

**HANA ADVISORY COMMITTEE TO THE
MAUI PLANNING COMMISSION
MEETING OF MARCH 28, 2013**

** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, Hawai'i. ***

A. CALL TO ORDER

The meeting of the Hana Advisory Committee (Committee) was called to order by Chairperson, John Blumer-Buell, at 4:06 p.m., Thursday, March 28, 2013, at the Old Hana School Cafeteria, 5091 Uakea Road, Hana, Island of Maui.

A quorum of the Committee was present (see Record of Attendance).

Chair John Blumer-Buell: I'd like to call the Hana Advisory Committee to the Maui Planning Commission meeting to order. I'd like to introduce the members: Anjoleen Hoopai-Waikoloa; and Ed Cashman; Clayton Carvalho, Jr.; myself, John Blumer-Buell; and our newest member, Ward Mardfin.

And from the county we have Clayton Yoshida, who's the Planning Program Administrator; Gina Flammer, who's a Staff Planner; Richelle Thomson, who's our Deputy Corporation Counsel; and the invaluable Secretary to Boards & Commissions, Suzette Esmeralda. Thank you.

And, you know, we've got a small group so why don't we just -- everybody, Frank, why don't you say who you are and let's just go around and say hello this is --

Members in the audience introduced themselves without a microphone.

B. APPROVAL OF MINUTES OF THE APRIL 26, 2012 MEETING

Chair Blumer-Buell: Okay, the first thing on our agenda is approval of the minutes of April 26, 2012, so I will -- I should say, before we go to that, that there's seven members on the Hana Advisory Committee, so it takes four of us to have a quorum, and it also takes four of us to move any item. If you don't have four votes, things don't move. So anyway, I'd be happy to accept a minute for -- a motion for the approval of minutes of April 26, 2012, if you're ready to do that.

Ms. Anjoleen Hoopai-Waikoloa: I'll make a motion to approve the minutes.

Chair Blumer-Buell: Okay. We have a motion by Anjo, and second by Ed Cashman. And is there any discussion of the minutes? Ward?

Mr. Ward Mardfin: ...(inaudible)...

Chair Blumer-Buell: So any discussion of the minutes? Okay, I'll call for the vote.

There being no discussion, the motion was put to a vote.

It has been moved by Committee Member Hoopai-Waikoloa, seconded by Committee Member Cashman, then

VOTED: to approve the minutes of April 26, 2012.

(Assenting: J. Blumer-Buell; E. Cashman; C. Carvalho; A. Hoopai-Waikoloa)

(Abstaining: W. Mardfin - not a member during the April 26, 2012 meeting)

(Excused: I. Ballantyne; S. Crawford)

Chair Blumer-Buell: So we have four votes, unanimous, with Ward Mardfin abstaining. He was not at that meeting.

The next item is the public hearing, and the way we'll do it today, we'll do what the Planning Commission does, which is if you're not going to be here later in the meeting, you're welcome to speak right up front. So anybody is welcome to speak, but then you can't speak a second time, like if your application's up, it's probably better to speak at that point. So I'd like to open the public testimony if anybody would like to speak and then we'll -- from there we'll go through the various agenda items and people can give public testimony for each of the applications. Is that clear? Okay. So there's no testimony, noone's coming forward to give testimony at this point, the next thing we're going to do is hear a presentation by Gina Flammer and this will give everybody just an idea of what we're looking at in terms of regulations and so forth.

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

Ms. Gina Flammer: Okay. Welcome, everyone. Well, continuing our tradition of Hana technical problems, we're going to do the slideshow but as you can see, it's -- it was lined up perfectly ten minutes ago. I do have handouts, which I think everybody has also of the slides too.

First thing I'm going to do, because we have four of the same permits, the land use special use permit, I'm just going to give you a quick presentation on what is this permit. So we refer to it as the "ag permit." It's for properties in the state ag district. As you guys know from being on the board, there's three layers of land use regulation in Hawaii. I think we're the only state that has this. We have county zoning, we have a community plan

designation, and then we have a state land use designation, and that's written right out in the Hawaii Revised Statutes. We know that because in our application, we require applicants to fill out a zoning and flood confirmation form.

I will let you know, our Chair did ask me to bring copies of the different applications just so you guys could see what's involved in that, what kind of information we receive that then goes into the report that we're going to go through. This is one of the things that comes in with the application.

The state has four different classifications of land: conservation, agriculture, urban, and rural. And I wanted to just show you the 2011 slide so I could show that 47%, almost half of our lands in the state are zoned agriculture. But then I started looking at the 1969, when the laws were written, and it really hasn't changed very much. You notice there's almost no rural. I think Maui County is the only one that has any rural designations at all. So we're really either looking at ag or conservation and a little bit of urban. So what happens when you have two charts, two pies like this without a lot of change over the years is instead of rezoning, they start looking at the definitions of what's allowed in the different zoning districts. So I'll show you what's allowed in agriculture as we go into it, and it has expanded over the years, and that's the way they've addressed growth and different uses that have arisen over time.

So what is a land use special use permit? It's what is required when a use is not specifically listed right out in the code as an allowed use. And the important part for this committee to understand is it's when certain criteria are met, and I'm going to talk to you about what those criteria are. It's really important that you use those criteria and any recommendation you make ties back to those specific criteria. The approving agency. When you have a project that's more than 15 acres, the State Land Use Commission is the one that is the approving authority. But when it's under 15 acres, they delegate it to the different Planning Commissions. And because you're an advisory board for the Maui Planning Commission, you're going to see projects that are under 15 acres. And you've seen these over time.

Because often we have a use that will require multiple permits because of the different county zoning and state zoning, so last year, when you met, you saw a conditional permit, and that's the council approval, and then you also saw the state land use permit, called -- we call it an "SUP," and it's a 2 because it's what goes to the Planning Commission.

So today we have a B&B and an SUP, we have two of them, so the B&B is typically a department approval unless there's been something triggers, and I'll quickly go over that in a minute, and then we have two short-term rental homes, which are typically department approvals unless triggers are met. The SUP, both, in all cases, are approved by the Planning Commission, which is why you're hearing that particular permit today.

So, when are you going to get see B&Bs and short-term rental homes? You are going to see those permits specifically in the future. Today, you're seeing the associated land use permit because they're on ag land. But in the future -- well, I do have projects where there are three or more bedrooms; any B&B or short-term rental home with four or five or six bedrooms will come to this Committee first. Any case where there's 30% of the owners within 500 feet file a protest, you guys will recommend to the Maui Planning Commission then, who will be the approving authority. You're going to see a lot of this next one, it's when there's an existing one within 500 feet. Uakea Street, you're going to see them come in for there, probably Hamoa as well. And also when a variance is used to meet B&B requirements. That's very rare. We've only had one where there was multiple kitchens and it went before the BVA to be approved as a single-family dwelling and then went on to the Maui Planning Commission.

So what about short-term rental homes when the person does not live on the property? Again, if it's four, five, or six bedrooms in the Hana Community Plan Region, you guys will see it. There's a more strict neighbor protest provision with this type of permit. When you get 15% of owners within 500 feet, if there's 40 or less lots; then 30% if there's more than 40; or if there's an existing permitted B&B within 500 feet. There was a provision this year though where you could file applications by the end of last year where was waived, that requirement, but for many that come in for now, if there's one within 500 feet -- oh, that should be short-term rental, excuse me, where the "B&B" is. And again, if there's any type of variance used, then they will have to come before you.

Okay, so back to the reason that we're here today. All of these properties that are here before you are on ag zoned land in the state ag district. Hawaii Revised Statutes 205 is what tells us what you can do. I thought it might be a good idea to just real quickly let you know what can you do on ag land. I won't spend too much time. So, basically, you can grow crops; you can do farming activities; you can have aquaculture; wind-generated energy productions, so instead of going and rezoning land, the state decided they would just add that as a use right into the ag district; bio-fuel production now is allowed; solar energy facilities, if you're on the right kind of land; you can have agricultural services or other support services; you can put up wind machines and wind farms, windmills; you can have small-scale science collection; you can have an ag park; you can also have agricultural tourism, however, this provision, they're requiring that the counties pass a law that relates -- that regulates ag tourism and our county does not have one; also, with the next one, no. 12, you can have ag tourism including overnight accommodations, which you're reviewing today, however, Maui County does not, at this time, have an -- does not have an agricultural tourism bill so you won't see all these overnight accommodations until that happens; you can also have open area recreational facilities; you can have geothermal resources, that's a new addition; and then you can have some agricultural-based commercial operations, which I'm sure you see a lot of out here.

Okay, so again, this land use special use permit that we're reviewing today, it's for any use that's not listed in anything that I just read. So in the past, we've seen one for cell towers and microwave antennas. I think the law has changed so you can put up, within certain parameters, some of those now. We see a lot of these, not a lot, but we see some for concrete batching plants. You don't really want to put them in an urban area, so they tend to do on ag land, so you guys would be the ones who would take a look at that. B&B and short-term rental homes. The Haleakala Visitors Center is on ag land so they needed to come in for a permit; same with Ali'i Lavender Farm because we don't have ag tourism ordinance, they had to come in for a special use permit. The West Maui Boys and Girls Club is located on ag land, so they had to come in for a permit as well.

So what do you do? How do you review these? What are the criteria that you use? The state wrote and adopted Administrative Rules and they gave you five criteria. They're going to be found in your applicable regulations. In every staff report that you will receive from the department, it will have a section, usually page 2, that's the applicable regulations, and that'll be your guide to what is the law that you are using to evaluate the project that's come before you. Later on in the report, the department is required to respond to each of those regulations, so you'll get to see our response to that.

So for this particular permit, these guidelines, the first one is: The use shall not be contrary to the objectives sought by 205. What does that mean? Well, we require an implemented farm plan and because that farm plan requires that over 50% of all the land be put in - or more - be put into agricultural production, it shows that we are meeting the goals and intention of 205. We don't require that for all types of projects in the ag area. Concrete batching plant, we're not going to ask that 50% of all the land be put into ag. However, in this case, the State Office of Planning, we route all of our applications in the ag district to them, they are the ones, the overseers of state ag land, and they suggested that we use the farm plan as a way to show that it meets the goals and regulations, so I have had applicants that did not have farming activities going on that did have to put in -- they'd have to start doing farming in order to qualify for this. I included copies of the applications including the farm plan application if you're curious what goes into that. It does require a unilateral agreement right on your deed as well as an approved farm plan. We also make sure that it's implemented. So that's just to let you know what the State Office of Planning told us that that's what they want to see so we're now requiring everybody have an implemented farm; we require it now before they even turn in the application. You're going to see copies in your report of that implemented farm, and I'm going to show you photos as we do the presentation.

So in each of your report is going to be a copy of the permit, the farm plan permit as well as a plan itself showing you what's there. You also have four other regulations that you're going to use to evaluate each of these projects: The desired use would not adversely effect surrounding property, they're really -- you're looking at 1969 when we're dealing with

a lot of sugarcane land, they're looking to make sure it's not going to affect farm, basically. The law doesn't really protect a quiet residential neighborhood. That's not really the intent of it; The use would not necessarily burden public agencies to provide infrastructure; unusual conditions, no. 4, since the rules were written in 1969; and then the land upon the proposed use is sought is unsuited for the use permitted within the district. It's a little unusual in our case that we're actually requiring farming. I do do a soil analysis in the staff report and that'll tell you whether or not the land is for -- how well it's suited for farming. I think we're looking at a lot of C and D lands, but there is farming going on. That's not -- just because you're on E or D doesn't mean you get out of the farm plan rules.

So what is your role today? Your role is to conduct the public hearing. We want to see the people out in the community come out and testify so we do it right in their community. And we also are asking you to make a recommendation to the Planning Commission, and not only do we want you to make the recommendation, I'm going to write down your comments also so that we can let the Planning Commission know a little bit what's behind your recommendation, kind of like we did a year ago, I'll write down at the end and then I can read it back to you.

Okay, so now we're going to jump right into the four different permits. Are there any general questions that I could take right now on the permit? This would be a case example to go through each of the four.

Mr. Ward Mardfin: I have a question.

Ms. Flammer: Sure.

Mr. Mardfin: My question is: I noticed in your presentation you said that - now I'm not going to find it - there was a -- I guess it's on page 8, you say, "Rules and Department Responses in Each Staff Report," and I notice in here you did respond to a lot of things. There was no -- there was a reference to the Hana Community Plan but no direct response to the Hana Community Plan.

Ms. Flammer: What we put in there is we just include the provisions that are relevant.

Mr. Mardfin: Okay. On each of them, it was almost always on page 9. In the Hana Community Plan, under Land Use, item 9 says, "Discourage transient rental accommodation uses outside of the Hana urban area." So I have question about where the Hana urban area is for one thing, and then, secondly, none of the reports directly responded to that.

Ms. Flammer: We don't respond to the different -- well, I think we respond in the beginning saying that they're generally in compliance with the community -- with the following community plans. So if you go back and we start -- we'll take this Kennedy one is the first one --

Mr. Mardfin: Okay.

Ms. Flammer: Since we just happened to have that in front of us. As we start on page 5 and we go into our analysis, so as I go to no. 4, we read the charter, we go into the countywide plan, we, basically, give you all of the -- a description of it and then we give you all of the community plan provisions that are relevant to that particular one. I will note, the one that you mentioned, it does say "discourage," and not "prohibit."

Mr. Mardfin: It does say "discourage," and not "prohibit."

Ms. Flammer: Yeah.

Mr. Mardfin: I saw that.

Ms. Flammer: Yeah. A big difference there. What we really respond to, however, are the five criteria. The law says that we need to be in compliance with the different state plan, the community plans, the general plan, the Countywide Policy Plan. What we respond to are those five criteria that are listed out in the Administrative Rules. So I think we're on page, for this particular one, it's page 9 where we go through and we take each of those five criteria and we write a response.

Mr. Mardfin: This is A, B, C, D and E?

Ms. Flammer: Yes. Yes.

Mr. Mardfin: Okay. Thank you.

Ms. Flammer: Okay. Sure. Okay, so the first one we're going to go over today is the Hana Garden Room Bed and Breakfast application.

Chair Blumer-Buell: Gina? Yeah, excuse me, I do have a question regarding your report, and I'd like to let everybody know that we have two additional members of the Hana Advisory Committee here, Scott Crawford, who's our Vice-Chair, and Ian Ballantyne, who I think is suffering from jet lag. So this is the first time in quite a while where we've had seven members present, so thank you everybody for being here.

My question is specifically on page 9, which says, "Hana Advisory Committee review triggers," and, you know, we're looking at three or more bedrooms, 30% of owners so forth, existing permitted B&B, a variance. And my question is: Because in the Hana Community Plan, under Government, objectives and policies, it says, "Maintain the Hana Advisory Committee to the Maui Planning Commission to make recommendations regarding all land use policies permits and changes in designation within the Hana District," and this is language that has force. It was passed by ordinance, and so that's my question, why is --

Ms. Flammer: That's a good question. They're referring to public hearing items, not administrative type permits. So bed and breakfast and short-term rental homes that are approved by the department are considered administrative permits. The Planning Commission doesn't approve them. You are the advisory authority to the Maui Planning Commission so you review any permits that go before that commission.

Chair Blumer-Buell: Okay. Well, I have some more questions on that but this isn't the time for that so we'll get to that some other time.

Ms. Flammer: Okay, are we good to go? I'm giving you a lot of information and this is somewhat complicated having the two different permits, and at any point, if you have a question, just show me hand and we can just take it right then and there. No question is too obvious.

Mr. Mardfin: Let me do the one --

Ms. Flammer: Okay.

Mr. Mardfin: That I said I'd postpone. Where is -- what are the boundaries for the Hana urban area?

Ms. Flammer: Clayton Yoshida is going to show you a map that's in our community plan and maybe I can describe it while he's opening it up. I will address that --

Mr. Mardfin: I'm looking at this and it looks to be about past ...(inaudible)... a little bit pass ...(inaudible)... out that way, pass the -- but not as far as ...(inaudible)... on the south, and, John, I think earlier you told me, on the north, it's the police station?

Chair Blumer-Buell: ...(inaudible)...

Mr. Mardfin: Okay. Pass Wakiu, but not as far as Waikoloa or -- I mean not as far as Honokalani or the ag park or anything like that, airport?

Chair Blumer-Buell: I think we would need to really look at the maps very closely. I don't want to represent that because we had a, you know, newer part of the potential rural boundaries discussion with the Planning Commission and council so if Clayton have something definitely, I'd always thought the urban area on the Kipahulu side was at Jane Tople's old place where George Kinder lives now and that the urban area went to the police station and then potentially the expansion went all the way to the new school. The rural areas, in my recollection, let's see, Waikoloa and Honomaele are rural or interim rural. But that's -- if it becomes a question, we'll need to get that. During the deliberations, I think we should really nail that down.

Ms. Flammer: Yeah, it would be interesting to know what they meant by "urban area." Did they mean urban zoning? I don't know. Okay, so are you ready, I'm going to into our first -- one thing or comment I will make about that particular one. I did include it in the bed and breakfast even though a transient vacation rental is not a bed and breakfast, but I just thought if it's relevant, if you're going to want to see it so you can discuss it, so I did put it in there for that reason.

- 1. MR. FRANCIS KENNEDY requesting a State Land Use Commission Special Use Permit in order to operate the Hana Garden Room, a one (1) bedroom bed and breakfast home on property situated in the State Agricultural District at 255 Kalo Road, TMK: 1-3-009: 036, Hana, Island of Maui. (SUP2 2012/0017) (G. Flammer)**

The Committee may make a recommendation on the application to the Maui Planning Commission.

Mr. Flammer: So the first one you are reviewing today is the Hana Garden Room. It's a one-bedroom bed and breakfast. And again, we're looking at a B&B permit because it's in the county ag district, so when you go to Title 19, it tells you that you can have a B&B in the ag district if you get a permit. And because it's on state ag land, we're dealing with the state land use special use permit. So it's in -- it's one bedroom in an existing home, in the owner's home, 255 Kalo Road. The farm plan shows that over 75% of the land is used for agricultural purposes. You met the applicant, Frank Kennedy, earlier. He can answer questions at the end if you'd like. Again, the bed and breakfast permit itself will be approved by the department because there's no triggers that were met, there are no existing B&Bs within 500 feet and it is less than three bedrooms. I thought you might be curious though, so there are currently four bed and breakfasts that are permitted in the Hana region, and the cap is 44.

So here where we have where you pull in. It was pouring the day I did the site visit but you can see through the pictures. I labeled where the garage is. The house is kind of hard to see. I put an arrow so you can see kind of where the door is and to the room. There is a

floor plan also included in the staff report. Gives a little closer view of the door right there. Oh, there's floor plan. I put it in there so you could see where it is in the house. And some photos just so you can see what the room looks like. It's only a room. I could only take so many pictures of it.

Okay, so here's the real relevant part. In Exhibit 3, I show you where the farm plan permit is. Then there's actually a copy of the permit -- I mean of the plan itself. And then we list out or the applicant listed out what's actually on that plan, so what is planted, how many, in what area it is. You'll see it's mostly avocado. A lot of fruit trees. He does wholesale the fern, the pohole. Citrus. He has a citrus nursery as well. So just so you can see some pictures. These, well, these are the slideshow, it gives you bigger pictures. I think in the future, we're going to do your staff reports in color too so you can see the pictures. I think it'll be a little more easier -- it'll be easier to see. So you can see, it's about four acres. I think the applicants lived there 34 years. Is that right? And farmed for 34 years? Thirty. Thirty-one. Yeah, thirty years. Continuing to expand. There's still some keiki trees there, fruit trees. He has a nursery as well.

So also included in your staff report, you know, we send out our reports to the relative agencies, for the place we ask has there been any disturbances or complaints, the State Office of Planning, because there's an implemented farm plan, they don't have any comments. I did -- there was written testimony in support. I did not receive an protest. So we have one letter from the neighbor next door, and then we have three additional letters of support that are -- were handed out to you today that you'll see in front of you that were not in the report. So that's the basics of the first one that we have, we can discuss now, then I can give the department recommendation once you've had some discussion. So I do have the applicant as well who can come up if you have any questions.

Chair Blumer-Buell: I have a question on your presentation. What are the four permitted B&Bs at this point?

Ms. Flammer: We have Sandy Simone's, which I do not remember the name off the top of my head. We have Loakani, along Hana Highway. We have the Collins were just approved, Mark and Haunani. And, no, we have Sybil Shaplay, yeah, those are the four. I only have a couple in as well. Part of our outreach for this broadened bed and breakfast as well as short-term rental homes. And like I said, as we get more and more, you're going to see more because of the provision within 500 feet.

Chair Blumer-Buell: Ward Mardfin.

Mr. Mardfin: Gina, this is really, really minor, but I recall on the Planning Commission, they used to have their breakfast listed and I didn't see that in any of these. Is this no longer --

Ms. Flammer: No, it's because it's the state land use permit that you're reviewing. When you see the bed and breakfast and the short-term rental home permits, we can -- well, the bed and breakfast, if you'd like, we can include a menu.

Mr. Mardfin: I don't care. It's just -- more importantly, I do have some questions. On the taxes, for this one, you've checked that they've been paying income tax on their I presume -- have they been -- take a step back. Have they been using it as a B&B before now?

Ms. Flammer: Yes. They have.

Mr. Mardfin: And they didn't shutdown back before?

Ms. Flammer: The applicant would have to answer that question. I did not find any notices of warning anywhere in the record.

Mr. Mardfin: Okay. And you checked that they paid income tax on their income from the B&B rentals?

Ms. Flammer: I'm going to --

Mr. Frank Kennedy: Yeah, Frank Kennedy, the applicant. We have paid all transient accommodation tax, GET tax, as well as income taxes on the income from the room since it started.

Mr. Mardfin: Mr. Kennedy, do you pay -- do you claim the homeowners exemption for your real property tax?

Mr. Kennedy: I did. I believe in the application -- you can answer this better.

Ms. Flammer: You cannot remove your homeowners exemption if you live on the property unless you have a permit that's been approved. We have had people that have called as applicants and asked to have it removed, and the, I don't work for real property tax, but they have told me they don't remove it in that case. They wait for the permit to come through before they remove it.

Mr. Mardfin: Then they remove it.

Ms. Flammer: Yeah, I was kinda surprised but that's what they told us, and that's what they told the applicant.

Mr. Mardfin: Related to this, related to real property tax, I went to each of these online and the property assessments, we're not talking about the tax rates, we're talking about the assessments, we're not talking about the exemptions, on at least several of them, I don't quite recall whether Mr. Kennedy's was one or not, they take a portion of the lot and say it's a house lot, and the rest of the lot, they take as agricultural; agricultural rates are applied to the agricultural part, yeah?

Ms. Flammer: I can explain it for you?

Mr. Mardfin: Yes, please.

Ms. Flammer: Okay, it's a little complicated, and we're dealing with different departments, but how it works is there's two components that make up your real property tax payment. The first is the amount that's assessed, and the second is the rate that's applied to that amount that is assessed. For agricultural lands, lands that are actively farmed receive an agricultural assessment through the real property tax division; that removes that part of the land from -- they're taxed, I don't know if they're taxed at a different rate, but it removes it from being taxed at that ag or the homeowner rate that they are taxed at. It lowers the value of the land is what it does. As long as they are farming, they keep that assessment because they are farming. Now this permit, and the review, will trigger typically an inspection by the property -- real property tax division to go out. They will look at farming and they will also look at the structure and make sure that their records are accurate. They want to make sure they're collecting the proper amount of tax for the structure. But they do verify ag. And you're going to see that in a couple of the comment letters from real property tax, ag inspection required. In one case, we have an applicant that didn't know they could claim it, and here they're running a commercial nursery on it, so the ag inspector came out and included much more the land into that assessment because it's currently being used for farming. That's their current policy. I don't know if it will change in the future.

Mr. Mardfin: Okay. And the portion that's not ag would include their primary residence, if it is their primary residence, and the structure they're using for either STR or B&B?

Ms. Flammer: Well, let me put it this way, the only part that is included is the part that is being used for ag. If the entire property is being used for ag, they will take out a home site, which is typically half an acre. I think, in one of the cases, they went on to a quarter-acre but they call it a "home site."

Mr. Mardfin: And that home site is taxed, I don't care the dollar amount, but it's taxed -- the fact that they're going to be using it for income production to a B&B or an STR doesn't change the category that that site is in does it?

Ms. Flammer: Yes it does.

Mr. Mardfin: It does?

Ms. Flammer: Yes.

Mr. Mardfin: And how does that happen?

Ms. Flammer: The home site is changed. Once the permit is approved, we copy the Department of Finance Real Property Tax Division. If it's a bed and breakfast, they change the rate to something called "commercialized residential," and they remove the homeowners exemption. If it's a short-term rental home, we require them to prove to us they have not taken the homeowners when they come in for the application. It's also checked again when it gets routed to them so we know for sure they don't have that unless they are living there for some reason. Council has not set the tax rate yet for short-term rental homes. They will do it, most likely, during this budget season. The Department of Finance has told us, at the moment, they will use the hotel rate unless they're instructed -- until council instructs them otherwise.

Mr. Mardfin: Thank you very much.

Chair Blumer-Buell: Clayton Carvalho.

Mr. Clayton Carvalho: I had a question in regards to the cap. I know it's 44 short-term, and 44 bed and breakfast. Is that cap going to be reassessed later? Do we have any responsibility now in terms of making a decision based on that cap, making a decision for any recommendations today?

Ms. Flammer: It's a really good question. Because it's a state land use permit and you're looking at the ag permit, the cap doesn't play into your recommendation the way it would if you were reviewing the actual B&B or short-term rental home permit. When you start seeing B&Bs and short-term rental home permits that come before you, especially when they're one more than 500 feet, yes, you are going to look at the cap. The council did not -- they intended for you to decide where they go and where is appropriate is basically and using -- looking at where they are with the cap is one factor in your decision-making. They did, for the short-term rental home, put a provision in that when you reach I think it's 10% of the cap, the council would like to take another look at that cap number. The B&B provision does not have that. It'll just stop right at that 44.

Chair Blumer-Buell: Thanks for that question, Clayton. It's a good question because I just want to say, and I would have to dig it up in the records, but the Hana Advisory Committee thought those caps were way too high, and I do too, and this question goes -- the reason

I asked the question about government, which was maintain the Hana Advisory Committee to the Maui Planning Commission to make recommendations regarding all land use policies, permits, and changes, and the way I'm looking at that it's part of our responsibility is to see that whole areas and neighborhoods are not taken over by B&Bs and short-term rentals. We've had lots of complaints about what's happening at Hamoa, Maka`alae, and so forth, so that's -- I think that's important to get to, and we can come back to it 'cause it's not an issue for me today, but in that government policy and objective, there's no qualification regarding administrative, so I would like to raise that with Corp. Counsel, not necessarily to answer at this minute, but I was at the meetings of the 1994 community plan. The intent was clearly to have this community empowered and to have us look at the distribution and so forth.

Ms. Flammer: I can address that briefly if you'd like, John.

Chair Blumer-Buell: Yeah, and just for the audience, 'cause I consider this a dialogue with the community too, this Committee is at a real disadvantage and this community's at a real disadvantage because in the community plan 1994, there was language which came out of the community at these meetings and the community said, "Conduct an inventory and study of existing nonconforming uses including vacation rentals to determine: 1) their numbers; 2) geographic distribution; and 3) the effects upon the local housing and real estate markets, and the local economy, and identify recommendations for resolving nonconforming use issues." So if the Planning Department had done a study, which the community wanted in 1994, we would be looking at a, I believe, we'd be looking at a more logical and systematic way of approving these, and that's just for your information. Please make your comment.

Ms. Flammer: When I wrote my staff -- when I wrote my report to council on the bill, and your recommendations, it was all in that report that the council considered. They chose to write the law so that it has those trigger provisions that it does. They have to balance the community plan policies. We have policies in there that talk about efficient government, so they're balancing two conflicting policies, and then they are the final authority on what the law says. Part of the reason I think they provided the triggers is by coming through the Hana Advisory Committee, you're looking at another six to nine months before you get approval, so that conflicts with the efficient government, so they tried to find some kind of middle ground where you could, in certain cases, you would review them.

Chair Blumer-Buell: This is not argumentative but it's my feeling that if all the permits came to this Committee, we'd have a more logical way of dealing with this situation, and one person from Keanae testified several times that we previously had an island with tourist; in other words, designated areas for hotels and so forth, and they were afraid we were going to end up with a tourist island and, to me, that's what's happened or is happening, so I think my concern is that, you know, the community have growth controllness and when

all these things are being administratively approved, it takes the power away from the community. So thank you.

Ms. Flammer: I think you're in the discussion phase of where we're -- question and discussion. When you're done with that, I can make the recommendation and then we can go into --

Chair Blumer-Buell: Ed Cashman, please.

Mr. Ed Cashman: I have to agree with John. I live in Hamoa and there's a lot of vacation rentals that is not permitted, so when you say like you live within the 500 feet, most of the vacation rentals or bed and breakfasts, they don't have permits, so how are we going to apply the law? And I know for a fact, 'cause I've complained, and there's no enforcement. To me it's good when people like this come forward and they want to get a permit because that's what we want, but mark my word, there's more people who's not going to come forward because you can make more money and there's no enforcement. I've complained I mean over and over, and nothing happens. There's just excuses. To me, it's great when I see people come forward, you know, we going pay the taxes, you going do what you supposed to be doing, but there's going to be more people not doing it. When I listen to when they were trying to pass this law, I think they said they were going to hire two more inspectors, I don't know if it came about, but I gotta back when John is saying because, to me, the community plan was supposed to be done first. You gotta ask the community: What you want? How many you want? Where you want it? You don't do the countywide plan, you do the Maui Island Plan, and then you put us in the predicament like how can we refuse these people? The law says they can do it and they trying to be legal, so how can you tell them no? You put the burden on us, like if we tell them no, like but the law says we can. They should have considered our plan first. We live here. We have an idea how we want this community. Don't come from the other way and then put us in -- I mean, to me, there's no way I can tell these people no. You folks just like going backwards. Thank you.

Ms. Flammer: When I do my feedback at the end, I'm hearing you'd like to see enforcement. yeah, we can talk about that as being one of your comments.

Chair Blumer-Buell: Excuse me, there's one other thing I'd like to read, and I have put together some papers for our Committee, and it is a non-advocate kind of paper. I went through the report, and went through the Hana Community Plan, picked out about a number of things that I thought were applicable that aren't in the report -- okay. Could I -- I'm being advised by our attorney that it would more appropriate to go into public discussions -- I mean public testimony for the first application. Is that right? And we can discuss this after that. So, Gina, are we first ready to go on to the public hearing for Frank

--

Ms. Flammer: Yeah.

Chair Blumer-Buell: Francis Kennedy? Okay. Anyone that would like to testify regarding the application by Mr. Francis Kennedy is welcome to come up to the mike and please state your name so that our secretary cannot -- can have it in the minutes. Thank you.

a. Public Hearing

Mr. Dean Wariner: My name is Dean Wariner. I live 46756 Hana Highway. I'm a retired Hana High School teacher. I've been both a client and a friend of Frank Kennedy for the last 15 years. He taught me some rudiments about carpentry for which I have been forever grateful. And I have watched him develop his property, both the ag side and this proposed B&B operation. I operated my own B&B in Estes Park, Colorado, for four years, and I have some experience in what that kind of operation should be and can be, and how it can be legally operated in residential areas without offending neighbors. It does require a great amount of planning and watchdogging because people will cheat on the rules, people will do what they can get away with, so Mr. Cashman's observations are very valid. On the other hand, Hana is a place of -- that is bound up in tradition and it is being held back by that tradition from developing as a normal community. For one thing, there is only one commercial district in the Hana community, and that belongs to the hotel. There is absolutely no way for anybody else in Hana to earn a living legally because they're all operating out of their homes, and as you know, home businesses aren't legal. So while we're on the subject of developing an organized and a fruitful community, those are some of the things we need to look at, and those are some of the things that community plans have to deal with, and I think we have a long way to go in that direction. But in support of this application, I have seen this property, I have visited there and done work there, and I highly recommend that you sanction this application and recommend it. I think it helps the community to have some accommodations for people who cannot afford the hotel, and the hotel only has 90 rooms, and we get a lot more than 90 people a day coming into Hana looking for a place to stay. If they can find a place to stay that they can afford, then they do have spendable income. They can increase the wealth of the community by spending more time in the Hana community, and accommodations, such as Mr. Kennedy's, will encourage that and it'll be better for all of us if we can support this kind of operation. And I'm not in support of locating B&Bs up and down the street, like a strip mall, that's not what would be in favor of in any community, but if this kind of operation is done correctly, in a good setting, and in a gentle manner, it does offend the surroundings, I think it is very good for the community to have. Thank you.

Chair Blumer-Buell: Thank you, Dean. Any questions for the testifier? Okay, seeing none. Does anyone else care to testify on this application? And I think it would be appropriate to close the public testimony on this application and then ask the applicant to come up to answer any questions the Committee might have. Ward Mardfin.

Mr. Mardfin: I have one, and it's not a reflection on short-term rental, but we also have a need for long-term rental in this community. Have you given any thought to using your property for long-term rental? And if not, why not?

Mr. Francis Kennedy: The particular business that I'm running that's in the application has a description, mostly we do one night stays, which a lot of people don't want to do the trip in one day. It's fairly low-impact on my particular residence since it's part of the house, and their, you know, check-in/check-out times, and most people don't check-in until usually later in the day anyway, so it's relatively low-impact on my particular lifestyle, you know. If I had a second little ohana or something like that, I might consider that, but in this particular instance, I'm not willing to give up that much.

Mr. Mardfin: Thank you very much. That answers my question. Thank you.

Chair Blumer-Buell: Any other questions from the Committee? Okay, seeing none. Thank you, Frank. And we will close, you know, this part of testimony but when we get to the discussion part of the permit, I would allow you to come back and make comments. I mean I was this to be -- this isn't us against -- you know, this is everybody in this so I'm going to, when we get to the discussion part of it, if there's conditions and suggestions or whatever, I think it's fair to have you be able to respond to that. So the -- Corporation Counsel, I had put together and I'm calling it "information provided by me to the Hana Advisory Committee" and it has to do with a few things that I thought were relevant in the community plan just to inform -- inform people there's not a recommendation. I would like to comment to Ed's point about the community plan, at this point, and the very first page, and each of you will get one of these, talks about, this is county, Maui County Code, Chapter 2.8B.110, and under F it says, "Effect of adoption of the general plan and community plans. Until revised or amended pursuant to this chapter, the general plan and the current community plan for each community plan district shall remain in full force and effect." And so we talked about this, I served on the general plan advisory committee, this came up a number of times; that means that if there's a conflict between the new general plan and our Hana Community Plan as it exist now, our community plan has more weight than the new general plan. And then there's -- I have you -- I will distribute -- and you might ask, "Well, why would I do this?" Because at all these hearings, the hardest part for me, and usually everybody else, is to come up with a recommendation, you know, on the fly and the Planning Commission needs to have good language with justification. So, for example, I've made some comments regarding Frank's application, it says, "Possible approval with changes of existing recommendations and additional conditions." I did the same and I did some conclusions of law regarding the state laws. I did the same thing for Terry and Michael Kristiansen. And then I also made some possible justifications for denial. So I'll hand this out. This is not meant to influence in any way but it's information that is not necessarily in the -- well, it's not in the report much of this, so here we go.

Mr. Mardfin: While you're doing that, can I ask Gina a question? Gina, one of things that affects me the most is that the neighbors are okay with it. You know, we live in a community of neighbors and if people are okay with things, and I tend to be fairly liberal about it; if they're not, I tend to be more tough. Were there any -- notices were sent out to every property owner within 500 feet, I understand?

Ms. Flammer: Twice.

Mr. Mardfin: You have any idea how many people that would be, or how many plots?

Ms. Flammer: Yes. I can tell you. Let me grab the file. While I'm doing that, let me explain how the noticing requirements work for these two type of permits. For the bed and breakfast and the short-term rental home, and I think a change in zoning and a couple other of our permits, we require a notice at the beginning of the application to neighbors within 500 feet, so we have a form called a "Notice of Filing." We sign it as the department once the application comes in. We approve the location map and the site plan, and that is sent to all the neighbors within 500 feet. I'm going to take a quick look at my file here and see what we're looking at. And then again, when you have a public hearing for a state land use permit, you are required by state law to notify your adjacent neighbors of the public hearing. For the short-term rental home, if you are approved, you're required to then send your approval letter to neighbors right around you also. It's another requirement we have.

Mr. Mardfin: I'm only asking this because of the Costco incident. We -- you send it to the owners of record. If the next door neighbor isn't the owner of record but they've been living there on maybe a year lease or something like that, they wouldn't get notification would they?

Ms. Flammer: No, but it's hard to miss the sign.

Mr. Mardfin: It's the sign. The sign will take care of that issue?

Ms. Flammer: Especially the B&B sign.

Mr. Mardfin: Thank you very much.

Ms. Flammer: Yeah. That's why it's in there.

Chair Blumer-Buell: I would like to get it into the record for the Planning Commission that, at this point, we have three letters regarding the application by Frank: One by Robin Gaffney and Gaylord Stadshaug, we have another letter from Dean Wariner and Tad Bartimus Wariner, and we have a third letter from Beth Medeiros and Ray Lau, Jr. The

letter from Ray Lau, Jr. and Beth Medeiros is in support. The letter from Dean and Tad is in support. And the letter from Robin and Gaylord is in support.

Ms. Flammer: Thank you, Chair. It's nice to have that in the minutes. I do want to let you know that I did just look at -- there's 14 properties surrounding within 500 feet of this parcel. All 14 received the notice of filing. There are 7 adjacent parcels and they would have received this public hearing notice. It's a good question.

Chair Blumer-Buell: If there's no more questions or we can include anyone on staff part of this but the Chair's willing to --

Ms. Flammer: Did you have another copy of what you passed around, Chair?

b. Action

Chair Blumer-Buell: Sure. So we can go into action on this item now, and so the Chair will take a motion if someone wants to make one. I would just like to say that, you know, in fairness to everybody in the community and on the Committee, that normally we take a motion and it is seconded for discussion. So, you know, if people have other ideas or don't agree, that's why we're having the discussion. So we can go, as you know, we have the options of approval, approval with conditions, deferral, or denial. So that can be, you know, you may -- I'll just give you, you know, some of my thinking. There was a point where I thought, you know, I'd sure like to have a field trip to visit at least a couple of the properties. Clayton, it looks like you're --

Mr. Yoshida: Yes. Mr. Chair, before the Commission begins its deliberations, would the Committee like to hear department's recommendation?

Chair Blumer-Buell: Yes.

Ms. Flammer: Okay, we have a separate recommendation packet for you. Okay, in consideration of the foregoing, the department recommends that Hana Advisory Committee for the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for March 28, 2013 as the meetings findings of fact, conclusions of law, decision and order, and authorize the Director of Planning to transmit said recommendations to the Planning Commission.

This recommendation is based upon seven conditions, which are listed out. Instead of reading through them, I can answer any questions on them. I do want to note, no. 7, which says: "That the farm plan must remain implemented during the time that the permit is being held. Evidence of implementation would be submitted as part of the renewal application." And again, when the permit is renewed, the planner would go out and verify.

Chair Blumer-Buell: Clayton or Gina, do you have anything else you'd like to say or, Corporation Counsel? Okay.

Mr. Yoshida: The Maui Planning Commission has referred this matter to you for your -- to conduct the public hearing and to make a recommendation to them as specified in Section 2.28.060D of the Maui County Code.

Ms. Flammer: Thank you for your additional information. You could be a planner if you need a second career.

Chair Blumer-Buell: I thought it was worth going through the Hana Community Plan and pulling out language that our members might want to consider. It's for their interpretation but all of these things can be used that way so -- Ward Mardfin, please.

Mr. Mardfin: John, are you ready for a motion?

Chair Blumer-Buell: Yes.

Mr. Mardfin: I move we recommend approval of this application to the Maui Planning Commission.

Mr. Ian Ballantyne: And I second that.

Chair Blumer-Buell: Okay, we have a motion from Ward to approve this application as recommended by the department, and a second by Ian. Discussion? Clayton.

Mr. Carvalho: Again, like the last meeting, what are our options for -- do we have a motion to recommend with conditions?

Chair Blumer-Buell: We have a motion from Ward, and seconded, strictly to approve the director's recommendation. Now, we have the reason that you second it is so that we can discuss it and you're welcome to say I would rather, you know, defer it, pass it with conditions, or deny it. Those are our other options.

Mr. Carvalho: Yeah. In regards to the permit --

Chair Blumer-Buell: Right Right.

Mr. Carvalho: But we can still approve with conditions?

Chair Blumer-Buell: Yes.

Mr. Carvalho: Yes.

Chair Blumer-Buell: So Corporation Counsel, please.

Ms. Richelle Thomson: You could also do what's called "an amendment" and if you wanted to add different conditions than what is in the Planning Director's report.

Ms. Flammer: Typically, you would do that with a friendly amendment to start with if the maker agrees, and go from there.

Chair Blumer-Buell: I missed what you said, Clayton, 'cause you -- did you want to make an amendment to the motion?

Mr. Carvalho: No. I just wanted to hear the options.

Chair Blumer-Buell: Okay.

Mr. Carvalho: Just the options.

Chair Blumer-Buell: Ed Cashman.

Mr. Cashman: Yeah, I want to recommend we make -- we approve with the recommendations that's set forth by the city, you know, recommend approval with conditions, the conditions that the city set forth, the seven conditions be included in the approval.

Chair Blumer-Buell: Okay, that's a --

Mr. Cashman: Amended to his motion.

Chair Blumer-Buell: Okay, now I can be corrected procedurally if anybody's better at this than me, but if we have an amendment to the motion, we can -- should we discuss that, the amendment to the motion, or do we need to? Where do we go?

Ms. Thomson: Okay. It sounded to me like it was a statement in support of the existing motion that you're in support of the department's recommendations. Okay. So that's the motion on the floor. So my understanding is that the motion on the floor is to recommend approval of the department's recommendation, which includes the conditions. Correct.

Chair Blumer-Buell: So, procedurally, how do we handle -- Ed wants to make some conditions?

Mr. Ballantyne: No. No. No. Because it's already ...(inaudible)...

Chair Blumer-Buell: Okay.

Mr. Cashman: My understanding is he just recommended approval. He didn't say anything about conditions.

Chair Blumer-Buell: Okay. I misunderstood. Any other comments on the motion?

Mr. Mardfin: Just to kick a dead horse. My recommendation for approval was recommendation to approve the department's recommendation. The department's recommendation had conditions already attached to it. So by recommending approval of the department's recommendation, it included the department's conditions.

Chair Blumer-Buell: Okay. That's clear. Anyone else want to comment on the Committee? Okay, the Chair would like to make some comments on this, and I disagree with the motion, and I want to do through why. So, first of all, it's clear to me that Frank has a true bed and breakfast, number one. I mean of all the applications, it's a true B&B, traditional B&B. And here's the possible changes I'd like you to look at if you look at the application of Frank Kennedy, and it goes -- the one corresponds to the one of the county that the State Land Use Commission Special Use Permit shall be valid for three years from the date of approval of the bed and breakfast permit, and I added: "A request for further extension shall be forwarded to the Hana Advisory Committee to the Maui Planning Commission for consideration." So all I'm adding to that first point is rather than have it be administratively approved, just to bring it back to this Committee, and that would be in three years, and at this point, this is a new process that the community is getting into, I think it's worthwhile to bring everything back to us in three years and hear what's going on, and I don't see it as being arduous if, you know, people -- we may just go Frank's exemplary and let's just give him three more years. But the purpose is to bring it back to this Committee, and then the justification for that addition is the 1994 Hana Community Plan which states: "Maintain the Hana Advisory Committee to the Maui Planning Commission to make recommendations regarding all land use policies, permits, and changes in designation within the Hana district." No. 2, which corresponds to the Planning Department's report, simple says, "The subject land use permit," and I added, "shall not be transferable."

Mr. Mardfin: Mr. Chairman?

Chair Blumer-Buell: Yes?

Mr. Mardfin: I'd suggest if, this is just a suggestion, but if you're going to make -- you're in effect proposing amendments to my motion. If you're doing that, I'd suggest we do them one at a time unless you want to put --

Chair Blumer-Buell: No. Okay, that sounds fine. These are not, you know, these are not -- I mean I think these are friendly amendments that you'd have to accept them that way.

Mr. Mardfin: I would want discussion on each one separately and I suggest we do them sequentially.

Chair Blumer-Buell: Okay.

Ms. Thomson: And that probably sounds like the cleanest way of handling it is to handle to each one as a separate amendment so --

Chair Blumer-Buell: Right.

Ms. Thomson: Motion to amend, second, discussion, pass it.

Chair Blumer-Buell: Okay. Does that -- that makes sense to me. So the first we'd be discussing is no. 1, and that says, we have the county recommendation is no. 1 and I'm simply adding to that, "A request for further extension shall be forwarded to the Hana Advisory Committee to the Maui Planning Commission for consideration." Should I -- does anyone second that motion?

Ms. Anjoleen Hoopai-Waikoloa: I'll second that motion.

Chair Blumer-Buell: Okay, second by Anjo for discussion. Ian.

Mr. Ballantyne: Yeah, I think this is unnecessary. This is kind of a separate thing to the actual permit itself for the use of the premises and that will come up for a recommendation as well in three years and if we oppose that one, we don't need to be opposing everything. It's just adding complication to something that's not simple already and, as I say, the actual special use permit would not be renewed if the application to continue the B&B isn't renewed so it seems to me kind of adding a layer of unnecessary discussion.

Chair Blumer-Buell: Any other comments on that? Scott.

Mr. Scott Crawford: Just to clarify the difference between what the Planning Department's recommendation is and what your recommendation is. Reading the first recommendation it says, from my understanding, three years, the request for extension must be submitted in a timely manner. The Planning Director may forward the time extension request to the Planning Commission for review and approval, and may require a public hearing on the time extension by the Planning Commission. So it seems like is it correct to say that it's basically up to the discretion of the Planning Director whether it needs to go back to the Planning Commission and whether it needs to have a public hearing.

Ms. Flammer: Yes. That's correct.

Mr. Crawford: Okay. And then the other thing I would just comment on is as far as the process is that there are, in the other recommendations, there are several requirements for compliance that renewal will be subject to, so if there was any noncompliance in terms of representations made to this Committee about the use of the property or, let's see, other government regulations or -- and there has to be actually a report submitted with details of compliance, and then also the farm plan has to be implemented and evidence of implementation shall be submitted as part of the renewal application. So those are the things that are already in place for that renewal process that have to be complied with during that three year period. Is that correct?

Ms. Flammer: Yes.

Chair Blumer-Buell: Ward.

Mr. Mardfin: Yeah, I basically agree with Scott. In fact, it's the word "may" that's the real bugaboo at the Planning Commission level because the commission was not thrilled by the director being able to do ...(inaudible)... around the commission. But I agree with Scott that there are enough other conditions in here that things will be done properly, pono. If --

Mr. Crawford: Can I just clarify? I'm not actually making a statement one way or the other at this point. I was just trying to clarify what the conditions are.

Mr. Mardfin: Okay. I shouldn't put words in your mouth. It would seem to me that there are already provisions in here. I don't -- he's been running the business for a while. There haven't been complaints from around the neighborhood. It would be -- if there are complaints that do arise because he starts holding rave sessions till four a.m. five nights a week, I think somebody would notice and let the Planning Department know and there would be a request for service and things would happen. If it looks good now and it looks approximately the same three years from now, I actually don't see a reason to have to involve the Hana Advisory Committee, so I don't think it's necessary but, you know, the Committee will decide.

Chair Blumer-Buell: Yeah, my sole reason for that was just to bring it back to the Hana committee giving us a chance to assess what has happened in three years. Is there any other discussion of this? And let's vote up or down on this one.

There being no further discussion, the motion was put to a vote.

It has been moved by Chair Blumer-Buell, seconded by Committee Member Hoopai-Waikoloa, then

VOTED: to amend condition no. 1 to add: "A request for further extension shall be forwarded to the Hana Advisory Committee to the Maui Planning Commission for consideration."

(Assenting: J. Blumer-Buell; C. Carvalho; A. Hoopai-Waikoloa)
(Dissenting: I. Ballantyne; E. Cashman; S. Crawford; W. Mardfin)

MOTION FAILED

Chair Blumer-Buell: Okay, the vote is four to three. I'm glad we have seven here 'cause we need four to move anything. So that amendment fails, proposed amendment failed.

Now we're on 2, no. 2, which is: "The subject land use special use permit," and I added, "shall not be transferable." Can we have a second for discussion?

Mr. Mardfin: I'll second it for discussion.

Chair Blumer-Buell: Thank you. Any discussion on this one?

Mr. Mardin: I'm going to vote against it. There are all kinds of things that can happen, you know, suppose he were to pass away, you know, his heirs needed it or something. I think the Planning Director, actually, not even the Planning Commission is sufficient to see that things are going well. If it sounds like he wants to transfer it to a rave operator, then issues would arise and be dealt with some other way.

Chair Blumer-Buell: Gina.

Ms. Flammer: If I could just give you some information. The underlying permit, the bed and breakfast permit, is non-transferable period. It's a condition of that particular permit. If something, heaven forbid, were to happen, that permit could not be passed on to heirs.

Chair Blumer-Buell: Okay. That was my understanding before I read the report, so I, without objection, I will withdraw that motion.

Ms. Flammer: It's a good example of how this permit is kind of a catchall. It's for any use so it might apply for a concrete batching plant, where you could have a change in ownership, but because it's attached to another permit that has stricter provisions, it may not come into play quite the way it would with a different type of permit.

Chair Blumer-Buell: Okay, in my statement here, I'm fine with nos. 3, 4, 5, 6, and 7, and I had a proposed additional conditions, first no. 8, I'll just go through them right down the line: "Applicant agrees to or shall participate in community-based dialogue to find solutions regarding sustainable agriculture; food security; energy security; impacts upon the culture, environment and issues identified in the 1994 Hana Community Plan." And the reason that I made that motion was to try to get the community in a dialogue. There's a lot of good knowledge. Frank has been part of the Hana Community Association Development Committee. The idea is to really engage the community and try to evolve this whole situation in a positive manner. There's no, you know, there's no you must do this ten times. But it's the idea of getting together and discussing what the implications of these things are, for example, the impact upon the cultural sites and so forth. Is there a second to that for discussion?

Mr. Crawford: I'll second for discussion.

Chair Blumer-Buell: Okay. Yes. Ian.

Mr. Ballantyne: Okay. I'm sorry, John, I don't agree at all. This is pork kinda thought, you know, pork and bills are just not politically correct at the moment. I mean this has nothing to do with somebody running a bed and breakfast, and I don't agree with it.

Chair Blumer-Buell: Okay. Scott.

Mr. Crawford: My question is just how enforceable it would be? I mean you're saying "They shall participate," but what does that mean? So if he shows up for one community meeting, then he's participated. So I like the idea behind it but I just don't it's practical, really, to enforce or to include on this level of a permit.

Chair Blumer-Buell: Okay. I appreciate that. I didn't read the justification if I could read that first one. The 1994 Hana Community Plan states, "Encourage community-based dialogue regarding proposed land use changes in order to avoid unwarranted conflict." And that's the reason for it is to try to proactively deal with some of these problems that we know exist, we may not want to do it in these applications, but it's still a good idea. Ward.

Mr. Mardfin: I think it would desirable if he did this, but I don't see a nexus between this condition and the SUP, so I can't support your motion. I would encourage Mr. Kennedy to -- do participate in the community but I don't see a nexus to put it as a condition for approval.

Chair Blumer-Buell: Okay. Any other discussion of proposed condition 8? Okay, seeing none.

There being no further discussion, the motion was put to a vote.

It has been moved by Chair Blumer-Buell, seconded by Committee Member Crawford, then

VOTED: to include a condition no. 8: "Applicant agrees to or shall participate in community-based dialogue to find solutions regarding sustainable agriculture; food security; energy security; impacts upon the culture, environment and issues identified in the 1994 Hana Community Plan."

(Assenting: J. Blumer-Buell)

*(Dissenting: I. Ballantyne; C. Carvalho; E. Cashman; S. Crawford;
A. Hoopai-Waikoloa; W. Mardfin)*

MOTION FAILED

Chair Blumer-Buell: Okay, we have six opposed; one in favor. That condition is -- does not pass.

Nine, next proposal: "Applicant agrees to or shall practice organic farming and gardening, and avoid genetically modified organism crops." And the justification is the 1994 Hana Community Plan, which states: "Encourage organic farming practices, environmental protective practices in the selection and application of chemical pesticides, herbicides, and fertilizers." Is there a second for discussion?

Mr. Crawford: I'll second for discussion.

Chair Blumer-Buell: Any discussion? Anjo.

Ms. Hoopai-Waikoloa: I think this is similar kind of to no. 8 where we can encourage him to avoid GMO crops, but it's not connected to his B&B special use permit, but we can, you know, always encourage people to practice organic farming but looking at the pictures, there's a lot of agricultural use on the property and -- yeah.

Chair Blumer-Buell: Thank you. Any other comments? Ward.

Mr. Mardfin: I'd like to ask the applicant if he does use GMO crops.

Chair Blumer-Buell: The question was to Frank Kennedy, and here's Frank.

Mr. Kennedy: Yeah, Frank Kennedy. I actually do organic farming already. I don't use any GMO products -- natural --

Mr. Mardfin: Thank you very much.

Chair Blumber-Buell: Thank you.

Mr. Crawford: Just for the sake of discussion. If there was some desire to include this, question for Corp. Counsel and/or Gina, is this enforceable and does it really belong with level of permit?

Ms. Thomson: As to whether it's kind of a viable condition and whether it can be enforceable, there are, in the county, no GMO taro, a GMO taro ordinance, that's already on the books, so it wouldn't have to be a special condition. The definition of "farming operation" under state law, it's HRS 165-2, includes the application of chemical fertilizers, insecticides, pesticides, etcetera, non-organic type farming are allowed, and that's I think, if my memory serves, that was to protect commercial agriculture, which, you know, definitely uses those types of products. Whether you would want to just go on the statements that the applicant is making that this is the type of operation that he is doing, and that's part of what you're considering and granting or denying the permit, I think I would go more on that rather than making it a condition, but it's up to you.

Chair Blumer-Buell: Any other discussion? Gina

Ms. Flammer: I will note that one of our conditions is that any representations made the applicant is bound by so you've essentially made a condition.

Chair Blumer-Buell: Right. Ian.

Mr. Ballantyne: Yeah, maybe I've got too much tunnel vision here, but as I understand it, this is a special use permit for part of that ground to be something else other than agriculture, and it's that little speck of land where the bed and breakfast room is that we're talking about. We're not talking about the rest of the land. We're saying this little part of this four acres is going to be something different, so it's not going to be agriculture, so why are we discussing agriculture?

Chair Blumer-Buell: Any other discussion? I appreciate everyone seconding these motions and discussing it. It's my intent was to try to create a discussion and the awareness of these issues, which are part of the community plan and, certainly, are already being incorporated into the community as some level at this point. Scott.

Mr. Crawford: And I appreciate you bringing them forward for our awareness and discussion, John.

Chair Blumer-Buell: Thank you. So let's, if there's no more discussion, let's have an up or down vote on no. 9.

There being no further discussion, the motion was put to a vote.

It has been moved by Chair Blumer-Buell, seconded by Committee Member Crawford, then

VOTED: to include a condition no. 9: "Applicant agrees to or shall practice organic farming and gardening, and avoid genetically modified organism crops."

(Assenting: J. Blumer-Buell)

*(Dissenting: I. Ballantyne; C. Carvalho; E. Cashman; S. Crawford;
A. Hoopai-Waikoloa; W. Mardfin)*

MOTION FAILED

Chair Blumer-Buell: Okay, the proposed amendment fails, six to one.

So 10, the next proposed condition is: "Applicant agrees to recycle and encourage guest to recycle as much as possible." Is there a second to that motion?

Mr. Mardfin: I'll second it for the point of discussion.

Chair Blumer-Buell: Okay. Any other -- any discussion? Okay, we will -- I'll call for the vote unless there's more discussion.

Mr. Mardfin: I think this is admirable. I suspect Mr. Kennedy already does this, but again, it doesn't strike me as a thing to put down as a condition for this. It does seem like a good thing, and I think he'll do it, and I appreciate you bringing up these issues for our discussion, but I think it's somewhat irrelevant for this.

Chair Blumer-Buell: Yeah, I can live with this and, you know, the thing is we're talking about now and into the future, and the purpose of this is try to incorporate what's in our existing Hana Community Plan, and the best things out of it, and move it forward so when we have -- I think we will have discussion groups who are certainly going to review the community plan in the next few years and all these issues will be thoroughly discussed I'm

sure at that time. Okay, so we have the -- we had our discussion regarding proposed amendment 10.

There being no further discussion, the motion was put to a vote.

It has been moved by Chair Blumer-Buell, seconded by Committee Member Mardfin, then

VOTED: to include a condition no. 10: "Applicant agrees to recycle and encourage guest to recycle as much as possible."

(Assenting: J. Blumer-Buell)

*(Dissenting: I. Ballantyne; C. Carvalho; E. Cashman; S. Crawford;
A. Hoopai-Waikoloa; W. Mardfin)*

MOTION FAILED

Chair Blumer-Buell: Okay, we have six opposed, one in favor. The motion dies. What's that? What's that?

Mr. Carvalho: I have a comment.

Chair Blumer-Buell: Yeah. Please.

Mr. Carvalho: Perhaps just establishing awareness is just as effective as establishing conditions, perhaps we establish a group, another group with sidebar to it to make these homeowners aware of these conditions we want to pass but not necessarily put them into action. Perhaps we -- yeah, like I agree with Mr. Mardfin that we have -- we already have homeowners who are doing these things, perhaps we just make them all aware that we're all trying to practice that and we'd encourage them to practice the same way.

Chair Blumer-Buell: I agree that that's the intent.

Mr. Carvalho: Yeah.

Chair Blumer-Buell: Ward.

Mr. Mardfin: So the vote shouldn't be interpreted as we're against these things; the vote should be interpreted as we don't think there's a connection to the SUP but we do encourage these things.

Chair Blumer-Buell: Okay, all in favor of 10? Or did we vote? Okay, we've done it. Okay, the -- had to discuss was regarding page 2 of the Planning Director's recommendation and the -- this is, you know, to me it's -- this has to do with the five tests of the State Land Use Commission Special Use Permit, and no. 5 says, "The land upon which the proposed use is sought is unsuited for the premise for the uses permitted within the district." And I have simply made the case, and I've given a list of justification, and said -- the Hana -- I'm making a motion that Hana Advisory Committee finds that the land upon which the proposed use is sought is suited for agricultural uses.

Mr. Crawford: I'll second the motion for the sake of discussion and then say that I think that the fact that they have a farm plan kind of covers that already. If they didn't have an approved farm plan -- if they have an approved farm plan, I think there's an assumption that it is suitable for agricultural use.

Chair Blumer-Buell: Right. But the -- my point was to - just one moment, Gina - was to just clarify that the land is suited for agriculture and my justification, I mean I think this is, for anyone that wonders, these are conditions for approval, so these are not negative things. What we're trying to do is establish a record. And what's important is this land, these small parcels, are suitable for agriculture. I think that's an important thing, point to make even though it may seem obvious because the state's saying if it's not -- if it can't be -- you know that one of the requirements is that it is not suited for agriculture; well, it is suited for agriculture and this Committee will deal with the approval or disapproval, deferral, or the conditional thing in spite of that. I think we're making it clear that this is usable agricultural land. And just for everybody's short justification is the Hana Agricultural Park, where the subject parcel is identified, was prime grazing land for the Hana Ranch before the land was sold as an agricultural park. Earlier, Kaeleku was used for sugar cane production and traditional crops, such as kalo. There was a contested case regarding the suitability of three parcels in Kaeleku for agricultural use. Those parcels were found suitable for agricultural use. Case number and information should be available through the Maui County Planning Department. The applicant has used the land for agriculture for decades and has a farm plan on file with the county. And I'll just add too, Frank knows this, I did a fair amount of work out there on that piece of property at one time so I feel that I know that area. The point is that if we're -- if we approve this as a Committee, we're saying in spite of the -- it not supposedly not being fit for agriculture, it is fit for agriculture and we're making a recommendation on top. Gina?

Ms. Flammer: I've had the same question. It's hard when we require a farm plan and then say it's not suited, however, the particular land we're talking about, there's a house on top of it. It's a strict interpretation but it's hard to farm when there's a structure on top of that land. I believe if you were to use that strict interpretation, that's probably what is meant in this particular case.

Mr. Crawford: Which is consistent with Ian's point earlier that really this is just dealing with the house itself and not the property around it actually. The permit is just for the house itself, not the rest property.

Chair Blumer-Buell: Right. But that particular test, that no. 5, that test I think it's important to show that we think this land is good for agriculture and if we grant --

Mr. Crawford: But the house itself that we're discussing is not suitable for agriculture because it's a house.

Chair Blumer-Buell: Yeah. Okay. That same justification was used -- was part of the contested case in Kaeleku. There was a proposal for a large campground on three -- spread over three large parcels in Kaeleku. The applicant claimed that it wasn't good for agriculture and, therefore, met that test to do the commercial use. The community went into a contested case and proved, before a hearings officer, that in fact that ag -- that land was good agriculturally. That's the point.

Mr. Mardfin: John?

Chair Blumer-Buell: Ward first and the Ian.

Mr. Mardfin: John, a campground, a proposed campground would take land out of agriculture and use it for something else. This house, particularly, not the surrounding land, which is used for agriculture, but the house itself is probably unsuited for any legal agriculture short of getting basement type growing, which would be frowned upon by the police department, so strictly speaking, the land for the B&B, which is already an existing house, he's not building a new house for it, the land within the existing house is unsuitable for agriculture unless he grows mushrooms.

Chair Blumer-Buell: Ian.

Mr. Ballantyne: Yeah, I mean just to reinforce that point. As I understand it, this is a special use permit, it's not excluding agriculture, it's in addition to agriculture. Am I correct?

Chair Blumer-Buell: Okay. That is the -- we've had our discussion. That is number -- that's just part of the findings of the -- in the report. The question is: Does the Committee want to include that in the report or not?

There being further discussion, the motion was put to a vote.

It has been moved by Chair Blumer-Buell, seconded by Committee Member Crawford, then

VOTED: to include as part of the findings in the Planning Department's Staff Report: "that Hana Advisory Committee finds that the land upon which the proposed use is sought is suited for agricultural uses."

(Assenting: J. Blumer-Buell)

(Dissenting: I. Ballantyne; C. Carvalho; E. Cashman; S. Crawford; A. Hoopai-Waikoloa; W. Mardfin)

MOTION FAILED

Chair Blumer-Buell: The suggested condition fails. Now, back to the -- now we're back to the main motion. Ward, would you like to restate that in case people have forgotten?

Mr. Mardfin: My motion was to approve the conclusions of law and recommendations of the application for a special land use permit as recommended by the Planning Department and we're recommending this to the Maui Planning Commission.

Chair Blumer-Buell: Right. Any further discussion? Okay, I will call for the vote.

There being no further discussion, the motion was put to a vote.

It has been moved by Committee Member Mardfin, seconded by Committee Member Ballantyne, then unanimously

VOTED: to recommend approval of the Planning Department's recommendation, with conditions, and transmit to the Maui Planning Commission.

Chair Blumer-Buell: It's unanimous. Seven in favor; none opposed.

Ms. Flammer: I heard a couple other comments. Thank you for the vote, by the way. I heard a couple other comments. I didn't know if you wanted me to relay them to the Maui Planning Commission. I heard that you'd like to see more enforcement. Was that just one member or is that something that everybody -- okay. I'll include that.

Mr. Crawford: Yeah, definitely, I concur with that. I mean the idea if we're giving an incentive for people to actually go through the process and comply with all the laws, then there should be some disincentive for those who don't.

Ms. Flammer: Thank you. Okay. I also heard that even though you discussed these particular conditions, and this will be included in the packet that goes to the Planning Commission, which you just discussed, that even though you found there wasn't a legal nexus, which just so in layman's terms you guys know what that means, it means that there's a condition that needs -- a negative condition that needs to be mitigated and it can be mitigated through a condition, that's what a nexus is, so you didn't find the legal nexus but, however, you wanted to encourage applicants to adopt these practices. Is that what I heard from you? Okay. Is there anything else that you wanted to convey to the commission? Okay. Okay, thank you.

Chair Blumer-Buell: I think we are completed with that particular application. Thank you, Frank. Okay, on to the next agenda item, which is the application by Terry and Michael Kristiansen requesting a State Land Use Commission Special Use Permit. Is anyone here representing Terry and Michael Kristiansen. Hi, Michael. Would you like to go up to the microphone and make any comments?

Mr. Michael Kristiansen: ...(inaudible)...

Chair Blumer-Buell: Okay.

- 2. TERRY and MICHAEL KRISTIANSEN requesting a State Land Use Commission Special Use Permit in order to operate the Entabeni Cottage, a one(1) bedroom bed and breakfast home on property situated in the State Agricultural District at 370 Hana Highway, TMK: 1-2-004: 011, Hana, Island of Maui. (SUP2 2012/0011) (G. Flammer)**

The Committee may make a recommendation on the application to the Maui Planning Commission.

Ms. Flammer: Okay. Again, we're dealing with a bed and breakfast use that is the trigger for the land use special use permit. We have it listed as a one-bedroom, however, it's really a studio unit. And again, this is why we went over this with the previous one. It's an 800 square-foot accessory dwelling. The owners live in the main house. I did put -- they wrote a little more information in their application so if you see in this report, under the project description, you'll see more information about this. I believe they bought the property while Mr. Kristiansen was working in Honolulu as the director of the botanical gardens. They would come over periodically, stay in that cottage; later, when he retired, they built the main house and moved into there. I think the son lived in the cottage for a while and ran the nursery. And now they use it as a bed and breakfast. It's located in Nahiku. They run a commercial landscaping nursery as well as a botanical garden. This is the case where the ag inspector came out and I've never seen such a huge area for ag assessment before. I think they only did a quarter of the whole site.

Again, we just talked about this with the previous one, there were no triggers. It's where you would see the B&B. You said it's hard sometimes to deny people. When you see a lot of protests and a lot of complaints, maybe not so hard. Cases like this where there are no triggers being met. You're only going to see the state land use. I realized I forgot to put floor plan in your packets so I've got it right up here so you can see. We are really just talking about a studio unit there. Again, the weather wasn't so great. I think I caught a moment of sunshine. This is from the applicant, some of these photos. So here we have the inside, dining area; you've got a kitchen area across the sitting area; one bedroom that's still in the main area. Here's the written description, which I just included as Exhibit 3 for you to read.

When we move onto Exhibit 4, we're looking at the farm plan permit. Implemented farm -- farm plans are required as a part of the building permit approval process. When you build a second cottage, they are required to be implemented. So because this applicant built a second cottage in 2004, they were required, at that time, to have their plan implemented. Now, back in 2004, this is all we gave you for your permit ...(inaudible)... saw with the other ones. It does have a plan. I did go out and inspect. The areas that say "proposed," actually they have done, so they've continued to expand the area. Now these are all the agricultural activities. I included them in one of my general presentations on the short-term rental and then thought later, boy, I set the bar pretty high for people to see. They're growing a lot of stuff, and selling also, and displaying. They do include some tours along if a guest would like. So I'm just going to show you some pictures of the yard just so you can see since you can't do a site visit. Some of them are labeled botanical garden style. I don't -- you can't necessarily see them in the pictures. When you come to look at the plants, they want to be able to show perspective -- or show buyers what the plant looks like when they grow. Blue jade up in the corner. I think if you look here, you can see some of the markings where they label. So we're looking at flowers, ginger, heliconia ginger, ti leaves, more ginger, torch ginger. I don't remember what this was. Two different plants there. Is that orchid? Okay. Something other than an orchid. A lot of palm trees. Lots of varieties of palm. Lots of different ti leaves. They do have some fruit trees. I wanted to show you where the nursery activities take place. They have a greenhouse. And then there's pictures -- there's pasture land as well. Chickens too, which I think it was raining so hard at that point, I didn't quite get pictures of that.

I wanted to show you, in the report, agency comments. You can see here RPT did come out. They did have three letters of support from neighbors as well as the Hana Business Council. And I think you've all met Michael here. He can come up and answer any questions when we get to that point.

Chair Blumer-Buell: Ward?

Mr. Mardfin: First of all, I'd like to -- what years were you head of -- director of the botanical gardens in Honolulu?

Chair Blumer-Buell: Can you state your name, please?

Mr. Michael Kristiansen: My name is Michael Kristiansen. I was the director from '89 to '96.

Mr. Mardfin: I want to congratulate you. I used to live in Honolulu for a long time. I moved back to Hana in 2001. And Foster Garden and Lyon Arboretum were two of my favorite places to go in Honolulu. You did a magnificent job.

Mr. Kristiansen: Good. Thank you.

Mr. Mardfin: My question -- now my less friendly question. Is there -- it's the same question I asked the previous gentleman about long-term rental. Had you ever considered using this for long-term rental?

Mr. Kristiansen: No, we haven't only because of our lifestyle. We prefer not to have someone living on the property permanently; plus, I think the unit is too small. It's 800 and it's basically just a very large room with a separation of the bathroom, etcetera, so basically those are the two main reasons. I think it's just too small.

Mr. Mardfin: I understand. I just am going to ask that of every person anyway. This is sort of beyond what we're doing right now, but I don't know if you've been involved, we have an annual East Maui Taro Festival, and a man with your experience, there might be some way that you could be sharing that with our local community and I would encourage you to do that.

Mr. Kristiansen: If I had as much time as I thought I would have as a retiree, I would certainly get involved because I think the Taro Festival is one of the most worthwhile activities in the Hana area.

Chair Blumer-Buell: Anjo.

Ms. Hoopai-Waikoloa: I don't have a question but just looking at the pictures, like I come in 'cause, you know, we just pass and it just looks like wild, but the pictures it just looks amazing and it's what I would hope for in all ag landowners to utilize their land in the ways of, you know, all your plants and sustainability, your garden, your farming, and I mean I would like to go take a look up there 'cause there's a lot I could learn, you know, from it and, hopefully, you have a lot to offer professionally in your experience, and even not just reaching out to Taro Fest, but maybe reaching out to our school kids besides like the

Mahele Farm to see not just a community farm, but a person or lifestyle, you know, just encourage you to maybe do that also.

Mr. Kristiansen: Well, we have been slightly involved with the school in their keiki garden program, but they haven't needed anything more since my initial involvement.

Chair Blumer-Buell: Any other questions? Thank you. Gina, would you like to read your recommendations?

Ms. Flammer: Let's do public testimony. We'll just maybe double-check and close that.

a. Public Hearing

Chair Blumer-Buell: Okay, is there anyone wishing to testify regarding this application? And please give us your name so that the Planning Commission will know who it is.

Ms. Annalynn Nahe: I'm Annalynn Nahe, and I'm a community member for over 30 years in Kaeleku District. I just wanted to comment in regards to Michael and Terry's property, he does open it up to families, at least my family, and it goes beyond in sustainability, teach you how to live. They got chickens there that poop. They use the poop for the garden. I mean everything evolves. Everything goes in a circle. He not only sells, but he also give to families vegetables, fruits, anything. So I just wanted to share that I encourage your approval to this because it's not only a bed and breakfast out in Nahiku, it's a little family garden and it extends to the Nahiku family in itself. They employ people too so by not approving him, there will be a lot of our local families would be losing jobs so he not only have a working farm, but he also helps the community every year they're with jobs. So thank you.

Chair Blumer-Buell: Mahalo. Anyone else wishing to testify?

Mr. Mardfin: Annalynn? Can I ask Annalynn a question ...(inaudible)...

Chair Blumer-Buell: Absolutely.

Mr. Mardfin: When you refer to jobs, are you referring to jobs in the garden or you're referring to jobs in the B&B?

Ms. Nahe: With both.

Mr. Mardfin: Thank you.

Ms. Flammer: In response to your question, Ward, we started asking on the application who they employ, in the written description, it's one of the things that we've suggested they could talk about. In the written description. It's in the application. We do ask them to talk about employment opportunities; who they employ; who does; do they do the work themselves; do they hire people, yeah, and I include it there -- I'm including all the applicant's own written materials as exhibits in there.

Chair Blumer-Buell: We have a question from Clayton for the applicant I think.

Mr. Carvalho: Well, I that question goes with mine. I guess it's a question to the homeowners, with his knowledge and expertise, it's pretty safe to say that his business is just going to expand, do you think there's a lot of employment opportunities out there for other people to work in your business?

Mr. Kristiansen: Yes. There is. If I live long enough, yes.

Chair Blumer-Buell: Anjo has a question.

Ms. Hoopai-Waikoloa: I'm curious. What does "Entabeni" mean? The name of your cottage?

Mr. Kristiansen: "Entabeni" is a Zulu word which means "a place on a hill with a view," so you may see bush or jungle from the street, but up on the top, there's a very good view.

Ms. Flammer: Just so you can see that view, it's right here.

Chair Blumer-Buell: Thank you. Any other questions for the applicant? Or any other comments from the public? Okay, we'll close this part of it and have Gina read the recommendation.

b. Action

Ms. Flammer: Okay. In consideration of the foregoing, the Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for today's meeting as the findings of fact, conclusions of law, decision and order, and authorize the Director of Planning to transmit said recommendation to the Planning Commission. Now, the foregoing that we refer to are the seven conditions that are listed on page 3 and then 4, again with no. 7 requiring that the farm plan stay implemented during the duration of the permit.

Mr. Mardfin: Mr. Chairman?

Chair Blumer-Buell: Ward.

Mr. Mardfin: I move approval of the staff recommendations for recommending to the Maui Planning Commission with all the conditions as recommended by department.

Chair Blumer-Buell: Do I hear a second for discussion? Ed Cashman seconds. Any further discussion? I had put together, as far as this handout, I had put together a similar kind of a approach to Terry and Michael's application, but since the, you know, the Committee's spoken on that, I don't see any reason to, you know, pursue that. But -- so is there any other discussion on the motion? Okay, call for the vote.

There being no further discussion, the motion was put to a vote.

It has been moved by Committee Member Mardfin, seconded by Committee Member Cashman, then unanimously

VOTED: to recommend approval of the Planning Department's recommendation, with all the conditions, and transmit to the Maui Planning Commission.

Chair Blumer-Buell: Unanimously for - seven to zero. And I think that closes the action on this application. Thank you very much.

Okay, third, next application is Mr. Lawrence J. Hansen.

Ms. Flammer: Okay.

Chair Blumer-Buell: Gina, would like to do your report first?

- 3. MR. LAWRENCE J. HANSEN requesting a State Land Use Commission Special Use Permit in order to operate Hana's Heaven, a two (2) bedroom short-term rental home on property situated in the State Agricultural District at 355 Waiohono Road, TMK: 1-4-011: 005, Hana, Island of Maui. (SUP2 2012/0028) (G. Flammer)**

The Committee may make a recommendation on the application to the Maui Planning Commission.

Ms. Flammer: Okay, we're moving to a same permit, the land use special use permit, however, the trigger is for a short-term rental home, and not a bed and breakfast. I will note, in this case, the applicant does live in Hana.

So again, you're seeing the use is requiring two different triggers. The short-term rental home permit did not meet any of the triggers for a Planning Commission approval. There were actually no protest at all, in this particular case. It's less than three bedrooms so it doesn't come to you. So in this case, we're looking at a two-bedroom, 944 square foot home. This is - I put in a map so you can see but I'll show that in a minute, this is right before where they're replacing the new bridge. The road right before Sybil's house, actually. We have Mr. Larry Hansen here, the applicant. And we have an implemented farm plan consisting of 58% of the property. I will note that the applicant bought the property a few years ago -- four years ago. He's continuing to expand the ag. It does take a while.

Again, well, I'll let you know since we're doing STR, we do have one pending approval in the Hana region, that's an administrative permit that was not on ag land so it didn't require an SUP, and it was for a studio unit, so it was less than three bedrooms. There are 11 applications in, including 2 today. I think four of them have associated SUPs that you will see. The other ones some have done the 45-day neighbor notice and there have not been any protest. Some will come to you because they are more than four -- they're four, five, or six bedrooms, and some may come to you if they hit the protest provisions, the mailings haven't all gone out. I did include a copy of the application for the short-term rental as well as the B&B too so you can take a look at what's required. Again, the cap is 44 for short-term rental homes.

Okay, I wanted to show you the map of where we're talking about here. We're working our way around also ...(inaudible)... okay, so here's the home. You do have a floor plan, I believe, in your packet, but it's a pretty simple layout - two bedrooms with a central area.

Okay, so I did include also the applicant's written description. You can read it in his own words. I also included - he addressed, we ask for in your land use permits a report identifying the reasonable and unusual uses, he did go ahead and take a stab at that. You'll find a letter from us with the farm plan approval. I did include a copy in your materials of our farm plan application. It is quite an involved process. Our Zoning Division is the one that does that, so they approve the plan first and then they send out an inspector who shows that it's been verified; then they have to place the unilateral agreement on their deed as well. So here's a copy of his current farm plan. Again, he listed out the numbers of the different trees, plants. And then he included a future farm plan because he is continuing to expand. This is the coffee that's right here. It's kind of interest. He's actually taking land we would consider unusable and he's clearing it and planting down the gulch. You can see this area here where he's continuing to expand. You have a small keiki fruit

tree but then you also have some of the real small coffee plants. There's quite a bit of citrus also on the property. This is one of the few mature trees. It was probably there when he bought the property. The rest, I think he's installed. You can see it takes a while for them to grow. It looks like an avocado. Mango maybe we have here. Another plant on the right. Star fruit. I think that's turmeric. Lots of banana. I think we another -- maybe that's an avocado there. Structural bamboo. It looks like several different species. More fruit trees.

In terms of the agency comments, we had no comments, actually, even from real property tax. My guess is maybe they've been out there already. And then we had two letters of support including one from an adjacent neighbor, and then we also had a letter from the homeowners association stating they have no objections with this application. And that concludes the presentation.

Chair Blumer-Buell: I have a question. There's a -- one of the letters is from Maryanne Kusaka, on the Hanahuli Association letterhead, is that what is being referred to as the community association?

Ms. Flammer: Yes.

Chair Blumer-Buell: Okay. I would just like to clarify that, Chuck Gray here could probably help with that, is that in fact an association up there? The Hanahuli Association, historically, is a limited liability corporation and isn't really a community -- neighborhood community organization.

Mr. Lawrence Hansen: Larry Hansen. We sent out the 500 feet; these were one of the individuals that we sent a letter to and they responded with their response to us.

Chair Blumer-Buell: Right. Okay. I know -- I've met her and know the Hanahuli but it's just I've never heard it referred to that way. It's -- so that was my question. Thank you. Ward.

Mr. Mardfin: Mr. Hansen, I will ask you the same question. Have you ever considered using this for long-term rental as opposed to short-term?

Mr. Hansen: No. No. We have never thought of it that way. Like the previous individual, we like our privacy also.

Mr. Mardfin: Is this within your home or it's a separate --

Mr. Hansen: We have two structures.

Mr. Mardfin: Okay. Thank you.

Chair Blumer-Buell: Any other questions? Ward.

Mr. Mardfin: One of the differences between a B&B and short-term rental is that for a B&B you have to live on the property. Do you in fact live on the property?

Mr. Hansen: Yes. But we do not rent a room. We rent the whole structure. Am I right?

Ms. Flammer: I love the questions you guys ask. You can live on the property if it's a short-term rental. A bed and breakfast requires that you be there at all times. So if you have somebody that's there part-time, we want them to get the appropriate permit so they're going to have to have a manager when they're gone, so that's another difference.

Mr. Mardfin: Is that case, is that the situation in this case, you're here part-time and --

Ms. Flammer: The applicant explained to me that he travels --

Mr. Mardfin: Oh.

Ms. Flammer: So I thought, in that case, it's probably more appropriate that he come in for the proper permit.

Mr. Mardfin: Thank you.

Chair Blumer-Buell: Any other questions? Thank you.

a. Public Hearing

I'll just give one more opportunity if there's anyone that wants to, from the public, that wants to make comments, now's your opportunity. Okay, Ward, did you have another question? Okay. Gina, do you want to read the recommendation?

b. Action

Ms. Flammer: The Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for today's meeting as its findings of fact, conclusion of law, decision and order, and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission. You'll notice again it has the same seven conditions of the previous two permits that we reviewed.

Chair Blumer-Buell: Thank you. Any questions for Gina? Ward.

Mr. Mardfin: Not a question, I was going to move for approval.

Chair Blumer-Buell: Okay, no more questions from anyone. Okay, I'll take a motion.

Mr. Mardfin: I move approval of the staff's recommendations to the Maui Planning Commission. I guess it's technically you send this to the Director to transfer to the Maui Planning Commission with the recommendation.

Chair Blumer-Buell: Okay, do I have a second for that?

Mr. Carvalho: I will second.

Chair Blumer-Buell: Okay, Clayton seconds. Discussion?

Mr. Mardfin: Yeah. Now I do have a question for Gina, I think, as part of our discussion. I raised it early on about this outside the urban Hana area, and the two we've approved are outside the urban Hana area, this one is also, I think the last one is inches out of it, you know, or hundreds of feet out of it, the interpretation of you and the department is that where it doesn't say "prohibit" so we sort of -- I guess I wonder where this goes.

Ms. Flammer: Yeah. Planners have a tough time when we see vague language because prohibit is prohibit; shall means prohibit; discourage; it comes to you and it becomes your interpretation of it.

Mr. Mardfin: Mr. Chairman, as part of discussion, I'd like to make kind of a short statement. While I understand the Hana Community Plan does try to discourage this, I also -- the other parts of the plan was to encourage certain kinds of tourism to encourage more economic development, and I didn't mention it when we passed the first two, but what I'm saying now applies to those also, you know, we get so many visitors, close to a million visitors a year coming through here on a day trip spending five bucks on lunch and ten dollars on a t-shirt, and very little economic impact. And when visitors stay overnight, one, two, three nights, there's much more economic impact, positive economic impact on Hawaii, positive impact on jobs. The visitor experience, I think, is enhance for the people that do stay overnight and get to see parts of Hana that they don't otherwise see. They go away with a really warm feeling, maybe they have an opportunity to go to the Hana Cultural Center, or Kahanu Garden. While the Hana Community Plan does say to discourage it out in certain areas, times are tough, economically, and if we can get our visitors to have a rewarding experience without disturbing neighbors, none of these places have had complaints from neighbors or anything like that, I don't have a problem in voting approval of these sorts of things.

Chair Blumer-Buell: Any other comments or questions? Yeah, Clayton.

Mr. Carvalho: More just comment, I guess. You purchased this land three years ago and the development for the ag is like in its infancy stages. I'm not saying that's in regards to -- I guess my next comment is not in regards to this one because a lot of the testimony goes with that he's been developing in the last year, but what's to stop another applicant from abusing that provision for ag land, basically, building something -- starting something and then just letting it wilt over the next few years while he has that permit approval?

Ms. Flammer: We talked about that. It's not easy to farm. You know, yeah, it really isn't, and we discussed no. 7, the condition that says that farm plan has to be implemented, and the commission discussed it and, you know, we drew a line in the sand is you have. If you have bugs that come in and destroy your property, if you have a flood that comes through, like what happened in Maliko Gulch and wipes out your property, you are not farming anymore. You can't pass that farm plan.

Mr. Carvalho: Yeah.

Ms. Flammer: Yeah. You gotta draw the line somewhere.

Mr. Carvalho: Yeah. Well, just more a comment. Just asking.

Ms. Flammer: Yeah, I know. We've also had the question of if it's a plan, doesn't that mean it's what I'm planning to do, and it has to be in the ground when we come out to be on the plan, so even though he submitted future, we don't consider that into the calculations.

Chair Blumer-Buell: Any other questions or comments? I just had one short comment and that's just that, you know, I hope -- the reason -- you know, and I will continue to pursue having these permits come to the Hana Advisory Committee, I think it's really important that we have the big picture, not that we're getting -- you know, we're hearing about four that got approved here and two that are pending, and we're just hardly being consulted, I think that's very important to the community. And I agree with what Ward said about there being tough economic times, and anybody that lived in Hawaii in 1994, 1995, will remember the oil embargo, and there wasn't much tourism in Hana then, but you could only get gas, five gallons at Hasegawa's two or three times a week at the most, and my point is that things can change very rapidly with this situation, and that's why I discussed in my previous conditions just the idea of sustainable agricultural practices because, to me, if we have dozens of small farms that have a basis of food crops and so forth, and something really goes -- if things change drastically, we're going to have a good start of sources of food and that sort of thing, and I've contended for a long time that, you know, two acre or bigger

farms with gardens that if you have a neighborhood full of those kinds of farms, you can feed yourself as a community if times go get tough. You know, if you have four, or five, or ten people with two-acre gardens, if everything else fails, you'll have something to eat. And so I just want people to be mindful that, you know, for me, this is -- we're kind of starting on a new road on the community and, you know, I just think we need as much information as we can get and, hopefully, things will work out so, anyway, any other comments or questions for Gina or the applicant. Okay, and who seconded the motion? Clayton seconded. Thank you. If there's no additional questions or comments, I'll call for the question.

There being no further discussion, the motion was put to a vote.

It has been moved by Committee Member Mardfin, seconded by Committee Member Carvalho, then unanimously

VOTED: to recommend approval of the Planning Department's recommendation, with the seven conditions, and transmit to the Maui Planning Commission.

Chair Blumer-Buell: None opposed. That's unanimous - seven to zero. And thanks for coming, the applicant.

Okay, we're on to the next application, which is Wendy and Robert Horen, and why don't we have Gina do her report.

- 4. ROBERT and WENDY HOREN requesting a State Land Use Commission Special Use Permit in order to operate the Hale Nanea Short-term Rental Home, a two(2) bedroom short-term rental home on property situated in the State Agricultural District at 5440 Hana Highway, TMK: 1-4-003: 051, Hana, Island of Maui. (SUP2 2012/0018) (G. Flammer)**

The Committee may make a recommendation on the application to the Maui Planning Commission.

Ms. Flammer: Okay. Again, this time we're looking at a short-term rental home. The applicants live in Hana, however, they do not live on the particular property, though they do do agriculture that requires them to be on the property. Okay, two-bedroom, 896 square-foot home, 5440 Hana Highway. I'm sure you guys all have a good sense of where that is. Their implemented farm plan came out to be about 70% of the property being planted out. A lot of banana. So here you can see the front of it. A little dark. Inside...(inaudible)... two-bedroom 'ohana with a central area.

Okay, again, I included the written description so you can read in the applicant's words. And then the farm plan permit along with the plot plan. We understand that farmers aren't skilled graphic artists so we'll take just about anything. What we really care about is when we show up, are the plants there and, yeah, they are there. I think you're looking at papaya here. More papaya. Some fruit trees. More banana fruit trees. There's lilikoi as well. Then you can see a smaller tree. I think they're continuing to plant out the property. You can see another small fruit tree. There's some ginger as well. A little bit of black taro.

Again, with the agency comments, real property tax did come out and do an inspection. Is that right? You may not have been there. They don't notify. They just come by. Okay. So that -- okay, so, alright, they're doing ag. And then we did have two letters of support, one I -- I distributed both to you today so they'll be in your packets. So that concludes the presentation. And I guess it's easy to introduce the applicant, I'm sure you know them, if you have any questions.

Chair Blumer-Buell: I miss that. I was looking at something.

Ms. Flammer: Oh, we have the applicants here.

Chair Blumer-Buell: You want to come up? Wendy and -- it's good if you -- we're being recorded here for the Planning Commission so it's good if you give your name.

Mr. Robert Horen: Okay. My name is Robert Horen.

Mr. Mardfin: Mr. Chair?

Chair Blumer-Buell: Ward.

Mr. Mardfin: Maybe more than the other three, my question is to you 'cause you're living in a different place, had you given any thought to long-term rental for this property?

Mr. Horen: We actually were doing long-term rental. When we first bought the property, we had a renter in there for about a year, a little over a year, maybe two years, and what happened is they pretty much trashed the whole house. I should have probably brought pictures for you. And so while we were remodeling it, we were trying to find somebody to go long-term but we couldn't find anybody to rent it at that time, and so that's when we decided to go short-term.

Mr. Mardfin: And when was it that you went -- started to go short-term?

Mr. Horen: I'm going to say about four years ago. Something like that.

Mr. Mardfin: Thank you. This is right by Bully Ching's place, real close from ...(inaudible)...

Mr. Horen: Yeah. Yeah. Right across from Craig Kristofferson's, down from --

Mr. Mardfin: Yeah. Thank you.

Chair Blumer-Buell: Any other questions for Otto. Okay, thanks.

Mr. Horen: Okay. Thank you.

Chair Blumer-Buell: Just for the record, Gina referred to minutes -- I mean some letters and we do have a letter in support from Danny Mynar, who's the General Manager at Travaasa Resorts, and also from Neil Hasegawa. They're both in support. Those were the two. Okay, Ward.

Mr. Mardfin: I do have another question. I know you and Wendy work real hard on things, but do you hire any other people to work on this property?

Mr. Horen: Yeah. Sure. We have girls that do cleaning. Our guys do the repairs on it and the yard work too.

Mr. Mardfin: So two, three people maybe?

Mr. Horen: Yeah.

Mr. Mardfin: Okay. Thank you.

Mr. Horen: You bet.

Chair Blumer-Buell: I have a question that, and this is -- the reason I'm asking this is I was watching the County Council one time and Bully Ching, Marvin Hanchett-Ching, was there and was asking a question, which was about the road going up by your place to the Hanchett property, and so his question had to do with liability and I just thought I'd put that out there so it's answered, how is that dealt with, you're kind of a hui on that property or it's separate?

Mr. Horen: What it is is it's a five-parcel subdivision and we have a 40-foot wide easement, and that's what Bully was -- I've talked to Bully about it and he's fine now with the insurance we have that covers all that.

Chair Blumer-Buell: Thank you.

Mr. Horen: Yeah. You bet. Scott Crawford.

Mr. Crawford: I do have one more question for you. This is just following up with our original discussion as far as the agriculture. Are you practicing organic farming practices and do you intend to continue that?

Mr. Horen: Yeah. We have around 14 or 15 fruit trees, and, you know, we're continually planting. We've got blueberries and coffee, and then we also have -- you saw the black plastic that's on - it's not plastic, it's ground cloth - we're also -- we're doing what you're talking about is we raise a lot of our own vegetables and stuff, and actually we plant enough that our guys get to have a lot of the food that we raise as well, plus we give a lot away. As far as being organic, I would say we're pretty much organic. A long time ago, I was spraying Roundup and that's why we starting put down the ground cloth to keep the weeds down so we didn't have to spray, and what we're doing now is anywhere -- we're not spraying Roundup anymore except out on the street where the rock wall. What we're doing is we're turning everything to where we can mow it and mow around all the fruit trees and everything. But, yeah, the only thing -- I'd say we use organic fertilizers and a lot of compost, but I'd probably still use a little bit of snail bait because I haven't found anything that works really good for the snails. They just wiped out all the corn I planted so that's about -- we're trying to be as organic as we can 'cause we're eating it so --

Mr. Crawford: Okay. Thank you.

Mr. Horen: I'll just hold on to this.

Chair Blumer-Buell: That might be cutworms, not snails.

Mr. Horen: You know, I got those really big snails, you know, they just like wiped everything out, and just when it come right up.

Chair Blumer-Buell: I've had it with corn, you know, the cutworms.

Mr. Horen: Really? Well, you know, I did notice that the tops came up about that high and then ...(inaudible)... a cutworm?

Chair Blumer-Buell: If one does that, just take your finger and dig down right around the plant, you may find a cutworm.

Mr. Horen: What do you use for it?

Chair Blumer-Buell: Well, chickens. If you have chickens in there before you plant, they'll eat all of those.

Mr. Horen: But the chickens were tearing up everything I planted.

Chair Blumer-Buell: Okay. Well anyway, we're not -- we can talk about this later.

Mr. Horen: Yeah.

Chair Blumer-Buell: Okay, anymore questions for the Horens? Okay, seeing none, thanks.

Mr. Horen: I'll pass the ...(inaudible)...

Chair Blumer-Buell: Okay, why don't we have Gina read the recommendation. Oh, okay. I'm being advised that we should open up public testimony one more time.

a. Public Hearing

If anyone wants to testify on this application, they are welcome. Seeing noone running towards the mike, we're close public testimony, if there's no objections. Okay.

Ms. Flammer: You're ready?

Chair Blumer-Buell: Yeah.

b. Action

Ms. Flammer: The Planning Department recommends that the Hana Advisory Committee for the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for today's meeting as its findings of fact, conclusion of law, decision and order, and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission. Again, we're looking at those seven conditions that we've had on all the other permits.

Chair Blumer-Buell: Any questions for Gina? Ward. Okay, since there's no questions for Gina, we'll take a motion. Ward.

Mr. Mardfin: I move we approve the recommendations of the Planning Department with the conditions as outlined to give to the Director to transmit to the Maui Planning Commission.

Chair Blumer-Buell: Do we have a second? Ed Cashman seconds for discussion. Any discussion? Seeing none.

There being no further discussion, the motion was put to a vote.

It has been moved by Committee Member Mardfin, seconded by Committee Member Cashman, then unanimously

VOTED: to Approve the Recommendations of the Planning Department, with the conditions as outlined, to give to the Director to transmit to the Maui Planning Commission.

Chair Blumer-Buell: Okay, it's unanimous - seven for and none opposed. And that completes this action on this application. Thank you. We have an important next thing on the agenda, and we'll try to make it quick, but where Gina wanted to talk about scheduling of other Hana region applications, or Clayton did, and that's the first one.

D. DIRECTOR'S REPORT

1. Scheduling of other Hana Region Applications

Mr. Yoshida: Thank you, Mr. Chair, Members of the Committee. Again, I echo the Chair's comments that all seven members showed up today, that's great, and besides Ward Mardfin being confirmed to the Committee, I guess Scott Crawford has been confirmed to a full five-year term, reappointed to a full five-year term.

The passage of the short-term rental home ordinance by the council last year has spurred a lot of activity within the division. We received over a 130 applications for short-term rental home permits countywide, and also spurred submittal of a lot of bed and breakfast permit applications. We received 30 short-term rental home permit applications on December 31, 2012 alone. Several of these are in the ag district located in Hana so you'll continue to review these State Land Use Commission Special Use Permits for bed and breakfast and short-term rental homes. At least we'll have two or three more meetings on these types of permits. In addition, we have a change in zoning request from Nancy Plenty for the Luana Spa, Luana Day Spa on Uakea Road, just before you get to the road to Hana Bay, from urban reserve to service business residential. I guess we'd like to schedule the next Advisory Committee meeting possibly within the next two or three months because we have several of these State Land Use Commission Special Use Permits for bed and breakfast homes and short-term rental homes in the ag district ready to go. We were just wondering if Thursday are a good meeting day. Right now, the council is in -- the mayor submitted his budget on Monday so the council is kind of tied up with the budget, but once, after June 10

and the committees, council committees will start to meet. So that's what we have, Mr. Chair.

Chair Blumer-Buell: Thank you, Clayton. Let's, you know, I'd just like to ask everybody how Thursday is at 4, and it's worked very well with Suzie, thank you for calling around, you know, doing kind of initial call out to see who's available, and Gina following up on that as well for this meeting. So is this a good time and day for people on this Committee? Ward.

Mr. Mardfin: For me, Thursday at 4 is fine. And now I hate to tell you the next bit of news. In May, I'm going to Puerto Rico for a week with my sisters. And the end of May through the middle of August, I'm going to be on Oahu going to U.H. summer school. So I'll be gone for about 12 weeks. I'll be free in April if it's that soon; otherwise, I'm likely to miss a couple.

Chair Blumer-Buell: Speaking for myself, I'm available in April too, if Ward can be here, you know. I think sooner rather than later sounds like it's happening and I just want to express my appreciation too, which Clayton did, to have seven people here finally. It's really a good thing. So I guess we can leave it at that and maybe -- oh, Scott?

Mr. Crawford: Just in terms of scheduling, Thursdays at 4 works for me except for the third Thursday of every month. I have another board meeting that I'm committed during that time.

Chair Blumer-Buell: Anybody else? Anjo.

Ms. Hoopai-Waikoloa: Thursdays work well for me at 4.

Chair Blumer-Buell: Okay. Great.

Mr. Carvalho: Thursdays with advance notice. Yeah.

Chair Blumer-Buell: Okay. Good. Great. Ed's good. Ian?

Mr. Ballantyne: It's the least convenient day but I can make ...(inaudible)...

Chair Blumer-Buell: Okay. Does that take care of no. 1 under the Director's Report, Clayton?

2. Discussion of Future Hana Advisory Committee Agendas

Mr. Yoshida: Yes. The next -- so would the Committee like to see any additional items placed on your next agenda? I know we haven't had an orientation in a while because

people have kind of come and gone on the Committee and it may be good to have a short orientation session as well as hear some of these short-term rental home, bed and breakfast State Land Use Committee Special Use Permits.

Chair Blumer-Buell: As a future agenda item, I'd like to just be able to set aside some time to ask questions from Committee Members regarding procedural things and that's -- I mean I talked to Gina briefly about conditional permits and some of the vacation rentals that were conditional. I don't need to talk about them now, but I'd like to see it on the agenda just, you know, discussion of procedures and so forth.

The other thing I would like to see on the agenda is, it's under the 2.80B, you can have nondecennial amendments to the community plans, and I guess I would ask this as a question for Clayton, and Gina, and our Corp. Counsel to see if this is an appropriate place to raise the issue: We have a PK-4 conditional zoning that is nearly 20 years old. The applicant did not meet the -- any of the 21 conditions within five years, which is the requirement, and on top of that, they violated the conditions of zoning. So I'd like to know if it would be appropriate to initiate that community plan amendment back to -- from PK-4 to agriculture from this Committee, and I believe the amendment needs to be submitted in June, so that's just a question: Can it be done from here or better -- and I have all the records and so forth. I mean I'd like to see this dealt with because the community is still in a lawsuit, as is the County of Maui, as is Maui Tomorrow, and as are a number of individuals, and the Hana Ranch Partners said they didn't want to build a golf course, they didn't, and so we're way down the road here, and how can we restore that land to agriculture, and could it be done from this Committee this year? And if it's, you know -- that's the question for me.

Mr. Yoshida: Well, again, Mr. Chair, under Section 2.28.060, I guess your authority is delegated by the Planning Commission.

Chair Blumer-Buell: Right.

Mr. Yoshida: The authority on the change in zoning is the County Council. There's no necessarily use it or lose it clause in the zoning. Sometimes there maybe like you develop the property within x-amount of time frame or you -- the zoning will revert back to the original, but there's no such condition in the zoning. You know, I -- well, ultimately, I guess I think the council can initiate it, certainly the landowner would have to be notified of any type of action.

Chair Blumer-Buell: Right. I think you've answered my question though, which is that this Committee would not be the place to initiate something like that. Is that true? I mean I agree with it's the County Council that takes the final action. Ward.

Mr. Mardfin: We're an advisory committee to the Planning Commission.

Chair Blumer-Buell: Correct.

Mr. Mardfin: Clayton or Corp. Counsel may overrule me, but it seems to me we could instigate some discussions about it and make a recommendation to the commission, and the commission could make a recommendation to the council. I mean I think if we were going to try something like that, we ought to get very good legal advice so that we don't find ourselves on the docket.

Chair Blumer-Buell: I would be -- if we could put it, if we have a meeting in April, I'd love to put that on the agenda and just bring the information for people to look at and see if anything could come out of that. But it would be I think in the best interest to get it off the -- get it off the books at this point, you know. But if we could put it on the agenda to discuss, I'd be happy to bring all the appropriate information and court documents even. Judge Cardoza, when the former owners, the Hana Ranch Partners, said they didn't want to build the golf course, he said let's take -- he wanted to get it off his docket, and so it's still there. It's still there. And we talked about it during the General Plan Advisory Committee when we were talking about boundary amendments in a subcommittee and the GIS Department pulled everything up, it's still on the books. It's still on the maps. So I'm happy to share that with everybody. Ian.

Mr. Ballantyne: Yeah, I agree with John. I think we should instigate it and, legally, if we just made a recommendation that it should be changed from what it is now to agriculture, I can't see there be any legal ramifications, but who knows.

Chair Blumer-Buell: Scott.

Mr. Crawford: I'd say that I concur with what they've said and I think that, at the very least, it would be good to put it on the agenda so that we can have a discussion about what the purview of our Committee is and whether we could be able to initiate something, initiate a recommendation to the Planning Commission that they take action on this.

Chair Blumer-Buell: Any other comments? Or questions? Any other discussion of future Hana Advisory Committee agendas? Scott.

Mr. Crawford: Just in terms of the announcement of these meetings and how they're made, how notices are made to the public, what are the means by which that is done? 'Cause I know neighboring properties are given notice as far as if they're affected by it, but how do other people in the community here about these meetings?

Mr. Yoshida: Well for public hearing items, we publish the notice of public hearing at least 30 days prior to the hearing in *The Maui News*. If it's for a special management area use permit, we have to publish it in a statewide newspaper. The state defines a statewide newspaper as *The Honolulu Star Advertiser*, *The Garden Island*, *The West Hawaii Today*, *The Hawaii Tribune Herald*, and *The Maui News*. So it's published in five newspapers if it's for a special management area use permit. As well, copy of the agenda is filed with the Clerk's office at least six days, six calendar days prior to the meeting in compliance with Chapter 92, the Sunshine Law. And also the agenda is posted on the county website and people can subscribe to receive agendas to the county website for any of the commissions or boards, such as the Planning Commission, the Hana Advisory Committee, the Cultural Resources Commission, the Urban Design Review Board, and so forth.

Mr. Crawford: Okay. Thank you. I'll just say, in the future, I think I'm going to make a point to get a copy of that notice by email and I maintain an email list of the Hana community to send out notices of various events, so I'd like to just make sure that I can send that out and help as many people to be aware of the meeting as possible.

Mr. Yoshida: And then sometimes we ask for the help from the Council Services representative here to post the agendas on community bulletin boards.

Chair Blumer-Buell: Just as a point of information. When the proposed golf course and country club on the Hana Advisory Committee agenda, we were having three-four hundred people at every meeting so -- anyway. Thanks for that, Scott. Any other questions or suggestions for future agendas? I'd like to see this if we could schedule a meeting sometime in April so Ward could be here and try to get some of these things taken care of sooner rather than later.

Mr. Mardfin: I'll be here the first week in May also, if that helps.

Chair Blumer-Buell: Okay. Okay, any other suggestions or discussions, Clayton? Okay, thank you, Clayton.

E. ADJOURNMENT

I'd like to have someone make a motion to adjourn.

Mr. Crawford: I so move.

Chair Blumer-Buell: We have a second? Second by Anjo.

There being no further business brought before the Committee, the motion was put to a vote.

It has been moved by Committee Member Crawford, seconded by Committee Member Hoopai-Waikoloa, then unanimously

VOTED: to adjourn the meeting 6:50 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

John Blumer-Buell, Chairperson
Scott Crawford, Vice-Chairperson
Ian Ballantyne
Clayton Carvalho, Jr.
Ed Cashman
Anjoleen Hoopai-Waikoloa
Ward Mardfin

Others

Clayton Yoshida, Planning Program Administrator
Gina Flammer, Staff Planner
Richelle Thomson, Deputy Corporation Counsel