I believe all the Commissioner have read that letter so can you ask him a question, please?

Mr. Mardfin: I want to ask the question, is this an accurate representation of what happened?

Mr. Lynch: It is. However, if I can add. I did get a direct apology for that several months subsequent to the that and the nexus of my concern was Urban which was changed to Rural. So --

Mr. Mardfin: So that alleviates a lot of your concern?

Mr. Lynch: It alleviates a great deal of my concerns, yes sir. Provided we get an ongoing Special Use Permit.

Mr. Mardfin: Do you view this as a hotel?

Mr. Lynch: Absolutely.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Anyone else wishes to provide testimony at this time regarding this agenda item, please come forward? Seeing none, the public hearing is now closed. Open the floor to questions from Commissioners for applicant or Staff. Livit?

Ms. Callentine: Yes, I just wanted to let you know Chair that we have Francis Cerizo of the Zoning Division on-call here and also Stan Solamillo of our Long Range Division if you have any questions for them. They're also available?

Chair Hiranaga: Thank you. Commissioner Mardfin.

Mr. Mardfin: Livit, I'd like to ask you a question. I wanna--before we even start discussion of this, I wanna ask, I wanna be real clear in my mind, there are two things being requested, a Special Use Permit so that even if there were no District Boundary Amendment, a Special Use Permit would allow them to go forward with their plans is that more or less correct?

Ms. Callentine: That is more or less correct. If there were no dormitory. They're existing and they wanted to build a school. They would need a Special Use Permit in Ag.

Mr. Mardfin: Okay. So with a Special Use Permit alone, they'd be able to go forward with what they propose to do, is that correct? Would they need a ...

Ms. Callentine: With the Special Use Permit alone, they would be able to go forward and construct the school and begin to operate the school, yes. And, and the accessory dormitory use as well.

Mr. Mardfin: So there's no need to get a District Boundary Amendment to do what they have least proposed here?

Ms. Callentine: That's correct.

Mr. Mardfin: If they get the District Boundary Amendment, does that mean that they no longer need

the Special Use Permit?

Ms. Callentine: Yes, that is my understanding. I will look to my Director and see if he has any comments or Corporation Counsel.

Mr. Spence: Yes, the--right now, the applicant's requesting a Special Use Permit because of the State Agricultural, you know, District that's on it. So they need, they need an SUP to, to go ahead with, you know, the teachings and the, the classes and all that. The dormitory use, you know, would be, that's actually like a nonconforming use at this time. Okay, do--they're going ahead with, and they can correct me, they're gonna go ahead with the, with the District Boundary Amendment to Rural to legitimize, not legitimize, to go ahead and permit the college use, the educational aspect of the, of the facility. At that point, I mean, because we're getting a Special Use Permit for the Ag District, once it goes into the State Rural District that that Special Use Permit will no longer be valid.

Mr. Mardfin: So if they get the District Boundary Amendment it would be in perpetuity they could what they wanted?

Mr. Spence: Unless there are conditions placed on the District Boundary Amendment.

Mr. Mardfin: But if they get--don't get the District Boundary Amendment and just get a Special Use Permit then that would be reviewable every so many years?

Mr. Spence: That's correct.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: Definition, and I just need more clarification, in the letter from the Department of Agriculture, they talk about spot zoning. They also mention Rural Service Center. Can you expand on that, on those two differences there or maybe they're the same, I'm not sure.

Ms. Callentine: I don't believe that I can expound on the Department of Ag's comments for them.

Mr. Spence: Which exhibit is that?

Ms. Callentine: I'm looking for it right now.

Mr. Shibuya: Exhibit 26, Page 2.

Ms. Callentine: Exhibit 26. So you're, you're asking about their inclusion of a discussion of the Draft Maui Island Plan and the --

Mr. Shibuya: That's correct.

Ms. Callentine: --and the description of rural growth area and rural service center?

Mr. Shibuya: Yes.

Ms. Callentine: Well, I did look at that and, and I did look at the Draft Maui Island Plan and look at these descriptions and it's my understanding that this particular property would be considered part of a rural service center, but actually I'm not sure and we have to bear in mind that this is completely a draft and we do not know what's gonna happen in the future. Therefore, we did not emphasize the Maui Island Plan because it's still a very fluid document that is not in any way, shape or form complete.

Mr. Spence: And, Mr. Chairman?

Chair Hiranaga: Director.

Mr. Spence: Thank you. In briefly looking at this, at this letter, what Livit is saying is true is that the Draft Maui Island Plan is only a draft. Okay, but what we're looking at, what is more pertinent right now is the Paia-Haiku Community Plan which designates this property as Public/Quasi-Public. So that's the intended use of the property. They also, Department of Agriculture also says, establish a spot zone of Urban District. They're not applying for Urban. They're applying for Rural. In this area, in this area of Baldwin Avenue there are a number of institutional uses, Montessori School --

Ms. Callentine: Hui No`eau.

Mr. Spence: Hui No`eau. There's Maunaolu College which is also, happens to be in the Ag District. But there's a number of these uses -- that are already there that are public/quasi-public in nature. So it fits. This kind of use would fit in nicely within that area. And since they're, they're --one of the concerns that I believe the applicant heard was that Urban would be inappropriate and so they're applying for Rural which is there is some Rural up and down Baldwin Avenue, State Rural District and that is more in keeping with the character of the area.

Chair Hiranaga: Just a follow up question. So did Staff confirm that this project site is within the proposed rural, rural service center currently before Council?

Ms. Callentine: I can't absolutely say that for sure right at this moment. I don't know if there's anyone in the room that can. Can't speak for Long Range.

Chair Hiranaga: Can someone do that for us as we continue?

Ms. Callentine: Yes.

Chair Hiranaga: 'Cause the statement was made by the applicant that it is located in the proposed rural service center boundaries currently before the Council.

Ms. Callentine: The applicant may actually have a map with him. I do apologize, I do have a map, but it's not with me right now. I could get it and show it to you later.

Chair Hiranaga: No, if the applicant has a map ...

Ms. Callentine: Okay, I'll yield the floor to the applicant then.

Mr. Jordan Hart: Good morning. I'm Jordan Hart from Chris Hart and Partners. The latest available map that's provided by the Planning Department for the Draft Island Plan indicates that it's a rural service center. So that's the latest publicly available --

Chair Hiranaga: Yeah, why don't you just circulate it to the Commissioners?

Mr. J. Hart: Sure.

Chair Hiranaga: Okay. Any other questions? Commissioner Shibuya.

Mr. Shibuya: Yeah, I had a recollection to that effect because I sat on the GPAC and this board, this Commission, also reviewed this very fact and approved it, recommended approval to the Council. And that's where I'm getting off in terms of the policy was not developed by this Commission, but developed by the community. And this Commission, reviewed it and approved it or recommended approval to the Council. And the Council has overextended their review and coming up with a decision on this. This is where the problem comes in. If the intent of the public is to have this service center then we need to proceed post haste quickly and get it done. In terms of my definition, I understand it as a service center and the spot zoning, now all of a sudden you have residences bordering this or within this service center such as the Bruces, such as the Lynches --

Chair Hiranaga: Do you have a question?

Mr. Shibuya: The question is, the spot zoning, does this mean that you spot zone the residences surrounding this area?

Chair Hiranaga: You're asking the Staff or applicant this question?

Mr. Shibuya: Staff. How would you interpret this spot zoning? Would they retain their Rural Agricultural zoning that they had before?

Mr. Spence: I think it -- Mr. Chairman?

Chair Hiranaga: Director.

Mr. Spence: I think there would be much more of an indication of spot zoning and spot zoning is, is determined on a case by case basis. But it, it would be more indicative if it was Urban, if the State District was Urban because there's nothing else like that anywhere in the area, but in this case, you have a fair amount of Rural, State Rural District within that area. And so it keeps in the character of that area and therefore, it wouldn't be--you're not granting something to this particular owner or this particular parcel that is different than the surrounding area. It's consistent with what they can--with the area.

Ms. Callentine: I might add too, if I may, that it's also consistent with the community plan designation of Public/Quasi-Public.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Continuing with you, Mr. Director. On Page 18 of Livit's report, at the very bottom, it's talking about the Paia-Haiku Community Plan. And it talks about land use goal, objectives and policies. They have No. 11 referring to Haiku, and then it below it says, A. It does say it should be made on a case by case basis for limited residential development. Then it says, A, "that the proposed change is contiguous with the Urban or Rural District." Is this property contiguous with the Urban or Rural District?

Mr. Spence: I'm not sure what's right next door.

Mr. Mardfin: Livit may.

Ms. Callentine: It's not. It is not contiguous.

Mr. Mardfin: It's not contiguous.

Ms. Callentine: Right.

Mr. Mardfin: So this in a sense would be spot zoning because it's not meeting this criteria from --

Mr. Spence: Well, you could also make a case that this particular objective and policy or, or policy shall be made on a case by case basis when limited residential development. Is this residential development or is this a public/quasi-public use which is distinctly different?

Mr. Mardfin: Okay.

Mr. Spence: Because you're also looking at the map of the community plan. It designates it for a public/quasi-public use. It's not residential.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: Just coming back to the definition of "dormitory" and I'm going back maybe 50 years ago or maybe I'm 40 years ago. When I went to a dormitory, we shared the bathroom facilities. Each of our rooms shares the facilities. In this early dormitory pictures, I recall seeing the layout having shared bath facilities. In the current layout I believe each room has their own bathroom. As you showed the picture, you said each has this bathroom. So what's the difference? Is that the difference in dormitory versus hotel or lodging?

Ms. Callentine: None of the definitions that I read of the word, dormitory include any reference to the restroom facilities. I don't think that would be criteria on which to decide whether something is or is not a dormitory. I think that there could be a dormitory room with a private bathroom. For example, something that's ADA compliant might have its own separate bathroom.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: I lived in a plantation and that was like a dormitory for a family, and we shared the bath facilities and toilet facilities, okay. That was plantation.

Ms. Callentine: Thank you.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I -- let me make a quick comment on that last thing. At Hawaii Loa College where I taught for almost 30 years we had dormitories and there were shared bathroom facilities within pairs of dorm rooms. So I'm not-- I wouldn't wanna lean for a definition on whether it, it was not a bathroom. I will add though, that my--I stayed in Johnson Hall when I was at UH and we had a shared bathroom facility.

Chair Hiranaga: Was that brand new at that time?

Mr. Mardfin: Almost. Wasn't that old. But I didn't pay \$399 a night either. I didn't pay \$399 a semester I don't think. I'd like to--and maybe this is for their attorney, Mr. Mancini, if I may?

Mr. Paul Mancini: Good morning, my name is Paul Mancini.

Mr. Mardfin: Good morning, Mr. Mancini. I know you will do a fine job of representing these people.

Mr. Mancini: Thank you.

Mr. Mardfin: I have a question. We talked about quasi-public and, let me see if I can find my note here, it was said that it has to be a -- is this a nonprofit organization.

Mr. Mancini: Yes, A nonprofit is going to be running it, yes.

Mr. Mardfin: Nonprofit's going to be running it?

Mr. Mancini: Well, you've got LLC but a nonprofit is going to be the umbrella that basically takes, takes it in. Whether there will be two activities on there or whether there'll be other activities on it or not is another question. But it's a non--Xorin, what's the name of the nonprofit?

Mr. Balbes: ...(inaudible - speaking from the audience)...

Mr. Mancini: Soulspace, okay. And Soulspace is gonna get the, the Special Use Permit.

Mr. Balbes: ...(inaudible - speaking from audience)...

Mr. Mancini: But maybe Xorin is better to ask the question of the nonprofit. All along it's gonna be a nonprofit because then the quasi-public and public has to be a nonprofit either has to own or operate one of the two.

Mr. Mardfin: So whether you're in --I'm sorry, I didn't mean to cut you off.

Mr. Mancini: No, that was --

Mr. Mardfin: So earlier in the testimony, I think the second or third person to testify this morning said that he was an investor in this.

Mr. Mancini: I'm assuming he is Xorin's partner in Soulspace LLC. Jason.

Mr. Balbes: ...(inaudible - speaking from the audience)...

Chair Hiranaga: Okay, we need, we need to maintain some order here. So if you want to refer the question to some other individual we need to call him up to the podium.

Mr. Mancini: I agree. Okay.

Mr. Mardfin: Maybe I need to speak to --

Mr. Mancini: Any other questions for me though?

Mr. Mardfin: There probably will be but not just now.

Chair Hiranaga: So you want Mr. Xorin to come here, Mr. Balbes to come up here to answer your question about ownership and partnership?

Mr. Mardfin: Yes, please.

Mr. Xorin Balbes: Hi, I'm Xorin Balbes. You want me to answer that question?

Mr. Mardfin: Yes, I'm, we're concerned about the ownership and the way this is organized.

Mr. Balbes: Okay, So Soulspace Ranch LLC is the property owner of the property, of the building itself.

Mr. Mardfin: So that's a profit making corporation?

Mr. Balbes: That's a, that's a, yes it is. It's a regular LLC. When I went into Livit's office just about a maybe about a month and a half ago, she, she decided that it was better to have the Special Use Permit for the nonprofit institute, you know, this Special Use Permit held in the Soulspace Ranch LLC and it's allowing the nonprofit, the institute, to operate on the property. That's how it's structured.

Mr. Mardfin: So the LLC will get the --

Mr. Balbes: So the LLC --

Mr. Mardfin: --Land Use Permit.

Mr. Balbes: Correct.

Mr. Mardfin: Special Use Permit.

Mr. Balbes: And then allow the not for profit to operate on the property.

Mr. Mardfin: But now it doesn't look like it's a quasi-public -- public/quasi-public institution if the Special Use Permit's being held by the profit making LLC.

Mr. Balbes: Well, I don't believe that it's gonna be held by, I think it's gonna be given to. I think that's how, is that how that was changed in ...(inaudible)... oh, okay. I mean, to me it doesn't matter whether it is in the not for profit this Special Use Permit for the educational facility or if it's in the Soulspace Ranch LLC that allows the not for profit to use, to use the Special Use Permit.

Mr. Mardfin: Is the nonprofit a 501(c)(3) organization?

Mr. Balbes: It's a not for profit. It doesn't accept donations.

Mr. Mardfin: It's not nonprofit.

Mr. Balbes: It's a not for profit. It doesn't accept donations. That's the only difference between a not for profit and a 501(c)(3). Paul, I think I have that right. It's different. It's just that we are not allowed to accept donations from anyone else.

Mr. Mardfin: Is it a eleemosynary institution? Charitable institution?

Mr. Balbes: It's not a charitable institution.

Mr. Mardfin: And it's not religious.

Mr. Balbes: No, it's educational.

Mr. Mardfin: The definition here, quasi-public use is quoted by Chris Hart which is from the definitions is quasi-public facility means a use conducted by or facility or structure owned or operated by a nonprofit which you said this is not -- you said, not for profit, not nonprofit.

Chair Hiranaga: Well, why don't you complete your statement and ask a question?

Mr. Mardfin: So it sounds like it's a not for profit not a nonprofit. It's not religious, it's not eleemosynary so it doesn't qualify as "quasi-public facility." In my reading of it, I'm not an attorney however.

Mr. Balbes: And I'm not the attorney but, you want me to address it?

Mr. Mancini: I think the statement was that if he want --

Chair Hiranaga: Please identify yourself again.

Mr. Mancini: I'm sorry, Paul Mancini. The statement was that the operator is a nonprofit entity.

The difference between a 501(c)(3) and a nonprofit is one gets qualified by the Internal Revenue Service to take deductions. The State of Hawaii basically grants charters for nonprofits that's what that is. A nonprofit can apply based upon the type of nonprofit it is, but that is a tax issue not a, not a issue of whether it's it for profit or not for profit. So it is a nonprofit, it is for educational, cultural, recreation, religious and other purposes so I believe it does qualify as the operator under the quasi-public definition in the Code under Section 19. I don't believe--there's been a lot of testimony concerning the question of whether it's a hotel. The dormitory is accessory to all of these activities, accessory to the educational, cultural, recreational, religious, it's accessory to it. There's a nexus, it's tied to it. A hotel doesn't have that tie to it. Hotel doesn't have that requirement. A hotel basically run as transient accommodations. This doesn't run as transient accommodations solely, it runs with that nexus attached to it. That's the conceptual difference and that's why many, many types of these, I think you did one probably for Hana recently is my recollection, a similar type situation for that. But this, this is a very, I would say, unusual if not unique situation. I think you have to look at it as unique situation. I think the property and the development can create a great opportunity for the island if it's done right and done correctly. It could be another facility like we have the Maui Community Arts and Cultural Center. It could be a great addition to the community. That's what they want is that type of opportunity to create that and like Steve Jobs, things have to be simple, they have to be usable and they have to be elegant and it's not that easy to make them all of that at once and I think that's the intent here and I think to some degree there's a degree of flexibility ...(inaudible)... in these.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: Just wondered Mr. Mancini in terms of you now have a private entity now performing a public service is that what what this is proposed to be?

Mr. Mancini: This is, this is --

Mr. Shibuya: Educational purpose.

Mr. Mancini: Mr. --

Mr. Shibuya: So its purpose is to provide this educational service to the public.

Mr. Mancini: Educational, cultural, spiritual, a broader concept.

Mr. Shibuya: And is there a educational facility already there?

Mr. Mancini: Yes.

Mr. Shibuya: I didn't see that. I saw the dormitory, but I didn't see the educational.

Mr. Mancini: Well, first there are nonconforming uses on the property. The dormitories can be used now for on site agricultural activities, agricultural that's the nonconforming use that exists there. Now whether those programs happen on a daily basis or not daily basis from being developed, you can ask that question to Xorin. But that's the nonconforming use, the ability to use the dormitories in connection with the on site agricultural activities and off site agricultural and other

educational activities, that's the nonconforming use. That's the existing legal use. Now the Special Use Permit is to expand that so we can go beyond the agricultural on site. So you can do metaphysics, you can do the cultural, you can do other things as stated in the application. That's the whole purpose for the Special Use Permit to expand those on site uses. I think everybody's acknowledged the existing on site uses can be used. The dorms can be used for the agricultural activities and the off site educational activities. That the purpose of the Special Use Permit. The purpose of the, of the Rural designation is basically to try to conform to your community plan. This is not really ag, it's -- it shouldn't be ag land, if you take the long term property interest involved it should be another zone. At some point in time possibly it should go back to what the plan is, Quasi-Public zoning, but the Rural designation is not a zone. It's a Land Use Commission designation, and it's consistent what we're having here because Rural authorizes quasi-public and public uses. Jack?

Chair Hiranaga: Yes, Commissioner Freitas.

Mr. Mancini: I'm sorry, Mr. Hiranaga.

Mr. Freitas: The land is held under what corporation?

Mr. Mancini: The land is held by Soulspace Ranch LLC.

Mr. Freitas: Thank you.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Is this educational institution registered with the State? Is it not for tax purposes as a nonprofit. Is it registered with the State as an educational institution?

Mr. Mancini: I don't think there's any -- it's an interesting with their accreditation. I don't think, the State has not accredited and from some reason may not want to be accredited and for public purposes because once it's accredited it doesn't have to pay any transient accommodation taxes and some others which are exempt from it. But it has not been accredited and there's no application for accreditation.

Mr. Giroux: Just to clarify that on --

Chair Hiranaga: Corporation Counsel.

Mr. Giroux: Thank you. On the website of the DCCA states that the State does not accredit colleges. There's a separate entity that is a Western organization that accredits colleges, so the State doesn't. But there is State laws that govern people who want to run facilities that they're going to call colleges under 446(e), but those are more of business guidelines as far how they're supposed to run that business and how they're supposed to advertise.

Chair Hiranaga: Thank you for that.

Mr. Mardfin: Are they --

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Are they registered with DCCA that way, Department of Commerce and Consumer Affairs?

Mr. Giroux: I would assume that the Office of Consumer Protection would be the enforcement arm of 446 and that they would be registered under that.

Mr. Mardfin: Mr. Mancini, do you happen to know whether they are registered under that?

Mr. Mancini: I don't think there's a requirement to register under 446 is a totally different requirement I think in this situation here.

Chair Hiranaga: Livit.

Ms. Callentine: Thank you, Chair. On the DCCA, there are several registrations connected to this parcel. There is the registration of a foreign limited liability company in the name of Soulspace Ranch LLC. There is Articles of Incorporation for Ke-Ao Lanihuli, Inc. and this states the purposes of the articles state," that the undersigned incorporator desiring to incorporate a nonprofit corporation in accordance with the laws of the State of Hawaii including the Hawaii Nonprofits Corporations Action Chapter 414(d) of Hawaii Revised Statutes." So we have that in the name if Ke-Ao Lanihuli Inc., then there are two registrations of trade names underneath that Ke-Ao Lanihuli Inc., one of them is Soulspace Institute which is stated to be a -- to foster -- purpose, sorry -- "to foster personal transformation and global peace through educational programs on an individual level and on a group level in the areas of yoga, metaphysical studies, alternative healing modalities and water sports programs." And the second registration of trade name under the corporation Ke-Ao Lanihuli Inc., is the Portal at Lumeria Maui and it lists the same nature of the business as was listed for Soulspace Institute.

Mr. Mardfin: May I ask a follow up? May I ask a follow up?

Chair Hiranaga: Sure Commissioner Mardfin.

Mr. Mardfin: The first thing you said was it's listed as a foreign corporation did I hear you say?

Ms. Callentine: Yes, that is what I said.

Mr. Mardfin: From what country?

Chair Hiranaga: Order.

Ms. Callentine: I can't answer that question. We will have to look to Corporation Counsel or to the applicant's attorney to explain what that means.

Chair Hiranaga: Do you wish to ask the applicant that question?

Mr. Mardfin: Yes, I -- anybody that can answer it.

Mr. Mancini: Paul Mancini. When something's identified as a foreign corporation it only means it's been registered as a corporation in another state and then authorized to do business in this State. So if you're a California corporation you're considered foreign when you register to do business here.

Mr. Mardfin: And this is registered in California?

Mr. Mancini: In Delaware.

Mr. Mardfin: In Delaware.

Mr. Mancini: Delaware and it's registered to do business here.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions, Commissioners?

Mr. Mardfin: I have a whole bunch.

Chair Hiranaga: Oh, you do?

Mr. Mardfin: Yes.

Chair Hiranaga: Commissioner Wakida.

Ms. Wakida: This is for the applicant. I believe the applicant, we're going to go -- something visual not quite so esoteric. There's a site plan that I wanna refer to that was passed out to us. It's A-1, I wonder if you could--if you have that in your ...

Ms. Callentine: I believe the Commissioner is referring to Exhibit No. 5 of the staff report.

Ms. Wakida: Okay, is it close--I know, my staff report fell apart so I'm -- had the-- the staple came out.

Chair Hiranaga: Or a photograph might be adequate, aerial photograph.

Ms. Callentine: Oh, yeah.

Ms. Wakida: I want the scheme--the proposed plan.

Ms. Callentine: Commissioner Wakida are you talking about the floor plan --

Ms. Wakida: Yes.

Ms. Callentine: --or the site plan? You're talking about the floor plan?

Ms. Wakida: Yes.

Ms. Callentine: And it's Figure A1.

Ms. Wakida: Yes, my bad. Yes.

Ms. Callentine: Okay.

Ms. Wakida: Okay, that will do. I just want to get clear on what part of this is the dormitory or the 24 guest rooms that are going to be created.

Mr. J. Hart: This is Jordan Hart. This is the existing facility here.

Ms. Wakida: Correct.

Mr. J. Hart: This is where the dormitory, this is the Fred Baldwin Memorial Hall.

Ms. Wakida: So the 24 guestrooms that were referenced or maybe there was 27, where would those be?

Mr. J. Hart: There's, there's rooms within the Fred Baldwin Memorial Home and then there's also duplex structures here. These were all Maui Land and Pine structures. There's four, four units here and there's 22 units in this facility.

Ms. Wakida: So both sides of the, of the courtyard?

Mr. J. Hart: Basically. Yeah, there's a, there's a kitchen and an extra room here and then there's a upper level room and a kind of like an entryway in the main structure, yeah.

Ms. Wakida: Because repeated reference was made to having classes in the dorms. So I don't understand how that's happening.

Mr. J. Hart: There's, there's one area that's possible for a meeting room, but in actuality the, the way the application has been proposed is for the classes to occur in this proposed classroom facility which is shown--one second please--it's shown here. That's, that's this facility and that's to occur in this location. That, that's the actual area where classes would have space to happen. The Fred Baldwin Memorial Home is already developed as a dormitory facility. It's really not well suited to entertaining classes and that's why the additional buildings were proposed here.

Ms. Wakida: No, that was my question because it was repeatedly came up in that. Okay, ...(inaudible)... but later.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: Coming back with my same old educational purpose here. You don't have an educational facility but when are you planning to have this constructed and operating?

Mr. J. Hart: Maybe the applicant could speak to financing and planning?

Mr. Balbes: So I've been waiting obviously for this meeting to occur to be able to, be able to, I mean, I have those plans already at the County for approval for the permits. So we've already done our second round of corrections on our plans and so as soon as this occurs, God willing, then I am working on the funding for the building.

Mr. Shibuya: And while you're here what about the pool because I see it as proposed?

Mr. Balbes: That would be the same thing.

Mr. Shibuya: It would be going at the same time?

Mr. Balbes: Hopefully it would be happening at the same time, yes. Currently we have one room in the dormitory building that could be used as a classroom, but we've obviously been waiting for this occur so we that we could actually build the building to do that other classrooms.

Ms. Wakida: Follow up?

Chair Hiranaga: Commissioner Wakida.

Ms. Wakida: Good morning. According to your, one of your, your blog, you're still looking for investors?

Mr. Balbes: Actually, that's a very good question. I've actually sold everything that I have in -- that I was living in Los Angeles and moved here a couple years ago to do this project and I've now sold all of the assets that I have for this project and for this dream. And so when you read that in the blog I, I finished -- that was prior to me selling even my home that I had in L.A. And so at this point, I've funded, self-funded this entire project and at this point in order to get the building built, I do need an investor. But everything else--when you read that, that was when I still needed funding but I then sold everything that I had in order to get to this point.

Ms. Wakida: So you have the main building paid for, but now you don't have the education facilities paid for?

Mr. Balbes: Well, yes, because I can't raise the money until I actually get the approval in order to be able to build the building and one of the things that that's dependent upon for me is that if I'm going to only get a Special Use Permit and not get something that's more permanent I can't get an investor to spend another million or another million and a half dollars on a building, on a let's see if the County's going to be happy with for a two-year permit or whatever that might be. So I have a little bit of a conflict there. Does that make sense?

Ms. Wakida: Uh huh.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Is anybody staying in the, in the dormitories currently?

Mr. Balbes: The only people that are staying there are people that are actually working there

currently just to, you know, for keeping it clean and working on landscaping and --

Mr. Mardfin: But they're living there?

Mr. Balbes: Yes. Which they are living in the duplex buildings which is allowed for staff. That's part of the, you know, the Certificate of Occupancy that we currently have.

Mr. Mardfin: So you've kept up the use as a dormitory consistently through today?

Mr. Balbes: Actually, yeah, -- yes, I have and that was one of the biggest challenges for this project because the County actually only gave me one year to do a gigantic renovation. And I did my best to actually comply with that and worked seven days a week, crews from morning till night to make that happen and comply with that it did not go over one-year of not being used as a dormitory.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: Can you tell me what percentage of the educational services are you providing to local residents?

Mr. Balbes: Well, until we get that building built, it's gonna be very small because we don't have the space in which to provide education for the community and for the people that will, that will be there. But once that occurs, percentage wise I don't, I can't really say, but at least 25 percent maybe more. I certainly would like to be able to bring in the community on different occasions for other, you know, for educational things too, but I think it would be if I was to guess the percentage, maybe 25 percent?

Mr. Shibuya: Okay. And follow up question?

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: In--lost my train of thought here. I'd like to also know in terms of the manpower that you will need when you're fully operational. What is your percentage of full-time, part-time and where are they coming from?

Mr. Balbes: We, I think that there'll be probably about 20 to 25 employees that are gonna be needed and they'll all be coming from Maui.

Mr. Shibuya: And they'll be living on campus or ...

Mr. Balbes: No, they won't be living on campus. I mean, there might be a few people that live on campus but most of the people will be living in their own spaces and coming to work each day.

Mr. Shibuya: Yeah, I'm, I'm assuming this is a educational thing. So that's why I'm saying campus not on site.

Mr. Balbes: Correct.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Wakida.

Ms. Wakida: If you are booked to capacity, how many guests you expect?

Mr. Balbes: Well, if you -- I would think maximum would be like 48.

Ms. Wakida: And are guests allowed to come on a nightly basis?

Mr. Balbes: They could come for a night class or, you know, for a class for one day. What we're encouraging is three, five, and seven day programs and classes, and then, and then also individual daylong classes for community and other individuals.

Ms. Wakida: But if someone wanted to come and check-in for a night, may they do that?

Mr. Balbes: Only if they're actually enrolled in courses for that day.

Ms. Wakida: So there is a condition that they must be in a class in order to stay at the facility?

Mr. Balbes: Absolutely, absolutely. And that was actually from the County of Maui and from our perspective.

Ms. Wakida: And tell me again that minimum number of nights?

Mr. Balbes: Oh, the minimum? Oh, you said it could be one, but we're really encouraging three, five, and seven-day programs. That's what we really want to pursue.

Ms. Wakida: So there is no minimum?

Mr. Balbes: But...I don't think that there was --

Chair Hiranaga: We, we understand the answer.

Mr. Balbes: Okay.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: What will you be charging for the rooms?

Mr. Balbes: I know that you had made a comment that it was 399, but it's going to be 299 including all course work and food.

Mr. Mardfin: So it's 299 a night.

Mr. Balbes: Correct.

Mr. Mardfin: For food and tuition. So you don't have a separate tuition?

Mr. Balbes: No, it's all inclusive.

Mr. Mardfin: What happens if you rent the facilities to Maui College for their Continuing Ed Program?

Mr. Balbes: We haven't really figured out what that cost would be yet.

Mr. Mardfin: But presumably if they're having Maui residents they won't need--they won't be staying in the dorm.

Mr. Balbes: I believe, are you referring to the --

Mr. Mardfin: The Maui College representative.

Mr. Balbes: --Suzie that was here?

Mr. Mardfin: Yeah.

Mr. Balbes: Yeah. So I believe that what she was saying is that in my brief meeting with her, is that they actually do overnight. They're not doing a day, they're not doing a day class, they're doing like overnight classes and educational programs where people are actually staying there too.

Mr. Mardfin: Okay. I think you're probably right.

Mr. Balbes: Yeah, yeah.

Mr. Mardfin: I think you're right now that you've jogged my memory on that. Thank you.

Chair Hiranaga: Commissioner Wakida.

Ms. Wakida: I'm interested in your decision to put in a pool. It's a wonderful space in the middle of this courtyard that seems to me would lend itself to gardens and other more local activities. Can you expand on that?

Mr. Balbes: I can, and Stan don't kill me. So, well there are a lot of gardens in the courtyard currently. And originally that's where the pool has been approved from the National Park Service on the, you know, national level and on the, on the State level I believe and there was a part of me that wanted to move the pool somewhere else. And part why I wanted to move the pool somewhere else was because the courtyard is so peaceful and calm right now and the other part was because my neighbors asked -- they didn't ask, they were concerned about having a pool in the courtyard and so, I was open to moving it, but I don't know that that can occur based on my approvals that I already have.

Ms. Wakida: But is a pool mandatory for your facility?

Mr. Balbes: Well, the pool is, you know, I'm very big on yoga and yoga as a healing modality and teaching teachers and training teachers to become teachers and yoga in water is also a very important modality for people that actually have conditions where they can't actually move their body without the support of water. So for me, that was an important piece.

Ms. Wakida: Will this be a heated pool?

Mr. Balbes: It will be solar-heated pool.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Will you be seeking any sort of academic accreditation for this?

Mr. Balbes: You know, that has never really been a, a point that was important to me. All I'm really here to do is to just serve people and in moving in a, in a way in many different ways. And so whether I was accredited by somebody that felt like what I was doing was good enough or not, I'm just here to, to serve the individual.

Mr. Mardfin: You have a dining room in this building already is that correct?

Mr. Balbes: Correct.

Mr. Mardfin: Will you be accepting guests who are not involved in your programs?

Mr. Balbes: No.

Mr. Mardfin: What if there's a student involved in the program that wants to bring a friend from the community?

Mr. Balbes: Well, for me this is what...there's another important aspect to what we've created. And that is that the intimacy that's created in the collective of the people that are there is also part of the program to me. It's like, you know, to bring guests in from the outside that actually interfere with the intimacy that gets created in the work, that gets created in those educational programs doesn't really feel like a right fit for me.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: I notice that you have wonderful south facing roofs. Have you considered putting photo voltaic or some kind of energy generating, renewable energy generator system later on?

Mr. Balbes: Yeah, so, so let me address that. So there's a couple things. One is because the building is historic. You know, there were limitations especially with the most important piece of architecture which is in the courtyard to not have any solar panels that would take away from the

original condition of the historic building. But in negotiations with the Federal government and the State, we actually put on the--let's see what side of the building would that be? On the west side of the property we actually put the brackets up already to receive solar panels I just couldn't put them in at this moment. But in the new building, we'd like to put all solar on the, on the roof.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I'd kinda like to hear from Stan Solamillo about the historic aspects of it since he was the person that put in the registry application.

Chair Hiranaga: So be it.

Mr. Stan Solamillo: Thank you Commissioners, --

Mr. Balbes: Thank you.

Mr. Solamillo: --Chair. This is a really important project. This is the largest Certified Rehabilitation in Hawaii and as everyone I think is aware from the newspaper articles in the past several years SHPD and Hawaii's Preservation Program came under considerable fire and was under an audit by the National Parks Service. This specific project which, you know, we call it the Fred Baldwin Memorial Home actually consists of eight buildings and it is a Historic District in addition to being a Certified Rehabilitation. And during a Certified Rehabilitation everything goes through successive stages which means it gets reviewed by the local commission. In this case, it was the Cultural Resources Commission and gets sent to the State Historic Preservation Division and ultimately goes to the National Parks Service which through a series of negotiations with a new property owner or someone who's proposing a rehabilitation comes up with this final ultimate plan to put what would have been eight derelict buildings back into some sort of function and back into a condition that they will probably last many, many decades.

The, the period in between the time that the buildings went up for sale and when Xorin Balbes and his company actually purchased them was kind of bizarre because we had all sorts of proposals coming out from heaven knows whom and a lot of them were kind of frightening. I deal with lots of demolitions in Maui County and there was at least one to raise the whole complex and put single family estate houses. So it was really a, a happy moment to say the least when I got a serious proposal. Xorin showed up with an architect. They were drawing in the field and they were actually talking about going through this process. What Maui County did because the program to facilitate these types of, of projects has been in existence at the Federal level since 1975, and it has not been used by Maui County to any great degree or by the State of Hawaii is that we help them along. So Maui County prepared the nomination to the Hawaii Register of Historic Places followed up with the National Register nomination, also three applications that detailed, they're called the Part 1 and 2 for a Certified Rehabilitation, and then Part 3, in each case you photograph the existing conditions and you comment at the tail end with the final photographs. The work went really fast. It was the fastest application. The Federal reviewers said it was one of the best submitted in the United States. So I can only applaud the project as it has come forward and as it stands here before you today.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Do you happen to know whether there were any promises made about permits, District Boundary Amendments, Special Use Permit or anything?

Mr. Solamillo: No. This is just between the project--the Commission only is overseeing aspects of certain things like pool because the pool dealt with water and dealt with Hawaiian issues regarding water, holding water on the site. There was a lot of negotiations or actually discussions in that and that came out as a separate CRC hearing, but as far as any promises for anything, no. The ultimate reviewer is the National Park Service because they have to meet the Secretary of the Interior standards in order to certify a project like this as a Certified Rehabilitation.

Mr. Mardfin: And were they told about the usage as an educational facility?

Mr. Solamillo: Didn't go into that. They just go into--they'll look and review essentially are you damaging the buildings in any way, preserving the original massing, fenestration and appearance of those buildings in order to meet the Secretary of Interior standards. From their standpoint, it was a compatible use.

Mr. Mardfin: Internally there were new bathrooms were put into each of the rooms.

Mr. Solamillo: Yeah, you have to meet Code.

Mr. Mardfin: And that was not a problem for the State Historical?

Mr. Solamillo: No.

Mr. Mardfin: Or the National?

Mr. Solamillo: No.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Wakida. Could you use the microphone please?

Ms. Wakida: Follow up. I know the State level or the National level is it required that the -- okay, this is a National Historic Building, correct? That's the designation?

Mr. Solamillo: It would be a building which is now listed in the National Register of Historic Places.

Ms. Wakida: Okay, is that required to be open to the public?

Mr. Solamillo: There is a requirement. How many days per se, I don't know and I would have to check on that.

Ms. Wakida: And, and what about on the State level?

Mr. Solamillo: At the State level, I would have to verify that as well.

Ms. Wakida: Because I would like to see those in place and posted.

Mr. Solamillo: Okay.

Ms. Wakida: Should the project go through.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: Just a question. I just noticed our esteemed Senior Planner is here and I've worked with him many years and I know he knows the answer. So I'm going to ask him the question about Rural Service Center as identified in the Draft Maui Island Plan versus the Public/Quasi-Public type of zoning indicated in the Haiku-Paia Community Plan. Can you elaborate on that as well as spot zoning in terms of those residents who are within this particular area will they be forced to comply or change their zoning or the use?

Mr. Francis Cerizo: Are you referring to me?

Mr. Shibuya: Yes.

Mr. Cerizo: The Service Center and the Maui Island Plan, those issues, you know, actually we don't get involved in, I mean, as far as the Zoning Enforcement. So the only portion of the question and maybe you want to rephrase it deals with public/quasi-public uses and the current use now is a permitted use in the Interim District. And if granted the Special Use Permit and/or the Rural District-District Boundary Amendment that use would be also--would be consistent with those or would allow the proposed use. Once you obtain those, the Special Use or the District Boundary Amendment that use would be consistent with the zoning, therefore it would be allowed. The use being allowed would be the educational purposes. The dormitory would be as Mr. Mancini indicated would be an accessory use. They would have to, you would have to have the, the school in order to have the dormitory. You can't have, and I heard it several times hotel use. You cannot have an independent hotel use.

Chair Hiranaga: I have a question. Commissioners, do you have more questions? Okay, then let's break for lunch and reconvene at 1:00 p.m.

Mr. Mardfin: This is just a follow up, ...(inaudible)... 30 seconds.

Chair Hiranaga: Promise? Okay, go ahead.

Mr. Mardfin: Let me make sure I understand what you said. Without the Special Use they can't do the school. They'll still have the dormitories. They can't run it as a hotel, but without a Special Use Permit they can't run the education.

Mr. Cerizo: That's correct.

Mr. Mardfin: I think we have a distinction here. If the Chairman will allow the attorney to answer

'cause he disagrees.

Chair Hiranaga: Okay, sure.

Mr. Mancini: I never disagree with Mr. Cerizo. Sometimes we have a lapse of memory.

Chair Hiranaga: Please identify yourself.

Mr. Mancini: Paul Mancini. The existing nonconforming uses are basically agricultural uses on site. So the dormitories are accessory to those on site agricultural uses and our off site agricultural or other educational uses. Those are embodied now. Don't need a Special Use Permit for those. You can proceed with them. If he wants to expand his on site which he is asking for for his metaphysics, for his yoga, for his other activities, he cannot do that if you don't grant him a Special Use Permit. If you would deny him his Special Use Permit, obviously it puts him in current limbo. He would then have to wait to see what the Council would do on his Rural application. Because the Rural application would give him authority for Quasi-Public and Public. So those are the, the variables. Does Mr. Cerizo agree?

Mr. Cerizo: I agree with that. One thing that I wanted to--maybe I should have prefaced my comment was that the existing nonconforming use is a--that's what it is, it's like, is this a nonconforming dormitory use? If they would like to continue the use today, that use would have to be associated what it was prior to, just prior to...and that was the use as a dormitory for agricultural workers and, and perhaps some off site people that would be maintaining that facility.

Chair Hiranaga: Okay, we'll recess for lunch and reconvene at one o'clock.

A recess was called at 12:02 p.m., and the meeting was reconvened at 1:03 p.m.

Chair Hiranaga: The floor is open to Commissioners for questions to applicant or Staff. Commissioner Mardfin.

Mr. Mardfin: This is for Mr. Mancini. I'm sorry, I wasn't speaking into the mic very well. In your letter of November 14, 2011, on the second page at the bottom, No. 5, Acknowledgment Affirmation. It says, "this is to acknowledge and affirm that prior to obtaining Special Use Permit and/or redistricting, the dormitory use on the subject property will be solely to provide overnight lodging for students participating in the on site agricultural education programs and off site programs as referenced," and that's what you said just at the close before we went to --

Mr. Mancini: Correct.

Mr. Mardfin: I had a chat with --

Mr. Mancini: Francis Cerizo.

Mr. Mardfin: Francis. And he said that to be consistent with the existing use it has to be agricultural workers that are doing this. The existing dormitory was for agricultural workers. And that if you had people come in and just take educational classes that would not be grandfathered in.

Mr. Mancini: I disagree with Francis. The whole nature of nonconforming uses is kind of a interesting use. Some years ago, maybe 35, 40 years ago, I used to be County Attorney here and in those time and this issue would come up quite frequently at the time. Someone had a nonconforming use, and what's the nature of the continuing nonconforming use? Does a nonconforming use have to be exactly the same use? You'd have a retailer who came in and he was retailing sporting goods, but he wanted to go to another type of commercial use in the same thing. And at that time you would research the case law. In most jurisdictions have a ordinance that deals with it. City and County has an ordinance that deals with nonconforming uses. That ordinance basically allows a generic type of nonconforming use to continue as long as there's no significant internal impact because it was continuing in a general nature. Here, the nonconforming use on this property has been over time a, a moving target. There's been many different types of nonconforming uses. What the Planning Department has finally concluded is that it was a dormitory for ag people. The ag, ag participants, and of course, you had the Maunaolu School. Sometimes, ag participants would go off site to work, they would be on site to do things, they would go to Maunaolu College for things off the site, but it was never a consistent you have to work on the property. Because it was never really an agricultural property itself that was there. For the years, you had people, I can recall coming from Salt Lake City. The Mormon groups would come in for Maui Land and Pine and they would stay there to be field workers during the summer. Those field workers would go out and work, they would go to school, they would do other things, it was a broad social program also as well. And then it moved over and then the Micronesian students came in and the Micronesian students still continued the same thing. So to maintain it was a static on site isn't consistent with my recollection of the history and I'm surprised that Francis took that position.

Mr. Mardfin: But the, I would, I think he was looking at the most recent thing with the Micronesian students and -- he didn't say that and with the ones from the mainland, but they were there for three or four months at a time. They were seasonal workers that were there for extended periods of time not a week, not three days, not five days, not seven days, and so I think that's the context in which he thought it won't be the same to have short-term rental.

Mr. Mancini: I think you look at the more the generic use. It was the dormitory. The dormitory served certain purposes. What were those purposes? Is this consistent with the purposes then? I think you look at the broader base until, until the Council passes an ordinance to further define, you know, the nature of a nonconforming use which it hasn't done here and as I said, they've done it in City and County of Honolulu.

Mr. Mardfin: Yeah, thank you very much.

Mr. Mancini: I could send you a very detailed paper on the issue. I did study it in detail.

Mr. Mardfin: I don't need a detailed paper this will ...(inaudible)...

Chair Hiranaga: Any other questions, Commissioners?

Mr. Mardfin: Yeah, I do have one more.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: There was a brief reference to TAT, Transient Accommodation Tax. Is it the intention that TAT would be applied to these units?

Mr. Mancini: I did. Transient Accommodation Tax would have to be paid.

Mr. Mardfin: It would.

Mr. Mancini: Yes.

Mr. Mardfin: Regardless--unless they stayed for six months and had a six-month --

Mr. Mancini: Well, interesting, interesting issue. If it's--if you're renting for six months then you don't fall, it's a different, type of use, but for the nature of someone coming to school. There's legislation as to whether Transient Accommodation Taxes are applicable on education institutions and you have to be accredited, accredited to get an exemption for it.

Mr. Mardfin: So since they won't have an exemption because they're not going for accreditation then they would have to pay it.

Mr. Mancini: I think that's a correct statement.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any more questions from the Commissioners? Commissioner Mardfin.

Mr. Mardfin: Yes, we had a very interesting testimony from Dick Mayer raising a number of very specific issues and I'd just like to follow up on one set of them. On Page 2 of his written testimony he referred to the Paia-Haiku Community Plan and he has three major points. The Paia-Haiku Community Plan on Page 14, No. 3 says, "prohibit hotel resort development within the region." So if this looks like a hotel to us it's absolutely prohibited?

Chair Hiranaga: Are you asking a question? If you're doing discussion, we need a motion on the floor and we haven't gotten to that point yet.

Mr. Mardfin: Well, maybe Staff can help explain their reasoning in not stopping this based on the Paia-Haiku Community Plan?

Mr. Spence: Okay, Mr. Chairman?

Chair Hiranaga: Director wishes to answer.

Mr. Spence: Yeah, I think the determination is is that what they're doing is educational in nature. Okay, I often, I certainly respect Mr. Mayer and sometimes disagree with him as, as I do sometimes respect Mr. Mancini and often, you know, disagree with him as well, but in this particular case, I don't think this is, this is a hotel because there is this educational aspect. Mr. Mancini made the argument that there's the nexus between the two. You can't--if there was no educational aspect this would be a hotel. I agree with that argument. So that portion of the community plan would not

be applicable in this case. I think the question comes with, with the Special Use Permit and with the, with the District Boundary Amendment how do we keep it, you know, how do we keep that educational component intact and it doesn't morph into something else after, you know, after zoning is granted or after the District Boundary Amendment is granted.

Mr. Mardfin: And therefore, you wouldn't consider the Page 16, No. 13, his comment, "limit visitor accommodations to owner-occupied bed and breakfast because you wouldn't consider this a visitor accommodation?"

Mr. Spence: No, I wouldn't. I would not consider this a visitor accommodation in the context into which this is speaking. The --which one are you referring to? Okay, Page 17. Okay, "limit visitor accommodations to owner-occupied bed and breakfast." That's speaking of a different thing. Again, we're talking about a use that's characterized as, you know, an educational facility. It doesn't meet, you know, it's certainly outside of what, you know, my experience with colleges or whatever. They're looking at a different kind of education. You know, it's outside of most of our boxes, and you know, I don't see a problem with that.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Ball.

Mr. Ball: I guess while we're on this topic there was a testifier earlier, it was I guess gonna kinda be in charge of the curriculum here, and maybe they could come up and give us a little bit better idea of this education component of this project? Because there was a lot of general statements of education and we're gonna do this, we're gonna do that and if there isn't a firm curriculum yet then you know, say there isn't one. But if we're gonna pass this as a, as an education-based approval it be nice to know what to expect from the, the project as far as that's concerned.

Chair Hiranaga: Okay, one second. I need clarification if this individual is part of the application team or not or if he's Mr. General Public because we are not allowing questions to the general public. So if he's on the --

Mr. J. Hart: I wouldn't say that he's formally part of the application.

Chair Hiranaga: It's a yes or no question.

Mr. J. Hart: No.

Chair Hiranaga: Okay, so we're not gonna allow questioning that person.

Mr. J. Hart: So, to that --This is Jordan Hart. The proposed programs are outlined in our application.

Chair Hiranaga: Could you speak into the microphone please?

Mr. J. Hart: The proposed programs are outlined in our application and I'll just briefly kinda go through them. Let me just get to the description of the proposed use. Okay, so --

Mr. Mardfin: Is this, is this in our packets?

Mr. J. Hart: So there was a --

Ms. Callentine: Just to answer your question. No, this is part of the application which we don't transmit to the Commission.

Chair Hiranaga: So we don't have it in our packets?

Ms. Callentine: It was summarized in the report, and I'll look for the reference.

Mr. J. Hart: So, to continue. Basically a cultural awareness program which would be in summary, cultural training and education for staff and members in traditions and understanding of Hawaiian culture. Staff education in historic and cultural aspects and then, let's see, including programs for, for students. I'm sorry, this is several pages so I'm trying to go through it. Metaphysics, metaphysical programs would be -- well, traditionally metaphysics attempts to answer two basic questions in the broadest possible terms what is life about and what is happening in the world that we can't see? And so basically these would be programs focusing on this type of subject matter with experts in the field who would either be from Maui or visiting and they'd basically be running courses. Water sports training programs. Basically, Xorin had partnered with a professional water sports athlete here on Maui and these kind of programs would basically be, be kinda directed toward expanding your ability and skills in this specific type of -- basically extreme water sports like big wave surfing and things like that.

Mr. Ball: I guess what I'm looking for more so is like 8:30 this is what this have.

Mr. J. Hart: Oh, I see what you're saying, okay.

Mr. Ball: 12:30 this happens--

Mr. J. Hart: Okay, I thought you were looking for a description of the type of programs that were happening.

Mr. Ball: Well, yes and no, but more of a time frame too, because who's to say, that you just show up and say, hey look I'm going to take a few classes when I want to and otherwise I'm gonna be --

Mr. J. Hart: No, they would be preprepared and that kind of a discussion about the syllabus that was being prepared. Basically the courses will be mapped out and they'll occur on a schedule and then, you know, either you will be enrolled ahead of time or if you're approaching, you'd basically could participate in the programs that are, that are occurring on a schedule.

Mr. Ball: I guess I'm not clear on that. Either you're enrolled before you get there?

Mr. J. Hart: Well, for instance if you are aware of a program that you've been planning to participate in for months then, you know, you would be --

Mr. Ball: Oh, and then if you show up --

Mr. J. Hart: --but if you're for instance, local people can come to these programs too. So if there's a program that's running and they wanna basically -- they come and they're saying, you know, what classes are going and they can enroll in.

Mr. Ball: But in previous testimony those people would have to spend the night also, right?

Mr. J. Hart: No, I believe in order to -- in order to spend the night, you would have to participate in the classes, but there can be people who participate in classes who don't spend the night.

Mr. Ball: I misunderstood then because I believe in previous testimony you said that they had to be guests there.

Mr. J. Hart: No, I mean, sorry, I'm the project planner so I've been with this project for about two and a half years almost now, but anyway, in order to make use of the existing nonconforming dormitory use, they would have to be participating in courses.

Mr. Ball: So you may have 20 people that are staying the night let's say, and then you have another ten that show up that come for the class and then they go home?

Mr. J. Hart: That's right, that's right, yeah, exactly.

Mr. Ball: So it will be, because in previous testimony it sounded like it was closed somewhat to the, to the local public, if you saying that it's not then that's better.

Mr. J. Hart: There was discussion about basically bringing people into, for instance, participate in lunch and things like that and I think that Xorin was talking about the people that are in the courses. He wants them to be in their courses together there wouldn't be a lot of just hopping into a course. Like if you're in a course, you're in it with the people that you're in the course with, but there wouldn't be a lot of just hopping at the moment.

Mr. Ball: And when you're talking course, you're not meaning single class, you're meaning the course?

Mr. J. Hart: Whether it's a course or let's say it is a single class basically he wouldn't want to be mixing incidental people with people who are participating in a course program.

Mr. Ball: I guess that's kind of where I'm --

Chair Hiranaga: Yeah, just for clarity, you need to be a student in order to stay overnight in a dorm?

Mr. J. Hart: That's correct.

Chair Hiranaga: Okay.

Mr. Ball: But yet you can show up for lunch then?

Mr. J. Hart: No.

Mr. Ball: I mean, if you show up for class, so --

Mr. J. Hart: You could, you could show up and then basically register and enroll in classes and then come to the class when it happens.

Chair Hiranaga: You need to be a student enrolled in a class in order to eat in the lunchroom, in the dormitory lunchroom or dining facility.

Mr. Balbes: Is it okay, this is Xorin Balbes, is it okay if I speak to the question?

Chair Hiranaga: Sure.

Mr. Balbes: So nobody can come to the property just to eat at the property. That's not occurring. But the people that actually stay on the property have to be enrolled in classes and programs but other people can come in from the outside that aren't staying there and be enrolled in those courses and programs. Like as an example, let's say we were doing a Ashtanga teacher training that week. Somebody could not be staying on the property and come and join that class so that they can actually become a teacher in Ashtanga. Does that help?

Mr. Ball: It does. I mean, it's not here nor there whether there's a class that ends right before lunch and then they have to go off property to eat or bring their lunch and then they come back afterwards, I mean, I guess that's how the theory is. It doesn't matter, but that's what --

Mr. Balbes: Well, I thought I would just try to help.

Mr. Ball: Kinda weird feeling --that earlier part, thank you, for that earlier part.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I have two questions. Earlier you told us that tuition is imbedded in the fee to stay overnight. How would you deal with tuition for people that lived on island and weren't staying overnight?

Mr. Balbes: We just have to come up with a different pricing structure that doesn't include accommodations and does include ...(inaudible)... So there'll be a fee for the course. Like at the university you can go to agricultural courses for like anywhere between like 30 and \$60 for a course. So maybe we're gonna be in that same ballpark in range.

Mr. Mardfin: My second question. In Exhibit 16, their letter from Mr. Mancini, on Page --

Mr. Balbes: Is it for Mr. Mancini or for me?

Mr. Mardfin: I don't know. It probably is you, I would guess. One, two, three, four, five, six, seven it refers to off site farm emersion classes. Maybe this is you, maybe you can refer.

Mr. Balbes: Yeah.

Mr. Mardfin: And the first one listed is, "along with our on site curriculum, we'll also offer off site farm classes," and then you have some more words, and then below is a list and you list, "Kipahulu Ohana, this class offers cultural education in ancient Hawaiian farming practices." And I'm rather familiar with Kipahulu Ohana, it's a great organization. What I don't understand is how they'd stay in your place and they'd go over for the day to work in the program and then come back at night is that what you envision?

Mr. Balbes: Correct. That would be the same thing as like Maui Cultural Lands that on Saturdays that the students would go down to Maui Cultural Lands and understand, you know, what they're currently doing and then assist in the restoration of that. So it would be off site programs where they would participate in other farms because there's certain farms that are doing let's say, you know, Biodynamic or they're doing, you know, permaculture farming or other things, so we can't house everything on our premises so we're creating relationships with other people outside.

Mr. Mardfin: Have you got a formal relationship with Kipahulu Ohana?

Mr. Balbes: That's actually through Matthew who is not here, but yes.

Mr. Mardfin: You have any idea how long it would take somebody to travel from your location to their location?

Mr. Balbes: I personally don't know.

Mr. Mardfin: Would you be surprised to hear three hours each way is about right?

Mr. Balbes: No, I wouldn't be surprised.

Mr. Mardfin: Okay.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida.

Ms. Wakida: It sounds like your clientele will be people from the mainland, is that correct? Predominantly.

Mr. Balbes: Predominantly I would think so.

Ms. Wakida: Okay, and I --

Mr. Balbes: And for maybe interisland.

Ms. Wakida: Okay, people...I know this is really not our area but I assume you've done your market studies and know what people want and what they're gonna come and look for. What happens if you don't get capacity? What happens if the program doesn't fly?

Mr. Balbes: What if it doesn't fly? Well, I guess that is the possibility of every business on this

planet current that a business doesn't fly. But I'm gonna certainly give it my best shot and effort for it to do so. That's all I can do.

Ms. Wakida: But you feel confident that your, that your feasibility plan is gonna work?

Mr. Balbes: I do. I believe that people today are actually very hungry for a different experience in what they've experiencing, in what they've been experiencing. And that people truly do want to incorporate education and a cultural education and agriculture and all the programs that we have. I mean, even just, you know, people that go around the world for yoga retreats it's enormous. So I believe that what we're offering is at cutting edge of what is currently a trend that's going to be emerging all over the planet.

Ms. Wakida: So probably really are appealing to the high-end market, correct?

Mr. Balbes: I wouldn't say it's just high-end. I would say it's middle- to high-end. It's -- I would say it's middle- to high-end. I think \$299 for food, education and classrooms isn't considered high-end when if you look at the hotel rates on Maui, \$299 isn't even a high-end hotel.

Ms. Wakida: Well, that may not be your final price though once you get your expenses all factored in, but that's not our business.

Chair Hiranaga: Right.

Mr. Balbes: No.

Mr. Ball: Question?

Chair Hiranaga: Commissioner Ball.

Mr. Ball: The cultural training and historic and agricultural and all that, where are your instructors getting their training for those cultural classes if you will or --

Mr. Balbes: For the cultural classes or for all of them?

Mr. Ball: Well, kind of all of them, but I'm more concerned I guess with the Hawaiian classes that are being taught and are they being taught by the correct way and ...

Mr. Balbes: So if I may share, a couple people actually showed up late today that actually didn't speak, like I don't know if you know, Kupuna Al, who was here earlier, who's actually helping us design cultural programs. And Lei'ohu Ryder, I don't know if you know who she is. She was here also and she's helping design programs and classes and through Puanani Lindsey and Ekolu they're actually doing our Hawaiian native plants and medicine plant courses. So what we're doing is we're not trying to pretend that we know how to teach Hawaiian classes, we're actually gonna have Hawaiian people teaching the Hawaiian classes because it would just seem very odd for us to do that.

Mr. Ball: And does that translate into the ag classes and --

Mr. Balbes: And it translates to ag like Anu Farms, we actually hired their main farmer who's actually gonna be teaching our classes and then I've got, you know, like 25 other letters that I never submitted but I'll give them to you guys. And the woman that actually was one of the heads of the Agricultural Program at University of Hawaii is gonna be doing a lot of our class work for agriculture and I've got a letter from her that I can give you, give you guys. And then related to yoga, I mean, everybody has to be certified, Ashtanga teacher, you know, Yoga Flow teacher, Kundalini teacher, I mean they already have like their certificates, so they're certified teachers. We're not like bringing anybody in that's not certified.

Chair Hiranaga: Commissioner Sablas.

Ms. Sablas: Aloha.

Mr. Balbes: Aloha.

Ms. Sablas: First, I wanna commend you for the wonderful work you did there and I know you put a lot of in and I acknowledge you for that.

Mr. Ball: Thank you.

Ms. Sablas: And I do know all the cultural practitioners that are there and I can vouch for their integrity so there's a lot of things that I like about the project that you are--you have. But the major concern I have, I think is that, before I read it is that, you know, while it talks about water sports, cultural swimming pool what it looks to me like a hotel and that's really what's troubling me honestly. And maybe the request should be for a hotel in an Ag zone area. You know, I mean --

Mr. Balbes: Can I address that?

Ms. Sablas: Well, if I could just finish?

Mr. Balbes: Okay.

Ms. Sablas: But again, not to take away from the effort and I think Maui, I agree with a lot of testimonies that Maui is a very special place that people from the world would come over to find peace and -- and if we can have a place to make, have people become better stewards of the land, you know, I think great for that and I think that's what that project is doing and to address as far as agriculture part, Hawaiian culture is so with the land. You cannot have Hawaiian culture without the land so just having the culture aspect there, the Hawaiian culture in my mind it goes with the land. I mean, you saw what Kupuna Lindsey what he talked about and I truly believe in that. So now that I've made my point if you could address, this is the only thing that's troubling me is that it looks like it's a hotel, so can you address that please?

Mr. Balbes: I can. So, could I just have one second though? So here's the deal, so first of all, that's really old what they actually pulled off line. And what had occurred was that when we first originally went into escrow on the project we were, we have a letter actually from Francis Cerizo that says that we're allowed to do the--a dormitory and it was never actually attached to an educational piece. And then when we finished the project, we thought that we could actually do a

dormitory that wasn't attached to the educational piece until we got this building approved so that we could actually do the education. And then what happened is that there was a meeting and they asked us to have agricultural education on premises and agri education off premises connected to the dormitory use. So that went out before anybody had said to us that we couldn't just do the dormitory without the education before the building actually occurred. So as soon as we were told that we couldn't do that, that never occurred again. That's a very old document that was pulled off the internet. And the County -- excuse me, so I'll address the printing it out yesterday. Once something goes online on the internet, you can't take it off. It's very difficult to get it off. Every document is there. When the County asked me to not present anything like that, I stopped immediately, and in fact, there were two places that Livit had asked if I would call them and find out is there any way that they could pull it off of their site and begged, borrowed and stealed and they took it off their site, and there might be a couple more places where it is, but I stopped immediately once they asked me to do education with it. I didn't know that I had to do it until I got the building. So it was never--its intention was never to be a hotel. Its intention is still not to be a hotel. Like would I invest all the money that I've invested in this project to pretend I'm something? It's like, it just doesn't make any sense to me and why would I want to invest any more money in a building for classrooms if I was a hotel. It's just a really hard conversation for me when I put everything I have in it and it's, it's an educational facility. I'm here to inspire people to transform their lives and to connect to this planet and to this earth in a new way. That's my job. I gave us a huge career because I felt like God had called me to do something else. That's all I want to do. I want to serve people, to reconnect them to themselves, to reconnecting to their land and reconnecting to the body. It's my only purpose and I can't do that in a hotel.

Ms. Sablas: Thank you very much.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I have a question for the Director. This seems a little odd coming at this sort of late stage. Shouldn't this have come to us a couple years ago or am I not understanding the process very well?

Mr. Spence: I'm not sure --

Chair Hiranaga: Director.

Mr. Spence: I'm not quite sure what you're referring to that what should have come because I mean, if you have a nonconforming use or I mean, even if it's -- if you have a nonconforming use that use can continue. If have an, you know, agriculturally related uses, there's no permit needed for that. The historic restoration of the property is permitted under both State and County Law. There is really nothing to bring before the Commission. Now with the expansion of the use and the other educational avenues, you know, that's at the point that this needs to come to the Commission. I mean, it's--getting entitlements in Maui County is difficult. It's, you know, which one comes first? You can't get them all at once. You have to get them one at a time, at a time, at a time. Some of them are sequential, some of them are not. This particular project, this is the point where we're trying to get this particular entitlements so they can continue on from there.

Mr. Mardfin: Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya.

Mr. Shibuya: I'd like to ask our Planner, Livit if she wouldn't mind reading the definition of a dormitory, according to the dictionary.

Chair Hiranaga: I believe she already did that. You want her to repeat?

Mr. Shibuya: No, she didn't repeat.

Chair Hiranaga: I asked her that question before, definition of a dormitory. There is not one in the Code, County Code, so she paraphrased out of the dictionary.

Mr. Shibuya: Well, she did not. And so that's why I'm asking her to paraphrase it from the dictionary, Merriam-Webster, Merriam-Webster Dictionary.

Ms. Callentine: Okay, I did look that up and I do have it up on my smart phone. This is from the Merriam-Webster Dictionary and historically it says in the 15th Century it was used as, as defined as a room for sleeping, especially a large room containing numerous beds. Second definition was a residence hall providing rooms for individuals or groups usually without a private bath. And then there's another example that's chiefly a British example referring to commuter, commuter communities. So I believe the point that Commissioner Shibuya wanted to make was regarding No. 2 the issue of private baths.

Mr. Shibuya: Thank you.

Chair Hiranaga: Any other questions, Commissioners? I have a question. The classroom, the proposed classroom, you can actually have classes without the proposed classroom, correct? You could have it outdoors, you could put up a tent?

Mr. J. Hart: That's correct.

Chair Hiranaga: So -- the point being you could still have an educational facility there without the classroom. But he wants the SUP so he can go to potential investors to allow him to build the, to finance the classroom, but....

Mr. J. Hart: I believe he was saying he really needs the District Boundary Amendment to get financing for the structures, but the SUP would allow the operation on site.

Mr. Spence: Right.

Chair Hiranaga: Operation of a classroom on site?

Mr. J. Hart: Operation of education programs, educational uses.

Chair Hiranaga: So without the SUP and if he did not build the building he would not be allowed to have classes outdoors on the lawn?

Mr. J. Hart: No, public/quasi-public special uses. Like no public/quasi-public educational uses without the Special Use Permit. He can do the agricultural education on site in the State Ag District and then he can do off site educational or agricultural educational.

Chair Hiranaga: Thank you.

Mr. Balbes: Could I?

Chair Hiranaga: Well, my question's been answered. Any other questions, Commissioners? If not, we're still ready for the staff recommendation. Commissioner Mardfin.

Mr. Mardfin: I'd like to ask the applicant, yes, you seem to wanna clarify that last answer, how would you clarify it?

Mr. Balbes: Oh, I guess, the only way...this is Xorin. The only way that I could actually--I wanted to clarify it was that being where we live it probably rains 50 percent of the time so it's difficult to do classes outside.

Mr. Mardfin: Would it be possible to hold them in a dorm room?

Mr. Balbes: We could, we could probably do it in one of the rooms, yes, but it's small and so we won't be able to bring in enough people to do classes. And there was one more, please hold on.

Chair Hiranaga: Well, you can't do classes without the SUP, this is ag related.

Mr. Balbes: And the only classes we can do there is agricultural education. Oh, and then the comment about the tent, I already looked into tents because I thought it would be a cheaper way to go. But, you're only allowed to have a tent up for two weeks at any one period of time in Maui County legally.

Chair Hiranaga: Thank you. Okay, if there's no further questions, we're ready for the staff recommendation. You know, I'm gonna ask for a ten-minute recess because I need to attend to something. So we'll reconvene at 1:50.

A recess was called at 1:40 p.m., and the meeting was reconvened at 1:56 p.m.

Ms. Callentine: Recommends that the Maui Planning Commission grant approval of the Land Use Commission Special Use Permit for three years subject to conditions that I'm going to be specifying below.

Chair Hiranaga: Excuse me Livit, I just want to address Agenda Item B-1 and we'll do B-2 separately.

Ms. Callentine: Agenda Item B-1 is --

Mr. Spence: Well, let's do the Special Use Permit first and then --

Ms. Callentine: Right.

Mr. Spence: So take action on the Special Use Permit and then take action on the District Boundary Amendment.

Ms. Callentine: Right. So that's what I said was we recommend approval of the Land Use Commission Special Use Permit. I'm going to take them separately, thank you, Mr. Chair.

Mr. Shibuya: Three years, right?

Ms. Callentine: I did, I did say that is our standard initial term. So we did say three years, until January 31, 2015. So No. 1 is and I've got them up on the board and I wanted to put 'em here because the -- I passed around a sheet at lunchtime for you Commissioners and it's a working draft that we've since changed but it does, but it does contain the language. We've moved some of the conditions around and so that's why I have it up on the board so you can follow along with me. So No. 1 stays the same. This is No. 1 of the Land Use Commission. No. 2, also stays the same with the correction because I left out--oh, maybe it wasn't this one. No, it wasn't this one. It was, No. 2 stays the same. No. 3, is about the compliance report and we wanted to make a condition that there be an annual compliance report and there's certain things that are required to be included in the report. We want your help with that, but we wanna put that condition on the District Boundary Amendment if you move forward with this. So I'm not gonna say anything else about the compliance report right now and I hope the Director will butt in and tell me when I've put my foot in my mouth or before, before I do. So now then, No. 4 which is the first project specific condition is going to remain the same. It's about the SHPD approval for the classroom building. No. 5, stays -- actually No. 5, we wanna strike No. 5 because when I first, when I first drafted these conditions, the -- they hadn't submitted the final and since the time that I drafted the conditions they did submit the final. So this condition is no longer necessary. So I would strike No. 5. No. 6 would then get renamed although it doesn't show on here. This one about the grading permit and several of the ones that follow, No. 7, No. 8, and No. 9, are all related to getting the building permit. I would ask the Deputy Director of Public Works if there's any others that she wants added in here, but if not, then these would stay on the Special Use Permit and would be satisfied during building permit review. So I'm gonna take this separately then.

So in consideration of the foregoing, we recommend that you adopt the, this report and this recommendation for the Land Use Commission Special Use Permit prepared for this January 10, 2012 meeting and authorize the Director of Planning to transmit the record as findings of fact, conclusion of law, decision and order on behalf of the Maui Planning Commission. So those are your -- so there are changes to -- that's the recommendation for the Special Use Permit. Thank you Commissioners.

Chair Hiranaga: Livit?

Ms. Callentine: Yes, sir.

Chair Hiranaga: What are the new conditions you added to the green recommendation paper?

Ms. Callentine: Yes, the new conditions, well, I didn't bring them up because you asked me to deal

with the State Land use Commission first and so, I'm gonna scroll through and show you now we're looking at the conditions for District Boundary Amendment. Those proposed new conditions would be added to the District Boundary Amendment so that they would be in perpetuity rather than expiring when the Special Use Permit sunsets.

Chair Hiranaga: You're making the assumption that the Boundary Amendment is gonna be approved. I would not make that assumption at this time. So you should go over--you should say,
--

Ms. Callentine: Okay.

Chair Hiranaga: --you should add this to the--my recommendation is you add this to the SUP application and say if the Boundary Amendment is granted these would no longer be necessary.

Ms. Callentine: Are you asking me a question?

Chair Hiranaga: No, I'm suggesting you do that.

Ms. Callentine: Okay.

Chair Hiranaga: Director or Corporation Counsel if you wish to comment? 'Cause I mean, you're making the assumption what this Commission is gonna do and that may be a dangerous assumption.

Ms. Callentine: Okay.

Mr. Spence: I don't see any problem with being redundant because as soon as the Special Use--assuming the District Boundary Amendment is going to be approved and this Special Use Permit is no longer needed, you know, these will, these will just go away. We'll deal with Commission conditions on the District Boundary Amendment in a moment.

Ms. Callentine: Okay. So then after condition--well, the condition that hasn't been renamed yet, but renumbered--but after the Department of Water Supply condition then there would be a condition actually -- not the change in zoning--that's not going with the Special Use Permit. Okay, No. 10 would be, "that all overnight lodgers in the dormitory unit shall enroll in and attend on site educational programs as represented to the Department of Planning and the Maui Planning Commission. In addition, students may participate in off site educational programs coordinated by Soulspace LLC."

No. 11. "That at no times shall the dormitories be used for short-term rental of overnight accommodations for individuals who are not enrolled in on site educational programs."

And No. 12. "That the applicant shall develop the project, the property, in substantial compliance with the representations made to the Commission in obtaining the Special Use Permit. Failure to so develop the property may result in revocation of the permit."

So that's the recommendations for the Special Use Permit.

Chair Hiranaga: Okay. All right, open the floor to a motion.

Mr. Shibuya: Some more question.

Chair Hiranaga: Question regarding process?

Mr. Shibuya: No, No. 13.

Chair Hiranaga: Question regarding the recommendation?

Mr. Shibuya: Yes.

Chair Hiranaga: Go ahead, Commissioner Shibuya.

Mr. Shibuya: Okay, the question is, No. 13, I believe is stricken, but do--does the County require not for profit reporting? Does the County require any kind of reporting from not for profit agencies operating on Maui at all? Is there an annual requirement for that?

Mr. Spence: The only time that that there is any kind of reporting requirement is if they have--they're either a grantee or if they have some kind of permit like this, what they're applying for here. Otherwise, not for profits or nonprofits there is no--you know, they're not attached to the County in any way so there's no reason to be reporting to them.

Mr. Shibuya: Yeah, the condition of not for profit is what is troubling me at this point. They're gonna provide some assurance that they're remaining as not for profit, but how do we know that they are retaining that? I need some assurances from some, somehow.

Mr. Spence: I understand. Condition No. 3, we were going to discuss a little bit. Normally as a part of a Special Use Permit they have to submit a compliance report to the conditions. In this case, maybe the compliance -- then it wouldn't be a standard condition. It would be a special since we're modifying it. The compliance report could include such things as, you know, some kind of verification that the nonprofit is operating the educational facility that yes, indeed the classes have taken place and those kinds of things.

Mr. Shibuya: I feel assured when we do have some kind of statement then No. 13 can be stricken.

Mr. Spence: Okay.

Ms. Callentine: So do you want to take what on the board is showing as Condition No. 3 and make it an annual compliance report and that the annual compliance report be submitted 90 days prior to the anniversary date each year of the Special Use Permit.

Mr. Spence: Or just once a year. It doesn't, it doesn't -- and I'm sure the applicant will have something to say about all that.

Ms. Callentine: And then do you wanna make some specifications in this condition about what would be included in that report? We talked about possibly proof of ongoing registration with the

DCCA as a nonprofit to make sure that the school continues to be run as a nonprofit and maybe the applicant can actually help us with what kind of evidence they could provide and then also we talked about documenting so that a annual report of attendance of the classes, the types of classes and the numbers of students that have passed through. Maybe the numbers who are from Maui or from the islands and that sort of thing. You can specify the types of things you'd like to see in the report. You could specify that the report come back to you for review. You could.

Chair Hiranaga: No, he's questioning--asking clarity on the staff recommendation I don't think we need a motion 'cause he's just asking for clarification of staff recommendation before--then he can make a motion once he understands that are we satisfied. You have a question about the recommendation?

Ms. Wakida: Yes, about the project, yes I do, project condition. Sorry Livit, this is for you.

Ms. Callentine: Yeah, I know.

Ms. Wakida: Assuming that this passed, is this business ready to take guests and go into business tomorrow?

Ms. Callentine: I cannot answer that question. I'd have to defer to the applicant.

Chair Hiranaga: Yeah, let's hold that off for discussion next.

Ms. Wakida: Because--

Chair Hiranaga: We need clarity on what they're recommending not if they're ready to hit a ground with a shovel or not.

Ms. Wakida: Well, that leads to my question which is on No. 11, "the dormitory shall at not time be used for short-term rental." Are we going with a legal definition of that "short-term rental?"

Ms. Callentine: The intent here was to prevent anyone from staying overnight in the dormitories who is not enrolled in an education program, an on site educational program. So the language could definitely be changed. In a way, it does seem a little redundant because it's for short-term rental of overnight accommodations. You could strike for short-term rental and just say, be used for overnight accommodations and not specify any kind of a time there and maybe that would be clearer.

Ms. Wakida: Okay, I think so.

Ms. Callentine: I mean, I don't know if the Commission wants to do that, but...

Chair Hiranaga: Can you show that to us on the screen there?

Mr. Shibuya: May I make a suggestion that we...positive on No. 11. Just specify that overnight is for enrolled on site educational programs. If you're enrolled you can stay. Say it in a positive way rather than no time shall, say you may.

Ms. Callentine: Yeah.

Ms. Wakida: You must be.

Mr. Shibuya: Yeah, you must be.

Chair Hiranaga: Make it in the affirmative.

Mr. Shibuya: Yeah, say it in an affirmative way not a negative.

Chair Hiranaga: An individual must be enrolled--

Ms. Callentine: Okay.

Chair Hiranaga: --in the educational programs in order to use the dormitory facilities for overnight purposes or something like that.

Ms. Callentine: So am I getting this, "that the dormitories shall be used for overnight accommodations for individuals who are not enrolled --who are enrolled in on site educational programs."

Ms. Callentine: Only.

Chair Hiranaga: Doesn't have to be on site, it's only enrolled because it could be off site. They can go off and come back. Just put educational programs. Must be enrolled in educational programs.

Ms. Callentine: Who must be enrolled?

Chair Hiranaga: Yeah, individuals or individuals enrolled. Anything else before we go to a motion? Commissioner Mardfin.

Mr. Mardfin: Yeah, Livit, the Director I think correctly said that, we don't change standard conditions. So three could stand the way it is. We add a project specific condition about annual reporting. So you take "annually" out so it's standard language and then make a project specific condition that there be annual reporting verifying the educational use including data on students, courses, et cetera.

Chair Hiranaga: Okay, why don't you do that as an amendment once a motion's on the floor? So I know there's some wordsmithing that needs to be done, so maybe while we have a motion on the floor and discussion, you can clean it up for us, Livit, but we know the intent. So I'll open the floor to a motion. Commissioner Shibuya.

Mr. Shibuya: I'll make a motion to accept, I mean approve the State Land Use Commission Special Use Permit as recommended by the Planning Department, all of the standard conditions and the project specifics and listed down by Livit. I think there's 12 of them.

Ms. Callentine: Well, the numbering is probably off a little bit because I struck this one, maybe I

just pull this one since and that will fix the numbering. I don't believe that you've got total language that you want in -- I don't believe I've captured your language, but you're in the middle of making a motion.

Chair Hiranaga: Could you scroll down a little bit more?

Ms. Callentine: Yes I could.

Chair Hiranaga: What's the last condition?

Ms. Callentine: Well, I started to try to craft, you see, it's hard for me to write in here and also listen to you at the same time. I was going to specify annual compliance--what would be required in the annual reporting. An annual report shall be--an annual report shall be filed and shall include, I was trying to give specifics like that.

Chair Hiranaga: Can you scroll back up?

Ms. Callentine: Okay.

Chair Hiranaga: Isn't No. 10 redundant with the one above?

Ms. Callentine: Isn't No. 10--

Chair Hiranaga: No. 9 and 10 aren't they redundant?

Ms. Callentine: Well, they may be because No. 10 was originally crafted as in the as sort of a cautionary that dormitories shall not be used for short-term rental for individual who are not enrolled in on site educational programs. Now -- and so No. 9, is in the positive that all overnight lodgers shall enroll -- you know, you could probably just take out 10 --

Chair Hiranaga: Yeah.

Ms. Callentine: --since you've changed the wording of 10, you could probably just eliminate that altogether.

Chair Hiranaga: Okay. So--anyway from a procedural standpoint we need a second on the motion. So is there a second?

Ms. Sablas: Second.

Chair Hiranaga: Okay, move to approve as recommended by Staff by Commissioner Shibuya, seconded by Commissioner Sablas. Discussion which is now you can start -- put an amendment on the floor. Commissioner Mardfin.

Mr. Mardfin: I move to add an 11th project specific condition, "that an annual report to the Planning Department shall include information on the educational activities provided including," I'd put, "including enrollment, list of courses, et cetera."

Ms. Callentine: Well let's, let's not just say, "et cetera," if we could. The more specific we can get, the better for, both for the Planner trying to review whether they're in compliance with it or not and both for the applicant to know what to submit.

Mr. Mardfin: Including student enrollment by course.

Ms. Callentine: Including student enrollment by course. Are there any other items you, Commissioners, would like to see in an annual report?

Chair Hiranaga: Well, that was a, that was a motion to amend, is there a second?

Ms. Sablas: Second.

Chair Hiranaga: Motion to amend by Commissioner Mardfin, seconded by Commissioner Sablas. Discussion on the amendment? Commissioner Mardfin.

Mr. Mardfin: Only that it makes clear what our intent is, it's to find out exactly -- since this Special Use Permit is to allow educational programs other agricultural programs this is a way to verify that such programs are being offered.

Chair Hiranaga: Any more discussion on the amendment? Seeing none, call for the vote. All in favor, raise your hand.

Mr. Spence: That's seven ayes.

It was moved by Mr. Mardfin, seconded by Ms. Sablas, then

VOTED: To Add Project Specific Condition No. 11, "That an annual report to the Planning Department shall include information on the educational activities provided including, enrollment, list of courses, and student enrollment by course."

Chair Hiranaga: The motion to amend is approved. I know this is procedurally unusual, but can you go like around 9 or 10, isn't 10 inherent in any SUP?

Ms. Callentine: Is 10 inherent? Yes.

Chair Hiranaga: So why do we need --

Ms. Callentine: That is a standard condition.

Chair Hiranaga: So should that--that should be somewhere else.

Ms. Callentine: Oh yeah. How 'bout that? Now that is in the project specific condition--I mean in the standard condition. As Condition No. 4.

Chair Hiranaga: Can you show us the new, the new condition--project specific conditions again?

Ms. Callentine: Yes, sir, I certainly can. So there's just two. Can you see that? Okay. May I make one, one comment? The annual report, you might wanna consider that it somehow or other also captures the ongoing nonprofit status of the school. And I do not know what would actually prove that status other than perhaps a submission of evidence from the DCCA that they still have that trade name--still have that nonprofit corporation registered, but perhaps our Director or Corporation Counsel may have a recommendation for other evidence of the nonprofit. If you care to include that.

Chair Hiranaga: Question for, not sure if you have this answer, but a nonprofit or not for profit organization is basically you obtain that designation because there is some tax advantages. So there's really no incentive for someone who is able to qualify for that type of status to give it up 'cause basically they're increasing their tax liability. So I don't know if we really need to confirm that status annually because it behooves them to retain because it provides tax advantages and there's many ways to maintain your nonprofit status even if you're making tons of money just pay your employees more money so that you don't make a profit. So I don't know if we really need to put that in there.

Ms. Callentine: Director?

Mr. Spence: Well, I think for the purposes of the -- the conditions would cover already, you know, in substantial compliance with the representations made to the Commission. The representations have been made that a nonprofit entity will be, you know, operating the school and I think substantial compliance would include that, and we can always look on line. As, as a part of the annual report, Planning Department before they approve that report, you know, we can look on line at the DCCA website and see that they're filing their annual reports and that the, the entity is still in existence.

Ms. Callentine: Okay, thank you.

Chair Hiranaga: I'm just making sure I understand those two new conditions.

Ms. Callentine: Okay.

Chair Hiranaga: And so the conditions above that were all in this green?

Ms. Callentine: Condition Nos. 5, 6, 7, 8, and 9 are all going to be conditions that must be satisfied prior to either issuance of a building permit or a C.O., a Certificate of Occupancy.

Chair Hiranaga: Did, did the applicant wish to comment on these new conditions?

Mr. Mancini: Just two. Livit if you can go to Condition No. 10? I believe the Chairman suggested to delete -- 10, on site, because the programs are both on site and off site and I think that was just, just not, not deleting that. Right now, the way it's worded it's enroll and attend on site educational programs. It doesn't provide the ability for off site and I think that was a earlier comment by the Chairman.

Chair Hiranaga: And delete the last sentence in that condition.

Mr. Mancini: I think the way the Chairman worded it, "shall enroll and attend educational programs as represented to the Planning Department,"--"to the representations" were pretty clear.

Mr. Mardfin: Mr. Chairman?

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I like the way it's written. I think they need to be doing stuff on site to be dorm residents rather than and, and this allows them to do off site, but they need to be on site to do dorm residents. So I kinda like the way it reads.

Ms. Callentine: And also, Mr. Chair, in Exhibit, in Exhibit 16, Mr. Mancini drafted a letter to the Planning Department in which he, in which he acknowledged and affirmed that program participants will enroll in onsite agriculture programs and may participate in off site agriculture programs and other programs coordinated by Soulspace LLC. In this condition, I took out the words "agriculture" because with the SUP they don't have to have classes that are related to agriculture.

Mr. Mancini: That's correct. Condition No. 10 that doesn't allow the off site under the SUP and we've got it as a nonconforming use now.

Chair Hiranaga: Actually, I prefer the language that you read from Mr. Mancini saying they shall enroll in and attend on site educational programs and may participate in off site.

Ms. Callentine: Well, okay. We separated it into two sentences.

Mr. Shibuya: No need.

Chair Hiranaga: Yeah, I'd condense it.

Ms. Callentine: Is that what the rest -- is that-- is that an amendment?

Chair Hiranaga: We can do an amendment once you put it up there.

Mr. Mancini: I had one additional request.

Chair Hiranaga: I'm sorry, Mr. Mancini, you said something?

Mr. Mancini: Yeah, I had one additional matter I wanted you to consider.

Chair Hiranaga: This particular item is that satisfactory to you, No. 10?

Mr. Mancini: I would like--I'd like it to be on site and off site so there's no question or consistent with my letter would be fine.

Ms. Callentine: Well, your letter restricts people to agricultural education programs only so that's why --

Mr. Mancini: Yeah, you would just, you would just take away the agricultural --

Ms. Callentine: I did. And this is what your letter says.

Mr. Mancini: Yeah, if we would just--my letter would be consistent just don't need to use the word, "agriculture" -- on site programs and may participate in off site programs.

Chair Hiranaga: Yeah, that's what it says there.

Mr. Mancini: As long as it's clear that the dormitory participants can participate in off site programs.

Chair Hiranaga: Yeah. Commissioner Mardfin.

Mr. Mardfin: That's not what we're talking about. What we're talking about is under the nonconforming use they can attend agricultural programs either on site or off site.

Mr. Mancini: Uh huh.

Mr. Mardfin: But for nonagricultural things, it has to be on site. Now one way to do it grammatically would be to say, all overnight lodgers in the dormitory units shall enroll in and attend on site educational programs or off site agricultural programs and may participate in off site nonagricultural educational programs.

Mr. Mancini: That would be fine.

Mr. Mardfin: That would be consistent with what you currently have.

Chair Hiranaga: Well, what I'll do is the maker of the motion are you agreeable to that as a friendly amendment what's presented up there or --

Ms. Callentine: Can you repeat that too before we go further?

Mr. Mardfin: We, we didn't actually have a motion on this one, and the motion we had was voted upon.

Chair Hiranaga: No, we voted on your amendment --

Mr. Mardfin: And it was voted upon.

Chair Hiranaga: Right, your amendment. This is the motion, the main motion on the floor.

Mr. Mardfin: Oh.

Chair Hiranaga: We already approved your amendment which is 11.

Mr. Shibuya: This is a friendly amendment and I accept it.

Mr. Mardfin: My, the way I believe it should be written if we're gonna keep what they think they already have through grandfathering is that they can do either--I'm speaking in general now, don't write yet.

Ms. Callentine: Okay.

Mr. Mardfin: Can do either--they can do either on site ag or off site ag. We're now changing it to on site anything educational.

Ms. Callentine: Yes.

Mr. Mardfin: Or off site agricultural so that we're not taking away the off site agricultural that they currently have.

Ms. Callentine: Okay.

Mr. Mardfin: And may participate in off site non agricultural programs. So they, they --we haven't taken away what they already have, but we've said you can't just do nonagricultural stuff off campus unless it's in addition to doing on site.

Mr. Mancini: Let's see, your intent is that off site programs can include ag and non ag as long as you're enrolled on site. Is that, is that your intent?

Mr. Mardfin: No, I'm leaving you with what you had or what you, you think you have which is --

Mr. Mancini: Both, on site or off --

Mr. Mardfin: You could do ag on or off.

Mr. Mancini: That's correct.

Mr. Mardfin: And I'm preserving that.

Mr. Mancini: Yeah.

Mr. Mardfin: Non ag, you can only--you can only stay in the dorms. If you're not doing ag, you're doing non ag, it has to be on site to stay in the dorm. If it's non ag off site, it doesn't give you the right to the dorms.

Mr. Mancini: The way it is now, we can do off -- have people stay in the dorms and do off site both ag and non ag.

Mr. Mardfin: No, you can't.

Mr. Mancini: I believe we can.

Mr. Mardfin: Current, under current conditions without an SUP.

Mr. Mancini: Yes.

Ms. Callentine: I don't believe that's what our Zoning Division has told us. Then you're actually -- if you could do that, why would you get any permit at all?

Chair Hiranaga: Director.

Mr. Spence: Thank you. I think what we're trying to do is be able to say--what we're trying to do is say, if you're gonna stay on the site, you're gonna enroll in classes whether those classes are on site or whether they're off site. I don't think we need to specify agriculture or anything like that, but just say -- overnight lodgers in the dormitory units shall enroll in and attend on site or off site educational programs.

Chair Hiranaga: Okay we have --

Mr. Spence: Let's just leave it at that --

Mr. Mancini: I agree.

Mr. Spence: --because that's the requirement.

Mr. Mancini: Yeah, we have no objection with that.

Chair Hiranaga: Okay, the maker of the motion, the friendly amendment if you take the word, "agriculture" out of that word, take ag out of that. My personal take is it puts more emphasis on on site as the primary reason for staying overnight, but you have the option of going off site if you want. So for me, I'm happy with the way it is stated there, but it's up to the maker of the motion if he's willing to accept this as a friendly amendment?

Mr. Shibuya: I'll just leave it as is.

Chair Hiranaga: So you accept No. 10 as is, as a friendly amendment?

Mr. Shibuya: As written right now?

Chair Hiranaga: Yeah.

Mr. Shibuya: Yes.

Chair Hiranaga: As stated up there. Commissioner Shibuya. Don't touch it. Don't touch it.

Ms. Callentine: Oh.

Chair Hiranaga: No, put it back the way it was, don't change it.

Ms. Callentine: There, it's back. I was just gonna combine off site. It was gonna say on site and off site and get rid of two programs. I was trying to be -- I was streamlining.

Mr. Shibuya: Is there a difference between --

Chair Hiranaga: Okay, you've added the word, "and off site programs," you need to take that out.
The green --

Ms. Callentine: Take all that out?

Chair Hiranaga: You just added that in.

Ms. Callentine: No, no, no. Well, well, it used -- it did say, "and off site agricultural programs," and you asked me to remove the word, "agriculture." So right in here I had the word, "agriculture."

Chair Hiranaga: No, take, take what you have in green out. Take what you have in green out.

Ms. Callentine: Take that out.

Chair Hiranaga: Okay, yeah. We're still waiting for the approval of the friendly amendment by the maker of the motion.

Mr. Ball: I have a question of the --

Chair Hiranaga: We still have--waiting for approval.

Mr. Mardfin: Mr. Chairman, it didn't--if you have it the way it is, it didn't change.

Chair Hiranaga: Right.

Mr. Mardfin: It's the exact way it was originally.

Chair Hiranaga: Okay, so you're, you're in agreement that that's your motion then, your main motion?

Mr. Mardfin: And, and Mr. Chairman?

Chair Hiranaga: No, you're not recognized. I have a question to Commissioner Shibuya and I want his answer.

Mr. Shibuya: I think it's off site agriculture education program.

Chair Hiranaga: Director.

Mr. Spence: I think what the--thank you--I think what the applicant represented was there are going to be as it says there, off site educational programs coordinated by SoulSpace LLC. There are times when there's gonna be classes that can be held in different locations, but they're still associated with, with SoulSpace. I mean, you know, I'm not gonna pretend to say what the applicant is--what classes they're gonna have, but there are, there are going to be location specific classes that you can only hold in those specific locations. And so, to be able to--you don't want to

limit it to agricultural classes and it certainly would include any agricultural.

Chair Hiranaga: Let me interject, some place that's site sensitive --

Mr. Spence: Yeah.

Chair Hiranaga: --say at the summit of Haleakala you wanna have a class there. It's not gonna be agriculture, but they want it up there.

Mr. Shibuya: Okay.

Chair Hiranaga: Commissioner Ball. I'm not sure if that's legal in the National Park but that's their problem.

Mr. Spence: That's not our enforcement kuleana anyway.

Chair Hiranaga: Commissioner Ball.

Mr. Ball: The question I have is to the representation on the last line. When are these programs gonna be represented to the Department --

Chair Hiranaga: Okay, hold on, let me, let me, just get this thing off. So you're okay with this language here, Commissioner Shibuya?

Mr. Shibuya: Yes.

Chair Hiranaga: And the seconder is okay? Okay. Now you have a question, Commissioner Ball?

Mr. Mancini: Could I? I was gonna comment. I still don't think it states what the intent stated by the Director is in that someone can come on the property stay overnight and then sign up for an off site programs without being on an on site program the way it's stated now, "and may participate" certainly can be interpreted, you have to enroll only for on site and as an added matter, you can go off site. But as the Director stated there is an intent to have people who wanna come strictly on the off site programs wouldn't might not be interested in what's on the on site at that point in time. And this would--if that's the intent that would prohibit that use, if that's the intent. It's a little ambiguous. But as was stated earlier, if it's overnight lodgers in the dormitory shall enroll in on site and/or off site educational programs coordinated by, that would be the correct statement.

Chair Hiranaga: I understand your argument but I believe that was--that's not my intent and I don't know if that's your intent. My intent is the off site program is a secondary level of education. The primary level is you must enroll on site program, but that's for discussion.

Mr. Shibuya: To help the process here I would recommend taking off, "may participate" changing those two words to "enroll," "and enroll in off site education programs."

Mr. Ball: No, "shall" right?

Mr. Shibuya: Shall.

Mr. Ball: He shall on the on site and they may do the off site.

Mr. Shibuya: You want the "may," okay.

Mr. Ball: So they gotta do the on site and then they can do some off site if they want.

Chair Hiranaga: Right. Commissioner Wakida.

Ms. Wakida: I have a quick question and maybe I've lost something in this whole discussion. I thought that in this land use, I thought ag classes were mandatory?

Mr. Spence: No, they're not. I mean, that's why they're, excuse me --

Chair Hiranaga: Director.

Mr. Spence: Thank you.

Ms. Wakida: That's why they're what?

Mr. Spence: This is why they're applying for a Special Use Permit. They don't. They don't need any Special Use Permit to conduct agricultural classes.

Ms. Callentine: Right.

Mr. Spence: They need a Special Use Permit to do all the metaphysical and the yoga, et cetera.

Ms. Wakida: But what I'm getting at is that they may do that, but they may choose to drop the ag altogether and my reading of this says to discourage Special Use Permits unless they support community--the community support agricultural uses and so on. So my only concern is that the ag classes aren't dropped altogether.

Mr. Spence: I think we have representations from the applicant that they're going to continue. That's a, that's a very desirable part of their program. So--and that's on the record from applicant and the applicant's representative and everybody else. So I'm convinced that the--they're gonna continue that.

Ms. Wakida: Okay.

Mr. Shibuya: Ready for the question.

Mr. Mancini: Could I have one more comment?

Chair Hiranaga: Sure. Paul Mancini.

Mr. Mancini: There have been a number of requests to use this property both by the government

and by nonprofits for their retreats. Government officials, the Mayor specifically asked whether this will be permissible under SUP Permit and I've indicated that it would not be permissible because they're not involved in the program. So I was asked to bring this up to see whether the uses could be under the Special Use Permit could be added that governmental programs and nonprofits. So if that's something you'd like you could add it. If you find it not to be appropriate, you cannot add it.

Chair Hiranaga: Thank you. Someone wish to make an amendment to that purpose? Seeing none.

Mr. Spence: I think this is --

Chair Hiranaga: Director.

Mr. Spence: I think if, if we're going to, you know, they're gonna be pursuing the District Boundary Amendment and then the Special Use Permit is going to disappear that, that they're going to be, you know, for, for government agencies to have--hold an event there may be some reason either for a retreat or for some other reason, they need to gather on this property or if another nonprofit wishes to have some kind of a retreat, I've been on a couple of boards that they need retreats. I don't see why that would not be out of character with what they're wanting to do anyway. So, I think it's, it's certainly with the Commission's purview to say yea or nay, but assuming they get their DBA, the point's gonna be moot anyway.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I wouldn't assume that they're gonna get their DBA as our Chairman already has stated. But I don't see how a governmental retreat would be out of line because ...(inaudible)... structure is a class, a retreat class. And I would also assume that governmental retreats if they would normally not stay overnight, they normally stay at home, but if you needed them overnight for the purposes of the retreat you can structure it as a class and it would be non, non agricultural class, but it be appropriate.

Chair Hiranaga: Commissioner Ball.

Mr. Ball: I think we're getting off track now. I mean, we're catering to, to the government agency and the nonprofit which I don't know why we got off track right there, with that. But I mean, let's get back on this. We've been here all day with this, and let's move forward. We're moving backwards now and starting talking about governmental, special interest and then private project. They can book their selves in like Ward said, and be part of thing and whatever. I mean, why are we talking about this?

Mr. Spence: So long, so long --

Chair Hiranaga: Director.

Mr. Spence: Sorry. So long as that is on the record that, I mean, normally something like this outside of this record that, you know, this is fine with the Commission, I would say would be sort

of a weaselly way around the conditions of the permit. So long as the Commission is saying that yes, this is, you know --

Mr. Ball: Why is --

Chair Hiranaga: Order, order. Well, I don't think the Commission is saying that. We're just not-- we're not addressing it because there's no proposed amendment on the floor.

Mr. Ball: That's exactly not what we're saying. We're saying they book themselves as a legit person, but they gotta through the, the classes and then they have times where they have whatever they're gonna do.

Chair Hiranaga: Okay. We spent enough time on this issue.

Mr. Ball: Well, I'm offended by the Director saying that we're trying to make this weaselly thing.

Mr. Spence: No, no, no. I wasn't --

Mr. Ball: This is definitely not what I'm saying. I'm saying this thing shouldn't even be brought up. I mean, it is what it is and the County and the nonprofit wanna book themselves in, so be it.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: It sounds like you're getting ready for a vote on this and as normal I'd like to explain my reasoning. I am going to vote particularly the way they left No. 10 alone, I'm gonna vote in favor of this. I personally think this looks like a hotel and smells like a hotel, but I'm willing to give a Special Use Permit for two or three years to give 'em a chance to develop a track record. It's been alleged that in passing that this is like Ala Kukui. Ala Kukui is very different. Ala Kukui was an agricultural property and they basically have a track record of programs that go back ten years and they wanted to add a few housing units. This is a bunch of housing units and they want to add educational ...(inaudible)... which they don't have a track record. I can go with an SUP to give them an opportunity to develop a track record. I would absolutely vote against a DBA which would get 'em out of this hold box. I think they need to prove themselves and an SUP does that, a DBA does not.

Chair Hiranaga: Any other discussion? Seeing none, Director if you could restate the motion?

Mr. Ball: I did have a question back to my question about the representation to the Department. Is the representation made all through the record of--we don't really have --

Chair Hiranaga: Per the minutes.

Mr. Ball: Huh?

Chair Hiranaga: Per the minutes.

Mr. Ball: Well, I mean, but we had generalizations on, on educational programs and things like that. Are we gonna have an actual list these are things that I'm gonna do or is it?

Mr. Spence: In their annual report to us, we'll, you know, and shall include information on the educational activity. I suspect that whichever Staff Planner is reviewing the annual report there'll be a list of the classes that were held, and you know, number of students. I mean, again, the purpose of that, that proposed condition is so to know that there's -- it hasn't turned into a hotel, but indeed that there are, you know, the educational component is a primary function of the, of the project.

Chair Hiranaga: Okay, so if there's no further discussion, Director if you could restate the motion?

Mr. Spence: The motion is to approve as amended, how 'bout that? Per the conditions up there on the screen.

Chair Hiranaga: Call for the vote. All in favor, say -- raise your hand.

Mr. Spence: Seven ayes.

Land Use Commission Special Use Permit

It was moved by Mr. Shibuya, seconded by Ms. Sablas, then

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Planning Department with Conditions.
(Assenting - W. Shibuya, L. Sablas, D. Domingo, J. Freitas, K. Ball,
P. Wakida, W. Mardfin)
(Excused - I. Lay)**

Chair Hiranaga: Motion passes. Just a informational announcement. I need to leave at three o'clock. So Deputy -- Chair Shibuya knows about this and he'll be taking my position at three o'clock. So now we're ready for the staff recommendation on the Boundary Amendment.

Ms. Callentine: The Department of Planning recommends that the Maui Planning Commission recommend approval of the State District Boundary Amendment subject to the following conditions: A prohibition--now these, this condition, the first two conditions are standard conditions of your District Boundary Amendments. A prohibition on any action that would interfere with or restrain farming operations providing the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contingent lands in the Agriculture District. That is to prevent them from claiming that a neighbor's agricultural activities would be a noxious interference and then this second one is also a standard condition. And then, on the sheet that I handed you, this -- so we crossed out the requirement that they continue the Special Use Permit, to continue to carry on the Special Use Permit regardless when the District Boundary is changed to Rural--if it's changed to Rural. We struck that because we felt that it wasn't enforceable. And then we had also talked about requiring them to apply for a change in zoning from Interim to Public/Quasi-Public within a year of approval of the District Boundary Amendment. That's kind of also up for grabs. We didn't get a chance to really discuss that very much. We didn't

get to discuss that much with the applicant. And then I've taken both of the conditions about -- well, actually I'll amend them but No. 4, and then we would probably delete No. 5, but we would make No. 4 and 5 then actually -- we wouldn't have this one on the District Boundary Amendment about substantial compliance. So I'm gonna delete that one. That's not a standard condition in the District Boundary Amendment. We would change these two to read the same as their read in the Special Use Permit. That is so those, those conditions would be carried on regardless of -- okay, and that is, that is our recommendation for conditions of approval on the District Boundary Amendment.

Chair Hiranaga: How about the Ag Hawaii Right to Farm Act did you take that out?

Ms. Callentine: Well, well, those are standard in District Boundary Amendments. This is what this is referring to. I don't think it's a very well written condition because it just says, it just makes a statement. It doesn't say, it's not written as a condition. But it is referring to the Right to Farm Act. If anyone can propose alternative language?

Chair Hiranaga: If Corporation Counsel is comfortable with that language, it's okay.

Ms. Callentine: You are? Are you? Are you comfortable?

Mr. Giroux: It should come right out of 205. I mean, the language is there already.

Ms. Callentine: Right.

Mr. Giroux: It should mirror 205 exactly.

Ms. Callentine: Right.

Mr. Giroux: And I'm hoping that you, you did.

Ms. Callentine: I did. It's just--to start with a prohibition that would interfere with--that, that clause doesn't have any verb in it. A prohibition on any action that would interfere with or restrict farming operations.

Mr. Giroux: There shall not be.

Ms. Callentine: There shall not be. There shall not be any prohibition on any action that would interfere with or restrain farming operations provided -- yeah, how 'bout that? There shall not be any prohibition.

Mr. Mardfin: There shall be.

Ms. Callentine: No. No, there shall not be any --

Mr. Mardfin: There shall be a prohibition?

Ms. Callentine: Oh, oh, oh I'm sorry. There shall be, yeah, sorry, sorry. There shall be no

prohibition.

Mr. Mardfin: There shall be.

Ms. Callentine: There shall be. What I am doing? Okay, there's too many negatives in here and double negatives. There shall be a prohibition on any action that would interfere-- okay, great. And then, let's see--notification shall be provided to all perspective developers. This is No. 2. I see, Commissioner has his hand up, but...

Chair Hiranaga: I see that too.

Ms. Callentine: So No. 2 I just amended to, "Notification shall be provided to all perspective developers or purchasers of land or interest in land in the petition area." And that's, that's a standard requirement. It just wasn't worded as a action.

Chair Hiranaga: You have a motion, Commissioner Mardfin?

Mr. Mardfin: I do, Mr. Chairman. I move that the Maui Planning Commission recommend denial of a State District Boundary Amendment should this go to the Maui County Council.

Chair Hiranaga: Is there a second?

Ms. Wakida: I'll second it for discussion.

Chair Hiranaga: Moved by Commissioner Mardfin, seconded by Commissioner Wakida to deny the request for a -- recommend denial of the Boundary Amendment. Commissioner Mardfin.

Mr. Mardfin: My reason for recommending denial is as I stated earlier. I voted for the Special Use Permit to give him a chance to build up a record. If they get a District Boundary Approval then all constraints are sort of off the table. I want very much to have -- I voted for the Special Use Permit to give him an opportunity to produce a record. I think after three years they should have the record. They come in for a time extension on the SUP and at that point, they could be, you could consider recommending one way or the other on a District Boundary Amendment, but I cannot recommend for a District Boundary Amendment at this time.

Chair Hiranaga: Question, Director. So, if we were to obtain State Land Use District Rural, no Community Plan Amendment is necessary under the current plan?

Mr. Spence: No. There would be no Community Plan Amendment necessary because what they're doing the, the -- what they're wanting to do is a public/quasi-public use. Okay, public/quasi-public uses are permitted in State Rural. So the, the ...(inaudible)... mess us with the consistency, conformity thing but the underlying, the Rural District, State District would permit the public/quasi-public use so those things would go together. One is gonna permit the other.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: So they will not incur any problems with pursuing their permits to build the educational

classroom building as well as whatever the pool that they need?

Mr. Spence: No. They would not. They wouldn't run into any problems with that.

Mr. Shibuya: Okay.

Chair Hiranaga: Any further discussion? The applicant wishes to comment?

Mr. Mancini: Yeah, I just like to comment because there is, there is a ramification in not getting the redistricting. One is if you, anyone has been in private business they know if they got a three-year use obligation you can't get any financing. And I think you had heard Xorin indicate that it just wouldn't be able to. So the ability to get the financing to build the classroom and to build the pool and the improvements wouldn't be there. If you need--the whole purpose of rejecting it as I understand the logic is to build up a track record. If take a look at any time a change in zoning comes before you, you got vacant property and someone is looking to change it, he's got the authorized uses the changing. If you have a concern about it, you put conditions on that to deal with the issues or representations. I'd suggest you deal with, with this the same way because I don't think you can achieve--he can achieve his objectives with the three, three-year limit on it. If you're a banker in today, you know, financing's inability to do normal projects it's gonna be quite problematic.

Chair Hiranaga: Livit, you have a comment?

Ms. Callentine: Yes. Yes, Chair. I wanted to see if I could ask a question of Mr. Mancini which is if the Commission votes to recommend approval of the District Boundary Amendment and it goes, it goes through its process and it sits with Council and it takes anywhere from six months to five years to actually get to Council. It could, I mean, I don't know. You know, it could take a long time. It could take years to get to Council depending on their docket. They schedule their meetings. We don't. Would just the Maui Planning Commission's recommendation of approval be enough to get financing?

Mr. Mancini: No, of course not. You need, you need the action of the Council to do that. Now to say it's going to take three to five years to get to the Council, obviously I know some people characterize the County of Maui entitlements no different than Bombay, India, but I'm a little more optimistic than that, optimistic than that. I think we can get through the Council in less, in less than 18 months.

Ms. Callentine: But are, are you saying this-- this follow up--are you saying that without the District Boundary Amendment financing can't be obtained and without financing the school will not be built, so therefore, the school will not be built until the District Boundary Amendment is granted? Is that what you're saying?

Mr. Mancini: I think your characterization is not correct. The school is there now. The Special Use Permit allows him to go ahead and what he can do with his--for his financing. To get permanent financing on something like this, you need more than three years. It is not--and he can conduct activities on what he has there now under the Special Use Permit. There's no prohibition, it's the ability to get further financing that's not gonna take, take place. So when you're looking for an

annual report, you're probably not gonna find a comprehensive annual report on the expansion activities. You're gonna find it on the one room that's there, you gonna find it in agricultural activities, you gonna find it on the off site activities, but most likely, even if he had the financing now, as we know, it's gonna take probably a year and a half to build something there. Yes, he'll be able to run an operation, but it's not what it was intended to be.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I believe that classes can be held in, I've looked at the blueprint with Stan and as you go into the center building two wings on the side, there's a fairly large area about the size of this room here in which one could hold classes. I once taught for three years at UH West Oahu and we operated out of smaller rooms than this. It's perfectly feasible to hold classes of 30 or 40 people in a room this size and they could certainly go right ahead with offering educational programs, retreats and everything else and establish a record that so that it looks like an institution and smells like an educational institution instead of looking like a hotel and smelling like a hotel.

Chair Hiranaga: Any further discussion on the motion? Commissioner Ball.

Mr. Ball: Ward was saying that that all this goes away if we approve this, but you're just saying that you're gonna add those conditions of reporting, if you will, onto this?

Ms. Callentine: Yes.

Chair Hiranaga: Recommendation to approve.

Ms. Callentine: Yes.

Chair Hiranaga: It's a recommendation to approve.

Ms. Callentine: I've added it. It's shown on the screen now. I have added these conditions to the District Boundary Amendment as recommended. We still have ...(inaudible)... to discuss.

Mr. Ball: So then Ward's statement would incorrect?

Chair Hiranaga: So would that then translate or continue as being condition upon if zoning is granted that this conditions would carry forward?

Ms. Callentine: I'm sorry, I didn't follow the question?

Chair Hiranaga: I mean, if this is gonna be applied to the District Boundary Amendment, the question is when they obtain zoning would these conditions also carry forward?

Ms. Callentine: Are you talking about a change in zoning or you're talking about District Boundary Amendment?

Chair Hiranaga: Right 'cause they ultimately need to --

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Don't you need to --

Ms. Callentine: They haven't applied for a change in zoning.

Mr. Spence: Yeah. Mr. Chairman, okay, just a couple of things. The motion on the floor right now is to deny.

Chair Hiranaga: Right.

Mr. Spence: Okay.

Chair Hiranaga: Recommend denial.

Mr. Spence: Okay, and it is only recommendation to the County Council. The Planning Department is gonna continue to recommend approval. Okay, I obviously would, I think there should be a recommendation for approval. But since it's a legislative act, I mean, the District Boundary Amendment is a legislative act. You can put conditions on that. It would be similar to zoning, and it would take care of some of the concerns that you've heard today and as the Commissioners have expressed, those things, normally conditions are--and recorded with the unilateral agreement and filed with the Bureau of Conveyances and it goes with the land, so it blends with the land. So, you know, that's what we're proposing here that there be some conditions to satisfy some of the concerns that have been expressed here today.

Chair Hiranaga: Any further discussion on the motion? Seeing none, I'll call for the vote. All in favor of the motion to deny, please raise your hand.

Mr. Spence: That's one aye.

Chair Hiranaga: Opposed?

It was moved by Mr. Mardfin, seconded by Ms. Wakida, and

**The Motion to Recommend Denial of the District Boundary Amendment to
County Council, FAILED.
(Assenting - W. Mardfin)
(Dissenting - D. Domingo, L. Sablas, J. Freitas, K. Ball, P. Wakida, W. Shibuya)
(Excused - I. Lay)**

Chair Hiranaga: Motion fails.

Ms. Callentine: Is that five?

Mr. Spence: Six nays.

Chair Hiranaga: Six nays.

Chair Hiranaga: At this time, I apologize, but I must excuse myself and hand over the gavel to --

Ms. Callentine: Can we, when you hand over the gavel can Staff have a five-minute break?

A recess was called at 3:03 p.m., and the meeting was reconvened at 3:08 p.m.

Mr. Shibuya: On the remaining action. This is on a District Boundary Amendment. From a State Agricultural District to a State Rural District. Staff recommendation already done. So, Commissioner Ball.

Mr. Ball: I move to approve the State, excuse me, State District Boundary Amendment for the project of Soulspace Ranch LLC with the added conditions we added on then.

Ms. Callentine: Can I just clarify that was a move to approve?

Mr. Ball: Correct.

Ms. Callentine: And you would be moving to recommend approval to the Council?

Mr. Shibuya: Yes.

Mr. Ball: Correct.

Ms. Callentine: Okay.

Mr. Ball: With the conditions.

Mr. Shibuya: Yes, and it was seconded by Commissioner Lori Sablas. Members? Commissioner Wakida.

Ms. Wakida: Yes, I would like a clarification on the conditions please?

Ms. Callentine: Thank you. Right now we have five conditions on the--recommended on the District Boundary Amendment. The first two are -- the first one is regarding the Right to Farm Act and second one is regarding notification of--it's the same thing, it's Right to Farm Act and then, Condition No. 3 which you'll see I've highlighted a portion of it, I wanted you to discuss. Condition No. 4 and 5 are the same conditions that they correspond with Conditions No. 10 and 11 of the Special Use Permit. So Condition No. 3, I just had a chance to talk with the applicant's representative during the break and this was a Department introduced recommended condition that the--that within one-year of approval of the District Boundary Amendment, the applicant shall apply for a change in zoning from Interim to Public/Quasi-Public. I believe maybe they might wanna say something about this, but the highlighted area "within one-year of approval," they don't wanna have that restriction. So they would request that that be stricken and it just says that the applicant shall apply for a change in zoning from Interim to Public/Quasi-Public. Well, we'll ask the Chair.

Mr. Shibuya: Members? Any suggestions?

Mr. Ball: I have a question?

Mr. Shibuya: Yes. Commissioner Ball.

Mr. Ball: Why?

Ms. Callentine: Well, I'd like the Director to answer that. I mean, why, I'm sorry you said --

Mr. Ball: No, that's for the applicant.

Ms. Callentine: Oh, you said, why?

Mr. Ball: Why.

Ms. Callentine: Why does he not want this on there?

Mr. Ball: Correct.

Ms. Callentine: Okay.

Mr. Mancini: We objected only to the one-year. If you take a reasonable chronology, I don't think we will be through the County Council on the redistricting ...(inaudible)... year. This Council is generally pretty tied up with budget until midyear. This being an election year after, after budget things get very, very time conscious and the likelihood of getting this before this Council is probably not going to happen. To be realistic, we'll be there 2013. I'd leave it up to the Council when they have it as to when they'd like to do this. What we'd like to do at a point in time the Planning Department is moving to change some of these Interim zones would like to join with the Planning Department in changing it. We have no objection to changing it. Our initial application was to do this for a change in zoning. The applicant was advised that that wasn't at that time appropriate. This was a different Administration that advised him so it's not this Administration. So we don't oppose it, it's just the time elements on getting it done. And we'd just like to get done a little flexibility in when it gets done and how it gets done.

Mr. Shibuya: Okay, thank you, Commissioner --

Mr. Ball: Follow up to that?

Mr. Shibuya: Commissioner Ball and then Commissioner Mardfin.

Mr. Ball: Clarification, I guess, and this may be for Will. On the one year from the approval of the DBA is that from meeting let's say we approve it or is it from the Council 'cause we're only recommending, right?

Mr. Spence: Yeah. The way that it's written would be one-year from the approval by the County Council. And I do understand the applicant's thoughts on this. Just philosophically, you know, you have an Interim zone. You have something that is supposed to be temporary and it's been temporary for the last 50 years. So at one point we did go through a lot of things, a particularly

large project to rezone things in Interim to their community plan designations. We may follow up on that again sometime in the future after the new community plan is adopted or you know, there's any number of possibilities. We would like to see the applicant initiate it, but you know, if that's--you know the--whatever the recommendation is of the Planning Commission to the Council.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I was gonna basically concur with what Keone and the Director said that I believe that it says that within one-year of approval of the District Boundary Amendment, only the Council can do that.

Mr. Spence: Right.

Mr. Mardfin: So Mr. Mancini's argument that it may take five years to get to the Council, fine. It's-- the clock doesn't start until after they approve it. And I don't think it's unreasonable to expect that they would apply for the change in zoning within a year. They might not get the change in zoning within a year, but they ought to be applying for it right a way and this puts a time specific condition on it. So I would leave it the way it is.

Mr. Mancini: I'm assuming it would allow if the Planning Department were to petition for other Interim changes before we get to the Council we still could join them even though it's -- I would think that there be no objection to that even though it's a bit inconsistent with that.

Mr. Spence: In, in --Mr. Chairman?

Mr. Shibuya: Yeah, go ahead.

Mr. Spence: Personally, I mean, I don't know how the County Council is gonna react to this. I mean if they're issuing a -- if they're going to approve a District Boundary Amendment, they may initiate, you know, Public/Quasi-Public zoning on it anyway. I don't know. I tend to concur with the applicant that that one-year may, may, you know, not offer the flexibility that's needed. I mean, I do know the Planning Department is going to be initiating zoning on a number of parcels probably if not the coming year then the following. So you know, flexibility on all parts is, always like to see that.

Mr. Shibuya: So is there a suggestion for time limit or should the limit be just stricken? Is that what you're commending?

Mr. Spence: I think we can strike the time limit. Commissioner Ball.

Mr. Ball: We're just asking for, for within a year to apply not to get it or anything so what's the big deal? So they turn in the paperwork and then like Ward said, it runs for five years or whatever, who cares. But we wanna see that they at least put in the paperwork within the year. So if we don't have a time limit then we shouldn't have it at all. Okay, you know ...

Mr. Shibuya: Sort of get off dead center and do something?

Mr. Ball: Yeah, do something, you know. Change in zoning is a matter of turning in the application.

Mr. Shibuya: Any other changes, Planner?

Ms. Callentine: Well, one other suggestion that might be a compromise position which is rather than saying within one-year of approval the District Boundary Amendment maybe it be within three years of the District--approval of the District Boundary Amendment. That way, in that time period perhaps we will have already initiated a change, maybe Council will initiate the change that perhaps gives more time just a possible suggestion.

Mr. Shibuya: Commissioner Ball.

Mr. Ball: I guess what time, I guess is what I'm wondering because we approve it, right --

Ms. Callentine: It takes quite a while to do.

Mr. Ball: We approve the DBA, they're just turning in the paperwork, you're applying for the zoning, you're not getting zoning, you're not doing any of that, you're just filling out the paperwork and turning it in that's what that says. I don't know what time, I don't know what time--

Mr. Shibuya: Commissioner Wakida.

Ms. Callentine: I think there's a little more to the application for a change in zoning than just filling one form.

Mr. Ball: Well I didn't say one form.

Ms. Callentine: Yeah, yeah, I know you didn't and I didn't mean say that, but I mean, it's, it's-- there's some--it would not be a duplication of the --

Mr. Ball: It doesn't even say you have to turn in all the forms. It says you gotta working of the thing.

Mr. Shibuya: Commissioner Wakida go ahead.

Ms. Wakida: I agree with Mr. Ball, I think the one-year is fine, it's just turning in the paperwork. I think we can leave it.

Mr. Shibuya: Thank you.

Mr. Mancini: I think we'd like to move it on so we're okay with the one-year.

Mr. Shibuya: Okay. Commissioners are you ready for the question or are there other suggestions or changes? Commissioner Mardfin.

Mr. Mardfin: I have a question for the Director. The Director on our last motion said that even if we had recommended denial, they were going to recommend approval. Do you intend to recommend if this passes without my vote, do you intend to recommend approval of these additional conditions

or do you intend to recommend a clean approval as was originally in the original green paper?

Mr. Spence: We're gonna--we always transmit whatever the recommendation of the Commission is. So normally we don't, we don't argue with the conditions at Council. Usually they, they usually fuss at Planning Department why did the Commission do this and why did the Commission do that? So no, we're probably not going to recommend any changes to it.

Mr. Mardfin: Thank you.

Mr. Shibuya: Commissioner Wakida.

Ms. Wakida: And, and that's why I voted against Ward's motion originally was I felt it that if the Department went ahead with approval and it had no conditions then, then we have no recourse and so I chose to go ahead with voting against Ward's original motion so we could add these conditions on.

Mr. Shibuya: Commissioners are you ready for the question or have you had a chance to take a look at all the conditions that you've edited?

Ms. Sablas: Call for the question.

Mr. Shibuya: Call for the question here. All those in--Planning Director can you repeat the motion please before we take a vote?

Mr. Spence: The motion is to recommend approval for the District Boundary Amendment to the Maui County Council with the attached conditions.

Mr. Shibuya: Okay, Commissioners, all in favor of this raise your hand.

Mr. Spence: I have five ayes.

Mr. Shibuya: Okay, all opposed?

Mr. Spence: That's one nay.

Mr. Shibuya: Let the record reflect that it was five approval and one denial.

District Boundary Amendment

It was moved by Mr. Ball, seconded by Ms. Sablas, then

**VOTED: To Recommend Approval of the District Boundary Amendment to the County Council as Recommended by the Planning Department with Conditions.
(Assenting - K. Ball, L. Sablas, D. Domingo, J. Freitas, P. Wakida)
(Dissenting - W. Mardfin)
(Excused - I. Lay, K. Hiranaga)**

Mr. Shibuya: Next item, Planning Director.

Mr. Mardfin: Mr. Chairman, Mr. Chairman?

Mr. Shibuya: Yes.

Mr. Mardfin: May I make a quick comment?

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: We've passed this. I sincerely hope that the applicant will stay very clear to the--to what's been proposed. That this be an educational institution and a not glorified hotel.

Mr. J. Hart: thank you, Mr. Chairman.

Mr. Shibuya: Thank you very much.

Mr. Balbes: May I just say thank you to everybody? Thank you. And I will. Thank you.

Mr. Shibuya: Okay.

Mr. Mancini: I would just like to say thank you for your time. It's been a long day. Thank you.

Mr. Shibuya: Planning Director, can you introduce the next item?

Mr. Spence: Yes, Commissioners, we're on Item C-1, Mr. Marty Herling requesting a ten-year time extension to State Land Use Commission Special Use Permit for the Banyan Tree Bed and Breakfast within the State Rural District also on Baldwin Avenue and our Staff Planner is Kurt Wollenhaupt.

C. COMMUNICATIONS

- 1. MR. MARTY HERLING requesting a 10-year time extension on the State Land Use Commission Special Use Permit in order to continue to operate a transient vacation rental known as the Banyan Tree Bed and Breakfast in the State Rural District on approximately 2.10 acres of land at 3265 Baldwin Avenue, TMK: 2-4-002: 002, Makawao, Island of Maui. (SUP2 2000/0007) (K. Wollenhaupt)**

Mr. Wollenhaupt: Good afternoon, Commissioners. The item that is before you right now is indeed a request for a ten-year time extension of a currently operating transient vacation rental in the State Rural District on 2.10 acres at 3265 Baldwin Avenue. Just by way of background, this application has had a long history going way back there was a District Boundary Amendment and Change of Zoning after which that was approved it then went to the County Council for a Conditional Permit that was approved. It also then after the Conditional Permit was approved then it went to this body which unanimously approved the State Land Use Commission Special Use Permit and these were

all tied to a five-year time limit. I think this might be the first one under the new process of approving a Conditional Permit. The Council streamlined the process so that the applicant could send out notifications to everyone within 500 feet of the impending Conditional Permit time extension. The applicant did do that. They waited the appropriate time. There were, there were no concerns or disagreements. Under the new process if there had been even one concern that was deemed legitimate then this project would have gone to this body for the Conditional Permit review and sent back to the County Council. However, since there were no disagreements, this project can be approved administratively on the Conditional Permit side on the assumption that today's review of the State Land Use Commission Special Use Permit is affirmative.

There's not too much to explain except that the applicant has fulfilled the conditions for the compliance report for both of the Conditional Permit and the State Land Use Special Use Permit. They've been operating successfully. They have their insurance, their transient occupancy tax all up to date. And the team of Christopher Hart and Brett Davis along with Marty Herling, who is the owner/applicant is here to answer any questions. That would conclude the staff report and I can give you the recommendations after you ask questions, if there are any.

Well, the recommendation of the staff then would be then to approve the operation, approve the Land Use Commission Special Use Permit to be valid until April 25, 2021 along with the attached conditions of which there are 7 standard conditions and then the aforementioned 8 through 17 which are the project specific conditions which have not in any appreciable measure changed from that originally approved except that the applicant did indeed build the accessory dwelling that they were allowed. That no portion of it was exceeding 20 feet and then tied -- and that it would be only limited to long-term use and not less than 90 days per term. So the applicant followed all of the original conditions imposed by this body through a unanimous vote and the staff recommendation would then be to approve the Land Use Commission for ten years.

Mr. Shibuya: Okay, Commissioners?

Mr. Ball: Question?

Mr. Shibuya: Why the--I mean for lack of obvious reasons, but is there any other why it's ten instead of let's say five?

Mr. Wollenhaupt: I think it's just a matter of pushing it into the future as there have been no complaints so that it wouldn't have to come back to Staff. They will have to though, of course, have the annual compliance report process of which we'll be looking to make--ensure compliance. But they've been operating successfully for the last five years with no complaints. And there had been discussion apparently at the original hearing amongst the neighbors about different kinds of events and those things have generated no complaints so that as a recommendation for the ten years. In addition, probably that that the Conditional Permit then they'd have to go through that process again by notifying everyone for another extension of the Conditional Permit. So rather than having them that process they would also be tied to five years to make the two mesh with each extension of the Conditional Permit they have to notify all their neighbors within 500 feet, wait for any negative comments. If there are negative ones being legitimate then they would go through this process back up to the Council again. So it was a matter if we can make it for ten years then they will go through that Conditional Permit extension process in ten years rather than having them do it again

in five.

Mr. Shibuya: Okay, Commissioner Ball, can you hang on for a while?

Mr. Ball: Sure.

Mr. Shibuya: Let's open it up for public testimony. If they have anyone here to testify on this issue? Hearing none, you can continue. Okay, Commissioner Wakida.

Ms. Wakida: The accessory dwelling is that the owner's home?

Mr. Wollenhaupt: The owner lives in that, yes.

Mr. Shibuya: Any other concerns, Commissioners?

Mr. Ball: More of a comment, I guess.

Mr. Shibuya: Go ahead Commissioner Ball.

Mr. Ball: I would probably want to still do a five-year on this kind of for the reasons that you said the people-- you know, they have to notify the neighbors and things like that and neighbors will change and that sort of thing and then hopefully they would get notified if the subject property became a nuisance to that neighborhood. Then they'd realize, oh, well there's something I can do about it in theory. That's the worst case scenario side. If not, maybe tell me if you get in the compliance annual report calls for service to the residence and things like that? Do you do a search through, through the emergency services or things like that? Is that part of the annual review or ...

Mr. Wollenhaupt: Well, in this compliance report they would--they were looking to ensure--part of the requirements of this one, which were a little more extensive than some was that the harmony of the community, the operation of the bed and breakfast shall be consistent with the character of the existing neighborhood. That the premises would create no greater impact than a typical residential home in the Sunnyside neighborhood. So there's a little bit higher level of review in this compliance report than just have they done their insurance, have they done their compliance report, are they in full compliance with applicable conditions? So I think that gives more discretion and I would think that whoever's looking at this would really research the request for service. Have there been requests a.k.a. complaints in order to justify the legitimate answers on project specific Condition 9 and 10? So that is a bit of a safety valve there on this particular permit unlike some others.

Mr. Ball: Maybe, maybe --Chair?

Mr. Shibuya: Commissioner Ball.

Mr. Ball: Maybe you can explain to me, okay let's say there's a, there's a trouble, the neighbors are I guess calling or writing letters to the Department. So those go in a file then and then the annual compliance reviewer would then pull that file and see that there's ten letters of complaints or log

of complaints? How do you guys do that, I guess?

Mr. Wollenhaupt: Will could probably illuminate this more deeply. However, since he was talking about this, I think, yesterday. Any individual can, can go online or can call with a Request for Service. It's an easy process. It's not anonymous. Your name will be on there. Then the Code Enforcement Division goes out and reviews that. However, then they come to a conclusion, whatever that may be. But when the document will come up for review for the next compliance report on the Current Planning Division's worksheet it has a space, it says, "Requests for Service." So that's an immediate attention getter that you need to look and see what were those? Were they legitimate, was it, maybe there was a cow that got loose or something? How many were there? Were they legitimate? And so part of what we've been told to do is look and see how were they resolved, were they resolved and how many of them? So that's part of the analysis that goes into each of the yearly compliance reports, is looking at those which are right on the cover page of our assignment sheet. So that's, that's what I do.

Mr. Shibuya: Okay, now Commissioner Ball and then I'm gonna ask the, the applicant if they have anything to respond to. Go ahead Commissioner Ball.

Mr. Ball: Okay. And, and my question just comes from the ten-year time frame because I think that's a long time. The, the calls for service is there a formula, I mean, saying that well, this person got five so now we're gonna, you're gonna pull his Special Use Permit? It's not that easy, is it?

Mr. Wollenhaupt: Well, maybe Will I think can answer that.

Mr. Spence: Mr. Chairman? Anybody with a Special Use Permit still is subject to enforcement by the Planning Department. So if for some reason Mr. Herling starting having wild parties and was disturbing the neighbors. You know, we would go out and enforce on that just like we would anybody else. The--if there's a continual stream of problems, say all pertaining to noise or something like that, you know, we may, you know, there may be at some point in which we would wanna bring that back to the Commission. We would issue a Notice of Violation. They could appeal that to the BVA or you know, there's a, there's a whole procedures involved with enforcement, but they're subject to enforcement just like everybody else. I know this particular bed and breakfast has been in operation for quite a while and there have been no complaints that's why we're recommending ten years. So whether you give him ten years or whether you give him five, they're not avoiding any enforcement or potential enforcement. What we're saying, by giving, recommending ten, you know, it's just, hey, he's doing a good job. You know, he doesn't need to come back before this body 'cause there's no issues.

Mr. Shibuya: Thank you. Commissioner Freitas, would you like to?

Mr. Freitas: Yes. On, on this particular case, I would, I would go with the ten years 'cause I know this property very well. I pass it every day and I've never seen a automobile come out of this, come out this property. He's property is basically isolated. There's not a lot of, lot of people, residents around it. And I have a Special Use Permit. I have a five, five-year Special Use Permit and it comes up on you so quickly and it's very expensive to maintain the permit if you have five years or three years or what have you. And if there have been no complaints, this is why I would support the ten years.

Mr. Shibuya: Okay, at this time, I'd like to let the applicant say a few words if they would like. Please introduce yourself and provide us with your comments.

Mr. Marty Herling: Hello everyone. It's an honor to be here. My name is Marty Herling, and I'm the owner of the Banyan Tree House Bed and Breakfast on Makawao Avenue. And it's been very fulfilling for me to be running the Banyan Tree House and we ran it for quite a few years before we got legalized although we were one of the first to apply for a new permit and it took approximately seven years the first time to get approved for a permit. And now, we're into it again, you know, in five years time. You know, I've really gone out of my way to cooperate with my neighbor. We don't really have neighbors. We have one neighbor. You know, otherwise the neighbors, one fellow is on a 160 acres. His house is nowhere near us. And you know, it's been very gratifying to me that we've become really good friends with, with my next door neighbor and he just told me the other day, he said, I received the notice and as you know, I have no complaints. You've been very cooperative and you've become a friend of mine and so, you know, I'm just very gratified to have this business in Maui and we try to serve the community and everyone else. And you know, this five years does come up fast, you know, and before you know it's five years and it is expensive to go through this process to give you all the information so that you can feel confident that we're doing a good job and whatever you decide I really appreciate your time. And thank you very much and happy new year.

Mr. Shibuya: Yes, thank you very much. And I believe your representative, Mr. Hart?

Mr. Chris Hart: Thank you, Mr. Chair, Members of the Commission. It's interesting, Marty Herling is also an individual who was involved in restoring historic buildings in San Francisco when he came to Maui. He bought an old, one of the older Baldwin homes on Baldwin Avenue. It was built in 1939, and he essentially had from the very beginning a desire to try to operate it as a bed and breakfast. Also, the community plan at the time, it still does, identified and proposed that the property could be changed from Agricultural to Rural and it's a 2.1 acre site and so in the process, you know, of, you know, trying to secure a Special Permit and a Conditional Permit to run the bed and breakfast we were also proposing a Land Use District Boundary Amendment which did bring out some of the neighbors within in 500 feet who wanted to be basically be sure that the kind of impact was gonna be something that didn't change the character of those residences set back from the road with a lot of open space and so on. It wasn't a precedent that was gonna hurt them. So there was some concern about that and, you know, ultimately the purpose for the change in zoning was to allow Marty to build another residence on the site that lives in and he operates the bed and breakfast and as he said, you know, essentially the neighborhood has been very positive about his, his operation. Now the reason that we asked, another reason that we asked for a ten years is that the Planning Department has already recommended approval of ten years for some other similar kind of bed and breakfast operations. So we felt that, you know, it was justified given his record and, you know, the kind of operation that he is actually, that he actually has.

Mr. Shibuya: Okay, thank you.

Mr. Hart: All right. So that's--and we really appreciate your patience today. Thank you very, very much.

Mr. Shibuya: Thank you very much. Commissioners do you have any comments or would you like

to make a motion at this point? Commissioner Wakida.

Ms. Wakida: Well, we need staff recommendation first.

Mr. Shibuya: Yes.

Mr. Ball: Thought he gave it already?

Mr. Shibuya: Yes, he already gave the staff recommendation. He was faster on the draw.

Ms. Wakida: Okay, I recommend that we approve the request for the ten-year time extension.

Mr. Freitas: Second.

Mr. Shibuya: It's been moved by Commissioner Wakida and seconded by Commissioner Freitas. Members, discussion? Commissioner Mardfin.

Mr. Mardfin: I intend to vote in favor of this unlike the previous agenda item, this applicant has established a track record of doing what he said and made his credibility known.

Mr. Shibuya: Okay, thank you. Any other comments?

Mr. Freitas: Question.

Mr. Shibuya: Ready for the question? Can you repeat the motion Planning Director Spence that we are gonna be voting on?

Mr. Spence: I think so, but I wasn't listening. I guess it was a motion to approve as recommended by Staff.

Mr. Shibuya: Okay, thank you.

Mr. Spence: Was I correct?

Mr. Shibuya: Yeah, that good enough.

Mr. Spence: Okay.

Mr. Shibuya: Members, all in favor of this, raise your hand. It's unanimous, a vote of six affirming this motion. Thank you very much applicant.

It was moved by Ms. Wakida, seconded by Mr. Freitas, then

**VOTED: To Approve the 10-Year Time Extension of the State Land Use Commission Special Use Permit as Recommended by the Planning Department.
(Assenting - P. Wakida, J. Freitas, D. Domingo, L. Sablas, K. Ball,**

W. Mardfin)
(Excused - I. Lay, K. Hiranaga)

Mr. Shibuya: Can you introduce the next item?

Mr. Spence: Yes, Commissioners we're on Item C-2, Towne Development of Hawaii. They are requesting a five-year time extension on a SMA Permit to complete construction on the north-south collector road extension from Walua Place to Keonekai Road in Kihei. Mr. Paul Fasi is our Staff Planner.

2. TOWNE DEVELOPMENT OF HAWAII, INC. requesting a 5-year time extension on the Special Management Area Use Permit condition to complete construction of the North-South Collector Road Extension from Walua Place to Keonekai Road at TMK: 3-9-004: 005 & 145, 3-9-019: 004, 3-9-020: 004, 007, 012, 016, 020, & 027, Kihei, Island of Maui. (SM1 2005/0007) (P. Fasi)

Mr. Paul Fasi: Thank you. This Special Management Area Permit was first approved on September 27, 2005. It went into effect October 3, 2005 with 18 conditions. Being that it was in 2005, this is their first time extension contrary to what you heard from the testimony this morning. This is not their second time extension. This is their first time extension. The construction was started timely. The construction completion deadline date was October 1, 2011. The applicant is requesting for a five-year time extension. There are some mitigating circumstances as to why this particular project has not been completed to date. And I'm gonna turn it over to the applicant's representative, Karlynn Fukuda from Munekiyo and Hiraga to give a short, three-minute presentation and she'll give you a graphic explanation as to where the project stands. There's also representatives from Towne Development. The applicant here in the audience as well. Thank you.

Mr. Shibuya: Thank you. Karlynn.

Ms. Karlynn Fukuda: Thank you. Good afternoon, Commissioners. My name is Karlynn Fukuda with Munekiyo and Hiraga, Inc. I'm here today on behalf of Towne Development of Hawaii regarding their request for a time extension for their SMA Use Permit for the construction of a portion of the north-south collector road. Joining me today is Mr. Chris Lau of Towne Development of Hawaii.

I would like to provide the Commission with a brief summary of the status of the north-south collector road, the portion from Ke Alii Alanui Drive to Keonekai Road and that's the graphic that I have here. This is Keonekai--sorry, Kealii Ala Nui Road here, and Keonekai Road is here. The beach or the ocean is here. Piilani Highway would be above here. You've got Kamalii Elementary School here and Towne does have the Ke Alii Villas project as well as the Ke Alii Kai II Subdivision also known as Moana Estates.

Currently the portion of the road closest to Kealii Ala Nui Drive has been completed. This green portion here that you see, and this is actually yellow here, but this portion has been completed so there are two lanes of traffic with full curb, gutter, sidewalk improvements. Additionally, this portion here up to the north end of this part that was built as part of the Moana Estates Subdivision is also completed and has two lanes of traffic. It provides a secondary access to the Moana Estates

Subdivision.

We are seeking a time extension request to complete the remainder of the roadway, construction of the roadway. The need for this time extension request is due to current legal proceedings for the land acquisition for portions of the remaining right of way. In order to complete the project there is a need for land acquisition for portions of the roadway which are not owned by Towne or the County of Maui. Towne is covering the costs associated with the land acquisition and condemnation proceedings including the cost to purchase the property. Additionally, Towne has posted a bond with the County for the improvements. So just briefly to share with you, the land acquisition for this first lot indicated in red has been completed and this portion of the right of way has been dedicated to the County of Maui. This second lot here is currently in legal proceedings. This third lot here, there is an agreement with the landowner and acquisition is, is proceeding. The agreement--I'm sorry, yes, that's correct. There is also an agreement pending for this red parcel here and no condemnation is anticipated for that portion of the property or the roadway. This last red portion of the property is currently in legal proceedings relative to the condemnation action that had been taken. This last green portion of the roadway alignment we understand that there is a prior agreement between the landowner and the County of Maui whereby the landowner would be required to dedicate this right of way to the County of Maui upon demand by the County. So, that's essentially secured.

I would also like to respond to and clarify information that I understand was presented in this morning's public testimony and as Paul noted, this is the first time extension request for this project. Construction was initiated during the three-year time limit for initiation of construction on the roadway improvements when they received their SMA Permit. However, they were not able to complete the construction within the five-year time frame that you are given with the SMA Permits once you initiate construction due to the legal proceedings for the condemnation process.

Secondly, I would like to note that Towne Development is not delinquent on their obligations on its SMA Permit. And further, they are not trying to avoid their obligation relative to this roadway, and to illustrate this, I would like to share with you a summary of the financial commitment that they've made thus far to this project. Towne has contributed approximately 1.1 million to the cost associated with the land acquisition process including legal fees. And as I noted earlier, this process is not completed yet, but they are paying for that. They have posted a bond to the County of Maui in the amount of \$3.88 million and they completed the portion of improvements to the north-south collector road at a cost of approximately \$530,000. Additionally, we note that the applicant is aware of the request by the Department of Public Works for an increase in that bond amount and Towne is willing to meet with Public Works to discuss matter further.

We would like to respectfully request approval by the Planning Commission of the Department's or Director's recommendation for a five-year time extension for the SMA Permit for completion of construction of this portion of the north-south collector road. Thank you very much.

Mr. Shibuya: Thank you, Karlynn. Is there anyone in the audience would like to testify? Hearing none, public testimony is closed.

The following testimony was received at the beginning of the meeting:

Chair Hiranaga: Mike Moran. Please identify yourself.

Mr. Mike Moran: Good morning. My name is Mike Moran. I'm with the Kihei Community Association and I appreciate the opportunity to speak before you this morning. Our concern is Towne Development and their request for a one-year--excuse me, the request for a five-year extension in building the north-south--their portion of the north-south collector road in Kihei. First, I'd like to say that the north-south collector road is probably the number one priority of the Kihei Community Association and has been for decades. We have been advised that our best move is to request a one-year deferral with specific conditions imposed on Towne including a specific date for completion of a road and built -- road building and heavy penalties for not doing so. It is our understanding that Towne had already had a two-year extension and now is asking for an additional five years. Through observation we determined that they have already completed their Moana Estate development and they are finishing the last phase of the Ke Alii Ocean Villas. Why is it appropriate for them to short-change the community on the conditions that allowed them their SMA permit to develop? What other community obligations, if any, are they delinquent on? How can the community be better informed of public meetings? We were asked that question as our association by many members saying, gee, you know, we didn't even know this was going on if somebody didn't catch it. I know legally, you know, notices are posted but it is a challenge for people to, for the general public to be aware and you know, these meetings are scheduled but it is tough for the public to come up. We almost missed this as an organization. We had one person who caught it, contacted us, and said, what are you guys doing about it? And then, you know, we're all volunteers, so then we said, we'll do our best at it. Obviously, not the best informed and advised but we are certainly concerned with the situation. Mahalo for the opportunity.

Chair Hiranaga: Questions, Commissioners? Just for clarity, did you say you represented yourself or the Kihei Community Association?

Mr. Moran: The Kihei Community Association. I'm the vice-president.

Chair Hiranaga: Okay. All right, thank you.

Mr. Moran: Thank you.

Chair Hiranaga: Andrew Beerer.

Mr. Andrew Beerer: Aloha, thank you. My name is Andrew Beerer. I'm speaking as a Kihei Community Association board member and the father of two children at Kamalii Elementary School. I will be speaking to the Towne Development issue in Kihei. As mentioned, the north-south collector road is a number one priority for Kihei Community Association. It is a critical roadway and more importantly a critical pedestrian byway for our community. It is located just south of Kamalii Elementary School. Right now the students, the kids and the other people in the community they cross that land as it is. It's an abandoned lot full of safety hazards. Illegal dumping and illegal camping. As an association, we are between a rock and hard place with this extension, but have been advised to request a one-year deferral with specific conditions imposed on Towne. We would offer that if it must be extended then for only one year and the requirement to ask the County to condemn the missing piece at the end of the year then they have no reason to delay.

To give you some background, Towne has land acquisition issues. Many years ago, they were supposed to buy the land in question from another party. They did not like the price so they took it to arbitration. Two years ago, arbitration came back with a price. Towne did not like that price. So their only recourse was to pay that price or take the third party to court claiming fraud. That's what they did, they chose the later and we're stuck with it.

So we have been advised that it would be counterproductive for us to request a full denial of the five-year extension that would further--could be further fouled with possible litigation. Towne would have to go back to Planning, reapply, rehire consultants and the clock would likely tick on for much longer. A better approach would be to ask the Planning Commission to grant a one-year deferral with strong conditions to hold Towne to that timetable and show absolute progress.

Towne has long completed their Moana Estates development. They are finishing the last phase of Ke Alii Ocean Villas complete with a fancy clubhouse, beautiful waterfalls and luxury amenities. Why is it appropriate for them to shortchange the community on the conditions that allowed them their SMA permit to get started to develop this area? What other community obligations are they delinquent on? There's a beautiful park there that was part of this development that remains locked up and under, you know, under the control of Towne Development. Can Towne be forced to move forward with a portion of the north-south collector road they do have land for? Now I'm sure they will cry that building roads piecemeal is not, you know, economically feasible, but that may be an option. This is a predicament they got themselves into. It shouldn't be a predicament that is the burden of the community.

Chair Hiranaga: Please conclude your comments.

Mr. Beerer: Alright. Fifth point. How can the community be better informed of such an imperative decision to delay our most critical north-south collector road? We were only tipped off to this a couple weeks ago even though we follow this issue closely. Towne got it on the docket. We weren't aware of it. I asked David Goode --

Chair Hiranaga: Please conclude your comments.

Mr. Beerer: --how we get maps and info on lots in questions. I was told to contact Planning Department. I spoke Paul Fasi in Planning. They were no help. He said we would have to fill out forms requesting --

Chair Hiranaga: Thank you very much. Questions, Commissioners?

Mr. Beerer: --and so was not available in time.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: Mr. Beerer, I was just wondering, you're saying this collector road construction is gonna be close to the Kamalii Elementary School, and of course, you know that there's noise and dust pollution. What impact will that have to the students during this time of construction?

Mr. Beerer: This area is actually I would, you know, estimate it to be a couple hundred yards south

of the school and so it would have no implications on the school. In fact, right in that area, on that road as of yesterday, Maui Paving has all their equipment on that road because they're finishing the parking lots in the Ke Alii Ocean Villas, and they've been constructing those for years and it has no negative effect on the school. It will only be a positive, but it's a, it's a critical byway to our community and it makes --

Chair Hiranaga: Can you please just answer, limit your response to the question?

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Freitas.

Mr. Freitas: Yes, you said it went to arbitration. Was it binding arbitration or not?

Mr. Beerer: I can't answer that accurately, I do not know.

Mr. Freitas: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you.

Mr. Beerer: Thank you.

This concludes the testimony received at the beginning of the meeting.

Mr. Shibuya: Commissioners, any questions or comments? Commissioner Wakida.

Ms. Wakida: Thank you for that summary. This to me looks like a project that needs to get completed. In a nutshell, bottom line, what's the hold up?

Ms. Fukuda: I'm not sure to the extent and I'm not the legal counsel for Towne, but my understanding is basically there is a dispute between the landowners in terms of the acquisition price for the property.

Ms. Wakida: So it's money?

Ms. Fukuda: Yes.

Ms. Wakida: It's not the condemnation part?

Ms. Fukuda: Well, that's what would need to occur if there is no agreement I believe on the purchase price.

Ms. Wakida: Any, any speculation on that time line?

Ms. Fukuda: No. Sorry.

Mr. Shibuya: Okay, Commissioner Freitas then Commissioner Mardfin after.

Mr. Freitas: This question is for the applicant. I understand you went through arbitration and there was a price. The arbitrator set a price. Was that a binding arbitration or was it not?

Mr. Christopher Lau: Commissioner Freitas, my name is Christopher Lau. I'm executive vice-president of Towne Development. We did go through arbitration. The arbitration award was confirmed into a judgement. There were negotiations after the judgement and the judgement was not paid within the two-year statutory time period. The judgement has lapsed. Subsequent to the finding that the judgement lapsed, we discovered information that the landowner, Alaku Point, had not disclosed to the arbitrators and that is the subject of the present legal, legal battle so to speak.

Mr. Freitas: Thank you.

Mr. Shibuya: Thank you. Commissioner Mardfin then Commissioner Ball.

Mr. Mardfin: Mr. Lau, I'd like to follow up with some questions. There was testimony this morning that they had made, the landowner had made an offer to you that you folks had rejected?

Mr. Lau: That is not correct.

Mr. Mardfin: Would you like to explain what is correct? Did you start to go to arbitration or did you --

Mr. Lau: Oh, we did, we did go to arbitration. The arbitrators did determine a valuation for the property. There was a judgement confirming that arbitration award. There were negotiations subsequent to that in which the applicant was going to convey other property to us, the second parcel. At this point, the person who I was dealing with is no longer associated with Alaku Point and we have a situation where we are alleging that they withheld information from the arbitrators when there was in our mind clearly a legal obligation for them to disclose that information.

Mr. Mardfin: But you said that it lapsed after two years. How come in the two years before you discovered this extra information you folks didn't -- did you reject the arbitrator's award?

Mr. Lau: We did not reject the arbitrator's award. Part of the agreement with--that we were working on was that the judgement would not be paid for two years. And, and --

Mr. Mardfin: So you--

Mr. Lau: I'm sorry, go ahead.

Mr. Mardfin: No, you please. You know what the situation is. I'm just shooting darts in the dark.

Mr. Lau: Well, there were negotiations and the negotiations included our--the owner of the--the owner of this Kamaole piece which had some of the owners of this piece were common owners to the Alaku piece and what they were gonna do was to deed this piece to the, to the County and all of this was supposed to happen in two years after the judgement on this piece. The parties who were involved had, I don't wanna say, I don't know for a fact, but I believe that they decided to go their own ways and some of the parties who I was negotiating who controlled this piece no longer

controlled that piece in a nutshell that's --

Mr. Mardfin: So the real hang up is that long brown piece?

Mr. Lau: This is the long hang up and we, we have intervened into the condemnation proceeding. We have filed a complaint and intervention. They filed a complaint--a counter claim against us. So it's going through that process.

Mr. Mardfin: And you had to go the condemnation route because you couldn't go to another arbitration and get it worked out?

Mr. Lau: Well, there's still that possibility. There's still that possibility.

Mr. Mardfin: Are you pursuing it?

Mr. Lau: At this point, the complaint, the counter claim have been filed and we have not sat down to, to talk, to see whether we can go to arbitration. We'd like to go to mediation, but it's up to the other side to, to decide that. At this point, it's with the attorneys and they're filing legal complaints and counter claims.

Mr. Shibuya: Commissioner Mardfin, I'm gonna give you one more question and then I'll give it over to Commissioner Ball.

Mr. Mardfin: I'll take the one more question. Because you haven't come to an agreement, I take it the County of Maui is the party that's going through condemnation?

Mr. Lau: Correct. And what may have to happen is there may have to be another condemnation complaint filed but that's, again, something that we are discussing with the Corporation Counsel's Office.

Mr. Mardfin: Thank you.

Mr. Shibuya: Commissioner Ball.

Mr. Ball: Okay, so all that that Towne can do is done, correct?

Mr. Lau: At this point, we have control over the first parcel. There's dedication on demand for this parcel here and what we need--what we believe we need to do is to acquire this piece here, acquire this piece here and then we can start construction, yes.

Mr. Ball: And so then you'll just do that Keonekai section that's green then.

Mr. Lau: Yes.

Mr. Ball: It doesn't make sense to do it now and then it costs to much probably to --

Mr. Lau: We wouldn't want--well, we would not like to mobilize, demobilize and ...

Mr. Ball: Correct. I guess the other question is, how long have you been fighting this fight in court? I understand it takes a long time.

Mr. Lau: I wanna say it's going on four years. Since the condemnation action was filed, there was an arbitration, there was the award, there was the two years as when we working on, what we thought there was an agreement. And then what's happened now is that we found that they didn't disclose information. And the way we found out about that was that the partners in this parcel here got into a dispute and their dirty laundry so to speak was, was --

Mr. Ball: Secrets were told.

Mr. Lau: Was in the court-- were in court filings that that we found.

Mr. Ball: Clarification on the arbitration.

Mr. Shibuya: Okay, I'm going to cut it off after this.

Mr. Ball: Okay, yeah that's all. The arbitration was decided, was settled, let's say, and so they said okay, well, Towne or Towney or whoever this site is gotta pay landowner of there so much for that land. And then what happened? You and the County didn't pay that person or --

Mr. Lau: Correct, what, what --

Mr. Ball: --the disclosure thing found out so the deal was off.

Mr. Lau: No, what happened was that there was the arbitration, there was the judgement, there were negotiations and the party that I was dealing with who was the manager of Alaku basically said, we don't need the money for two years, hold off for two years. We'll also give you the Kamaole piece at the same time and we tried to get a written agreement. They weren't willing to sign. We sat back and after two years when the judgement lapsed we found that there was these items that they did not disclose and so we filed to intervene into the lawsuit and filed a complaint in the intervention.

Mr. Shibuya: Okay, Commissioners, I think we've, you know, covered it all. Can I have a motion or--Commissioner Sablas.

Ms. Sablas: Was there any effort to be put on the agenda for the KCA to give them an updated status on the progress of this project?

Ms. Fukuda: Thank you, Commissioner Sablas. No, we did not at that point in time or when we went in for the time extension request ask for a review by the KCA because this had been an existing permit that had been granted. So ...

Ms. Sablas: I may like to suggest after this process maybe just ask to be put on the agenda and just give them an update and let them be able to get direct answers from you from the community association as a suggestion.

Ms. Fukuda: Thank you.

Mr. Shibuya: Commissioners, any other questions? I'd like to press on and get to the question.

Mr. Spence: Commissioners, Mr. Chairman?

Mr. Shibuya: Go ahead.

Mr. Spence: One of the things that we distributed to the Commission was a memorandum from David Goode to myself dated January 9, 2012. I think the Department and the--well, both Departments, Public Works and the, and the Planning Department are supporting the time extension request and you know, of course, you heard testimony this morning that people are concerned that this thing get built. But we're, you know, wanted to give Towne every opportunity to, to complete it. And we think they can do that within a five-year period. But apparently, and one of the things that happened in the 2006 SMA Permit is Towne posted a bond for \$3.88 million, and at that time, that was probably sufficient to cover the costs of the construction and everything. We're in 2012, and I'm not sure how to go about this, but we're requesting that Towne update the amount of that bond amount to make sure that in today's dollars there's sufficient amount to--I mean, should just something happen, we don't know what. There's a lot of things we don't anticipate, but that we be able to--if necessary, the County can take that bond and complete the roadway.

Mr. Fukuda: Thank you, Director. If I may just respond? I would just like to note that, you know, the applicant is aware of that memo from Department of Public Works and is amenable to meeting with Department of Public Works to discuss that further. The, the amendment it's -- without getting too complicated, the bond is part of the-- an agreement that had been drawn up as part of the SMA conditions for another permit and covers the, the cost. And so, but that's separate, you know, from this SMA Permit, we believe. But the applicant is willing and open to having discussions with Department of Public Works. And I'd just like to note that the applicant did have a updated estimate for the completion of the work done in September of last year. And it's not too far off from the 3.88 that they have. So we're willing to have that discussion with Department of Public Works separately, so...

Mr. Shibuya: Commissioner Freitas.

Mr. Freitas: Question. A discussion to, or, or if it gets approved, a discussion is a discussion. Would they be willing to commit to doing the additional bond to complete the work? That's my question.

Ms. Fukuda: I guess without, you know, actually having--because there are conditions of the road improvements that are covered in this separate agreement that's covered between the County and Town, it would be difficult to say there's, there's gonna be negotiation I think between Public Works and, and the applicant in order to actually come to the agreed amount of the bond. But generally, I think that without, you know, committing them to any kind of amount that Towne is open to looking at increasing the bond, so I'm sorry to be so vague on that, but...

Mr. Freitas: I understand being open. I do negotiations. My question is would they be willing to commit to whatever amount that they discussed, this discussion after, you know, commit to add in money to the bond? That's my question. Because you can have discussions and nothing get done, you know.

Ms. Fukuda: I think the other thing too, it's gonna be, I think not as unfortunately as simple as just the discussion of increasing the bond because, you know, part of it is that they're paying for the land acquisition costs which are separate from the bond, yeah, that I, I mentioned earlier. So I think it's, it's is as again I said, it would be difficult to commit to saying that yes, they will increase it without actually going through the discussion with the Department of Public Works.

Mr. Shibuya: Thank you. Commissioner Ball.

Mr. Ball: One quick question.

Mr. Shibuya: Go ahead, Commissioner Ball.

Mr. Ball: What's your time frame for completion once this, the legal battles have all settled?

Ms. Fukuda: Ideally, within the five-year time frame if we were to receive approval for the five-year time extension but ...

Mr. Ball: Complete it within that five years?

Ms. Fukuda: Ideally, yes.

Mr. Shibuya: Rowena Dagdag.

Ms. Dagdag-Andaya: If I could add in response to Commissioner Ball's question. Typically, I guess about eight months to a year for construction and so...and I don't know how long the court proceedings will take, but both the Director and I, we're comfortable with that five-year time extension in order to complete that portion.

Mr. Ball: To have done, people driving on it.

Mr. Shibuya: Okay. Thank you. We'll have to ask our counsel to put the pressure so that we can get off the dead center here.

Mr. Lau: We're working on it.

Mr. Shibuya: You're working on it. Thank you. Members? Commissioner Ball.

Mr. Ball: Make a motion to approve if we're ready?

Mr. Shibuya: Yes, Members.

Mr. Ball: Do we have public testimony on this?

Mr. Shibuya: Yes, testimony was already provided.

Mr. Ball: I'll make a motion to approve the five-year time extension for this with, I don't know if it's a condition or a suggestion, Lori's suggestion that, that you guys go out to the community meeting and talk to them because they have all kinds of things they're thinking why this thing isn't done. And so if you show 'em this it's very simple. It's a lawsuit, and until that thing is settled it can't be built. So the rumors are flying just to let you know and, and they can be quelled very easily by a simple map and just tell them that that you wanna do it within these five years. Hopefully it will happen, but like anybody knows, the court system is on its own time schedule.

Mr. Shibuya: It's been moved.

Ms. Domingo: Second.

Mr. Shibuya: Second by Commissioner Donna Domingo. Commissioner Mardfin.

Mr. Mardfin: I move to add another condition. The condition that this time extension be subject to an agreement between Public Works, Planning and the applicant as to how much the bond will increase to and that the bond be increased to whatever they agree to.

Mr. Shibuya: He's making a friendly amendment. Agreeable with the maker and seconder?

Mr. Ball: It's agreeable.

Mr. Mardfin: So that's in there?

Mr. Shibuya: Yes.

Mr. Mardfin: So they've, they've gotta come to an agreement before they get the time extension.

Mr. Shibuya: That's correct.

Mr. Mardfin: Okay, good.

Mr. Ball: And when does your time extension end or I guess are you out of the --

Ms. Fukuda: Right, the permit deadline for completion was October of last year and we filed our time extension 90 days prior to that as required by the SMA Permit. So...If I may, I do have some concern and maybe Director can provide the Commission with some direction with addition of conditions to this permit because my understanding is the amended item is just on the one condition on the SMA Permit. So...

Mr. Ball: Question on that?

Mr. Shibuya: Commissioner --

Mr. Ball: I guess my concern is that that now we're extending it more because your amendment

is that, this five-year time extension doesn't start until they come up with this bond, right? Bond increase.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I'd keep the same date. That increases the pressure to come to a settlement and a rapid settlement with the County between the applicant and the County. I don't want this to be diddled around with. And the County has--the Department of Public Works has expressed that the amount that's in there is currently inadequate. I want them to rapidly come to some agreement as to what the correct amount is. I don't wanna specify it what the amount is and have them provide the additional bond.

Mr. Ball: But then their time extension will start.

Mr. Mardfin: No, it's started. I'd leave the date in there that they have in there.

Mr. Giroux: I think, Ward --

Mr. Ball: ---...(inaudible)... they're just working that out within the five-year time period too, right?

Mr. Shibuya: Counsel.

Mr. Giroux: I believe the process is that the County will come up with a number and then give it to them. The Department has, has asked that they be allowed to use that process instead of having it as a condition. I think that if you put in a condition that they will update their bond amount to the satisfaction of Public Works that's going to put enough heat for the County to at least get that that going. This delayed initiation of a time extension I don't think is gonna work well with, with the legal department.

Mr. Mardfin: Mr. Chairman?

Mr. Shibuya: Commissioner.

Mr. Mardfin: I will accept the, our esteemed Corp. Counsel's suggestion as to the wording of it. Two things. It means it's not a negotiation anymore. Public Works will come up with the right number. They will pay the additional bond and we go forward and I'm happy with that.

Mr. Shibuya: Okay, Planner Fasi.

Mr. Fasi: Thank you, Mr. Chair. In the recommendation, Condition No. 2 will be amended to say that the construction of the project shall be completed by and I have October 1, 2016. Perhaps we should change that to January 1, 2016. So there is a completion date in there already.

Mr. Shibuya: Okay, we have a friendly amendment. Go ahead, Commissioner Mardfin.

Mr. Mardfin: I think Mr. Fasi misspoke. I you want January 1st, you should make it 2017.

Mr. Fasi: You are correct.

Mr. Shibuya: Yes. Okay. There's a friendly amendment, motion. Is there a second to this friendly amendment.

Mr. Ball: Friendly amendment. I think the amendment was taken out actually.

Mr. Shibuya: It was taken out?

Mr. Ball: Yeah.

Mr. Mardfin: We, Mr. Chairman?

Mr. Shibuya: Yes.

Mr. Mardfin: The essence--my specific wording we're substituting Corp. Counsel's wording and you were accepting the concept so it's a friendly amendment and it doesn't have to be voted on.

Mr. Shibuya: Okay.

Mr. Mardfin: So we have an amended, through friendly amendment, of the condition that --

Mr. Giroux: There's no objection.

Mr. Shibuya: There's no objection.

Mr. Mardfin: No objection.

Mr. Shibuya: Okay, any more suggestions here or amendments, if not, then we'll have Planning Director Spence come back with a motion to us?

Mr. Spence: Could I, could I request that the maker of the motion repeat the motion?

Mr. Ball: Motion was to approve the five-year extension and I don't know if we need it to be a requirement just know that a community meeting should be visited.

Mr. Spence: And we're saying until January 1, 2017?

Mr. Ball: 2017.

Mr. Shibuya: 2017.

Mr. Mardfin: And that the County come up with a number that for a bond increase.

Mr. Giroux: Should be updated to reflect the current acquisition and construction costs.

Mr. Mardfin: Exactly.

Ms. Dagdag-Andaya: Yeah, that's fine. That's fine with us.

Mr. Shibuya: Okay. All the Commissioners--Planner Fasi.

Mr. Fasi: Yeah, I think the applicant has a few words to say regarding that particular ...

Ms. Fukuda: Thank you, Commissioners. It appears that there is a concern from the Commission in terms of this comment that has come from the Department of Public Works and in discussion with the applicant we would like to respectfully request a deferral of this matter so that we can actually have discussions with the Department of Public Works and come back to the Commission when that has been completed.

Mr. Shibuya: Okay, Commissioners?

Mr. Ball: Rescind my motion then.

Mr. Shibuya: Yes, you gonna withdraw your motion? Maker of the motion has withdrawn. Secunder agrees. Commissioner Mardfin.

Mr. Mardfin: I have no problem with deferral, but are we gonna defer the date as well? If they come back 18 months from now, are we gonna add 18 months to the five years?

Mr. Spence: Oh, I don't think they want their SMA Permit to run out. It's gonna be a lot sooner than that.

Mr. Mardfin: I would hope that when they do come back, you keep the same date of January 2017.

Mr. Ball: It will be after March so don't worry about it.

Mr. Shibuya: Was there a motion or that was just a request for deferral?

Mr. Ball: I rescind my motion on the request of the applicant.

Mr. Shibuya: Okay, and are you gonna support the deferral request by the applicant or are we just gonna accept it. Commissioner Mardfin.

Mr. Mardfin: I move to defer this until the County and the applicant can get together on a bond amount.

Mr. Ball: Second.

Mr. Shibuya: Motion has been proposed by Commissioner Mardfin, and seconded by Commissioner Ball. Members, any other questions you'd like to discuss if not --Question, Commissioner Mardfin.

Mr. Mardfin: I'm sorry. I wanna make a friendly amendment to my own motion.

Mr. Shibuya: Okay.

Mr. Mardfin: That it be deferred until they come to an agreement, but that the date of the finish construction will continue to be January 1, 2017.

Mr. Shibuya: Is that acceptable to the seconder? He's shaking his head.

Mr. Mardfin: It takes away the incentive to delay this. If they know that January 2017 is their deadline then they'll push this. You'll go, go forward with this rather quickly rather than wait a long time.

Mr. Shibuya: Right, of course the cost is always gonna increase over time.

Mr. Mardfin: Even more so --

Mr. Shibuya: That's correct. So, Members, what's the motion here? Commissioner Mardfin would you like to repeat the motion?

Mr. Mardfin: The motion is to defer this matter until the County and the applicant can agree on a new bond amount, but that when this comes back to this body it have a deferral date of--it have a construction completion date of January 1, 2017.

Mr. Ball: I think a deferral is a deferral. You can't put, you can't put conditions on a deferral, right?

Mr. Spence: Procedurally I'm not sure that you can amend your own motion in a friendly way. The seconder would have to second it as well.

Mr. Mardfin: I withdraw my motion.

Mr. Spence: Okay.

Mr. Mardfin: Mr. Chairman?

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I'd like to make a new motion.

Mr. Shibuya: Continue.

Mr. Mardfin: That we defer this matter and that -- so that the County and the applicant can agree on a bond amount but that it, the completion date remain -- when it comes back, remain at 20 -- January 2017.

Mr. Shibuya: January 1, 2017.

Mr. Ball: January 1, 2017.

Mr. Shibuya: Okay, any second? None. Motion dies. Any other motion? Planner Fasi.

Mr. Fasi: Thank you. You know the discussion that we're having to defer this matter you know, based on discussions between Public Works and the developer is really a matter between Public Works and the developer and really not the purview of this Commission. So I would leave it as is and it already behooves the two parties to come to an agreement on a dollar amount and as the developer has already said, that the dollar amount is not too much greater than it is now. If they do come back before this commission with the dollar amount what does that prove? Public Works is comfortable with it. They obviously came to an agreement with it. So I would say, let's not bring it back before this Commission, but let it move on and let the discussions happen between the developer and Public Works and leave it at that. I'm sure Public Works will be comfortable with whatever dollar amount they can agree upon between the two parties and that way it saves everybody time.

Mr. Shibuya: Okay, Commissioner Freitas.

Mr. Freitas: Yeah, I'd like to make a motion to that effect.

Mr. Shibuya: Okay.

Mr. Freitas: That we just let it defer to the developer and Public Works to come to a conclusion and time extension.

Mr. Shibuya: Okay, the motion is to defer it to the Public Works and the developer or the applicant to --

Mr. Freitas: And it will be an executive decision by our Director.

Mr. Spence: Well, I don't think that I can--I don't have that kind of authority according to your rules that I can just extend an SMA Permit. It's still, that time extension still has to be done by the Commission. So, I mean, as I see it, the choices we can make we can defer it until the applicants and Public Works agree and then we can announce, you know, to the Commission that we've agreed and they're gonna up the bond or we can approve the time extension right now if you'd like.

Mr. Shibuya: Okay, Commissioner Wakida.

Ms. Wakida: Mr. Fasi, didn't -- wasn't your recommendation to ahead and act on this five-year extension and then let Public Works and, and work out the bond? Wasn't that your recommendation?

Mr. Fasi: Yes, that's correct.

Ms. Wakida: Okay.

Mr. Shibuya: Commissioner Ball.

Mr. Ball: The problem with that is that the public is not believing that the developer and the County

will work this out in favor of them. That's why I suggest strongly, and that's why other Commissioners are suggesting strongly that Towne goes to these community meetings. If we say, yeah, five-year time extension, they don't have to meet. That's not a requirement that we're putting on them. They don't have to meet if we say the five-year extension is done today. If we defer it and then they come back and they say, well, we couldn't really meet up with, with the bond. We're gonna keep it at 3.88 then we can decide at that time, but they've had their discussion because maybe the price, you know, the amount increased too much or something. They couldn't cover that. But if we defer today, then we don't have to, we don't have to think about it until they have their discussion then we can do the time extension and all that. If we do the time extension today with no requirement that they have to increase the bond or a discussion or whatever then they don't have to. That's what we're voting on. We're voting on a time extension and the conditions that go with it. A deferral, they have time to do that, they come back. We set the date Ward wanted at that meeting and we'd be done with it, I mean, we're going around and around and around over something that the applicant asked for.

Mr. Shibuya: Mr. Fasi.

Mr. Fasi: I will defer to my Director.

Mr. Spence: It's my understanding the applicant would amenable to going and talking with Public Works, going and talking with the KCA and then come back. So, I, I just guess we need a motion to defer and the applicant will come back.

Mr. Freitas: I move to defer.

Mr. Ball: Second.

Mr. Shibuya: It's been moved and seconded. Moved by Commissioner Freitas, seconded by Commissioner Ball. Commissioner Wakida.

Ms. Wakida: Well, I'm not trying to prolong things but I did notice the applicant kept trying to stand up and make a comment and I wondered if, if he should be given the opportunity?

Mr. Shibuya: Mr. Lau, would you like to please...

Mr. Lau: Thank you, Mr. Chair. When we start construction of the road and Rowena, please correct me if I'm wrong, I believe that we would have to post a bond with the County and the County will be reviewing the bond at that time. So there will be certainly the opportunity for Public Works to review the bond when we're, when we start construction. So I would strongly ask that we be given the five-year extension knowing that that's when we have to complete the road. We have the start the road somewhere, sometime before the five years and at that time, Public Works and Towne will work out the bond amount, if we haven't worked it out before.

Ms. Dagdag-Andaya: The whole--the objective or the goal for our Department is to be able to revisit the posted bond amount with Towne Development. I mean, that's the overall goal. Whether we defer today and then have that discussion with Towne, I mean, we can do that. But we wanted to be able to make sure that we have the opportunity to have some kind of discussion with the

developer to discuss that update or proposed update. And you know, if, if it is that we do a deferral today, I mean, we -- at least we'd be given an opportunity to, to kinda think this a little bit further and then come back to the Commission and say, well this is what we have been able to decide on and then maybe at that point, you know, you can move forward with the time extension.

Mr. Shibuya: Okay, Commissioner Ball.

Mr. Ball: Question for Public Works. So realistically, how, how quickly could this work? I mean, we meet twice a month. So I mean, this thing gets back on the agenda next meeting, we've already had the discussion, we can, "git r done," as they say, quickly, but it's up to Public Works and the developer then to, to, to get that sorted out and --

Ms. Dagdag-Andaya: Right.

Mr. Ball: --I mean, that's a day, right and put it back on the thing, and you're done. I mean, right?

Ms. Dagdag-Andaya: That would be my hope that we get together as soon as possible to, to discuss that and then get it onto the next available Planning Commission meeting soon after we have that discussion. I, it can't really say timewise, you know, timeline. I know there are other priorities for Planning Commission.

Mr. Ball: Well, I guess, can we work towards that goal because it doesn't--I mean, I don't know, it doesn't sound like that long of a discussion.

Ms. Dagdag-Andaya: And we don't want to prolong it either because this is, and the testifiers this morning had mentioned that this is a priority for the community.

Mr. Ball: Right.

Ms. Dagdag-Andaya: And we feel that this is a big priority as well which is why the Director had made a--created a memo requesting that we be given an opportunity to, to discuss this with the applicant.

Mr. Shibuya: Commissioners, it's getting kinda late. I do want to move on. Are you ready for the question? And this --

Mr. Spence: The motion is to defer.

Mr. Shibuya: The motion is to defer. All those in favor raise your hand.

Mr. Spence: That's five ayes.

Mr. Shibuya: And any opposed? None. Okay, let the record show that there five affirmative for deferral of this motion.

It was moved by Mr. Freitas, seconded by Mr. Ball, then

**VOTED: To Defer the Matter Until After the Applicant and Public Works Have Discussed the Matter of the Bond.
(Assenting - K. Ball, D. Domingo, L. Sablas, P. Wakida, W. Mardfin)
(Excused - I. Lay, K. Hiranaga, J. Freitas)**

Mr. Spence: Mr. Chairman, Item C-3 is also Mr. Christopher Lau in the Lehman Brothers Holdings Inc., and SASCO 2008 C2, LLC v. W2005 Kapalua/Gengate Hotel Realty. It is a civil action and they are requesting the transfers of SMA Permits and Phase 2 Project District Approvals and our Staff Planner is Mr. Kurt Wollenhaupt.

- 3. MR. CHRISTOPHER LAU, Commissioner in the Lehman Brothers Holdings, Inc. and SASCO 2008-C2, LLC v. W2005 Kapalua/Gengate Hotel Realty, LLC et. al., Civil Action No. 10-1-0567 (2), Second Circuit Court, State of Hawaii requesting transfers of the following Special Management Area Use Permits and Phase 2 Project District approvals from W2005 KAPALUA/GENGATE HOTEL REALTY, LLC to RCK MAUI, LLC for the completed Ritz Carlton Hotel Projects due to ownership change on parcels located at TMK: 4-2-004: 021, Kapalua, Lahaina, Island of Maui: (K. Wollenhaupt)**
 - a. 1990 SMA and Phase 2 Project District Approvals for the Ritz Carlton Hotel**
 - b. 2007 SMA and Phase 2 Project District Approvals for the Ritz Carlton Resort proposed lobby and common area improvements. (SM1 2006/0039) (PH2 2006/0007)**

Mr. Wollenhaupt: Good afternoon again. In Exhibit 1 of this item which is a request for a transfer, it was to Director Spence from the Commissioner, Commissioner Lau. It was requested that the permit that's been issued to the Ritz Carlton Kapalua be transferred to a new entity as there was a action of foreclosure on a mortgage and the new entity being RCK Maui, Limited Liability Corporation. There were a total of three permits that were to be transferred. One is a simple Exemption that's already been transferred as there were no conditions that it had to come to this body. However, the SMA original construction permit dated March 19, 1990, that it's long been completed in addition to the SMA Use Permit and Project District Phase 2 Approvals noted as SM1 2006/0039 and PH2 2006/0007 need to be transferred by vote of this body. Just by way of review, both of these projects have long been completed. This is an accounting, essentially an accounting issue to get this transferred. The final compliance report was issued on December 27, 2007 is attached for the Commission's review. Therefore, the recommendation of the Department is to make the transfer on these and to have the Director send a letter to the Commissioner indicating such transfer has been approved.

Mr. Shibuya: Thank you very much.

Mr. Freitas: So move.

Mr. Shibuya: And are there any public testimony that would like to have? None. It's closed.

Mr. Freitas: So move.

Mr. Shibuya: Commissioners?

Mr. Shibuya: It's been moved --

Ms. Domingo: Second.

Mr. Shibuya: --to recommend approval and transfer of the aforementioned, Special Management Area --

Mr. Spence: And just for the, the--for the record, we recommended approval of the transfer of the SMA Permits. We're also recommending approval of the Phase 2 Approval, correct?

Mr. Wollenhaupt: Yes.

Mr. Shibuya: And this was, the motion was made by Commissioner Freitas, and I believe it was seconded by Commissioner Donna Domingo. Members, any other questions before we take a vote? Okay, let's -- all in favor of this motion raise your hand.

Mr. Spence: That's five ayes.

Mr. Shibuya: Five ayes. Let the record show it was unanimous with five ayes. Any objections? None. Commissioner Wakida, left out, walked out. Next item.

It was moved by Mr. Freitas, seconded by Ms. Domingo, then

**VOTED: To Approve the Transfer of the Special Management Area Use Permit and Phase 2 Project District Approvals from W2005 Kapalua/Gengate Hotel Realty, LLC to RCK Maui, LLC.
(Assenting - J Freitas, D. Domingo, L. Sablas, K. Ball, W. Mardfin)
(Excused - I. Lay, K. Hiranaga, P. Wakida)**

Mr. Spence: Commissioners, we have Item D, Acceptance of the Action Minutes from the December 13, 2011 meeting.

D. ACCEPTANCE OF THE ACTION MINUTES OF THE DECEMBER 13, 2011 MEETING

Mr. Shibuya: Members, do I hear any approval or acceptance of these minutes as written?

Mr. Freitas: So move.

Mr. Ball: Second.

Mr. Shibuya: It's been moved by Commissioner Freitas, seconded by Commissioner Ball. All in

favor say aye. Any opposed say nay. Hearing none, it's unanimous acceptance.

It was moved by Mr. Freitas, seconded by Mr. Ball, then

**VOTED: To Accept the Action Minutes of the December 13, 2011 Meeting.
(Assenting - J. Freitas, K. Ball, D. Domingo, L. Sablas, P. Wakida,
W. Mardfin)
(Excused - I. Lay, K. Hiranaga)**

Mr. Spence: Director's Report. Item 1, notifying myself, notifying the Planning Commission intent to the provisions of 19.32, as amended of the Maui County Code to approve the following Step 3 Planned Development request for Mr. Kalani Ho.

Ms. Wakida: Ms.

Mr. Spence: Ms.?

Ms. Wakida: Yes. Mistyped

Mr. Spence: It's a Ms. Kalani Ho?

Ms. Wakida: Yes.

Mr. Spence: Okay, requesting a Step 3 Planned Development Approval for the installation of a covered deck. Our Staff Planner is Mr. Kurt Wollenhaupt. We will be bringing this to the Commission.

E. DIRECTOR'S REPORT

- 1. MR. WILLIAM SPENCE, Planning Director notifying the Maui Planning Commission of his intent pursuant to the provisions of the Chapter 19.32, as amended, of the Maui County Code to approve the following Step 3 Planned Development request:**

MS. KALANI HO requesting a Step 3 Planned Development Approval for the installation of a covered deck extension within the 6-foot setback at 5155-D Hanawai Street, TMK: 4-3-011: 022, Napilihau Planned Development, Napili, Island of Maui. (PD3 2011/000) (K. Wollenhaupt) (Variance approved by the Board of Variances and Appeals on October 13, 2011)

Mr. Kurt Wollenhaupt: I'm not sure on the process of these Director's Reports if there's any discussion or it's a matter of your waiving review in order to have the Director to approve?

Mr. Spence: Yeah. Okay, Item 2, this one we probably do need some direction from the Commission. Oh, okay -- the first item it says, "the Commission may take action to waive its review or review the proposed request amendment at a subsequent meeting."

Mr. Ball: You want a motion?

Mr. Shibuya: Yes.

Mr. Ball: Move to waive the review on the --

Mr. Shibuya: And then we allow the Planning Director to decide?

Mr. Ball: Yes.

Mr. Spence: Yes.

Ms. Domingo: Second.

Mr. Ball: Allowing the Planning Director.

Mr. Shibuya: Okay, motion made by Commissioner Ball and seconded by Commissioner Domingo. Members? Commissioner Wakida.

Ms. Wakida: Believe me, I don't want to hold things up here, but are we supposed to hear from Mr. Wollenhaupt about this?

Mr. Shibuya: No.

Mr. Spence: No.

Ms. Wakida: Okay.

Mr. Shibuya: Any public testimony? Out there anyone to provide public testimony? None. Public testimony closed. Members here, can you read the motion, please?

Mr. Spence: Okay, the motion is for the Commission to waive action and let the Planning Director decide.

Mr. Shibuya: Members, all in favor, raise your hand.

Mr. Spence: I see four, five, six hands. Six ayes.

Mr. Shibuya: Six ayes. The motion passed.

It was moved by Mr. Ball, seconded by Ms. Domingo, then

**VOTED: To Waive Review of the Proposed Amendment.
(Assenting - K. Ball, D. Domingo, L. Sablas, J. Freitas, P. Wakida,
W. Mardfin)
(Excused - I. Lay, K. Hiranaga)**

Mr. Spence: Item 2. Delegation to the Hana Advisory Committee to the Planning Commission to conduct a public hearing for Ms. Arabella Ark requesting a State Land Use Commission Permit and a Conditional Permit to allow visitation to ceramics studio, Ark Ceramics in Hana. Basically what we're asking for the Commission is if they want to delegate the public hearing requirement to the Hana Advisory Committee.

2. Delegation to the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing on the following requests:

MS. ARABELLA ARK requesting a State Land Use Commission Special Use Permit and a Conditional Permit to allow for visitation to ceramics studio, Ark Ceramics by clients on 0.959 acres of land located in the State Agricultural District at 45-575 Hana Highway, TMK: 1-5-008: 010, Koali, Hana, Island of Maui. (SUP2 2011/0006) (CP 2011/0006) (G. Flammer)

Mr. Mardfin: Mr. Chairman?

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I move we delegate this item to the Hana Advisory Committee to hold a public hearing.

Mr. Shibuya: Okay.

Ms. Wakida: Second.

Mr. Ball: Second.

Mr. Shibuya: Okay, second by Commissioner Wakida. Members? We'll take a vote verbal. All in favor say aye.

Commission Members: Aye.

Mr. Shibuya: Any opposed say nay? Hearing none, it's unanimous. Next item.

It was moved by Mr. Mardfin, seconded by Ms. Wakida, then

**VOTED: To Authorize the Hana Advisory Committee to the Maui Planning Commission to Conduct the Public Hearing and Make Its Recommendations.
(Assenting - W. Mardfin, P. Wakida, D. Domingo, L. Sablas, J. Freitas, K. Ball)
(Excused - I. Lay, K. Hiranaga)**

Mr. Spence: And notification to the Planning Commission of the filing of a SMA Area Appeal, Mr. Paul Mancini is going to--is appealing a determination by the Planning Director regarding the SMA Minor Permit Approval for Notice of Warning dated October 5, 2011 with the approved limited time extension to remove illegal structures.

3. Notification to the Maui Planning Commission of the filing of the following Special Management Area (SMA) Appeal on December 16, 2011:

MR. PAUL R. MANCINI of MANCINI, WELCH & GEIGER, attorney for the AOA POLYNESIAN SHORES appealing by document received on December 16, 2011 Planning Director William Spence's letter dated December 6, 2011 regarding a Special Management Area (SMA) Minor Permit Approval for Notice of Warning dated October 5, 2011 with an approved limited time extension for removal of illegal structures in the shoreline setback area at the Polynesian Shores Resort, 3975 Lower Honoapiilani Road, TMK: 4-3-008: 002, Lahaina, Island of Maui. (SMX 2011/0513) (SSA 2011/0085) (EAE 2011/0011) (APPL 2011/0005) (J. Buika)

Mr. Spence: Basically my office--we approved a SMA Minor Permit to--so they could remove certain structures that were built illegally and they are contesting--they're appealing certain aspects of that approval.

Mr. Ball: And why is that on the agenda for us? It's just FYI?

Mr. Shibuya: To let us know.

Mr. Mardfin: Mr. Chairman?

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: Is this because an appeal to your decision will come before this body to determined at a later time?

Mr. Spence: Yes.

Mr. Mardfin: So this will come on a, on a future agenda ...(inaudible)... of your decision?

Mr. Spence: That's correct.

Mr. Mardfin: Thank you.

Mr. Shibuya: Okay.

Mr. Spence: Planning Commission Projects/Issues.

4. Planning Commission Projects/Issues

a. Revising the SMA Boundaries

Mr. Spence: Revising SMA Boundaries. I have nothing to report. Clayton, do you have other things to report to the Commission?

Mr. Yoshida: We've distributed our reports regarding SMA Minor Permits, SMA Exemptions as well upcoming items for the January 24th Maui Planning Commission agenda.

Mr. Shibuya: Thank you, Clayton. Any other comments, questions? If not, I have one. It's just relating with since when is the State of Hawaii's projects being reviewed by the County. I thought it was already accepted. You have one UH College, Maui College campus as well as Hawaii DOT, Hawaii DOT Highway Baseyard System where they're gonna put in PV. Is this the normal practice that you review State projects?

Mr. Spence: Yes, the State is not exempt from their own laws.

Mr. Shibuya: Okay, thank you.

Mr. Spence: You see, you see DOT projects all the time.

Mr. Shibuya: Okay, good. Thank you. Any other items? Commissioner Wakida.

- 5. EA/EIS Report**
- 6. SMA Minor Permit Report**
- 7. SMA Exemptions Report**

Ms. Wakida: I don't want to open up a big discussion believe, I just--if there's a short answer, but on this approved projects on this Kaanapali Subdivision. How does this, how does this--I want a short answer, how does this subdivision become a minor project? It's on the --

Mr. Ball: Page 1, bottom.

Ms. Wakida: Page 1, PD Approved SMA Minor Projects.

Mr. Ball: Page 1

Mr. Spence: I'm not sure what the project is.

Ms. Wakida: Okay.

Mr. Spence: Clayton, you have --

Mr. Yoshida: I believe that the valuations, it's a, essentially a paper subdivision and the valuation is less than \$500,000.

Ms. Wakida: For a whole subdivision?

Mr. Yoshida: Without--just a paper subdivision, yeah.

Ms. Wakida: What's that mean? I don't understand the term.

Unidentified Speaker: It's not being built.

Mr. Yoshida: There's no improvements. It's just cut out lots on paper.

Mr. Shibuya: Commissioner Wakida.

Ms. Wakida: But does this eventually go through subdivision approval with all the bells and whistles? Is that, is that the deal?

Mr. Shibuya: I think so. Go ahead Clayton.

Mr. Yoshida: Again, we can probably bring forth the information to the Commission between now and the next meeting. That's why we ask that before the meeting the Commission submit their requests so we can be prepared at the meeting, necessarily scrambling at 4:40.

Ms. Wakida: Next meeting is fine. I don't want to belabor --

Mr. Shibuya: Okay, discussion of future Maui Planning Commission Agendas. Clayton, you want to tell us a good story?

8. Discussion of Future Maui Planning Commission Agendas

a. January 24, 2012 meeting agenda items

Mr. Yoshida: Joe Alueta will be here to talk about the various legislative changes to Multi-Family Districts, Duplex, Apartment, Hotel Districts. The Commission will be dealing with the final EA for the Kihei rock crushing plant from Pacific Rim Land. You reviewed the Draft EA back in November. There's a time extension on a B&B, Land Use Commission Special Use Permit in the Ag District for Claudia and Kevin Ledesma out in Haiku. They were one of the first people that got a B&B Permit under the 2009 Bed and Breakfast Permit Ordinance. And the other item is the Big Scrap Metal Recycling on Lower Main Street. They want to be able to accept used car batteries and white goods, used white goods for sending over to Oahu for recycling purposes.

Mr. Shibuya: Thank you. Commissioner Mardfin.

Mr. Mardfin: I'd like to ask if there's any clues to--for my own personal scheduling any clue as to when the hearing on Kula Lodge is gonna take place?

Mr. Yoshida: There's no date yet. It will be at least two months from now.

Mr. Mardfin: Okay.

Mr. Shibuya: Thank you. Okay, the next meeting would be in January 24th. Hope to see everyone. Meeting adjourned.

F. NEXT REGULAR MEETING DATE: JANUARY 24, 2012

G. ADJOURNMENT

The meeting was adjourned at 4:40 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Keone Ball
Donna Domingo
Jack Freitas
Kent Hiranaga, Chairperson (excused at 3:03 p.m.)
Ward Mardfin
Lori Sablas
Warren Shibuya, Vice Chairperson
Penny Wakida

Excused

Ivan Lay

Others

Will Spence, Planning Department
James Giroux, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works