

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JANUARY 22, 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 22, 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.)

Chair Hiranaga: ...Commission. Today is January 22, 2013. First agenda item...well, actually excuse me, I'm going to open the floor to public testimony. At this time you have an opportunity to provide public testimony on any agenda item or you may wait until the agenda item comes up. I'm gonna down a list of signees and you can declare whether you wish to testify at this time or when the agenda item comes up. So the first individual signed up is Michael Gronemeyer?

Mr. Michael Gronemeyer: I'll wait for the agenda item.

Chair Hiranaga: Thank you. Michael Sonnleitener?

Mr. Michael Sonnleitener: Sonnleitener. I'll wait as well.

Chair Hiranaga: Thank you. John Coté?

Mr. John Coté: John Coté. I'll wait.

Chair Hiranaga: Thank you. Jim Coon?

Mr. Jim Coon: I'll also wait till the agenda comes up.

Chair Hiranaga: Thank you. Joanna Stockham?

Ms. Joanna Stockham: I'd like to wait until the agenda item comes up.

Chair Hiranaga: Thank you. David Medina?

Mr. David Medina: I'll wait till the agenda item.

Chair Hiranaga: Bob Bowlus?

Mr. Bob Bowlus: Yes, I'll wait also.

Chair Hiranaga: Thank you. Mark Marchello?

Mr. Mark Marchello: I'll wait also.

Chair Hiranaga: Jack Naiditch?

Mr. Jack Naiditch: I'll wait as well.

Chair Hiranaga: Joel Richman?

Mr. Joel Richman: I prefer to speak now.

Chair Hiranaga: Please come forward. Please state your name and limit your comments to three minutes.

Mr. Joel Richman: Okay, my name is Joel Richman. I'm a manager of Hana Koali Mesa LLC. I'm speaking in regard to Communication, D-1, John Blumer-Buell, Chairperson, Hana Advisory Committee regarding the request of Ms. Arabella Ark for State Land Commission Special Use. I basically, I testified in Hana so I don't know if it's necessary to repeat it here, but basically Hana Koali Mesa which I'm a manager is the owner of the easement that provides access to Ms. Arabella Ark's property from the Hana Highway. We definitely do not want this turn into a ceramic studio. The easement is for residents. We prefer it to stay that way. And speaking as an attorney, I would say that the attempt to designate this property as a special permit is spot zoning and is illegal. There is no geographic or geological basis for this request. It's merely somebody who wants to take advantage of looseness perhaps in the zoning regulations. Right now this type of facility is not zoned there and it should not be...I'm sorry, request that the Planning Commission deny this application. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Ball?

Mr. Ball: So that easement, so will the easement then be terminated if let's say the request goes through?

Mr. Richman: I don't believe we have the authority to terminate the easement. However, the easement was given for a private property, a residence. And if anybody here has seen the locale, it's narrow, there's no room for fire turnaround. There's no improvements. There's no parking on the easement. To turn this into a...and there's no...I'm not aware of really much parking at Arabella Ark's facility and I do know from neighbors around that there is a problem with traffic here and we really think that this is not a suitable location for an art studio. It's not zoned that way. It should stay that way. Any other questions?

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Yes, thank you for testifying. I just wanted to have clarified the easement. What kind of easement is this? Is it a utility easement, water?

Mr. Richman: Access and utility.

Mr. Shibuya: Oh, access and utility. And it's--

Mr. Richman: And it's purely for the benefit of Lot No. 1 of TMK: 2-1-5-008:010, which is Arabella Ark's property. And if anybody's interested I have a map showing the easement.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Just to clarify, and thank you for coming this morning. I believe the request before us is for a Conditional Permit and a Special Use Permit not spot zoning just to clarify.

Mr. Richman: Well, I think that to allow a ceramic art studio in a location that doesn't provide it without Special Use Permit would be spot zoning. That's my humble opinion, nothing more.

Chair Hiranaga: Any other questions, Commissioners? Just for clarity, your status with this particular request is were you an adjoining property owner?

Mr. Richman: We are an adjoining property owner. Actually our property surrounds Arabella Ark's property on three, three, three directions. And we request that this be denied.

Chair Hiranaga: The map you showed, is that something you can circulate among the Commissioners?

Mr. Richman: I can present it. You guys can keep it.

Chair Hiranaga: Give it to Staff please? Any other questions, Commissioners? Seeing none, thank you very much.

Mr. Richman: Thank you.

Chair Hiranaga: Anyone else here that wishes to testify on any agenda item, please come forward? Seeing none, public testimony is now closed and we'll move onto the agenda. First item, Item B-1. Deputy Director?

Ms. McLean: Thank you, Chair. Good morning. The first public hearing item is a transmittal from the Planning Director referring to the Planning Commission Council Resolution No. 1299 for the proposed bill amending Section 19.32.040, Maui County Code relating to Planned Developments and Section 19.37.010, Maui County Code relating to Transient Vacation Rentals. Joe Alueta is the Staff Planner who has processed this resolution.

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

- 1. MR. WILLIAM SPENCE, Planning Director referring to the Maui Planning Commission Council Resolution No. 12-99 containing a proposed Bill Amending Section 19.32.040, Maui County Code relating to Planned Developments and Section 19.37.010, Maui County Code, relating to Transient Vacation Rentals. (J. Alueta)**

The Council is considering a proposed bill to amend Title 19, Maui County

Code, to allow transient vacation rentals in planned developments that were approved on or before April 20, 1981, with certain restrictions.

Mr. Joe Alueta: Good morning, Commissioners. My name is Joe Alueta. I'm your Administrative Planning Officer today. As you know, there's two methodologies in which you can amend Title 19. One is either Director initiated in which I'll do the drafting and bring it before you and go before the Commissions or another way is through initiation by resolution in which the Department has...is initiated by the Council or a Council member. It is then sent down by Charter and subject to 19.510 and processed that way in which each Commission has a timeline in which they must return their comments back to the Council with their comments before they can act on it.

Again, today's resolution deals primarily with amending a Planned Unit Development under 19.32 as well as 19.37 regarding Transient Vacation Rentals. Essentially the Council has established criteria in which they would allow for transient vacation rentals within certain planned unit developments that had been approved throughout the County. One was final approval was on or before April 20, 1981. Had at least one dwelling unit operating as a transient vacation rental during that time. Has an area of about at the least 25 acres with some residential zoning. Consists of duplex or multi-family dwelling units. And was privately funded.

Based on the limitations established by the Council, the Department believes that the only planned development that would qualify would be Puamana Planned Development and that's attached as Exhibit 3 although the resolution does not specifically say Puamana, but it does...based on the conditions it does outline and limit it to that one project. The Department did send it out to couple agencies. There was no major issues with regards to the resolution itself, to the law. We did get comments from Public Works, Highways regarding roadways, but again, this resolution does not enhance or intensifies the development existing at or changes densities or require any public infrastructure at this time.

Puamana was granted tentative approval back in 1965, prior my birth and a few other Commissioners so it is an older project. The use of individual units as transient vacation rentals has been long contentious issue at Puamana as well as other planned developments. Letters from Mike Foley as also attached indicated that transient vacation rentals would be allowed throughout the project although there has been various legal opinions over the degree in which TVRs are allowed at Puamana, Mr. Foley's determinations to allow had not be revised or rescinded. So currently, just so you understand is that currently the Department's interpretation is that TVRs, that transient vacation rentals are allowed project wide at Puamana. Okay, and that...so that they can currently do it. It's not based on a unit by unit basis. So basically what will happen is this change in the Code will basically codify an interpretation by the Department at this time.

The Department believes that other planned development projects, hence the audience today, has similar issues as Puamana of being...transient vacations being grandfathered or otherwise allowed as a whole or unit by unit. However, given the complexity of the issue, we have not be able to go through all of our other planned developments to do an analysis.

Again, this is a resolution...Department, we're not being asked to redraft the ordinance for Council. Just want your comments on the proposed ordinance. The proposed ordinance is attached as basically Exhibit 1A. It's on Exhibit 1. And many of you have seen this before basically the

underlining, it's in Ramseyer format. So the language that is underlined is the one that's being added to the existing code and anything that has a bracket is being removed. So you can see primarily there's some...on the first page, you have a few ands, conjunctions being changed, zone to districts being changed, removed. And then you also have on Page 2, in Section 1, then you have going down to H, it goes basically goes on to transient...allowing for transient vacation rentals shall be allowed in planned developments and it sets out the ...(inaudible)... Sorry for my sniffles today, I'm sure Carolyn will love that.

And then again, there's an amendment to 19.37 basically for consistency. It's to allow for it because we do have restrictions on where transient vacation rentals are allowed by right. This is separate. Remember this is separate from your short-term rentals. We just were having that discussions on...didn't we change the definition or term, short-term rental is a section, new section, 19.65 that deals with allowing or a permit process in which short-term rentals are allowed in districts in which they are not allowed. The amendment proposed today would allow for transient vacation-- just as if it was a hotel. And that's all I have. Have any questions?

Chair Hiranaga: We're gonna reserve questions till later.

a) Public Hearing

Chair Hiranaga: At this time, I'm going to open the public hearing. First individual signed up to testify is Michael Gronemeyer. Please identify yourself and limit your testimony to three minutes.

Mr. Michael Gronemeyer: Thank you very much. My name is Michael Gronemeyer. Aloha and thank you for letting me testify. I am a Lahaina resident and a unit owner at Puamana, and I support the proposed bill. I first became an owner at Puamana in 1994. And like virtually all owners at Puamana I was fully aware that Puamana was primarily a vacation rental community and it had been since it was built.

Today in my testimony I would like to highlight just a few peak points. We have several owners here who have coordinated amongst ourselves so that we're not repetitive in our testimony. Today, you'll hear about Puamana's long history of successful TVR. As we investigated our history it appeared that we closely paralleled other developments of multi-family buildings which were approved before April 1981. All of the others were organized as condominiums as far as we can tell and virtually all are currently allowed to do TVR unless restricted by their governing documents.

Based on weeks of research it appears that Puamana is the only multi-family planned development approved before 1981 that is not organized as a condominium. Since Puamana is so unique it was not included in any of the previous ordinances or rulings explicitly and thus by default if nothing happens we would be prohibited from all TVR on the property.

As you know, our underlying zoning was not updated to Apartment when our planned development was approved. However, we do not meet the specs of Residential District in Title 19, but we're very close to the specs for an Apartment District in Title 19. The change in zoning was not relevant in 1967 when Puamana was finally approved as planned development was planned developments-- I'm sorry, was approved as a planned development because TVRs were not restricted anywhere at that time in 1967. Now the proposed bill should resolve this zoning loose end for Puamana

consistent with the treatment of apartments which happen to be a condominium form of ownership. You'll hear from our association president about the overwhelming support of our community for TVR and that our CC&Rs expressly permit TVR. We will also discuss our efforts to communicate with other planned developments identified by the Planning Department to get their input.

I have sent a link out with electronic copies of letters of support and also the letters we've sent to several other communities. I've brought paper copies to circulate or if you need copies, but these are basically letters of support from our owners and from Friends of Puamana.

In summary, we want a fair solution to treat Puamana like other multi-family condominiums--

Ms. Takayama-Corden: Three minutes.

Mr. Gronemeyer: --who were...that existed before 1981, and who have successfully conducted TVR for over 30 years. The proposed bill does that and I support it. We hope the Planning Commission will support this moving forward. This applies to TVR as a principle permitted use and ultimately for real property tax classification purposes. Thank you very much.

Chair Hiranaga: Thank you. Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Good morning, thank you for coming. Do you currently live at Puamana?

Mr. Gronemeyer: I don't live there. I live about a mile away.

Ms. Wakida: Do you know what percentage of the owners are resident owners?

Mr. Gronemeyer: The ones that are residents sufficient to be qualified for the homeowners exemption I think it's about 15 percent.

Ms. Wakida: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you. Next testifier, Michael Sonnleitner. Once again, please state your name and please limit your testimony to three minutes. We do have a full agenda today. Thank you.

Mr. Michael Sonnleitner: Good morning, Commissioners. My name is Michael Sonnleitner. I'm an owner of a unit at Kaanapali Plantation purchased in 2010 as our second home with the intention of making it our permanent home in a few years as the kids went off to college. I purchased this unit with the understanding that...as stated in association's declarations and CC&Rs that I'd be able to rent my unit as needed as a transient vacation rental when we're not able to be there in person.

In the proposed legislation, in Resolution 12-99, there's wording that allows TVRs only in developments larger than 25 acres. I believe this legislation is discriminatory against all but Puamana development. That all smaller developments would be prohibited from renting on a short-term basis.

If this legislation passes as currently worded it will certainly raise the property values at Puamana and lower the property values at Kaanapali Plantation. I, and many owners who have bought in the last few years would be forced to sell at a loss. This would not only result in a severe loss to me but also to Maui County. Property values would suffer, therefore, property tax revenues would suffer as well as lost TVR taxes. There would also be a loss to the local economy as short-term renters contribute in purchases at car rental agencies, restaurants, and shops, et cetera.

But there's a small vocal group of owners at Kaanapali Plantation that wants to eliminate transient vacation rentals, but the overwhelming majority of owners at Kaanapali Plantation has consistently over the years favored short-term rentals. This is evidenced by the majority vote defeating repeated efforts by the board to change the declaration in order to eliminate TVRs.

So I respectfully request the wording in this legislation to be changed to allow short-term rentals at all developments based on each development's preferences as stated in the governing documents. Or as an alternative, to change the 25-acre limit to 10 acres which would at least allow Kaanapali Plantation the legal right to be short-term rentals. Thanks for considering these requests.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you for testifying. I just wanted to know if you knew, I know this is second-hand information, but what are some of the objection points for the Kaanapali owners for TVRs?

Mr. Sonnleitner: Well, I guess it's usual. I mean, I've heard objections to noise and that's pretty much all I can...all I'm aware of. One owner in particular was a lower unit underneath an upper unit and was complaining of noise, but I mean, that could happen anywhere even with long-term renters or residents.

Mr. Shibuya: Okay. Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Thank you for coming this morning. Do your...you said your CC&Rs permit TVRs. In your CC&Rs is there a minimum number of nights stay?

Mr. Sonnleitner: There's no restriction currently.

Ms. Wakida: So they could be anywhere from one night up is that correct?

Mr. Sonnleitner: Yes, it doesn't state a minimum requirement.

Ms. Wakida: Okay. And I have a second question. And what percent of your owners are resident owners?

Mr. Sonnleitner: Well, I can't tell you exactly. I just know that we have to have a majority vote to defeat these resolutions that have come up and it's I think it's 67 percent. So there must be less than 30 percent I would guess. We have an attorney who will testify later who probably has this

exact information.

Ms. Wakida: Thank you.

Chair Hiranaga: Any other questions, Commissioners? I have a question. Kaanapali Plantation is that formerly known as the International Colony?

Mr. Sonnleitner: No, it's a different development altogether. International Colony Club is closer to the road below Kaanapali Plantation.

Chair Hiranaga: Where is Kaanapali Plantation?

Mr. Sonnleitner: Just directly above. There's a golf course in between International Colony Club and Kaanapali Plantation. So it's just directly up the hill.

Chair Hiranaga: Is that a leasehold project?

Mr. Sonnleitner: No.

Chair Hiranaga: Fee simple?

Mr. Sonnleitner: Yes.

Chair Hiranaga: And would it meet the duplex multi-family dwelling condition as proposed in this ordinance?

Mr. Sonnleitner: I'm pretty sure it would. You'd have to ask the attorney. It's my impression.

Chair Hiranaga: All right, thank you.

Mr. Sonnleitner: Thank you.

Chair Hiranaga: Next testifier is John Coté.

Mr. John Coté: John Coté.

Chair Hiranaga: Coté.

Mr. Coté: I'm just going to hand out a sheet here that you did not get earlier.

Ms. McLean: We can pass those around.

Chair Hiranaga: We'll make sure everyone gets a copy.

Mr. Coté: Aloha and good morning, Planning Commissioners. Thank you for giving me the opportunity to speak.

Chair Hiranaga: Please state your name.

Mr. Coté: I'm John Coté. I'm a homeowner. I have lived for nearly 15 years at Kaanapali Plantation. You're gonna have to forgive me, I went to Foodland this morning and all they had was caffeinated coffee, so I'm a little wired and I don't drink caffeinated coffee, but I had to have my coffee so I'm a little jittery here.

Having lived at Kaanapali Plantation which is an R-2 zoned, a half a mile from the ocean, nowhere near TVRs, next to the Masters which is basically 30-day or more, to the north it's Ag zoned, to the east it's Kaanapali Hillside and to the south it's the Masters. We're so far away from TVRs. Some how or other we got dumped into this thing which basically I totally support Puamana having TVRs, but we kinda got dumped into that particular situation.

Interestingly enough Joe had mentioned, Joe Alueta, that short-term rentals would be allowed as if it were a hotel. You gotta see Kaanapali Plantation. I mean, this is not a hotel. This is nowhere near it. This is just a quiet, beautiful community of probably 70 percent owner-occupied. There are long-term rentals there, there are a few short-term rentals, and of course, needless to say they would like TVRs. I have 34, I had solicited 34 signatures of homeowners which I have there and there's gonna be a whole lot more, I just didn't have time to get them all. I would venture that I can probably come up with about...well, at least another half of that or more. It's not true that the majority of people want TVRs. It's nowhere even near it. I mean, by far, we do not want TVRs. Yet the big part of this is is that the majority of us actually live there and we work.

This morning I woke up to a man walking around in his pajamas just to come in for a week, smoking a cigarette. It almost looked delirious. I was going to say something to him about house rules, quiet time, 8 to 8, et cetera, et cetera, but you know, they come in, they do what they do and you know, that's fine, but let me tell you, it's frustrating and it's amazing to me.

Ms. Takayama-Corden: Three minutes.

Mr. Coté: I hope that you'll consider, it's almost a plea at this point from the standpoint, I don't think we should be here in the first place. It's just so frustrating. You should see our sweet little community, 62 units. A happy community.

Chair Hiranaga: Thank you very much.

Mr. Coté: Thank you so much. Aloha.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you, Mr. Coté for coming here. So the irritation is actually the basis for your objection for TVRs?

Mr. Coté: Well, I am not sure that you'll find the word, "planned development" even in any of our papers and I'm not really sure that we at any place in our paperwork it mentions TVRs. I'm not sure of that.

Mr. Shibuya: Follow up question. On CC&Rs does that permit it?

Mr. Coté: No, it really doesn't.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Good morning, and thank you for coming. How many units are in...

Mr. Coté: There are 62.

Ms. Wakida: Sixty-two. Thank you.

Mr. Coté: They're both kinda like condominium and townhouse, and there are some above others. Of course the townhouses it's your own. I have a townhouse so I don't have that problem, but certainly smoking is a problem there. There's a number of things that are a problem and it's just people that don't know. They just don't know.

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

Mr. Coté: Thank you. Aloha.

Chair Hiranaga: Next testifier, Jim Coon?

Mr. Jim Coon: Good morning. My name is Jim Coon. Recognize Chair Hiranaga and Vice-Chair Lay. My brother, Rand and I have been owners at Puamana for over three decades and we strongly support this Maui County Resolution 12-99. It contains two amendments to the Maui County Code relating to the planned developments and TVR vacation rentals which would permit TVR as a principle permitted use at Puamana.

When we started our charter business 40 years ago, Puamana was actually one of our strongest suppliers of tourists. And through word of mouth and good support from the staff they...we depended on that as a main draw for us and the guests liked our products and still do. Puamana is still a significant source of tourist revenue for our business. So a few years later we decided to actually buy a unit there and we did this because we realized that we could also rent out that unit occasionally or all the time. Initially we rented it out all the time. But when my dad passed away in '82, my mom decided that she wanted to move into that place and just felt more secure there and so she moved there in '82, and she lived there until her passing just last year, just a little over a year ago she passed. So we then once again, we...by then our unit needed to be remodeled. It was an older unit and so we have just completed an extensive remodel. Different people that told us about the vacation rental market said this is just not up to speed, you can't rent a unit like this, you gotta fix it up and so we've just completed a very extensive remodel of that unit. And we're... we did that based on some of the letters. The reasonable expectation that we had that we'd be able to continue to rent it as a vacation rental and this was, this was reinforced by the Planning Director's letters of 2003, 2004 where he actually confirmed the project would be...have a project

wide grandfathering as vacation rentals. It appears that Puamana's unique status as one of the first planned developments in Maui County has left it out in the cold as far as official legislation relating to TVR rentals and the language included in Council Resolution 12-99 would rectify this oversight and memorialize its right. So I humbly ask you to support this resolution. I think it provides a reasonable and fair solution by treating Puamana like other multi-family developments which were built long before TVR--

Ms. Takayama-Corden: Three minutes.

Mr. Coon: --restrictions existed. Council Resolution 12-99 would treat planned developments meeting the restrictions in this resolution just as condos are treated. This would apply to TVRs--

Chair Hiranaga: Please conclude your comments.

Mr. Coon: I beg your pardon?

Chair Hiranaga: Please conclude your comments.

Mr. Coon: This would apply to TVRs as a principle permitted use project wide as well as for real property tax classification. Thank you.

Chair Hiranaga: Thank you very much. Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Good morning, Mr. Coon.

Mr. Coon: Good morning.

Ms. Wakida: Do you personally wanna rent your unit? Would you personally put any length restrictions on your unit or would you...

Mr. Coon: You know, we haven't...we just...we're actually completing it this weekend and so we haven't even thought about how that would work. Our concept is that most people come here for...they're not gonna fly to Maui for a day. We don't...I don't think there's any economics to renting a place for a day. I mean, I'd wanna rent it for I think at least a week. You know, that seem like it...I can't imagine people coming over here for less than a week. And so, we haven't really even talked about that. But I think we would rent it probably for at least a week and then hopefully longer then you don't have to...I mean, my idea is that we'll rent it them and we're not gonna be making the beds for them and all that stuff. You know, it's just here's the key, enjoy yourself and just try to take good care of it and we'll...hope you have a great time here.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Are either of your neighbors, your close neighbors, long-term residents?

Mr. Coon: They are. Our neighbors on both...our neighbors on one side are part-time residents but they've been there a long time. And our neighbors on the other side are I think, they and my

mom were the longest term residents there at Puamana and just really wonderful people, but they're both in their 90's and are getting there too. So there probably gonna eventually be somebody else living there.

Ms. Wakida: Thank you.

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

Mr. Coon: Thank you.

Chair Hiranaga: Next individual is Joanna Stockham.

Ms. Joanna Stockham: Joanna Stockham. Thank you very much. I appreciate this opportunity to stand before you. I am a Puamana homeowner and Lahaina resident and I'd like to outline for you the major points in the proposed bill which I support. The language of this bill has been refined over time. The spirit of the bill is to clean up loose ends that were described in the previous testimony about Puamana's history, and to treat duplex and multi-family dwellings and planned developments the same as other apartments. Councilmember Cochran requested that the Planning Department do additional research on the effect of the bill. Based on the Department's findings, the Department suggest additional restrictions to narrow the scope of the bill to a very limited number of planned developments. First, publicly funded developments were excluded. The bill now before you first excludes publicly funded developments. It then imposes all of the following restrictions:

Number 1, the planned development received final approval pursuant to this chapter and at least one unit in the planned development was operating as a vacation rental on or before April 20, 1981. This was the date that the Maui County Council first began restricting TVR use. Just like other apartments, planned developments with TVR use that were approved before the change in the code should be allowed to continue doing TVRs. This was the heart of the solution and was in the initial bill;

Number 2, the planned development must have an area of at least 25 acres. This would further narrow the scope of this amendment. Projects of this size are typically more resort like in layout and have sufficient open space for guests to comfortably use the property and facilities including parking without congestion;

Number 3, the planned development must be located on parcels with at least some Residential District zoning. This language covers planned developments in which the planned development overlay allows apartment like structures, but the underlying Residential zoning was not changed to Apartment. Apartment zoned TVRs have been allowed to continue their TVR use; and

Number 4, the planned development consists of duplexes or multi-family dwelling units. This requires apartment like characteristics and assures that the bill will not affect planned developments or single-family homes.

In summary, with these restrictions the bill will now allow TVR use only in associations that should be treated similarly to apartments because of their history and attributes. Puamana does not have

a position on any of these restrictions as long as Puamana can qualify for transient vacation rentals throughout our planned development. To be clear though, any association can be still prohibit TVRs through their bylaws and CC&Rs and this bill would not affect that right. Thank you.

Chair Hiranaga: Questions, Commissioners? Joanna, I may have missed your stating this, but are you representing the HOA at Puamana or are you representing yourself as a individual?

Ms. Stockham: Just myself as a homeowner.

Chair Hiranaga: Oh, okay because you said Puamana and Puamana so, okay, I got confused. Thank you.

Ms. Stockham: I apologize. Thank you. Any other questions?

Chair Hiranaga: Seeing none, thank you. Next individual is David Medina?

Mr. David Medina: Aloha, Planning Commission Members and mahalo for this opportunity to testify. My name is David Medina. I am the current president of the Puamana Community Association and I have been a homeowner at the Puamana since the 1980's. Like so many of the other homeowners in Puamana, my first exposure was a result of renting a unit there for a vacation. Owners in Puamana have been renting their units as vacation homes since the 1960's and early 1970's when Puamana was developed.

Puamana is a special place and many current owners spent years vacationing as repeat renters while dreaming of being an owner. To make the dream a reality many of us relied on the long standing practice of renting our homes when we cannot use them ourselves. In fact, I do not know of a single owner that was not aware of the fact that there are vacation rentals in Puamana prior to their purchasing their homes.

As president of the association I have had the opportunity to speak with many of our owners about the status of TVRs in Puamana. Through my own conversations and informal survey, I can tell you that a vast majority, 95 percent support the right to vacation rent. You have in the packet that Mike handed out over 200 letters of support from current owners in Puamana and vendors in the community that support this right. Our CC&Rs specifically allow the rights to rent our unit as short-term rentals.

Puamana is a very unique community. Our property is isolated from other neighborhoods. We have our own streets, parking, rules and security. Our guests are given a handout with the rules of Puamana usually upon booking and then again on arrival. As a result, and in a random review of security log there were very few complaints or writeups about our TVR guests. In anticipation of concerns and questions from some of the communities that this bill could affect their communities we've made efforts to contact their homeowners' associations. Included in that packet that Mike handed you earlier is a letter that we send out as well as a chart of our research that indicates that they would not meet the criteria established by this bill.

Puamana has continued to pursue an official solution to this problem through three Administrations.

Because Puamana's situation is so unique, the County Council wanted to address the much larger B&B and TVR processes for single-family homes first. The Short Term Rental Bill excludes permits of multi unit structures consequently, Puamana was excluded from that bill. Now that these bills have passed, it's time to clean up the loose ends for Puamana. The owners in Puamana overwhelmingly want to retain the right to short-term rent and to be treated the same as pre-1989 apartments that have that right. Please give us the legislative solution that will ensure our continued right to rent our units. We had been inadvertently overlooked in the past and I'm here before you today to ask for your support in seeing this bill through. Thank you for your time.

Chair Hiranaga: Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you very much, Mr. Medina. I just wanted to find out what procedures you had that makes Puamana so successful?

Mr. Medina: As far as with TVR rentals?

Mr. Shibuya: That's correct.

Mr. Medina: Most likely that we have specific rules that the homeowners that rent their units specifically by themselves or the property managers must follow. We have security that we pay for that ensures the rights that people are following the rules. Most of the time when there's a problem with a TVR rental, they just don't understand and our security officer will go by and explain the rules and there rarely is a follow up problem. And like I said, I went through the security logs to just see what kind of issues come up. Occasionally there's noise or a little bit too noisy in one of the pools. We have three swimming pools in Puamana. One is specific for our little children. One is for a little bit noisier pool, and then one is our ocean pool which is considered the quiet pool where there's no jumping, running, screaming or cell phones. So we make it so it's user friendly. We are a multi ...I don't even want to say this, we have full-time residents, we have people that don't rent their unit, but come half the time, we have people like myself who are there eight months a year. And it's just that we've been doing this for 30 or 40 years, we've got a pretty good handle on it and we listen to our residents. We listen to their concerns.

Mr. Shibuya: Thank you very much because there is something in terms of the procedures and the respect of the homeowners themselves when you have new tenants they need to respect the rights and the property owner's rights.

Mr. Medina: Absolutely agree.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Thank you, Mr. Medina. You said that Puamana is isolated, but it is adjacent to a neighborhood, right?

Mr. Medina: We are across the street from the neighborhood, but we are completely separated.

No noise or anything could be heard from Puamana with our neighbors.

Ms. Wakida: Well, right, 'cause it's a gated community, correct?

Mr. Medina: It is a gated community and we have to ocean on one side and the highway on the other.

Ms. Wakida: Right, but you are right next to a regular neighborhood right across the street.

Mr. Medina: Yes.

Ms. Wakida: And one more question.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: You have any units in Puamana that stand alone? In other words, it aren't connected to another unit?

Mr. Medina: No, all the units are connected.

Ms. Wakida: Thank you.

Mr. Medina: Thank you very much.

Chair Hiranaga: Actually I have a couple questions.

Mr. Medina: Yes, sir.

Chair Hiranaga: As president of Puamana's association, what's your position on the proposed Condition No. 3 which limits PUDs to 25 acres or more?

Mr. Medina: We don't have a position on that. I mean, whatever is fair. If they meet all the criteria that's set out the bill, we personally don't have a position.

Chair Hiranaga: Okay, thank you. And just a comment. I wanna thank you for your unofficial surf assess policy at the gate.

Mr. Medina: You're quite welcome.

Chair Hiranaga: Thank you very much.

Mr. Medina: It used to be you could look on a web cam and see what the surf was doing. I don't know if that's still set up.

Chair Hiranaga: Next testifier is Mark Marchello?

Mr. Mark Marchello: Aloha, Planning Commission Members. Thank you for allowing me this opportunity to testify in support of this bill to permit short-term rentals at Puamana. I also thank the Planning Department in assisting with the proposed changes that will prevent this bill from impacting communities that don't want to share their properties with vacation guests.

When I purchased my home in Puamana 23 years ago, I already had three years under my belt as a vacation rental manager for the project. There was no question about it. This ocean front resort with three pools, tennis court, historic clubhouse in proximately to Lahaina Town was very active vacation rental property dating back to its inception in 1968.

Over my many years of living, raising my children and managing rentals in Puamana I didn't fully appreciate how important the Maui visitor was to our economy. Then in 2008, the recession hit. One of my family members and several friends on island lost their homes. We all became painfully aware of how important the Maui visitor is. But really how important to the Lahaina economy is the business generated by a 100 plus family that visit Puamana every week?

Well, like everything these days when you have a question just Google it. The Hawaii Tourism Authority reported in October that the average visitor to Maui is spending is \$203 a day. At first glance this doesn't seem like much 203 a day. But let's take a moment and work the numbers. There are approximately 110 rents in Puamana. The majority of the rentals are two, three, and four bedrooms that's a minimum of six guests in each town home. That's 660 guests a day multiply it by 203 a day, \$133,000 a day. If we can ...(inaudible)...estimate if each town home is renting 20 days a month and multiply it by 12 this equals \$32 million a year to our economy. A huge number to the Lahaina economy. Although there's another important economic and human factor involved in this legislation, the majority of the owners in Puamana purchased their town homes as second homes after vacationing in the project. They hoped that one day they'll be able to spend more time in retirement or enjoy living full-time on Maui. To many of these owners this is a second, this is the second largest investment of their lives. Many depend on vacation income that offset other expenses. That's not just not only the local jobs our economy ...(inaudible)...but also the finances and dreams of hundreds of our kamaaina tax paying part-time residents. These are the owners helping Maui prosper by opening their doors to our visitors. There are plenty of second home owners who don't want to rent their homes and don't want visitors in their projects. Many have spoken at commission meetings in the past. As we have learned in 2008, no visitors equals no jobs, equals no income. While writing this sentence, the sign in front of Polli's Restaurant in Makawao flashed before me. Come in and eat or we'll both starve. Works for me.

Puamana has a long established 45-year history of vacation rentals is due to hearts of many of Maui's return guests as important to livelihoods of hundreds of Lahaina residents. I respectfully ask that you move this legislation forward, allow the Puamana to share this beautiful property and help Maui's economy continue ...(inaudible)...prosperous. Thank you for your kind consideration.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Good morning, Mark. Should this resolution be approved, how would it change things at Puamana from how you're already doing business?

Mr. Marchello: It really won't change things. It will change the question mark. We had a question mark which was raised in 2003 about short-term rentals. It's been ongoing as it right...it's not in writing but it is considered by the Planning Department...do short-term rentals.

Ms. Wakida: You said you have a 110 rentals. How many units are there?

Mr. Marchello: There's 230 in the property and all the years and I work as a manager for 40 of those rentals, Whalers Realty Management, but there's probably 110 right now and it kind of varies over the years. You see some people move in, some people decides it's ...(inaudible)...decide they want a vacation rental because their parents away, ...(inaudible)...kinda changing how the use is and it's happened kinda year in, year out, I'd say about half the project is usually a short-term rental.

Ms. Wakida: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, thank you very much. Next individual is Bob Bowlus.

Mr. Bob Bowlus: Thank you, Commissioners and Chair Hiranaga for hearing me today. My name is Bob Bowlus and I'm a full-time resident of Maui. I'm a homeowner at Puamana since 1981 and I first bought there because Puamana is a gated community, planned and designed and legally used for vacation rentals. The legal TVR use was a determining factor and reason to buy. Puamana is a unique property completed in the 1970s consisting of 60 multi-family units. We're seeking TVR legislation that addresses our very unique situation which is really never been directly addressed by any of the TVR legislation to date. It's so unique that at this time we understand that Puamana is the only planned development that would be affected by this bill. Longtime Maui residents know that Puamana Planned Development has been enjoying vacation rentals in over half the units since the 1970s. Puamana was approved as a planned development but it was never rezoned to apartment or organized as a condo. At that time it was considered an issue, not considered an issue because there was no restrictions in any zoning district. Then about 30 years ago in April 1981, the County amendment the Zoning Code to allow TVRs in multi nit buildings only on properties zoned Hotel or Apartment, but inadvertently did not considered planned developments which had Apartment zoning characteristics. In August of the same year the courts though that short-term rentals were allowed at Puamana. In '89, the TVR was restricted to Hotel zones and the County acknowledged that Apartment zoned properties were grandfathered project wide not unit by unit, Puamana and possibly other planned developments which effectively apartments were again, inadvertently not considered. In 2001, Corporation Counsel option recognized that TVR use was grandfathered at dozens of Apartment zoned condominiums that were permitted before '89 which contained thousands of units that opinion was clear that the entire projects were grandfathered not just individual units that could prove continuous use and Puamana and possibly other multi-family planned developments which were effectively apartments were again not considered as part of that ruling. In 2003, Puamana sought a similar ruling and the Maui County Planning Director issued a written confirmation of Puamana's right to do TVRs project wide. He reaffirmed that position in 2004...while this was helpful, it was not as official or permanent as a County Ordinance. That's what we're seeking today.

Puamana has continued to pursue an official solution to this project through three Administrations, however, Puamana's situation is so unique that the County Council wanted to address the much larger B&B and TVR issue processes for single-family homes before addressing this one neighborhood. The Short-Term Rental Bill excludes permits for multi unit structures so Puamana was excluded from the TVR bill. Now that these bills have passed, it's time to clean up the loose ends and for Puamana owners to be allowed our original historic right to enjoy our properties as this planned development was originally conceived. Our owners expect to pay our fair share of property taxes--

Ms. Takayama-Corden: Three minutes.

Mr. Bowlus: Thank you.

Chair Hiranaga: Thank you very much. Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you, Mr. Bowlus. You mentioned that you're a homeowner there. So you have a homeowner's exemption?

Mr. Bowlus: I do not. I'm a homeowner there, but I don't live there. I live in Paia.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: Can you tell me what is prompting this entire fiasco?

Mr. Bowlus: Well, earlier I heard a question when I was sitting in the audience that asked what is the intent of this resolution and what are we trying to do here? And right now, myself included, a great many people rent their Puamana homes as a short-term rentals, but there has been a cloud of the legality of it and this is intended to put a rubber stamp and like a final approval on what has always happened it's 30 years of short-term rentals at Puamana that others have a cloud over it, we're trying to clear that up.

Chair Hiranaga: Commissioner Hedani, you may want to direct that question to the Deputy Director later? You have another question?

Mr. Hedani: I have a question for the testifier?

Chair Hiranaga: Yes.

Mr. Hedani: If the proposed ordinance or proposed resolution is intended to correct the problem at Puamana, why isn't it specific to the Puamana instead of being drafted broadly and shot gunning everybody else that has an opinion one way or another, pro or con, rather than just addressing the question that needs to be addressed?

Mr. Bowlus: Because when putting this resolution together Puamana worked closely in the

preparation of this resolution. And it...we wanted something that was easy to get your hands around and easy to pass because if it was broader other communities like Kaanapali Plantation there are strong feelings that they do not want TVRs in their community. They just, they don't want it and many other communities don't want TVRs. Puamana has 95 percent of the owners in support of this. It's substantial number, almost a unanimous approval. And yet we're still clouded and we're caught up in a quagmire of all these other...so it was drafted specifically to Puamana, the acreage the use, the construction, the type, the age, PRD, PUD. So we're trying to make it just specifically for Puamana and everybody have it or not at their own choice. Thank you.

Mr. Hedani: Okay, thank you.

Chair Hiranaga: Thank you. Commissioner Hedani, that's probably another good question for the Deputy Director later, later.

Mr. Hedani: Jim, can you enlighten us why isn't the resolution a simple one?

Chair Hiranaga: No, no, reserve that for discussion. Right now we're in the public hearing.

Mr. Hedani: All right.

Chair Hiranaga: Next individual signed up is Jack Naiditch.

Mr. Jack Naiditch: Thank you, Chairperson, Members of the Committee, Ms. Chouteau-McLean, Corporation Counsel. I sent a letter in. I don't know whether it was received and circulated. It was. Okay, so if it was and you've read then, what I want to do is address some of the testimony that's gone on before. I do represent a group of homeowners at Kaanapali Plantation and despite what has been said previously I wanna correct a couple mischaracterizations.

First of all, Mr. Coté, who is a real estate broker who has sold many units at Kaanapali Plantation has stated that there's no document supporting that. Well, I supplied the Commission with the CC&Rs that specifically...that were done in 1970 when the project was formed which specifically provide as use, that houses shall be occupied and used only as private dwellings or transient living accommodations. So it has been in the CC&Rs of this project since day one, since 1970 and many people have bought into this project based on those CC&Rs and the opportunity to engage in transient vacation rental. So I wanted to clarify that one.

The other thing I'd like to clarify is that this project similar, is similarly situated to Puamana and we're not opposed to resolution favoring Puamana. What we're opposed to is the 25-acre limitation and perhaps the characterization as planned development instead of condominiums. We are a condominium project with...I thought it was 62, but it's apparently 64 units. Some of them are duplexes, some of them multi-family. We were formed before...at 1970 before this cutoff date and more than one person has engaged in TVR before that cutoff date. So we pretty much...we qualify on every point except for the size limitation and I've discussed the deliberation at the Council committee meetings and there's really no rational basis for limiting it to 25 acres other than to just to exclude everybody but Puamana from this bill.

The second thing, the next thing I would like to address is the testimony that homeowners or unit owners at Puamana, I'm sorry, at Kaanapali Plantation do not want TVRs. That's not true. There's a vocal minority, primarily board members, all of whom are residents who don't want TVRs, but they have tried to pass a bill from what I can tell for five or six years to remove that language from the declaration and they have been rejected every time. So if they did, if most everybody at Kaanapali Plantation really didn't want TVRs that bill would pass, but it didn't pass. And so, you know, the homeowners that I represent feel that they're being excluded unfairly--

Ms. Takayama-Corden: Three minutes.

Mr. Naiditch: --this project is about 16 acres so it's a fairly large size project and we would, we would ask the committee to consider reducing the acreage size and amending the planned development restriction to allow projects similarly situated like ours which were planned as TVR projects to have the same rights as Puamana.

Chair Hiranaga: Thank you. Questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Hello, I didn't get your last name here.

Mr. Naiditch: Naiditch.

Mr. Shibuya: Jack Naiditch. Okay, thank you for coming, but I just wanted to find out what procedures are in place right to facilitate the TVR operations as Kaanapali Plantations?

Mr. Naiditch: I'm not sure what you mean by procedures to facilitate. The CC&Rs provide it. Kaanapali Plantation also has extensive house rules and regulations which regulate the behavior and conduct and activity of all owners and their guests and tenants. So if someone for instance is smoking, there is a procedure in place to deal with that in terms of fines to the owner who is responsible for his guests and tenants. So they do have in place procedures to deal with issues with respect to transient vacation rentals, short-term rental, long-term rental, and owners use.

Mr. Shibuya: And enforcement of these procedures?

Mr. Naiditch: Absolutely. They have enforcement procedures.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: No, I don't have a question.

Chair Hiranaga: Oh, I'm sorry. Thank you very much.

Mr. Naiditch: You're welcome.

Chair Hiranaga: Next individual is Joel Richman? Oh, okay. I guess Joel already testified. Moving

onto Kevin Costello. Oh, I'm sorry, one second. Okay, I guess that's all the individuals that have signed up to testify regarding Agenda Item B-1. Is there anyone else in the audience that wishes to testify regarding this agenda item at this time, please come forward?

Unidentified Speaker: Am I able to?

Chair Hiranaga: You're out of order.

Unidentified Speaker: Sorry.

Chair Hiranaga: Seeing none, this public hearing is now closed. At this time, we'll open the floor to questions from Commissioners to Staff? Seeing none, oh, Commissioner Shibuya?

Mr. Shibuya: Staff, I have the West Maui Community Plan map here and I'm looking at it and it says that it is SF that means Single Family. In this particular case, much of the units or many of the units are multi-family units. Does that make a difference or why hasn't it been identified as apartment or condo?

Ms. McLean: When the West Maui Community Plan was last updated I don't know why it wasn't designated Multi-Family rather than Single-Family. That's a good question and I can't say why ultimately Council didn't go with that designation.

Mr. Shibuya: Okay so a follow up question to this would be, do they have to come in for some change in zoning or modify the community plan amendment, have a community plan amendment?

Ms. McLean: What the proposed bill would effectively do would be to establish in the Zoning Code that vacation rental uses are allowed at Puamana. I don't really believe there's an existing zoning district that would allow everything that is going on on that property in terms of lot sizes, building setbacks and uses. I don't believe that for example, if the property were zoned Apartment, that wouldn't outright allow vacation rental uses. If it were zoned Hotel let's say there would be a lot of nonconformities. So there isn't an existing zoning that could be established for Puamana that would cure all of the problems. The proposed bill isn't a perfect solution either, but it would target the concern that seems to be the greatest for the owners at the moment which is to codify that vacation rental uses are established there because up until now it's been grandfathering, it's been department letters which can change depending on administrations. It's just not, it's not in the County Code and that's what the bill would do.

Mr. Shibuya: Yeah, I hate to see a County Code being spot zoned if you will. I'd like to see some consistency in terms of we have these plans, let's follow through. Either change the plans or change the development. We can't change the development, so I guess we change the plan.

Chair Hiranaga: Thank you. Any other questions, Commissioners? Commissioner Hedani?

Mr. Hedani: Michele, can you explain to me what the Department's recommendation is on this?

Ms. McLean: The Department supports codifying the vacation rental use at Puamana. It's been

made very clear to the Department that there is widespread support for that. The Department in the past has issued memos saying that the use is allowed. And you know, that's difficult for the Department to administer a use based on a policy memo rather than on Title 19 being changed to allow the use outright. When it comes to Kaanapali Plantation or other planned developments that might have an interest in falling under this, it isn't clear what the perspective of Kaanapali Plantation is. We've heard very vocal, compelling arguments, people saying, oh this should be...you know, Kaanapali Plantation should be included in the bill. We've heard from others saying, no, Kaanapali Plantation shouldn't be included. So I think more time needs to be spent to determine whether Kaanapali Plantation should be treated similarly. Until that can be done though, we certainly support codifying the change for Puamana.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Well, maybe I'm asking Mr. Hedani's question about who generated this amendment? Did this come from the Planning Department or did this come from Puamana?

Ms. McLean: It came from the County Council working with the Puamana owners.

Ms. Wakida: But did Puamana go to the County Council?

Ms. McLean: You'd have to ask Puamana.

Ms. Wakida: Would that how that--

Ms. McLean: I believe they approached the Council.

Chair Hiranaga: I think the communication came from Councilmember Elle Cochran which initiated this resolution. It's in your packet. Commissioner Hedani?

Mr. Hedani: I guess for Michele. If the request is specific for Puamana. The intent is to correct an oversight where they got dropped in the cracks when the TVR bill was passed, wasn't included in the Hotel zoning, wasn't included in Apartment zoning, PUDs were dropped in the crack. Nowhere in the resolution does it talk about Puamana and instead it's pulling in everybody else from...and this is just the beginning because as others get wind of this there's gonna be others that go, what about us? So the question is if it's intended to correct an oversight, why don't we correct the oversight rather than creating a whole new problem for everybody?

Ms. McLean: I agree, and we conveyed that same sentiment to Council when they initially discussed the resolutions and sent it down to the Commission. We suggested that the Council air those...air that discussion with Kaanapali Plantation and others so that the Council could determine how wide or how narrow to craft the bill. It was Council's decision instead to just send the bill as drafted to the Planning Commission, but...and what's before you today is the bill as drafted. If you choose to recommend approval of it, you could do so with an additional recommendation that more time be spent on determining whether other projects should also be included.

Chair Hiranaga: Commissioner Hedani, here's an observation. There's only one PUD that is 25

acres or larger on this island, but if you called it Puamana TVR then that would be considered spot zoning, but if you say limited to 25 acres or more there's only one PUD that qualifies. Commissioner Shibuya?

Mr. Shibuya: Yeah, I was just concerned about the size of that limitation there. If you're gonna have some kind of law we first need to understand the basis for this 25-acre limitation. Can you enlighten me on that?

Ms. McLean: Yes, as the Chair just suggested, the bill was purposely drafted with those five conditions so that the bill would only apply to Puamana. And one of the unique things, one of the many unique things about Puamana is its size compared to other planned developments.

Chair Hiranaga: You wish to comment, Joe?

Mr. Alueta: Yeah, just to clarify, Wailea is a Planned Development. So you need to keep that in mind. So that's the...it's the dates. It has to do with the dates as well as the size.

Chair Hiranaga: Thank you for that clarification. So Wailea was developed after 19--

Mr. Alueta: That is correct.

Chair Hiranaga: Thank you. Commissioner Shibuya?

Mr. Shibuya: Kapalua would have same situations too, would they not?

Mr. Alueta: Dependent on the dates that's--

Chair Hiranaga: Well, you need to be a PUD first.

Ms. McLean: It's the five conditions together.

Mr. Alueta: Five together make--

Ms. McLean: Limit it, limit the bill's effectiveness to just Puamana. There might be other...Wailea is larger, there might be others that because of the dates or because of the types of structures.

Mr. Alueta: Right. Napili Hau came into play, but then it required...it had some...there was some public funding so that was excluded. So you have to look each...everything was tailored, you know, basically to get down to a, where you have only one project essentially just Puamana at this time. And if they change, if you change any of these conditions it would take, I don't know, Council, but it would also would take the Planning Department a while to try fair it out who's in and who's not. Okay, that's...I mean, apparently right now it's been vetted pretty well to eliminate it down to this Puamana. And so if there's any change to it, that would definitely delay the adoption of what they're trying... what they're attempting to do I guess you could say because the Department would then or Council staff would have to then vet through all of the various approvals that have occurred.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Joe, have you walked the property? Are you familiar intimately with the Puamana property?

Mr. Alueta: I was Mr. Puamana for many, many years as a planner long ago for the probably eight years of my land use planning on Maui, yes.

Ms. Wakida: So I just wanna clarify because I did hear from one of the testifiers that Puamana pretty much is a short-term rental doing business of short-term rentals now and that should this resolution pass, I guess I can ask a question, would it open up a lot more short-term rentals should this resolution pass or is it just continuing business as usual in your opinion?

Mr. Alueta: Puamana has changed I guess also with kinda the island, you know, as more...I think Puamana when they first were developed it was again, the second home market for offshore market and also retirees. It was a lot of retirees. And so as indicated by the contentious boxes and boxes of lawsuits that have gone in Puamana, there wasn't always a consensus that they wanted short-term rentals, and but as...it was mostly the original owners or longtime owners who bought as kinda a retirement community. As those people have died off and the opposition has died off, the new owners who have bought in are more willing for short-term rentals and that has changed the make up of the community there as well as the board. But...I mean, like I say, and that's just, you know, the progression of that project. There was...was there always short-term rentals? Dating back to like 80, 82 when they were with Paul Mancini who used to work for Corporation Counsel was...there were lawsuits that the County sued Puamana because they were operating a hotel. So it goes...I mean, there's all this past history but again, as time has gone on, the make up of Puamana, and I think their attorney has done a excellent job of documenting some of the whole...the transition I guess as well as some of the past history. So yeah, there has always been some form of transient vacation rentals going on there. There's always been internal conflicts as well as external conflicts over their legality of it. We got a semi definitive answer with the opinions from Mr. Foley with regards to legality on a project wide...there's always been contentious where they tried to change that opinion at the Council level, but then now the Council is now trying to codify it so that would not...it doesn't go back and forth, you know, it becomes a football. At this point in time it can be codified. Basically what's been the Department's position which is that transient vacation rentals are allowed. And as indicated by the Deputy, the Department is supportive of that at least codify it.

Ms. Wakida: Well, a follow up is, what I'm kind of getting at about would things, would it be business as usual or would things change is that is the impact on the adjacent neighborhoods from increasing or not because one of the purposes as you have stated here in the planned development is to protect natural environmental and minimize traffic congestion and enhance living and working conditions. And I suppose that applies to the development itself, but the adjacent neighborhoods of course, are single-family residential neighborhoods right there across the street.

Mr. Alueta: Again, I can't really speak as how much of an impact again because they had been doing short-term rental there for quite a long time. So I don't that that's gonna change the surrounding properties that dramatically. I think...like I said, I think they have a long history of doing

it. I forget what the percentages was that they talked about, but I think that that percentage is always gonna change, you know, back and forth, but I think, you know, as time goes on it's probably just gonna increase because that's--until there's some other new development coming along that attracts buyers away from Puamana.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Joe, in your opinion, is Puamana a single-family unit or is that apartment or is it a duplex? How do you classify that? I respect the way you look at, you know.

Mr. Alueta: Sorry for my...I try not to give too many opinions, but the property is zoned R-2, R-3 and Agriculture. Okay, that's the zoning is. It was developed as a multi-family, multi-unit complex. They all have individual TMKs, but on each one of these...each unit, but they were built as, I wanna say almost like duplex because they're back to back. There's what you call, considered like four-pack, you know, where you have multiple units, but they're built as duplex townhouses where they basically own up and down, straight up.

Mr. Shibuya: That's right.

Mr. Alueta: And so again, because the project was developed many, many moons ago, right, that was allowed. It as an allowed project. But if you look at what the planned development concept is, it's basically to enhance...to consolidate development and to enhance the amount of open space. And that's, Puamana has been developed quite well in that aspect. So you got...what you would normally get is a certain development rather than just chop it up into lots and lose all your, your open space. They basically consolidated the units into these buildings giving each one a TMK and then enhance the expansion of open space for the enjoyment of the overall community so I think it's done a...I mean, it's a beautiful project, I mean, no one can deny that. There hasn't been many planned development approved. The last one that I know of is probably on South Kihei Road where they have a condominium complex we had Apartment and Residential zoning and they did apartment buildings on it.

Chair Hiranaga: Joe, maybe you could explain the significance of April 20, 1981?

Mr. Alueta: I do not know. I honestly I don't.

Chair Hiranaga: Maybe the Deputy?

Mr. Alueta: Yeah, maybe.

Ms. McLean: I believe that's when one of the significant definitions in the County Code was amended to no longer or to specify that occupancy needed to be a 180 days or longer. So up until that date the definitions in the Code were silent as to full-time use or transient use and then that definition was changed to say, oh it needs to be long-term occupancy thus removing permitted short-term rental use and so that's what we call grandfathering once that right was taken away that

use had to remain without an interruption of more than 12 months in order to be considered grandfathered. And now what's happening because that's so many years ago for us to establish grandfathering we need some sort of evidence that the use has been uninterrupted. So you know, there aren't that many people who save records from decades and decades ago whether it's tax returns or guest registers or what have you. So it's difficult, getting more and more difficult as time goes on to establish grandfathering.

Chair Hiranaga: Thank you. Any other questions, Commissioners? What is the significance of the Condition No. 5?

Mr. Alueta: My understanding, my understanding from the Council is that it excludes Napili Hau PUD. Napili Hau which is in, you know, not the condo that we had many, many lawsuits but the affordable housing project that I think was kind of Maui Land and Pine was initiated.

Chair Hiranaga: Is that across from Napili Plaza?

Mr. Alueta: Yes, it is.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Quick explanation for a simple mind. Item No. F, it says, "overall dwelling unit density which shall be determined by dividing the total number of dwelling units by the net land area." Huh? Try that again? How do you work that out?

Mr. Alueta: I'm sorry, which one are you looking at?

Mr. Shibuya: F, Exhibit A.

Mr. Alueta: Oh, I'm sorry. You're looking at the Planned Development Code?

Mr. Shibuya: Yes.

Mr. Alueta: Okay, yeah.

Mr. Shibuya: Isn't it the other way around? Dividing the net land area for acreage by the number of dwelling units?

Mr. Alueta: Yeah. Net land area...(inaudible)...total lot minus the dedicated streets...Okay, yeah, so basically they allowed for a...if you had a 10-acre parcel, right in many cases and the zoning normally would typically allow four units like on a...say an R-3, four acres per unit so you're allowed 40 units. So they would allow for that and then there's a bonus category that's allowed too on the density and so then you minus, so then you would take out the streets that would be developed for that project and then they could either do a clustering of single-family units or most likely multi-family units in that if you declare it as a planned development then they would dedicate at least 20 or 25 percent, 20 percent of their land area as dedicated open space. Then you would just exclude the streets from it.

Mr. Shibuya: Is the phrasing correct in terms of how you compute it? This is overarching.

Mr. Alueta: Okay. That's not being proposed at this time, but there's no amendments being proposed except for the word, "the."

Mr. Shibuya: No, because do you divide the total number of dwelling units by the land area or is it the other way around?

Ms. McLean: Commissioner Shibuya, I believe it's correct. For example, if you have 10 units on 20 acres, 10 divided by 20 is point 5 so your density is point 5 units per acre.

Mr. Alueta: Right.

Mr. Shibuya: You're dividing by the land by the number of units, right? No?

Ms. McLean: No, to figure out the--

Chair Hiranaga: Density.

Ms. McLean: You're not trying to figure out the...how many units you can get per acre--

Mr. Alueta: Find out the density.

Ms. McLean: --you're trying to figure how much land is needed per unit. So you can look at density either way and what they're saying to do here is to figure out how much land is needed per unit. So you can look at density either way and what they're saying to do here is to figure out how many units you can have per acre. And so you would divide the number of units by the acreage. But density is sometimes portrayed the other way like you're thinking.

Chair Hiranaga: Understood. Moving on. Any other questions?

Mr. Shibuya: I'd like to change the word, area, "land area" to "land acreage," right? 'Cause you don't have square feet. Change the word, "acre."

Chair Hiranaga: You can put that in a motion if you so wish. Any other questions, Commissioners? Commissioner Hedani?

Mr. Hedani: This is for Jim, Corporation Counsel. Jim, is there a cleaner way of doing this than what we see before us?

Mr. Giroux: I think the, I mean, the reason it's so hard it's because it's a PUD. If it was...you know, I was looking at the PUDs and the Project Districts. If it was a project district it's just an ordinance and you tag in TVRs in there and that's a permitted use, you know. So it would be easy. But you know, we started using PUDs first. That was the original tricycle or you know, when you look at your TVs and you throw out your analogs, you know, but it's still a good product. It's just that you know, you can't analog anymore, you know. So it's a great product, but it's really hard...it's difficult

in our framework of using our Euclidian zoning and using our ordinances and our products that we're using now, it's just really hard, you know. They're the last ones to get the, you know, the attention. And you can see this in our Euclidian zoning when we are trying to get all of our golf courses, you know, to be park and so, we went through the litany of where they were and we missed some because, you know, some were actually on single-family residence and stuff. So it's just so complicated that when you're trying to do these large policy, you know, you're just trying to dial things in and so you gotta kind of be a little creative sometimes to look at the solution. I don't know if there is an easier way.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: I just need to have a definition of PUD. What is a PUD? Maybe staff can help me?

Chair Hiranaga: Is there a official definition within the County Code, perhaps you could read that?

Mr. Alueta: I can read you the purpose and intent which is what defines it. The purpose and intent of a planned development as stated as, "in order to encourage desirable design, land use pattern, protect natural environment, minimize traffic congestion, and to enhance living and working conditions, it is deemed desirable to provide a tract development of land in planned development." It's essentially as James alluded to it was one of an...it was an early planning tool to allow for enhanced density development, right, in some areas because you're gonna preserve...it probably came out right around the same time as probably cluster housing developments where you allowed for people to cluster their single family homes. It was just another tool in the planner and developers bag that someone decided to do. And I think, you know, for the most part, it's worked well in those cases where you have mixed development...mixed zoning, land zoning and somebody wants to do different uses on different zonings without going through the process of having a zoning change or a land zoning change. It's still consistent with what's the underlying zoning is allowed. It's just is allowing for better design of it. Like I say, the last one was in Kihei. You don't normally see too many because there's not that many large parcels where somebody can take advantage of this.

Chair Hiranaga: Any other questions, Commissioners? I have a question. Is there a official definition for Transient Vacation Rental, 'cause I know what a STR is, a B&B, is there a TVR in the Code?

Mr. Alueta: Yes.

Ms. McLean: James gets credit for this answer 'cause this is his ipad. "Transient Vacation Rentals or a use means occupancy of a dwelling or lodging unit by transients for any period of less than 180 days excluding bed and breakfast homes."

Chair Hiranaga: So it applies to single-family residences and apartments?

Mr. Giroux: It doesn't make a distinction.

Ms. McLean: Dwelling or lodging unit, so dwelling would mean single-family homes.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, I'll open the floor to a motion as we need to provide official comments to the Council. We'll do that by a motion. Commissioner Wakida?

b) Action

Ms. Wakida: I would like to move to accept the...I'm not sure the motion directs?

Chair Hiranaga: You could structure it as either recommend adoption as proposed or you could amend it or you could recommend denying the proposed ordinance.

Ms. Wakida: I would like to move to accept the bill as proposed with--that's it. I'd to...I move to accept the bill as proposed.

Chair Hiranaga: Is there a second?

Mr. Tsai: Second.

Chair Hiranaga: Seconded by Commissioner Tsai. Discussion? Commissioner Shibuya?

Mr. Shibuya: I'd like to put in a friendly amendment to strike out the, at least 25-acre area limitations to this PUD.

Chair Hiranaga: So it would read, "having an area with some residential zoning?"

Mr. Shibuya: That's correct.

Chair Hiranaga: Is there a second? Well, actually it's a friendly amendment. So is the maker of the motion to wish to accept the friendly amendment?

Ms. Wakida: No, I don't.

Chair Hiranaga: Would you like to make a hostile amendment?

Mr. Shibuya: Then I'll say that I will be voting against it because I think we should have at least...we have limited lands here--

Chair Hiranaga: Commissioner Shibuya, you can make an amendment and see if there's a second?

Mr. Shibuya: Okay. I would like to...there's already a...the amendment would be to have--

Chair Hiranaga: Remove the size requirement, the land size.

Mr. Shibuya: Yeah, I'd like to take away the 25 acre. That's all it is.

Chair Hiranaga: Okay, is there a second? No second. Amendment dies. Any further discussion on the motion? Commissioner Hedani? Commissioner Hedani?

Mr. Hedani: Michele, you had a suggestion that we make a recommendation to the Council relative to airing out the issues so that other projects that might be affected just so that we don't throw fire, you know, throw oil onto something that's already burning that we request that they have additional hearings to ensure that the targeted condominium that they're trying to address is exactly that. How do you do that?

Ms. McLean: Whether it's a friendly amendment or a not friendly amendment--

Chair Hiranaga: You're asking for a language suggestion or...

Mr. Hedani: I'm just asking the Department if they're, you know, along with a motion to support this particular bill, that we have recommendations that we can pass to the Council.

Ms. McLean: Right. I would say it could be part of one motion because you have one particular action before you. So just procedurally I would think you'd want to amend the motion to say, that the Planning Commission's recommendation to the Council is to approve the bill as drafted, but to conduct further hearings or outreach to determine whether other projects...whether the bill might be amended to include other projects.

Chair Hiranaga: Are you proposing an amendment or a friendly amendment?

Mr. Hedani: I'd like to propose a friendly amendment to pick up the Deputy's recommended language.

Chair Hiranaga: Is the maker of the motion agreeable to the friendly amendment?

Ms. Wakida: Yes.

Chair Hiranaga: Is the seconder agreeable?

Mr. Tsai: Yes.

Chair Hiranaga: Discussion? Commissioner Ball?

Mr. Ball: The original comment I think from you was that we're trying and actually kind of Wayne too that we were gonna try and see if the Council would look at fixing this Puamana issue instead of creating 10 other issues out of...potentially 10 other issues or whatever out of this resolution. Is that how you understand that motion that was just made?

Ms. McLean: I think the Council could respond to that recommendation in one of two ways. One either going forward with the bill as drafted, but then keeping the discussion in committee to further investigate it or to do its investigation and amend the bill to include more projects. They could do it either way. It would be up to Council to decide whether they wanted to try to do it all in one

package or go ahead with this one clean and then pursue resolution of other projects in another way.

Chair Hiranaga: Any other discussion? Commissioner Shibuya?

Mr. Shibuya: I see this issue not as...the ordinances that we create here, we seem to be putting band aids over some irritations. What we need to come down to is the basic facts, the basic problems and not look at the symptoms of it. We need to look in terms of adding a future of rules of the community. If this community accepts that certain standards of living and treatment and respect for the property as well as the property as well as guests as whoever's on that property. If this respect is displayed through the behaviors of all within this group I don't see this going be the problem. But all of a sudden this becomes a problem because some people do not enforce the community rules and then it comes out to this issue here of we have a separate type of community that would like to continue and I support that, and it doesn't have to be a community that is 25 acres or more. It can be a smaller community of maybe 10 acres, could be of five acres. Size has nothing to do with it. It's the group of people who decide for themselves how they would like to live and which behaviors are acceptable for that group, and that's all I'm going to say.

Chair Hiranaga: Any other discussion, Commissioners? Commissioner Hedani?

Mr. Hedani: When all is said and done, I don't think it makes that much difference because the bill was passed with no dissent and the resolution was passed with no dissension.

Chair Hiranaga: It hasn't been passed, the resolution. The ordinance has not been adopted. It's a resolution.

Mr. Hedani: Right, well the resolution was passed with no dissent.

Chair Hiranaga: But that's different from an ordinance. I have a couple of comments. I'm not opposed to the TVR use at Puamana, but I feel the mechanism that's being used is not the right way. If they want to make TVRs legal in Puamana they should just say, TVRs will be legal at Puamana. But to craft a resolution and pending ordinance which basically only makes Puamana qualify I think is going down the wrong path. If TVRs should be allowed for other PUDs then let that be examined by Council and by the Department and by the Planning Commission. That's another route. Puamana had worked very hard and has made a great argument, so just say, we're gonna make TVRs legal Puamana, but don't craft an ordinance that excludes other people, other PUDs that may qualify also. 'Cause then they've gotta go to Council to get the ordinance amended because they don't qualify. So for me, I would agree with Commissioner Shibuya and remove that 25-acre limitation and send it back to Council for a review and debate, but also I'm not opposed to just saying TVRs are legal at Puamana just craft that ordinance. Commissioner Lay?

Mr. Lay: I'd like to agree with Chairman Hiranaga. I see it as a patch you're trying to fix what was promised to Puamana from a long time ago and we're trying to make it, I guess, in writing that agreement is there, but it's like that snake in the can when you close the lid and you open the lid and what pops out you don't know. I'm afraid it might open up other things too like how the wording and the verbiage is on that. So if we can just say we're fixing something at Puamana and this is

the patch for it, but it excludes everything else because we're working from this day forward but we're trying to fix what happened in the past. That's how I feel about it.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I think this gives us an opportunity. This resolution gives us an opportunity to have similar unit opportunities for property owners. Every property owner should have that right and that ability if their group agrees and accepts TVRs then they have some set of rules that they follow, I see no problem with it. I think that's a great way of going about it. And so therefore, size has nothing to do with it. It's how we react as property owners amongst ourselves.

Chair Hiranaga: Any other discussion? Another comment, I guess, you know, if you were to legalize TVRs at Puamana that could serve as a model for the future when they are crafting an ordinance that would apply to other PUDs, but this just seems like a backwards way of trying to legalize TVRs at Puamana. If there's no further discussion, I will call for the vote if the Director will restate the motion?

Ms. McLean: The motion is to recommend approval of the bill as drafted and for the Council to conduct further hearings, research, and outreach to determine whether other similar projects should be addressed either by the proposed bill or by a similar measure.

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

Ms. McLean: Five ayes.

Chair Hiranaga: Opposed?

Ms. McLean: Two noes.

Chair Hiranaga: Motion carries.

It was moved by Ms. Wakida, seconded by Mr. Tsai, then

**VOTED: To Recommend Approval of the Bill as Drafted to the County Council, and for the Council to Conduct Further Hearings, Research, and Outreach to Determine Whether Other Similar Projects Should be Addressed Either by the Proposed Bill or By a Similar Measure.
(Assenting - P. Wakida, M. Tsai, D. Domingo, I. Lay, K. Ball)
(Dissenting - W. Hedani, W. Shibuya)
(Excused - J. Freitas)**

Chair Hiranaga: We're gonna have a short recess and reconvene at 10:53 a.m.

A recess was called at 10:43 a.m., and the meeting was reconvened at 10:53 a.m.

Mr. Hiranaga: Agenda Item D-2. Deputy Director?

Ms. McLean: Thank you, Chair. This is a Communication from the Planning Director referring to the Commission proposed bills to enact a Community Plan Amendment and Change in Zoning for property situated at 101 A, B, and C Kuau Place, TMK: 2-6-009:024 in Paia. Again, this is a Council initiated action that's being forwarded to the Planning Commission for recommendation, and Paul Fasi is the Staff Planner.

Mr. Hiranaga: Before you begin, I'd like to make a disclosure that I have had previous professional relationship with two of the applicants. I do not currently have professional relationships with them, but I will at this time request that Vice-Chair Ivan Lay administer this particular application. And I will not be recusing myself.

- 2. MR. WILLIAM SPENCE. Planning Director referring to the Maui Planning Commission proposed bills to enact a Community Plan Amendment and a Change in Zoning for property situated at 101 A, B, and C Kuau Place, TMK: 2-6-009: 024, Paia, Island of Maui. The bills referred in the resolution are: (P. Fasi)**
 - a. A Bill for an Ordinance to Amend the Paia-Haiku Community Plan and Land Use Map from Agricultural to Rural for Property situated at 101 A, B, and C Kuau Place, TMK: 2-6-009: 024, Paia, Island of Maui.**
 - b. A Bill for an Ordinance to Change Zoning from Agricultural District to RU-0.5 Rural District for Property situated at 101 A, B, and C Kuau Place, TMK: 2-6-009: 024, Paia, Island of Maui.**

Mr. Lay: Okay, Mr. Fasi. Oh, I'd like to open the public testimony. Oh, excuse me, Paul go right ahead. Sorry about that.

Mr. Fasi: Good morning, Commissioners. The purpose of the two Council initiated draft bills, one for a Community Plan Amendment and a Change in Zoning is to change the Agricultural designation to Rural for the Community Plan Amendment, and RU-0.5 for the Change in Zoning. The property is inconsistent with the Ag land use designation and the number of existing dwellings is not permitted under the current land use designation. There are currently three dwellings on this 2.1 acre parcel. The correction will allow the property owners to make improvements or rebuild the residential structures currently on the property. There are no proposed developments on this proposal. It is strictly the Change in Zoning and a Community Plan Amendment only and this body is here to make recommendations to the Council for further action.

The property is two acres. The dwellings have been in place for quite a while. It is surrounded by single-family residential lots. State Land Use Designation is Urban. There's no change proposed. It's in the Paia-Haiku Community Plan under Ag and of course, they want that changed to Rural. County zoning is Ag and the requested change is RU-0.5 which is Rural half acre. As I said, there are three dwellings presently on the parcel, and there are no plans for an expansion of these

dwellings. The proposed request is in conformance with the goals, objectives and policies of the Hawaii State Plan. It's in the Urban District. The use is consistent with the Urban designation of the property. Residential use is an allowed use in the State Urban District. There is no change for this particular land use designation. Their proposed Community Plan Amendment and Change in Zoning is consistent with the Countywide Policy Plan. And as of January 8, 2013, the Department has not received any communication in the form of letters, emails, et cetera from the public regarding this matter, and nor have any agency comments been received by the Department. There are two owners in the audience today. And that concludes the Department's presentation.

Vice-Chair Lay: At this time I'd like to open it to public testimony. Does anyone wish to testify at this time? Oh, does the applicant wish to say anything at this time? Step forward, give us your name and you have three minutes. No.

Mr. Philip Kai Binney: Good morning, Commission. Philip Kai Binney, one of the owners of the properties in subject. Thanks for hearing the application to amend the community plan and zoning to Rural Residential which would allow our homes to be legal and consistent under the new general growth plan and the surrounding land use designations. I'll just give you a brief history of how this all happened. You know, we bought...my three partners and I, there's three of us that still own the properties in question. We hui'd together and bought this parcel in 1997. At that time it was Interim zoning and we went into have discussions with the Building Department to see what was allowable at the time for houses. Subsequently they gave us permits for three homes. One for each of us. We went ahead and built the homes and have been living there. We raised our kids, you know, a special place, Pauhau is the old Hawaiian name for it and that's on Tavares Bay in Paia.

As time passed you know, you know, we weren't notified of any proposed blanket zoning amendment. I personally found out about it when I went into the Building Department. I wanted to do a renovation to the house and at that time, they informed me that the properties were now in under a legal non-conforming status and that occurred due to regional blanket zoning amendment that occurred years prior. You know, we were pretty appalled at that point. And we weren't notified by mail or any public hearing regarding that action. You know, since that time there has been a lot of hardship for us, the three of us, the original owners. And you know, we're unable to do any renovations, if so, it would trigger a nonconformity of one of the parcels. You know, the refinancing of the properties for home equity lines has been hard based on the nonconformity and the fees we've incurred trying to get this thing rectified. The Council heard our plea and that's why it's before you now to try to allow us to exist as we are now. And we're not, we're not asking for any increase in density or development rights, we just wanna have our properties conform, our buildings conform to the existing state that they're in now. You know, I respectfully request you guys to consider a motion to approve and can answer any questions you might have regarding the property. Thank you.

Vice-Chair Lay: Commissioners we're gonna hold off on our questions to the applicant until after public testimony.

a) Public Hearing

Vice-Chair Lay: At this time we're gonna open up to public testimony. Does anyone wishes to

testify step forward and don't see anybody on our list here, and give us your name and you have three minutes.

Mr. Rob Hilbun: Rob Hilbun. I'm another one of the property owners. I live on the property with my children and fiancée and we've been there the whole time. And like Phil said, all the houses were permitted by the County and all of our properties were finalized through all the inspection processes on my side for sure and the first time I knew about that the zoning got changed, there was somebody out measuring the perimeter of my house. Oh, hey what are you doing? And they said, oh well, I'm measuring all your property perimeters 'cause you got changed to Ag. And at the time I didn't really think anything about it. It wasn't until a few years later until Phil went in and we found out, oh, now you've got non-conforming and I thought oh, man if the bank even knew about this they would be in a tailspin because the way it affects your property values and not being able to do anything with it and other people coming into to buy would go and say oh, this is a morass. So we just at this point just want to get it straightened out and be what we are. As we were never Ag. We were...you know, by the time it got changed to Ag, there was all these homes on it and all the sugar cane had been taken away and it was...so thank you very much for your time.

Vice-Chair Lay: Any questions, Commissioners? Does anyone else wish to testify at this time on this agenda item? Please state your name and you have three minutes to testify.

Mr. Paitaka Miyahira: My name is Paitaka Miyahira. I live at 110 Apau Place in Makawao. I used to...I was born and raised in Kuau behind Kuau Store and I understand what they're saying. I've gone through the same thing before with different issues on getting blind sided and then you're not being able to...you know, you're thinking what's going on here? I can feel for these guys. I grew up there. It's a nice piece of property. They raised their children there. I think it's a good thing for them to have what they need.

Vice-Chair Lay: Commissioners, any questions? Commissioner Wakida? One question please?

Ms. Wakida: Thank you for coming to testify this morning. What is your connection to the property you said?

Mr. Miyahira: There's no connection. I just grew up in the area. And I think they're by Tavares Bay where Mr. Tavares was a principal in one of the schools here and his children lived there. I surfed when I was child there and behind A.D. Waterhouse and the Rodrigues family. So I know...I was born and raised in Kuau. So my connection is only that I feel for their need of what they wanted to do. Raising a family in this hard economic times, it's hard for us to do these things that cost more money and to try to change what has been done and not been notified, you know, I think that's just not right.

Ms. Wakida: Are you friends with any of the owners?

Mr. Miyahira: No, not at all. I don't know them at all.

Ms. Wakida: Thank you.

Vice-Chair Lay: Does anyone else wish to testify at this time? Seeing none, I'm going to close public testimony right now. Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: Just some clarification 'cause I'm not real familiar with the area, and I'm looking at the map. This is for Paul. Is the area across the highway still under cultivation with ag? Is that still sugar cane or something over there?

Mr. Fasi: You're looking at Exhibit 7, Exhibit 3?

Ms. Wakida: Yes.

Mr. Fasi: And you're talking about what area?

Ms. Wakida: The green area that's across, I guess it's Hana Highway from the...

Mr. Fasi: I believe that's still in agricultural development. That's ag right there, sugar cane.

Ms. Wakida: Okay.

Vice-Chair Lay: Commissioner Shibuya?

Mr. Shibuya: Paul, can you enlighten me a little bit in the historical aspects here, the significance of Kuau, the Spyglass House and the grave yard?

Mr. Fasi: I'm from Oahu. I don't have any history of Kuau.

Mr. Shibuya: Okay.

Mr. Fasi: I know that the Spyglass House is going through a similar change in zoning and it's at Council right now. Yeah, this area right here is all messed up, and if you look at Exhibit 7, you can see that the zoning is pretty much all residential on two sides of the property and they're surrounded by two sides by two large ag lots. And why the County blanket zoned it Ag without notifying the property owners, I can't...I don't have an answer for that.

Mr. Shibuya: Okay, thank you.

Vice-Chair Lay: Commissioner Ball?

Mr. Ball: I'd like to make a motion to recommend the Change in Zoning from Agricultural to half acre Rural District for the property located at 101 A, B, and C Kuau Place.

Mr. Shibuya: Second.

Vice-Chair Lay: Seconded Commissioner Shibuya. Do we have any discussion on it? Commissioner Hedani?

Mr. Hedani: That motion includes the recommendation that the Department has made?

Mr. Ball: Oh, I guess we didn't do that. I was a little premature.

Ms. McLean: That is the Department's recommendation. The Department didn't propose any conditions.

Vice-Chair Lay: No further questions? Commissioner Wakida?

Ms. Wakida: I'm a little...are we approving both in one motion or are we taking them separately. I didn't quite catch that.

Mr. Ball: Both.

Ms. Wakida: To amend the community plan and change zoning.

Mr. Ball: For a community plan amendment also.

Vice-Chair Lay: Could you restate the motion please?

Mr. Ball: To approve the Change in Zoning and Community Plan change from Ag to half acre Rural District for the property located at 101 A, B, and C Kuau Place.

Vice-Chair Lay: Seconded by Shibuya?

Mr. Shibuya: Yeah, second.

Vice-Chair Lay: Commissioner Wakida?

Ms. Wakida: Not to be picky, but I am picky, the change in zoning is to RU...to a particular kind of Rural District, RU-0.5 does that need to be dealt with separately? Do we need to specify that separately?

Ms. McLean: Well, the proposed bills...by recommending approval of the proposed bills, it would be changing the zoning to RU-0.5.

Ms. Wakida: Okay, okay.

Vice-Chair Lay: Commissioner Hedani?

Mr. Hedani: I'd just suggest that the Department read into the record the recommendation.

Vice-Chair Lay: The Department would like to read the recommendation.

Mr. Fasi: The Maui Planning Department recommends to the Maui Planning Commission that it recommend to the Maui County Council approval of the two proposed bills without modification.

You are approving the resolution which contains the two bills.

Vice-Chair Lay: Any further discussion?

Mr. Shibuya: Call for the question.

Vice-Chair Lay: Call for the question. Those in favor? Commissioner Ball?

Mr. Ball: No, I was just raising my hand for aye.

Vice-Chair Lay: All those in favor?

Mr. Hedani: Supposed say, signify by raising your hand.

Vice-Chair Lay: Signify by raising your hand.

Ms. McLean: Seven ayes.

Vice-Chair Lay: Motion passes.

It was moved by Mr. Ball, seconded by Mr. Shibuya, then

**VOTED: To Recommend Approval of the Community Plan Amendment from Agricultural to Rural and Change in Zoning from Agricultural District to RU-0.5 Rural District for Property Situated at 101 A, B, and C Kuau Place to the County Council.
(Assenting - K. Ball, W. Shibuya, D. Domingo, K. Hiranaga, M. Tsai,
W. Hedani, P. Wakida)
(Excused - J. Freitas)**

Mr. Fasi: Thank you.

Vice-Chair Lay: Let's take a five-minute break, reconvene at 11:20.

A recess was called at 11:15 a.m., and the meeting was reconvened at 11:20 a.m.

Chairperson Hiranaga: Next Agenda Item is 3. Deputy Director?

Ms. McLean: Thank you, Chair. The next item is a request from Charlene Schultenburg and Gary Passon requesting a Bed and Breakfast Permit in order to operate the Aloha Aku Inn, a six-bedroom B&B in the A-1 Apartment District at 1390 South Kihei Road, TMK: 3-9-009:008 in Kihei. Joe Prutch is the Staff Planner.

3. **CHARLENE SCHULENBURG and GARY PASSON requesting a Bed and Breakfast Permit in order to operate the Aloha Aku Inn, a six (6)-bedroom bed and breakfast home operation located in the A-1 Apartment District at 1390 South Kihei Road, TMK: 3-9-009: 008, Kihei, Island of Maui. (BBKM T2011/0003) (J. Prutch)**

This bed and breakfast home application is being referred to the Maui Planning Commission for review and action because a variance was obtained to meet the requirements for a bed and breakfast home permit.

Mr. Joe Prutch: Good morning, everyone. For this Project I'd just like to note that there is a public testimony letter of approval that just came in from Mr. Kevin Costello that you just received just a few minutes ago. So just make note that that is testimony for this project that just came in. For this project, I'm gonna defer to Tessa from Munekiyo and Hiraga first. She's got a power point presentation. So I'll let her go through that and then afterwards, I'll be able to kinda wrap things up as far as what testimony we got and maybe go over some of the agency comment letters and things like that and then of course, answer any questions. So for now, I'll go ahead and bring Tessa and she'll go over the power point presentation for you.

Ms. Tessa Munekiyo Ng: Good morning, Commissioners. Thank you for your time. My name's Tessa Munekiyo Ng. I'm with Munekiyo and Hiraga and I'm here today on behalf of Gary Passon and Charlene Schulenburg, who are the applicants for the proposed Aloha Aku Inn B&B. Their home is at 1390 South Kihei Road and they're proposing six rooms for overnight accommodation at their B&B.

So the property is in Central Kihei just off of South Kihei Road in the vicinity of Lipoa Street right adjacent to the St. Theresa Catholic Church and the Waiohuli Beach Hale Condominium. This is an aerial photo of the area. Here we have the property. It's in an area surrounded by a number of multi-family condominium development many of which do offer vacation rentals. Some of these again include the Waiohuli Beach Hale Kihei Gardens Estate to the north. So the proposed Aloha Aku Inn Bed and Breakfast would allow six...offer six bedrooms of the total nine bedrooms on the property for overnight accommodations. Gary and Charlene do reside on property and eight parking stalls would be available off street parking.

They submitted their County B&B application back in April of 2011, and the bed and breakfast operations have not yet begun. Gary and Charlene wanna comply with all County regulations so they've been working with the Planning Department for the permitting of their proposed B&B. And it's also noted that the bed and breakfast home passed the County Miscellaneous inspection back in August of 2011.

So this is a site plan. This is here the driveway coming off of South Kihei Road. There are two dwellings on the property. The first is a main dwelling. It's a two-story, single-family home. The second dwelling is above a garage and that's two bedrooms. Separating the main dwelling and the second dwelling is a carport here.

So this is a photo of their property taken from the end of the driveway. You can see the main dwelling here. The garage is here and the second dwelling above that garage. On the first floor of the main dwelling there are four guest bedrooms each with an attached kitchen and sitting room and these four bedrooms would be offered for B&B use. Gary and Charlene reside on the second floor of the main dwelling. It contains bedrooms, living room, dining room, kitchen. And this is the second dwelling again on the second floor of the garage. This has two guest bedrooms which would also be offered for B&B use along with a kitchen and a living room.

The proposed B&B complies with the County's restrictions and standards related to bed and breakfast operations. It's in two single-family dwelling units. Gary and Charlene are Maui residents and reside full-time on the site. They have their Transient Accommodation Tax and General Excise Tax licenses in place and no more than six bedrooms would be offered for B&B rental. All guest parking will be provided off street and breakfast will be available daily for guests. And as part of the regulation there's a cap of 100 B&B permits in the Kihei-Makena Community Plan region. Thus far, only 19 approved so they're well below the cap.

The reason we're here today, bed and breakfast applications are typically administratively approved by the Planning Department. However, a variance was approved for this project and because of that we're in front of the Commission today. The variance was unanimously approved by the Board of Variances and Appeals in September of last year from Section 19.04.040 related to the definitions of dwelling unit and bed and breakfast home. And specifically the variance allows five existing kitchens to remain in the main dwelling at the proposed B&B whereas only one kitchen would be allowed by Code. These kitchens were existing at the time that Gary and Charlene purchased their home and when the Planning Department notified them of the noncompliance, they worked with the Department and applied for a variance to address this situation. And again, it was unanimously approved by the BVA. So this is again, showing the four kitchens that are each attached to the guest bedrooms on the first floor of the main dwelling.

The proposed B&B wouldn't have any adverse impacts to the neighborhood. Gary and Charlene will enforce house rules pertaining to noise, light, and other parameters. And it's compatible with existing neighborhood character. As I mentioned earlier, the surrounding zoning is A-1 Apartment zoning and there are multi-family condominiums in the vicinity, many of which do offer vacation rentals.

They've received support from the neighborhood and I'll get to that in a little bit. And I also wanna note that the previous owners did operate short-term rentals at their property, but again, since Gary and Charlene purchased the property they have not operated short-term rentals or their B&B pending the outcome of this permitting application.

So this map here shows in red the letters of support that were received either for the B&B or for the variance application. Notably, St. Theresa's Catholic Church submitted a letter for the B&B in support as well as the president of the AOA for the Waiohuli Beach Hale Condo. He's here today to testify if...I think he has to leave at 11:30, but he also submitted a letter in case he does not have the time to testify in person.

So just to summarize, the proposed B&B is for six bedrooms, four bedrooms in the first floor of the

main dwelling and two bedrooms on the second floor in the second dwelling. Again, Gary and Charlene are Maui residents and live on property and all of the property will be off site...off street. Thank you very much.

a) Public Hearing

Chairperson Hiranaga: Thank you. At this time, we will open the public hearing. First to testify is Kevin Costello. Please state your name and limit your testimony to three minutes.

Mr. Kevin Costello: Good morning everybody, my name's Kevin Costello. I do live at Waiohuli Beach Hale, 49 West Lipoa Street. I'm the property adjacent directly to the north of the proposed bed and breakfast. I just wanted to speak in Charlene and Gary's...support of Charlene and Gary's proposal. As neighbors since they've brought the property they've made many improvements to the property. Both are involved in the community, different committees ...(inaudible)... We're a vacation rental property with 52 rental units. Over 80 percent of our units are vacation rental, and I haven't had any complaints from any of our owners or any of the board members. I guess we look at them as friendly competition next door. We welcome them to the community. They've been very good since they purchased. So that's all I have to say, if there's any questions, so...

Chairperson Hiranaga: Thank you. Questions, Commissioners? Seeing none, thank you. Anyone else wishes to testify regarding this agenda item please come forward?

Mr. Paul Corarito: Good morning, my name is Paul Corarito. I am the business manager at St. Theresa Church in Kihei and I'm here to represent the Roman Catholic Church in the State of Hawaii and owner of the property and to read a letter on behalf of Reverend Monsignor Terry Watanabe, who's the Pastor there.

Dear Maui Planning Commission, I am Reverend Monsignor Terrence Watanabe, Pastor of the St. Theresa Church and Vicar Forane for the Maui Vicariate. I had Intended to attend this hearing in person in order to speak on behalf of and support of the Aloha Aku Inn Bed and Breakfast. I am out of town and Paul Corarito is my representative. St. Theresa Church and my living quarters are adjacent to Charlene Schulenburg and Gary Passon's property. Char and Gary are very good and conscientious neighbors. Charlene is a returning resident having grown up here and I know it has been her dream to move back to her island home and run a bed and breakfast. We had supported the variance and continue to support the bed and breakfast.

I can speak with direct experience as to how generous and how much Char and Gary have contributed to Maui's community. St. Theresa Church and I have partnered many times when Char and Gary have opened their home and property for non profit and other fund raising events including Habit for Humanity, United Way, and more. They are on a number of boards and give generously of their time and resources. They intend on continuing that aloha spirit. They are also outstanding citizens striving to do the right thing and to share their good fortune including their home with the community.

I observed them making great improvements to their property and surrounding area. In addition, they have volunteered their own time, monies, and efforts to help maintain not only the Laie

wetlands adjacent to their property, but also the DLNR property beachside of their structure. As far as their home itself, they had made minor changes to improve the look and feel of the property keeping in mind that the entire neighborhood, the majority of which are condos with kitchens.

Char and Gary have also been active in supporting St. Theresa Church's Hale Kau Kau Community Feeding Program which serves food 24/7 to the homeless, hungry, sick, disabled, elderly, and homebound. They are part a neighborhood watch, helping to keep the homeless off the beaches and improving the reputation of our neighborhood. This helps us to maintain a neighborhood that supports tourism, creates more family friendly community. They also work directly with the DLNR and Kihei Police Department to prevent crime and loitering, littering, and illegal camping.

Father Terry serves on the board of St. Anthony Jr. High School with Charlene. He has personally witnessed her commitment to her alma mater and the island she loves. She wants nothing more to share her home and beautiful property with visitors. Please consider allowing the bed and breakfast permit to be allowed. Thank you.

Chairperson Hiranaga: Questions, Commissioners? Seeing none, thank you. Anyone else wishes to testify regarding this agenda item please come forward? Seeing none, the public hearing is now closed. Open the floor to questions from the Commissioners? Tessa, did the applicants wish to say anything? No? Commissioner Wakida?

Ms. Wakida: Well, probably...well, Joe you could probably answer this. I just want some clarity on what we've been given. We were given the first floor and second floor of the main dwelling. Is that where all of the B&B bedrooms are located or is there one over the garage?

Mr. Prutch: There's one over the garage. It's a two-bedroom-detached cottage with two rooms in there, and then the other four rooms are those four rooms downstairs in the main house with the kitchens and then upstairs portion, not shown on the site plan, however, the upstairs portion is three bedrooms that is for the owner's use. The B&B guests will stay downstairs or use the two bedrooms above the carport, above the garage.

Ms. Wakida: And I have second question about...one of the stipulations for a bed and breakfast is they actually offer breakfast to their guests. Where in this area is that provided? Where is their communal breakfast area?

Mr. Prutch: Yeah, if you look on, if you look on the site plan see that common area, utility area, it's kind of a large space. I think when I went in there there were some tables and chairs and stuff in there. So that's kind of a central location for the guests to go to. It's my understanding is they'll provide some kind of...I don't know exactly what type of food, but they'll supply food at that location.

Ms. Wakida: Oh, okay 'cause-

Mr. Prutch: So the guests can be told where to come down to get the food.

Ms. Wakida: In one of the pictures that sort of looked like a laundry room down there.

Mr. Prutch: It is, it is laundry as well if I remember right.

Ms. Wakida: So, okay. I just...I don't oppose this, I just want to understand it a little better. So they provide a buffet of breakfast items? What is the owners—

Mr. Prutch: Let me ask the applicant, I don't know what the menu is going to consist of.

Ms. Munekiyo Ng: There's actually a menu in the application. Let's just see. Section 19 of the application if you happen to have that in front of you. The menu will consist of continental breakfast served daily from 8:00 a.m. to 11:30 a.m. Breakfast choices will include fresh fruit, pastries, cereal and milk, coffee, tea, and juices.

Ms. Wakida: Thank you.

Chairperson Hiranaga: Any other questions, Commissioners? Commissioner Ball?

Mr. Ball: Looks like there's an easement for the access. Where does that...I don't see it on the map here, so where does that driveway connect up with South Kihei?

Mr. Prutch: Yeah, it's hard to see on the site plan. There's actually two...well, there's two easements. One of them is from the church, I forget exact dimensions, and one of them is from the State on the other side where the drainage area is. I believe they have a total of 30, 30 feet. I think it was 30 feet of easement from Kihei Road back to their property line.

Mr. Ball: Across St. Theresa's property I guess?

Mr. Prutch: Crossing the Church's property, say half of it, and other half is the State's property as well. I think it's 18 feet on the church side, and 12 feet on the State's side, something like that, but they do have the access easements to their property from Kihei Road, and they have the driveway there and the plants and it's pretty well maintained.

Mr. Ball: Okay.

Chairperson Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Going through my standard questions here. Water service, size of meter?

Mr. Prutch: They do have a one-inch meter which allows I believe there's a letter in there from the Water Department, I think it's 50 gallons per minute and their calculations they did came out to be 49. So their meter's adequate for what they're doing. And Water Department was satisfied with the calcs, and Water Department was also satisfied with their low flow fixtures that they installed. And there is an exhibit from the Water Department closing everything up.

Mr. Shibuya: Okay, and the fire hydrant, where is it located and the size?

Mr. Prutch: I don't know the size, I know it's located on Lipoa. As far as the exact location on

Lipoa, I don't have that. Do you?

Chairperson Hiranaga: Please identify and speak into the microphone.

Ms. Munekiyo Ng: Sorry, Tessa Munekiyo Ng, Munekiyo and Hiraga. The fire hydrant is just adjacent to the driveway on the north side.

Chairperson Hiranaga: Any other questions, Commissioners? Commissioner Tsai?

Mr. Tsai: Yeah you pointed out to South Kihei Road where the fire hydrant is. Well, how long is that driveway from South Kihei Road to the property, the easement?

Ms. Munekiyo Ng: Tessa Ng. Three hundred feet, 300, 350 feet.

Chairperson Hiranaga: Follow up? Commissioner Shibuya, you had a question?

Mr. Shibuya: Yes, changing in terms of flood zone designation. Is this a flood zone area?

Chairperson Hiranaga: I believe it's stated in the staff report, AE.

Mr. Prutch: Yeah, AE and AH.

Chairperson Hiranaga: AH.

Mr. Shibuya: Okay, thanks.

Mr. Prutch: Is that what's in the staff report, I forget, I'm sorry.

Mr. Shibuya: And the County sewer or is it a septic?

Chairperson Hiranaga: County sewer.

Mr. Prutch: It's County sewer.

Chairperson Hiranaga: It's in the staff report.

Mr. Shibuya: Okay.

Chairperson Hiranaga: Commissioner Lay?

Mr. Lay: There were some questions about weddings be held on the property and I was wondering if we could clarify on that?

Mr. Prutch: Okay. My understanding from talking to the applicant and talking to the consultant between the house and the shoreline there is State reserve land. Wedding coordinators could, people could get a permit to have a wedding on that property just like they can get a permit to have

it elsewhere on a State beach. So people can have weddings out on that property and that property is right smack in front of their house. My understanding is that the owners in question now have been living on the property for two years and they have not been doing...they have not been performing weddings on that property in conjunction with like a B&B use. They haven't been using the house as a B&B, vacation rental as well. I think these letters going back about weddings and different things and short-term rental use was the previous owner. It may have had a track record of doing that without permits. But my understanding is from the new owners that for the past two years they've owned it they haven't rented their place out and they haven't, they haven't I guess supported a wedding on their property. Now, I don't know if there's actually...I don't know if there have not been weddings on the State property. There may have been, but it sounds like there aren't any that are associated with the applicants.

Chairperson Hiranaga: Commissioner Tsai?

Mr. Tsai: I don't know what kind of requirements the Fire Department needs, but the 300 feet driveway from the fire hydrant in front of the house is that acceptable to the Fire Department. I don't see a support on the documents here.

Mr. Prutch: With Fire Department we have common, standard conditions from them that we use on all B&Bs and short-term rentals. The idea of the smoke detectors, the fire extinguishers within 70 feet distance of the property. So that's all pretty standard stuff and that's what we end up using in this case. I mean the majority of B&Bs especially as you get down to Haiku or somewhere, there might not be a fire extinguisher within a 150 feet there either. We didn't get comments from Fire Department either. They don't comment on these. They're just their standard comments for smoke detectors and fire extinguishers and escape routes. That's our standard response from them.

Chairperson Hiranaga: The Deputy Director wishes to comment.

Ms. McLean: Thank you. The structure was lawfully built with a building permit, so the Fire Department would have commented on the initial construction of the structure. So that's the time that they would have put any restrictions on if there was a concern on fire protection.

Chairperson Hiranaga: Commissioner Tsai?

Mr. Tsai: And my understanding is that this was operated as a B&B before the current owner operated correct?

Ms. McLean: We believe that that did occur. They didn't have a B&B or short-term rental permit.

Chairperson Hiranaga: Commissioner Lay?

Mr. Lay: I have a question about the kitchens. I know there's five kitchens there. I know there's been a variance on it for the five kitchens and the property owner bought it with the five kitchens in there, but I'm wondering how that happened, how that came about with the prior owner I mean? Do you have any...

Mr. Prutch: How the kitchens came about?

Mr. Lay: Yeah, how did they okay five kitchens in a residence?

Mr. Prutch: I think the Deputy wants--

Chairperson Hiranaga: Deputy Director wishes to answer your question.

Ms. McLean: Thank you, Chair, and the reason I'm jumping in is 'cause the Director and I were involved with this project as soon as they submitted their application, actually a couple of years ago, one of the changes that the Director has implemented is the interpretation of the definition of kitchen. And in the past, for quite a long time, the Department administered the definition of kitchen as having one of three components either a sink, a refrigerator or a stove and so you could have a full kitchen and just remove one of those elements usually the stove and the Department wouldn't consider it to be a kitchen anymore. And the applicants came in for their B&B Permit with the kitchens exactly as you've seen and they were this close to getting their B&B Permit just administratively when that new interpretation or that new administration came to play and they were taking out the stoves. They were doing what the Department said, oh take out the stoves and then we can approve it as a B&B. And we came in and we were like, no, you can't do that. And so that started all these processes that the applicants had to go through initially from getting just an administrative B&B Permit to now having to go to the BVA and the Planning Commission to get approved. The structure was built lawfully as a multi-family dwelling because it's zoned A-1. So each of those units could be separated off and entered only from the exterior and have no interior connections and that would be lawful as a multi-family structure, but the applicants live upstairs, they wanna operate it as a B&B. And so when they bought the property knowing that oh, these could be all short-term or long-term multi-family we wanna operate it as one single-family structure as a B&B. And so it's actually more burdensome for them to do it that way than for them to keep it as a multi-family dwelling. So the kitchens were lawfully built under the zoning, and now because of the variance, they can be considered as part of a single-family structure.

Chairperson Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I just wanted to know what kind of exterior lighting you have?

Mr. Prutch: I'll have to get the applicant up here for that.

Mr. Shibuya: Sure, thank you.

Mr. Prutch: I was there in the daytime to see it.

Mr. Gary Passon: Good afternoon, Commissioners. I'm Gary Passon. We have motion detector lights in the corners for security purposes primarily. Relatively they're aimed down as much as possible because obviously it's to protect the perimeter of the building. We also have some other lighting in place particularly on the backside of the house with the driveway to illuminate that area for parking purposes and that kind of stuff.

Mr. Shibuya: Yeah, I was just concerned about the seabird being confused, and it's not shining towards the ocean is it not?

Mr. Passon: No, and we're very sensitive to that issue. You know, because we are adjacent to the wetlands, we use the least amount of lighting that, you know, would still allow the place to be safely traversed.

Chairperson Hiranaga: Commissioner Shibuya?

Mr. Shibuya: In terms of energy sustainability that's part of your conservation I guess, you'd minimize the amount of illumination or power that you'd need for lighting. What other conservation initiatives have you implemented, and planning to implement, and also the renewable power generation, what's your plans related to that?

Mr. Passon: We've actually invested significantly in all those areas. In purchasing the house it did already have a very significant solar hot water system. We've since added about 86 PV panels to both roof segments and we are now at this point either a net generator or a slight net user of MECO electricity so over the course of the year we average out just as close to zero as we possibly can be. In addition, when we...when the property was built initially and we acquired it, there was a unpermitted well on the property. We have since...are moving forward in the permit process and have a letter from the DLNR that within 90 days they expect to approve our well. The well is not a drinking water well. It's a landscape irrigation well only. So because we're net electric generator, we can use that electricity to run the pumps to actually do our irrigation and draw less water from the community. So even though our plan number is 49 gallons, we actually, when we can use our irrigation well will be a very limited generated use of water off of the island. And we've been very active in as I mentioned in Laie wetlands and other conservation activities in our area particularly maintaining the mangroves and so forth. So we're very, I'd say we're hyper conscious of that issue.

Mr. Shibuya: Okay, thank you very much.

Chairperson Hiranaga: Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: But my question is for Joe. Thank you so much.

Mr. Passon: You're welcome.

Ms. Wakida: Joe, I'm not real familiar with this area down here by the beach. That State...on the map that you gave us, the area that's marked State beach reserve, is there any...what's the public access to that?

Mr. Prutch: Well, since it's State park reserve, the public does have complete access to it. It may not be well known that that's there. I mean, it would probably take knowing where that reserve is and knowing where that beach is to use it. It is grassed. It is...it's green grass that's out there too. It could be mistaken someone walking along the beach that this might be the house's property. It's not, but it may look that way just because it's grass in front of the house, but the public does have access. The applicant did tell me that some of the kids come down and use that area to fish in the

pond next door. So people do utilize that property then of course, if somebody wanted to have a wedding on that site and got a permit, I guess they could do that too out there.

Ms. Wakida: So the access to it is coming down—

Chairperson Hiranaga: Probably by...behind St. Theresa's Church.

Mr. Prutch: Yeah.

Chairperson Hiranaga: It's lateral beach access.

Mr. Prutch: Yeah, it be lateral. It's not through the property. It's not through the property. It's not through the owner's property. Lateral or maybe along the drainage ditch somewhere in there to get you to there. There were people out on the beach in front of the place when I went out there for the site visit a few weeks ago.

Chairperson Hiranaga: I used to pick ogo long time ago when had ogo back there. Commissioner Hedani?

Mr. Hedani: I still pick ogo and the access to the beach over there is off of Lipoa Street where you can actually park and walk down to the beach.

Chairperson Hiranaga: It's behind St. Theresa's Church?

Mr. Prutch: Yes.

Chairperson Hiranaga: Commissioner Wakida?

Ms. Wakida: Well, I know there...I'm not accusing certainly this applicant of this, but I know there is a tendency of some people that have properties adjacent to beach reserves to tend to landscape that area and therefore it ends up looking like private property. And rather than just letting the State take over, and I hope that isn't the case here.

Mr. Prutch: Well, do you mind if I have the applicant explain some of that?

Ms. Wakida: Absolutely.

Mr. Prutch: About the beach reserve?

Ms. Wakida: Absolutely.

Mr. Passon: Gary Passon again. I happen to be a member of the board of what's called Ulunui Beach Reconstruction Area and it's a loose group of people all the way from the VFW if you're familiar at all with the area all the way south to where Kalama homes actually have the land all the way up to the beach. That group has negotiated with the State DLNR an entrance agreement which allows for dealing with taking care of the coconuts, dealing with the greenway, signage,

lighting, back to the issue of the birds and turtles and so forth and so on. And all of the home owners along that area have bound together to execute this agreement. It's not executed at this time, but it's incredibly close. We hope to have it actually executed in the next month or two and we'll contribute toward the maintenance of that greenway and that area in front of all the homes along here and it addresses specifically making sure that that stretch of land is accessible, is well marked that it's, you know, that it...people have a right to use it and it's just taken care and maintained in a safe manner like taking care of the coconut trees, things that the State government simply can't afford to take care of at this time.

Ms. Wakida: Good. Thank you. I think that's a commendable effort and as long as the public is aware that this is open for everybody's use.

Mr. Passon: Absolutely. We're very sensitive to that and ...(inaudible)...of that.

Ms. Wakida: Thank you for your good work.

Chairperson Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Just one question here relating to the water runoff from storm. You have impermeable type of pavement here in front of the...on the driveway as well as the carports. Can you describe where the water runs and how it's...maybe hydrocarbons are actually retained or captured or mitigated?

Mr. Passon: Hi, it's Gary Passon again. Another area...and this I have to give compliments to the original builder of the house. The driveway and it's difficult to see in these pictures is actually pavers. And the way the water runs off of the roof it runs onto pavers and there's a paver ring around the house so what happens is as the water runs off, it filters through the pavers into the ground. To the extent that there is more runoff than can be absorbed in the normal rains, and of course we're in Kihei, I mean, if we get five or six inches it's a big year for us. The ground generally slopes toward a basin in the garden area and what happens is if there is a high degree...a large amount of rain then it does tend to puddle up in that area and then be absorbed through that...into the ground in that area. So generally the water doesn't run either toward the ocean or toward Laie wetlands next to us.

Mr. Shibuya: Okay, thank you.

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

b) Action

Mr. Prutch: Thank you. Okay, staff's recommendation. The Maui Planning Department's recommending to the Maui Planning Commission approval of this Bed and Breakfast Permit subject to the following, well, the 16 standard conditions shown in your recommendation report including a three-year time period to expire on January 31, 2016. Maui Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation

prepared for today's meeting January 22, 2013, and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on behalf of the Planning Commission. Sorry, but there is one typo that I would like to change, minor on Condition No. 8, I refer to Section 16.64, it's the B&B Code, should be 19.64, so if I can make that minor change.

Chairperson Hiranaga: Thank you. Open the floor to a motion. Commissioner Shibuya?

Mr. Shibuya: I move to accept the recommendations made by the Planning Department and the approval to include all of the 16 conditions.

Chairperson Hiranaga: Is there a second?

Mr. Hedani: Second.

Chairperson Hiranaga: Seconded by Commissioner Hedani. Discussion? Commissioner Ball?

Mr. Ball: I have one question, quite not really toward this applicant but just in the recommendation.

Chairperson Hiranaga: Speak into the microphone please?

Mr. Ball: In the recommendation here under R, would it possible to have let's say a countdown, if you will, of these areas so we know, you know, we're getting close to the numbers.

Chairperson Hiranaga: Just for that community plan area?

Ms. McLean: I believe in the—

Mr. Prutch: I did. I think I did in the staff report.

Ms. McLean: It is in the staff report how many have been issued for South Maui.

Mr. Ball: I know, but if we have it right here. You see how this lists all the areas.

Ms. McLean: Oh, you wanna know a rolling count?

Mr. Ball: I mean it just be helpful to see it right here.

Ms. McLean: Okay.

Mr. Ball: 'Cause we see these a lot you know what I mean?

Ms. McLean: Yes.

Mr. Ball: Just as a quick reference guide.

Ms. McLean: Okay.

Chairperson Hiranaga: We'll defer to the Department's judgement.

Mr. Ball: She said yes.

Chairperson Hiranaga: Any other discussion? Seeing none, we'll have the Deputy Director restate the motion.

Ms. McLean: The motion is to approve the Bed and Breakfast Permit subject to the 16 conditions listed in the staff report with the one typo corrected.

Chair Hiranaga: As recommended.

Ms. McLean: As recommended by the Department.

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

Ms. McLean: Seven ayes.

Chairperson Hiranaga: Motion carries.

It was moved by Mr. Shibuya, seconded by Mr. Hedani, then

**VOTED: To Approve the Bed and Breakfast Permit as Recommended by the Department with the Recommended Sixteen (16) Conditions.
(Assenting - W. Shibuya, W. Hedani, D. Domingo, I. Lay, M. Tsai, K. Ball, P. Wakida)
(Excused - J. Freitas)**

Chairperson Hiranaga: Congratulations. Good luck.

Ms. Munekiyo Ng: Thank you, Commissioners.

Chairperson Hiranaga: If there's no objection we'll recess for lunch three minutes early and reconvene at 1 o'clock.

A recess was called at 11:57 a.m., and the meeting was reconvened at 1:00 p.m.

Chairperson Hiranaga: ...order. It is now 1:00 p.m. or soon thereafter. So we're gonna skip the agenda forward towards Item C, Adoption of Decision and Orders if there's no objection from the Commissioners. Deputy Director?

Ms. McLean: Thank you, Chair. This relates to the Iglesia Ni Cristo application where the Commission denied intervention. So this is...would be the Commission taking action to approve your written order denying the intervention on Iglesia Ni Cristo's Special Use Permit and SMA Permit to demolish an existing church building and related improvements in the R-3 District

at 1518 Malo Street, TMK: 4-5-014: 009 in Lahaina. Anna Benesovska is the staff planner.

C. ADOPTION OF DECISION AND ORDERS (To take place at 1:00 p.m. or soon thereafter)

The Commission may take action to approve the written order denying the following intervention request per vote taken at the November 13, 2012 meeting:

- 1. B. MARTIN LUNA and STEVEN S.C. LIM of CARLSMITH BALL, LLP, attorneys for the Applicant IGLESIA NI CRISTO (CHURCH OF CHRIST) submitting proposed Findings of Fact, Conclusions of Law, and Decision and Order denying WAHIKULI NEIGHBORHOOD COMMUNITY ASSOCIATION, BRIAN CAREY, SONJA SANCHAGRIN, and JAMES FOSTER's Petition to Intervene filed November 2, 2011 in the matter of the applications of IGLESIA NI CRISTO (CHURCH OF CHRIST) to obtain a County Special Use Permit and a Special Management Area Use Permit to demolish an existing church building and related improvements in the R-3 Residential District at 1518 Malo Street, TMK: 4-5-014: 009, Lahaina, Island of Maui. (CUP 2008/0006) (SM1 2008/0025) (A. Benesovska)**

Ms. Anna Benesovska: Good afternoon, Commissioners. I'm Anna Benesovska--

Chairperson Hiranaga: Okay, before we begin, I'd just like to take moment to recognize the recent passing Martin Luna who was a familiar face at these proceedings and it's seemed we've lost two fine gentlemen very recently. Thank you, Anna.

Ms. Benesovska: Thank you, Chair. Good afternoon, I'm the planner assigned to the project. Yesterday we have received a document that I'm gonna distribute momentarily from the petitioners, and their legal representative, Mr. Lance Collins objecting to the proposed document in front of you in so far as it includes matters expressed by Commissioners and matters not agreed to by majority vote at the meeting and I'm citing from his letter. So I'm gonna quickly distribute it to you.

Chairperson Hiranaga: So, I was gonna ask Corporation Counsel for an opinion. Is he coming back?

Ms. McLean: Jane is here.

Ms. Jane Lovell: Yeah, but I'm representing the ...(inaudible)... Planning.

Chairperson Hiranaga: Yeah, procedurally is there some type of a timeliness issue as far as receiving this communication from Lance Collins and what impact does it have on this particular agenda item?

Ms. Jane Lovell: Good afternoon, Chair and Members of the Commission. My name is Jane Lovell, I'm a Deputy Corporation Counsel. I'm actually here representing the Department today and not

the Commission, but I can give you my views on this letter and that is that leaving aside any timeliness issues, my feeling is it's just not very helpful to you to get such a vaguely worded letter where the objections are not really spelled out, you know, line by line or paragraph by paragraph. The objections don't have legal citations to them so we don't know if there's a particular legal problem with any of the proposals. And then the other thing is that Mr. Collins has not offered anything to substitute which I think would have been the better course for him to follow. So just on behalf of the Department of Planning, I'm here today to say that I have reviewed the findings of fact and conclusions of law, et cetera that were prepared by the church and their attorneys and the Planning Department has no objections whatsoever to the form.

Chairperson Hiranaga: Thank you. I'll have the applicant...applicant's attorney comment on Mr. Collin's letter, and then I'll have Corporation Counsel comment.

Mr. Greg Garneau: Good afternoon, Chair and Members of the Commission. My name is Greg Garneau, and I'm an attorney with Carlsmith Ball, and I'm here on behalf of the church members. With regards to the letter, I have the same concerns that Ms. Lovell does is that it's very nonspecific. So if it was meant as a...as being helpful in terms of making any changes to the proposed order, it's not in that regard. I'm not certain of why this was sent in this way, but I would also note under your rules we're at the position where you had denied a petition for intervention and there is nowhere in your rules that provide for someone who's not admitted as a party to file objections and so forth. So in my view, this really has no effect under your rules anyway. And so for both those reasons, I ask that you not take it in consideration. Obviously, we're the drafter of the proposed findings of fact, conclusions of law and order, so my client is in support of the terms as contained therein.

Chairperson Hiranaga: Thank you. Corporation Counsel, do you wish to comment regarding Mr. Collin's letter?

Mr. Giroux: Yeah, I'd just like to let the board know that if wanna go into executive session to talk about it, it's fine. I don't think it's necessary. I would just reiterate what the two attorneys said. I mean, absent specific objections to portions or words included in the document, you're kind of left that to guess at what he's objecting to, what portions have been left out or weren't in the record. If you're satisfied with the document that you have and it reflects your intent and your understanding of the hearing then you're free to go forward and finish up the adopting of that document. You know, the letter's been submitted so it's been noted.

Chairperson Hiranaga: Since this is an agenda item, I'll just open the floor to public testimony. Is there anyone here that wishes to provide public testimony regarding this agenda item, please come forward? Seeing none, public testimony is now closed. Open the floor discussion or questions to the applicant or the Department or Corporation Counsel. Commissioner Wakida?

Ms. Wakida: Just for clarity, so there is nobody here today representing Lance Collins or that position is that correct?

Chairperson Hiranaga: Yes, and their position was denied by the Commission.

Ms. Wakida: Right.

Chairperson Hiranaga: They have really no standing on this proceedings.

Ms. Wakida: But no one, we had nothing but the letter today. We don't have anybody?

Ms. McLean: Correct.

Ms. Benesovska: That's correct. We only have the letter at this time. There is no other representation.

Ms. Wakida: Thank you.

Chairperson Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Are you looking for a motion to adopt the written decision and order?

Chairperson Hiranaga: Is there a second?

Ms. Wakida: Second.

Chairperson Hiranaga: Seconded by Commissioner Wakida? Any discussion?

Mr. Shibuya: Yes, I'd like to say for the record that we did receive correspondence from Lance Collins objecting to these findings of fact, conclusions of law and decision and order which denied the Wahikuli Neighborhood Community Association which includes Brian Perry and Sonja Sanchagrin and James Foster's petition to intervene filed on November 2, 2011. And I just want to make a note...noted that his letter was very vague, lacked specific objections, and lacked any suggested revisions, and even lacked law references to substantiate his objections, so therefore I feel that, and I feel very comfortable with the way it's worded.

Chairperson Hiranaga: Taking a step back, procedurally should I ask the Department and the applicant if they're satisfied with the document as prepared?

Mr. Giroux: I don't think it's necessary. I think they already spoke on that position, and it's favorable to them so they haven't stated any objections. So I don't believe it's necessary.

Chairperson Hiranaga: Okay, thank you. Any discussion regarding the motion? Seeing none, we'll have the Deputy Director restate the motion for clarity.

Ms. McLean: The motion is to adopt the proposed written decision and order without modification.

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

Ms. McLean: Six ayes.

Chairperson Hiranaga: Opposed. Motion carried.

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

**VOTED: To Adopt the Proposed Written Decision and Order.
(Assenting - W. Shibuya, P. Wakida, D. Domingo, I. Lay, M. Tsai,
W. Hedani, K. Ball)
(Excused - J. Freitas)**

Chair Hiranaga: Moving on. Agenda Item B-4, Deputy Director?

Ms. McLean: The next item is a request from Mrs. Tasey Miyahira requesting a State Land Use Commission Special Use Permit to operate the Maui Upcountry Home Short-Term Rental Home, a four-bedroom short-term rental home in the State Ag District at 110 Apau Place, TMK: 2-4-032: 069 in Makawao. Gina Flammer was the Staff Planner. Danny Dias is filling in for Gina today.

- 4. MRS. TASEY MIYAHIRA requesting a State Land Use Commission Special Use Permit in order to operate the Maui Upcountry Home Short-Term Rental Home, a four (4)-bedroom short-term home on property situated in the State Agricultural District at 110 Apau Place, TMK: 2-4-032: 069, Makawao, Island of Maui. (SUP2 2011/0004) (G. Flammer)**

Mr. Danny Dias: Thanks, Michele. Good morning Chair Hiranaga and Members of the Maui Planning Commission. As Michele mentioned, this item is actually assigned to Gina, but she's out sick today so I'm just gonna attempt to cover for her. This project is relatively straight forward. It's a Special Use Permit in order to eventually operate a short-term rental home in Makawao. The applicant's Paitaka and Tasey Miyahira, they own a property that it's about 2.2 acres in size as mentioned located on 110 Apau Place. I'm not sure how many of you are familiar with the Kalama School area but essentially next to the Kalama School there's a bunch of soccer fields and baseball fields and this property is adjacent to those fields sort of on the western portion of Kalama Intermediate School. The property is in the State Ag District also designated Ag in the Makawao-Pukalani-Kula Community Plan and also zoned Agriculture by the County.

There are two dwellings on the property, a cottage and a main dwelling. The applicants currently rent out the cottage to long-term tenants and are proposing to rent out the main dwelling to short-term guests. The main dwelling was build in 1988. It's about twenty-three, twenty-four hundred square feet in size. It has four bedrooms and about two and a half bathrooms. In addition, the property has ample parking. The property also has an approved and implemented farm plan with the majority of the property being used for the grazing of cattle and goats.

With respect to applicable regulations, the Department feels that this application meets all the criteria regarding the operation of a short-term rental along with the SUP specifically Chapter 205-6, HRS which allows for the establishment of "unusual and reasonable uses" in the State Ag District with the approval of a SUP Permit. The guidelines established in determining "an unusual and reasonable use" are addressed in Pages 9 and 10 of the Department's report. As of today, the

Department has not received any testimony on either the Special Use Permit or the Short-Term Rental Permit. So with that, along with myself, the applicants, Paitaka and Tasey Miyahira are here to answer any questions. Thank you, Mr. Chair.

a) Public Hearing

Chair Hiranaga: At this time, I would like to open the public hearing. Is there anyone here that wishes to provide public testimony regarding this agenda item, please come forward. I believe we have someone signed up. Christy Vail?

Ms. Vail: I'm with the ...(inaudible)...

Chair Hiranaga: Oh, okay, you had indicated Agenda Item No. 4. Was it further down? Anyway, anyone else here that wishes to provide public testimony? Seeing none, the public hearing is now closed. I'll open the floor to questions from Commissioners. Mr. Shibuya?

Mr. Shibuya: Again, my standard questions. Maybe Danny can help.

Chair Hiranaga: Okay.

Mr. Shibuya: Okay, water meter service size?

Mr. Dias: I'll have the applicant come up and answer those.

Mr. Shibuya: Okay.

Mr. Paitaka Miyahira: Paitaka Miyahira. I live at 110 Apau Place. I'm not sure of the water meter size. I think it's one-inch to be honest with you. I believe it is.

Mr. Shibuya: And the fire hydrant is how far away?

Mr. Miyahira: From the property, it's probably a 100 feet away.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I am a little confused. You are applying for a short-term rental. However, in the write up, the project description it states that you intend to operate the rental as a bed and breakfast when you're living on the property and short-term rental when you're off island.

Ms. Tasey Miyahira: Hi, I'm Tasey Miyahira. I originally was gonna do a bed and breakfast and then my parents in Las Vegas are 87, 82 and I've been going back and forth caring for them. And when the law changed, I thought that would give me an opportunity to still help them and have some income in my home 'cause I have six children and I only have one left at home and the other

one is in college. I have three married and one on her own. I thought that's an opportunity to still have my home and have some income and not have to be at home and I can still care for my parents.

Ms. Wakida: No, I understand that, but maybe my question should be directed at the Assistant Planning Director. If they are applying for a bed and breakfast that sorta kicks it into another category doesn't it?

Ms. Miyahira: What happened was is I started with a bed and breakfast and then I switched over to the short-term and paid application fees and everything and canceled out the bed and breakfast. So I don't know if they just confused the paperwork, but it is a short-term vacation or short-term rental. Sorry.

Ms. Wakida: Okay, all right.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Is this a sewer, septic or cesspool?

Ms. Miyahira: Cess, cesspool.

Mr. Shibuya: Cesspool?

Ms. Miyahira: Yes.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: I assume, I'm looking at your house plan.

Ms. Miyahira: Yes.

Ms. Wakida: And you give us the upstairs guest quarters, and I'm hmmm, I'm now spotting it. I was just looking for the bathroom. I just now spotted it faintly written on the side. That's okay. Answered my own question.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Energy sustainment. What conservation initiatives as well as generating renewable power initiatives have you implemented or planning to do?

Ms. Miyahira: We haven't changed since the house was built. We bought it in 91. It stays, it stayed the same. We've done some solar lighting on the outside going up to the property. We're about 250 feet off the main street that our home is located and we've just done solar lighting and things like that, but we haven't changed anything since we purchased the home.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: You understand that if you do the short-term rental, you'll be forfeiting your homeowners exemption, right? Or you're already are...you're not doing the homeowners exemption maybe I should say?

Ms. Miyahira: I can still live there and do both, correct?

Mr. Shibuya: No.

Ms. Miyahira: Not at all. Well, I could in the cottage.

Mr. Shibuya: Well, you could continue with the cottage, but I don't think you can continue with...

Chair Hiranaga: You should pose that question to the Department.

Mr. Shibuya: Maybe the Staff can answer that.

Ms. McLean: That's correct. Once the bed and breakfast or short-term rental permit is issued the home no longer qualifies for the homeowners exemption for your property taxes. You can still live there.

Ms. Miyahira: Okay.

Ms. McLean: But you need to give up the homeowners exemption for your property taxes.

Ms. Miyahira: Okay.

Mr. Shibuya: Also, you'll have to be filing your GET, General Excise Tax.

Ms. Miyahira: Okay, yes.

Mr. Shibuya: And is there a TAT also?

Ms. Miyahira: Yes.

Chair Hiranaga: I think the Department addresses all of those standard conditions.

Mr. Shibuya: I didn't see it in here.

Ms. McLean: This is for the State Special Use Permit. Those kinds of things are conditions of a B&B Permit or a Short-Term Rental Permit which would be imposed administratively by the Department if this permit is issued.

Mr. Shibuya: Yeah, I didn't see it in here.

Ms. McLean: Right.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: I'm not sure who this is for, but there is currently a cottage on there or not?

Ms. Miyahira: Yes.

Mr. Ball: There is?

Ms. Miyahira: Yes.

Mr. Ball: Because under the EPA ruling on cesspools...are both of the structures going into the one cesspool?

Ms. Miyahira: No. The cottage has its own cess and then the house has its own cesspool.

Mr. Ball: Okay.

Chair Hiranaga: Okay, so that exhibit should be corrected 'cause your Exhibit 3 only shows one cesspool.

Ms. Miyahira: Okay, that's my fault then.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Just another clarification on your floor plan. You show us a downstairs. So I'm assuming that you have an upstairs is where you will keep for family?

Ms. Miyahira: In the main house when I'm away, I'll do it as a short-term rental. When I'm home, I'll live there.

Ms. Wakida: In the whole house.

Ms. Miyahira: Uh huh.

Ms. Wakida: I gotcha.

Mr. Ball: I've got a question.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: About a letter received from Jessie Souki from the Department of Business, Economic Development and Tourism...based on the information provided is inaccurate showing a bonafide agricultural uses on the property and a few other concerns I guess by them. I don't know were we...I didn't quite...I mean, I saw a little bit of addressing that in the conclusion statement, but not specific, so—

Chair Hiranaga: You should direct that to the Department.

Mr. Ball: I thought I was looking at them, but...

Chair Hiranaga: It's a fairly common letter.

Ms. McLean: Yeah, the Chair is correct that the State Office of Planning typically issues this same language. They have stricter...they take a stricter look at short-term rentals on Ag land than the County does. It's been the policy of the Administration and the Council to see short-term rentals and B&Bs more as a residential type use. So where those uses are conducted on Ag land whether short-term or long-term, the County generally sees those as the same. We do have a farm plan requirements for structures and in this particular case as you can see in the pictures there is bonafide agriculture going on with grazing so we're comfortable recommending approval even though the State Planning Office is a bit stricter than we are.

Mr. Ball: Okay.

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

Ms. Miyahira: You're welcome.

Chair Hiranaga: We'll have the staff recommendation.

b) Action

Mr. Dias: Thank you, Chair. The application for a Land Use Commission Special Use Permit complies with the applicable standards for an unusual and reasonable use within the State Agricultural District for reasons stated in the Maui Planning Department's report. Therefore, the Maui Planning Department recommends approval of the application with seven conditions.

Chair Hiranaga: Floor is open to a motion. Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Mr. Ball: Second.

Chair Hiranaga: Seconded by Commissioner Ball. Any discussion? No discussion. We'll have the Deputy Director restate the motion.

Ms. McLean: To approve the State Land Use Commission Special Use Permit as recommended by the Department with seven conditions.

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

Ms. McLean: Seven ayes.

Chair Hiranaga: The motion carries. Congratulations. Good luck.

Mr. Dias: Thank you.

It was moved by W. Hedani, seconded by K. Ball, then

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

Chair Hiranaga: We'll take a five-minute recess and reconvene at 1:30 p.m.

A recess was called at 1:25 p.m., and the meeting was reconvened at 1:30 p.m.

Chair Hiranaga: Next Agenda Item is G, Communications. Deputy Director?

Ms. McLean: This is a Communication item from the Chair of the Hana Advisory Committee transmitting their recommendation on the request by Arabella Ark for State Land Use Commission Special Use Permit and a Conditional Permit to operate a ceramic studio in the State Agricultural District at 46-575 Hana Highway, TMK: 1-5-008: 010 in Hana. This is posted as a Communication item because the Hana Advisory Committee conducted the public hearing on the Commission's behalf. The Staff Planner is Gina Flammer and Ann Cua is covering for her today.

D. COMMUNICATIONS

- 1. MR. JOHN BLUMER-BUELL, Chairperson of the Hana Advisory Committee to the Maui Planning Commission transmitting the Committee's Recommendation on the requests by MS. ARABELLA ARK for a State Land Use Commission Special Use Permit and a Conditional Permit to operate a ceramics studio in the State Agricultural District at 46-575 Hana Highway, TMK: 1-5-008: 010, Hana, Island of Maui. (SUP2 2011/0006) (CP 2011/0006) (G. Flammer)**

Ms. Ann Cua: Good afternoon, Members of the Commission. I'd like to start you off with a power point and we'll just all try and get through this together. Okay, so first of all just to tell you a little bit about the project, the applicant is requesting a Conditional Permit and State Special Permit to operate a ceramic studio in her residence that will allow client visitations and sales of ceramic artwork to clients. Ms. Ark had been operating a ceramic studio on her property from 2002 until 2010. The studio is 480 square feet. In 2010, she was informed by the County that permits were required based on her zoning and in the report that went to the Hana Advisory Committee, Exhibit 5 is her letter requesting the approval.

Just to note the hours of operation of her studio is 11:00 a.m. to 4:00 p.m. or by appointment. She

mentions that there's really no set days of her operation and she could be open seven days a week or she could even be open, you know, possibly one day a week. It's really dependent on her travel and her writing schedule. In terms of frequency of visitors she indicates that they can range from three or less per week to one to three per day. So that kinda puts it in perspective.

Based on her zoning, her County Ag zoning, she is required to obtain a Conditional Permit and based on her State Agricultural zoning she's required to obtain a Land Use Commission Special Use Permit. Because the acreage of the parcel is under 15 acres, it's actually .959 acres the Planning Commission is the authority to act on the Land Use Commission Special Use Permit. On the Conditional Permit, you'll be making a recommendation to the County Council who is the final authority on the Conditional Permit.

Just to go over Conditional Permit requirements based on Maui County Code, Chapter 19.40, the intent of the Conditional Permit is to provide 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 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.

I think Gina in this slide wanted to just give you a little bit of history on Conditional Permits that were issued for residential properties which is the first category for like a design office, a hair, skin and nail salon, a real estate office and just a general office. Non residential properties were also issued Conditional Permits, Nahiku Market Place, Haleakala Ranch Visitors Center, and Seabury Hall's Creative Arts Center. Some industrial uses she also listed Paia Mill telephone facility, Kihei rock crushing facility, Ameron quarry and Ameron concrete in Honokowai. So again, this is just showing you the range of uses that are required to obtain Conditional Permits and that have been granted Conditional Permits.

Okay, so again, as I mentioned, the property is located in the State Agricultural District. The lot is a non conforming Ag lot which is under one acre. No farm plan is required because it is less than one acre. However, the property does meet our farm plan ag definitions and you'll see that in some of the pictures. It's pretty extensively planted in ag. The lot is used as a home site when State Land Use Designations were made. The home on this property was built in 1947 even prior to when building permits were required.

So this is just a general location of the property. You see the A there. A little bit more specific location, the property as it relates to Hana Highway. Okay, now I'm gonna take you through some photographs very quickly of the property. To the left you can see, that's actually Gina's car parked in the driveway there. That's the property driveway. Again, another shot of the driveway, and then now this is the road that leads up to her dwelling and the proposed studio. This is also where an easement...she has an easement that allows her to traverse the property onto her residence and the studio. Again, just additional pictures. You can see it's pretty lush this area.

So this is a photograph of her studio and we're gonna kinda go into the studio now to see some of her wares, her designs. One of the matters that arose during agency comments and this was by Public Works, there was an unpermitted roof structure that was identified and so the applicant has applied for an after-the-fact permit for the storage area roof. The area however is not for public use.

This is a photograph of the residence where Ms. Ark resides and just some shots of the property where you can see it's very heavily planted. And there's also a site plan in the reports that shows these photographs and some of the planting that is on the property. As we mentioned, you know, farm plan required, but definitely meets the farm plan requirements. Avocados, papayas, flowers.

So in terms of the process, as you all know when a project is located in Hana, you have the Hana Advisory Committee that advises you. The applicant went to the Hana Advisory Committee on April 26, 2012. That process has been completed and we'll go over their recommendation and now it's your authority...at this point, your authority is on the Land Use Commission Special Use Permit as I mentioned and you will be making a recommendation on the Conditional Permit. And as I mentioned previously, the County Council is the authority on the Conditional Permit.

So on April 26th, the Hana Advisory Committee reviewed the project. Their letter is included in your packet. Four members, including the Chair voted to deny this project and their issues basically dealt with preserving Hana's uniqueness, lack of information on the easement, safety of the easement and the permitted use in Ag similar to a farm stand. There were 11 people that testified including the applicant. Three of the immediate neighbors cited issues over easement liability, noise, privacy issues, and seven residents supported the project due to arts and cultural impacts and economic benefits to the Hana community. This slide illustrates neighbors who testified in opposition and they're highlighted. So you can see where the Ark property is, it says A-R-K in red, and then the large property basically mauka of that little square is owned by Hana Koali Mesa LLC and then below that you can see highlighted the Marion Warren Trust and then the Eric Liljestrand Trust. Anyway, those are the neighbors who testified in opposition.

I distributed to you today in addition to the report that was sent to you with your agenda some additional letters and it's labeled, "Additional Exhibits." And basically it was additional letters we received as of January 15, 2013. The first was a letter from Tom Welch regarding the actual easement and his letter was to Arabella Ark and it was...it was actually regarding the Warren Trust and their...how should I say, their legal interest in that easement which he's saying is not there. And then in addition to that, we received seven letters, seven additional letters in support of the project. So total since April 12, 2012, we received 11 letters in support of the project, no letters in opposition, but we do point out that at the Hana Advisory Committee public hearing there were individuals that had strong concerns about the project. So that includes [sic] my presentation. Are there any questions?

Chair Hiranaga: Just one question. So who resides on the Warren Trust land?

Ms. Yeknich: I do. (Answered from the audience).

Ms. Cua: I guess they're in the audience.

Chair Hiranaga: You don't know their name, Ann?

Ms. Cua: I don't, sorry.

Chair Hiranaga: Does the applicant wish to make a statement?

Ms. Arabella Ark: Thank you. My name's Arabella Ark. I'm so pleased to finally be here today. This has been a bit of a wait. I'm a ceramic artist. I've been one here in Hawaii for 41 years. I was president of Hawaii Craftsmen, I taught at the Academy of Arts for 14 years, I've been a member of Hana Arts. I was their vice-president when I moved to Hana. I've taught at the Hui Noeau over the years. My work in Hawaii has been I've produced films on Hawaiian quilting, on Ryku pottery that have won national awards.

When I moved to my home in Hana, one of the first things I did was cry because two of my children had just died and I gave up my ceramic career. And then my oldest daughter said to me, mom get back to work. So I built my studio and I began operating it and everything I thought was just fine because I had owned at gallery at Ward Center for 12 years. I'd also had studio sales at my home, but then a neighbor moved in to what had been an empty property. No one had lived there for the first seven years that I had lived in my home that's on the Warren Estate. And that neighbor a few years later made a complaint and the only way I knew about it was the County telling me. So I've done what I'm supposed to do. I did my easement research. I have a land courted warranty deed easement that is only for my property, but it's also for the telephone and the electric people and so on to come up that road. The Warren Estate has no prescriptive right to it whatsoever, but I've never told them not to use it. It's fine with me if they use it.

My goal here is I create ceramics and they're shown around the world. I'm in museums, my work is in museums, I'm here, but it's in museums around the world. I want to continue that work and my great pleasure is that I get curators, I get clients and I get strangers who come to me and they want to make commission or they want to just talk story and a very delightful thing that I didn't know about before I moved to Hana is how many foreigners come down that highway and once or twice a week somebody will venture up my driveway and we talk story. I show them that King Kekaulike built a wall up where my taro patch is, I show them the seven pools out in the distance, and we just talk or I give them some food or I get cut flowers from the garden. So the *New York Times* wrote me up as a purveyor of aloha, I've been *Maui No Ka Oi*, and so on. And so it's kind of a...(inaudible)...when I was told I could not show my artwork to people. So I'm here today to respectfully ask that I be able to do it because it's not a big business. I don't have tour buses. I don't have anything like that. It's personal and I would appreciate your kokua. Thank you so much.

Mr. Hiranaga: Any questions for the applicant, Commissioners? Seeing none, thank you very much.

Ms. Ark: Thank you.

Mr. Hiranaga: At this time, I will open the floor to public testimony. We have some people signed up here.

Ms. Cua: Excuse me, Chair? Before you do, I just wanted to mention I incorrectly spoke. We did receive two letters of opposition on this project. So I just wanted to clear that.

Mr. Hiranaga: Thank you very much. Christy Vail, did you want to speak on this particular item?

Ms. Christy Vail: Yes, I do.

Mr. Hiranaga: Okay.

Ms. Vail: Good afternoon, Commissioners. My name is Christy Vail. I'm also a ceramic artist. Doing ceramics in Hawaii is difficult. All of our materials must be shipped in from the mainland. If you go to the Pacific Northwest there's a tremendous interest in ceramics and the work that they do. You can visit their studios. We are geologically too young to have clay and Pacific Northwest you can go out and dig up some clay and make pots with it. We can't do that here. So it's expensive, and it's also expensive to ship your work out. I first took a class with Arabella in the early 90's at Hui Noeau and I knew of her and I was thrilled that she was coming here to teach. I had several books that have work of hers in there. I brought this one because it says this, "monkey pod, avocado, and mango trees span the spectacular sea views of the pacific coast of the Hawaiian island of Maui which provides the idyllic setting for Arabella Ark's ceramic studio. For nearly 30 years the passion behind Arabella's work has been driven and fashioned by her surroundings. The architecture and ruins supplying a provenance for her slab built teapots and tall sculptural fortress structures. Surfaces display the rich colors of red cinder and black sand beaches splashed by sea spray and the organic textures of rocky outcroppings and lava tubes which evidence their dramatic volcanic origins and continual creation of the Hawaiian islands."

I first visited her studio with a group of artist friends who invited me to come out and see her studio and I was thrilled. It's set well off the road. It's beautifully and tastefully done and Arabella I know to be a very quiet, very private person, very professional. She is not the kind of person who has parties or makes noises. She's also a writer and I think that in talking to her on this visit, I found out more and I've lived on Maui since 1969 when there was one stop light on the island and in talking to her I learned more about that area than I had ever known from reading books. She is a fountain of information about the area and I think the visitors who stop there are astounded at the knowledge that she has about the local area. I believe in my heart that how a community, how a society treats its artists is integral to how that community chooses to live and to treat everybody. I think that arts are so integral to us. On Maui we have no Academy of Arts. I grew up on Oahu from elementary school. I went with classes to the Honolulu Academy of Arts and looked at art. We have very little of that on Maui and very little opportunity for young people to visit and see working studio artists who are doing ceramics because of the problems of doing ceramics and I know that there a lot of visitors, people read these books. She's well-known. She's been invited to lecture in Japan on the process of Raku. Raku is a Japanese process and it's quite an honor if the Japanese people are interested in how she is doing Raku here in Hawaii which is a bit of a different process so to be invited-

Mr. Hiranaga: Okay, please conclude your comments. Thank you.

Ms. Vail: -am I out of time? Okay. Thank you for your time.

Mr. Hiranaga: Questions, Commissioners? Seeing none, next individual is Patty Yeknich. Please state your name and please limit your comments to three minutes.

Ms. Patty Yeknich: Okay. Aloha. My name is Patty Yeknich and am the granddaughter of the Warren Trust. I just had some issues. I know that's it's a little concern about the easement. Of course we don't have right of way because we have land access, but back in 1947 when both

houses were built by grandfather and Lloyd Wagner who were up there instead of making two driveways up they probably sat at the end of the driveway and said, gee Lloyd, let's just go from point A to point B which they did. And the issue, if you guys would look on what was sent here. The easement is not true to the driveway. That is a huge concern. It not only...it intersects our property, crosses over our property where most of the...where the driveway is on our property then it recedes back. This is a legal liability and noise issue, everything for me. Even though they planted...said that the easement was wide enough, as you know, this is a very lush area. If you get off the sides you're causing damage, you're on our property. You cannot see the bottom of the road from Arabella's property down. We see oodles of cars coming up. Her gate's closed, they come into our property, they turn around, they ask questions, our privacy is constantly invaded. So I don't have anything against artists. She has great work. That's not the issue here. I understand she can work and do all the ceramic work up there, I just don't want public coming up and down. Who is to say if they go off the right side, if something happens they're gonna come sue us because it was our property they were on if it really gets to it. So that's basically my whole thing. And there's some little errors in facts and on the determination, I notice that the Dillinghams did not originally own that property it was the Wagners. So I'm trying to get some issues straight here. The baby pigs crossing is a huge issue for me and ...(inaudible)... That was my grandfather's doing and it's been claimed by many artists as for artwork and then come people claim it to use it for their own business as the baby pigs crossing B&B. You know it kind of a...it steps on your ego when someone uses somebody else's artwork doesn't know the whole history. That came from my grandfather.

Then her property doesn't adjoin the roadway. It does have to cross up and over. So those are little things that I just wanted to do. And then you have the ...(inaudible)... right there where the big looping one which is Robert Liljestrang or Bob's. He also has a letter in there for denial of this too. So all surrounding neighbors don't want this. It is basically a...it's a legal issue for us as the easement goes. And all I wanted to say is Hana Koali Mesa gave us a verbal easement and they're going to put it in writing too. Thank you.

Mr. Hiranaga: Questions? Ma'am? Commissioner Wakida?

Ms. Wakida: Yes, thank you for testifying. So the access to your property is not off of Hana Highway, it's off the easement?

Ms. Yeknich: It comes off the Hana Highway. If you would look at your exhibit that you were given, this big, huge packet. Did you guys get this packet also? There's exhibits that shows...I start with Exhibit 5, yeah, you got the page after that, shows my start from the highway and the line that's intersecting that is their property line in the left and easement on the right. The next page, I just walked about 25 feet up the driveway and it shows exactly. We're gonna also have this surveyed and marked too, and...you can see.

Ms. Wakida: Well, my question was... but the access to your property. How you get to your house?

Ms. Yeknich: We use that easement. And like I said, Lloyd Wagner and grandfather sat down at the bottom and said, instead of me going up and making my own driveway and you causing another driveway up the side, let's just do this together and it was the easiest due mango trees and all the

other shenanigans that are existing there.

Mr. Hiranaga: Okay, let me just clarify. Their legal access is off of Hana Highway. They have been casually using this roadway for access purposes, but as she s stated they are working with the landowner to formalize that use. But their legal access from what I'm reading is off of Hana Highway. They've been casually using that.

Ms. Wakida: Well, I wanted to get from the testifier that information.

Mr. Hiranaga: Okay. Do you concur with my statement?

Ms. Yeknich: Yes, I do.

Mr. Hiranaga: Commissioner Ball?

Mr. Ball: I have a question. It may not be for the testifier. It may be better answered by the applicant, but the map that you –

Mr. Hiranaga: I'm sorry, we're in public testimony right now.

Mr. Ball: Okay, so I'll ask you this question.

Mr. Hiranaga: Yes.

Mr. Ball: The map that you showed us here and there's this other map, so I just wanna get all the landowners straight I guess.

Ms. Yeknich: Okay.

Mr. Ball: So the Koali land is the same land as the trust land, right, the bottom trust land? Yes?

Ms. Yeknich: What you have here...I don't...(inaudible-not speaking into a microphone)...

Mr. Hiranaga: I'm sorry, you need to speak into the microphone.

Ms. Yeknich: Hana Koali Mesa is the owner of all this land in this area, and Ark is...she's got one little, less than an acre right there. This is the area that we have, and then Bob Liljestrand owns this large here, and so she...this is where the driveway comes up. This, there's one easement and then there's another easement. Actually this easement is not exclusive for Arabella. It also...it has an exclusivity for Bob Liljestrand. My parents...(inaudible)...so they wouldn't come up and through the properties which would be a nightmare and Arabella should agree with that because it would heinous to go between our two properties is my mother allowed him to come onto his property through here on our property. So that solved our problem for having ingress and egress that way. Like I said, Hana Koali Mesa, Joe Richman is the one that testified for that and they actually own the easement if the utilities and her and Bob did not need ingress and egress. So that's how that works.

Mr. Ball: And what's that little triangle?

Ms. Yeknich: This triangle here?

Mr. Ball: No, further in. Sorta kinda that, no, yeah.

Ms. Yeknich: There's an actual little tiny piece of property that's been contested by the Hawaiians as I know and Hana Koali Mesa has more information on that. It's totally acres and acres away. Actually it's probably about three or four acres away from that.

Mr. Hiranaga: It's a Royal Patent.

Mr. Ball: Okay, so my question is on this map here, right, we got these colored here, so this pink section that kinda runs through...like kinda runs off the easement and then kinda runs back-

Ms. Yeknich: To our property and then-

Mr. Ball: And then there's like a driveway I guess to-

Ms. Yeknich: You can see the dotted line. You can see the driveway is actually in black, okay.

Mr. Ball: Okay, right.

Ms. Yeknich: Or exactly the property line is in black. The dotted line on either side of it is the roadway. Very tiny small dots there.

Mr. Ball: Okay.

Ms. Yeknich: You can see how that intersects and goes past the easement, going into our property, goes back to the easement. We just have a legal issue with because that is on our property too.

Mr. Ball: And this building here at the top of the easement, what is that?

Ms. Yeknich: Building at the top of the easement actually you see building on the bottom part is our chicken house then we have a carport and our house. There's a little building on the easement that used to be a generator building before they had electric in Hana and that is what my grandfather and Wagner used. They had a big generator there and they shared the use of that, and that building has fallen down but the structure still stands.

Mr. Ball: Okay.

Mr. Hiranaga: Any other questions for the testifier?

Ms. Yeknich: I do have one more thing, the other day she's never had-

Mr. Hiranaga: Ma'am I thought you concluded your remarks?

Ms. Yeknich: Okay, well, all right.

Mr. Hiranaga: I have a question for you.

Ms. Yeknich: Sure.

Mr. Hiranaga: If they relocated the roadway within the 30-foot wide access easement would that satisfy some of your concerns?

Ms. Yeknich: Yeah, definitely. It would be very interesting 'cause it's gonna cost thousands, and thousands, and thousands of dollars for them to do that there's five or six large mangos that –

Mr. Hiranaga: But that would–

Ms. Yeknich: Sure.

Mr. Hiranaga: And if the–

Ms. Yeknich: We could get our own ingress and egress, and she had own.

Mr. Hiranaga: And if they erected a fence that would then prevent people visiting that property from driving onto your property.

Ms. Yeknich: Yeah, we'd have to redo the entire driveway. One for us and then she would have to take care of it and obviously it wouldn't come out of our pocket and I don't know if Hana Koali Mesa would care so it would have to come out of her since it's her exclusive.

Mr. Hiranaga: And maybe signage at the entrance saying whether she's open or closed?

Ms. Yeknich: It does have signage still to this day. It's always had signage. That's what allows people to come up and say, hey there's somebody up here. Oh, her gate's closed, let's come see.

Mr. Hiranaga: Does it say whether she's open or closed?

Ms. Yeknich: Sometimes. Well, no that kinda shows that you have a business running and so she's had to not do that. You know what I mean? Open, closed shows that you're running a...

Mr. Hiranaga: But if she got a sign--

Ms. Yeknich: She does have a sign.

Mr. Hiranaga: If she was...let me finish my question before you answer it.

Ms. Yeknich: Sorry.

Mr. Hiranaga: So you answer the right question. If she were to receive this Conditional Permit

which we will not grant it's from the Council would that help alleviate some of your concerns if one of the conditions was she was to place an open or closed sign out there?

Ms. Yeknich: No.

Mr. Hiranaga: Okay, just want an answer to my question. Thank you. Any other questions, Commissioners? Seeing none, thank you very much. Next testifier is Walt Yeknich. Walt are you gonna testify? Please come forward.

Mr. Walt Yeknich: Thank you for listening to our arguments I guess. My name is Walt Yeknich. I'm Patty's husband, and I reside at the same residence she does. One of my biggest concerns is after the County did all the surveys and stuff about the safety and roadway frontages and all this stuff is fire for one. We have an inch and quarter water line that comes across the hill from a little, probably eight, six-thousand gallon tank. If the pumping station in Hamoa quits at 4:30, if everybody in Koali which is I don't probably 10 houses takes a shower at 5 o'clock, we're out of water. That quick. That simple and that quick. I report all the water leaks. I try to help the Water Commission out there and stuff. The line is very poor. The whole situation ends at our house. The cable ends at our house, electric ends at our house, the water ends at our house, everything. So we're the last one to know anything out there.

And as my wife has said, the visitation by other people has become ridiculous. It's got to the point that I don't even lie if I come around the corner of the driveway, you better look three ways, you'll get run over. And if you're not challenged by someone with a middle finger sticking up at you, they're cursing at you coming down your own driveway. Just a couple days ago we took photos of pictures here in the driveway. My daughter was there. We had to ask these people to move. Of course, you can see they're over on our property,...(inaudible)...vegetation, walking everywhere. It's kinda like the blow hole issue out in ...(inaudible)...Road and stuff. It's private property, please stay off of it. That's all we ask. I'm not against artists whatsoever in this world. I love artists. I think it's cool. I don't care if they make nuclear devices up there. Don't invite the public across our property to see it.

And one of the resolutions I see the whole thing is putting a gate at the bottom of the hill that way you can control the come and go people, influx of people 'cause I don't know who's going to show up in my driveway uninvited any time of day, anytime of night, and they always wanna ask about the baby pig crossing signs and stuff like that. I don't care about answering all these questions all the time. I'm not trying to be anti aloha. We just like our personal space. And there's a few ways to resolve it, and we'll just have to see what happens after this deal, you know, I don't know. If anybody wants to look at some of these pictures we have, it's fine. I don't know if I'm allowed to submit 'em or what.

But it's been a very...it's a very precarious attitude out there. I mean, there's all kinds of rumors how things start like the baby pig crossing signs for example, things like that. That's not out of humorism. My father-in-law was a rude old man. He'd call Mr. Parks and go, bang, bang, your pigs are shot, come get 'em. That's how the sign got there. If the public wants to know the truth. Pick out three numbers and say bang, bang, Mr. Park come get your pigs, they're destroying my cattle. I have cattle there. I have chickens there. I've had people in my pasture fields. My chickens

are...they have a bed and breakfast that's still operating up there on that hill as far as I know. There's different cars there all the time. I'm waiting for somebody to call me some morning going your rooster's crowing at 3 o'clock in the morning. My guests can't sleep. What's gonna happen to my ag property then? If she sells the property which it's on the market for sale, is it more valuable commercial, if it's private? Then what will it be, 7-Eleven? We'll just keep on stretching this thing out. This is a very, very rural community we live in Koali. All our neighbors get along very well. All of them.

Mr. Hiranaga: Thank you very much.

Mr. Yeknich: Thank you for your time.

Mr. Hiranaga: Questions, Commissioners? Commissioner Hedani?

Mr. Hedani: I'm sorry, I didn't get your name?

Mr. Yeknich: Walt.

Mr. Hedani: Walt.

Mr. Yeknich: Yes.

Mr. Hedani: It seems to me that there's a dispute over use of the driveway as the primary concern. You use the term, my driveway, my property.

Mr. Yeknich: It is in our property that they're—

Mr. Hiranaga: Sir, allow the Commissioner to complete his statement before you answer.

Mr. Yeknich: Oh, okay, sure. Yeah.

Mr. Hedani: The question basically that I have is from the documents that I see it appears to me that the driveway serves Lot 10. It's Land Courted which means they have an absolute right to use that driveway to access their property. There's no access right for your property according to the Land Court in the current situation. So you are using the driveway that accesses Lot 10 as your personal driveway is that correct?

Mr. Yeknich: We have a verbal agreement with Koali Mesa and Robert Liljestrand.

Mr. Hedani: Verbal agreements don't count in Land Court.

Mr. Yeknich: Okay. I mean, we have the full discretion. What we'll do is just build a fence on our property line and they can spend a million dollars and make their own driveway. That's what it will amount to when it all comes to the end see that's the problem.

Mr. Hedani: Okay.

Mr. Hiranaga: Commissioner Ball?

Mr. Ball: Can you tell me where these pictures are?

Mr. Yeknich: The picture on the lower is looking from my house out the driveway, you see the white car, you have to turn right there to go down the driveway.

Mr. Ball: And you go down the driveway.

Mr. Yeknich: Yes.

Mr. Ball: So it be coming at it.

Mr. Yeknich: Yes.

Mr. Ball: This is the—

Mr. Yeknich: That's uphill. That mauka from that white car.

Mr. Ball: Is the neighboring property?

Mr. Yeknich: Yes.

Mr. Ball: And this is your property here?

Mr. Yeknich: Yes.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: Do you happen to have on your property by your driveway any private property signs and signs that say private property?

Mr. Yeknich: Yes, on a mango tree on the Kipahulu side of our property. Yes, I have a private sign there.

Ms. Wakida: This is off that easement road, correct?

Mr. Yeknich: It's on a tree on my property, yeah, it's off the road, yeah.

Ms. Wakida: From that, okay.

Mr. Yeknich: Yeah.

Mr. Hiranaga: Any other questions, Commissioners? Seeing None, thank you very much. Next person to testify is D. Pierce Gray.

Ms. Ark: I don't think he's here right now. He was here this morning.

Mr. Hiranaga: Okay, next person is Ryan, try to guess, Buckley.

Ms. Ark: Ryan was here this morning too. ...(inaudible-speaking from the audience)...

Mr. Hiranaga: Thank you. Is there anyone else? Martha Yacht?

Ms. Martha Yacht: Good afternoon. I know Arabella for about three years now and we play Scrabble together. I have been to her house about three dozen times. Day, weekend, night time and so far I've never seen anybody at all come up her driveway. And so I don't even know how she makes a living because there's nobody there. But I also work at the Hana Cultural Center. And people are always asking us what is there to do in Hana? So we like to try and tell them what there is to do. And I don't think that in any way at all it injures our neighborhood to have artists selling artwork. Doing these complaints on an ad hoc basis is so unfair. If nobody complains you're good for anything and really we need the people who fix our cars and paint our houses and do fingernails and haircuts and welding and there's all kinds of very small businesses that aren't exactly sanctioned but nobody is making a fuss about it. But for one person to make a fuss and then everybody else gets off scot-free that's just not right.

Also, these exceptions go on in both Rural and Agriculturally zoned areas. There's all kinds of people in residential areas that have home businesses and we value them. We don't want you to close down home businesses. For our...as I said, for our visitor benefits, we'd like to have places to send people and especially, we have such awesome things being produced on that road even the coconut baskets that people sell by the road. If you wanna make a fuss about is this business illegal person to have a business selling baskets by the road, you could if somebody wants to complain to you, and if nobody complains then it goes on.

And lastly is about the easement, I have had easements and I understand them to mean that it was attached to my property for my benefit. And if that's the case, and I think it is, then the easement attaches to the Ark property and the other property has to have its own driveway and that's everything I have to say. Thank you. I'm under three minutes.

Mr. Hiranaga: Questions for the testifier? Seeing none—

Ms. Yacht: Oh, oh, excuse me.

Mr. Hiranaga: No questions. Thank you.

Ms. Yacht: Oh, okay.

Mr. Hiranaga: Anyone else that wishes to provide public testimony at this time, please come forward? Please identify yourself and limit your comments to three minutes.

Mr. Andrew Rayner: I'm Andrew Rayner, and friend of Arabellas. Arabella is an asset to Maui and to Hana. We have very few business opportunities in Hana. Arabella is an important artist and she

is I think probably our most famous citizen certainly in the art world. There are very few businesses which are suitable for Hana. Wearing my hat as president of the Hana Business Council I can say that an appropriate business for Hana is a home business and it's almost universally true. We have very little business space which is appropriately zoned. And for one, I beg you to grant the application.

Mr. Hiranaga: Questions for the testifier? Seeing none, thank you very much. Anyone else wishes to provide testimony at this time, please come forward?

Ms. Rebecca Buckley Betalia: Hello, my name's Rebecca Buckley Betalia and I've been a resident of Hana for over 25 years and I'm a flower farmer. And I'm here in support of Arabella. She's been a friend of mine for a long time. I've been to her home many times. I have never seen much traffic up her driveway to tell you the truth, but she is really an asset to our community and I think that you have to ask yourself what kind of a community do you want when you live in a remote town like Hana? And I think being an artist fits our community. She served on the board of Hana Arts to encourage art for the students at Hana School. She donates to silent auctions when we have festivals in Hana. She's a community asset to our little town out there. And I just hate to see this. It seems to me this is a dispute between neighbors. And I just hope that there can be some kind of a compromise struck on this particularly the easement issue. It sounds like it's kind of a gray area and it's confusing and Walt and Patty say well, they have liability. Well, Arabella apparently does too. We have people that go to see them cross over her property and I'm not quite sure how the liability on easements work but it seems like this kind of cloudy area needs to be cleared up. At least that's what I get from what everybody is saying here. So I just hope that we can come up with some kind of a compromise that works out for both people. I would hate to see Arabella sell her house and move away from Hana because of this whole thing when there are many other artists that are practicing their craft on their property too without problems.

Mr. Hiranaga: Thank you. Questions, Commissioners? Seeing none, thank you very much. Anyone else wishes to provide testimony, please come forward?

Ms. Robin Rayner: Hello, my name is Robin Rayner and I'm here to testify on behalf of Arabella Ark. I am president of Hana Arts and Arabella has been my vice-president for some time. She was instrumental in putting together a ceramics program for our community. She's done a lot of things for our community. I've also seen her gallery work in Europe and I've seen her work in Honolulu as well. She's very well respected. But I have to say and I think that it's...this appears to be a dispute among neighbors and it's unfortunate that anyone with a gripe can present a complaint and shut down someone who has a legitimate business, a fair and reasonable business. Hana is a very remote place. We have no accommodations for business in our community. Almost everything has to be done out of the home and most of it is done illegal according to the zoning bylaws which is also unfortunate and that's part of the reason we're here today because the zoning bylaws limit us having businesses in our community even though there are no buildings, there are no other places in Hana to run businesses legally. So Arabella is sort of caught in this situation. And so I hope that you can see the wisdom of providing space and opportunities for businesses in our community and particularly the arts because it's an ideal sort of business for our community, it suits very well with what Hana is about and keeping Hana, Hana, I believe.

And one last comment I'd like to say is that we have neighbors that have teenage children. Arabella lives alone, she has four bedrooms in her house. Should the house be sold to someone with three teenagers, you'll see an awful lot more traffic going up that driveway than you will right now with her business the way it is I would venture. So it's something else to think about. She actually lives a very, very quiet life and very little activity there other than people, and people who normally come with respect to her, to her house and her studio. And I've been there numbers of times and she's always very careful about guiding us down the driveway. She tells us how to turn around on her property. If we do have to back down, she tells us where to back down and how to back down so we're not interfering with anyone else in the community or on the abutting neighbors and that's just been my firsthand experience. So thank you very much for the opportunity to present to you.

Mr. Hiranaga: Questions, Commissioners? Seeing none, thank you. Anyone else wishes to provide testimony at this time, please come forward?

Unidentified Speaker: May I just say--

Mr. Hiranaga: You're out of order. Please sit down. Thank you. Anyone else wishes to provide public testimony at this time? Ms. Ark as the applicant you've already spoken, but you will be available to answer questions from the Commissioners. At this time, I'll close the public testimony. Open the floor to questions from Commissioners. Commissioner Lay?

Mr. Lay: Okay, three questions for Corp. Counsel if I may? With this Conditional Permit will it affect the easement as far as them having commercial traffic going up and down that road if it is approved.

Mr. Giroux: Chair?

Mr. Hiranaga: Corporation Counsel?

Mr. Giroux: As far as the easement that's going to be amongst the parties as far as does that easement...the change in use affect, you know, whether or not the parties are gonna start disputing the use. I haven't seen the document supporting the easement. I'm not exactly sure what the wording is on it. But as far as the County's concern we're looking at just whether or not they have access to the property or not. And as the easement...as far as the County is concerned, they've been given information that this property does have access, but that's no guarantee that, you know, there's not going to be litigation amongst neighbors as far as whether or not that easement is, you know, causing any type of violation.

Mr. Lay: Second question if I may?

Mr. Hiranaga: Continue.

Mr. Lay: With that easement, can they fence both sides of that roadway going in like we've heard to her property?

Mr. Giroux: No, I believe that if that easement's been Land Courted, if it runs over somebody else's property part of the...part of having an easement is that the landowner cannot block those easements. That's my understanding of the law.

Mr. Hiranaga: But what you're asking if a fence can be erected around the boundary of the easement?

Mr. Giroux: No, he said to block it.

Mr. Lay: No, no, that's the third question. The second question would be can she put a fence line on her...that easement going up to her property.

Mr. Hiranaga: Along the boundary?

Mr. Lay: Yes, on that boundary.

Mr. Hiranaga: Legal boundary.

Mr. Lay: That falls under easement, huh?

Mr. Giroux: Yeah, you know, that one's a little more tricky. I don't...you know, I don't think...and again, I would have to actually read what was filed on the property, but to fence off the easement, I don't-

Mr. Hiranaga: It's not to fence off the easement, it's to separate the two landowners 'cause one land owner is complaining that people are using their property to turn around. So if you erect a fence it will prevent the cars from accessing the neighbor's property. I think that's what he's asking.

Mr. Lay: At this point, we're looking at just...as an access for their house that we're seeing right now, right? With that easement and for utilities, right, that's what we're seeing?

Mr. Ball: Something to throw into that conversation.

Mr. Hiranaga: Commissioner Ball?

Mr. Ball: But remember the easement and the actual driveway are kinda different. They're not the same. So, you're talking about two different things. Fencing the easement which then would cut off some of the driveway, existing driveway or is it fencing off the driveway that's kind of there in the middle of everywhere?

Mr. Hiranaga: Driveways can be moved.

Mr. Ball: Right. But just going back to your statement whether it's the...actual easement or if it's the actual existing driveway would be the clarification I guess on that.

Ms. Cua: Mr. Chair? Mr. Chair?

Mr. Hiranaga: No, I'm thinking.

Ms. Cua: Oh, okay, sorry.

Mr. Hiranaga: Yes, Ann?

Ms. Cua: Thank you. I don't know if this would provide any help, but it's just something that you guys should be aware of. So if you look at...so that cover sheet that Gina provided the January 7, 2013-letter to the Chair and the Commission talking about the Hana Advisory Committee's recommendation. On Page 6, it refers to exhibits, and Exhibit No. 8 says that Joel Richman submitted a copy of the title report for adjacent lot owned by Hana Koali Mesa stating on Page 4 that there are encroachments on the lot and a map showing the encroachments highlighted in pink. Okay, so if you look at Exhibit 8, and you know, the last page before you get to this blue...before you get to this blue separation, Exhibit A, talks about Lot 1 area 0.959 acres more or less, okay. That is the property. And then the next paragraph says, together with an easement 30 feet wide for access and utility purposes. So just to direct you to that.

Mr. Hiranaga: Yeah, but typically, typically there is a underlying document that is more specific to what is actually allowed in that easement. That's what I think Corporation Counsel is referring to. He needs to review that-

Ms. Cua: Right.

Mr. Hiranaga: -to answer the Commissioner's question.

Ms. Cua: I just wasn't sure if everybody was aware that we even had this in the report. So I just wanted to let you know.

Mr. Hiranaga: Okay, who had their hand up next? Commissioner Hedani?

Mr. Hedani: Ann, can you tell me who built the driveway? Who built the driveway in the wrong location?

Ms. Cua: Sorry, I have no idea.

Mr. Hedani: Does someone in the audience know?

Mr. Hiranaga: You cannot...that's out...you're out of order. You cannot, I'm sorry. You may I guess whisper it into Ann's ear if she wants to tell us.

Ms. Cua: I believe what I'm hearing is the-

Mr. Hiranaga: I think the testifier mentioned it was her father and someone else that-

Ms. Cua: Patty, Patty mentioned it's her grandfather.

Mr. Hiranaga: Commissioner Hedani?

Mr. Hedani: Does the applicant in this particular case have any problem with her neighbors utilizing the existing driveway at the current time?

Ms. Cua: I believe—

Mr. Hedani: Does Arabella have a problem with the heirs of the trust using the driveway to access their property?

Ms. Cua: I thought I heard her say, again, I'm just kinda stepping in for Gina so I don't have all the history. I don't know all the players, but I thought I heard her say at the microphone—was it her that said, she doesn't mind if other people use the easement? Yeah, that's what I thought I heard her say today.

Mr. Hedani: Thank you.

Mr. Hiranaga: Actually, and maybe Corporation Counsel wants to chime in, but the landowner that is encumbered by the access easement is the one that is concerned about liability. She has the right to use a portion of his land for access purposes. She technically does not control who uses that because she doesn't own the land. She knows she has a right to use that. So the liability is really the Hana Koali Mesa LLC.

Mr. Hedani: Right.

Mr. Hiranaga: They're the ones that's ...(inaudible)... not her.

Mr. Ball: And the Warrens, I guess, it runs partially on their property also, right?

Chair Hiranaga: Well, that's an encroachment issue which is—

Mr. Ball: The driveway is just a verbal.

Chair Hiranaga: Could you speak up, Commissioner Ball?

Mr. Ball: Because the...the existing driveway that's in this dotted pink line is just a verbal driveway.

Chair Hiranaga: It's a verbal consent which I don't believe is binding, but I'm not an attorney.

Mr. Ball: Because we wanted...we're calling it the easement but the easement is actually, it meanders through the easement and onto the adjoining property.

Chair Hiranaga: The easement is described by...the easement is described by metes and bounds description. The driveway is wandering in and out of that easement area.

Mr. Ball: Right. Just want people to know when they're calling it the easement it's not really the

easement. The easement is there. If you're calling the easement the easement or the driveway the driveway. They happen to be two different.

Chair Hiranaga: Yeah, the driveway is not always in the proper location. Commissioner Ball? Commissioner Tsai, since you haven't-

Mr. Ball: I had a-

Chair Hiranaga: You had a chance.

Mr. Tsai: I have to get my turn, guys. Ann, can you clarify Exhibit 5 after page, what is it...that map and following what are the those dots, are they supposed to signify the easement relative to the driveway?

Ms. Cua: I believe that's what Patty testified. That...you're talking about that line?

Mr. Tsai: Yes, we have like on...how many...Exhibit 5, they have five pictures in there with one that's drawn.

Ms. Cua: Yes. I believe it was either Patty or her husband. Yeah, so Patty talked about those lines that are in those photos is the basic discrepancy between like Commissioner said, when you talk about the easement, the easement is not necessarily the road in certain portions. And that's what she was trying to claim here is that where the lines are drawn part of...on one side is the easement and on one side is their property and that thus the concern.

Mr. Tsai: Is this done by a professional surveyor or just...

Ms. Cua: I don't, I don't believe so.

Ms. McLean: The marks on the photograph.

Mr. Tsai: The marks on the photograph.

Ms. Cua: No, you're talking about the line, right?

Mr. Tsai: Yeah, I'm talking about the lines, you have dotted and you have a straight line on...

Ms. Cua: Yeah, I don't know who drew that line.

Chair Hiranaga: You're done?

Mr. Tsai: Yeah.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I just wanna follow up here on that same exhibit. This map came from the, I'm sorry,

I forgot...(inaudible)..., the Yeknichs, correct?

Chair Hiranaga: Exhibit number?

Ms. Wakida: 5A.

Ms. Cua: Right.

Chair Hiranaga: Who prepared Exhibit 5A?

Ms. Wakida: Yes.

Ms. McLean: The Yeknichs' did. They presented that to the Hana Advisory Committee.

Ms. Cua: From Walter and Patty.

Ms. Wakida: Yeah, so-

Ms. Cua: It's attached to their letter, I believe.

Ms. Wakida: Right, and this, I just wanna clarify never mind the pink part, but all these line drawings this came off of...what source is this map from? Do you have any idea?

Ms. Cua: I believe it was drawn by is it Valera? I believe Valera.

Ms. Wakida: By who?

Ms. Cua: Engineer, Mr. Ed Valera.

Ms. Wakida: Okay.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: So, I guess the bottom line is, is I don't know if Arabella is willing to remedy the situation and that's of having people drive up the driveway and driving into the neighbor's property. I mean, I live in town and I would want people doing that and people move to Hana to get away from that sorta situation and now that situation is created and how are we going to remedy that? Is there a solution for that?

Chair Hiranaga: Well, I think you need to first ask questions to clarify what is being presented and once a motion is on the floor you can start discussing conditions or...

Mr. Ball: Well, I need to find that out before I would make a motion because I don't...right now the motion is denial, but if I hear a valid solution for the problem then I might change that to-

Chair Hiranaga: Well, why don't you ask the applicant?

Mr. Ball: I thought I just did.

Ms. Ark: Hi, I'm Arabella Ark. There is a...I'd like to clarify something if I may about the easement. The easement was given to me as a warranty deed when I bought the property. It's not shaped like this, it's shaped like this. And so when you see that red line that goes straight up to my house, it turns left, it goes across the Warren Trust all the way over to Lilijestrands that is the easement that is for my use. It is not so when my car, when I come down my driveway I can reverse from my cattle guard that's on my personal property, I can reverse into the easement facing the Warrens backwards and then go down. The pictures that they showed you of two cars were cars on the easement because it's shaped like a seven. They object because their living room is 500 feet away and they have cattle guard that denotes where their property starts. Their property is not as you can see right there. It's the easement that's there. We've got a 30-foot space. So, I can't see it as...I'm not and my guests are not encroaching on their personal property. It's the easement that's the same as if you come up my drive or you turn left. What they have actually done and I didn't come here to cause huhu but they've actually fenced it off so that I cannot use that easement and that's where that part is. But I wanted to let you know, it's not just a straight shot to my house. My easement is up and across.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Arabella, could you please just walk up to the map and point to where the fence...the gate is?

Chair Hiranaga: I'm sorry to interrupt. Commissioner Ball was your question answered?

Mr. Ball: Not really, but...

Chair Hiranaga: You wanna restate it so that applicant can answer your question?

Mr. Ball: Well, what I'm looking for is a solution.

Ms. Ark: Me too.

Mr. Ball: With your neighbor. Your answer didn't offer a solution, it was a defense, so looking for, you know, more ti leaves or a fence or different...(inaudible)...

Ms. Ark: I have a solution. The solution is, they do not have a prescriptive right nor do they have any right to use this easement. They have full frontage on the Hana Highway. They can put in their own driveway, they'll never look at me, I'll never look at them, but they haven't thought of that option, but it's a pretty straightforward one. Any more that I need to say to answer you? May I continue with this? So right here is the Hana Highway and the easement, I put in a fence along Koali Mesa. The reason there's some confusion about the land is Koali Mesa only bought this property from the big landowner called Hana Huli a few years ago and they are in the process of developing that land. But I have this, and we had wild cattle and the cattle were coming down on the highway so when Hana Huli owned the land, I asked if I could put a fence down here and they said yes, but directly on this side it's owned by the Warren Trust so there's no way that I would put

a fence along there nor I think would Koali Mesa. This is the Warren's property, but the easement comes up, and over here and my land is fenced here, but the Yeknichs have put a fence across here so that I can't access my own property on my southern boundary, but that's...so is that clearer now?

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Just to...I just wanna be clear, so you're saying that the easement goes straight up and then how far and it goes clear over until it goes up again?

Ms. Ark: The easement goes all the way here to Bob Liljestrand's property and the Marion Warren Trust told me before the Yeknichs ever moved there that they preferred not to have Bob drive along here to his property so they bulldozed, another neighbor of ours bulldozed part of their land and made him a driveway here. Again, an agreement that he wouldn't drive with his headlights going into their house along this easement and he did that. But they and I have no such agreement.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: Arabella, at the time you purchased your property I assume the driveway existed at the time you purchased your property were you told that you could use that driveway to access your property?

Ms. Ark: It's in my deed, yes, absolutely. I have a warranty deed for the easement.

Mr. Hedani: Let's separate, let's separate the actual driveway that exists from the right to an easement which is different because whoever built the driveway built it in the wrong location. They didn't put the driveway inside of the easement. It goes at one point according to the map I have, it goes a 100 percent outside of the easement onto the Warren property and then it meanders back into the easement area. So the actual hard pavement is in the wrong place. So my question is who built the driveway, and who gave you the right to use that driveway to access your property?

Ms. Ark: I do not know who built the driveway.

Mr. Hedani: It's probably her grandfather is my guess.

Ms. Ark: Perhaps so. I do know that it was land courted I believe in 1987, and when it was land courted it was an "as is." If somebody had wanted to make huhu about where that was they would have, I believe, needed to do it at that time. So actually my mother bought the property I'm in first and then I acquired it from her later. But we were never told...that was...we always understood that that was our driveway. And in fact, I spoke with the Morris' who are the Yeknich's parents when I moved in and we discussed who cleaned the easement, who took care of things, and I planted plants and I said, well I'll do the mauka and the Hana side and they said that the other side belonged to them so that wasn't mine to touch.

Mr. Hedani: Okay, I think from my own personal perspective, what we've lost over the years is a little bit of the aloha that existed way back when. We build one driveway, we share its use, you use it, I use it, everybody's happy. And that's basically where, you know, I think things have changed.

Ms. Ark: That's been my attitude as well and it's really broken my heart that a few years after these people moved in, they actually hand-carved signs and nailed them to the trees saying, "if I were you I'd turn back now." And I actually asked in writing of Mrs. Yeknich if in the spirit of aloha because it's my easement driveway if they needed that kind of sign to put them on their own property and that's when they complained to the County about my ceramics studio. So it is humbug.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Wakida?

Ms. Wakida: This is for our Corporation Counsel. We've got this letter from Mancini, Welch, and Geiger that lays out I guess, it says that the owners and occupants of the Warren Trust land do not have any legal or recorded right to use the easement or for a driveway serving the Warren Land Trust. So, it seems like the last basis of contention is the little bit where the roadway that's supposed to be on the easement encroaches on their property. Is that seem to be what's left?

Mr. Giroux: Seems like a easy matter, but it raises the complications of straightening all that out. They don't have the right to use it, but it is on their property.

Ms. Wakida: Yeah.

Mr. Giroux: And that's the distinguish between an easement and a real driveway.

Mr. Ball: Question?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Then that goes for both sides, right? Because the easement side people now are traveling on-

Mr. Giroux: Somebody else's land.

Mr. Ball: -the other people's property. So it's kinda that old...(inaudible)...thing where it benefits the Warrens because their access is right on Hana Highway, they potentially could build their own driveway, right, and then say, well, you can't...I don't recognize your driveway...your existing driveway, I recognize your easement, but you cannot use my driveway anymore. It comes onto my side of the property or is that-

Mr. Giroux: You know, you got like three attorneys involved in this so I hate to say anything that any of them has ...(inaudible)...to. All I can say is that, you know, if...we know what the issues are. But these are all between the property owners and they can litigate themselves into poverty if they want, and the lawyers walk away with...you know, unless people start being reasonable and working things out. I think one of the issues is is that the large landowner who has the easement on his own property is taking the position that nobody else has a right to use that because that

would be an additional use of the easement that is not prescribed in land court. That's one person's position and that's the large landowner. And then you've heard the applicant's position and you've heard the neighbors who would benefit from the use of that easement and their position, that it, it actually...the actual road is then on their property and if they wanna fence their own property they have every right to do so if it doesn't encroach on the easement. So you know, surveys need to be done, actions taken, litigation incurs.

Chair Hiranaga: Well, not necessary litigation, mediation. Any other questions, Commissioners? No questions. I guess we'll...oh, I'm sorry, Deputy Director wishes to comment.

Ms. McLean: Thank you, Chair. I appreciate the opportunity. If I could ask Arabella a question? Ann, can you show her the exhibit with the driveway shown in pink? What the Commission is trying to reconcile is that the driveway that's shown more or less in pink, you know, assuming that this map is accurate that the driveway meanders in and out of the easement. So in order for your property to be accessed solely by the easement that driveway would have to be widened looking at the map to the right in several areas. Is that physically possible due to terrain and vegetation and so forth?

Ms. Ark: It's physically possible, but it wouldn't be up to me. I believe it would be up to Koali Mesa if they wanted to realign that driveway. It is...the driveway's crowned so that on that Hana side that shows where the encroachment is it does go down and when we have heavy flooding that's where the water runs. So I have it planted on the up slope from it toward the fence with Sago Palms. The Yeknichs have cut down several trees that I had planted on that driveway, palm trees, so that they could get their tractors and backhoes turned into the easement, but other than that, yeah it's—but again, it's not my job to realign that that would be Koali Mesa.

Ms. McLean: Has that question ever been asked of them? It hasn't come up before this process?

Ms. Ark: It has not come up, no. In my opinion it would be a silly one and quite expensive.

Ms. McLean: Okay, thank you. That was my question.

Chair Hiranaga: Any other questions, Commissioners? At this time, we'll have the staff recommendation.

Ms. Cua: Well, I guess at this time it's basically reviewing what's happened. I mean, the Department had recommended approval of the project to the Hana Advisory Committee. We recommended that there be conditions attached to the Conditional Permit as well as the State Special Permit. However, you have before you a recommendation from the Hana Advisory Committee, a recommendation to deny the permit. So that's what you have before you.

Chair Hiranaga: Any questions regarding the recommendation?

Ms. Cua: And excuse me, Chair, our recommendation, you know, this thick report that you have, our recommendation dated April 26, 2012 is attached and those conditions are there if we need to use that.

Chair Hiranaga: So this is a recommendation...well, this is approval of a Special Use Permit and a recommendation to Council for a Conditional Use Permit?

Ms. Cua: That's correct.

Chair Hiranaga: But if the Special Use Permit is not granted that kills the deal, there's no ...(inaudible)...

Ms. Cua: Yeah, they need both. They need both.

Chair Hiranaga: Before I open the floor to a motion I'd like to make a comment which I don't normally do. When someone is applying for a Special Use Permit or a Conditional Permit, they're requesting basically a privilege to operate or use property that's not zoned for that use. When they do that, they should mitigate the impact as much as reasonable to their neighbors because they are infringing on the private property rights of their neighbors. For me, I would have the adjoining neighbors survey that property line, erect some type of a barrier, and prevent access to cross the boundary line, and I would also stop using that easement for their personal access. They should go back to Hana Highway and use that, put up a boundary and who cares where that roadway is 'cause they won't be able to use it because there'll be a barrier along the property line which is legally described and that's how you remedy that access issue. I mean, they don't have to relocate the driveway, they could drive on the dirt. As long as they're within the 30-foot wide easement area to me that's the practical remedy. And so I will open the floor to a motion. Commissioner Hedani? Let's take it one at a time, SUP first.

Mr. Hedani: First of all, it's not on a green sheet so I can't see the recommendation.

Ms. Cua: Oh, you're right. But it is separated by blue dividers.

Mr. Hedani: Right, it is separated with blue dividers.

Ms. Cua: And it's about half, more than halfway through.

Mr. Hedani: The Department's recommendation is for approval of the State Land Use Commission Special Use Permit--

Ms. Cua: That is--

Mr. Hedani: --subject to the conditions.

Ms. Cua: Subject to seven standard conditions and six project specific conditions.

Mr. Hedani: I move to approve the Department's recommendation as stated on the Special Use Permit.

Chair Hiranaga: Is there a second?

Ms. Wakida: I second it.

Chair Hiranaga: Moved by Commissioner Hedani, seconded by Commissioner Wakida, discussion?

Mr. Hedani: Question for Staff?

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: Question for Staff, does your recommendation include any conditions relative to the driveway?

Chair Hiranaga: No, their conditions are stated there.

Ms. Cua: No.

Chair Hiranaga: If you wish to add conditions you may do so.

Ms. Cua: No, it does not.

Mr. Hedani: Right, so it does not.

Ms. Cua: No, the specific conditions deal with the recommendations that were given from the Fire Department, Public Works about the after-the-fact permit, and the Water Department.

Mr. Hedani: Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Clarification. I don't know if I'm looking at the right conditions. Is this—

Chair Hiranaga: Page 4.

Ms. Wakida: In front of the minutes that one?

Ms. McLean: Yes.

Ms. Cua: Yes it is.

Chair Hiranaga: Yeah, Page 4.

Ms. Wakida: Okay.

Chair Hiranaga: Yeah, it threw me off too without the green paper.

Ms. Cua: Spoiled.

Ms. Wakida: We're so spoiled.

Chair Hiranaga: We're trained, not spoiled, trained.

Ms. Cua: Carolyn spoils us all with the nice green paper.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: I would vote against the motion from some of the testimony that we heard and a non resolution resolvement of that issue and also with the Hana Advisory Committee, Commission, who semi rely on them to have a pulse on their community and they voted for denial. I'll tend to agree with them on that.

Chair Hiranaga: You could propose amendments to the motion and add conditions that might satisfy your concerns. Anyone? Commissioner Wakida?

Ms. Wakida: I am gonna vote in favor of the motion though think that the solution that's proposed by the Chair is one, is one solution that may or may not make the other landowners happy, but it's a solution. And I read through the minutes of the meeting and felt that the...Ms. Flammer had I thought vetted pretty well the Department's position, and answered the concerns. I thought she...I thought they were...I was a little surprised at the outcome. Having said that I can understand in a small community how people are looking for peace among neighbors. To me, it's very important. But I will be voting in favor of this.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: I have a question I guess for, I don't know who can answer this maybe James or somebody. If this is approved and the Warrens' decided to erect a fence on their property line would they be able to do that?

Ms. McLean: As far as the Planning Department's concerned they're entitled to do that now erecting a fence along their property.

Mr. Ball: In turn cutting off this roadway.

Chair Hiranaga: They are not cutting off the roadway.

Mr. Ball: If they put the...if they put the fence along their property line.

Chair Hiranaga: Okay, let me restate. They're not cutting off the easement.

Mr. Ball: No, I didn't say easement. I said driveway.

Chair Hiranaga: Yeah, so they'd have to drive on the dirt.

Mr. Ball: They put a fence on their property line which in turn cuts off this road that's on their

property, they could do that.

Ms. McLean: In general, yes they could. It would be up to those with rights to that easement to challenge whether they have—

Mr. Ball: Well, that's not an easement.

Ms. McLean: No, no, no, I'm saying the ones who have the rights to the easement, if the fence is put along that property line cutting off the driveway it would be up to those who use the driveway and who have the right under the easement to make some sort of prescriptive rights case that they've been using that driveway for however long and they, you know, can try to establish that. That's a very, very lengthy process, but in general—

Mr. Ball: In the meantime the fence—

Ms. McLean: —in general, a property owner can install a fence along their property line.

Mr. Ball: Right.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Okay, it's a utility easement also, right? Do they have any responsibility of that being open or manageable for their trucks to go up and down through it also?

Ms. McLean: I don't know.

Ms. Cua: I'm not sure. I'm not sure.

Chair Hiranaga: That's really a private matter between Maui Electric and Hawaiian Tel. They have their own requirements. So if they feel that access is being prevented they would notify the property owner. It's like if you have trees blocking the access easement and the MECO truck can't go down, they'll notify you that you need to clear it not that it's happened to me. Commissioner Hedani?

Mr. Hedani: Yeah, in speaking in favor, you know, in favor of the motion, you know, I think the question before us is whether or not the use that's being asked for is something that fits within the guidelines that we approve those uses for. She has a property that's less than an acre. It's agriculturally zoned. We've heard numerous people testify about other uses on agricultural land, you know, where you really cannot generate sufficient agricultural revenue to sustain yourself on a purely agricultural use. In this particular case, we're dealing with a high valued product, a person that lives alone, doesn't bother anybody for the most part, her neighbors, there's no noise emanating from the project, there's no fumes, no dust, no noxious vapors coming off of the project, it's a benevolent use from my perspective. It's a high valued benevolent use that's an asset to the Hana community. What we're missing is the spirit of aloha that existed at the time the driveway was built. And that's what they need in order to move forward. If people are traipsing onto the neighbor's property in this particular case, they can build a fence right at their driveway that prevents them from traipsing onto their property. The area where the driveway meanders onto their

property, you know, you can fence it off if you wanted to cut off your nose to spite your face, but you would cut off your own access to your own house at the same time also, and the solution to that would cost a lot of money to create your own access off of Hana Highway. So it's a joint use type of a situation. The easement can be moved just as easily as the driveway can be moved if you can get concurrence from the landowner for a relocation of the easement. So that's another possibility. But the issue that's before us is whether or not the use is something that we can accept. And from my perspective, you know, I think it's something that is not detrimental to the neighbors from the standpoint of any of the things that we've heard that cannot be resolved, yeah. One to three people per day accessing the property or less to me is not a significant impact.

Chair Hiranaga: Any other discussion? Commissioner Shibuya?

Mr. Shibuya: I've been silent on this one, but now I'm gonna speak up. I'm supporting Commissioner Hedani on this because the use of the land is the issue at this point. And the land use especially in Hana there's no particular Industrial zoned area for businesses. And this, they've been using various home lots for businesses and it's no different than what they have been doing. This is not a body and fender type of operation. This is not where you treat certain types of hazardous material. This is something that you create and both the community and the individuals can benefit from it. And so I see it's a win-win for everybody. Unfortunately, the easement is of the issue but the easement can be changed and it can be revised. With a little aloha it can be done. Thank you.

Chair Hiranaga: Any other discussion? Commissioner Tsai?

Mr. Tsai: I just wanna say I'm in agreement with Commissioner Hedani's viewpoint as well.

Chair Hiranaga: Any other discussion? I guess, I have to I guess disagree with the motion on the floor. I think when you apply for a Special Use Permit, and I've said this before, a Conditional Permit, it is basically a privilege for an unauthorized use that's currently zoned for that property. And when you start impacting your neighbors, you should mitigate that impact to your neighbors. This is a commercial enterprise. It generates income. She's making money off of this. So if the neighbors feel their privacy is being impacted then she should erect some type of a barrier to prevent vehicles from trespassing onto her neighbor's property 'cause she's generating that traffic with this proposed commercial use. She's making money off of this enterprise. I would suggest that the neighbors who are being impacted no longer casually use that access because they do not have any legal right to. They should go and create their own access off of Hana Highway and fences make good neighbors. And so, without specific conditions whereby you're just saying, well good luck you guys figure it out, I can't support the motion on the floor, but this will—if it moves forward, it will go to the Council. They'll have public hearings once again, and there'll be chance to possibly apply conditions. So if there's no further discussion, I'm going to call for the vote. If the Deputy Director will restate the motion?

Ms. McLean: The motion was to approve the State Land Use Commission Special Use Permit subject to the 13 conditions recommended by the Department.

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

Ms. McLean: Four ayes.

Chair Hiranaga: Motion fails.

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

The motion to Approve the State Land Use Commission Special Use Permit Subject to the Thirteen (13) Conditions Recommended by the Department, FAILED.

(Assenting - W. Hedani, P. Wakida, M. Tsai, W. Shibuya)

(Dissenting - D. Domingo, T. Tsai, K. Ball)

(Excused - J. Freitas)

Chair Hiranaga: Floor is open to another motion. Well, looks like a good time for a recess. Let's reconvene at ten after 3:00.

A recess was called at 3:00 p.m., and the meeting was reconvened at 3:10 p.m.

Chair Hiranaga: Okay, the floor is now open to a motion. Commissioner Shibuya?

Mr. Shibuya: I'd like to ask...before I make a motion, I'd like to ask Ms. Arabella Ark if she would be willing to move her driveway and to stay within the easement?

Ms. Ark: Thank you. This is Arabella Ark. I don't think it's mine to move because that's on Koali Mesa land and it's...the way that my warranty deed reads is that it's for access and utilities purposes. And the cable truck, the MECO and so on, water. Water comes every day...where the asphalt driveway is on the Warren land is also before the water meters, before the electric meters and so they wouldn't be able to access it. There's a big, big boulder on the Hana side that couldn't be moved without...and I'm not the one who would be able to do that because it's actually not my land. I would have to go to Koali Mesa ask them if I could put in new asphalt, new roadway and...

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Yes?

Chair Hiranaga: Perhaps the question is not whether to move the existing driveway, but will you limit your access to the prescribed boundaries of the easement access because you don't have to move the roadway. It can stay there and be abandoned. You just drive on dirt.

Mr. Shibuya: That's correct.

Chair Hiranaga: As long as you stay within your...it's a 30-foot wide easement access, 30 feet. Most access easements are 10 feet. So there's a lot of play there, and so I think the question is will she limit her access to within the prescribed easement boundary?

Mr. Shibuya: Yeah, that's what my intent here was to see if she would be able to work within that

existing easement?

Ms. Ark: What I'm answering is there's a large boulder which no, I couldn't get around. I would be willing to get around, but I couldn't. But also the utility vehicles couldn't get around it either. So that's what I'm saying is that's the problem there at that particular point with the easement. But my understanding through Tom Welch was that when this was land courted that driveway was in place and that would have been the time to bring up these issues and that's back in the 80's not today because once it was land courted that's the deal.

Mr. Shibuya: No, I'm not talking shoulda, coulda. I'm talking about here's the 30-foot swath. If you're not willing to do that then I'm not willing to support the other aspect too.

Ms. Ark: I understand what you're saying. I'm just being honest in saying physically me can I move the trees, the rocks, everything and could a vehicle possibly go there? No, right now not the way it is. I am willing to do something, but I think I have to have the cooperation of Koali Mesa.

Mr. Shibuya: It's your easement not Koali Mesa's.

Ms. Ark: Oh okay. If that's...Okay. That wasn't how I understood it, but if that's the case, yes, I'm willing to do that.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Just to get a better understanding. That water truck that you were talking about that comes up every day, what type of water truck is that?

Ms. Ark: County. The County water truck comes up and they're checking the quality of our water every morning around 8 o'clock. So it's one of the big ones and it goes beep, beep, beep, beep and it backs right up to my cattle guard and they check the water.

Mr. Lay: Thank you.

Chair Hiranaga: The floor is open to a motion. Commissioner Shibuya?

Mr. Shibuya: I'm gonna recommend approval with the condition that the Arabella Ark pavement is within the existing easement.

Chair Hiranaga: Yeah, Commissioner Shibuya when you say, "pavement" you're requiring reconstruction.

Mr. Shibuya: Possibly.

Chair Hiranaga: You were just saying restrict-

Mr. Shibuya: The use.

Chair Hiranaga: –the access use–

Mr. Shibuya: Right.

Chair Hiranaga: –within the prescribed easement boundary.

Mr. Shibuya: That's correct. Yeah, just the use.

Chair Hiranaga: Which is different than what you just stated.

Mr. Shibuya: Oh, okay. Well, the intent was for use and her use...(inaudible)...is within that 30 feet easement.

Chair Hiranaga: Is there a second?

Mr. Tsai: Yes.

Chair Hiranaga: Seconded by Commissioner Tsai. Discussion? Commissioner Ball?

Mr. Ball: It's fine to say that but the reality is is the pavement is there, the people that drive up the driveway are gonna follow the pavement unless it's fenced or blocked or whatever. So I don't think that is the...I think it's a solution on paper but it's not a solution in reality because people just won't know that they gotta go 10 feet off the road and 10 feet up the road they gotta 10 feet off the road and another 20 feet up the road, they gotta go another 5 feet off the road, whatever the meandering.

Chair Hiranaga: Unless you put a barrier.

Mr. Ball: You put a barrier. So who puts the barrier, right. It would be part of that motion I would say and what kind of barrier? I mean, it could get way into it also. So it's just something to think about it. I would go against that again.

Chair Hiranaga: Any further discussion? Commissioner Lay?

Mr. Lay: I'd like to add a condition to that where a simple fence line around...following the easement to her property just to indicate the property...I mean, the easement is for the traffic.

Chair Hiranaga: It's more the property line. The property line between Lot 1. I don't have the TMK map numbers, but between–

Mr. Shibuya: 2-1-5-008.

Chair Hiranaga: The ...Warren Trust property and the subject property.

Mr. Lay: The easement is part of the Koali Mesa, right?

Chair Hiranaga: The dotted line is the one boundary and the property line is the solid line. So you want the fence along the solid line?

Mr. Lay: Right.

Chair Hiranaga: So it's the property line.

Mr. Lay: On the property line, okay. Condition that that fence line is along the property line.

Mr. Shibuya: That's acceptable as a friendly amendment.

Chair Hiranaga: So for clarity you are saying that as a condition of this permit the applicant must construct a fence along the property line?

Mr. Lay: Yes. Wire fence line is fine, just—

Chair Hiranaga: Hog wire, whatever?

Mr. Lay: Yeah, just something to indicate where the property line is.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: For clarity, the applicant can't build a fence on the other people's property. So my question is are they allowed to put up a fence on the easement?

Chair Hiranaga: Good question.

Ms. Cua: It's a good question. I don't know.

Chair Hiranaga: Unfortunately, we don't have the underlying easement document which basically prescribes the various rights that were granted with the easement.

Mr. Giroux: I'm not sure what kind of property rights would incur, you know, and again, we're not dealing with the best evidence here. So as far as how, how that would play out in the real world, you know, a survey of the property line that separates the property...you're working with the property line which sometimes the driveway crosses over, but it's not in the easement, so she wouldn't have authority to actually build a fence on somebody else's property line because her easement isn't even...her real easement, her legal easement isn't a part of the actual driveway. So that makes for a real legal difficult situation. I would hate for the County to be crossing that line with all three private owners because you have the owner of the large lot. You have the owner or the holder of the easement and then the landowner who is being encroached on. And so at any given time along that property line you could be running into one of three problems at any time and it puts the applicant in a very precarious situation.

Mr. Lay: With that information I'd like to withdraw that condition that I just suggested because we don't know who is...if that fence line can possibly even go up because of whose ownership and who has the right to one up.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'm just discussing, if it's the Warren Trust property line that is in question here, they could put it up, survey and put it up themselves because this is the issue that they're bringing up.

Mr. Lay: She's not the applicant. They're not the applicant.

Mr. Giroux: Yeah, this Board doesn't have the authority to require--

Chair Hiranaga: My preference is language that would restrict, restrict the applicant and her friends, clients or whatever from crossing the boundary and if there's a dispute then the persons who are being injured can file a complaint that the condition of the SUP is being violated and what means he does to control those people is left up to her be it a fence or rocks or a curb or a hedge or... Commissioner Hedani?

Mr. Hedani: The problem that I'm having is that the solutions we're coming up with is to shoot both the applicant as well as the person that's complaining. You know, we're hurting both parties at this point, you know, by advocating, putting a fence line where it doesn't belong that cuts off access to both parties. You might as well put the fence line on Hana Highway, you know, because they won't be able to get to their homes without tearing through a boulder the size of a house or whatever it is that they have to go through which doesn't make practical sense. I think what we need to do is address the impacts that the applicant is causing and see how you can avoid those impacts from affecting the neighbors. It's a matter of their traipsing down the neighbor's access driveway to their house going the wrong way, maybe it's putting an electric fence for them...a gate in there for them so that they can close off their property, still maintain access to the applicant's house and make it work that way or some other way. But to just put a fence up where the property line is that cuts off access for both parties just doesn't make sense to me.

Chair Hiranaga: My understanding of the facts is there...the Warren Trust legal access is off Hana Highway. They're casually using an existing easement which they have no legal right to do.

Mr. Hedani: Exactly, but that access doesn't exist.

Chair Hiranaga: It does exist. It exists in favor of the applicant.

Mr. Hedani: The right exists, but the driveway doesn't exist.

Chair Hiranaga: Can I...the legal right, the legal access exists in favor of the applicant. There is casual usage by neighbors. That is not a legal right. That is a casual usage. Their legal right for access is off of Hana Highway. So what I see the problem is is trespassing by the applicant's visitors onto a neighboring property owner's property. So you need to alleviate the trespassing be it encroachment of roadways or whatever, it's still trespassing and to me, that's how you solve the

problem. Commissioner Ball.

Mr. Ball: I have a question I guess for the Warren Trust is that true that if...if there was a fence erected on the...on your property line--you might wanna come to the podium to identify yourself--how are you going to access your property?

Ms. Patty Yeknich: I'm sorry I didn't hear the last part?

Mr. Ball: How would you access your property if the fence...if there was a fence erected on your, on your property line?

Ms. Yeknich: Like the Chairman said, we can get to our house from the highway and we can make a driveway. It is not an issue. It will be a huge issue for her because she will not have access to her house until a new easement is erected, I mean--

Chair Hiranaga: It's not a new easement. She just needs to create a passageway through the existing easement.

Ms. Yeknich: Through the...yeah, using the existing easement.

Chair Hiranaga: Right.

Ms. Yeknich: Now because of that boulder of which my granddad probably looked at and said, can't move it.

Chair Hiranaga: So we have the motion on the floor with the added condition. Could you restate that added condition?

Ms. McLean: The motion on the floor would be to approve the State Land Use Commission Special Use Permit subject to the 13 conditions recommended by the Department as well as an additional condition that access to the property shall be limited to the boundaries of the easement.

Chair Hiranaga: Corporation Counsel would the word, "restricted" be a better word than "limited?"

Mr. Giroux: What's the intent? You want them to only--

Chair Hiranaga: Stay within, stay within the legally prescribed access easement which is what they have a right to.

Mr. Giroux: It's on condition that they only use the legal easement in order to... that they only use the legal easement to enter onto the property.

Chair Hiranaga: This is the applicant.

Mr. Giroux: So limited or restricted would --

Chair Hiranaga: I asked you which is a better word, "restrict" or "limit."

Mr. Giroux: It doesn't-

Chair Hiranaga: It doesn't matter he said.

Mr. Giroux: As long as the County is...understands that this project is not to be permitted or to go forward until they can actually see that the access to the property is only gonna be made through the legal easement. That's the...because they're gonna be the enforcement officer on that and they're the ones gonna be asked to be given permits and all this type of stuff. So the language I think is, you know, clear as far as the discussion and the intent.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: So does that have to be part of the motion that this is the-

Unidentified Speaker: Can't hear you.

Mr. Ball: Is that part of the...needs to be part of the motion or is that just ...(inaudible)...

Mr. Giroux: That should be part of the condition.

Chair Hiranaga: It's a condition of the SUP.

Ms. McLean: Prior to the use being established is that what you're asking?

Mr. Ball: That the Department goes out and checks and makes sure that the access is not...the current access is in the easement only.

Ms. McLean: It would be more clear for the condition to be clarified that the condition applies prior to the use being established otherwise it's open ended and you can't say when that condition needs to be complied with. So if it's the Commission's intent for that condition to be met prior to allowing the use then the condition should be clarified as such.

Mr. Shibuya: That's correct. This is only a recommendation to the Council, right?

Chair Hiranaga: No, this is the Special Use Permit.

Mr. Shibuya: Okay,

Chair Hiranaga: We grant Special Use Permits, and then we haven't taken up the Conditional Permit yet.

Mr. Shibuya: Okay.

Ms. McLean: So is there...does someone wanna make that? The maker of the motion you want

to make that clarification?

Mr. Shibuya: Yes, this is for our approval.

Chair Hiranaga: No, you wanna adopt the recommended language by the Deputy?

Mr. Shibuya: Yes. Could you state it again?

Ms. McLean: That access to the property shall be restricted to the easement boundary prior to the use being established.

Mr. Shibuya: Perfect.

Chair Hiranaga: I'd like to include the word, "access easement."

Mr. Shibuya: Okay.

Mr. Tsai: I agree.

Chair Hiranaga: Second concurs. Any more discussion? Commissioner Ball?

Mr. Ball: Apparently it's currently happening now. Do we have to cease and desist that? How do we address that?

Chair Hiranaga: I don't think she's operating at this point.

Mr. Ball: Well, they said their testimony was that they have people coming up...(inaudible)...

Chair Hiranaga: I thought it was in the staff report that she stopped operations once a-

Ms. McLean: It's our understanding that she did stop.

Ms. Cua: Yes.

Chair Hiranaga: Someone filed a complaint with the Planning Department and she ceased.

Mr. Ball: Oh, got it.

Chair Hiranaga: Any more discussion on the motion on the floor? No further discussion. So for clarity, we'll have the Deputy Director restate the motion.

Ms. McLean: To approve the State Land Use Commission Special Use Permit subject to the 13 conditions recommended by the Department as well as an additional condition, "that access to the property shall be restricted to the boundary of the access easement prior to the proposed use being established."

Chair Hiranaga: Okay. All in favor so indicate by...

Ms. Cua: ...(inaudible)...

Ms. McLean: That prior to the proposed use being established, access to the property shall be restricted to the access easement boundary.

Chair Hiranaga: Or within the access easement boundary.

Mr. Giroux: I think maybe you wanna use the word, should be through the legal, the legal easement.

Chair Hiranaga: Within the legal access easement.

Unidentified Speaker: Recorded?

Mr. Giroux: Well, that's why I said legal 'cause that would be the recorded document.

Mr. Shibuya: That's right.

Chair Hiranaga: Are we all good? All in favor of the motion so indicate by raising your hand.

Ms. McLean: Seven ayes.

Chair Hiranaga: Motion carries.

State Land Use Commission Special Use Permit

It was moved by Mr. Shibuya, seconded by Mr. Tsai, then

**VOTED: To Approve the State Land Use Commission Special Use Permit Subject to the Thirteen (13) Conditions Recommended by the Department with the Additional Condition: That Prior to the Proposed Use the Established Access to the Subject Property Shall Be Restricted to the Legal Access Easement Boundary.
(Assenting - W. Shibuya, M. Tsai, D. Domingo, I. Lay, W. Hedani, K. Ball, P. Wakida)
(Excused - J. Freitas)**

Chair Hiranaga: Moving onto the Conditional Use Permit. Floor is open to a motion. Commissioner...I'm sorry, recommendation.

Ms. Cua: The Planning Department recommends approval of the Conditional Permit subject to five conditions as listed on Page 5 of our recommendation to the Hana Advisory Committee that was dated April 26, 2012. And basically those five conditions, No 1, deals with...that the permit be valid

for three years. Second condition is that it's non transferrable. Third condition is about insurance. Fourth condition deals with substantial compliance with representations made, and fifth condition is your standard full compliance condition.

Chair Hiranaga: The floor is open for a motion. Commissioner Ball?

Mr. Ball: I know we voted already, but that easement we got testimony that the people that own the easement didn't want to have use there, does it matter?

Chair Hiranaga: No, it matters, but the motion's been approved.

Mr. Ball: Okay.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I move to accept the Department's recommendation.

Chair Hiranaga: Is there a second?

Mr. Hedani: Second.

Chair Hiranaga: Discussion? I have a question. Does the same added condition that was on the SUP should that be recommended to be applied to the Conditional Permit or is that...

Ms. Cua: Probably.

Chair Hiranaga: 'Cause sometimes they don't always look at both documents. So the maker of the motion if you so wish to add that additional condition which was applied to the SUP?

Mr. Shibuya: Yes.

Chair Hiranaga: Secunder?

Mr. Shibuya: ...(inaudible)... be the same.

Chair Hiranaga: Secunder in agreement?

Mr. Hedani: Yes.

Chair Hiranaga: Thank you. Any discussion? Commissioner Ball?

Mr. Ball: I guess I'll raise my concern now on that. With the previous testimony from the landowner representative, landowner's representative from the what do they call themselves, Koali Mesa...told us that they wouldn't, they didn't want that use on that easement. They also testified that they didn't have any say in the matter, but just for the...

Chair Hiranaga: I think it's a private matter between property owners. Commissioner Lay?

Mr. Lay: With this defining of this property I think will help out in the future. It seems to be a problem nowadays that's occurring. You got the road that's going through somebody's yard, going out of somebody's yard, but defining where you can and cannot go it is what it is and I think that will help out in the future with your problems, you know, there's nothing you change, it's legally that's how it should be, and I think they'll be happy at the outcome at the end.

Chair Hiranaga: Any more discussion? Commissioner Hedani?

Mr. Hedani: You know, if the problem is guests of the applicant traipsing onto the neighbor's property and getting onto the neighbor's property or wandering where they shouldn't be wandering what we've done so far hasn't solved that problem. It hasn't restricted them from that. We've changed the direction of the driveway, but we haven't prevented them from impacting the neighbors.

Chair Hiranaga: The applicant will be responsible to enforce that or she'll be –

Mr. Hedani: No, what I'm saying is that she can provide access to her property within the designated easement, but the people that use that designated easement to get to her property can still traipse right across onto the neighbor's property.

Chair Hiranaga: Yeah, I agree. The property owners, the neighboring property owners have their own remedies available to them.

Mr. Hedani: So they can solve it themselves.

Mr. Ball: They can create a second driveway. They can put up a hedge there...

Mr. Hedani: Okay, that works for me.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: She can also pour a yellow line, right in the center of the line that says follow the yellow line and it goes right to her house. Simple.

Chair Hiranaga: Any more discussion? Seeing none, we'll have the Deputy Director restate the motion.

Ms. McLean: To recommend approval to the County Council for the Conditional Permit subject to the five conditions recommended by the Department as well as an additional condition, "that prior to the proposed use being established, access to the subject property shall be restricted to the legal access easement boundary."

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

Ms. McLean: Seven ayes.

Chair Hiranaga: Motion carries.

Conditional Permit

It was moved by Mr. Shibuya, seconded by Mr. Hedani, then

**VOTED: To Recommend Approval to the County Council for the Conditional Permit Subject to the Five Conditions Recommended by the Department and an Additional Condition: That Prior to the Proposed Use the Established Access to the Subject Property Shall Be Restricted to the Legal Access Easement Boundary.
(Assenting - W. Shibuya, W. Hedani, D. Domingo, I. Lay, M. Tsai, K. Ball, P. Wakida)
(Excused - J. Freitas)**

Chair Hiranaga: Moving on, Agenda Item E, Acceptance of the Action Minutes of the January 8, 2013 meeting and Regular Minutes of the September 11, 2012 meeting.

E. ACCEPTANCE OF THE ACTION MINUTES OF THE JANUARY 8, 2013 MEETING AND REGULAR MINUTES OF THE SEPTEMBER 11, 2012 MEETING

Mr. Ball: Move to approve.

Mr. Tsai: Second.

Chair Hiranaga: Motion to accept by Keone Ball, Commissioner Ball, seconded by Commissioner Tsai, any discussion? All in favor say, aye.

Commission Members: Aye.

It was moved by Mr. Ball, seconded by Mr. Tsai, then

**VOTED: To Accept the Action Minutes of the January 8, 2013 Meeting and the Regular Minutes of the September 11, 2012 Meeting.
(Assenting - K. Ball, M. Tsai, D. Domingo, I. Lay, W. Hedani, P. Wakida, W. Shibuya)
(Excused - J. Freitas)**

Chair Hiranaga: Moving onto Director's Report. Deputy Director?

F. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

a. Amending the SMA Boundaries

Ms. McLean: Thank you, Chair. Item 1, Planning Commission Projects/Issues. We have nothing to report on amending SMA Boundaries.

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

Ms. McLean: For Nos. 2, 3, and 4, you have your report in your packet. Are there any questions on any open projects or pending projects?

5 Discussion of Future Maui Planning Commission Agendas

a. February 12, 2013 meeting agenda items

Ms. McLean: And lastly Future Agenda Items, you received a memo from Clayton Yoshida listing two public hearing items for short-term rental homes and a review of the Final EA for the Hester Proposed Shoreline Protection Project at Kahana and there's more on the back. Approving a Decision and Order and for the Big Island Scrap Metals use determination and two Communication items, the Kula Lodge requesting a time extension on Phase 2 Approval and Unity Church of Maui, an amendment to a County Special Use Permit to conduct services.

Chair Hiranaga: Any discussion? Our next regular meeting is February 12, 2013. If there is no objection, this meeting is adjourned.

G. NEXT REGULAR MEETING DATE: FEBRUARY 12, 2013

H. ADJOURNMENT

The meeting was adjourned at 3:40 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Keone Ball
Donna Domingo
Wayne Hedani
Kent Hiranaga, Chairperson
Ivan Lay, Vice-Chair
Warren Shibuya
Max Tsai (in attendance at 9:10 a.m.)
Penny Wakida

Excused

Jack Freitas

Others

Michele McLean, Deputy Director, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works