

(APPROVED: 02/20/14)

**HANA ADVISORY COMMITTEE TO THE
MAUI PLANNING COMMISSION
MEETING OF SEPTEMBER 26, 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, 2200 Main St., Suite 315, Wailuku, Maui, Hawai'i. ***

A. CALL TO ORDER

The meeting of the Hana Advisory Committee (Committee) was called to order by Clayton Yoshida, Planning Program Administrator, Current Division, Department of Planning, at 4:11 p.m., Thursday, September 26, 2013, at the Helene Hall, Hana Bay, Hana, Island of Maui.

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

Mr. Clayton Yoshida: Good afternoon. I'd like to call this meeting of the Hana Advisory Committee to the Maui Planning Commission to order. My name is Clayton Yoshida. I'm the Planning Program Administrator for the Current Division of the Planning Department. Let the record show that at this time we do have quorum of the Advisory Committee with Members Ballantyne, Mardfin, Blumer-Buell, and Cashman in attendance.

Since the Chair is not able to attend the meeting and the Vice-Chair is not here yet, we have to elect like a temporary chair at least to chair the meeting until the Vice-Chair shows, and we need four votes. Okay, so the floor is open for temporary chair.

Mr. John Blumer-Buell: I would like to nominate Ward Mardfin as our temporary chair today. We have a --

Mr. Yoshida: Okay, it's moved and seconded, Ward Mardfin, any other? Okay, so the motion is to -- that Ward Mard serve as temporary chair for today.

There being no other nominations, a vote was taken.

It has been nominated by Committee Member Blumer-Buell, seconded by Committee Member Cashman, then unanimously

VOTED: that Committee Member Mardfin serve as Temporary Chair for the September 26, 2013 meeting.

Mr. Yoshida: Okay, let the record show there are four votes, so congratulations Chair Pro Tem, Ward Mardfin.

Chair Ward Mardfin: Temporary Chairperson. And I gather the meeting has been called to order. We -- the approval of -- or the next order of business is approval of the minutes for the March 28 meeting. Can I have a motion to approve the minutes? Mr. Blumer-Buell?

B. APPROVAL OF MINUTES OF THE MARCH 28, 2013 MEETING

Mr. Blumer-Buell: I move to approve the minutes of March 28, 2013.

Chair Mardfin: As distributed?

Mr. Blumer-Buell: What's that?

Chair Mardfin: As distributed?

Mr. Blumer-Buell: Yes.

Chair Mardfin: Is there a second? Mr. Cashman. Thank you. The motion's been made to approve the minutes as distributed. Are there any corrections or, before we vote on the motion, any corrections or additions?

Mr. Blumer-Buell: Okay, I think -- I think Suzie did a very good job with the minutes, and they're interesting minutes because there's a lot of issues that have to do with the short-term rentals and B&Bs that were hashed out. My one correction is on Page 41, and it's the fourth or fifth paragraph where Ms. Flammer says, "Yes." And then Chair Blumer-Buell says, "I would just like to clarify that, I'm Grace here could probably help us with that . . ." I just want to be -- I thought that was the one thing that just made no sense to me that "Grace" should be replaced with "Mr. Chuck Gray," so if we could just substitute "Mr. Chuck Gray" for "Grace," I'd be happy. Thank you.

Chair Mardfin: Are there any other corrections or additions? Seeing none, can we vote on the motion to approve the minutes as amended?

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

It has been moved by Committee Member Blumer-Buell, seconded by Committee Member Cashman, then unanimously

VOTED: to approve the minutes of the March 28, 2013 meeting as amended.

Chair Mardfin: It is unanimous, 4-0, and with four we have a quorum so that passes. Public Hearings, action to be taken after the public hearing. I think -- I do remember this. This is a public hearing. Anybody in the audience that wants to make a statement now may do so if you choose, but when -- we will have additional time for public testimony when we address each item. If you can't be around and you want to make public testimony on one of the items on our agenda, you can certainly do that now, but you won't be able to speak again when we take-up the individual item. If you'd like to wait until we take-up the individual item, you can do that. Would anybody like to testify at this time? Seeing none, public testimony is closed.

Chair Mardfin read the following agenda item into the record:

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

- 1. ANDREW and ROBIN RAYNER requesting a State Land Use Commission Special Use Permit in order to operate the Kalo Ohana Bed and Breakfast, a two (2) bedroom bed and breakfast located in the State Agricultural District at 120 Kalo Road, TMK: 1-3-009: 021, Hana, Island of Maui. (SUP2 2012/0027) (G. Flammer)**

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

Chair Mardfin: And Gina Planner is the Planner, and I suspect she wants to make a statement, give a presentation. Take it away, Gina.

Ms. Gina Flammer: Okay, thank you, Chair -- Temporary Chair. I noticed the powerpoint is a little bit dark. I don't know if anybody could flip the lights off in the back. I also have copies if anybody else is curious and wants to come up and follow along.

So what we're reviewing today is a state land use special use permit. It's associated with a two-bedroom bed and breakfast. That bed and breakfast is administrative so that is approved by the department. But we're here today to take a look at what we call "the ag permit," that's the state land use permit.

So when we're looking at the project background, the two-bedroom unit is a 944 square-foot second farm dwelling. The owners, the Rayners, they live in the main house. The cottage that's here for the permit is rented out when their family and friends are not visiting, and it does have an implemented farm plan. Its got six acres of agriculture with more coming, as you'll see in just a bit.

I included a map. It's Kalo Road. I think 255 Kalo. And this is pretty much for -- oh, 120 Kalo Road. This is pretty much for the Maui Planning Commission. You guys all know Hana very well. I did include a site plan as Exhibit 4 in the staff report. We do have extra copies up here if anybody needs some nighttime reading. It does show on here the full parcel and it shows the area in yellow where the ohana is. And then I also included, for the Committee Members, a floor plan so they can see what it looks like. And then I have lots of photos in the report, but I also just wanted to kinda show in color, again really dark, but what the unit looks like. So we've got the view that's from there. I've got what the backyard looks like. And then I just put some photos - we've got the deck here, and then the inside, the kitchen area, the eating area. It's one big open area in the middle with two bedrooms tucked on the side. We've got the main bedroom up here, and then two twin beds are in the other bedroom.

In included information about the farm plan, which includes a site plan, and then it also includes what's planted out in the area, that's Exhibit 7 for the Committee Members. What I wanted to do was show you some color photos of what it looks like. This is a good case of diversified agriculture. I know the applicants planted a variety of plants to see what would do well. I believe the history -- there's a long history of farming, not the greatest soil because of that history, so they really tried to figure out what was going to grow appropriately and I know they have a long-term plan, which we'll talk about at the very end. There's a big orchard right in the middle so I captured some of the trees. We have cashew trees here. There's lots of banana. Tons of it. And then there's lots of other types of fruit. I won't read all the names. It's in the report what the wide variety of different trees are on the property. We've got some jackfruit here. Lots of avocado, mango, durian. There's limes, surinam cherry. There's clove trees. Coffee. Longan is also planted on the property. Mountain apple. Peanut butter fruit, kind of an exotic variety. More avocado and rambutan. Soursop, mulberry, star fruit. Then future area no. 8, which is listed on there, they've made -- they've figured out what they're going to do, they're going to plant 2500 peach palms in the area. I understand, from talking to the applicant today, they've got the weed mat down. I'm not sure of the schedule, when it's going to go in, but it's quite an endeavor.

I also included in the report, like we always do, we have the agency comments. So the Police Department did review the application. They had no recommendations or comments to offer. They do check the records to see if there's been any disturbances. They used to come out. I think this application was early enough where they did actually go by the property and take a look. The State Office of Planning is who reviews these permits because it's a state land use permit. They didn't have any comments on it either. And then we didn't have any protest. So that concludes my presentation. And the applicants are here if there's any questions for them.

a. Public Hearing

Chair Mardfin: Thank you very much. That's the presentation to the Hana Advisory Committee of the Maui Planning Commission. At this state, at this point, we'd like to open the floor to anybody that would like to make public testimony on this application. Anybody would like to speak on this application? Seeing none, public testimony is closed. Would -- do any of the members of the Advisory Committee have any questions they'd like to ask the applicant? The applications are here. Would you like to ask anything?

Mr. Blumer-Buell: I'd like to ask a ...(inaudible)... to Gina ...(inaudible)...

Chair Mardfin: John Blumer-Buell would like to ask a question.

Mr. Blumer-Buell: This is for Gina Flammer. Can you hear me, Gina?

Ms. Flammer: Loud and clear.

Mr. Blumer-Buell: Okay. Good. My question is: The application refers to approximately 1.4 acres of land, the parcel itself is -- it looks like it's 10.644 acres, and the farm plan includes the entire 10.644 acres, so my question is just for clarify of why it's not the entire parcel and just one point --

Ms. Flammer: That's a really good question. What we do is we list the project area, and the project area's a portion of the TMK. We have lots of cases where we'll have large ag lots come in. I remember reading a 625-acre lot on Molokai and they came in for a concrete batching plant, but that batching plant doesn't -- the area doesn't involve the entire parcel, it only -- so what we do when we write our reports is we only look at what the project area is. However, with these permits, because we do require a farm plan, we require that the entire parcel pass the farm plan.

Mr. Blumer-Buell: A couple of these questions, and this is not -- these questions are not really aimed particularly at the Rayner application. We're still trying to figure out the short-term rental bill and the B&B bill, so these are questions that really apply to all the properties and I won't be asking them a second, or third, or fourth time. The question has to do, two questions, one, with agricultural income requirements. I've heard the County of Maui, the Department of Water Supply, the County Council, the State, the Farmer's Bureau, they are all on different pages. So what is -- what is the County Planning Department's standard for income requirements, if there are any?

Ms. Flammer: Okay. What we ask, this is for the Planning Department farm plan, that's different than the Department of Water Supply, their requirements for ag water rates, and this is also different than the Real Property Tax Division's rules, they all relate back to different laws, I know applicants and people in the public often get confused by this because they're property owners and they're dealing with three different departments, but

for Planning, when you come in for a farm plan, we look at the feasibility of income. We understand that farming may not be the most profitable, it may go up and down, you may start and it'll be a while before you can start harvesting, so we look at what is actually in the ground. We also don't look at future plans; we look at what's actually planted.

Mr. Blumer-Buell: A couple of other questions and this, again, this applies to all -- all the lots. When people going to build a farm dwelling or a second farm dwelling, what are the requirements? In other words, you know, you have to pass certain criteria, and I'm trying to understand what the requirements were when the previous owners of the Rayner's property built the houses or other properties, what hoops did they have to jump through?

Ms. Flammer: We began with the farm plan requirement, Clayton would probably know, I think the mid-2000s is when it came into place, so anybody that built prior to that did not have to satisfy that requirement because it wasn't in existence. So when this house was built, there was -- I believe it was built before 2005. You bought it about that time? Yeah, it was already built. There was no farm plan requirement. The applicants had to apply separately for that before they came in for the -- well, while they were doing the application. So they did -- it's nice for me to note. I mean they are farming and they are doing plantings because that's what they want to do. They've done it before they applied for the farm plan.

Mr. Blumer-Buell: I don't have too many more questions, but the next one, and this is to understand the whole process for everybody, we're seeing areas now in Hana where you have a B&B, and next door you have a short-term rental, and then you have an illegal vacation rental, and then you have another B&B, and so forth, so my question is for the Planning Department: When you have these notification requirements, if there's a short-term rental next to a B&B, do they -- do those -- do those contradict each other? In other words, if there's two people right next to each other, does an objection from one or the other trigger a public hearing?

Ms. Flammer: That's a good question and something the Planning Commission is I'd say they're struggling with it. How the law reads is that a B&B, the trigger to come to the Hana Advisory Committee or the Maui Planning Commission is if there's another one within 500 feet, it's not if there's a short-term rental, it's only a B&B. The same is for the short-term rental. However, the Planning Commission has asked us to let them know what B&Bs are there. You'll see when we do our last permit, it's for the short-term rental home permit, I did print out a map and include it in your staff report showing the whole area, and I put both on, and I also put approved and pending, and we'll talk a little more about that why I did that when we get to that last application.

Mr. Blumer-Buell: I'm not sure who put it together, but I was going to point out that the application, it's the forth one we're going to look at today by Robert Henrikson, that his exhibits were really what I think we should have online for the council and the community

that is his application shows all the short-term rentals, all the B&Bs within the two-mile radius; now, I think we should have that for the entire community, you know, Hana Bay, Kaeleku, Maka`alae, so we can really start to see what the cumulative impacts are. And I think, you know, the individual impacts maybe are not so great but when you -- when you, for example, when we have sometimes more than 2,000 visitors at the National Park in Kipahulu, that's more of an impact on the shoreline runoff, cesspool runoff, than Hana Town probably, except for household cleaners. So the point is is that all these things have a cumulative impact, we're very early on in this process so we haven't really gotten to that, but I'd like to see the kind information that was provided in Robert's application really online so we can take a look at that and really see how things are actually working. Thank you.

Ms. Flammer: Yeah, our computer system, our KIVA system can show you all that on the map. We do have members of the public that have gone in and taken a look. And when we bring you projects when you're reviewing that permit, we do try to provide you with some information. I tried to show you a big map of the Hana area but it was just so large, I couldn't -- I did make one, but it just didn't really do the job, so I did the two-mile radius.

Chair Mardfin: Gina, I'd like to say I had seen that in the fourth application also, and I was pretty sure you would put that together and that is what she was referring to a minute ago and it's very useful.

Ms. Flammer: Thank you.

Chair Mardfin: Thank you. Are there any other questions from Members of the Commission -- Committee?

Mr. Blumer-Buell: I have a question. I have kind of a question and comment for the applicant, if the applicants could, or one of them, could come up and let me give you a question. I just wanted to say that, you know, this -- we're early-on in this whole process, not just yours, but in this whole overall process, so I think you got a good starting farm plan, and I'm just going to encourage everybody to take the ag part of it seriously; if it's a break-even kind of thing and you employ local people, it's a good thing. So, you know, I looked at your plan. I urge people to take it seriously because there could become a point where this will become who is really doing ag, you know, in three, four, or five years from now. So I just want to say I think you've got a good start, and I had a question: What are you planning to do with the peach palms?

Mr. Andrew Rayner: John, eat them. The crop is edible part of palm, they do produce very good fruit, but that is probably not a commercial crop, yeah.

Mr. Blumer-Buell: Okay, they do -- I mean I've read that they do -- it's potentially a heart of palm kind of crop, you know, it's good for heart of palm but also the fruits do have a --

are a value added product in other countries, so I just think that's a good -- a good thing to jump into if it's the heart of palm is good, that's great crop to get into. It's a quick-growing crop. And the last thing on that is that was the community plan really encourages the planting of kalo, and I wouldn't require you to do that, but I really think that the more people that plan kalo, whether it's a quarter-acre or half-acre or whatever, that is a good thing. And that's all. So thank you.

Mr. Rayner: Okay, thank you.

Chair Mardfin: Andrew, I'm going to have two questions for you, maybe three. Does any other Committee Member have a question? Okay. What is P-E-J-I-B-A-Y-E?

Mr. Rayner: That is the common name for the peach palm.

Chair Mardfin: Oh. Okay. Now I -- it all fits together. Now, my main -- that was more of curiosity. My -- you said -- it was said in the application that you had a long-term tenant there, in this building, for quite some time. Is that long-term tenant still there?

Mr. Rayner: No. Not since around four years.

Chair Mardfin: Not since?

Mr. Rayner: About four years ago.

Chair Mardfin: Now, this is question I'm going to ask every applicant today and in the future, and I asked last time. Have you considered using this for long-term tenants, and because there's a dramatic need for long-term accommodations in this community, and if you've ever thought about, and if you're not planning to do that, why aren't you planning to do that? And I think your wife may want to say something. I see her hand going up.

Mr. Rayner: No, clearly, we have considered using it for long-term tenancy and that's why we had a long-term tenant in the first instance. An ohana is essentially a family building. We have family who are not in the islands, not even in the United States. When they come with their children, we need somewhere to put them. Also, when friends visit, there may be a number of them, we have one spare room in our house, we want to have somewhere we can put them. Essentially, the idea of having a bed and breakfast or a rental is using the accommodation when we don't need it for those ...(inaudible)...

Chair Mardfin: Thank you very much. Did Robin want to say something? Okay. Does anybody else have any questions? Thank you very much. Seeing none, I think we're ready for the Planner's recommendation.

b. Action

Ms. Flammer: Okay. I'll not that there are seven conditions that are recommended by the department, they're on page 3 of our recommendation report. I always point out the last one, condition no. 7: That the farm plan has to remain implemented during the duration of the permit. And we do require evidence when they renew their application. So with that in mind, 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, September 26, 2013, as its findings of fact, conclusions of law, decision and order, and authorize he Director of Planning to transmit said recommendation to the Maui Planning Commission.

Chair Mardfin: The -- I wanted to ask one quick question. You recommended in there that it would be for a three-year time period?

Ms. Flammer: Yes. Typically, with bed and breakfasts, we offer up to three years and then they can renew after that period; very different than the short-term home permit, which we -- is only granted for one year if they're in the first year.

Chair Mardfin: Thank you. The Chair will entertain a motion from one of the Committee Members.

Mr. Blumer-Buell: I will make a motion to accept the Planning Director's recommendation.

Chair Mardfin: Richelle, I think the motion -- the effect of the motion is to approve the findings of fact and everything else in the recommendations by Planners and we're recommending it to the Planning Director for transmission to the Planning Commission?

Ms. Richelle Thomson: Yes. That's correct.

Chair Mardfin: So I'll interpret the motion to be that.

Mr. Ian Ballantyne: I'll second the motion.

Chair Mardfin: Seconded by Ian. Are there -- we're open for discussion.

Mr. Blumer-Buell: We discussed this issue in the -- what was the previous minutes ...(inaudible)... we discussed at some length in the March 28 meeting, and I discussed this with our Corporation Counsel, just briefly before the meeting, now, one of the conclusions of law and -- is that no. 5 is that the land upon which the proposed use is sought is unsuited for the uses permitted within the district. Now, normally that's a justification for, you know, you can't grow something so you need to grow something. Now, at our last

meeting, for you that weren't there, we had really just interpretations that it was only the -- we were only considering the square footage under Frank Kennedy's house, and of course you can't grow anything under there except mushrooms, so the point -- and this is -- there have been legal cases at Kaeleku before that in this case, and Scott, our Chair, Scott Crawford, basically said in our minutes that if -- if people have an implemented farm plan, that is enough to prove that the land is good for agriculture. So I think that should eliminate that argument but the -- it's real important with the state, I mean they just, historically, and I saw Stacy Lynch is here, there was a case in Kaeleku where somebody wanted to do a large campground and they claimed that it was no good for agriculture; the same classifications of soil that are generally in Kaeleku. Well the community disputed that it wasn't good for agriculture and went to a contested case hearing and they, eventually, ruled that the land in fact was good for agriculture. So I'm just trying to lay that potential issue to rest and I hope I'm being clear. For me, the fact that there's an implemented farm plan is proof that this land is good for agriculture and if this is approved for "an usual and reasonable use," which is allowed, that's -- it's unusual and reasonable use not -- it doesn't have anything to do with no. 5, which potentially could, would be a reason for saying "no" to this application, and I hope that's clear. If our Corp. Counsel has any comment, that would be fine. I just wanted to put that in the record because it's not -- it's really not -- I looked through our minutes very carefully and it was kind of a -- people were recused and that was kind of a silly argument. Go ahead.

Ms. Flammer: Oh, I think I'm going to add on to that section of our future reports. I think this discussion here is worthy of putting in here as part of our conclusions in mentioning the long-term versus the short-term use.

Mr. Blumer-Buell: I think the minutes from that meeting where we discussed all this are really good to look at because we were, as a Committee, were not clear and were confused, and we batted things around and people made assumptions, and that's why we're having these discussions today. We want to be very clear for the Planning Commission but also be clear why we're doing things because we're setting a precedent for future applications too. Thank you.

Chair Mardfin: John, I'd like to respond also. And, Richelle, if you want to come in at some time, let me know. But my recollection from the discussion last time, and I had raised a similar question myself at the last meeting - well, maybe the meeting before last - and it came clear to me that we weren't saying that the surrounding land wasn't good for agriculture, we were narrowly saying that the land that currently has a building on it is unsuitable for agriculture. We weren't -- the issue you raised about a campground in previous years, I wasn't around when that happened, but I would have been on your side on that on the grounds that it was a proposed new use of land that would have taken land out of that -- potentially out agriculture by making it a campground. This is not the situation. This situation has an existing building. To use it for more agriculture, it would

probably require tearing the building down and putting in some -- a few taro, kalo plants. And so I don't have a problem with going through and saying that the case has been made and that we're not out of bounds in granting a special use permit.

Mr. Blumer-Buell: This is my last comment, and I thought Scott Crawford did a good job of kind of concluding in our minutes, and I do have the page written down, I won't read that, it was on page 31, and Gina also made some comments, but on page 10 the Planning Department report, in this report for the folks in front of us, no. E, on page 10, says, "The land upon which the proposed use is sought is unsuited for the uses permitted within the agricultural district." That's the fifth test for the state special use permit. If you don't meet one of the test, you potentially can be denied the permit. But here's the response, and I accept this response, and I think it clarifies it so it shouldn't be debated anymore, response from the county says, "The property has an implemented farm plan with a majority of the land planted in agriculture. It is not anticipated that the proposed B&B use will affect the continued agricultural use of the property." And that's clear enough for me.

Chair Mardfin: Thank you very much, Mr. Blumer-Buell. I'm sorry, sir. We've closed public testimony. Would -- you don't know how hard it is for me to say that. Gina knows that I don't like to do this. Would any other members would like to speak? Are there any amendments -- anybody want to propose any amendments to the conditions?

Mr. Blumer-Buell: I would look to Corporation Counsel to put this in the proper form. I'm not set on this today, but I think it's very important, as I said, in the long-term that we start to look at the cumulative impacts of all these applications. In other words, if we have -- if we get 500 people, additional people, staying in down, we've increased the population of the district by, you know, 20% let's say, and that does have impact on the landfill and other services. It's not an issue for me today, but I think we ought to all be aware of it. Now, the community plan says, "Encourage economic activities which are of substantive economic benefit to the residents of the area, environmentally benign, and compatible with the cultural sensitivities of the residents of the Hana region." Now, if we can pass this as some sort of a friendly amendment to the motion, that's fine. If we don't, it's going to come back. And that is. And I talked with a number of my Hawaiian friends about these things even though they don't like to come to meetings, and I have a police report here from -- it's actually a memo dated August 1, 2006 to Lieutenant Michael Kaho`ohanohano, who was the division chief in Hana at that time, this is from John B. Kim, Deputy Corporation Counsel of the County, it's a long report, and I'll just read you this much of it, let me find my place here:

There has been community meetings on this subject since July 2003 in which Council Member Robert Carroll had indicated that Ulaino Road is a county roadway all the way to the ocean; however -- sorry I didn't introduce this. I'm talking about the road, Ulaino Road, that goes all the way to the Muliwai at the ocean. Nor does it support the county is the

owner of the lands because they conduct maintenance on the roadway. Documents further support that access to Blue Pool is over private property and hui lands. Supporting documents attached.

So I'm asking, I talked about this with Frank James Oliveira, who probably all of you know, and he has raised this issue for a long time with the county, and I would just like to see the applicants in Kaeleku let their -- the people that stay at their places know that the road to Blue Pool, after Kahana Gardens, is private property. And let me tell you, this will be appreciated by the Hawaiian community. If you know Frank, and you talk to him, he'll probably welcome you down there. And I just think it's a courtesy and something that we need to take-up as a community. There's sacred places. There's places where the Hawaiian community don't want tourists, and I understand it. And there are -- there is an organization that was approved by the state legislator, called the "Ahu Moku Council." This is now in effect and has been funded to some extent. Now the Ahu Moku system is based upon the old system of land management, and there are Hawaiian groups meeting to determine where's it appropriate for people to go and are there other areas that should be kapu or not. So this is a long-term -- a long-term discussion but I want to let people know that it is one that's ongoing. Frank also said that, look, people can go to Kahanu Gardens, the Pi'ilanihale Heiau, as long as they're open for business. So maybe Ward can turn this into a motion, or it's in the record. This might be something that we can hold a workshop on as a Committee, if the Planning Commission will let us, 'cause we're acting on their request. So, Ward, thank you.

Chair Mardfin: Gina, would you like to respond?

Ms. Flammer: Sure. What I'd like to do is we're looking at the state land use commission permit; that's a permit that would probably fall closer to the bed and breakfast permit, which the department approves and considers conditions for that. The reason I say that is there needs to be nexus, there needs to be a connection between the condition and the actual use or the permit that's being approved. So it might be something to be considered for the bed and breakfast. Maybe Richelle maybe could jump in on the difference between the two permits.

Ms. Thomson: I was going to recommend that, you know, if the Committee agrees, you know, with that, you can transmit that as a communication rather than as part of this specific permit or a condition attached to this specific permit request.

Chair Mardfin: Thank you. I also don't see a nexus between -- I appreciate your concerns and I agree that there are more places people to be concerned about, and I think this is something that we might discuss at some future meeting. I would like it on the record, as John says, that people applying for permits and special use permits, where you're likely to attract visitors not from this area, that you inform them in your rules of what is, the

Hawaiian word is "pono," what is proper; what you should be doing; what you shouldn't be doing; where you shouldn't be going. You can't be too specific about that or they'll say, "Oh, we want to go there." Red Sand Beach is another place. But I didn't hear a specific motion there so I'm going to treat it as no direct motion but as Richelle says, concerns were raised and transmitted to Gina that she can consider for the future.

Ms. Flammer: Can I read back kind of what I'm hearing to -- so what I do, just so everybody understands the process, I write a letter that describes the comments from today's hearing. I usually do the votes. And then a lot times, as you guys remember, I'll run by different comments by you so the Planning Commission can understand what the discussion was. I also transmit the actual minutes, and they do read them. They ask me questions about them. So what I'm hearing that you want me to let the Planning Commission know is that this type of use is likely to attract visitors from other areas and that you'd like the applicants to consider in some of their rules or just explanations to those visitors what is pono and also areas that may be kapu or may be not areas for them to go on to.

Chair Mardfin: I'm sorry, sir. Public testimony is closed. You're not allowed to do that. If you quietly speak to one of the other Members of the Committee, maybe they will raise it on your behalf. Again, you don't know how this hurts me to do this 'cause I -- it's happened to me and what I've done is talked to other people quietly and got my interest in.

Mr. Blumer-Buell: Okay. I'm satisfied that if the Committee works with Gina to pose the appropriate question to the Planning Commission and/or the County Council because the Planning Commission is normally authorized by the County Council, we can deal with this issue. The other thing, Gina, that I want -- that I will get to you is we have this opinion from the Deputy Corporation Counsel of the County of Maui, we also have -- I also have an opinion from the State Attorney General Bennett that says Ulaino Road is not a public road. It is a private road. And there's really some real legal questions that we're not going to try to deal with here, but I think it's a very valid piece of evidence. It went to court, and the Attorney General took a position in court regarding this.

Chair Mardfin: Gina?

Ms. Flammer: I believe there's a sign posted right on the property explaining that it's not public property, it's private, and they're not allowed to trespass.

Mr. Mardin: Yes, John?

Mr. Blumer-Buell: There is a sign and if, you know, this part of the reason I brought this up is, you know, is that if visitors come here and they have a better understanding of kanaka maoli culture and what they -- and how they want to be considered, that will make

things a lot better in this community. There's just too much conflict. Now, there's so many great places this community has to offer for people to go to. We have Kahanu Gardens; the Pi'ilanihale Heiau; we have Wainapanapa; the national park; we have Ono Farms; we have Whispering Winds Bamboo. We have lots of other individual ag operations and other things, and I just think that these are -- we should be encouraging people to go to the right places instead of creating problems for people that are on private property and are tired of having to fend-off the public because of *Maui Revealed* and the visitor industry. Thank you.

Chair Mardfin: John, thank you for your mana`o. Are there any other Committee Members that would like to speak on this issue or raise -- make any amendments? Seeing none, I think we're ready for the vote. All in favor -- should I read back the motion? Or can Suzie read back the motion? Want me to do it?

Ms. Flammer: I'd be happy to. So the motion is to adopt the Planning Department's report and recommendation and transmit the recommendation to the Maui Planning Commission.

Chair Mardfin: And the Director.

Ms. Flammer: And authorize the Director of Planning to transmit --

Chair Mardfin: Oh. Thank you.

Ms. Flammer: The recommendation to the Maui Planning Commission.

Chair Mardfin: Thank you.

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

It has been moved by Committee Member Blumer-Buell, seconded by Committee Member Ballantyne, then unanimously

VOTED: to adopt the Planning Department's report and recommendation and authorize the Director of Planning to transmit the recommendation to the Maui Planning Commission.

Chair Mardfin: It's passed unanimously. And with four, it is passed. Our second item on the agenda is C.2.

Chair Mardfin read the following agenda item into the record:

2. **RICHARD and JODY SMITH requesting a State Land Use Commission Special Use Permit in order to operate the Luana Cottage, a two (2) bedroom short term rental home located in the State Agricultural District at 36 Waianapanapa Road, TMK: 1-3-005: 019, Hana, Island of Maui. (SUP2 2013/0012) (G. Flammer)**

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

Chair Mardfin: Gina, would you like to make a presentation?

Ms. Flammer: Yes. Again, it's kind of dark. Eventually it'll be dark; you'll be able to see more. So, again, we're looking at a land use commission special use permit that's triggered because the state -- the land is on state zoned agricultural land, even though it's only one acre. We did require -- we did ask them to come in for a farm plan, which they did get approved for that. It's a two-bedroom. It was built in 1979. It was bought by the applicant in 1981. The applicants live in Montana where they farm about 5,000 acres of spring wheat. The applicant came in today even though I know they're at harvest. So each or after harvest, the applicants tell me that they spend about two months at the house and the permit is for the times when the house is not occupied by the applicants or their family. And I'm going show you pictures of the implemented farm plan in just a little bit.

So here's -- well, can't really see it, but it's a picture of the house. And then I just provided some pictures also in the staff report of what it looks like inside. I think we're doing our reports in color too now so it's a little bit easier for you to see. It's got the kitchen area. There's an outdoor eating area. One of the bedrooms. And we have the other bedroom.

The implement farm plan is mostly bananas, papayas, citrus trees, a lot of coffee, and tropical flowers. I included, as Exhibit 8, what the site plan looks like, but then I wanted to show some photos, and I tried to show you the areas where it's kind of hard to visualize. It is a little bit of a rectangle. Like a lot of farmers, I find they plant things along the edge, so along this property there's a lot planted. A lot of coffee is around all the edges. A lot of papaya. There's a lot of banana. You can see the banana here. Then there's a lot of fruit trees that are planted in the middle. Again, I showed some pictures in here of what the coffee looks like. There's a lot of coffee-starts that are there. Sometimes, you know, you guys -- most of you guys farm, first time doesn't always take so she's got a lot of other little keiki there ready. And show just kind of the lay of the land where a lot of fruit trees are. And then I just provided in the report lots of pictures of what the trees look like. Some of them look like they've been planted maybe within the last two, three years, and then some of them look mature. I came and did the site visit right after the storm. This is the area where the storm blew through. They fared okay. There were a couple trees that went down; even with that, there's still a lot there. So, again, just more pictures kind of showing

what the ag looks like. And then hard to see, a lot of papaya up in that one tree, very hard not to shake the tree. And in the backyard area, there's also a lot of fruit trees so I just provided some pictures for you to see that as well. There's also lots of flower.

And then I also included in the report, as we always do, the agency comments. Again, there are no police comments, and there were also no comments from the State Office of Planning, so I just provided some of that paperwork. There were four letters of support; three of them are in the staff report and then one of them I handed out separately, and that's this one right here. So that concludes what I have for you, and then the applicant is here, Jody Smith, if you have any questions for her.

Chair Mardfin: Thank you very much. We'll open the floor for anybody that would like to make a public comment on this project or a statement in general. Please come forward, introduce yourself.

a. Public Hearing

Mr. David Greenberg: Yeah, my name is David Greenberg. I'm a resident of Kaeleku actually. And I will be apply for a permit, but not this time, another time. I didn't get a chance before to comment on something that John Blumer-Buell said on the last one, which didn't really directly affect the last one or in any way relate to that so I thought why not do it this time even though it doesn't relate to this particular one, but he mentioned something about the problem -- that he saw a problem that an applicant for a permission for a campground said that it was not usable for agriculture. Somehow I'm not sure which project he was talking about because he didn't name any names but I thought he meant a camp, a summer campground or something like that, on Ulaino Road. It wasn't on Ulaino Road? Oh. Okay. You didn't mention where it was. I assumed it was going to be on Ulaino Road. Anyway, I just want to finish what I was going to say is that on Ulaino Road, where there was another -- someone trying to do a campground and said that it wasn't good for agriculture; in the end, there was an agriculture project done, a large-scale agriculture project done on that property which changed the geography in a way that created a lot of floods; in other words, to make that of agriculture use, it created floods going down Ulaino Road, which then devastated that road and was one of the reasons I think that Carl and Rae Lindquist died during that flood because they were trying to, and not in the right way, make land use for agriculture, you know, but I guess it was the wrong project, so I'm sorry.

Chair Mardfin: Thank you very much. Whenever somebody speaks, Committee Members are able to ask some questions. Would any Committee Member like to ask a question? Seeing none, would anybody else like to testify on this project? Please come forward and introduce yourself.

Ms. Stacy Lynch: Hi. I'm Stacy Lynch, and I just had -- I submitted a letter and this comment could go for Paul Orsulak's and Dick and Jody Smith's. I have managed both these properties for many, many years. And when my husband became sick, this enabled me to come in with an income. And so I'm, with the Orsulak's property, I was there with the previous owner, Bob Reeds, who was doing the macadamia nuts, and then when they sold the property, I went and -- Dr. Orsulak and Helene bought it, I -- they took me on as the -- as their housekeeper also, so I'm very familiar with both these properties and the agriculture. And Dick and Jody Smith, who you're talking about now, I've known them for 30 years, and they are full-on farmers with combines on the Mainland, so they totally understand farming. And wonderful people. So my letters are submitted and I just wanted to make that comment.

Chair Mardfin: I presume those are letters in support of their projects.

Ms. Lynch: Definitely.

Chair Mardfin: Thank you.

Mr. Blumer-Buell: Yeah, as these applications come forward, the last ones that we heard back that were in our minutes, I made a point that I think that the County of Maui and people need to recognize that small farms are a good thing, and that if you have enough people growing diversified orchard on two-acre pieces, for example, if there's really something really happens to the economy, people will at least be able to feed themselves. My question for you is: Is how do you see this farm feeding into kind of a cooperative agreement? Do you purchase flowers from them? I noticed that at one time -- that in the Boerner's, Lilian Boerner's testimony that, at one time, they purchased -- Ono Farms purchased fruit from them. So my question is just do you see the value in people that may not have real big farms, like I think yours is good size farm, contributing to, you know, the overall success of the flower business, fruit business, and cooperating with marketing fruit in the future?

Ms. Lynch: Yeah, well, with Dick and Jody Smith, which we're talking about at this moment, I can remember back when I delivered flowers to Olapawa, and Jody was here, this was a long time ago, and I said, "Yeah. I can use your flowers." And she actually -- you know, I took them up and sold them. And that was many, many years ago. And with Dr. Orsulak, I do harvest flowers there that enables me to keep my business going during the busy seasons, especially which is Christmas, Mothers' Day, and Valentines Day when you need more flowers than you normally have. So they have given me the rights to do that and it's been very helpful for me because, otherwise, I would -- I don't have enough flowers for those big push times. So, yes, and I think it's really important. They both have allowed us to pick fruit and sell it, you know, our family sells fruit too so it's very helpful.

And, like you say, when it comes to the point of if Hana's ever cutoff or whatever, there will be fruit trees on the land that will be available for people so --

Chair Mardfin: Are there any other questions for the testifier? I have one question.

Ms. Lynch: Okay.

Chair Mardfin: Do you have an active State of Hawaii Real Estate License?

Ms. Lynch: Do I?

Chair Mardfin: Yes.

Ms. Lynch: No. I do not.

Chair Mardfin: Does your husband?

Ms. Lynch: No.

Chair Mardfin: Okay. Thank you very much. We're still doing testimony. Would anybody else like to give testimony on this project? Seeing none, public testimony is closed. Now it is -- would you like to ask a question before we entertain a motion?

Mr. Blumer-Buell: Ward has some good questions he usually asks and I think they should be, you know, we should always ask those. The question I have for Gina is: Was there any complaint about this application? Did anybody object to it? And I say that because, you know, the standards -- I'm going to ask this in the future just because the standards are -- to me it matters if one person in the neighborhood is bothered, and I, personally, don't like the -- this 30% threshold, or whatever it is. I mean that's a correction I hope will be brought in. If one person complains, I want to hear why. And if they live in that neighborhood, and they're neighbors, we should hear what they have to say. So the question is: Did anybody have an objection?

Ms. Flammer: No. They didn't. And when we go into the last permit where we're looking at the short-term rental home permit, I'll let you know. There's different ways to protest. You can -- I get letters. That's the most official way. That's what goes towards the trigger. However, I get phone calls from people and a lot of times they don't want to give me their name, and when I'm out in the community, I talk to people and I hear things. I have heard nothing negative about actually any of the ones on today, and that speaks a lot when I'm doing my recommendation and analysis.

Chair Mardfin: Gina, would like to make -- give the department's recommendation?

b. Action

Ms. Flammer: I sure would. Again, we have the same conditions because this is a land use permit that we did on the past one, it's the seven conditions with the last thing that the farm plan has to remain implemented.

So 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 the September 26, 2013 meeting as the findings of act, conclusion of law, decision and order, and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission.

Before I do that, I would like to say too, I did hear a couple comments. I just want to confirm if you want me to put those in the letter that's going to go to the Planning Commission. I heard that small farms are important for food security in Hana. The Commission did ask me what some of your comments and feelings were about these small farms out here. Is that consensus from the group?

Chair Mardfin: Do you want a vote on that?

Ms. Flammer: Well, I just need to see consensus is that --

Chair Mardfin: Do people agree? Nod your head, please, if you agree. And shake it no if you disagree. If you agree with her concern - Gina, you said it better than I ...(inaudible)...

Ms. Flammer: Oh, okay. One of the comments I heard that were small farms are a good thing for the community that they're important for food security out here. Okay. Okay.

Chair Mardfin: I think that's a consensus.

Ms. Flammer: Okay. Thank you.

Chair Mardfin: That's a recommendation. I noticed, again, this is for three years?

Ms. Flammer: No. This is a short-term rental permit so it is -- how it works with these -- oh.

Chair Mardfin: I think the SUP is for three years.

Ms. Flammer: The SUP is for three years.

Chair Mardfin: And this one does not -- it's a two-bedroom so it does not require -- it's not--

Ms. Flammer: We're not reviewing the short-term rental home permit.

Chair Mardfin: Correct.

Ms. Flammer: Just so you understand though because it's a little complicated and tricky because there's two permits. The short-term rental permit, when it's issued by the department, would be issued for one year. If there are no complaints, police complaints or request for service received by the county, we do extend that permit for up to an additional two years. We do the three years with the SUP so it matches what a full initial three years would be.

Chair Mardfin: And the recommendation here is for an SUP; that's the matter in front of us, not the --

Ms. Flammer: Not the short-term rental home permit.

Chair Mardfin: Short-term rental.

Ms. Flammer: Yes.

Chair Mardfin: Do any Committee Members have any questions they'd like to ask Gina, the applicant, or anybody else? John.

Mr. Blumer-Buell: This is a procedural question for Gina and our staff. I noticed that Otto and Wendy Horen were before the Planning Commission not too long ago. Now, we just approved those minutes today. And so it kind of disturbed me that the -- I don't expect the Planning Commission to read 60 pages of our minutes, however, they might have read the part concerning Robert and Wendy Horen, and there's at least one person I know on that Planning Commission that tends to do a very thorough due diligence. So, you know, this is just -- I would like to see, you know, some protocol set-up so we approve minutes before they're heard at the Planning Commission, and I don't know how we do that. I'll defer to Corp. Counsel. But the other thing is, with these recommendations today, when I served as Chair, Gina had sent me recommendations, which I approve. Now, I want to be sure that any recommendations that we -- that you're going to pass on to the Planning Commission are given to Ward to sign off on. I mean I'd appreciate seeing it too, but with Ward as the Chair for today, I think he has the discretion to call board members without violating the Sunshine Law and say, "Is this what we did?" You know. So that's, you know, my two things that are, one, the minutes to the Planning Commission before they hear our recommendations, and, secondly, just requesting that the conclusions and so forth that are sent to Ward Mardfin to sign off on.

Ms. Flammer: Thank you for that.

Chair Mardfin: My recollection, when I was on the Planning Commission, we had the same technology problem where it took a while to get full minutes out, but we had action minutes that came out within a week or maybe two weeks, we met every two weeks, and I think we had action minutes at that time, and that was sufficient to meet the requirement of prompt minutes and the discussion is not absolutely necessary for that. And Richelle looks like she wants to say something so, please. Or Corp. Counsel.

Ms. Thomson: I think the Planning Commission has probably a tougher time, longer meetings and shorter time span between the meetings to get the minutes out, but draft minutes are available within 30 days, so draft minutes can be transmitted or the public can request them too. You know, so it doesn't take as long to get draft minutes out, but they're officially adopted as your official minutes once they're passed by the board.

Chair Mardfin: And I'm assuming that, I haven't been the Chair of this before, but I'm assuming that there's some sort of action minutes? There are not? Okay. Might be a good idea.

Mr. Blumer-Buell: The one thing that has come up at the -- the minutes we approved today, and it's come up several time, and that is Gina has asked us: Do you want us convey to the Planning Commission that you want the laws enforced? Well, you know, absolutely. You know, it's in the minutes, by consensus. Everybody wants the rules to be enforced. I mean the people that are coming in now are trying to get compliant under the current laws and I'd like to see -- I mean, just as a discussion, I hear people now before the Maui County Council, that used to be illegal vacation rentals that now have their permits, that are complaining about no enforcement. I can give you a name but not in the minutes. But, you know, these are some of the people that were the most vehement about running their illegal vacation rentals; once they're legal, they're now complaining about the people that are noncompliant. So I support that sentiment. I mean at what point is the Planning Department going to enforce the rules?

Ms. Flammer: Is that a question?

Mr. Blumer-Buell: Yes.

Ms. Flammer: Okay. Thank you for that question. I'll give you an update on what's going on. We had -- our Administrator for the Zoning and Enforcement Division retired. It took quite some time to find a good replacement for him. That person has been hired. The department -- we have two positions that the council mandated that we create, two enforcement officers. The department decided to wait until we had replaced the Administrator so that he can hire them. He was just hired in -- I think he started in July and

he's been given the list, it's kind of an old list, but he's given that, of potential people to hire for these new enforcement officers. I'm not sure where they're at with that but they're in the process. They're hoping to hire two off that list. If they do not, they'll have to go back out with the positions. So it does take time to get somebody onboard. We are required, as the department, by the council to again, by the end of the year, go on the internet and provide a list to the state as well as the county real property tax of people that are operating. That will happen. We also need to notify them they need a permit. The next step then would be to go into more active enforcement.

Chair Mardfin: Please make it quick.

Mr. Blumer-Buell: Thank you for that response. That's -- it will help to level the playing field. Is the new land use enforcement John Rapacz? Is that who they hired? Okay. Thank you.

Chair Mardfin: We do not have a motion on the floor at this time. I don't believe. We've had the recommendation of the planner, and the Chair would like to entertain a motion from one of the Committee Members. Ian?

Mr. Ballantyne: So I will use the same wording as the first motion, so if perhaps Gina could -- to approve it. Yes.

Ms. Flammer: Okay, so the --

Chair Mardfin: Approved as recommended by the department. Is there a second to that? Ed Cashman second it. This -- we'll open for discussion among the Committee Members. Would anybody have any questions, potential amendments? I have a couple of questions for the applicant. Can you please step forward? And if you'd introduce yourself, and then I'll ask the questions.

Ms. Jody Smith: Aloha. I'm Jody Smith.

Chair Mardfin: Thank you very much. You have a very nice place down there. I had some friends stay there several years ago. You're still currently operating it -- you're in operation right now are you not?

Ms. Smith: Yes.

Chair Mardfin: Okay. This question I did not ask the previous applicant because -- let me -- no, I do want to ask the first question first. Excuse me.

Ms. Smith: Okay.

Chair Mardfin: Have you given any thought to having long-term rental instead of short-term rental?

Ms. Smith: It would not work for us to be able to come here in the winter if we chose to rent it long-term. We wouldn't be able to come and stay in our home so --

Chair Mardfin: You come in the winter?

Ms. Smith: We do.

Chair Mardfin: Okay. I would think if it happened to be summer, it would be great for a teacher who might be here for nine months and be gone for the summer.

Ms. Smith: We're farming in the summer so --

Chair Mardfin: Okay. Thank you. Now my second question is: We're here approving a special use permit, but there is an -- the assumption that if we grant the special use permit, that the department will grant the short-term rental permit, and I don't know whether this is for you or for -- maybe it's for Gina more than anybody but -- and Gina knows where I'm going with this I think -- short -- B&Bs, the person lives on the property. Short-term rental, you're not living on the property

Ms. Smith: Correct.

Chair Mardfin: During the active time of rental. And maybe I'll you sit down 'cause actually this is for Gina. Thank you so much.

Ms. Smith: You bet.

Chair Mardfin: And good luck. Gina, you know where I'm going with this I think 'cause you sent out, with one of the other applicants, conditions for short-term rentals, one of which, 2.A. is service, a manager, individual, but that's an immediate adult family member, I don't think that's happening; B. An individual with an active State of Hawaii Real Estate License to serve as manager, and how will the department be implementing this, and is there a difference between somebody that's -- has a real estate license that is -- has one position and somebody, like Stacy, who has some other duties?

Ms. Flammer: Okay, so this permit is reviewed by the department. It's not ready to be approved and that is because, right now in Hana, we may have one, Hana is lacking brokers that will sponsor real estate agents to do short-term rentals. Because of that, anybody that's lived off-island, doesn't qualify. One of the great things that the council did with this particular bill is that they mandated that it come back to them within two years so

they could work out some of the kinks. One of the kinks that needs to be worked out is some areas -- Lanai also is having issues with this, there are not brokers or real estate agents to take on this business. One of things that we've learned as a department and the council members also is there's this whole other business out there of property management and weren't really aware of the sector, and these are the kind of people that actually check in the guest, that take care of the houses, that do the cleaning. A lot of times they also maintain the yard. Very responsive to guests. The council is going to be considering a way to address this problem. One of the things that has come up is having a travel agent license, and then that way the money is escrowed because travel agents are required to escrow the money, and that's what the council was really concerned about was making sure that money is protected. So we're waiting for the bill -- so they have a -- they have options; they can find a manager that meets the requirements for this, or they can wait until the bill goes back to council and that is changed.

Chair Mardfin: To the best of my knowledge, and please correct me if I'm wrong, I don't think there are any travel agents in Hana either.

Ms. Flammer: No. The license isn't -- it's not the same as getting the license to be a broker. So I've talked to the different managers. They seem open to getting a travel agent license and abiding by those rules and regulations.

Chair Mardfin: Okay. You might also consider accountants or that sort of thing.

Ms. Flammer. Okay. Thank you.

Chair Mardfin: Because they might be used to doing it, and I think part of it is a fiscal -- I think some of the reasoning behind it is fiscal responsibility, and an accountant or a bookkeeper might be -- have the appropriate experience and contacts and escrows and that sort of thing to make it work just ...(inaudible)...

Ms. Flammer: Thank you. We're open to ideas. Anybody's got any ideas, feel free to call me or Don Couch, who's the head of the Planning Committee.

Chair Mardfin: But given that we're here dealing with this as an SUP, we don't have to address that issue, at least on this project.

Ms. Flammer: No. If this were the Maui Planning Commission, who's the final authority, we'd probably would have waited. But since it takes quite some time to make it's way all the way to the Maui Planning Commission, I did kind of wait till the tail-end so that by the time we did get to Planning Commission, the bill -- I'll probably wait until the bill -- this bill goes back to council.

Chair Mardfin: Thank you very much. Do any Committee Members have any further questions? Seeing none. Are we ready for a vote? The vote is to approve the recommendations as presented with no amendments.

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

It has been moved by Committee Member Ballantyne, seconded by Committee Member Cashman, then unaimously

VOTED: to approve the recommendations as presented with no amendments.

Chair Mardfin: Four-zero. It passes. We're up to the third item under C, which is -- Jody, congratulations. And I should have said it before, Andrew, congratulations. At least one step closer.

Chair Mardfin read the following agenda item into the record:

- 3. PAUL and HELENE ORSULAK requesting a State Land Use Commission Special Use Permit in order to operate the Hale Heavenly Hana, a two (2) bedroom short term rental home located in the State Agricultural District at 2925 Hana Highway, TMK: 1-3-009: 053, Hana, Island of Maui. (SUP2 2013/0017) (G. Flammer)**

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

Chair Mardfin: The Planner is, surprise, surprise, Gina. Take it away.

Ms. Flammer: Okay, we've had a consistency out in Hana so I'm the one that handles most of the permits out here. So again, I'm going to go through and show you some pictures that you can see. You also have your report there.

...(inaudible)... this is -- I know you all know where this is, but this is mostly for the Maui Planning Commission so they can see. There was a sign out front if anybody's noticed it when they drive by Hana Highway. You'll see where the airport is. Okay, so here's the picture of the house. And I wanted to show just a couple. And then pictures of the inside. Oh, they come up really dark. And the kitchen area. The main area. Again, it's a two-bedroom with the main area and then you've got the two bedrooms on each side. There is a shared bathroom. And then there's a nice porch that's screened in that kinda overlooks all the agriculture and you've got some ocean views.

So in terms of the agriculture that's going on, it's a lot of agriculture. This was quite a site visit for me. It was a lot of walking. It's seven acres of mac nuts. There's citrus that's been planted over the years. There's mature avocado trees and young ones. There's mature mango and young mango. Lots of banana and lots of papaya trees. I also saw lilikoi. There's quite a bit. When the owner bought the property it was an existing mac nut orchard. There's over 100 trees. The owner has its own husker. The nuts have been sold commercially in the past. And the flowers on the property, Stacy sells them through her business.

So I just wanted to show some pictures of what the farm itself looks like. What the mac nuts look like. Again, a lot of this is for the Maui Planning Commission. And then he's planted, over the years, you can see some of the fruit trees. There are quite a large number of them. And then some of the mature. Lots of banana again. Lots of papaya. And then there's a lot of flowers as well. It really took me a long time to photograph everything on there.

And then I included information in the report so you could see some of the commercial side of it, and this is Maui's Best Flowers, their website.

I also included the agency comments. So again, we had no -- well, in this case, we had no comments from anybody, including the State Office of Planning and the Department of Police, and I just included that for you to see. And then also, there was a letter of support from Stacy on this, it's not in the report, it came in after that. And that concludes the presentation. And then we have Paul Orsulak is here if you have any questions of the applicant.

Chair Mardfin: Thank you very much. You mentioned that there was a letter of support. Were there any letters of protest?

Ms. Flammer: No. There were not. And again, I didn't receive any phone calls about it, and no one that I talked to did I hear anything.

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

Chair Mardfin: Thank you. It is time for public hearing. If anybody would like to speak on this item, please come forward. Seeing none, public testimony is closed. I would, before we proceed, I would appreciate if somebody would make a motion to deal with this item. Do we have a motion on the floor?

Mr. Ballantyne: I would propose --

Chair Mardfin: Sorry, I'm jumping the gun. We didn't get the recommendation.

Ms. Flammer: Okay.

Chair Mardfin: Before we go with the recommendation, do any of the Committee Members have any questions? Let's deal with that first.

Mr. Blumer-Buell: One question. I'm hoping that the Planning Department can answer -- just in trying to get my bearings on this parcel. Is this Bob Reeds old property? Okay. I know where we are then. Thank you.

Chair Mardfin: Gina, would you like to make -- give the department's recommendation?

Ms. Flammer: Sure. We have the same seven conditions, including that the plan, the farm plan, stay implemented. So 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 the September 26, 2013 meeting as its findings of fact, conclusion of law, and decision and order, and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission.

Chair Mardfin: Thank you. And that also is for a three-year time period for the SUP, is that correct?

Ms. Flammer: This is for the SUP, yes.

Chair Mardfin: I would now appreciate a motion.

Mr. Ballantyne: Now I propose that we approve and as the wording for the Planning Commission has been identical three times that our wording should be identical three times.

Chair Mardfin: Will somebody second the motion? Ed Cashman seconds. Thank you very much. We have a motion on the floor. Would any Committee Member like to ask questions, make comments, make amendments?

Mr. Blumer-Buell: I have a quick question for the applicant, and that's just that I was doing a lot of tractor work and so forth in Kaeleku when those mac nuts were planted, and I'm just curious how you see the mac nut trees evolving. I mean do you see a new crop you're going to put in or you're going to use the mac nuts for shade for understory or just how do you see that farm evolving?

Mr. Paul Orsulak: Thank you. Paul Orsulak. Couple things going on. As Gina said, there's about a hundred macadamia nut trees, but when we acquired the property, we actually had closer to 200. They are aging out. They have a limit of around 30 to 35 years before they start, basically, dying out of old age, so what you'll see, somewhere in our farm plan, you'll see some substitutions now. About three weeks ago, we cleared what we call our lower orchard, about an acre, acre-and-a-half, and we completely cleared it of dying and old mac nut trees. On the picture, it's in the upper left-hand corner. We have purchased a starter batch of 50 cacao trees, which will be going in there, and then we anticipate, depending on the space, once we see how those go out, an additional 50. So we're starting to replace. The reason for that, the first five years we owned the property, we harvested and shipped to the Mainland somewhere in the neighborhood of 20,000 pounds of dried mac nuts in the shell. At the end of about five years, followed the culture, nearly one million macadamia nut trees came on line in Central America, on the western slopes, completely obliterated the price of mac nuts worldwide, which just dropped it right through the floor. You know what's happened on the Big Island, most of the mac nuts on the Big Island are gone or going because the prices dropped out so badly. Central America has taken over that crop. We saw that too. We dropped five years ago. The price dropped to the point where we just couldn't afford to harvest let along ship it to the Mainland. So we started making changes. The fruit trees that Gina showed in the middle are citrus fruit, which really contribute to everything that's going on around us. We're letting the bananas grow out quite a bit. We did spend quite a bit of time recently cutting back the oldest of the avocado trees. They're over 30 years old. You probably saw those go in too. But by cutting them way down to the ground, we can regrow them; they come back like giant bushes. So we've already seen, just since last spring, huge improvements in the growth of just those crops. So that's -- we're making changes. We're going to keep the trees that are active going, and we're harvesting now. Thanks.

Chair Mardfin: Please stay there. There's a few more.

Mr. Blumer-Buell: Just as a point of interest, you may know this, but if the macadamia nut trees are large enough, it's a millable wood. You might try to talk to Bob Getzen or a local woodworker and see if the wood's suitable for their purposes.

Mr. Orsulak: We have talked to some. It is millable. It's -- we've talked to two or three. Some has actually tried it. And mac wood has a very unusual characteristic. It has an unpredictable ability to split years later. They don't trust it. It is a great wood but milling it very different. Thanks.

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

Mr. Orsulak: Yeah. It's hard. Yeah.

Chair Mardfin: I'm going to ask you the question I ask all applicants for this sort of thing.

Mr. Orsulak: Sure.

Chair Mardfin: Have you considered it for long-term rental?

Mr. Orsulak: I think our answer is really the same as Jody's. If we did that, we wouldn't be able to use it. You know, we're going to be here next year. We're planning most of the winter. Minnesota's not a good place to be in the wintertime. It's one of the luxuries that we have now of being retired. We will be here almost all winter. It's when we make our big improvements on the property and changes. Our family uses it on and off through the rest of the year. We have two grown children with grand kids and close friends. So a long-term rental just would not meet our family needs.

Chair Mardfin: I understand. Thank you very much.

Mr. Orsulak: Thank you.

Chair Mardfin: One quick question.

Mr. Orsulak: Sure.

Chair Mardfin: This is a little off the top, but I'm an economist, isn't cacao -- what makes you think the price of that will remain high? Don't they do it throughout Africa and everywhere else?

Mr. Orsulak: It's a possibility but we're, you know, there's a growing market, we haven't done a lot of research, but the feedback we got was from the ag department and others that it's a good substitution crop. It fits the land. It fits the culture that we got, particularly in our lower orchard, which we got from local people. And the health food industry is growing. They're using raw cacao in things like Kashi, who makes the energy bars and nutrition bars, are now using the raw cacao rather than even turning it into chocolate. But my wife and I are inveterate chocolate people, we eat more than our share, so that's a possibility too. Chocolate and mac nuts - that's a perfect combination.

Chair Mardfin: Thank you very much.

Mr. Orsulak: Thank you.

Chair Mardfin: Are there any other questions from the Committee? Any comments or amendments from the committee? Seeing none, I believe we're ready vote. The motion

is to approve as recommended by the department with all the conditions attached and everything else.

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

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

VOTED: to approve the recommendation by the department with all the conditions attached.

Chair Mardfin: It is four-zero, passed unanimously. Congratulations. And that brings us to our next -- our last order of business under C, which is no. 4.

Chair Mardfin read the following agenda item into the record:

- 4. ROBERT HENRIKSON requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate the Hana Gardenland, a five (5) bedroom short-term rental home located in the State Agricultural District at 65 Kalo Road, TMK: 1-3-009: 027, Hana, Island of Maui. (SUP2 2013/0010) (STHA T2013/0001) (G. Flammer)**

The short-term rental home permit application is being brought before the Hana Advisory Committee and the Maui Planning Commission because the applicant wants to use more than three (3) bedrooms for short-term rental home use.

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

Chair Mardfin: And before I turn it over to Gina, I want to mention two things. One is, on the report we have on this, the TMK is incorrectly stated. It reads "1-4-009-027." It should be "1-3-009." So if you're looking for glitches and things, the way I tend to do as a former professor, make that change. It also says the reason we have a short-term rental home permit application is being brought before the Hana Advisory Committee and the Maui Planning Commission because the applicant wants to use more than three bedrooms for short-term rental home use. Gina, would you please do the presentation?

Ms. Flammer: Sure. Sure. Thank you for that correction too. I have nightmares about getting numbers incorrect. Okay, so just to give you some background. I think everybody here is probably familiar with the property. It's the former Hana Gardenland Café and Botanical Garden. It was bought a number of years ago. There were permits at the time the café did operate. There was a variance. I mentioned something in the report about

that. The new owner did apply for some permits, the permits exhausted, so it's gotten much more difficult at that point. He opted to close the business and not pursue that. So he is no longer in business with that. It is a five-bedroom home. And the trigger was already mentioned that said there's more than -- there's more than three bedrooms and it's located within the Hana Community Plan area.

So this is just so you can see where it is, but you probably be able to associate a little bit better here with this picture. So I included as Exhibit 10 what the site plan looks like and where -- what the farm plan is. And then I also did include the floor plan. It's a two-bedroom. That shows you what it looks like. And I just wanted to show you some pictures. Again, they're in color in the report but this way everybody can see them. This is the front of the house and as you enter. This is the upstairs, the main area. That's the kitchen that you're looking at. And this is what I would call the master bedroom, and then some of the other bedrooms. These are some of the, I think, downstairs bedrooms.

I wanted to show you, since we are reviewing the permit, I did give a little more information on the property. I wanted to show you the access to the property. It's a very wide road. There is -- there's actually two fire pipe stands. We have one of our planning commissioners that interested in fire safety. I wanted to show you what the entrance looks like. Easy to get in and out.

Okay, so what about the property. So I think you all know back in its heyday how it was used. So today, it's still a botanical garden. It's mostly for guess use. The owner told me he is willing to schedule private tours. I don't know how much demand there is for that right now. I did get a chance to tour and walk it. It's kept in fairly good condition but I can see how more income would probably lend itself to probably go right into the land. A lot of fruit trees in addition to just a lot of specimen plants. So I'll let you kinda see here. And then because it was a botanical garden, there's just so many more plants than I was familiar with, so I included a list of what the palm trees are that are there, and then I included in your report also just the fruit that's planted on there, and then all the flowers that are planted there. I think this is some of the old literature from when it was a really active botanical garden. Some of the specimen plants. And I wanna kinda lead right into a little bit of background about the applicant.

The Planning Commission often will ask applicant's: Are you a farmer? It's a really interesting question and I wanted to just kind show the applicant does have a background of what his background is. He did show me two new books he's also written on algae culture as well.

And then I also wanted to kinda go through with you what are the regulations, and that's because this is the first time you're seeing the short-term rental home permit. I'm going to go into a lot of detail but I'm sure we'll have some other questions. So in your report, in

every report is the applicable regulations, that usually in the beginning; in this case, it's page 4, and these are all the regulations that they have to adhere to. I gave you a copy of the application so you can look at it. It's real thick. We get a lot of calls from people - why is this so long? It's so long because there are so much -- there are so many regulations so ask them, through the permitting process, to provide us information to show that they're in compliance with this. I also gave you the short-term rental home inspection form, and I just wanted you to see that, in this particular case, the applicant did do the home inspection in all the areas that were looked at for safety. And then I also wanted to show you, you know, what are the --

Chair Mardfin: Gina, excuse me for interrupting. Maybe I'm not seeing this in mine. Does everybody have this?

Ms. Flammer: I didn't include it in the report. I included it as a handout today. John has a -- are you talking about the home inspection?

Chair Mardfin: Yeah. Well, all of -- some of the stuff you're referring to that I don't see in my report.

Ms. Flammer: Which stuff? We can go back.

Chair Mardfin: That picture was in there. I don't think --

Ms. Flammer: Applicable regulations are actually in the body of the report on page 4.

Chair Mardfin: Okay.

Ms. Flammer: I didn't attach the law. We don't do that unless you cut and paste it into it. So if you look on page 4, there's a heading, it's not an exhibit.

Chair Mardfin: Thank you.

Ms. Flammer: It's the body. Okay...(inaudible)... And then the form -- okay. So in those applicable regulations, it's no. N, list out what are some guidance for you to look at as a Committee. And the biggest thing is the overall goal is that it has to conform to the character of the existing -- the existing character of the neighborhood, and they give you five criteria that you can look at. This one they really -- the council really wanted to know if there's a homeowners association and what are the rules and regulations of that. We're not going to deal with that today because there is no homeowners association. Second, we look at existing land use entitlements and uses. This might be a case where if the café were open and there was a conditional permit, we might take a look at that and see if there's already impacts, how is that working, if we add more how would that go, but in this

case, we're only looking at the short-term rental home. The applicable community plan. Well, that's on every report and you guys are really good at taking a look at that. We really appreciate that. We look at community input. So we're going to look at the letters that came in, especially if there were protests on that; in this case, there were not. And then we look at the potential adverse impacts. So I think I just kinda went through them.

But when you look at the character of the existing neighborhood, for this particular permit request, things to consider would be, there are large parcel ag lots in this neighborhood, I think they go between 5 and 19 acres. There is a lot of active agriculture in the neighborhood. It is currently a mixed neighborhood with a lot of -- with existing vacation rentals, there's also a lot of part-time residents. I have had a chance to get to know the road a little bit. There were no protests.

And I just want to remind you that the Planning Commission really does rely upon your comments because they know you know the individual neighborhoods, and not just the community, and that's really what they're interested in. Some of the comments that I've heard come out of the commission is they recognize that sometimes there will be areas where they'll be more concentrated than other areas. This might be an example of one of these areas, I don't know if it's because it's because there are part-time residence, I'm not quite sure exactly why but it lend itself to that.

Again, there's no homeowners. All the community plan policies are listed in the report. I didn't receive any phone calls or letters. And then when you look at no. 5, what are potential adverse impacts: noise, traffic, garbage. I mentioned that we're dealing with very large acreage, very dense foliage, and I'll show you pictures in a minute. There's also house rules that are mandated, they're actually in the law, so when you look at those applicable regulations, I don't remember which letter they are, but they list out, so there has to be quiet hours between nine at night and eight in the morning. That has to be posted. It needs to be signed by the registered guests. They need to be told that noise is not to be excessive or audible beyond the rental property. A lot of these are for kinda smaller lots. They don't want to hear a radio at the next door neighbor's of people out in the afternoon. You should be parking in designated spaces only. Again, sometimes with the smaller lots, there's concern about street parking. This property, there's plenty of parking. And also, council put on a condition that no parties or group gatherings of anyone other than the registered guests. They're really concerned about noise. They don't want to see wedding parties there. And they don't even want to see dinners there with other people coming. And they did talk about that. They realized how stringent that is and they left it in.

There's also additional guidance in the law, and I just wanted to remind you of what that is, and I'll go through them real quickly individually. So in another part of that law, it's the permit processing section, it tells you specifically what the department, so when we're doing administrative permits we look at this but also reviewed as the Committee to the

Planning Commission is supposed to consider, so the first one, you're supposed to look at the number in distance from the parcel to other permitted short-term rental homes. So there are no other pending or are there any other approved B&B or short-term rental home applications within 500 feet.

There are no approved applications within a -- STR within a two-mile radius. There is no approved B&B up the street. Hana Gardenroom, the one you saw, Frank Kennedy, maybe that was March 28, that was just approved by the Planning Commission. I did include this map, which is in your report, that does -- just to give you an idea of what's going on within a two-mile radius.

Chair Mardfin: If I can interrupt. This is on Exhibit 12 for Committee Members that are looking for it.

Ms. Flammer: Thank you. And this, for you, is really just background information. It's not mandated that we give it to you because most of these are pending. There is one that has been approved, and that's Frank's, which is listed under pending B&Bs. That just went through and was approved. Kalo Ohana is the same one, that was today, you recommended it go to the Planning Commission. It's still considered pending however. So I just wanted you to see kinda what the whole area looks like.

And then I also gave you, I just started to think about what do you really wanna see, so I gave you a listing of all the applications in Hana, and I gave you the B&Bs as well as the short-term rental. It might be a little overkill, but I'd rather give you more information rather than less. But we have had a couple since I did write the report that have been approved. Koali Ranch, Chuck Gray, which I think you all know, pretty far out on this side. Hale Nanea, the Horens, was just approved at the Planning Commission as well as Hana's Heaven, and Tutu's House, right over here on Uakea, was administratively approved. None of these are actually located right near the application, and that is something that we do look at. And as I did mention, on the same road, there are two other pending short-term -- oh, I didn't mention this. There are two other pending short-term rental home applications. You will be seeing those in the future. You haven't seen them yet. They are further up the street. And then the cap for the region is 44. So right now we're at 4. So we're in the early, early stages.

Chair Mardfin: Gina, is that B&B was 44?

Ms. Flammer: The B&B is 44, and the short-term rental is also 44.

Chair Mardfin: In your report you said 48 at several points.

Ms. Flammer: Forty-eight? Okay. Thank you.

Chair Mardfin: So every place that's 48, you should change it to 44.

Ms. Flammer: Oh, I gotta -- okay. I have to look at the law. Thank you.

Chair Mardfin: I think it is 44. I was surprised at 48. Don't worry about it now.

Ms. Flammer: Okay. So the other -- second criteria you're instructed to look at through the bill is that the number and the substance of the protests, and protests related not only to that home but protests just related to the cumulative effect of all of them. In this case, it was real easy. There just were no protest at all. And I wanted you to see what the neighborhood looks like, the large lots, so this is the property right to the west, kinda going up the street the street from them. They're on the corner so there's nobody on that side of them. This is the property across the street. I wasn't able to get behind, that's private property, though I was curious. It's very dense as well. You can see the fire pipe stand right there too, which is good. And then we also look at existing or past complaints about rental operations on the property. In this case, there were no complaints. There was an anonymous request filed back in 2007, but that was not followed up by the county. The police did have an interesting comment. There was a disorderly conduct from some kids throwing a party a couple years ago that's completely unrelated. Actually, I think it was the people in the rental that had called and said what's going on. And that was taken cared of. Nothing happened after that.

Then you're also instructed to look at existing or past noncompliance with government regulations and then the degree of cooperation. But in this particular case, there weren't any noncompliance issues. No RFS that were -- no notices of warning, I mean, that were issued. And the applicant is coming forward voluntarily to come into compliance too, and we really do look at that. He wasn't under enforcement and thought this is how I'm going to get out of it. He came on his own.

And then also again, we want to look at the homeowners. This is the provision that refers to the homeowners association and in this case, there is not one.

And then again, we do the same thing for the state land use permit, and I think you guys are very familiar with that so I'll just remind you of that instead of going through it.

The agency comments, again, I did tell you about the police one; it's in there for you to read. And then the Office of Planning, they -- this is an older -- it went through in April. They used to -- State of Office of Planning, this is their standard letter that's in here. It's nice that they told me that the soil rating is "D." He's obviously done a lot of work out there to get everything growing. And then the farm plan shows that about 74% of the total area is in ag use.

And so final considerations, when I'm looking at the permit, I'd see that there's no protests, there's been no complaints, and there's nothing else within 500 feet, and these are things that we consider when we're doing the recommendation. Alright, thank you.

a. Public Hearing

Chair Mardfin: Thank you very much. And at this stage, we're going to go for public testimony. Would anybody like to come forward and give testimony on this particular project? Seeing none, public testimony is closed.

Ms. Flammer: I did forget something. There was a letter of support that was handed in today. I see our letter writer's a little bit shy, he hasn't come up, but he did write a very nice letter, but we don't have any copies but I will make sure that --

Mr. David Greenberg: I'll come up.

Ms. Flammer: Ok. Thank you.

Chair Mardfin: Please.

Mr. Greenberg: My name is still David Greenberg. And Robert Henrikson is a friend of mine. And I've been really appreciative of that particular land even before he bought it. I mean the Hana Gardenland Café was an incredible thing while it lasted. The next President of the United States actually had lunch there a couple times and approved of it. Unfortunately, as Gina mentioned, it was too complicated to keep that going as a restaurant because of all the laws since those days. But what I appreciate the most about what he's done is to keep up that five acres of botanical gardens. I think a hundred different kinds of palm trees and all kinds of different rare fruits and things that have gone as one of the great botanical gardens of the Hana area, I mean not as good as Kahanu, but maybe second place, and that he's been able to do that by the vacation rental, just made enough money to improve it, and I think Gina's right, as it becomes, you know, legal now, there'll even be more money to keep that up, and it's a great thing that he's done just because of the love of the plant, I think, and the love of Hana. So I really appreciate what he's been able to do because of that vacation rental, and so I'm for it.

Chair Mardfin: Thank you very much. Do any Committee Members have any questions of the testifier? Seeing none of that, would you like to come forward and testify? Please. I take back my closing testimony.

Ms. Nora Wilson: I'm Nora Wilson. I live immediately to the left of the Hana Gardenland property. I'm on five acres that used to be the Sidener property. I just had a very nice discussion with Robert, and I have no objections. I think we can work things out. The only

thing I'm concerned about is the parties that sometimes happen around here. They can be quite late at night and noisy. But we talked about that and he doesn't approve of that either.

Chair Mardfin: Thank you very much. And one of the conditions, Ma'am, I believe one of the conditions that will go forward when he gets a short-term rental -- if and when he gets a short-term rental permit will be that there will have to be somebody that can be called that lives on the island relatively close to deal with any problems that come up.

Ms. Wilson: Good. Thank you.

Chair Mardfin: Thank you. Any other comments from Committee Members? John?

Mr. Blumer-Buell: Aloha.

Chair Mardfin: Excuse me? Excuse me? Just before you start, I want to officially close public testimony, and, John, now you may ask the applicant a question.

Mr. Blumer-Buell: Thank you. This is kinda has to do with the use of the property. There's two houses on the property, yeah? Was that correct?

Mr. Robert Henrikson: Yes.

Mr. Blumer-Buell: Yeah. Now, I guess I'm asking, this has to do with the, you know, with the potential problems or past problems ...(inaudible)... and so forth, why not just -- why not live in the one house and have a B&B with the other? Is that -- have you considered that?

Mr. Henrikson: Well, I, yeah, I do live in one of the houses there.

Mr. Blumer-Buell: Okay.

Mr. Henrikson: And the short-term rental's the other house.

Mr. Blumer-Buell: I see.

Mr. Henrikson: Yeah.

Mr. Blumer-Buell: So you're the onsite manager?

Mr. Henrikson: I'm there a lot, but I do travel back and forth to the West Coast.

Mr. Blumer-Buell: Right.

Mr. Henrikson: So I'm there much of the time, but not all the time. Certainly, this last year was very challenging and I wasn't here as much as I wanted to be.

Mr. Blumer-Buell: So just to address the previous testifier, you know, we all know of wild parties all over Hana now and then, but do you think you can keep things under control in that five-bedroom house to -- you know, that's one of the big things is that it's got to be ...(inaudible)...

Mr. Henrikson: Yeah. When I talk to potential guests who want to stay there, I send emails and I clarify about the rules of the house; it has to be quiet; we're in a residential neighborhood; even though it looks like nobody's there because the parcels are bit, sound carries a long way. And I talk to them on the phone, and I qualify them, and, you know, if it seems like there's going to -- it's like six guys from Kihei want to come to Hana, that's not what I'm looking for. So I try to qualify and screen out people that look like they could be a problem. I rent primarily to families with kids. They like the large number of bedrooms. The kids can roam around the botanical gardens. Those are the kind of renters I want.

Mr. Blumer-Buell: Yeah, I was wondering about the five bedrooms and how that would be used. I mean I imagined, for example, when the runners come out the Hana Highway, there's a lot of big parties.

Mr. Henrikson: Well, that's the Hana Relay. Right.

Mr. Blumer-Buell: Meaning, not big parties, but large -- people with a lot of people in their party and that might be something if the -- you know, that could be a good thing.

Mr. Henrikson: Yeah, and that's definitely one of Hana's party weekends for sure. But why people like this property is there's a lot of people that don't come as couples but they come as families, or multiple families with grandparents and multi-generations, and they really like to have a house where they have two floors that's connected, and everybody can stay there, and they're very appreciative to have that kind of space.

Mr. Blumer-Buell: On the agricultural part of it, I was doing contract work in that area when Sandy Sanders started Hana Gardenland so I kind of helped out here and there, and watched it evolve, do you have a -- are you propagating plants on there and, you know, if you're not, I would suggest that you, you know, make that possible. A lot of people that are doing long-term planning, I mean six months to a year off, for different species, you might be able to offer that as a service and create some employment. I mean, for example, when they first opened, Sandy brought in a great variety of avocados, and, you know, I planted a lot of those, and there were varieties that are not generally available here now. So my point is that if you could find a good grafter and try to promote that, I think you'd have

some -- be doing some long-term good in the, you know, in helping ag to flourish a little bit. That's all.

Mr. Henrikson: Yeah. And actually those avocado trees are enormous right now. I mean the place is well propagated with very large trees at this point because of the wonderful planting that was done by Sanders so many years ago. I mean it's a fully packed property. But people do come to the property and they take cuttings, and plants, and keiki, and so forth so -- and we're looking at kind of partnering with Hana Farms, just down the way of the properties, where they can come and select different plants and species and replant them on their property too. So it's kind of a wonderful seed reserve and plant reserve for other people to come, and they do come privately, and get plants.

Chair Mardfin: Thank you. Do any other Committee Members have any questions before I ask mine? Have you thought about using it for long-term rental?

Mr. Henrikson: Well, I knew that question was coming. I have a very large extended family of five brothers and sisters, and large community, multi-generations, and I love it when they come to Hana. And one of the reasons I love this property is there's space to have family come, and our community also, I'm from California originally, and so it's wonderful to be able to invite people and say, "Come on, stay for a few days, stay for a weeks and enjoy Hana." So that was one of the reasons I got the property and the short-term vacation rental allows me to be flexible in offering that to people to come here.

Chair Mardfin: Thank you very much.

Mr. Henrikson: Yeah. Thank you.

Chair Mardfin: Gina, I have a question for you. John asked a very interesting question about why not B&B. Because this is five bedrooms he -- what is the requirement, that Hana is limited to three without -- unless we -- why does a five-bedroom have -- short-term rental come before us and not a three-bedroom? And related question, if it were a B&B, would it still have to come before us?

Ms. Flammer: Okay, the answer is yes. B&Bs and short-term rental homes - I have the code in here - do come before you. It's one of the triggers for review and it must have -- it originated with the B&B bill, I can only guess it came from this Committee originally, and I don't know if anybody on the Committee remembers when the B&B bill came through.

Chair Mardfin: I think it was. I think I was on the commission at the time and I recall we wanted -- we said small ones, okay; big ones, we want to look at. And that's my recollection.

Ms. Flammer: Okay. Good. So the short-term rental bill was based on the bed and breakfast bill, and it was probably just picked up from there.

b. Action

Chair Mardfin: Thank you. Can we have the recommendation from the department?

Ms. Flammer: Sure. I'm not going to go through and read all of the recommendations on the short-term rental home permit. You're familiar with the state land use. I think those were placed first. We have 23 conditions that we put on short-term rental home permits. And we do require a compliance report come in when they come in for renewal with this. If anybody has read them and has any questions, I'm more than happy to address them.

Mr. Blumer-Buell: My question is just generic, and you raised this before, it doesn't -- it's not aimed at this project in particular, but the idea of having agents for the short-term rentals, what's the solution there? I mean, you know, I understand they're supposed to have, theoretically, they're supposed to have a real estate agent, and I don't know that for sure, but that's the way it looks, and they're supposed to have a contact number of somebody within a reasonable distance or the agent within a reasonable distance. How do you see this playing out in Hana where we're very remote and there's not a lot of agents and so forth?

Ms. Flammer: Okay, so - and I talked to the applicant about this too - when he is away, he's required to have a temporary manager. He is required to give that name and contact information of that temporary person to the people that abut him and those people with adjacent properties, so kind of two rings out. I noticed with big ag land, it does actually go beyond the 500 feet. It's more intended for small residential but nonetheless, a lot of people are -- if he's not available, then the temporary agent information has to go out to the neighbors. The council also require that there be a sign put, a two square-foot sign, where it's visible from the road, so if a neighbor is hearing a party, they don't have to knock on the door, they can go -- if you're next door, you'll already have the manager's information. The applicant is required, when they're approved, to send their approval letter, which includes the -- and the manager's contact information to their neighbors and the abutting neighbors. They also, in addition to that, have to put a sign out that has that information on it so the person, if there is a problem, there's the number of the manager, there's also the number of the Planning Department, so if there's a problem, they can't get the manager, they can call the Planning Department and then we -- then the complaint has been issued at that point with that.

Chair Mardfin: You want to continue with your recommendation?

Ms. Flammer: Sure. Okay. So condition no. 5 is the one where you have to notify any changes. Condition no. 4 is where you have to send the permit letter to your neighbors as well.

So in consideration of the foregoing, which are the 23 conditions for the short-term rental home permit and the 7 for the land use permit, the Planning Department recommends that the Hana Advisory Committee to the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the September 26 meeting, with the correction of the TMK, as its findings of fact, conclusions of law, decision and order, and authorize the Director of the Planning to transmit said recommendation to the Maui Planning Commission.

Chair Mardfin: Thank you, Gina. And, Gina, would you look at page 6 of your -- right above the recommendation.

Ms. Flammer: Okay.

Chair Mardfin: And under R.1.

Ms. Flammer: Forty-eight. Boy, I was just going to start looking through for the 48s.

Chair Mardfin: That's one of them.

Ms. Flammer: I wonder if it is 48.

Chair Mardfin: Since we're doing this, it should be 44, is that correct?

Ms. Flammer: I'm going to look. I've got the law right here. I think it's 44.

Chair Mardfin: It should be whatever the law is, is that correct? This is just a --

Ms. Flammer: Forty-eight. It's 48.

Chair Mardfin: I thought you said it was 44?

Ms. Flammer: I got the law right here.

Chair Mardfin: It says 48?

Ms. Flammer: It says 48.

Chair Mardfin: That's the way it goes.

Ms. Flammer: I'm sorry about that.

Chair Mardfin: That's okay.

Ms. Flammer: It's good to get that worked out. Okay.

Chair Mardfin: Thank you for your recommendation. And just for clarification, the special use permit for -- the ag special -- land use commission special use permit is for three years?

Ms. Flammer: Yes it is.

Chair Mardfin: In item 1 recommendation, on page 6, and the STRH permit is one year on -- initially, on page 7, on the following page, at the bottom, 7, 1, condition 1, I guess, near the bottom. Is that correct?

Ms. Flammer: Yes. Uh-huh.

Chair Mardfin: Would somebody like to give me a motion to approve, disapprove, change, decline, or something so that we can proceed on this matter?

Mr. Ballantyne: I would move that we approve this, the Planning Commission's recommendation. Do we have a second? Ed Cashman. Thank you. Now we have a motion on the floor. Are there any questions, discussion, potential amendments anybody wants to make?

Mr. Ballantyne: I'll say something just because I haven't said anything pretty much this meeting. Just really -- this is a general thing, all four applicants, very impressed with the standard of the paperwork, it's all pretty self-explanatory. Thank you for taking the time to put so much effort in.

Chair Mardfin: Thank you, Ian. I think part of the thank you should also go to the planner on that. I've seen planners that have good reports and planners that don't, and Gina makes -- does excellent plans.

Ms. Flammer: Awe, thank you.

Chair Mardfin: Any other comments, suggestions, questions? Seeing none, are we ready for a vote?

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

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

VOTED: to approve the Planning Department's recommendation.

Chair Mardfin: Again, this is getting very boring, but it's passing four-zero, unanimously. Congratulations. We have just a couple more things on the agenda. It should be very quick, I hope. We have D. The Director's Report, and there are two parts: scheduling of other Hana region applications, and Clayton can do that.

D. DIRECTOR'S REPORT

- 1. Scheduling of other Hana Region Applications**
- 2. Discussion of Future Hana Advisory Committee Agendas**

Mr. Clayton Yoshida: Good evening, Mr. Chair and Members of the Committee. Predominantly, we have short-term -- bed and breakfast permit applications, short-term rental home permit applications, and special use permits, state special use permits for such if they're in the ag district, say for a special use permit for a proposed quarrying application in the Kawaipapa area, which we're still processing, so at this point in time, it looks like we won't be able to come back -- applications will not be ready till maybe February of next year.

Chair Mardfin: February did you say?

Mr. Yoshida: Yeah.

Chair Mardfin: Thank you. I think there's a question that John wants to ask you about scheduling of other Hana region applications.

Mr. Blumer-Buell: I thank the Planning Department for keeping the 2., Discussion of future Hana Advisory Committee agendas on the agenda. I mean I'd really appreciate if that's on every agenda so we have the opportunity to briefly discuss things we might want to talk about. I previously brought up the PK-4 condition zoning. It appears to me without really a -- that's really gotta come from the County Council. But I wanted to followup on this request that I'm going to work with Gina on. And just to be clear, because this is on the discussion of future Hana Advisory Committee agendas, I'm going to submit this letter from Deputy Corporation Counsel, John D. Kim, of the county, and the opinion from the State Attorney General to -- to Gina, and I guess we'll leave it to you to figure out how we can start to, you know, maybe have a workshop or something if we have a short -- if like let's say we have one application or two, maybe we can have a workshop and try to have a

constructive discussion on what, you know, what we might want to do to inform visitors of appropriate places to visit and that sort of thing.

Ms. Flammer: Did you want me to include that in the packet to the Planning Commission, the letter, or is that just for us to -- just information?

Mr. Blumer-Buell: Well, I think it would be appropriate to go to the Planning Commission. I'd be happy to work with you on --

Ms. Flammer: No, no. I mean when I'm transmitting on this particular permits, is that testimony from you or a handout for them, or is that something on a completely separate item?

Mr. Blumer-Buell: It's my understanding is I said that I wasn't attached to making this a condition, and so what we talked about is trying to develop a discussion on where it's most appropriate for visitors to go and where it's not appropriate to go, and I think that's a conversation that rightly should be bringing the Hawaiian community and so I'm just -- what's I'd like to do is give you what information I have and then could we transmit that to the Planning Commission, have them authorize us to hold the workshop because my understanding is we can only carry on business authorized by the Planning Commission. Is that so?

Mr. Yoshida: Yes, according to --

Mr. Blumer-Buell: Okay, so that would be -- you know, and I don't think that this is a real difficult one. I, you know, I would think they would be interested to know what the community feels about, you know, the visitors and how they can best fit in to the community and best be managed, so if that's okay, I'll just transmit -- I'll send you this stuff with a short letter and see what you can do with it. Is that okay, Clayton?

Mr. Yoshida: That's be fine. Well, you can transmit it to the department.

Mr. Blumer-Buell: Great. Thank you.

Chair Mardfin: Are there any comments from any other Committee Members? I'd like to give my thanks to Gina for efficiently putting -- making sure that the reports were in order so that they could be disposed of in a orderly process. I want to thank the applicants for coming and showing us your proposals. I want to thank testifiers for being here and sharing their mana'o. And with that, I declare the meeting adjourn.

E. ADJOURNMENT

There being no further business brought before the Committee, the meeting was adjourned at 6:16 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Ward Mardfin, Chair Pro Tem
Ian Ballantyne
John Blumer-Buell
Ed Cashman

Excused

Scott Crawford, Chairperson
Clayton Carvalho, Jr., Vice-Chairperson
Anjoleen Hoopai-Waikoloa

Others

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