

**MAUI PLANNING COMMISSION
REGULAR MINUTES
SEPTEMBER 23, 2014**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:00 a.m., Tuesday, September 23, 2014, 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: The Commission is now called to order. It's September 23, 2014. Now we're gonna open up for public testimony. If anyone wishes to testify on an agenda item that we have coming up today because they're unable to testify later on now would be the time to do it. You have to understand that if you do testify now, you won't be able to testify later on.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed.

Chairperson Lay: Does Debbie Wright wish to testify at this time?

Ms. Debbie Wright: ...(inaudible-speaking from the audience)...

Chairperson Lay: Okay, does anyone else wish to testify at this time? Seeing no one, public testimony is closed. Our first agenda item is Ms. Denise Holland requesting a Short-Term Rental Home Permit in order to operate the Maui Vacation Home in a three-bedroom short-term Rental Home operation located on R-2, Residential District in 1161 Lahilahi Place in Lahaina, and our Planner...

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

- 1. MS. DENISE HOLLAND requesting a Short-Term Rental Home Permit in order to operate the Maui Vacation Home, a three (3) bedroom short-term rental home operation located in the R-2 Residential District at 1161 Lahilahi Place, TMK: 4-5-004: 037, Lahaina, Island of Maui. (STWM T2013/0013) (L. Callentine)**

This short-term rental home application is being referred to the Maui Planning Commission for review and action because an existing short-term rental home is operating within five hundred feet radius of the proposed short-term rental home lot.

Ms. Livit Callentine: Thank you, Mr. Chair, and my name is Livit Callentine and good morning, Commission. So we're gonna be reviewing an application for a short-term rental home in the Urban

District in Lahaina, and you are reviewing the project today because one of the triggers for commission review was activated mainly that there is an existing short-term rental home within 500 feet of the proposed use. So the project location map is shown in our report to you dated September 23, 2014 as Exhibit 1. That's the location map. There's one dwelling on the property and it contains three bedrooms. There's a one-car garage on the property as well as room for two additional cars in another driveway whereas only two spaces are required for a short-term rental home of this size. And you will see in Exhibits 2 and 3 the site plan and the parking plan. The floor plan is show as Exhibit 4. Photographs of the site and the dwelling are also provided in Exhibit 5 and you'll see aerial photography of the neighborhood and the property shown in Exhibit 6. The property is 5,849 square feet approximately and it is located in the State Urban District. It is zoned R-2, Residential and in the West Maui Community Plan as Single-Family. The neighborhood's characterized by single-family dwellings and the property is located on a cul de sac of similarly modest single-family homes in what would be considered an older neighborhood. It was developed as Lahaina Beach Lot Subdivision which was established in approximately 1960.

The West Maui Community Plan allows for a total of 88 short-term rental home permits. As of the date of this report, the date it was written 26 short-term rental home permits in this community plan area have been approved, and four of these are within 500 feet of the project. By way of contrast, the West Maui Community Plan allows for 88 B&B home permits and there is only one permitted B&B within 500 feet. If you look at Exhibit No. 7 of your report that will show you all pending and approved short-term rental homes and B&B homes within 500 feet.

The application was transmitted to the Police Department and to the Finance Department to their Real Property Tax Division for comments. We usually don't expect comments back from Real Property Tax, but we would welcome them if they did comment. The Police Department did respond. And they stated that there have been no noise or disturbance complaints on this property nor had they any concerns about vehicular or pedestrian safety and you'll see their comment letter shown in Exhibit 8.

In 2006, there was one request for service about vacation rentals filed on the property and at that time during investigation the Zoning Inspector concluded there was no evidence of vacation rental and the RFS was closed.

Now in regards to public testimony, in advance of this hearing, the Department received one letter of protest. It was filed by an owner of property within 500 feet and you'll see this in Exhibit 10 his letter. This owner apparently currently resides in Seal Beach, California and has rented out his home to someone else, but he primarily is concerned that the short-term rental home will cause additional noise, parking problems, and traffic and will bring unwanted people in that area. Contrast this with the Police Department comments that I mentioned earlier. They had no record of any complaints. The applicant did provide a response to this letter and that is shown in Exhibit 11 of your report. Yesterday, the Planning Department received seven letters of support from other neighbors. These were distributed to you this morning in a packet that looks like this, there's a cover sheet on it. And I didn't have a lot of time to try to verify whether these folks were all owners or not but it appears as though four of the seven letters were submitted by owners of property within 500 feet. For the other three letters either the name was unclear or...so that I wasn't able to determine whether they were actually part of the ownership records.

So in analyzing this project against our regulations we find that the application conforms to the Hawaii State Plan and to the State Urban District. It complies with the Countywide Policy Plan and with the West Maui Community Plan. With a project of this nature we're primarily concerned with how it conforms to the zoning regulation regarding short-term rental homes. So we look at Chapter 19.65 of the Maui County Zoning Code to help us with this analysis. The zoning was analyzed in detail on Pages 9 to 11 of the report, but I would like to briefly summarize because there's some important...there's some important guidance provided in 19.65.030(N).

Now we are directed both the Department and the Commission to consider the following requirement to issuing a permit. I'm gonna summarize these. Is the short-term rental property subject to any homeowner, condominium association or other private conditions? And the answer is no, this property is not subject to any CC&Rs. Existing land use entitlements and uses, we went over that above. It is compliant with State and with approval of an STRH Permit this will be allowed in the Residential, R-2 District. The community plan specifies single-family, and the Planning Department considers this a, this use to be compliant with the description of single-family use. And the West Maui Community Plan does not prohibit short-term rental use in the designated area. You also are to consider community input. The community is given ample opportunity to review the application. Pursuant to Section 19.05....sorry, 19.65.050(B) and (C), the applicant sent written notice of the application and of the public hearing by certified mail to all of the owners and lessees of record within a 500-foot radius of the subject property. And in addition, the applicant displayed a four square foot sign along the main access road which notified interested parties of the proposed short-term rental use of the property including contact information. And additionally, both the applicant and the Maui County Department of Planning published a notice of the public hearing in *The Maui News* newspaper. Finally, the Maui Planning Commission is holding the public hearing that's required on the application today and you will be taking public testimony a little bit later.

Now you're also to consider potential adverse impacts including excessive noise, traffic and garbage. In response to that, the Department has determined that potential adverse impacts including excessive noise, traffic, and garbage were considered. Because the short-term rental home is allowed to be used only by one group at a time, the impacts are considered to be comparable to either those of a homeowner-occupied or a long-term rental occupant. In addition, the Department has no record of any complaints on the property and there are no open RFSs on the property, Request for Services, RFSs.

As previously indicated, this application has to approved or denied by you because of the existing short-term rental homes within 500 feet. The Code, the Zoning Code also has additional factors to consider when you are reviewing and approving or denying an application and there are five of them. The first one is the number and distance from the subject parcel to other permitted short-term rental homes. So there are five other approved or pending short-term rental homes within 500 feet of the property and you can see that on Exhibit 7 again.

The number and substance of protests for the short-term rental home application relative...related to the cumulative short-term rental homes in the larger neighborhood of the area. So if you refer again to Exhibit 9, that map shows you the one property within 500 feet of the property which has objected to the project. That property is approximately 500, sorry 355 feet from the property. And in addition, the Department of Planning has been unable to obtain any documentation just in general that proves that short-term rental homes do actually bring a increase in noise, parking,

traffic or crime problems to a neighborhood. We would be open to hearing that evidence, but we haven't heard it in this case, and generally we don't hear it in other cases. And again, the applicant responded to the one protest that was filed and that's shown in Exhibit 11 of our report.

So existing or past complaints is the third factor you're considering and there were no police reports on this property. There was one request for service regarding short-term rental operations on the property filed and closed in 2006 well before this application was filed or before we had a permitting process for short-term rental homes.

The fourth factor is existing or past noncompliance with government regulations and the degree of cooperation. In the response, there was no evidence of existing or past noncompliance with government requirements. And the applicant has been very cooperative in providing requested information and arranging for a site visit for the Planning Department Staff.

And finally you consider the correspondence that is received by the Department and forwarded to you. We know that you've received one letter of protest from someone 355 feet away and you've received at least four letters from owners within 500 feet of the property and possibly more if we could have time to verify, but you have at least four that were registered in support. And we've determined that the property does conform to the character of the existing single-family residential neighborhood in which it is situated. So this concludes the Department's presentation. The applicant is represented here today by Mikal Torgerson who would like to now show you a brief power point presentation and say a few words about the project as well as answer any questions that you may have. Thank you.

Mr. Mikal Torgerson: Good morning, Chairman, Board Members. We appreciate the opportunity to present the project to you today. Again, my name is Mikal Torgerson, and I'm here representing Denise Holland.

Livit did a great job of covering most of the salient points on this project, so ought of respect for your time, I'll try to be brief. The project once again is on Lahilahi near the Keiki Beach or Baby Beach area of Lahaina. I have an aerial photo here representing the overall neighborhood and where the property is located. This is a view looking down Lahihahi Street. The subject property is on the left and you see their drive apron coming off of Lahilahi. Coming in the front gate leading onto the property you see that it's heavily landscaped. I have site plan for the property. Again, this shows that there are three parking stalls on the property in excess of those required for short-term rental house use. I've also got a floor plan of the property if you'd like to go through that. And this is a view looking into the kitchen of the home. The dining room. This is the master bedroom. Another bedroom, and the last bedroom. The living area of the home. And the backyard, pool area.

As Livit mentioned, Maui County Code has five criteria by which short-term rental house projects are to be judged and she did a good job of going through those. I'll do so briefly. The first is the number and distance of the subject parcel to other short-term rental homes and that she mentioned there are five other short-term rental type operations either permitted or pending in the area. I think several of them are pending. And most of those are actually on Kaipali Street. So while they're within the 500-foot radius they're not gaining access off of the same road system.

The second criteria is existing and past compliance about the property. As Livit had mentioned

there were no noise or disturbance complaints and the Police Department indicated that there were also no concerns related to vehicular or pedestrian safety on the property.

The third criteria was existing or past noncompliance on the property and we're aware of any existing noncompliance and that was confirmed by your planner as well. Any correspondence received by the Department pursuant to 19.65.030 and that relates to homeowners associations and condominium associations, and those don't apply to this application because there are no homeowners associations or CC&Rs relative to this property.

And the last item I wanted to touch on was the number and substance of protests for the short-term rental home. As Livit had mentioned there was one letter expressing concern about the property sent by a property owner roughly a block away from this one. And there were seven letters of support that was distributed to you. Mr. Hayashida, who sent the letter expressing concern had the following concerns. One was that the streets are narrow and bring unwanted people to the area. It's worth noting once again that Lahilahi is a--do we have a laser pointer? I'll just point here. This is...

Chairperson Lay: You need a mic.

Mr. Torgerson: Okay, I apologize. The complainants property is this one right here. It fronts Front Street and Ala Moana Street, and oh thank you ma'am. And the subject property is this one down here. So, while it is true the streets are rather narrow in the area, and I respect his concern about bringing unwanted people to area, it does seem rather unlikely that these folks using this roadway system to gain Front Street would have a dramatic effect on this property here. I think part of the concern he might have is that a lot of people gain access to Baby Beach via Ala Moana and so there are a lot of people introduced into the area independent of this application or really any other. He also raised a concern about this application raising the crime rate locally. As Livit mentioned I don't have any empirical evidence that it does or doesn't raise the crime rate. I think the Police Department would be the ultimate authority on that and they didn't express any concerns about that. So I would sort of fall on their judgement on that one. The applicant and myself both tried to contact the property owner. We sent a letter of written of response and didn't get anything back. His property is being managed by a leasing agent and attempts to direct...or contact him through his leasing agent were unsuccessful. So we did what we could to just to talk to him about that.

So, as I mentioned, we believe that we're complying with the five criteria of which the Code says that we should be judged. I am available for any questions. I wanted to be brief out of respect for your time, but I'm happy to answer any questions that you might have. So I'll just leave it at that.

a) Public Hearing

Chairperson Lay: At this time, I'm gonna open it up to public testimony. If anyone wishes to testify, step forward, identify yourself and you have three minutes to testify. Seeing no one, we're closing public testimony, and now Commissioners we're open for questions. Commissioner Wakida?

Ms. Wakida: I'm sorry, Ferguson was that your name?

Mr. Torgerson: Torgerson, yes.

Ms. Wakida: Torgerson. I'm looking at Exhibit 5 and 6.

Mr. Torgerson: Okay.

Ms. Wakida: The additional parking in picture 3 where is that additional parking?

Mr. Torgerson: Perhaps the site plan would illustrate it best. We have two tandem parking spaces on this side of the property. And then there's an additional parking stall on this side. It's kind of oversized 13 ½ feet wide.

Ms. Wakida: But how do you, but in Picture 3 where is the access to that parking?

Mr. Torgerson: They would both take access directly off of Lahilahi. So you would pull directly off of Lahilahi into the site and back out into Lahilahi just as you would in a traditional driveway

Ms. Wakida: And the third parking stall?

Mr. Torgerson: The third parking stall is just on the opposite side of the house.

Ms. Wakida: So it's...but looking at this picture?

Mr. Torgerson: The one that you're looking at has the two ribbons of concrete is that correct? Yeah, I'm not sure why that's labeled additional parking. That's not intended to be parking. That's on street. I understand your confusion. That's labeled as additional parking. That's not additional parking. That's just a view looking down Lahilahi.

Ms. Wakida: Okay, but the parking comes off that street, right?

Mr. Torgerson: Yes, the parking comes directly off of Lahilahi just like any other traditional driveway would. But I do understand your confusion. Exhibit 5, No. 3, is actually a view looking down Lahilahi and that's not parking. There's no intended on street parking.

Ms. Callentine: Commissioner Wakida? Mr. Chair, if I might follow up on that response?

Chairperson Lay: Go ahead.

Ms. Callentine: I also had the very same concern when I looked over the application and when I went out on my site visit I was very curious about that. So if you would look at Exhibit 6. Exhibit 6 is an aerial photograph and this I think demonstrates it best. If you see the parcel that's highlighted and it ends in the 37, yes? Parcel 37. So you see Lahilahi along the upper...

Chairperson Lay: Excuse me, can we pull it up, Exhibit 6, no?

Ms. Callentine: I don't think that Mikal has it on his power point.

Chairperson Lay: Okay.

Ms. Callentine: Yeah, sorry. So we'll have to...if everyone has a copy? You don't have a copy Rowena? Do you want a copy? I have an extra report here. Oh, you got it. Okay, she's got it. All right. Anyway let me try to explain and then we'll see if Rowena can find an image we can portray to you. So this photograph shows Lahilahi in the upper right-hand corner. And the pool area shown in the back. I think it would take a little bit of time to find. If you look at the property, you see down in the lower right-hand corner of the property, you see a little cutout, right? That is the third driveway. That is the third stall. That is the second driveway and the third stall in the upper corner of the property with...overhung by trees so that you can barely see it, that is the driveway that has room for two parking, two parking stalls that are tandem parked. So that is, so that is how you get two driveways on this property. One on either end of the property border with Lahilani Place.

Chairperson Lay: Commission Hedani?

Mr. Hedani: Livit, relative to parking...well, for driveways you're saying there's two driveways for a single-family lot. Is that allowed by Code?

Ms. Callentine: Rowena, two driveways are allowed by County Code? You know, the Commissioner asked in there were two driveways. You know, I'm a bit at a loss here just because we do not transmit these short-term rental home applications to the Department of Public Works. So they were unable to review and provide comments and they've actually indicated I think that they no longer really wish to review them. So I'm not...I'm sorry, that may not be correct, but the Department no longer...the only thing I can say for sure is the Department longer transmits to Public Works for comments. So...

Mr. Hedani: Maybe the Deputy Director can answer?

Ms. Callentine: Yeah, maybe.

Chairperson Lay: Deputy? Rowena?

Ms. Dagdag-Andaya: Rowena Dagdag, Department of Public Works.

Ms. Callentine: Carolyn, we don't have any power on this mic.

Chairperson Lay: It's working.

Ms. Wakida: It's working.

Ms. Callentine: Oh, thank you.

Ms. Dagdag-Andaya: Again, Rowena Dagdag, Department of Public Works. We can check to see if there are driveway permits and that would usually tell us whether or not the driveway points were legally permitted or allowed. I can't remember exactly now according to Code if you are able to have more than one driveway. Previously we had some issues with that in some of the

subdivisions, like the residential subdivisions and what we noticed was that some of these driveways were not permitted. So I think that would be the first step in us trying to identify, but as far as the Code, I'll need to take a look at that as well.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Another question that I had was the exhibits that are shown shows a line running outside of the property line for the parcel, and I'm not sure what that line represents. So the question that I have is are there any encroachments of the property outside of this boundary lines? I'm looking at Exhibit 2, if you look at Lahilahi Place there's a line that runs down Lahilahi Place that looks like it's a foot or two feet across from the boundary line. Is that an error or is there an encroachment? I think the fence is in that location.

Mr. Torgerson: Okay, I'm trying to understand which line. I think you might be looking at a dimension line that's coming outside of the property?

Mr. Hedani: I'm looking at this line.

Mr. Torgerson: Okay, that's...I believe that's Lahilahi itself. The line is indicating the edge of pavement there. But the one thing I can tell you is, I was told by the applicant that when she purchased the property they had a survey done to verify if there were any encroachments and there weren't either encroachments from their property to other properties or vice versa.

Mr. Hedani: So the line you say represents the edge of the pavement of Lahilahi?

Mr. Torgerson: I believe that's the one that you're indicating. Well, this is the same drawing on the screen. Is this the one you're referring to or this one? I'm trying to understand...

Mr. Hedani: Below the word, Lahilahi.

Mr. Torgerson: Below the word, so this one?

Mr. Hedani: No.

Mr. Torgerson: This one?

Mr. Hedani: Yes.

Mr. Torgerson: That would be the edge of pavement. So the edge of pavement is outside of the property line because that's the actual roadway itself. In other words, perhaps what you're seeing is the paving between the driveway intersecting the roadway and that does occur outside of the driveway as it naturally would.

Mr. Hedani: Okay, so there's no encroachment?

Mr. Torgerson: No, sir. Not that I'm aware of.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: I have a question regarding your letters of support.

Mr. Torgerson: Yes, sir.

Mr. Higashi: In looking at it there's seven letters, but they all seem to be the same letter.

Mr. Torgerson: Yes.

Mr. Higashi: Is there a reason for that?

Mr. Torgerson: What my client had done is draft a letter and brought it around to the surrounding neighbors as a convenience to them to show their support and get them to sign. It was more of a petition I guess than an independently written letters. But you're correct, it was written initially by my client.

Mr. Higashi: Yeah, 'cause it doesn't make any sense. Seem like it's a letter from one person who's the manager, but they're all saying they're managers.

Mr. Torgerson: Yeah, it was drafted by my client and then she went around and spoke to the different surrounding neighbors and asked if they would sign in support. So that might be why that reads kinda funny.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yeah, Livit, I don't wanna keep after this, but I'm just mystified where the entrance is to this third parking stall.

Ms. Callentine: Yeah, I'm glad you brought that back up because I just looked at the permit summary on this property. And in relation to this stall no. 3, shown on the site plan, in Exhibit...well, it's shown in both Exhibits 2 and 3, there's a building permit that was issued and completed for conversion of a garage to a master bedroom and bathroom. So actually there is no longer a garage there. But since this was actually reviewed and issued to the Department of Public Works, I think it's safe to assume that since there's no remarks as far as...there's no remarks or comments regarding any nonconforming construction. You may feel safe and comfortable assuming that since Department of Public Works issued a permit to convert a garage to a master bedroom at one time or other that garage was a permitted use. If there was a garage there had to have been access to it. So there had to have been a driveway there. So just to provide further information on that. And I'm sure that if Rowena gets anything more, she'll update us.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Well-

Ms. Callentine: I'm sorry if that didn't answer your question.

Ms. Wakida: –that’s fine, but I’m looking at the picture that shows the front of the property and it shows a fence going seemingly all the way down to the end of the street to a sign and some sort of gate in the middle here. And then it leads right into somebody else’s garage on the end of the cul de sac. So...

Ms. Callentine: So you’re wondering where the opening is to this–

Ms. Wakida: Right.

Ms. Callentine: –other driveway?

Ms. Wakida: Right.

Ms. Callentine: Okay, could I turn the podium, mic over to Mikal to shed some light?

Ms. Wakida: Thank you.

Chairperson Lay: Go ahead. And again, identify yourself just for the record.

Mr. Torgerson: Yes, Mikal Torgerson, thank you. If you’re looking at No. 3 on Exhibit 5, you’re seeing that fence that you just described. Where you see the sign is right here on the side, I’m sorry, right here on the side. So the driveway is immediately adjacent to that, so that’s sort of the end of the fence as you can see, and then the driveway occurs right adjacent to it. At the other end of the fence where it ends right here, it comes back in and the driveway occurs here. So I can see the confusion. In the photo it looks as though the fence continues across the entire frontage of the property. It actually goes between the two driveways from here to here just between the two driveways and then returns back into the property.

Chairperson Lay: Commissioners? Commissioner Hedani?

Mr. Hedani: I have a question on parking again. If you look on Exhibit 5, there’s a fence with a couple of broken slats in it. It looks like it might have been hit by vehicles. And the caption beneath it reads, No. 3, additional parking area. It doesn’t look like it’s wide enough for a car. So my assumption would be that the cars would overlap onto Lahilahi Street and use the shoulder as additional parking?

Mr. Torgerson: No. This, once again, this is mislabeled. I’m at the disadvantage because I wasn’t the one that created the initial application, but whoever did, mislabeled that. So No. 3 that says additional parking area is just simply mislabeled. That’s Lahilahi Street, and we do not propose any on street parking of any kind. So the only parking would occur on the owners parcel itself. And in fact, they have house rules that prohibit on street or off site parking.

Mr. Hedani: Is on street parking allowed on Lahilahi Street?

Mr. Torgerson: I don’t know the answer to that, but we have one more parking stall than it is required and the house rules prohibit.

Chairperson Lay: Deputy Director would like to answer that?

Ms. Dagdag-Andaya: There's actually four signs along that side of the road that say, no parking. So there's no parking on the street.

Ms. Callentine: I'd like to also point out because I think this is a great discussion. You know, we do want all parking off, off street parking is required. And as we all know from driving anywhere in Maui, it's not always followed. But when the Council adopted the Short-Term Home Rental Ordinance, they also amended several other sections of the Code. One of them being primarily 19.36A which governs off street parking. So there's a table that's provided and under short-term rental homes the requirement is one parking space if there are more than four bedrooms used in short-term home use in addition to any other parking requirements under this chapter. So parking stalls may be situated in tandem or on grasscrete. So we have to combine that with the short-term ...sorry, the single-family dwelling requirement and which is two parking spaces for each dwelling unit. So because this application is only for three bedrooms, it does not trigger the need for an additional parking stall therefore the parking requirement is satisfied with two parking stalls, and they one in excess of what they're required to have.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yes, Mr. Torgerson? Is the applicant here today?

Mr. Torgerson: No, I'm sorry, she wasn't able to make it today.

Ms. Wakida: What is the maximum number of people that you expect to rent to?

Mr. Torgerson: I believe the Code only allows two persons per bedroom and there are three bedrooms on the property.

Ms. Wakida: And will you be renting to more than one family at a time?

Mr. Torgerson: No, absolutely not.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I was going to ask if the applicant was here. Yeah, I just find it strange that the ...(inaudible)...

Chairperson Lay: Please speak into the mic Jason, thanks.

Mr. Medeiros: In the letter it says that she lives less than five minutes away from subject property. I find it strange that she's not here to testify on behalf of herself. How long if ever has she lived on that property?

Mr. Torgerson: She lives on a property about two miles away and she apologizes in advance for not being able to be here. She had some health issues and asked me to represent her.

Mr. Medeiros: Okay. Had she ever lived on that property? This property?

Mr. Torgerson: It's my understanding that she has not. She lives in a house about two miles away.

Mr. Medeiros: So this property was bought as an investment property?

Mr. Torgerson: That's my understanding.

Mr. Medeiros: Okay.

Mr. Torgerson: Quite some time ago.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Denise Holland—

Mr. Torgerson: I'm sorry?

Mr. Hedani: Denise Holland, does she have any property that she owns that she applied for a short-term rental on other than this property?

Mr. Torgerson: I believe her husband was an applicant on another property.

Mr. Hedani: Right. That was the one that was in the Wainee Aholo Subdivision?

Mr. Torgerson: That's correct.

Mr. Hedani: That the Commission denied?

Mr. Torgerson: I believe that's correct, yes sir.

Mr. Hedani: That's no longer pending.

Mr. Torgerson: No, sir.

Mr. Hedani: So they won't have two short-term rental applications in at once.

Mr. Torgerson: No, that one was denied.

Mr. Hedani: It was denied and they have no intent to pursue that further?

Mr. Torgerson: I don't know the answer to that. I don't know what other recourse they might have, but it would be legal, and that would be if there was any other recourse it would be outside of anything I would be aware of.

Mr. Hedani: Yeah, the reason I'm asking the question is the law only allows one short-term rental to be owned by any one person.

Mr. Torgerson: Right.

Mr. Hedani: And if their pending application that was denied is being appealed or they're gonna take another run at it, then that would be two short-term rentals that they would have.

Mr. Torgerson: Right. Yeah, as I mentioned that one was denied and the applicant on that property was Bob Holland, and the applicant on this property was Denise Holland. So the Code allows for permits to be in either person's name essentially.

Mr. Hedani: Does she live in that same home?

Mr. Torgerson: Yes.

Mr. Hedani: But she's not the owner, you said?

Mr. Torgerson: I don't know the answer to that. All I know is they were two separate applicants for those properties.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: There's a shortage of short-term....shortage of long-term rental homes on the west side. Why has the applicant not chosen to put this into long-term rental?

Mr. Torgerson: My understanding is that the reason they chose to pursue the short-term rental is they do use the house occasionally. They like to go over there and use the pool and stay there. I know they just stayed there last week in fact. And so they pursued the short-term rental market rather than long-term rental so that they could intermittently use the house.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: I have a question for staff. This is in relation to another project, but apparently those people that were opposed to that particular project, this is the Stanford Carr one that's across street, that vacant lot area—

Ms. Callentine: Okay.

Mr. Higashi: —these people were concerned about traffic and et cetera, but yet when I look at this particular map, there's six vacation rentals in that small subdivision which I would think would create traffic. And yet, I don't see any of their names being opposed to this particular one talking about traffic in a small area. What is the rationale? I don't understand. You have so many vacation rentals in a small congested area and according to our guideline you know they're supposed to be like 500 feet away for vacation rentals to be one or the other and there's six of them all congested in one area.

Ms. Callentine: Sounds like the Director would like to address your question if you might?

Chairperson Lay: Director?

Mr. Spence: Thank you, Mr. Chairman, and good morning, and sorry, I'm a little late. The guidelines don't say that there's supposed to be 500 feet between them. It says if there are more than one within 500 feet they come to the Planning Commission. That's why they're here today.

Mr. Higashi: Okay, but looking at where all these vacation rentals are I don't know what...I see a problem because the one across the street which is a big development I don't see these same people that live in...I think that they live in the same particular area...

Mr. Spence: Okay, that's a different question. All I can say is that's why this applicant is here is because there is other...normally if there was no other vacation rentals within 500 feet it would be an administrative approval and this Commission would never see it. But because there is someone else within 500 feet, that's why we're here. It's for you to consider is too much, too much or is this good well-run operation and this is not a problem and it fits in fine. That's why we're here for the Commission to decide.

Mr. Higashi: Thank you.

Chairperson Lay: I have a question for Livit. On Exhibit 4 and Exhibit 3, what's the correlation of the two? There's a two story and I'm just having a hard time putting the two together.

Ms. Callentine: Okay, Exhibit 3 is a site and parking plan. And Lahilahi Place is shown in the lower right-hand quadrant of the drawing on Exhibit 3 as you look at it in this portrait orientation. Flipping over to Exhibit 4 where you would actually find Lahilahi Place would be on the left side of the property that is the Lahilahi. So the drawing is reversed as far as its orientation on Exhibit 4 from Exhibit 3. Does that help?

Chairperson Lay: Okay. Yes. Commissioner Tsai?

Mr. Tsai: Just a follow up to Commissioner Wayne's comment earlier. For my clarification, what's our Department's policy regarding I guess if you have a couple that...could they have separate permits individually under husband and wife's name separately or what's...can you provide some clarification on that?

Mr. Spence: I did not bring the Code with me. If...however, I would say if...what's the guy's name, Tom Holland?

Mr. Torgerson: Bob.

Mr. Spence: Bob Holland and Denise were joint owners they would only be allowed one permit. If there are separate trusts set up or they're held in different LLCs or family corporations they may...we have run into a couple instances where different family members can hold the vacation rental. However, the permit is to held in the name of a natural person. So it would have to be if one of the Holland properties was owned by one LLC and another one by you know, a different LLC, that's possible, but they would have to be held in the name of a member of that LLC and that person would have to be a natural person.

Mr. Tsai: Okay, so can...is it safe to say if both of them on the same title for different, two different properties then they cannot have?

Mr. Spence: They could not be both on the same title. But this is really not the case here. This Commission has already denied one application. So this is not the case where there are two. So, you know, there's one application before this Commission. And there's...if you were to grant this permit there would only be one permit held by the members of this family.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Livit, is there a setback requirement from the street for fences?

Ms. Callentine: I would defer to...well, let's see, in the Zoning Code, no you can put a fence on a property line according to Title 19, Zoning Code. You can check with the Deputy Director of Public Works for any other setbacks she might have. But mostly it's the Zoning Division of the Planning Department that determines compliance with setback requirements.

Chairperson Lay: Deputy wish to say something about that?

Ms. Dagdag-Andaya: Well, setbacks are Planning Department. We're more concerned about issuing the permit for the fence. So as far as the setback, yeah, I would defer to the Planning Department for that.

Chairperson Lay: Director, the question has been forwarded in your direction.

Mr. Spence: And the question was?

Chairperson Lay: Fence line.

Mr. Hedani: Is there a setback requirement for Lahilahi Place and my...basically my question is is this fence legal?

Mr. Spence: Just from viewing the pictures I would say it is legal that's without doing additional research. It appears to be legal to me. You can put a boundary fence on your...anyone can put a boundary fence on your property and you're allowed up to I believe it's seven feet in a residential area. So it appears to me to be fine. And I would also note for the Commission this is an older neighborhood that's why Lahilahi you know, is rather narrow, you know, so a lot of the things...the questions that I've heard being asked, you know, things that you would expect to see in the more recent subdivisions are not going to apply here because the codes and everything was much different when this particular subdivision was done. I mean, even just looking at the end of the street that's a hammerhead and we don't really allow those anymore that I'm aware of. I see Deputy Director Dagdag-Andaya shaking her head no. So you know, that's an indicator this is an older subdivision and you would be expected to see things that are no longer permitted but were fine when they were built.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Currently, how many short-term rentals are in that neighborhood active?

Ms. Callentine: Within 500 feet there are—

Mr. Medeiros: More or less in that neighborhood.

Ms. Callentine: Oh my goodness, I don't have that number. In the community plan...we look at community plan area. Overall there's only 26 that have been issued in the entire West Maui area. Most of them are centered in either Kaanapali or Lahaina, but then there's quite a number also that have gotten also Special Use Permits in Launiupoko, along the shoreline, so it kind of is spread out. But I would say the biggest concentration is either Lahaina or Kaanapali, but I'm sorry, I cannot give you the exact numbers in Lahaina town proper.

Mr. Medeiros: Okay, how many within 500 feet?

Ms. Callentine: There are four approved within the 500 feet.

Mr. Medeiros: Approved. How many pending?

Ms. Callentine: One.

Mr. Medeiros: So there'll be a total of five that you know of within 500 feet?

Ms. Callentine: Correct. If the one that's pending is approved, yes. And that will come before you as well.

Mr. Medeiros: Kinda dense. Okay, thank you.

Chairperson Lay: Commissioners, any more questions?

Mr. Spence: Chairman, can I comment?

Chairperson Lay: Director?

Mr. Spence: I would just comment in response to Commissioner Medeiros's question, Exhibit 7 it appears that none of the additional rentals whether they be B&Bs or whatever within 500 feet are directly...they're not accessible off of the roads that provide access to this rental. I mean, they're up, they're block over nonetheless, so it might make some difference in...

Mr. Medeiros: Okay, the reason I ask the question and she wasn't able to provide me with an answer was you know that whole area it is an old area.

Mr. Spence: Yes.

Mr. Medeiros: I know, 'cause I'm old and I used to play over there. Now it seems that with all these TVRs coming up and everything that old area that I grew up playing in is becoming a mini resort

area. And you know, Maui needs houses not mini resort areas. We need homes for local people. And that's been my position now since before coming on the Planning Commission and it remains my position.

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

Ms. Callentine: Were you going to open it up to testimony? Oh no, we already did that. Sorry, sorry, sorry. So after considering all of the criteria provided to us in the Maui County Code, we've determined that the application for a short-term rental home does comply with Section 19.65, or Chapter 19.65 that covers the restrictions and standards for short-term rental homes as discussed in the Maui County Planning Department's report to the Maui Planning Commission dated September 23, 2014 for Docket No. STWM T2013/0013. Accordingly, the Department recommends approval for one year subject to further extensions by the Planning Director and also subject to 23 conditions of approval as noted in our recommendation report. And in consideration of foregoing, the Maui Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the September 23, 2014 meeting, and the additional exhibits which were distributed on September 23, 2014 as the findings of fact, conclusions of law and decision and order, and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chairperson Lay: Commissioners, a motion? Commissioner Ball?

Vice-Chair Ball: Move to approve short-term rental home at 1161 Lahilahi Place.

Chairperson Lay: Motion by Commissioner Ball.

Ms. Thomson: Just for clarification too, you're moving to adopt the Planning Department's recommendation and report?

Vice-Chair Ball: Yes.

Chairperson Lay: Do we have a second? Motion fails. Commissioner Medeiros?

Mr. Medeiros: Move to deny.

Mr. Higashi: Second.

Chairperson Lay: We have a motion by Commissioner Medeiros for denial and a second by Commissioner Higashi. Any discussion on the motion? Commissioner Wakida?

Ms. Wakida: My concern, my biggest concern with the property is its location. I am very familiar with this neighborhood and it is as the applicant has said several times in his application it is a modest, older, single-family neighborhood. I would like to keep that character. I don't agree with the response in the application on E, Section 19.65 that said short-term rental homes conform in character of the existing neighborhood in which this one is situated. I do not believe that a short-term rental in this neighborhood is in conformance with its character. I think it's a bad fit. The next

street over has a whole different, it's a new...excuse me, newer neighborhood, it has a whole different character, that would be another discussion. This would be the first permitted rental on that, in that subdivision in that older neighborhood and I believe the residential character of that neighborhood needs to be preserved.

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

Mr. Medeiros: I agree with Commissioner Wakida. You know, I'm just curious about the density of TVRs in that entire neighborhood. Right now, possibly there's five, possibly more. You know, and that's one of the things that we have to consider the density of TVRs in neighborhoods. You know, if it's spread out here and there and the neighbors don't care, you know, sprinkled throughout the west side, well okay, so be it. But when you're turning a neighborhood into a mini resort area, I have to take a serious look at it. You know in this case, I will vote to deny.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I have a difficult time supporting this particular application because there's so many open questions that we haven't answered yet, yeah. Are two driveways permitted to a single-family residence off of Lahilahi because they have two driveways. I'd like to reconfirm that there are no encroachments onto Lahilahi Place. It's a hammerhead subdivision that's not currently allowed and if you look at the five applications that surround it, it comes off of an improved roadway that has a conforming cul de sac in the adjacent block while this does not. If they're gonna be building a hotel in the middle of this neighborhood they should bring the street as well as the cul de sac up to Code in order to operate that hotel is my perspective. And because they are not, I have a difficult time supporting it.

Chairperson Lay: Commissioners, any more discussion on the motion? Can we get the Director to repeat the motion?

Mr. Spence: The motion is to deny the application for a Short-Term Rental Home Permit.

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

Mr. Spence: That's six ayes.

Chairperson Lay: Those opposed?

Mr. Spence: One nay.

Chairperson Lay: Motion carries. Denied.

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

VOTED: To Deny the Short-Term Rental Home Permit.
(Assenting - J. Medeiros, R. Higashi, M. Tsai, W. Hedani,
S. Duvauchelle, P. Wakida)
(Dissenting - K. Ball)
(Excused - J. Freitas)

Chairperson Lay: Commissioners, at this time we're gonna take a ten-minute break, reconvene at 10:10.

A recess was called at 10:00 a.m., and the meeting was reconvened at 10:14 a.m.

Mr. Freitas was in attendance.

Chairperson Lay: Commissioners, please be seated. Our next agenda item?

Mr. Spence: Commissioners, the next agenda item is Russell and Elizabeth Evans requesting a Short-Term Rental Home Permit for Hale Evans also in Lahaina, and the Staff Planner is Livit Callentine.

2. **RUSSELL and ELIZABETH EVANS requesting a Short-Term Rental Home Permit in order to operate the Hale Evans, a four (4) bedroom short-term rental home operation located in the R-3 Residential District at 16 Holomakani Place, TMK: 4-4-009: 027, Lahaina, Island of Maui. (STWM T2014/0001) (L. Callentine)**

This short-term rental home application is being referred to the Maui Planning Commission for review and action because an existing short-term rental home is operating within five hundred feet radius of the proposed short-term rental home lot

Ms. Livit Callentine: Good morning again, Commission. And so this is for the Hale Evans at 1600 Holomakani Place up in Kaanapali, and we are going to...you are going to review this today again because they trigger is that there is one existing short-term rental home operating within 500 feet of the proposed short-term rental home.

So the project location map is shown as Exhibit 1 of our report. There is one dwelling on the property containing four bedrooms. There's a two-car garage on the property as well as room for at least an additional two cars in the driveway whereas only two spaces are required per Maui County Code, Chapter 19.36A. Exhibit 2 shows you the site plan, and the Exhibit 3 shows the parking plan. The floor plans can be viewed in Exhibit 4. And photographs of the site and dwelling are provided in Exhibit 5. You'll also find aerial photography of the property and the neighborhood in Exhibit 6.

The property is approximately 14,539 square feet, and I'd like to note this is a correction to the first page of the report and the recommendation report which incorrectly lists the property size. So if you wouldn't mind crossing that out and inserting 14,539 as the correct size of the parcel. The property is located in the Urban District. It is zoned R-3 Residential, and again, it's community plan designated Single-Family. This neighborhood is characterized by single-family dwellings and the property is located in approximately the middle of a cul de sac of moderately sized single-family homes in a neighborhood developed as Kaanapali Vista Subdivision. This was established in approximately 1969.

There are CC&Rs and an association was set up in the beginning. It is now defunct. There is no

board of directors. So there is no budget. There are no dues. There is no operation of an association. However, in reviewing the CC&Rs, we found that the only specific guidance was there was a minimum dwelling size and minimum cost to construct, but it's silent on the question of the uses. So again, the West Maui Community Plan allows for up to 88 Short-Term Rental Home Permits and as of the date this report was written, there were 26 permits issued. And one of these is within 500 feet of the project. And there are no permitted B&Bs within 500 feet of the project. The map in Exhibit 7 shows you the short-term rental home approved in the neighborhood.

The application was transmitted to the Department of Police and Finance and we did not receive comments from either. In 2006, there was a request for service—wait, let me see here—I'm sorry, I may have misspoke on that. Yeah, there was one request for service. It was filed and closed in 2007. In addition, because the Planning Department did not receive comments from the Department of Police, we utilized an online service called "RAIDS Online" which is an additional option that we have for checking whether there have been any, whether there have been any complaints or crimes of confirmed within the neighborhood or on the property and that drew a negative response. There were none.

As of August 27, 2014, we had received on letter of support. And Exhibit 8 of the map shows the source of the support letter, and a copy of the letter is provided as Exhibit 9. Then yesterday, we received and our wonderful Commission Clerk, Carolyn Takayama-Corden, transmitted to you by email and I believe also distributed a hard copy this morning of a letter from another owner. It looks approximately like this. And an updated map, you'll see in the pink sections here, the source of the two homes which provided letters of support in relation to the subject property. You'll see one is adjacent and one is across the street. There were no letters of objection filed on this project.

So the Department has analyzed the project against the Zoning Code and we find, and against the State and community plan requirements, and we find that it is in compliance and conforms with all of the above plans including the Countywide Policy Plan and the West Maui Community Plan. If it's approved, it will comply with Chapter 19.65 of the Maui County Zoning Code regulating short-term rental homes. So your zoning was analyzed in the report.

In summary, we have the five considerations that both the Planning Department and...or the Commission must take into account prior to issuing a permit. The first one is if it's subject to any homeowner, homeowner's association private covenants or restrictions. As mentioned, there is no active homeowner's association and the CC&Rs are silent on the use of short-term rental or vacation rental uses. The second consideration is existing land use entitlements and uses which I've already gone through the applicable community plan. The community plan does not prohibit short-term rental use in the designated area. The fourth consideration is community input. This application was given ample opportunity to comment. The community was given opportunity to comment on the application, and including written notice twice, and posting of a sign, and publishing of the notice of public hearing in *The Maui News* newspaper. In addition, you'll be taking public testimony today if anyone wishes to testify. And community input, we did receive two letters of testimony which I described previously. Potential adverse impacts, this home is allowed to be rented to only one group at a time, and the Department considers any potential impacts to be comparable to either a homeowner occupant or to a long-term rental occupant. And the Department has no record of complaints nor is there any open requests for service on the property.

So as we previously indicated, you must consider this and approve or deny this application because of the trigger being another short-term rental home approved within 500 feet. So what you would need to take into account when deciding whether to approve or deny the application is the number and distance from the subject parcel to other permitted short-term rental homes. And there is one approved short-term rental home within 500 feet as you'll see on Exhibit 7. The number and substance of protests, there were no protests filed. Existing or past complaints about rental operations, there are no police reports on the property. There was one request for service and that was closed in 2007. Existing or noncompliance with government requirements and the degree of cooperation by the applicant. There is no evidence of existing or non...past noncompliance with government requirements, and the applicant has been most cooperative in providing requested information and arranging for a site visit by the Planning Department Staff and any correspondence received by the Department. So we discussed the correspondence received two letters of support. We follow Section 19.65.030(N) that describes the guidance that the rental home shall conform to the character of the existing neighborhood, and we have no evidence that it would not conform to the existing character, the character of the existing neighborhood. This concludes my presentation. The applicant is here today. And he is also represented by Mikal Torgerson. And I'm not sure who's going to go first, but I think the applicant just wanted to introduce himself to you and then Mikal would do a brief power point if that's all right with you?

Chairperson Lay: Sure.

Mr. Russell Evans: Good morning. My name is Russell Evans. And just want to thank you very much for the opportunity to come before you and discuss our application. If you have any questions for me after Mikal makes his comments, his presentation, I'd be happy to answer them. Thank you, again.

Chairperson Lay: Thank you.

Mr. Mikal Torgerson: Good morning again, Chair. Board Members thank you for the opportunity. My name is Mikal Torgerson. Livit did a great job of presenting the application, so out of respect for your time, I'll try not to duplicate what she had said.

The property is in the Kaanapali area. It's on the mauka side of the Honoapiilani Highway just where Kaanapali Parkway is. It's bordered by Holomakani and Halelo, so it's sort of a corner lot if you will and it's only adjacent to two separate homes. This is a view looking down Holomakani looking makai. You see the driveway on the left-hand side of the slide there. This is a view looking back up the hill and you have Holomakani on the left and the Halelo continues on the right side there. Again, an aerial view.

I'll take you through the house briefly. This is coming in front door. The great room portion of the home, the kitchen, a bedroom, another bedroom, and the master bedroom and master bath, another bedroom here. And this a view from the lanai looking down over the pool area of the home, again, the pool area. I have available for you a site plan showing the property and it's relative to the surrounding roads. Floor plan of the main floor which is actually the upper floor. There's a grade above, and then it's sort of a walk out, and the lower floor.

As Livit had mentioned there are five criteria by which the Code dictates this should be judged and I'll go through these briefly. The number and distance of the subject parcel to other permitted short-term rental homes. As Livit had said there's only one other in a 500-foot radius and this is a map of the 500-foot radius that we notified too as well.

The second criteria is the number and substance of protests for the short-term rental home application. There were no letters of protests or any concern raised, but there were two letters of support. The adjacent property owner here, and the one across the street, and I understand those have been given to you.

As Livit had mentioned, there were no existing or past complaints about the property and no police reports relative to the property. There's no existing noncompliance with government regulations and the RFS that was opened and closed in 2007 preceded ownership of the property by my client. And as Livit had mentioned 19.65.030 which relates to CC&Rs and homeowner's association doesn't really...I guess it applies to the application but it doesn't prohibit short-term rentals in the area. And with that, once again, I tried to be brief so that I can be available to answer any of your questions that you might have. My client's also here and happy to answer any questions. So I would leave it back to you. Thank you very much.

a) Public Hearing

Chairperson Lay: Commissioners at this time I'm gonna open up to public testimony. If anyone wishes to testify at this time, step up to the mic, identify yourself, and you have three minutes. Seeing no one...oh, one second, okay. Please identify yourself and you have three minutes.

Ms. Deborah Wright: Thank you Chairperson and Commissioners. The reason we were having a discussion is because we did submit a letter of protest with regard to this property which...and it was hand delivered to the Planning Department so we were trying to clear up at that point why it wasn't in your packet perhaps. My client also filed a letter of protest when he first got noticed on March 3rd which also attached to our letter. So on March 3, 2014, Mr. Sumner, Michael Sumner submitted a letter of protest, and on September 18, my firm, my name is Deborah Wright and I'm an attorney with Wright and Kirschbraun, and on September 18th we hand delivered a letter of protest also to the Planning Department. And we just discussing trying to understand perhaps why that wasn't in the Planning Department's packet. I don't know, it's addressed to the Planning Department and my office hand delivered it to the Planning Department, didn't mail it. So it wasn't lost in the mail.

I need to bring up several, since obviously you don't have the letter of protest, I'll have to go over with you essentially what it says. First of all, we disagree with the Planning Department that the CC&Rs don't have any use restrictions. The CC&Rs do have a use restriction. In the first portion, find the exact number, in the numbered paragraph one of the CC&Rs it says that the...all lots in the subdivision have to be used for single-family residential purposes. In Section 11 of the CC&Rs which deals with nuisances. It's titled nuisances and it goes through that there can't be anything that would disturb other neighbors and sort of general nuisance language. However, the last sentence of that provision says, no commercial activity shall be carried on or conducted on any lot. So we did wanna bring that to the Commission's attention because it specifically provides that there shall not be commercial activity on any of the lots.

This is a very small subdivision, a street that ends in a cul de sac. My client's residence, this is 16 Holomakani Place, but the way it swerves around in the cul de sac my client's lot which is 25, that address, is one of the lots that is directly across from this particular lot. My client has said that commercial activity including short-term rentals have gone for several years on this property and what has concerned him the most and the reason he was most motivated to protest back in March and then to have us protest, and because he cannot be here today for us to appear and testify for him, is that there have also been weddings, wedding activity and things of this nature on which caused huge amounts of parking problems on this little cul de sac. Lots of noise, late into the evenings and various other things of these type of commercial activities. And so, as a result, my client lives part-time at that house. He is not there year round, but he does come and stay on this residence part of the time, and then part of time--

Ms. Takayama-Corden: Three minutes.

Ms. Wright: I'm sorry? Part of the time he's on the mainland.

Chairperson Lay: At this time, I'm gonna ask you to conclude and if Commissioners, you have any questions for her?

Mr. Hedani: I'd like to hear the rest of her comments.

Chairperson Lay: Okay.

Ms. Wright: I'm sorry?

Chairperson Lay: Continue.

Ms. Wright: I was just going to tell you that it's a generally a quiet residential neighborhood. And as you can see just from the area it is a small neighborhood with a limited number of lots. He feels that the generally speaking short-term rentals have quiet hours from 9:00 p.m. to 8:00 a.m. and that has not been the way things have been conducted on this property in the past. And so his fear is that even if that restriction is, they say it's a short-term rental and you can't do this, it's not going to be honored in the future and especially in light of the activity where there have been large gatherings and weddings and things of that nature. So at this time, I just wanted to stress, I don't know what we need to do to be sure we get the protest letters to you guys because like I said, there are actually two. One he sent in March, and one he asked us to send to you on his behalf which is dated September 18, but at least I've had the opportunity and I appreciate it, to address you and express his concerns at this time.

Chairperson Lay: Thank you. Commissioner Wakida, any questions for the testifier?

Ms. Wakida: Just how long is the first letter?

Ms. Wright: It's one page.

Ms. Wakida: And how long is the second letter?

Ms. Wright: The second letter is two pages and a signature page.

Ms. Wakida: Are they addressing the same issue?

Ms. Wright: Yes. His was initial address where he says the problems that's he's experienced with the property.

Ms. Wakida: Chairperson, would be appropriate to ask her to read that letter, the first letter to us?

Chairperson Lay: Commissioners is it all right with everyone? Proceed.

Ms. Wright: I'll read you his March 3, 2014-letter first. It's the starting one.

Ms. Wakida: Just read the first letter.

Ms. Wright: Yes. Planning Director, I have the home across the street from the proposed short-term rental property reference above. And he references 16 Holomakani Place and the TMK. This home has been used for short-term rentals for the last several years apparently without a permit. It has renters almost every week. If there were only two families and two cars at the house at one time there is no real issue. The problem has been the number of times each year that this house is rented for wedding parties. This happens often and when it does there are as many as 15 cars parked on this narrow street, blocking our driveways and creating a noisy nuisance. The guests party around the swimming pool until late at night creating a tremendous amount of noise. I am against the approval of this permit as it interferes with my quiet enjoyment of my home. I am going to surprised if you don't receive other protests from my neighbors. There are plenty of condominium developments on and near the beach that are expected to be used as short-term rentals. Please don't turn our quiet street into a tourist zone with all the traffic and noise that come with it. I would like to be kept informed of the progress and outcome of this action. Sincerely, Michael Sumner.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Do you know if he registered any complaints with the Police Department?

Ms. Wright: I do not know if he did. Knowing Mr. Sumner, I've known him for a number of years. He probably would try not to if he could possibly could. He might have told people to please keep it down or try to do something. But when a permit was being applied for then probably that increased his concern about how much this would continue. He tends not to want to cause trouble and so I don't, I don't know if he ever called the police.

Mr. Freitas: Thank you.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Yes, just for verification. You mentioned that this particular community has a CC&R?

Ms. Wright: Yes.

Mr. Higashi: And in it, it stipulates about not having any commercial activity?

Ms. Wright: It is in there. I think as the representative for the Planning Department told you, the association may not be active at this time. However, the CC&Rs run with the land and it says in there specifically in No. 11, numbered paragraph or Section 11 that there is to be no commercial activity on any of these lots, and we had attached actually. We had attached a copy of the CC&Rs to the letter that was sent to you guys.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, I guess this question is for Livit. Regarding not receiving any complaints, complaint letters. As a standard practice, we send out letters asking neighbors for feedback correct?

Ms. Callentine: The applicant is required to send out those letters, yes.

Mr. Tsai: How ahead of time are we supposed to do, are they supposed to do that?

Ms. Callentine: They have to send out the letter of notice of application prior to filing the application. Sorry, no I'm thinking...I'm mixing it up with B&Bs. Once the Planning Department reviews, initially reviews the application, we sign the notice of mailing of the notice of application. We sign that notice and then applicant sends it out once we've reviewed and another planner actually reviewed this before me. I inherited the project. But...so well in advance of the public hearing they were notified of the application and then again, they must send out a notice of public hearing at least 30 days before the hearing takes place.

Mr. Tsai: Thank you. Is there a guideline as to how much, how many like within the whole, like what we're talking about adjoining neighbors, across the street or what...is there a guideline for that?

Ms. Callentine: You mean as regards to protests?

Mr. Tsai: To let, yeah, yeah or letters or just to send...

Chairperson Lay: Commissioners, we didn't shut down public testimony yet, so-

Mr. Tsai: Oh yeah.

Chairperson Lay: Does anyone else wish to testify? If so, step up to the mic, identify yourself and you have three minutes.

Mr. Thomas Croly: I'm Thomas Croly. I have no connection with the applicant or with this application, but you strayed into an area that I have some experience in so I wanted to offer you my mana`o on it. I live in Maui Meadows. One of the first bed and breakfast applications that was granted in Maui Meadows was done so back in 1998. The homeowners association at that time sued the granting...to deny the granting of that permit, there was two permits actually under exactly

the same CC&R provisions that were just presented. That number one, that this should only be used for residential use; and number two, that no commercial activities take place. The court found in this case that the use of these homes, people sleeping in the homes was indeed consistent with a residential use as well as since then our Code now says that a short-term rental home is a residential use. So I would point out that we're not in conflict with that. And then second, as far as commercial activity, the court also found that the long term renting of homes was the same type of commercial activity as would be staying in a bed and breakfast for a short-term rental home.

But I also wanna make clear as the...a board member of the Maui Vacation Rental Association that a Short-Term Rental Home Permit does not allow the use of the property for weddings or any group activities. In fact, they expressly prohibited. So should the applicant be granted this permit and conduct these weddings he would be in violation of his permit, and that would be reason to pull the permit. Now it's up to your kuleana to determine what has been done in the past and that, but I just wanna point out that in no way, shape or form is granting this permit allowing the applicant to have any commercial activities. Thank you.

Chairperson Lay: Commissioners, any questions for the testifier? Commissioner Higashi?

Mr. Higashi: Are you saying that the CC&R does not hold enough power so that someone can come in and violate that particular...

Mr. Croly: Well, the CC&Rs are really not under the kuleana of you guys anyway. They're private covenants and it would be up to his homeowners association to sue him for violation of the CC&Rs. But they are stated as part of this ordinance to establish what's the character of this neighborhood. If the CC&Rs explicitly say the character of this neighborhood or develop the character of this neighborhood through certain restrictions, then you're allowed to take that into consideration as the character of the neighborhood. But to look at a CC&R and then have this board or this commission say, based on this CC&R we're going to say, no really wouldn't be appropriate. But the CC&Rs simply stating no commercial activities, I'm just pointing out the court has found that someone sleeping in a house and the owner being paid for that sleeping in the house is not a commercial activity in and of itself.

Chairperson Lay: Director?

Mr. Spence: When public testimony is done, I'll read something out of the Code directly pertaining to CC&Rs.

Chairperson Lay: Does anyone else wish to testify? Seeing no one, public testimony is closed. Commissioners, now we can ask our questions, but let's go to the Director first.

Mr. Spence: Okay, it is after public testimony. This is directly out of Title 19, 19.65.030, the Restrictions and the Standards, a portion of N-1. And basically it's talking about processing the permit, the considerations for where short-term rental homes are located, and part of the discussion is, of course, are the...is a proposed vacation rental in conformance with the character of the neighborhood? So N-1 addresses, it's really long, but the portion that I wanna read is, "the Director and the Planning Commission shall not be bound by any private conditions, covenants or restrictions upon the subject parcel. Any such limitations shall be enforced against the property

owner through appropriate civil action.” So this Commission is not bound by CC&Rs. What specifically to reiterate a little bit of what Mr. Croly said, you can, you know, look at the CC&Rs and say okay, you know, they may describe the neighborhood or it may be some kind of indication to the Commission or to the Planning Department, but you’re not bound by those. Those CC&Rs, and we’ve treated this consistently since I can remember over the last 20 years that CC&Rs are a private covenant between the property owners within a subdivision or whoever owns the properties bound by those CC&Rs. We don’t get involved with them as a County. We don’t interpret them as a County because as you can imagine they’re written by any number of attorneys. We have no...they can be interpreted any which way and with...I understand the interpretation from the testifier is that this is a commercial use, you know, there was a court where they said, no it’s not. I look at that and I go I can see it either way, you know, so, you know we can’t be bound by interpreting what is binding on someone else’s property. I don’t even want to interpret. So that’s like treading in majorly dangerous water to me. So you can use them for the purposes of determining the character of the neighborhood, but that’s the extent of it.

Chairperson Lay: Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: Yes, maybe to the applicant.

Mr. Evans: Should I step up?

Ms. Wakida: Yes, please.

Chairperson Lay: And identify yourself again, please?

Mr. Evans: Russell Evans, applicant.

Ms. Wakida: Good morning, Mr. Evans. How long have you owned the property?

Mr. Evans: I believe we’ve owned it since November 13, 2013.

Ms. Wakida: Okay, so you heard a previous testifier that there were weddings on the property. Any in the past year?

Mr. Evans: There have been no weddings on the property since I’ve owned it, since my wife and I have owned it.

Ms. Wakida: Have you rented it out since you’ve owned it?

Mr. Evans: Yes, we have.

Ms. Wakida: Long-term or short-term.

Mr. Evans: Short-term.

Ms. Wakida: Thank you.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Mr. Evans?

Mr. Evans: For me? Yes, sir?

Mr. Hedani: I'm familiar with the subdivision because I worked with the company that developed the subdivision in a prior life. One of the mistakes we made in the subdivision was that the subdivision was built without curbs, gutters and sidewalks that comply with County Code. So if you look at the subdivision you'll see that there's no sidewalks in the subdivision.

Mr. Evans: Yes, sir.

Mr. Hedani: The other mistake that we made was that when we set up the association and the CC&Rs we didn't provide a clear mechanism for resurfacing the streets so I don't think the streets have been resurfaced since 1969 which is 45, almost 45, 44 years ago. And I would guess that they're in pretty bad shape at this point, and my question is do the homeowners in Kaanapali Vista have any inclination to resurface the street at this point?

Mr. Evans: Mr. Commissioner, no? Are you a Commissioner?

Mr. Hedani: Yes.

Mr. Evans: Mr. Commissioner.

Mr. Hedani: Hedani.

Mr. Evans: Mr. Hedani, since my wife and I became owners of the subject property at 16 Holomakani, we've made an effort to get to know as many of our neighbors as possible, most particularly the immediate neighbors say within 500 feet. And we've had several discussions about trying to organize our neighbors, our neighborhood. And everybody feels the same way, the street is unpaved and apparently there are no municipal funds for that. It was if we lived somewhere else the County would pave the road. So there have been some discussions. And personally I was thinking about going to Maui Land and...I don't actually know the name, what it became Amfac.

Mr. Hedani: It's Kaanapali Land Corp.

Mr. Evans: Kaanapali Land, thank you. My plan is to go to them and get more information and see what I can do to organize things and make a difference. One neighbor I haven't been able to speak to is the immediate neighbor across the street, the person whose attorney, and I've been in the property, stayed in the property about 12 weeks this year myself. It is our part-time residence. We are not full-time, short-term rental home. Our purpose is to spend a great deal of time here. And when we're not here, rent it out to appropriate groups or families who will behave in such a manner that's consistent with the County Code. And we have a manager who is less than mile away at...Harris Hawaii, the management company. They do a very good of making sure that, you know, guests are checked in, checked out, that people are behaving as they should be. So we feel there's a adequate amount of supervision. But to answer your question, I have to talked to probably

eight to ten of the neighbors and that is a very common discussion and I plan to work on that myself.

Mr. Hedani: Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Mr. Evans, you have a downstairs bedroom that you label an ohana. In my vernacular an ohana is usually a separate, independent unit with its own kitchen and so on. This particular space is your fourth bedroom, correct?

Mr. Evans: Yes, that's correct, and there is no kitchen.

Ms. Wakida: There's no kitchen?

Mr. Evans: No, ma'am.

Ms. Wakida: Thank you.

Chairperson Lay: I'll follow up on that. Is there a separate entrance for this ohana or is it all...

Mr. Evans: I would say there's a separate entrance. You have to go outside, go down the stairs, and then go into the...what somebody told me, it's called the ohana. And I know the word, ohana and guest house, but I didn't give it the name.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Mr. Evans, as long as you're up here. Your representative said that you would be renting to one group at a time. How large of a group will you be renting to, please?

Mr. Evans: I believe the maximum is eight persons.

Ms. Wakida: All right, so you'll be renting to eight?

Mr. Evans: At a maximum, yes, but-

Ms. Wakida: And you have parking for how many?

Mr. Evans: Well, there are...for people or cars?

Ms. Wakida: Cars.

Mr. Evans: There are three spots in the driveway and there's a two-car garage.

Ms. Wakida: Okay.

Mr. Evans; And we have a...I don't know if we do this because we are told to or because we just

think it's courteous, but when you go into our house there's a book with rules, there's a little sign and it says, don't park on the street in so many words. Yes, please park in the driveway and don't park on the street as a consideration to our neighbor and I believe to be in compliance with the STRH Code.

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

b) Action

Ms. Callentine: So in light of the testimony and the report that you've previously heard summarized, the application it does appear to comply with Section 19.65.030 and the Planning Department's report to the Planning Commission dated September 23rd for Docket No. 2014/0001, accordingly the Department recommends approval for one year subject to further extensions by the Planning Director and subject to 23 conditions of approval as noted in our recommendation report. Further in consideration of the foregoing, the Planning Director, sorry the Maui Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the September 23, 2014 meeting and the additional exhibits distributed on September 23, 2014 as the findings of fact, conclusions of law, and decision and order and authorize the Department of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chairperson Lay: Commissioners, any motion? Commissioner Ball?

Vice-Chair Ball: Motion to approve 16 Holomakani for a Short-Term Vacation Rental Home and the recommendations by the Planning Department.

Mr. Freitas: Second.

Mr. Medeiros: Second.

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

Mr. Medeiros: When I first read this, you know, application and everything I was pretty much for it. Then I heard the complaint and I was going, oh wait a minute. And then I heard the explanation from the Planning Director and I said, wait a minute again. You know, this ..you had no dealing with the previous weddings and everything, you know, and that seems to me where the problem was you know. And I'll support it, you know, as long as you limit your weddings to your family and you being to make sure that the neighbors don't get disturbed and everything, you know. I mean, if I owned a property like that you know, I mean if one of my family wanted to get married, heck yeah, you know. And it was my family and the neighbors objected to the wedding, well call the cops.

Chairperson Lay: Corp. Counsel wanted to suggest some conditions for this.

Ms. Thomson: Thank you, Chair. Just had a...I recommend amending the main motion to clarify Conditions No. 10 and 11. No. 10, because there is a main dwelling on the second floor and an

ohana with a separate entrance, just for clarity purpose, I'd recommend changing No. 10 to read, "that the property shall be rented to no more than one group." Recommend changing No. 11 to say, "that the STRH Permit is limited to four guest rooms within the main house and ohana." So that's just changing the first sentence of No. 11. So if somebody wants to make that amendment that's what I'd recommend.

Vice-Chair Ball: I'll accept the amendment.

Mr. Medeiros: Second.

Chairperson Lay: Okay, amendment is approved by the maker of the motion and seconded by the seconder. Any discussion on that? Let's vote for the amendments on our motion. All those in favor raise your hand?

Mr. Tsai: For the amendment.

Mr. Spence: Just for the amendment.

Chairperson Lay: Just the amendment, yes. The changes that Corp. Counsel spoke of.

Mr. Spence: That's eight ayes on the amendment.

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

**VOTED: To Accept the Amendments to Conditions No. 10 to read, "That the property shall be rented to no more than one group." And that the first sentence in No. 11 to say, "That the STRH Permit is limited to four guest rooms within the main house and ohana."
(Assenting - K. Ball, J. Medeiros, J. Freitas, M. Tsai, W. Hedani,
S. Duvauchelle, P. Wakida, R. Higashi)**

Chairperson Lay: You guys need it to be read again as far as the amendment or is that, was that clear? Okay. Moving back onto our motion. Any further discussion on the motion? Commissioner Hedani?

Mr. Hedani: Personally I don't have a problem with a vacation rental in this particular subdivision, but it does have CC&Rs and although the portion that the Director did read says that the County is not in the business of enforcing private CC&Rs. Private CC&Rs should be made available to the Commission in its deliberations in order to develop an understanding of the character of the neighborhood which is why the provision is there that says if there are CC&Rs it should be provided to us. We haven't gotten the CC&Rs for this particular subdivision. We haven't gotten the protest letter that was hand-delivered by an attorney to the Department that should have been provided to the Commission for their consideration, for our consideration.

One of the conditions that I would suggest attaching to this is that the applicant make an effort to have this subdivision brought into a safe condition in terms of the roadway including resurfacing of the roadway up to his property boundary or up to Holomakani Place or something so that guests

that are leaving this area don't hit a pothole and lose control of their vehicles in the dark of night. The subdivision roadways are in really bad shape. Roots are protruding on the side of curbs, you know, and there are no sidewalks. So people that are walking around the subdivision can get hurt. So it's not up to current subdivision code. Like the prior application that we just denied, you know, where the roadway was not up to current code. So that would be a suggestion that I would make if we're inclined to move forward with this particular approval.

Chairperson Lay: Is it a suggestion or a condition as far as the roadway improvements?

Mr. Hedani: I don't know that the applicant...I don't know that it would be fair to the applicant to have him resurface the entire roadway. I think it's 30 or 35-lot subdivision and he's already making an effort to try to coordinate the neighborhood. I think the neighborhood...at one time we sent a letter out to the entire neighborhood saying you guys agree to cover 1/35 of the cost of resurfacing the neighborhood, we'll resurface it for you and we'll bill you for the cost of the project. The answer that we got from most of them was great, and the answer from the rest was I'm not paying for anything. So that's probably the same answer that Mr. Evans is gonna have when he does this application. And that's why that subdivision is in such good shape.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I, too, I'm concerned that we didn't get all the information and I apologize to the attorney and the people that she represents for this because I think that's a, that's a serious lapse somewhere along the line. I have a little bit of concern, this too, is an older neighborhood, but it's a more upscale neighborhood and of course, it's adjacent to a resort area. However, I am willing to give this applicant a year to prove himself without any further concerns from his neighbor because he it does sound like he has neighbors that are very vigilant and will keep on top of things.

Chairperson Lay: Commissioners, any more discussion on the motion? Can we get the Director to repeat the motion?

Mr. Spence: The motion is to approve the permit as...with all the conditions as amended.

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

Mr. Spence: That's seven ayes.

Chairperson Lay: Those opposed?

Mr. Spence: One opposed.

Chairperson Lay: Motion carries. Congratulations.

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

VOTED: To Approve the Short-Term Rental Home Permit as Recommended by the Department with Amended Conditions.
(Assenting - K. Ball, J. Freitas, J. Medeiros, M. Tsai, S. Duvauchelle, P. Wakida, R. Higashi)
(Dissenting - W. Hedani)

Chairperson Lay: Commissioners, let's take another ten-minute break. We've got a big agenda today.

A recess was called at 11:00 a.m., and the meeting was reconvened at 11:10 a.m.

Chairperson Lay: Our next agenda item?

Mr. Spence: Commissioners, we're on public hearing no. 3, Mr. Paul Merage, somebody will correct me if I mispronounce it, requesting an SMA Permit to demolish existing structures and construct three single family residences at 3116 South Kihei Road in Kihei, and our Staff Planner is Mr. Keith Scott.

3. MR. PAUL MERAGE requesting a Special Management Area Use Permit in order to demolish the existing structures and construct three (3) single family residences and related improvements on approximately 0.80 acres of land in the R-3 Residential District at 3116 S. Kihei Road, TMK: 2-1-010: 005, Kihei, Island of Maui. (SM1 2014/0006) (K. Scott)

Mr. Keith Scott: Good morning, Chair and Members of the Commission. The application under consideration is a Special Management Area Use Permit. The applicant proposes to demolish an existing single-family residence on a 34,848 square foot lot, and construct a main dwelling consisting of 7,661 square feet, a pool and spa, two pool pavilions, associated landscaping and hardscaping and two additional dwellings each consisting of 2,64 square feet of living space, and 642 square feet of garage.

The project is located in the State Urban Land Use District and Maui Island Plan Urban Growth Boundary. The Kihei-Makena Community Plan designation is Single-Family Residential. County Zoning is R-3 Residential and the project is located in the Special Management Area.

The elevation of the site ranges from 27 feet above mean sea level on the east and nine feet on the west. The standards for reviewing a Special Management Area application are found in your report. At this juncture, Mich Hirano at Munekiyo & Hiraga and other consultants to the applicant would like to make a brief presentation. After that, I'll return and present the Department's analysis.

Mr. Mich Hirano: Thank you, Keith. And good morning, Chair Lay and Commissioners, and Director. My name is Mich Hirano with Munekiyo & Hiraga and we represent the applicant, Paul Merage on the SMA application before you this morning. We've prepared a brief power point presentation to provide some background on the project and the assessment of the Special Management Use Permit.

I'd like to just introduce the project team for the Commissioners. The applicant is Paul Merage and Paul is in attendance at this meeting this morning. I am the principle in charge of the project with Munekiyo & Hiraga. Charlene Shibuya is also a senior associate in our office and she's here this morning. She'll be making the second part of the presentation. The project architect is Carlos Elenas from EBTA Architects, and Carlos is in attendance as well. Landscape architect is Bill Mitchell with Hawaii Land Design and Bill is also in attendance. And the civil engineer is

Stacy Otomo and Stacy and Ashley Otomo are here as well to answer any questions the Commissioners may have.

In terms of the background of the project, the proposed project involved the construction of a main dwelling and two additional dwelling units. The residences have been designed for Paul and Lily Merage and their extended family. Property address is 3116 South Kihei Road. The zoning is R-3, Residential and the lot area is 34,848 square feet or approximately .8 acres. Pursuant to the Zoning Code, three residential structures are permitted on this property because the minimum lot size is 10,000 square feet. And this parcel is 34,000 square feet. The permitting is a Special Management Area Use Permit, and we've also submitted a Shoreline Setback Assessment because the subject property is on the shoreline.

This is a property location map. The property is located on South Kihei Road. And just at the border of Wailea, Okalani Drive, Kilohana Drive is kind of the border of Wailea Resort. This is Kilohana Drive, Piilani Highway is to the east. You come down Kilohana Drive to South Kihei Road. There is a beach access parking lot on the southeast corner of Kilohana Drive and South Kihei Road. There is a beach access, a public beach access just across the street. South Kihei Road sort of continues south. And it joins Okalani Drive out and ventures into Wailea and it also extends further south, South Kihei Road and comes to another public beach access point and this is along Keawakapu Beach in South Maui.

This is an aerial view of the subject property and as you can see we wanted to just show this for the Commissioners. This is the subject project. It's in a neighborhood of single family residential dwellings. This is...there is an existing structure on the property, a single family residence that was built in the 70s. Mr. Merage would demo the existing structures and build a new structure on the property. So I just wanted to show as well this is South Kihei Road and going up to Kilohana Drive.

And then this a picture of the Merage family and as you can see it's a fairly large family. The Merage family is a very close knit extended family and they enjoy vacationing together on Maui. The Merages wanted to find a property that would accommodate their three children, their spouses and six grandchildren, and their two great grandmothers and their caregivers. So the Merage family travels together, they come and they spend time on Maui. And this picture was taken last year at the blessing last December when the Merage family purchased the property.

I'd like to now turn the presentation over to Charlene to go over the assessment of the development.

Ms. Charlene Shibuya: Good morning, Chair and Commissioners. Again, my name is Charlene Shibuya and I'm a senior associate with Munekiyo & Hiraga. And I guess for those of you that know from my former life, I've seen retired from the Department of Transportation.

Okay, just to give you a walk through of what the existing property looks like. Yeah, if you're looking from South Kihei Road. This is South Kihei Road back here, if you look in the driveway this is main residence that you were seeing behind the Merage family in that photo. This is the cottage and the garage is way down here to the left. If you're actually sitting on the patio of the existing dwelling and looking out to the ocean you've got this wide lawn area with a lotta trees and this area is gonna remain as is because this is pretty much within the 90-foot shoreline setback area which

is restricted from building anything. But you can see it's nicely well maintained. It will serve to actually capture storm runoff and you know filter it so it doesn't get into the ocean. And if you're standing from the beach looking in, the sand...actually the beach actually slopes upwards so this property is sorta tucked away in this longish property and it's well landscaped with...actually the beach itself have natural landscaping of beach naupaka with this coastal dunes fronting all of the property.

Now this is what is proposed on the property. As I said, it was a long property. This is South Kihei Road and this is the beach. This line here represents the 90-foot shoreline setback line and as you recall, I showed you that photo looking out from the existing residence that the patio is approximately at this point, and this is that 90-foot shoreline setback area that's supposed to remain open grassed area. And here was the pool and deck area. There's gonna be some small shade pavilions and another pool pavilion and then this is the main residence. And there's gonna be a garden landscape area and this is gonna be dwelling no. 2 and dwelling no. 3. And then there's two, garage spaces for two cars under this dwelling, another two, and another two spaces here. If you look at the side perspective of the property you can see how it slopes down to the ocean which is why when you...if you were standing at the beach you couldn't really see well into the property. But again, this is the 90-foot shoreline setback line and then this is where the pool starts and then you got these little shade and pool pavilions and deck area, the main residence and this open garden area and then dwelling 2 and dwelling 3 which are mirror images of each other so you will see only one. But again, you'll see this you'll see the 30-foot maximum building height line, all these dwellings will be within that envelope.

This view, this is a northeast perspective but you know, if you were standing in that lawn area and looking into the property you can see how nice it looks. And obviously, you know, this grass area extends way out this way. If we were to do the perspective from the beach, you wouldn't be able to see this. So if you were standing on the property looking in this is what the pool area would look like, the dining pavilion, a shade and pool pavilion and then the main residence. So it looks like it's really nicely tucked in, tucked into this long parcel.

These are the elevations for the main dwelling so if you look at the...the idea of these dwellings were they wanted to get this contemporary island look and then Paul Merage and the architect worked for hours trying to create design that kinda creates this island contemporary, you know, and incorporates a lot of the native trees and respectful of the culture, and it has the high quality architecture. So you'll see, got these extended overhangs and these mahogany and cedar trims and the colors are pretty earth tones, you know, not too loud so it pretty much very well blends in with the surrounding. And these are the dwelling 2 and dwelling 3 for his extended family. Again, the same extended overhangs, you know, the mahogany and cedar trims and then lot of landscaping. And dwelling no. 3 is a mirror image, so it's pretty much the same.

Now looking at the conceptual landscaping plan. Again, this is South Kihei Road, this is the beach, and this is that large lawn area that's gonna remain as is, the 90-foot shoreline setback area. And I pointed out all these main dwellings, the dwelling 2 and dwelling 3, and as you can see it's a well landscaped. The garden areas are well landscaped with a variety of palms, trees, shrubs and groundcover. And if you'll look at some of the plantings, you can tell that they've incorporated a lot of native plantings into their scheme. And of course, all the plantings will be watered with an automatic irrigation system.

Now if you were to look from...if this is South Kihei Road, if you look at the property from across the street this is what it looks like now. It's pretty densely landscaped along the frontage, and you'll just see the opening to the driveway. This photo montage will give you an idea of what you would see even with all the buildings constructed and you can see that you just barely see the tops of dwelling 2 and dwelling 3, and then, I know it's kinda dark this photo, but then you will just see the driveway gate. So if you look in the left, the existing and then the proposed, it pretty much blends very well in from the South Kihei Road side. And I'm bringing up this aerial view again 'cause I wanna point out to you again if you look at all the existing residential properties and then you look at Paul Mergé's property, the 90-foot setback line is approximately here and about a quarter in the property, so the pool sits about here and his main residence starts another 70 feet in, so it's about here where the existing house sits and then you'll have the dwelling 2 and dwelling 3. So again, you can see even from the ocean side, it's tucked away. You know, a lot of it is tucked away, and then in comparison to these older structures that didn't have to comply with the shoreline setback rules, it sits further back.

Now to give you an idea of the view of the surrounding properties. This is South Kihei Road again, and if you're looking northwards, this is the Wailea Kai gated subdivision and on the left side these are all the beachfront properties, and as you can see all of the properties are pretty much densely landscaped along the frontage like the earlier photo that I showed of the Mergé property. And then if you looking southwards towards Wailea then you can see again, these are the typical beachfront properties. And a little bit closure look, if you were to drive down South Kihei Road going towards Wailea, these are what the properties kinda look like. You know, they're pretty high in architecture and nicely landscaped and then you'll see some of them have actually gates that you cannot see through and some of them they leave it open. And then again, some of them have these see-through gates and again, solid gates, but pretty much if you look back, if you remember back at the other photo with the Mergé property you can see his actually property...well, his proposed buildings will actually kinda sit real nicely behind all this landscaping.

Then again, looking from the beach side, Keawakapu Beach...this is typical views along the frontage at Keawakapu Beach, it's very wide. It has these healthy coastal sand dunes and here's a closeup that shows you the healthy sand dunes that kinda lie along the frontage of all these properties. This is beach naupaka and the ipomoea, what they call morning glory that sorta holds all these coastal sand dunes nice and tight.

Archaeological...an archaeological assessment was completed for the property. It entailed, you know, actually excavating eight trenches. Nothing significant was found, but although...even if nothing was found archaeological monitoring was recommended so the archaeologist prepared a monitoring plan and State Historic Preservation Division approved both the assessment as well as the monitoring plan.

And I don't know if you remember Mich mentioned that the existing structure was built in 1970, so asbestos has been identified in the floor tile, popcorn ceiling, and roof shingles. So the asbestos will be removed per Department of Health rules and regulations by a certified contractor.

And for the drainage, as I mentioned before there's that large lawn in the front that will capture onsite runoff, but in all the garden and landscape areas there's gonna be an onsite retention system. There's a series of little graded intakes that will capture into little French drains to

percolate into the sand, and that way you won't have any adverse impacts to the ocean or adjacent properties in the event of a storm.

Before I end, I wanted to add also that as far as water demand it's gonna be approximately 1,800 gallons per day, but again, the residences will be used as a vacation rental so it's not gonna be occupied all year round. And also, to kinda add to the energy efficiency of the whole site, they are gonna include photo voltaic and then internally they'll have a Diakin heating system that's designed to use only 20 to 25 percent less energy than a conventional system.

So in summary, you know if you look at all this design, the proposed residences will provide Paul and Lily Merage and their extended ohana which you know, you saw was quite large the vacation home they envisioned to blend in with their surroundings and add to the quality of the architecture of this beautiful island. And I forgot to mention that the reason why, you know, they're gonna be three separate residences, they wanted to create something a little more open space and no create like one big, large house to accommodate everybody. So you can see how very well designed the site and Paul Merage has spent numerous hours with the architect to ensure that, you know, his vision for vacation home is created. And if, you have any questions we have all our consultants behind me.

a) Public Testimony

Chairperson Lay: At this time, I'm gonna go to public testimony. If anyone wishes to testify, please step up to the mic, identify yourself, and you have three minutes. Seeing no one, public testimony is closed. Commissioner Freitas?

Mr. Freitas: Yes, you stated that this property will be used as vacation rentals?

Ms. Shibuya: Oh, when I said vacation rental, vacations for the family, excuse me. I'm gonna correct myself, not rentals. It's for the family, only for the family.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: So these homes will be vacated only or any of them will be a permanent residence, will be occupied as a permanent residence or they will be just all vacation rental...vacation...

Ms. Shibuya: Actually, the family will be using it for their vacations throughout the year but otherwise it will remain vacant.

Mr. Freitas: So we're not looking forward for them coming for a short-term rental permit?

Ms. Shibuya: No, the owner does not intend. He has spent a lot of hours with the architect to ensure that, you know, his vision is completed for the family and he intends it, you know, to carry over to his children also.

Mr. Freitas: Thank you.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I didn't raise my hand.

Chairperson Lay: Got that six sense thing going.

Mr. Hedani: I just wanted to compliment the owner and the architect on the design as it's presented, you know, it's very impressive.

Ms. Shibuya: Yeah, thank you. Yeah, 'cause if you speak to Carlos and Paul, they spent a lot of hours to make sure that, you know, the materializes into what he really envisions for the family.

Mr. Hedani: I find it it's a very, very attractive residence.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Do you have the slide, it says Exhibit 7, but you have a few Exhibit 7s.

Ms. Shibuya: Oh, those were just...is that the grading plan?

Vice-Chair Ball: No, I think it's...it doesn't say what it is but it's like a survey map, but it has some landscaping on it. So my concern is the landscaping that is shown on here on the beach side of the property line if this is correct...there's also some concrete steps, number of palm trees, grass bank, naupaka plant.

Ms. Shibuya: Let me have Mich...answer that.

Mr. Hirano: Thank you, Commissioner Ball for that question. You know this is a photo reference map that you're looking, but it's taken from the shoreline survey, and the shoreline was certified. So those are not on the Merage property. The property line is I guess mauka of that, but it didn't prevent the shoreline from being certified. So I don't know what the status is of those steps.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: I notice that in your drawings, et cetera, you stipulated that there's a 90 feet setback from the ocean.

Mr. Hirano: Correct, yes.

Mr. Higashi: However, I don't see the distance from the setback all the way to the street. I'm trying to get the 34,000 square feet amount, but I don't know what the width is?

Mr. Hirano: I think Keith had that information as part of his presentation, but the property line is about 286 feet deep and width is about 100 feet frontage, approximately 100 feet frontage, 186 feet.

Mr. Higashi: And 300 going the other way.

Mr. Hirano: Yes, the--

Mr. Higashi: And your garage I think one of the statements it said something about living area. Is there an upstairs on top the garage?

Mr. Hirano: The garage are part of the dwelling unit, the second and third dwelling unit. It's a 600-square foot garage, and then there's a second floor on that. So there's a living--

Mr. Higashi: Is that a living area or storage?

Mr. Hirano: Yes. No, it's a living area. It's a dwelling so there's a kitchen.

Mr. Higashi: There's a kitchen in it.

Mr. Hirano: Yes.

Mr. Higashi: So actually you have four. You have the main dwelling, you have two cottages and the garage with a upstairs?

Mr. Hirano: No, no, the garage is part of the second and third dwelling units. Each of those units have a garage, an inside garage.

Mr. Higashi: For each unit?

Mr. Hirano: Yes.

Mr. Higashi: So you have--

Mr. Hirano: Three structures.

Mr. Higashi: Three structures. And how many parking spaces do you have then?

Mr. Hirano: Two parking spaces in the garage in each unit, and two on surface for the main dwelling, so there's six.

Mr. Higashi: Six parking areas.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Mich, this is just a comment. On the irrigation system for the beach side landscaping if the owner could take into account that the County just enacted an enforcement action in the Charlie Young Beach area or Kamaole Beach Park II area where they had the landowners cut back the landscaping along the beach side to free up the dune system basically. So the irrigation system should not artificially extend the vegetation line towards the makai area.

Mr. Hirano: Yes, thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yes, I'd like to piggyback on that same comment. We had a workshop recently at the Planning Conference and we were shown how the proliferation of naupaka actually impedes dune restoration. So you don't wanna let it grow out there. Some people think that it preserves the beach but in particular in the Kihei dune system it impedes it. On the other hand, the morning glory, that little vine that's on the ground, the sand comes right up and becomes part of that so that's okay. But your naupaka looks pretty generous, and you probably wanna take a look at that.

Mr. Hirano: I'd like Bill Mitchell to just make comment.

Mr. Bill Mitchell: Good morning, Mr. Chair, Members of the Commission. My name is Bill Mitchell, I'm the project landscape architect. Yeah, thank you for your comments on the naupaka. We're aware of that and we don't plan on any irrigation water supplementing the existing naupaka. In fact, we typically hold our irrigation back five to eight feet from that edge so we don't any bleed back onto the naupaka. So those are good comments. But happy to answer any other questions you have.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Mich, I guess. Mind sharing the total cost of construction, estimated time line for completion?

Mr. Hirano: I'd like to ask Carlos Elenas to do that please.

Mr. Carlos Elenas: My name is Carols Elenas, I'm a principle at EBTA Architects. We're anticipating the project duration to be around 22 months, somewhere in the 20 to 22-month range. And the project cost is gonna be anywhere between eight to ten million dollars.

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

Mr. Higashi: I have one more. This is in relation to your infrastructure. The water meter that you have there and is on property now, you have two water meters.

Mr. Hirano: Correct.

Mr. Higashi: One is 5/8 inch and the other is 1 1/2 inch is that something that was originally installed?

Mr. Hirano: Yes.

Mr. Higashi: 'Cause that's unusual for 1 1/2 inch pipe to be on a property like that.

Mr. Hirano: That's right. They're quite expensive now. These are existing on the property.

Mr. Higashi: Existing.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Would the applicant be opposed to pulling that naupaka and those palm trees or

at least get some input from that coastal dune restoration group for that's growth that's seemingly coming from their property onto the beach?

Mr. Hirano: I would like to ask Mr. Merage to maybe respond to that. But you know, that is not on the property. It's not on his property. So I guess he would have to have permission, but certainly—

Vice-Chair Ball: Right, I understand that, but it seems if it's coming from his property over to the beach.

Mr. Paul Merage: Mr. Chairman and Commissioners. Thank you very much. Actually to answer your specific question, we recently received a request from the State to cutback the naupaka and they actually put in exactly what the line was that they wanted and that has been done. We just did that like about a month ago.

Vice-Chair Ball: Okay, great.

Chairperson Lay: Have a question for drainage, Stacy? This is, this is probably gonna be a pretty elaborate system that you're setting up here for drainage and if you could just run through for us on how you're gonna do your retention on this project?

Mr. Stacy Otomo: Stacy Otomo from Otomo Engineering. We have a series of area drains. Particularly in this landscape area. We have a series of area drains so that we prevent water from ponding or you know, overflowing into the home. And basically halfway down we have a system coming out here along the side which includes numerous area drains to pick up storm water, and at the very bottom before the shoreline setback on either side, we do have a perforated drainage system where the water would be allowed to stored and infiltrate into the ground. In addition, during construction if we wanna tie in the roof down spouts to this system we have opportunity to do that as well. Just keep in mind, I think as Charlene mentioned, in this particular shoreline setback area the dunes are I would say anywhere between two and four feet higher than someone's lawn area so that creates a natural detention area for the property as well.

Chairperson Lay: My only concern was previous to this there was a lot of green in this area and now it's got a lot of hard surface where the water's not able to penetrate into the soil, but glad you got some system going there.

Mr. Otomo: And in addition, this little green space here we are creating a detention, a shallow detention basin there as well.

Chairperson Lay: Okay, thank you. Commissioners, any more questions?
Commissioner Medeiros?

Mr. Medeiros: And this one is for Mr. Merage. This is more a statement than a question. Wow!

Mr. Merage: Thank you.

Mr. Medeiros: You're welcome.

Mr. Mearge We appreciate...I really...my wife and I and our family, we really appreciate your comment. I just have to say that, you know, 48 years ago when we got married we had our honeymoon here and since then we have brought back our children, our grandchildren, and parents. So we've always been fans, and this has been kind of a dream vacation...home for us. So we are glad to finally find a piece of land that works for us, and you know, hope to be a member of this community for a long time.

Chairperson Lay: I thought you were gonna tell him you're up for adoption. Commissioner Hedani?

Mr. Hedani: This is a question for Keith actually. I notice that there's a public beach access to the north as well as to the south of this particular property. Do you know, Keith, do you know the distance between those beach access?

Mr. Scott: I don't believe I do. The answer is no, I don't know, but we can...

Mr. Hirano: I don't know the exact distance Commissioner Hedani, but this is the property and this is the beach access off Kilohana Drive, and that's maybe six, seven hundred feet. It's, you know, about seven properties over. This is the other beach access at the end of South Kihei Road where it goes into cul de sac, and again, what would that be, 1,500 feet perhaps? Each lot is about 100 feet wide.

Chairperson Lay: Commissioners? Commissioner Hedani?

Mr. Hedani: I know one of the goals that's stated, you know, within our documents is to try to establish beach accesses at 1,500-foot intervals. That's the ultimate goal. From my own perspective, I think there's adequate access because of the mauka parking area to the south as well as the parking area to the north. So from my perspective I think there is adequate beach access.

Chairperson Lay: Commissioners? Commissioner Tsai?

Mr. Tsai: Just to respond to Commissioner Hedani's comment. Yes, I run at that beach all the time. There's south and north parking and it's very easy to get access to.

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

b) Action

Mr. Scott: Thank you. The application complies with the applicable standards for the Special Management Area as found in Hawaii Revised Statutes and as well as 12-202-11, the Special Management Area Rules. The Maui Planning Department recommends approval of the Special Management Area Use Permit based upon the Department's report and the ten standard and seven project specific conditions in this report. Briefly those project specific conditions are that the asbestos be remediated and that owners and lessees of parcels within 100 feet of the subject parcel be notified at least one week prior to the remediation taking place. That lead-based paint testing of all existing structures be undertaken prior to commencement of demolition and

appropriate remediation takes place should lead-based paint be detected. That deconstruction or other methods are used to remove the existing structures on the property in order to recycle materials for reuse. That the applicant shall pay any required wastewater related fees of the Department of Environmental Management. That best management practices be implemented to ensure water quality and marine resources are protected. That the applicant shall consider the use of photo voltaic power generation for the project and I think they've already indicated they'd do that. And that the approved National Pollution Discharge Elimination System Permit if required, be appropriately filed prior to issuing the demolition permit.

Mr. Freitas: So move, as recommended.

Mr. Medeiros: Second.

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

Mr. Medeiros: One word, wow!

Chairperson Lay: Any more comments? Can we get the Director to 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 eight ayes.

Chairperson Lay: Motion carries. Congratulations.

Mr. Hirano: Thank you very much, Commissioners.

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

**VOTED: To Approve the Special Management Area Use Permit as Recommended by the Department.
(Assenting - J. Freitas, J. Medeiros, K. Ball, M. Tsai, W. Hedani,
S. Duvauchelle, P. Wakida, R. Higashi)**

Chairperson Lay: Commissioners, we're gonna jump into the next one right away so we can get something done before 12:00. We have a long day ahead of us.

Mr. Spence: Okay, Commissioners, Item D-1, Ms. Juanita Chong of Halfway to Hana, Inc., requesting a 20-year time extension on their State Land Use Commission Special Use Permit and Conditional Permit to continue operation of the Halfway to Hana Stand in the State Ag District in Keanae. Staff Planner and it is still morning, is Mr. Paul Fasi.

D. COMMUNICATIONS

- 1. MS. JUANITA CHONG of HALFWAY TO HANA, INC. requesting a twenty (20) year time extension on the State Land Use Commission Special Use Permit and Conditional Permit to continue the operation of the Halfway to Hana Stand in the State Agricultural District at TMK: 1-1-007: 003, Keanae, Island of Maui. (SUP2 960007) (CP 20010004) (P. Fasi)**

Mr. Paul Fasi: Good morning. Thank you. This matter arises from a request by Juanita and Doug Chong for the Halfway to Hana also known as the Waianu Fruit Stand. They're requesting a 20-year time extension on this particular...these two permits, the State Land Use Commission Special Use Permit and a Conditional Permit. They've held these permits for 31 years, and they've been renewed seven times over the 31 years. The last renewal was for 10 years. So the Department is requesting 20 years. You can make it longer if you wish. We don't really have an issue with that. There have been no complaints, zero response from the neighboring properties. It's a big property, 107 acres. It's only five acres that this particular fruit stand occupies. As the Director said, it's designated Ag on all three zoning levels. It is not part of the SMA. It received its first State Land Use Commission Permit in 1983, and it's been renewed ever since. So about 31 years in existence.

And the reason for the Conditional Permit is at the time they were selling items that were not produced on the property and things like mosquito repellent, 35 mm film which doesn't exist anymore, chips, you know, things like that. And also, it's 432 square feet. The limit is 300 square feet. So it's slightly larger, but it has been there for 31 years and there have been no major issues with this particular operation or its location. That concludes my presentation, if there are no questions...I'll take some questions. Also, Juanita is here. They drove in from Hana this morning with her husband, Doug, and they are available for questions. Thank you.

Chairperson Lay: At this time, I'm gonna open up to public testimony. If anyone wishes to testify, please step up to the mic, you have three minutes. Seeing no one, public testimony is closed. Commissioners, questions for the applicant? Commissioner Wakida?

Ms. Wakida: Since the applicant came all the way from Hana I would like them to come up.

Ms. Juanita Chong: Good morning.

Ms. Wakida: Good morning.

Ms. Chong: I'm Nita Chong, my husband, Doug. You know, we've been operation for 31 years. We have around five to seven employees that are all Keanae residents. So we do try to get the area people working there. And I do ask for the extension because we've always complied with all the rules and regulations, and we've been here, like he said seven times and it's sometimes costly and time consuming to do it so, we're not someone that's gonna be here, sell it, and out. We tend to be here for quite a while, except I'm getting older, but that's the reason for the 20 years that I'm asking.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: You are selling, I see banana bread and fruits.

Ms. Chong: Just light snacks. It's...we have a small area where there's two picnic tables or three picnic tables and it's walk up to the counter, get your food and go to the picnic tables. So it's a pretty fast turnover. It's not where people linger for very long. And snacks as far as hot dogs, and burgers, and chips, and ice cream.

Ms. Wakida: Okay.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Thank you. Juanita, thank you for coming and I'm fully supportive of your operation. I wish you the very best. My only question, I have more like a comment is that why is it every time I drive by there the place is closed?

Ms. Chong: No, it's not. You must be coming at 6:00 in the morning. We're open seven days a week, and we're 8:30 to 4:00 except Christmas and maybe Thanksgiving. But we're always there. We have portables that it doesn't cost...you know, it's on my expense. It's for the tourist and for the Hana people because we have a lot of Hana people that drive at night, drive early in the morning. They stop, they get a drink, they have the rest stop. So it's accommodating more than just tourists.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, I've been there, I can't count how many times. Always had great service. My question is why do you folks have to come back here for a permit? You're asking for 20 years, I have a what do you call, a question for Corporation Counsel. Can, what if we would do an indefinite permit, is that an option?

Chairperson Lay: Corp. Counsel?

Ms. Thomson: No, I don't, I don't recommend an indefinite permit.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'm against the 20-year extension. I'd like to see 30 minimum. Why have them come back in 20 years, go 30.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendation? And thank you for coming.

Mr. Fasi: Pursuant to Department's findings in the report and the above stated conclusions of law, the Maui Planning Department recommends approval of a 20-year time extension for the Land Use Commission Special Permit and County Conditional Permit per the following changes as noted in the Department's report and basically we're taking six old conditions and updating them to today's language with six new...basically it's the same conditions, but new language. And then we're deleting some of the old conditions that are no longer applicable. So if the Commission wants to entertain a longer time period, I'm sure the Department can accommodate that.

Mr. Tsai: I move to approve, and also with a condition to extend it for 30 years.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Tsai, seconded by Commissioner Medeiros. Any discussion on the motion? I'd like to say that I stop there all the time to get ice cream halfway through, okay just to let you know, and the kids enjoy the ice cream cone. It's a little break, halfway to Hana and we enjoy it. Commissioner Hedani?

Mr. Hedani: So the motion is to approve as recommended by Staff, with the amendment of the time of 30 years?

Mr. Tsai: Yes.

Chairperson Lay: Any more discussion on the motion? Seeing none, can the Director repeat the motion?

Mr. Spence: Just as Commissioner Hedani said, the motion is to approve as recommended by Staff with the exception of...instead of 20 years it would be for 30 years.

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

Mr. Spence: You have eight ayes.

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

**VOTED: To Approve the Time Extension of the State Land Use Commission Special Use Permit and Conditional Permit as Recommended by the Department with the Amendment of the Time to 30 Years.
(Assenting - M. Tsai, J. Medeiros, J. Freitas, K. Ball, W. Hedani,
S. Duvauchelle, P. Wakida, R. Higashi)**

Chairperson Lay: Drive home carefully. Congratulations. Okay, we can run through the preliminaries till 12:00, just to open it and then close right then? How does that sound? Okay, our next agenda item?

Mr. Spence: Commissioners, this is Item D-2, Ms. Michele Lincoln, President of Protect and Preserve Kahoma Ahupuaa Association submitting an Objection to Denial of Petition to Intervene dated July 7, 2014 in the matter of Stanford Carr Development LLC on behalf of the Harry and Jeanette Weinberg Foundation Inc.'s request for an SMA Permit for Kahoma Village Project in Lahaina. I would just say that the Planning Commission took action to deny the permit to intervene request and approve the SMA Permit that was on June 4, 2014. The Staff Planner is Mr. Danny Dias.

2. **MS. MICHELE LINCOLN, President of PROTECT AND PRESERVE KAHOMA AHUPUAA ASSOCIATION submitting an Objection to Denial of Petition to Intervene dated July 7, 2014 in the matter of STANFORD CARR DEVELOPMENT LLC on behalf of the HARRY AND JEANETTE WEINBERG FOUNDATION INC.'s request for a Special Management Area Use Permit for the Kahoma Village Project at TMK: 4-5-008: 001 (por.), Lahaina, Island of Maui.**

The Maui Planning Commission took actions to deny the Petition to Intervene request and approve the Special Management Area Use Permit request at its June 4, 2014 meeting.

Mr. Danny Dias: Thank you, Director Spence. As Will stated, this item involves the objection to denial of a petition to intervene for the Kahoma Affordable Housing Project. I didn't get a chance to the Chair, but I believe we advised both sides, Michele Lincoln and the applicant's representative, Craig Nakamura that they would be given equal amounts of time to make their case. And so I'll have Michele Lincoln come up and—

Chairperson Lay: In all fairness depending on how long it might be, we might wanna end it here and come back after lunch, and that way we have one after the other.

Mr. Dias: Okay.

Mr. Spence: Yeah.

Chairperson Lay: Does that sound all right?

Mr. Dias: Okay, 'cause Craig isn't here right now, so...

Chairperson Lay: Okay, so at this time I'm gonna break for lunch and reconvene at what, 12:55?

A recess was called at approximately 11:55 a.m., and the meeting was reconvened at 1:00 p.m.

Chairperson Lay: The Commission is now called back to order. We are on Item no. E-1. And Danny is up.

Mr. Dias: Thank you, Mr. Chair. Thank you, Mr. Chair. As mentioned, prior to the lunch break, the item before you is an objection to deny...Objection to Denial of a Petition to Intervene, and with us we have Michele Lincoln, President of Protect and Preserve Kahoma Ahupua`a Association, and also Mr. Craig Nakamura, who is representing the applicant. I'm not sure if Corp. Counsel wants to say something. If not, I'll have Michele Lincoln come up.

Chairperson Lay: And it's Item D-2, excuse me.

Ms. Duvauchelle: Should I...I need to disclose.

Chairperson Lay: Okay, go ahead.

Ms. Duvauchelle: Hi, I'm gonna...I'll recuse myself from participating in this action since I'm employed by one of the principals.

Ms. Thomson: Okay, so just kind of go over what the procedure is for this particular item. The Maui Planning Commission has rules for reconsideration to where intervention is granted. However, that's not the case here. So what we go by are Robert's Rules of Order and if the Commission or Commissioner is so inclined to offer a Motion to Rescind or Amend the Denial of the Petition to Intervene that would be one possible action. The other action would be just to receive the letter and file it. So those, we can, we can kind of talk it through as, you know, as you hear from the parties, but we don't have a procedure for a Motion to Reconsider under Maui Planning Commission Rules so we're defaulting to Robert's Rules of Order.

Chairperson Lay: Danny, you wanna come up?

Mr. Dias: Thank you, Chair. I'm gonna have Michele Lincoln come up?

Chairperson Lay: Okay.

Ms. Michele Lincoln: Thank you, Chair and Commissioners for allowing me to speak on behalf of Protect and Preserve Kahoma Ahupua`a Association. We are asking the Planning Commission to please reconsider the denial of our petition to intervene. On July 7th, we submitted our timely Objection to Denial of Petition to Intervene. And the main statutory basis for our objection is that you failed to comply with the rule making procedures required by law. There are no rules that permit planning commissions to consider any findings of fact, conclusion of law or decision and order drafted by a party and yet the Commission appears to be considering that on the agenda today.

Our objection is in order since this findings of fact, conclusion of law and decision of order have been considered or approved. We ask you to please take action today that would allow...that would avoid costly and lengthy court proceedings and allow for our intervention. As we wrote in our objections it appears that the minutes of the Maui Planning Commission over the last five years, the Commission has adopted a practice is always denying complete petitions to intervene. It appears the Commission claims that all petitioner's interests are not distinguishable from the general public.

As the Commission is enforcing a new rule regarding those who have standing to intervene a Special Management Area Permit application proceedings but has not followed the requirements of Chapter 91, Hawaii Revised Statutes, those rules and those applications are invalid. We raised the objections pursuant Hawaii Revised Statute 91-3, 91-8, and 205A-5. As the Commission implements its rules that limits or narrows the liberal standing for environmental interest in the Coastal Zone Management Area process, those rules and their applications are invalid and unconstitutional. We implore you to please reconsider your decision. Please allow for us to intervene as provided by law and protected under the Constitution.

There are issues that were not fully and completely considered regarding the approval of the SMA Permit for the Kahoma Village Project in Lahaina. The issues relating to traffic, lack of adequate

infrastructure, tsunami zone impacts, and the loss of scenic vista and a healthy environment will negatively impact the existing neighborhood and it be in violation of constitutional rights.

We are seeking remedy as provided by law to allow intervention status. The property is the last of the open space of the Capital of the Kingdom of Hawaii.

Chairperson Lay: At this time, we're just addressing your letter now. It's not any new information or anything on that part. It will be addressing your--

Ms. Lincoln: Right, and that's what I'm just speaking to that and you can address the letter and --

Chairperson Lay: Yeah, your reasons, yeah.

Ms. Lincoln: Yeah, I just...two more minutes and I'll be done. The property is the last of the open space of the Capital of Kingdom of Hawaii. We are acting on the strength of our convictions to protect and preserve the historical and cultural significance that this land represents. Historically, civilizations have attempted to wipe out people's culture as an--

Chairperson Lay: At this point you're going off of your letter. You're adding information that isn't relevant to what we're here for.

Ms. Lincoln: Then can I use this time as my public testimony if I'm not gonna be allowed to speak as far--

Chairperson Lay: When we open for public testimony then you--

Ms. Lincoln: Okay, then I'll save my speech and start over for public testimony. Thank you.

Chairperson Lay: Oh, at this time Craig, we're gonna open up for public testimony--

Mr. Nakamura: Okay.

Chairperson Lay: --so we can hear anything at this time. First on the list we have Deborah, Deborah Wright, excuse me, Michele Lincoln. Excuse me, yeah, sorry Deborah Wright came up already.

Ms. Michele Lincoln: Would you all like me to start over from the beginning or should I just--can I just go where I left off? Okay, thank you. Let's see, I'll start here. We implore you to please consider your decision. Please allow for us to intervene as provided by law and protected under the constitution. There are issues that were not fully and completely considered regarding the approval of the SMA Permit for the Kahoma Village Project in Lahaina. The issues relating to traffic, lack of adequate infrastructure, tsunami zone impacts and the loss of scenic vista and a healthy environment will negatively impact the existing neighborhood and be in violation of constitutional rights. We are seeking remedy as provided by law to be allowed to intervene, intervention status.

The property is the last of the open space of the Capital of the Kingdom of Hawaii. We are acting

on the strength of our convictions to protect and preserve this historical and cultural significance that this land represents. Historically civilizations have attempted to wipe out people's culture as a means to have them disappear from the face of the earth. We much recognize the importance of history and culture and be sensitive to not unintentionally doing the same thing with our actions. We must identify and recognize important places and not neglect our duty to protect and preserve historical land and protect reefs that provide cultural practices.

The west side in the Maui Island Plan is projecting thousands of housing units to be developed. It is not necessary to desecrate historical and cultural land to provide housing. There are other issues that did not receive the scrutiny that it deserved regarding the impact to near shore waters. The U. S. Coral Reef Task Force met on Maui this month as they, and I quote, "identify the coral reef system along the West Maui region as a priority management area. They had a specific workshop to highlight the vulnerability of coral reefs to storm water runoff." Also, a recent study of Mark Howland of WHALE Environmental Services confirmed previous findings that West Maui reefs are at risk and need of protection.

Cumulative projects in a watershed ahupua`a all contribute to pollution associated with storm water runoff in simple acts of water lawns and washing cars can be a factor. The waters of Mala are already impaired. The pollution caused by Emerald Plaza's light industrial as well as the Opakea housing project mauka of the Kahoma Village have not been factored into the study. They are in progress of development as we speak, Though Kahoma Village has done a stellar job of including detentions systems it will not mitigate the negative impact that will cause to the impaired Federally protected waters. We can help to generate a complete record and ensure that the Commission has done their due diligence in addressing the issues related to Special Management Area Permits, and Coastal Zone Management Areas. We are an important time in Hawaii's history.

Allowing for our intervention to address these issues would demonstrate an act of good faith that we are all sensitive to the protection of the Hawaiian heritage and the spirit of aloha. We humbly ask for you to allow our intervention to avoid court proceedings. We ask you to take action that would allow for our intervention. Thank you.

Chairperson Lay: Commissioners, any questions for the testifier? Seeing none, thank you very much. At this time, does anyone else wish to testify? Seeing no one, we're closing public testimony. Craig?

Mr. Craig Nakamura: Thank you very Mr. Chair, Members of the Commission. Craig Nakamura, attorney on behalf of the applicant. Just very briefly we did submit an opposition to the objection that was filed. I think, excuse me, as Corp. Counsel mentioned this was a little bit of an unusual procedure, but just very briefly I wanted to address the objection that was raised. In the opposition that we filed, we listed again, all the reasons in detail, why the Commission was correct in denying the intervention. According to the legal standard that's set forth in the law and the rules of the Planning Commission.

What I took from the objection was that she seemed to be saying that because of the procedure that's he's noted of the Planning Commission in denying interventions recently that there must be a change in the Rules of the Planning Commission that haven't been done according to the procedures established by law. I think, I wasn't part of the previous or the other applications that's

she's referring to so I can't tell you specifically how the Commission ruled on those. I was part of this application, and I can tell you that I'm very confident that the Commission considered all of the facts, all the material facts, all of the items that were raised during the testimony, during the reports that were given, and the various reports that were submitted. And I'm very confident that the Commission considered all of those facts in ruling and denying the petition to intervene. This is...I'm sure the Commission does all these things on a case by case basis. It's not a rule change or anything that requires a change of the rules as being suggested by the intervenors.

Everything else that I believe you heard today during the testimony was a reiterations of the things there were, of issues that were raised before regarding drainage and the soil conditions and so forth. And I think the Commission has considered all of those things properly in denying the petition to intervene, and I thus request that the objection be filed. I'd be happy to answer any questions you have.

Chairperson Lay: Commissioners, any questions? Seeing none, thank you. Corp. Counsel if you'd like to go over our options on this?

Ms. Thomson: Sure. So the options are if you feel that the decision to deny the Petition to Intervene was made in error or if it needs to be corrected in some fashion, one of the Commissioners could offer their notice of an intent to move to rescind or amend that decision which would occur at a subsequent meeting for notice purposes. So you wouldn't actually make a motion today to rescind or amend, but you would offer intention to do so at a subsequent meeting. The other alternative is to file the opposition to the denial and just receive it as a communication item and file it.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Move to receive, move to receive the objection and file.

Mr. Freitas: Second.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Hedani, seconded by Commissioner Freitas. Any discussion on the motion? Commissioner Hedani?

Mr. Hedani: Basically the information that I heard today was repetition of what we've heard before. I don't think any new information was presented and I think we basically made the correct decision.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I have a question for Corp. Counsel. With the rules that we have before us right now, I feel that we pretty much followed it. You know, I mean, do you see anything that we didn't do as far as you know...

Ms. Thomson: No. Generally I think that you analyzed the application and then made a decision based on the criteria set out in your rules regarding intervention either as a matter of right or

permissively. You did walk through that analysis in your decision making previously.

Mr. Medeiros: Then I agree with, wholeheartedly with Commissioner Hedani. I, too, feel that we made the right decision on the information put forth before us.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I agree. I know that I read carefully through all the information when it was first presented to us. I was at the site visit, I considered all the concerns and I felt that the Commission made the right decision when they made their original decision.

Chairperson Lay: I have a question for Corp. Counsel too. In this situation it was brought to us again without any new information, can that happen again?

Ms. Thomson: Potentially. You know, this was submitted as a Communication item so it's not a formal. There's no mechanism right now under your rules for a formal motion to reconsider. So it's in essence it's a communication item from a potential intervenor. So yeah, it could happen again.

Chairperson Lay: Just curious if there could be some kind of filter, you know, before it comes before us again with the same information. And you know, we got a pretty full agenda today.

Ms. Thomson: One of, you know, one of the things is that on your agenda today you have the draft decision and order regarding the underlying permit, so once that decision is made there are appeal...you know, triggers for appeal and then it would proceed into a court process if the potential intervenors wished to go that route. But you know, at that point your final decision is made.

Chairperson Lay: Any more questions on the motion or discussion? Can we get the Deputy Director, Michele, to repeat the motion?

Ms. McLean: The motion was to receive the communication and file the matter.

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

Ms. McLean: Six ayes with one recusal.

Chairperson Lay: Those opposed?

Ms. McLean: None opposed.

Chairperson Lay: Thank you.

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

**VOTED: To Receive and File the Objection to Denial of Petition to Intervene.
(Assenting - W. Hedani, J. Freitas, J. Medeiros, K. Ball, P. Wakida,
R. Higashi)**

(Excused - M. Tsai)
(Recused - S. Duvauchelle)

Chairperson Lay: Our next agenda item?

Ms. McLean: Chair and Commissioners as previously noted the next item, Item E-1 is the adoption of the written Decision and Order. You have before you Proposed Findings of Fact, Conclusions of Law, and Decision and Order submitted by Craig Nakamura and Arsima Muller of Carlsmith Ball, LLP, attorneys for Stanford Carr Development, LLC on behalf of the Harry and Jeanette Weinberg Foundation, Inc., that was transmitted on August 18, 2014, and again, Danny Dias can present this to you.

E. ADOPTION OF WRITTEN DECISION AND ORDER

- 1. CRAIG NAKAMURA and ARSIMA MULLER of CARLSMITH BALL, LLP attorneys for STANFORD CARR DEVELOPMENT, LLC on behalf of the HARRY AND JEANETTE WEINBERG FOUNDATION, INC. transmitting the following on August 18, 2014: (D. Dias)**

Proposed Findings of Fact, Conclusions of Law, and Decision and Order relating to the denial of Protect and Preserve Kahoma Ahupuaa Association, Michelle Lincoln, Mark and Linda Allen, Patrick and Naomi Guth, and Constance B. Sutherland's Petition to Intervene on the Special Management Area Use Permit for the proposed Kahoma Village Project at TMK: 4-5-008: 001 (por.), Lahaina, Island of Maui. (SM1 2012/0007)

The Commission took an action to deny the Petition to Intervene at its June 24, 2014 meeting.

Mr. Dias: Thanks, Michele. This item involves as mentioned the Proposed Findings of Fact, Conclusions of Law and Decision, and Decision and Order regarding the Kahoma Project. The one thing that I wanna make clear is that this is simply a decision on whether or not you agree with this Findings of Fact, Conclusions of Law. We certainly don't wanna go back into making arguments for and against the project. It's, you know, is the document that you received, does that accurately portray what happened at the meeting. So thank you.

Chairperson Lay: At this time, I'm gonna open up to public testimony. If anyone wishes to testify, please step up to the mic, identify yourself, and you have three minutes. Seeing no one, public testimony is closed. Commissioners, any questions? Commissioner Hedani?

Mr. Hedani: If a motion is in order, I move to accept the Proposed--

Mr. Medeiros: Second.

Mr. Hedani: --Findings of Fact, Conclusions of Law, Decision and Order.

Chairperson Lay: Corp. Counsel wishes to say something.

Ms. Thomson: Thank you. I just have a minor correction. Page 2, at the top, this is at the very top, myself, Richelle Thomson, appeared on behalf of the Commission. So we need to strike out, appeared on behalf of the County of Maui, Department of Planning, the Planning Department. I was only representing, you, the Commission, not the Department.

Chairperson Lay: We have a motion on the floor.

Mr. Medeiros: Second.

Chairperson Lay: Seconded by Commissioner Medeiros. Any discussion on the motion? Seeing none, can we get the Deputy to repeat the motion?

Ms. McLean: The motion is to adopt the Proposed Written Decision and Order with the one correction made by Corporation Counsel.

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

Ms. McLean: Seven ayes and one recusal.

Chairperson Lay: Motion carries.

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

**VOTED: To Adopt the Proposed Written Decision and Order with Amendment
(Assenting - W. Hedani, J. Medeiros, J. Freitas, K. Ball, M. Tsai,
P. Wakida, R. Higashi)
(Recused - S. Duvauchelle)**

Chairperson Lay: Our next agenda item?

Ms. McLean: Thank you, Chair. Next on the agenda is Acceptance of the Action Minutes of the August 26, 2014 Meeting and Regular Minutes of the May 27, 2014, and July 8, 2014 Meetings.

**F. ACCEPTANCE OF THE ACTION MINUTES OF AUGUST 26, 2014 MEETING AND
REGULAR MINUTES OF THE MAY 27, 2014 AND JULY 8, 2014 MEETINGS**

Chairperson Lay: Commissioners, all had a chance to look it? Any changes?

Vice-Chair Ball: Motion to approve with no changes.

Mr. Medeiros: Second.

Chairperson Lay: All those in favor say, aye?

Commission Members: Aye.

Chairperson Lay: Those opposed? Acceptance of our Action Minutes.

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

**VOTED: To Accept the Action Minutes of August 26, 2014 and Regular Minutes of the May 27, 2014 and July 8, 2014 Meetings, as Circulated.
(Assenting - K. Ball, J. Medeiros, J. Freitas, M. Tsai, W. Hedani,
S. Duvauchelle, P. Wakida, R. Higashi)**

Chairperson Lay: Next item?

Ms. McLean: Chair, the next item G-1, Director's Report, an item from the Planning Director notifying the Commission pursuant to Section 12-202-17(e) of your SMA Rules of the Director's intent to process the following time extension request administratively. A request from Mr. Glenn Kimura, Tamura, excuse me, for a two-year time extension on the SMA Use Permit condition to initiate construction of the proposed Tamura's Plaza formerly Pacific Plaza, and related improvements at 99 E. Lipoa Street, TMK: 3-9-002: 215 in Kihei. Keith Scott is your Staff Planner.

G. DIRECTOR'S REPORT

- 1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the following time extension request administratively:**

MR. GLENN TAMURA requesting a two (2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the proposed Tamura's Plaza (formerly Pacific Plaza) and related improvements at 99 E. Lipoa Street, TMK: 3-9-002: 215, Kihei, Island of Maui. (SM1 2006/0041) (K. Scott)

Mr. Keith Scott: Thank you very much. The Special Management Area Use Permit for this project was approved July 23, 2007, with construction to be initiated July 31, 2010. The applicant submitted a request for time extension on May 3, 2010, and on September 8th of that same year the project was transferred to Central Pacific Bank. On July 20, 2012, the time extension request was approved...I'm sorry, it was approved on January 26, 2011. On July 20, 2012, another time extension was requested. On August 8th of the same year a transfer to the current applicant was approved. And then on September 8, 2012, the time extension to July 31, 2014 was approved. July of this year, a subsequent or an additional time extension request was made and on August 28th, some additional information was submitted. Today's consideration is only a two-year time extension to July 31, 2016, and the just to make it very clear consideration of a change in the configuration of the project and the use will be considered at a future date in a public hearing setting. There have been no changes in the Special Management Area that would cause the project to have any substantial adverse effects, and Brett Davis and Jordan Hart of Chris Hart and Partners are here to more fully address the project specifics and the reason for the time extension and answer any questions.

Mr. Jordan Hart: Jordan Hart, Chris Hart and Partners. Just in summary, the applicant, Mr. Tamura was exploring reconfiguring the site. We were working with the Planning Department and we were working with an architect and a traffic engineer. We went out to agency comment and an update to the traffic study was prepared. Public Works approved the proposed revisions, however, at the last minute they requested a reconfiguration of the driveway entrance to align with Kaupapa Place, and so what that did is kind of sent us back into the site analysis and reconfiguring circulation and the location of the buildings, and it basically pushed us back to a point where we need to request an additional extension before we'll be able to present the proposed reconfiguration to the Commission at a separate date as Mr. Scott mentioned.

Chairperson Lay: So at this point you're looking at a time extension then?

Mr. Hart: That's all. That's correct. As I said or as Mr. Scott said, there's a proposed reconfiguration and we've met with the Kihei community, but we haven't been able to present it to the Urban Design Review Board yet, and so it's really not ready to present to the Planning Commission. So we have that...we're going to them next and then we'll have a full project that we'll be able to present, but at this time, we just need to have the time to reconfigure that and represent.

Chairperson Lay: Commissioners any questions on that? They're asking for a time extension.

Ms. Thomson: ...(inaudible)...

Chairperson Lay: Okay, the choices we have Commission...

Ms. Thomson: Okay, thank you, Chair. So the choices you have are to either move to review this request for a time extension or waive your review and let it be processed administratively. And my understanding it's simply a request for a time extension and that the project once reconfigured will be brought back.

Vice-Chair Ball: Move to approve time extension for--

Mr. Medeiros: Waive the review.

Mr. Tsai: Waive the review.

Vice-Chair Ball:...(inaudible)...

Mr. Hedani: Second.

Chairperson Lay: Do you wish to repeat that?

Mr. Tsai: You wanna repeat that. You wanna waive review or do you wanna...

Vice-Chair Ball: Go ahead.

Mr. Tsai: I waive review. Move to approve with review not required.

Mr. Medeiros: Second.

Chairperson Lay: We have a motion by Commissioner Tsai, seconded by Commissioner Medeiros. Any discussion on the motion? Commissioner Hedani? Clarification I guess?

Mr. Hedani: Motion is to waive review, right?

Mr. Tsai: Right.

Chairperson Lay: Yes.

Mr. Hedani: Okay.

Chairperson Lay: Any more discussion on the motion? Okay, the motion is to waive the review. Call for the vote. All those in favor?

Ms. McLean: Eight ayes.

Chairperson Lay: Motion carries.

Mr. Hart: Thank you very much.

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

**VOTED: To Acknowledge Receipt and Waive Its Review of the Time Extension Request.
(Assenting - M. Tsai, J. Medeiros, J. Freitas, K. Ball, W. Hedani, S. Duvauchelle, P. Wakida, R. Higashi)**

Chairperson Lay: Our next agenda item?

Ms. McLean: Chair, Commissioners, the next item under Director's Report, Item G-2 is a status update on the scheduling of the site inspection and public hearing in West Maui for applications relating to the proposed West Maui Hospital and Medical Center. Since the project is seeking both Phase 1 and Phase 2 Project District Approvals pursuant to the provisions of Section 19.45.050 of the Maui County Code a public hearing needs to be held in the affected community plan area of West Maui. Gina Flammer is the Staff Planner for this project. I believe she's out sick today and so the Division Chief, Mr. Clayton Yoshida is here.

- 2. Status Update on the scheduling of the Site Inspection and Public Hearing Date in West Maui for the following applications relating to the proposed West Maui Hospital and Medical Center. Since the project is seeking both Phase I and Phase II Project District Approvals, pursuant to the provisions of Section 19.45.050 of the Maui County Code, a public hearing needs to be held in the affected community plan area (West Maui). The applications are (previously discussed at the August 26, 2014 meeting.) (G. Flammer):**

- a. **New Proposed West Maui Hospital and Medical Center Site at the Kaanapali-North Beach Mauka Project District:**

MR. WILLIAM SPENCE, Planning Director transmitting on behalf of NEWPORT HOSPITAL CORPORATION the following requests for the proposed West Maui Hospital and Medical Center site a Community Plan Amendment to address the inclusion of the hospital in the Kaanapali-North Beach Mauka Project District; a State Land Use District Boundary Amendment from State Agricultural District to State Urban District; a Change in Zoning from County Agricultural District to Kaanapali-North Beach Mauka Project District, a Phase I Project District Approval, and a Phase 2 Project District Approval for property situated at TMK: 4-4-002: 052 (por.), Kaanapali, Island of Maui. (CPA 2014/0002) (DBA 2014/0002) (CIZ 2014/0002) (PH1 2014/0001) (PH2 2014/0002) (G. Flammer)

The proposed West Maui Hospital and Medical Center is an acute care hospital, assisted living facility, skilled nursing facility and rehabilitation center, and medical offices building.

- b. **Reversion of Land Use Entitlements at Prior Site (near Lahaina Civic Center) to its original Land Use Designations**

MR. WILLIAM SPENCE, Planning Director transmitting on behalf of NEWPORT HOSPITAL CORPORATION the following requests for the former planned West Maui Hospital site a Community Plan Amendment from Public/Quasi-Public to Agriculture, a State Land Use District Boundary Amendment from State Urban District to State Agricultural District; and a Change in Zoning from P-1 Public/Quasi-Public District to County Ag. District at TMK: 4-4-006: 070, Lahaina, Island of Maui. (CPA 2014/0003) (DBA 2014/0003) (CIZ 2014/0003) (G. Flammer)

Mr. Yoshida: Thank you. Mr. Chair, Members of Commission where we left off on August 26 was we tried to decide on a date for the hearing which was determined as Wednesday, November 19. Then we tried to secure a place for the hearing. So we have secured the West Maui Senior Center meeting hall located on Lahainaluna Road for that meeting. So what we need to determine is one, for the site inspection does the Commission wanna go to both sites or do they just wanna go to the newly proposed site because the currently entitled site, entitlements will just be reverted to what they were originally.

The second thing is what time do they want to start the site inspection, and what time do they want to start the public hearing noting that some of you may have to drive a ways to go home after the meeting if you live Upcountry or thereabouts.

Vice-Chair Ball: What's the date of this? Do we have a date?

Ms. McLean: Clayton, what was the date? November 19th is that right? Wednesday, November 19th?

Mr. Yoshida: Yes, correct. Yes, correct. So we could do the site inspection in the afternoon and have a snack or dinner and then have the public hearings at the West Maui Senior Center later in the afternoon, but hopefully in time so some of you can drive back to...back home.

Chairperson Lay: I have a question. For the site inspection is it going to be like we all hope in a bus or are we gonna be just driving there on our own for the site inspection?

Mr. Yoshida: Yeah, I guess just to kinda seeing where the site is and so you have a better picture as to what the conditions are.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I got confused. There's two sites, a previous site and then a new proposed site?

Mr. Yoshida: Well, what's on the table at the meeting are one, entitlements for the newly proposed site within this Kaanapali 2020 Project District. And the second thing is the reversion of the entitlements at the former site located by the Lahaina Civic Center back to its original land use designations.

Ms. Wakida: Okay, so we only need to visit one site? The proposed?

Mr. Yoshida: Yes.

Chairperson Lay: So on the floor I guess we're gonna schedule a time that we have our site visit and schedule a time for our meeting after that.

Vice-Chair Ball: One o'clock and four o'clock?

Ms. Wakida: If it's a public meeting I-

Chairperson Lay: That's a big span.

Vice-Chair Ball: Two o'clock and four o'clock?

Ms. Wakida: - I would say a little later in the evening to the community if this is going to be...

Vice-Chair Ball: Says the person who lives out there.

Ms. Wakida: Oh, boo hoo.

Chairperson Lay: See I was wondering about bus service from here, take us there, and then come back.

Ms. Wakida: Excuse me, Chairperson?

Chairperson Lay: Yes, Commissioner Wakida?

Ms. Wakida: I think isn't the purpose of this meeting not for us only to see the site but to have a public meeting, right?

Chairperson Lay: Yes.

Mr. Freitas: Right.

Mr. Yoshida: Yeah, the public hearing...because you're...one, two of the entitlements are for Project District approvals the public hearing has to be held in a community plan so that's why we have to go to West Maui.

Ms. Wakida: I think it should be a little later, maybe for the meeting like six o'clock because we need to make it convenient for the people that are interested in this.

Mr. Tsai: Three and six, there you go.

Chairperson Lay: How long do you predict the site inspection to be?

Mr. Yoshida: The site inspection—

Chairperson Lay: Half an a hour at the most?

Ms. Wakida: Yeah.

Chairperson Lay: So a bus pickup would be hard because of the time, the scheduling of the meeting so that would be out of order, but we jumping on the bus so we go over to project site would be good.

Ms. Wakida: I think that was the question is there a bus at all and if so, where is it, where is it going?

Mr. Yoshida: Well, I guess we can make arrangements, try to make arrangements with the applicant. We just need to know what times.

Vice-Chair Ball: Who would ride the bus? You guys are already gonna be out there, right?

Mr. Hedani: I'm already out there.

Vice-Chair Ball: Already out there, you're already out there. I won't ride the bus.

Mr. Tsai: I won't either.

Chairperson Lay: So we're looking at a meeting point there. Okay, right, scratch the bus. And you're suggesting a later afternoon about maybe you were saying 6:00. What if we did the scheduling for the site inspection about 4:00? I'd say 5:30...4:00 and 5:30.

Mr. Freitas: Well, people gotta work, you know maybe 5:00 and 6:00. This is pertaining Lahaina, so have to give them time to get off work if they're gonna go to the hearing. You know what I mean? If we're gonna do it, we may as well do it right. Where, what do you call, they have the opportunity to voice their, you know...this is not convenient for us, it's convenient for the public.

Chairperson Lay: So a little later like 4:00, I mean...

Vice-Chair Ball: 4:00 and 6:00.

Ms. Wakida: 4:00 and 6:00.

Vice-Chair Ball: 4:00 and 6:00.

Chairperson Lay: 4:00 and 6:00.

Ms. Wakida: Do you want us to meet first at the Senior Center and then caravan out or do you want us to meet at the site?

Chairperson Lay: Yeah, it would be the meeting place at 4:00.

Mr. Medeiros: Yeah, that way we get the parking.

Ms. Wakida: Oh, that's not gonna be a problem.

Chairperson Lay: Where would be a good meeting spot. I mean, would probably be before 4:00, right? 'Cause at 4:00 we're at the site unless we're gonna meet at the site? And if we're meeting at the site where would be the spot or location for us to all meet up?

Ms. McLean: Chair, we can follow up with members on those details. We can check with the applicant on the precise location of the site visit and whether they might have a van or something available if members want to meet at the senior center and all go to the site inspection together. We can work on those details. The main thing was getting the date and time selected if you can get those on your calendars. And that you only want to visit the one site. So those were the three questions that we needed answered today.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: And just FYI, the Senior Center, you know where the old Pioneer Mill was, well it's just turn up the road and it's on the right there.

Mr. Tsai: So what's the name of that road?

Ms. Wakida: Lahainaluna Road. Turn up Lahainaluna Road and it's the first right.

Mr. Yoshida: So is it the site inspection at 4:00, and the meeting at 5:30?

Ms. McLean: 6:00.

Chairperson Lay: 6:00.

Mr. Yoshida. 6:00.

Chairperson Lay: Okay are we good with that? They'll get back to us with the information on where we're meeting and our scheduled site visit is at 4:00 and a meeting after that at the Senior Center at 6:00.

Ms. McLean: Thank you, Chair. Next item on the agenda, under Director's Report, Item G-2, excuse me, G-3. This is for notification purposes only. It's notifying the Commission of an appeal of your decision to the Second Circuit Court. This was presented by Gregory Kugle and Bethany Ace of Damon Key Leong Kupchak Hastert, attorneys for Terry Epstein and Mary Katherine Epstein appealing on August 27, 2014, the written Findings of Act, Conclusions of Law, Decision and Order Denying the Short-Term Rental Home Permit and the State Special Use permit for the Shambala Short-Term Rental Home at 120 Kaimanu Place, TMK: 2-1-19: 100 in Kihei.

3. Notification of the Appeal of the Maui Planning Commission's Decision to the Second Circuit Court on the following

GREGORY W. KUGLE and BETHANY C.K. ACE of DAMON KEY LEONG KUPCHAK HASTERT attorneys for TERRY EPSTEIN and MARY KATHERINE EPSTEIN appealing on August 27, 2014 the written Findings of Fact, Conclusions of Law, Decision and Order of the Maui Planning Commission denying the Short-Term Rental Home Permit and the State Special Use Permit for the Shambala Short-Term Rental Home at 120 Kaimanu Place, TMK: 2-1-019: 100, Kihei, Island of Maui. (Civil No. 14-1-0495(1)) (STKM T2012/0012) (SUP2 2012/0030) (D. Dias)

***AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH THEIR ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES PURSUANT TO SEC. 92-5(a)(4), HRS.**

Ms. McLean: Again, this is for notification purposes only that that decision has been appealed to court. If you did have any questions about that matter, Corporation Counsel would probably advise you to go into executive session.

Vice-Chair Ball: Move to go into executive session.

Mr. Tsai: Second.

Chairperson Lay: We have a motion to move into executive session, seconded by Commissioner Tsai. All those in favor? And this is going to be discussion on Michele has talked about.

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

**VOTED: To Go Into Executive Session.
(Assenting - K. Ball, M. Tsai, J. Medeiros, J. Freitas, W. Hedani,
S. Duvauchelle, P. Wakida, R. Higashi)**

The Commission went into executive session at approximately 1:37 p.m., and the adjourned executive session at approximately 1:41 p.m.

A recess was called at 1:41 p.m., and the meeting was reconvened at 1:47 p.m.

Ms. McLean: Chair, under Director Report, Item G-4, Reports from the Maui Planning Commissioners on the 2014 Hawaii Congress of Planning Officials Conference conducted on September 10-12, 2014 at the Sheraton Maui Hotel in Kaanapali.

4. Reports from the Maui Planning Commissioners on the 2014 Hawaii Congress of Planning Officials (HCPO) Conference conducted on September 10-12, 2014, Sheraton Maui Hotel, Kaanapali, Island of Maui.

Ms. McLean: This is for Sunshine Law purposes as well as sharing your observations of the sessions you attended information that might be pertinent to your role as Commissioners.

Chairperson Lay: Commissioner Ball?

Mr. Ball: I'll share. I've probably gone to 40 conferences in different aspects of life, and this was one of the best ones I've ever been to as far as organization, how the program was laid, where we broke out into sessions, it was mass sessions and then back out to breakout sessions. It was very well organized. Some people commented they like the lunch outside 'cause it gave you a chance to warm up and to kinda be out in the fresh air. I thought it was very well run. I had no issues with anything. Parking, any of that, was super easy, and thank you very much for putting on a good product for the State. And the classes were okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'd like to echo Commissioner Ball's comments. I thought the conference was very well run, organized and all of the details were taken care of for the field trips as well as the conference itself. I thought it was excellent.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yes of course I echo Commissioner Ball's comments. The young man from...who represented Kauai made a statement in one of his presentations. I don't know whether was when we were in the big group in the ballroom or at the end of the session, but he said, you don't wanna be the parent who says I'm sorry son there's no room on Maui for you. And it just...man, it just really hit me. I mean, I have two kids that are trying to find a home here on Maui. And I'm acutely aware of the difficulty in finding any place that's affordable. And there were various sessions that addressed peripherally, but he made that point very well about planning communities so that we're

not planning our communities for retirees and resort living which is something I think we're all very aware of planning our communities for the families that are gonna come here, that are already here, that are our children that are looking for places to live so they can get 'em out of the house, right Carolyn? Anyway, I just wanted to share that 'cause I was really...it was one line out of that whole conference that I walked away with word for word because it really got to me.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Yeah, the guy that did the presentation for Kauai I thought presented some very innovative concepts where they're incorporating traffic circles. They're incorporating streets with no dividing lines in between them, you know that slows down traffic as well as adopting a lot of the complete streets concepts so I thought that that was great.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: I also liked the sessions that were very forward thinking and weren't the regular old thing. It was a lotta innovative stuff that was out there being presented to us in all aspects, shoreline to streets to planning communities. So that was...I appreciated that, something new and exciting instead of same old thing.

Chairperson Lay: Well, for me what I enjoyed a lot was we had people from the mainland, from Canada and I like that telling what they did in their cities and towns. And yet we had speakers from Hawaii that was telling us what was going on over here. And seeing what they were doing in the mainland and we're saying oh, here we can't do that, we can't this and we're not even developed yet, and here you got cities already going and you know, big cities and everything and they're worried about transit, they're worried about communities and they're making changes to address that. I thought that was really innovative and not where we just say we can't do it. They were out there doing it. And the classes themselves, I didn't find any boring and the speakers were just phenomenal and the break up between sessions, entertainment, food, it was just a nice flow. It was really good. I enjoyed it.

Vice-Chair Ball: One of the most impressive photos that I keep remembering is the one of the I think it was the wastewater treatment or something like that and it was turned into a park and the thing was cool, and I keep seeing that vision like that's super forward thinking like if you can turn that into something really nice like that, you know, and it looked like it was at night too at the photo where like people were hanging out. I know I wouldn't like our wastewater treatment plant. I don't know but, they must have a different chemical or something.

Mr. Hedani: 'Cause you couldn't smell it on the video.

Vice-Chair Ball: I'm gonna have to take field trip. We might have to pay for me to go see that.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: There's a lot of talk about complete streets and great streets and a lot of great ideas, but what I was sorta hearing on the side among the people on Maui that no, is that those plans are wonderful and everybody wants to do them but our Code is...has kept them from implementing it. So what needs to happen is somebody's gotta start making some Code changes and get those

pushed through the Council because none of these great ideas can get...right now our Code apparently says we have to do certain streets a certain way and there aren't any options. And the complete streets presentation showed all sorts of things that they were doing. So, there needs to be some serious book work done.

Chairperson Lay: Yeah, there's a lotta restraints here and it's hard to get around it and comments and things that we think should be done and have to be done just have a hard time getting through all the paperwork in my opinion. Any more comments on that conference, HCPO? Commissioner Medeiros?

Mr. Medeiros: I found it very informative but I really liked Willie K.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: I would like to on behalf on the Commission thank the Planning Department for inviting us to this conference which I think was very well planned and organized.

Chairperson Lay: Like I was saying earlier, they set the bar really high for the other islands to try and at least match this. This was very well informed for everybody and everybody got something out of it in a positive sense. Moving on, next on the agenda?

Ms. McLean: Thanks Chair, and recognition does go to Ann Cua who was the lead staff coordinator for the conference. There were different staff members who were in charge of the different committees for all the different parts that needed to come together but Ann oversaw all of that and really did a fantastic job. So I'll be sure to pass your very nice remarks onto her. Next on the agenda you have your SMA Minor Report Appendix A, Exemption Report Exhibit B or Appendix B.

5. SMA Minor Permit Report (Appendix A)

6. SMA Exemption Report (Appendix B)

Chairperson Lay: Everybody get a chance to look for that? Any questions on it? Commissioner Hedani?

Mr. Hedani: Move to accept.

Chairperson Lay: Motion to accept.

Mr. Higashi: Second.

Chairperson Lay: All those in favor say, aye.

Commission Members: Those opposed? Acceptance.

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

**VOTED: To Accept the SMA Minor and SMA Exemption Reports.
(Assenting - W. Hedani, R. Higashi, J. Medeiros, J. Freitas, K. Ball,
M. Tsai, S. Duvauchelle, P. Wakida)**

Ms. McLean: Next we have discussion of future Maui Planning Commission Agendas.

7. Discussion of Future Maui Planning Commission Agendas

a. October 14, 2014 meeting agenda items

Ms. McLean: You have a memo distributed from Clayton Yoshida for your October 14th meeting. Looks like there are four public hearing items. You have the Wailea MF-15 Step 1 and 2 Planned Development Approvals and SMA Permit, Armstrong Homes SMA Permit, Alex Fergus SMA Permit. Royal Kaanapali Golf Course Conditional Permit, and a communication item, and Director's Report. Any questions on these items?

Chairperson Lay: No questions? Commissioner Hedani?

Mr. Hedani: Not a question. I just wanted to thank the Department for coming up with a very complete agenda for today's meeting, and you know, I think we covered six items today pretty well.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I will not be at this meeting. I will be on the mainland.

H. NEXT REGULAR MEETING DATE: OCTOBER 14, 2014

Chairperson Lay: That's all we have today. Motion to close our meeting.

Mr. Mr. Tsai: So moved.

Vice-Chair Ball: Second.

I. ADJOURNMENT

The meeting was adjourned at approximately 1:55 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Keone Ball, Vice-Chair
Sandy Duvauchelle
Jack Freitas (in attendance at 10:00 a.m.)
Wayne Hedani
Richard Higashi
Ivan Lay, Chair
Jason Medeiros
Max Tsai
Penny Wakida

Others

William Spence, Director, Planning Department (9:00 a.m.-11: 55 a.m.)
Michele McLean, Deputy Director, Planning Department (1:00 p.m. - 1:55 p.m.)
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works