

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
SEPTEMBER 22, 2015**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:04 a.m., Tuesday, September 22, 2015, 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.)

Chair Ball: ...the September 22, 2015 Planning Commission.

**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.

The following individuals testified at the beginning of the meeting:

Mark Ellman - Item C1, Helen Hunt, SUP2  
George Helms - Item C1, Helen Hunt, SUP2

Their testimony can be found under the item on which they testified on.

Chair Ball: Okay, anyone else would like to testify at this time may do so? Seeing none, public testimony is closed. And we will move onto Item C-1. Deputy Director?

Ms. McLean: Good morning, Chair. Good morning, Commissioners.

Chair Ball: Good morning.

Ms. McLean: There are four public hearing items on your agenda today. The first is a request by Ms. Helen Hunt of Her Maui LLC and N.B. LLC requesting a State Land Use Commission Special Use Permit for the use of two dwellings with total of five bedrooms for a short-term rental home in the County Agricultural District and the State Ag District on approximately 2.07 acres of land located at 89 Awaiku Street, TMK: 4-7-009: 05 in Lahaina. Kurt Wollenhaupt is your Staff Planner.

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

- 1. MS. HELEN HUNT of HER MAUI LLC & N.B. LLC requesting a State Land Use Commission Special Use Permit for the use of two (2) dwellings with a total of five (5) bedrooms for a short-term Rental Home (STRH) in the County Agricultural Zoning District and the State Agricultural District on approximately 2.07 acres of land located at 89 Awaiku Street, TMK: 4-7-009: 05, Lahaina, Island of Maui. (SUP2 2015/0006) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good morning, Members of the Maui Planning Commission. Pleasure to be back in front of you today. The item before you, Item No. C1 is a request by Ms. Helen Hunt for a State Land Use Commission Special Permit for the use of two dwellings with a total of five bedrooms for a short-term rental home in the County Agricultural Zoning District and importantly in the State Agricultural Zoning District on approximately 2.07 acres of land located at 89 Awaiku Street in Lahaina in the area commonly known as Launiupoko.

For some of the Members, of course the Commissioners all know this but for some of the members of the audience and anyone watching on the Akaku network, the why are we here today is always a good question. The applicant has requested a Short-Term Rental Home Permit on State Ag Land. As the Commissioners know very well, this is a two-part process when it's on State Agricultural land. First, the applicant sent a notice of the application for short-term rental home to all of the property owners within 500 feet of the property. That's step one to determine if there needs to be a public hearing on the specific short-term rental home part of the permit. In this case, there were no triggers that would have required a public hearing on the STRH phase of this permit. So if this were not located on Agricultural land the Planning Director could have approved it administratively.

First off then what are those triggers? Those triggers would have been was there another short-term rental home within 500 feet? The answer is no. The second off, were there sufficient number of protests from people that would have triggered a public hearing, and that answer is also, no.

The second phase is because this is located on State District Boundary Amended Agricultural land it's been determined that all applicants for a short-term rental home need to come before this Commission to get a State Special Permit. And so how do we look at State Special Permit? Well, Chapter 205 of Hawaii Revised Statutes indicates there are five criteria by which is a State Special Permit may be granted. I will run through these since these are kind of the criteria that one would need to be looking at in evaluating this. Mr. Jordan Hart will be presenting a power point presentation that will bring you the details of the specific agricultural operation, the details of the home along with the team that's here today and I'll just introduce them. The applicant, Ms. Helen Hunt's in the audience, the consultant of Chris Hart & Partners, Mr. Jordan Hart is in the audience, Mr. Paul Mancini, attorney on Maui is in the audience, Ms. Tina Marshall, who works with Ms. Hunt in managing this property is in the audience, Mr. Navayo Caiserman, who is the agricultural expert who can be asked for any questions on the agricultural component of this is in the audience, and so they will be available for any kinds of questions.

Getting back to the five criteria. First off, the proposed rental home is it unusual in the Ag District but is it reasonable? It's been determined that there is a process by the County Council did establish through their short-term rental home ordinance that short-term rentals are an acceptable use on Ag land if the planning commission indeed grants the State Special Permit. The production of crops in this case that being on over 50 percent of the property with avocado, citrus, coffee was verified, field verified by both the Zoning and Enforcement Division, Ms. Rulan Waikiki in getting an approved and implemented farm plan and then also I did a walk through with Mr. Caiserman and looking at the implemented farm plan.

The second is, will the desired use adversely affect the surrounding property? There's no evidence that this house being used for short-term rental being rented out to a party would adversely affect

the surrounding property. And in fact, I think it's critical for the Commissioners to understand that this portion of Launiupoko is within the Rural, Rural Growth Boundary. This is a crucial distinction when you look at agricultural areas. If you're looking at Haiku obviously very rural. I live on two acres of land, but it's very rural out there. This is on two acres of land but it's very rural out there. This is on two acres of land, but it's been identified in the Maui Island Plan that this area is characterized by a somewhat more dense and very economic framework. In fact, if you just looked at the Sunday newspaper of *The Maui News*, you see in the headline, proposed Launiupoko residential project looks to mix it up. Now this area that Ms. Hunt's STRH is in is not in that exact area, however it's nearby and there's going to be consideration which this Commission and the State Land Use Commission has will be that the Makila Rural community will be asking for State District Boundary Amendment to go from Ag to Rural and Ag to Urban. So this area as all of you know is characterized by more of a rural component.

Will this adversely burden public agencies with regards to sewers, water, drainage, school improvements, police and fire protection? The Department sees no indication if this were granted to be a short-term home rental would in fact adversely affect it. It's critical that there's strict management on these. There's every evidence that the applicant will have strict managers to take care of any issues regarding police and fire protection.

Have unusual trends arisen since the District Boundaries were established in the early 1960's? Yes, in deed. In fact I was looking at a...a interesting video from Kaanapali 1964 by American Factors Corporation. You only have to look at 1964 versus today, the area's changed. We all know it's changed. People are looking for a different type of tourist experience. Agricultural tourism is becoming important, a more rural experience. A balance between agricultural and tourism is Maui's future. So a well run short-term home rental permit can add to the tourist industry.

Finally, is the land with the proposed use not necessarily suited for the uses permitted within the district? Well, the land, yes of course is Agriculture, but it is rated a B878I while B land is relatively good land it's important that you look at the I factor. Meaning that without irrigation this land is pretty good at producing rocks. In fact, one of the old commissioners said that Launiupoko land rocks are a pretty good crop out there. It's tough to make it work. And we've seen this before over and over. So the applicant, if you notice in the exhibits has taken what was a pretty rocky area and has turned it into what will become a productive citrus grove. In the past, yes this was used for forest, grazing, mono cropping of sugar cane. It's doubtful that that will come back as mono cropping of sugar cane. So there have been changes and it's been recognized.

The Commission is often asked well if we look at this area of Launiupoko what's going on in the West Maui Community Plan District? As of August 2015 there's 28 permitted short-term home rentals in the West Maui region out of a total of 88. There are no short-term rentals within 500 feet of this particular property. Within this smaller area, subdivision, there is one, Maya Myers with Kalapana which was approved by this Commission for her State Special Permit. Within the greater Launiupoko area we have Lahaina Dreams, Sparky and Linda own that one. They've been pleased, their pasture, their horses it's doing well. There was some concern, but that's working well. We have Ms. Teresa Waters with her Lahaina Animal Farm. We have Jan Hendricks with Makila Plantation House.

In addition, we have a letter from one of the adjacent owners, Mr. Jay Wisthoff who is approved for

a bed and breakfast within this community. Mr. Wisthoff is within 500 feet of the applicant today. He has an approved bed and breakfast. It's working successfully along with a Conditional Permit to hold weddings but just for guests of his B&B and he does support this project.

The State Office of Planning which looks at these from a larger perspective didn't have any comments on this project. And so that would give an overview of where we are today and if it's your pleasure, we'll have Mr. Jordan Hart give a power point presentation that will detail this project.

Chair Ball: Very good.

Mr. Jordan Hart: Mr. Chair and Commissioners, my name is Jordan Hart of Chris Hart & Partners. I'd like to start by thanking Kurt Wollenhaupt for an excellent introduction to this project. As noted, this is a request for a State Land Use Commission Special Use Permit at 89 Awaiku Street. The property is a condominiumized TMK as noted in the application documents. Kurt mentioned the project team that we have here today.

The purpose is to request a State Land Use Commission Special Use Permit. As noted State Land Use designation is Agriculture. The Maui Island Plan Rural Growth Boundary is overlaid over the project site. Community Plan is currently Agricultural and the County Zoning is Agricultural. The project is located in Flood Zone X. This is a TMK map. The purpose of this map is to kinda illustrate the pattern of development. These are two-acre minimum lot sizes for ag development. State Land Use Commission Ag District. Maui Island Plan Rural Growth Boundary, the project site is located here. This is the community plan map. Agricultural County Zoning.

This is an aerial photograph of the project site. This further indicates the character of the neighborhood. It also shows the condition of the project site before Ms. Hunt implemented her farm plan. At the time that she purchased the parcel, the parcel had been subdivided and the main and accessory dwelling had both been constructed. There was no filed, approved or implemented farm plan. Ms. Hunt applied for these things and implemented them all after purchase.

At this time, I'd like to bring up Navayo Caiserman to discuss the farm plan. This is a site plan of the farm itself.

Mr. Navayo Caiserman: Hi. I have a couple of things I was gonna go over. There's probably not enough time for all of them but...oh, my name is Navayo Caiserman. I take care of the landscape primarily and most recently the ag. So I just wanted to...you can go back one? Well, if you look at the house here, this area down here this last third of the property is where most of the work that we've done recently has been done. That area about a 15 plus foot drop off of this main area here. So that whole area has been grubbed and graded and cleaned and about 35,000 square feet of citrus spaced 25 feet apart. Commercial farms do 25 to 27 feet apart in rows and they go closer together on within the rows and that's because you're harvesting on a commercial scale, but they end up thinning it out to that spaces that we have. We're not trying to be, you know, maximize every last lemon out of there. We're trying to make aesthetically pleasing and produce well. And in my opinion, when you get too much stuff too close together they end up competing and it's not just my opinion, it's also research has been done.

Everything else you see, all the lawn around here within that lawn we had to redo all the irrigation

and we have same space, actually a little closer about 20-foot spacing up here so we could get more all throughout the whole lawn all up in here, and maybe to the next slide a little easier. So this is all the existing lawn we have done the same, a little closer spacing and dropped citrus trees in there. There's coffee and avocado. There's avocado all around the perimeter here as well as this coffee hedge all the way around the perimeter. There's about 250 coffee plants on this hedge and bunch more here. I'm not sure exactly how many, and then there's some coffee right in this area as well in this lawn.

Overall on some of these pictures if you come up it doesn't look to impressive. They're a little smaller. Maybe you can go to some of those? You know, they're smaller right now if you look. They're not fully grown yet. And so when you look at them right now it's like, you know, they don't look like much but eventually they're almost gonna be touching. The lawn's gonna practically disappear and you're gonna have just enough to squeeze a sitdown mower between every tree, and it's just gonna be full on fruit. You know, average fruit per year on some of these are 350, 400 pounds maximum I doubt we're gonna get it, 1,500, but that's a long shot. So we have quite a bit of fruit coming out here.

In Launiupoko like they were saying, unless you were gonna farm that whole Launiupoko in my opinion it's really hard to afford the equipment needed to handle this kind of grounds and rock. I think the future of Launiupoko is gonna be...I have a bunch of property up there, it's gonna be having a few of these and kinda co-oping to get people like Mark and other people the food out of there. 'Cause there is so much food in Launiupoko but no one really has enough to do anything with you know what I mean? But together I think that's more where it's headed.

I also have a letter I'd like to read. You can turn the lights back on is that okay while I'm up here? Aloha and good morning, I would like to thank the Members of the Planning Commission for taking time to come in today and listen to and vote on this issue. My name is Navayo Caiserman. I have worked with Matthew and Helen as their landscaper for the past seven years and in more recent years to help them implement their farm plan. I'm here in support of their STRH Permit request.

I have always been involved in agriculture in some form or another. I grew up in Ka`u on the Big Island on a 40-acre give or take persimmon orchard and exotic fruit orchard. My family supplemented our income with a small yard care business and here I am doing the same thing. In the ninth grade I came to Lahainaluna as a boarder. After high school I went to MCC, University of Hawaii at Hilo all in ag. I've worked for the County recently for the past ten years I was a life guard, Wastewater Department, and the last five years in the Fire Department. During my time with the County of Maui I was always involved in agricultural throughout continuing education classes and also owning my landscape maintenance and installation business. I left the Fire Department on good terms a few years ago to pursue my passion which is and has always been working with the land.

Before I go any further I'd like to get one thing out of the way, I really don't like speaking in public. My hands get sweaty, my heart beats fast, I tend to get choked up when I'm talking about something that matters to me. I wouldn't do this, come up here and put my reputation on the line for anyone if what they were doing didn't sit right with me.

When I started my landscape business, Matthew and Helen were my first customers. I mean, the

very first customer I had luckily for me was a really good one. They've always been great to work for not only 'cause they pay on time, but more so because of who they are and how they treat my crew and I. Matthew, Helen and myself, Tina and other people have spent the past seven years working on this property and have transformed it from a weed and vine covered landscape into a beautiful home for them and hopefully others to come and enjoy.

Even before being aware of any other agriculture requirements Matthew and Helen always integrated edibles into their landscape and each time they visited we would add new things. We installed herb gardens, small amounts of coffee, bananas, papayas, and avocados. Most recently after learning that we needed to comply with the agriculture requirements of this subdivision we embarked on an intensive and costly project to convert most of the existing landscape and all of the unused land to meet and exceed the agricultural requirements of the subdivision. In addition to the edibles already there we opened up 35,000 to 40,000 square feet of bare land and added approximately...it says, it says a little less in this page here, but he only had one of the invoices I think, the two invoices added up to about 75 citrus and exotic fruit trees. Altogether there's maybe about 10 avocado trees and over 200 coffee trees, countless varieties of bananas and just random other little things that add to the vibe but they're not really gonna be harvesting them, some squash here and there and that kind of stuff.

I'd like to stop here and stray a little off subject for a second. I take care about 60 properties, many in Launiupoko. I pride myself in doing very good work and that has been my reputation. In recent years I have had many requests from existing customers and even more from perspective ones wanting to convert their property over to agriculture. I have not accepted any of this work for one reason. Most people are only trying to get the agriculture exemption so they can do other things, flip their house, add a pool, build a cottage, sell for a higher price. Because their motives are not agricultural ones they do the least possible and as soon as they get the permit pull out the coconuts, you know, whatever it is, you've probably seen it all. This was a concern of mine when Matthew and Helen first approached me with the idea to convert ag. When I confronted them with my concerns, I told them I would not be involved in a project that was not real. They said, good that was not their intention. They wanted to comply with all the requirements and if possible exceed them to create a property that would produce food for them and others. This property is not just a piece of land for them. They are not using it for personal gain. They are not selling it for profit. It is a peaceful retreat from their otherwise fast paced life. It is their home.

I understand there's a hold up when it comes to short-term rentals and I understand that as an island we are hesitant to outside influence for a good reason, we should be. It doesn't mean that every outsider or every outside influence is a bad one. A lot of people have adopted our concerns as theirs and care about the island like we do. I can say with confidence that Matthew and Helen are two of these people.

From what I understand the ag plan requirements have been met and approved, right? We've implemented an ag plan that is above and beyond what is required. When the inspector, Mrs. Waikiki came out she told me she wished everyone would put this kind of effort into their farm plans. The pictures don't do it justice. It is really a beautiful orchard and when it reaches maturity will produce a lot of food. I am biased 'cause I installed it, but it's also because I designed the orchard based on what it will be in the long term not what it will look like right now so we could get your approval.

My wife and I love to travel. We don't do it much, but when we get to, we always stay at interesting places. Very rarely do we choose a hotel. I'm grateful that most places I've traveled have allowed these creative accommodations to exist. Thank you for your time.

Mr. Hart: Thank you. At this time...Jordan Hart from Chris Hart & Partners, I'd like to proceed through the presentation regarding the Special Use permit. As noted, this is the farm plan that's been approved by the Planning Department. This a list of some of the citrus trees that have been installed. The proposed uses for coffee include gift, welcoming gifts for guests and citrus, the intent is to sell to restaurants, excess would be contributed to organizations similar to Waste Not Want Not or Feed My Sheep. Photographs of the installed farm plan.

Regarding the Special Use Permit and Short-Term Rental Home use this is a diagram of the parking requirements for the project site. Awaiku Street is here, the cottage is here, two stalls up front, the main dwelling is here access by a driveway, two stalls in front of the garage. The garage is maintained for personal storage. I'll show photos of that in a bit.

The residence consists of the main dwelling is a three-bedroom, four bath. The cottage is a two-bedroom, one bath. The parcel is condominiumized that separates the main dwelling and the cottage. These are photos of the project site. This is the main dwelling by the main access. This is looking from the cottage to the main dwelling. This is looking from the cottage northwest. This is looking from the cottage east. These are photos of the main dwelling, the garage. Interior photos of the main dwelling. The garage is reserved for personal storage this includes surf boards and their main vehicle that they operate out...use while they're here. Photos of the cottage. Interior.

This map was provided by the Planning Department. It indicates the Bed and Breakfast Permit and Short-Term Rental Home Permits that have been approved in the vicinity. Within this neighborhood one B&B Permit has been approved. Within this neighborhood, one Short-Term Rental Home Permit has been approved as well as others surrounding. This is downloaded as recently as today. I thought this was a really important indicator of the Short-Term Rental Home Permit application process. The rules were adopted in May of 2012, and as you can see in West Maui there's currently 32 permits of 88 potential have been issued. Island wide there are 115 permits been issued with 400 potentials. As a planning consultant this says two things to me. It says first the application process is difficult for Short-Term Rental Home Permits, and then second, there are a lot of people who are choosing not to go through this process. And so I really think that it's important to recognize the people who invest the time and energy in proceeding with these requests.

These are some house rules. The house rules are intended to maintain peace and quiet enjoyment of neighboring properties surrounding the project site. Kurt mentioned these prior, the Special Use Permit criteria. I'll go through them very briefly. The proposed project is not contrary to HRS 205. The reason it is not is because the project is operating under an approved farm plan. There's not anticipated to be significant impacts to neighboring property owners due to implementation of quiet hours...quiet hours and house rules, excuse me. The use will not unreasonably burden public agencies. This is an existing and developed subdivision. The proposed use is gonna be a similar level of impact as the existing use. As noted previously there is an increasing demand for alternative accommodations for visitors. Returning visitors consistently coming back to Maui are seeking alternative experiences. In addition, the short-term rental home use allows ag to continue

on site or evolve on site. And then separately, the applicant has a busy schedule and often is able to come to Maui on short notice being able to make use of their home without displacing a long-term renter is really a asset for this particular request. The land upon...the project site is unsuited for agriculture. There's a number of things. The two-acre minimum ag lot size has been criticized by a number of people just as a pattern of land use development. This is one of those subdivisions. As a result, the County of Maui has identified it as being in the Rural Growth Boundary which means when the community plan amendment is updated in the next few years it's very likely that this will be a Rural designated area. The County Zoning will follow that. So in five to seven years this will be outside of the ... well, perhaps longer, but outside of the State Agricultural District which is the trigger for the State Land Use Commission Special Use Permit. As stated earlier, following the closure of sugar in West Maui this project was developed. There was no ag implemented. This applicant was the one who initiated and implemented the farm plan to reinstate ag in the area.

In conclusion, the project site is appropriate for the request and meets all the criteria of the State Land Use Commission Special Use Permit criteria. At this time, I'd like to call up the applicant to speak a little bit about the purpose for the request.

Ms. Helen Hunt: Let me introduce myself. I'm Helen Hunt. Good morning.

Chair Ball: Good morning.

Ms. Hunt: Thank you for your time. My intention is pretty simple. I want to live here full-time. I've been coming to the west side of Maui since 1978, I was 14. I'm 52 now and I have not given up. I keep hearing about busy schedules. I do not have a busy schedule, but other members of my family do. My husband works. My children are in school. And we bought this house in 2006 with the intention to live here full-time. My daughter goes to a Waldorf School on the mainland. There's Haleakala School here. We plan to make the big drive everyday, sit in café in Paia and write and pick her up and bring her home. And then my father wasn't quite well enough for us to leave. My stepson was at an age when moving really wasn't appropriate and so we're kind of biding our time until we can live here.

And whatever anybody imagines I cannot afford to keep the house and have it just sit here when I'm not here. That's not a possibility. So I can only say other than the health of my family there's literally nothing more important to me than being able to not only come and live in Maui but to stay in this house where we've sort of had all of our memories and hopes and dreams poured into this little spot of land. From the minute I heard there were 88 permits gonna to be issued, I mean, you've heard already what we've done, I just can only say that if there's a rock unturned, I would be surprised because I'm exhausted. And I can only say how much it means to my family and to myself to live here ultimately and to rent it long-term would mean we couldn't do what we do now. We don't come and visit for a couple of weeks a year. We're here sometimes most of the summer if not half of the summer. We're here for holidays. We're here any chance we can get. I'm here now and get back in week. So if it were up to me we'd be living here now, but other members of my family have to catch up and our intention is to do that in the next set of years. So the wish right now is to be able to generate enough income to keep the house and live here eventually. And yes, it is meaningful to me to have the land produce food, to have that food feed local people. I've done some charity work in the mainland...(audio feedback)...



Unidentified Speaker: It's an old system.

Ms. Hunt: ...with you know, eating locally. Eating locally that's important to me so the idea that our keeping the house could be wrapped around a local food kind of vibe meant a lot to me. I think that's really all I've got. ...(inaudible)...is it over? Okay, thank you.

Chair Ball: Thank you. Are you done?

**a) Public Hearing**

The following testimony was received at the beginning of the meeting:

Chair Ball: We'll open public testimony at this time. Anybody that would like to testify may do so at this time, however, when the agenda item comes up you will not be able to testify again. So if you'd like to come up and testify at this time you may do so. I see Mark Ellman would you like to come up now or testify at the agenda time?

Mr. Mark Ellman: Now.

Chair Ball: Okay. Come forward. You have three minutes. Please identify yourself when you reach the podium.

Mr. Mark Ellman: Hi, I'm Mark Ellman, and I'm a chef and owner of some restaurants here on the island of Maui. I have...I believe everybody has a copy of a letter I wrote. When I first came to the island in '85 and opened my restaurant called Avalon I was purchasing produce from the mainland and the approximate percentage was 80 percent, about 20 percent local. Now in 2015, it's flip flopped. We're about 80 percent local and 20 percent from the mainland. So what I've seen in the 30 years that I've been in business here is that Maui's starting to explode with agriculture and being more diversified. And I have three restaurants on the west side and I'm constantly buying citrus, avocados, fruits from folks that happen to be living up in Launiupoko, Puunoa, up north in Kaanapali as well as in Napili. So my friend Helen here who I've known approximately 30 years. She used to dine at Avalon and has followed me through my restaurants. I've always known her to be a person of integrity, someone that loves the islands especially Maui. And when I heard she was planting an orchard of citrus and avocados I was thrilled because a lot of my customers that live in that area we purchase from them on a daily basis. So it's something that's needed for commerce here on the island and to have local organic products is something that's very important to myself and to my customers. So I'm in support of anybody that's growing food for the local restaurants here and the hotels, so has my approval. Thank you.

Chair Ball: Any questions for the testifier? Thank you. George Helms is next.

Mr. George Helms: Good morning.

Chair Ball: Good morning.

Mr. George Helms: New to the island. I've been on island about a year now and love the place.

Chair Ball: Please identify yourself, George.

Mr. Helms: George Helms. I'm the owner of 105 Awaiku, next to the property that Helen is applying for the permit for. So I just wanted to come and say that I really like what's she's done with the property. I support the activity she's done with the farming and support the permit as well. So the place looks great and she's been a great neighbor, so I wanted to come and voice my support for her, and let the committee know it's a great thing.

Chair Ball: Thank you for coming. Any questions for the testifier? Seeing none, thank you.

This concludes the testimony received at the beginning of the meeting.

Chair Ball: Okay, at this time, we'll open it up for public testimony on this agenda item. Anyone would like to testify they may do so at this time? Seeing none, we'll close public testimony.

**b) Action**

Chair Ball: Recommendation, Kurt?

Mr. Wollenhaupt: Good morning, Commissioners once again. The recommendation of the Planning Department after looking at the criteria under Chapter 205 and 205A of Hawaii Revised Statutes and the Rules of the Land Use Commission regarding the review of the Land Use Commission Special Permit is to recommend to the Planning Commission approval of the Land Use Commission Special Permit subject to seven conditions. These seven conditions are typical from what the Commission has seen in the past.

The first one that the Land Use Commission shall be valid until September 30, 2018 subject to extension by the Director upon a timely request for extension. And the important one, No. 7, would be that the farm plan shall remain implemented throughout the duration of the Special Permit and evidence of implementation shall be submitted as part of any request for a time extension. The other conditions are very standard. That being the case, the Planning Department does recommend that the Maui Planning Commission adopt the Planning Department's report and its recommendation prepared for the September 22, 2015 meeting as its findings of fact, conclusion of law, and decision and order and authorize the Planning Director to transmit the said written decision and order on behalf of the Maui Planning Commission. Thank you.

Chair Ball: Okay, questions from the Commissioners?

Ms. Duvauchelle: I have a question.

Chair Ball: Yes, Commissioner Duvauchelle?

Ms. Duvauchelle: For Jordan, I'm just curious. Does this lot have an ag source of water and a potable source or...

Mr. Hart: It does.

Ms. Duvauchelle: It does. Okay, thank you.

Chair Ball: Other questions? Commissioner Medeiros?

Mr. Medeiros: I move to accept the recommendation.

Chair Ball: There's a motion.

Mr. Hudson: I second it.

Chair Ball: Second by Commissioner Hudson. Discussion on the motion? Commissioner Robinson?

Mr. Robinson: I still have questions for Jordan is that allowed?

Chair Ball: Okay, go ahead, yeah.

Mr. Robinson: Hi Jordan.

Mr. Hart: Hello.

Mr. Robinson: Jordan, I got a letter from the Mahanaloanui owners and it says that the CC&Rs have determined that --

Chair Ball: Do you have an exhibit that you're looking at?

Mr. Robinson: Yes, it ...(inaudible)... have part of the packet today.

Chair Ball: Looking on the bottom is it...

Mr. Wollenhaupt: If you go to Exhibit No. 12--

Mr. Robinson: You got it?

Mr. Wollenhaupt: And then you go one page back because I included the entire CC&Rs for the Mahanaluoa Association. So the letter would be right before Exhibit 12 which is near the very end of the packet.

Chair Ball: I'm sorry, Commissioner Robinson continue with your question.

Mr. Robinson: It shows that the owners and their intents are to not have any short-term vacation rentals or TVRs and as well as there's a couple of letters opposed to it. And has there been any responses or reaching out to these, to the homeowners and to the homeowner's association?

Mr. Hart: Yes. We did reply to all comment letters including Navayo did speak with the neighboring property owners individually. I would like to note with regard to the homeowners association letter, clearly the CC&Rs are included in this application packet and they state that any use that can be

permitted is permitted within the subdivision. And so essentially what they've done is they've written an opinion letter ignoring simple language that states that anything that can be permitted is permitted to be done within the property. I would also like to note that the Planning Commission has already approved one short-term rental home permit. That property is currently in operation in this subdivision and so my...I would also like to note that, you know, the short-term rental home sign the first one we put up was vandalized. So in my personal opinion there's people who don't want to have this happen in the neighborhood and they're asserting their opinion but in actuality the rules of the association allow for it.

Mr. Robinson: There's also have been short-term vacation rentals in this area that we've also denied though, right? So we've approved and denied. This isn't an automatic because it's in this area we approve it.

Mr. Hart: And I wasn't trying to make that assertion. I guess what I was trying to point out is that the rules do allow for the use.

Mr. Robinson: So is there any letters, did you guys write any letters or do you guys just verbally speak to the people that--

Mr. Hart: No, we wrote letters as well.

Mr. Robinson: Are they part of these exhibits, the responses?

Mr. Wollenhaupt: They handed it out this morning.

Mr. Robinson: That was the response to--

Mr. Wollenhaupt: Applicant's response--

Mr. Robinson: To C1 or to C2?

Mr. Hart: The response to the association was written during the application process though many months ago and it should be, it should be right in front of the comment letter. And it basically calls attention to the section of the CC&Rs that I just mentioned a second ago.

Chair Ball: Did we answer the question?

Mr. Robinson: Yeah. I'd like to make a comment.

Chair Ball: Okay.

Mr. Robinson: To the applicant and to the landscaper I think the site is exactly what everybody in Hawaii had visioned when we had these two-acre lots that a owner would come in and even though they have a cottage and a pool that they would at least try to get some agriculture and it wouldn't be just a gentleman lots, you know, gentleman estates. I think it's very progressive and I think it's very good looking. But I'm not so convinced that when we granted these lots that we thought that it all become rentals and I understand there's a financial benefit and this is a financial situation

which the applicant did talk about. And my question with the applicant is do you folks need, you guys use all seven rooms to come in? You know, to me this looks like a beautiful bed and breakfast location where you have a big house and a small house with a caretaker and you know, people kinda come and go instead of a 100 percent rental.

Ms. Hunt: Is the question--

Chair Ball: Please identify yourself too, just for the record?

Ms. Hunt: I'm Helen Hunt. Why do we need all the bedrooms? Do I understand part of the question is why can't we rent part of it?

Mr. Robinson: Yes, one house and keep the cottage as a caretakers, a bed and breakfast instead of a full rental?

Ms. Hunt: So we're just very close with you know, older members of our family. Often I don't feel comfortable leaving without them and there's a privacy...generational privacy issue there. And so we found that most of the times we come we use all of the property, not every time.

Mr. Robinson: Okay. Thank you. Thank you, Chair.

Chair Ball: You have further questions? Commissioner Medeiros?

Mr. Medeiros: It's not a question. I made the motion to accept the recommendation mostly because I know that there was some letters of protest and everything. But there was a lot of letters supporting, you know. They hired a local boy who has experience with agriculture and he was hired to institute a farm plan, okay. And as stated, you know they would be on the minimum requirements, the boy instituted a farm plan. Let's face it. You know, this is Launiupoko. Okay, I am not a big fan of, you know, TVRs, but they put together a good plan so I going support it. That's all I got.

Chair Ball: Anyone else? Commissioner Hedani?

Mr. Hedani: I was impressed with the presentation that was made by the landscape contractor in this particular case. I liked his integrity. I liked the way that he approached which projects he would do and how he would do it. I like what I see in the application in terms of the commitment to agriculture. And in this particular case I think the soil is actually very good soil, it's 30-inches deep and it's well drained and the subdivision provides irrigation. So the missing ingredient that classifies it as E is eliminated. So I think a real commitment to agriculture can occur on this particular property. And I think the applicant is...has the capacity to execute in a manner that would be viable from the standpoint of marketing, developing products.

I like the application. This the first time I've seen the entire declaration for the subdivision and a true agricultural subdivision would never disallow pigs or roosters. And I think Jordan's comment relative to the property being in a rural designation, I've always felt the entire subdivision looks, acts, feels more rural than it does ag. But I'm supportive of the application as Jason has indicated. I also like her movies.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Yeah, I have a question for the landscaper guy.

Chair Ball: That's your official title now.

Vice-Chair Tsai: Yeah, I'm sorry. I didn't get your name again.

Mr. Caiserman: Navayo Caiserman.

Vice-Chair Tsai: Yeah, great job on the presentation stuff.

Mr. Caiserman: Thank you.

Vice-Chair Tsai: So since you apparently do a lot of properties around the area, how much yield do you think the...this particular property, you know, the amount of ag products produced as compared to the other ones? Is it on par or what...

Mr. Caiserman: Much more by far. I mean, as far as...well, right today, nothing. I mean, there's a couple of oranges, they're little. You know, next year we'll get a few. At its maximum output, there's probably very few properties up here that are gonna be anywhere close to the yield on this. I've seen a couple guys have you know, rows of trees five, ten feet apart and it looks like it's gonna be this crop, but you're just gonna be cutting those trees back to prune them. They're never gonna really...these are gonna be able to be 20-foot tall citrus trees. It's gonna be probably the most ag as far as anything up there. The dragon fruit farm, I think they have a farm up there, there's a animal farm, I see only a few. The dragon fruit farm has to supplement their income with what they do, zip lines, you know I mean, not a lot of ag up there. But reality I see, what I see up there I mean we can get a lot off here. What I see up there is getting the other owners around who wanna be on board you know, for a small fee or for a break even, let's just all do ag and do a co-op or what...everyone is gonna have a different want with their fruit, but we can get everyone's fruit to market, to people like Mark or some buyer, but when people just try to bring like a couple trash cans of tangerines it doesn't work that way. I mean, people have...there's so much...if you go around there there's so much food combined, it's just you can't... no one's really out there farming it, you know? It's just sitting there. There's a lot.

Vice-Chair Tsai: So for a non ag guy like myself can you quantify at all how much?

Mr. Caiserman: Okay, numbers?

Vice-Chair Tsai: Numbers, like how much?

Mr. Caiserman: So was speaking to the average crop yields on citrus, 350, 400 are the average, there's lower, 1,500 is you know, I can try to quote that number, but that's extreme and we're not gonna get 1,500 pounds per tree per year. So 75 trees if someone has the calculator, do the math, 75 citrus trees, 400 pounds, 28,000 pounds of citrus. I mean, if we don't do something with it, I'm gonna have a...I'm gonna just be working to dump it. So we're gonna do something with it. I have to carry it up and outta there. I designed the whole area so we can drive a cart around and pick it

and get it out. I have to get out anyway, I might as well get it out while it's ripe and we do something to it. So, I mean, something's gonna be done with that fruit. I'm not gonna let it rot there. Yeah, and I'm hoping to get more people on board. I just did another orchard for a Plantation Estates customer probably almost half the size of this one. But so I have a few properties that have quite a bit of citrus on it. And if anything I'm gonna do something with it, yeah.

Vice-Chair Tsai: Thank you.

Mr. Caiserman: I also have a quick...about the letters, and I'm not discounting anyone's complaints, but the complaints that did come our way were from people outside of the 500 foot range. I went around the whole subdivision. You know, I've been up there. I know a lot of people up there and I asked everybody, everybody, I did not come...well, not everybody, but in the 500-foot zone and around it, nobody... and this is just hearsay, but I have letters of approval so people are for it. And then I have a lot of neutrals, you know, we wish you the best of luck. The immediate neighbors were all neutrals. And well there's about six or eight immediate neighbors, four or five of them gave us letters and four or five of them gave us neutrals. No one said they were gonna oppose it, and that's hearsay, you can do your research on that, but the letters do speak for themselves, and the letters of oppose were from outside of 500 feet. Any other questions?

Chair Ball: Commissioner Robinson?

Mr. Robinson: My voting history is pretty apparent when it comes to short-term rentals and I'm actually looking at this project as the way to set the bar of how we want people to act in this area. You know, where they're gonna you know, they're gonna really try and make ag use out of it where they're gonna get their resources and you know, like Mrs. Hunt she you know, she went all the way. And that's nice to see. This isn't somebody trying to slide by and say they're selling coconuts and they have ag. And you know, it's not against the law and you know, I'm actually gonna support this, this short-term rental. I can't believe I'm saying that.

Chair Ball: Okay, everybody said their piece? Commissioner Hedani?

Mr. Hedani: I would also like to say that I would never vote against anybody that comes presented by a pinstripe suit and tie.

Chair Ball: Okay, any other questions? Seeing none, all in favor of the motion to approve say, aye and raise your hand, please?

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried unanimously.

**It was moved by Mr. Medeiros, seconded by Mr. Hudson, then**

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Department.**  
**(Assenting - J. Medeiros, L. Hudson, M. Tsai, W. Hedani,**  
**S. Duvauchelle, K. Robinson)**  
**(Excused - R. Higashi, I. Lay)**

Chair Ball: Okay, we'll take a five-minute break.

A recess was called at 9:56 a.m., and the meeting was reconvened at 10:11 a.m.

Chair Ball: Item C2. Deputy Director?

Ms. McLean: Thank you, Chair. This is your second public hearing item today. A request from Michael and Lynn Fleetwood requesting a Short-Term Rental Home Permit to operate a four-bedroom short-term rental home, Serene Napili Hale in the County R-2 Residential Zoning District and State Urban District on approximately 22,000 square feet of land located at 5150 Lower Honoapiilani Road, TMK: 4-3-003: 040 in Lahaina, and Kurt Wollenhaupt again is your Staff Planner.

- 2. MICHAEL AND LYNN FLEETWOOD requesting a Short-Term Rental Home (STRH) Permit to operate a four (4) bedroom STRH, Serene Napili Hale STRH, in the County R-2 Residential Zoning District and State Urban District on approximately 22,000 square feet of land located at 5150 Lower Honoapiilani Road, TMK: 4 3-003: 040, Lahaina, Island of Maui. (STWM T2015/0007) (K. Wollenhaupt)**

**The application is being brought before the Commission as there is another permitted STRH located within 500 feet of the subject property and two (2) or more adjacent neighbors filed a written protest within the specified 45-day time period.**

Mr. Kurt Wollenhaupt: Good morning Commissioners.

Chair Ball: Good morning.

Mr. Wollenhaupt: We're going to our next item, Item C2 in Public Hearing for Mr. Michael and Ms. Lynn Fleetwood requesting a Short-Term Home Rental Permit to operate a four-bedroom STRH, Serene Napili Hale in the County's R-2 Residential Zoning District and State Urban District on approximately 22,000 square feet of land located at 5150 Lower Honoapiilani Highway in Lahaina.

Again, it's all ...(inaudible)...we're going to switch gears here a little bit from the last item. This item is located in the State Urban District so the review process is encompassed by Chapter 19.65.060 of the Maui County Code which is the ordinance that was enacted by the Council in order to review short-term home rental applications. The matter does arise from a application filed by the consultant, Ms. Debbie Mitchell who is in the audience and will be doing a presentation on this particular property on behalf of Mr. Fleetwood today. Also, Mr. Fleetwood is in the audience so that questions may be asked of him about this particular application.

So why are we here today? Why is this not being approved administratively by the Director? In this case, there's two reasons. The first is is that there's another short-term home rental within 500 feet of this application. There are in fact two of them. One is directly across the street that would be



BJ's Ohana owned by Jay Moore. The other is owned by Mr. Fortun up on Papaua Place in which there is a pod of short-term rental homes although they're outside of the 500-foot radius. However, there are two within 500 feet which does trigger the public hearing.

The other item is that we did receive during the mailing of the notice of the application to everyone within 500 feet, we did receive a written protest from the owner or lessee of record of two or more lots directly adjacent to or across the street from the proposed short-term rental home. These were all done at the time of the mailing of the notice of the application. That mailing which was done on May 13, 2015. Now it's always critical, and the applicant's representative Ms. Mitchell will be going into detail about the letters that have been received, letters that have been received in support from adjacent neighbors in fact, a preponderance of which would be in support of this, and the letter which was received from an adjacent neighbor, Mr. Eubanks to the south, and also signatures from another owner who is also adjacent. So we always look at what the letters say, we always look at the type of protests that comes in. So we do have a trigger however because we have one letter from Mr. Eubanks to the south, and then we had a letter come in with four addresses and four signatures simply stating they were in protest. So the Commission will take a look at the evidence that's been received from this standpoint. That being the case however, we do have a public hearing and it's also important to note that there have been no letters of opposition received as a result of the notice of the public hearing. In fact, we've had no...we've had letters received in support of it which have been given to the Commissioners.

Also so that everyone knows there were responses that were drafted to the people who are opposed to it. The applicant has been attempting to contact these people and Ms. Mitchell will be describing those attempts and what has occurred.

As the Commissioners all know this area in Napili has a range of owner-occupied houses, it has single family homes, a mixture of second homes, condo units such as Alaealoe and then it moves up the coast to the Kapalua and to the Ritz-Carlton Hotel.

It is an area that's designated and within the Urban Growth Boundary which does allow short-term home rental operations. It's important to note that on this property there is the main house which we'll be reviewing today, the four-bedroom main house, and there's also a two-bedroom ohana. The applicant could have by law requested to have the entire, both properties submitted for short-term rental home use however they only submitted the larger, four-bedroom house and consequently will be using the ohana for either family uses or for long-term rental. That's been an issue that the Commissioners have asked about in the past.

All of the regulations from 1965 have been outlined and there have been responses given in the staff report. I'm going to go through just a few of them however from Chapter 19.65 in what the Commission can look at as they review today's application. First off, would be the number and the distance of the subject parcel to other permitted short-term home rental homes. As indicated, there is one across the street which is ocean front, Jay Moore's, and then there's one up on Papaua Place in which there is a cluster of STRHs, all high end homes on the shoreline.

Then the second is the number and also the substance. The substance of the protests for which the short-term home rental application has been noted for. As indicated before from the initial notice of the mailing there were two protest letters received one of which was adjacent. And then

there was a petition which had four signatures of which one of them replicated the letter and one was also adjacent which triggered the public hearing.

C, existing or past complaints about the property. There's no police report that indicate there's been excessive noise coming from this property in the past or other complaints. Existing compliance, the applicant has come in to get a Short-Term Home Rental Permit. On August 10, 2015, I went out with Ms. Mitchell to look at the property and to see what some of the concerns might be. Immediately to the south of this property with which there was the person who has a concern there's a significant hedge fence which would try to help to alleviate any kinds of noise that may come from the pool. I believe that Ms. Mitchell will be commenting on that.

And finally, correspondence, if there's any private CC&Rs for this property there are none in this case. The applicant has submitted the extensive checklist of issues with regards to the Short-Term Home Rental application and those have all been found to be in accordance with the requirements of the application. That being the case, just to let you know, from the notice of the mailing of the public hearing we've received seven letters of support. I believe there's a couple of more that have been issued and are at your desk there. And no protest letters have been received from the mailing of the notice of the public hearing. So we have two mailings. That sets the stage for Ms. Mitchell's presentation if you decide.

Ms. Debbie Mitchell: Thank you, Kurt. Good morning, Commissioners.

Mr. Ball: Good morning.

Ms. Mitchell: Hope you're all well today. My name is Debbie Mitchell, and I have been retained by the applicants, Mr. and Mrs. Fleetwood to assist them with the Short-Term Rental Permit application for their home that is located in West Maui, Napili area.

This home is located in West Maui. This lets you see the general area between Kaanapali and Kapalua. Bring it in a little closer you can see that it is west of Highway 30 and just mauka of Lower Honoapiilani Road, north of Napilihau Street. Coming in again, here you see the subject property. You can see a little bit more of the coastline and the layout of the individual lots. Please note there are several large condominium complexes here, Kahana Sunset, Alaeloa, Honokeana Cove,...(inaudible)...Napili Point and the remainder of the properties are single family residences.

Here's a little aerial view for you. The house is circled in red there. Again, you'll see the highway going up above, Napilihau Street coming down on the right and then the lower road. This is directly above the lower road and you can see that it is setback from the lower road quite a bit. Also you can see there is quite a bit of mature landscaping. Coming in directly on the house, as Kurt mentioned there are two structures. One is the main house which is the subject of this permit application and the cottage which is currently vacant which is not and we'll discuss that shortly.

It's a permit request for four bedrooms and it sits on about a half an acre lot. Here is the driveway and you notice it is a gated property. All the parking is on the other side of the gate so street parking is not an issue in this instance at all. And there is...(inaudible)... On the other side of the gate, you see the main house, and in front the cottage that we'll discuss very shortly. Again, large fence and heavy landscaping. Here's the parking area. There is more than adequate parking per

the ordinance requirements. This is the first area of parking and the second is on the north side. Again, you can see the location of the cottage. This is the cottage. It has until very recently been home to Mr. Fleetwood's mother. It is currently vacant and they specifically excluded it from this permit application. It can be used for caretaker's cottage, for family use or perhaps a long-term resident. It is just undesignated and was deliberately left off this permit.

Going to the north side of the property again showing the fence along the side. The south side yard. Again, the landscaping. This is the view from the upstairs lanai showing to the west, and the east view showing a very, you can see is very heavily wooded backyard separating from the neighbors. The main entrance. There's a large lanai in the front going into the main entrance. Inside the main entrance. The front as you turn to go into the house there is a spiral staircase going up to a loft lounge. The living room, billiard room, dining room, and this is up those spiral stairs to the lounge. There's quite a large...this is the first half of it and there is the other side. Kitchen, very well appointed. Downstairs there is a gymnasium and this is also where the laundry facilities and storage for the unit are located. Four bedrooms in this particular residence. This is bedroom no. 1, bedroom no. 2, no. 3, and no. 4. We have two and a half bathrooms, master bath, second full bath and the half bath.

Moving outdoors, we have a nice tiled deck, nice outdoor shower, pool area, again, you notice the very well developed landscaping and spa. The back lanai with barbeque and nice swing set for the kids.

Now taking you around the neighborhood just to show you a little bit of the area. This is south of the property. It's just Lower Honoapiilani Road and this is a very large complex that I pointed out to you before, the Alaeloa Condominium. Moving north towards the property, and this is the north entrance so it's quite a large complex, condominium here. Across the street from that so we're continuing to move north towards the property. This is directly across from the home. This is the other permitted, the first permitted short-term rental home. We do have a letter of support from this owner for our permit application. This is again the information on that rental.

I'm gonna move down and kinda go back and forth across the street so you can see the homes in the area. This is south of the property once again where it's most of the houses are located behind that thick barrier. It's noise abatement from the roadway. Again, going north, direct...this is not directly, this is the first house across the street, coming back...I'll just go through these so you can see the...this is the neighborhood along the highway.

This is this other permitted short-term rental within the 500 feet. This is owned by Mr. Fortun and he has also sent us a letter of support for our application. This just...the 500-foot circle just barely catches the corner of this but it is included.

So as Kurt explained, the trigger of course was really twofold. There are additional short-term rental homes within that 500 foot circle. And we did receive two letters of protest, again, adjacent neighbors. So just to give you the idea of what is going on in terms of bed and breakfast and short-term rental, TVRs. This is the whole West Maui area from Launiupoko on up to Kapalua and so you can see the purple dot show the already permitted short-term rentals in the area. And moving in, there are as Kurt mentioned there's a grouping at Papaua and our location is just right here. And then closer this is the 500 foot circle which shows you why those...what, what that trigger

was happened because those two were directly in that circle.

This gives you a view, overhead view of those permitted, these two and the houses here. So you can see it's well setback from the roadway. And just to be clear, a couple of the letters mentioned concerns about walking access to the ocean for visitors. It's mauka of the roadway. There is a not issue with beach access because it doesn't walk in, it's not ocean front.

So again, as Kurt mentioned we sent our original mailing notifying all the neighbors within 500 feet of our intent to file. And then again, we notified them by letter of the notice of a public hearing. We also placed an ad in the Maui News three consecutive weeks telling up the hearing. And the Department placed an ad notifying the public of the hearing itself.

Speaking to the protests, we did received two letters of protest. I've been...I'm a consultant in West Maui and so have done...been present, involved with several applications and the first protest was received which is basically a form letter that this resident, she lives three houses down across the street from the applicant. And she...it's verbatim the exact same wording, she just changes the address and the TMK, so it's...there is nothing really demonstrated towards this particular property, it's just dissatisfaction with the concept of the ordinance. And then we had one letter from an adjacent south neighbor. And it was just a statement that said they were opposed but gave no reasons for the opposition. And one...is was...there were three additional signatures in addition to the one from the south neighbor.

So the action that we took, we reached out first of all by letter to the protestors. The woman, we tried to separate on the letters what the particular complaints were as they concerned us, and the Nelson letter, the form letter basically was worried about potential partying and noise from guests. She didn't have any instances she was claiming. She just is worried about the potential. We responded to her, we reached out to her by letter and then by telephone, and we explained the position or the process that we have in place. We have a local manager who can respond to any complaints. We have a sign that will be posted that gives a 24/7 contact on it so that if anything should happen they can have someone to call immediately.

The quiet hours, all the restrictions imposed by the ordinance are listed in the house rules that are posted in the house and explained to guests upon check in which includes quiet hours. So the guests are well aware of those. So she basically was not against this permit specifically as it applies to these applicants. She just is afraid of potential. She doesn't even have...okay, she cited some old cases that were from 15 years ago or so, but she had nothing current, but she just was concerned about the potential. So we gave her assurance that, you know, these are the things that we have in place.

The letter from the neighbor to the south, this gentleman is not a resident here. He lives in Oregon. We sent him a letter explaining our issues and mostly this letter consisted of it sounded like someone who was really frustrated with tourists and the tourist activities that seem to be taking over the island in his opinion. And so we tried to separate the letter down to what was...what can we do something about here? How can we assure you? So we really, again, spoke to him telephone, explained what I just identified with Ms. Nelson, and he actually indicated that he would be willing to give the permit, the understanding that it's for one year on the first approval that he would...as long as he is able to protest if something comes up that he doesn't like and we assured him that

it would that he would have that chance. So he indicated to us over the phone that he would be willing to give it that chance. And I do have present, Mr. Fleetwood's manager who actually made these phone calls. If you guys want to speak to him so that you have direct first person testimony he is available as well.

And moving along we had some great letters of support. We had eight letters written which should be in your packet within 500 feet...of neighbors within 500 feet including as I mentioned the ones from the two permitted short-term rentals have both expressed their approval. And four of the letters of support are from adjacent neighbors. So there were two adjacent neighbors that were against, and there are four that are, that are expressing support. And then we had three other letters of support from the community that know the applicant s and are in support of this. This is just a little map. This is the map that you have in the handout that shows you the layout. The yellow are the folks that just didn't tell us why they were against it. And it seemed to be that that signature page that was just the signed saying it came from Mr. Eubank. So we dealt with Mr. Eubank, explained it to him, and he was willing to give it that chance for that one year.

Okay, so finally in conclusion, I just wanna talk to you a little bit about the applicant. This is not someone that is a mainland owner that is coming over to take money out of the island. This is a resident of the island. He is very involved in the community. He's heavily involved in local charities. He's on the board of the hospital. He is...owns a business, businesses in Maui that employ 150 to 200 people. So he is heavily invested in this community, in our island. And he, by approving this permit it actually provides more employment possibilities for local people including flexible working hours. Landscapers can come with housekeepers and let their kids go to school and come when they are able to come, car rental agents, activities vendors, restaurants, shops. All these institutions benefit from approval of this permit. So we have worked very hard to support and comply with all the requirements of the ordinance and we ask for your approval. Thank you.

Chair Ball: Thank you. Does that conclude your presentation?

Ms. Mitchell: It does.

Chair Ball: Okay. Kurt, you too?

Mr. Wollenhaupt: It does.

**a) Public Hearing**

Chair Ball: We will now open it up for public testimony. Anyone that would like to testify on this agenda item may do so. You have three minutes. Let's see, Bill Medeiros. Please identify yourself when you get to the podium, thanks.

Mr. Bill Medeiros: Good morning.

Chair Ball: Good morning.

Mr. Medeiros: I'm Bill Medeiros. I'd like to ask the Chair if I could testify last after all other testimonies are given?

Chair Ball: Sure.

Mr. Medeiros: Thank you.

Chair Ball: Brian Graham.

Mr. Brian Graham: Good morning.

Chair Ball: Good morning.

Mr. Graham: My name is Brian Graham and I'm here to speak on behalf of Mick Fleetwood. Give you a little bit of background about my familiarity with Mick Fleetwood. I first met him at Maui Prep Academy. Our daughters were in class together so I got to see him and witness his character as a co-parent if you will or parent in the community. I was very impressed with what he contributes back to the community in many forms and fashion.

As the time moved on we began to explore the Fleetwoods Restaurant, I became also a investor and business partner with him. I had the pleasure ...(inaudible)...today to still witness how he manages and works with people in the community. I can tell you that I see that he always not only the high road but also chooses always to do what's right and that sometimes goes beyond just what is financially the right choice, it's what's right for people. I think that says a lot in itself.

And then through the years just getting to know each other more and more now as friends I can tell you that it's been an honor. It's a pleasure to work with somebody who takes such pride in what they do, but also in giving back to others and doing what's right for the community. So I would just say that you know, I'm a big advocate of supporting Nick and I know the community's been very supportive of him as well through the years. And if there's anything specifically that I can speak to I'd be happy to do that. But I just want to let you know that I think he's an honorable man who will always do the right thing, and I think it would good for the community to support this initiative.

Chair Ball: Thank you. Any questions for the testifier? Seeing none. Thank you.

Mr. Graham: Thank you.

Chair Ball: Anyone else who would like to testify at this time? Seeing none...

Mr. Bill Medeiros: Good morning again.

Chair Ball: Good morning.

Mr. Medeiros: Commission Chairman Ball, and Commissioners, and Planning Director, and staff. Thank you for this opportunity. I'm Bill Medeiros testifying in support of Agenda Item C2, Fleetwood. And the reason I'm here is in support is I'd like to give you a perspective from the County Council's side of this ordinance. When I was on the Council we drafted this ordinance and I'd like to share some of the deliberation that went on and the concern and the pluses that ended up with the ordinance.

I represented the East Maui District which is the Hana area and I went out and talked to our community when we were deliberating on this ordinance and one of the things brought up by people in the East Maui District was that these short-term rentals would provide part-time work for a lot of people in our community. And the special thing about the work associated with these kind of properties is that mothers who are at home with their children weren't able to work full-time jobs. These jobs provided an opportunity for them to take their children to school, go to work on one of these properties and be off before school was out so they could pick up their children and go home. And so this provided for Hana especially very much needed income for families that could only work part-time as far as those that remained home with their children. Besides, you know, housekeeping and landscaping and all the other trade jobs that it provided for plumbers and electricians and painters and so forth, it helped our community in Hana with the economy and with just so much new opportunities that Hana wasn't experiencing.

In listening to testimony in our Council Chambers regarding this ordinance some of the concerns that were raised by communities in all districts were that how would we control the amount of applications that were offered and that were approved. And you know, I've been off the Council now a little bit over four years, but I remember we set a limit for all the districts. And I believe the West Maui District, the limit was 88, and I think it has gotten...it has reached approved permits for West Maui at 29. So in looking back, it seems that it was a good guideline, a good control over the number of applications or short-term rentals allows in different districts.

Ms. Takayama-Corden: Three minutes.

Mr. Medeiros: And the different districts were given different numbers according to what their Council representatives had heard from their communities. I think the plus for this application is the letters of support they got especially from adjacent neighbors and that this applicant lives here on Maui and is a business person that offers jobs to people in the community. I'm very familiar with this property as part of my work for the County I was the District Administrator for Department of Public Works for West Maui for 21 years.

Chair Ball: Thank you. Any questions for the testifier? Seeing none. Thank you.

Mr. Medeiros: Thank you.

Chair Ball: Anyone else who would like to testify at this time? Seeing none, public testimony is closed.

**b) Action**

Chair Ball: Can I have the recommendation from the Staff, please?

Mr. Wollenhaupt: Thank you, Commissioners. The staff takes all of the evidence that comes in very seriously in regards to both letters of support and letters of protests. It also looks at the neighborhood and the number of short-term rentals that are currently existing. It also looks at specifically the situation on site. It did recognize that the applicant made an excellent effort in contacting the people who had concerns and it seems to be evidence that that did pay off in getting responses. It was pleased that adjacent neighbors especially to the north and directly across the

street also wrote letters of support. It also...the Department was also pleased that the applicant could have used both dwellings for short-term rental but elected just to use the main house which would probably be less likely to be rented to a median income worker as opposed to the smaller ohana which is being kept vacant. In light of all that and in looking at the balance and the preponderance of the evidence that came to us for this application, the Planning Department does recommend approval of this short-term home rental application subject to the 23 standard conditions for a four-bedroom short-term rental home. And in consideration of the foregoing the Department does recommend the Commission adopt the report and recommendation prepared for the September 22, 2015 meeting as its findings of fact, conclusion of law, and decision and order and authorize the Planning Director to transmit the said written decision and order on behalf of this Commission. Thank you.

Chair Ball: Thank you. Questions from the Commission? Commissioner Hudson?

Mr. Hudson: I have a question for Ms. Mitchell is that okay?

Ms. Mitchell: Yes?

Mr. Hudson: Hi Ms. Mitchell. How are you?

Ms. Mitchell: Hi, I'm fine. I'm Debbie Mitchell.

Mr. Hudson: Debbie?

Ms. Mitchell: Yes.

Mr. Hudson: Okay. My question is relevant to Robert Eubank's letter and I call attention to the bottom quarter of the letter. You have been renting this 5150 H'piilani already on and off for last year or so. That's the first item I want you to address and the second item I would like you to address is people are very loud, stay up late, party all night and don't respect 10:00 p.m. curfew for noise. And he started by saying there's no police reports, but as a former law enforcement officer I know that before police reports are made, usually all patience is exhausted. So could you please address both of those for me please?

Ms. Mitchell: Absolutely. As to the first, there were some rentals that were happening until the owner became aware that that was not...that this ordinance was supposed to govern that. As soon as he was aware of that he ceased all rentals and pulled all advertising and engaged me as his consultant to obtain his permit. So as soon as he was aware of the law, he acted appropriately. He ceased advertising and ceased his rentals.

As to the noise, this is an issue that usually arises in these applications and we feel that the way the ordinance is set up and when a rental is governed by the ordinance these noise complaints have a channel, a method to be dealt with. There is a house rules that are by ordinance put into the...posted in the house, they are posted in each bedroom and they are given to the guests upon arrival that totally outline the quiet hours. And it's...it is very specific about what that means, no sound amplified beyond the boundary. And as I showed in several of the pictures there are fences and there is heavy, mature landscaping in place already.



In addition there is...there will be a sign if this permit is granted, there will be a permanent sign with the name...telephone number of the property manager. None of this has been there so there hasn't been a mechanism for anyone to do so. That number can be called 24/7 if anyone has any complaints whatsoever. That manager will respond and will deal with it. We have security deposits in place that the guests will be made aware when they check in that that security deposit may be at risk if they don't comply with these orders. So that...and when the mailing is sent out notifying the neighbors it has to go to the adjacent adjacent neighbors that information on that property manager is given to them. So they have his contact...his name and his contact number. That way they have in their hands as well as the posted sign a mechanism other than the police to call someone right as soon as problems are arising. As soon as they have a noise complaint.

And just an aside, I've been involved with several of these, of both permitted short-term rentals within the 500 feet and they've been in place since 2012. We have not had a single instance where we have had a call. So we believe that the methods set out by the standard will govern these issues. When it is not governed by an ordinance who do you call? You know, there's no one to call, there's no one to...no method in place. But now, neighbors will have the means by which if they have any complaint at all, issue, question, they can call somebody immediately. It's not wait till business is open next morning, it's 24/7. So we believe that by permitting this, it creates a structured environment with methods for the neighbors to reach out if they have complaints.

Mr. Hudson: Thank you.

Chair Ball: Further questions for the applicant? Commissioner Medeiros?

Mr. Medeiros: Question for the owner.

Chair Ball: Please identify yourself at the podium.

Mr. Mick Fleetwood: My name is Mr. Fleetwood and I'm the owner of this house.

Mr. Medeiros: Okay, my question is what are your plans for the cottage?

Mr. Fleetwood: Plans for the cottage. As the lady mentioned I believe my mother Betty Fleetwood lived there until quite recently and she passed away there. It's gonna remain as far as I'm concerned, as a connect to family, part of all the memory of this house. That's how I approach it now. And outside of that, there are no plans at all. I mean, open to certain things that are being suggested here today, but the interim is that it seemed for me personally a really nice part of that home to remain as is.

Mr. Medeiros: Okay, so you don't have any plans whatsoever for it?

Mr. Fleetwood: Outside of it not being part of what we're applying for that would be a part of the ...(inaudible)... plan that's demonstrative and real that it's kept separate from that. And my sense is without being a fortune teller would be to have it certainly in as we sit as something that's available for my family.

Mr. Medeiros: Okay for private use. Okay, thank you.

Chair Ball: Thank you. Any further questions for the applicant? Do I have a motion then? Commissioner Medeiros?

Mr. Medeiros: Move to approve recommendation.

Chair Ball: Motion to approve.

Ms. Duvauchelle: Second.

Chair Ball: Second by Commissioner Duvauchelle. Any further discussion? Corporation Counsel?

Mr. Hopper: I think Commissioner Robinson will be not be voting on this item, that's correct?

Mr. Robinson: Yes.

Mr. Hopper: Just to note for a conflict. So he just won't be calculated towards the voting total neither for nor against.

Chair Ball: Okay. Commissioner Hedani?

Mr. Hedani: Actually this is a question for Kurt I guess. The...the concern I have with this particular application is that the configuration of the lot is very elongated. It has a tremendous amount of perimeter area that touches adjacent neighbor's properties. It's stretched out so that all of the neighbors are in very close proximity. One of the questions that, and it kinda reminded me of the application that came in at Maui Meadows where you know they had a very large house, a pool, the pool had nine speakers around it for entertaining. And the question that I have is you know, there's a pool, there's a jacuzzi, is there amplified music around the pool area for this residence?

Mr. Wollenhaupt: I don't...I don't have an answer. I think that you'll have to have the owner answer whether there's amplified music and I'm getting the response with a head shake, no there's not. I remember the project in Maui Meadows. Is that the one that we put the sign to slow down as you're driving down?

Chair Ball: Okay, are there further questions? Seeing none, Director?

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

Chair Ball: All in favor, raise your hand, say "aye".

Commission Members: Aye.

Chair Ball: One, two.

Chair Ball: And opposed?

Mr. Spence: One opposed, two opposed.

Chair Ball: Two opposed. And one, one yes. So three. Okay, do we have...the motion does not pass by lack of...lack of majority.

Mr. Hopper: As a note for the record, there's...It's a three for, two against. We need at least five votes in order to approve the use. Commissioner Robinson is not counted and the Chair would only vote to break a tie. In this case if there's only three votes for. You would need five votes so the Chair's vote would not be a tie breaking vote. So therefore the motion does not pass.

**It was moved by Mr. Medeiros, seconded by Ms. Duvauchelle, and**

**The Motion to Approve the Short-Term Rental Home Permit, FAILED.  
(Assenting - J. Medeiros, S. Duvauchelle, Abstained - M. Tsai)  
(Dissenting - L. Hudson, W. Hedani)  
(Recused - K. Robinson)  
(Excused - R. Higashi, I. Lay)**

Chair Ball: Motion fails. Is there another motion? Would you like to make a motion?

Mr. Wollenhaupt: Oh no. I had comment.

Chair Ball: Please do.

Mr. Wollenhaupt: Ms. Mitchell did indicate that apparently one of the applicant's managers had talked directly with the gentleman who wrote the protest. Just to give you...should that letter have been "officially" withdrawn then the only reason we would have had a public hearing today would have been because there were another short-term rental within 500 feet. So the Commissioners at their discretion may find something of interest in speaking to this individual. I'm not sure, but she had quite a bit new information that have been given this morning that I hadn't heard about.

Chair Ball: Okay, thank you. Do we have further discussion? Or another motion? Commissioner Tsai?

Vice-Chair Tsai: I'd like to hear what the...Mr. Fleetwood's manager had the conversation.

Chair Ball: Please identify yourself at the podium.

Mr. Ryan Silva: My name is Ryan Silva. I spoke to Larrick Eubank last week and his main complaint was twofold. On the one side in general he just was against short-term rental permits just in general. And the other complaint that he had was years ago when the property was remodeled that the construction people made noise in the late hours. They working past normal construction hours. He did tell me verbally on the phone last Thursday that under the guidelines that he could reinstate his complaint a year from now if his problems weren't resolved that he would agree to support for one year.

Vice-Chair Tsai: Thank you.

Chair Ball: Any further questions? Commissioner Hedani?

Mr. Hedani: I'd like to make a motion to deny.

Chair Ball: There's a motion to deny. Is there a second?

Mr. Hudson: Second.

Chair Ball: Second by Commissioner Hudson? Further discussion? Can we have some reasons for denial? Commissioner Hedani?

Mr. Hedani: At first I was a little confused. I thought I was looking at the wrong application and that we had the wrong, I had the wrong letter of opposition. It's a letter from Jeanne Nelson.

Chair Ball: Exhibit 20.

Mr. Hedani: Dated March 25, 2015. And Mrs. Nelson in this particular letter is testifying against a short-term rental application for 5177 Lower Honoapiilani Highway. ...(audio feedback)... In today's application May 27, 2015, ...(audio feedback)... she also wrote to the Planning Commission this letter where she's identifying concerns about the neighborhood changing. And I can feel her pain. In the March 25<sup>th</sup> application for Breanne Fortun, the peninsula that this application was located on is being inundated by short-term rentals like three or four or almost five applications within that peninsula. It's all within the same region. That one was down the street. This one is directly across the street from her home.

The concern that I have is the neighborhood in general. On the application back in March, you know, you can say, the peninsula is all shot to hell already. Nobody cares in that neighborhood because it's all short-term rentals for the most part although there's an equal number of people that don't have short-term rentals on the peninsula. The applications...(audio feedback)...the applications are moving across the street, across Honoapiilani Highway, the mauka side of the property into the neighborhoods that surround that particular area. And probably the consultant can track that coastline...(audio feedback)...

Here's the problem back in 1969-1970 we had a resort development class at the University of Hawaii taught by Larry Helber, Helber, Hastert, Van Horn and Kimura. Larry Helber showed us, I was a student back then, he showed us an actual location of a geographical area for a master plan to be developed for a resort area. He gave us the criteria for development of resort area and had the 100 students that were in the class design the project. So what he essentially did was take the brightest idea of 100 students applied it to an actual development and incorporated the best of those ideas into the plan. The project was Kapalua and the plan spun off affordable housing component to the resort which resulted in the Napili Hau development which is right ...(inaudible)... So what we're seeing is the resort component of the area invading the housing component of the area that was intended for workforce housing.

In this particular case, I think the lot is...I think the lot is particularly not well suited for a short-term rental because of its proximity to the neighbors. I also did not appreciate the dismissal of the concerns that were expressed. There were four properties that expressed opposition in this particular application. Two letters, four properties expressed dissatisfaction. And to me when an application comes in with four adjacent or immediate proximity neighbors opposing a property, I'm

inclined to not support the application just because of the community opposition in that particular area. I think...I love the applicant's music. I love his music more than Helen's movies, but in this particular case I think the property itself is not well suited for short term vacation rental.

Chair Ball: Any further comments? Okay, seeing none, call for the vote. All in favor raise your hand of denial?

Mr. Spence: That's two ayes.

Chair Ball: Opposed to denial?

Mr. Spence: One, two, three.

Chair Ball: Okay, well we can—

Mr. Spence: Wait, wait.

Mr. Hopper: If he does not raise his hand it's a vote in favor of the motion.

Mr. Spence: Okay, so that's three in favor of denial.

Mr. Hopper: Right.

Chair Ball: May I suggest....motion fails.

**It was then moved by Mr. Hedani, seconded by Mr. Hudson, and**

**The Motion to Deny the Short-Term Rental Home Permit, FAILED.  
(Assenting - W. Hedani, L. Hudson, Abstained - M. Tsai)  
(Dissenting - J. Medeiros, S. Duvauchelle)  
(Recused - K. Robinson)  
(Excused - R. Higashi, I. Lay)**

Chair Ball: May I suggest that maybe we defer this item to a different time and that we could have more Commissioners attend the meeting.

Mr. Hopper: Can I make a comment?

Chair Ball: Corporation Counsel?

Mr. Hopper: Yes, if there is a deferral then the Commissioners who are absent today, we're gonna need to get them copy of the minutes and all the background and they will have to read it prior to the next meeting and before taking action on the permit.

Chair Ball: Of course. Kurt?

Mr. Wollenhaupt: Oh, I was just going to perhaps make a suggestion to the applicant that they

had...they had this verbal discussion with Mr. Eubanks so perhaps they could continue and get something in written form indicating that he didn't seem to be...that he would reverse essentially his and perhaps they could make another effort at the Areola family, the Dade family, and I believe it's Fraser.

Chair Ball: I think that be helpful.

Vice-Chair Tsai: Move to defer.

Mr. Medeiros: Second.

Chair Ball: Moved by Commissioner Tsai to defer and seconded by Commissioner Medeiros. Discussion on that motion? Seeing none, all in favor of deferral, please raise your hand.

Mr. Spence: That's five ayes.

Chair Ball: Motion carried to defer. We will make sure that we schedule this item far enough out where the Commissioners that are not present they get verbatim minutes for the hearing that we just had. Okay, thank you.

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

**VOTED: To Defer the Matter Until Additional Members are Present and Minutes are Available.**  
**(Assenting - M. Tsai, J. Medeiros, L. Hudson, W. Hedani, S. Duvauchelle)**  
**(Recused - K. Robinson)**  
**(Excused - R. Higashi, I. Lay)**

Chair Ball: Moving on...or let's take another five-minute break.

A recess was called at 11:06 a.m., and the meeting was reconvened at 11:14 a.m.

Chair Ball: We are on Public Hearing Item C3, Director?

Mr. Spence: Commissioners, this is an application by Ms. Maxine Sturgeon requesting a Land Use Commission Special Use Permit in order to operate the Holomakai Bed and Breakfast, a two-bedroom bed and breakfast home located on Holokai Road and our Staff Planner this morning is Livit Callentine.

**3. MS. MAXINE STURGEON requesting a State Land Use Commission Special Use Permit in order to operate the Holomakai Bed and Breakfast, a two (2)-room bed and breakfast located in the State Agricultural District at 165 N. Holokai Road, TMK: 2-8-004: 027, Haiku, Island of Maui. (SUP2 2015/0002) (L. Callentine)**

Ms. Livit Callentine: Thank you, Director and good morning, Commissioners.

Chair Ball: Good morning.

Ms. Callentine: So now...we had an exciting morning. Now we're moving away from short-term rentals and back into the bed and breakfast realm with the next two items. So both of these items, the owners live on site and will continue to live on site.

So this first item is out on Holomakai Road, sorry Holokai Road. The name of the project is the Holomakai. It is a two-bedroom bed and breakfast home on one of two dwellings on the property. I'd like to point out an inaccuracy on the staff report, on Page 2, second paragraph it describes the bed and breakfast home dwelling that's being proposed as a two-bedroom and one-bath unit. It's actually got two bathrooms just so we're all clear. This is about a two and a half acre parcel. It is covered with various fruit and nut trees including citrus, banana, coconut, guava, macadamia nut, and avocado. The applicant also raises hens and also has planted bamboo for future construction materials. In addition, they've planted pheasant wood, teak, and nara trees which when they're mature will be good hardwood for furniture making and the applicant's daughter and son-in-law are both experienced wood workers and construction, have a trades background. So with that introduction, I will show you the location map.

So can we get that light off please? That's kinda...thank you. As you can see it's not on the ocean front. It's...I put it in here, I think it's approximately 300 some feet from the ocean possibly more so you get the general idea of the location. Trying to do this left-handed with the mouse, it's tricky. So you can see the parcel the parcel is kind of a key shaped lot and the red lines indicate the property boundaries and up in the upper right-hand quadrant the red lines continue on but we couldn't fit the whole thing onto the slide. That is a long, it's a flag lot, so that's a lot driveway out to the road. As you can see it's heavily wooded on the...to the west and the family home is in the center of the property and the proposed bed and breakfast home is in the eastern quadrant of the property.

So we're only looking at the Special Use Permit because this is on State Ag land as Kurt was emphasizing in one of the previous discussions today. In this...so you have certain criteria that you will use to make a determination on this case. And we are essentially going to be looking at whether the use that is desired would change or not change the essential character of the district nor be inconsistent with it.

There are five criteria that you use. You're probably very aware of them. I'm gonna go through each of them briefly. The first one that is not contrary to the objectives sought be accomplished by the Chapter 205 and 205A, HRS and the Rules of the Land Use Commission. And the analysis response is that allowing bed and breakfasts is not expected to negatively impact the currently implemented farm plan. Bed and breakfasts are considered a special use and may be permitted if a special use permit is granted first. The bed and breakfast will take place in a permitted dwelling and will not conflict with the agricultural uses that are taking place on the property. And we do not anticipate that the proposed B&B would be in any way contrary to the goals and objectives of the state law.

Now as to whether the desired use would...what its effect on surrounding property would be, again, this is a two and a half acre lot. Most of the other lots surrounding it are either that size or larger. The closest neighbor to them has presented a letter of support which is included in your packet.

The total number of guests will be limited to four. That would be two adults and two minors per bedroom, so the total for the house would be eight maximum and it would require them to have two parking spaces. They easily have plenty of parking. The residential agricultural neighborhood is characterized as I said by similarly situated parcels and homes. And there will be strict house rules which the applicant as she does live on site will be enforcing as a condition of approval.

Now as far as whether there would be any unreasonable burden on public agencies this home could be occupied by an owner occupant. It could be occupied an long-term rental. There's absolutely no evidence that I know of in the field that would tell us that this home will...a B&B use would have any adverse impact that would be any greater than any other type of occupancy.

And we know that there have been unusual trends and needs have arisen since the district boundaries and rules were established. Bed and breakfasts, short-term rentals and transient vacation rentals became a part of Maui's tourism industry and as we probably all know they seem to be here to stay and the mechanism for achieving or being granted one of these short-term rental type permits or bed and breakfast permits were all established after the district boundaries and rules were established. And in 2009, the Council adopted an ordinance which permitted bed and breakfast in the County within this ag, with a special use permit.

And the property is not unsuited to agricultural uses and it is being used to its maximum for agricultural uses. As I said, they have an implemented farm plan which we'll be seeing in just a moment. Approximately 20 percent of the property is covered by a very steep gulch and heavily wooded, you'd consider it to be in conservation use. It couldn't be planted.

So I found out the applicant has at least 45 mature coconut palms and plans to add 50 more, more than 300 apple banana plants, various different citrus fruits were tried and it turned out the meyer lemon, improved meyer lemon was the thriving winner of the bunch. And so the applicants are continuing to grow those and I believe have plans to plant additional ones. Once they actually get an enough crop of each of the crops as they come in they plan to do selling to Mana Foods or to at a farmers market. And they also have patches of papaya, macadamia nut, avocado, guava and mango. And I as I mentioned several species of wood that they're hoping at some point to be able to build out of.

So this is...sorry this is not a very good image and it is in your...it is in your report if you want to see it...well, you can ask me if you want to see this. So I'm just gonna run through several of the different agriculture...pictures of the ag. So this is, this to give you the orientation. This is the proposed house for the bed and breakfast and this is the family's dwelling and we have patches of flowers, guava, banana, papaya, all kinds of things growing on this property. As I said, just run through a few of these.

Okay, so that's my last slide, if I could have the lights back...oh no, I'm sorry, not yet. Now because it's something that is...you wanna keep track of and keep tabs on, I wanted to show you...well, first of all the testimony that we have...the applicant had one letter in support of the project and no protests. They will be required to get a bed and breakfast home permit which has extensive conditions of approval that they have to comply with including carrying insurance, including enforcing house rules, and noise...keeping the noise down and such in this very tranquil environment and the Commission is not required to review the B&B 'cause no triggers occurred.



So just to let you know, give you an idea of this, so their parcel you can see in the center of the green circled area and to the, to the east, north east of the property there's a B&B called Haiku Makai and just south of that there's the Maui Ocean Breezes Bed and Breakfast. So two bed and breakfasts, a little further out there's a short-term rental and I didn't have time to look up which one that is before this. But obviously fairly at a great distance from this property. To give you a little bit further perspective, again the same boundary is shown around the parcel and this shows you the short-term rentals and bed and breakfasts that have been approved in the area. The pink or purple areas marks are the short-term rentals that have been approved and the green refer to the bed and breakfasts and they're not all approved. If it's a triangle it's an application. And then just one last slide which shows you the concentration of bed and breakfasts and short-term rentals on the entire island of Maui. Just to give you a sense of where they're being concentrated. A concentration of short-term rentals on the west side, but also a cluster of B&Bs. A lot of bed and breakfasts on the north shore and then Hana itself is getting populated with about seems like an equal mix of short-term rentals and bed and breakfasts. And why up in Kula we've even got a few of each type.

So with that, I think that was my last slide, it was. And I wanted to let you know that the applicant is in the audience today along with her daughter and son-in-law and unless...and is here and is available for questions. Does not have any sort of a presentation to make. So that concludes my report and I welcome your questions and comments. Thank you.

**a) Public Hearing**

Chair Ball: Thank you. At this time, we'll open up for public testimony. Anyone who would like to testify on this agenda item may do so at this time? Seeing none, public testimony is now closed. We'll move onto the recommendation by the Staff.

**b) Action**

Ms. Callentine: Thank you, Chair. So the application for a Land Use Commission Special Use Permit we find that it does comply with the applicable standards for determining whether a use is unusual and reasonable within the State Agriculture District and...and for the reasons that have been stated in the Maui County Planning Department's report and recommendation to the Maui Planning Commission dated September 22, 2015 for Docket No. SUP2 2015/0002. It does comply with the five standards that you will use to determine yourself whether this is an unusual and reasonable use. And the Maui County Planning Department recommends that the Maui Planning Commission approve the Special Use Permit subject to the following conditions.

There are seven conditions and one of them, the seventh condition is that the farm plan shall remain implemented throughout the duration of the special use permit. Evidence of implementation shall be submitted as part of any request for a time extension. The conditions of the special use permit shall be enforced by the Maui Planning Department's Zoning and Administration Division and we do recommend that you adopt our report and recommendation prepared for the September 22<sup>nd</sup> meeting as its findings of fact, conclusions of law and decision and order and that you authorize the Planning Director to transmit said written decision and order on behalf of the Maui Planning Commission.

Chair Ball: Thank you. Questions from the Commission? Commissioner Robinson?

Mr. Robinson: Hi, I'm trying to find the amount permitted B&Bs in the area?

Ms. Callentine: Okay, I can tell you where that is.

Mr. Robinson: I don't see that inside the...

Ms. Callentine: If you look on Page 3, and you look at Item No. 5, about half way down.

Mr. Robinson: Okay.

Ms. Callentine: It says there are no permitted bed and breakfasts within 500 feet as of July 15<sup>th</sup> which was our last published report of this year. There are 31 bed and breakfast operations in the Paia-Haiku Community Region with the cap for this area being 88 permits, and there are 36 permitted short-term rentals within the entire community plan region and the cap for short-term rentals is 88 as well.

Chair Ball: Any further questions? Is there a motion? Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Mr. Hudson: Second.

Chair Ball: Second, Commissioner Hudson. Any discussion on that motion? Commissioner Hedani?

Mr. Hedani: I thought the applicant does a good job in terms of approaching agriculture and planning for the future. I thought they had a very nice long-term view of the property. I looked up both pheasant wood and nara wood and they're very impressive woods if they can make a go of it. And I was supportive of anyone that can have free range chickens on their property.

Chair Ball: Okay. Any further comments? Commissioner Medeiros?

Mr. Medeiros: I support Commissioner Hedani on this one. I always been supportive of bed and breakfasts. They did more than just be compliant so I'll support it. And if you like free range chickens, my whole neighborhood has it.

Chair Ball: Anyone else? Commissioner Robinson?

Mr. Robinson: I do think the applicant did a good job. I am for this, but I am also concerned that the number and the amount of available homes you know, to me when they got the...I wish Bill was still here so I could ask him how did you come up with 88? You got a 166 rentals in a certain neighborhood while Kahului has five times the homes and have the same amount. And so, I think the applicant did his job. I think he hits the qualifications, but in the overall sense I am concerned about the numbers in this area where it's gonna become inundated with bed and breakfasts and just this short area with the circle is gonna be 25 percent of the lots are gonna be bed and

breakfasts. Thank you.

Chair Ball: Any further discussion? Seeing none, Director restate the motion please?

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

Chair Ball: All in favor raise your hand?

Mr. Spence: That's six ayes.

Chair Ball: Motion carried.

**It was moved by Mr. Hedani, seconded by Mr. Hudson, then**

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Department.  
(Assenting - W. Hedani, L. Hudson, J. Medeiros, M. Tsai,  
S. Duvauchelle, K. Robinson)  
(Excused - R. Higashi, I. Lay)**

Chair Ball: Moving on.

Mr. Spence: Commissioners, your fourth public hearing item, the last public hearing item for the morning, Debra Waldron and Ronald Chapple requesting a Bed and Breakfast Home Permit to operate a B&B Hale Halama on Halama Street in Kihei. Staff Planner is also Livit Callentine.

Ms. Callentine: If you could just give me a moment to set up. I'd appreciate about five minutes.

~Note: No recess was called~

Chair Ball: Okay, let's continue with Agenda Item C4.

- 4. DEBRA A. WALDRON and RONALD J. CHAPPLE requesting a Bed and Breakfast Home Permit in order to operate the Hale Halama Bed and Breakfast, a five (5)-room bed and breakfast home located in the R-3 Residential District at 1514 Halama Street, TMK: 3-9-010: 014, Kihei, Island of Maui. (BBKM T2015/0005) (L. Callentine)**

**This application is being brought to the Planning Commission for review because there is another permitted bed and breakfast home located within 500 ft. of the subject property.**

Ms. Livit Callentine: Thank you, Mr. Chair. I will go ahead and introduce the item. This is a bed and breakfast application on Halama Street in Kihei. It's on the ocean side and the applicants, Debbie and Ron Chapple are here today and will give a brief introduction after the Staff concludes the report.

Okay so just running through this. This application is for, and it's a little confusing and if you read the description it took me a while to get my mind wrapped around it. There are two dwellings on this property. A large main dwelling and a small cottage. And the applicants have lived in the main dwelling and raised their children there and now the children are gone to college and they would like to be able to move back and forth between the ohana and the main dwelling as their family returns to visit and so forth. So they essentially plan to move into the cottage once they get their permit and have begun marketing efforts. They have never operated. They have lived here quite a long time as they can attest. And they're actually one of the few owners on Halama now that is, is a full-time resident of the street. So they...so it's a little difficult to frame the request. So they only want to rent four bedrooms in the main dwelling or the only one bedroom in the cottage but never both at the same time. They will either be occupying the main dwelling or the cottage. So that's why you see it written as either four bedrooms or one bedroom. There's also in the main dwelling as you'll see on Exhibit 4 when we get there, there's an office that could be used as a bedroom but is not going to be used as a bedroom and we have a statement from the owner in the report which attests to, affirms that they will...that's their plan is never to rent more than four bedrooms in the main dwelling.

Well, I didn't say much about the noticing requirements, but just that that all the noticing requirements were met. I will leave it at that. So as I mentioned, this is for either a four or a one-bedroom home B&B. The dwellings will be rented out as single units to one family and not actually as individual bedrooms to multiple parties. So they want to offer the home or the cottage for short-term rental but they want a B&B because they want to...they always will live on site.

I'd like to show you an aerial photo of the property. You can see that it is a long and a narrow parcel running between Halama Street and the Pacific Ocean. The main dwelling occupies about half of the property. A three-car garage is in the center and the one-bedroom ohana cottage is here.

I'd like to show you the site plan just briefly. You can see the...you enter into the driveway off of Halama right here and there is parking...I think I'm gonna show you that on the next slide. Actually I'm sorry, I'm not. You'll see it in your report, but I don't have the parking shown on this, but the three-car garage, the owners will use one parking place in the garage. The other two will be for guests and then there's guest parking in the driveway with adequate turnaround distance.

And the main dwelling floor plan, you can see the living room, family room, kitchen, four bedrooms and then the office in the right-hand side of the drawing. This is a drawing of the ohana and the garage and I think it speaks for itself.

So in speaking about the caps and the nearby B&Bs or...and short-term rentals in South Maui the Code allows for a maximum 100 B&B permits and I think we're gonna hear a little later in the public testimony section from Tom Croly who will actually enlighten us as to why the cap, why the caps were set with the amounts that they were. I don't know the answer to that myself. I'm curious. But as you can see there's approximately...about 25 percent of the bed and breakfast permits have been issued in South Maui and likewise for short-term rentals in South Maui about a quarter of the available permits have been issued.

So there are three short-term rental permits within 500 feet, two of the three short-term rental

permits on Halama Street are within 500 feet of the applicants but that wouldn't be a trigger for Planning Commission review it's that there is one B&B within 500 feet of the applicant. That is the trigger today for your review. And as you can see on this map, this is the applicant's parcel, these two, the square, the purple squares are the Moana Hideaway to the west, northwest, and Sapphire Seas below and the Mango Surf is still in application. This is the other bed and breakfast that's in operation Hale Komomai and down below is the Bliss Beach House short-term rental.

And then just backing out into the area of it, you can see the applications and permits along Halama Street. It's a...you know, it's become sort of another resort destination area in a little bit of a way. And most of the homes are occupied either by second homeowners, they're part-time owners or they're operating some type of a short-term rental with or without a permit I'm not sure. I don't do enforcement. And then this is the same map that I showed you before earlier just showing the distribution of short-term rentals and bed and breakfasts on the island at this time. So permit conditions will be implemented and they will require the applicant to meet all of the standards in 19.64, Maui County Code and we would have granted this permit administratively if it had not had a trigger. It's a good solid house, it's a good family and so the Department would have had approved.

The permit if granted by the Commission will require the owners to live on site, to continue to live on site. It will be...allow a maximum of eight guests renting the house or two guests renting the ohana. They will enforce quiet hours of course, and they have...they will submit proof of GET and TAT payments and they understand that they will lose their homeowner's exemption and pay a higher property tax rate.

So this map is a...there were three letters testifying in support and on this map you can see that they...there's a party that owns two lots to the northwest of them, west I guess is west, they submitted a letter, another one here across the street and down a little bit, and then a third one down the street quite a bit. So as I said, there were no letters of protest submitted either during the notification of the application nor the notification of public hearing. And that's the...concludes our report. Thank you.

Chair Ball: Thank you. We'll open up for public testimony at this time. Anyone that would like to testify?

Ms. Callentine: I am so sorry, would it be appropriate at this time, the applicant would just like to say a few words of hello?

Chair Ball: Yep.

Ms. Callentine: Okay, thank you.

Mr. Ronald Chapple: Aloha Commissioners.

Chair Ball: Aloha.

Mr. Chapple: Thank you for your time. As Livit has explained we are applying for—

Chair Ball: Please identify yourself for the record?

Mr. Chapple: –I'm sorry. Ron Chapple, and my wife, Debbie. We are applying for a B&B Permit for our home on Halama Street in Kihei. This is our family home. We built the home almost 20 years ago, raised our two boys. As a family we've been an active member of the Maui community. Our boys you know, fish, paddle, basketball, went to the Volleyball State Championships a couple of years ago, volunteer time, very much part of the community.

One of the needs really now is the house is 20 years old. We would like to continue keeping up the house in good repair as well as make the house more energy efficient and we see the income from the B&B as a way that we can continue to do that. The property has as Livit has explained is a main house and an ohana. The house has four bedrooms that will be rented out to one group at a time. So one family in the house. When the house is rented, we will move 30 steps away to the ohana and be on premises the whole time. If we are in the main home, then we will, you know, rent out the ohana at that time.

As this map shows, we are one of nine properties between two beach accesses and we have really excellent beach access to our south. And then on the north side, we also have an excellent beach access. And a beach also that is walkable from one end to the other and goes probably another six or eight properties to the south and then just continues all the way up on the north side. As the only owner-occupied home in that section, we very much see ourselves as you will stewards or caretakers for the beach. We're the ones that live there full-time. When we're walking the beach we're the ones noticing anything that might be amiss. We're the ones picking up the trash that somebody might have left behind. And we're also the ones that might let a visitor know, like hey you're not supposed to take selfies with a girl, and generally just saying hey, this is our neighborhood and most importantly we're making sure that the beach and the state beach reserve have access to everyone.

Again, really the high points are we've been here, you know, we built the home 20 years ago, we want to use the additional income to keep the home in good repair and make it more energy efficient. Our intentions are only to rent the home as a single unit and while we live in the ohana and then vice versa, the ohana if we are living in the home. And to stay here and just you know, might be another forever. So very much thank you for your time and consideration.

Chair Ball: Thank you.

**a) Public Hearing**

Chair Ball: Okay, we'll open up public testimony at this time. Anybody that wish to testify may do so?

Mr. Tom Croly: Aloha Chair.

Chair Ball: Aloha.

Mr. Croly: Aloha Commission. I'm Tom Croly and I did assist the applicants in preparing their application for their bed and breakfast permit. I visited the house. It's beautiful. Beautiful house

and think it will be a wonderful bed and breakfast and their idea as the maturing family goes that we'll move out of the big house into the ohana and rent out the big house just makes sense in terms of the way people's lives go. And maybe someday the kids will be back and they'll move back into the main house and continue to rent out the ohana and it's wonderful to give them opportunity to do that.

I did wanna give some testimony and address a concern that I've heard the Commission express a number of time which is where did these caps come from? Where did the numbers that we're working under come from? And it goes back almost exactly 10 years ago when the Real Estate Association commissioned a study from a company called the Kauaian Institute to do an inventory of what were the existing short-term rentals and bed and breakfasts on the island of Maui at that time. And they did this inventory and they created a report and they came up with I believe the number was 1,100 at that time of which 800 were individual units. The 1,100 included every bed and breakfast room. So if someone had five bed and breakfast rooms they were renting out that was it. But it was 800 properties total.

When the Bed and Breakfast Ordinance first came around the Planning Director simply said let's take that 800 cut it in and half and let's assume half of them were bed and breakfast. So that's where the 400 then came from. Now how they distributed those 400 was they looked at the existing distribution at that time and this was the Kihei-Makena distribution and if you look at this, it looks a lot like the maps that you sometimes see now and in this particular case it showed there were a 190 in Kihei and 78 in Wailea. Now some of these at that time may have had permits but most did not because we didn't have a permitting, you know, scheme at that time. So between Kihei and Makena there were 200 and some. So that's how we ended up with 100 B&Bs and 100 STRs as the numbers. In say Wailuku for example there weren't many existing at the time so they didn't just simply say well, it's gonna be 2 percent of the housing stock or 5 percent of the housing stock or whatever and assign a certain number to Wailuku because...well, that's not where they have had landed the ones that exist. However, in comparing the numbers that were established to the housing stock in each area, there was no area where it exceeded more than 4 percent of the housing stock in any one area that were going, was going to this use. I believe the highest number was out in Hana where it was just about 4 percent. But in like the Kihei area it was somewhere in the 2 to 2 ½ percent range of the total number of houses that were in that area, single family homes that would be allowed to get permits and that is kinda where the Council decided in this 2 ½ percent range we're really not going to be adversely affecting housing to any great extent. So that's just a little history of the numbers. Thank you for the opportunity.

Chair Ball: Thank you. Any questions for the testifier? Seeing none...oh, Commissioner Hedani?

Mr. Hedani: Tom, I appreciate the work that you folks put into the bills, both the B&B bill and the TVR bill. From the Administration side, you know as a commissioner on the implementation of the ordinances I think the numbers were too high. You know, even cut in half I think the numbers are too high because what we're seeing is that specific areas you know get saturated. When they have very high qualities of beach or whatever other amenities are in the area especially short-term rentals it becomes, it becomes honey and it attracts the bees. In this particular area if you look on this particular application the short-term rentals, and the concern that I had about short-term rentals is that they're so lucrative that they can clone themselves, multiply, you know, success, repeat, repeat, repeat. Bed and breakfasts I don't have so much problem with because one permit, one

owner, you stay there, you don't clone yourself, you know, and it doesn't take over an entire neighborhood. My recommendation would be for consideration of withdrawing TVR, the TVR portion of it and just moving forward with an expanded number of B&Bs so that we don't see STRs gobbling up entire neighborhoods. It's just a comment.

Mr. Croly: Can I make a comment back? In terms of like the area you're looking at right now I looked historically at what has the use of these homes been and the fact that we've had this ordinance hasn't changed that use. You know, we haven't really created a new change in use because going back ten years that was the existing use. And the expectation on the Council's part was that there would be some clustering in these areas where they exist. And that's why they portioned a higher number to those areas. So for example, the ocean front homes, the beach front homes in Kihei, there's about 170 ocean front properties in Kihei. The expectation was probably half of those are gonna be short-term rentals. Now it hasn't turned out anywhere near that, but that was kind of the expectation at Council level and when they considered that. But I understand where you're coming from and I appreciate your comments.

Chair Ball: Thank you. Any further questions for the testifier?

Mr. Croly: Thank you.

Chair Ball: Thanks Tom. Okay, any further public testimony? Seeing none, public testimony is closed. Can we have the recommendation from the Department?

Ms. Callentine: Yes, Chair. Thank you. So we have found that this application for Bed and Breakfast Home Permit does comply with the Maui County Code, Title 19.64.030, Restrictions and Standards for the reasons stated in the aforementioned presentation and in the Department's report to the Commission dated September 22, 2015 for Docket No. BBKMT 2015/0006. There are an extensive list of restrictions and standards that they will comply with all the way from Item A through S listed in the recommendation report. In conclusion, the Maui County Planning Department recommends approval of the bed and breakfast home subject to standards conditions. The permit will run, if granted, until September 30, 2018 and they will be required at that...three months before that date to come in with a compliance report and request a time extension. And during that time of course we review to make sure there have been no incidence of concern regarding complaints regarding any kind of police incidents and so the Department will do extensions that the Department will research the permit operation from the time of approval to the time they apply for an extension and determine whether indeed they should be extended or not. So there are 17 standard conditions of approval and in consideration of the foregoing the Maui Planning Department recommends that the Maui Planning Commission adopt the Department's report and recommendation prepared for the September 22, 2015 meeting as the findings of fact, conclusion 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. Thank you.

Chair Ball: Thank you. Any questions for the applicant? Commissioner Hedani?

Mr. Hedani: Livit, ...(audio feedback)... refer to Exhibit No. 1 that you have, who owns the parcel that's labeled 51?



Ms. Callentine: Sorry, which one? Which parcel? It's numbered 51?

Mr. Hedani: Makai of his house?

Ms. Callentine: I believe that would be the State.

Mr. Hedani: So that's a State Beach Reserve.

Ms. Callentine: Yes.

Mr. Hedani: In that area?

Ms. Callentine: Yes.

Mr. Spence: Oh yeah.

Mr. Hedani: This is public property. So it not in front of his property.

Ms. Callentine: You are correct. Thank you. I stand corrected.

Mr. Hedani: The question that I have is when I look at the aerial photos for this area it looks like the entire State Beach Reserve is well manicured by the adjacent properties making the State Beach Reserve look like private property. And the question that I have is, is there any way to delineate where the State property begins and where the private property ends?

Ms. Callentine: Oh boy, that is a question I wish Tara Owens was here to answer. There's certainly...it's always possible to delineate—

Mr. Hedani: ...in another way.

Ms. Callentine: Okay.

Mr. Hedani: Is there a way that we can say require a condition that would have them designate where the property line ends and the State property begins? Either a hedge or something that would be within permitted—

Ms. Callentine: Right.

Mr. Hedani: —you know, permitted guidelines?

Chair Ball: Director?

Ms. Callentine: It sounds like you would like—

Mr. Hedani: That would allow people to understand where public property—

Ms. Callentine: I think the Director would like to address your question if it's—

Mr. Spence: I'm not sure I would but—

Chair Ball: Director?

Mr. Spence: I'm not...perhaps I'm not understanding what this is trying to mitigate because most conditions are supposed to mitigate some...(inaudible)...

Mr. Hedani: Well, what I'm looking at, if you look at the Kahana area in West Maui, there's a Government Beach Reserve along a lot of the condominium properties which the condominiums have by adverse possession if nothing else, they've essentially taken over the State's public property and incorporated it into their own private property just because the State isn't watching and they don't realize what's happening. And same can be...(inaudible)...this entire parcel. Looks like a very significant parcel that could essentially be like a State park, a State beach park tied together by two beach accesses.

Ms. Callentine: You know, just a little comment on the topography of the parcel and the State land it's there's a very, very steep embankment usually. I don't know if that ever flattens out during the year. It's every time I've been there it appears that that bank is fairly stable and so quite a bit of that State land is a steep bank. Now it's planted I believe with mostly naupaka. That I would actually ask the applicant to answer if you wanted to know more details about what's in front of their property. You know and the Department has gone through and is still going through quite a number of exercises to sorta take back the beach if it's been overgrown by...and that's usually what ends up happening there's some sort of either naupaka or some other vegetation that either natively grows or is planted. In some cases we've found people who are actually irrigating that to create more of a buffer. But the Department has little by little. been going around working with property owners to reverse that trend. A good example is in front of the Mana Kai Maui Condominiums in South Maui right at the base of Kilohana Drive. The Department successfully worked with them to remove the overgrowth and sort of spread out the beach area and their property line to the beach is way up in their property to tell you the truth and they've demarked, demarcated their line with tiki torches that they put in the ground and I think there may be one slightly discrete sign that says, you know, on this side is private property, you know, they don't restrict anybody from walking on it or putting their chairs on their property or anything like that. It's well used like a park. But they do have some—

Chair Ball: Let's bring this back to the applicant, application.

Ms. Callentine: Yes. Okay.

Chair Ball: Maybe we can put a condition that the property, the vegetation growth is within the confines of their property and just make that a condition so that it doesn't overgrow. 'Cause it's actually I believe it's a State DLNR issue not a County issue. But if we can say that they you know grow vegetation in their property then we can help everyone out that way.

Ms. Callentine: So maybe it would be a condition that says, the applicant shall not irrigate or plant on State land—

Chair Ball: Well, if you only —

Ms. Callentine: Something like that?

Chair Ball: They shall only have growth within the confines of their property.

Ms. Callentine: I don't know if have any growth themselves. I don't...you might wanna ask them. I don't know where that...

Chair Ball: We don't care if they have it or not. We're saying that they have it within their confines of their property. They can grow whatever they want within the confines of their property. Whether they have it there or not isn't relevant, but putting a condition on it saying that they can only grow vegetation within their property. Director? Thank you.

Mr. Spence: And we can provide...we can require some kind of compliance report to show that that is the case. And I would just note to the Commission when we are aware that people plant on the beach and irrigate to extend the property we consider that an enforcement action and we have them take it out.

Chair Ball: Commissioner Hedani?

Mr. Hedani: What I'd suggest in this particular case is that you add a condition like was described by the Chair and add a provision that the applicant provide signage which delineates private property along the front.

Chair Ball: Corp. Counsel?

Mr. Hopper: I think the original condition if it's already a legal requirement we can understand that. But if the signage is a State requirement if it's a actual legal requirement then that's okay, but I think if we're requiring a sign generally there would be a showing of need for mitigation basically meaning that it's something that they're doing, is the use they're doing cutting off the beach access or having an adverse effect on the beach access. Certainly if it's already a requirement and yeah, not having...you know, only growing vegetation on your property I can understand that, but the requirement of the sign from the Commission it would be something that I think you would need to tie into the criteria required for the approval of the bed and breakfast home on the bed and breakfast ordinance. Remember this is not a, not a SMA Permit. It's a bed and breakfast home permit so we would wanna look to that criteria. And again, I think saying that, you know, dealing with existing shoreline requirements I don't think there's any problem with that condition. But I'm not aware of there's a requirement dealing with signage on something like that. I think you can certainly require that they not plant outside of their property line that was part of the condition.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I have two issues with...I was trying to prove this proposal. One is what we're talking about right now. If you look on Exhibit 6, it has the aerial photo not only of the subject property as well as neighboring property and even the property that has a permitted STRH and you know, there is overgrowth, there is a, you know, it looks like you know there's a definite barrier between the beach and between the property owners and if we're gonna permit people to have a permit to operate something we wouldn't we as a County to make sure that they're in compliance with all

things before we give them something else like this and if you look at the photo on the next page, flip it over there Spence, the other, on your back side, sorry. It's a clear outline of the growth on the beach. You have coconut trees, you have manicured lawns, you know. It looks great, but like anybody that's gonna walk down the beach they're gonna think that that's at that person's house, I mean, I would too, you know. And good for them. If that was my house I probably would have done the same thing. But if we're gonna start giving people permits to go ahead and, you know, have a financial benefit from the house and we're gonna give them special permits shouldn't we make sure that all the County, you know, rules are in existence including the house that's two houses away that already has a special use permit?

Chair Ball: Director?

Mr. Spence: I know that that....on State Beach Reserves the property owners...I am not familiar with if this is the case here or not, but sometimes property owners and homeowners associations will enter into an agreement with the State to landscape beach reserves and there's certain parameters. I mean, it's...because with this photograph, this Exhibit 6 shows manicured lawns on not only this property but properties to the north and the south of the subject property it appears that something like this might be the case or maybe perhaps they just took it upon themselves. I don't know. The property owner would like to address us. This may be the case here and we can look into that further if the Commission would like.

Chair Ball: Question for the...for Livit. Is this an accurate description of the property lines on Exhibit 6?

Ms. Callentine: Well, that's a very good question and we've recently gone through an exercise with another property trying to determine which...where the property lines actually are on a parcel. And this is the...we have several methods. We can look at Pictometry images and I believe this came from a Pictometry image. We can look at Google Earth, but we don't have the layers for the property lines. We can look at the real property tax maps. But when they vary which they do sometimes vary probably fairly often, they're just not yet to the point where they're 100 percent accurate. And none of the GIS systems that we have access to at this time give us a 100 percent confidence in those lines. I can't tell you what level of confidence we have, but the answer to that question is...we don't know but-

Chair Ball: Does the applicant have something he'd like to say?

Ms. Callentine: Yes he does.

Chair Ball: You can come forward, identify yourself again, please?

Mr. Chapple: Ron Chapple. I'm the applicant. Perhaps I can give a little bit of history because we have the same concerns. Twenty years ago, the State or the County was losing probably 20 feet a year to erosion there. And we have a permit from the DLNR that requests and requires that we plant the beach with naupaka and beach morning glory. It is part of...I'm sorry, I don't have it with me, but I can show it to you, but it is a part of a group of properties that have the exact same requirement in order to preserve any more beach being lost. The permit does say that this will be in place until we can come up with a better solution which is of course, trying to correct all of, you

know, South Maui erosion which is an entirely another issue and we don't wanna get into. I can tell you from personal experience that people walk behind the house, between all of the properties at free will, and they're welcomed. And while to the photographs it does look like it's restricted, there is regular traffic through there. We have been very much a part of the Uluniu group up there behind Times to make all of that beach access and beach reserve open for anybody to walk through. The access to the property...if you were to walk the beach and going south, you can enter-

Chair Ball: Hold on we gotta get you mic'd up for that.

Mr. Chapple: I'll just point it out. The beach reserve ends right about here and there is no longer all of these properties at this end, the beach reserve is gone so that if someone were to walk down here which they do, they only get to about this point and then would need to go back. So that if you think like all the way up here is Uluniu there is really where it ends and the, you know, much more of the erosion has occurred. And so...and the properties that, you know, have the, you know, the obligation from DLNR to maintain the naupaka are these three properties in this area here. There are other permits from DLNR for this area as well. So the...we're really, we're complying by the DLNR request to help maintain what is left of the beach reserve until...you know, at such time that a better solution is provided. You know, we didn't create it, we just sort of inherited that, and you know, what could we do as good neighbors to make sure that people can walk by. As far as putting a sign up, I'm all in favor of that as well as, you know, making sure that it's very clear that anyone that is renting the house that is State Beach Reserve, this is public beach and that's really part of, you know, the aloha that we can offer and share in the Maui, you know, culture and what having an open beach is all about. Thank you.

Chair Ball: Any other questions? Commissioner Robinson?

Mr. Robinson: Mr. Chapple, could you please come? Thank you for explaining that. That was very informative. I'm having a hard time supporting you moving back and forth between a central house and a cottage and you and your belongings and your personal items and trying to imagine this going back and forth. I know the option is fantastic to have, to say I might wanna do this or that, but I don't think it's a, I don't think it's a reality. I travel a lot and go between a lot of homes too, and it's...30 feet it's still, it's still moving something, even to move rooms from one to another is a challenge. Have you ever tried doing this in the last few months before this application where you would move your stuff from one place to another?

Mr. Chapple: I cannot say we've experimented with moving back and forth. We're still in the process of you know, trying to clean out the attic from, you know, 20 years of children and stuff, but that is very much our intention. Again, we're looking for supplementary income. It's not the intention to make this a full-time, you know business. It's to, you know, try to accommodate, you know, getting the home fixed up and being more energy efficient. And you know, really where it's the two of us, you know, setting it up so that we can move back and forth is something we've talked about extensively and feel that we can accomplish that.

Mr. Robinson: In your main dwelling, excuse me, in your main dwelling is there any one of those rooms that could be become a permanent fixture in that main dwelling and that way the rest of the main house and the cottage could be...(inaudible)...

Mr. Chapple: That's already, yeah, it's already established in the plan that there is an office in the back of the main dwelling that will not be...you know, that will be part of, but not offered as a bedroom.

Mr. Robinson: But could that be like for yourself a bedroom or where you have your main?

Mr. Chapple: Oh, yeah, I'm sorry, yes..that's--

Mr. Robinson: 'Cause I mean--

Mr. Chapple: Yes, that room is locked.

Mr. Robinson: --yeah, we've all traveled and everybody has their owner's quarters you know, where they lock it off and that's that main center.

Mr. Chapple: Yeah, so we're calling it an office, but it is the owner's quarters.

Mr. Robinson: My concern is, is with any business as it becomes lucrative it's...and you have, you have more and more people wanting to stay at your home and you have more requests for your main house and your cottage house, you know, economics is economics and at some point you know, you may be tempted to go ahead and rent both out. And not having one permanent residence is going to allow you to do that regardless if it's your intent now, when the money comes coming in, you know, 'cause I've seen it personally, it's, you know, hard to turn down when you know somebody is gonna give you a \$1,000 a night. That's where it's hard for me to see somebody jumping back and forth.

Chair Ball: Commissioner Robinson that's by their requirement they're not allowed to do that. So we can't asked them questions that the permit doesn't allow it. So that's the answer.

Mr. Robinson: I know it doesn't, but they don't have a permanent residence, so...

Chair Ball: They do. They're gonna go back and forth and that was the testimony that they gave so we can't ask...we can't have them predict the future on that.

Mr. Robinson: Okay.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Actually it's a question for...

Chair Ball: You know what hold on one second. Do we want to break or do we wanna just power through? We will have to return at 1:00 because we have a scheduled item at 1:00. So if everybody doesn't mind taking a shorter break then we'll just continue on and then break whenever we break and come back at 1:00? Good? Everybody has something they have to do? Yes?

Ms. Callentine: Will that mean, will that mean that this item will move to after the scheduled item?

Chair Ball: Well, we're finding that out right now.

Ms. Callentine: Okay.

Chair Ball: Is everybody fine just moving forward? Finish it up?

Mr. Hudson: I'm gonna have to leave at 12:30 and pick up my car.

Chair Ball: Okay, if you have to leave at 12:30 that's fine. We still have enough. Okay, continue. Commissioner Hedani?

Mr. Hedani: The question that I have is the swimming pool. Is the swimming pool complied with setback laws?

Ms. Callentine: It is permitted.

Mr. Hedani: I know swimming pools are permitted in residential areas.

Ms. Callentine: No, I mean, it was. They got a permit for it.

Mr. Hedani: So it's setback from the State property line.

Ms. Callentine: I don't...I can't tell you how far it's setback, but I believe the applicant might be able to illuminate—

Mr. Hedani: My concern is that there's a 40-foot...there was back in the 60's or 70's a 40-foot setback from the edge of the vegetation line, and I'm trying to determine if it's setback adequately.

Ms. Callentine: Just to comment as a planner, we're kind of getting and I'd like to hear from Corporation Counsel...this seems like this is—

Chair Ball: The applicant has a comment behind you.

Ms. Callentine: —getting into SMA questions.

Mr. Hopper: If there's legal requirements such as zoning compliance I think they can ask about the zoning compliance if they've got concerns, but if the property is in compliance or not. I mean, if as long as it's part of the...I know the application criteria goes over a variety of things, but I mean if there's active violations on the property, I'm not saying there are, but if there's questions with regard to that, I think they can be, they can be asked.

Chair Ball: Mr. Chapple?

Mr. Chapple: Just like to confirm. I'm sorry, Ron Chapple, the applicant. I'd like to confirm that the home and the pool were all built to the standards at the time. It seems like there's been a sliding scale of standards that have changed over the last 25 years or so. So our home and pool in the backyard were fully permitted and approved at the time of construction. It may...other properties

since then have been built with a different set of regulations.

Chair Ball: Thank you. Commissioner Hedani?

Mr. Hedani: So just to confirm because your property is not oceanfront property, because it's government beach reserve property, the setback was complied with from a backyard setback from the government property line?

Mr. Chapple: Yes sir. So all of the, yeah, all of the requirements at the time for building a structure were complied. In fact, we even pushed it back a little bit further.

Mr. Hedani: Thank you.

Chair Ball: Okay, anyone else? Do we have a motion? Commissioner Medeiros?

Mr. Medeiros: Move to approve the recommendation.

Vice-Chair Tsai: Second.

Chair Ball: Second by Commissioner Tsai? Any further discussion on the motion? Commissioner Medeiros?

Mr. Medeiros: When I first got my mail and I saw this, I know somebody that lives on your street. Okay, so I went and asked him about it. And the funny thing about it is they don't know, okay, but they know your kids. And they said, good kids, lotta respect. You know what, where I sit, if you can do that good a job raising kids, you know, you can do a job, a really good job having a business.

Chair Ball: Thank you. Any further discussion? Commissioner Robinson?

Mr. Robinson: I'm opposed to a permit that allows a bed and breakfast owner to live in any one of the five or six permitted rooms. I'm for them choosing one and that's just my feeling. Thank you.

Chair Ball: Any further discussion? Okay, call for the vote. Repeat the motion first, Director.

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

Chair Ball: All in favor, raise your hand?

Mr. Spence: That's six ayes.

Chair Ball: Five ayes.

Mr. Spence: Five ayes, oh.

Chair Ball: Any opposed?

Mr. Spence: One opposed.



Chair Ball: Motion carried.

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

**VOTED: To Approve the Bed and Breakfast Home Permit as Recommended by the Department.**  
**(Assenting - J. Medeiros, M. Tsai, L. Hudson, W. Hedani, S. Duvauchelle)**  
**(Dissenting - K. Robinson)**  
**(Excused - R. Higashi, I. Lay)**

Chair Ball: Okay we will take a recess until 1 o'clock.

A recess was called at 12:00 p.m., and the meeting was reconvened at 1:08 p.m.

Chair Ball: Call this meeting back to order. We are on Item D, Communications. Director?

Mr. Spence: Commissioners, Item D1, Paul Alston & Pamela Bunn of Alston Hunt Floyd & Ing, attorneys for Appellant Seashore Properties, LLC, submitting a Notice of Appeal on the July 27, 2105 Planning Director's decision to issue an SMA Permit After-the-Fact Permit to the Flatbread Restaurant. You also have Isaac Hall, attorney for Francis Skowronski who is the applicant for the SMA Permit and also, Isaac Hall, attorney for applicant and intervenor Maui Aina Company. They're present today. And I see Mr. Martin Brass, one of the owners of Flatbread in the audience. Our Staff Planner this morning is Mr. Keith Scott.

**D. COMMUNICATIONS (To begin at 1:00 p.m. or soon thereafter.)**

**1. PAUL ALSTON & PAMELA W. BUNN of ALSTON HUNT FLOYD & ING, attorneys for Appellant SEASHORE PROPERTIES, LLC submitting a Notice of Appeal on July 27, 2015 of the Planning Director's decision to issue an After-The-Fact (ATF) Special Management Area (SMA) Minor Permit Approval for Flatbread Restaurant at 87/89 Hana Highway, TMK: 2-6-002: 002, Paia, Island of Maui. (SMX 2014/0291) (SM2 2015/0054) (APPL 2015/0002) (K. Scott)**

**a. ISAAC HALL, attorney for Applicant FRANCIS E. SKOWRONSKI and Intervenor MAUI AINA COMPANY, LLC submitting a Notice of Appearance of Counsel for Applicant Francis E. Skowronski and Intervenor Maui Aina, LLC dated August 20, 2015 on the abovementioned SMA appeal.**

**This is for notification purposes.**

**b. ISAAC HALL, attorney for Applicant FRANCIS E. SKOWRONSKI and Intervenor MAUI AINA COMPANY, LLC submitting a Petition to Intervene on behalf of MAUI AINA COMPANY, LLC dated August 20, 2015 on the abovementioned SMA appeal.**

Mr. Keith Scott: Good morning...good afternoon, Chair and Members of the Commission. The following is a chronology of events that lead us up to this item today. On June 30, 2015, a Special Management Area Minor Permit, SM2 2015/0054 was issued to Frank Skowronski for Flatbread Pizza. The Maui Planning Commission and the public were notified of the approval of the SMA2 on July 14, 2015 as a part of the agenda for the Planning Commission meeting of that date. On July 24<sup>th</sup>, the attorneys for Seashore Properties filed an SMA appeal with the Department and filed the appropriate fee shortly thereafter. July 24<sup>th</sup> was the deadline for filing an appeal. The Maui Planning Commission was notified of the appeal on August 11<sup>th</sup> on their agenda. On August 20<sup>th</sup>, attorney Isaac Hall submitted a Notice of Appearance of Counsel for Frank Skowronski and Intervenor Maui Aina Company, LLC, and also a Petition to Intervene on behalf of Maui Aina and a Motion to Dismiss the SMA Appeal. The deadline for submittal of the Petition to Intervene was August 26<sup>th</sup> so it was a timely filing. On September 21<sup>st</sup>, attorneys for Seashore Properties filed a Statement that Seashore Properties does not oppose the Petition to Intervene to the extent the intervention is limited to the contents appropriately included in the Rules of Practice and Procedure for the Maui Planning Commission. So now you have before you, this afternoon, consideration of the Petition to Intervene on behalf of Maui Aina Company, LLC.

Chair Ball: That's Aina. Aina. Corporation Counsel?

Mr. Hopper: Just as a comment. As agendized and the parties were noticed, the Commission's jurisdiction today is just to address the Petition to Intervene. So the discussion of the merits of the case other than on the petition will have to be on another time. So just a reminder.

Chair Ball: Okay, thank you. Where we go from here then? Mr. Hall would like to give a statement?

Mr. Isaac Hall: Yes I would. Good afternoon, Chair Ball and Members of the Maui Planning Commission. My name is Isaac Hall. I represent the applicant, Frank Skowronski and the petitioners, intervenors, Maui Aina. The Maui County sent a letter to Maui Aina asking them to apply for five minor items, some roofing, three roofing items, a storage shed and a fence. And Maui Aina did so and hired Frank Skowronski to do that. Frank Skowronski for Territorial Architects is listed as the applicant and Maui Aina is listed as the owner. And Mr. Skowronski filed for those five minor items and the Planning Director issued an SMA Minor Permit for those five minor items. Mr. Baskin has filed a Notice of Appeal on grounds that have not much at all to do with those five minor items and we filed a Motion to Dismiss.

Now by your automatic party rules, Frank Skowronski is an automatic party and usually the owner is recognized as an automatic party but not technically under your rules. But the owner really is the party with the most at stake here. Maui Aina was the party told to get the permits. Maui Aina took all the steps to get the permits, and the permit was issued to the benefit of Maui Aina and Maui Aina would lose the most if this permit were threatened. Therefore, we've moved to intervene on behalf of Maui Aina.

I filed a Petition to Intervene. You've all seen that. It meets all the requirements for a Petition of Intervene as a matter of right and as a matter of permissive intervention and so we would ask you to grant the Petition to Intervene.

There hasn't been any opposition to that Petition to Intervene. I would say whatever statement was filed was untimely. Any position statement on a Petition to Intervene is due five days after being served with the Petition to Intervene. This was filed almost a month later, it's untimely in any event.

The only last comment I'd like to make is that that the file marked Notice of Appeal, our file mark Notice of Appeal is on June 24<sup>th</sup>, it has a Planning Commission date of June 24<sup>th</sup> on it, not July 24<sup>th</sup> before the SMA Minor Permit was ever even issued. So there's some irregularity here that needs to be explained away at some point in time but that's for a later date. I ask you to vote to grant the Petition to Intervene today.

Chair Ball: Okay.

Mr. Hall: No questions for me?

Chair Ball: No questions. Thank you. Are there any other parties who would like to give a statement?

Ms. Pamela Bunn: Good afternoon, Mr. Chair, Commissioners.

Chair Ball: Good afternoon.

Ms. Bunn: I'm Pamela Bunn for the appellant, Seashore Properties, LLC. As said in our statement we agree that Maui Aina meets the criteria for intervention. We don't oppose that intervention. I apologize I didn't read rules as requiring anything other than an opposition within ten days, and we do not oppose the intervention. I submitted the statement so that everybody would know that we don't oppose it and Mr. Hall could plan accordingly.

As far as the date, I think we all agree, but there are discrepancies that our Notice of Appeal was submitted on July 24<sup>th</sup> as it said in the Staff's submittal. In the agenda I believe it says July 27<sup>th</sup>, that's not correct, and June 24<sup>th</sup> is indeed the day that's file stamped on it. I can't explain that. We had a courier bring it over to the County and that was the date the Planning Department put on it. I don't think there's any real dispute though that it was July 24<sup>th</sup>. Anybody have questions?

Chair Ball: Seeing none, thank you.

Ms. Bunn: Thank you.

Chair Ball: Next up?

Mr. Tom Colby: Sorry, Tom Colby on behalf of the County of Maui and just for the record, we also do not have any opposition to the petition for intervention.

Chair Ball: Thank you. Anyone else like to...was there a question? Seeing none, anyone else would like to...seeing none, okay do we have a motion? Commissioner Hedani?

Mr. Hedani: Move to grant the request for intervention.

Mr. Medeiros: Second.

Chair Ball: Motion by Commissioner Hedani, seconded by Commissioner Medeiros. Discussion? Seeing none, all in favor of the motion please raise your hand?

Mr. Spence: That's six ayes.

Chair Ball: Motion carried unanimously.

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

**VOTED: To Grant the Petition to Intervene.  
(Assenting - W. Hedani, J. Medeiros, L. Hudson, M. Tsai,  
S. Duvauchelle, K. Robinson)  
(Excused - R. Higashi, I. Lay)**

Chair Ball: Moving on.

Mr. Hall: Thank you very much.

Chair Ball: Director?

Mr. Spence: Commissioners, Item E, acceptance of the action minutes of September 8, 2015, and regular minutes of August 25, 2015.

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE SEPTEMBER 8, 2015 MEETING  
AND REGULAR MINUTES OF THE AUGUST 25, 2015 MEETING**

Mr. Hedani: Move to accept.

Mr. Medeiros: Second.

Chair Ball: Motion by Commissioner Hedani, seconded by Medeiros. Discussion? Commissioner Tsai?

Vice-Chair Tsai: Just for clarification, I think I was the Chairperson that day, but it says, Keone Ball.

Chair Ball: Got that change?

Vice-Chair Tsai: He's excused on the back, but also says he called the—

Chair Ball: Thank you, anything else on the minutes? Motion was to approve the minutes with those changes. All in favor raise your hand. Unanimous.

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

**VOTED: To Accept the Action Minutes of the September 8, 2015 Meeting with Correction and Regular Minutes of the August 25, 2015 Meeting as Circulated.**  
**(Assenting - W. Hedani, J. Medeiros, L. Hudson, M. Tsai, S. Duvauchelle, K. Robinson)**  
**(Excused - R. Higashi, I. Lay)**

Chair Ball: Moving on.

Mr. Spence: We're onto Director's Report, Item F. The first item is Keala O Wailea, LLC requesting a Planned Unit Development Step III. The Staff Planner this afternoon is Mr. Danny Dias. The purpose of this is to notify the Commission and ask whether you want to waive your review and let the Planning Department take final action or if assuming the Commission would like to review it. Anyway, I'm sure Danny will explain.

**F. DIRECTOR'S REPORT**

- 1. Pursuant to the provisions of Section 19.32.020.C of the Maui County Code, Planned Development, the Planning Director notifying the Commission of the Planning Director's review of the Step III Unified Site and Building Program on the following application:**

**KEALA O WAILEA, LLC requesting a Planned Development Step III approval for their proposed multi-family development at 55 Wailea Gateway Place, TMK: 2-1-028: 001, Wailea. Island of Maui. (PD3 2015/0002) (D. Dias)**

**The Commission may waive its review and allow the Planning Director to take final action on the Planned Development Step III application or review and take final action on the Planned Development Step III application.**

Mr. Danny Dias: Thank you, Director Spence. Good afternoon, Chairman Ball, Members of the Maui Planning Commission. As Will mentioned this is PD3 for the Keala O Wailea Project. Basically this step is a step that's taken right before the applicants submits building permits. The Commission reviewed this project in November of last year and the Department looked at the plans and basically it's the exact same project. So they have made no changes and therefore we would ask the Commission to waive their review as we don't feel it's necessary.

Vice-Chair Tsai: Question?

Chair Ball: Yes, Commissioner Tsai?

Vice-Chair Tsai: Danny, yeah if we waive it all the conditions that were put and I specifically remember there was a height restriction that was discussed is that gonna be of course up held?

Mr. Dias: Yes, everything is upheld. So part of the PD3 is we look at it and we make sure that, one, that it's the same project. They didn't add a floor, move buildings around, et cetera, and also that with what they're gonna submit to Public Works that it's meeting all the conditions that the Commission placed on the approval.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Move to waive.

Chair Ball: Motion to move to waive.

Mr. Medeiros: Second.

Chair Ball: To waive review. And there's a second by Medeiros. Any further discussion? Commissioner Robinson?

Mr. Robinson: I'm lost. I don't know what this is can you please help?

Mr. Spence: Project Districts or this is actually a Planned Development. Okay, I can tell you all about project districts. I'm sorry. Danny you wanna explain? I don't deal...I've never dealt with—

Mr. Dias: Okay. Well, there's a zoning area if you wanna call it that on Maui that's considered Planned Development and that's basically just Wailea. It's similar to the project district process where there's three phases. There's Planned Development Step 1, Step 2, and Step 3. So Planned Development Step 1 is sort of a conceptual type of thing. The applicant comes in and they say well, we think we're gonna put you know a hotel in this area of Wailea and we're gonna designate this area for residential, et cetera. They come to this Commission and the Commission, you know, approves or denies it. What happens next in Step 2 is they come before you with an actual plan. So in this case Keala O Wailea came in, they said okay, we're gonna take this property and we're gonna put seven buildings, three-stories high, the parking lot's gonna be here, et cetera, et cetera. So the Commission reviewed that like I said in November, and ultimately granted a Special Management Area Use Permit and granted Planned Development Step 2. So the next step which is this step, Planned Development Step 3, it's just sort of like a confirmation that what the applicant presented to the Commission and what the Commission approved is actually what they're submitting to Public Works for their building permits. So I mean, it's arguably an extra step, maybe I'm sure the applicant probably feels it's unnecessary, but it's essentially the County and the Commission making sure that what they said they were gonna do is actually what they're doing.

Chair Ball: Commissioner Robinson?

Mr. Robinson: So in other words, when you had the meeting in the November there were certain conditions that you guys were gonna come back with to agree to and that was gonna be?

Mr. Dias: Not necessarily. There were conditions and they already agreed to it. The only notable condition was the height of the buildings. The Commission wanted the height of the buildings for this project to not exceed the height of the buildings at the Wailea Gateway Center which is next door. That was the only substantial condition and that required them to drop the level of one

building by two feet which they did. Everything else with respect to the approval was more a general type conditions that are placed on most special management area use permits.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Yeah, and this is for Commissioner Robinson and the Commissioners who weren't here. I just wanna go on record in saying that was somewhat of a controversial project because it was in front...it's right in front of the Wailea Gateway Shopping Center and I think there were some discussion, really a lotta concerns from the public regarding putting another structure out there that blocks the view. So I think that I'm the one who put that height restriction as a, you know, a mediation between all the things that were going on. So if you guys are okay with not having that review that I guess I'm okay with too. But that is definitely a concern, a big concern at the time. And as expressed by Commissioner Hedani and other Commissioners at the time.

Mr. Robinson: You know I-

Chair Ball: Commissioner Robinson?

Mr. Robinson: Well, there's enough, five of you guys that have been here before. It's just like for me and Larry, I have no data, even what the conditions are and the people who submitted. So I don't feel comfortable voting for something that I don't even know what I'm agreeing to.

Mr. Hudson: I concur. And this is a significant project. This is not a bed and breakfast or something like that.

Mr. Robinson: Right.

Mr. Hudson: What would, what would entail if we said, no that we wanna review it? What would our jobs be then? What?

Mr. Spence: So the request that's before the Commission is just to waive review.

Mr. Hudson: Right.

Mr. Spence: The previous planning commission approved this project with the site plan that's before you. If you, and so this is a formality, you may wanna review it or you may not. If you choose to review the Phase 3 what we would probably do is we would bring you the staff report and a site plan was approved through the SMA and the Phase 2 and you would compare that to what's been brought before you today and say okay, these are the same or they're not same and why. It's not reopening up the SMA Permit. That's not the purpose of it. Like Danny said, the purpose of it is just to say, okay, they're...and what this Phase 3 is is this is what they're going...building from it. Okay, so it's really a check for...if you chose to review it it would really be a check for you to say okay, yeah they are going to get building permits for what was approved by the Planning Commission regardless of...(inaudible)...whether the two newest commissioners were there or not.

Chair Ball: Commissioner Robinson?

Mr. Robinson: With that said, where does it say this is what was approved? You know, usually we have like recommendations or the conditions were approved. Where does, where does what you just said, where is that in this packet? I didn't see drawings.

Mr. Dias: Well, that's, that's our job. You know, we looked at it and we're confirming to you folks that this is the same project. There are no substantial changes and that's why we're asking to waive review. We're basically saying we don't think it's necessary for this commission to review it again because it is the same project that was approved.

Chair Ball: It is an ongoing issue and it happens all the time because we have commissioners that go off and come on and have not seen things.

Mr. Robinson: I mean, like you guys got five anyway, so it's not like we're gonna stop it. But just yeah...

Chair Ball: And it's a moral dilemma between voting for something that you haven't really seen and rehearsing the whole thing every time, right. We're not going to be rehear the thing now that new People come in because it just happens all the time. So that's the dilemma in your thought process. But the reality is it's the same thing that was deliberated on for hours by a previous commission. Director?

Mr. Spence: And I would say, I have not sat down with the SMA approval and those site plans and gone and compared them, but Danny has. I trust, and I mean, it's still up to the Commission. It's your choice whether you wanna waive review or not. But I trust that Danny's have had compared them and gone over it and if he's saying they are the same. That's his professional opinion and I trust that.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I was under the impression that Step 3 was an administrative process. What's causing it to come before the Commission?

Chair Ball: Corporation Counsel?

Mr. Hopper: The Code requires it. The Code says, "Upon approval of the Step 2 preliminary plan, the owners shall proceed to prepare a Step 3 Unified Site and Building Program which shall include among other things construction plans in accordance with Title 18. Site plan showing grading, landscaping, protected open spaces, location of each building and structure, building plan of each building and structure and the financing and timing program. The Planning Director has review the Step 3 Unified Site and Building Program and shall notify the Commission of the Planning Director's review. The Commission may review and take final action on the Step 3 Unified Site and Building Program or waive its review and allow the Planning Director to take final action. Upon approval the owner may proceed to finalize the planned development". So that's what the Code says to review or choose to waive.

Chair Ball: In my short experience I would believe that they have that in there because if there was a substantial change we would probably not approve it. We would probably would wanna...we



would wanna review it. So I think that's what that is. That's what that's meaning.

Mr. Hopper: Of course, the waiver of review means you don't review it. So generally there's not a review to determine if you're gonna waive review. If you waive review, it's saying we're okay with the Planning Director doing this. If you don't, then you wanna look at it. It should be kept in mind because it's phase...If it's a Phase 3 approval that the decision of the Commission is to say if it's in compliance with Phase 2 or not. It's not to add additional conditions which you cannot do, and it's not to add additional requirements which you cannot do. Phase 2 has already been approved so that's already done. The determination is are you, are you not in compliance with the Phase 2 plans that were already granted. So that's the Commission's decision. You can absolutely decide you want to review this if you're not comfortable waiving review. So it's up to the Commission.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I was under the impression that on this basically it was us voting on whether they were in compliance or not. You know, so the County you know is the one that checks if they're in compliance. We're not reopening it.

Unidentified Speaker: Right.

Mr. Medeiros: You know so since there is no way for us to reopen it unless of course they were not in compliance and you know they did make substantial changes, I just voted for this because it's an added step and that in my opinion isn't needed but that's the way it is.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Question for the Director or I guess Corporation Counsel. So is this, this is it, Phase 3 so they're ready...once that's done, they're ready to start construction?

Mr. Spence: Once they pull...once we say yes, this is compliant with the SMA and the Phase 2, they can go pull building permits.

Chair Ball: Okay. Director?

Mr. Spence: I would just comment too that this is unusual because it is a Planned Development. Normally once the Commission has grant an SMA Permit you don't see it again. I mean, we look at it, the Planning Department looks at it again through the compliance report before a building permit can be issued. But really it's left up to the Planning Department t make that determination that they're in compliance or not. This is just...planned developments are just weird animals that the law gives this option, this choice back to the Commission and this is different than the other ...(inaudible)...

Chair Ball: Commissioner Hudson?

Mr. Hudson: ...(inaudible)...statement. I know how I'm gonna vote. I'm not gonna vote for something that I don't...I'm not comfortable with because I'm not comfortable with it. But I want to be very clear to Mr. Spence that I trust him and his Department implicitly and Danny too, but

understand that before we take the vote, so...

Chair Ball: Okay, anyone else? Shall we vote? All in favor of the motion please raise your hand?

Ms. Duvauchelle: That's to waive review, right?

Chair Ball: Correct.

Mr. Spence: One, two three ayes.

Chair Ball: Any opposed?

Chair Ball: Two opposed. Chair votes in favor. Motion carries. He abstained that's an affirmative so that's five ayes.

Mr. Dias: Thank you.

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

**VOTED: To Waive Review and Allow the Planning Director to Take Final Action  
on the Planned Development Step III Application.  
(Assenting - W. Hedani, J. Medeiros, S. Duvauchelle, K. Ball,  
Abstain - M. Tsai)  
(Dissenting - L. Hudson, K. Robinson)  
(Excused - R. Higashi, I. Lay)**

Chair Ball: Moving on. SMA Report Item F, No. 2. Director?

**2. SMA Minor Permit Report (Appendix A)**

**3. SMA Exemption Report (Appendix B)**

Mr. Spence: So Commissioners this is just for you to acknowledge receipt or if you have a questions the SMA Minor and SMA Exemption Reports?

Chair Ball: Any questions on that?

Mr. Robinson: I have a question on one.

Chair Ball: Okay, what's the item no?

Mr. Robinson: SM5, Hana Ranch.

Chair Ball: You have a page number?

Mr. Robinson: Page 1.

Mr. Spence: He's looking at this.

Chair Ball: Yellow.

Mr. Spence: Okay, the farm shed?

Chair Ball: Just is it Hana farm Paia or Hana farm Hana?

Mr. Spence: TMK is a Hana TMK.

Mr. Robinson: Thank you. That was it.

Chair Ball: Any other questions on that? Okay, discussion of future Planning Commission meeting agenda.

Mr. Spence: Mr. Yoshida is here.

Chair Ball: Clayton?

#### **4. Discussion of Future Maui Planning Commission Agendas**

##### **a. October 13, 2015 meeting agenda items**

Mr. Yoshida: Mr. Chair, Members of the Commission your next meeting is scheduled for October 13<sup>th</sup>, three weeks from today. You have one public hearing item for a Short-Term Rental Home Permit request from James Walkus. He currently operates a B&B. He has a B&B Permit to operate a B&B on Front Street in Lahaina. You also have request from Wailea Golf LLC to transfer a Conditional Permit to Wailea Golf LLC, and a time extension on a Conditional Permit for the parking lot for the tennis center, Wailea Tennis Center in Wailea. You have a request from the Garcia brothers, Sam and Jon to amend their site plan, SMA permit site plan for the proposed Garcia Family Subdivision in Makena. And oh, you have a time extension request on a County Special Use Permit for the Unity Church of Maui located here on High Street in Wailuku. And then we're planning to bring forth the Motion to Dismiss on the item that you heard today the Flatbread Restaurant appeal. The applicant and the intervenor now that we have determined who all the parties are did file a Motion to Dismiss so the Commission can hear oral arguments from the parties on the Motion to Dismiss. If you do not approve the Motion to Dismiss then we can move forward on scheduling items for the contested case hearing, selection of a hearings officer, selection of mediator, and try to determine a schedule. So those are the items for the next meeting.

Chair Ball: Thank you.

#### **G. NEXT REGULAR MEETING DATE: October 13, 2015**

Chair Ball: Okay, the next regular meeting will be October 13, 2015. If there's nothing else meeting's adjourned.

**H. ADJOURNMENT**

The meeting was adjourned at approximately 1:37 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions

**RECORD OF ATTENDANCE**

**Present**

Keone Ball, Chair  
Sandy Duvauchelle  
Wayne Hedani  
Larry Hudson  
Ivan Lay (9:00 a.m.- 9:11 a.m.)  
Jason Medeiros  
Keaka Robinson  
Max Tsai, Vice-Chair

**Excused**

Richard Higashi

**Others**

Michele McLean, Deputy Director, Planning Department  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works