

**MAUI PLANNING COMMISSION
REGULAR MINUTES
NOVEMBER 26, 2013**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:04 a.m., Tuesday, November 26, 2013, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Chairperson Lay: Commission is now called to order. Today is November 26th. Public testimony will be taken at the start of the meeting on any agenda item except for contested cases under Chapter 91 HRS, in order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered by the Maui Planning Commission. Public testimony will also be taken when the agenda item is taken up by the Maui Planning Commission. Maximum time limits on individual testimony is three minutes. Any person testifying at this time will not be allowed to testify again when the agenda item comes up before the Commission unless any new or additional information will be offered. Please be advised that the applications for community plan amendment, state district boundary reclassification, change in zoning, and conditional permit require the approval of the Maui County Council. In order to be notified of future agendas of the Maui County Council please notify the Office of County Council Services. At this time we're gonna open up to public testimony. Does anybody wish to testify at this time? Seeing none, public testimony is now closed and our first agenda item?

Mr. Spence: Good morning, Commissioners.

Commission Members: Good morning.

Mr. Spence: Say Happy Thanksgiving before we go even further. Our first public hearing is Mr. Xorin Balbes of Lumeria Maui requesting a Change in Zoning. Staff Planner is Mr. Joseph Prutch.

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

- 1. MR. XORIN BALBES of LUMERIA MAUI requesting a Change of Zoning from Interim District to Public/Quasi-Public District in order to comply with a condition of Ordinance No. 3990, District Boundary Amendment for the Lumeria Maui project at 1813 Baldwin Avenue at TMK: 2-5-004: 007, Makawao, Island of Maui. (CIZ 2013/0003) (J. Prutch)**

Mr. Joseph Prutch: Good morning everybody.

Commission Members: Good morning.

Mr. Prutch: So as he mentioned we have the Soul Space Ranch Project before you a change in zoning. It's a property that's about 5.6 acres in size. It's developed with a--if you know the property--it's developed with a dormitory, a duplex, a swimming pool and a nonprofit school of yoga,

metaphysics, water sports training, agriculture, and Hawaiian culture. The applicant is currently operating under an Ordinance County Council No. 3990 for a District Boundary Amendment which was approved by Council in December of 2012. So just two years, no, a year ago, sorry.

Now let me give you a little brief history of the application and the project site. Back in November of 2010 the Fred Baldwin Memorial Home which is the main structure on the site was placed on the Hawaii Register of Historic Places by the applicant. On December 1, 2011, the same building was placed on the National Register of Historic Places, so it's on both registers. In January of 2012, a State Land Use Commission Special Use Permit was issued by the Commission, by your Commission to operate the nonprofit school of yoga, metaphysics, water sports, ag and Hawaiian culture. And then in January of 2012, same day, you guys also approved the District Boundary...or not approved, you recommended approval of a District Boundary Amendment for the same project. And then finally on December 10, 2012, the County Council approved the DBA, by Ordinance No. 3990. And one of the conditions, Condition No. 5 of that ordinance was that within one-year of the effective date of the ordinance, Soul Space Ranch shall apply for a Change of Zoning from Interim to Public/Quasi-Public District. The applicant made their application back in March of this year so they made it in a timely manner.

I'll give you a little brief description of the project site, but the applicant, Mr. Jordan Hart is here and he'll be able to give you a power point presentation to go a little more in depth. But essentially it's developed with several buildings and accessory structures. The most prominent being of course the Fred Baldwin Memorial Home which is about 14,000 square feet dormitory facility. It was constructed between 1910 and 1911. There's also two existing duplex buildings on the property that total about 3,000 square feet. There's a laundry facility at a 1,000 square feet. There's a swimming pool that was just built earlier this year. And in the future the applicant plans to construct a classroom facility and additional parking after approval of a change in zoning.

As far as agencies reviewing this project, sent it out to various agencies. I only received comments from the Water Department, they essentially had no issues. Department of Public Works, they also had no issues, and the Department of Health, they were concerned about the individual wastewater system. They said that it wasn't approved. But in further review of that and consultation between the applicant and the Department of Health, they determined that there were Certificates of Occupancy which is in your exhibit and that they were approved for the existing buildings. My understanding is the Department of Health was confused that there was I guess a building permit outstanding for the school facility, they have a new school facility and there was no IWS for that yet. That's true. So when they get around to building that, they'll have to go through and get their septic and all that.

As far as testimony, the Department has received no letters, well prior to today we've received no letters supporting or opposing this change in zoning request. However, today I was handed a...you were handed this as well, a letter from the neighbor I believe to the south...to the north, an adjacent neighbor that submitted letter saying that they were in support and had no issues or concerns with the zoning change. So that was given to me today.

Other than that, I think for now I will let Chris Hart, I mean, Jordan Hart, I'm sorry, go through and do his presentation and the Xorin Balbes is here as well if there's any questions from the applicant.

Is that okay?

Mr. Jordan Hart: Good morning, Commissioners. My name is Jordan Hart from Chris Hart & Partners. I'm just gonna briefly go through some of the background for the property. I know that some of you have already seen this project two years ago. Project is the Fred Baldwin Memorial Home. The applicant is Xorin Balbes on behalf of Lumeria Maui. The application is for a change in zoning from Interim to Public/Quasi-Public.

Access to the project site is provided off of Baldwin Avenue via private driveway. Project site is 5.66 acres. Facilities are an existing dormitory, pool, and duplex structures. There is a proposed classroom facility. The uses that occur on site are educational uses which include a yoga, metaphysics, water sports training, Hawaiian culture and agricultural educational programs.

The State Land Use District Boundary Amendment was conducted for this project so the property is now in the Rural District. That was what was reviewed by the Planning Commission approximately two years ago. The property is in the Public/Quasi-Public District in the Paia-Haiku Community Plan and that's the change in zoning that we're going for today. The current zoning is Interim. The property is located in Flood Zone C or X.

This is a location map. This is Baldwin Avenue here, Rainbow Park here, Makawao Union Church here, Haliimaile Road is up here. Here's an aerial photograph. These are some of the existing Public/Quasi-Public uses that are occurring in the facility or sorry, the vicinity. Maui Farm Inc., Aloha Job Corp., Aloha House, Maui Youth and Family Services, Makawao Union Church. Here's an aerial photograph. This is the Fred Baldwin Memorial Home. This is currently the reception center. These are the two duplex structures. This is the neighbor that provided the letter of support or email in support this morning.

This is a State Land Use District Map. Some of this history that was just discussed by Joe, I'll just kinda pass over. This is the Community Plan Map and basically it just shows a concentration of Public/Quasi-Public in the location. Maunaolu College, some of the other Public/Quasi-Public uses I was just mentioning to you. This property, the makai property abutting and Makawao Union Church and the associated facilities. Here's an aerial, not an aerial, site plan of the project. The Fred Baldwin Memorial Home, duplex structures, existing parking lot.

As Joe discussed, Xorin on his own initiated the process of adding the property to the State and National Register of Historic Places and also conducted a comprehensive repair and maintenance program supervised by the State Historic Preservation Division and, you know, we were just looking at site photos, the project site, you know, when he first took it over and it was in really bad shape. It was basically being used as labor housing by Maui Land & Pine. It has as many as 140 people in there at one time and it was, it was in horrendous shape.

Just some of the background. This is Fred Baldwin. Basically Fred Baldwin passed away at an early age and so the facility was built as a memorial to him. It was initially a convalescence home for or I'm sorry, it was initially a rest home for retired plantation workers who had no family locally, then it became a convalescence home for military veterans, it became the dormitory for Maunaolu Women's College and then it was used for ag labor housing.

Harry Livingston Kerr was the architect. He built some of the buildings around Maui. He designed some of the buildings around Maui. He designed the court house that's next door as well as a few others. This is a photo of the early project site. Some photos from the 40's of the interior, exterior, and these kinda were all uncovered in the adding of the property to the National Register.

So the Change in Zoning is for Public/Quasi-Public. Here's just a list of the structures, some more photos. These are interior. This just kinda shows the scale of what was happening at the property. There's three massive rice cookers for all the laborers that were living there, big mixer. This is the current character of the dining facility. These are some exterior shots. These are kinda a little recent after construction. These are some more settled photos of the site.

This is the proposed classroom facility. Because the property is State and National Register there's gonna have to be some intensive review by SHPD, Architecture Branch on the property construction. But this is the preliminary proposed design and it's well-received. It's already been approved.

Okay, so in 1993 and in 1995, the Paia-Haiku Community Plan designated the parcel for Public/Quasi-Public. Public/Quasi-Public uses are permitted in the State Rural District which is what is now the designation for the parcel. In obtaining our State Land Use District Boundary Amendment we were provided with Condition No. 5 which required us to file for this change in zoning and so we're here today. That's the conclusion of my presentation. I do wanna thank Stan Solamilo who is the former Cultural Resource Planner for the County of Maui who provided a lot of that background history and photos for us which was really nice to have. Thank you.

Chairperson Lay: Does the applicant wish to say anything at this time?

a) Public Hearing

Chairperson Lay: If not, we're gonna open up for public testimony. Does anyone wish to testify at this time? Seeing none, public testimony is closed. Commissioners, questions? Commissioner Ball?

Mr. Ball: There is a brief statement about the...how the wastewater was used and something about septic? Can you go back to that and explain what's going on with that?

Mr. Hart: Sure. Basically, what happened is the classroom building which I just misspoke on, the permit for that was issued. No groundbreaking activities took place, but Department of Health had on their records the permit was issued so they're expecting to come to review a wastewater system so their reply letter to us was basically that your wastewater system didn't get final review, but no construction has started at this point. So there is no existing system that hasn't had final review.

Mr. Ball: So what is the system currently then?

Mr. Hart: The current system serves the entire facility and that was basically upgraded by Maui Land and Pine immediately prior to their sale and then the applicant has going C.O.s for all the buildings and that includes the updated review of all those systems. So all the operating systems

are operating under C.O.s and there's no, currently, current system under construction that hasn't been reviewed by the State Department of Health.

Chairperson Lay: Commissioners? Commissioner Wakida?

Ms. Wakida: I have, I have a question of the applicant.

Mr. Xorin Balbes: Hello.

Ms. Wakida: Good morning. I've recently, and I apologize I can't put my finger on the source but I recently read an article referencing Paia. And it said that there were no hotels in Paia except, I think it's called Paia Inn and Lumeria. They called your establishment a hotel. Would you like to respond to that?

Mr. Balbes: Sure. We only actually market ourselves as a retreat center, but we can't really control anybody that picks up a story and calls us a hotel. And so it's something I try to control, but there's really nothing I can do about that. You know, some people you know think a retreat and a hotel are the same when they're doing a story or an article and I just don't have power or control over that.

Ms. Wakida: I understand. So I know when you originally came in for an application we had a lot of a questions about the nature of your guests and what the restrictions were. So you're saying it's the same that your guests are connected with the programs that you offer?

Mr. Balbes: Absolutely. If you take a look at our website, you'll see hundreds and hundreds and hundreds of three-day and five-day, and seven-day yoga intensive trainings and teacher training and certificates given and yes, it's very intense educational.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Do you have guests who come and just stay there and don't participate in any programs?

Mr. Balbes: No, in order to stay they do participate in programs. That was one of the conditions.

Ms. Wakida: Okay, thank you very much.

Mr. Balbes: You're welcome.

Chairperson Lay: Commissioners, any more questions? Commissioner Shibuya?

Vice-Chair Shibuya: I was looking through I wanna compliment you for an outstanding job of restoring this historical structure and I've looked at some of your pictures there. I really appreciate you giving us this rundown here. It reflects a lot of personal care and wanting to restore and retain the nature of what was there before and so thank you very much.

Mr. Balbes: Thank you.

Vice-Chair Shibuya: I do have the driveway...because of Baldwin Avenue it's sorta sloping downwards past your driveway, I don't know if you have that growth, it's like a bush or shrub that sorta blocks your view of those folks coming down towards your property. Is that cleared out?

Mr. Balbes: Which one is that? It's at the main entrance?

Vice-Chair Shibuya: Yeah, at your main entrance, yes. Right where your sign is there's a big bush.

Mr. Balbes: Oh, is it a big red bush?

Vice-Chair Shibuya: Yes.

Mr. Balbes: Yeah, I still have that big red bush there. So you're saying that it seems like an impediment?

Vice-Chair Shibuya: I don't know if it is. If you're in a car maybe you can take a look at it and see if does, it's just a safety concern, okay. It's not something that you gotta do right now.

Mr. Balbes: I'll look at it for sure.

Vice-Chair Shibuya: Take a look at it and keep it trimmed and there's bicyclists coming down there.

Mr. Balbes: Sure.

Vice-Chair Shibuya: Yes, a lot of them.

Mr. Balbes: A lot of them.

Chairperson Lay: Public Works wish to comment on that?

Ms. Dagdag-Andaya: You brought up a good point, Commissioner Shibuya and I just wanted to add that as they're going through the building permit process they're gonna be required to do a sight distance analysis anyway. So prior to even getting the plans reviewed they need to do a...the civil engineer needs to do a sight distance analysis for those kinds of things. And at the same time, our Highways Division does periodic checks along our right of way for any sight distance issues. Police Department also has, sometimes they do checks as well, so in working with the applicant, we'll be able to address that concern of yours.

Vice-Chair Shibuya: Okay, thank you.

Chairperson Lay: Commissioners, any more questions? If not, oh...Commissioner Shibuya?

Vice-Chair Shibuya: Just for a quick review. You do have a fire hydrant close by or is that...you can tell me the distance and then also smoke alarms and/or some kind of fire suppression system?

Mr. Balbes: Yes, we did have Fire Department approval. But I can just let you know that we've got sprinkler systems in the attics, we've got sprinkler systems on the main floors, we've got sprinkler systems underneath the...the foundation level, and then we also have wet and dry fire lines on the property and I think two fire hydrants in front of the property.

Vice-Chair Shibuya: Yes, I remember something to that effect.

Mr. Balbes: Yeah.

Vice-Chair Shibuya: Thank you very much.

Mr. Balbes: You're welcome.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Motion to approve the change in zoning to rezone property from Interim to Public/Quasi-Public for the property located at 1813 Baldwin Avenue.

Mr. Medeiros: Second.

Chairperson Lay: There's been a motion and second. Any comments on the motion and recommendation? Or can we get the Department's recommendations also. Jumping the gun there.

Mr. Ball: Like to suspend my motion.

Chairperson Lay: Let's get the Department's recommendation at this time.

b) Action

Mr. Prutch: Well, this seems kinda moot point now, but...okay, the Maui Planning Department's recommending that the Maui Planning Commission recommend to the Maui County Council approval of the change in zoning from Interim District to Public/Quasi-Public to comply with the condition of County Council Ordinance No. 3990. The Maui Planning Department recommends that the Commission adopt the Department's report and its recommendation memorandums prepared for the November 26, 2013 meeting as findings of facts, conclusions of law, decision and order and further authorize Mr. Planning Director transmit, to transmit said recommendations to the Maui County Council. Okay, go ahead.

Chairperson Lay: Now, Commissioner Ball? You wanna make a motion on that?

Mr. Ball: So moved.

Mr. Freitas: Second.

Chairperson Lay: Motion by Commissioner Ball, seconded by Commissioner Freitas. Any comments or discussion on it? Commission Tsai?

Mr. Tsai: I'm definitely for the motion and I just wanna add that I had the pleasure to actually visit your establishment and I'm really amazed how good a job you've done in there. It's immaculate, beautiful, it's nice, nice work.

Chairperson Lay: Any more discussion on the motion? If not, call for the vote? All those in favor?

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion carries. Thank you very much. Congratulations.

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

**VOTED: To Recommend Approval of the Change in Zoning to the County Council, as Recommended by the Department.
(Assenting - K. Ball, J. Freitas, J. Medeiros, M. Tsai, W. Hedani,
P. Wakida, W. Shibuya)
(Excused - S. Duvauchelle)**

Mr. Spence: Good morning, Commissioners. The next item on your agenda, next public hearing item on your agenda is Mr. Galileo Buzzi Ferraris and Ms. Monica Del Duca requesting a Land Use Commission Special Use Permit in order to operate a short-term rental home in the State Ag District. And our Staff Planner this morning is Ms. Gina Flammer.

- 2. MR. GALILEO BUZZI FERRARIS and MS. MONICA DEL DUCA requesting a State Land Use Commission Special Use Permit in order to operate the Hale Akaula Short-Term Rental Home, a four (4)-bedroom short-term rental home located in the State Agricultural District at 311 Waiama Way, TMK: 2-7-003: 117, Haiku, Island of Maui. (SUP2 2013/0001) (G. Flammer)**

Ms. Gina Flammer: Okay, good morning, Commissioners. I will mention that this a two-acre lot in the subdivision Haiku Hill. I'll just go right into the power point and give you an overview. So here's a regional map that's also included in your staff report. It just shows you where in Haiku that we're talking about. And just to get a little bit closer it shows you where the subdivision is and then the pink is where the proposed, where the lot is. And then I wanted to give you the big picture.

There's a couple applications for the same subdivision and the Department wanted to bring them to you all at the same time. It took quite a bit of coordination, we had to wait, but we thought it for your sake it made the most sense to do that. So after this, we're gonna have two that are also in the same area, but this is in your report, but I wanted to just show you. And I wanted to mark on here too, the different letters of support so you could get a feel for the entire neighborhood. I did put the green 500-foot boundary, but I wanted to let you know that you're only reviewing the State Special Use Permit for these projects today and that's because the Short-Term Rental Home Ordinance had a waiver that anybody that came in during the first year by the end of 2012, they didn't trigger a Maui Planning Commission review of the Short-Term Rental Home Permit so long as they came in before that date if there was another one within 500 feet. The other trigger still

applied so if there would have been adjacent protests or protests that met the 30 or 15 percent provisions it would have come before you, but as you can see we didn't have that in this particular case.

And then this isn't in your report because we just got this. It really took a while for the Department to reach out and to get our MIS Division to put forth the funding and time to put together the computer program. So now we're able to map on here where the Short-Term Home Rental Permits are. So I wanted to show you that. In the report it says that there's eight in the Haiku region. If you look, there's really just six. You have two in Huelo and then you have the rest of them are over in Paia. Because most of the parcels in Haiku are in the State Ag District, you're gonna start seeing those come in for the SUP Permits. Those do take a while and I'll kind of explain that when I'm done why they take so long.

I wanted to show you too, the B&Bs. I know you like to see the big, really big picture so there you have it. Just as a reminder, we're almost at the same place. We have 27 STR Permits issued. The cap is 88, so that leaves 61 permits available. So you're gonna be seeing these for a while. Same with the Bed and Breakfast. There's 25 currently issued. So that means there's 63 of those permits for this area that are still available.

And then I wanted to just go right into the property. So this is the house. It's a four-bedroom. I believe the intention is to rent it for three, so they do have that extra bedroom if they wanted to. Concrete driveway, there is a garage there on the right. It's a turnaround very easy to get in and out. Here's the inside. There's pictures in the report too. I see it's a little dark here. And then here are the different bedrooms. The owners have three children, so these are really their children's bedrooms and then they had the extra room that could be converted if needed.

So the farm plan, when that Short-Term Rental Home Bill was first passed there was no requirement for farming. It was put under a special use specifically. That was actually from a conversation from our Attorney General. However, when the Department started to implement it, the State Office of Planning, they really liked the idea of having the farming. So we worked with them, we developed a policy that does highly recommend that you have an implemented farm plan. These applicants are one of the first...the property manager told me about them right after the bill passed. So she went ahead, she was preparing the whole application and then she came to find out that we had changed our policies,....now we recommended the farm plan so that's why we're here this much later. And they did do some planting. They didn't need to do a whole bunch but I'm gonna kinda show you what they did.

So they had an existing mature orchard, a lot of citrus, some avocado. There's some star fruit. So there's a lot of pictures in the report. So what they did is they added in three different areas. One of them was to add onto the existing orchard in the back area. Only so much area, only so much sunlight so they did the best they could back in that area. It's probably the best area when I look at it considering where the wind block is, however, you gotta work with what you have. So here's where they added onto. And then they moved around to the side of the house. You can see where the entrance is right there. Before I forget, I don't have a picture of the standpipe, but it is directly across the street from right where that entrance is. So they did add right here at the front. There is some lilikoi on the side and then they put in the new fruit trees and the papaya trees right there.

Not sure if the lilikoi was planted or if it was already there. It seems to be doing fairly well. I know they're dealing with wind issues with dealing with the rest of the citrus. They put up the wind blocks that seem to be helping. Then they planted the front of the property as well with a lot of papaya. You can see there just quite how much was done. And then they had lots of coconuts, so when they...I talked to the property manager, when they sat down and thought about, you know, they're that the Commission's looking for commercial uses, they took a look at what they have. A lot of it was brand new. I know they're interested in putting a farm stand up when they come next summer. The fruit they weren't quite ready when they came this summer. So the coconuts are probably I believe the biggest commodity that they have right now. So they've been harvesting the coconuts. I did put in your report a couple of receipts. She, the property manager gave me some new receipts. Instead of giving you each a piece of paper with the new receipts, I just wanted to show you up here. What kinda struck me just how much money you can make off of coconuts. This is in one week, we're looking at \$66, 23 and then \$60, and most of that's for the water. Yeah, if you guys ever buy the water at the store. That's why it's so expensive.

And then I wanted to show you the family. I actually took this at the site visit when they were here. And then you know Margit Tolman, she is the property manager. She lives about a mile away. Her office is located also just down the way on Baldwin Avenue. And I wanted to give you a project summary. Again, you're reviewing the State Land Use Permit. I do wanna remind you that this is in the Rural Growth Boundary. So when we went through the Maui Island process, this was put in the Rural Growth Boundary and the County does intend to rezone it to Rural. These are all two-acre parcels in the subdivision.

The permit, the Short-Term Rental Home Permit will be issued administratively once if this is approved today, the Special Use Permit there are 23 conditions that come with that that address the short-term rental. This permit really just addresses the ag.

Neighborhood comments, there were two support letters. There were no protest letters. I do know people in this neighborhood, so I do usually just ask around and I hadn't heard any complaints about the people that live there and any other problems with it. There's plenty of room in the cap. The Department does look at that when we're issuing permits. And then agency comments which we do look at, this one had a no comment letter from the Office of Planning and also the Police Department found no complaints. We do have the manager here today. I wanted to talk to our Chair about this a couple of months ago. I wanted to explain why the applicants are not here. They were here for two summers wanting to act on their permit. So first we had to tell them, great the bill was passed you can come on in, then oh, wait, hold on you need a farm plan. Oh, your farm plan has to be implemented. So they spent about a year getting everything done, figuring out...first they had to figure out what they wanted. They were really good about it. They thought about what's gonna grow and what can we sell, what can we do with the property instead of just putting something in just to get a farm plan approval. Then it was assigned to a planner who went out on some sick leave, so it was reassigned to me during the middle of the year. This particular permit also had an...when you go through the farm plan process you're required to put a unilateral agreement on your Warrantee Deed that relates back to this that can take nine months to record. We wait for that to come back. Sometimes it comes back saying that the exact wording isn't correct as what was on the deed. They have to refile it. We do the best we can. It's really hard to explain to people why things take so long. There's so many steps when it comes to doing this particular

permit. So when I had to go on the site visit and explain to them again that they were gonna have to wait it was probably one of the hardest things I've had to do. They'd waited two summers. They'd done everything we'd ask them to do. So we went ahead, we decided we wanted to bring all these to you at the same time so we thought it would be okay to have just the property manager here for questions. I hope that's okay with you. The other option was to either try to Skype them which they were more than happy to do but we don't quite have the resources to do that or to have them wait till next summer which I'm kinda glad we didn't ask them to do that. But I do have the property manager if you have any specific questions. Thank you.

a) Public Hearing

Chairperson Lay: At this time, I'm gonna open up to public testimony. Does anyone wish to testify at this time? Seeing none, public testimony is closed. Commissioners, questions? Commissioner Freitas?

Mr. Freitas: What is the property presently used? Is it being rented out now or it's just vacant?

Chairperson Lay: Please come up and identify yourself.

Ms. Margit Tolman: Good morning, Commissioners. My name is Margit Tolman. I'm with ERA Pacific Properties. I'm the property manager and I helped the owner providing the application. The question was...can you repeat your question please?

Mr. Freitas: Yes, is the property presently rented?

Ms. Tolman: We had it rented occasionally but only in rare circumstances, mostly monthly guests. But maybe three, four times a year. It sits vacant since the owner left this summer.

Chairperson Lay: Commissioners, any more questions?

Ms. Flammer: If I could just add, even though it was rented just not a whole lot, we still required them to come in with the tax clearance form. In this particular case it didn't take that long. That alone can take several months, sometimes up to six months. But as part of the Short-Term Rental Home application they were required to...they did check that box and they were required to provide verification that they had paid all their taxes.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yes, what will be the minimum length of stay?

Ms. Tolman: The minimum length of stay is seven nights.

Ms. Wakida: Thank you.

Chairperson Lay: How many properties do you watch over in the area in Haiku?

Ms. Tolman: Currently I have 11 properties.

Chairperson Lay: Eleven?

Ms. Tolman: In Paia-Haiku area.

Chairperson Lay: And all within a distance from your house...how far away I mean, is your furthest one?

Ms. Tolman: The furthest one is probably about four and a half, five miles from my house.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: How close is the closest fire hydrant to this property or fire stand?

Ms. Tolman: The subdivision does not have any fire hydrant and the next one is on Haiku Road when you get out of the subdivision you turn right, immediately on the left-hand side there's a fire hydrant. On Haiku Road, there's a fire hydrant.

Chairperson Lay: Director wishes to comment.

Mr. Spence: Margit, there must be standpipes?

Ms. Tolman: The subdivision has standpipes. The standpipe is just across the street.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendation?

b) Action

Ms. Flammer: Again, I'm gonna just like I always do remind you of all the conditions that are on this. There's seven placed on this one, including our last condition which states that the farm plan has to remain implemented during the duration of the permit and then we require when they come in for renewal to provide evidence it's still implemented. So in consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Department's Report and Recommendation prepared for today's meeting, November 26, 2013 as the findings of fact, conclusion of law, decision and order and authorize the Planning Director to transmit the written decision and order on behalf of the Maui Planning Commission.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: So moved.

Chairperson Lay: Motion by Commissioner Tsai.

Mr. Ball: Second.

Chairperson Lay: Seconded by Commissioner Ball. Any discussion? Commissioner Shibuya?

Vice-Chair Shibuya: I wanted to thank the Planner, Planner Gina Flammer for outstanding charts of the area on which she had bed and breakfasts as well as STRHs identified. It's a really wonderful graphic that you can see the density and the amount of concentrated bed and breakfasts as well as the STRH. I know it's a huge undertaking computer wise, but thank you very much. I appreciate that.

Ms. Flammer: We could thank the Director for really expediting getting that.

Mr. Ball: ...(inaudible)...guidance, right.

Ms. Flammer: Yes, it was quite an effort. We used to do it all by hand.

Mr. Spence: And thank MIS or ITS now for their assistance in all this.

Vice-Chair Shibuya: It's a great tool and I appreciate it very much.

Chairperson Lay: Any more discussion on the motion? Commissioner Freitas?

Mr. Freitas: Yeah, I'm gonna vote no on this motion and I have several reasons. One is the distance from the fire station to the what do you call, property. The people that are renting is unfamiliar with the property, giving directions and what have you. That's one concern. The second concern is that this is a commercial establishment which all bed and breakfasts are and they're competing with the hotels and they are not what do you call zoned as hotels and paying the same rates as the hotel has to pay to run their business.

Chairperson Lay: Commissioners, any more discussion? Commissioner Hedani?

Mr. Hedani: Just a question for Staff. Like Commissioner Shibuya mentioned I appreciate the fact that we're displaying all of the proposed as well as the existing short-term rentals. On this particular map, does the short-term rentals include B&Bs. I'm looking at Exhibit 3.

Ms. Flammer: There are...the 500-foot map?

Mr. Hedani: Right.

Ms. Flammer: There are none.

Mr. Hedani: There are none?

Ms. Flammer: There are none. I originally did the map intending...I thought there was one in there but there wasn't. It was my understanding that you wanted to see that as well, yeah.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'd like to ask if you can consider, well, it's a question in this particular case you have a 500-foot radius that you can plot around the applicant's house, but because we're looking at multiple applications within the same subdivision, what I'd like to see is each of the...in this case four proposed and existing applications display a 500-foot radius and what that would tell you...what that would show to you is which neighbors get impacted by one, two, three or four applications. And in this particular case there's probably half a dozen they covered by all four if you include 500-foot radius.

Ms. Flammer: Which I did run that. I always wonder about how much information to give you. I was just curious. I didn't show it. It looked a little busy with the three different circles, but I did want...I put this up for a reason because this is unusual...it's an unusual subdivision. It's a little bit like the one I showed in Haliimaile last time. It's surrounded by big tracts of ag land so it's not like some of the smaller neighborhoods where you're really overlapping onto other streets. So all of the 500 circle stayed within the subdivision. So you're not gonna have secondary impacts on not just your own street people that aren't, is aware, even though they do get notice when they're within the 500 feet of the short-term rental or the B&B Permit. So in this particular case they're surrounded by large tracts of ag land...and actually gulch on one side.

And if I could just quickly address the tax issue, as far as I understand it from Real Property Tax these are currently at Hotel, the tax rate. It hasn't been taken up by the County Council, but right now that's what these owners are looking at.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: But it's not in force at this time, all right?

Ms. Flammer: Oh no, once you get your permit you're taxed at a ...the letter gets copied. Not only do we notify the Tax Department in the beginning of just of the application itself. They can't change the tax status just based on the application 'cause not all applications go through. You don't see them all. Sometimes they're pulled out especially if you have neighbor objections. Once the permit is approved they are cc'd on the approval letter. They're also notified. So each one as they come in goes to the Assessor and it's changed. But as...we also notify them I think quarterly we produce a list that shows all of them. But on each individual one it is sent to the Tax Department.

Mr. Freitas: So when they get their permit they are rated as hotel-

Ms. Flammer: Right now, that's where it's set up. That's our understanding.

Mr. Freitas: But they are paying hotel rates.

Ms. Flammer: Yeah, it may change if they Council decides to take up the bill. But that's currently what we're looking at.

Mr. Freitas: They're paying hotel rates?

Ms. Flammer: Yes, they will once they get the permit.

Mr. Freitas: No, but they're not paying hotel as of now?

Ms. Flammer: No, no, it's not until...we've had people that have tried to come in actually before the permit and change it and Real Property Tax won't change it. But once they get the permit it does change.

Chairperson Lay: Quick question too, on the applicants we have, we have four today, is it in a time frame order where the first, first one that be coming before us that would be good to know too.

Ms. Flammer: It would be so nice if we could do that. It's all based upon when you reach the finish line. So that's why I tried to explain all the different steps and variables. If you have a Bureau of Conveyances not mail your thing back, I've gotten them back in three months and I've gotten them back in nine months. In this case, the first time they did it, it wasn't worded exactly as the deed was, it got rejected. In this particular case, the planner went out on leave and it was reassigned. I think Danny has was also reassigned, that will cause a big delay. In the past, we had two applications where one of the planners went on maternity leave and the applicant finished first then the other one was bounced to Planning Commission, that's another \$1,300 to come to Planning Commission. We just can't control that. So it's whenever we cross the finish line.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Gina, did you get a letter of response from Jesse Souki from the State Office?

Ms. Flammer: Yeah, it was a no comment letter in the particular application that I have. And I just spoke with actually. He came around. When they see an implemented farm plan...they had originally suggested that we use the same criteria that we do for B&Bs which is an implemented farm plan. So when they see that we've already gone through the implemented farm process that's why we're getting back many of no comment letters from them. They're seeing that as is qualifying under the State Law.

Chairperson Lay: Commissioners, any more discussion? Commissioner Hedani?

Mr. Hedani: I'm not sure if this is for Gina or for the Director. I can understand how difficult it is for Staff when you have an application that comes in like this, in this particular situation where you have multiple applications in very close proximity. What is the Department's philosophy behind granting or making recommendations for approval when you have multiple facilities immediately next, you know, next to each other? Is it, the maximum is 88 so if 88 is hit and we're gonna put a cap on this or say, if we took every single lot within the subdivision and made it a short-term rental it would still not exceed the 88 cap, so the question is at what point do you determine whether the 500-foot radius means?

Ms. Flammer: I'll take that because when we went to the Council and even when we sat in here that one full day we talked about this. Right now...we just had the waiver which went from May 2012 to December 2012 for the 500-foot rule. That waiver is no longer applies so you will see the multiple ones and the law does specify what criteria you're looking at. So you're looking at the substance of the complaints that come. So what we do is we really, me as a Staff Planner and the

Department we take a look at the neighborhood and if there are complaint letters we take those very seriously. And if there are enough, it comes to you and then you have the hard job of taking a look at the neighborhood because in this particular case none of the triggers were met, what I looked at as the Planner is what the law guides me to. If we go through our rules and regulations I have to look at the community plan area. I need to look at the complaints, not only the number but the substance of complaints. I need to look at compliance with other government regulations. Sometimes we have people that have had problems in the past and we look at whether or not they've complied, building permit issues, sometimes they rented in the past, and had to shut down, and there's a couple other criteria. We look at the community plan area and what those policies are also. We do that for all of them, but it says specifically that's one of the criteria. I think probably the most important thing is the neighbor letters that come in. And Maui's a small town too, so you know, you know certain area where we've held meetings in other parts of Maui where the neighbors have just said right out from the beginning we're uncomfortable with this and we know that. So in this particular case I did that 500-foot map so I could show you where the support letters were because when we go to issue the permit, that's probably one of the biggest things that we look at.

Chairperson Lay: Director?

Mr. Spence: Just a little bit more on that. When the Council took up this topic, informed, you know, the legislation to establish a short-term rental home permit process the thing is we had such a large underground kind of, you know, operation and there's still a lot of people operating without permits. They wanted to come up with a way to make these things legal. And make a way that, that again, I understand Commissioner Hedani's concerns about the character of the neighborhood and everything. But the Council wanted a way for people to actually become legal versus operating, continuing to operate without permits and people were not applying because this kind of thing required both a Special Use Permit and a Conditional Permit. It required an ordinance to be passed by the County Council to get these permits. And that wasn't...one it was so difficult to do and took years to accomplish it just wasn't a feasible process to undergo. So we just, we had this whole thing going on underground.

By becoming legal, they're paying...they're not only paying hotel rate tax, and I don't know if that will change with the Council or not, but they're also paying GET and TAT. So they're getting hit pretty hard with, you know, all across the tax spectrum. But mostly I think kinda like Gina said, we look at this as impact based, you know. Just because somebody is operating a short-term rental does not mean there's an impact on the neighborhood. We take neighbor letters very seriously. We take...people are very afraid when they file a complaint against, not just, you know, against any short-term rental or against any use that has an impact on the neighborhood. It doesn't have to be short-term rentals. It can be auto repair, it can be, you know, just you name it. Though people will file on line to say, hey my neighbor is doing this land use it's not permitted. So we look at that and then we also, I mean, as part of our analysis I mean, we look at this, these are two-acre lots. These are not, five...you know, 6,500 square foot lots. They're not...people aren't immediately next door to each other. There's a distance between and I know some people will say, well two acres isn't very large or whatever. It's a lot larger than some of the ones we see in the urban area. So when you look at all these things as mitigating factors knowing this neighborhood it's very spread out. You know...knowing the terrain, the way that the subdivision has been constructed, the way that the houses are arranged. We look at all those things. So, I mean, it may, it could very well be the

case that there is impact on an adjoining property. But in this case, we don't feel like there is one and we do look at these one at a time. And we look at them, you know, like, I'm saying we look at this neighborhood as a whole. So, I mean, there's a lot of work, a lot of consideration that goes into these. When something comes before you, you know, it's been examined and analyzed and looked at from aerial photography, from going into the neighborhood, from doing a site visit on the property. All these things are thoroughly investigated before anything comes to this Commission.

Ms. Flammer: When we were at Council too, we also gave them the option or talked about do you wanna have a provision that says you can only have one within 500 feet? And the discussion was, you may have some areas where they are concentrated, and that may be preferable. I think we sat in here a couple years ago too, where I think it was the Chair that said the same thing and I kinda thought about it. I was kinda surprised, but it was the 500-foot trigger to come to you was done on purpose. So that you're the body that then decides. It's not an outright prohibition. I know it's a tough spot to be in, but it's okay to say, no. But it really...what they decided to do instead of outright prohibiting it, they wanted it to go to you so that you would be the authority that would determine it. In this particular case, the ones you're gonna see today, the trigger wasn't met, it's on the ag permit, the State Land Use Special Use Permit that you're reviewing.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Is there any dialogue with associations?

Ms. Flammer: There was when the bill came out.

Mr. Ball: Is there any like now? Let's say like, you know, if there's four proposed for this neighborhood and maybe more I think it be nice if you also talked to them and said, you know, like we got a lot planned for your neighborhood, just FYI kinda thing and kinda get their input on whether they care or not, maybe they don't even care.

Ms. Flammer: If there's a homeowner's association they are required to submit a letter with the application. Now general community associations like the Kihei Community Association, Kula, Maalaea, there's really no formal ones in West Maui, but there are some kinda informal ones. We went out with the bill and talked to them about it, and their general feeling was don't bother us with the individual applications, but when you're doing the law, come back to us and let us see. And our thought is we're looking more at the people that are impacted. We don't want people to say no just because they wanna say no, and they don't like to see change. What we wanna hear is are what are the particular circumstances with this particular parcel?

Mr. Ball: And also agree with Wayne on circling, you know, each parcel because there's that one parcel be affected by all four of those. So maybe in...(inaudible)...

Ms. Flammer: We can do that in that in the future then.

Mr. Ball: That would be helpful too, thanks.

Chairperson Lay: Commissioner Hedani? Oh, Commissioner Wakida?

Ms. Wakida: I appreciate the Director's comments and clarification. I also, for me, I take a more global look at these communities though. We've got this particular subdivision, but I am also interested in the whole Haiku-Paia area and they're very clear in their community plan about wanting to preserve the agricultural and rural nature of that community. And while I think, you know, vetting all of this concern in the immediate vicinity of the application what impact is this have long range on this entire area and what proliferation of short-term rentals? So that to me that is a very important issue.

Ms. Flammer: Thank you, I agree. I went to the Haiku Community Association, and we discussed it. That's why it's so important that they comment when the bill is being drafted because that's really when you take the global look. That when the cap comes into consideration and that's when, not only did we talk about it with this bill, but when we did the Maui Island Plan, we really looked hard at Haiku because of the rural designations and they were fairly comfortable with once the subdivision's been broken up into two acres kinda hard to do commercial farming. That's why you're gonna see a lot more of these Rural Growth Boundaries right there in Haiku. We're gonna bring the bill back and I do want to go out to the communities now that we've had some time and just kinda see what...can't really predict what the effects are gonna be, so I'm really curious. I'll go back to Haiku and see. I did specifically ask them about the community plan policies that talk about not on the shoreline and I was surprised by some of their answers. They took a much more practical approach. They would...they said, sure we're concerned about the shoreline but we understand we're one of the top windsurfing places in the world and we value that.

Chairperson Lay: Commissioner Ball?

Mr. Ball: I have a general question for you. The difference between Ag and Rural as it would pertain to something like this because there are a lot of questions about the Ag, but...and there's a big push to push a lot of those Ag properties into Rural. My understanding is that if it does switch to Rural, the Ag component goes away.

Ms. Flammer: There's two...I'm gonna give you a broad and then funnel down to the specific question. There's two layers. Only in Hawaii are...there's actually three. There's two layers of zoning that we have. We have State and then we have County. The list the permits...they list the permitted uses each of the laws do. You're here because it's the State that doesn't allow short-term. Actually they do allow ag tourism. So it's the permitted uses that change when you go from Ag to Rural. The Ag, State Ag Bill also has a right to farm provision that allows you...it was written with the commercial farming. This was done during the '60s late '60s when that law first put into place. And the right to farm says that you can use I think they used the word, noxious chemicals, you can make a lotta noise, you can have dirt, you can use pesticides. When you go to Rural you lose that right to farm provision but you don't lose the ability to farm. And then also for the County when you come in for your building permits when you have Ag, when you're in the Ag County Zoning you're required to do the farm plans, but when you go to Rural you're not required to do that. It's also density, the acreage, size of your lot changes, but we did pass a bill recently where you can have Rural that can go up larger than half an acre but the minimum is half. When Ag, you're looking at the minimum as being two acres. And it's actually it's a sliding scale so you can only do two acres up to so many in your subdivision.

Chairperson Lay: Okay, Director?

Mr. Spence: Fill in a couple blanks on that. In the Ag District you have farm dwellings. Your house is supposed to be related to a farm. In the Rural District, you can have a single-family dwelling so it's not related to farming at all. So like when we did the Maui Island Plan and actually this has been long discussed in community plans and et cetera I think everybody recognizes that a lot of these subdivisions are not farming subdivisions. They are...they're more rural in character. Some people wanna do some farming and that's great, we encourage that and support it. But mostly they're large lot residential. So you know, in towards recognizing that, the Council chose to show certain places as a Rural in the Maui Island Plan and like Gina earlier reported we have every intent of going in and rezoning it. And just recognizing it what it is. We're not gonna be rezoning half-acre, we will do it two acres so there won't be further subdivisions without...I mean, I suppose somebody could come in and apply but everybody knows how humbug that is. ...(inaudible)...these are large lot mansions and we should, mostly mansions and we should recognize them as such. So basically in the Ag District you're required to do some farming, in the Rural District you're not required but you still can.

Chairperson Lay: Commissioner Ball?

Mr. Ball: But not if, and I'm talking about STRHs. That would not be a condition then? Like now the ag part that farming...(inaudible)...a requirement for that, the permit. Rural would not.

Mr. Spence: No, Rural would not have a farming requirement. Actually for a Special Use Permit there's no farming requirement. There's a farming requirement for a farm dwelling for anybody in the Ag District to build a house you have to do a farm dwelling, I mean, you have to do a farm plan. For a Special Use Permit you have the five guidelines under the State Land Use Commission Rules that those are this Commission's guidance for whether to approve or deny or approve with conditions for a Special Use Permit. I mean, there's no farming requirements for a cell tower, for a school, you know, that you would have, you know, so it's the same thing here. It's the same, it's the same guideline, but you know, the Commission's looking at other things.

Mr. Ball: But I'm just comparing the apple to the apple so the vacation rental to the vacation rental just that it's either on Ag or it's on Rural. ...(inaudible).. cell tower different you said.

Mr. Spence: For the Special Use Permit really the agriculture is not a requirement. The difference comes not on the Special Use level, the difference comes on a zoning level. Rural, they're not necessarily farm dwellings. There's no association with a farm. In Ag, this is a farm dwelling.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Question for the Director on this zoning issue. If you're gonna rezone a subdivision to Rural and you have one or two people on this Ag property that is doing farming are you gonna take that right away from them and rezone the whole subdivision or are you gonna spot zone?

Mr. Spence: No. We would zone...first off, the idea is to zone entire subdivision. The second part of that is no, we're not taking away any rights to farm. That would be the furthest thing from our

minds. I'm gonna guess because that's such a critical issue whether you can farm in Rural or not probably what...when we go to do comprehensive zoning what we'll do is we'll include some kind of right to farm provision. We're talking years from now.

Mr. Ball: And probably a tax component of that also, right? Because they'd be taxed at the Ag rate instead of a Rural, large lot.

Mr. Spence: Right now you can get an Ag rate downtown Kahului if you can show that you're farming. So there will always be an agricultural discount if you're actually doing farming

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Follow up question. On that ag ruling would...when you rezone it to Rural would obnoxious law from the State go away or would that still be in place because that would limit some people whether they can farm or not.

Mr. Spence: When we discussed this--maybe to put it a little bit different--when we discussed this at Council there was a lotta concern about this so what I'm saying is when we go to zone these properties, we're probably going to retain a right to farm provision whether it's piggeries or whatever because I know that that, I mean that was a big discussion in Council and I agree, people should retain that right to farm. No, we're not gonna be taking that away from anybody.

Ms. Flammer: That right to farm provision is attached to the State zoning and we don't as a County have the authority to rezone the State only they can do that. So we would be rezoning the County portion of it, but we can't do the State. Is that correct?

Mr. Spence: Not entirely. So, we have instances where we rezoned entire tracts like, I forget, the one by Carden Academy in Pukalani...the Council rezoned the entire subdivision to the State Rural District.

Ms. Flammer: Did they do the DBA?

Mr. Spence: Yes, they do the District Boundary Amendment as well as the County Zoning.

Ms. Flammer: Okay, thank you.

Mr. Spence: That's certainly within the County's authority.

Chairperson Lay: Any more discussion on the motion? Commissioner Medeiros?

Mr. Medeiros: Yeah, you said that there had to be a farm dwelling, right? And in looking at all this, and farm dwelling, you know, I hate to say this, but I owned a house like this and somebody walked in with dirty shoes which most farmers do, I would get upset. Okay, we got 88 more, okay so that's what 88 houses taken off of long-term rental. You've got Haiku since I was one kid was always an agricultural community. You know, now they want mini hotels there, you know, which TVRs are. You know, if it walks like a duck, you know...or when I first came in I looked all of this all in one area

first thing that popped into my mind is what's gonna happen to Haiku, you know. I tend to lean towards Commissioner Freitas and will not support this.

Chairperson Lay: Commissioners, any more discussion on the motion? Commissioner Hedani?

Mr. Hedani: Gina, there was a complaint letter that came in not on this particular application, Hale Akaula but on Kiralani, where is that lot in relation to this application?

Ms. Flammer: It's the one down in the right, the blue square that's not within the 500 feet, but it's...is it the next project?

Mr. Hedani: Is that the lot just above—

Ms. Flammer: Hold on, I've got a...you're gonna be reviewing that one as well today.

Mr. Hedani: Where's the complainant's lot?

Mr. Freitas: Right next door.

Chairperson Lay: Commissioners, any more discussion? If not, can we get the Director to repeat the motion please?

Mr. Spence: The motion is to approve as recommended by Staff.

Chairperson Lay: Let's call for the vote. All those in favor?

Mr. Spence: That's four ayes. Nay?

Chairperson Lay: All those opposed?

Mr. Spence: That's three nays.

Chairperson Lay: Okay, so looking at this application, this application has been before us or has been in the process for a very long time. They've done everything they can to get this going they do have...for me, this is my own personal views on this, they do agricultural growth on this property. There is some...it's not something that when completely turned over and they've done a whole just like we're hearing about, just a hotel kind of thing. And with the other 88 or 67 more that could possibly come before us, I think we have to look like...if it is being incorporated in some way as far as agriculture and there is. There's a lotta trees planted there in my opinion and there is some effort. So I'm gonna vote for.

Mr. Spence: That would five ayes. The motion carries.

Chairperson Lay: Thank you.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Department.
(Assenting - M. Tsai, K. Ball, W. Wakida, W. Shibuya, I. Lay)
(Dissenting - J. Freitas, J. Medeiros, W. Hedani)
(Excused - S. Duvauchelle)**

Chairperson Lay: Commissioners, let's take a 10-minute break get back at 10:20.

A recess was called at 10:10 a.m., and the meeting was reconvened at 10:22 a.m.

Chairperson Lay: Planning Commission is now called back to order. Our next agenda item?

Mr. Spence: Thank you, Commissioners. The third public hearing item on your agenda is Mr. Franklin Parlamis requesting a Special Use Permit to operate the Seaview Short-Term Rental Home in the State Ag District, and Danny Dias is our Planner.

3. MR. FRANKLIN PARLAMIS requesting a State Land Use Commission Special Use Permit in order to operate the Seaview Short-Term Rental Home, a five (5)-bedroom short-term rental home located in the State Agricultural District at 295 Waiama Way, TMK: 2-7-003: 110, Haiku, Island of Maui. (SUP2 2013/0002) (D. Dias)

Mr. Danny Dias: Thank you, Director Spence. Good morning, Chair Lay and Members of the Maui Planning Commission. As stated, the item before you is a Special Use Permit application in order to operate Seaview Short-Term Rental Home.

This property is approximately three acres in size and is also located in the Haiku Hill Subdivision. This subdivision now has two approved short-term rental homes and then of course, after this there's another application that you'll have to review. I just wanna point out where they are just to sorta rejog your memory. So obviously in the blue here this is Seaview. The one that you folks just approved is adjacent to it. There was Pinnacle that came before maybe three months ago, that's here. And then the one after this, Kiralani, is right here. So I know there was a question about, you know, the overlap of 500-foot circles. I don't know for sure, but I'm assuming it's probably around these properties here are gonna have, you know, all four of them within 500 feet of them.

The property has two dwellings, an accessory dwelling and a main dwelling. The accessory dwelling won't be rented out. The main dwelling will be. The main dwelling has five bedrooms and is about 4,500 square feet in size. The property has a fully implemented farm plan. This was approved and field verified by our Zoning Division. I know there is an aerial photo in there, it's probably three years old so it doesn't show what they've recently planted. Another thing about the farm plan is we did receive comments from the Office of Planning, I believe, and in their letter they stated that there was no farm plan. I just wanna clarify that there is a farm plan for some reason they skipped over it or they didn't get it. But normally their practice is if there is an implemented

farm plan they don't send us comments.

So with respect to public testimony, we've received six letters of support, three of those letters are adjacent neighbors and as far as letters of concern or protests, we've received none. So with that, I'll hand it over to the applicant's representative, Kathy Clark for a brief presentation. Thank you.

Ms. Kathryn Clark: Aloha, Commissioners. My name is Kathryn Clark and I worked with the Parlamis Family to put together their short-term rental application. The first slide shows exactly where the property is in relationship to Paia and Haiku, excuse me, to Hookipa and Haiku. So Haiku Hill is located between the highway and the center of Haiku Town. This particular property, the long side of it borders along Maliko Gulch. There's actually 37 properties at Haiku Hill and most were previously pineapple crops with the exception of the very top of the hill. The Maui Island Plan does recommend a change in zoning to Rural and if that had already happened, these applications wouldn't even need to come before you. The Haiku Hill Subdivision is a mix of short-term rentals, long-term rentals and owner-occupied homes. My home is in that subdivision and we were actually one of the first properties to be occupied. So we've been there since the beginning.

This is a plot plan of the property. The upper part of the property is actually quite steep. There was a flat spot created for the house and the pool. Below that, the entire lower half has recently been planted with the fruit trees.

Access to the property is along Waiama Way which is a County road. And when Seaview started into this process, there was no farm plan required. The initial applications that came back from the State indicated that they did want to see an implemented farm plan. The Parlamis Family had always had the idea of planting the lower half with the property so this did push them forward to become more oriented towards agriculture. When we started to look at it we considered there were only two options. We could grow crops or raise animals, but with nobody full-time on the property to take care of those animals it just wasn't realistic to assume that we would do that. Would have been lovely to look down and see horses in a pasture, but with nobody being there that really wasn't the right thing to do. So then we looked at what could be planted as a crop. We contacted the UH Crop Extension Office in Kula to discuss ideas for this. Spoke with a master gardener and the first thought was coffee, but it's actually too low in elevation and it's also too windy. So he didn't think that was a very good idea. He also didn't think that small crops with shallow roots would work because the pineapple soil is seriously depleted and he felt that even if we watered them constantly we wouldn't really have a thriving crop. Flowers, of course, would look very beautiful, but they also require a lot of water. So we wanted to grow food rather than something more decorative. And of the options, of course, vegetables, fruits, nuts or grain, the best option was fruit trees. Once they sink their roots deep enough into the ground, hopefully the water requirement will lessen.

So how did we prepare for this because it is a very large area on the property. We had a backhoe come in to dig holes for each tree. The soil is simply too hard to dig by hand. We used Eco Compost and some rich soil to fill those holes. We laid in 1,800 feet of irrigation line, and rather than using sprayers, we put drippers around each tree so as to conserve the water. We repaired the fencing and added extra barbed wire along the gulch side since Maliko Gulch unfortunately is full of deer. And we planted approximately 73 trees allowing space for growth. So this was the very first phase of it. You can see the trenching lines go across the side, along...across the hillside of

the property and trees were approximately two to three feet tall when they were put in. Freddy comes to Seaview every Saturday to weed, prune, fertilize and to look at the fencing. So they are actually growing and this is what some of them look like right now. But we do have a few obstacles to growth and despite the best efforts the deer are finding their way onto the property and they particularly love avocado trees. So they rub their antlers on the base of the young trees, it removes all the bark and the tree does die. We've already replaced quite a few of them. So we keep adding more barbed wire on the gulch side thinking that eventually we're going to be high enough that the deer aren't going to be able to jump the fence. We also had to cutback watering during the dry period so that sort of stalled them a little bit, but I think we're back on track. We've also tried wrapping the base of the damaged trees which this tree seems to be living so in the future perhaps when the deer have destroyed the bark on the bottom we'll wrap them up and hopefully that will still keep the tree living.

The other obstacle to growth in this neighborhood is the soil. This classification C which indicates only moderate potential for agriculture and the recommended uses are pineapple or grazing. They did pineapple for a very long time and this is the soil they left us with. So Launiupoko has a lotta rock, but here in this area we have plastic. And it's just from the years and years of pineapple cultivation. So this was from a little spot that we dug in the soil a few days ago to show you exactly what we were working with.

And then we wanted to talk about taking the crop to market. The first crop is approximately a year away. And we'd like to actually look to the wisdom of this Commission knowing that if we get a permit, we'll be back before you in three years to ask you what you would like to see done with it. We've investigated two plans of this distribution. The first was to donate it. Feed My Sheep appreciates donations. They either use them directly to distribute to people or they sell them so that they have money for other food items. We also spoke with Kehau at Waste Not Want Not and she is interested in coming to the property once we have crops going that they could harvest, but she also mentioned something that I found quite interesting when she heard that we had quite a few papaya trees. Oh, papayas, we really love getting papayas. So we looked at what we have out there, and while the trees are small we can actually go along and put another papaya tree between every tree that is already planted. We don't know if we'll be able to do that forever as the trees get large but they were really spaced just to take into account the canopy of the tree. We are right there below 500 feet in elevation so it's actually ideally suited for papaya. If selling it, we have talked to the people at Mana Foods, Down to Earth and I did go to the flea market to talk to some of the farmers market people and they're always open to receiving produce.

The topography of the property is actually very steep on the top part of it. We did plant wedelia to hold that soil in place. This is the third thing that we've tried. Nothing else seem to live. It was actually recommended by the U.S. Department of Agriculture, National Resource Conservation Service. And I was sorta surprised when I did hear Mr. Hedani mention that wedelia is an invasive species. Unfortunately, this is the plant that they recommend using and it seems to be the only one at least for this particular property that's been able to live on these two slopes.

For fire protection, the Paia Fire Station would respond. Standpipe 151 is straight across from the bottom of the driveway. The fire station to the entry gate is 5.5 miles. There's also a monitored system at the property so that it would provide early detection. And they could also use the water

that's in the pool.

Rental policies. Minimum stay would be seven nights and it would be rented only to carefully screened guests to reduce impact on the home and the neighborhood. I live right there. I really don't want my neighbors calling me to say, oh your guests are a problem. So yes, we would look to select guests to suit the property and not is a disturbance to the neighbors.

The support letters are from the green properties. The white property to the right is the STR that you just approved. The red one at the end is where we live. That concludes our presentation. The owner, Franklin Parlamis is here as well.

Chairperson Lay: Does the owner wish to say anything at this time? Okay, let's go to public testimony.

a) Public Hearing

Chairperson Lay: Does anyone wish to testify at this time? Seeing none, we're closing public testimony. Commissioners, questions? Commissioner Wakida?

Ms. Wakida: Perhaps the owner I could address this to.

Mr. Franklin Parlamis: Hi, I'm Franklin Parlamis, the owner.

Ms. Wakida: Thank you. Why have you chosen not to rent out your property long-term?

Mr. Parlamis: It's actually a very difficult market for long-term rental. It's a pretty substantial property and there's really not just, not just a market to be honest with you. When we moved here in 2005, I looked around for a long-term rental actually before buying the property and it's just not a very established market at all. Plus I also enjoy coming to the property as well. My parents come to the property and my wife's parents come to the property and we use it, so a long-term rental would also, would foreclose that option, so it's better for us.

Chairperson Lay: Commissioners, any more questions? Commissioner Hedani?

Mr. Hedani: This is for the managing agent, I guess. Is the property currently being rented?

Ms. Clark: Yes, it has been. Not frequently--

Mr. Hedani: Short-term rental?

Ms. Clark: --but it has been rented.

Mr. Hedani: Is the prevailing view among property managers that you can go ahead and do short-term rentals without a permit?

Ms. Clark: No, it isn't. I think the properties that started renting years ago, when they started into

the process the Council members had said it's not our intention to close them down while they go through the process. But there is a new crop of owner coming along now that basically should not be renting. They weren't renting before and they shouldn't start renting until they get a permit. So on the property management side, no, the old owners that were renting that entered into the process immediately when they had a chance were renting, but I don't think that you'll see that from people coming to apply in the future.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, question for the owner. Are you living on Maui full time right now?

Mr. Parlamis: No. No, I live in San Francisco. We lived full time Maui from 2005 to 2007, and we live in San Francisco or north, just north of San Francisco.

Chairperson Lay: Commissioners, any more questions? Commissioner Hedani?

Mr. Hedani: This would be for the property manager. What is the prevailing rate for a short-term rental?

Ms. Clark: It totally varies. There's short-term rentals as little as \$100 a night. If you were to look on the south shore there's short-term rentals as much as five, six, seven thousand dollars a night.

Mr. Hedani: In this particular case, what would be your recommendation for a rental?

Ms. Clark: The rate for the house depending on how many people were coming would fall between \$600 and \$1,000 a night.

Mr. Hedani: I'm sorry?

Ms. Clark: Between \$600 and \$1,000 a night.

Mr. Hedani: Okay, so that would be \$15,000 to \$30,000 per month?

Ms. Clark: It could be.

Mr. Hedani: At a 100 percent occupancy.

Ms. Clark: It would never be a 100 percent occupied. We would wish for that of course, but that's not realistic.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Please tell me your name again?

Ms. Clark: Kathryn Clark.

Ms. Wakida: So Norman is your husband?

Ms. Clark: My husband, right.

Ms. Wakida: Just clearing this up because his name is listed here as the licensed realtor.

Ms. Clark: Yes, that's correct. I'm only the paperwork queen.

Chairperson Lay: Commissioners, any more questions? Commissioner Medeiros?

Mr. Medeiros: How much would a week cost?

Ms. Clark: It could be anywhere from say \$4,200 to \$7,000.

Mr. Medeiros: For a week?

Ms. Clark: For a week. And keep in mind that a client that likes a home like this it's usually multi-generational. It's usually grandma and grandpa bringing their married child who might have children. And for them the idea of gathering as a family is very appealing where grandma and grandpa can sit and watch the children in the pool or cook meals together. That's sort of what they're looking for when they come to a property like this. We actually get a lot of requests from local people that want to bring their family here and they wanna a place where they all can stay together.

Mr. Medeiros: Thank you. So 7,000 a week, and 7,000 a week would ...there'll be some months that you'd rent it two months.

Ms. Clark: I'm sorry?

Mr. Medeiros: I mean there would be some months when you'd rent it two weeks right?

Ms. Clark: And some months when you rent none.

Mr. Medeiros: That's a lotta money for a farm.

Ms. Clark: I just wanna explain that I think when we think in terms of the rent, we think automatically in terms of the owner, but 30 percent off the top of that, goes to managers and agents that are local people. This is how, you know, my family makes a living. This is how the agents that might have clients for the house make a living. So it doesn't all go to the owner. And then when it does, of course, we go Franklin you need to repair the rot, Franklin you need to do this, Franklin you need to do that. There really isn't a lot that ends up in an owner's pocket.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: In this particular subdivision, you know of others that are in the short-term rental business?

Ms. Clark: The ones...well, there's the four that have applied to you.

Mr. Hedani: I'm talking about people that haven't applied.

Ms. Clark: Actually I do know of one.

Mr. Hedani: So the answer is yes?

Ms. Clark: Yes, there is one. Do we rent this property? No, we absolutely do not. But I believe there is one.

Chairperson Lay: Commissioners, any more questions? If not, can we get the Department's recommendations?

Mr. Dias: Thank you, Chair. The Department recommends approval of the Special Use Permit subject to six conditions. I'm sorry, seven conditions.

Mr. Ball: Move to approve.

Chairperson Lay: Motion by Commissioner Ball. Do I have second?

Vice-Chair Shibuya: I'll second.

Chairperson Lay: Second by Commissioner Shibuya? Any discussion on this motion? Commissioner Freitas?

Mr. Freitas: I'm going to abstain from voting because I'm one of the founders of Waste Not Want Not...(inaudible)...

Chairperson Lay: Any more discussion on the motion? If not, can I have the Director repeat the motion?

Mr. Spence: The motion is to approve as recommended by Staff.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's four ayes.

Chairperson Lay: Those opposed?

Mr. Spence: One, two nays.

Chairperson Lay: Wow, I thought it was a long day, I didn't know it was going to be this long. This one is a toughy. How long has this been in this Planning Commission so far?

Mr. Dias: How long has this process been going for this property?

Mr. Dias: You know, this was one of the ones that was reassigned to me, but let me...December 26, 2012. So almost a year. Almost a year, but...you wanna just come and...I believe the actual process to do the farm plan and so forth started in summer time of 2012.

Chairperson Lay: I'm gonna have to take a little break here and think about this. Give me about five minutes. We'll come back at ten to...

A recess was called at 10:44 a.m., and the meeting was reconvened at 10:49.

Chairperson Lay: After some deep thought I've decided that yes, we're gonna approve this. So we got-

Mr. Spence: That be five ayes and two nays.

Chairperson Lay: Motion carries. Congratulations.

Mr. Spence: And one abstention.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Department.
(Assenting - K. Ball, W. Shibuya, M. Tsai, W. Hedani, I. Lay)
(Abstaining - J. Freitas)
(Dissenting - J. Medeiros, P. Wakida)
(Excused - S. Duvauchelle)**

Chairperson Lay: Our next agenda item?

Mr. Spence: The fourth public hearing item Commissioners is Mr. Erich Schneider and Ilse Schneider also requesting a Land Use Commission Special Use Permit for a three-bedroom short-term rental home in the Ag District, and Danny Dias is also our Staff Planner for this one.

- 4. ERICH SCHNEIDER and ILSE SCHNEIDER requesting a State Land Use Commission Special Use Permit in order to operate the Kiralani Short-Term Rental Home, a three (3)-bedroom short-term rental home located in the State Agricultural District at 2344 Umi Place, TMK: 2-7-003: 111, Haiku, Island of Maui. (SUP2 2013/0004) (D. Dias)**

Mr. Danny Dias: Thank you, Director Spence. As stated this is last short-term rental home in this neighborhood. It's called Kiralani and it's located on a two and a half acre property. Next to it, basically on top of the hill is the Pinnacle short-term rental home and that was as mentioned earlier a short-term rental that you folks approved about three months ago.

Regarding structures on the property there is a single structure, a single dwelling that is three

bedrooms and approximately 1,500 square feet in size. The property also has a fully implemented farm plan which was approved and field verified. And just on a personal note having gone to this subdivision numerous times, I haven't been to every house or seen every house but I think this property probably has the most ag going on of all of the homes in the neighborhood. When they decided to apply for a short-term rental permit and we told them they needed a farm plan, you know, they really went to town. You know, if you look at the aerial view you can see that the trees when the picture was taken aren't very mature but when they do become mature essentially they won't really have a yard it will just be nothing but fruit trees and whatever else they're growing. With respect to public testimony we received two letters, one for...or I should say one in support and one letter of concern or protest. The letter of protest is directly to the north and the letter in support is directly to the south. And that basically sums it up. So I'm gonna have the applicant's representative Margit Tolman come up for a brief presentation. Thank you.

Ms. Margit Tolman: Good morning again, my name is Margit Tolman with ERA Pacific Properties. I'm representing the owners, Erich Schneider and Ilse Schneider with their application for the Kiralani home in the Haiku Subdivision.

This is an aerial picture of...I found on Google Map, it's pretty recent probably from spring where you can see the implementation of the farm plan. The trees are very small at this point. We will have more pictures and show you the focus of the implementation of the farm. This is...everything Erich and Ilse's dream home. They plan to retire here on Maui. They plan to have a farm that will be their retirement work when they are able to move over here full time.

This is the entrance of the property from Umi Place, very good, visible, nice access. And the driveway goes straight up to the house.

The neighborhood, you heard a lot about this neighborhood. I'm representing two properties and I know a lot of the neighbors for many years being in this business. It's very quiet, peaceful and that is our goal to keep it this way. The Schneiders have been here about five times. They just purchased this place last year in September and it's important for you to know that after the law was established and they have a really good relationship to all his neighbors. You heard about one letter of concern. I would like to explain that we did not know about this letter because this application was handed to Danny Dias, another planner had it before. We knew about this letter maybe a week before Erich and Ilse came to Maui for this hearing. They have been in contact with the neighbor and we tried to set up a meeting and it didn't happen at this time. There was just no good timing for them. But I don't...there was no more concern voiced.

These pictures are from 2012 after the Schneiders purchased the property. There was very little agricultural use except coffee trees along the border of the property and there was a big nursery.

This shows the farm plan after many hours of thought. The farm plan was established by Simon Russell who is present here for any further question. As you can see, pretty much most of the land is now in agricultural use and that was from the beginning...(inaudible)...of Schneiders. We first start off the implementation. There was a lot of dirt moving. I haven't seen something like this before. Lot of trees were planted. I have a full list of all fruit trees. Here again, just to show you before and after the implementation even though the trees are still small, they just need a few

years now to get established and have crop. Some mature trees where have been on the property like the bananas and the avocado tree. They just needed a little love to have good crops. And on the right bottom you see the implemented...the new trees which are amazing fast growing.

This is just to compare May to November. On the left upper picture, you see the implemented flower bed, on the right side this is how it looks now in November. We harvest the flowers. I need a lot of flowers for all my properties because the guests are getting a nice bunch of flowers as welcome greeting. And on the bottom are the fruit trees after implementation and November shows that they are really happy. These are some of the flowers we are harvesting at this point, mostly heliconia. A whole list of the different variety of trees and they were very carefully selected to have a large variety. Additional crops, there's coffee, lots of papaya, coconut, sugar cane, passion fruit, taro, a lot of herbs, breadfruit tree and lots of bananas. The agricultural activity number one is a fruit plantation. Second, is the flowers. Right now we do...cannot a show a lot of crops yet, however, it's right now it's a benefit to the plantation workers, the families and our guests. All our trees are labeled with their names because we allow guests to pick whatever they like. This is Ilse Schneider and within the last year she is learning to be a farmer in caring for land with an amazing passion. These are all the lilikois just planted last year. The crop produced right now mostly will be taken to Mana Food.

The Fire Department, the nearest fire station is Paia. The fire hydrant as I explained before for the other property is on Haiku Road just outside of the entrance of the subdivision. The standpipe is across the street on the next property. Thank you very much. If you have any questions, Simon Russell here implemented the farm and the owner, Ilse and Erich Schneider.

a) Public Hearing

Chairperson Lay: At this time, I'm going to open up to public testimony. Does anyone wish to testify at this time? Seeing none, we're closing public testimony. Commissioners have questions? Commissioner Medeiros?

Mr. Medeiros: Question for the owner.

Ms. Ilse Schneider: Hello.

Chairperson Lay: If you can identify yourself please also?

Ms. Schneider: I'm Ilse Schneider.

Mr. Medeiros: She mentioned that you were hoping to retire on this property eventually?

Ms. Schneider: Oh yeah, definitely. In between three to five years.

Mr. Medeiros: You would retire on that property?

Ms. Schneider: Uh hmm.

Mr. Medeiros: That's what I like hearing. You got my vote.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: The question I ask everybody that comes in for a short-term rental is why have you chosen not to rent it out long-term?

Ms. Schneider: We love it here. Alone this year this is the third time that we are here. Each time for six to eight weeks. We just love to be here, see. You know, and we harvest the lilikoi for instance, only this visit I was twice selling lilikoi once to Mana Food and once to...(inaudible)...and earlier in the year breadfruit.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Ma'am where do you currently reside?

Ms. Schneider: In Utah, in southern Utah in Moab.

Chairperson Lay: Commissioner Ball?

Mr. Ball: This complaint letter, how have you addressed the concerns of that neighbor of yours?

Ms. Schneider: Okay, as Margit had mentioned we didn't know about the letter until I think one or two weeks before we came here and I can only say, I mean since we are here but also in the past over the whole year we had neighborly talks, you know, over the fence with the whole family, with Jerome, Sr., with his son, with his wife and this time I invite the family please to come over to show them what we did. We did a lot of planting arecas, bamboo, we built a berm just to have more privacy, I mean for us and for him. And even before we know about the letter, I talk to him and he mentioned that he would like to see the Haleakala. And there are these huge ironwood trees in his side. And we agreed to cut them down and my husband, Erich started already. So this will be gone.

Mr. Ball: And this was after January 14?

Ms. Schneider: Yep.

Mr. Ball: I'm referencing the letter on that date, January 14, Exhibit 18. Thank you.

Chairperson Lay: Commissioners, any more questions? Commissioner Wakida?

Ms. Wakida: Yes, I do. Ma'am would you...Well, first of all, what is the minimum stay that you are proposing for your rental?

Ms. Schneider: It's a seven-night minimum stay.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: In the presentation, your manager referenced plantation workers, would you...would that be, what, people who are taking care of the...gardeners or what, who are these people?

Ms. Schneider: We have a caretaker, fantastic caretaker. He planted everything. He's Simon Russell?

Ms. Wakida: Excuse me?

Ms. Schneider: He is Simon Russell. He made the design for all the trees being planted. It's all organic. And of course, we have somebody who mows the lawn. Bill, who comes like twice a month. So we create also some work.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: This is a question for the Department I guess. The applicants that are coming before the Commission appear to be under the assumption that they can continue normal short-term rentals as long as their application is pending is that correct?

Chairperson Lay: Director?

Mr. Spence: I wouldn't say that that's the case. I mean, you have people who I can't say all of them but certainly some them have short-term rented. So they're coming forward to become legal, to legalize their operation, and they're being honest with you ask that question, they're admitting yeah, we did short-term, but we've never told anybody that it's okay to rent, you know, while you're doing...while you're in the application process.

Mr. Ball: Or the opposite?

Chairperson Lay: Commissioner Ball?

Mr. Ball: Or the opposite.

Mr. Spence: I don't think we've said that either.

Chairperson Lay: Commissioners, any more questions? Commissioner Hedani?

Mr. Hedani: I'm gonna ask the question, if they rent short-term before the permit is approved is that a violation?

Mr. Spence: Technically, yes. But at the same time as, you know, as Gina talked about before, the Council didn't wanna shut people down while they're operating, you know, a lot of these people are...we were trying to encourage people to come forward and legitimize their operation rather than punishing them. I mean, you just, you don't wanna punish applicants for doing the right thing by coming forward and applying. So, if there are complaints that's a different matter, but we haven't had complaints. We have the one letter of concern but as far as I know that's all we have on this, and it sounds that's even been resolved. So...

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I guess this would be a follow-up question for Danny or the Director. As we look, as we process the 88 applications that may come forward relative to short-term rentals, do we have or can we aggregate on a map a record of complaint letters that have been come forward on all the applications so that as we aggregate information we know which lots are opposed, which lots are in support of applicants?

Mr. Spence: I'm sort of curious why you would want complaint letters on a map?

Mr. Hedani: Well-

Mr. Spence: Because they're so individualized with the individual applications.

Mr. Hedani: Yeah. Well, my reason for asking that is that when we look at individual applications, we try to aggregate as much information as we can within that area. From the standpoint of the people that are neighbors to the four, you know, four operations that are gonna be in this particular subdivision at the current time, some of those neighbors don't know that there are four applications pending in most cases I would think. And they don't know in some cases that they're gonna be impacted, possibly impacted. In this particular subdivision I don't think it's that much of a problem because you're working with two-acre lots and there's a lot of space in between neighbors, but from the perspective of other areas what I'd like to know is in this community or this neighborhood how many people have filed complaints with the Department. And my reason for asking is I'm thinking with the technology that we have today it's easy to identify a tax map key by tax map key the individuals that have filed complaints show us a map that displays that.

Mr. Spence: When the applications come before...there's two reasons why applications come before you. When they need a Special Use Permit or when there's one closer than 500 feet, you know, closer than 500 feet together or between them. And so when those things come before you, we show you everything. I mean, we report everything whether it be, you know, letter of concern or an RFS or anything like that. So you're getting that information already. And now, and we're already presenting to you maps showing where locations of, you know, all the applications are. So I'm not sure what difference...because you're already getting the information.

Mr. Hedani: Let me clarify. I'm sorry.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: If you look at the map in this particular case, if the neighbors who say the Kiralani were to come in with a short-term rental application that application would go out, a notice would go out for the neighbors within 500 feet and they would have the opportunity to provide testimony I guess for or against.

Mr. Spence: Right.

Mr. Hedani: I guess if it was a neighbor, the ...(inaudible)...should already be recorded or if...they

would have to file another letter of complaint in order to be picked up on the map?

Mr. Spence: I still don't understand why it needs to be put on the map because you're already getting this information. If we get...the neighbors within 500 feet, whether there's five of them or whether there's 2,000 of them, they get notified via certified letter. And if they have concerns, you know, you get all those in your packet if, you know, for every short-term rental...say if somebody is within 500 feet for a couple of these, they'd still have opportunity to provide you with their viewpoints on it and you get those. I don't see the purpose of...and we inform you which lot they come from. Danny said there's one letter of concern just, I forget, to the south or whichever side it is on and one in support on the other side. So you get all the support and you get all the negative comments. And we tell you where they are.

Mr. Hedani: Okay.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I actually see the validity behind Commissioner Hedani's request being that when we look at the number of applications coming...well, proposed or existing it would be nice to know which ones have or where a concentration of complaints are gathered because for us when we look at if for example you take a map of Haiku Hill wherever it is and you have more people in certain areas are complaining then for us I think that's a valuable information knowing the neighborhood and perhaps effects our decision whether to approve or not approve.

Mr. Dias: I get what you folks are saying. The problem with that though is we do want complaints to be more specific because in some instances and I've had this situation before where you know we have two short-term rentals, you know, they're like, you know, two properties away and somebody will write a letter in protest of one, but they have no problem with the other one because that one has had issues in the past, the other one is operated well. So if we do a map that can be misleading because you can say, okay this guy doesn't like short-term rentals when it's not necessarily the case, he just doesn't like a specific operation. So...

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I can understand where Wayne is going. That 500 feet it's good for the neighbors, but they're still affected. The neighborhood is still affected traffic wise. And what if there's 600 either way. I mean a 100 feet and you're affected by the traffic and that's what you don't like. You know have any rights to complain or you know, you don't get notified so that you can have that right?

Mr. Dias: Part of the application process is they do have to put up a sign. It's not just a 500-foot notice. They gotta put up a sign on the property. So you know, of course, if you're in the beginning of the subdivision you may not necessarily see it but there is that other option too, and then of course, you know, the notices in the paper and so forth.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Danny, when you talk about the sign that's required to be posted as soon as they go in for application?

Mr. Dias: Actually the law says like five days before. So before you even come in for an application you're supposed to put up a sign and that's one level of notification to the neighbors. So they're notified, you know, in multiple ways and then that's not by accident.

Chairperson Lay: Commissioners, any more questions? Commissioner Hedani?

Mr. Hedani: So just to clarify your position Danny, each application has to stand on its own, letters of support or letters opposed and the application that came before it shouldn't taint the application that comes after it is what you're saying?

Mr. Dias: Correct. And I think you know the individual applicants would...could, you know, successfully argue that, you know I run a clean operation. The guy down the street, you know, he parties and so forth. Don't hold his complaints against me.

Chairperson Lay: Whereas with this application they had problems with the view and it was addressed and cut down, where the view is, it just applied to that one person, I mean, that one neighbor. Where like they said the next door neighbor down the road it might not affect them and they feel fine with them being there. Any more questions, Commissioners? Seeing none, can we get the Department's recommendation?

b) Action

Mr. Dias: Thank you, Chair. The Department recommends approval of the Special Use Permit for Kiralani subject to seven conditions.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Move to approve.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Ball, seconded by Commissioner Medeiros. Any discussion on the motion? Commissioner Wakida?

Ms. Wakida: Yes, I am conflicted on this one. I have taken seriously the policy that the...the last two applications, maybe the first one as well, have listed under the land use and it says the policy is to maintain a balance between resident and visitor population by controlling and regulating growth of visitor facilities. And that's kind of guides my thinking about the density of short-term rentals in any one area. Gina or somebody, I think it was Gina made a point about concentrating short-term rentals in one area and keep em out of other areas when the cap gets reached. So I'm a little on the fence here on this application.

Chairperson Lay: Any more discussion on the motion? Commissioner Medeiros?

Mr. Medeiros: I'm supporting this, you know, for as long as I've been alive, when people wanted to move here we said welcome. This is not from...her intent of retiring here making this her home makes it in my heart makes it all good. It's not just speculation, okay, let's go and get a property and we can have this vacation property and down the road we'll sell it and make a nice tidy profit. We're not taking care of local people. She wants to be a local person. Okay, she has an intent on living here. Okay, and that goes a long way with me. With that she's got my vote and my welcome.

Chairperson Lay: Commissioners, any more discussion?

Ms. Wakida: Do we need to wait for our missing member, Chair?

Chairperson Lay: Not at this time. Can you repeat the motion?

Mr. Spence: The motion is to approve as recommended by Staff.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's six ayes.

Chairperson Lay: Motion carries. Congratulations.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Department.
(Assenting - K. Ball, J. Medeiros, M. Tsai, W. Hedani, P. Wakida,
W. Shibuya)
(Excused - S. Duvauchelle, J. Freitas)**

Chairperson Lay: Okay, Commissioners lets take a little 10-minute break here. Come back, reconvene at 11:30.

A recess was called 11:21 a.m., and the meeting was reconvened at 11:32 a.m.

Mr. Spence: Okay, Commissioners this is your fifth public hearing item this morning. So anyway, this is Mr. Frank Morris and Mr. Gabriel Gallucio. I hope I got that okay. I got thumbs up back there. State Land Use Commission Special Use Permit for a short-term rental home in the Ag District. This one is not in Haiku Hill. This one's on East Kuiaha Road in Haiku, and the Staff Planner this morning is Mr. Kurt Wollenhaupt.

- 5. FRANK R. MORRIS, JR, and GABRIEL L. GALLUCIO requesting a State Land Use Commission Special Use Permit for the Hale Hiluhilu Short-Term Rental Home to permit a total of six (6) bedrooms in two (2) short-rental dwellings (main dwelling - four (4) bedrooms and accessory dwelling - two (2) bedrooms) in the State Agricultural District at 910 E. Kuiaha Road, TMK: 2-7-012: 186, Haiku, Island of Maui. (SUP2 2013/0009) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good morning, Chairman Lay and other Members of the Maui Planning Commission. The item before you has been on file since December 17, 2012. This is one of the original ones that has come in. Today we do have both owners in the audience Frank Morris, Jr., and Gabriel Gallucio along with their consultant today is Margit Tolman who will be doing a power point presentation, and we're also fortunate to have Simon Russell who will be talking to you who is actually farming the property.

The farm plan has been approved by the Zoning and Enforcement Division. It's also been implemented, verified by Staff. I've been out there. Driven out to the property and walked it. The property is located on two acres as noted before it's 910 East Kuiaha Road. In addition to the map that Gina handed out earlier today which I think all of you had which shows the B&Bs and the short-term rentals in the area there are no approved bed and breakfasts, there are no approved short-term rentals within 500 feet of this application. In addition, I went out to a 1,000 feet there are no approved B&Bs within a 1,000 feet and no approved short-term rentals within a 1,000 feet. As you've been noted today at the start of today there were 27 permitted STRH operations in the Haiku...Paia-Haiku Community Plan region out of the, of course, the 88 that are allowed by the cap.

The subject parcel is on a relatively standard lot. It's relatively flat except there is an unusable steep gulch portion on the western edge which will be shown in the power point presentation. The Police Department was contacted about this and they had no problems, no notices, no RFSs on record of any problems with this property regarding building permits or noise or any other issue. It was also sent to the State Land Use Commission, the State Office of Planning. They had no comments on this. As has been indicated previously the State Land Use Commission is in the Chapter 205-6, HRS it allows for establishment of such uses and there are the five factors our Director alluded to originally. They are noted in the report. The reasons for this recommendation by Staff is also noted in these five conditions.

The agricultural land use is C rating which is similar to those before. This would be the average rating of farm land in this area showing pasture land and fruit production on the property. Again as I said the farm plan was approved on December 6, 2012. It's been implemented. The agricultural usage includes a orchard, duck nursery, vegetable garden taking up approximately 59 percent of the lot. The infrastructure and public facilities are noted in the report as well as a detailed farm plan and also a detailed house plan. So Ms. Tolman will give you a brief power point that will help to illuminate all of this application.

Ms. Margit Tolman: Aloha, Commissioners again. This is Margit Tolman with ERA Pacific Properties. I'm the property manager for the subject piece of property and also did the application for the owners.

The property is located at 910 East Kuiaha. This is the upper area at East Kuiaha Road. The aerial view shot shows you the cottage has its own driveway from East Kuiaha and the house has a long driveway and on the property line. The property is very well established with agriculture activity for many years. On the left side, point view see that as more the gulch area. First homes were built in 2005 by Gabriel and Frank. Their goal is to retire here in hopefully a few years. Both homes are...the cottage at this time is long-term rented and will stay this way because the tenant is taking

care of the farm. And the two-story home has four bedrooms and we'd like to continue vacation rental in this house. These are the driveways. The right upper picture shows you the driveway to the main house and on the left side is the driveway from East Kuiaha to the cottage.

The neighborhood is a collection of small to medium family dwellings, 2 to 20-acre lots. Some in the neighborhood including including Hale Hinuhinu are actively involved in small farming or gulch restoration. And tenant Simon would like to maybe talk to you about his farm activity. The property had an existing farm plan but we didn't have any information any more so we established a new farm plan and updated the existing one. All the outlined area in red is right now in agriculture use. This is a detailed explanation how large the areas are. If you have specific questions about the trees growing and their purpose I'd like to ask you to ask Simon. Mostly there are lots of citrus fruit trees, coconut and Simon has a large vegetable garden he is using for his own family. This was originally the implementation of the first farm plan a while ago probably 2004, 2005. The property had only cane grass and needed to be cleared and planted. And the soil needed a lot of extra work to make crop growing. Lots of bananas we have planted. On the left side already established in the early years and the right photo is a new picture. It's a really large banana patch and the crop is sold to mostly to Mana Foods. This is the vegetable garden Simon farms. The start was planter boxes, three weeks later it was already flourishing. This is pretty much how it looks right now. Lots of labor, lots of love for the land. He also has a nursery and propagates Hawaiian plants, endemic plants. This is a koa tree. A papaya patch was established just as the border of the gulch. And there is already harvest. Some more pictures of the vegetable garden. Additional farm activity is a duck pen. The agricultural activity it's ...(inaudible)...and vegetable. The farmer is Simon Russell and he has the benefits right now of harvesting and bringing the fruits and vegetable to the market. He provided with some receipts recently from the banana harvest.

The next standpipe is about 130 feet across the street. The next fire station is Makawao Fire Station, 5.8 miles away. It's about 14 minutes drive. Thank you very much. This is our farm dog, Paka.

a) Public Hearing

Chairperson Lay: At this time, I'm going to open up to public testimony. Does anyone wish to testify at this time? Seeing none, public testimony is closed. Commissioners, questions? Commissioner Freitas?

Mr. Freitas: For the applicant or the owners?

Chairperson Lay: Please...in the mic please?

Mr. Frank Morris: Frank Morris.

Mr. Gabriel Gallucio: Gabriel Gallucio.

Mr. Freitas: Frank, I see you have ducks for egg production. How many ducks you got? I see you got a male duck here and male ducks don't produce eggs?

Mr. Morris: There's about 10 ducks.

Mr. Freitas: Okay, thank you.

Chairperson Lay: Commissioner Hedani, oh Commissioner Ball?

Mr. Ball: The access to the main house is there an easement for that access, deeded easement?

Mr. Morris: Yes.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Your presenter said these houses were built in 2005, did I understand that correctly?

Mr. Morris: Four I think.

Ms. Wakida: And when did you acquire the property?

Mr. Morris: About two years before that.

Ms. Wakida: Oh, so you built the homes?

Mr. Morris: Yes.

Ms. Wakida: Have you ever lived on the property full-time?

Mr. Morris: Full-time. I came and did all the landscaping with Simon. So just for about eight months. I used to live in Los Angeles and the idea was to keep coming on a regular basis, but then I got transferred. I work for FOX and I got transferred to Europe. So I've been not coming quite so regularly. It's a very long trip. But the idea is to, to be here permanently.

Mr. Gallucio: I used to live down the road on East Kuiaha.

Chairperson Lay: Please identify yourself too.

Mr. Gallucio: I'm Gabriel Gallucio. I used to live down the road on East Kuiaha, the very beginning of East Kuiaha for about two years before we bought.

Chairperson Lay: Commissioner Wakida or Commissioner Ball?

Ms. Wakida: I'm just trying to...so since you built these two dwellings, you've rented one out long-term is that correct?

Mr. Morris: We've had them both up long-term. The ohana was easy to rent--

Ms. Wakida: Right.

Mr. Morris: And that's always been rented long-term. The main house we never got a long-term tenant. We tried quite a few times. As a matter of fact in the last few years we've also had it up for long-term rental and never got a tenant. So we've just...we've done both, a mix of both, whatever was available. So, long-term would have been okay with us because if we came we've got lots of friends with ohanas we can stay at. It's not an issue, but it just was really difficult to get a tenant.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yes, you said long-term you could not get a tenant. What was the rent you were asking for long-term rental...(inaudible)...

Mr. Morris: I believe the last time we had it up I think it was \$1,800.

Mr. Freitas: That's probably why you didn't have a tenant. Some people can't afford that.

Mr. Ball: That's cheap.

Mr. Morris: Just with the mortgage and everything else...I didn't think it was too bad, but...

Chairperson Lay: Commissioner Ball?

Mr. Ball: That's what a four-bedroom home goes. I think that's cheap actually, but anyway, the...this is actually for staff, just in a general question. So when we give permits for this is it for the property or is it for...lets say we pass this, the cottage is to be rented long-term. Would that have to come back for that or is that...or you go to the property and then it's--

Mr. Wollenhaupt: The short-term rental bill allows for a total of six bedrooms and the applicant as part of the flexibility wish to apply for a short-term rental for the total of six as is allowed for two dwellings on the property. That would be for the cottage and for the main four-bedroom house. So that would allow maximum flexibility in the future. And Mr. Russell, who's in the audience who I think you'll probably have some questions to acknowledge all the agriculture, he and his family live in the cottage. And it's my understanding from the owners and from the consultant that it's everyone's intent to have Mr. Russell stay there as long as--

Mr. Ball: And I was just talking in general not specifically this property. But usually the staff person, i.e., you or whoever would bring the permit in for the structures not...

Mr. Wollenhaupt: Well, they can apply for however--We bring the application to you based upon what the applicant wants as long as it meets the requirements and what the law allows are two structures on the property, a total of six bedrooms.

Mr. Ball: Okay, thanks.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Kurt, you know all of the applicants that have come today have pointed to standpipes across the street basically. How does the standpipes work as opposed to a fire hydrant?

Mr. Wollenhaupt: I guess our Public Works representative is—

Chairperson Lay: Not here today.

Mr. Wollenhaupt: I'm not an expert in that. I'm not sure. There's probably some kind of a—there's a fireman in here. Is there a fireman in here?

Mr. Hedani: My question was just how do standpipes work? Does the Fire Department hook up and pressurize it and does it then provide water to the house?

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: The standpipes normally they hook it up to the fire trucks and it pumps it. But normally the volume ain't enough there to supply the pumper truck. So normally they just lay hose to the fire.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: For the applicant or one of the applicants is fine. Did I hear you correctly when you said that your long-term tenant you hope to keep?

Mr. Gallucio: Yes, that is correct.

Ms. Wakida: Is that true?

Mr. Gallucio: Yeah.

Ms. Wakida: Okay, because you said that he's the one that takes care of the farming and takes care of your animals and so on?

Mr. Gallucio: Yeah, he's the farmer living in the land. So our intent is to keep Simon on the property as long as he wants to stay there.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: One more question. And then you also indicated some future plans that the two of you have to live on the property could you repeat those?

Mr. Gallucio: Yeah, the house were built with that intent. With the intent of having a homestead in the property. We both have large families so the main home is large enough to house our family when they come over. In fact, several times we have had family reunions in the property when we all take vacation together.

Ms. Wakida: So you're not planning to come over and live in this house?

Mr. Gallucio: We're planning to come over and live in this house. It's just that we want a house big enough so our family can come and visit us and stay with us as well. But the intent is to live on this island. The intent is to retire on this island.

Chairperson Lay: Commissioners? Commissioner Medeiros?

Mr. Medeiros: I'll take the same position I took with the last one. If you want to move here, welcome.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Well, I'm gonna pin you down a little bit then if you wanna move here. Do you have a projected time line?

Mr. Gallucio: It's money wise a little bit. You know there's a couple of things that are actually evolving right now and certainly the vacation rental will expedite the process for us to be able to have an extra cushion for us to be able to retire sooner and there's also some new things that are starting to happen for Frank to be moving here sooner.

Mr. Morris: I'm sorry. When I left Europe I went to North Carolina. I have family there and I started a business with my brother. We do concrete counter tops and things like that. I've just been in discussions here with a fellow who has a concrete business here and I'm meeting with him again on Thursday. He's, right now his business is kind of on hold because he's been...he's a project manager of the new telescope up in the top of the mountain. So we're discussing us coming over on a job basis and doing work for him. So if I do that then I can start slowly moving my business over here as well. But it would work fine with the vacation rental because if I have a job, I'll just book the house rather than pay somebody else, I'll pay myself which would be great. But that's the intent is hopefully we'll be able, I'll be able to move my business over here as well.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendation?

b) Action

Mr. Wollenhaupt: The recommendation is to approve the application as presented in the staff report.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I move to approve.

Chairperson Lay: Motion by Commissioner Medeiros.

Mr. Hedani: Second.

Chairperson Lay: Seconded by Commissioner Hedani. Any discussion on the motion? No

discussion. Can we get the Director to repeat the motion?

Mr. Spence: The motion is to approve as recommended by Staff.

Chairperson Lay: And call for the vote. All those in favor?

Mr. Spence: Six.

Chairperson Lay: Those opposed?

Mr. Spence: One opposed.

Chairperson Lay: Motion carries. Congratulations.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Department.
(Assenting - J. Medeiros, W. Hedani, K. Ball, M. Tsai, P. Wakida,
W. Shibuya)
(Dissenting - J. Freitas)
(Excused - S. Duvauchelle)**

Chairperson Lay: And we're gonna move onto our next agenda item seeing we can--

Mr. Spence: Okay, Commissioners, this is New Business. Mr. Albert Kanno, Manager of ABC Development Company, LLC., requesting comments on the Draft Environmental Assessment, and I know I saw Paul Fasi just a moment ago. This is the great big, thick book we passed out.

C. NEW BUSINESS

- 1. MR. ALBERT KANNO, Manager of ABC DEVELOPMENT COMPANY, LLC requesting comments on the Draft Environmental Assessment prepared in support of the community plan amendment for the Waikapu Light Industrial Project, a 7-lot light industrial subdivision and related improvements at 109 East Waiko Road, TMK: 3-8-007: 105, Waikapu, Island of Maui: (EA 2013/0003) (P. Fasi)**

The entity who will decide on the acceptance of the Final Environmental Assessment is the Maui Planning Commission.

The EA trigger is the Community Plan Amendment.

The public hearing on the Community Plan Amendment, Land Use District Boundary Amendment, and Change in Zoning will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.

Ms. Cheryl Okuma: Would you like me to?

Chairperson Lay: If you can proceed? Yeah, just identify yourself please?

Ms. Okuma: Yes, my name is Cheryl Okuma and I'm from Munekiyo & Hiraga. Good afternoon Chair Lay and Commissioners. Thank you for the opportunity to be here before you today as the Maui Planning Commission reviews and comments on the Draft Environmental Assessment for the proposed Waikapu light industrial project.

We are before you here today to request the Maui Planning Commission's review and comment on the Draft Environmental Assessment for the Waikapu light industrial project. This is just some project information. The project is of course the Waikapu light industrial project and the applicant is ABC Development Company, and we do have Mr. Albert Kanno here with us here today. The project is in Waikapu and the document that is before you is the Draft Environmental Assessment and the trigger for the Draft Environmental Assessment is a community plan amendment request. We will be coming in at a later point in time on this project after the Commission is completed with the environmental review process but that is the trigger and the reason why we have the Draft Environmental Assessment. And of course, the Maui Planning Commission is the approving authority.

In terms of the project team, as mentioned, we do have Mr. Albert Kanno representing ABC Development Company as the applicant. Also from RT Tanaka Engineers is Kirk Tanaka, and from Austin Tsutsumi and Associates, Matt Nakamoto, and myself as mentioned from Munekiyo & Hiraga.

Just some context in terms of this project. As you can see the project is located in Waikapu. And it is between the two main arterial highways here in the region, Honoapiilani Highway and Kuihelani Highway to the east.

A little further context in terms of the surrounding land use. Here again is the project site. Is in within an urbanized corridor within the Waikapu region. As you can see to the east is the Fong Construction Baseyard, Consolidated Baseyard. To west, Waiko baseyard, and to north and the south is the Waiale Project District for master plan community in the area.

Some perspective in terms of the historical use of this project site. For 20 years this has been the area of industrial use through special use permit and conditional permits in order for the Maui Scrap Metal Company to operate its scrap yard on this parcel. When those permits expired, the State Department of Health ordered the Maui Scrap Metal Company to do site clean up. And at that point in time the scrap yard contained approximately 40,000 tons of scrap metal, tires, white goods, washers, dryers, construction equipment as examples. It was in 2007 that ABC purchased the property as is. And ABC, the applicant, completed a site clean up of this parcel in 2010 at significant cost now making this a useable piece of industrial land.

And the following pictures will give you an idea of what the applicant was dealing with. Some pictures before clean up here. So this is the view west if you're standing within the project site and

you're looking out towards West Maui Mountains. You can see the electrical line in the background which tells you where the Waiko Baseyard basically sits. This is another view, it's from within the project site if you're looking east and out towards Haleakala with East Waiko Road would be to the right of this area. So the applicant made substantial efforts to clean up the parcel at significant cost and the following pictures give you an idea of what we are viewing today. So again, if you're within the project site and you're looking to the west you can see the electrical line along Waiko Baseyard in the background. Here's another picture is a view from within the project site looking east out towards Haleakala and it was really through the use of a variety of heavy equipment, shredders, and balers to remove this metal that had accumulated on the property and shipped it off to Oahu to a recycling company there. The applicant made use of specialized heavy equipment such as trommels on the site in order to separate some of the smaller materials from the impacted soil, and then what the applicant did all under the supervision and approval of the State Department of Health, took those affected soils, contained them, placed them into cells within the ground, and capped it then with approximately three feet of clean soil.

In terms of this particular project, the applicant is proposing seven light industrial leasehold units on 8.5 acres and the lots would range in size from about .8 to 1.5 acres. Project access would be off of East Waiko Road and this area has been designated by the Maui Island Plan as being within the Urban Growth Boundary. There will be related improvements which include grading, grubbing, utilities, internal roadways as well as drainage as examples.

Now this is what the project site plan would look like. There is, there are seven common, what's referred to as common elements or units on this parcel. And roadway access would be from two points. This is one of them. This is the original access road at the time of Maui Scrap Metal and this is basically a new access road in order to access some of those internal lots. There are...water meters have been issued for this parcel and there are water lines basically within Waiko Road connecting up to where Waiko Baseyard is and those water meters would service these seven limited common areas or units as we refer to.

There is no offsite storm water that would affect the site as there's drainage basins to the north of this particular property and the storm water flow will generally run in a sort of easterly type of direction. And it would include onsite drainage subsurface basins.

Now the applicant, Mr. Kanno, will be keeping one of these limited common element units for his purpose. You know, Mr. Kanno has had a business here on Maui previously and it is his intent to be able to conduct a business on one of these limited common units.

Now in terms of potential impacts and what this Commission's review involves in terms of anticipated finding of no significant impacts just going over some of the environment considerations. As mentioned, this parcel has been used as a metal, scrap metal for a number of years and so the agricultural designation really indicates that there's low agricultural productivity. The parcel will not be impacted by flood and tsunami as its outside of those flood and tsunami zones. There are also no streams or wetlands that will be impacted because there are none that exist on the property and no endangered or threatened flora or fauna. There are no archaeological or cultural indicators or resources that are on the property, but of course, if there is a find during construction, you know, all work will stop and the State Historic Preservation District Office will be contacted and there will

be coordination with that office.

There was, you know, the applicant did undertake a comprehensive removal effort as well as studies for environmental site assessment and to look at ways to basically clean up and restore this property to make it usable and this came at significant cost to the applicant. So all of this again was done under the supervision with the State Department of Health and again as mentioned those affected soils have been placed in containments and cells within ground and is now covered with clean soil.

In terms of the infrastructure, the traffic movement is at acceptable levels. At the project access road intersections it will be stop controlled and it will allow left and right-hand turns onto the site from Waiko Road. As mentioned, water meters have been issued to connect to the County system and there are a number of wastewater options that the applicant is currently assessing. One option could be that the individual common lot or unit owners would actually have their own individual wastewater systems. Another option would be to open up dialogue with either the Consolidated Baseyard or the Waiko Baseyard and see if there could be connections to their existing wastewater treatment facilities. And another option would of course for the applicant to collect onsite through an onsite collection system. There would be a need, of course for a pump station and force main. Drainage improvements would be according to whatever the County drainage standards are.

Now this Commission will be seeing this project again. After we're completed with this environmental review process, this project will come before you on applicant's request in order to change the current designations for the property in order to be able to conduct light industrial activities and one of the land use requests would be a request to...on the district boundary amendment to change the existing designation from Agriculture to Urban. The other would be a community plan amendment request to change the designation from Agriculture to Light Industrial. And a third request would be a change in zoning for a change in the Agricultural designation to M-1, Light Industrial. So you will be seeing this project at that later point in time once we are completed with this environmental review process.

Now this project, the applicant has gone out into the community to talk about the project and provide some information on it and these just indicate the couple of community meetings that have occurred. The first one occurred on October 5, 2010 is the community informational meeting and most recent one was June 10, 2013 before the Waikapu Community Association at their general meeting.

So in conclusion we would like to respectfully request this Maui Planning Commission's review and comments on the Draft Environmental Assessment for the Waikapu Light Industrial Project and we thank you for your time. Thank you.

Chairperson Lay: Does the Department wish to say anything?

Mr. Paul Fasi: Paul Fasi, Planner for the project. My apologies for being late. I thought for sure you guys would break for lunch after that last one. But just for record, this body is the approving agency for the Draft EA. It's under 15 acres so it won't go to the State Land Use Commission. You are the deciding body on the District Boundary Amendment, Change in Zoning and Community Plan

Amendment. As Cheryl said, we'll get through the EA process first. It will come back to you as Final EA with all of the responses to your comments today and then we'll get through the County regulatory changes. This is extremely similar to the Waiko Industrial Baseyard that was approved earlier by this body on May 14, 2013. The approval for the Community Plan Amendment and Change of Zoning was unanimous. Currently it's sitting at Council waiting for approval and scheduling.

As Cheryl mentions, it involves the creation of seven light industrial lots on about eight and a half acres. The trigger for the 343 was the County use of County lands they are gonna but in some sidewalks and gutters and some landscaping and the community plan amendment. The infrastructure is gonna be done basically by the developer. Each individual lot, each individual owner, condominiumized owner will do their own improvements, similar but slightly different from the Waiko Baseyard. I'm sure Cheryl covered a lot of this so I'm not gonna go over it again. Please hold onto your Draft EA, that is gonna be the supporting document throughout this whole process. We're gonna use that document also for the Final EA and the Change in Zoning, DBA, and Community Plan Amendment. Thank you.

Chairperson Lay: At this I'm going to open up to public testimony. Does anyone wish to testify, please step forward? Seeing none, we're closing the public testimony. And Commissioners, any comments?

Mr. Freitas: Yeah, I'd like to make a comment. I was involved originally when the scrap started going out of that property and it was a mess. And after Schnitzer pulled out, they had magnets, they had everything there. Whoever the owner was he came back and he went and bought a brand new trummel and he came in, I mean, he screened that thing and he took every little piece of metal and every piece of rubbish out there and they went very deep. I have yet to see a job done so well.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'd like to commend them on that work too. I was looking at the pictures. I've driven by, you know. But what you did with cleaning up that property anything you do with it is an improvement. I mean, God bless you. You know, you really did a great job at cleaning that area up and if you can do just half as good with putting something on it, you go(inaudible)...

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: For..yes, thank you. About the drainage improvements, in the EA it says they will...I guess some is put in by the developer but others will be put in by individual units.

Ms. Okuma: Yes, the individual lot, the individual unit owners will be responsible for putting in some of that drainage improvements as well.

Ms. Wakida: And so do they come before...I guess they come before the Planning Commission but in their permit process those drainage improvements are gone over, right?

Ms. Okuma: Yes, yes.

Ms. Wakida: Because this is a condominium property, further on you say that there will be inspection of the drainage facilities annually who does that then? Whose responsibility is that?

Ms. Okuma: I believe that that will be through the association because this is a condominiumized development. And so there will an association and some documentation in terms of what needs to be done on the property. I believe that's the case. Yes, I see a head shaking that would be the case.

Ms. Wakida: Okay, so the association would see to the annual inspection of this drainage?

Ms. Okuma: Yes.

Ms. Wakida: Okay.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Cheryl, can you describe to me how the contaminated soil with lead, petroleum, hydrocarbons, PCB, benzene, pyrene have been contained?

Ms. Okuma: We do have with us here today if I may ask, Mr. Ian Sandison of Carlsmith Ball. He was very involved in that process and perhaps he can address that question, if I may?

Vice-Chair Shibuya: Okay, thank you.

Chairperson Lay: Please identify yourself?

Mr. Ian Sandison: My name is Ian Sandison. I'm the lawyer representing ABC Development. I've been primarily environmental attorney dealing with the clean up of this property for the last 10 years or so. The process that has gone through here if I can get to it, went through a environmental site assessment. It was first to get all the scrap metal off and basically the solid waste, and then to do both surface and subsurface testing of the soil to see the movement of contaminants down into the soil column and what that has been. There were...scrap metal is full of hydrocarbons, it drips fuels and lubricants which is the petroleum component and then primarily lead, lead cadmium which are principally from paints which are scraped off as the stuff is moved around. The soil was largely clean underneath the surface. It didn't...the contaminants didn't travel that was assembled of the large stockpiles and then a containment cell or a big hole in the ground was dug on the...in the far end of the property, so the Wailuku side, end of the property that soil was buried. And it's not, it's fairly lightly contaminated, it's a little bit above what's called industrial standard. It's not heavily contaminated soil. And then the soil it's got a layer of plastic with tape that says don't dig here. So it warns someone with the backhoe if they go down and start and to dig it up. And then there's a three-foot layer on top of that. So that's the...and then the remaining soils have been tested to confirm that they are all clean so that is isolated. And we're entering into what's called a UECA or Uniform Environmental Covenant that will basically that will basically govern and run with the land to manage that contaminated soil. Does that answer your question?

Vice-Chair Shibuya: Partially.

Mr. Sandison: Okay.

Vice-Chair Shibuya: I'm concerned because there's the Waikapu-Wailuku aquifer down below and I'm very concerned about that. And you say you have it lined with some kind of plastic liner?

Mr. Sandison: This is not a lined. And the reason it's not lined is the Department of Health also is very concerned about movement of soil and the soil column. The aquifer is about 240 feet deep there. We tested the soil with, in conjunction and with the approval of the Department of Health to determine if the contaminants would move and the soil column there's water draining down through it and we found that it didn't. We both tested that through the toxicity characteristic leaching procedure test and also it was sort of confirmed when we scraped the soil off because as you saw what was on top of it, it hadn't migrated in the 20 years that it was operated in that way. So it didn't move. It was all...the lead and cadmium did not move. We had a little bit of petroleum, but really not that much. So we're, not only are we confident but the Department of Health is very confident that it will not migrate down into the water table.

Vice-Chair Shibuya: Okay, and how far deep did you bury it?

Mr. Sandison: Kirk, do you recall the bottom of the containment cell? I wanna say it's 15 feet but I can't remember.

Vice-Chair Shibuya: Because that's the distance closer to the aquifer that's what I'm concerned about.

Mr. Kirk Tanaka: Good afternoon, Commissioners. My name is Kirk Tanaka with Tanaka Engineers. We're the civil consultants on the project. We did a grading plan for which Rojac Construction implemented. And I wanna say the containment cell was around 15 to 20 feet. I'm sorry, I don't have that exact information with me. I didn't bring the grading plans, but it was all reviewed and approved and I wanna say around 15 to 20 feet.

Vice-Chair Shibuya: Okay, thank you.

Chairperson Lay: Commissioners, at this time I wanna know if you guys wanna finish up with this or you wanna go for lunch?

Mr. Freitas: Finish up.

Chairperson Lay: All those in favor of finishing up raise your hand. Those wanna eat? Okay, let's continue then. Commissioner Wakida?

Ms. Wakida: I have a question about trees, but I don't know who to address?

Ms. Okuma: Perhaps see what the question is.

Ms. Wakida: Okay, it says here in a letter to the Waikapu Community Association that the project site...on the project site will be planted shade trees in the parking areas. Does that mean you plant

trees on the different parcels that other parcels own?

Ms. Okuma: I believe that that's a reference to the requirements under the parking code.

Ms. Wakida: Right.

Mr. Okuma: To have depending on what, you know, what those parking lots are, but maybe Kirk...Kirk, you can address that?

Mr. Tanaka: Good afternoon again, Commissioners. Kirk Tanaka. The Offstreet Parking Ordinance requires one tree per five stalls in a consolidated parking lot. So I believe the interpretation of that would mean that each individual parking lot would have the specified number of trees that are required. So let's say hypothetically Unit 7 has you know, 100 stalls, then on Unit 7 there would be a minimum of 20 shade trees.

Ms. Wakida: Right. So...but this is gonna be up to each individual purchaser to see that these trees are planted?

Mr. Tanaka: And that would typically be a condition of the building permit, the Offstreet Parking Ordinance.

Ms. Wakida: While we're...if I may just make a comment on this? I don't know if this was you or Leilani that gathered these responses from different people in the area. They're wonderful and one man in particular, Mr. Santiago, if I could just read two sentences. He made just this charming comment about trees, he wrote, he said, "you watch one tree in a parking lot and the birds are coming on and off the tree. Some of them nest in the tree, some of them find sustenance, there's bugs and stuff in this tree, so just one tree in a barren looking parking lot is like a little oasis". And I hope that will encourage to go beyond the minimum of planting as many trees as possible because besides what he says, of course, it helps to offset the carbon footprint and all sorts of wonderful things. So I appreciate these comments that you gather.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Cheryl, is there a common landscaping plan for the subdivision along East Waiko Road?

Ms. Okuma: Common landscaping plan, I'm not sure...along Waiko...not that we know of? Yeah, not that we of.

Mr. Hedani: Okay, my concern basically is that on the other three sides you're pretty much bordering, you know, industrial type uses so that's not that big of a concern. East Waiko Road is heavily utilized by the public, and what I would suggest is a landscaping plan that can be implemented by the individual lessees that would abut that roadway so that it becomes a coordinated type of a planting plan. Question is can that be incorporated somehow?

Ms. Okuma: We'll take a look at that, but thank you for that comment.

Chairperson Lay: Commissioners, any more comments? Commissioner Shibuya?

Vice-Chair Shibuya: Still with this concern about the hazardous material. On the one hand we're asking that we have trees planted, we have drainage being contained, the storm waters contained on property, on site, and if we do have these structures built, we'll probably need to dig in some dry wells and Kirk maybe you can address some of this because you know where the locations of this cells are and where would this dry wells be located?

Mr. Tanaka: Again, Kirk Tanaka. We are definitely gonna try to avoid the areas of the containment cells. We went with a...it's a three-foot plus cover over it. And typically in terms of drainage it would be definitely deeper than three feet. We looked at the electrical utilities which are generally about a foot and a half cover so we'll be above that no matter where we put it. Water lines run about two, two and a half feet covered based on the size of the line. So again, we're trying to say above that. Sewer goes below that, drain goes below that and by that token we're looking at in designing those facilities we'll avoid the containment cells.

Vice-Chair Shibuya: Okay, as long as you have some means to avoid it and that's more my concern.

Mr. Tanaka: Okay, yes.

Vice-Chair Shibuya: Thank you.

Mr. Tanaka: Thank you.

Chairperson Lay: Commissioners, any more comments on the proposed EA? Commissioner Hedani?

Mr. Hedani: I'm not sure if Cheryl or Paul or the Director can answer this, but not in this subdivision in an adjoining subdivision, light industrial subdivision, I think they had wells that are onsite that were supposed to provide the subdivision with potable water. And my concern would be, you know, to...and sounds like you folks have done everything that you have to do, you know, by the book up to this point. My concern would be to help ensure that those sources, water sources are protected to some degree with whatever is the appropriate methodology.

Ms. Okuma: Okay, thank you.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I don't know who to direct this question with in terms of testing the water quality now, and then maybe 20 years or 10 years from now test the water again in this aquifer that is being used and to see if there's any leakage or leaching of these materials in that water's aquifer. By that time it be too late but if it is leached in. How do we address testing something like this maybe 10 years, 20 years, 30 years later? Is there such a thing?

Mr. Spence: I'm not sure. I can't answer for Department of Health, but I do know that they're...I

mean, they're aware of where all the old landfills are, containment cells like this would be. I mean, you have a number of wells in that area that you know, it's pretty much a matter of course that water is tested from those wells. There aren't going to be any surprises.

Vice-Chair Shibuya: Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Cheryl, just as a matter of information, what was the cost of during mediation effort that was expended to date?

Ms. Okuma: It was about 4 million, \$4 million.

Mr. Hedani: Okay, personally I'd just like to express our appreciation on behalf of the County for the efforts that have been expended to address what was there and to bring it to its current condition.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'd also like to echo my appreciation too, with Commissioner Medeiros and Commissioner Freitas and Hedani in terms of the care that the owner has taken. I appreciate very much. I also would like to find out a little bit more about the heat island effect. How are you planning to mitigate this and I think you briefly mentioned landscaping. And to me, landscaping is what percentage are you planning to have this heat effect mitigated?

Ms. Okuma: I'm not sure at this point exactly what percentage. I think that's something that the applicant would be looking at through this process.

Vice-Chair Shibuya: Okay, thank you. And also in terms of power, electric power is of concern for me and I'm sure for all of Maui. That we have this power that is being used and of course, by light industrial area is used quite a bit and I just would like to some consideration in terms of placing some renewable power generation if it's possible. It'll provide some shade to cool or keep the structures cooler. That's one way that you could mitigate some of the heat effect. The other one was in terms of dual purposing covered canopies for parking, things of this nature. Thank you.

Ms. Okuma: Thank you for your comment.

Chairperson Lay: Okay, so far what comments do we have for our EA?

Ms. Fasi: So what I've recorded there was a comment made on unified landscaping from Commissioner Hedani and the renewable energy sources from Commissioner Shibuya?

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I'd like a little more specific information on shade trees. I wanna be sure that this is taken seriously. Not that I don't think they're gonna renege on this, but I would like them to look

into the Cooperative Extensive Service, Hawaii Tropical Agriculture and get recommended trees that they be suitable for both heat mitigation and aesthetics.

Mr. Spence: Yes, just a comment on that. We do have a County Planting Plan that specifies what trees to use and those kinds of things that it comes into our...as each one of the buildings comes in and somebody wants to build, we require a planting plan as a part of the required parking lot. So they would be following the County Planting Plan. And that plan is reviewed by the Arborist Committee, it's adopted by the County Council. I mean, there's a lot of input by very knowledgeable into that and they're just about done revising the Planting Plan and it will be going to Council shortly.

Chairperson Lay: Any more comments that we'd like to be accompanying this EA? So at this point, we just have the one about the photovoltaic then right?

Ms. Fasi: That's correct.

Chairperson Lay: Okay. No more comments then? Okay, thank you. We'll adopt those comments. All those in favor of adopting that comment about the photovoltaic raise your hand.

Mr. Spence: Six ayes.

Chairperson Lay: Okay, do you guys wanna break for lunch or run through this in about 10 minutes.

Unidentified Speaker: Lunch.

Chairperson Lay: Half an hour lunch or a hour?

Mr. Ball: Wait, wait, wait. We only have these...

Mr. Spence: Acceptance of Minutes, Director's Report.

Chairperson Lay: Ten minutes? Okay, we're gonna continue then.

D. ACCEPTANCE OF THE ACTION MINUTES OF NOVEMBER 12, 2013 MEETING

Chairperson Lay: Everyone get a chance to look at our minutes?

Mr. Hedani: Move to approve.

Mr. Ball: Second.

Chairperson Lay: All those in favor of accepting the minutes say, aye?

Commission Members: Aye.

Chairperson Lay: Those opposed?

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

**VOTED: To Accept the Action Minutes of the November 12, 2013 meeting.
(Assenting -W. Hedani, K. Ball, J. Medeiros, M. Tsai, P. Wakida,
W. Shibuya)
(Excused - S. Duvauchelle, J. Freitas)**

Chairperson Lay: Okay, Director's Report.

E. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

Mr. Spence: Planning Commission Projects/Issues, none to report.

2. Reports from Commissioners who attended the 2013 Hawaii Water Works Conference, October 23-25, 2013, in Makena on Maui.

Mr. Spence: Reports from Commissioners who attended the Hawaii Water Works Conference? Any comments?

Vice-Chair Shibuya: No, I really appreciated that conference because it does say that the planning and the water should be together and I fully endorse that and I hope we can continue this dialogue. It was very, very helpful. I think all of us can benefit from it.

Chairperson Lay: Thank you for representing us there, Mr. Shibuya.

3. EA/EIS Report

Mr. Spence: Nothing to report for EA/EIS Reports.

4. SMA Minor Permit Report (see attached)

5. SMA Exemptions Report (see attached)

Mr. Spence: You have received your SMA Minor Permit Report and Exemptions Report. I'm not sure if there's any comments by Commissioners on that or if you just want to acknowledge receipt.

Chairperson Lay: All those in favor acknowledging say, aye?

Commission Members: Aye.

Chairperson Lay: Those opposed?

6. Discussion of Future Maui Planning Commission Agendas

a. December 10, 2013 meeting agenda items

Mr. Spence: Future Commission Agendas, we have a memo from Clayton Yoshida for the December 10th meeting. We're gonna be taking up Maui R&T Partners, LLC. If you recall, we had a workshop on form-based codes for the Commission and so we're gonna be taking up not only that particular code but also the community plan amendment and change in zoning, et cetera. So that's gonna be a good one. Couple other things on that, amending a special use permit for microwave dish antenna in Hana, and notifications to you on the transfer of SMA Permits.

7. December 3, 2013-site inspections of the following projects beginning at 9:30 a.m.:

a. Community Plan Amendment and Change in Zoning for the proposed Maui Research and Technology Park (MRTP) Master Plan Update located on 406 acres of land at TMK: 2-2-024: 002 to 008, 009 (por.), 014 to 018, 032, 034, 036 to 044, 045(por.), 046 and 2-2-002: 084 (por), Kihei, Island of Maui. (CPA 2013/0001) (CIZ 2013/0002) (K. Wollenhaupt)

b. Community Plan Amendment and Change in Zoning for the proposed Puunene Heavy Industrial Subdivision located at TMK: 3-8-008: 019, Pulehunui, Island of Maui. (CPA 2012/0002) (CIZ 2012/0005) (K. Wollenhaupt)

Mr. Spence: December 3rd we have site visits for the Commissioners. One is to the R&T Park and then the other one is to the Puunene Heavy Industry. It's actually at Pulehunui, but that's a change in zoning, community plan amendment for a heavy industrial subdivision.

Mr. Ball: Be unable to attend that.

Mr. Spence: I won't either. We will have department representative.

F. NEXT REGULAR MEETING DATE: DECEMBER 10, 2013

Chairperson Lay: Okay, our next meeting will be December 10th. And if we have no further business meeting's adjourned.

G. ADJOURNMENT

The meeting was adjourned at 12:35 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Keone Ball
Jack Freitas (excused at 12:32 p.m.)
Wayne Hedani
Ivan Lay, Chair
Jason Medeiros
Warren Shibuya, Vice-Chair
Max Tsai
Penny Wakida

Excused

Sandy Duvauchelle

Others

Will Spence, Director, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works