

**MAUI PLANNING COMMISSION
REGULAR MINUTES
APRIL 12, 2016**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Max Tsai at approximately 9:06 a.m., Tuesday, April 12, 2016, 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.)

Vice-Chairperson Max Tsai: Aloha everyone. Today is April 12, 2016. The Maui Planning Commission is called to order. I'm gonna open the floor for public testimony. Anyone who wants to testify now may testify at this point, but may not testify again when the action item comes up. So you can pick one or the other. So is anyone wish to testify right now. Please come up to the podium and you have three minutes. Identify yourself too please.

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:

Mike Moran – Item F-3, Resolution 16-09

Simon Russell – Item – F-2 and F-3, Resolution 16-01 and Resolution 16-09

Kimoeko Kapahulehua – Item F-3, Resolution 16-09

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

Seeing none, public testimony is now closed. Next item on the agenda is C.

C. INTRODUCTION OF NEW MEMBERS - LAWRENCE CARNICELLI and STEPHEN CASTRO

Chair Tsai: We have one new member here in attendance. We have Stephen Castro. Welcome.

Mr. Castro: Thank you.

Chair Tsai: Would you say a word or two about yourself?

Mr. Castro: Well, I come from tourism, I come from tourism. I actually opened up and closed down with Kapalua Bay Hotel, 26 years. I do work for the union. I enjoy being here today. I also did a stint with the Board of Variances and Appeals so I'm happy to get involved again.

Chair Tsai: Thank you, Stephen. Thanks for coming. So we also have one other member who's not present, new member Lawrence Carnicelli. So thank you for joining us. Next item on the agenda we election for the officers for the new year 2016-2017 commission year.

D. ELECTION OF OFFICERS FOR THE 2016-2017 COMMISSION YEAR - CHAIR AND VICE-CHAIR

Chair Tsai: First we're gonna I guess vote for the Chair.

Mr. Robinson: I nominate Max.

Mr. Medeiros: Second.

Mr. Spence: Well, you're gonna take nominations.

Chair Tsai: Right, any other nominations? I don't think we need to do a first or second I don't think. For the Chair position. Seeing none, I guess we take a vote.

Mr. Spence: All in favor. We only have one nomination. Nominations have been closed. All in favor of electing Max as the Chair please raise your right hand. That's seven ayes. Max, you're Chair. Congratulations Mr. Chairman.

Chair Tsai: Thank you. Thank you. Pleasure to serve you guys, with you guys. And we have now...need to elect for a Vice-Chair position.

Ms. Duvauchelle: I'd like to nominate Wayne Hedani if he accepts.

Mr. Hedani: I would like to withdraw my name from the position of Vice-Chair. I've done that, I've been a terrible chairman for two years. So I think what we should do is elect some new blood into the officers.

Chair Tsai: Thank you, Wayne. So Wayne decided to withdraw his name from the pot. So any other nominations.

Mr. Higashi: I nominate Jason Medeiros.

Mr. Hedani: Second.

Chair Tsai: Any other nominations for the Vice-Chair position?

Mr. Spence: For the record, Jason said yes.

Chair Tsai: Would you accept?

Mr. Spence: He accepts the nomination.

Chair Tsai: Yes, for the record, yes. Okay, call for a vote.

Mr. Spence: Okay, all in favor of Jason Medeiros as Vice-Chair please raise your hand? That's

six ayes. Motion carried. Congratulations Mr. Vice-Chairman.

Chair Tsai: Congratulations Jason. All right, we're gonna continue the agenda. We have the next item, Orientation Workshop.

E. ORIENTATION WORKSHOP NO. 1

- 1. Opening Remarks by the Planning Director - Will Spence**
- 2. The Planning Framework - Kurt Wollenhaupt**
- 3. Zoning - Candace Thackerson**
- 4. Chapter 343 HRS - Environmental Assessments and Environmental Impact Statements - Danny Dias**
- 5. Bed and Breakfast Home Permits, Short-Term Rental Home Permits, and State Land Use Commission Special Use Permits - moved to Workshop No. 2**
- 6. Special Management Area Rules and Shoreline Area Rules - Jim Buika**
- 7. Flood Hazard Districts - Avelina Cabais**

Presentations were given by the Planning Staff.

A recess was called at 12:15 p.m., and the meeting was reconvened at 1:17 p.m.

Chair Tsai: Our first public hearing item, Director?

Mr. Spence: So Commissioners, we are on Item F-1 of your agenda. We have a Council Resolution No. 15-139 referring to the Planning Commissions a proposed bill related to transient vacation rentals in planned developments. So like we were talking about in the explanations this morning you have certain things that are advisory to the County Council and this is one of them when the Council will send down a reso and ask for your input on it. So that's where we're headed with this one and actually the two next ones. Joe?

F. PUBLIC HEARING (Action to be taken after public hearing.) (To begin at 1:00 p.m. or shortly thereafter)

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 15-139 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill relating to transient vacation rentals in planned developments. (J. Alueta)**

Mr. Joseph Alueta: Thank you Mr. Director. As the Director was indicating there are two methods in which to amend Title 19. Title 19 can either be administratively generated which will normally come from the Director or myself and get comments from the three commissions prior to sending the bill up Council. Or they can be amended through a resolution generated starting from the Council side and that's how you have these three resolutions before you.

The first one that you're dealing with is 15-139. It has to do with amending the Planned

Developments Ordinance to allow for transient vacation rentals under certain conditions. This is very similar as indicated to a previous bill which was 12-99 which was adopted by Ordinance 4063 and was commonly referred to as the Puamana Bill and that basically allowed for Puamana a planned development to conduct transient vacation rentals. This one again is kind of an ad hoc amendment to the Code. From all of the research that the Department has done so far we feel that it impacts only one older planned development that is Alaeloa on the West Side. It's about a 13-acre parcel. It is a gated community. It's on...from what I can tell based on research of it it's a leasehold land. It's not cheap. From an impact on the affordability of housing we don't think it really impacts affordable housing per se. As we like to say every unit hurts. Every time you take a unit out of the inventory it does create a ripple effect throughout our housing inventory. Another aspect of the bill that we...is that we're not fans of project specific amendments to Title 19, to the County Cod. It convolutes the Code as it is and makes it harder to interpret and you also have unintended consequences when you do that. You know everybody's...politicians constituents that they need to appease and all I can do is comment on that it makes a...can create a problem. I often refer to it as when you take Title 19 and I open it up for amendments, when I do an amendment, it's like opening up Pandora's box. Okay, so every amendment you have to be very careful of where does this impact down the line? Again, right now our best knowledge is that it will impact only one planned development, again, and allow them to do transient vacation rentals. They currently advertise for that and we do have some outstanding Notices of Warnings on that project. As far as the big picture, affordable housing it will have some marginal ripple effect again through as far as housing inventory, but not so much as far as directly impacting on a one-to-one loss of affordable or middle class housing stock. And that's pretty much it. And we're here to take your comments back. Again, on Page 2, it's a pretty short memo report. You have four options as far as what we would recommend, what your options are I guess as far as recommendations. I'll close unless you have any specific questions and then we have public testimony I guess.

Chair Tsai: Thank you.

a) Public Hearing

Chair Tsai: Okay, open the floor up for public testimony. Anybody wish to testify on this item please come forward and identify yourself, you have three minutes.

Unidentified Speaker from the Audience: For this item only?

Chair Tsai: Just this item. We already did the regular public testimony earlier this morning.

Unidentified Speaker from the Audience: ...(inaudible)...testify.

Chair Tsai: Which item you wanna testify?

Unidentified Speaker from the Audience: ...(inaudible)...the second...(inaudible)...

Mr. Spence: We'll get to that.

Chair Tsai: When we get to that you have another chance. Seeing none, public testimony is closed.

b) Action

Chair Tsai: Questions from the Commission? Commissioner Robinson?

Mr. Robinson: The question I have is you sure that it's only gonna affect one planned development currently?

Mr. Alueta: That we know of, yes.

Mr. Robinson: So the people that are in the pipeline right now would they be allowed to change their classifications from residential to TVR?

Mr. Spence: May I ask for...

Chair Tsai: Director?

Mr. Spence: For a little clarification when you mean the people in the pipeline?

Mr. Robinson: We have, we have Dream City. We have Makena before us. We other people that have single family as well as affordable would they be able to change that classification after they've gone through certain processes?

Mr. Spence: No. This is for a specific planned development. Planned development is not we've planned out Dream City.

Mr. Alueta: 19-32.

Mr. Spence: One of the things that was covered this morning it's called a planned development and it has a certain ordinance that goes with it. Dream City is not a planned development in this sense. Makena is not a planned development in this sense. It's just this one subdivision that falls under these criteria.

Mr. Alueta: Title 19 has various developmental districts and one of the developmental tools that is allowed it's called a planned development under 19.32 and which somebody who has a certain acreage can come in and have basically do using single family and apartment and can do a mixed project of apartments or single family and they will dedicate I believe it's 10 percent of open space or 20 percent of open space for their project and they'll get certain density bonuses and they'll be basically a three-phase process. There'll be a site plan or approval for the planned development. And the underlining zoning of Residential R-2 or your standard Maui County Code will stay but there's certain density bonuses allowed for doing it and that's basically what this project did back in quite some time ago. I wanna say in the '70s or '80s similar to Puamana. All of Puamana is zoned or the majority of Puamana is zoned Residential and actually there is some Ag zoning there too, but they were allowed to do individual condo

units that would not normally be allowed within the Residential District. And they did individual units or lots but the density based on the acreage that's how they determined how many lots and they also dedicated a certain amount of in the design scheme Open Space or about 20 percent open area within that project. Same situation happened here is that they have a certain residential designation and they were allowed to do basically some single family but also condominium townhomes or duplexes and quadplexes on the property which would normally not be allowed within the Residential District. But under the review under the planned development they were allowed to do that because they kept the overall density the same. And so that's separate from like say your standard R-3, R-2 zoning in Kahului which is just basically land that was subdivided out although it was done under one developer, they just followed Title 19 which is 19.08 the residential standards for that. So that's a little different than what we're talking...this is going to amend specifically 19.32 of the Maui County Code which is the Planned Development provisions. And under that provisions it basically, it prohibits transient vacation accommodations and transient TVRS or STRHs except for these provisions and the exceptions where old planned developments such as Puamana, and then certain ones that got building permits before a certain time. And now they're making an exception for that basically when you...I don't want...when you take the funnel and you throw all the planned development projects in only this, this one will meet this criteria.

Mr. Spence: So when...

Chair Tsai: Director?

Mr. Spence: So this particular proposed ordinance is for planned developments consisting solely of duplexes or multi-family dwellings that had a transient vacation rental use on or before April 20, 1981. So this particular planned development all the way, at least back in 81 had vacation rental use was permitted. And then time goes on, the County laws change, things begin to get fuzzy. Some of these people are still renting and there's a good portion of them are still renting and their vacation rentals are grandfathered in, but there's a lot of administrative problems of having to prove it and et cetera. So Council just proposed okay, they used to have it. A lot of them still do, they'll vacation rent, so let's just make it legal in...instead of just saying this particular location, they'll say all planned developments that are in this circumstance. And this was the only one that falls under that ...(inaudible)...So did that help or that make it more confusing?

Chair Tsai: Commissioner Robinson?

Mr. Robinson: I think I understand. I think the Council in a long way around and try to give an exemption for one area by using this ordinance, right?

Mr. Spence: Exactly.

Mr. Robinson: So will it affect any future or is it just gonna be held to just this one specific location?

Mr. Spence: It should be held to this one specific location. Like Joe said, we don't think it will

affect anybody else. It should be held to this one specific location and if the Council wants to change something else they'll have to do, pass another ordinance.

Mr. Robinson: Is there another way to where they could all apply together under one mass application or is that, is that what you're talking about being complicated?

Mr. Alueta: No, that...that would have been the recommendation that they seek a change in zoning to hotel...some type of hotel designation in which, you know, in which to get the uses allowed. So I'm not saying...if that was the position that the I guess...that were held fast that that was their only option then it would only apply...that change in zoning would only apply to this property and there would be no amendments to Title 19 at all and they would come, go before this body as well as go before the County Council. The issue is would they comply with the community plan? I'm not sure what the community plan designation is on the property. And so, going through a community plan amendment to designate this one property and also as you know the "H" word sometimes does not go over well with the general public and so when you say the "H" word, people freak out and they decide they don't...there may be some opposition to it if you call it something like a TVR they feel a little better or in this case, they're calling it a...they're sort of trying to...as the Director indicated, they used to be allowed in this area. Some people are still doing it. And they're trying to find a way that resolves it that only impacts this one development. Again, right now the way this ordinance is written, the amendments would only allow for Alaeloa, at this this one project. The previous amendment that was done again, a couple of years ago that only impacted or that only allowed for Puamana and so...

Chair Tsai: Commissioner Duvauchelle?

Ms. Duvauchelle: So even though this is project or development specific wouldn't it open the door for future applications for planned developments to be able to have TVRs? It doesn't set a precedent?

Mr. Alueta: Not really because it's...the first paragraph, they have to meet all three of these criterias and if you look on Page 3 of the ordinance the first criteria as indicated by the Director was they had to be in operation prior...on or before April 20, 1981. There really wasn't that many planned developments that were approved and operating as a short-term rental. Then the planned development had to have duplexes and multi-family dwellings. Again,...and then the second criteria, a combination of single-family units and duplexes or multi-family dwellings. So your planned development had to consist of only either duplexes or multi-family dwellings or a combination of single-family dwelling units and duplexes or multi-family. And so again, there was...it really narrowed it down and was very specific. So even like the biggest planned development you could say is Wailea, that's a planned development. That wouldn't meet the criteria. They're one way over, plus they already have Hotel zoning, but none of the residential are duplex complexes that are currently in Wailea would qualify under this provision because they were done in 1989 I believe. So it's...it really, the planned development really didn't come into vogue until Wailea basically. And I can't think of...one I processed one on South Kihei Road in the late 90's across from the Korean memorial down on South Kihei Road. And that was a multi-family apartments you know, kinda like a complex and it's not short-term rental, it's just a long-term. It was sold...(inaudible)...affordable housing. So again, this is the way the

Council has structured this it's gonna...it's currently only impacts Puamana and Alaeloa.

Ms. Duvauchelle: Okay.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: What do you categorize all the properties on Maalaea that's all pre-1981? And those are all residential and single-family.

Mr. Alueta: I don't believe there's a planned development under 19.32 in many of those areas. Most of those I'm not sure...in Maalaea.

Mr. Robinson: But Maalaea is all, is all what you described. It's all, you know, individual units. It's all single family and apartments. It's all pre-1981 'cause I was there.

Mr. Alueta: Correct. But it had to have a planned development approval which is a specific process as I indicated that were either allowed for increased densities or for allowed for the increased densities and a requirement for the open space. And I'm not familiar with if there is any Maalaea planned developments out there.

Mr. Robinson: It's not with all the, with all the waste that they had to do themselves that wasn't a...that's not considered one of these?

Mr. Alueta: No, they got zoning. For most of those, those are like either they are apartments and condominium complexes that were grandfathered in under the provision. So the previous amendment that Council did on the apartments if you recall when they...what was kinda called codifying the Minatoya Opinion which allowed for older condominium complexes in the Apartment District that were developed prior to a certain a certain date or building permits and SMAs that they could be used for short-term rental and a lot of those, that impacted quite a bit of your existing condos and apartments in Kihei and the ones in Maalaea. And I thought Maalaea also had some Hotel zoning at the same time, but that's pretty much...they weren't developed under the planned development provision such that these guys were or Puamana was developed or Wailea, all of Wailea was developed and so again it's...it's very specific to a certain process or developmental process and that was I don't recall Maalaea ever going through that process.

Mr. Spence: They have straight zoning.

Mr. Alueta: Yeah.

Mr. Robinson: Straight zoning?

Mr. Spence: Yes. They're not a planned development.

Chair Tsai: Commissioner Medeiros?

Vice Chair Medeiros: Okay, now they were all grandfathered in so there's nobody that is operating an illegal TVR, right? Everything since they were grandfathered in it's legitimate, right?

Mr. Alueta: If you were grandfathered in, you were grandfathered in and you had to show that you were grandfathered. In the case of Alaeloa some of them as the Director indicated can prove it, some of them can't, and so we have some Notices of Warnings that went out because we weren't able to get the documentation that they were legally...grandfathered legally because you know units get sold and the use has to show that it was continuous in the use. This would allow for you don't have to show that you were in continuous use as long as one unit which I'm pretty sure one unit can show that they were used as TVR then all of units can allow...will be allowed to do a transient vacation rental. And again, if you go any website whether it's the real estate website or vacation—

Ms. Duvauchelle: VRBO.

Mr. Alueta: Yeah, you will find these units there.

Vice Chair Medeiros: Okay, so there are people in violation because you gave them warnings, right?

Mr. Alueta: Yes.

Vice Chair Medeiros: What happens to those violations?

Mr. Alueta: Changing hats, Zoning Administration hat. 'Cause I work in another division, but from the enforcement standpoint there still was a violation. If it went all the way to NOV which I'm not sure if any of these went to NOVs then the violations still exist and we could still collect the fine. If it's just at an NOW stage and this resolved and this is adopted by Council then we would consider that the issue being solved and there would be no fines. I don't know whether or not there's actually been an NOV issued for any of the units. I know that there's been NOWs. So this could in essence resolve and close out all those Notice of Warnings for us.

Vice Chair Medeiros: Because I just had a problem if they were in violation and they're continuing to operate, I mean, if they were cited and they stopped, I'm okay, I can live with that. But if they continued the operation while they were cited for a violation and then they get to skate because we're changing I don't know, I have a hard time living with that one. So you know, I mean, you know...

Chair Tsai: Director?

Mr. Spence: Like Joe said, I don't know what the status of enforcement is on any of the units in this area, but the intent of Council is to make vacation rentals...(inaudible)...there, so we'll just have to ... we'll follow up as this bill progresses and whatever the Commission you know, votes on it, we'll transmit it to Council.

Vice Chair Medeiros: Yeah, and so we can make recommendations?

Mr. Spence: Oh, absolutely.

Vice Chair Medeiros: That would be one of my recommendations.

Chair Tsai: Commissioner Medeiros and this is for the Commissioners, we do have one of four options here so to make a motion on.

Vice Chair Medeiros: The second question that I have is if we're gonna make the whole project available for TVR so what about the taxes? Would the people that are not participating have to pay the TVR taxes. How does.....how is the taxes gonna work? They gotta run a TVR before they're...

Mr. Alueta: If they're operating as a TVR Commissioner Medeiros, they should be filing their State TAT taxes. As far as how RPT or Real Property Tax assesses them they would change the assessment that they would be allowed to do TVRs, but then they would send notice to each of them and ask them are you operating a TVR? Because you would then declare it. 'Cause I have long-term rental condo that actually is zoned Hotel and so, but I don't rent it short-term and so, I just say that it's not being used as one and they know that it's not being used as one so I get taxed at a normal, you know, whatever secondary rate. But these people would have that option to declare are you using that as a TVR or not. Tax Office, tax from my understanding and how it's always been explained is they tax on use. So they will go out even if you are single family home, but they can go there and they see that you're renting it for short-term they will then send you a bill and say you're being taxed as a hotel because you're using it short-term regardless of whether you have a permit or not. Okay, so they are...they have a lower threshold of proof than our Enforcement Department. So they will go and tax. And so if you build an illegal structure, they'll go ahead and tax that structure even if you don't have a building permit for it. So they're pretty good about tracking down people. So again, Mr. Chair you do have four options with regards to it. You can recommend approval of the proposed bill to the Maui County Council. You can recommend approval of the proposed bill with amendments to the Maui County Council. You can recommend denial of the proposed bill to the Maui County Council or you could vote to defer action on the proposed bill in order to gather more specific additional information.

Chair Tsai: Thank you, Joe. So Commissioners can I get a motion?

Mr. Robinson: I'll make one.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: I make a motion to defer for more information.

Mr. Higashi: I second the motion.

Mr. Robinson: And I'd like to explain more. Usually when we have a request for a change or

TVR or short-term vacation rental, we have a map, we have the amount of units we're talking about, we have neighbors, we have lot more information than we just say, I wanna give all these people short-term vacation rentals. It's not that I'm for it or against it, I just I don't have enough information right now even reading this twice to make a comfortable decision. Thank you.

Chair Tsai: Director?

Mr. Spence: Joe, when's the 120 days up?

Mr. Alueta: I'm not saying because we took it out because it was past due. We are late.

Mr. Spence: Oh, we're already?

Mr. Alueta: Yes. I will say that the units, the complex again was done in the mid-60's as indicated on Page 1 of the memo report there are 28 single-family units, 12 duplex units and two townhouse units as well as a manager's cottage and it's about 13 acres. Again, this is based on of what we know of how this bill is structured. The reason you don't get a map, you don't get like you do with a normal TVR or B&B and notices is because it's a change to the Title 19 and not a change to a specific land use ordinance. So that's the reason you didn't get a map per se.

Chair Tsai: Commissioner Duvauchelle?

Ms. Duvauchelle: I understand there's a motion on the floor, but could I ask a couple more questions?

Chair Tsai: Yeah, we're gonna have discussion.

Ms. Duvauchelle: So Joe, there is another...as you explained, there is another avenue for this development to go through to try to be qualified for TVRs so there is another alternative?

Mr. Alueta: Yes, there's always some other methodology.

Ms. Duvauchelle: And then my question is and I'm sorry if my light bulb is just coming on, if this goes through then all 28 residences are just granted TVRs. There's no other application process?

Mr. Alueta: Yeah. Well, they'll have the option to do a transient vacation rental or hotel rental, hotel use. They won't be given a permit it will just be a use that's allowed by right similar to all of the units at Puamana. All of the units at Puamana have the option of either being long-term rental or short-term rental and it's up the unit similar to all of the grandfathered apartments and condominium complexes that were covered under the Minatoya Opinion, the recent amendment basically saying all of those units can switch back and forth between long-term and short-term. There is no registration or permit, it would just be handled tax wise, you'd be obviously it would change. So the same situation would apply to this project, they would...could go in and out of TVR or long-term it's up how the owner sees fit.

Ms. Duvauchelle: Okay, thank you.

Chair Tsai: Commissioner Higashi?

Mr. Higashi: I second the motion based upon the fact that I think we have laws and regulation but there's no enforcement so then you basically encourage illegal activity taking place and we should try to regulate that first before we enact on any other proposals that are coming up and so that's why I seconded the motion by Commissioner Medeiros saying that we should defer this until such time that we can get more accurate information.

Chair Tsai: And I think to be fair too, the motion has Commissioner Robinson we have to make sure that there's specific information that we're looking for that we're lacking currently in order for this defer to make sense.

Mr. Robinson: Yes, thank you. Part of my deferral it says that the information that was gathered was from a real estate website so it's not even from the County. So it's on County paper that these are how many units, how many duplexes but we only got it from a real estate website.

Mr. Alueta: Yeah, 'cause I—

Mr. Robinson: So there's no...So I mean—

Mr. Alueta: Yeah that seems to be the...I mean, inquiring, finding out what's on the property, I mean there's multiple permits and units on the KIVA permit site but remember this is an older project and so the accurate permit data is not necessarily always there because again it was done in the 60's. So I don't have any...so the only other data I could pull was that was easiest. If I pulled RPT data that would show again that units. I have no reason to believe that the real estate site, I also pulled up other documents that showed like lease agreements and so it seemed to correspond correctly with what was being portrayed on the website and the site itself.

Mr. Spence: This wasn't a realtor's website, this was a website that deals ...(inaudible)...

Mr. Alueta: Correct and then I kind of cross-referenced it with some other real estate's, realtor's website.

Chair Tsai: Director?

Mr. Spence: So what I'm hearing is this Commission, Commission probably want to defer this. What, if I could just ask what all the information you want. You want...I heard a map.

Mr. Robinson: I apologize, I don't know where this is.

Mr. Spence: Okay.

Mr. Robinson: A map, the exact amount of units and the neighbors next to these, next to these

units.

Ms. Thomson: Just for clarification regarding the neighbors next to the units, do you mean what the properties are zoned, but you're not looking for the neighbors to come and represent anything. You just wanna know what the land uses are surrounding the property?

Mr. Robinson: For myself, it's...I'm used to processing the data for a short-term vacation rental with certain information that is in the criteria. And I just wish I had that same criteria if I'm gonna make a blanket determination on a short-term vacation homes. That's my request.

Chair Tsai: Commissioner Hudson?

Mr. Hudson: I have a question for the Director. Sorry to put you on the spot like this, but this thing was adopted in November, how come we're only made aware of it now?

Mr. Alueta: I'm a little short-handed right now. So we are, and we are...because these bills have to go all three commissioners, three commissions, two of them off island, I mean one of them Molokai and one on Lanai, we are trying to save the taxpayers some money by consolidating and so as you see you have three bills before you and so, since those other bills came in right before I was gonna schedule this it was decided to defer taking to you guys immediately and just wait for the other bills so that we could take all three at one time. It says plane fare to the outer islands, to the other islands, and as well as staff time, as well as the commission time try to be...try to be efficient with your time as well and other commissioners.

Mr. Hudson: That makes sense. But my follow up question would be the 120 days is still 120 days whether we try to do things more efficiently or not, a 120 days still came and went.

Mr. Spence: Thank you. Yes.

Mr. Hudson: And so after a 120 days does it become moot whether we say anything or not?

Mr. Spence: No, no. The Council will still want your input. They will...you know we take responsibility for being late on this, but that's our kuleana and we'll just have to deal with it.

Chair Tsai: Commissioner Medeiros?

Vice Chair Medeiros: I'd also like my question answered about you know what's gonna happen to the people who are in violation. And also if I could say that I'm supporting Commissioner Keaka's motion mostly because if we're past the 120 days and it is what it is at least I didn't vote for it.

Mr. Alueta: And to just touch on that, again, apologize for being late on it, it's just that again trying to save money on consolidating the efforts of the Department, the Council is again tied up with budget right now and so they're not gonna take up any items until then. So we kinda knew that they were in a standstill so us rushing something through only to send it up there, it would just sit up there anyway. So felt that it was better to just to wait for that. The Charter does allow

for them to take action if they don't hear from the commissions within the 120 days. But again, we felt the risk was there...was worth taking because of the current budget hearings going on right now.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Joe, how do the associations feel about this? Did they make the request to begin with?

Mr. Alueta: Chances are again, we didn't get much of a report. Again, this is not ours. Again, we didn't generate this. This is coming from Council. You can see the Planning Committee report that's attached. It's pretty sparse so there wasn't much of a discussion you know at the County Council and so again that makes it difficult for us. The Planning Department just has to take the bill as it is and try to figure out what are the impacts, what are the pros and cons and so Council did not specifically say in their report, in their transmittal to us what was the impetus for it. So we don't have that, we can't really pass that information onto you.

Chair Tsai: Commissioner Medeiros?

Vice Chair Medeiros: That was a good question that Commissioner Hedani had. I'd like that answered too what is the opinion of the association because that directly affect them, because they are directly affected. So I'd like to know what their opinion is.

Mr. Spence: From the?

Vice Chair Medeiros: Association.

Mr. Spence: The community association for this project?

Vice Chair Medeiros: Yeah.

Mr. Spence: Okay. I'm sure they're in favor of. We'll make some phone calls.

Vice Chair Medeiros: When I'm in favor of something and I wanna see it goes through I show up.

Mr. Spence: Yeah.

Chair Tsai: All right, Joe and Director and this is going back to Commissioner Robinson's request getting neighbor feedback. I don't know what our purview is on that. I know this is not a testimonial item so we don't need to have...we don't need to send out notices to the neighbors so I'm not sure how we can do this to satisfy your request. Commissioner Robinson?

Mr. Robinson: My request isn't about public notice, my request is...I just...more about information about the project, where it's located and the neighbors that's surround it. If there's duplexes on either side of them, if there's a school next to it, if there's a park next to it, and how

a TVR might affect that before I give a blanket. I mean it's...you know it's...we don't even know, we don't even know who's asking for this. You know we have a resolution from the Council, but we don't even know if the Council just said you know what I wanna make that a TVR that whole area or if, you know usually when we get application for this we know who the owner is, we know what the uses are for and we know what the limitations of it is. So you know, this is...it's just an information thing. It's just you I'm not used to it, and you know, I am new but just used to having a little bit more information. I mean it would be great if we could get all the lists of the owners that are asking to become grandfathered in and be permanent TVRs that would be interesting to see too.

Chair Tsai: ...(inaudible)...clarification thanks.

Mr. Alueta: From Google when I looked at it it was basically, it's down one road, it goes to a point. There's single family residence and there's a gate, and Google Earth just shows it's just a point, grassy point on 13 acres and it shows you know, all these different units on it. There's a...I wanna say a gulch running through part of the property, but we'll bring you a map and some other stuff. I was trying to...we don't have internet connect in here so I was trying to bring up a Google for you to show what it looks like, but I'll bring you a map along with the surrounding zonings of that and then see what...and we'll go from there.

Chair Tsai: Okay.

Mr. Spence: Assuming that the motion passes, what we'll do is we will send a letter to the County Council and you know, the Commission have no recommendation at this time, but they requested additional information and we will send that at a future date and in the meantime we'll get a bunch of the information and reschedule. I'm just guessing the motion will pass.

Chair Tsai: Any more discussion on this motion? Let's call for a vote.

Mr. Spence: The motion is to defer for additional information.

Mr. Alueta: And just to clarify the additional information is a map of the project as well as of what we think is impacted by this change in ordinance, a map of the project, the surrounding area, unit count, what happens with the NOWs or NOVs that are currently on the property, comments from the association. Was there one more that I missed?

Chair Tsai: Commissioner Hudson?

Mr. Hudson: Is it possible to add the reason why this came up, the impetus behind this?

Mr. Alueta: Okay, why. We can ask Council thank you.

Mr. Robinson: And also if a list of the owners is available on that website that you found.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Joe can we add in the information request where the closest beach access is to that point?

Mr. Alueta: I was looking at that when I looked at this. Okay, beach access.

Chair Tsai: Anything else to add Commissioners. So let's take a vote. In all in favor of this motion?

Mr. Spence: Seven ayes.

Chair Tsai: Opposed? Seeing none, motion carries.

Mr. Alueta: Thank you.

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

**VOTED: To Defer the Matter for Additional Information.
(Assenting - K. Robinson, R. Higashi, J. Medeiros, L. Hudson,
W. Hedani, S. Duvauchelle, S. Castro)
(Excused - L. Carnicelli)**

Mr. Spence: So Commissioners we are on Public Hearing No. 2, this is Item F-2 on your agenda. Again, we are transmitting Council Resolution No. 16-1 referring to the Lanai, Molokai and Maui Planning Commissions a proposed bill to amend Title 19 relating to composting in the Ag District, and again, we have Joe Alueta.

2. MR. WILLIAM SPENCE transmitting Council Resolution No. 16-1 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill a proposed Bill amending Title 19, Maui County Code relating to composting in the County Agriculture District. (J. Alueta)

Mr. Joe Alueta: Good afternoon Commissioners. Again, the bill is amending primarily 19.04 definitions as well as 19.30A to allow for composting within the County Agricultural District as a outright permitted use. As I tried to explain if you look on...just to make it a little easier for you, if you jump ahead to Page 3 of the memo report is a small table on the bottom. So this is the current standards of what composting. So if you are farmer and you are composting agricultural material that's...green waste material from your property that you've self-generated you could say you can use it on your site and you can actually commercially sell it if you wanna compost it. If you wanna bring material from offsite from your neighbors or from somewhere else or from some tree trimming company or food waste from a hotel and you wanna compost it on your site and you use all of that material on your property as part of your agricultural operation that's also allowed, okay no problem.

It's when you start to bring material, the way we currently say it is if you bring material in from offsite, you commercially compost it and then you sell it to somebody else then you need a Special Use Permit. Okay, so that's the crux of it.

Now what this bill in a somewhat confusing fashion it defines what composting is which that's all it defines is composting. And if you look at Department of Health...if you look at the definition they make reference to Department of Health, but if you look at the comments from Department of Health they're saying we don't wanna be involved at all. We don't wanna be mentioned at all in the definition. So there's an issue right there. From the planning standpoint and we've talked with both planners as well as some other people outside and those comments on as far as what for composting noise, composting of the operation. When you're utilizing cup grinders can create a lot of noise, okay.

This bill would basically allow composting as a permitted use and you don't necessarily have to have any ag. So it can just be a two-acre or five-acre lot, no farming going on and you can run a composting facility with no permits. Okay, so one we have a concern because there's no agriculture operation going on in the Agricultural District. Two, again, noise depending on the type of material you're using it can be quite noisy. Containment, once you make a product if you've ever seen compost it's a black pumice like material. If you don't have proper containment it can become windborne or it can be washed easily. Fires, as we have seen with other composting facilities if you stack the material too high, part of the composting process is to generate heat and if you don't control it correctly you can have fires. There was also comments with regard to invasive species. We cite an example, a real life example that occurred recently from where in Haiku they discovered some fire ants. The guy cut it out, it was in the green waste, took it to Hana Landfill. Hana doesn't take it. They don't want it. So it had to be trucked all the way back to Central Maui. All of a sudden you've got a invasive species hitching a ride going back and forth across East Maui. That's not good practice as far as containing of invasive species. So there's that concern.

From the Department standpoint, again, we're not sure if we're the best...once you put it in Title 19, we're the ones that gonna have to enforce it to some aspect. We're not sure if we're the best agency to enforce that. And we would rather see definitions between composting as well as commercial composting so that you can make a distinction. Also, if you make it a permitted use, you're not gonna have any regulations it's just an outright permitted use. Someone can set it up. Determining whether or not someone's composting or has a landfill. Someone's got a big pile of brush, they're allowing haulers to dump green waste. Do I cite them for illegal dumping or do I say...or is their answer gonna be, oh no that's my compost pile. So you create an enforcement issue that create problems down the line 'cause I know of a lot of gulches in Haiku and Kahakuloa filled with green waste that would qualify as a compost. So again, I'm not gonna read all of the different comments in that we have.

We found some different definitions of a compost and we're looking for a little simpler one. One, we wanted to have a commercial composting. We had concerns over the impact of neighbors with regards to it once it's allowed. Also, from the State side, there was some questions. The way we are...last year or in '05 there was a bill in which the State Legislature wanted to regulate composting within the Agricultural District and so they, themselves had drafted a bill that would limit one, the size of composting. It would have defined the composting as well as limit the type of...which type of ag land it could be on. So clearly there was...even on the State side they felt that there needed to be some type of regulations with regards to it. But short of the

amendments, right, even if the Council's amendment does pass to allow it, on the State Agricultural District we would still require a State Special Use Permit because we don't, we don't see it as meeting the State Agricultural District standards. If someone is taking in composting material and wants to resell it, okay if they're taking it offsite. Again as indicated in the table below that's how our standards of how we view it right now. So if somebody wanted to do a commercial...what we would call a commercial composting facility in which they took material in from offsite, we would require and sell that material, we would require a State Special Use Permit even if this...the County Ag bill was amended.

The Department does have recommendations on these ones and again, the Department doesn't support the proposed bill because the use is currently allowed under certain restrictions and the proposed amendments would appear to try to circumvent the need for a State Special Use Permit. The Department recommends that 19.04 be amended to add the following definitions to help improve and clarify the existing law, and I'm reading on Page 4 of the memo report. Composting means the biological decomposition of solid organic material by bacteria, fungi or other organisms into a soil like product. Commercial composting means the importing of solid organic materials for the purposes of processing or composting and the eventual sale of a finished organic material or compost.

The Commission has the following options. You can recommend approval of the proposed bill to the Maui County Council. Recommend approval of the bill with amendments to the Maui County Council. Recommend denial of the proposed bill to the Maui County Council or vote to defer action on the bill in order to gather more specific information. That's all I had. Do you have any...

a) Public Hearing

Chair Tsai: Thank you, Joe. At this time, we're gonna open the floor for public testimony. We got Vincent Mina, please come up identify yourself again please and you have three minutes.

Mr. Vincent Mina: Aloha, my name is Vincent Mina. I am a family farmer, small family farmer and also president of Hawaii Farmer's Union United, a State organization which we have nine chapters across the islands. What I have with me here today is a sample of our compost from our farm that has been cultured for the past 22 years. And what I wanna point out with this and I'll pass it around so you can see it yourself and I'll leave the extra that's on the podium for future presenters is the humid content of this. Now this is a microcosm of what could be done on a large scale and the humid content of this material basically allows the friability of this material for roots to be able to go through freely. So over a 22-year period you know we've cultured this compost and it's the lifeblood of our business. People are very excited about the fact of how the food taste, the quality of food taste and also, the shelf life of the food, of food. So I'm speaking in support basically of regional compost sites. Farmers that we represent value this practice of using compost in their operations. There's a number of benefits from it. Number one is you know basically...from our practice we see it as we're feeding a ...(inaudible)...the top seven inches of the soil where all your biology, all your life occurs. And if you're doing that, your soils are open to regrowth then you're recharging your aquifers. So you're really adding a benefit to the island ecosystem. I know at the same time you're not importing chemicals from

the mainland, you're basically recycling nutrients here on the island. We live in a biomass machine, 365 days of the year you know if you have yards you cut something back it grows back with a vengeance. Well, that's what we have here. So taking that and processing it into a high quality compost would be in our best and highest interest as an agricultural community. The only problem is we are a service based economy and the more, when I hear about agri tourism I think it's a great thing if we could marry the two to where we could be a service based economy but also a production based economy. And one way to facilitate that is to lower the inputs of the farmers and so that's what this represents. So I'd like to pass it around. You can take a look at it, squeeze it, you know, smell it. And in closing I would like to, you know, speaking of humus, I think we all need to have a sense of humus.

Chair Tsai: We have a question from our attorney.

Mr. Mina: Yes?

Ms. Thomson: I wanted to ask if you've taken a look at the proposed definition of composting and whether you have concerns with sewage sludge and bio-solids being included as part of the organic mix.

Mr. Mina: Right, well in the organic standards it's now allowed to use sewage sludge, but myself personally I feel what's lacking in that whole process is it to be inoculated with biology, be inoculated with indigenous micro-organisms I think, I would have...I wouldn't have an issue using them in orchards, maybe vegetable production I would, but then I wouldn't be able to get certified organic because of that use. I think that's what's lacking right now in the process of using sewage sludge that's being done with Eco Compost and you know, if it smells you don't wanna go near it then you don't want to go near it.

Ms. Thomson: Sorry Chair, one more question.

Mr. Mina: And just in that spirit, you know there's no such thing as bad bacteria or bad fungi. It's not good or bad. It's just out of balance. You know they all play a role in this whole ecosystem that we see as being critical in our production of food.

Ms. Thomson: Thank you. Does this ordinance help your business creating compost? Really what I'm trying to get at is from a farmer composter standpoint is this a positive change for your business and if so, how?

Mr. Mina: It's the lifeblood of our business that's why I've been doing it for the past 22 years. And you know, we basically cut our trays...it's a seven-day crop, we cut our trays, these greens and we take those flats and build static piles that we come back two months later and they're ready to use again. We just mineral balance them as per recommendations of the soil analysis that we get. But it's the lifeblood of our business and people, you know we sell out of our product. I would have brought you some today but we're sold out.

Ms. Thomson: Are you being prevented right now from doing anything that you want to do?

Mr. Mina: No, except for my wife.

Chair Tsai: Good answer. Any other questions? Commissioner Hedani?

Mr. Hedani: I think everybody is in favor of composting but the question is are you in favor of this particular bill?

Mr. Mina: In all honesty, I have to read it. Okay, I heard about the meeting this morning. It's important that I represent our family farmers being the president of Hawaii Farmers Union United.

Mr. Hedani: Thank you.

Mr. Mina: But what I've...talked with a farmer friend of mine earlier about it seems like the composting definition needs to be worked on.

Chair Tsai: Director?

Mr. Spence: And just a comment for Mr. Mina and as well as everybody listening. We already consider composting as a natural part of somebody's farm. But the question that we have about this and the comments that we have back from Economic Development and some other discussions is bringing, importing green waste from other sites onto your site composting and selling it. But you could basically have...I hate to use Eco Compost as a...but you could have, you could have a facility of that scale so long as you have a large enough lot whether you took sewage sludge or not. And so the question is do you want a tub grinder next to you? Do you want to be able to do all that stuff? I mean, there's no question compost the benefits of...(inaudible)...It's just the nuisance that by just out rightly allowing you could have a facility of that scale...

Mr. Mina: I understand.

Mr. Spence: ...next to you.

Mr. Mina: Could I make a comment on that? There's a proposal for a agricultural land trust to happen. If we had a agricultural land trust to where we had a regional site that could feed those areas, you know, that's...that would be the highest use I feel of being able to deal with that kind of a situation. Thank you.

Chair Tsai: Any more questions for the testifier? Thank you, Vincent. Anybody that wish else to testify regarding the compost item please come forward, identify...okay, come forward please and identify yourself, you have three minutes.

Ms. Gretchen Masano: Thank you. Sorry, my name is Gretchen Masano and I wanted to just give a little bit of a different perspective because I am part of a collective that would be involved in a commercial composting operation where we don't have a farm and I've also been intimately involved with the introduction of this bill. Unfortunately there were two versions of this bill

presented to the Council. One of them included bio solids and the other didn't because I don't think that anybody who's involved in a commercial composting operation that would be regional...when we had the meeting with the County Council we all agreed that a regional composting site because of the issue with the fire ants and other issues. I mean, mainly because of the size of the operations you know we don't wanna be on the west side taking green waste or food waste all the way from the other side of the island it just doesn't make sense. But regional commercial composting sites that are very specific to just composting because composting is a very...if you do take other items, so a very untapped resource that we have on the island right now is our compostable foodservice ware which a lot of the restaurants, the big hotels have already started switching to these products in mass. And right now they have nowhere to go except the landfill which is, it's really too bad and there's about...our landfill composition studies, the last one that was in 2012 did not differentiate between to go products in the paper goods section, the last one that did was in I think it was in '92. So we don't actually have a good percentage of how much we could be diverting from the landfill unfortunately because they didn't differentiate. But there are a number of...and I'm just thinking about the west side because I deal directly with these customers. I also represent a company that manufactures a 100 percent compostable to go items so I just know by my personal, my personal experience all these hotels that are using these to go boxes that could be turned into soil, a really valuable resource. And in a farming operation, you know there's a lot of things that go with you know when you're farming and you wanna do composting. It's not really the best place to be importing a bunch of to go products and mixing them with—

Ms. Takayama-Corden: Three minutes.

Ms. Masano: --the food waste and mixing them with the green waste. It's just too much stuff. So...but there is—

Chair Tsai: Please conclude.

Ms. Masano: Well, I urge you to reconsider because there's a couple of things that were not intended to circumvent the process of the special use permits it was more to make composting accessible to these other uses that are so desperately needed. We could divert about 40 percent of what's going into the landfill right now if we're allowed to have commercial composting operations including the foodservice ware, food waste and you know green waste as well. I don't think anybody here really wants it to include bio solids so unfortunately that was...it was little bit of a mistake when introducing the bill in the first place. Nobody really wants to use that 'cause you can't certified organic and in every other operation you could.

Chair Tsai: Thank you.

Ms. Masano: Yeah, sorry. If you have any questions? Tried to get it all in.

Chair Tsai: Anyone has questions? Commissioner Hedani?

Mr. Hedani: So you're responsible for this bill?

Ms. Masano: No I'm not. No, it was actually Britney, Britney Smart from Maui Eco Compost who knows a lot about it, but as you know, Maui Eco Compost uses bio solids so she did introduce two versions of the bill and was like, oh my gosh why did they use that one, they could have just used this one?

Mr. Hedani: I'm just curious as to why a bill is necessary to allow something that's already allowed in the existing law?

Ms. Masano: Well, the special use permitting process is really, really incredibly difficult and so for all these other things like the noise and you know, the transporting of the invasive species there's other processes besides this one that would you know limit the accessibility of those issues. So like the noise stuff, I mean, all this stuff would be happening on ag land you know in big areas where you don't have close neighbors. You know, nobody's gonna hear the tub grinder in the areas where we're gonna...I mean, plus it's not necessarily a tub grinder, it's you know, a wood chipper really. I mean, it's not, it's not the same thing, but you know, you're not gonna be composting like huge massive like big trees, that's not the idea.

Mr. Hedani: Thank you, you've answered the question.

Ms. Masano: Okay.

Chair Tsai: Commissioner Robinson you have a question for the testifier? No? Oh, Director?

Mr. Spence: And again, I wanna emphasize that we consider composting as a permitted use in the Ag District already. It's for what you're talking about the regional facility or something like that where you're bringing from other sites and bringing it in.

Ms. Masano: Right. It just limits the sale of the...

Mr. Spence: But the, you know, the large scale kind of facility...(inaudible)...I know...I see so many people from the Ag Working Group. I'm sure everybody here already composts on their own property, but that's, you know that's limited to the size of your own property and what you're producing. If you start bringing in from hotels and start bringing in from you know all the landscape companies and everything, that's a whole other scale of it, so that's what we're trying to decide.

Ms. Masano: Right, and it's intended to be because this valuable resource that could be turning into soil is just going right to the landfill.

Mr. Spence: And I think it should be used.

Ms. Masano: Yeah.

Mr. Spence: And that I think everybody...(inaudible)...on that, it's just how.

Ms. Masano: Right. So yeah, I mean I'd be willing to help you know tweak the bill a little bit if

there's...if that's what is necessary to get this able to be passed. It's just something that needs to happen on our island.

Chair Tsai: Corp. Counsel.

Ms. Thomson: Just for the Commissioner's understanding too, so Eco Compost is located on Ag. It's in the State Ag and County Ag zoning and it's operating under a Special Use Permit so it can be done. It is an extra hurdle but it offers also the oversight and then the ability to set conditions and time limits and things like that. Thank you.

Chair Tsai: Thank you.

Ms. Masano: Thank you very much.

Chair Tsai: Oh, Commissioner Hudson?

Mr. Hudson: No I have a question for the Director. You mentioned that it's already permitted. Can this ordinance because this ordinance is it's underlying under No. 9 and that would be new material but I couldn't find it under old material.

Mr. Spence: For one, you're talking about that Section 2 with the definitions?

Mr. Hudson: No, I'm talking about...I'm sorry I'm talking about the Section 9. So that's the new material that would be added into it. The permitted uses, and then it goes onto say principle uses, agriculture and dah, dat, dah, dat, dah...

Mr. Spence: Okay, so what this bill is proposing is that, and we're still in the middle of public testimony, what this bill is proposing from the Council it proposes to make it an outright permitted use.

Mr. Hudson: But you said it was already permitted.

Mr. Spence: It's permitted as a natural part of somebody's ongoing farm, but...what this is doing including the use of material source from offsite and so what this bill seeks to deal is clarify that that you could bring in from other places.

Chair Tsai: Anyone else wants to testify, please come forward and identify yourself and you have three minutes.

Mr. Gerry Ross: My name is Gerry Ross. I've prepared a handout for all the Commissioners. Aloha Members of the Planning Commission. My name is Gerry Ross. I'm a commercial organic farmer. I grow fruit, coffee, vegetables and soil Upcountry. The testimony I've given you, the four pages are in two parts. One's an addendum which is a response to some of the comments from the Planning Department and a rather long winded testimony which I'm not really gonna go in for all the odds and ends of this but as I think Director Spence has already said, compost is right thing to do. If you look at, you know Google I wanna make a compost

facility, how big does it have to be? And you will find the Composting Council of America has said well, you know ten acres is a pretty good size, what are the eight points you really need to consider?

Point No. 1, location, location, location. Where is it gonna be, what kind of impact is it gonna have on your neighbors and what sort of regulations are there on the place of where it's gonna be and how it's gonna be done? The Planning Department from my perspective is the one that will help us figure out where it should be. The Department of Health, Solid Waste Division are the ones that will regulate how it's gonna be done. I was frankly kind of flabbergasted that the Department of Health wrote back to Mr. Alueta and said, we shouldn't be part of the definition. That definition that was used and submitted by the Council to the Planning Department was the definition of compost from the Solid Waste Division. That's a state document and here a member of the Health Department saying you don't need to use that. I'm kind of mystified.

I guess my recommendation without going through this whole thing. You can read this at your leisure this evening particularly if you have difficulty sleeping at night is that the Commission would defer this and would actually recommend that the Planning Department work with the Ag Working Group. We've spent a lot of time working on this already. We're all dyed in the wool composters. I personally get 38 tons of food waste a year including those cups and plates and stuff like that and turn that into amazing soil. My fertilizer application rates are 1/30 of what is recommended by CTAR if you're going to grow kalo or any vegetables. That's a lot less material I'm importing from off island. That's a lot less water soluble material impacting our reefs. So I would ask you to defer this item and encourage the Planning Department to work with the Ag Working Group. We can come up with language that satisfies all the parties involved especially the farmers and it makes it something's that responsible to both the land and the community 'cause this is really our way forward. Thank you.

Chair Tsai: Thank you Gerry. Questions from the Commission? Okay, thank you.

Mr. Ross: Thank you.

Chair Tsai: Anyone else wish to testify at this point? Please come forward. You have three minutes. Identify yourself.

Mr. Bill Greenleaf: Thank you, Chair and Land Use Commission, I mean Planning Commission. I just wanted to echo what Gerry said.

Chair Tsai: Will you please identify yourself?

Mr. Greenleaf: Oh, I'm sorry. My name's Bill Greenleaf. We have Greenleaf Farm in Makawao. This is our 11th year of farming. We have zero inputs from anywhere else and most everything we recycle on the land and turn back into amazing soil. And like Vincent said before he's been doing it for 22 years. Each season it seems to get to be richer, the vegetables get to be more delicious, larger and the plus diminish. But I wanted to step forward and echo what Gerry said. I really appreciate...I think it would be really helpful if this got referred back to meeting of minds between what Planning understands is key to this going forward with a

regional composting and what the Ag Working Group people know about composting. And I just wanted to add that farmers work in deep respect with the land and that deep respect includes respect of their community and their neighbors. So it will be with that respect that we would proceed forward and this is essential. We need, we need to not truck things out of Hana. We need things in East Maui to stay in East Maui. We need things in West Maui to stay in West Maui and Central to stay in Central and be put back into the land as we grow the future of agriculture here in Hawaii on Maui. Thank you.

Chair Tsai: Thank you. Commissioner Robinson?

Mr. Robinson: I have a question and actually was too slow to ask the person before you is it seems like most of the composting is all Upcountry but all our hotels are not Upcountry and what is your quick one-minute solution to that?

Mr. Greenleaf: Well, I think the regions are really key. West...South...if you go to West Maui you would...there's lots of great places over there that would be far removed from neighbors that we could access all the food waste, all the compostable containers and really reduce what goes into the landfill, reduce our problems with methane, same with South Maui. I think that's where it needs to be.

Mr. Robinson: But it would need somebody to step up and be willing to do that in that area or purchase property there, correct?

Mr. Greenleaf: Yeah, the Farmer's Union has been working with secretary Ann Wright to develop pilot programs for regional composting. That's a hot topic.

Mr. Robinson: Oh, okay. Thank you.

Chair Tsai: Okay, thank you.

Mr. Greenleaf: Thank you.

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

Vice-Chair Tsai: Please identify yourself?

Mr. Russell: Yeah, my name is Simon Russell. I'm President of the Haleakala Chapter of the Farmers Union here on Maui and also the Legislative Community Chairman for the State Chapter. That's the capacity I'm speaking to you in this morning. Unrelated I have another hat it's the Maui County representative to the State Board of Agriculture. So Council Resolution 16-01 and 16-09 have direct impact on our ag communities and I have submitted to you our testimony, written testimony that is in support of those. Certainly they may need to be amended or massaged but I would urge you please to move these, move these through your committee so that farmers can benefit. I know that me personally I've spent tens of thousands of dollars trucking compost to my farm. I'm farming 40 acres on the north shore and every truckload and I'm using about 60 tons per acre cost me a \$175 to truck it and usually it's from Central Maui or

you know, other areas that are selling compost. So it's really kind of urgent that farmers can cycle compost regionally you know especially in Hana and in Haiku. Central Maui already has one. Lahaina those guys are trucking from Central Maui all the way to Lahaina. That's thousands and thousands of dollars every year. And so we need to create a legal framework for people to compost regionally.

And then there's the scary issue of the fire ants moving in compost around the island. We certainly want to prevent that from getting any worse. Who knows what's happening. So far I really don't, but to my understanding fire ants were in Hana and then a lot of green waste moved the Central Maui landfill from Hana I think that situation's been fixed.

The other issue and it's in our testimony here, the Farmer's Union does support agri tourism. We have membership adopted policies to support that and I won't go into all that. It's in your, in our written testimony in front of you. But you know speaking as a farmer and long-time working in the Ag District, my family farm, my mom chose not to do agri tourism and I'm from Kauai, and back when this whole vacation rental thing started I was encouraging my mother to do that so that she could, you know, support her income and you know, keep farming, but she chose not to and then globalization kind of came into Hawaii with Walmart, Kmart, Home Depot, a lot of other big commercial nursery operations, we were nursery people and we lost our source of income because we were outcompeted by the big box stores. So I think agri tourism gives a tool to bonafide farmers to augment their income with you know tourism dollars and conversely if folks from the mainland are doing agri tourism operations here in the STRH possibly we could look at import replacement with strong regulations in the Ag District that kinda look at what they're doing. Making sure they—

Vice-Chair Tsai: Can you please wrap up?

Mr. Russell: So my time's up. I just wanted to voice my support and I won't be back at 1:00 so thank you for listening.

Vice-Chair Tsai: Thank you. Any questions from the Commission? Thank you, Simon.

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

Chair Tsai: Anyone else wish to testify at this point? Seeing none, public testimony is now closed.

b) Action

Chair Tsai: Questions from the Commission regarding this item? Commissioner Duvauchelle?

Ms. Duvauchelle: So we've heard testimony requesting that we defer, but wouldn't the deferral be back to County Council and not to Planning?

Mr. Alueta: Primarily. I mean, I don't think that deferral is gonna solve anything because if we defer it then that means we will be negligent in getting, in getting our comments back to the

Council and so, all of the testimony will be submitted to the County Council and so they can take it up. Again, we're just trying to educate you as well as the public as well as the County Council on this is that we think that there needs to be definition to clarify. You need to define what composting is in general terms. You need to define and specify what commercial composting is. Again, as we indicated, composting is allowed based on any agricultural lot as part of a farming operation, and you can actually bring in material and compost on your site. As indicated several farmers are already doing. I would love to bring in that same material. I have lots of green material on my site for composting right now, but you could always use more for farming.

But what we're trying to point out is that the way the State law is written, composting or commercial composting would not be allowed in the State Agricultural District. All of the properties or the vast majority of the County Agricultural zoned lands also has that State dual designation. Should this bill pass I was joking the only place you would be able to do commercial composting would be on Lower Main because that's the only place that has State Urban and County Ag. So, it's...'cause you could also do a quarry there. But anyway, it's where...I mean, that's how some of our bizarre zoning and state land use designations have been. But what we're saying is if somebody wanted to do a commercial composting, take material in and just sell the compost finished product, they would still need a State Special Use Permit. So this amendment to the County ordinance doesn't alleviate that State requirement. Hence the reason last year the State Legislature took it up and tried to define it and established the parameters in which composting would be allowed without a State Special Use Permit, okay. And so that's what, that's what I reference in the bill. That bill made it all the way through, didn't get past, it got carried over to this ...(inaudible)... And so, the lobbying needs to happen. I mean, I think everyone on the County side has bought into the idea of composting with restrictions. The lobbying needs to happen also on the State side. And so, I think that there's...you're not really alleviating or bypassing any of the regulations or getting around any of those that would establish regional composting. And again, if you wanna do a regional composting even more so a Special Use Permit is probably the best methodology in which to regulate it, establish the criteria, and the location and that was kinda echoed by our own Office of...our Ag Department, Office of Economic Development. And to say nobody is gonna bring in a tub grinder, no they did. Someone brought in a tub grinder, started and got complaints, and there are mobile tub grinders out there that you can just drive onto a site and the guy who was importing and chipping away eight to ten hours a day. And if you...even on a two-acre lot that can get a little noisy. So it does need to be regulated in some fashion. Right now the County feels that you should at least start with the definitions on the two and then right now the only way to...we feel the regulation of the State Special Use Permit is probably your best method at this time.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: So of the four options you gave us, is one of the options is to continue with the Special Use Permit process that we have now that gives you know, the County instead of the State, you know, the Planning Department the area for where they're gonna be composting, who they can grab the compost from. We could put all conditions right now through the Special Use Permit process, correct?

Mr. Alueta: Correct. You can make any recommendation. You could—

Mr. Robinson: No, but I know you had the four so there was like—

Mr. Alueta: Oh yeah, you could recommend approval again of the bill as is presented. You can recommend approval with amendments and so that would be, you would recommend...I mean or you can recommend denial with amendments, you know with comments. It's all...it's entirely up to you guys. Right now the Department is recommending...does not support the bill and so we do not recommend amending 19.30A. We do recommend that there be amendments to 19.04 which is the definition to add the two definitions to at least get us started in the discussion in the right direction. And then like I say, that's your comments back to County Council. How Council wants to deal with it they will have that discussion. I'm sure they'll have the farm, organic farmers and the farm people in.

Chair Tsai: Do I hear a motion?

Vice Chair Medeiros: I have one, one more question.

Chair Tsai: Yeah, Commissioner Medeiros?

Vice Chair Medeiros: Okay, so even if we vote for this one, vote for this amendment they still would need to go to the State Special Use Permit?

Mr. Alueta: That is the way that we would interpret it the current law.

Vice Chair Medeiros: So nothing we do will change the fact that they still have to apply with the State?

Mr. Alueta: That is correct. We just don't...from our aspects the counties can be more restrictive but they cannot necessarily be less restrictive than State law. And so we found on putting amendments in the Code that would....knowingly that it's contradictory to State law.

Vice Chair Medeiros: Okay.

Chair Tsai: Do I hear a motion?

Vice Chair Medeiros: Yeah, I'd like to make a motion. I'd like to move that we accept the recommendation of the Planning Department.

Chair Tsai: To accept the recommendation like...

Vice Chair Medeiros: The recommendation to...opposing the amendments.

Ms. Duvauchelle: Or denial.

Vice Chair Medeiros: Denial.

Mr. Spence: So in other words the recommendation is just to add these two definitions and not to adopt the Council's.

Vice Chair Medeiros: Yes.

Mr. Hudson: I second the amendment.

Chair Tsai: Okay we have a motion made by Commissioner Medeiros and second by Commissioner Hudson to I guess offer as recommended by the Department. Commissioner Hedani?

Mr. Hedani: I kinda agree with Jason. You know, I think all three resolutions, all three ordinances that we got are kinda like not ready for prime time. I mean the people that introduced it it's kind of been bastardized to the point where they cannot totally support the thing in its, you know, in its present form. So I think it actually, we should actually recommend that we send it back to committee and work on it some more.

Chair Tsai: Sounds good. Any other discussion on this?

Vice Chair Medeiros: I agree with Commissioner Hedani. While I believe that composting is important, you know, without composting you know, there's absolutely no chance for organic farming on Maui and I'd like to see it go through. But come with a plan, you know. If the plan is good I'll support it wholeheartedly 'cause I'm for organic...(inaudible)...I'm for all kinds of farming.

Mr. Spence: Just for clarity—

Chair Tsai: Director?

Mr. Spence: Just for clarity Commissioners is that part of your recommendation that it go back to committee for additional discussion?

Mr. Robinson: I have a couple of questions before—

Vice Chair Medeiros: To get the ...(inaudible)...

Mr. Robinson: Question?

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Maybe you can clarify what I'm feeling 'cause this is, this is all over the place.

Mr. Spence: I will channel...

Mr. Robinson: So my understanding is that it's not broken right now, correct what we're doing?

Mr. Spence: Not totally broken. The question is about commercial—

Mr. Robinson: Right.

Mr. Spence: The question is about...(inaudible)...

Mr. Robinson: So and the commercial process is when they want to be a commercial composter right now they have to get a Special Use Permit.

Mr. Spence: Yes.

Mr. Robinson: And during that process we can put conditions, we can control it, we can make sure that it's not harmful to anything per se with what it's doing?

Mr. Spence: That's correct.

Mr. Robinson: And we're recommending I hear that we're, we're sending it back to continue that but not change that? Like we're asking them to, we're asking the Council to do what?

Mr. Spence: It sounds like you're sending back to Council with no recommendation except that it needs to be worked on some more. To help define what commercial composting is, where it should be allowed just give it a Special Use Permit or what.

Mr. Alueta: Yes, I think that's where the Commission was like...we currently would recommend that you not recommend approval of the current bill as proposed and that they, the Council rework it. As part of that reworking they would incorporate two definitions that we've recommended to help at least administer how we currently do as far as commercial composting. I think that...and that's basically what I'm hearing and what we're recommending from the Commission.

Mr. Spence: And perhaps one of the clarifying elements could be this...perhaps one of the clarifying elements is specifically calling out in Ag zoning commercial composting as a ...(inaudible)...

Mr. Alueta: Correct. And maybe, yeah and maybe even just setting parameters too so that people know ahead of time. But again, I think there's some further discussion as you say with issuing—

Mr. Spence: And that would mean Mr. Ross could continue to bring in stuff to his property and compost the use on the property and those kinds of things. The idea of just a standalone, I'm trying to clarify ...(inaudible)...somewhere, just a standalone composting facility that's what would require the Special Use Permit.

Mr. Alueta: Yes.

Chair Tsai: Commissioner Medeiros?

Vice Chair Medeiros: Whatever he said that's my motion.

Mr. Spence: Again, there will be discussion at Council for everybody.

Chair Tsai: Commissioner Duvauchelle?

Duvauchelle: And I agree. I think there's a consensus with Planning, with the Council that it's an important subject and it's necessary, but I think I hear from both sides that what we have in front us today is not something that can be adopted. So my recommendation is as Joe stated and the denial also. I would support that.

Chair Tsai: Okay, call for a vote. All in favor of...

Mr. Hedani: Restate the motion.

Mr. Spence: Yeah, let's restate the motion.

Chair Tsai: I was...

Mr. Spence: Basically, the way I understand the motion is to recommend denial of the proposed bill and recommend that it goes back to committee for additional discussion and possibly the inclusion of these two definitions. Okay, I see heads shaking yes.

Chair Tsai: All in favor.

Mr. Spence: Okay, there's seven ayes.

Chair Tsai: Thank you Joe.

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

**VOTED: To Accept the Recommendation of the Department to Recommend Denial of the Proposed Bill.
(Assenting - J. Medeiros, L. Hudson, K. Robinson, W. Hedani,
S. Duvauchelle, S. Castro, R. Higashi)
(Excused - L. Carnicelli)**

A recess was called at 2:49 p. m., and the meeting was reconvened at 2:58 p.m.

Chair Tsai: Maui Planning Commission come back to order. To respect people's time I'm gonna allow public testimony right now open for the people who have to leave. So if you have to testify if you have to leave before your agenda item comes up you may come up right now and testify. Please identify yourself and you have three minutes and let us know which item

you're testifying for. I have a list here Cindy Biggers.

Ms. Biggers: I can stay.

Chair Tsai: Okay, Jonathan Beutler?

Mr. Beutler: I can also stay.

Chair Tsai: Lisa Starr?

Ms. Lisa Starr: Aloha, I'm Lisa Starr. Thank you, Director and Chairperson and Commissioners and Staff for your service to this process. I want to actually read what I wrote even though I nearly memorized it because I wanna make sure that the words I carefully picked to describe what I wanna say that I actually use them.

I would simply like to praise and commend these applicants. Tiare Roberson is one of the applicants told me that she dreamed of owning and running this little country store so close to home one day. She came to me a couple of years ago and we talked about whether that would be possible.

When the property became available for sale she came to me for a little bit of advice and assistance to buy the property and to proceed with her permit process. Every step of the way she with her husband and father have been exemplary in their diligence not only to beautify and expand their farm property but their thoroughness with attaining compliance with all departmental requirements. I have complete confidence that they will manage this farm and market with the same dedication and the style.

This family applicant so nicely represents ohana and kuleana in our community. Their example deserves appreciation. I wholeheartedly support them as the new owners of this market and I hope you do too.

Chair Tsai: Thank you, Lisa.

Ms. Starr: That's all I have to say. Thank you.

Chair Tsai: Questions from the Commission?

Ms. Starr: Aloha.

Chair Tsai: Aloha. Sydney Smith?

Ms. Sydney Smith: Aloha Commissioners. Aloha Director. Aloha Chair. Good afternoon, my name is Sydney Smith and my husband and I own Maliko Estate Coffee, a commercial coffee farm in Makawao where we also grow tropical flowers for sale. I'm the current president of the Maui Coffee Association, a member of the Maui Flower Growers Association and I'm on the Ag Working Group.

The Ag Working Group worked on the Ag Tourism Bill along with EAR Committee Chair and Councilmember Don Guzman for the past two years. And this is one of a number of bills we've helped draft included the composting bill you've heard today and a bill that calls for the hiring of qualified ag inspectors, a single definition of agriculture, a single farm plan and the farm stand bill that is already passed.

We have had a draft or a plan to create an Agriculture Division or Office either under the Managing Director of the Office of Economic Development. All these bills are really companion bills and work together to bring Maui County agriculture into the 21st century. And finally we'll have County personnel that can tell the difference between a real working farm and a fake one.

Expenses for farms have risen exponentially over the past 10 years. The cost insurance, labor, licenses, fees, taxes, compliance and regulation have never been higher. Our working farms and ranches are struggling to stay in business. Without providing avenues for our ag producers to supplement their income we will have no agriculture left in the County. We have to update the rules and regulations that were written for a different era.

New ordinances like we're discussing today were adopted 20 years ago in Europe and North America with no detrimental effect and we need to catch up. We developed a list of 16 items for the Ag Tourism Operator to provide to the Planning Department. There's now provision in the bill for the information to be verified but the operator will be required to sign a statement that all information is true and correct to the best of their ability.

As an example, the Ag Tourism Operator will need to supply a copy of their liability insurance policy listing the County of Maui as additional insured. Currently only vacation rental owners are required to do this. Both the Ag Working Group and Maui County Risk Management consider this to be a good idea. And since our EA our committee Chair, Councilmember Don Guzman is a lawyer, he thinks that a good idea too.

As of now ag tourism activities such as horseback riding tours that are allowable accessible uses on Ag land in the current code are not required by the County to carry this insurance at all. Other provisions call for the ag tourism operator to supply copies of the required permits and licenses. This entire list can be submitted digitally and uploaded to server maintained by the County with minimal involvement and the Planning Department. Nearly all the burden is placed on the farmer or rancher wishing to add ag tourism as a way to supplement their income and offer new and exciting adventures for our visitors.

There's also an urgency to this due the State law that was drafted by Senator J. Kalani English and passed by the Legislature that was custom made for us here in Maui County. He needs to defend it every legislative session and he had expected us here in the County to pass our Ag Tourism Ordinance years ago. This is our last year we have been told that he will fight to keep the language that was written just for us. So I urge you to help farmers and ranchers keep their family farms by recommending passage of this bill and welcome your comments and suggestions to help bring this about. Thank you.

Chair Tsai: Thank you Sydney. Peter Neiss, you wanna come testify? Please identify yourself you have three minutes.

Mr. Peter Neiss: I'm Peter Neiss from Maui Architectural Group here to testify in support of Ulumalu Market. Born and raised here on Maui in Haiku a mile up Awalau Road by Hanzawa Store. I grew up with it being a real country store where we didn't have to pay. I would go in as a kid and I would get candy or a hot dog and sign my initials and my parents would come at the end of month and scold me and be like what, what are you getting in here. But it was, it was a social hub for the whole community. It was a place where we would see our neighbors, talk story, talk about dogs loose in the neighborhood or just catch up and get to know your neighbors. And this Ulumalu Marketplace, it's a good thing, it's positive thing, it's agriculturally based in Haiku and we've lost so many of these small mom and pop old-time marketplaces like that and it would be silly in my mind not to let it be what it already was and let them continue operating right there off Hana Highway. Yeah, I like the project. I'm in support of it, and yeah, I look forward to seeing, stopping by there one day to get some food on my way out to Hana. Thanks. Any questions?

Chair Tsai: Thank you, Peter. Bill Greenwood? Sorry, Bill Greenleaf?

Mr. Spence: He already testified.

Chair Tsai: All right, Victor Lopez?

Mr. Lopez: I'll wait.

Chair Tsai: Jack Bunch?

Mr. Jack Bunch: Yes, my name is Bunch. I work Ocean Safety for the County. I'm in here in support of the Ulumalu Market. I'm a long-time part of Haiku community. I went to Haiku School. I think it's a really good place for the community to be able to kind of meet up with each other, meet families, meet up with your sister, for the kids. Safe place if like, it's always nice having a place off the Hana Highway in case of an emergency and whatnot. I think it's a good thing. Looking forward to not having to drive so far to get a cup of coffee. And I think it's a good thing for our community. Thank you.

Chair Tsai: Thank you, Jack. Jessica Caudill.

Ms. Jessica Caudill: My name is Jessica Caudill and I'm here in support of the reopening of the Ulumalu Market. Thank you for your time Commission members. So I'm also a long-time Haiku resident. I live about a mile past Ulumalu Road and if you must be familiar with Ulumalu it's by the 15-mile marker so I'm at the 16-mile marker. I'm a single mom and work full-time at the hospital and it's nice to be able to have a place that you can stop on the way home that's not in town that you can make, you know, a quicker exit of town to get home to the child. And to be able to get a little food and some of those essential items. I remember back in the early 90's when I was in nursing school I would stop there for coffee every day and when I was building my house in 2004, I would go there weekly to get some food for the crew. And so just over the

years throughout my life the store has always been there and it's always been a place that I've gone to sometimes more than once a day on some days. And also now over all of these years the residential, you know residential homes has grown a lot in our community and now we're one less store so that's been kind of a bummer. We have to go half way to Makawao to Hanzawas to...if you just need something like milk or something quick and that up a narrow winding bumpy road. So it's nice to be able to just to go on the highway, you know something that's easy on, easy off access. And I think those are my main points. So again, I think it would be a benefit for the community, the residences as well as visitors. It's a nice place to stop on the way to Hana. Thank you. Any questions?

Chair Tsai: Thank you Jessica. Keone Ball?

Mr. Ball: I can wait for the agenda item, but I'll also speak on this agenda item. I'll use one of my three minutes if that's okay Chair?

Chair Tsai: You may.

Mr. Keone Ball: Aloha Chairman and Commissioners. I grew up in Haiku and went to the same store. I never signed my name though, I didn't know we were supposed to do that. I thought we just took free food. I don't know...Peter's dad. Anyway, I think it's a great location for the store. I remember when it used to be open. Jessica was talking about the convenience of that lower side Haiku people they don't have to go up to Fukushima's or even up to Hanzawa's so it's a great location and it's proven itself in that location before so if the Commission will look favorable on that the people of Haiku would surely appreciate a store there. That's all. Thank you.

Chair Tsai: Thank you, Keone. Alfredo Evangelita? Okay, thank you. Anybody else wish to testify at this point? Seeing none, public testimony is closed. We'll reconvene on Item No. 3.

Mr. Spence: Okay Commissioners we're on Item F-3. This is another Council Resolution 16-9 referring to the Lanai, Maui, and Molokai Planning Commissions a bill to regulate agricultural tourism in the Ag District. Joe would please state your name again?

3. MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 16-9 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill to Regulate Agricultural Tourism Activities in the Agricultural District. (J. Alueta)

Mr. Joe Alueta: Good afternoon Commissioners. Again, my name is Joe Alueta. I'm your Administrative Planning Officer. Again, your third and final resolution that you have today is dealing with commercial tourism activities in the Agricultural District. This bill was transmitted out to us and then we sent it out for agency comments. Some of the agency comments I'll just briefly go over. On the Fire & Public Safety there is concern over the use of unpermitted structures. There needs to be a provision in which buildings used for the activity show approved paperwork with regards to their uses.

With regards to DSA we didn't get any comments in time. I did talk with them and their main concern is that whatever for the overnight accommodations that it follows the same provision that how B&Bs and STRHs so that it being used within a single-family dwelling so that they can still use that same building class for that. And so they have certain rules that would allow for that and right now they have it for B&Bs and STRHs.

As far as Department of Health, Maui again your standard comments saying to have them comply with any making or selling of food, comply with Hawaii Administrative Rules, Title 11, Chapter 50 for food safety.

Two big, I guess the crux in the matter as far as comments came in from Office of Hawaiian Affairs, and then you also, I passed out today from the Office of Planning, also their comments came in late. I was not able to incorporate it, but they under the same line of Office of Hawaiian Planning. The gist is the County's definition doesn't match up with the State's definition on the State side. The State side has a little more clear and stringent upon that it's has to be a commercial or farming operation. This is not just I planted some...I put some plants in the ground and I'm a farm. There's a commercial bonafide farm activity going. And so the way the County's definition is it lowers that threshold that it's no longer with the State law. And so from our aspect we would still require a State Special Use Permit even if this had passed. So we don't think that it would work in that aspect of meeting the criteria of the State law.

Some of the other concerns with regards to the drafting besides not meeting what a bonafide farm or commercial agricultural operation is and I go over that and summarize that and that basically is echoed by Office of Planning and Office of Hawaiian Affairs and those are Pages 3...2 and 3.

Other concerns with regards to specifics, specific sections primarily concerns for the Director because he's the one that's gonna be stuck with enforcing this. On Section .077 of Section C, 8B, if the agricultural activity is...(inaudible)...by private easement, the Planning Director shall have the discretion to require additional information documenting the easement and improvements as necessary to support the agricultural tourism activities.

I'm not sure if the Director is gonna be...there's no criteria. I don't think the Planning Department as far as roadway safety would be the best one to determine whether a gravel road is sufficient based on what you've proposed or what you're registering for your agricultural activity or if your road should be upgraded to, you know, pavement and whatnot. I think there's a little difficulty in there as far as enforcement and requirements. Enforcement, the section indicates that it's a violation if the operator does not register and the department is to maintain a list of registered agricultural tourism activities. It further states that a report by the Director shall be given to the Planning Commission. I'm not sure what the purposes of the registration report is for. Again, this is a registration. If it's, again, just a registration we're not sure what will the commission do with it. Would you accept it, would you reject it? Would you then, or would you question some of the individual registrations? It's kinda unclear as to what the purpose is. Again, we don't mind doing the work but we wanna have a reason behind doing the work.

This section requires...another confusing section is parking. It's entitled, Parking and it goes

over the section that requires parking be provided pursuant to 19.36A and then indicates if the parking is violated on three separate occasions in a year the agricultural tourism activity will result in suspension until Special Use Permit is obtained. We just, again, found this language inappropriate and confusing especially in that section so we're not sure what the...we understand that there's a parking requirement, we're just unclear as to why they're establishing that type of violation or that thing.

Again, we suppose the concept of supporting farmers and supporting legitimate farmers and I think that's echoed by both Office of Planning and Office of Hawaiian Affairs. The bill just doesn't match up. I think there needs to be some tweaks done by the County Council to bring it more in line with the State law that enacted or that authorized agricultural tourism for it to meet the intent and to be truly supportive of bonafide farms.

So the Department at this time does not support the bill. The language of the bill is inconsistent with State law. Although the proposal is for operators to only register with the Department it puts the Department in an awkward position of having to confirm the accuracy of the information. At best, the bill would create confusion with the general public and the land owners as the Department would still require a State Special Use Permit to conduct such activities. Again, if you list it in the County Code people think that's all they need and that's okay, and then they find out later you need to get another permit. It's better to be just consistent so you don't create this confusion.

For the bill to be consistent with State law agricultural tourism would need to be accessory and secondary to a principle agriculture use. Further the use would need to be accessory to a commercial farming operation as defined by HRS 165-2. Again, the Commission has the following options: Recommend approval of the bill to the Maui County Council. Recommend approval of the bill with amendments to the Maui County Council. Recommend denial of the proposed bill to the Maui County Council or vote to defer action on the proposed bill in order to gather more specific information.

Chair Tsai: Thank you, Joe.

a) Public Hearing

Chair Tsai: And now at this point, we're going to open the floor for public testimony. Please identify yourself, you have three minutes.

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

Mr. Mike Moran: Aloha Chair. Welcome new Commissioners and veterans. Mike Moran for the Kihei Community Association on Item F-3, the Reso. 16-09 on ag tourism. As we responded to a request in writing to this resolution inquiry for comment from the Department back on February 28th you possibly may have that in your file. Basically we read the reso and concluded that there were sufficient safeguards expressed within to ensure against abuse from "fake farmers" simply looking for low tax rates and attempting to conduct non-farming businesses while not really farming. Therefore we are in support because we believe it is very important to promote

policies that will help continue to make farming viable in our County. True ag tourism is a good thing for our community. Mahalo.

Vice-Chairperson Tsai: Thank you, Mike. Any questions from the Commission? I have a signup sheet here. Simon Russell?

Mr. Simon Russell: Good morning, Mr. Director, Vice-Chair Tsai, Members of the Committee. My pleasure to come before you. I don't think I've come before ever, but I am. I am the president of the local chapter—

Vice-Chair Tsai: Please identify yourself?

Mr. Russell: Yeah, my name is Simon Russell. I'm President of the Haleakala Chapter of the Farmers Union here on Maui and also the Legislative Community Chairman for the State Chapter. That's the capacity I'm speaking to you in this morning. Unrelated I have another hat it's the Maui County representative to the State Board of Agriculture. So Council Resolution 16-01 and 16-09 have direct impact on our ag communities and I have submitted to you our testimony, written testimony that is in support of those. Certainly they may need to be amended or massaged but I would urge you please to move these, move these through your committee so that farmers can benefit. I know that me personally I've spent tens of thousands of dollars trucking compost to my farm. I'm farming 40 acres on the north shore and every truckload and I'm using about 60 tons per acre cost me a \$175 to truck it and usually it's from Central Maui or you know, other areas that are selling compost. So it's really kind of urgent that farmers can cycle compost regionally you know especially in Hana and in Haiku. Central Maui already has one. Lahaina those guys are trucking from Central Maui all the way to Lahaina. That's thousands and thousands of dollars every year. And so we need to create a legal framework for people to compost regionally.

And then there's the scary issue of the fire ants moving in compost around the island. We certainly want to prevent that from getting any worse. Who knows what's happening. So far I really don't, but to my understanding fire ants were in Hana and then a lot of green waste moved the Central Maui landfill from Hana I think that situation's been fixed.

The other issue and it's in our testimony here, the Farmer's Union does support agri tourism. We have membership adopted policies to support that and I won't go into all that. It's in your, in our written testimony in front of you. But you know speaking as a farmer and long-time working in the Ag District, my family farm, my mom chose not to do agri tourism and I'm from Kauai, and back when this whole vacation rental thing started I was encouraging my mother to do that so that she could, you know, support her income and you know, keep farming, but she chose not to and then globalization kind of came into Hawaii with Walmart, Kmart, Home Depot, a lot of other big commercial nursery operations, we were nursery people and we lost our source of income because we were outcompeted by the big box stores. So I think agri tourism gives a tool to bonafide farmers to augment their income with you know tourism dollars and conversely if folks from the mainland are doing agri tourism operations here in the STRH possibly we could look at import replacement with strong regulations in the Ag District that kinda look at what they're doing. Making sure they—

Vice-Chair Tsai: Can you please wrap up?

Mr. Russell: So my time's up. I just wanted to voice my support and I won't be back at 1:00 so thank you for listening.

Vice-Chair Tsai: Thank you. Any questions from the Commission? Thank you, Simon. Vincent Mina? Anyone else wish to testify at this point? Please come forward, identify yourself, you have three minutes please.

Mr. Kimokeo Kapahulehua: Good morning Commissioners. My name is Kimokeo Kapahulehua. I'm here to support that resolution agriculture tourism business and like the gentleman before me, have an income for our agriculture farmers in a diversified manner to help them out is the way to go. But in addition I wanted to add to that that we have many, many thousands and thousands of students been invited by agriculture farmers in tourism and how to grow and plant, like you said, and the compost and how to do that so besides agriculture tourism we have a lotta educational program that gets out through this venues that they don't have in school and get professional education by the actual farmers on Maui how to plant and how to grow and where to go on this and imagine that for them to do that we need a passage of way to get to their farms. Our educational institutions needs to make sure that we have some sanitary reasons out there and some bathrooms. So they go through some extensive outreach to help our children on Maui so I wanna support that that agriculture tourism bill. So I appreciate for you give me this time this morning. Mahalo.

Chair Tsai: Questions? Thank you.

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

Ms. Cindy Biggers: Yes, aloha I'm Cindy Biggers. Aloha Commission.

Mr. Higashi: Speak into the mic.

Ms. Biggers: Chairperson and Director. This is short and sweet. I'm really glad that we're looking at the ag resolution again. The only thing that caught my eye and really screamed at me was the \$35,000 a year threshold and I've watched people go through a lot trying to reach a threshold. Certain properties years ago were given this amount for a B&B Permit and they had to sometimes sell every single plant on the property to even get close to this. If you're starting out with a two-acre lot of Grade D soil trying to build a business for your family, yeah I'm thinking of young people starting out, this is a really tough number and I think that there might be a little bit of reason to reconsider this number. I'm completely in support of bonafide farming and commercial agricultural before anything else, but I just think this is a high number, a high mark and that's really all I have to say. Thank you.

Chair Tsai: Thank you.

Mr. Jonathan Beutler: Aloha, my name is Jonathan Beutler. I'm the farm manager of Hale Akua

Garden Farm. We're a seven-acre commercial certified organic fruit and vegetable farm in Huelo. We're also a 501(c)(3) nonprofit. Our mission is that we're committed to empowering our students to incorporate sustainability into their lives. Some of our students have never had the opportunity ever to see a working farm or connect with a process of growing food. We're really eager to expand our opportunities to share our operation and practices, the improvement of our whole food system.

Before beginning my career as a full-time farmer and educator I spent several years working in economic development in communities suffering from the loss of rural character, the loss of services, the loss of education opportunities. As for farming became and is becoming a growing struggle to survive financially. And again and again we've learned that diversifying revenue streams is essential for managing risks in unpredictable farming business.

Agri tourism we know can be a really critical piece of maintaining profitability for farms. And a time that consuming are really yearning for opportunities to reconnect with a source of food on their tables.

The benefits of agri tourism as recognized in the resolution don't really end at the farm's profit statements and the opportunity to share the rural character of our landscape incentivizes the maintenance and stewarding of beautiful places and diverse ecosystems. I think this is particularly true in Maui where striking that gentle balance between development, tourism, and maintaining diverse, unique ecosystems and beautiful place is a struggle.

I support the resolution but I also think that should give really careful consideration to the \$35,000 threshold used to evaluate the bonafide nature of a farming operation. I work on, I manage one farm, I own another farm, both of our farms meet that threshold, but I know that during the developing years it would not have been really an easy number to accomplish especially when farming's a very high risk venture and takes a lot of investment capital to get started especially if you need to start from ground one meeting a pretty high number. I also think that farming being a really high risk venture it would be sort of unconscionable to strip an existing farm of the ability to operate as an ag tourism destination in the case of a flood or a crop failure or some other circumstance that lead them to drop below the \$35,000 threshold when they're already operating knowing that agri tourism is a strategy to diversify income to manage exactly that kind of risk. That's all I have.

Chair Tsai: Anyone else wish to testify on this agenda item? Please come forward, identify yourself, you have three minutes.

Mr. Tom Croly: Aloha, Commission. I'm Tom Croly and I'm speaking on my own behalf here. Just to give you a little bit of background 'cause I've been following this even though I've not been involved in any way with this bill, but at the State level a law was passed a number of years back that essentially granted Maui County exclusively the ability to regulate activities in the Agricultural District independent of the agricultural tourism activities in the Agricultural District independent of the State oversight provided that the County passed an Agricultural Tourism Ordinance and that's what's before you today. So this is enabling a law that was passed at the State level and saying okay, this is our agricultural tourism ordinance and that

allows the State to then bypass or allows the County to bypass the oversight of the State on these activities in this area. So whether this bill is ready for prime time or not, I'm sure that your input is going to be valuable on what you would like to see in such regulation. And we all know that our Agricultural District is full of real farming and farming that's being done to meet the criteria of having a house in the Agricultural District. We can't deny it. We have 10,000 homes in the Agricultural District. Now supposedly we have 10,000 farms okay. But we know, you know, you laugh but in order for those homes to exist, we had to approve a farm plan and in order for that second dwelling if they have a second dwelling to be there we have to show that that farm plan has been implemented. And as you guys see when short-term rental permits come before you we show that the farm plan has been implemented. Now those are farms but are those the criteria that you want to set up for this bill? And that's kinda the discussion that I hope that you have today. Again, I haven't been involved in this. I'm here primarily to make sure that the process that we currently have that people are going through for to get short-term rental permits will continue to exist. That we have a process. You guys are part of that process. We want that process to continue. This may be something separate from that and I think you have to define what those differences are going to be in this bill. Okay, thank you.

Chair Tsai: Thank you, Tom. Anyone else wish to testify? Seeing none, public testimony is closed. Questions from the Commission? Commissioner Robinson?

Mr. Robinson: Question, botanical gardens, zoos, how would those be classified or how are they classified now?

Mr. Alueta: Botanical gardens would be allowed. Zoos, I'm not sure. I'm not sure...I don't have the Code book. We did grant Special Use Permits for petting zoos in the past. Surfing Goat is a real...that's a real agriculture, they're making goat cheese. They have a commercial activity. So they...(inaudible)...qualify.

Mr. Robinson: For now. You're saying if they were to move, you know you never know for the future. And botanical gardens they're not selling, they're not selling open farm stuff, so—

Mr. Alueta: Right.

Mr. Robinson: --they exempt from that? Would they be exempt from the dollar amount that they produce? Because they're strictly a tourism element there.

Mr. Alueta: Most of those do get a Special Use Permit.

Mr. Robinson: But would that...they not need a Special Use Permit? ..(inaudible)...you know with that dollar amount.

Mr. Alueta: I'm not sure where they're getting the dollar amount from. There is no dollar amount. That's the problem. If there was a \$35,000 amount, I'd be oh great, no problem. That's like a real farm, but there is...the dollar amount they're making reference to I think they're confusing the third ag dwelling on lots that are greater than five acres or more you can get a third farm dwelling if you show that you have \$35,000 in income. But so, the provisions over the

amount that they're testifying on does not exist in this bill. If it did, I think we wouldn't have a problem.

Chair Tsai: Any other questions? Commissioner Hedani?

Mr. Hedani: Yes, I wanted to concur with the comments that came in from the Office of State Planning on this particular bill especially regarding the definitions and the concept that landscaping could be considered an agricultural activity based on the language that's contained in the bill.

Chair Tsai: Good point. Director?

Mr. Spence: The question was I remember petting zoos. There was another...(inaudible)...botanical garden. Botanical garden, okay under our Zoning Code, 19.30A, you have permitted uses, you have accessory uses. Botanical gardens and petting zoos are considered accessory uses. So you have...it would be accessory to whatever farming activities you have. And you can just do those and not have to get any kind of special permit or register them or anything like that. A full-blown zoo, if you want zebras, and lions, and giraffes, and all that, that's a little bit different story.

Mr. Robinson: Well I'm asking this not as an accessory as a money making. Their money making comes from the petting zoo and their money makings comes from the tours from the botanical it's not a accessory to a working farm.

Mr. Spence: It's supposed to be accessory to some kind of agricultural activity on the property.

Mr. Robinson: So a botanical garden is not considered an agricultural activity if you have only...only tours.

Mr. Spence: Yeah, not all by itself. It's supposed to accessory to some agricultural whether he's growing...like ...(inaudible)...Gardens they have a major ulu farm, you know, with all the different species or varieties from all over the world that's big use there. You know they grow breadfruit there. So as a part of that it's a botanical garden...(inaudible)...they can conduct tours and all that.

Mr. Alueta: Yeah, I mean they're growing and selling breadfruit and so...

Mr. Spence: ...(inaudible)...little bit. Mostly it's for the preservation of all those different varieties.

Mr. Alueta: Right.

Mr. Robinson: But what I'm saying, what if you just wanted to have tourism that's just a botanical garden?

Mr. Alueta: You'd need a Special Use Permit.

Mr. Robinson: Special Use Permit?

Mr. Alueta: Right.

Mr. Spence: It's supposed to be accessory.

Mr. Robinson: Because there are, there are agriculture that take five years to develop the plantings but if you want to have a tourism aspect of it to keep your business going until your fruits come in, you know, and that's where that limit is you'd have a certain size of a lot has to be. Okay, now is that just for a third dwelling or is that just for any size that's over three acres or five acres that you said?

Mr. Alueta: Yeah, that \$35,000 number is coming from for third farm dwelling lots greater than five acres. They have to have an income. There's three criterias and they have to meet two of them. And so, one of the criteria is \$35,000 in gross ...(inaudible)...

Mr. Robinson: Okay, so we have the Kaanapali coffee fields that has homes that are part of their lease where they outsource it to a second party. And so if it's over three acres are they gonna be entitled to...are they gonna be caught in this snare of not having that much money from it. It's not from them. It's leased out so does he grab the lease of those 47 or 57 lots and then that becomes one, one ...(inaudible)...month.

Mr. Alueta: That's a totally separate issue from what this bill is dealing with.

Mr. Robinson: Well, it's ag tourism, right. So it's a coffee fields and they run tours through the coffee fields—

Mr. Alueta: Correct.

Mr. Robinson: But they're not generating that much money even though those lots are that size. We're saying that they have to hit threshold of \$35,000.

Mr. Alueta: Correct. The ag tourism...okay, \$35,000 has nothing to do with ag tourism.

Mr. Robinson: Right.

Mr. Alueta: Okay, that's just for that. But as far as like Kaanapali Coffee doing tours, yeah, they're doing millions of dollars in sales so they're doing...they can do tours. Yes, they're doing...gross sales. Not saying you're making money, you're just saying you have gross sales, okay. I have a business and I have lots of sales, I'm not making any money but it's the same concept you know. It's like they have a legitimate farm, commercial farm activity. They're in it to make money, they're selling a lot of coffee and they're conducting tours as part of their operation. As to whether tours, I'm not sure if the...I don't think the tours generate more money than the coffee, but I think it helps.

Mr. Robinson: But there's...but it's a lease for all the properties but they're individualized owners. So one owner has four acres but only two acres of it is coffee.

Mr. Alueta: Correct.

Mr. Robinson: Does he have to show that there's coffee, there's a \$35,000 benefit from his parcel when it's part of a whole co-op?

Mr. Alueta: It's a good question. We never...we've never questioned Kaanapali Coffee. Not all of their operation is...I don't believe all of their operation is tied into...a large portion of it, it is tied in with the homes, but I don't know the complete financial arrangements.

Mr. Spence: Like Joe said we've never had to consider that before, but it's something that I think Sydney brought up in her testimony. We have some really old regulations for new ideas and like Kaanapali Coffee doesn't quite fit in the mold because we have so many lots it's one farm with a whole bunch of lots ...(inaudible)...We would consider it one farm, but it doesn't quite fit all the definitions...(inaudible)...

Mr. Alueta: It was a way to keep...I mean we did it to where that specific operation again off topic, we did a tour of that operation and it is a unique financial way to keep the farm viable and to keep the fields viable for Kaanapali Coffee. And because Kimo didn't have to buy the land or have a long...his lease of the land was favorable. So that was the way they could do it. But as far as this ordinance in relationship to the State law and it's tied into allowing for bonafide farms to do tourism that's fine I think and that's that's in the right step. This ordinance needs to be slightly tweaked as I said to be consistent with that State law so that we could say, hey this is consistent with the State law, ...(inaudible)...adopted an ag tourism bill that would allow for bonafide farms to conduct ag tourism operations. I think...I mean, we have lots of small farms that are true commercial operators. I mean, the McCords Christmas tree and botanical I mean that's true commercial farm and they could conduct tours and they probably do and then...and there's a lot of farmers that don't wanna deal with this. They are farming and don't want to. You have a lot of taro farmers out there, who have small taro farmers, majority of the land and they're harvesting and making some money off it and tour companies would love to be able to come and visit and learn about raising of kalo and the history of that. I think that gives...that gives those true commercial farmers an opportunity. But as Commissioner Hedani pointed out from the comments from Office of Planning, you could have a very nice landscaped house and property and conduct tours of a very nice landscaped house and property and do weddings, conventions, I mean there's not really much farming or commercial. This is, I think the original State bill was intended to help supplement farmers that are producing food, producing a crop, producing an economically viable material to help stimulate the economy.

Chair Tsai: Thank you, Joe. Can I get a motion please?

Vice Chair Medeiros: I don't think this bill is ready for us to pass. It needs more work. I have a problem with gentleman farmers who landscape their farms and...under the guise of being a farm so that they can run their TVR. The TVRs wind up becoming the moneymaker. I've heard people say, oh yes but we have to start and the first three years the farms don't make money,

you know, and we need something to supplement us until we get there. Well, my question is without regulation, without regulations like the State has how are we gonna stop farmers from saying, oh well we're making enough money with the TVR so we really don't have to become a farm down the road. I'm sure that there'll be honest people out there, but there are also some very dishonest people out there, you know. And I gotta support the special use permit you know until they come up with a better plan. One of the recommendations was sending it back?

Mr. Alueta: Yeah, you can send it back either as you don't recommend approval of it. You could recommend amendments to the bill. I you can recommend denial or you can just recommend it as approved or you could vote to defer if you want more information. And I think the discussion was around that you felt this needed more work so you weren't supportive of it.

Vice Chair Medeiros: Yeah.

Mr. Alueta: And you'd rather have Council—

Vice Chair Medeiros: Send it back, work on it some more. I mean it's nothing that can't be fixed. Send me something that's workable.

Chair Tsai: So you want to repeat that Commissioner Medeiros?

Vice Chair Medeiros: Okay I move to send it back to deny and send it back for more work.

Mr. Hedani: Second.

Vice Chair Medeiros: The same thing we did with the last one.

Chair Tsai: Second by Commissioner Hedani. Specific reasons why.

Mr. Robinson: I don't like the, I don't like the threshold of \$35,000 as part of the reason, as one of them to send it back. I think it's, I think it's too high. I think it's...I think we should encourage people to farm. I know some farmers that have two to three acres and don't even sell any of their fruit, they trade. Some people just use it for their own consumption. I don't think every farm has to be a money producing farm. I think it just has to be a house with a farm and if they wanna go to a vacation rental or do some other type of use for it then they'll come to this board and they'll ask for a special use permit.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: I think when we send the bill back to the Council we should you know indicate that the Department has all of these concerns with the bill that haven't been addressed.

Chair Tsai: Exactly.

Mr. Hedani: The conflict with State law, the letter that came from the Office of State Planning and their concerns, the concerns that were brought up by the Office of Hawaiian Affairs.

Everybody is in favor of agriculture and the concern that I have is we're losing agriculture. You know, we've lost pineapple for the most part, we've lost sugar for the most part. Coffee is there and some of it is successful like Kaanapali Farms sells everything that they can produce. But tourism as an industry is overrunning everything. I mean it's overrunning our residential areas. It's overrunning our agricultural areas. It's becoming the be all and end all of all things and it's like standing on one leg forever. You're not gonna be able to do it forever.

Chair Tsai: Commissioner Medeiros?

Vice Chair Medeiros: Yeah, I'd like it worked on to the point where as you were saying they're gonna have to go and get a special use permit anyway, you know, so come up with a solution where they don't have to go and get one. 'Cause what you're doing is you're trying to go around getting a special use permit and wind up having to get one anyway.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: I think the other think the other thing that I think the State, Office of State of Planning pointed out that's important is that the definition of agricultural conservation which they recommended be taken out of the definition is something that should be seriously considered where you don't have to produce everything, you don't have to grow anything, you don't have to sell anything. You can just have your house and have fallow land and it would qualify as a farm and that's like no agriculture at all.

Mr. Alueta: So if I can Mr. Chair, right now I hear that the Commission recommend denial and that the County Council note the Department's comments as well as the agency comments in their redrafting of the bill.

Chair Tsai: I think we have an additional comment regarding the threshold?

Mr. Alueta: Correct. The \$35,000.

Mr. Robinson: That was State?

Mr. Alueta: No. Again, the \$35,000 doesn't exist. That only exists for the third farm dwelling. It had nothing to do with the ag tourism threshold but we can put that in as comments, but it is just not part of this bill.

Mr. Robinson: It's not, I'm sorry.

Mr. Alueta: I've looked. I haven't seen it.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: One other question, Joe. Is the ag tourism bill designed to circumvent the TVR bill?

Mr. Alueta: I don't know. I think that the—

Mr. Hedani: Or does it supplement the TVR bill where—

Mr. Alueta: I think that because it was a registration and then also...I'm not sure if there was a provision in there that said you had to either get...STRH bill I did not see that anywhere.

Ms. Thomson: It's on Page 4, it's F1. Producer must submit a short-term rental home permit approved, et cetera.

Mr. Alueta: Thank you, yes. So the provision basically if they had met...if they had met the State provision and the County provision then they would not need to have a state special use permit. And I think that they...from again, to summarize the Department's position was that they set the threshold so low that it didn't meet the State provision therefore we're gonna require a state special use permit. If they raise the standard to match what the State is indicating it needs to be that you have to a bonafide commercial farm then you would avoid doing a state special use permit in addition to your STRH. You would just get your STRH Permit and then you would...and if you qualified under the State and County provision of ag tourism then you wouldn't need to go through the state special use permit process. But from our position, OP's position and Office of Hawaiian Affairs is that the threshold was set so low it doesn't meet that State stand therefore, a special use permit is gonna be required by us.

Chair Tsai: Okay. Everyone satisfied with the motion? Call for a vote. Everyone in favor of the motion—

Mr. Robinson: Say the motion please.

Chair Tsai: Again?

Mr. Spence: The motion is to recommend denial to the County Council and that it be I guess go back to the Committee and get worked on.

Chair Tsai: Based on the comments from the Department.

Mr. Alueta: To note the comments from the Department as well as the agencies that reviewed it.

Chair Tsai: Right.

Mr. Spence: And the comments of the Commission.

Vice Chair Medeiros: Yeah, that's what I said.

Chair Tsai: All in favor?

Mr. Spence: That's seven ayes.

Chair Tsai: Pass.

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

**VOTED: To Recommend Denial to the County Council and Recommend Proposed Bill to be Sent Back to Committee to be Worked On.
(Assenting - J. Medeiros, W. Hedani, L. Hudson, K. Robinson,
S. Duvauchelle, S. Castro, R. Higashi)
(Excused - L. Carnicelli)**

Mr. Robinson: It's not always like this Stephen.

Chair Tsai: Yeah, sometimes it's worse.

Mr. Spence: Commissioners, we're on your fourth public hearing item this afternoon. Mr. Brian MacFarland of W-ADP MAUI requesting an SMA Permit for a proposed retail and restaurant buildings at Maui Mall and Staff Planner is Candace Thackerson.

- 4. MR. BRIAN MACFARLAND of W-ADP MAUI requesting a Special Management Area Use Permit the Proposed Retail and Restaurant Buildings and Renovations at Maui Mall Project including the development of a 10,000 square foot retail building and 5,000 sq. ft. restaurant/retail building, renovation of existing Maui Mall lobby and lounge space, 3,600 sq. ft. storage addition at Whole Foods Market, the addition of 30 new parking spaces, and related site and landscaping improvements at 70 E. Kaahumanu Avenue, TMK: 3-7-009: 004 (por.), Kahului, Island of Maui. (SM1 2015/0008) (C. Thackerson)**

Ms. Candace Thackerson: So the item before you is to request a Special Management Area Use Permit for the proposed retail and restaurant buildings and renovations at the Maui Mall project including the development of 10,000 square feet retail building...10,000 square foot retail building and a 5,000 square foot restaurant/retail building as well as the addition of 3,600 at the Whole Foods Market and the addition of 30 new parking spaces and related site and landscaping improvements at 70 East Kaahumanu Avenue. You can hit the lights if you want to.

What's been removed from the project that's agendized here is the renovation of the existing Maui Mall lobby and lounge space. That was done separately under a different SMX permit 'cause it was just a minor one that we could do administratively. So we're just looking at the two buildings, the 10,000 square foot building, the 5,000 square foot building and the additional storage space to Whole Foods as well as the parking lot. The applicant's here and they have prepared a short presentation. So in the effort of moving things along we can get started with that if that's okay with you.

Chair Tsai: Thank you, Candace.

Ms. Marissa Fujimoto: Good afternoon Chair Tsai, Vice-Chair Medeiros and Commissioners. Thank you for taking the time to be here today. My name is Marissa Fujimoto and I'll be sharing information on the proposed retail and restaurant buildings and renovations at the Maui Mall and respectfully request the Planning Commission's approval on the Special Management Area Use Permit for the project.

The other members of our project team who are here today are Brian MacFarland from WADP-MAUI, Anthony Riecke-Gonzalez from Riecke, Sunnland, Kono Architects, Kevin Tanaka from K. Takana Landscape Architecture, Mark Matsuda from Otomo Engineering, Phillip Rowell from Phillip Rowell and Associates, and Karlynn Fukuda also from Munekiyo Hiraga.

Most of you are probably familiar with the Maui Mall. It's located between Kaahumanu Avenue and Kamehameha Avenue at the Puunene Avenue Intersections. Some of the landmarks in the surrounding area include Kahului Shopping Center, Kahului Harbor and Kanaha Pond. The Mall has three accesses on Kaahumanu Avenues, three on Kamehameha and two accesses on Puunene.

Proposed improvements as Candace mentioned include two new buildings, a 10,000 square foot retail building and a 5,000 square foot restaurant or retail building which would be built within existing parking lot. It also includes additional storage areas for Whole Foods, 30 new parking stalls and related landscaping and utility improvements. The off street parking requirements would continue to be met, and as Candace mentioned the original SMA application also included renovations to the existing Mall but they have been removed from the application. And as noted here construction of the buildings may be phased.

Here's the site plan. The 10,000 square foot building would be located behind American Savings Bank next to T.J. Max. The new 5,000 square foot building would be located by the Regal Cinemas Movie Theater and the new parking spaces would be up near Whole Foods.

These are photos of the proposed location of the new 10,000 square foot building. Photo 1 on the left is from the Kamehameha Avenue entrance and Photo 2 on the right is from T. J. Max. Here are photos of the proposed location of the 5,000 square foot restaurant retail building. Photo 3 on the left was taken from across Kamehameha Avenue at Hoohana Street, and Photo 4 on the right was taken near the Kamehameha Avenue entrance by Alamaha. Photo 5 on the left is the north facing view of the proposed Whole Food storage expansion and Photo 6 on the right is where the new 30 parking stalls would be added. And I will hand it over to Anthony Riecke-Gonzales to share about the building elevations and design.

Mr. Anthony Riecke- Gonzales: Good afternoon, Commissioners. My name is Anthony Riecke-Gonzales with Riecke Sunnland Kono Architects. I'm the architect on the project. We're proposing two new stand-alone buildings. The one that you see on the slide right here is a 10,000 square foot retail building to be located in the parking lot between the new T.J. Max and the back of the American Saving Bank building. It's split into several possible tenants spaces. You can see there's quite a few doors shown on the elevation. The elevation in the middle there is actually more of the back of the house with the trash and service area where the trellis

is shown on top of it. Both this building and the other building is under a height limit of 30 feet.

This is the second building which is a 5,000 square foot building. It is envisioned as a restaurant space, but we wanted to leave it open that it might also become a retail space depending on which tenant would take the building.

This is the building that we actually want to start right away. We actually already submitted building permits for it and it's not a stand-alone building it's an expansion to the warehouse area at Whole Foods in the back. So I'm sure you saw the slide before, it's a little messy back there. They wanna tidy things up and put some of that storage space into a building. The building is proposed to be very similar to what's already there at the Maui Mall. The concrete block for the walls and then the roof overhangs and cornice to be painted to the similar color with the roof was repainted to. I'm gonna turn this back to Marissa right now and we'll maybe have the landscape architect come up and talk about his layout. Are there any questions before I go? No? Great.

Ms. Fujimoto: So here's the landscaping plan for the proposed improvements. The existing trees are shown in the background and the proposed new trees are the brighter ones that stand out a little more. All proposed landscaping would be consistent with the mall's existing landscape palette and will meet or exceed the County requirements.

Some project considerations. The proposed action is consistent with the Countywide Policy Plan, the Maui Island Plan, Wailuku-Kahului Community Plan and Maui County zoning designations. There's an approved archaeological monitoring plan for the two new buildings which the applicant will comply with. The subsurface drainage system is designed to accommodate the increase in runoff generated by the project and it meets the County storm water treatment requirements.

A traffic study was completed for the project and concluded that the level of service for study intersections would not be significantly impacted by the proposed project and the Maui Mall has existing water, sewer and utility improvements on site.

The project meets the SMA criteria. No impacts are expected to any recreational, historic, scenic and open space and marine resources as the project site has been used for commercial and retail purposes for 40 years. The proposed action is not adjacent to the ocean and is not anticipated to impact coastal ecosystems, coastal hazards or beach protection. And the proposed project will have positive economic impacts by providing construction and retail related employment.

Additional considerations. As noted previously the project site has been used for commercial retail purposes for over 40 years and is located within a commercial retail core. It's along an existing County bus route with pedestrian linkages and it's investment to refresh the mall. And so we respectfully request your approval of the Special Management Area Use Permit for the proposed retail and restaurant buildings and renovations at the Maui Mall and thank you for your consideration. Any questions?

a) Public Hearing

Chair Tsai: At this point I'm gonna open the floor for public testimony. Anyone wish to testify regarding this item, please come forward you have three minutes.

Mr. Keone Ball: Aloha Chair and Commissioners. My name is Keone Ball and I am here today to testify on the Maui Mall's application. I'm here because we have been a tenant of the Maui Mall through Carol Ball and Associates for over 20 years of the 40 years that it's been in existence so we've seen the exit of Woolworths, it turned into a theater. We've seen Star Market turn into a Whole Foods. We've seen them take concrete out and put other concrete in to make it a nicer place to be along with the fountain and the center court which all helps. As you know, we're in a competitive market in retail mall space and I always think of the Maui Mall as kind of the mom and pop of malls here on Maui. With that being said, we need to compete with the malls that are around the area as well as malls around the island.

The upgrades that you haven't seen that are done administratively are also mostly cosmetic but they are integral part of the beautification of the mall if you will and are much needed as the mall takes a beating where it's located next to the ocean it needs constant upkeep and care. So with that I hope that you all see in the favor of keeping the mall alive and well with the expansion of Whole Foods warehouse and the expansion of the other buildings. As you know, the Commission just recently approved the T.J. Maxx that has now been open for a year or two and seems to be helping the mall tremendously. Thank you.

Chair Tsai: Thanks, Keone.

Mr. Ball: Walk away slowly.

Chair Tsai: I have Alfredo Evangelista.

Mr. Alfredo Evangelista: Good afternoon, Members of the Commission. My name is Alfredo Evangelista. I'm here to support Maui Mall's Special Management Area Use Permit. By way of background, I did submit written testimony late Friday so I'm not sure if you all had the opportunity to read it. But for the last five years I've been the event chairperson for the Maui Fil Am Heritage Festival sponsored by the Maui Filipino Chamber of Commerce Foundation and we had pretty good successful event there and I'm speaking here individually because we have a process that the foundation has to go through to approve any testimony, but I think in my capacity as the Chairperson for the last five years I think I can say that this type of improvements would help other organizations that continues to have community events there because it will increase the traffic there and traffic is always important when you have festivals like ours because you need people to come there. You already have a built in traffic there that's why you have festivals there and we're happy that Maui Mall is improving themselves because it's important to always have additional type of retail space especially restaurant space because sometimes it's hard to eat at the same place at night when you have late meetings and looking for dessert and the only open that's late at night is Zippy's and you can only have so much of their pies and cakes for you know, weeks at a time. So that's just my personal view. So thank you very much for this time.

Chair Tsai: Thank you. Anyone else wish to testify regarding this agenda item? Seeing none, public testimony is closed. Questions from the Commission? Commissioner Robinson?

Mr. Robinson: I notice this doesn't have a EA is there...could you explain to me because it was a project it doesn't...is it exempt from it?

Mr. Spence: Right. There is no...there's no trigger for this project to require an EA.

Mr. Hudson: No I remember that. No County funds, no...(inaudible)...

Ms. Thackerson: Commissioner Robinson, if would like I can send you a list of our triggers for the EA? Do the Commissioners have that list?

Ms. Cua: They have it.

Ms. Thackerson: They have it. Okay.

Mr. Robinson: I guess my question is with traffic. So has there been any traffic studies done with the increased square footage of rent...the retail property?

Ms. Thackerson: So included...thank you for that question...included in your packet is the traffic study and a traffic analysis that was done by Phillip Rowell and Associates. Also this project was routed to 10 different government agencies including UDRB for a grand total of 11, one of them being State DOT because Puunene is a State highway as well. So that was sent to Public Works and Public Works gave their green light on the project. Rowena asked if she needed to be here. I said, I think we got it. I think we have it, 'cause I know that she has a budge meeting right now. And then State DOT also came back with some comments but there was no comments from any of the agencies that were so significant that we're able to either mitigate them or the applicant was not agreeable to make any changes which is usually how that works when we get the comments back we'll incorporate it into the project as part of the approval or put as conditions of approval on the recommendation.

Mr. Robinson: Okay.

Ms. Thackerson: So everything's...it's not gonna significantly affect the traffic to a point that it's gonna be so detrimental. We felt it would go against approving the SMA Permit.

Chair Tsai: Commissioner Hudson?

Mr. Hudson: A question regarding parking. I see that you're gonna have a total of 30 stalls, right? Is that 30 stalls more than what they have now because you're gonna be taking stalls to do this construction?

Ms. Thackerson: So our Zoning and Enforcement Division is the one that calculates out all the parking. So they will be losing a few stalls in creating the spaces, but let me go back to the site

plan, Okay, so by the new building...I wish I had a laser pointer...oh, okay, so there's new striping being done here as well as they're gonna restripe around the building you see so they do put one in in the spaces that are there but they also make use of the spaces, right of the new and the configuration, plus the 30 stalls, and did you wanna elaborate on the parking?

Ms. Karlynn Fukuda: Karlynn Fukuda of Munekiyo Hiraga. The other thing that I wanted to share Commissioner Hudson is that there is currently an excess amount of stalls on the site. I believe it's approximately 165 or 168 stalls and Anthony can correct me if I'm wrong, but...so there's a surplus right now of stalls that they have to meet their parking requirement or they're beyond their parking requirements. And so with the installation of the two new buildings what that's gonna take away from the parking stalls that are currently there as well as what the parking needs would be for the those two new buildings. The 30 additional stalls that are being proposed would provide for the cushion of additional excess stalls at the mall.

Mr. Hudson: How many stalls in total are gonna be lost?

Ms. Fukuda: I will defer to Anthony Riecke-Gonzales on that.

Mr. Riecke-Gonzales: Hello Commissioners. So right now we have 168 excess stalls. When the two new buildings are built we will have six excess stalls. So we're using a 162 of those. The 30-lot parking lot provision that we're putting in here is a buffer and the reason being is because this is a very large mall if you get say a retail tenant that's currently in there now switching out to a different tenant that has a more intensive use in parking we would need to have more parking stalls to be able to accommodate that. There's no anticipation of that right now but when you're a mall you want to be able to have a cushion. There's also because you know this is a mall there's literally I think it's about 30 or 40 different tenants. They all have a little slightly different calculation and it doesn't take much when a tenant does a tenant improvement for the Planning Department to have a little bit of a different interpretation on that space and say hey, you need one more stall. That can add up pretty quick. So that's why we're asking for as part of this SMA, we wanna have this extra 30 parking stalls to be able to increase our cushion after the two new buildings are built from 6 to 36. So that the mall would have the flexibility that if they do get a tenant that needs more parking stalls they'd be to be able to accommodate that.

Chair Tsai: Commissioner Higashi?

Mr. Higashi: Yeah, so in relationship to your parking area the new proposed parking stalls that you're gonna create is that the one that's adjacent to Wendy's restaurant?

Mr. Riecke-Gonzales: No. It's actually up where there's like...

Mr. Higashi: The one on the top.

Mr. Riecke-Gonzales: No, Wendy's is way down at the bottom right of the corner.

Mr. Higashi: ...(inaudible)...

Mr. Riecke-Gonzales: Yeah. So the new stalls are up there. Right now it's kind of a grass area between the Sails Surf Shop and the parking lot where Whole Foods is.

Mr. Higashi: I'm just trying to look at your configuration of the traffic flow in that particular parking area.

Mr. Riecke-Gonzales: So it's just...it's within that dashed line it would be...right now it's a grass area with a couple coconuts in it and that's what we would turn into the 30 parking stalls if we needed them.

Chair Tsai: Commissioner Hudson? Oh...

Mr. Higashi: Is that that Kaahumanu coming out on Hana Highway around the corner is where it is?

Mr. Riecke-Gonzales: Yes, that is correct, yes.

Chair Tsai: Commissioner Hudson?

Mr. Hudson: The project is gonna be phased. At what phase do you plan on doing the parking lot?

Mr. Riecke-Gonzales: Right now it would be if the parking is needed. And that would definitely be after the two buildings are built because until those two buildings are built there is a large excess of stalls on the mall right now.

Mr. Hudson: What's the time for your project assuming everything goes through? Because if your project is gonna go around Christmas time that's gonna create an unbelievable amount of havoc.

Mr. Riecke-Gonzales: Yeah, scheduling at Christmas time is always a problem. At this point, the only schedule we have that's really firm is for the Whole Foods expansion the warehouse and so that's actually supposed to be finished if everything goes well like this meeting right now by Christmas time. So in other words in December the contractors would hopefully be gone. There is no schedule right now that I know of for the buildings E and F, but you know this is more of a like five-year plan for the mall. So if this gets approved today, then within the next five years we would hope to build the buildings, the 5,000 square foot and the 10,000 square foot building. We don't even know which one would go first at this point.

Chair Tsai: Commissioner Hudson?

Mr. Hudson: Thank you. One last question. Was your comment saying that you might build the parking lot or you will build the parking lot?

Mr. Riecke-Gonzales: We would like the ability to build it if it's needed. That's why we're asking

for the approval.

Mr. Hudson: Who will determine if it's needed?

Mr. Riecke-Gonzales: The Maui Planning Department would determine it because of a use that's going into the mall saying that hey, you need more parking to be able to accommodate this use.

Mr. Hudson: Is that right?

Mr. Spence: That's correct.

Chair Tsai: Director?

Mr. Spence: The parking review is done in the Zoning and Enforcement Division when they review building permits and certificates of occupancy, those kinds of things and that's an administrative function.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Could you please go to the photograph that is showing the wholefoods area where the new building is gonna be located? So where we have that loading zoning currently and we have the recycling and all the staging area for all the goods that go into Whole Foods is that where the building's gonna be?

Mr. Riecke-Gonzales: Yes within the fence not outside the fence. So the building is inside the fence.

Mr. Robinson: So do you know what Whole Foods plans are to have their recycling and having their loading zone?

Mr. Riecke-Gonzales: So the loading zone and the recycling...well, the recycling actually will now be on the right side. If you look at the picture there's actually two containers there behind those green trash cans, those containers have gotta go away. We wanna put that stuff that's in those containers in a building that's what we're asking to do. And so the containers become a building, the trash cans get moved over to the right and where that, no truck, but—

Mr. Robinson: Forklift.

Mr. Riecke-Gonzales: --forklift, thank you, is right now there's actually two loading docks. One of those loading docks gets filled in and closed in as part of this work so that a lot of the stuff that now is currently kind of spread out all over the site can be stored with the building within that space.

Mr. Robinson: I actually deliver to Whole Foods and that loading dock area is used a lot.

Mr. Riecke-Gonzales: Oh yes it is.

Mr. Robinson: And with that becoming a building my concern is what structure are you gonna have to enclose because I know those, I believe those cans have to be enclosed if you're gonna put it on the side is it gonna be towards the driveway that it is there now? I mean, I understand you put the building there but I don't know where you're gonna move the trash cans 'cause I assume the trash cans aren't going to be in the building.

Mr. Riecke-Gonzales: No, they're not gonna be in the building. They're gonna be on the right side.

Mr. Robinson: And if you're taking away one of the, one of the loading dock lanes that's where also where you have your large trash can and compactor. So if that's gonna be filled in too...

Mr. Riecke-Gonzales: Well there's the large, the large compactor that's up on the dock that's gonna become actually within the building. That stays there in the corner.

Mr. Robinson: Okay.

Mr. Riecke-Gonzales: That's a Whole Foods decision. I mean that's where they wanted it. The trash cans that are on the outside of the building, they're going to go if you look at the picture right there on the right side of that fence there's still about a 60 x 60 foot area that isn't gonna get a building. It has a lot of containers in it right now. They're supposed to reduce that down to just two containers.

Mr. Robinson: Which comes to my second question if I can? I notice on your architecture that it's different than how it is currently on the side of that building where we have a pitch and eave and look you know, traditional and now it's just coming to a box and flat like it's a back of a building.

Mr. Riecke-Gonzales: Yes.

Mr. Robinson: So it's to where Whole Foods was kind of circular it's now a backend and now we're gonna have a back straight wall with the trash cans there.

Mr. Riecke-Gonzales: Well it's within their dock and closure so it's not visible to the public.

Mr. Robinson: The trash cans are gonna move into the loading dock?

Mr. Riecke-Gonzales: Not the loading dock, into the fenced area.

Mr. Robinson: So the fence isn't moving?

Mr. Riecke-Gonzales: No, fence is not moving. It's still there.

Mr. Robinson: It's not going to be...so it's a permanent structure. It's not a temporary

structure?

Mr. Riecke-Gonzales: The fence?

Mr. Robinson: Yeah.

Mr. Riecke-Gonzales: Yeah, the fence is...I mean, it's there now.

Mr. Robinson: I know, but usually fences are temporary until...I got you, okay.

Mr. Riecke-Gonzales: And you know it is a program requirement for them to be able to get the volume that they want because they actually want more volume to store stuff than what's in those containers right now. That's why it's a box that's higher so that they can stack stuff up with the forklift ...(inaudible)...

Mr. Robinson: So is that side gonna be more of like a big roll up door to where...

Mr. Riecke-Gonzales: There is. There'll be a 12-foot rolling door.

Mr. Robinson: The deliveries will actually be faster because you'll be able to put things away quicker than instead of just where it is right now?

Mr. Riecke-Gonzales: I mean, I'm not a representative...

Mr. Robinson: Theoretically, yeah, I'm just saying yeah, you know, with trucks backing up there there's gonna be more than one truck there at a time if that loading dock is gonna be...(inaudible)...

Mr. Riecke-Gonzales: Well, the idea is, you know, I'm sure if you deliver to Whole Foods now it's like their loading docks they actually fill it with stuff. The idea is Whole Food—

Mr. Robinson: It's a popular store and they—

Mr. Riecke-Gonzales: Oh, I know and so hopefully the idea here is they're gonna be a little bit more organized so that their one loading dock is always used as a loading dock and not a storage area and that's why the other loading dock which actually currently now almost is always a storage area but it's on a sloped floor and it's in a hole in the ground is gonna become more storage area within a building that they can put stuff and so that the loading dock that's left is always open for trucks to come and go rather than I think a lot of times what I've observed over there is you know, a truck will come because the rest of stuff is kinda filled up they'll put all that stuff on the loading dock. Now the next truck that comes it can't portal into the loading dock because there's stuff there so pretty soon it all starts to build out. So that's what we're trying to solve and give them more space.

Mr. Robinson: Thank you.

Chair Tsai: Thank you. Commissioner Higashi?

Mr. Higashi: Getting back to the—

Chair Tsai: Commissioner Higashi can you speak to the mic please? Thank you.

Mr. Higashi: Getting back to that parking diagram that you had. I'm just trying to get orientation. You have Kaahumanu on one side and you also have Kaahumanu on the bottom. Is that supposed to be Kamehameha Avenue or is that...

Mr. Riecke-Gonzales: That's actually...it is Kamehameha. Maybe there's a plan that it's mislabeled but it says there Kamehameha.

Mr. Higashi: Oh I see. I thought it was...(inaudible)... And then on that same premise what Commissioner Robinson was talking about since you're gonna extend the loading dock when you have those double semis coming how are they gonna be situated reversing into that area with the space that you have?

Mr. Riecke-Gonzales: Yeah, it is actually a fairly large space right where the words, "Whole Foods addition", that's a much larger paved area than you normally have and that's where they do their maneuvering and that's not changing. That area will still be available for them to maneuver in their trucks.

Mr. Higashi: So the semis will be able to reverse back with no problem with traffic?

Mr. Riecke-Gonzales: They're able to do it right now. The problem they have right now is when they get...when they start parking containers out there then it restricts the area. They're not gonna be allowed to do that anymore.

Mr. Higashi: Okay.

Chair Tsai: I have a question for the applicant. Your funding required for the \$10 million is that in place?

Mr. Brian MacFarland: Hi, Brian MacFarland, ...(inaudible)... Development. What was the question again please?

Chair Tsai: Your funding is in place?

Mr. MacFarland: Yes it is.

Chair Tsai: Ten million?

Mr. MacFarland: It is.

Chair Tsai: So there's nothing holding you up?

Mr. MacFarland: No, we're ready to go, and actually this is a Whole Foods request to do this obviously they want to improve their operations and their efficiencies so they're chomping at the bit to get started. And as Anthony said, I think we're in for building permit right now so our hope is that we start construction here in June and finish by the holidays.

Chair Tsai: Thank you. Commissioner Hedani?

Mr. Hedani: I'm not sure who this is for. Are they buildings set up for photo voltaic use?

Ms. Fukuda: They are flat roofed I know, that those are the parapets and Anthony correct me if I'm wrong but similar to the situation that we had and I can't remember if you were on the commission when we reviewed the TJ Maxx and the retail building that they had but that option will be set up for the future tenant. That will be our future tenant's decision as to whether they wanna put in PV.

Mr. Hedani: Okay, so the parapet I guess and Anthony question, the parapet is high enough to screen the photo voltaic from the surrounding area?

Mr. Riecke-Gonzales: Yes, that's correct, and there is actually quite a bit of flat roof area. It's about over 8,000 square feet on the 10,000-square foot building and it's about 3,000 square feet on the 5,000-square foot building. So there would be a lot of opportunity for that.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: I guess this is for Phil, a traffic question. Have the lights on Kaahumanu Avenue been synchronized? I know we keep talking about synchronizing the lights but I can never get the feeling that they're synchronized.

Mr. Phillip Rowell: Your question?

Mr. Hedani: Are the lights on Kaahumanu Avenue, you know, in the area synchronized?

Mr. Rowell: They're supposed to be.

Chair Tsai: Can you please identify yourself?

Mr. Rowell: The word from DOT is that they are synchronized.

Mr. Hedani: Okay, thank you.

Mr. Rowell: I'm Phillip Rowell, the traffic engineer.

Chair Tsai: Hold on Phil, we got another question for you. Commissioner Robinson?

Mr. Robinson: Hi Phil. Bank of Hawaii is my bank so...

Mr. Rowell: I didn't do that study.

Mr. Robinson: I got there quite a lot and I end up always having to take the right turn because the left turn lane from Kamehameha to Puunene is backed up all the way sometimes past the stop light and I looked on top of the study here and it showed that it was a F before the project and it's going to a big F after. And building's great, we love the mall, you know, increasing jobs, it's all great, but we wanna be able to get out of the mall without having to go onto Puunene Avenue.

Mr. Rowell: First of all, the Bank of Hawaii and the TJ Maxx were under construction when we did the counts for the study. That's one of the reasons why DOT asked us to update the TIAR after those were opened. So we've already done new traffic counts. We finished those counts last month. So there will be an updated traffic study. We will be looking at that other site. And my gut feeling we were talking about this earlier is that that's where most of the impact is gonna be from all these projects is that intersection. So it will be reevaluated.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Fantastic. So when it's reevaluated and we see that it's an F going to an F is the possible solution that you folks would add a longer turn lane to Puunene so that way you would increase the storage or...I mean, how do we improve it from an F?

Mr. Rowell: There are a number of possibilities. I remember when we were doing the traffic study for Kahului Town Center there was a improvement to widen the left turn from Kamehameha from one lane to two lanes and change the signal timing so that Puunene would operate a lot more efficiently. So there are some ways to increase the capacity but I don't really want to talk about lengthening left-turn pockets because the longer it is, the longer it takes to empty it out. So we really want to start looking at some widening to be able to shorten the turn time just to accommodate more vehicles.

Mr. Robinson: Thank you.

Chair Tsai: Commissioner Robinson if you look at the handout specific condition 7 addresses your concern regarding traffic. Any other questions? Recommendation from the Department please.

Ms. Thackerson: Subject to the 12 project conditions the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the April 12, 2016 meeting as its findings of fact, conclusions of law, decision and order and authorize the Director of Planning to transmit said decision and order on behalf of the Planning Commission.

Vice Chair Medeiros: Move to accept the recommendation.

Ms. Duvauchelle: Second.

Chair Tsai: Okay, moved by Commissioner Medeiros, seconded by Commissioner Duvauchelle. Discussion on the motion? Commissioner Robinson?

Mr. Robinson: Director?

Mr. Spence: Yes, sir.

Mr. Robinson: The condition for No. 7 is this a time sensitive issue because should the TIAR conclude that mitigation measures are required the applicant shall coordinate with SDOT on the implementation of said measures. Evidence of such shall be submitted to the Planning Department together with applicant's final compliance report. So if we wanna build now how is No. 7 they could go in through construction and while it's...until it's done we have a year...I mean he says Christmas they want to open. And it ain't really Whole Foods it's the one, it's the new building by TJ Maxx I think would be the issue not the Whole Food one.

Mr. Spence: Probably yes. Whatever the...traffic impact report will come up with recommendations based and it's not just...these recommendations just don't fall out of nowhere. There's actually standards that are set up by, oh God...they have their own kind of criteria and everything and what warrants left-turn lanes and how long it's supposed to be, five turn lanes, all that stuff. So this...once this report will be done...they can start construction on their building and if this TIAR says okay you need to lengthen your whichever turn lane a couple of car lengths, you know they can go ahead and do that while they're still building the building. And they won't get a C. O. until their final compliance report. So once they...once this is done they start construction and they build everything they have to go through each one of these conditions and tell us how they have complied with each one. If it says for this TIAR and it has to...they have to coordinate with State DOT we will require some kind of evidence that they have worked with DOT and that they're compliant with that. So it's not just gonna be added there, nothing will happen. We have to see that they've done ...(inaudible)...

Ms. Thackerson: It was also included in the analysis that they could move forward since they were gonna phase the project that they could move forward with the Whole Foods portion since that was just going to be storage and not really effect a lot of parking trips and counts so it did say that the timing of the construction improvements may be phased over time with the Whole Foods storage expansion likely to happen first. Prior to construction of the new building an updated traffic impact analysis report will be submitted to the State. So it was more that when those are gonna in and those trips are gonna be generated. So they would like to move forward with at least the Whole Foods portion. We can get started on that one.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Candace, this is a question basically for drainage for the center in itself because there's so many cars that are in the parking lot and all of the cars eventually drip oil, oil ends up on the pavements, gets washed in the rains down into the gutters, is there any remediation work contemplated for treating the water before it hits the ocean?

Ms. Thackerson: I would have to defer that to the applicant. The best that we had was probably just the drainage report being approved by Public Works. But I guess I can...you guys want to answer that?

Ms. Fukuda: Karlynn Fukuda of Munekiyo Hiraga. So Condition No. 6 of the recommendations notes that there has to be filtration measures and program and record for keeping inspection, maintenance and disposal of contaminated residuals. So you know this is the filtration system that in the past the Commission has made a standard comment I think to address you know petroleum and other contaminants.

Mr. Hedani: So the inlets themselves will be set up to intercept the petroleum products?

Ms. Fukuda: Right, that's my understanding.

Mr. Hedani: Fantastic.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: One last question. On the Whole Foods buildings your guys are gonna keep the fenced area why didn't we just make that all building instead of having a fence?

Mr. MacFarland: The primary purpose of the...oh, Brian MacFarland. The primary purpose of the expansion was just to facilitate these new coolers and freezers and to bring some better organization to the back of house there. So I don't think Whole Foods you know there's a point at which the expansion, I mean, maximizes their efficiency and they feel that's the right plan we have right now. And they also need the additional outdoor storage as well.

Mr. Robinson: I think the mall is looking great. I think you guys ...(inaudible)...great improvements. I do wish you guys kept the eave concept all the way around instead of doing that flat wall but that's for you guys. Thanks.

Chair Tsai: Okay, no other questions. We have a motion to approve as recommended by the Department. Let's call for a vote. All in favor of the motion raise your hand?

Mr. Spence: That's seven ayes.

Chair Tsai: Opposed? Seeing none, motion carries. Congratulations.

Ms. Fukuda: Thank you very much.

It was moved by Mr. Medeiros, seconded by Ms. Duvauchelle, then

**VOTED: To Approve the Special Management Area Use Permit as Recommended by the Department.
(Assenting - J. Medeiros, S. Duvauchelle, L. Hudson, K. Robinson, W. Hedani, S. Castro, R. Higashi)**

(Excused - L. Carnicelli)

Mr. Spence: Okay, Commissioners we are on your fifth public hearing item.

Ms. Duvauchelle excused herself at 4:32 p.m.

Chair Tsai: So just so the Commissioners know we have less than 15 minutes to close out two items here.

Mr. Spence: Commissioners we're here for your last public hearing Mr. Arturo Wesley and Ms. Tiare Roberson of Ulumalu Market LLC requesting a State Land Use Commission Special Use Permit and a Conditional Permit to open the neighborhood market at 4320 Hana Highway. We sort of have a little adjustment to the agenda. This particular building and this operation falls under the commercial agricultural building ordinance that was passed by Council six months ago, something like that, and this is the first time we have applied it. So in first looking at it we thought okay, this needs a special use permit and a conditional permit. Special use permit because it's over a 1,000 square feet and there's some things that need done by State law. And then on the second look after we did the staff report and everything we've read the ordinance a little bit differently and it turns out they don't need a conditional permit. All they need for this is a State Land Use Special Permit and so this is a good thing. So Ann will...Gina is the planner for this project. She cannot be here today so Ann is taking over.

5. MR. ARTURO WESLEY and MS. TIARE ROBERSON of ULUMALU MARKET LLC requesting a State Land Use Commission Special Use Permit and a Conditional Permit to re-open the neighborhood market and commercial agricultural structure as permitted under Ordinance No. 4246 in the State Agricultural District for property situated at 4320 Hana Highway, TMK: 2-8-002: 016, Haiku, Island of Maui. (SUP2 2014/0012) (CP 2014/0004) (G. Flammer)

Ms. Ann Cua: Thank you, Director. Mr. Chair, Members of the Commission just to add a little bit on what Will just mentioned. According to the ordinance like Will mentioned, this structure qualifies as a commercial agricultural structure. When a commercial agricultural structure exceeds the standards and requirements of the bill a County Special Use Permit is required. So there's state zoning and county zoning. We know for sure that they needed a State Special Permit all along that has not changed. The issue that changed is initially it was determined they needed a conditional permit but with the passage of this bill because they're exceeding let's see the square footage that's required, the percentage of display area that's required, because they want to exceed that the ordinance says, the County ordinance, this commercial ag structure ordinance is a County ordinance this ordinance says that they need County Special Use Permit. So for State zoning they need a State Special Permit, County zoning they need a County Special Use Permit.

The Ag District ordinance 19.30A state under Special Uses, the following uses and structures shall be permitted in the Ag District if a special use permit pursuant to 19.510 of this Title has been obtained except, except that if a use described in this section also requires a special

permit pursuant to Chapter 205. So that's a State Special Permit and if the land area of the subject parcel is 15 acres or less which in this case it's a little over two acres then the State Special Permit shall fulfill the requirements of this section or the County Special Use Permit.

Do you guys get that? So you have the requirement for the State Special Permit, the requirement for the County Special Use Permit but because the acreage of the parcel is less than 15 acres the State Special Permit covers the County Special Permit. So all they need is one permit. So which is a good thing. Yeah, yesterday afternoon when we realized this. So what we'd like to do is I'm going to have the applicant give you a presentation, their power point of the project. I'll come back on very briefly just highlight a couple of points and then we'll get onto recommendations and we'll be on our way. So with that I'd like to introduce Sean Lopez and he will take you through his awesome power point.

Mr. Sean Lopez: Hi my name is Sean Lopez. Good afternoon, thank you for your patience. We'll make this short and sweet and breeze through this and elaborate anything you guys need. So let's get right into it.

This is the map where we're at. Obviously we're out here in the North Shore Pauwela Haiku District. This is our site map, Ailainu, Hana Highway, Ulumalu, Upper Ulumalu and Lower Ulumalu. This is our building in question right there. There is a fire hydrant here and another fire hydrant there. The other thing is there's basically the main dwelling, accessory dwelling and the ag office.

This is the most recent Google Earth photo. This basically shows—

Mr. Higashi: Can you speak into the mic?

Mr. Lopez: Yes. This is the most recent photo. This is the building that we're discussing right now. Main dwelling, accessory dwelling and the office. Hana Highway and Ulumalu and then there's also the EMI ditch running behind.

Similar photo, older, this is about 2010 Ulumalu, Hana Highway. This is the lot right here. This shows before we took over the ownership and basically lot of the overgrowth and jungle taking over the property before we did the cleanup. Another bird's eye photo that actually shows the parcel, Hana Highway, Ulumalu. This is us right here this pizza shape. And quick now introduce you to Tiare Roberson.

Ms. Tiare Roberson: Hi, good afternoon. My name is Tiare Roberson. Thanks for your time. I don't wanna take too much of it so I'm just gonna be brief. This is our family and this is the heart and soul of this project. We have myself, my father who is partner, my partner. He is right here Arturo Wesley and he is a 35 plus year resident here on Maui and we have my father-in-law who is a 45-year resident who has lived two miles away on Haumana Road for the last 45 years. My husband who is not here he's with my kids which are the three in the front, my nephews and Sean Lopez who is our business partner and will be the manager of the store.

I was born and raised here on Maui. I have lived in the Peahi area for the last 20 years. Twenty

years ago when I moved out there I had a job doing tractor work about a mile away from the store. I know, don't ask. And I went every day lunch to the old Ulumalu Market and they had these amazing Cajun ono burgers and they were famous for them. The whole island, I don't know if you guys remember but the whole island would go for these Cajun ono burgers. And it was just a great little convenient quaint market and it was right next to my house and it was...I loved it. Over the years when it sold it kinda went a little bit downhill from there and I just remember driving by every day and just wishing that we could reopen it into what I remember and what I loved, and now fast forward a couple years ago when we were able to purchase the property and I do have notes...I'm not going...I didn't do any...I'm not going through any of them, but you know with a lot of work with these people right here, my family and my friends, I have the kids out there just raking, digging holes, everything. So we did a lot of work, a lot of work on this property, a lot hard sweat has gone into it and we did about 12, 30-yard dumpster loads of trash and just so much clean up and I can't even tell you how much work has gone into this property to make it what it is today. And we're really proud of it and I think we did a great job, and I've been in close contact with our neighbors and our community and I've been talking to them all and they call can't wait for it to open. They you know talk about going and getting treats with their grandkids and grabbing coffee on the way to work and dinner on the way home and so we have nothing but support from them. I just wanna be a positive part of our community and pass something down to my kids. And like I said, it's just really a family affair. It's all of us that we're here. My husband would be here but he's with the kids and I just hope that you guys can see all the hard work that we've put into it and how we're just gonna continue to put more hard work into it if you approve this. All right, thank you.

Chair Tsai: Thank you.

Mr. Sean Lopez: Sean Lopez. I should say I think the property owners are ...(inaudible)... Arturo Wesley and Tiare and the ownership of the store is Arturo, and Tiare, and Kaleo, and myself, Sean. This is the nuts and bolts of our operation. Basically we wanna reopen the store. Open the market with the new special use permit and we did it correctly but with the great news we had yesterday without the conditional permit. The main thing we wanna highlight this is a historical use and a existing use of the property. It's been there before and just want to perpetuate what it was. It's basically a country style general store with food items and non-food items for the local community. It will include a cold to go, cold prep to go kitchen. Last it's gonna be a fully functional agricultural...sorry, it will be fully functional agriculture farm. The agriculture production of the property will provide the foundation of the menu and fresh produce sold. We also plan on buying and selling agriculture from the local farmers and the backyard farmers. We really want to just perpetuate the agriculture in the local community and the local economy. We wanna a model of healthy and sustainable living and business. And lastly, obviously, operate up to code, permits, and all agency rules that you guys provide for us.

This is the existing site plan of the building that we're discussing. To note there's 720 square feet of retail space 150 square feet of storage space and another 216 square feet of covered deck. So this is the retail space, cold storage, and obviously covered deck, ADA ramp on that side.

These are the elevations. So obviously the lower side front, back, east facing ADA ramp and

this is the west facing.

These are the pictures. This is the property in 1988 when it first opened as the Ulumalu Stop and it was granted the conditional use and special use permits. This is the property when we took...or this is the building condition we took over in 2014 after we did the extensive clean up and cut back the jungle and all the rot. This is the market in 2016 after we've done the work into it. This is the east or this is the west facing side of the building face of the ramp looking towards Hana. This is the back of the building where you got the backdoor to the kitchen, backdoor of the store and this is gonna be the cold storage area right here. This is the Hana side of the building. Just wanna point out the ADA ramp that we put in. This is the interior of the building right now. That's the backdoor to the retail space and the cold storages. This is going to be the front door of the building. This is basically the current condition of the building right now and we're just waiting for the permits and approval to move forward with the of the remodel construction on the inside.

Neighborhood, and approval, and notification. We did everything that was asked. We went and knocked on doors, wrote letters to all the people within the 500 feet got zero objections. We also have 50 plus letters of recommendation that we received and they're still trickling in even this morning. We've knocked, talked and just discussed and tell everybody and completely overwhelmingly positive.

This is the parcel map right now. Yellow, the story is the property is our property. All the green dots represent actually this is probably about the boundary, the 500-foot boundary. The green dots are the ones we got letters of approval or verbal confirmation. Any ones that you don't see there they're basically empty lots or rural lots or they're transient rentals.

This is the greater Haiku area and this is basically where we got all the letters of approval or verbal confirmation as well. So we have overwhelming support. Yellow is us right there in the middle. This is the greater Haiku area.

This is one of the letters I just kinda wanna highlight a couple things. It's from Charlie Smith, he's a 20-year fireman on Maui, Akamai uncle, father, family man, grandfather. Just wanna highlight one thing. Please recognize that this actually would be reopening as similar business existed in this location in the past. I have known the would be proprietors Arturo Westley and his Tiare Roberson for most of the time I've resided on Maui. They have lived and worked in the Haiku area since I can remember and know the area well. I believe they would not only what is best for the neighborhood and as residents. Please consider approving this project as the Maui Grown Market would offer something that is needed in our rural community. He basically speaks for almost every letter that we receive.

Quick ...(inaudible)... is our agriculture plan and story. The history basically we're here obviously the Kuiaha Pauwela Homesteads. We're in the Peahi District and Ulumalu, Ulumalu Valley. Obviously Haiku Pauwela is the greenbelt of Maui and it's been the historical agriculture community. The history of commercial agriculture started in Haiku basically. It started right here at the fruit packing camp what is now the...were Colleen's is. What they were is they weren't actually a farm but they were actually contract farmers and they bought and sold all the

produce from everybody from the small pineapple farms and the guava farms. Tiare's husband actually told a funny story was his earliest hustle was buying and selling guava...or he would collect guavas by the five-gallon bucket and sell them to the Haleakala Dairy which is in the same location 60 years later and so it's just we wanna continue that tradition of buying and selling produce from the local farmers and the backyard growers. Last is basically the mom and pops stores. This is the history and basically as we know they're gone rest in peace. This is one of the last ones that closed down on Hana Highway the old Pauwela Store by the community center.

This is our ag plan. Basically all the colors represent everything that we planted. The highlight basically is the yellow is for the bananas, orange for the papayas. We have over 600 banana trees right now on the farm. This is our count. Basically you can see everything that we've grown and the list is pretty long, but basically the biggest thing was is right here is 60 percent of our usable land has been used for agriculture. ...(inaudible)...is we have 600 banana trees and probably another 100 papaya trees

I'm gonna fly through these. These are a bunch of pictures of the farm. Papayas and bananas, papayas, citrus and avocado, more citrus. We planted the purple sugarcane pretty much everywhere and that's taken off like a weed with all the sun, rain and the sunshine. More papayas, bananas, bananas, papayas, bananas, bananas, bananas, bananas, bananas, bananas, bananas and we also do some token pineapples and vegetable gardens, coconuts, citrus, ornamental flowers ...(inaudible)...more sugarcane basically spread out and mature avocados and mangoes and the vegetable gardens as well.

Once you guys approve this we'll definitely be implementing Phase 2 of our agriculture plan. It's gonna be sustainability and resource management. Obviously solar PV panels for energy, water catchment systems for our irrigation and the aquaculture ponds and the soil management and the composting. I'm gonna upgrade the gardens for the vegetable...boxes...(inaudible)...nutritional, medicinal and the nursery.

And obviously the last bit of it and we've talked about it a lot today is agri tourism. To show the wisdom and be informative and talk story and show what we're doing. And that's basically the garden boxes. This is actually, my backyard garden that I do myself in Haiku. I live five minutes own the road. Thank you very much. Thank you for your time.

Chair Tsai: Thank you.

Ms. Cua: Okay, I'll try and be very, very quick. Just a little background again. There was a permit issued on this property way back 1987, a special use permit for the Maui Grown Market. They received numerous extensions, transfer, amendments, and the owners, the new owners bought the property. In 2014 the previous owner declined to allow a transfer of the permits requiring the applicant to obtain new permits that's why we're here for a public hearing today. A couple of things the five tests for a State Special Permit. I'm not gonna go through the criteria it's in your report. They meet the five tests. I wanna point out the community plan for Paia-Haiku. One of the things that it talks about is discouraging approval of special permits in the State Ag and Rural Districts unless it's necessary to serve the immediate community in remote

areas. This does. Support agricultural uses. This does. Needed for the use or distribution of locally produced products and services that otherwise do not adversely affect the environment, surrounding agricultural uses for public safety. It meets all of those requirements. In terms of any infrastructure there's no problems in terms of agency comments. Everything is acceptable. They just have to possibly get a Certificate of Occupancy and get some inspections. In terms of testimony, attached to your report is 25 letters of support. I believe Carolyn passed out another 25 letters that the Department received and there's still other letters trickling in. So there's over 60 letters of support...almost 60 letters of support and no letters of opposition. So with that, that concludes my presentation. Are there any questions or I can go onto the recommendation.

Chair Tsai: I do wanna open up the public testimony.

a) Public Hearing

Chair Tsai: I have one person, Victor Lopez if you're still around? You wanna testify?

Mr. Victor Lopez: Good afternoon, Chairman and Members of the Board. I'd like to keep this short and they said it all. They've very well demonstrated how much we need this store out there for the community and for the people that go from Hana to Haiku all the time and I think this is gonna be a really good project for them because they will be able to demonstrate to the public how things can be done properly and within the guidelines that people have set up and I think it will be a really good project. Thank you very much for your time.

Chair Tsai: Thank you, Victor? Anyone else wish to testify at this point? Public testimony is now closed. Questions from the Commission?

Mr. Robinson: I only have one. What's the signage rules for Upcountry? Gotta be...gotta have a nice sign.

Mr. Spence: Twelve square feet.

Ms. Cua: Yeah, it's quite minimum because it's in the Ag District. I can't quote that to you right now, but it's quite minimal because it's in the Ag District. I can't quote that to you right now but it's quite minimal.

Mr. Robinson: Go ahead Richard. You can—

Chair Tsai: Richard?

Mr. Higashi: First of all I congratulate the applicant for their fine work. The only question I have is I notice on Page 4 here's cars parked. Is that the designated area for the parking?

Mr. Lopez: Sean Lopez. When we did the parking study, we did the parking study we only needed 14 stalls. We have stalls adequate for 24 and there's actually an old parking lot right here and then on the side of the store as well, but there's more than enough parking. So we only needed 14 and we have 24 designated right now.

Mr. Higashi: So you have 24 available parking space for that particular area?

Mr. Lopez: Yes sir.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Mr. Higashi: Second.

b) Action

Ms. Cua: Can I? I have to make some amendments to the recommendation, please I'm sorry. Okay, the Department is recommending approval of the State Land Use Commission Special Use Permit subject to a number of conditions. We need to amend Condition No. 1 because it was linked to the Conditional Permit. So now it would just read the State Land Use Commission Special Use Permit shall be valid for five years or until April 30, 2021 and we take out the reference to the Conditional Permit. And instead of where it says, subject to further extension by the Planning Director upon a timely request for extension filed within 90 days prior to the expiration.

The second condition the subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Maui Planning Department. And then Condition No. 9 which talks about limiting the floor area because of the...that was put in because it was felt that they needed to have that in there based on the limitation of the ag commercial structure but that condition does not need to be in there, Condition No. 9 so we can remove that.

Condition No. 14 as you read which will now be Condition No. 13 that a Certificate of Occupancy and I'd like to add, if required or approval by the Fire Department shall be obtained prior to the opening of the market to the public. Because the building was in operation as a commercial use before, I'm not certain that they would need a new C.O. If they do, fine, if they don't, that's fine. And that's all the changes. That's all the changes.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: I'd like to amend my motion to read, move to approve as amended.

Mr. Higashi: Second.

Ms. Thomson: Mr. Chair can I ask a question? So Condition 17, does that need to be amended at all the compliance report? It sounds like Phase 1 and Phase 2 are both being approved under the new ordinance and by the special permit?

Ms. Cua: Yes. Oh, I see what you're saying. Oh, okay. There's two condition 17 I guess. So

it's the one the applicant shall submit to the Department of Planning compliance reports on the following basis.

Mr. Robinson: Which is now 16.

Ms. Cua: No, it's 17 because there were two 17. Yeah, I think we need to amend that. So...

Ms. Thomson: Well, I guess we could leave it as is but I just wanted to be clear that because the staff report references the two phases that we're approving both Phase 1 and Phase 2 by way of a special permit.

Ms. Cua: Yeah, so I think we should just say that the applicant shall submit to the Department of Planning a compliance report prior to the opening of the market 'cause we don't know if they need a Certificate of Occupancy so I don't...

Ms. Thomson: How about prior to commencement of commercial operations?

Ms. Cua: Okay, sure. Thanks for catching that.

Chair Tsai: Okay, I have a...we have a motion on the floor by Commissioner Hedani to approve based on the ...as recommended and with most recent changes and a second by Commissioner Higashi. Any discussion on the motion? Commissioner Robinson?

Mr. Robinson: Sorry, just real quick. I'd like to commend Gina for bringing another project like this that's very well rounded, dotted the I's, crossed the t's, got everything going, nice package, I'd just like to tell her good job.

Ms. Cua: I will.

Chair Tsai: Commissioner Medeiros?

Vice-Chair Medeiros: I'd like to call for the vote because I want them to start right now.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Just wanted to compliment the applicant for the work that they put into getting the community support for the project. I think they did an outstanding job.

Chair Tsai: Great job. All in favor of the motion?

Mr. Spence: That's five ayes.

Chair Tsai: Motion passed. Congratulations.

Ms. Cua: Thank you.

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

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

Mr. Spence: Commissioners, real quickly. Commissioners we're on No. G., Ms. Anne Takabuki, President of Wailea Golf LLC requesting a transfer of a Conditional Permit to Wailea Golf Inc. We have Ms. Livit Callentine. Basically you're taking it from one entity and to another entity. I'll let Livit say ...(inaudible)...

G. COMMUNICATIONS

- 1. MS. ANNE TAKABUKI, President of WAILEA GOLF, LLC requesting a transfer of a Conditional Permit to WAILEA GOLF, INC. to continue operation of an off-site parking lot in the A-2 Apartment District to satisfy parking requirements for the Wailea Tennis Center on approximately 0.55 acres of land at 0 Wailea Iki Place, TMK: 2-1-008: 141, Wailea, Island of Maui. (CP 99/0007) (L. Callentine)**

Ms. Livit Callentine: Yes, will Hi, good afternoon, and congratulations. Welcome to our new member. Congratulations, Vice-Chair, Chair. Thank you for hanging in so long this afternoon. This is a transfer of a conditional permit that has been in operation for quite a long time since...it came in in 1999 and it is a conditional permit for offsite parking lot in the A-2 Apartment Zoning District. So that is the reason that a conditional permit was needed because parking is not a outright permitted use in the A-2 Apartment District.

The condition of the ordinance that was enacted said that the permit is not transferrable without prior written approval on the part of the Council. So we're asking you to make a recommendation to Council and further we've recommended an amendment to that Condition to Council, we're asking you to follow our recommendation to Council which would allow for the Planning Director to approve this future transfers of this permit. Because we believe that Section 19.40.080 of the Maui Code applies to...could apply to transfers and that part of the Code says that the Planning Director may approve amendments to the Conditional Permit if the amendments are not substantive and do result in significant impacts. I will abbreviate it there, but our analysis of that and I am really abbreviating my presentation because of the interest of time but I am prepared to speak more if you have questions. But I'm...but we've analyzed this project for quite some time getting it ready and we've determined that because there's no other amendments there are no construction and no improvements are proposed with this transfer it is a nonsubstantive amendment and therefore we will also recommend if this is recommended by you and further accepted by Council that future transfers be eligible to use this same process instead of requiring an ordinance by County Council just to make a transfer. Thank you. And I do have in the audience today we have Tessa Munekiyo-Ng from Munekiyo Hiraga and also Ms. Anne Takabuki too if you would like to hear from either of them.

Chair Tsai: Thank you. Right at this moment we're gonna open the floor for public testimony. Anyone wish to testify on this agenda item please step forward? Seeing none, public testimony is closed.

Ms. Callentine: Mr. Chair, I am so sorry but I actually wanted to point out to you that this is a regional location map. Here's Wailea Ike Drive coming down from Piilani Highway, here's Wailea Ike Place and this little red crescent here is the parking lot. The tennis court for which the parking lot is satisfying some of the parking is on this parcel. Aerial photo, an aerial photograph of it again shows you the tennis court up here, the parking lot here and then the Wailea Business Center which was part of the original package of permits that were approved is there. Thank you for allowing me to amend my presentation.

Chair Tsai: Thank you. Commissioner Hedani?

Mr. Hedani: In view of the hour and to ensure that we don't lose quorum at the meeting can we assume that everyone's read this thing religiously before we got to leave?

Chair Tsai: Everyone read this?

Mr. Robinson: I don't want to use the word, religious, nobody's referred to me as that but I read it and I have a couple questions.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: First of all it says here the permit's going to be good until 2030?

Ms. Callentine: Yes, that's correct. A time extension was just approved in March.

Mr. Robinson: This is one that we just approved in March?

Ms. Callentine: No this was approved by...this is a very good question. Thank you for asking it. Maui County Code Chapter 19.40 several years ago was amended by Council to allow for time extensions to be approved by the Planning Director provided that certain criteria were met. Now I described that in on Page 6 of the report/recommendation up at the top, Item 2 I talk about the time extensions. So the time extension has to have been filed timely which it was. The conditions of approval have to be...there has to be compliance with conditions of approval. The uses shall not have changed and agencies shall not have identified any additional matters of concern. And no protests were received by owners or lessees of record. So the applicant was required to mail out by certified mail to all surrounding parcels within 500 feet a notice of the intent to...filing of a request for a time extension and received no responses back or they received no responses back.

Mr. Robinson: The new owner or the old owner?

Ms. Callentine: That is the owner of the parcel. So the time extension was mentioned in here

because it was already done.

Mr. Robinson: Already done?

Ms. Callentine: Yes, it's been done. The only thing that is being requested today is a transfer from South Maui Business Partners, an entity which no longer exists by the way, and to Wailea Golf LLC.

Mr. Robinson: Did Wailea Golf purchase South Maui Partners?

Ms. Callentine: You know I think at this point in terms of historical I think it might be more appropriate for me to bring up Ms. Takabuki if you don't mind.

Mr. Robinson: Sorry it's a 14-year lease that's why.

Chair Tsai: Anne will you please identify yourself for the record?

Ms. Anne Takabuki: Sorry, I'm Anne Takabuki, I'm President of Wailea Golf, and good afternoon everyone. No, Wailea Golf did not purchase that directly from South Maui Business Partners. Actually there was kind of a glitch in the way this all went because South Maui did not transfer it to our predecessor owner. That would have been the appropriate thing to have been done but that didn't happen. So we took title from another entity called Wailea Golf Resort Inc., without really having any knowledge of this permit at that time. And then when we became aware of it that's when we decided we better correct all these things that should have happened with the transfer of ownership. So basically that's why we're here today to try to correct that.

Mr. Robinson: And currently this parking lot this is where the new Marriott is going am I correct?

Ms. Takabuki: It's gonna be very close to it, correct.

Mr. Robinson: And isn't that parking lot currently being used for construction? I was just there a few days ago?

Ms. Takabuki: Well, they're taking some liberties let's put it that way. I think they are in need of having some extra trucks to be parked in the area so we have said that as long it's available and it's not imposing on the guests you know it's temporarily they might be able to use it But you know that's a very temporary situation otherwise they would try to probably park all over the road which is not a good thing.

Mr. Robinson: Okay. And Director is this just...permit just for they're only allowed to use it as a parking lot?

Mr. Spence: That's correct.

Mr. Robinson: Okay. Thank you so much.

Ms. Takabuki: Thank you.

Chair Tsai: Any other questions? Seeing none, can I get a motion please? Commissioner Medeiros

Vice-Chair Medeiros: Move to accept this as recommended.

Mr. Castro: Second.

Vice-Chair Medeiros: Second by Commissioner Castro. Discussion on the motion? Seeing none, call for a vote. All in favor of the motion raise your hand?

Mr. Spence: That's five ayes.

Chair Tsai: Passed. Congratulations.

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

**VOTED: To Approve the Transfer of the Conditional Permit to Wailea Golf, Inc., as Recommended by the Department.
(Assenting - J. Medeiros, S. Castro, K. Robinson, W. Hedani,
R. Higashi)
(Excused - L. Carnicelli, S. Duvauchelle, L. Hudson)**

Mr. Spence: Okay, Commissioners Item H. Acceptance of the Action Minutes of March 22, 2016 and the Regular Minutes of December 8, 2015.

H. ACCEPTANCE OF THE ACTION MINUTES OF THE MARCH 22, 2016 MEETING AND REGULAR MINUTES OF THE DECEMBER 8, 2015 MEETING

Vice-Chair Medeiros: So move.

Chair Tsai: Moved by Commissioner Medeiros. Second? Commissioner Higashi. All in favor? Five ayes.

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

**VOTED: To Accept the Action Minutes of the March 22, 2106 Meeting and Regular Minutes of the December 8, 2015 Meeting.
(Assenting - J. Medeiros, R. Higashi, K. Robinson, W. Hedani,
S. Castro)
(Excused - L. Carnicelli, S. Duvauchelle, L. Hudson)**

Mr. Spence: Commissioners, Item I, Director's Report.

I. DIRECTOR'S REPORT

1. March 8, 2016 Invitation Letter from MR. MARK A. ROY, AICP, Vice President of MUNEKIYO HIRAGA, on behalf of ATC MAKENA HOLDINGS, LLC to conduct a site inspection to review view analysis of the proposed Makena Resort M-5/M-6/S-7/B-2 Project at TMK: 2-1-008: 080, 098, 099, 100, and 106, Makena, Island of Maui. (EA 2015/0007) (A. Cua)

Mr. Spence: You have a March 8, 2016 invitation letter from Mr. Mark Roy, AICP, Vice-President of Munekiyo Hiraga on behalf of ATC Makena Holdings. They wanna do a site inspection to review the view analysis for the Makena Resort Project. The Commission schedule, may take an action to schedule a date and a start time for that. Clayton do you have any...

Mr. Clayton Yoshida: Good afternoon Mr. Chairman, Members of the Commission. We're looking at 9:00 start time in May, May 11th or May 25th which is a Wednesday.

Chair Tsai: May 11th, Clayton or May what?

Mr. Yoshida: 25th.

Chair Tsai: 25th works better for me.

Vice-Chairperson Medeiros: Good.

Chair Tsai: May 25th, Wednesday works for everybody at 9 o'clock?

Mr. Robinson: What did we agree that we're gonna go or we just have to go or what is this for?

Chair Tsai: We don't have to go.

Mr. Spence: Well, the Commission should set a date and a time so we can set agendas and the public will be notified et cetera.

Chair Tsai: I think if it's important with our ...(inaudible)... Commissioner Hedani?

Mr. Hedani: Is it something that we have to do?

Mr. Spence: Well, you could say...I suppose you could say no you don't wanna go on a site visit. The Planning Department is strongly recommending that you do a site inspection. The views from this site are one of the prime considerations for construction. You know one of the criteria for SMA is views from the public places. So the site visit would include a small walk along the area where it be developed and you can see what views would be impacted or what would be preserved, what you think is significant or not. It's going to be an important ...(inaudible)...

Chair Tsai: With all this stuff, so for the commission members you guys heard what the Makena

Beach Hotel closing down there's a lot of talks about you know jobs and so forth and we approved this particular one and based on our experience view and other things always gonna come up and we wanna do our due diligence to make sure that you know we're doing the right thing here so I highly support this trip

Mr. Robinson: I think it's premature for us to look at the sites now. I think when they last came in front of us there was over a dozen of different things and if we're gonna have to go on a site visit to address every single one of them, I know sight lines was one of them but there was many other ones. I'm not against going to visit but we've got so much with this that I think we're gonna maybe later on we'll have more to look at than just the sight line and to just...you know, to have us go out there just to look at the sight lines when there's you know there's a handful of things that we'll probably need a site visit for later on.

Mr. Spence: Okay, I'm not sure about what the other things are.

Mr. Robinson: Well, where are we now in the Makena process.

Mr. Spence: Okay, you have made...right now what we're doing is the commission is in the process of deciding whether you're going to accept the EA or if you are going to require a EIS. And part of that you've made a bunch of comments already on the record and I'm sure they're going to..they're preparing responses to those.. But really just the visuals are a primary thing... I'm not sure why we would go on other things.

Mr. Robinson: Well I mean, I'm sorry, if it comes at the SMA we're not even at the SMA point yet, we're at the, we're at the FONSI point aren't we?

Mr. Spence: Yes, FONSI or EIS.

Mr. Robinson: And then it goes to the SMA, correct? No?

Ms. Thomson: I think part of what it sounds like a concern is that the views to and along the shoreline that's an SMA concept but it's also part of what the EA or EIS would identify an if the project as described right now has such a significant impact on the views you might require an EIS So I think what is being said, is what I'm hearing is that the site is important both to the EA process and then your determination whether you're going to require an EIS and then also to the SMA.

Chair Tsai: Exactly.

Ms. Thomson: So it kinda sounds like a good thing to do.

Chair Tsai: But the way I'm understanding correct me, correct if I'm wrong is that we're at kind of a crossroads because the testimony that we heard before we have to decide or go with just a EA or a full EIS. So for a site visit it will help us make a decision final decision whether to accept the EA as is or...Commissioner Hedani?

Mr. Hedani: ...(inaudible)...

Mr. Spence: One of the things they want to do is set up story poles in order so you can see a basic framework of where the buildings are gonna be. You can tell how far down the hill or how close they are. Ann Cua is justto say something. But we think it is, this is an important thing to do for the purposes of making the determination whether it's gonna be a significant impact or whether we can just...you can move on.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Yeah, I was just gonna say you know are they gonna show the outline of the buildings because I think was the one that raised the question about the view planes to the ocean but I'm familiar with the area.

Chair Tsai: And from our experience the best thing is you gotta see it on site. You know renderings and pictures of whatever is not gonna do it any justice and I think we're covering our bases as a commission if we actually said we seen you know, we did a site visit and we're okay, we're not okay with what the plan is.

Mr. Robinson: I think that's reasonable. So are applicants able to request us for site visits or do we request site visits or does the Planning Department request site visits. What's the criteria for it? Are we gonna go out for every project?

Mr. Spence: No. We actually worked since the last meeting with all the public comments we talked to the applicant and they agree that this would probably be the best way to address impacts to the public view and so that's why this is coming before you. Is they are inviting you out to go look.

Mr. Robinson: And the Planning Department is encouraging us?

Mr. Spence: Yes.

Mr. Robinson: Does the applicant and the Planning Department not...

Mr. Spence: If you recall they had some really beautiful illustrations but they're watercolor. You know there's a whole big difference between seeing photographs of kiawe trees et cetera and illustrations when you can actually stand on site and go, okay, this is what ...(inaudible)...looking.

Ms. Cua: And if I could just add real quick. I'm sorry, I was trying to regroup from the last one. But you know as long as I've been in the Department it really makes a difference. I was able to go out there and take a look and it really makes a difference when you're standing there and then you have the plans and you can say okay this is the view from this, you know where you're standing and it really makes a difference. It's very helpful. I think it would be very helpful to you as a commission and this is in direct response to a couple of the comments that you offered in your review of the draft Environmental Assessment which remember we talked about the draft

and now they're preparing for the final. Well they're trying to address your comments and you did have some comments on views and so I think this would be extremely helpful to you and I think we would plan to be here by around 9:00 so maybe leave here by around 8:30 or so. I don't know if you talked about that but get there and be ready to go. They'll have buses ready to go at 9 o'clock.

Mr. Robinson: And when there's a site visit how does that work? Is there a Q & A session? Do we leave later, do they get points?

Mr. Spence: It's you go there, you'll meet, you'll open...The Chairman opens the meeting, you take public testimony, applicant shows okay this is you know building 3 or whatever the case may be. It's conducted just like one of these meetings except you're out on site. We won't take your name tags.

Mr. Robinson: So when we ask questions it would be for the record and all that?

Mr. Spence: Yes. It is a public meeting.

Chair Tsai: So this is more formal version of the other site visits we've done which is not, you know, I mean we've done the West Mau Hospital that there was not a—

Ms. Cua: I don't think it's a full on like this.

Chair Tsai: But you were saying it's called a meeting.

Mr. Spence: But it's still a meeting of the planning commission and you're limiting it to one thing going out and seeing the views.

Mr. Robinson: And is the public invited or is it just—

Mr. Spence: Yes, the public is invited. And we have to take public testimony.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: So it's the day after our regular meeting?

Chair Tsai: 25th is it?

Mr. Robinson: And that's with us being four short, two short.

Mr. Spence: Yes, that would be the day after your regular meeting. The day after you're supposed to bring snack.

Mr. Robinson: The day after I'm bringing snacks.

Mr. Spence: Well, that's what signed up for.

Chair Tsai: We may get better attendance because people will be here for the day before and probably not going to miss the day after.

Ms. Cua: Yeah, there are times where we've scheduled commission site visits on the day of your meeting we just felt you know with the distance we have to travel and the amount of ground we need to cover and the importance of this project that it really warranted and then the scheduling of your agendas that are kind of heavy especially because of the training that we're doing in April we just thought it best that it be on a separate day.

Mr. Robinson: Is the Commissioners agreeable to maybe do it on an off week so we're not taking two days out of our work week in one week especially that's a Memorial Day weekend that last weekend that Friday is a short Friday too. I know, I'm the young one with family and you know it's a lot of time out of this one week.

Chair Tsai: Can we do the Wednesday before the 18th or Wednesday after?

Mr. Robinson: 18th or the 17th?

Ms. Cua: May 17th or 18th Clayton? It's really up to the Commission and I guess the applicant.

Chair Tsai: Okay, you guys wanna do it Wednesday or keep it Tuesday? 18th, okay.

Vice-Chair Medeiros: The way I look at it is it's another tool. You know we gotta try to make the best decision possible and if somebody is offering us a tool to make a decision we should jump on that. Now scheduling the right day, hey I'll work with anybody. I'm retired.

Chair Tsai: So the 18th at 9 o'clock. Can we...some of us who live on the south side can we just meet there?

Ms. Cua: You can just meet there at 9:00. Everybody else should meet here by 8:30.

Chair Tsai: We were talking about 25th. Now we're gonna go with the 18th which is Wednesday.

Ms. Cua: So if you need, if you wanna carpool we can meet here at 8:30 and leave. But if not, everybody can just meet. Where should we meet at the...we should meet at the golf club house.

Chair Tsai: Okay, we'll meet at the clubhouse.

Ms. Cua: The old Café on the Green for those of you who golf. We meet there at 9:00 and then we can. We can all get there by 9:00 and they'll have shuttle buses that we can board and then they'll take us. Is it easier to meet at the hotel? You know, we'll let you know. It is either going to be, we'll let you know, it's either going to be at the hotel or it's going to be at the golf clubhouse.

Chair Tsai: All right, that's confirmed the 18th at 9 o'clock and determine the location.

2. **Designation of the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing and provide its recommendation on the following application:**

MR. STEWART STANT, Director of the DEPARTMENT OF ENVIRONMENTAL MANAGEMENT requesting a Special Management Area Use Permit for the proposed clean-up and closure of the inactive Makai Hana Landfill at TMK: 1-3-006:012 (por.) And 007 (por.), Hana, Island of Maui. (SM1 2016/0001) (K. Scott)

Mr. Spence: The second one on the Director's Report. Commissioners this is asking you to designate the Hana Advisory Committee to the Maui Planning Commission to conduct a public hearing to provide a recommendation on the closure...requesting an SMA Permit for the proposed clean up and closure of the inactive Makai Hana Landfill. This is for the Department of Environmental Management. Basically we're asking you would you please designate them to be the public hearing body.

Vice-Chair Medeiros: So move.

Mr. Hedani: Second.

Chair Tsai: It's been moved by Commissioner Medeiros, seconded by Commissioner Hedani. All in favor? Five ayes.

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

**VOTED: To Designate the Hana Advisory Committee to Conduct the Public Hearing and Provide its Recommendation.
(Assenting - J. Medeiros, W. Hedani, K. Robinson, S. Castro, R. Higashi)
(Excused - L. Carnicelli, S. Duvauchelle, L. Hudson)**

3. **SMA Minor Permit Report**

4. **SMA Exemptions Report**

Mr. Spence: Okay, you have your SMA Minor and SMA Exemption Report.

Mr. Hedani: Move to approve.

Mr. Robinson: Second.

Chair Tsai: Moved by Commissioner Hedani, second by Commissioner Robinson. All in favor? Five ayes.

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

**VOTED: To Accept the SMA Minor and SMA Exemption Reports.
(Assenting - W. Hedani, K. Robinson, J. Medeiros, S. Castro,
R. Higashi)
(Excused - L. Carnicelli, S. Duvauchelle, L. Hudson)**

5. Discussion of Future Maui Planning Commission Agendas

a. April 26, 2016 meeting agenda items

Mr. Spence: April 26th is your next meeting. You have two public hearings one is or Hololani an SMA Permit for beach protection, shoreline protection and the second one is Mr. James ...(inaudible)...AAAA Rent-a-Space requesting a Conditional Permit. You have orientation workshop no. 2. There's a whole bunch of stuff. And then you will also have another request to go to the Hana Advisory Committee for a draft EA in support of a 100 percent affordable housing project.

Chair Tsai: And as reminder please turn in your financials by this Friday the 15th needs to be a signed item. Thank you everybody for staying late really appreciate it. Hopefully we don't have to do this again this late. Meeting adjourned.

J. NEXT REGULAR MEETING DATE: APRIL 26, 2016

K. ADJOURNMENT

The meeting was adjourned at 5:30 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Stephen Castro
Lawrence Carnicelli
Sandy Duvauchelle (excused at 4:32 p.m.)
Wayne Hedani
Richard Higashi
Larry Hudson (excused at 4:45 p.m.)
Keaka Robinson
Jason Medeiros, Vice-Chair
Max Tsai, Chair

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Excused

Lawrence Carnicelli

Others

Will Spence, Director, Planning Department

Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel