

# LAND USE COMMITTEE

Council of the County of Maui

## MINUTES

March 12, 2014

### Council Chamber

**CONVENE:** 1:39 p.m.

**PRESENT:**

Councilmember Don S. Guzman, Vice-Chair  
Councilmember Stacy Crivello  
Councilmember Elle Cochran (in 2:04 p.m.)  
Councilmember Donald G. Couch, Jr.  
Councilmember Mike White  
Councilmember Michael P. Victorino

**EXCUSED:** Councilmember Robert Carroll, Chair  
Councilmember Gladys C. Baisa  
Councilmember G. Riki Hokama

**STAFF:** Carla Nakata, Legislative Attorney  
Scott Jensen, Legislative Analyst

Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

*Seated in the gallery:*

Sharon Brooks, Legislative Attorney

**ADMIN.:** William Spence, Director, Department of Planning  
Gina Flammer, Planner, Department of Planning  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

*Seated in the gallery:*

Rowena Dagdag-Andaya, Deputy Director, Department of Public Works

**OTHERS:** Robin Rayner  
Joel Richman, Esq., Hana Koali Mesa LLC  
Patty Yeknich

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Terry Kristiansen  
Kekama Helm  
Raffaella Alessandria  
Arabella Ark, Applicant

**PRESS:** *Akaku: Maui Community Television, Inc.*

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**ITEM NO. 20: CONDITIONAL PERMIT FOR ARABELLA ARK'S CERAMICS  
STUDIO (HANA) (CC 14-11)**

VICE-CHAIR GUZMAN: . . .(*gavel*) . . . Good afternoon. The Land Use Committee meeting of March 12<sup>th</sup> will come to order. I'm Councilmember Don Guzman, Vice-Chair of the Committee. Prior to starting, I'd like to ask everyone to turn off their cell phones. At this time I'm going to introduce our members on the Committee. We have Stacy Crivello. Good afternoon.

COUNCILMEMBER CRIVELLO: Aloha and good afternoon, Chair.

VICE-CHAIR GUZMAN: We have Don Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

VICE-CHAIR GUZMAN: Good afternoon. Mr. Mike White.

COUNCILMEMBER WHITE: Aloha, Chair.

VICE-CHAIR GUZMAN: And Mr. Mike Victorino.

COUNCILMEMBER VICTORINO: Chair, good afternoon.

VICE-CHAIR GUZMAN: Good afternoon. And we have Elle Cochran that will be joining us shortly as well as absent today we have Chairman Bob Carroll as well as Chairman of the, Chair of the Council Gladys Baisa who I believe may be watching us right now, so this is a little shout-out to all of, to both of you, hello. Hope you're getting better. And for our Executive Branch we have Gina Flammer, our Planner from the Department of Planning, and from the Corporation Counsel we have Michael Hopper. And the resource personnel Arabella Ark who is the applicant. And we have for our Committee Staff joining us is Scott Jensen, our Legislative Analyst, as Carla Nakata, Legislative Attorney, and Clarita Balala which is our Committee Secretary. At this time we have one single item on the agenda, it's LU-20, Conditional Permit for Arabella Ark's Ceramics Studio in Hana. Assisting this morning I'm going to go ahead and check in with our District Offices. In regards to Hana District Office, Dawn Lono, are you there?

MS. LONO: Yes. Aloha and good afternoon. This is Dawn Lono at the Hana Office and I have three people waiting to testify.

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VICE-CHAIR GUZMAN: Thank you very much. And checking in with Lanai District Office, Denise Fernandez.

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

VICE-CHAIR GUZMAN: Thank you. And Molokai District Office, Ella Alcon.

MS. ALCON: Good afternoon. This is Ella Alcon on Molokai and there is no one here waiting to testify.

VICE-CHAIR GUZMAN: Okay, thank you very much, ladies. Brief announcements regarding today's public testimony. For individuals who are wishing to provide testimony, please sign up at the lobby here on the eighth floor. Testimony will be limited to today's agenda as well as pursuant to the Rules of Council you'll have three minutes to testify and one minute to conclude. When testifying please state your name and/or any name of the organization in which you represent. Mr. Jensen, can you please call the first testifier?

MR. JENSEN: Yes, Mr. Chair. The first testifier signed up to testify in the Chamber is Robin Rayner.

**...BEGIN PUBLIC TESTIMONY...**

MS. RAYNER: Good afternoon. And thank you for the opportunity to speak. My name is Robin Rayner, I am a Hana resident. I'm also an architect licensed in Hawaii working in Hana. I'm also an artist that shows in the local gallery. I'm also the president of a local nonprofit organization in Hana that or that focuses on the arts. I'm also a farmer, and I also have a legal vacation rental that I run. I know Arabella Ark as a fellow Hana artist and also as a co-member of the Hana Arts nonprofit. And I think the Council has an opportunity here to establish an important precedence for this Conditional Permit. Hana has for a very long time been what is commonly referred to as a one-horse town. That one horse a major employer being, the major employer being the Hotel Hana Maui, now the Travaasa Hotel. A few years back when the hotel changed hands and the new owners for what I'm sure were very logical and rational reasons chose to temporarily lay off nearly all the employers [*sic*]. This single act brought fear and, to the heart of our residents. People were absolutely shaking, not sure if they would be able to stay in their homes, if they would need to drive the four-hour roundtrip to find a job on this side of the island, and if they did need to sell their homes and leave, where would they go and what would they do. It became strikingly clear to me and I'm sure to many other residents in Hana that it's absolutely imperative that the Hana, that Hana diversify its business and employment possibilities and opportunities to provide options beyond the local hotel and a few government positions. But Hana's unique and with special characteristics that limits the business possibilities. Not all businesses are going to fit in Hana for obvious reasons I won't bother to go into it. I gave you a bit about my history and background by way of introducing what I think are a couple important things to consider, and one of them is that I believe an ideal business for

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Hana that makes a great deal of sense is the business of the arts. This is a business that respects the environment, that celebrates the flora, fauna, and culture of the community and is ideally suited to rural areas. There have been discussions about home-based businesses and how crucial this concept is to the ultimate wellbeing of Hana's economy. Our present zoning system which is nearly all Agricultural provides very limited area for businesses anyway, and like me, most people in Hana wear a number of hats which makes it most effective to accomplish our work in our homes. Arabella Ark's pottery studio is a typical, typical of the business that could not economically work in a residential, in a rental space in the Hana Business Zone. Sales from her foot traffic, somewhere between zero to four cars a day could not cover the rent, nor would she be able to wear her other hats like writing, tending her flowers, and who knows what else she does. I think Hana can benefit from this sort of business based in the home, a business of creating and selling arts. It's ideally suited to Hana, and the limited traffic does not impact our community. But if you choose to deny this Conditional Use Permit, I fear that you send a negative precedence to our community by making it clear to our local artists that their business does not fit in Hana. So if it's not the arts in Hana then what kind of business does fit? Do we want to have McDonalds fast food? Thank you very much.

VICE-CHAIR GUZMAN: Thank you, Ms. Rayner. Members, do you have any further questions to clarify? Seeing none, thank you very much. Next testifier.

MR. JENSEN: Mr. Chair, the next testifier is Joel Richman.

MR. RICHMAN: Good afternoon, Committee members. Thank you for the opportunity to speak. I'm here...my name is Joel Richman, I'm an attorney. I'm here in my capacity representing Hana Koali Mesa LLC, who is the property owner that borders the subject parcel on three areas. The Tax Map Key for my client's property is (2) 1-5-008:006, and more importantly I'm here to speak against this Conditional Permit for two reasons, one in particular as far as the terrain and the access and another one, a general zoning level. In particular the access to this property is over an easement, is by an easement on my client's property. It's a small driveway. The driveway is actually not entirely on our easement, it abuts a neighbor, and in order for...it doesn't fit two cars going in both directions. We're concerned about the liability, and we believe that the easement would have to be altered if there was going to be more traffic on it and we'd prefer that that not be done. So for safety reasons and commercial reasons we object to the idea of having this easement which has been a driveway for 30 years. My clients acquired the property in 19, excuse me, in 2006, and we had no idea that there would be an application for an arts...I have no problem with an arts studio but the idea that the public will be coming to purchase things is not what we considered when we bought the property. On a philosophical level we believe in zoning. We believe...actually Arabella Ark is a talented artist and she does good work, we have no problem with her studio there, but we would appreciate it if she would use a gallery in town to sell. We feel that allowing tourists to come into this easement in a rural area of Hana...it's adjacent, it's between Makalai and Seven Pools and it's the Koali area, and it's not a place where it's zoned for commercial uses and it's not a place where anything other than agriculture is legally allowed. We believe that it would be illegal spot zoning to allow this application to proceed because it's zoned for Agriculture. We do like Ms. Ark and we hope that

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she's successful in selling her products but we would appreciate if she did that in a properly zoned location. Thank you.

VICE-CHAIR GUZMAN: Any follow-up to clarify?

COUNCILMEMBER VICTORINO: Chair?

VICE-CHAIR GUZMAN: I think \_\_\_\_\_, Mr. Couch followed by Mr. Victorino.

COUNCILMEMBER COUCH: Thank you. And thank you, Mr. Richman, for your testimony. Do you know if there's any selling going on now? Is that property being used as a studio now and customers are coming and going?

MR. RICHMAN: I make it to Hana maybe once or twice a month and occasionally I see cars going in there but I really am not there on a daily basis. I understand from neighbors that there are people that come in, and I've heard testimony from the previous speaker that three or four cars a day do come in. But we feel that that's without really a sign and without a proper access, and we, we're afraid that if this is granted that there will be more traffic than we want on our easement --

COUNCILMEMBER COUCH: Okay.

MR. RICHMAN: --which serves two other properties as well as Ms. Ark and our own, and our property is 159½ acres.

COUNCILMEMBER COUCH: How many acres? I'm sorry.

MR. RICHMAN: One hundred and fifty-nine and a half.

COUNCILMEMBER COUCH: Okay. And then on the other question you had on the zoning portion. I haven't seen you come to any of the meetings about home-based businesses so I'm not sure if you are really against this just because of this one project or in general, because we've had this discussion quite a bit for the last three years and this is the first time I've seen you. So are you against it because of just this project or are you against it in general? And then if so, how come we haven't seen you?

MR. RICHMAN: Well I actually like the idea of home-based businesses provided that it doesn't involve too much traffic of a commercial nature in an Agricultural or Residential neighborhood.

COUNCILMEMBER COUCH: Okay, thank you.

MR. RICHMAN: If a person wants a workshop, we have no problem with a studio, the problem is turning it into a tourist commercial location.

COUNCILMEMBER COUCH: Okay, thank you, Chair.

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VICE-CHAIR GUZMAN: Mr. Victorino.

COUNCILMEMBER VICTORINO: Well, thank you. Mr. Couch asked a couple of my main questions. The other question I had is regarding the roadway. This is the only roadway that goes into these properties both for Anabella [*sic*] and for your property or for your client's property?

MR. RICHMAN: That is correct. I have, if the Committee wants I can give you a, the survey map that shows it. . . .(*inaudible*). . .

COUNCILMEMBER VICTORINO: Well I think we have a lot of that stuff right here, and...

MR. RICHMAN: Okay.

COUNCILMEMBER VICTORINO: Okay. So, you know, thank you very much. But I'm curious there, you know, this roadway, you know, at certain points it's fairly wide and other points fairly narrow. Was there, was it set up that way or it just evolved, you know?

MR. RICHMAN: My understanding is the roadway was built 30 or 40 years ago. My clients acquired the parcel eight years ago, so it preexisted us. I also understand that the roadway is not entirely within the easement that's been granted by the Land Court in 1995 and it's partly on our property and partly on the property of the Warren Trust which is adjacent to the west.

COUNCILMEMBER VICTORINO: Down below, yeah?

MR. RICHMAN: Yes.

COUNCILMEMBER VICTORINO: Closer to the highway, yeah?

MR. RICHMAN: Yes.

COUNCILMEMBER VICTORINO: Have you guys worked on that yet or nothing has been done as far as the easement situation?

MR. RICHMAN: We have requested Ms. Ark that before she makes any alterations to the easement that she speak with us and she do it in a cooperative level. We had that discussion and she said she would.

COUNCILMEMBER VICTORINO: Okay. So prior to this, have you had discussions with Ms. Ark as far as what her plans were as, in doing this ceramic studio?

MR. RICHMAN: Yes.

COUNCILMEMBER VICTORINO: And the road was never discussed when you had those prior?

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MR. RICHMAN: The road was discussed. I testified in Hana before the Hana regional land use committee and I voiced the same sentiments I'm voicing today.

COUNCILMEMBER VICTORINO: Okay.

MR. RICHMAN: And I also spoke with Ms. Ark at that time as well.

COUNCILMEMBER VICTORINO: Okay, thank you very much. Appreciate it. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. Thank you for being here today. Does the map that you have show the location of the structures on your client's property?

MR. RICHMAN: No, it does not. Actually let me see. There is one structure on our client's property that's a few miles away. I'll see if it's on here.

COUNCILMEMBER WHITE: If the testifier has a map that would help us get a sense of the proximity of his client's property to the subject property, I think it would be helpful if we could have that map --

MR. RICHMAN: You're welcome to it.

COUNCILMEMBER WHITE: --copied for the Committee.

VICE-CHAIR GUZMAN: I'm not sure whether...do we have a photocopy machine that will cover --

COUNCILMEMBER WHITE: Oh, maybe...

VICE-CHAIR GUZMAN: --a standard plan?

MR. RICHMAN: It does show the location of structure on our property. Yes, it does.

COUNCILMEMBER WHITE: With the Chair's permission if we could pass that down the row, it'd be helpful.

VICE-CHAIR GUZMAN: Oh yes, why don't we go ahead and identify it on the record that we will be showing the Members a map provided by Mr. Richman from the --

MR. RICHMAN: If I may add, I've highlighted...

VICE-CHAIR GUZMAN: --subject property. We'll identify the exhibit first, Mr. Richman.

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MR. RICHMAN: I've highlighted in yellow the location of the easement in the subject parcel.

COUNCILMEMBER WHITE: I'm sorry, I didn't hear your last comment.

MR. RICHMAN: I've highlighted in yellow the location of the easement in the subject parcel on this map.

COUNCILMEMBER WHITE: Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. We'll take a minute for our Members to review it.

COUNCILMEMBER WHITE: I guess the question that, the question I have is the easement or the driveway marked in yellow, is that your client's access as well?

MR. RICHMAN: It is. We have two accesses off the Hana Highway. The other one is over by the Alaalaula Stream on the other side, on the Hana side of the property. This is our only access on the Wailua side.

COUNCILMEMBER WHITE: And whereabouts on the property is your client's residence located?

MR. RICHMAN: There's one structure that's located on the Alaalaula side, a number of miles away with a different access. There are no residences served by this access at the moment.

COUNCILMEMBER WHITE: Okay. Okay, thank you.

VICE-CHAIR GUZMAN: Members, do you have any further questions for Mr. Richman? Seeing no...Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. A follow-up question on what he just said. So along the easement and up to Ms. Ark's property, there's no other dwellings around there?

MR. RICHMAN: None on my client's property but on the property to the west of the easement owned by the Warren Trust, there is a dwelling, and they actually have an easement over our easement as well to get to their dwelling.

COUNCILMEMBER COUCH: Okay. But that dwelling is not one of your client's?

MR. RICHMAN: Correct.

COUNCILMEMBER COUCH: Okay. So you're basically the Koali Mesa property?

MR. RICHMAN: That's correct.



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COUNCILMEMBER COUCH: Okay. And your concern is just the liability because they're traveling on the easement?

MR. RICHMAN: Liability as well as the fact that I think to make it safer the easement is going to have to be altered, there's going to have to be some grading and some vegetation cut and we'd prefer that it left in its present state.

COUNCILMEMBER COUCH: And it's now 30-feet wide?

MR. RICHMAN: The easement is 30-feet wide, I believe the driveway is a little more than a car width.

COUNCILMEMBER COUCH: Okay. All right, thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. Any further questions? Seeing none --

MR. RICHMAN: Thank you.

VICE-CHAIR GUZMAN: --I wanted to have a follow-up to clarify. There are no dwellings on your client's property?

MR. RICHMAN: There is one dwelling on my client's property.

VICE-CHAIR GUZMAN: And where is that located again?

MR. RICHMAN: That is on the Alaalaula side and it's up near the top.

VICE-CHAIR GUZMAN: What is the distance from your, from that dwelling to the easement itself?

MR. RICHMAN: A few miles at least.

VICE-CHAIR GUZMAN: How many is a few miles? Less than ten, more than ten?

MR. RICHMAN: Less than ten.

VICE-CHAIR GUZMAN: Less...more than five, less than five?

MR. RICHMAN: There's no access. The access to that structure is a different road.

VICE-CHAIR GUZMAN: Can you please my answer question? Is it more than five miles or less than five miles?

MR. RICHMAN: I would estimate it's probably less than five miles. I've never measured it.

VICE-CHAIR GUZMAN: So is it less than two miles or more than two miles?

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MR. RICHMAN: I'm guessing, you can tell from the map, I would assume it's more than two miles.

VICE-CHAIR GUZMAN: Okay, thank you very much. Do I have any other questions from the Members? Seeing none, thank you very much for your testimony. I'm going to go ahead and check in with our Hana Office, District Office.

MS. LONO: Aloha, this is Dawn. I do have a testifier waiting. It's Patty Yeknich and she will be testifying on Item No. LU-20.

VICE-CHAIR GUZMAN: Okay, thank you very much. Please identify yourself on the record.

MS. YEKNICH: Aloha. My name is Patty Yeknich. I am, live at 45555 Hana Highway. I am the resident in the Maui or excuse me, in the Marion Warren Trust. I am the granddaughter of that trust, and I just want to say I oppose the fact that they want to change this in from a agriculture situation into a commercial venue. It goes back to the same thing that Joel said, the existing driveway and easement do not run true to the easement, and so we have clients that come up to see Arabella on a regular basis and we live there and we see, not hear from somebody else how many people come up and down this driveway. The unfortunate thing is there are many huge mango trees, the roadway's tiny. I know she has the ability or possibility of giving an easement or making the easement true, I am still really concerned about that because the grade there is significant and any new runoff is going to come directly onto our property. She still has signage down at the bottom of the road that states that she has a ceramic gallery. We get any type of public that wants to come up, you know, they're curious, oh there's a road. They come up, there's at times you can't see her property nor her gate from the top, she has her gate shut, there's nowhere to turn around. They're in our property, they're trying to maneuver around, we have a huge ledge there, it's going to happen, someone's going to fall off into that ledge. Secondly, I oppose this, I just don't see changing the zoning. We've come out here, my grandparents came out in the '40s, built their property with the idea of retiring, and it's, the whole venue is changing, and if we allow people to start changing into commercial venues for home-based businesses we're not going to have it stop. Once the door is open, there are going to be McDonalds down at the corner, a Subway here, there. I mean it's all a money-based, driven greed I'm looking at. We came here to retire and just relax, and I don't appreciate the public coming up our driveway or up this easement so called and coming into our venue and disturbing us. And we have tractors that run up and down 'cause we do honor the agricultural system, we raise cows, we have chickens, we abide by the rules. So as I sit here and I think about this, I am opposed just for the whole thing. And I'm not against home-based businesses but this one is not appropriate, she is landlocked, and it \_\_\_\_\_ up. Thank you very much.

VICE-CHAIR GUZMAN: Thank you. Members, do you have any questions for the testifier? Seeing none, I have one question. You mention that you moved here recently. Was that in, how recent was that that you moved?

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MS. YEKNICH: I moved here in 2006. My parents owned the or my mom is the trustee of the property. My dad had a stroke. It was an inability for them come and be here, so my husband and I came over and took the family property which has been in their house for 66 years.

VICE-CHAIR GUZMAN: Yeah, that's correct. That's great that you've had the homestead but when did you actually physically move into the property?

MS. YEKNICH: In 2006.

VICE-CHAIR GUZMAN: Okay, thank you. And you're aware that...was the applicant, were they there prior to you moving in?

MS. YEKNICH: She was there prior to us physically moving in, yes.

VICE-CHAIR GUZMAN: Okay. Do you know how many years she was there prior to you moving in?

MS. YEKNICH: Well I had visited the place numerous times since I was six years old. She moved in I believe around the year 2000, maybe a little later.

VICE-CHAIR GUZMAN: Okay, thank you very much.

MS. YEKNICH: You're welcome.

VICE-CHAIR GUZMAN: Any further questions? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Ms. Yeknich. Is that how you pronounce it?

MS. YEKNICH: Yes.

COUNCILMEMBER COUCH: Okay. Wanted to ask you, so you've been there since 2006 and have you, do you deal with Ms. Ark on a weekly/monthly/daily basis?

MS. YEKNICH: I'm sorry, I didn't hear the first part of your question.

MS. LONO: Do you deal with her on a weekly, monthly or daily basis?

MS. YEKNICH: That's an interesting question. We see her daily.

COUNCILMEMBER COUCH: I'm sorry, what?

MS. YEKNICH: Interaction, none.

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COUNCILMEMBER COUCH: Okay, so you don't interact...so you're saying that...I guess how would your relationship with Ms. Ark be? Is it friendly, neighborly or adversarial?

MS. YEKNICH: Adversarial.

COUNCILMEMBER COUCH: Okay. Is that because of the ceramic studio or just other reasons?

MS. YEKNICH: I think the whole thing started with the fact that she was running her Bed and Breakfast which she still continues to do despite her saying no, and also the fact that she had signage down at the bottom of the road that said she was running a ceramic studio so she was doing it illegally. So we called and had her shut down and now she's running through the parameters but she started illegally.

COUNCILMEMBER COUCH: Okay, thank you. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. Members, any other further questions? Seeing none, I'm going to go ahead and ask for the next testifier. Thank you very much for your testimony.

MS. YEKNICH: Thank you.

MR. JENSEN: Mr. Chair, the next testifier in the Chamber is Terry Kristiansen.

MS. KRISTIANSEN: Good afternoon --

VICE-CHAIR GUZMAN: Yes, can you please...

MS. KRISTIANSEN: --Vice-Chair Guzman...

VICE-CHAIR GUZMAN: Yes, thank you.

MS. KRISTIANSEN: Yes. My name is Terry...

VICE-CHAIR GUZMAN: Can you please state your name?

MS. KRISTIANSEN: My name is Terry Kristiansen. My husband and I run a B&B on our farm in Upper Nahiku. We've known Arabella's fine quality ceramic work when we were living on Oahu. As chance had it we both chose East Maui to pursue our goals and dreams. We have always taken visitors to Arabella's studio when we were touring and sharing East Maui with friends and guests. Arabella's home and studio is a destination for many and she extends aloha spirit to tourists and guests alike. As a side bar, when we drive up Arabella's driveway we easily turn around at the top without fear of falling off a ledge somewhere. The driveway is short enough to see if a car is coming up when you're coming down and vice versa. Arabella's art and talents have been shared in our community as she's held positions as vice president of the Hana Arts Council, she was instrumental in taking art into our schools where she encourages children,

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our local children to pursue careers in art. Arabella was also instrumental in bringing Hana into the Island Open Studio Tour. Arabella's studio is inspiring and her garden is an oasis that she shares with folks who are interested in tropical flowers and plants. Arabella has a rare and exceptional creative talent that provides a positive attribute to this community. She deserves to live and make a living as a participant in the community in which she has contributed and participated. We need more ambassadors like Arabella Ark on this island, and she has proven beyond a doubt that she is competent at both her art and ambassadorship. We now need to give her the ability to make a living at what she does best, and for the last six months at least when we have gone out to visit her, there has been no sign at the bottom of her driveway advertising her studio. Thank you very much.

VICE-CHAIR GUZMAN: Thank you very much. Next testifier.

MR. JENSEN: Mr. Chair, the next testifier signed up in the Chamber is Kekama Helm.

MR. HELM: Aloha, Council members. Mr. Chair Guzman, aloha. And in light of our recent events, tragic events, I'd like to say my deepest aloha to you our Council members. So and mahalo to you guys for being here today. My name is Kekamaikaikamaikalani Helm. I come before you in support of Arabella Ark. My grandmother is Melanie Koko Helm. She comes from the Koko, Kanohowailuku, Kaua, and Kealohanui family right there in Pukuilua and Koali. I'm here again in support of Arabella and I urge you to make it easy for her to run her small business there. Very low impact, low key. I am also one of the public that goes up the driveway every once in a while and we do go up and down from time to time because she is the grandmother of my children. I do have a personal relationship with her and therefore she is ohana to me. We affectionally call her GramaBella. Issuing this permits will alleviate financial stress on Arabella and allow her to keep her home in Hana. This home will eventually be a legacy for my children and their children to come. Please do not take that away from the future generations that have deep roots in that place that we call home. Arabella is an upstanding resident of Hana and has given so much to that community. She has worked with children through the Hana Arts program that now offer dance, music, and visual arts to all of Hana's students, and has a staff of three now. This arts program is vital to the Hana community and its opio. It is my opinion that Arabella's studio has no negative impact on the Hana community. I've seen people come, buy her art, and take it home with them, probably even stopping at the store or the local lunch counter to get a bite to eat. This adds much needed economy for that community. Arabella has also provided much needed work for some of my own ohana in that area. I've only seen kindness and generosity from her. Again, I ask that you give Arabella the permits or make it easier for her to run her humble art studio at her home in Hana. This will allow her to continue to live there and pass her legacy on to her moopuna. Mahalo.

VICE-CHAIR GUZMAN: Thank you, Mr. Helm. Any further questions from the Members? Seeing none, thank you very much, Mr. Helm. I'm going to turn to our neighbor district, districts if they have any testifiers in Hana.

MS. LONO: Yes, our next testifier is Raffaella Alessandria testifying on LU-20.

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MS. ALESSANDRIA: Yes, my name is Raffaella Alessandria and I'm here today against the permit, and I have several reasons for it. The main thing being is that I feel as though granting this permit in this instance would set a precedent for the area which I don't think would be in the best interest of the community of Hana at large. I'm familiar with the driveway and I've driven up the driveway many times. I know both Patty and Walt Yeknich. I want to clarify what the driveway is and isn't because I don't feel a clear picture has been given by the testimony given so far. I've seen the easement and actually where the easement actually follows is not where the existing road is, so given that, if you look at the road from the Hana Highway it's a steep driveway and yes, you can see up the driveway so you would be able to tell if a car was coming; however, two cars would not be able to pass on the roadway as it is. If a car was going up and, up the driveway and didn't realize that Ms. Ark's gate was closed, it would not be possible to do a three-point turnaround on the existing road as it is, so would require someone backing down the driveway. When Ms. Ark's gate is closed, if someone did attempt to turn around, the only way they would be able to do that would be to drive on the Warren estate, Warren Trust property and then do a many-point turnaround to do so. I want to clarify, I'm supportive of artists in the Hana community, what I'm not supportive of is someone making a commercial business on their property which is what we're addressing here. It's not a question of whether Ms. Ark's artwork is valid, whether it should be sold in galleries or whether it's good or not. I just feel that there's other opportunities for her to sell her artwork. There's a gallery in town so it's not as though there's no output, no place for her to sell her work. I think it would be detrimental to the community to grant this. I think that there's other people that would apply and I don't feel as though by allowing her to have a permit, how can you deny anyone else with these same requests? Because hers is the most extreme condition that you could have where it's totally affecting both the Koali property and the Warren Trust. You know I just feel it's not the right thing to do. In terms of employment in the Hana community it doesn't really have, it doesn't really, if indeed it's true that it's four cars a day, I don't feel it's like a significant portion of income to warrant granting . . . *(inaudible)* . . . So and also I might say that it seems as though that the people that are in support of this aren't the immediate neighbors. You know it's, I've been following this permit --

UNIDENTIFIED SPEAKER: Four minutes.

MS. ALESSANDRIA: --process and it seemed as though the Hana Advisory would be the ultimate test of what might be right for the community, and they recommended against --

VICE-CHAIR GUZMAN: Ms. Andria *[sic]*...

MS. ALESSANDRIA: --the permit. So I feel as though that should be followed. Thank you.

VICE-CHAIR GUZMAN: Thank you very much. Thank you for your testimony. I'm going to go, turn back to...oh wait, let me call on Molokai District Office. Do you have any testifiers?

UNIDENTIFIED SPEAKER: . . . *(inaudible)* . . . questions to the testifier.

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VICE-CHAIR GUZMAN: Oh, I'm sorry. I apologize. Do you have any questions for the testifier?

COUNCILMEMBER COCHRAN: Yes.

VICE-CHAIR GUZMAN: Ms. Cochran.

COUNCILMEMBER COCHRAN: Sorry. Ma'am, what was your name? Sorry.

MS. LONO: What is your name.

COUNCILMEMBER COCHRAN: Can you hear me?

MS. ALESSANDRIA: Oh, Raffaella Alessandria.

COUNCILMEMBER COCHRAN: Oh, Ms. Alessandria, thank you for being there. So I'm looking at a PowerPoint that was presented to the Maui Planning Commission and in it I know you have concerns in regards to the roadway and this and that. Maui Police Department and State Department of Transportation both state no hindrance to pedestrian or vehicular movement and things of that nature. So and I'm looking at some photos also in this PowerPoint which seem the road's not lined or anything but it's asphalted and seemed wider than my road that I live on. But anyhow so I'm just...are you an immediate neighbor to the property?

MS. ALESSANDRIA: I live down the street. I'm not adjacent to the parcel but I'm very familiar with the driveway. I'm sure with...I could tell you for sure that I've driven up and down that driveway, you know, probably, I don't know, probably at least 50 times, so I'm very familiar with the driveway. I think that it's, to me that's part of the aspect of this, the main point is it's a question of is allowing, is giving such a permit the right thing to do, given the area that it's being asked to be allowed for, and I don't feel that it's correct. So I'm sure that just like anything you could have 20 people saying yeah the driveway's fine and 20 people saying no the driveway is not fine, but ultimately this decision what it comes down to is what is actually going to take place on that property and it's not right for an agricultural community which Hana is. And so even though the Police Department is saying like yes, the...I don't know what criteria they're using for how they're making that evaluation but to me that's not the gist of what we're looking at. What we're looking at is...

VICE-CHAIR GUZMAN: Ms. Andria [*sic*] --

COUNCILMEMBER COCHRAN: Okay, thank you.

VICE-CHAIR GUZMAN: --I think you've answered the question.

COUNCILMEMBER COCHRAN: Yeah.

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VICE-CHAIR GUZMAN: Thank you.

COUNCILMEMBER COCHRAN: Thank you. Thank you for being there.

VICE-CHAIR GUZMAN: Do you have any further questions, Members? Seeing none, can we move forward with the next testifier.

MR. JENSEN: Mr. Chair, the last person signed up to give testimony in the Chamber is Arabella Ark.

MS. ARK: Good afternoon. It's my great pleasure to be here in front of you. This process has taken almost three and a half years. I guess I want to say I'm really honored to be here. I'm pleased that you're going to listen to me. I'd like you to know who I am and what I do and then to address a few of the misstatements that have been made that I've heard. So first of all, I'm an artist and part of being an artist is a spirit of giving back and giving back in beauty what I see and what I feel. So I do ceramics, I write books, I grow flowers, I share my world with as many people who enter it. And I want to thank everyone who's given positive testimony and letters in support, because this has taxed my friends a great deal to have to come forward so often and say what a wonderful person I am. So even though I like to hear it it's been quite a job. I've been in Hawaii for 42 years. I've been president of Hawaii Craftsmen. I've been a 20-year member of Pacific Handcrafters Guild. We make movies about Hawaiian quilting, about raku firing. Our movies have won national awards. In the spirit of giving back, I have set up two scholarship funds for over 20 years. The first for students going to Leeward Community College on Oahu because I lived in Waianae and I had often had children come to my studio who were the "unteachables", the bad boys, the hapai girls, and they would come in my studio and make things, get turned on to art and want to go on to Leeward College. So I would give them the money to do that. Then 14 years ago, two of my children died, so I set up a scholarship fund in their name and I've sent six children through college on that. Now the only way I make any money is by being an artist and selling my artwork or selling the books I write. For three and a half years since the County informed me that I needed a permit for my property and to sell my art, I have been closed. There is no ceramic art sign on the Hana Highway. There is a simple sign by my mailbox that says Arabella Ark and there's a flower on it. I grow flowers in my garden. I don't sell them but I could. If I wanted to sell my flowers we would not be having an issue about people coming up and down my driveway. Now my driveway is a safe driveway. There's been some contention over intruding on the Warren Estate. My driveway's shaped like the number seven, so people can come up my driveway and also turn on the south boundary because the Warren property doesn't start until almost their cattle guard. So it's very natural for people to come up my driveway and make a turn toward the Warren Estate but they're not on the Warren Estate land. I often use that same part of my own easement to turn around myself. I have not done business on my property for three and a half years, so I'd like to make that very clear. I have gone through \$350,000 that I had for my nest egg because I'm 67 years old. In order...

VICE-CHAIR GUZMAN: Excuse me, I apologize. I'll give you like one last sentence.



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MS. ARK: Thank you so much. I'm out of money, my house is for sale. I do very much hope to have these permits, and I thank you so much.

VICE-CHAIR GUZMAN: Thank you. Members, you have any questions to follow up? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Are we going to be able to have her as a resource?

VICE-CHAIR GUZMAN: Yes, she's listed down as a resource.

COUNCILMEMBER COUCH: So you want us to wait 'til then I would assume?

VICE-CHAIR GUZMAN: May do so if you wanted to ask any clarifying questions.

COUNCILMEMBER COUCH: Well she just said something that I was just a little concerned about. You said your house is up for sale?

MS. ARK: Yes.

COUNCILMEMBER COUCH: And does that include the studio and everything in it?

MS. ARK: The studio is part of the house but a permit would not go with the sale of the house.

COUNCILMEMBER COUCH: Okay, thank you.

VICE-CHAIR GUZMAN: Yes. Mr. Couch . . . *(inaudible)* . . .

MS. ARK: I don't want to sell it.

VICE-CHAIR GUZMAN: Excuse me, Ms. Ark. Yeah, it's just as part of the condition the Conditional Use Permit is nontransferable, yes.

COUNCILMEMBER VICTORINO: Mr. Chair?

VICE-CHAIR GUZMAN: Yeah, Mr. Victorino.

COUNCILMEMBER VICTORINO: I know she'll be here and there's some other questions I'll ask a little bit later, but I was interested in the fact that Mr. Helm's testified that he's family to you and that his children, your grandchildren and great grandchildren and other generations would enjoy that house if you were able to get this permit. Am I, was that a correct statement?

MS. ARK: That's correct. I have the home in a trust for my family.

COUNCILMEMBER VICTORINO: Okay.

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MS. ARK: But because of the financial difficulty I've gone through in this process, I wasn't sure when the process might end and which way it might go so I put it on the market. I've not had any offers nor do I have any buyers in sight.

COUNCILMEMBER VICTORINO: Right. Okay. Okay, thank you. The other questions I'll probably wait 'til we get into the actual discussion --

VICE-CHAIR GUZMAN: Okay.

COUNCILMEMBER VICTORINO: --Mr. Chair. If she's going to be a resource for us I'll wait 'til then.

VICE-CHAIR GUZMAN: Okay.

COUNCILMEMBER VICTORINO: Thank you.

VICE-CHAIR GUZMAN: Thank you. I believe that there's no other testifiers within the gallery. I'm going to turn back to our District Office to double check whether there are any additional testifiers. In Hana District Office, are you there?

MS. LONO: Yes. The Hana District Office has no one else waiting to testify, Chair.

VICE-CHAIR GUZMAN: Thank you very much. What about in Lanai District Office?

MS. FERNANDEZ: There's no one on Lanai waiting to testify.

VICE-CHAIR GUZMAN: And Molokai District Office, anyone wishing to testify?

MS. ALCON: There's no one here on Molokai waiting to testify.

VICE-CHAIR GUZMAN: Okay, thank you, ladies. That will conclude your portion of the meeting. Thank you for all your hard work on that side. Members, at this time I'm going to introduce...let's see what we have here.

MS. NAKATA: Excuse me, Mr. Chair? Are you closing public testimony at this time?

VICE-CHAIR GUZMAN: Oh, yes. I apologize. I'm a little bit frazzled today. So without any objections, I'm going to close public testimony.

COUNCIL MEMBERS: No objections.

VICE-CHAIR GUZMAN: Thank you.

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...**END OF PUBLIC TESTIMONY**...

VICE-CHAIR GUZMAN: At this time, Members, the Committee is in receipt of County Communication 14-11, from the Planning Director, relating to a Conditional Permit application submitted by Arabella Ark, to allow client visitations and commercial sales at a 480-square-foot ceramic studio located on a .959-acre parcel at 45-575 Hana Highway, within the County Agricultural District, Hana, Maui, Hawaii, along with a proposed bill to grant the request. I'd like to start by asking the Department of Planning to provide a brief overview of the project. The Department will be presenting a PowerPoint. If you could please identify yourselves from the Department and any other representatives that you may have. I think I believe that we have the Director Will Spence is here. Would you like to start off with an opening statement before you start your PowerPoint or preferably just go into your PowerPoint?

MR. SPENCE: No, Mr. Chairman. Why don't we do the PowerPoint and then we can ask questions at that time.

VICE-CHAIR GUZMAN: Okay. Why don't we go ahead and take a brief recess to set up the Chambers at this time. ...*(gavel)*...

**RECESS: 2:26 p.m.**

**RECONVENE: 2:28 p.m.**

VICE-CHAIR GUZMAN: ...*(gavel)*... Land Use Committee shall now reconvene. The Planning Department may proceed.

...**BEGIN PRESENTATION**...

MS. FLAMMER: Okay. Good afternoon, Council members. My name is Gina Flammer. I'm a Staff Planner with the Planning Department. I'm going to give you an overview of the project and kind of walk you through the whole process that we went, we've gone through up until this point. So the permit as you heard is to allow client visitations and sales of ceramic artwork to clients. The applicant is a ceramic artist who's recognized internationally and nationally. The request letter and the property history is included in the staff report in Exhibit 5. There's quite a bit of information. There's also information about the artist in Exhibits 28 and 29. The applicant built the studio in 2002, it is 480 square feet. It's an open-air studio as you'll see as we go through. This was discussed at the Hana Advisory Committee because we compared it to farm stands, farm stands are also open. The client operated it from 2002 'til 2010. She was informed in 2010 that she did need permits due to the Agricultural zoning. The studio was closed and the permit was applied for in 2011. The permit request is for the hours of 11:00 a.m. to 4:00 p.m. in the afternoon or by appointment. There are no stated days so it could be open every day or less. The applicant states that it will vary upon her travel and her writing schedule. The applicant has also stated in the application that when she operated the studio the frequency of guests ranged anywhere from three or less per week all the way to three per day. It's important to know the

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studio is located on the same parcel as the applicant's home which was built in 1947. Again in that report in Exhibit 5 is quite a bit of detail about the history of the property and the house itself. It is a nonconforming ag lot, it's just under one acre. This did require two permits, one of them because of the Ag zoning with the State law it was an SUP. As you know there's no State ag tourism or County ag tourism law, nor is there a home-based business law, so what we're looking at right now to satisfy the County Ag zoning would be this Conditional Permit that we're discussing. To satisfy the State Ag District you have a Land Use Commission Special Use Permit. Because it's under 15 acres the Maui Planning Commission is the approval authority for that. They did go ahead and grant it with 14 conditions, and I'll go into a little bit more detail about that in a minute. Again, just to remind you what the Conditional Permit is all about. I know you do see these a couple times a year, maybe three or four. It's for uses specifically not permitted within that given zone, and because of that it's used in all different districts so you get all different types of projects that come before you. Anything from a residential property, we've had a design office that was a converted garage. You've recently seen the Ala Kukui Retreat Center that's also in Hana. You've seen some ones for Ag districts, the Haleakala Ranch Visitor Center, Seabury Hall was required to come in, the West Maui Boys and Girls Club came in recently for their renewal. Also industrial uses, you see those with Conditional Permits, too, the Paia Mill telephone facility, and then we've got quite a bit of real hard industrial uses, rock crushing, there's quarries, concrete you just saw last year, and then a hot mix asphalt plant which is on Molokai. So to show you where it is, it's about eight miles towards the national park south of Hana. Here's, you have this in your staff report but here it shows you the parcel itself. The red outlines the parcel, the blue is the easement that goes with it. I did put on here who the two owners are. We've got the Koali Mesa property up above that surrounds it, almost 160 acres, and then the Warren Trust property which is to the left right there. This is from the Land Court, I wanted you to know that. This is the map from 1977, and we'll come back and visit this at the end. This is the driveway. You can see the little arrows pointing you which way goes to Hana, which way goes to Kipahulu. I wanted you to see what a car looked like going into it from both sides. There's the sign that everybody's talking about. I don't have a close up but it shows her name on it. It's kind of hard to see from here but you can see in your printout. And I wanted you to see what the driveway looks like. This is 2011 'cause I'm going to show you a more recent picture. And then as we come up right to the applicant's parcel. This is the cattle, a cattle gate and then there's the gate that they've talked about. This picture again was from probably 2010. Here's the studio itself. So you can see some of the open-air nature of it. I notice the pictures are in black and white in your staff report so I wanted to show them to you in color. Here are some of the inside shots still. You can see the one wall is open. And then the applicant asked me to show some of her artwork so I've included a couple pictures of that as well. I know she's recently at the Paia Maui Crafts Guild, I'm not sure of the name of it. It's in the window, you may have seen that as you go by. This is the residence that's at, on the property. And then I wanted to show you the front yard. Some of the views you can see from the front. And then I left in the pictures of the agriculture 'cause I just wanted you to get a full understanding of the property. These were put in for the Maui Planning Commission because they were talking about the SUP2 Permit, the Special Use for the ag. The property because it's nonconforming, it's under an acre, we do not require a farm plan; however, it does meet the farm plan definition of being 50 percent planted. It has extensive gardens. And I just wanted to include some photos. I

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know we don't do site visits but this is the best we can do just to give you an idea. And then there are quite a bit of tropical flowers that I know she used when the studio was open. She would use them as flower arrangements for that. So I wanted to just briefly go through the process. The Department we start by accepting the application. So we're not experts in every single area so we send it out to agency review for their comments, and I'll start with that. There's an overview, I put a table in the report, it's probably the easiest way I think but I also included the specific comments in the different exhibits that are at the back of that report. The most important here is the Department of Fire and Public Safety. They've required some basic including the fire extinguisher, annual inspections, but also there has to be an inspection prior to opening. Public Works, probably the most important comment was a roof structure off the back studio. It kind of, there's a picture in the report, it kind of covered a lot of...it was storage area, the area was not for public use. It was included as a condition on the SUP that an after-the-fact permit be obtained for this. The applicant has since gone ahead and just removed the roof structure altogether. I haven't been out since she's done that but that would be part of what I would look for when I go out for my site visit if this were to be approved and I were to do a final compliance site inspection. Department of Water Supply also had a couple conditions which are pretty standard for their projects, and those were also included on the State Land Use Special Use Permit. The Maui Police Department, they did a site inspection. You can see in the table as well as their specific comments in the exhibits, but they did not have any objections to the application. They specifically stated that customers will not hinder pedestrian or vehicular movement in or out of the ceramic studio. They found the parking to be adequate, and they also found the turnaround area to be provided on the property. The Police Department is really the Department expert on vehicular movement and on safety, traffic safety so we really rely very strongly, and it was nice to read that the officer had gone out and actually done a site inspection themselves. The State Department of Health wanted us to look into the existing cesspool. I did speak with the San Francisco Office and learn quite a bit about existing cesspools and that they are still allowed when they are functioning for the structure. This would not require an additional individual wastewater system. Department of Land and Natural Resources, even though the house is over 50 years old, they did not determine that the change of use to the, with the studio on the property would have any affect. And then Department of Transportation also they reminded us that it's the County that maintains the highway and that they didn't see any effects on State roadways. And the electric company had no comments. So on April 26<sup>th</sup> in 2012, we brought the application to the Hana Advisory Committee. I will let you know at the time I wrote the report, went to the Committee, I had four letters of support. I was not contacted by any of the neighbors ahead of time. Quite often I get at least a phone call from a neighbor. They do get notice of these hearings. So when we went to the meeting we had the staff report which you have now. At the meeting we had ten testifiers, that's an actual photo from the meeting. Six of them spoke in favor, they discussed how it's a similar use to what's going on. Not all of them differentiated between permitted uses and what's actually happening in Hana. I'm sure many of you have done the road to Hana and you see all of the activity that's on the road. When we're looking at permits we only look at permitted uses when we're looking at similarity. And they also talked about the uniqueness of the studio and the benefit to the Hana arts community. And then one of the testifiers did a very nice job of kind of describing sometimes how home businesses, arts, other communities have dealt with it, and they would like

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to see Hana deal with this because the arts community is such an important part of the overall community in Hana. There were four neighbors representing three different lots who protested. You've heard from two of them today. One has moved who was across the street. There's a new owner who I understand is a part-time owner that lives on the mainland. I've had nothing submitted from that owner. I know the applicant has been in contact with her. Those protests, they're similar to what you heard today, noise, access, liability. The letter that was written to the Maui Planning Commission with the recommendation from the Hana Advisory Committee is very detailed as you can see in the report. I go into much more explanation of what happened at that hearing than just this. So the outcome was four members including the chair and there was some discussion about when does the chair vote, voted for the denial, and two voted against the denial. In your packet are the minutes and also the letter I told you about, but I'm just going to go over just, you know, to be thorough what that recommendation of denial was based upon. The Committee talked a lot about the concern and you've heard that today in today's testimony, the concern for the commercialization of Hana and having art businesses open to the public. The open studio's exhibit that's, I think it's number 28 that's in the staff report really surprised the Committee members that this was going on. They were kind of alarmed that there was so much business going on in Hana. They were also, the Committee they were concerned about the unresolved issues regarding the easement. We didn't have any answers at that meeting, we didn't know who had a right to that easement, so without that information it was hard for them to vote for it. They wanted a deferral but that, the motion first was made to deny. There were safety concerns about the access road just like you heard today. There was a discussion about the lack of ability for the County to enforce permits in general, so they were concerned that we could put conditions on and then we wouldn't be able to enforce them. And they cited the opposition of the immediate neighbors and that was very important to them. There was also concern that the deferral would not produce an agreement amongst neighbors. They did recommend it. One of the neighbors had indicated she would not be open to that, so they went ahead instead of deferring they just made their decision. So it was brought to the Maui Planning Commission. The Department did its best to try to find some research on the easement and that was discussed at the Maui Planning Commission as you can see in those minutes. At that Commission hearing, there were eight additional letters of support and there were eight testifiers at the hearing, five of them were in support and three were the neighbors that were in opposition. Additional information about the easement was provided and discussed in quite thorough detail. The easement is not part of the Warren Trust neighbor's deed. They understood that it was a casual use that was being used of that driveway that dated quite back some time, they understood that. The Commission felt that the access for the trust property would be off of Hana Highway for that parcel, and that the actual easement varies from the map and it does encroach upon the Warren Trust property. Now you have in your exhibit, in your packet some exhibits that do show that, but I'm going to show you that in just a minute also. So most of the discussion at that Planning Commission hearing was on understanding the use of this easement, and in an unusual move, the chair at the time, he usually didn't make comments but he did in this time suggest that the neighbors create their own driveway for their property and that the Ark driveway be realigned to match the legal easement. Well as you know, you can't put conditions on neighboring properties, but you can put them on the property where the permit is being sought after, so the Maui Planning Commission added a condition which was that the access to the

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subject property shall be provided within the legal access easement boundaries. They went ahead and recommended approval of the Conditional Permit with this easement condition. This is also on the State Land Use Permit. So here this is the lot map that you saw before that was the Land Court map. So you can see in the pink area of the driveway, that is where the easement and the driveway do not match. That is the area that will need to be shifted, that's where the driveway will have to come in order for her to meet that requirement. So the applicant has had the easement surveyed. She's removed some of the trees that allows the driveway to be shifted. She's interviewed some contractors. She wanted to wait to find out the outcome of the permit before she went ahead and commenced the work. And I just wanted the Council to understand that if this permit is approved, there will be a site visit that will be conducted prior to determining compliance. There's a Fire inspection that will have to be done, there's the site visit, and at that site visit we'll confirm that the roof structure was removed and that we'll also make sure that the driveway has been realigned. So these are some pictures provided by the applicant that shows the work that she has done to realign the easement, to realign the driveway so that it matches the easement. These are some trees that were removed. This is a 2001 picture. I show in the pink on the bottom where the driveway is going to be shifted. It'll also be shifted at the bottom as well. And then I just wanted to remind you again that the roof structure was removed. The condition has been satisfied assuming I go out with the site visit and everything goes well and it's not there. The Conditional Permit, the Maui Planning Commission unanimously recommended approval with six conditions. You'll remember there's other conditions on that State Land Use Permit. Again, the easement, number six that they added is the easement condition. I do also want to let you know that the neighbors did appeal the Maui Planning Commission decision to the Circuit Court, the court did prevail...the County did prevail. This was last summer. Our Corporation Counsel can answer more questions about that. All right, that concludes the presentation. Thank you.

... **END PRESENTATION** ...

VICE-CHAIR GUZMAN: Thank you. We'll go ahead and take a recess to reset the Chambers. Thank you. ...*(gavel)*...

**RECESS: 2:44 p.m.**

**RECONVENE: 2:46 p.m.**

VICE-CHAIR GUZMAN: ...*(gavel)*... The Land Use Committee shall now reconvene. Yes, I'm going to go ahead and ask the Department if they had any supplemental statements prior to opening up questions from the Members.

MR. SPENCE: No, none.

VICE-CHAIR GUZMAN: Okay, we'll hear from Deputy Corporation Counsel, Mr. Hopper.

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MR. HOPPER: Just to go on with what Gina had said. The Planning Commission's issuance of the State Special Use Permit was appealed to the Circuit Court by Ms. Yeknich, and the Circuit Court upheld the Planning Commission's decision to grant the Special Use Permit. Again, not the Conditional Permit. That's the Council's purview and there was no decision on that, but this was on the State Special Use Permit that was challenged in Circuit Court, and the Circuit Court upheld the Commission's decision to grant the Special Use Permit. So that's just for your information, and the appeal timeframe to appeal that decision to the Intermediate Court of Appeals has lapsed. So that's the final decision by the Circuit Court. I can give you more details if you like but I think that affects only the Planning Commission's Special Use Permit which is of course a required permit for this project but not something that the Council has purview over. The Council has the decision making authority over this Conditional Permit before it now.

VICE-CHAIR GUZMAN: Members, I'm going to open up the floor for any questions. Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair. Of course, you know, obviously by one of the testifiers' testimony I also have a relation to the applicant, Ms. Arabella's moopuna who's my grandnephew and niece. So I'd like to just disclose that in open. I have a question I guess for Planning. With the objection or well maybe you've got to...I've got to back up a bit. The Hana Advisory Committee denied the applicant. Can you clarify for me what is the purpose of the Hana Advisory Committee and how does that, I guess they got superseded with their decision, the obvious, and can you explain probably why that supersede?

MR. SPENCE: Okay.

VICE-CHAIR GUZMAN: You may proceed.

MR. SPENCE: Okay.

VICE-CHAIR GUZMAN: The Department.

MR. SPENCE: Thank you, Mr. Chairman. The Hana Advisory Committee is to make a recommendation. Since it's such a rural community and it's hard for people to drive out and testify and all that, you...we...the Hana Advisory Committee was formed for issues out in Hana, and that Committee makes recommendations to the Maui Planning Commission and to the, ultimately for things that end up in front of the Council. Of course you get that as well. They do not deny, they do not approve or deny anything, they make a recommendation. So the Planning Commission lets the Hana Advisory Committee hold the public hearing, the official public hearing out in Hana, and then that recommendation comes back to the Maui Planning Commission for decisions under their purview. And then of course whatever that recommendation is if it applies to Council action, you know, that you would receive that information as well.

COUNCILMEMBER CRIVELLO: Chair? May I have a follow-up --



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VICE-CHAIR GUZMAN: Yes, Ms. Crivello? Yes, go ahead.

COUNCILMEMBER CRIVELLO: --question on that? On the Maui Planning Commission do you have Hana representation?

MR. SPENCE: Not at this time. The last Commissioner was Ward Mardfin who sits on the Hana...he still on it? Yeah, he still sits on the Hana Advisory Committee now.

COUNCILMEMBER CRIVELLO: Okay. Thank you. I have more questions but will pass it on.

VICE-CHAIR GUZMAN: Okay. Members, any further questions? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Just as a follow-up to Ms. Crivello's question, Mr. Spence, has the, to your knowledge has the County Council ever gone against the advice of the Planning Commission?

MR. SPENCE: Yes. Mr. Couch, the Council has...I would have to look up instances but I'm aware that the Council has voted quite differently from the recommendations made by the Planning Commission.

COUNCILMEMBER COUCH: Okay. The other thing that was mentioned and I thought that was a very, very telling comment by I think it was Ms. Ark, she said that if she sold flowers commercially there that there would be no issue because it was a permitted use. Is that correct?

MR. SPENCE: That's correct. The, one way we look at Conditional Permits and that's actually one of the criteria is is it comparable to other things, is it not listed as a permitted use but is it comparable to other things that you can do under the zoning. And certainly there's a lot of agricultural uses that would generate more traffic. For instance I'm looking at permitted uses, certainly agriculture is one of those, and a whole lot of things can fall under that including things like, you know, she could raise flowers, she could raise orchids, she could do a farmers, like an agricultural stand on her property and people could come up and purchase retail for that.

COUNCILMEMBER COUCH: Fruits, vegetables.

MR. SPENCE: All that kind of stuff. I'm just thinking it's a substandard lot, you know, it's not even quite an acre so you probably could not do, you know, row crops and stuff like that, but a greenhouse kind of operation would be a possibility, and people would be free to come up her driveway and, you know, review the orchids that are growing in the greenhouse or, you know, those kinds of things. Those are all permitted and those would, at least from what I heard three to four cars per day, certainly that kind of flower operation would generate, I should say could generate a lot more than that.

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COUNCILMEMBER COUCH: Okay. And I, just as a follow-up to this and then 'cause I do have a whole bunch more. The permit is saying that to allow client visitations and commercial sales, so is that commercial sales of anything?

MR. SPENCE: No, that would be just, she's, Ms. Ark is requesting commercial sales of her ceramics art, not just of...I mean other than the agricultural stuff that she could sell --

COUNCILMEMBER COUCH: Right, right.

MR. SPENCE: --she's just asking for the ceramics.

COUNCILMEMBER COUCH: Okay, thank you. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. Any further questions? Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. It looks on the Real Property Tax website that the Warren property and this subject property both use the same driveway. Is that correct? Or is there a separate driveway for the Warren Trust property?

MS. FLAMMER: No, they use the same driveway.

COUNCILMEMBER WHITE: Okay, so it's a shared easement then?

MS. FLAMMER: No, it's an easement in favor of Arabella Ark.

COUNCILMEMBER WHITE: Okay, so the Warren property is using an easement that's granted to the Ark property, is that correct?

MS. FLAMMER: That's what we understand.

COUNCILMEMBER WHITE: Okay. And then the other question I had was how many B&Bs and Short-Term Rentals do we have permitted in the Hana area? In rough terms. I'll make it easier, how many, do we have any that are on agricultural properties?

MR. SPENCE: Yeah.

MS. FLAMMER: Yes, we have, most them are on agricultural properties because we're talking about Hana and most of the parcels out there are agricultural properties. I just did a presentation, I want to say there's maybe ten Short-Term Rentals and, or maybe eight Short-Term Rentals, ten Bed and Breakfasts. Something in that order.

MR. SPENCE: Yeah.

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COUNCILMEMBER WHITE: And do you have any way of estimating the traffic that would be going in and out of a B&B compared to this operation? It would depend on the size of the B&B but I'm just wondering --

MR. SPENCE: Right.

COUNCILMEMBER WHITE: --if...

MR. SPENCE: It would depend on the size of the B&B and you have to remember too, B&Bs you can rent out to different parties, so if you have a three-room B&B or, you know, a five-room B&B, you could rent out to five different parties and those people could come and go as they please. With a Short-Term Rental, you're required to rent out to a single party. I don't know that...I would say with the B&B it potentially, significantly more. With the Short-Term Rental, I don't know, several times a day, because they're going to go out and stay and then go site seeing, then come back in the evening or then maybe out to dinner. It's going to vary from party to party.

COUNCILMEMBER WHITE: Yeah. And it could for an STR too because you rent it to one party but it could be three cars or four cars or whatever.

MR. SPENCE: That could be. That could very well be.

COUNCILMEMBER WHITE: The reason for my question is that several of the testifiers noted that this would be the first commercialization on ag properties, but we in fact have B&Bs which are equally commercialized I would...*(inaudible)*...

MR. SPENCE: Yes.

COUNCILMEMBER WHITE: Yes. And I believe, Ms. Flammer, your presentation noted that the vote at the Maui Planning Commission was a unanimous in favor. Did that include Mr. Mardfin, the Hana representative or was he there that day?

MS. FLAMMER: No, he had left the Commission at that point.

COUNCILMEMBER WHITE: Oh, okay.

MS. FLAMMER: Actually he was on at the Hana Advisory Committee at that point but he wasn't on it when it was first heard.

COUNCILMEMBER WHITE: And when this came before the Planning Commission, had the Hana representative been replaced with another Hana resident?

MR. SPENCE: No, we currently do not have a Hana representative on the Planning Commission.

COUNCILMEMBER WHITE: Okay, so this was fairly recent then?

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MR. SPENCE: Yeah. Mr. Chairman, can I comment on the commercialization?

VICE-CHAIR GUZMAN: Yes, go ahead. Proceed.

MR. SPENCE: And I want to say I do understand the concern of the testifiers who are saying that, you know, they're worried about the commercialization of ag land in Hana. As Mr. White points out, we've issued a number of Special Use Permits or I should say the Planning Commission has issued a number of Special Use Permits for Short-Term and Bed And Breakfast uses out in Hana, and those may or may not generate more traffic than what's been the cause of concern today. But I would point out that this is not a Change in Zoning. If the people are still listening out in Hana, this is not a Change in Zoning, this is a very, very narrow permit that the County Council is conditioning or considering today. It does not set a precedence. Each one, by its very nature a Conditional Permit is very individual. There are no two alike. The facts of each, the location of each, the scope of each. I can't ever recall seeing a Conditional Permit for a ceramic studio. As the slide that Ms. Flammer showed, I mean it's for a slew of different land uses and even those, they're very narrow. But just the fact that someone would have to spend three and a half years in the permitting process in order to get this far, that says something for the difficulty of the permitting process and it's hardly precedent setting. It's a very onerous process to be able to allow, in my opinion, it's an onerous process to be able to allow people to come view your ceramics at your property and possibly purchase some.

COUNCILMEMBER WHITE: Okay, thank you. Chair, if I could just have one other question?

VICE-CHAIR GUZMAN: Yes, Mr. White.

COUNCILMEMBER WHITE: For Corp. Counsel, if the easement is granted solely to the Ark property, does that mean that the use of the driveway by the Warren Trust could be revoked or disallowed by the Ark property?

MR. HOPPER: Thank you, Mr. Chair. I can't comment on what rights that the Warren Trust property may have, that's a private agreement between them and the Ark property. I will note as Ms. Flammer did that one of the conditions that the Planning Commission imposed and, in, on the SUP and that you are being recommended is Condition Six which states that the access to the subject property for the proposed use shall be provided within the legal access easement boundaries. This requires that the access to the Ark property has to be through the Ark property's legal access and can't go onto other properties where the driveway may currently go onto other people's property or at least outside of the easement access area, and that condition was placed on there by the Commission to require that whatever access you have to the property is within the legal access easement boundaries. And that's something the Commission placed on it. And I think that's as far as the Commission was advised and probably could go as far as looking into the party's private rights. Just to ensure that any access you provide has to be access that you're legally allowed to have --

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COUNCILMEMBER WHITE: Right.

MR. HOPPER: --for the property.

COUNCILMEMBER WHITE: Yeah. No, that's pretty clear in the documents. Thank you, Chair. I have questions for Ms. Ark later but.

VICE-CHAIR GUZMAN: Okay, thank you. Any other questions for the Department? Mr. Couch.

COUNCILMEMBER COUCH: Oh, Ms. Cochran has some.

VICE-CHAIR GUZMAN: Ms. Cochran.

COUNCILMEMBER COCHRAN: Oh, thank you, Chair. And so, yeah, I'm just trying to figure out where the weight lies within the Hana Advisory Council [*sic*] in regards to your decision. So I was trying to just gather, you know, your points, Ms. Flammer and Mr. Spence, you know, and then hearing the concerns of the opposition at, as, from the testifiers in Hana and neighbors which I think the liability, privacy, and noise, and also one testifier brought up spot zoning. They felt this was a case of spot zoning. So I just kind of want comments on that. I've been trying to sift through the information, and I guess as in privacy and noise they're mainly, their main concern were vehicles, the customers that may be traversing up and down for noise. And I think was there comments to say put up barriers of maybe like hedges or a tree about, to, you know, to cut off noise and that aspect.

MS. FLAMMER: The complaints stem with the use of the easement from the neighbors. The Planning Commission did talk about fencing it off. The applicant stated that she probably wouldn't do that. She was fine with them using it. You can ask her later about that. But the Planning Commission did suggest that they go ahead and do that, and that they have separate entrances and that would probably solve the problem.

COUNCILMEMBER COCHRAN: Okay. And so...Chair, if I might, may --

VICE-CHAIR GUZMAN: Yes, go ahead.

COUNCILMEMBER COCHRAN: --continue? Okay, thank you. And, Ms. Flammer, in your presentation you said...so say we approve and then you'll go back for a site inspection to double check about that, the removal of that roof and other things. Say that it's not done but yet we this body have approved this, what happens then?

MS. FLAMMER: Well the condition is that it has to be satisfied. If it's satisfied prior to opening and that's what the driveway alignment is then the studio cannot open. So I would have to go out prior to the studio opening, just as there needs to be a Fire inspection prior to the studio opening.

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COUNCILMEMBER COCHRAN: Okay. But at no point after we approve is it rescinded then? If the conditions aren't met and roof isn't removed and, you know, Fire was never called to get inspected and things of that nature.

MS. FLAMMER: In that case the applicant would not be allowed to open the studio, so if she did open it, we got a notice from the neighbors, our enforcement officer would go out and order the business to be shut down. Also when it comes for renewal, she has to show compliance with all of the conditions. The roof one, the Planning Commission commissioned it, put the condition on not prior to opening leaving her some flexibility so that she could earn some money while the studio is open and use that to remove it. I think the applicant decided that before she came here she wanted the best, cleanest record she could get so she went ahead and removed it. The driveway alignment costs some money, I believe she wanted to wait for the outcome of this before she went ahead and did that kind of work.

COUNCILMEMBER COCHRAN: Right. And one last question, Chair, if you don't mind?

VICE-CHAIR GUZMAN: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: And so the beginning of the proceedings, the process for this, Ms. Flammer or whoever, was it already been said that the place is up for sale?

MS. FLAMMER: No, it wasn't up for sale...you'll have to ask the applicant. You'll have to ask her exactly when. It wasn't in the beginning, it wasn't when we went to Hana, and I don't even know if it was when we went to the Planning Commission. I'm not sure. But she can provide that information.

COUNCILMEMBER COCHRAN: Okay, thank you, Chair.

VICE-CHAIR GUZMAN: Yeah. Just, Ms. Cochran, in terms of the issues about selling the property, just to make note again, it's, the Conditional Permit is nontransferable so the new owner, a good faith owner purchasing the property would not be able to retain having the Conditional Permit granted.

COUNCILMEMBER COCHRAN: So it doesn't like run with the land, thereby give --

VICE-CHAIR GUZMAN: No, it does not.

COUNCILMEMBER COCHRAN: --higher value to the property as...

VICE-CHAIR GUZMAN: No --

COUNCILMEMBER COCHRAN: Okay.

VICE-CHAIR GUZMAN: --it will not.

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COUNCILMEMBER COCHRAN: Okay, thank you. Thank you, Chair.

MR. SPENCE: Mr. Chair?

VICE-CHAIR GUZMAN: Mr. Spence.

MR. SPENCE: Yes, thank you. Just a comment. Ms. Cochran seems to have a concern about spot zoning. Spot zoning...okay, what...maybe a little contrast. If...what's being requested here is to be able to have people come and just purchase some ceramics. If we were talking about spot zoning, what the request would be would be like to change to the Urban District and to B-2 Commercial, and that's not, that would be spot zoning. You would have a little spot in the middle of the Ag District that is something entirely different and it would only benefit one person, and it would run with the land. What we're not, what we're doing here, we're not changing zoning, you're granting a permit or considering a permit to allow an additional use. The, so it's we're not dealing with zoning at all. I mean we're dealing with zoning as far as granting an additional use but not, you're not changing zoning whatsoever.

COUNCILMEMBER COCHRAN: Okay, thank you. Thank you for that clarification, Director Spence. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. And yeah, and, Ms. Cochran, we're only dealing with a three-year Conditional Permit, so it's only three years. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And for, I guess this is for Mr. Hopper. I notice that Condition No. 4 is the insurance. Is a million dollars enough these days for the County or I thought we were moving it to somewhere around 3, 2 or 3 million? Or we had talked about it a couple times but I don't know if we've ever actually done anything about it.

MR. HOPPER: Well, Mr. Chair, I'm not sure if we have a standard that we've been going by in Conditional Permits. Should the...I mean a million dollars has been our standard in the past. If we feel that this is a case where there would be more liability than your average Conditional Permit, we could request that that amount be raised. Is the Special Use Permit amount a million as well? I believe so. So I mean that was done on that permit. Should the Council wish, it could raise that. I don't necessarily see a requirement that this be raised, but, you know, that's something that the Council could consider if we're looking at...

COUNCILMEMBER COUCH: I'm just concerned about, you know, the stuff we see in Mr. Hokama's Committee, if there's anything in here that you as an attorney would say, you know, we could be sued for more than a million dollars, or something could, somebody could be sued for more than a million dollars and then go after the County.

MR. HOPPER: I mean if...

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COUNCILMEMBER COUCH: The likelihood. I know everybody can sue at any time but the likelihood.

MR. HOPPER: Again, if we want to look at a standard change of this condition we could do that. Again, a million dollars as I understand it is the standard in this case. We could have Risk Management take a review of this and see if we think we need to go higher or defer the item and then have that come back with a recommendation if the Council like. They have not specifically reviewed this application to my understanding though. I mean so that's an option that we could have or have that before first reading. But I mean this would be a question literally on every single Conditional Permit, and if we're looking at that limit being raised, we should, you know, probably be consistent and raise that or if there's certain ones that we see that are a higher liability than others. I mean this is to run a ceramic studio on Ag property versus, I mean I don't know what the liability of...with, I'm not sure what the insurance amounts are on things like, I mean we have a rock quarrying facility and much larger size Conditional Permit uses that are allowed and I'm not sure what those amounts are. But I would say in general, yeah, those are probably higher risk uses than a ceramic studio would be. But, you know, personal injury issues and that's recognized in here. I mean and the County would still I think deny any liability in this case. I mean we're granting a permit but it is the responsibility of that landowner still to protect her invitees in that case. This is just in case the County is sued, so I mean we could consider a 2 or 3 million dollar change but I have no specific recommendation for this project based on the activity that's being done.

COUNCILMEMBER COUCH: Okay, thank you. Maybe, Mr. Chair, as an aside a letter to the Policy Committee saying maybe we should take something up. Not on this specific one --

VICE-CHAIR GUZMAN: Right.

COUNCILMEMBER COUCH: --but as for the standard.

VICE-CHAIR GUZMAN: Okay, yeah.

COUNCILMEMBER COUCH: Thanks.

VICE-CHAIR GUZMAN: Duly noted. I know from standard practice in small businesses it's usually 1 million, and probably Mr. Victorino might want to pop in on that in terms of insurances, but usually it's a million dollar policy for small businesses, right?

COUNCILMEMBER VICTORINO: Yeah. And again many times criteria is what bases the amount that is necessary, and again if you have a rock quarry where blasting is occurring and other things, yeah, obviously a million may not be near enough. In something like this, you know, I don't know. I don't know what kind of major exposures you'd have. I don't know what kind of, you know, problems you may arise out of that, and I don't know, as far as amounts anybody can sue for any amount. We all know that, Mr. Chair. Thank you.



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VICE-CHAIR GUZMAN: That's correct. Is there any further questions from Members?

COUNCILMEMBER COCHRAN: Chair?

VICE-CHAIR GUZMAN: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Just looking at the conditions, on No. 2 in regards to nontransferable. So it doesn't like automatically run with the land but a Council body can extend. I mean unless approved the transfer by ordinance. So this body or future bodies here could say, you know, Ms. Ark, you know, did a great job for the past three and someone else purchases and says and they want to continue or something, I guess this body could say we can grant another extension or of some sort. Is that what would occur?

VICE-CHAIR GUZMAN: I could respond to that but I'll, Mr. Hopper, can you respond to it officially?

MR. HOPPER: Oh. Well again I think the Director can grant an extension of time and but that would be to the same person. A transfer would have to be approved by the Council as would a brand new permit would have to be approved by the Council as well. Based on Condition 3 it says shall be nontransferable unless the Council approves the transfer by ordinance.

COUNCILMEMBER COCHRAN: Right.

MR. HOPPER: So you'd have to be back up here at the same, maybe not the same Council but a Council would have to approve that, and I mean essentially that's the same body that would have to approve a brand new permit anyway. So I think that's probably the thinking there, but, yeah, that's the distinction. An extension can be granted in some circumstances by the Planning Director under that Code section and a transfer would have to go to the Council again.

COUNCILMEMBER COCHRAN: Okay. Thank you.

VICE-CHAIR GUZMAN: Did you understand that?

COUNCILMEMBER COCHRAN: Uh-huh.

VICE-CHAIR GUZMAN: Okay, good. Any further questions from our Members? I have a few questions and just to follow up. On the, getting back to Mr. Richman, who represented the clients I believe on the larger parcel, the Hana, oh, the Mesa LLC, Koali. There's a secondary access, is that right? Is that...

MS. FLAMMER: I'm not aware of the access to that particular property, but from what I heard earlier I think he stated there was two accesses.

VICE-CHAIR GUZMAN: Yeah, two accesses.

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MS. FLAMMER: Yes.

VICE-CHAIR GUZMAN: And so do they have legal, he's saying that his clients had legal access on that easement.

MS. FLAMMER: I'm not sure what the legal access is. I can tell you from my visual site inspection it's fenced off on the right side on that part of where his property is, and I believe in the report the applicant explains that at one point of time there was cattle that was roaming so they put the fence in to keep the cattle from roaming --

VICE-CHAIR GUZMAN: Okay.

MS. FLAMMER: --further.

VICE-CHAIR GUZMAN: Okay. And so now the applicant is shifting the, I guess the misplaced roadway to now the legitimate legal within the boundary easement. Right, correct?

MS. FLAMMER: That's the condition and then I have photos showing the work that she's making towards that.

VICE-CHAIR GUZMAN: Okay. And so that when you mentioned shift --

MS. FLAMMER: Yes.

VICE-CHAIR GUZMAN: --are you expanding that road or are you making a new road? I mean shifting means an expansion so how are you going to divide that if it's going to be one road, you know?

MS. FLAMMER: That's a good question and it's something the Planning Commission talked a little bit about. I put the slide up that showed the pink area where she had the room on the right. I think she can explain what exactly her plans are for moving it. The Planning Commission discussed how they don't, they wouldn't even require it to be paved, they just want, it's Ag, they were comfortable with a dirt road going up. But I think the applicant could explain further whether it'd be completely separate or not.

VICE-CHAIR GUZMAN: Yeah. I see more of the issue of the, you know, the neighbors having traffic concerns as opposed to their arguments of, you know, is this going to meet Hana community standards and things like that. I think maybe your recommendation in terms of the, you know, adjusting of the easement would solve a lot of the problems. And you mentioned also that you found the property to have maintained the 51 percent requirement of agriculture use, and you showed some pictures but can you go into a little bit of detail so I can get that on the record?

MS. FLAMMER: Okay, sure. For many, for some uses I should say, the Department recommends a fully implemented farm plan. The case you're probably most familiar with is someone comes in

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to build an ohana on Ag property, they need the farm plan that they submitted for the main house to be fully implemented. What fully implemented means, that at least 51 percent of the property is planted in agriculture, currently planted, it's not just a plant, it has to be in the ground. This property dates back prior to even Statehood so they would be exempt for any of the structures that are currently there. It wasn't required for the studio when it was built in 2002, but a visual inspection...and it's hard in Hana not to have half of the land in some kind of agriculture just due -- I do many Hana projects -- just due to the nature of all the rain and sunshine that they get. When I did my visual inspection, I also have a site plan that's included in the staff report as one of the exhibits, and it will show you what the different plantings are and where they're located and that will give you some kind of visual idea. You can see from that that at least half of the property is planted out, and that doesn't include grass areas. But it does include all the fruits and it does include all the flowers that are around there. If you give me a minute I can tell you exactly which.

COUNCILMEMBER COUCH: Pineapples, coffee. Even potatoes. It's Exhibit 23.

MS. FLAMMER: Oh, thank you. I'm hearing it's Exhibit 23. Twenty four also has, maybe you can read some of the writing a little bit better, but that's, shows you what's planted where.

VICE-CHAIR GUZMAN: Okay. So but in your recommendation, in your findings you determined that it is in compliance of 51 percent for agricultural use?

MS. FLAMMER: Yeah, it current...probably more than 51 percent, but because they're not subject to the requirement we didn't make her go through that process. But you can see from the site plan what's there, and what's on the plan is visually what I inspected when I went.

VICE-CHAIR GUZMAN: Okay.

MS. FLAMMER: It's hard when you have such dense properties to take photos that show what the ag looks like. That's why you see a lot of close-ups of different types of plants, but the site plan hopefully can help you see that.

VICE-CHAIR GUZMAN: Was there...do you believe that a ceramic studio would be a reasonable use within the Agricultural District?

MS. FLAMMER: You know this was a very interesting permit because--request--when the inspector first showed up to respond to the complaint, he told her if you were using dirt from your property to make the ceramics you would be, that would be an allowed use. She said I use porcelain. She did actually try to fire something with the clay and brought it to the Hana Advisory Committee to show us. It wasn't nearly as pretty as some of the other things that she produces. So it's similar in that respect. It's, I didn't include in the, I really went back and forth with the PowerPoint, should I show you similar uses in the area. I know you see a lot of these so I took the slides out. It's very similar to the farm stands that you see in Hana, they are quite large, and it's good to see that out there for food security reasons. But they are big in scale, and we did talk about that at

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the Hana Advisory Committee quite a bit, is this similar, what use would it be similar to. Sometimes Ag can be very industrial but this is much more similar to your local farm stand. I don't know if our Director wants to talk about that as well.

VICE-CHAIR GUZMAN: Yeah, I find it, it's an interesting discussion because if you're talking about made in Maui or the products from Maui, okay, and she has, you know, you can't get that type of clay here in Maui but she's actually making it in Maui. So where do we find that, you know, it's artwork, she's making it in Maui, it's she's just using clay from a different area. And that's kind of, you know, value added, I don't know. It's a deep discussion that we will be having on Friday 'cause that, I believe Ms. Cochran's bill is gonna, we're prepared to address that on Friday, it's all finished. So it's going to be...you have any comments on? It's just a sidetrack.

MR. SPENCE: Thank you, Mr. Chairman. And your question was do we believe that this is a reasonable use to have a ceramic studio on Ag land and the answer is yes. We believe it's reasonable considering that, you know, the reports are three to four cars. I mean when you compare it to other things that are permitted on Ag land and/or that happen as a matter of right, you could have, you know, you could have a family living in that house with teenage kids that would generate more than three or four cars a day. You could have an agricultural, you know, the question was about, you know, selling flowers, commercially selling flowers. That could easily generate more than what is, and more noise by the way than, you know, these other things. And teenagers, too, they sort of have their way. You know there's this, we compare this to a lot of other things that could happen in the Ag District. We don't see that this is substantially different and in some cases less intrusive and less of a problem than what's out rightly permitted, so we think this is a very reasonable request.

VICE-CHAIR GUZMAN: Okay. And then just some follow-up. Once the condition of No. 6 is completed by building or shifting the easement on the legal portion of the property, do you believe that the ceramic studio will then adversely affect the surrounding property with any other factors?

MR. SPENCE: Well I think and my apologies to the neighbors, I don't think they're going to be satisfied whether there's, you know, the roadway is on the property easement or not. But as just said, I think there's other uses that are out rightly permitted that could be noisier and more intrusive than what's being requested.

VICE-CHAIR GUZMAN: Okay. And also so if the ceramics, if we were to grant this Conditional Permit and the ceramic studio is in full function, she's complied with the easement and Condition 6, would it then be in compliance with the plans for the Hana Community Plans? Is it consistent with what they envision Hana to be?

MR. SPENCE: We believe, the Department believes it's in compliance with the Hana Community Plan. Just by mention, just by virtue that people have testified in opposition to this, the, you know, that opinion probably different. But we, the Department believes that it's in compliance with the Community Plan.

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VICE-CHAIR GUZMAN: Okay. Is there, within the Hana Community Plan is there any type of goal of diversification of economics --

MR. SPENCE: Yeah.

VICE-CHAIR GUZMAN: --promotion of tourism in their Hana Community Plan?

MR. SPENCE: Perhaps Ms. Flammer would like to read a couple of those, but yes there's, actually one of the problems and opportunities I believe mentioned in that plan is a lack of economic opportunity. So this would, in a very small way this would, could broaden that in creating an opportunity for other economic activity.

MS. FLAMMER: On Page 12 of the staff report that was given to the Hana Advisory Committee as in we do in all our staff reports we analyze the community plan. I will note that plan was adopted in 1994; however, probably the strongest goal would be economic activity which is a balanced local economy which provides long-term viability and sustainability while meeting the residents' need and respecting the cultural and natural resources of Hana. And also as an objective and policy in the plan is to maintain the visitor industry as the major economic activity, encouraging commercial activities which focus on the day visitor market. For urban design they also talk about harmony between the natural and manmade environments through building infrastructure and landscape design that ensures natural beauty in the character of the Hana region. There's also some planning standards. I will tell you at the Hana Advisory Committee though they recognized the need to address this on a much larger scale. Anybody that's driven through the area has seen all the commercial activity that's going on. A fair number of it is arts focused. The group was also...even right down the way actually from her within walking distance is another art studio. The Advisory Committee wanted to find a way where the arts community and the residential community could live in balance and in harmony. They recognized that this permit application was not really the time to answer that big question but that's a question that they'd like to deal with. Similar to other communities, they mentioned Carmel, Montecito, and Martha's Vineyard, that they wanted to use those as models when the time came.

VICE-CHAIR GUZMAN: I mean I think it's important for the public to realize especially in Hana that this is not a zoning change, this is a case-by-case approval of a Conditional Permit which is for three years, and I believe that you, we do have according to what you've stated, enforcement measures that would be in effect during that three-year period. Am I correct on that?

MR. SPENCE: Yes. We have enforcement measures in place beyond three years. I mean if it's subsequently renewed after that, you know, we would do enforcement specific to the permit but also in accordance with I think it's 19.530 of the Code.

VICE-CHAIR GUZMAN: This is kind of similar to the Kaukini Gallery, right?

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MR. SPENCE: The Kaukini Gallery out in Kahakuloa is much busier. Oh my goodness it's, and it's much larger than what is being proposed here. And...

VICE-CHAIR GUZMAN: And that's in an Ag District, right?

MR. SPENCE: That's in the Ag District and it's also on a single-lane road.

VICE-CHAIR GUZMAN: Single-lane road, right.

MR. SPENCE: Yes.

VICE-CHAIR GUZMAN: And I pulled the Conditional Permit for that particular applicant, and very similar, identical conditions going on here. The only difference here is I see that they're more, they've been granted a ten-year Conditional Permit, and they also have incorporated language of made in Hawaii type language, crafts and arts. So something that our Members could probably want to contemplate adding into this condition to make it more local maybe. It could be a distributor for most people to come in and hey, look at our culture, look at our different items from Hawaii, I mean from Maui, excuse me.

MR. SPENCE: And I would say Kaukini not only shows the owners' artwork but the artwork of very many people, many artists on the island of Maui. Maybe other islands, too, I'm not sure. But Ms. Ark is only requesting to show her artwork.

VICE-CHAIR GUZMAN: Okay. So, Members, if there...yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Well maybe this is, we're going to have applicant come down?

VICE-CHAIR GUZMAN: I'm going to bring her down.

COUNCILMEMBER COCHRAN: Oh, okay. But as in fire and, you know, obviously she's firing ceramics which is in an kiln, and was there any concerns with Fire Department in regards to that? I mean God forbid anything happen and something catches on fire, and their access to the studio or perhaps if that did go up in flames, would it, you know, travel to another neighboring people or I don't, I'm not really sure. Was there any talk about that?

MS. FLAMMER: Do you want me to answer that?

VICE-CHAIR GUZMAN: Yes...*(inaudible)*...

MS. FLAMMER: My first thought when I got the application was I should route this to the Fire Department and see what they say. I too was very curious about that. So the Fire Department did have some comments. They're in...I'm looking them up right now, I'm looking up the exact ones. They're requiring probably the most important thing to me besides the fire extinguisher which is a much larger fire extinguisher than you have a residential unit, they're requiring a fire

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inspection prior to opening as well as biannual inspections. Let me see if I can find their comments, they're in the staff report. Oh, they come in an e-mail, that's right, that's why they're...

COUNCILMEMBER COCHRAN: And you have those on Page 19 of your PowerPoint also.

MS. FLAMMER: Oh, thanks. Exhibit 12 are the actual, is the actual e-mail from the Captain of the Fire Prevention Division. He did mention that should, if this were to be expanded, the whole structure could be treated as something else and they would have different requirements, which lead me to believe the small-scale use is why they're going with the biannual fire inspections after the initial inspection. If it were a much larger studio, they would be looking at different requirements and guidelines, but due to the smaller size of it they fall in a different category.

COUNCILMEMBER COCHRAN: Okay. All right. Good, thank you, Ms. Flammer. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. Any further questions? I'm going to ask Ms. Ark to come down to serve as a reference, source of reference. Thank you, Ms. Ark. I'm going to go ahead and open up to any questions for our Members. Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. One of the concerns that the testifiers had was that when your gate is closed there's difficulty turning around in your, in the driveway. Is there anything that you have contemplated with the realignment that would resolve that problem or assist it in some way?

MS. ARK: Thank you. My easement driveway is shaped like a seven, so I'm right here, my neighbors are over there. This is my easement which I've always let them use. The Maui Planning Commission requested that they build their own driveway as their property fronts the Hana Highway, that would just solve everything, but as it is, they come up my driveway looking right at me and then they turn on this seven to their property. Now if my gate is closed or if my gate is open it makes no difference, they're not coming onto to my property. Nor if someone comes up to see me, they can't come in, of course they go on this part of my easement and reverse down. So it's actually a nonissue. I appreciate everyone's concern about it but it just is a nonissue.

COUNCILMEMBER WHITE: Okay, thank you. Thank you, Chair.

COUNCILMEMBER CRIVELLO: Chair?

VICE-CHAIR GUZMAN: Any further...yes, Ms. Cochran...I mean Crivello.

COUNCILMEMBER CRIVELLO: No. Hello.

VICE-CHAIR GUZMAN: Sorry.

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COUNCILMEMBER CRIVELLO: Hi, Arabella.

MS. ARK: Hi.

COUNCILMEMBER CRIVELLO: Good to see you.

MS. ARK: Thank you.

COUNCILMEMBER CRIVELLO: I have...in your opinion, you know, you've mentioned about how much dollars you've invested and it's, and you not being able to operate commercially. Meeting the conditions that we're setting before you, would that increase additional costs?

MS. ARK: Yes, absolutely. Having to remove the roof of my, a small storage area of my studio has just cost me a few hundred dollars. Doing the driveway, I've had various estimates, one of them was 4,000, one was 10,000. Mama's almost out of cash. I had to take out a mortgage. I'm like oh no, so it's very difficult is the answer. I can and will do it, whatever it takes but it is difficult.

COUNCILMEMBER CRIVELLO: Okay. Obviously your neighbors or people who are not in support of this have gone a little further and did some litigation and, you know, it came in your favor. I don't know what kind of hostility that comes from your neighbors, but in your opinion and we approve all this, do you see yourself still staying there and not consider selling if your neighbors continue to challenge the legality of the approvals or...

MS. ARK: That's a really big question because this home was given to me by my mother and she's since passed away. I put it in a trust for my children and grandchildren. Now I only have one child left and two beautiful grandchildren. It is so important to me, my grandson is named for the relatives from Hana, Kahikikalaikalolo, so I want this, and my grandchildren always love to come see Grandma Bella in Hana. This is important to me. It's important to me on a spiritual level, but my home and studio were built in 2002, the studio part, my home was built in 1946 and it was the Dillingham family's home. It's an old historic property in Hana. I put in the studio. In 2002 there were no neighbors living, the house was empty below mine. No one had lived there for a good ten years, nobody lived there for seven years after I moved in, then these people came. They stole from me, they dug up my plants, and when I very politely went to them and said hello, you're on my property, they assaulted me, and then right away came the complaint to the County that I was an artist on Ag land.

COUNCILMEMBER CRIVELLO: So that being said, you still see yourself continuing because of your tie-in to the aina?

MS. ARK: I would love to continue, and everyone who comes to my land and home loves it.

COUNCILMEMBER CRIVELLO: And if I may, Chair, ask...

VICE-CHAIR GUZMAN: Yes.



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COUNCILMEMBER CRIVELLO: So it sounds like Hana has an array of artists, different type of artists or and probably you're in that network that meets regularly or have the common thread of, you know, your spiritual connection with art. Have you or is there any consideration to develop an art studio of some sort in Hana so that the people that have that interest or that, or everybody can bring their beautiful work one place or there can be a gathering of artists of some sort?

MS. ARK: That's in the works. Robin Rayner who is president of Hana Arts testified earlier and she went and the DOE finally approved her academy program for the students of Hana, so children from ages K through 12 can get arts education which they had been denied. And she's got the Art Barn where there's yoga, guitar, dancing, and a wonderful new ceramic studio. And we have a very fine man from Nahiku who's running that, and it's very, very popular. And the further growth of Hana arts would be to have a gallery, and we have an old defunct Hana marketplace that Hana Arts is negotiating now to see if they can possibly afford a gathering place for artists. I have always shown at Hotel Hana Maui. I've always shown, there's a small, little art gallery called I Love Hana. I'm a member of the Paia Maui Craft Guild, Lahaina Village Galleries, so I have my work out there. And other artists in Hana are certainly looking for spaces to show. Many, many artists do what I already do in their homes, they just don't have complaints about them, that's the difference.

COUNCILMEMBER CRIVELLO: But in addition or wouldn't it to avoid, you know, the conditions, the Special Use Permit and everything else that's required and maybe not be so much of an infringement on your neighbors or what have you. I gather in respond you do support the idea of going to an art studio and your home can be the home that it's meant to be.

MS. ARK: I support that for anyone who should need it. Artists traditionally around the world work at home in their own home studios. There is, I'm a hermit, I write novels. I need my quiet, my time, et cetera. So my studio, when it was open was not always open, and I travel a lot. So it's not a daily 100 percent oh, Arabella is doing this and that, hardly. That's just not the way it works.

COUNCILMEMBER CRIVELLO: No, I understand the artist --

MS. ARK: Yeah.

COUNCILMEMBER CRIVELLO: --wanting to have their quietness --

MS. ARK: Yes.

COUNCILMEMBER CRIVELLO: --and doing...but I'm talking about the sales part, going out into the studio like you're doing now so that the buyers don't have to come to your home necessarily. . . .(inaudible) . . .

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MS. ARK: I actually really enjoy it, I love the interaction. I've had three Nobel Prize Laureates come. I've had the director of the Paris Symphony. I have the Getty Museum people. It keeps me where I'm very isolated physically in touch with the whole world. I love it and they love coming to me because they get to see how someone lives, they get to see this historic property. I always give people fruits and flowers, invite them in for dinner. It is not a tour bus operation. It is not Joe Blow just off the highway. It's usually by invitation and by appointment. The only reason I'm here is to comply with what I had never even known was a requirement.

COUNCILMEMBER CRIVELLO: Thank you. Thank you, Chair.

COUNCILMEMBER VICTORINO: Chair?

VICE-CHAIR GUZMAN: Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you. And, Annabella [*sic*], thank you very, very much for being here and helping us traverse this problem. You know first thing I see here and I going say my opinion before I ask you the question is somebody was there first and somebody else comes in and doesn't like what you do and wants to change it. I see that very clearly, and that's going throughout all of Maui and I'll be damned if I'll let that continue to happen if I'm here. Because you were there first, you were doing something there, and somebody else comes around, they should show you respect so long as you don't change it and make it more intrusive, number one. Number two, I looked at your driveway and I looked at the gate, you could almost take a Mack truck and turn it around there. Go look at the picture, Page 7, Page 7. Okay. So, you know, let's call a spade a spade. I've sat quietly. You know when I sit quietly, I'm listening and I'm not happy with what I'm listening to at this point in time. Thirdly, you know, these people are generational, they want to pass it on. Aren't we all about generational and passing our homes to our families and somehow surviving doing that, Mr. Chair? Aren't we all trying to do that? You know and I gotta disclose and I know Ms. Crivello will know that, that somehow the Helms and I are related, but I don't know how and my mother said that. No, no, you're laughing.

VICE-CHAIR GUZMAN: Oh, I'm so sorry, Ms. Crivello.

COUNCILMEMBER VICTORINO: She doesn't want to claim me but that's okay. We understand that part of the family.

COUNCILMEMBER CRIVELLO: Okay, Cuz. Okay, Cuz.

VICE-CHAIR GUZMAN: Let's get back...

COUNCILMEMBER VICTORINO: You know she hurt my feelings now.

VICE-CHAIR GUZMAN: Let's get back to business.

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COUNCILMEMBER VICTORINO: And I think the, and the fourth thing and I'll stop with this, you know, I want to ask her, you know, Annabella [*sic*], first and foremost you and your art you've done for many years in your art studio, that is correct, right? And you do your writings on your property, and I know many of the what I call very good artists and writers are kind of eccentric, they don't like the mainstream, they want to be away from mainstream, whatever mainstream is, yeah. So you basically are saying and I've heard you say this twice that you are more by invitational or by somebody telling somebody that you...and still will let you know, right? Okay. And any improvements and I think, you know, Mr. Chair, you mentioned about only or somebody mentioned about only Hawaiiana and all that.

VICE-CHAIR GUZMAN: Yeah, right.

COUNCILMEMBER VICTORINO: Yeah. I looking at all her art and all the pictures on Page 9 and, you know, I don't know how you'd equate that other than being made in Hawaii, being made there. Some of this I would not equate to Hawaiiana but, you know, maybe we can connect it somehow, somehow, 'cause those bottles I'm not sure how that connects but okay. But so you make and will be selling these items out of that location if allowed to?

MS. ARK: Yes.

COUNCILMEMBER VICTORINO: And that's the only thing you're trying to do is get that legal because in the past you've done it but they've now made an issue of it so?

MS. ARK: Yes. I had a studio in Waianae, Oahu for 28 years and there was never a problem. This is actually, when I was called up it's the first time in my 42 years in Hawaii as an artist and president of organizations that I had heard that I couldn't create my own art in my own home and show it to clients, so I'm trying to comply. But also I've been commercial, I owned a gallery at the Ward Center on Oahu for 12 years and I showed my art there and sold it and so I've been on the commercial end of things, and I also wholesale my art and I show around the world. My art since I opened my Hana studio every piece is signed Ark, Hana, and the year it was made. And I'm a big believer in what's made in Hawaii, so I've always done that.

COUNCILMEMBER VICTORINO: So okay if it's made in Hawaii I guess I could . . . (*inaudible*) . . . And last question and just because I want it on the record. If you do not get this permit the likelihood of you selling this property is very high?

MS. ARK: It's very high unless one of my books becomes a best seller. You can all buy my books.

COUNCILMEMBER VICTORINO: That could happen too, but I just want that on the record because --

MS. ARK: Yes.

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COUNCILMEMBER VICTORINO: --I think that's been mentioned and I wanted to put that on the record.

MS. ARK: Yes.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair.

VICE-CHAIR GUZMAN: Thank you. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

VICE-CHAIR GUZMAN: You're not related to Mr. Victorino are you?

COUNCILMEMBER VICTORINO: No.

COUNCILMEMBER COUCH: No, thank God.

COUNCILMEMBER VICTORINO: No.

VICE-CHAIR GUZMAN: Just making sure before you --

COUNCILMEMBER COUCH: Thank you.

VICE-CHAIR GUZMAN: --get on the mic there.

COUNCILMEMBER VICTORINO: Don't insult me like that. Oh, sorry.

COUNCILMEMBER COUCH: Ms. Ark, you know there was a, the concern of cars coming up and your gate being closed and having an issue turning around which I can see that there isn't that big of an issue. Would you be amenable to potentially putting a little sign underneath your sign at your gate, at your entrance from the highway saying hey, the studio closed if you were closed?

MS. ARK: When I was open officially I always did that.

COUNCILMEMBER COUCH: Oh, okay.

MS. ARK: Yeah. But I haven't been able to have a sign.

COUNCILMEMBER COUCH: Sure.

MS. ARK: I used to have a sign on the highway that said Ark Ceramics, Open 11:00 to 4:00, and then it would say closed if I was closed.

COUNCILMEMBER COUCH: Okay. So you would go back to that then to --

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MS. ARK: I would like to.

COUNCILMEMBER COUCH: --alleviate traffic? Okay, thank you. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And thank you, Ms. Ark, for being here. And so in your closing comments from your testimony earlier you touched upon an idea that went through my head, and I think it was in relation to our Maui Island Plan and that we want to bring together economic benefits and culture and tourism and visitor industries, blah, blah, blah. And so but you did say no tour vans 'cause that struck, you know, I thought is this going to be one of the usual Hana tour stops --

MS. ARK: No.

COUNCILMEMBER COCHRAN: --along the way, come to Arabella, you know, Ark's ceramic studio. So I just wanted to clarify, you touched on it but I wanted, that was one of my main questions to you for coming down here to the podium.

MS. ARK: It never was part of what's going on with me. It's private individuals. That's it, just private people.

COUNCILMEMBER COCHRAN: Okay.

MS. ARK: Yeah.

COUNCILMEMBER COCHRAN: Okay. Well thank you. Thank you for --

MS. ARK: Thank you.

COUNCILMEMBER COCHRAN: --that clarification and statement. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you.

COUNCILMEMBER COCHRAN: That's all.

VICE-CHAIR GUZMAN: Ms. Ark, I have a couple questions. On the...it's very inspiring to hear all of your works and what you plan to contribute or have contributed to our--

MS. ARK: Thank you.

VICE-CHAIR GUZMAN: --the Hana community. In doing so would you be willing to present other works of arts at your studio from within the local community?

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MS. ARK: No one has actually asked me that. I think it's a good thing to consider. When I built my studio it was as a sanctuary. I had lost two adult children, I was very bereft. My surviving daughter said mom, get back to work, you've got to keep creating art, so I dedicated myself to a notion of bringing beauty into the world, gentleness and beauty. And so for me bringing other people in, it's almost like they're in my private worship zone, but I think I'm kind of beyond some of the grief that I've had in the past and so I might be able to entertain such a thought.

VICE-CHAIR GUZMAN: Very good. Also one more, couple more questions. Do you intend to sell any other products aside from just your ceramics?

MS. ARK: No. In fact when I first met with Mr. Spence about this permit process, I said well gosh, I grow tons of flowers and I always have them in my studio and what if I sell them in my vases or just the container like you have a plastic container for a nursery plant, he said ah, ah, ah, you better get your permit. So anyway --

VICE-CHAIR GUZMAN: Oh, very good.

MS. ARK: --no, the answer is no.

VICE-CHAIR GUZMAN: And I notice in one of your other responses that you're a proponent, an advocate for made in Hawaii products.

MS. ARK: Yes, I am.

VICE-CHAIR GUZMAN: And so that being said and you're in agreement to that --

MS. ARK: Yes.

VICE-CHAIR GUZMAN: --I have an option here wherein I have the Kaukini Gallery, they have also a Conditional Permit that has language in there. In their permit it says a Conditional Permit to operate an art gallery and gift shop selling made in Hawaii artwork and crafts. We don't have language like that in your Conditional Permit. Would you be willing to accept such a language change?

MS. ARK: Well that's fine with me but my intention is it's highly personal. This is me, I always sign things Hana. I give people a beautiful card or brochure and that shows the studio and gardens so I feel I'm willing if you think that that's a good idea.

VICE-CHAIR GUZMAN: Made in Hawaii would mean you making it here in Hawaii, not traveling to -

MS. ARK: No, I don't...I used to --

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VICE-CHAIR GUZMAN: --San Francisco --

MS. ARK: --work in \_\_\_\_\_. No, no.

VICE-CHAIR GUZMAN: --and painting there or crafting it and then bringing it.

MS. ARK: No, no, no, no. Ceramics don't quite work that way.

VICE-CHAIR GUZMAN: Right, right, right, right.

MS. ARK: You've got to have a studio . . . *(inaudible)* . . .

VICE-CHAIR GUZMAN: So it would be very common, you know, it would be very logical just to say yeah, it was made in Hawaii because you're making it here.

MS. ARK: That's right.

VICE-CHAIR GUZMAN: So, Ms. Crivello.

COUNCILMEMBER CRIVELLO: I was trying to understand your question and it sounded like it was to expand it, but what I'm seeing, the applicant is going strictly for her artwork and the conditions are set upon her application for her artwork. And I think earlier on I mentioned a possibility of a Hana art studio, and I would hope that wouldn't be put on the condition for Ms. Ark's application. And we would, you know, if I misunderstood that . . . *(inaudible)* . . .

VICE-CHAIR GUZMAN: No, my line of questioning was merely to see if we could narrow it to just things that are made here in Hawaii --

COUNCILMEMBER VICTORINO: Chair?

VICE-CHAIR GUZMAN: --and not necessarily bring in artwork from France, bring in artwork from Germany.

COUNCILMEMBER CRIVELLO: No, I understand. But I --

VICE-CHAIR GUZMAN: Yeah.

COUNCILMEMBER CRIVELLO: --think we should, oh, in my opinion we should just stick to what her application and her --

VICE-CHAIR GUZMAN: Yeah.

COUNCILMEMBER CRIVELLO: --objective is for her art studio as Ark's creative work.

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VICE-CHAIR GUZMAN: Yeah.

COUNCILMEMBER CRIVELLO: And --

VICE-CHAIR GUZMAN: There's no doubt about that.

COUNCILMEMBER CRIVELLO: --not necessarily bring other...yes, there are many other artists or crafters that do things made in Hawaii, but I don't see where we need to impose that upon her application, a condition.

VICE-CHAIR GUZMAN: Yeah, that's why I asked her, and it seems as though she's uncomfortable with it --

COUNCILMEMBER CRIVELLO: Okay, thank you.

VICE-CHAIR GUZMAN: --so that's why I didn't propose the amendment.

COUNCILMEMBER CRIVELLO: Okay.

VICE-CHAIR GUZMAN: I asked her first.

COUNCILMEMBER CRIVELLO: Okay.

VICE-CHAIR GUZMAN: So --

COUNCILMEMBER VICTORINO: Chair?

VICE-CHAIR GUZMAN: --just...thank you.

COUNCILMEMBER CRIVELLO: Thank you. Just clarify.

VICE-CHAIR GUZMAN: Thank you. Mr. Victorino --

COUNCILMEMBER VICTORINO: And thank you, Chair.

VICE-CHAIR GUZMAN: --followed by Mr. Couch.

COUNCILMEMBER VICTORINO: And following the same line as Ms. Crivello, I was also going to say that if you start bringing other people's artwork there, now you may increase the amount of traffic. And isn't this the whole, I mean one of the biggest overlying issues has been traffic? So I think I'd like to stick with what she's put out and doing her art which is done in Hana. And, you know, I understand, Kaukini is a little different than what Ms. Annabella [*sic*] is doing. I mean actually really different you know. So I would like to stick with that and I wouldn't be too favorable of any kind of amendment like that, Mr. Chair.



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VICE-CHAIR GUZMAN: Okay, thank you. Is there any...yes, Mr. White.

COUNCILMEMBER WHITE: One last question. I think I probably know the answer but the Chair brought up the fact that this other gallery has a ten-year timeframe and being that it's taken you three and a half years to get this far would you be amenable to the permit being valid for the same ten-year period as the other?

MS. ARK: I would just love that. Thank you.

COUNCILMEMBER WHITE: Okay. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. Members, are there any further questions? Seeing none, I'm going to entertain a motion to recommend passage on first reading of the proposed bill entitled a Bill for an Ordinance Granting Arabella Gail Ark, Trustee of the Arabella Gail Ark Revocable Trust, Dated October 17, 2007, a Conditional Permit to Allow Client Visitations and Commercial Sales at a Ceramics Studio Within the County Agricultural District for Property Situated at 45-575 Hana Highway, TMK: (2) 1-5-008:010, Hana, Maui, Hawaii; incorporating any nonsubstantive revisions; and filing of County Communication 14-11.

COUNCILMEMBER COUCH: So moved.

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

COUNCILMEMBER WHITE: Second.

VICE-CHAIR GUZMAN: Okay. I'm going to toss a coin and I'm going to say Mr. Couch moves and Mr. Victorino seconds.

COUNCILMEMBER VICTORINO: No, no, was Mr. White.

VICE-CHAIR GUZMAN: Okay, Mr. White. Thank you for yielding. Mr. White, you're second. All in favor of the motion, say "aye".

COUNCILMEMBER COUCH: Hold on. Hold on. Discussion?

VICE-CHAIR GUZMAN: Oh, sorry. Excuse me. I was almost there. Discussion, any further discussion? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I move to amend the --

VICE-CHAIR GUZMAN: Very good.

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COUNCILMEMBER COUCH: --your motion or the motion to amend Condition Two, Section Two to say that the Conditional Permit shall be valid for ten years from the effective date.

COUNCILMEMBER VICTORINO: Second.

VICE-CHAIR GUZMAN: We have a motion on the floor to amend Section Two, wait, Section Two, part two from the sentence "The Conditional Permit shall be valid for three years." Deleted "three years" replacing it with "ten years" from the effective date. We have seconded by Mr. Victorino. Any further discussion? Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, is there a way to get comments from Department at all --

VICE-CHAIR GUZMAN: Yes. Would you like to ask them?

COUNCILMEMBER COCHRAN: --on that? Yes.

VICE-CHAIR GUZMAN: Department, would you --

COUNCILMEMBER COCHRAN: If that was discussed at all --

VICE-CHAIR GUZMAN: --like to comment --

COUNCILMEMBER COCHRAN: --ever?

VICE-CHAIR GUZMAN: --on the ten-year, I guess, extension?

MR. SPENCE: I think the, Mr. Chairman, the ten years is fine with us. The Special Use Permit is...and I would remind the Council that at least I believe the way the condition is written is the Planning Director can administratively extend it so long as there aren't any changes. The Special Use Permit is for three years and that can also be administratively extended.

MS. NAKATA: Excuse me, Mr. Chair. I believe the State Special Use Permit calls for three year or until the expiration of the Conditional Permit, whichever is later.

MR. SPENCE: Okay.

VICE-CHAIR GUZMAN: Okay. So did everybody understand that?

MR. SPENCE: Okay, whichever is later.

COUNCILMEMBER COUCH: Yeah, whichever is later.

VICE-CHAIR GUZMAN: Whichever is later.

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COUNCILMEMBER COCHRAN: Okay. Well, Chair, you know, I like Ms. Ark and her intentions and I know is very true and she's passionate, and then I also see the side that Mr. Victorino brought up, you know, that she was originally there and then others have come in and I face the same issues where I live where others have come afterwards and then have ways that they want to change things. But, you know, Conditional Permit being three and then jumping clear up to ten, you know, I just kind of thought maybe a trial thing and if so then obviously Director or ourselves, this body can extend and add on or whatever. So it's just kind of taking me a little bit aback just 'cause I think the whole process was looking at a three-year idea and not the, a decade. So I mean again I don't really see any huge glaring red flags with this Conditional Permit, but I'm just, you know, never looked at a decade versus a three-year thing. So, you know, I know there's conditions to be met, there's inspections to be made to verify that it's a go and all, you know, all green lights and all, everything's been complied with. So it's just...yeah, I don't know, just trying to think it through right now.

VICE-CHAIR GUZMAN: I'll take Ms. Cochran...Ms. Crivello. You guys two are sitting close to each other and I'm tired.

COUNCILMEMBER CRIVELLO: No, I just wanted to segue over the taking aback of, you know, it took her three years and it's still continuing until we approve the permit or the conditions that's set upon her. And it's been a loss in income, three years, and just the thought of someone just to survive to upkeep a place that was passed on and the opportunity that...I would think us as government, we don't create the jobs but we support the efforts of individuals or people to have some means of sustaining their livelihood. And this is a process so I can appreciate Mr. Couch's and Mr. Victorino's support for a ten-year process, and then everything again after that comes at the discretion of our Director.

VICE-CHAIR GUZMAN: Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. I understand Ms. Cochran's concerns but at the same time this has been an operation that was in place before she was asked to go and get a permit, and I don't, we don't know whether there were problems with the operation then but I would guess not. So I'm comfortable with the ten-year timeframe because it's what we've given to another similar application on Ag property on a smaller road and I think it's only fair to do that. And the fact that the Special Use Permit will simply extend to match the ten years I think makes it a very simple thing. And if we're going to make it a three and a half year process to get an approval to do something in your own home that is done everywhere else in one's own home, I think the least we can do is to give them a break from that process for a while and I think that while should be ten years.

COUNCILMEMBER VICTORINO: Chair?

VICE-CHAIR GUZMAN: Mr. Victorino.

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COUNCILMEMBER VICTORINO: You know and thank you. And I think I concur with my colleagues, and I'll also put this in, no offense to the Hana Advisory Council [*sic*], you know, they do a lot of great work. You know sometimes just like the Maui Planning Commission sometimes things don't always go the way they expected it, but it does fit in the Island Plan, it's not something that's totally outside of the Island Plan. They were there for a long time. They've been good residents, and most importantly it's a legacy for her grandchildren and great grandchildren, and that's something that, you know, has really stuck out in all of this. It's not just so that she can have a studio, it's to, for her to maintain and keep something for her ohana, for her keiki's future, and I think to me, that is very important. So I think the ten years is fair. I mean we drag people for three, three and a half years, sometimes four or longer, and you've been here when you've seen those permits, you know, extension after extension after extension, finally got a permanent, you know. So I think it's time, I think it's time, and let's give her an opportunity. And maybe I'd like to ask the neighbors and the rest to think that maybe when they want to do something, what would somebody else come along and say no to them, how would they feel? Do onto others as you want others to do unto you. Thank you, Chair.

VICE-CHAIR GUZMAN: Thank you. Mr. Couch, did you want to --

COUNCILMEMBER COUCH: No, I'm good.

VICE-CHAIR GUZMAN: --jump in on this? Mr. Spence, I had a question. In terms of the Kaukini permit, Conditional Permit, when you granted it, when that was granted for ten years and when this permit as it's set forth today, it came up to us with a three year. Was there a reason why you just limited it to three years?

MR. SPENCE: Normally when special uses or conditional uses come before the various approving bodies, we try to try them out first, but, you know, again, I have no...as Ms. Cochran said, we don't have any red flags for this at all so we have no objection to ten years.

VICE-CHAIR GUZMAN: Okay. So from the Hana Advisory Committee, Commission, to the Maui Planning Commission it was consistent for three years up --

MR. SPENCE: Correct.

VICE-CHAIR GUZMAN: --and then now it's in our body...the recommendation has been for three years from the Hana Advisory Committee, it recommended three years?

MR. SPENCE: The Hana Advisory Committee did not recommend approval.

VICE-CHAIR GUZMAN: What was that? Oh no, they denied it, yeah. They denied, sorry.

MR. SPENCE: They recommended denial.

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VICE-CHAIR GUZMAN: Yeah, recommended denial, and sorry and then the Maui Planning Commission --

MR. SPENCE: Granted it.

VICE-CHAIR GUZMAN: --granted it for three years.

MR. SPENCE: Three years --

VICE-CHAIR GUZMAN: Okay.

MR. SPENCE: --and recommended approval to the County Council for approval of the --

VICE-CHAIR GUZMAN: Okay.

MR. SPENCE: --Conditional Permit.

VICE-CHAIR GUZMAN: Okay, very good. So any further discussion? That being said, all in favor of said amendment, say "aye".

COUNCIL MEMBERS: Aye.

VICE-CHAIR GUZMAN: All opposed, say "no"? Six ayes, no noes, amendment passes.

**VOTE:       AYES:   Vice-Chair Guzman, and Councilmembers Cochran, Couch, Crivello, Victorino, and White.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Chair Carroll, and Councilmembers Baisa and Hokama.**

**MOTION CARRIED.**

**ACTION:     APPROVED AMENDMENT.**

VICE-CHAIR GUZMAN: Going back to the main motion, all in favor...oh, wait.

COUNCILMEMBER COUCH: Discussion.

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VICE-CHAIR GUZMAN: I gotta...discussion, sorry. Going back to discussion on the main motion. Any further discussion? None? No further discussion. So all in favor of the motion that's on the...the primary motion, say "aye"?

COUNCIL MEMBERS: Aye.

VICE-CHAIR GUZMAN: All opposed, say "no"? No noes. . . .*(laughter)*. . . Who's laughing over there? No noes.

COUNCILMEMBER COCHRAN: She's ecstatic.

VICE-CHAIR GUZMAN: Motion carries. Excuse me, can we, sorry, can we get some order, please? Thank you. So I can place this on the record. We have six ayes, no noes, three excused, Baisa, Carroll, Hokama. The motion carries.

**VOTE:       AYES:   Vice-Chair Guzman, and Councilmembers Cochran, Couch, Crivello, Victorino, and White.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Chair Carroll, and Councilmembers Baisa and Hokama.**

**MOTION CARRIED.**

**ACTION:     Recommending FIRST READING of revised bill and FILING of communication.**

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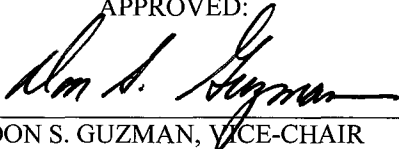
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VICE-CHAIR GUZMAN: That being said, that will conclude today's agenda, Members. Thank you so much for the very engaging discussion and for the pleasantries. And thank you very much for the Department's hard work, and for the applicant, congratulations and we look forward to seeing you succeed. Thank you. . . .(gavel). . .

**ADJOURN:** 4:06 p.m.

APPROVED:



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DON S. GUZMAN, VICE-CHAIR  
Land Use Committee

lu:min:140312:ds

Transcribed by: Daniel Schoenbeck

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CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 19<sup>th</sup> day of March, 2014, in Kula, Hawaii

  
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Daniel Schoenbeck