

**MAUI PLANNING COMMISSION
REGULAR MEETING
JANUARY 8, 2013**

ACCEPTED 02-26-2013

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:00 a.m., Tuesday, January 8, 2013, 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.)

Mr. Kent Hiranaga: This is the Maui Planning Commission meeting of January 8th, 2013. I want to wish everyone a happy new year. At this – at this time I'd like to open the floor to public testimony. Anyone wishes to provide public testimony regarding any agenda item please come forward. You may also provide testimony during the agenda item. Seeing none, we'll proceed to agenda item B1. Director?

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

- 1. MR. WILLIAM SPENCE, Planning Director referring to the Lanai, Maui, and Molokai Planning Commissions Council Resolution No. 111 containing a proposed Bill Amending Chapter 19.40, Maui County Code, Relating to the Duration of Conditional Permits. (J. Alueta)**
 - a. Public Hearing**
 - b. Action**

Mr. William Spence: Good morning Mr. Chairman, and happy new year commissioners. First, just – this is not an agenda item. I just wanna express my condolences to the relatives of Kenny Hultquist who spent so much time with us in commission meetings filming our meetings for Akaku. There's just – he almost became, you know, like, a part of the proceedings and everything, offered testimony on so many occasions. You know, he just felt that passion for these meetings, and that part of why he did this. So I just, you know, I want to pass my condolences in care towards the family and relatives.

Mr. Hiranaga: Commissioner Wakida?

Ms. Penny Wakida: I thank you for bringing that up, director, and I would like to echo that Kenny Hultquist is the only person whose obituary I've seen that was two columns in the Maui – in the Lahaina News. The man had an amazing background and was – he's going to be missed especially in the Lahaina area.

Mr. Spence: Okay. Commissioners, the, item B1, a public hearing item. This is regarding a Council Resolution No. 111 containing a proposed bill amending Chapter 19.40 relating to Conditional Permits. Joe Alueta will be presenting the report to the commission.

Mr. Joseph Alueta: Good morning commissioners. For this one, I'm your Administrative Planning

Officer. I'll change hats later on. But, as you know there's two ways in which you can amend Title 19. The primary way is either director initiated, which is where I come in and draft legislation. And the other way by resolution which comes down straight from the county council. Normally resolutions are for, hopefully, pretty thought out ideas, and have some type of consensus at the council level. So this is coming – again, this is a resolution from the county council no. 12-111. The – the proposed ordinance is to amend 19.40 which is your Conditional Permit process.

The Conditional Permit process is – it's kind of a hold over from the original old school days of how you did zoning and allowed for permits. And this is like pretty much pre-Special Use Permit or Accessory Use Permits that, that we have in the modern Title 19. It's a carry over from the original Title 8. And so basically at the beginning stages of the County Council – or the County, and the establishments of zoning, we didn't realize where we're gonna have this. And so, they had a laundry list, and – but they said they're not gonna be able to figure it out, that allow for everything. And because it's an euclidean zoning in which they – if it's allowed in that zoning, everything else that's not listed is not allowed. So it's a permissive zoning and it excludes everything else. So they allowed for this Conditional Permit process in which they – and I guess the intent – this is reading directly from 19.40. "The intent of the Conditional Permit is to provide an opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some specific impact, special impact, or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location." Okay.

Now, since that original intent, we've been using Conditional Permits in a variety of methods. Primarily, one, is to establish specific conditions, meaning someone has a use. We kind of understand what the use is going to be. But they're scaling it to a level that we feel may be compatible with that district. And we see that primarily with short-term rentals. Traditionally those are hotels. However, they're being scaled down and being used. And so a lot of the conditional permits that we have established works for those – initially, were initially for transient vacation rentals.

The other method that which the county has been using Conditional Permits has been where we have a rural and agricultural areas. Maui is made up – has, has limited urban areas, but we have vast rural communities. Our county has the most rural lands of any other county. I don't even think there's any rural lands on Oahu. I mean, it's all – it's either ag or urban. Even the Big Island does not have that much rural lands. It's pretty much –. And so – but we have a lot of rural communities, but we do not feel that urban designation is an appropriate. And so a lot of times what's happened is that we put in these Conditional Permits to establish a very limited urban type use. Okay? But scaled down to the appropriateness to match that community's needs.

You also – and specifically in Hana and East Maui and the Haiku, you have vast land tracks, as well as in Hana where you have some very limited areas. But you may not have all of the urban designations. There's very limited industrial land. In fact, there's almost no industrial lands in –. And so, what do you need if you need an auto body shop? That's an industrial use. Long ago, one of my first projects as a planner was the . . . (inaudible). . . Auto body, and he basically did painting, safety – it was all the people who use to get safety check in Hana at the time. He had a super large croatian tree. I've never seen a croatian tree, but it was croatian that is a size of me, and he never moved it. And he used that to straighten auto bodies and frames. It was amazing. But, that's the

kind of – that's the kind of uses, the good type. I mean, meaning where you wanna have limited urban type use that's not appropriate for urban – but you don't want to give it urban designation. Once you urbanize an area, and you give that state to urban, and give it a official county zoning that would be appropriate, that's one of the criteria for urban expansion.

Also if you have areas such as Hana, they do not have urban infrastructure. Their water lines, sewer lines and other electrical needs would not meet what you consider to be an urban designations. And many of your Haiku, some areas in Kula. So those are your, your, your typical uses.

The other typical type where Conditional Permits has come in besides – is where you don't need a large footprint of urban designation, and where you have technology. The most common that you'll see, and you saw, and you're probably gonna see many, many letters is cell, cell towers. At the time, I'm dating myself with pagers. You know, there were people who'd come in for their pagers, as well as radio towers. So it's, it's something that where it's not meant – it's a – it's a technically it's an urban designation. You should have an urban zone, but it's out in the middle of the country. So those types of use.

You also have noxious uses. And the types that we talked about is the Maui County – I don't know – dump or landfill or refuse – whatever they're calling it now. I don't know what they're -. Quarry facilities. Okay. The only legal place that you can do a quarry is – okay – is in the state urban and county agricultural districts. And the only legal place that you can do it is the land next to lao Parkside, on Lower Main. That's the only area that has urban and county ag, and you can do a legal quarry. Every where else you need to get a Special Use Permit and a Conditional Permit. Do you think that Lower Main next to lao Parkside is an appropriate zoning location for a quarry? Normally not. Okay. So therefore, that's where a conditional permit. At the same time, do you think it's appropriate to designate 20 acres of urban land, right, out on the slopes of Waikapu or in the middle of Puunene? No. That, it would not. I mean, for our standpoint it is not. And therefore, that is why the Conditional Permit process as well as the State Special Use Permit process has been used, in some, in most cases, has been used appropriately.

I think the intent of the resolution is a good one coming from Council is that they wanted the uses to push or thinking, hey, you're established now, we kind of see what the impacts are, should you, shouldn't you move forward with the proper permits of going through the zoning change? I think that's the intent, okay? And again, as you pointed out in our mini report that we passed out – and again, I apologize for the lateness of that. We had a little . . . (inaudible) . . . there. I apologize – is that Council – the Council is the final authority in Conditional Permits. The Planning Commission has the comment. At any point in time, they can say, enough is enough. I'll put a condition in there that says, we're gonna give you two years and you need to go through a Change in Zoning. If you don't get the Change in Zoning when we do the final analysis, then you need to relocate your use. They can do that at any time during the process. And they can do that, in fact, on the initial permit if they want. But again, there are some uses. Again, I'm gonna talk about – we talked about noxious uses that should not be, such as quarries, county facilities like landfills, as well as, areas – areas that you need like cell towers that don't need a large land areas. As well as some areas – rural communities that need very limited or minimum urban type uses but don't need the urban designation on their land. And those are the good ones that we kind of see that.

So that's – again, we did not send this out for agency comments. This is pretty much a processing of internal. And in fact, there is no committee report on this. This came straight from the council without being referred to committee, so that's kind of unusual. So again, I talked to my director. He had a brief conversation – we're – on the, on the council members who made the mo – who initiated the resolution, and – so we have very limited information on what the purpose of. But we believe its main purpose is to kind of really push some of these uses that have been hanging on for years and years on a Conditional Permit to really just go for the Change in Zoning. However, putting it in, in the ordinance as a finite thing with the limitation of time could have some really adverse impacts. There's methods to, to minimize those impacts as the department talks about in our report which is about, you know, maybe, grand-fathering in some of the existing Conditional Permits, where you kind of just say, yeah, they can continue on the path –. I think, however, I think from the department's stand point, again, this is the final authority of the council. If they want or see something, go for a Change in Zoning, they can either put that in their specific – in those applicant's specific conditions to get a Change in Zoning, or they can initiate the Change in Zoning themselves through a resolution if they want.

Okay, that pretty much concludes my presentation. I do have a 44-page stack of all the Conditional Permits that we've gone through since – way back when I – so –. But I'm not gonna give you that. I just –. There is a few in there. I think I provided you in the report a couple samples of the ones, and the CP numbers that you guys have processed in the past. Do you have any questions at this time?

Mr. Hiranaga: We'll defer questions till after public testimony.

Mr. Alueta: Okay.

Mr. Hiranaga: So at this time I'd like to open the public hearing. Is there some – anyone signed up to testify? First – first individual is Thomas Fairbanks. Please identify yourself and please limit your testimony to three minutes.

Mr. Thomas Fairbank: Thank you Chairman Hiranaga. Thank you all for your effort and time that you put in to this process. I just wanted to make a couple comments. As a CP holder for – since 1998 I'm a little concerned about this change. We've made – my wife and I operate the Old Wailuku Inn. We own the property. It's a historic property. And my wife is Janice Fairbanks, I'm Thomas Fairbanks. I forgot to introduce myself.

We purchased that property with the intent to make it into a bed and breakfast. We came to the Planning Department back in 1995, end of 95, told them what our intent was. And at that time the Planning Department was quite supportive of our efforts because they were trying to preserve the historic inventory of buildings in Wailuku town and other towns. And they had done an inventory, I guess, a year or two before that, as sort of an archaeological inventory or whatever. So we, with this encouragement we moved forward. And then we were very involved in the process of developing the bed and breakfast permit ordinances in 1996 through 98 when it was finally passed. However our building, our intent, in the process, we were always planning to develop this property into a 10 room bed and breakfast inn. And so we initially, the main building was to accommodate seven rooms, so when we did our first permit back in 1998 when the ordinance passed, we asked for our CP for the seventh room because we were trying to go through the process. And so we had

been supporting the bed and breakfast permit process. And during the process of developing the original ordinance, it was important to keep it simple and keep it easy to understand, and manageable, and more than one operation, like it is now. So it was limited to six rooms at a time, although we were pushing for a country inn sort of ordinance or something like that we would possibly qualify in.

At that time I believe the Silver Cloud had 12 rooms and they were also permitted under a CP, so it wasn't like we were something new to Maui. But again, the home that we rehabilitated to make the Old Wailuku Inn. It's a historic home. It's about 90 years old now. It was built in 1924, and I think that we've done a really good job over the past 15 years to help preserve the sense of place of Wailuku and – so I just ask if you be sure to think about those that came before. Thank you very much.

Mr. Hiranaga: Thank you. Questions, commissioners? Seeing none, thank you.

Mr. Fairbanks: Thank you.

Mr. Hiranaga: Next individual is Mike Beason.

Mr. Mike Beason: Good morning chair and planning commissioners. My name is Mike Beason. I'm here on behalf of Verizon Wireless. I'm a planning consultant. Been working Hawaii for 13 years now, and doing a lot of telecommunication projects. Verizon Wireless has submitted written testimony. I have a copy of that letter if you haven't seen it or want a copy of it. I'm not gonna read from the letter, but go over the major points that are made.

The proposed amendment limits a Conditional Permit to five years total. And one of the reasons that I'm here is that Verizon Wireless has an existing Conditional Permit at Paia Mill right now. And of course communications, wireless communications are fairly unique and have only been incorporated into the County Code recently. Otherwise it's usually considered accessory or some other aspect of it. It's not directly in the code.

The proposed change would affect the wireless facilities because most zoning districts don't actually include it. The five year term would be unrealistic and unwarranted for Verizon to be able to do any kind of facility here because their facilities were intended to be there for the long term. It's a really complex process from trying to develop an agreement with an owner to finding a place that works well to cover the area or the community that is trying to provide the wireless service. And our projects can take easily five years to go all the way through the building permit and being able to construct it. So you can see with the five year limit, by the time the permit is approved, we start back at the beginning if there's – if we've only got five years to work with, so it makes it really difficult.

The other part is that if Verizon or any other carrier would have to go out and look for another site because they know this is going to end, they're gonna be demo-ing the full facility and rebuilding the full facility so this becomes a really expensive project in areas that aren't necessarily or specifically or – specific uses or special uses.

Our other concern, Verizon Wireless concern is what about existing permits and the new permit and

whether there's any extensions allowed on the permit. We just continuously go back and – back and forth on that. I'd like to say that the intent of the Conditional Permit and wireless – wireless is definitely unique and the Conditional Permit process provides a very thorough process to review our use and make sure that it is allowed. And it does provide time limits for reviewing those permits. Thank you.

Mr. Hiranaga: Thank you. Questions, commissioners? Commissioner Shibuya.

Mr. Warren Shibuya: Thank you very much Mr. Beason for highlighting some of your problems here. I'm concerned in terms of insuring your return on investments because many of these towers are very expensive investments. And if you have it for five years then you would take a loss, would you not?

Mr. Beason: Yes.

Mr. Shibuya: Then the other aspect of it is radiation hazards. Currently some of our rules do not extend or allow for the powers to be or exceed 40 feet. And if they do they have some kind of variance to exceed it just a little bit more. This radiation hazard if it is further away from the population and located in a more remote area, then it seems to be more acceptable. And most of the practices – is this a problem with you?

Mr. Beason: The deciding for me is a visual aspect, and I would agree with the distance and the range that if we can be a further away that helps. We don't always have that ability to locate something further away, or tall, but we try to do that. And if higher is the desire that, you know, we can try to work with, with height limits and the antenna position.

Mr. Shibuya: And because of more broad band – in another words, greater use, and the need for greater power and through put, you have more emission strengths would you not?

Mr. Beason: The emissions are limited by federal rules. So there's a maximum allowed by the carriers. And that's about as much as I know on the regular frequency aspect of things. But they – each of the carriers are licensed to provide, you know, certain frequencies.

Mr. Shibuya: Okay, because of the greater demand now, would you need more antennas?

Mr. Beason: The antenna configuration Verizon uses is usually 12 antennas total, and that they – everything is within that, that design. So we're not – we haven't gone antennas beyond that unless maybe there was a transport where you couldn't get telecommunications to it, where you might need to do that as a microwave connection, right. And so that would use an antenna but for a different purpose.

Mr. Shibuya: For a greater –

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I just have one more.

Mr. Hiranaga: Okay, let's see if any other commissioners want to ask a question.

Mr. Shibuya: Okay.

Mr. Hiranaga: Any other questions commissioners? Okay, let's try to stick to the agenda item which is the term of the Conditional Use Permit.

Mr. Shibuya: In terms of greater use by the population, it would seem like we're increasing the use. Would you need more towers?

Mr. Beason: Towers – antennas are more of the element there than a tower. I will try to locate on existing structures. We are continually improving services so there is more development being done and that is why we're testifying because we expect it will have to come before you at some point, requesting a Conditional Permit.

Mr. Shibuya: Okay, thank you.

Mr. Hiranaga: Any other questions commissioners? Seeing none, thank you. Next individual is Eric Yoshizawa.

Mr. Eric Yoshizawa: Good morning chair and members of the commission. Thank you for the opportunity to provide testimony this morning. I am Eric Yoshizawa, vice president of operations for Ameron Hawaii on Maui. Ameron Hawaii is particularly concerned with this proposed bill proposing changes to Maui County Code Chapter 19.40, relating to the duration and also the implied sunset of extensions of Conditional Permits.

Ameron Hawaii conducts mining as a primary business, and as one of two major providers of concrete products on this island. Our company has been part of Maui's community for nearly five decades. And the quarry itself began operations in the late 1930s. We operate three facilities on this island. All of which relies on the issuance of Conditional Permits for our concrete batching and casting operations. There's a quarry in Puunene adjacent to the landfill, a concrete batching facility in Honokowai, and the concrete batching facility in Kihei.

The lengths of time granted for a Conditional Permits are integral for our companies, for our business future, and provide assurance that our commitment to and presence on the island will continue. The Conditional Permit for our batching operators at our Puunene quarry, for example, was granted for a duration of 10 years, our Honokowai facility for 20 years, and the Conditional Permit for our Kihei plant was most recently recommended by the Planning Commission for the duration of 15 years to the Maui County Council. The five year time limit will present challenges for longer term planning, and will erode our parent company's investment confidence when one considers the risks involved with such a short duration of permit coverage.

A sunset on extensions would likely render these businesses infeasible. All three of our facilities are located on agriculturally zoned lands in which we lease from agricultural landowners. At our quarry location where the spaces we occupy are continuously changing. We even have lease provisions for land reclamation to return a portion of the premises to farm land. At any of our locations, our landlords may hold a future interest in returning the lands to agricultural use following

our tenure, making a change – making a change in zoning infeasible, a process which by itself is costly and not necessarily guaranteed. It is also unclear to us how the proposed legislation will effect the duration of our existing Conditional Permits. Thank you for the opportunity to provide comment.

Mr. Hiranaga: Thank you. Questions commissioners? Commissioner Wakida?

Ms. Wakida: Thank you for coming this morning. You currently have a Conditional Permit, correct?

Mr. Yoshizawa: That's correct. We have three.

Ms. Wakida: And for how long is your current permit? One of your sites.

Mr. Yoshizawa: So we have three sites at 10, 15, and 20 year durations.

Ms. Wakida: And they come up for renewal and then you get them renewed, and move off and keep going. Is that correct?

Mr. Yoshizawa: That's correct.

Ms. Wakida: Just clarifying. Thank you.

Mr. Hiranaga: Any other questions commissioners? Seeing none, thank you. Next individual Charles Jencks.

Mr. Charles Jencks: Good morning Mr. Commissioner, Mr. Chair, members of the commission. My name is Charles Jencks. I'm testifying today on behalf on Pacific Rim Land, the development arm of Goodfellow Brothers, Inc with regard to the resolution that we're discussing relative to Conditional Permits. You know, Joe talked about the staff report. The staff report is two pages and I think the staff report asks more questions than it provides, provides answers. The direction from the Council I think is really spare. I think Joe frankly struggles on the staff report. It's – it's – I've asked the question of the council members. I don't get clear answers as to why this was sent out. But the intent is – I think the intent was to tie this somehow to zoning at some time in the future which may be is a good idea in certain circumstances.

However, I think if you look at the entire picture of the issues of this, this permitting process, you have to also look at Maui as a whole. Joe made some good points with regard to the amount of rural land in Maui county. Maui County is unique in terms of the areas that are zoned. Five percent of the land mass is urbanized. That's not very much if you consider the entire island. There's a definite lack of entitled land for opportunity for people. They end up in the rural districts or the ag districts exercising their rights and getting Conditional Permits with a time frame on it which is why we're here today. I think the TVR issue, the bed and breakfast issue, as well as the ag issue complicate that because as Joe said a lot of the land is rural, a majority is ag. And you – when you get into those area, you need these permits to, to have any kind of business and be successful.

From my standpoint at Pacific Rim, my end, we process all the permits for the company. We have a baseyard in Kihei that has a Conditional Permit. We have a baseyard on Molokai that has a

Conditional Permit that's coming up for renewal. It's difficult for me to process those permits on a very short time frame, five years, and then go out to a CPB or ASB and ask for funding to an approved facility without a significant amount enough time to amortize the value of those improvements. It's a real pain for the company. In the case of Kihei, we are in the process of re-zoning that to light industrial which will take care of that issue. However, on Molokai, that's not, that's not a potential because we're on leased land. We don't own the land.

Another good example of this problem we have is we have the Central Maui Landfill. I'm not sure you're aware of the fact that the County is out to bid now with an RFP on a waste to energy proposal for the landfill. You want somebody to come in and spend, maybe, two, three million dollars on a plant at the landfill on a Conditional Permit, it's not gonna happen. You have to create certainty for people. 15, 20 years at a minimum for that kind of facility. And this kind of proposal doesn't help get you there.

I also don't think, in most cases, when you have a use in a rural district that is lets say a TVR they have to get zoning. Well, okay, then you have hotel zoning in the middle of a rural district or ag district. I don't think that's appropriate either. I would say to you that if the issue is monitoring, some of these Conditional Permits have conditions, well, maybe there's a way to improve the monitoring of the permits. Maybe there's a way to improve the reporting back to the Planning Department. Performance standard could be one way to handle that. I just don't think that saying to people you've got five years, and then you either change the zoning or you're out is a good way to go because we have lots of other reasons why this needs to continue on and help the people in Maui County. So I would say to you leave it the way it is. You folks are doing a good job. I would send this back to the Council saying thank you very much. We'll leave it the way it is. If you want them leaving in five years, if you want to restrict them at five years or six years, that's your prerogative, but we think the process is working fine the way it is. That's my recommendation to you.

Mr. Hiranaga: Thank you. Questions commissioners? Seeing none, thank you. Next individual, sorry I can't make out your last name. It's Eric Kawa –

Mr. Eric Kaneshiro: Sorry for the chicken scratch there. My name is Eric Kaneshiro. I represent AT&T. I'd like to thank the commission for allowing AT&T to make this presentation. You know, just to recap, I guess, some of the other testimony that came previously, from a wireless perspective, it is a very expensive endeavor. There is a lot of capital cost and most of our leases are for 20 plus years, and because of the substantial capital cost. Thus, without that time frame, it's very difficult to commit dollars if it's only for a five year period. And it's realistically as, you know, the Planning Department – Joe from the Planning Department had indicated, it's not that realistic if you have a 500,000 square foot wireless installation on a 50 acre parcel to re-zone the entire parcel for just that small application. This is where the Conditional Use Permit works well because it is a very small installation, part of your larger, much larger parcel, and it's just not feasible economically if the landowner or any of the wireless companies who are to having to re-zone these areas. And again, I think it's an ideal situation where the Conditional Use Permits do work well in this type of situation. And I think this is what the permit was made for, the Conditional Use Permit was made for.

AT&T, thus requests that, you know, the Maui County, Maui Planning Commission oppose this

change in ordinance or at the very least, exempt wireless facilities from this five year limitation. Again, it's a matter of the capital cost is too substantial to only have what potentially will be a five year term. I'll take any questions.

Mr. Hiranaga: Thank you. Questions, commissioners? Seeing none, thank you. Is there anyone else that wishes to speak regarding this agenda item please come forward. Seeing none, public hearing is now closed. I'll open the floor to questions from commissioners. Commissioner Lay?

Mr. Ivan Lay: Good morning Joe. How many CPs do we have right now, currently? Approximately?

Mr. Alueta: I couldn't tell. I didn't run the report that way. I specified – just basically ran everyone, including the ones that are expired or been closed. But, let's see – I think there's been about 170 out there at any one time.

Mr. Lay: And this includes state and govern – state and county ones?

Mr. Alueta: No, these are just Conditional Permits which is under the County that –. So what will happen is Conditional Permits, like a variety of the Conditional Permits maybe for a child care facility, okay, that's within the residential district that has more than six kids. So it's limited on how many kids you could have as a home occupation, I guess, you could say. Let's say someone is doing a 12 or 20 kid child facility in the residential district. That would also require a Conditional Permit. Anything, anything that's not listed as an allowed use, you know, how like, I'll give you my, my little spill on whenever you update the Title 19 where you have your list of uses that are allowed, your accessory uses and those that are listed as special uses. If it doesn't fall in one of those three categories within each of the zoning categories, the only option for that person, for that use, in that zoning category would be to seek to a Conditional Permit. So it's not a common.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: Thanks Joe. In your opening remarks you make a statement that if there is a change of zoning say for in an ag, for a business to, to urban – for example – then that opens the door for additional lands nearby to be open for urban. And I sensed that that was not a good thing.

Mr. Alueta: Correct. That in – in the – one of the criteria that State Land Use Commission looks at for determining whether – for – to urbanize, to grant urbanization, one of them is that it's adjacent to existing urban – exciting urban areas. Okay.

Ms. Wakida: So, I'm not, I'm not understanding the Council's motivation then. Is their intent to encourage people to, that have urban uses, to go for Change of Zoning to urban?

Mr. Alueta: That – that would be the consequence. I'm not sure if they thoroughly thought the whole process out. I think that one of the things that they may have looked at is those that are already in the urban areas. They may have been looking only at those that are currently in urban designation. So like I say the, the child care facility or someone's running a hair dressing, or hair dresser, or some type of business, right, that has employees that, that got a Conditional Permit to do so, rather than seek the Change in Zoning. They should ultimately seek a Change in Zoning. And that – and that works again if you're in the urban designation and you also potentially have a

community plan.

Ms. Wakida: Right.

Mr. Alueta: Most of these in the process of how Conditional Zoning works, it can –. The bad way of Conditional Zoning works is that it's the tail wagging the dog. A classic example of the tail wagging the dog is Waiko Road. Okay. Conditional Permits, Special Use Permits for baseyards, industrial facilities all along Waiko Road, okay. Community Plan Ag, State Ag, you know, and not, not an ideal location. Got all the permits for Conditional Permits, Special Use Permits for all these limited durations, and it worked great for awhile. Then all of a sudden once you got – then they came in during the Community Plan process, the last Community Plan process they – Consolidated Baseyard, DeCoite or whoever, got their Community Plan designation to industrial. Okay. Then the community – once you got the Community Plan, then they got their Change of Zoning. That's called the tail wagging the dog. That means we didn't go in and say, here's the Community Plan. So that's the core method of doing Conditional Permits that shouldn't be done.

So – but again, like I say, in some areas, you where you wanna use the Conditional Permits, and, like I say, one of the examples I use is in Hana. You don't have the infrastructure for that, for many of these urban designation, but you need small industrial areas. Or you have politically from the population standpoint urban designation is a bad word, alright? The Hana Health Center is a classic example. It's been a medical facility and we could not get it, so somehow I came up with the solution which was go to rural. They were happy with rural. They could still do the use because it was a public quasi/public use. So instead of going for an urban designation, they went for the rural designation because public quasi/public uses are allowed in the state rural district. We allowed and then we went to Conditional Permit under the rural, under the rural side, on the county rural side, and allowed for the – I mean, we gave it a public quasi – they were going for a public quasi/public zoning because it was still – there was a like-like. We were able to make that work. So there's, again, good and bad of conditional zoning, but our concern here is that if, if you force all the uses to go to an urban designation, you're gonna, you're gonna open pandora's box.

Mr. Hiranaga: Director?

Mr. Spence: Thank you. Commissioners, as this maybe to expound on what Joe says a little bit, and on a little bit of the testimony. I did speak with a couple council members regarding the purpose and intent of this, and as, as we've discussed a little bit, the purpose is some of these Conditional Permits go on for so long you might as well zone the property. A perfect example is what Joe brings up over on Waiko Road. You have industrial baseyards. Well, why don't we just zone it industrial? It's a perfect solution for that. It's, it's not appropriate. That kind of thing, it's better to just zone the properties and get that done. But on the other hand, Conditional Permits serve a purpose really individual uses. Like Mr. Fairbanks has been operating his bed and breakfast for a very long time. It doesn't meet any of the criteria for bed and breakfast. I mean, it meets criteria, but too many rooms for it to meet the code, etcetera. In that particular location it works fine, and it works fine with a Conditional Permit. The alternative would be to zone it hotel. I don't think this commission or the County Council would want to do that. I don't think you want to zone each one of these cell towers, you know, some kind of business or industrial. You know, you think about, I mean, just any number of uses the, the batching plant, I don't think we want to zone those industrial. Sometimes, you know, those – there will be other uses in those areas. We'll

let that come at that time. Right now, it's fine working the way that it's, it's doing. So I'm not – I think for the purposes – whatever the commission wants to recommend to the County Council, think in some instances it's appropriate to urge an applicant to rezone their property. In other instances, definitely not. And the County as well as the Council should have the flexibility to say something should be zoned and something should just remain – it's zoned the way it is.

Mr. Hiranaga: Commissioners Shibuya?

Mr. Shibuya: Thank you very much. I agree with our director. I, I feel that, you know, spot zoning is a problem, and I don't believe we have provisions for that, Joe, right? In spot zoning?

Mr. Alueta: You can do it. It's just that we discourage it.

Mr. Shibuya: That's right. You know, I'm not looking towards it, or for it, and nor am I trying to restrict competition either. And so, here, again, we need some provisions and I like the Conditional Permitting as is, as it's operating right now. It provides for the public services and it also limits in some respect the onerous types of industries. But we need those industries. We need the businesses, so that we can function as a society, as a economy. And so it's a problem here that I think we can resolve it by continuing what we have. Yes, conditional does not have to be within a time limit, and I think we need to take a look at that.

Mr. Hiranaga: Commissioner Lay?

Mr. Lay: I echo what Commissioner Shibuya said. We're in a unique area here in our island where we have sparse development here, big development elsewhere, but still we have to accommodate to all different types of needs. With a Conditional Permit we can set up a place that's, you know, for a short duration, and have a chance of bringing it back to what it was before. And I like that option, instead of having them to re-zone, we're stuck with that. Somebody else moves in where we can't stop them, and it's an open door.

Mr. Hiranaga: Commissioner Freitas?

Mr. Jack Freitas: I hold a Conditional Use Permit, and I'd like to see the thing stays, stays as it is. What do you call, we're a small company that is renting a property. And for them to go in and put up a structure, and five years later they have to, what do you call, move out, it's a burden on everybody, on, on, on the – all of the . . . (inaudible) . . . The landfill, it will affect everybody. I say scrap the whole thing.

Mr. Hiranaga: Any other questions, commissioners? Commissioner Wakida?

Ms. Wakida: Joe, just to be clear, the resolution in front of us, the underline part is the part that the Council is recommending, correct?

Mr. Alueta: On exhibit 1, and, I guess, A, yes.

Ms. Wakida: Yes. And nothing has been deleted, right, from the original?

Mr. Alueta: The bracketed. It's in Ramseyer format. So anything that has a bracket around it.

Ms. Wakida: Okay.

Mr. Alueta: They're just taking out, like, ands and semi colons, and periods.

Ms. Wakida: Right, punctuation and so on.

Mr. Alueta: Right.

Ms. Wakida: Alright, just to be clear. Thank you.

Mr. Hiranaga: Joe, just for clarity, this resolution which was not reviewed by Council Committee, is it really a recommendation or is it just a communication? Is it a recommendation from Council, or is it just a communication for discussion?

Mr. Alueta: It's a resolution transmit – transmitting their proposed bill to the three planning commissions as required by charter for, for their comments. And so your option to give them comments or recommendations back to the County Council. That's the official resolution, and basically transmitting their proposed bill down to you guys.

Mr. Hiranaga: Any other questions, commissioners? I guess I'll open the floor to a motion because we need to provide official comments from the commission, so someone wishes to make a motion? And then that maker can provide official comments that can be voted upon. Commissioner Shibuya?

Mr. Shibuya: I'd say that we appreciate the resolution. However, we are not in favor of the conditional time limit that is added to it for five years. I think that the current Conditional Permitting process is most acceptable.

Mr. Lay: Second.

Mr. Hiranaga: Moved by Commissioner Shibuya, seconded by Commissioner Lay. Any further discussion? Commissioner Wakida?

Ms. Wakida: Just one to Joe. I – can I conclude that you are in favor of the original code as it stands?

Mr. Alueta: From the department – from the department's standpoint, yes. Just, again, as a planner, we always have concerns with Conditional Permits, again, when they're used in the wrong way.

Ms. Wakida: Right.

Mr. Alueta: The method that we are trying to attempt to correct and maybe some of the concerns we have with the Conditional Permit is to amend our Title 19 in each zoning category so that the uses that are most commonly being used for Conditional Permit such as transient vacation rentals

or B&Bs can somehow be moved down into a zoning category as a Special Use Permit so that it doesn't – not everything goes to the – goes to a Conditional Permit.

Ms. Wakida: Okay.

Mr. Alueta: And so you'll see that in a lot of my amendments such as home based businesses, cell towers, or any type of tower structure. You'll see that in a lot of our amendments that we're adding those things into the zoning category as either a Special Use Permit. So that we're moving it down from what is considered conditional. But, yes, as it currently stands we like the existing code over that is being proposed.

Ms. Wakida: Thank you.

Mr. Hiranaga: Any further discussion? Seeing none, I'll have the director restate the motion.

Mr. Spence: The motion is, as I understand it, that there be no change to the code.

Mr. Hiranaga: All in favor so indicate by raising your hand.

Mr. Spence: Six ayes.

Mr. Hiranaga: The motion carries. Thank you very much.

Mr. Alueta: Thank you.

It was moved by Commissioner Warren Shibuya, seconded by Commissioner Ivan Lay, then

VOTED: to recommend to County Council no change to Chapter 19.40, Maui County Code, relating to the duration of Conditional Permits.
(Assenting: D. Domingo, J. Freitas, I. Lay, W. Shibuya, M. Tsai, P. Wakida
Excused: J. Ball, W. Hedani)

Mr. Hiranaga: We'll take a five minute recess, and reconvene at 9:57.

(The Maui Planning Commission recessed at approximately 9:52 a.m., and reconvened at approximately 9:57 a.m. Commissioner Ivan Lay leaves the Maui Planning Commission meeting.)

- 2. MR. PETER HAMILL of CDF ENGINEERING requesting a State Land Use Commission Special Use Permit for the SEH 28 MLP 10 Solar Hub Utilities Project, the construction and operation of a 240-kW ground mounted photovoltaic system and related improvements in the vicinity of Honokowai in the State Agricultural District at TMK: 4-4-002: 019 (por.), Honokowai, Lahaina, Island of Maui. (SUP2 2012/0007) (K. Aoki)**

- a. Public Hearing**
- b. Action**

Mr. Hiranaga: Director?

Mr. Spence: Thank you Mr. Chairman. The second public hearing for today is Mr. Peter Hamill of CDF Engineering requesting a State Land Use Commission Special Use Permit for a solar hub facility project. Our staff planner this morning is Ms. Kathleen Aoki.

Ms. Kathleen Aoki: Good morning commissioners. Today we have before you a request for a 10 year State Land Use Commission Special Use Permit for the construction of a 250 kilo watt solar photo voltaic cell facility. The project is located mauka of Honokowai about a mile or so above the highway – kind of directly above Kaanapali Beach Club. The project entails the use of approximately 45,000 square feet, with the panels taking up about 30,000 square feet. The project is located on a parcel that is approximately five acres in size. It is owned by Maui Land and Pine. They're leasing out the parcel, or, I should say the project area. It is surrounded, the parcel itself contains the old Honokowai reservoir which still has water in it. And from what I understand, has been used, but as you may be aware, all the fields around that reservoir were previously in pineapple cultivation, so they're not currently fallow. There's also the Honokowai gulch to the south of the property.

Today we have Jacob Freeman and Pete Hamill, of CDF Engineers, who are the agents for the application, Solar Hub Facilities. We also have Jill Dunphy and Patrick Shudak of Solar Hub Facilities. Mr. Freeman will be doing a pretty short power point presentation for you to just to give you a little bit more information on the project.

Mr. Jacob Freeman: Aloha and good morning staff and commissioners. Thanks Kathleen for the help on this project. You've been, you've been a big help. My name is Jacob Freeman, I'm a civil engineer with CDF Engineering, and we're here today to present this project to you in a little bit more formal fashion.

I'd like to start with reiterating the purpose of the presentation today, and that is to obtain a 10 year State Land Use Commission Special Use Permit for the construction and operation of a 250 KW AC Photo Voltaic cell facility. The photo taken on this site is from the northeasterly side of the parcel, looking south, southwest. And as noted on the bottom of the slide, the State Land Use designation, County zoning and the West Maui Community Plan designation is agricultural.

And as Kathleen stated previously the project is located in Honokowai. The view on this map here is up being north, so plan north. The current access to the site is through the MLP access gate near the intersection of the Kapalua Airport Road right next to the Honoapiilani Highway in Mahinahina. So you travel south, approximately one mile, and then head east or mauka, approximately another mile, and this puts it roughly half way up the mountain between the highway and the County of Maui Department of Water Supply Mahinahina Water Treatment Facility.

Our company boundary surveyed the parcel and found that the Real Property Tax information for the parcel is consistent with field conditions at 5.1 acres of total land. And it's kind of faint, but on the right hand side of that parcel, you can see the proposed PV array layout with the panels

oriented to the south which includes minor grading on the eastern edge of the parcel. The grading will allow us to achieve a more consistent cross slope along that, that portion of the parcel which is gonna increase our overall efficiency for the facility.

Our developer has chosen to pursue the use of Canadian solar for their, for their panels. Not just on this project, but for all of their projects statewide. Canadian solar panels have been used in Hawaii, and have a good track record here. And our particular developer is using it on, on over 10 megawatts worth of projects.

The use specified a ballasted ground mount system for this particular project. And that means that the system can be installed with minimal ground penetrations. And as you can see from the photo, the panels are mounted to the racking system which is connected to the feet or a pan that sits flat on the ground. And then concrete blocks are used to weigh those down. We can achieve wind speeds without any ground penetrations of 120 miles per hour which is consistent with any building code requirements here presently. We have had systems designed in the state for up to 140 miles an hour with this particular racking system.

And just some quick photos, looking east in the upper left hand corner. From the northwest looking south in the upper right. Looking east from the northwest corner of the property in the lower left. And then looking northwest, or from the northwest looking west, northwest on that lower right.

That concludes my presentation.

Mr. Hiranaga: Thank you very much. At this time I will open the floor to public hearing. Is there anyone here that wishes to provide testimony regarding this agenda item please come forward? Seeing none, the public hearing is now closed. I'll open the floor to questions from commissioners. Seeing none – oh, Commissioner Shibuya?

Mr. Shibuya: I was waiting for others to, to ask the question first.

Mr. Hiranaga: Thank you for your consideration.

Mr. Shibuya: Okay. Thank you. I just wanted to find out – on this you're asking for 10 years, and I was wondering because the – MECo has a tier, I mean, fifth program that requires that they have 20 year contracts. How does this relate?

Ms. Aoki: Well, normally when we come in for an initial State Special Use Permit we don't normally grant or suggest long term. However, if the commission felt that it was more appropriate for a longer term and the director supported it, you know, it's basically your purview. It's just in the past they've normally come in for three or five years. But now we're getting these kind of projects that do have a 20 year life to them. We thought we would ask for a 10 and then when the permit is up for renewal, you know, we can review it and come back to the commission and ask for an extension.

Mr. Shibuya: Okay. Is that the preference of the owner, or the developer?

Mr. Freeman: Jacob Freeman again. The preference of the owner would be to go for a 20 years

if that was possible.

Mr. Shibuya: Okay. Thank you.

Mr. Hiranaga: Any other questions, commissioners? Commissioner Wakida?

Ms. Wakida: This would be for the applicant. On – on your agreement with Maui Land and Pine, is there a, an end – I don't know what it's called – in other words, if you cease operations, do you, do you have an agreement to dismantle everything and put the land back the way it was?

Mr. Freeman: That is correct. Yeah. Depending on, you know, would, would, I guess, stop the agreement from proceeding any further. It could be at the expense of the landowner or the developer. Does that make sense?

Ms. Wakida: Yes.

Mr. Hiranaga: Could you speak up please?

Mr. Freeman: I'm sorry. Yes. Yes, there is an agreement in place. There is an agreement in place to –

Ms. Wakida: Thank you.

Mr. Hiranaga: Any other questions commissioners? Commissioner Shibuya?

Mr. Shibuya: In this configuration that you have you've only shown how the PV is located. Is there a pad, a concrete pad, or some thing that you have – your utilities there and disconnected and interconnects?

Mr. Freeman: Correct. Yes, there is –

Mr. Shibuya: And what size is that, and where?

Mr. Freeman: The transformer pad is gonna to be the MECo standard transformer pad, which I believe is an eight by six pad right now, concrete pad. And it will be located and it just showed up so faint on here. Do you mind if I go to the screen to show you? This location here. And it still is at MECo's request. This is where we have decided to put the transformer pad, an inverter pad, and then also a CMU pedestal wall which will hold the metering equipment such as disconnects and a switch gear if we need it.

Mr. Shibuya: Okay, that means you have a string inverter then, not a micro-inverter system.

Mr. Freeman: Correct.

Mr. Shibuya: And your utility is where? How do you interconnect at this point?

Mr. Freeman: The util – currently there is no electrical service to the property.

Mr. Shibuya: Yes. I know that.

Mr. Freeman: MECo is designing to bring in the power poles via the right of way – the right of way that are, that are associated with these – with this parcel.

Mr. Shibuya: Oh, the water right of way.

Mr. Freeman: Yeah. The pipe line and the ditch right of ways.

Mr. Shibuya: Okay. Is that gonna be a tower or is it gonna be a pole that's 40 feet?

Mr. Freeman: It will be poles. Yeah, pole. Pole extension, line extension.

Mr. Shibuya: Thank you.

Mr. Hiranaga: Commissioner Wakida? Commissioner Freitas?

Mr. Freitas: You have five acres there. Are you, in the future, are you folks planning an expansion of more panel?

Mr. Freeman: Presently no. In accordance with the, the tier two program that Commissioner Shibuya mentioned earlier, we can't go any larger than the system that we have there now. The site also has a reservoir on the main body of it, and there's no more room for, for panels after we do this work.

Mr. Freitas: Okay, thank you.

Mr. Freeman: And being consistent with the setbacks and ag zoning.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: I just would like to be clear on the purpose of this facility.

Mr. Freeman: Yeah, so it is generating power in accordance with the feed and tariff program, so that the energy will be sold back to the utility for general consumption into the grid.

Ms. Wakida: Okay. Thank you.

Mr. Hiranaga: So it's a for profit venture.

Mr. Freeman: That is correct.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: One more question. Do you know where the panels are manufactured? I know you said they come from a Canadian company, but do you know where they're manufactured?

Mr. Freeman: It is Canadian based. The entire facility is Canadian based.

Ms. Wakida: So Canadian manufactured as well.

Mr. Freeman: Correct.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I don't want to monopolize it, but go ahead. In terms of the wattage for each of these modules, it would be 250? Is that what is? So it's CP, a Canadian Product 250 P?

Mr. Freeman: Right now we have it designed it actually at 235.

Mr. Shibuya: 235.

Mr. Freeman: 235 watts. During the course of this permitting process they no longer make 235 so we'll be up to 245. So we're getting more efficient the longer we wait. The panels are.

Mr. Shibuya: Okay, thank you.

Mr. Hiranaga: Commissioner Tsai?

Mr. Tsai: What's the life expectancy of these panels?

Mr. Freeman: The life expectancy – I mean, they're, they are currently warranted for 25 years so the business motto is for 20 years, but we're hoping that it could last for up 30. With the feed and tariff program they were originally signed up for 20 years. With the utility it is then renewable for two consecutive five year terms after that. So, it is the hope of all developers that the panels will last forever, at least 25 years.

Mr. Hiranaga: Commissioner Freitas?

Mr. Freitas: Return on your investments. How many years before the units be paid for?

Mr. Freeman: At the current rate and this is all subject to the developer and then, of course, the investors that come along with it for whatever they can end up being the – or whoever ends up being the end buyer, but it is currently some where in the five year range.

Mr. Hiranaga: Commissioner Tsai?

Mr. Tsai: Yeah, the amount of your investment?

Mr. Freeman: The amount of the investment currently is about \$5 per AC watts, so \$1.25 million is the current estimate. Of course, we haven't built it yet, but that's, that's the estimated range.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: In the photo you mentioned that the – or at least showed or depicted gravel, crushed gravel, on the bottom. Is that what you're gonna have?

Mr. Freeman: We are intending to put a small amount of gravel on the ground, yes, with low, ground cover around the array.

Mr. Shibuya: Okay. There was some concern by an agency comment saying that there will be grass growing and that was a concern.

Mr. Freeman: The fire department, we actually met their requirements and we've obtained their approval on the building permit side already.

Mr. Shibuya: Okay. Thank you.

Mr. Hiranaga: Any other questions commissioners? Commissioner Wakida?

Ms. Wakida: This is the last one. The pole that MECo brings in, does that – is that something you folks have to pay for?

Mr. Freeman: In the end the developer will ultimately end up paying for it. It will be designed and they'll pay, pay for it through an interconnection fee.

Mr. Hiranaga: Any other questions commissioners? I have a question. Why this particular location?

Mr. Freeman: It's a left over lot. MLP didn't want to encumber any of their larger lots for future development. But this one is sort of a utility type lot with some left over space that's never been used for anything. So they've, they've gone ahead and said this is a, this is an accepted place for us to get some good money out that, that we haven't in the past. And this particular developer is working on MLP on 13 of these projects actually on the west side. All of them are lots very similar to this very, kind of difficult to construct on, not your cream of the crop type parcels. This one actually is the best one for us because it's generally flat and easy to get to. Some of the other ones are in steeper locations. Does that make sense?

Mr. Hiranaga: Technically this is not a subdivided lot. It just happens to be an enclosure that has excess land area.

Mr. Freeman: Correct.

Mr. Hiranaga: And is the facility located above grade of the reservoir?

Mr. Freeman: Up, uphill, if you will?

Mr. Hiranaga: Right.

Mr. Freeman: Yeah. Yes.

Mr. Hiranaga: Any other questions? Commissioner Shibuya?

Mr. Shibuya: Looking ahead, is this facility a beginnings of Maui Land and Pine using other reservoir sites for similar type projects?

Mr. Freeman: We have one other project on a reservoir site very similar to this. I'll show you – this is the best representation . . . (inaudible) . . .

Mr. Hiranaga: Okay, you need to use the microphone.

Mr. Freeman: Sorry about that. We've stayed away from the embankment side. This would be kind of the earth dam side if you will. All of this area being almost left to, to native, before they started excavating here. So the entire array will be mauka, staying away from any embankment on the property. One other parcel that Maui Land and Pine has chosen to do this on is a reservoir lot. They've actually – it's on the opposite side of a drainage way. The array will be on the opposite side of the drainage way from the reservoir. But that one is already permitted and ready to go.

Mr. Shibuya: Yeah, I like the idea in which land uses are being used, not only for drainage ways or, I guess, reservoirs, but you're using it to generate electricity. And I think that's an admirable way of, and creative way of, being resourceful.

Mr. Hiranaga: Any other questions commissioners? Commissioner Shibuya?

Mr. Shibuya: In terms of the size of it and the location in terms of the Kapalua West Maui Airport, have you addressed in terms of some of the concerns that pilots sometimes have in terms of reflection? I don't see that a problem, but, you know, I'm not a pilot.

Ms. Aoki: Thank you for that question. We did transmit to the Department of Transportation, Airports Division specifically because they had asked us to send them a transmittal on any of these types of projects, and they did not respond.

Mr. Shibuya: Okay, thank you.

Mr. Hiranaga: Any other questions? Seeing none, we'll have the staff recommendation.

Ms. Aoki: Commissioners, you have your conclusions of law and recommendations on the back of the report. First condition states that the Land Use Commission Special Use Permit shall be valid until January 31st, 2013 subject to extension. The rest are pretty much your standard conditions. No. 7, I put in, you'll see in the report that we did repeatedly tried to get State Historic Preservation Division to comment on the project. There is a draft survey that was done that was also provided to you. No artifacts or culture, you know, of any kind were found, so I just put that in, in the case that if anything should be found they are to stop and contact the agency. No. 9, there was concern about the presence of the Blackburn's sphinx moth and we have come to an agreement with US Fish and Wildlife Service on how the fencing shall be done. So they were to do a survey which they've actually already done and have already submitted to us. So they've actually completed this conditional already. And as for the Hoary bat, no. 10, the condition is in there that they are to place a stand of plain a top – approximately three stands or for a barbed wire. And again that was agreed

upon with the Fish and Wildlife Service.

So the conditions of this State Land Use Commission Special Use Permit shall be enforced pursuant to Subsections 205-12 and 205-13, HRS, in consideration of the foregoing. The Maui Planning Department recommends that the Maui Planning Commission adopts the Planning Department's report and recommendations prepared for the January 8th, 2013 meeting and authorize the Director of Planning to transmit said Findings of Fact, Conclusions of Law, Decision and Order on behalf of the Planning Commission.

Mr. Hiranaga: Thank you very much. I'll open the floor to a motion. Commissioner Tsai?

Mr. Tsai: Move to approve as recommended.

Mr. Freitas: Second.

Mr. Hiranaga: Seconded by Commissioner Freitas. Any discussion? Commissioner Tsai?

Mr. Tsai: I just wanna say that I'm in full support of the project, and I think, I applaud the applicant for, you know, going forward with this. And it's great that we're harnessing the power of sun which is readily available and free. You know, we live on the island that needs to have to happen more of this.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'd like to make a friendly amendment to include on paragraph one of the recommendation that the permit, Special Use Permit, shall be valid to, extended to a 20 years total. And that would be for 2033. It's just a friendly amendment.

Mr. Hiranaga: The maker of the motion willing to accept this friendly amendment?

Mr. Tsai: Yes I will.

Mr. Hiranaga: And the seconder?

Mr. Freitas: Yes.

Mr. Hiranaga: Any more discussion? Commissioner Wakida?

Ms. Wakida: I have a concern about extending it for 20 years. The photo voltaic business is rapidly changing and – I mean our testifier even said as we speak they're changing the panels. That they've planned 235 and they don't even make them anymore. Now they've got to 245. So I have a concern about extending this permit for 20 years without review.

Mr. Hiranaga: Any other discussion?

Mr. Spence: Mr. Chairman?

Mr. Hiranaga: Director?

Mr. Spence: I would just point out just for Commissioner Wakida's consideration. What you're approving here today, if, if this motion passes, what you're approving is a specific project. If there are changes to that project within the next 20 years, if they want to add panels or change configuration, or, you know, depending on the conditions of the, the permit, they'll have to come back to the Planning Commission. This is – you're just approving what's been presented today. If there are changes if the applicant needs to change the project in some significant manner, they'll have to come back to the Planning Commission anyway. So you're not foreclosing any additional review if needed.

Mr. Hiranaga: Okay, any other discussion? Commissioner Shibuya?

Mr. Shibuya: The only reason why I ask for the 20 years because they made a contract. They had to sign a contract with MECo for 20 year.

Mr. Hiranaga: Any further discussion? Seeing none, I'll have the director restate the motion. The motion is to approve as recommended by staff with the addition of an additional 10 years. So there would be a 20 year duration.

Mr. Hiranaga: All in favor so indicate by raising your hand.

Mr. Spence: That's five eyes.

Mr. Hiranaga: Motion carries. We'll take a 10 minute recess.

It was moved by Commissioner Max Tsai, seconded by Commissioner Jack Freitas, then

VOTED: to approve the State Land Use Special Use Permit as recommended by staff, with an amendment to condition no. 1 that permit be valid for 20 years.

(Assenting: D. Domingo, J. Freitas, W. Shibuya, M. Tsai, P. Wakida

Excused: J. Ball, W. Hedani, I. Lay)

Ms. Aoki: Thank you.

Mr. Spence: Thanks Kathleen.

(The Maui Planning Commission recessed at approximately 10:25 a.m., and reconvened at approximately 10:36 a.m.)

- 3. MS. COLLEEN BRADY requesting a State Land Use Commission Special Use Permit and a Bed and Breakfast Permit in order to operate the Lilikoi Lani Farm Bed and Breakfast, a five (5)-bedroom bed and breakfast home in the State Agricultural District at 2460 Kaupakalua Road, TMK: 2-7-002: 061, Haiku, Island of Maui. (SUP 2012/0008) (BBPH T2012/0004) (J. Prutch)**

All of the guest rooms will be located in the main farm dwelling.

Mr. Hiranaga: Next agenda item is E3.

Mr. Spence: Thank you Mr. Chairman. Our third public hearing – it's been a long time since we've had three public hearings – the third public hearing is Ms. Colleen Brady requesting a State Land Use Commission Special Use Permit to operate their Liliko'i Lani Farm Bed and Breakfast on Kaupakalua Road. And our staff planner this morning is Mr. Joseph Prutch.

Mr. Joseph Prutch: Thank you Mr. Spence, and good morning commissioners. Well, you've got to be really close to this thing. Okay. What I have before you today is a Liliko'i Lani Bed and Breakfast. It's a Special Use Permit and a Bed and Breakfast Permit. You are reviewing them both today. Normally you just review the Special Use Permit, and we review the Bed and Breakfast. But in this case, the reason this one is here before you is because there's another B&B within 500 feet, so therefore the B&B has to come to you for review as well. So today, you're reviewing the Special Use Permit and the Bed and Breakfast.

The owner on this is Colleen Brady. She's in the audience, and her consultant is Chelsea Hill. They'll both be able to answer any questions should you have any at the end. I'll just dig right into the, the property itself and the farming. Approximately 70% of the property is covered with different kinds of fruit trees and exotic plants and chickens, chicken coop. They have a variety of different native plants. And then the other 30% is covered with a five-bedroom main farm dwelling which is for the bed and breakfast use. There's an accessory farm dwelling, a one-bedroom, which is for the owner to live in. There's also a barn at the rear lot, there's a chicken coop, and of course there's a gravel driveways and gravel parking lots, and a garage for the five-bedroom house. Access is from Kaupakalua Road. The accessory dwelling is at the front of the property, the one bedroom. The main dwelling, the five-bedroom dwelling is in the middle of the property. And then at the back of the property is the barn and the chicken coop.

A farm plan was approved for this. A unilateral agreement was approved back in November, just November 2012. The applicant will use some of the fruits and vegetables to give to the guests of the bed and breakfast. The others, cut flowers, entire plants for potting, some of the chickens and the eggs as well can be sold to neighbors or friends. There is, as I mentioned, there's one other bed and breakfast two doors down to the south, and these are larger lots. This is two acres, so it's not right adjacent, but it is two doors down to the south. It's the Pili'alo'ha Cottage and it's a – if I remember right – I think it's a two-bedroom cottage. It's been in operation probably for a couple of years now. I did a – I did a search further than the 500 foot, I actually looked out a mile radius from the property and there was no other bed and breakfast within a mile of the property. And in the Paia-Haiku Community Plan area so far I see that we have 27 approved bed and breakfasts of the 88 that are allowed in the B&B ordinance, so that's about 30% right now.

Under the Land Use Commission rules, Special Use Permits, projects have to meet the certain unusual and reasonable guidelines. These five guidelines with the description of how they're satisfied are included in your staff report. They're also included in the staff recommendations which I'll get to later. There's been no opposition to this project in writing during the notice of application period. I didn't hear any public testimony this morning on this, so we don't have any opposition to this project at all. And in the report itself I've included a bunch of pictures of the property, the

driveway and some of the graveled parking areas, as well as a bunch of pictures of various agricultural uses. This including some guavas and heliconia, a chicken coop, some pineapples, bananas, and an organic vegetable garden that the, the applicant is growing as well.

Staff recommended approval, but I'll wait and go through that during the recommendation. If there's any questions, I can help or Chelsea or Colleen can also answer any questions if you have them.

Mr. Hiranaga: Thank you Joe. At this time I'll open the floor – I'll open the public hearing. Is there anyone here that wishes to provide testimony regarding this agenda item please come forward? Seeing none, public hearing is now closed. Commissioners Wakida?

Ms. Wakida: Chairman, I would like to disclose that I am acquainted with the applicant. Not the applicant herself, but the applicant's assistant. She was my Italian teacher and I – I was on that property for those classes.

Mr. Hiranaga: She was your Italian speech teacher – language teacher?

Ms. Wakida: Italian speech.

Mr. Hiranaga: Language teacher. Was this in elementary school or high school or –?

Ms. Wakida: No, this was as an adult, two years ago.

Mr. Hiranaga: Oh, I see. Okay, thank you. Thank you for that. Any questions commissioners? Commissioner Shibuya?

Mr. Shibuya: I noticed through the pictures it looks like just dirt on driveways and parking areas. Is that correct or are you – do you have gravel or anything like that?

Mr. Prutch: I thought it was gravel and dirt. There's no pavement. No.

Mr. Shibuya: Okay.

Mr. Prutch: Except for the garage area, but –

Mr. Shibuya: Okay. Thank you. Are they planning to concrete it or put asphalt on it?

Mr. Prutch: I can bring Colleen up and she can respond to that.

Mr. Shibuya: Okay.

Mr. Prutch: Otherwise, I don't know her intentions for paving.

Ms. Colleen Brady: Yes, I'm Colleen Brady and thank you for the question. I have surveyed my neighbors and they prefer the gravel except for right at the driveway where you pull into the bed and breakfast. They want to keep it looking agricultural, and they felt that if we paved all of it, it would not maintain that agricultural feel. But one of my neighbors doesn't like the sound of the gravel

when you pull into the B&B, so probably in the coming year I will probably pave just that section because I like having excellent relationships with my neighbors so –

Mr. Shibuya: Good for you. Okay, thank you.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: Joe, you didn't include the farm plan, right? I didn't miss it, did I?

Mr. Prutch: I didn't include the farm plan approval letter. I did dictate – I did mentioned that the number and it was approved on such and such date. But I did include the farm plan map itself, somewhere in there.

Mr. Shibuya: Exhibit 4.

Ms. Wakida: But, but –. Yeah, but not what the plan actually is as far as that agricultural viability. What I'm getting at is the farm activity seem a little sketchy here. I mean, to me, I'm not seeing anything that looks particularly agricultural. Be it, it looks more ornamental and, and what we all have in our yards.

Mr. Hiranaga: Is – Joe, isn't exhibit 4 the farm plan?

Mr. Prutch: That is the farm plan map that was approved, and then there's a unilateral agreement that's approved with the farm plan. I didn't submit a copy of that. And then we receive a letter – the Planning Department received a letter after that, that simply says that the farm plan has been implemented. Meaning somebody for code enforcement has gone out there, looked at the property and said okay what you show on the map is actually in the ground. And we get a letter that's saying its been implemented. And that's what we look for as proof that the farm plan is actually in the ground, not just on paper.

Ms. Wakida: Yes, I understand that. However I'm looking at Jesse Souki's letter and he points out that, that the short – I mean he's – he points out that we need to preserve the agricultural viability of property in ag lands. And if there are going to be short term rentals or B&Bs they need to have bonafide agricultural activities so that, that this can maintain the agricultural nature of the, of the area, and not turn this into a mini hotel district. And so I understand that the farm plan was approved. Regardless, it just, to me, seem sketchy. It just looks to me like decorative stuff going on here.

Mr. Prutch: I mean, it's – I was out at the site. I mean, it's definitely not road crops and, you know, an orchard. That kind of farming obviously is not there. But there was quite an impressive amount of different kind of fruits and exotic plants and bamboo. And from what I understand talking to the applicant and maybe I'll have her come up here – Chelsea – and elaborate a little bit more what the do with the ag or what they have because she can tell you much better than I can.

There was quite a bit, I thought, for such a narrow lot. And for a bed and breakfast use, it seemed like there was quite a bit. But that's just my perspective. I don't own a farm. I don't live on ag land, so I'm not as familiar as you guys might be with ag land.

Ms. Wakida: Yeah, well –

Mr. Prutch: But just all the B&Bs I've seen, this one seemed like it – it did seem to have quite a bit for the two acres lot size.

Ms. Wakida: Well, I'm thinking closer scrutiny because it's within 500 feet of another one. So –

Mr. Prutch: And the other one if I remember, that the other one was my bed and breakfast from years ago. I was the app – the applicant – I was the planner for the applicant on that one. And remember looking at that site, and that one had a lot of ag conservation. It didn't have a whole lot of – this one, I think even has more farming than that one did. But that one had a large eucalyptus grove, kind of in a gulch area that they, they used as ag conservation.

Ms. Wakida: Yeah, I remember.

Mr. Prutch: So this one, I think, actually has more plants growing, and chickens and that kind of stuff, compared to the other one.

Ms. Wakida: Well, as Mr. Souki points out that we don't want to be driving up ag land because we're turning these small lots, which I realize are difficult to getting any money off of. But turning them into commercial enterprises and thereby destroying the ag value of lands and that's a real concern I have.

Mr. Prutch: Sure. And if you did see – if you saw the applicant's response, she did actually respond to Mr. Souki's letter, exhibit 9. She does say, like I said, they do sell the chickens, the eggs, the cut flowers and the fruit, as well as entire plants for transplanting and potting. Of course, they're agricultural operations. The income they said was about \$2,500 per year. Obviously not enough to sustain itself but I guess, at least, there's a little bit of income. Sometimes you don't get any income on some of these.

Ms. Wakida: I, I would like to hear from the applicant.

Mr. Prutch: Sure. Yeah. Chelsea or Colleen? Chelsea.

Ms. Wakida: Yes, . . . (inaudible) . . . I'd like to hear from you, a little more from you. I heard from Joe, but what's your ag operations involve?

Ms. Chelsea Hill: Well, I think that –

Mr. Hiranaga: Please identify yourself.

Ms. Hill: I'm Chelsea Hill. I'm the consultant for Colleen Brady. I think that farming would be a stretch, for sure, on this little lot to even imagine doing it and it's not being done. But what they are managing to do is keep it very rural feeling by cultivating a lot various plants. And in the variety that they have, they are able to do some trade with, with other neighbors and people in the upcountry area, and actually some of their plants are being purchased. And she has a chicken house with exotic chickens, and she gives away and trades and sells some of the eggs and some of the

chickens as well. It's kind of really wanting to do as much as she can in that area, but there's not really an opportunity for plowing and planting large crops and doing more farming than she's doing. She's got bananas and guava and – what's some of the other fruits? – some pineapple. Really maxing, in my opinion – I live in Haiku also as you know – maxing out the amount that she can do with ag, I think. Which brings me to something I forgot. Does that sort of answer the question?

Ms. Wakida: Yes. Yes, I think so Chelsea. Thank you. What are exotic chickens? We've all got chickens believe me.

Ms. Hill: Yeah, that's a great question. You know what, I don't know if you've been to the County Fair, but you can see them there a lot of times. They, they've got – they're called Americanos, and what is the other one called? Silkies. The Seabrights. And they look like they've got fur on their, on their claws, and helmets, and different varieties of them like that. And they come in the bantam size. And they're just, really, actually, believe or not, social. And the – so they're fun. Colleen has grandchildren and they love to come, and actually play with the chickens. And the chickens don't run away, and they let themselves be pet. And, so, yes, kind of almost petting zoo type opportunity for the guests I was thinking as well.

Mr. Hiranaga: Commissioners Freitas?

Mr. Freitas: Yes. Hi. What you call? I lived upcountry all my life. I've – I know about the ag operations. And two acres is almost impossible to generate enough income for – to sustain a household. It can't be done. Approximately how many chickens do you have, and do you folks have resale license? You said that sold about \$2,500 worth of, worth of products. And it amazed me to see, you know, the picture that you could even get \$2,500 out of there. How many chickens do you have?

Ms. Hill: Well, the chickens vary because they come and they go.

Mr. Freitas: I understand.

Ms. Hill: I – when I was there last year, there were at least – 23 today. 23 chickens today.

Mr. Freitas: 23 chickens?

Ms. Hill: Yeah.

Mr. Freitas: So you almost get two dozen eggs a day. Okay.

Ms. Hill: Yeah, there's a lot of eggs. And some of that number, the 2,500, to be honest, is an equivalent of trade. It's not 2,500 actual dollars cash that has been received. Sometimes people will say, oh, I'll do this for you instead of you having to pay me.

Mr. Freitas: So it's a approximate. So it's not a – it's not a – it's not realistic number.

Ms. Hill: Yeah. It's not being done as a business if that's what –

Mr. Freitas: So, do you have a resale license?

Ms. Hill: I don't think so. I don't think there's a resale license.

Mr. Hiranaga: Are you referring to an excise tax license?

Mr. Freitas: Yeah, excise tax license.

Ms. Hill: Yeah, there's an excise tax license on the property. Yeah.

Mr. Freitas: Okay. Thank you.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: Is the homeowners taking a homeowner – taking a homeowner's exemption on the house?

Ms. Hill: Are you claiming homeowners? Yes.

Ms. Wakida: So you will discontinue that when you have a B&B operation?

Ms. Hill: The tax department has been notified as part of the application process. And I think that the year – within a year or so of receiving the permit, they make the adjustment.

Mr. Spence: Mr. Chairman?

Ms. Hill: Automatically.

Mr. Hiranaga: The director wishes to comment.

Mr. Spence: Again, the property owner for any of these B&Bs lose their homeowner exemption when they obtain a permit, so –

Ms. Wakida: Automatically.

Mr. Spence: It's automatic. Mr. Chairman, if I could comment on the ag.

Mr. Hiranaga: Please do.

Mr. Spence: The, the agriculture on the property, whether – I mean, what's before the commission today is a Special Use Permit. It's not – it happens to be on agricultural land. If there's a permit on the land, I can't say if they're gonna do more agriculture or not. If there's no permit for the bed and breakfast, I can't say that they're gonna do anymore agriculture than they already are doing. There's two homes on the property. Those will exist with or without a bed and breakfast permit. Certainly it makes the –. So in other words a bed and breakfast permit, people going and staying on the property for a week at a time is not going to enhance or diminish the agricultural viability of this property. It's – it is what it is. You know, we encourage all the owners of the ag land to do, you

know, their farming on their property. If they want to build a house, they have to do a farm plan, regardless of a bed and breakfast permit or not. So that's, that's actually an independent kind of – just an independent issue than the bed and breakfast.

We've had discussions with Mr. Souki at the state, and I understand their concern. They're also, since, I believe since this letter has come out, they've been satisfied that at least we are having people do farming on the land as opposed to doing nothing that we've seen in so many other places around the state, not just on Maui. So, to me the, the farming that they're doing on the property is wonderful. It shouldn't be so much a consideration on this particular property. They're doing a lot more than what we see regular homeowners do. So, my opinions of the commission.

Mr. Hiranaga: Commissioners, again, we're here to ask questions of the applicant. Commissioner Wakida?

Ms. Wakida: No. I was just going to make a comment.

Mr. Hiranaga: You could save that later. Commissioner Shibuya?

Mr. Shibuya: I just have a question relating to the police comment, saying that it is unsafe or less safe, that they highly recommend some kind of mitigation or means of making it safer exiting as well as entering the driveway. What – can you comment on that?

Ms. Hill: We did respond with a letter to the Police Department, and resolved the problem by putting in some new mirrors to make it safer to exit the property.

Mr. Shibuya: And is it functional?

Ms. Hill: Yeah. Yeah, it's working beautifully.

Mr. Shibuya: And it's acceptable by the police?

Ms. Hill: Yes.

Mr. Shibuya: Thank you.

Ms. Hill: Thank you.

Mr. Spence: Mr. Chairman? Public Works . . . (inaudible) . . .

Mr. Hiranaga: Yes, Deputy Director?

Ms. Rowena Dagdag-Andaya: I just had a question about the mirrors. Where would they be placed? If they are placed within the right of way, then that would need to be reviewed by staff. Now this is something that we don't typically create a condition on. However, you know, I would caution that you do consult with our department first, before you start installing things that are within the right of way.

Ms. Hill: Okay. They are across the street, and not on the road.

Ms. Dagdag-Andaya: Okay.

Mr. Hiranaga: Are the mirrors installed on private property or is it installed on county property?

Mr. Hill: They were installed on the mailbox across the road, so on a structure that was already existing.

Mr. Hiranaga: The concern from the Public Works Department is that you would need their review and permission to install mirrors on – within the county road right of way. So you need to determine whether those mirrors are on private property or on county property.

Ms. Hill: Okay. We will look into that. Thank you.

Ms. Dagdag-Andaya: But I would – I'm sorry – I would just caution or suggest that you consult with us anyway.

Ms. Hill: Thank you.

Mr. Hiranaga: Even if it's on private property?

Ms. Dagdag-Andaya: If it's on private property, it's still okay. I think I missed that last portion, but –

Mr. Hiranaga: She needs to confirm if it's –

Ms. Dagdag-Andaya: Yeah.

Mr. Hiranaga: But if it's on private property – if it's confirmed to be on private property, she still needs to consult with Public Works?

Ms. Dagdag-Andaya: I would just come in anyway and just discuss with us. Yeah.

Mr. Hiranaga: Commissioner Freitas?

Mr. Freitas: Question, are you operating a rental at the present time, as a bed and breakfast?

Ms. Hill: No. They have not started operations yet.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: More in terms of sustainment. Are there some efforts or initiatives to conserve energy or generating energy?

Ms. Hill: Yes. The owner has submitted –.

Ms. Brady: Thank you. Yes, we have submitted –

Mr. Hiranaga: Please identify yourself.

Ms. Brady: Oh, I'm sorry. Colleen Brady. And we have submitted application with Maui Electric Company for solar for the bed and breakfast. And then probably six months from now, we'll also do solar hot water. So our plan is that everything be solar for the property.

Mr. Shibuya: Thank you.

Ms. Brady: Thank you.

Mr. Hiranaga: Any other questions commissioners? Commissioner Shibuya?

Mr. Shibuya: In terms of public safety, I normally ask this question in terms of Fire Department as well as extinguishers. Do you have the proper amounts of clearances from the Fire Department?

Mr. Prutch: There's smoke detectors were in each room, and in the hallway to the room as required by the, the bed and breakfast ordinance. The fire extinguishers, I remember seeing one in the kitchen. I think there was one down the hall too if I remember right because it may have been close to 70 feet away. So fire extinguisher, smoke detectors were there. In this case I, I, I just found out too that the applicant also had to put a fire suppression water tank at the rear of the lot because I guess the rear of the lot is outside of 500 feet from the nearest fire hydrant. The main house is within 500 feet, but I guess, that borders right between her house and the rear of the lot, so she's got a fire suppression tank at the back of the lot for the barn. So she does have that placed.

Mr. Shibuya: Okay. Also, another question in terms of the photo I noticed the main doorway to the rental unit – alright, if I can find that again – it says main house front door. I noticed that it is a screen door that opens out ward, but yet the landing there looks like it was not designed for the door opening outward. The reason why I'm saying that is if you step up on the landing, then you have to step away or fall off as you open the door.

Mr. Prutch: Okay, if I remember that door is the side door at the main master bedroom.

Ms. Hill: I'm Chelsea Hill. I think the door that you are referring to, Commissioner Shibuya, is one way to enter the house. There is a foyer inside that door, and there's another main door that's actually wider and bigger off of the front lanai. And the door that you're referring to is beside the garage. If you look there's a window to the right, and there's – yeah, that's actually a window into the garage. So it's, it's a bit six of one half dozen of the other which way you go into the house. You can go that way or you can go around the other side of the garage and there's a, there's an entry from the lanai as well into the – into the house.

Mr. Shibuya: Well, I'm just concerned that if you open the screen door, and you're standing on the landing, you could push yourself off. That's all. Thanks.

Ms. Hill: Thank you.

Mr. Hiranaga: Any other questions commissioners? Seeing none, thank you very much. We're ready for the staff recommendation.

Mr. Prutch: Yes. Yes, yes, yes. Okay, the application for the State Land Use Commission Special Use Permit does comply with the applicable standards for an unusual and reasonable use within State Ag District as spelled out in the staff report and the recommendation report. The project also – the bed and breakfast home also meets the restrictions and standards of Chapter 1964 – 19.64 Bed and Breakfast Home, Section 19.64.030, restrictions and standard, A through S, which are also listed in the recommendation report. The Maui Planning Department is recommending that the Maui Planning Commission approves the State Land Use Commission Special Use Permit and the Bed and Breakfast Spec – I'm sorry, Bed and Breakfast Permit subject to the six standard conditions for the Special Use Permit which includes an expiration date of January 31st, 2016. Three years from now. And also the 16 standard conditions for the Bed and Breakfast which obviously still the expiration coincide with the Special Use Permit for January 2016. That's our recommendation. Thank you.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: Joe, why didn't the applicant go for five years?

Mr. Prutch: Well, the applicant could go for the five years, I guess, on the Special Use Permit, but the B&B is limited to three years on your first try.

Ms. Wakida: Oh.

Mr. Prutch: So we just put three years for the Special Use Permit to coincide. Next time around if everything goes well, we'll try for the five years at that point.

Mr. Hiranaga: Joe, condition no. 6, is that something new?

Mr. Prutch: In the Special Use? In the Special Use Permit Condition, I'm sorry, or the Bed and Breakfast?

Mr. Hiranaga: The B&B permit.

Mr. Prutch: It's, it's revised. In the old days it use to say that the – the use to say that the B&B homes shall not operate during any times the owner operator is away overnight period. Since that time, we've had discussions with, with Will and Michele and the planning staff, and we've kind of come to the realization that sometimes the B&B owners are going to go on vacation. In some of the cases we've had medical conditions where somebody's family was sick on the mainland and owner couldn't leave because they couldn't be away when their B&B was operating. So in that kind of cases we've, I guess, we've softened that condition a little bit to allow them to take some time off and go and still operate, and just let us know this on island person is so that we can at least someone to contact should anything happen. So that condition – it's, it's – we've probably been using it for, I want to say, a year now maybe. As the renewals come in we've been changing that condition. So this is probably the first time you guys have seen this because you don't see the B&B conditions very often.

Mr. Hiranaga: Any other questions regarding the recommendation? Seeing none, let's take the two applications separately. So we'll open the floor to a motion regarding the Land Use Commission Special Use Permit. Commissioner Wakida?

Ms. Wakida: I move to adopt the recommendation to approve the State Land Use Commission Special Use Permit.

Mr. Hiranaga: Is there a second?

Mr. Freitas: Second.

Mr. Hiranaga: Seconded by Commissioner Freitas. Any discussion? Commissioner Wakida?

Ms. Wakida: Just a comment, and I wanna thank the director for his clarification. Wherever there's ag land involved, though, I'm always going to be raising some issues about keeping it – ensuring its continued viability and it's – when we have opportunity. When individual homeowners build on their lands, we don't get a chance to have any discussion about that. When it comes before and we can I will bring something up so that we be just a watch dog to that.

Mr. Spence: Understood. I share your concerns.

Mr. Hiranaga: Any other discussion? Seeing none, we'll have the deputy – the director restate the motion.

Mr. Spence: The, the motion is to approve the Special Use Permit.

Mr. Hiranaga: As recommended by staff.

Mr. Spence: Yeah.

Mr. Hiranaga: All in favor so indicate by raising your hand.

Mr. Spence: That's five ayes.

Mr. Hiranaga: Motion carries.

It was moved by Commissioner Penny Wakida, seconded by Commissioner Jack Freitas, then

**VOTED: to approve the State Land Use Commission Special Use Permit
as recommended by staff.**

(Assenting: D. Domingo, J. Freitas, W. Shibuya, M. Tsai, P. Wakida

Excused: J. Ball, W. Hedani, I. Lay)

The Bed and Breakfast Permit needs to be reviewed by the Maui Planning Commission because the property is located within 500 ft. of a previously

permitted bed and breakfast home operation.

- a. Public Hearing**
- b. Action**

Mr. Hiranaga: The floor is open to a motion regarding the B&B Permit. Commissioner Wakida?

Ms. Wakida: I move to approve the B&B Permit as recommended by staff.

Mr. Hiranaga: Is there a second? *(Commissioner Shibuya raised hand.)*

Mr. Hiranaga: Seconded by Commissioner Shibuya. Discussion? No discussion. We'll have the director restate the motion.

Mr. Spence: The motion is to approve the Bed and Breakfast Permit as recommended by staff.

Mr. Hiranaga: All in favor so indicate by raising your hand.

Mr. Spence: That's five ayes.

Mr. Hiranaga: Motion carries.

Mr. Prutch: Thank you.

Mr. Spence: Thank you Joe.

Mr. Hiranaga: Good luck. We'll take a five minute recess.

It was moved by Commissioner Penny Wakida, seconded by Commissioner Warren Shibuya, then

VOTED: to approve the Bed and Breakfast Permit as recommended by staff.

(Assenting: D. Domingo, J. Freitas, W. Shibuya, M. Tsai, P. Wakida

Excused: J. Ball, W. Hedani, I. Lay)

(The Maui Planning Commission recessed at approximately 11:12 a.m., and reconvened at approximately 11:16 a.m.)

C. Workshop on Ordinance No. 3941 relating to Short-Term Rental Homes (G. Flammer)

The purpose of the workshop is to provide information to the Commission on the details as specified in the Ordinance regarding the procedure and criteria for the Commission's review of Short-Term Rental Home Permit applications and for State Land Use Commission Special Use Permit applications for Short-Term Rental Home

operations in the State Agricultural District.

The Commission will be reviewing a number of Short-Term Rental Home Permit applications and for State Land Use Commission Special Use Permit applications for Short-Term Rental Home operations in the State Agricultural District beginning with the January 22, 2013 meeting.

Mr. Hiranaga: Next agenda item is Item C. Director?

Mr. Spence: Thank you Mr. Chairman. You have Item C on your agenda today, we have a workshop for related to ordinance 3941 related to short-term rental homes. We have with us today Gina Flammer – our staff planner Gina Flammer, to explain a little bit about the ordinance and how we're processing these things. I would also like to recognize the presence of Council Member Don Couch who chaired the Planning Committee for this ordinance. And he's here today as a resource for the commission if you have questions on the Council's intent.

Ms. Gina Flammer: He's also gonna come up in a couple of minutes and fill us in . . . (inaudible) . . . I'm gonna do my best to tell you Council's intent, but I have the source right here too. Will and I did sit through most of the meetings as well. Thank you. Good morning everybody. It's been a while since I've seen you. June 11th, I think, I brought the bill to you – 2011 – so some of you were not on the commission at that point. There's been lots of changes too since you saw it, so I'm gonna walk you through those.

Okay, so just as a brief history and a reminder. You saw the bill about – about a year and a half ago. It also went to all of our local commissions including Hana. The Council spent about six months reviewing it diligently, going through line by line. They also worked very closely with the two different groups that were interested. The industry which was mostly represented by the Maui Vacation Rental Association, and also members of the public, mostly the Maui Meadows Homeowners Association. And it was a really great process to watch where the two groups got together and with the same goal in mind, to create a regulated industry where we had a permit that worked for everybody. And it was nice to see many of the changes in there. He gave us some really good tools especially to this commission.

The ordinance was adopted about six months ago, May 23rd, 2012, and the department has been busy receiving applications. I think we're – we had about 80 in before the end of the year. We got about 30 in the last week. So we're looking at over 100, and that's a great sign of success. The people out there want to be legal. It also shows that they've met the requirements. You have to actually meet the requirements to even apply.

Okay, so you're gonna be seeing a lot of these applications partly due to the department working with the industry for outreach efforts. There's additional protest provisions where you're gonna see a lot more of the short-term rentals than you did with B&Bs, and I'll go into more detail on that. The Council told us most important part of this is enforcement. They want a regulated industry. They required two new officers dedicated just to this, and I'll go into more detail about that. They also told us they want easier and a fair permitting process, so we're working really hard to do that. And I think the number of applications that we have shows that we're doing a good so far. Always room for improvement, we're always open to comment. With that being said, the Council put a review

clause on the – they've been doing that with many of their legislative items and it's an excellent thing. They're going to see this again in two years, which means it's going to come back to you probably in about a year, maybe a year and a half. They really want to hear your on the ground expertise about this process and how to improve it.

They also gave you a completely new function. You will now be the body that will proceed over revocation hearings. They used to go the Board of Variances and Appeals, but the Council felt very strongly that you have the expertise. Your hearing is in the beginning, and you meet regularly, every two weeks. They wanted you to have this power, and I'll go a little bit more into that as well.

At this time I'm gonna have Council Member Couch come up. And I've done my best to kind of explain the Council's intent which I'll go through later, but I wanted you to hear it straight from him.

Mr. Don Couch: Thank you Gina, and good afternoon. Good morning? Good afternoon? Morning. Good morning everybody. I really appreciate you taking the time to go through this because quite often we, we create laws and then just say, "okay, deal with it." But I wanted to be able to tell you, at least from my perspective what the intent of Council was when we, when we came up with this law. And Gina is correct, the bill will be coming back to you in about 18 months because we need to review it. Because we know we don't make – get things right the first time because we don't know from experience what's going on on the ground and you guys do. You guys have been doing this for a while, and in general, Planning Commission as a whole. I mean, there's different people every time, but the body has been doing a really good job at, at planning for this community.

The other thing that she mentioned is that we got – this is a law that came about. There was a group of people that said we don't want any short-term rentals any where, and the group says, you know, they're there now, let's regulate them. We got those guys in a room, put them in there with a bunch of sugar and that's it, and they came out in about three or four hours with a really good compromised position that they both – both sides agreed on and we moved from there.

With – with that being said, the Council is very concerned about short-term rentals and B&Bs for that matter being good neighbors. That's the first thing. We want to make sure that they're good neighbors, that they're not affecting the character of the neighborhood. The issue there was how do you define the character of a neighborhood? Again, you guys have a really good perspective on that, and you can see through all the stuff. People come up here and testify, and you can see through some of the – just kind of the hyperbole – hyperbole – and you can get down to the nitty gritty.

We wanted to be able to make sure that if there are CC&Rs, if there's an actual neighborhood association – I mean, a homeowner's association with covenants, conventions, and restrictions, you know, we can't as a county enforce those. But we can say, you know what, if there are something in your covenants, conventions, and restricts that either say yes, you can't have short-term rentals, or no you cannot, that you need to be aware of that and take that into consideration. You're not enforcing it, but, you're, you know, it would be a situation where the director can say, look, it's plain and clear that the homeowner's association said you can't do this. For instance, in Wailea, pretty much every homeowner's association in Wailea says you cannot do it, so, you know, we're not going to issue the permit. We wanted to give the director that capability and if, if, if the applicant say, well, I don't agree with that, then they come to you and you guys can be the final say.

We also wanted to make sure the houses are safe. It's an old, you know, run down place, we don't want our visitors coming here and getting hurt. So we wanted to make sure the house was safe. But in a situation, and I can give you an example right here down the street is that somebody bought a house that was built in the early 40's, and several additions were made prior to the permitting process came about, and standards have changed all along. It's a safe place to live, but it doesn't meet the current coding, building code. Is that a situation where they have to come up . . . (inaudible) . . . to that, or is it a safe place for somebody to stay? So we're asking for an inspection to see is this a safe place for somebody to stay.

We also want the owners to pay proper taxes. Just plain and simple. We've got a lot of people out there getting homeowner's exemptions. It's not a lot. But getting homeowner's exemptions when they're doing short-term rentals. Not necessary short-term rentals, it could be TVRs as well. We've see that as well. So this helps. We also want to protect – one of the biggest things was who else is going to take care – you know, people are going to move their unit from long-term rental to short-term rental. We want to be able to protect that in any way we can. We put in some rules in there to make sure that that is weighed heavily.

The biggest thing, the second biggest thing – the biggest being they need to be a good neighbor – as part of that we need to have a very strong enforcement program. That was the key phrase throughout this whole thing. We need to be able to enforce. And we asked the Planning Department, well, how come you're not enforcing now? Well, because it's very nebulous, very unclear on what the rules are. So we tried to make the rules succinct. One thing, if you advertise, we're gonna say it's prima fascia evidence that you are running a short-term rental. The fact that you're advertising. So, there's some rules in there on how to determine that. And a lot of really good enforcement clauses that says that you guys can look and say, no, they don't meet this, they don't meet that, they do meet that, we have to deny or revoke.

And then that's the other thing, there hasn't been a really good revocation process. It's been, all along is once somebody gets a permit, they're gonna be assumed that it's their forever, and you know, you really can't take it away from you. We put it in there, we put it in the law that says, yes, we can take it away from you and we will if these conditions aren't met. And again, as Gina said, you guys are the ones that probably saw it or at least the Planning Department definitely saw it first and have some history with it, and people made assertions to you. Especially if it comes here, they're gonna say, yes, we're going to do this, this and this. If they come back in a year and half, and it shows that they didn't do what they said what they're gonna do, you guys are gonna know that, and you're going to say, look, you guys stood up here, you said you were going to do it, you didn't do it, we're revoking the permit. That's the biggest concern is from the people who don't want any at all, they're saying, look if they get it, they're going to keep it forever. That's not necessarily the case.

And we wanted people to come out and actually apply for these things, as opposed to the supposedly 1,100 to 1,500 illegal out there. We wanted them to come in and say, look, get your permit. And once, once there's a time period that came up – and I think it's up now but, or I can't remember if there's a couple more months left. After that then the department has been tasked to move against the people who didn't come in and make people comply to the new ordinance.

And we wanted it to be a fair process. It is a – I see the application form – it is kind of big, but,

maybe that's is what's necessary to get a good – to get you guys the proper information. And we also wanted to allow for it on agricultural lots. And the reasons we wanted – we figured that as long as the people are still doing agriculture, according to HRS 165 and HRS 205, that they can also help supplement their agricultural income with short-term rental. Or vice versa, supplement their short-term rental with agricultural. But as long as they're doing the agriculture on the lot, we, we feel that this is an assistance. There are several out there that could use – they're trying to do the best they can with their agriculture and if they can rent out a couple rooms or the place, then sometimes that might be just enough to keep them going with the agriculture. We don't want, at least from what I understand what my colleagues were saying as well, we don't want somebody who's doing really well in agriculture or even just struggling in agriculture to get rid of the agriculture and make it short-term rental. We don't want to have that happen, so that's what we're trying to – those are some of the intents that we had. And I'd be happy to – I don't know if you're doing Q&A now or – I'd be happy to answer any questions if you have concerns on these. Again, I know Will was there a lot, Gina was there a lot, and Mr. Giroux, and Mr. Hopper, both were there.

Mr. Hiranaga: Okay, I'll open the floor for questions for Mr. Couch, if any. Commissioner Wakida?

(Commissioner Wayne Hedani joins the Maui Planning Commission meeting at approximately 11:25 a.m.)

Ms. Wakida: Just, Gina, are you going to continue to go through these? Maybe I'll hold my questions.

Mr. Couch: And I can stick around for that.

Mr. Freitas: You're talking about enforcement. Is it going on a complaint oriented or there will actually be enforcement? Because the way enforcement is handled in all of the departments, today, in Maui County, is complaint oriented. Other than that, they just stand around.

Mr. Couch: That is – complaint oriented is one phase. The other phase is – and we had asked the department what they needed and they said if they got two people. So we put in, the budget committee, we said, you know, they asked for two people, so we gave them two people for enforcement for short-term rentals and B&Bs. And part of their job is suppose to be to go through ads, match them up with permits. If there are ads that don't have – because every ad is now required to have permit number on there, and their house rules, and they're suppose to go through those ads. That's gonna be their job is to enforce B&Bs, either proactive or reactive.

Mr. Hiranaga: Any other questions? Seeing none, thank you very much.

Mr. Couch: Thank you.

Ms. Flammer: Okay, I'm going to go into much more detailed analysis of each of those. Before we move on I did want to remind you what you're going to see. Most of the permits as part of this fair, easy permitting process – maybe easy not the right word – fair, permitting process is that like the B&Bs most will be done administratively. We want to use your time for particular applications. And that is going to be when there are two or more protests from either next door neighbors or across the street. Like Council Member Couch said, you really have great expertise in figuring out what

the real problem is. And because of that we want you to take a look at those applications. This is a protest provision over the B&B. Much stronger.

We also have the 500 foot, like we did with the B&Bs. However, we made it smaller so that if there's 40 or more lots, only 15% is the trigger for protest to come to you. We'd only seen one with a 30% protest under the B&B, and the Council saw that and wanted something a little bit more. Like the B&Bs, if there's another operation within 500 feet, you will see it. However, as . . . (inaudible) . . . to come in, there was a clause added that waived that until the end of this year. It did work. We have a lot of applications. We got 30 in by the end of the year. They do have to be complete. I'm not sure all 30 will get processed at this point in time.

If a variance is granted – so far you've only seen one of those. That was the one in Kihei that had several kitchens. Or, you will see it. You will see it. You will see it at your next meeting. Very rare. In Hana, if there's more than three bedrooms, you're going to see those applications. They go to the Hana Advisory Committee first. I'll talk about Hana at the end. You're looking at a nine to 12 month process for Hana. Many Hana applications.

And also we added a new clause where applications can be forwarded to your for cause, and that's for good cause. So if we find a reason to send it to you, we want your expertise. We have the ability to now go ahead to do that.

Okay, so like I talked about, we got the strict protest provision here. You're going to see many more applications because of this. It's really your job, as Council Member Couch said to weed out the bad apples. Applying doesn't give you the right to get the permit. It's really going to be your job to figure out what are those protests about and are they related to something relevant to the bed and breakfast or the short-term rental operation. They did give you some criteria in which to use, which is very nice tools for you to have. Our attorney likes that.

So, you can take a look at the number and the type of protest that you're getting. Were there existing or past complaints? Sometimes that's one of the nice things about having someone have operated before – you get to know what type of manager are they. Were there other problems with non compliance? You've seen that. Often that comes up. You can take a look at that and evaluate it and play it into your decision. And also correspondence received by the homeowner's association. That is something new. The Council felt very strongly that homeowner's association play a very valuable role in helping us understand the character of a neighborhood. And we wanted to have some tools where we could use there, understanding, and the bi-laws.

We were given some criteria for all permits. It has to conform to the existing character of the neighborhood. I know sometimes people have ideas about how they want their neighborhood. We're tasked looking what that does that neighborhood look like right now. We want to look at community impact, and of course, adverse impact which we look at with the B&Bs as well.

So probably one of the strongest provisions is you need a property manager. You could be your own manager if you live on island within 30 miles. You can have a family member if they're within 30 miles. Otherwise you have to use a licensed real estate, a realtor. Most properties are going to need a realtor. We're relying on the professional expertise of the realtors. We understand it's a profession that monitors itself and it has strong provisions.

Manager duties are spelled out right in the law. They have to be available at all times. They have to be physically present at the property within one hour following a request. They have to enforce the house policies. And council wanted to make sure that there was no funny business with any of the money. That's why they like the idea of the realtor.

They added some other provisions. The entire structure has to be rented to one group. Council wanted to keep density down in the neighborhood. No parties other than registered guests. That's a huge provision. That has to go right on the web. Anybody planning their wedding, thinking about having the reception at the house, thinking about even having their in-laws over for dinner, that's not allowed. They were very strict with that. The maximum occupancy is half of what it is for bed and breakfast. The department also decided that that should be posted right on the website so that people know when they're booking a place what it is. Again, trying to keep the density down in hopes of not having over utilized properties with the problems.

House rules have to be right in the advertizing. Also, unlike the B&Bs you get your permit for one year. And, you know, I really want to credit the vacation rental industry with helping us understand why that's so important. They want to make sure that there are no bad examples out there. So they really worked with us to –. You can get one year, and then it can be extended if there are no complaints. But if there's a problem, we're gonna know right away. So the wanted a way so that we don't have to worry about revoking a permit. We just don't renew it when there's a problem.

Here are the house policies. I'm gonna let you read them for yourself. They're in your packet. The quiet hours is probably the most important one. Same with no parking on the street. I get a lot of complaint letters about parking on the street. We go out. We actually physically take a look. I measure sometimes to make sure a car does meet the code for parking.

We did add the shoreline area is open to the public. Not everybody knows that. We did have a case, when I heard at the Molokai Commission of some young boys playing on the dune, and the police got called on them. And that wasn't looked very kindly upon by the community. Again, these polices need to be included right with the advertising so that the person booking understands.

A new role for the homeowner's association. You've heard about that. We need correspondence from the homeowners association if there is one. And what that correspondence has to say is what are your rules, is this an allowed use? It's not up to the county to read the rules and come up with the conclusion. We want the homeowner's association to tell us what those rules are.

The application packet has to be complete. So at this point in time, if you have a homeowner's association and you don't have a letter, we will not accept the application. Also new provision above and beyond the B&B, once your permit is approved, you do send a copy of that approval letter with all of the conditions including the time limits to your neighbors, along with who your property manager is. Along these same lines, you also have to put up a two square foot sign that somebody can read from the street that has the contact name. They didn't want to put the neighbor in the position of having to knock on the door. They just wanted them, if there's a problem, they go by and note the number and call. Also it has the Planning Department's number – we want to know about problems as well.

Second biggest concern of the Council is they want to make sure the houses were safe. A lot of

discussion about that. So we've got three different ways that you can take a look. They wanted to make sure it was safe when it was built, and they had wanted to make sure it was still safe. The first one, was it built in compliance with county regulations at the time of construction. Well, anybody that's gone and research building permits know we don't have all the records. We did have a building with a lot of records that had some mold issues. People were really kind of running in circles trying figure out how to prove this so the department did come up with a different solution. You can come and have a Public Works miscellaneous inspection and they'll do all the research for you. Or you can also have a certification by a licensed architect that will go in and make sure that the house was built to code. I wanted to give you an example. The inspection letters they go into a lot of detail.

In addition, the house has to currently be safe. And again, this is something that's new with the B&B. New with the short-term rentals, it's different than the bed and breakfast. They wanted to make sure, like Council Member Couch said, that when a tourist comes out and they're not familiar that there's nothing there that's going to be a problem for them. So, we, in the past, used the miscellaneous inspection letter from the Department of Public Works. The Council requested that we come up with an alternative method. The department did develop some administrative rules for a rental home inspection form. I'm happy to say those rules have been adopted. The form that's in your packet is the official one. It's a little different than a miscellaneous inspection because it's more like a private home inspection. It was modeled after some programs in other states. That's just a copy. You can see right in your application exactly what – people know ahead of time when they read the form. They can go through their own house and take a look. It focuses on bringing certain things up to current code, and also just making sure there's been no degradation of a deck that over time there hasn't been any problems. So just so you can see these are the main areas that the inspector takes a look at.

And also some general provisions for safety. Fire escape plan in each sleep room. Working smoke detectors. We require photos of them in the application. When we go out to the site, we actually check to make sure. If the light is not there, I have the applicant hit it for me so I can hear it. We also require the bigger fire extinguishers be mounted in an obvious place, and we check for that when we do our site visits. The council is also very concerned about paying taxes. They have to have GET and TAT. We also require that if you're currently operating that a tax clearance form comes in with the application. That's a very thorough process where the state goes through and make sure all income taxes has been paid and every thing is clear. They do lose the homeowner's exemption just like the bed and breakfast. But technically if they're not living on there, they're not suppose to have it. They have to show us when they submit the application that they do not have it. Or if they're living there, and they're going to convert, they need to let us know that.

We also are required, the department, to send an annual list of permits as well as violators – RFSs, goes right to the County Real Property Tax Office and the state tax office for them to follow up. A very useful tool.

Okay, you also have a permit caps when I was here in 2011. What's new is Maui Meadows. You know from reading the newspapers over the years, there's been a lot of problems with vacation rentals up there. Part of it is just the topography of the land. You're talking about a steep area, lots of gulches, noise is really, they really carry. You're also talking about a lot of mainland residents that may not be managing those properties. Those residents and their homeowner's association

spent a lot of time working with Council the way – to make it work. They came to a cap of five. You are going to see some of these permits. It's important to recognize that there is a minimum cap up there. It's up to you to decide who gets that permit. Council did –. There's actually four because one Conditional Permit was converted. Council did put a clause in that they will revisit those numbers when they reach 90%. They understood it could be kind of strict in at least one area, so it will automatically go back to them to take a look. And they're going to take a look and see, you know, how is this affecting these neighborhoods. There was discussion for Paia/Haiku actually to increase it. And we did a very thorough analysis with the help of the industry to see. We thought that the ADA was just about right. We'll take another real close look when we get a little closer to that.

The Council does listen to you guys. They do read all of your minutes and your comments. They put a condition in there that said the home has to be built more than five years ago. Too bad Commission Mardfin isn't here – I did tell him when I saw him out in Hana. We did listen to him. Council wants new homes built for residents. They don't want homes built for this kind of use. Also, you're going to be seeing them – another one within 500 feet. Those will start to come in now.

Low income 201H properties do not qualify. That's not just the low income part. That's the entire project. Also only one permit person. However, they did understand that there are some very expensive homes out there already being used. As far as I understand we only have, I think, two – at least one that I'm aware of that have come in under this clause.

Okay, the first thing that happened when we got to the Council. Thought we'd go through the bill section by section, but no. Enforcement was the number one thing that we addressed. We were mandated by Council to hire two new enforcement officers to do proactive enforcement. That proactive enforcement is spelled out in the code specifically as an annual list which comes through a web search. We use that annual list. But also we send that to Real Property Tax and the State Tax Office. We were given a really good tool. Advertizing is operating. No more hiding out in the bushes writing down how many cars come by. We can look right now on the web and tell, send you a letter. And we have some strong language in there. Your first warning requires you take down your advertizing within seven days. If it's not down you get an NOV. Not only do you get fined, but you are banned for five years from applying for a permit. That's the owner. Council was very serious about this – yeah.

Revocation procedures. You provide a false or misleading information during the application process, you're in violation of any health regulations, you haven't paid your taxes, we can take your permit away from you. When you get complaints, we're going to take a really close look what's going on. So three complaints received within a year. It can't just be from one neighbor. It's got to be from property owners of two or more different lots within 500 feet. The department is going to conduct the investigation. The department has the right to outright revoke that permit. However, we gave the commission – the Council did – the right to proceed over a hearing should we decide to send it to you, which in most cases we probably will. We really trust your judgement.

Council gave you some criteria to look at. Evidence of non responsive management. If there's any police reports or other disturbances, those can come in through request for service. You get warnings again from the request for service. Neighbor complaints of noise and other disturbances relating to the short-term rental operation. If your permit is revoked, you are banned for two years

from coming in for a permit. So it's not like you can turn around and just submit a new application.

Council did want a smooth transition. They talked quite a bit about this. It doesn't mean forever, but for right now while we are developing our enforcement program you can come in while operating. However, you need to show us that you paid the taxes. This is right in the law. You have to give us that A-6 tax clearance form. We also need to know you weren't taking homeowner's exemption and the circuit breaker was not received. Now in cases where someone is living on the property, we understand that. We just need an explanation about that.

Now once our enforcement program is up, and I understand we've gone through most of the way. We had to create positions. We had to advertize. We had to weed – or the Department of Personnel Services had to weed through and find qualified applicants. They needed to take a test, and then we have to do the interviewing and then the training. So we are the most of the way through that. Once that occurs we will be going through the web and then sending out NOWs. That NOW does tell you have to take down your advertizing right away. It's hard to operate when you can't advertize.

Okay, I don't know if our permit process is fair or easy for the applicant. It is long. I'm sure –. It's part of your training application. We lovingly call it the take home final. You can do it at your own pace. It doesn't take a Master's degree. I've had people do it over the weekend, and I've had people give up and hire a consultant. So, how comfortable you are with paperwork, and how good you are at keeping your records, that's up to the individual person. A large number of these will be processed right by the department. We did a lot of outreach with the community to let them know about this. The big stick, the strong enforcement that does bring people in. Just even the fear of it. We had our first wave of people that want to comply. We're going to have the second wave once the enforcement program starts, and that's going to be more of the person that's not so excited about applying. It's kind of nice to have these first people as we go through trying to figure out how to make the process better for everybody.

So we want people to have a complete application in. They don't want them to get a letter that says you got to shut down and they turn in two pages. We want to make sure that they meet the qualifications before they even come in. We have a new process – like we don't do this with other applications but maybe we will – you can call and make an appointment with a planner. We can review your application. If it's complete, we will sign your neighbor notice form. If it's not complete we will circle the areas that you need to complete and then bring back to us. We also have a new agency review process. They're transmitted to the police and to real property tax. Part of the reasoning behind this is that if this home was permitted to be a structure, a dwelling, it went through the permitting process right there. So as long as you can show us it was permitted properly, and show us you're still safe, we're fine with that. For the ag properties, those do go to the State Office of Planning and the State Land Use Commission, and you did see the letter from Jesse Souki from the State Office of Planning. I'm gonna to get a little more into how we negotiated with them.

You have a neighbor notification period which you know all about from the B&Bs. And then if everything is done after that, administratively we can approve if everything is met. Or, if it meets the trigger it comes to you, or if we see cause. We require a lot of information up front. However the trade off is that there's less agency review, you get a quicker permit, less unexpected problems. Applications as you can see is very detailed instructions and checklist to follow. I've heard

everything from you're being terrible in doing this, to I'm so excited to get something that's so detailed that I don't have to pay \$40,000 for a consultant. So mixed feelings. We're still open to improvements. And again, all information has to be in before we can even accept it.

Okay, so ag properties. One of the things that you see, you see the SUP. You don't really see the permit for the short-term rental. You're reviewing the State Land Use. And just as a quick reminder why do you see those. Well, for this bill, for the county zoning of ag, it's listed as a special use. However, the state classification of ag still requires a Special Use Permit. There was some legislative language last year that said if there's a county – you're a county with three islands – then if you have an ag tourism ordinance showing bonafide ag also then you don't need the permit. However, Maui County doesn't have that ag tourism ordinance right now. You will continue to see these State Special Use Permits. So just as a reminder here, the State Special Use Permits are – it's a broad permit. It's for any use not outright permitted. You just saw a PV equipment earlier today under a state use.

Now with the short-term rentals and the bed and breakfast you need an implemented farm plan. And that is different than what you're seeing with some of your other uses for the state land use permit. That implemented farm plan we are using it to show that the rental – it meets the objectives of 205. And I'm gonna go into a little more detail, but I also have Joe Alueta here since zoning division is the one that handles that type of permit. I'm going to do my best to give you a broad overview.

So we send it to the State Office of Planning for them to review it. They suggest – when they started getting these first in, because the short-term rental permit doesn't require an implemented farm plan, they explained to us how you're looking for the bonafide ag. We want to see some consistency. So we worked with them and we decided that we're going to recommend to our applicant that they give us an implemented farm plan. And that's something that's already established, and in place, and used when you're building a farm dwelling right, so it seemed very reasonable. Again, I did talk about Hana. They do review the SUPs. It will take quite a while before you're going to see a Hana application here. So there are a lot that have come in.

Okay, I included these applications for the SUP so you can see it. It is a very outdated application. It's on our list for improvement. I really have sympathy for applicants when the first question says please submit a report identifying the reasons it's a reasonable and unusual use pursuant to this. What does that mean? You're going to see lots of different answers to that in your applications so I ask you to be patient with people. The department – we're gonna try to improve that. It's this application by the way. I think it asks for slides also preferably. That could mean that was a new fancy way of showing pictures at them.

Okay, unfortunately we do have some rules in the law that tells us what to do, and you see these on a regular basis. The first one is that it not be contrary to the objectives sought by 205 and 205A. Those are very broad objectives. We'll probably going to go into a little more detail in some of our reports and the one you're getting to get next in two weeks. Those are more based on the State Hawaii plan. So we're using the implemented farm plan to show that it does meet those objectives. And these are the same criteria that you're used to seeing. Again, we're going to go through all of those. It's probably no. 2 you're going to place the most weight on.

Okay, so what is this implemented farm process? It's our Zoning Administrative and Enforcement Division that handles that. I did include a copy of the Farm Plan application and the guidelines in your training packet. I'm going to go over that real briefly and then I'm gonna to have Joe at the end, he's our expert on that. These rules were adopted in 2006. They're used for to make sure that a dwelling coming on ag land is a farm dwelling. The farm plans have to meet these rules, and there has to be – for the short-term rental and the B&Bs – there has to be an inspection showing that the plan has been implemented at the time you come, and also at the renewal time.

So what are these rules? Well, the purpose is to encourage sustainable agricultural practices and to protect and preserve agricultural resources. Basically you need 51% or more of the land in ag or ag conservation use. So what does that mean? They actually went ahead and defined. They took the existing code, both Maui County and HRS 205, and they put together a definition. It means the production of plant, animal life for food and fiber for raw materials for processed products. And it gives some examples of what, what agriculture is.

They also defined agricultural land conservation. I think NCRS is that State agency that – I mean, it's a federal agency – usually it's done with the help of another agency. You just can't write ag conservation on your plan. There's much more to that. There is a plan that we look for.

Mr. Alueta: . . .(inaudible) . . .

Ms. Flammer: It is. Thank you. Okay so we put together some guidelines – the department did – to help applicants. Instead of having to read the rules, they can look at that. And that just tells you 51% or more must be in these following uses. It also does require you to place a unilateral agreement on your property deed showing the restrictions. And so if somebody new buys it they understand what they're getting into. So when we tell you there's an implemented farm plan this is what is 51% of the property. I know Joe has more examples but here's just an example I had from one of my applications. We don't require to get a consultant. You can hand draw yours. We understand people that are farmers, that they're not going to be experts with the computer necessarily.

We are asking at this point in time that when the applicant comes in for the SUP that they give us the approval letter for the farm plan. We know it's a longer process. We're working to kind to improve the system. We want to make sure that they actually meet the ag criteria before they even come in for the permit.

So before I turn it over to Joe, it's a very complicated law. Not so much in analysis, but just in details. I want you to ask questions when you're going through the application process. The planner will do the best to explain it to you. There's a lot of nuances in there. So your first SUP is going to come January 22nd. That will be mine. And then our first short-term rental to trigger a neighbor protest clause is going to come on February 12th. If you have any questions, we have a planner on call – that's anybody, including the public can call the department and they can get routed to someone that's actually there. Also please feel free to give me a call. I'm more than happy to speak to anybody. I love answering questions and explaining government to people. Okay, I'll turn it over to Joe Alueta.

Mr. Hiranaga: Okay, before we have Joe start perhaps this might be a good time to recess for

lunch.

Mr. Alueta: I'm not even – I'm mostly five minutes, 10 minutes. You've got questions on them?

Mr. Hiranaga: Yeah, I think we should break for lunch at this time.

Mr. Freitas: Joe wanna go.

Mr. Hiranaga: So we will reconvene at one o'clock.

(The Maui Planning Commission recessed at approximately 12:00 noon, and reconvened at approximately 1:00 p.m. Commissioner Donna Domingo leaves the Planning Commission meeting at 12:00 noon.)

Mr. Hiranaga: Joe I think you're up.

Mr. Alueta: Okay. Good afternoon commissioners. I'm the acting administrator for the Zoning Enforcement Division, so that's why I'm asked to come down here and talk about our farm plan application.

A quick pass out. What I – what I passed out to you – normally Rulan Waikiki is our, is our farm plan expert. She's the one that processes most of our, or all of the farm plans, and she, along with some of the other inspectors also do a site visit . . . (inaudible) . . . she works with it. So we passed out and you already got a copy from Gina, and there was a wonder presentation on the whole STR Bill. Very comprehensive. So, again, mines is only about a five to ten minutes just to handle questions.

So again you got your application which is pretty generic, and then you have – we have a unilateral agreement that they go through so it is registered and how that is notified. The other sample is, you know, what we accept as far this 51%. We've taken farm plans. How complex is it? How hard is it to do it? It's not that hard if you're really doing a farm. Okay? So these is samples of what we've actually accepted. Some people have just done hand drawn, showing what it is, so we can go out there. Some have been a little more complex. Gina showed you a pretty good one on the screen – that sample. Some have used that. So it's – it's kind of goes the gamut. Just to clarify, like, I know that there's – some of you may be aware of other quote-quote farm plans or farm dedication and stuff terms. Okay, you gotta understand the Water Department uses other criteria for determination for ag water rate. Real Property Tax has another ag dedication process in which you can get your, your farm or your property, a portion of it dedicated to an active farm land. We use the farm plan application and the rules that were done for Zoning Administration, again, when you come in for a second farm dwelling. When you come in for your primary residence on a farm, on your theoretical farm, then you get your, your farm building or your first dwelling, you're required to submit a farm plan, okay.

Before you can get a building permit for your second dwelling, we have to certify that you've implemented that farm plan and it's currently in operation. Okay? Because there's an existing

process that is currently being done by the Zoning Administration, when a person comes in that's in the agricultural district for a short-term rental, STR, permit, they'll send it over to us to ensure that farm plan was implemented. And then we'll send a letter out to the applicant. I'm trying to find my sample letter, but you saw a sample from Aaron. There's one with my name now on it that just basically says we've inspected your property, and you've met their criteria. And that's pretty much goes down the list.

It's pretty straight forward. Why do you need it? It's required for all ag zoned properties. Some of the common questions. What can be planted? Like Gina had a slide up there that showed all the different stuffs. Ag conservation is considered. Do I have to derive income? No. What if I don't want to do any ag? These are some of the questions. Then you don't get a building permit, or you're not gonna get a second farm dwelling, or you're not gonna get a STR permit. Are gulch – are gulches considered conservation? A lot of people like to do ag conservation. No, it's not. We will subtract it from the area, the rest of the area, and then you have to do 51% from the remaining farmable area. Okay? So we don't count that. When did the requirements start for this? It started back in 1998. Does one goat – one goat qualify as a farm? Depends. It depends on how big your – not big the goat is, but – I have one dog, that doesn't count. I am Filipino so I have one black dog so that doesn't count. If I had five – if I had five, I might be a rancher, but I'm not. Only for me. Sorry. Any way, the – let's see – we do, we do have what we call – whether or not you're going to farm, whether you're just – you know, if you have like one tree every 200 feet, that's, you know, there's a density requirement based on the product – productivity. And we do – we don't always look at that, but we do look at it sometimes, like, and we try to use common sense. Okay. I mean, if the guys got two mango trees on two acres, that doesn't count or qualify. That's not a farm plan. So we do need to have 50%.

When is a farm plan not required? If it's under one acre. It's not required. How long does it take to process? Give or take a week to get through all them paperwork provided that it's – like I say we have all the information. How long do I wait before you get an inspection? Usually no longer than a week. We normally do it within one or two days. Can – can we use photo voltaic as part of your farm plan? Yes you can. PV systems are considered or added as a use so we can use it. However, there are other restrictions that go in there with regards to the county rules . . . (inaudible) . . . and state law also that you can't exceed a certain –. If you get a certain size, you require Special Use Permit, or if you use –. You can use that as a portion so you could have maybe 10% of your property be photo voltaic, and then another 41% of it being some other agricultural – permitted agricultural activity. So, and that's pretty much it. Do you have any questions?

Mr. Hiranaga: Gina, so are your presentations done now? Oh, okay. At this time I'll open the floor to public testimony first. Is there anyone here that wishes to provide public testimony regarding this agenda item please come forward? Seeing none, public testimony is now closed. I'll open the floor to questions from commissioners. And I guess just for clarity, we're not really here to debate the pros and cons of this ordinance which has been passed. We're here to ask questions for clarity.

Ms. Flammer: Yes, that's exactly right.

Mr. Hiranaga: Thank you. Commissioner Wakida?

Ms. Wakida: Is this a handout that the public gets, this one that says Farm Plan guidelines. . .

(inaudible) . . .

Ms. Flammer: Yeah. It is not on our website, but it is something that we have as a department resource for people.

Ms. Wakida: Because it just seems sort of odd that you list agriculture as production, plant, and animal life, and then – but – and then you really specify agricultural uses but you don't have like vegetables in there. It seems this is an oversight.

Ms. Flammer: I'd like to have it updated also because of the applicability clause doesn't include B&Bs or short-term rental homes. And same with the unilateral agreement, right now it says for building permits or applicants are putting a unilateral agreement on their deed that says it's for a building permit. But that's something we're going to try to work out within our department how to update that for this.

Ms. Wakida: Yeah. . . (inaudible) . . .

Ms. Flammer: Any other suggestions you have too just feel free to e-mail them or –

Ms. Wakida: . . . (inaudible) . . .

Ms. Flammer: And we can pull that right out of the definition that we used. Those are only guidelines interpreting our rules. So we have, as a department, we can go ahead and very easily update that.

Ms. Wakida: Thank you.

Mr. Hiranaga: Commissioner Tsai?

Mr. Tsai: Question regarding your slide titled when will –. I think it's the second one or third one. Third one – when will MPC review application – review applications. Yeah, right there. To clarify, bullet no. 2, 30% or more when bigger than 40 lots, and 15% or more when . . . (inaudible) . . .

Ms. Flammer: Okay, Commissioner Shibuya explained to me where the symbols is on the keyboard. So I couldn't find the symbol that did a less than. There should be on the – it's 15% when 40 – 40 or greater. So it should be less than 40. So I probably should have just put 39.

Mr. Tsai: 30% more when it's less than 40 lots.

Ms. Flammer: Yeah, so it's be 39. Yeah. So when it's 40 exactly, then we're looking at 15%. Thank you. That's two of you that pick out. You guys read your stuff.

Mr. Tsai: Just for your information it goes the other way.

Ms. Flammer: Oh, it does, I really have no math ability I guess. It's a good thing I went into public administration. Thank you for not pointing that out.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: The farm plan, what is the enforcement or oversight of that? So if somebody gets a farm plan and then a couple years later, what's the deal?

Mr. Alueta: We talked about that with Gina on the inspection. Like on their – for STRs or you talking about in general?

Ms. Wakida: In general.

Mr. Alueta: In general, once they get their second farm – show that they've been implemented, they will get a building permit for a second farm dwelling.

Ms. Wakida: No, my question is the oversight of the farm plan.

Mr. Hiranaga: Continuing farming.

Ms. Wakida: So how do you know that they –

Mr. Hiranaga: – continue to farm.

Ms. Wakida: Who's checking up on them?

Mr. Alueta: Well, that's, that's one of the sticky wickets as they say because as it was pointed out by someone else, you can't force people to be good farmers. Somebody can go out there and be a farm – try to farm, plant all their crops, they get all their building permits, and they fail miserably as a farmer because they, they just suck at it. And so, it's like – you know – or they chose not to. And there's really there's no ramifications, and therefore that's why from our standpoint, there's probably gonna be a greater need for coordination between real property tax as well as the Water Department. Because I think the more hook to farm, to get people, you know, hooked on farm, I guess you could say, is the tax consequences. Meaning if you are truly doing an active farm, there is a tax break. Okay? And it doesn't matter or not if you're in the agricultural district or not. I'm in the rural district and I have an active farm. So, that's one of the measures. Now that's different –. So, and also the Water Department, there's certain criteria the Water Department use whether if you're on the county system and you're requesting ag water rates. So, again, that's a larger county issue that, you know, could be adjusted in other departments. But from a Planning Department, I guess, for us, we're only – our only obligation is up to the point of when they come in for that extra farm dwelling.

Ms. Flammer: But specifically for the short-term rentals when they come up for renewal, when the planner does their inspection, part of – it is a condition that will be placed on the permit. But it will be part of the planner's responsibility to bring the farm plan with them and make sure it's still implemented.

Mr. Spence: Mr. Chairman?

Mr. Hiranaga: Director?

Mr. Spence: I think, Commissioner Wakida, it was part of your question – I mean, besides when you get a building permit, and besides the short-term, we don't go out and check. There's far too many properties on this island in the ag district that we would employ any number of people, you know, just to go around and check farm plans. We do check when their building permit come in. Somebody already has their farm plan and implemented. And, you know, even if they have their second dwelling, if they wanted to add a room or something like we'll check. But, just practically speaking there's far too many homes in the ag district to go out and check. Because just like real property tax folks, there's far too many properties to go, actually, physically see each one every year.

Mr. Hiranaga: Commissioner Tsai?

Mr. Tsai: Follow up question director. Is there – you're saying that as a part of the application process, for the farm plan, you guys don't check it as long as it's submitted. Am I understanding correctly?

Mr. Spence: For the first – if you purchase a piece of vacant agricultural land and you want to build a home, as a part of the approval for a farm dwelling, you need to submit a farm plan. Okay. I mean, it's just a practical matter. At one time I recall the state saying, well, no you need to be farming first, then you can build your home. And how many people can realistically afford to do that? So as a part of it, we say okay, you have to have your farm plan, then we can approve your building permit for your farm dwelling. Then you have – the theory is you have time to implement that plan. Then if you want to build the second farm dwelling, we go out and see, okay, did they do the farm plan? Are they – are they actually producing something on the property? And that's – that's when we can withhold the build – the second building permit or not.

Mr. Hiranaga: Commissioner Tsai?

Mr. Tsai: I have some specific questions regarding the farm plan. The farm plan stipulates that the 51% of the useful land has to be for farming purposes. Now referring to the samples, the handouts you gave out, and I guess my question is as nice as the last one is, there's not much to say how much – I mean, at 51%, it seems like what's more reasonable is something like this which actually spells out percentage. And you even had something else here that pretty much just draws stuff on there. So how do you guys determine or go about, you know, based on something like this or –

Ms. Flammer: I can answer that question. They're now requesting that the applicant write out specifically each plant, crop, area, and what percentage of is of the property as a table and then add it all up at the bottom. I would like to see in our staff reports to you, along with the plan.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: This was a – maybe it's more a comic relief item, but I'll try to keep it more serious. 50 years ago I was a teenager actually farming a farm. And before mom passed away, she subdivided it, and I ended up with 1.5 acres. But when the – when you subdivide you don't get the water meter. The water meter stayed with the house. So I have property there, and I need to submit a farm plan. But how can I submit a farm plan when I don't have water. And so that's the dilemma. Also, I planted, you know, because I wanted to comply with it as best I could, I planted

those items that didn't need too much water such as sweet potato. Well, I've had it harvested many times automatically by the axis deer. And then I also planted cabocha, two different types, and I get harvested by four-legged rats. So now, you know, there's an attempt to do it, but there's no water. And should I go ahead and continue with this effort? Or at least the farm plan.

Mr. Hiranaga: I think, on that line and to add to what Mr. Shibuya just stated, more farmers fail than farmer who are successful. Farming is not an easy thing. And just because you put something in the ground, it's not going to meet fruition. You could have disease, you could have pests. Too much water, not enough water. And that's why we have a federal ag farm subsidy plan for the nation because farming is not easy. So, I think there will be concerns when people come up for renewal, unless you say, well, these . . . (inaudible) . . . look pretty recent, so it looks like you were trying to farm even though all of the cabbage is gone. I have a friend that grows coffee up in Kula. He had to put like an eight foot chain link fence because that's the highest the deer can jump over. I mean, you know, it's, it's not easy. Any other questions. Commissioner Tsai?

Mr. Tsai: Regarding the open lawn on this picture, or actually I read somewhere that sod has to be commercial grade. So is that considered as part of the 51% if you have certain part of useful lands allocated for . . . (inaudible) . . .?

Mr. Alueta: Yeah, according – it has to be – according to Rulan, it has to be a sod. So you have to have like a dedicated sod farm area, and not just your lawn. You know what a – have you seen a sod farm?

Mr. Tsai: Yeah.

Mr. Alueta: It doesn't look like a lawn.

Mr. Tsai: Right, right, right.

Mr. Alueta: Yeah, so it's pretty easy. So that's why it would not – a lawn would not be counted toward that.

Mr. Tsai: But if you had a sod farm –

Mr. Alueta: Yeah.

Mr. Tsai: – you can.

Mr. Alueta: Yeah. Yeah.

Mr. Spence: It better not be your lawn.

Mr. Alueta: Yeah. Yeah.

Mr. Hiranaga: Commissioner Freitas?

Mr. Freitas: This question is for – for them.

Mr. Hiranaga: Gina.

Mr. Freitas: Gina, you have a – what do you call – an ag lot that you cannot grow anything on because it's, let's say, it's designated ag, but it's, it's rocks, and you want to put a second dwelling on. You do a farm plan, but you can't – nothing will grow. What happens in a case, in a scenario like that where it is dedicated ag, but it's a –

Ms. Flammer: You can work with the NCRS on developing a plan for conservation, or developing a plan to deal with your property when it's like that. When that's done we do include it as part of the farm plan. We understand that not all areas – I mean, especially gulch areas in Haiku – not areas are useable. But like I said you have to draw the line somewhere, so we draw with working with them.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: I'm looking at Maui Meadows five short-term rental cap. Generally those permits are for how long? Three years?

Ms. Flammer: Well, the initial permit is for one, and then it's automatically renewed if there's no complaints, and it can automatically renewed for one or two. Then it comes up for renewal, and those can be up for five years.

Ms. Wakida: In the mean time, suppose there's been five granted, but other people want to jump in. What happens?

Ms. Flammer: It goes back to Council to take a look at the cap. And until then they just wait. . . .(inaudible) . . . is critical.

Ms. Wakida: So it's like the first five or it's first come, first served sort of thing.

Ms. Flammer: At this point, yeah. Yeah. And remember most of those will be administrative unless one of the triggers is met. I believe we have – we have at least five in right now.

Mr. Hiranaga: Isn't it –. Well, it's unusual that a particular subdivision was singled out, versus the other caps are based upon community plan areas. Were they just being bad of something? They're being punished or –?

Ms. Flammer: There's – I could let Council Member Couch, but I'll give you the abbreviated version. When you plan an active role in government it works. So if you want – we have clauses that were written in there by members of the public that were adopted and put right in the bill. Their homeowner's association was very active in working with us. It's also one of the areas just due to the topography you do have more noise issues there. So they requested the cap. That didn't come – we didn't place it upon them. They asked for it.

Mr. Hiranaga: But the B&B cap is still by community plan?

Ms. Flammer: Yes. Yes. That did not change. And they're more comfortable with B&Bs because

you have somebody there managing them who's suppose to be monitoring things. I don't know how – you guys probably don't read the paper the way do because we have to follow these permits. There's been some trouble operations in Maui Meadows. And because of that, the neighbors, they were just much more aware of the issues. So when it came before Council they came and spoke and met with their Council Member and the department.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Yeah, if let's say you have more than five applicants, are you planning to use some kind of lottery system to ensure that you address the first five that you pull? Some equity system.

Ms. Flammer: It's – we had with the B&B, our current system is whoever reaches the goal line first. So whoever's application is completed first. And we really did judge. We really did test this out when we had one planner for the B&Bs go on maternity leave, and the other planner finished first. And then that other applicant got kicked to you guys for being within 500 feet. That's – that's – yeah, it's not what comes in first, it's who finishes first. And that's our current system.

Mr. Shibuya: Okay. Thank you.

Mr. Hiranaga: Commissioner Tsai?

Mr. Tsai: Just a really short clarification. Your allocation for the B&B for south side, you have 100 for Kihei/Makena, that's excluding Maui Meadows. So Maui Meadows get their own five. Is that correct? And the rest of . . . (inaudible) . . .

Ms. Flammer: Oh, I should've been a little more clear. It's a subset. So you're going to 95 for the rest.

Mr. Tsai: Okay.

Ms. Flammer: It's a – I'm sorry – yeah, I didn't make that clear in my presentation. It is a subset of the 100.

Mr. Tsai: You might want to make clear to the rest of the people.

Ms. Flammer: Oh, they know, it's just my –

Mr. Shibuya: It just came out now.

Ms. Flammer: Well, I shouldn't say they are aware because I thought we'd a flood of applicants in from Maui Meadows, but we did not.

Mr. Hiranaga: Any more questions? Seeing none, thank you very much. We look forward to this new challenge in our scope of duties.

Ms. Gina Flammer, Staff Planner, provided a power point presentation on the short-term rental home permit. The presentation included a brief history of the ordinance, the

guidelines and requirements established on short-term rental home permits, the commission's roles in reviewing short-term rental home permits, and the Planning Department's procedure of processing the short-term rental home applications.

Council Member Don Couch provided an over view on the Council's intent relating to the short-term rental home permit.

Mr. Joseph Alueta, Acting Planning Program Administrator, Zoning Division, provided a brief overview of the Planning Department's Farm Plan application process.

The workshop provided the Commission a clearer understanding of the permit and process, and allowed the commissioners an opportunity to ask questions for clarity.

D. ACCEPTANCE OF THE ACTION MINUTES OF THE DECEMBER 11, 2012 MEETING AND REGULAR MINUTES OF THE NOVEMBER 13, 2012 MEETING

Mr. Hiranaga: We can now move on to Item D.

Mr. Spence: Thank you Joe, and Gina, and Council Member Couch.

Mr. Hiranaga: Item D.

Mr. Spence: Commissioners, acceptance of action minutes of December 11th, 2012, and the regular minutes of November 13th, 2012.

Mr. Tsai: So move.

Mr. Shibuya: Second.

Mr. Hiranaga: Moved to accept by Commissioner Tsai, seconded by Commissioner Shibuya, any discussion? Seeing none, all in favor say aye.

It was moved by Commissioner Max Tsai, seconded by Commissioner Warren Shibuya, then

VOTED: to accept the action minutes of December 11, 2012 meeting, and the regular minutes of the November 13, 2012 meeting as presented.

(Assenting: J. Freitas, W. Hedani, W. Shibuya, M. Tsai, P. Wakida

Excused: J. Ball, D. Domingo, I. Lay)

E. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

a. Amending the SMA Boundaries

Mr. Hiranaga: Moving on to Item E1.

Mr. Spence: Okay, director's report, no. 1, planning commission projects and issues. Amending SMA boundaries we have nothing to report at this time.

Mr. William Spence had nothing to report regarding amending the SMA boundaries.

2. Planning Department's Proposed Revisions to Special Management Area Use Permit Conditions (J. Dack) (Matter was deferred at the December 11, 2012 meeting.)

- * **An Executive Session may be called under the provisions of Section 92-5(a)(4), Hawaii Revised Statutes to allow the board to consult its attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.**

This matter is for discussion and possible action.

Mr. Hiranaga: Okay. Moving on to E2.

Mr. Spence: Planning Department's proposed revisions to SMA Permit conditions. This is something we tried to cover the last meeting, and just ran out of time. So we have Mr. Jeffrey Dack here to – you have a memo dated December 11th, 2012 as a part of your packet.

Mr. Jeffrey Dack: Yeah, under the rules of the SMA rules for Maui Planning Commission indicates that you're suppose to, or have to approve SMA Permits subject to terms and conditions as permitted by particular sections, two specified sections of the Hawaii Revised Statutes, HRS. That's 205A-26(1) and then 205A-26(3).

SMA – under Hawaii Revised Statutes, the SMA permit conditions must relate to those provisions of HRS. And there's a few listed. Those are listed in your staff report under section 205A-26(1), Development in the Special Management area needs to be subject to terms and condition in order ensure adequate access to publicly owned used beach, recreation, natural reserve areas – I'm just skimming through it – adequate public recreation, wildlife, preserves; provisions made for solid liquid waste management; alternations to lands, forms, vegetation that could cause – something that could minimum adverse effect to . . . (inaudible) . . . resources, etcetera.

And in the second section, you have to, when you're reviewing these, have conditions which seeks to minimize dredging and filling; minimizes the reduction of any size of a beach or the useable area for recreation; minimize restrictions on public access, interference with line of sight view towards the sea from the state highway nearest the coast or anything that could adversely affect water quality, open water, fisheries, wildlife, habitats or existing agricultural uses.

Modifications are also suggested today to improve – to have conditions improve the effectiveness of conditions and their implementation by adding four particular features that are identified in the

memorandum. So as a proposed action the department offers language written in detail in the memo that could be appropriately applied to most SMA Use Permits in six particular conditions. And some of these will look familiar to you because you commonly see on some these in your recommended list of conditions for your various SMA use permit – use permit in the staff reports for those.

So real briefly to go through these, the first is regards initiation of construction. You've seen those before. Initiation of construction has to be within a particular period of time. Usually three years is what we try to do. Second is that there's completion of construction. As suppose to be done within, again, also a minimum of five years. Sometimes you provide longer time frames, but that's kind of a guideline we start with. Or if that doesn't occur then someone has an opportunity to get a – to request an extension as long as they file within a timely manner. The third one is insurance condition. We'll – we'll be updating that hopefully soon, but this is – actually – I'm sorry, I apologize – this is an updated version of the insurance condition. Recently worked out in detail with Risk Management and Department of Corporation Counsel. So, again, this is an updated version, of which you have seen is usually a shorter version of an insurance condition. There's three more that we're suggesting be the common conditions that you've seen in pretty much all permits. Another one familiar that we would develop your property in substantial compliance with representations made to the commission. Fifth condition talks about compliance reports. We normally require preliminary and final compliance reports. And then in the bottom we basically collapsed three of the conditions that you normally would have seen in your past recommendations into one here by including items of substantial compliance with architectural plans to that particular date so we know – everybody knows what's being approved. Grading plans, landscaping plans, particular date so people know what – some of the specifics things that a project needs to be reviewing in its compliance report. And then the last one is one again you've seen often in the past that there needs to be filtration measures by petroleum projects. Filtration measures to separate petroleum products from other contaminants.

And as an action the department is just recommending that the commission review this proposed language and provide the department with any comments. And we would then expect to proceed forward and have this be the list of common conditions you'd see at the beginning of your various recommendations for SMA Use Permits. Any questions?

Mr. Hiranaga: Okay, well, first of all I'm going to open the floor to public testimony. Is there anyone here that wishes to provide public testimony at this time please come forward? Seeing none, public testimony is now closed. Commissioners Wakida?

Ms. Wakida: Jeffrey, on the beginning, you said the department says that you have four features – what, when, who's, and what evidence – are those new or are those guidelines that you've had for quite some time?

Mr. Dack: They're guidelines that we've been working to have worked into all the conditions.

Ms. Wakida: Because I like – I like that, that you've –. But I was just wondering if these four features were something that you recently – guideline that you recently created.

Mr. Dack: It's been guidance for about a year or maybe a little more, but its actual implementation

in the conditions has been a little bit spotty. But we wanted to get – get that incorporated into these common conditions that you do, and then we're going to be looking more closely and trying to ensure that those four features get into all the – all the conditions that come to you in the future.

Ms. Wakida: Good job. I like that.

Mr. Dack: Good.

Mr. Spence: Director?

Mr. Spence: Yes, just add a little bit to what Jeffrey is saying. In the past we've had a lot of questions on, well, who's responsible to enforce it? I mean questions come up years after a permit granted. Who is responsible to enforce this? What happened here? Etcetera, etcetera. So, the – really the staff's credit they came up with – I mean after they have worked with so many issues and so many – I hate to say – sometimes problems with enforcement when conditions aren't clear. If we termed these conditions in this manner and say who, what, where, why, etcetera, it becomes clear on who's responsible for what. So really it's the staff credit to come up and clarify these things.

Ms. Wakida: Good job.

Mr. Hiranaga: There's a footnote here about Executive Session. Is there a need for us to call Executive Session?

Mr. James Giroux: I don't see one.

Mr. Hiranaga: Thank you for that opinion. Any other questions? Commissioner Shibuya?

Mr. Shibuya: It's more of a comment. I really appreciate what the staff has done, or Jeffrey, you may taken the leadership role on this. I see this as an outstanding work here, and I really like this. Thank you very much, you and your staff. Thank you.

Mr. Dack: We'll past that on to Michele McLean who actually did a lot of the writing on this.

Mr. Shibuya: Okay, thank you.

Mr. Hiranaga: Any other questions? Seeing none, thank you very much.

Mr. Dack: We'll proceed forward with those six beginning, hopefully, with your next reports. Thank you.

Mr. Hiranaga: Is there a need to adopt this language by the commission?

Mr. Shibuya: Move to accept.

Mr. Hiranaga: So, if there's no objection to these changes, we advise the department to proceed.

Mr. Shibuya: You need a motion to accept? Okay.

Mr. Hiranaga: Moving on to Item 3, 4, 5, and six.

Mr. Jeffrey Dack, Staff Planner, presented the proposed language changes to six of the Special Management Area Use Permit Conditions to the Commission. The Commissioners did not have any objections to the proposed changes, and therefore, the Planning Department will proceed with said changes.

- 3. EA/EIS Report**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report**

Mr. Spence: EIS report, I didn't see, personally see those reports. The SMA Minor Permit Report, Exemptions, any questions commissioners?

The commissioners did not have any questions to the EA/EIS Report, the SMA Minor Permit Report and the SMA Exemption Report.

- 6. Discussion of Future Maui Planning Commission Agendas**
 - a. January 22, 2013 meeting agenda items**

Mr. Hiranaga: Okay, moving on to Item E6(a).

Mr. Spence: For your next meeting Mr. Yoshida passed around a memorandum just telling you – the four public hearings at the next meeting. Proposed –. One is related to transient vacation rentals, a bill for an ordinance to amend the Paia-Haiku Community Plan. That's via reso. Actually the first one is via resolution as well. The second one is via reso from the Council, to change community plan and rezone. The third one, a Special Use Permit for a short-term rental home. It will be your first one for your next meeting. And then the fourth one also requesting a bed and breakfast permit.

And then communications, we'll discuss Hana Advisory Committee commission's recommendations for Special Use Permit and a Conditional Permit. And then we're also going to review a proposed settlement agreement with Mr. Paul Laub on SMA violations.

Mr. Hiranaga: Thank you for that. Any discussions? Seeing none, if there's no objection, the next meeting is scheduled for January 22nd, 2013, and this meeting is adjourned. Thank you.

Mr. William Spence briefly summarized the memo dated January 7, 2013, from Clayton Yoshida, which outlined the items scheduled on the January 22, 2013 Maui Planning

Commission agenda. Items included will be four public hearing items and two communication items.

F. NEXT REGULAR MEETING DATE: JANUARY 22, 2013

G. ADJOURNMENT

The meeting was adjourned at 1:41 p.m.

Respectively submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present:

Donna Domingo (from 09:00 a.m. to 12:00 noon)
Jack Freitas
Wayne Hedani (from 11:25 a.m. to 1:41 p.m.)
Kent Hiranaga, Chair
Ivan Lay, Vice-Chair (from 09:00 a.m. to 09:52 a.m.)
Warren Shibuya
Max Tsai
Penny Wakida

Excused:

Keone Ball

Others:

William Spence, Planning Director
Joseph Alueta, Administrative Planning Officer & Acting Planning Program Administrator, Zoning Division
Kathleen Aoki, Staff Planner
Joseph Prutch, Staff Planner
Gina Flammer, Staff Planner
Jeffrey Dack, Staff Planner
Don Couch, Maui County Council Member
James Giroux, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works