

**MAUI PLANNING COMMISSION
REGULAR MINUTES
AUGUST 23, 2016**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Max Tsai at approximately 9:12 a.m., Tuesday, August 23, 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.)

**Due to the amount of individuals present for this meeting it was announced to the public that the meeting would be moved to the Velma McWayne Community Center (Wailuku Community Center) after the lunch break to be reconvened at approximately 1:00 p.m. at which time the Commission would take up Public Hearing Item D-1.

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 minutes for Item B, Public Testimony was transcribed by a court reporter and was approved separately by the Maui Planning Commission.

Chair Tsai: Director, can we have the next Item C.

C. RESOLUTION THANKING THE SERVICE OF COMMISSIONER JASON MEDEIROS

Mr. Spence: So Commissioners we are on Resolution Thanking the Service of Commissioner Jason Medeiros. That resolution is back in the office. So we will pick that up next time.

Mr. Spence: So then we're going to Item D-2, Mr. Timothy Moore.

Chair Tsai: Can you guys quiet down over there please? Thank you, audience. Thank you.

Mr. Spence: And we will be happy to see everybody at 1 o'clock down at the community center. This is Public Hearing No. 2, Mr. Timothy Moore requesting a Land Use Commission Special Use Permit in order to operate the Hekili Point Short-Term Rental Home and our Staff Planner this morning, it is still morning is Mr. Kurt Wollenhaupt.

- 2. MR. TIMOTHY MOORE requesting a State Land Use Commission Special Permit in order to operate the Hekili Point Short-Term Rental Home, a four bedroom short-term rental home operation in two dwellings in the State Agricultural District at 11485 Lower Honoapiilani Highway at TMK: 4-8-003: 044, Olowalu, Lahaina, Island of Maui. (SUP2 2016/0005) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good morning Members of the Maui Planning Commission. The docket before you today is a docket for a State Land Use Commission Special Permit in order to have a short-term rental located in the Ag zone. As all of you are very familiar since you've seen these multiple times for a short-term home rental there is a two-step process when it's in the Ag zone.

The first is to notify all the neighbors within 500 feet that there is a notice of an application for a short-term home rental which the applicant did. There were no letters of concern or opposition, therefore there's no trigger for a public hearing on the short-term home rental process. Were this not to be in Ag this permit would already have been approved. But as you know, the steps when it is in Ag is to get a State Land Use Commission Special Permit.

The home is located at 11485 Honoapiilani Highway in Lahaina, Maui actually close to and in Olowalu Town. That being the case the applicant is requesting two dwellings with a total of four bedrooms for a short-term rental home. This is a unique property which almost 40 percent of the lot is in the Conservation zone. There's multiple district boundary zonings, there's multiple County zonings in fact including Apartment zoning on the property, Agricultural zoning on the property. So the property in and of itself has inherently a number of very odd situations that we talked to ZAED about.

That being the case in this specific application and due to the unusual nature of this parcel not being two acres some of the ag possibilities here are problematic which will be shown in the Power Point presentation. There was decided that no specific farm plan would be required on this particular project as they couldn't even meet the applications as they're stated in the law having 50 percent of the parcel in ag since almost 40 percent of the parcel is in Conservation already. So you would only have 60 percent of the lot left for ag and the house was built and the ohana before there were even farm plan rules. So this becomes a bit of a, if you're familiar with the 1926 novel, Franz Kafka's Castle, this is a situation in which the homeowner had done everything possible but meet some challenging situations here as of not a making of their own. There is a Power Point. All the applicants are here. They'll be happy to answer questions. Thank you.

Mr. Jolyn Bien: Good morning, my name is Jolyn Bien and I'm a paid consultant. I'm paid to be here and just for Jim Moore, Hekili Point. Joe is located right here in Olowalu. Little old town is across there and the point is out there. The lot is right here and you can see the surrounding from the aerial it's mainly trees, but they do have on there as agriculture as you see is palm trees they're growing on the surrounding lots. These two parcels on each side are the State, and this is a little...(inaudible)...map. Aerial put you a little closer. And here's the parcel map. In green here you have the Conservation section and of course, the Agricultural District. Move closer in there you can see how that's been built in 2001. If we overlay that map Ag and Conservation District give you a little better idea how that ought to split up. I'm sorry I'm a little hoarse, I have a little asthma at my age and it kinda goes with the territory. The applicant's here, Tim Moore, Michael Moore, Robert ...(inaudible)..., they developed the property as a personal home. They're long-term Maui residents. They provide over 400 jobs through various businesses. As you can see, the Old Lahaina Luau, Aloha Mixed Plate, Star Noodle, the Culinary Center, and of course, right across the highway from their dwelling is Leoda's Kitchen

and Pie Shop. There other ventures they have a bake shop, taro farm and learning center, the Hale ...(inaudible)...

Here's the first floor of the main house. We have a bedroom here and a bedroom there on the first floor. Second floor is the third bedroom in the main house and the guest house is right off here. The main house is down here. There's a walkway to this guest house there's another bedroom. The front entrance. This is the frontage road. They highway is out here, right here there's ...(inaudible)...road and that's the entrance which is a private road. Your front driveway, inside compound. Facing north and south the view to the house. Main house facing east and facing west.

Back to the main house, there are the four bedrooms that are included. These are in the main house, all three and the one down the corner here is the guest house bedroom. Bathrooms that go with them. They're all en suite.

Just a little example of here's the main house, living room, the kitchen, they have a gym and swimming pool there included.

So their long term goals would be a great choice of vacation rentals and in keeping with Hawaiian practices and traditions. A long time as part of the work community and plan to continue. Big on Maui here and sharing its resources. It did well, it's not a unique vacation rental. ...(inaudible)... of all their businesses they'll be tying those in with their vacation rental as extras for whoever's ...(inaudible)...but probably not on the property.

They plan to retire like myself soon, and there are only two...(inaudible)...at house right now. As you can see it's quite an extensive estate, it requires a lot of upkeep and this will kind of, if they go somewhere else to move they'll...this will offset the cost of the property. Plus there are other, you know, they have their other business right directly across the street or across the highway.

History is 1998 they purchased the parcel. The state farm plan was not required at the time. 2001, the dwellings were approved and constructed. Half the parcel is in Conservation District and undevelopable and the remaining land is problematic for ag use. Here's some of the planting. They do have some fruit trees. They are planting more limes because they need to provide limes, they seem to be using a lot of limes in their various businesses right now. Key lime pie Leoda's I guess.

The other residences are over 400 feet away. The Hekili Point compound it's not visible anywhere actually. In fact if you drive by there it's kind of hard to find. The driveway even is a little bit hidden away and I had to pass by it and so did Kurt here and both got lost. And that would be the end of that. And ...(inaudible)... if you would like to ask some question.

Chair Tsai: Thank you.

a) Public Hearing

Chair Tsai: At this time we're gonna open the floor for public testimony. Anyone wish to testify on this agenda item please come forward? Seeing none, public testimony is now closed. Questions from the Commissioners? Commissioner Hedani?

Mr. Hedani: This is either for Kurt or for the applicants. I'm not sure who should answer this. Every time I pass Olowalu I see signs that say, for sale oceanfront property. My concern is that a lot of the properties are not oceanfront property. They border a Government Beach Reserve which is property owned by the government. So the advertising is false advertising. It could be something that I should take up with the DCCA or the Real Estate Board of something. In this particular case for this particular property the question is does it have a Government Beach Reserve on the makai side of the property?

Mr. Michael Moore: Our particular parcel does not.

Chair Tsai: Please identify yourself for the record Michael.

Mr. Moore: Oh, Michael Moore, applicant, one of the applicants. So our particular parcel does not have State land on the ocean. It's conservation designated. On both sides of this, I don't know if...on both of side this but they're very, very narrow strips on both sides of us, but our particular one...when the Pioneer Mill closed and Olowalu sold to West Maui Land we...this was an area that we had gone to for years of our lives. Our other partner Robert who isn't here, his family was on Olowalu Village. So we are very familiar with Olowalu. So when we knew this was going to be sold we looked for pieces that were already kuleana, that were already there and this was one. So you can see two and three are the State beachfront properties on either side but ours does not have that. Our goes all the way. It's just a unique little piece.

Mr. Hedani: Okay, so I guess my question is at the time the developer of the subdivision...well, the developer of the subdivisions made a representation to the commission that said that there was a Government Beach Reserve for the entire length of Olowalu. From my perspective that allows lateral access for the public along the Government Beach Reserve which is what the beach reserve is for to traverse the entire peninsula. And the question that I have is are they barred from traveling across this property for that property.

Mr. Moore: No. We have many people fish there, throw net. It's very common for people to walk from the camp by the front of the property to the pier and vice versa. Trees have fallen so it's more challenging now. We originally were maintaining a pathway but then it got to be a little complicated. It seemed like it encouraged erosion and such so...but people walk all the time and there's no, nothing...in fact now there's, I think there's signage on both sides that say on the state land that this is public property. Can't put that on ours 'cause it's not truly public, you know, but it is.

Mr. Hedani: If at some point in the future the State or the County or somebody were to establish public beach access at Olowalu would you have any objection to a condition of the approval requiring lateral access along the shoreline?

Mr. Moore: No, 'cause it's pretty much already is like that.

Mr. Hedani: So that would not be an objection.

Mr. Moore: You know there's already access at the campground and at the pier and so it's just people come from both sides you know.

Mr. Hedani: Thank you.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: I have a question for...aloha Mr. Moore.

Mr. Moore: Hi.

Mr. Robinson: I have on your Exhibit Picture No. 10, Kurt.

Chair Tsai: There's no 10.

Mr. Robinson: That's not 10, right here. Are you able to see that Mr. Moore? I see there's a, there's sort of a rock wall there. Am I...is that a rock wall we have there, a short rock wall? Right here, see this wall?

Chair Tsai: Michael could you?

Mr. Moore: We on the Conservation area we just let the grass grow tall so what you're seeing that where we stop mowing.

Mr. Robinson: What I'm asking is about the rock wall, you see the rock wall there? The boulders that they have in a uniform type of design? Is this not rocks right here?

Mr. Moore: No.

Mr. Robinson: So is that just grass in the shade?

Ms. Takayama-Corden: Need to use the mic.

Chair Tsai: Yeah, Michael—

Mr. Spence: We need you on the record.

Chair Tsai: Yeah, on the record please. Thank you. Thank you, Michael.

Mr. Robinson: Thank you Chair. What's on the picture is not any rocks. It's just the side of the grass that's tall and so they move that there.

Mr. Moore: So on photograph 10 it's just what you're seeing on the shadow there that looks like rocks is just where we mow the lawn and then the grass along the ocean we leave long.

Mr. Robinson: So on the plot that I have it shows that your house is right next to the Conservation land, but it seems like that area is mowed. You guys mow it for free?

Mr. Moore: We mow directly in front of the house and then where approximately where the Conservation area is we let go natural.

Mr. Robinson: Can you go back to that picture please? I'm looking at the Conservation lot compared to district. Yeah so what it, what I'm looking at is you guys don't have a lawn. The Conservation...So the Conservation District is still considered your property is what I'm getting at and it's not State property?

Mr. Moore: It's not State property.

Mr. Robinson: It's your property. It's just classified as Conservation.

Mr. Moore: It can't be developed. Though I guess you can develop but we don't

Mr. Robinson: But are you allowed to mow on Conservation land or are you supposed to just naturally let it grow?

Mr. Moore: I'm not totally sure of the answer. I think you can maintain because you know like adjacent to us they've taken out kiawe and et cetera. So I think you can maintain but you can't develop or plant. But in our original building permit, you can...we did apply for and got permission to plant native plants in that area. So it's not a area that you can't do anything, but I think you can maintain but can't be developed.

Mr. Robinson: Okay.

Mr. Moore: That's to my knowledge.

Mr. Robinson: Thank you.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: Okay, so just for clarification. You purchased the property in 1998 and did you purchase this from West Maui Land? You said, 'cause you said that you purchased that you wanted old kuleana property, but did you purchase this from West Maui Land?

Mr. Moore: Whatever entity they were at that time.

Mr. Carnicelli: Right, okay.

Mr. Moore: Yeah, yeah,...(inaudible)... Peter Riley—

Mr. Carnicelli: Peter Martin guys.

Mr. Moore: Yeah.

Mr. Carnicelli: So was this part of Olowalu Makai Subdivision or was this parcel specifically already existing?

Mr. Moore: Parcel already existing. This parcel and three others further south where Peter and Riley both built their houses—

Mr. Carnicelli: Right.

Mr. Moore: Those were existing lots. No subdivision. That all came after.

Mr. Carnicelli: So he didn't create this anomaly of a parcel. It already existed.

Mr. Moore: It already existed.

Mr. Carnicelli: Okay. If I could Chairman?

Chair Tsai: Yeah, go.

Mr. Carnicelli: So one other quick question. So since two, two of the partners live there why are you not going for a B&B and why are you going for a TVR?

Mr. Moore: I guess our whole motivation is planning for retirement and wanting to have other options. I think it was mentioned in the report we would like to move to Hana and have some property there identified, but we need to have...we need to make sure that this property...you know it was for sale for a while, it didn't sell so this is a way that we can sort of cover the mortgage and move onto other options basically it's our retirement.

Mr. Carnicelli: Okay, thank you Chair.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: I guess this is more for Kurt. On the map that...I'm not sure what exhibit this, on this exhibit—

Mr. Wollenhaupt: This one?

Mr. Hedani: Yes. What does the red line represent Kurt?

Mr. Wollenhaupt: I would imagine that that's the shoreline setback line. That was coming off of...well, I'm not entirely sure what this red line is.

Mr. Bien: ...(inaudible- not speaking into a mic)...

Mr. Wollenhaupt: Oh they don't always match up.

Mr. Bien: They don't always match up.

Mr. Wollenhaupt: In the GIS system you get overlays...like you try to overline a shoreline with a...in fact for this property, in fact yesterday I was down with Paul Critchlow in ZAED and we trying to determine this was all actually zoned Apartment 2 in 1961. So we were saying well then it got converted to part Ag and part Apartment 2, in fact the property next to this is still zoned Hotel. So we were saying well can I see where the bisection line is on this property between Apartment 2 and Ag? Well, we tried to put the layers together and they don't match. So it would appear that this is one of these unmatched things that should be pushed out to represent more the shoreline. So see it's not even...it's going right through the pier there so it's a mismatch probably the shoreline should be pushed close to the shoreline.

Mr. Hedani: So the short answer is the red line represents the shoreline setback?

Mr. Wollenhaupt: Well, we think that it would represent a shoreline. I'm not sure if it represents a setback.

Mr. Hedani: So it would be the edge of the vegetation line basically is what you're talking about?

Mr. Wollenhaupt: Could be yes, but I don't have a specific answer for your question on this one to be honest with. I'm not going to try. I'm not entirely sure what that red line is for.

Mr. Hedani: Okay.

Mr. Wollenhaupt: It wouldn't be the property line on each of the lots I know that.

Mr. Hedani: Could you point out for me just so I'm clear where the property line ends?

Mr. Wollenhaupt: I would say the property line in this case because this is one of these odd lots would end probably at the highest wash of the shoreline.

Mr. Hedani: Okay, so it is oceanfront property?

Mr. Wollenhaupt: This one is. And in reference to one of the other commissioner's questions about the makai subdivision, those lots all meet the ag standard, two-acre and those are all in the Lahaina side of the Olowalu plantation home. And then I got questioned well what's going on with these three and four lots that you have Riley, you've got Maggie, Peter Martin's wife, you've got then the Moores of course, and then it's found that this was a situation that has been inherited for years and years so they're aren't meeting all of these "ag subdivision", it was built for this purpose of an ag subdivision. So that's this is a highly unique property which has lots of—

Mr. Hedani: So it's a unique kuleana property outside of the subdivision?

Mr. Wollenhaupt: That's right.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Hi Kurt.

Mr. Wollenhaupt: Hi.

Mr. Robinson: Can you explain to me what's going on in Olowalu as a whole? I know this is one unique property here and like you've kind of said close to them there's some Apartment, some Hotel. Are those other lots that we're looking after Olowalu are those all Ags you know with those homes that are built along that area? I wanna see if I can get a grasp of a mile instead of a quarter mile.

Mr. Wollenhaupt: Well, if you go back to the 61 zoning maps where the Olowalu plantation home is that has...the reason that they can do weddings there is because that's zoned...is Hotel from the County perspective, but they also got a County District Use Conservation Permit to actually have these special events. So it's a highly unusual set of entitlements that they did in order to be legal for their hotel operation or for their wedding operation. That being said, the area right in front of the pier still has Hotel zoning on part of it. The area under question that we're talking about in this application has split zoning with Agriculture and Apartment down to the next point. The area that is on the left side of that map towards Lahaina those are all standard Ag subdivision. That was the Peter Martin Olowalu Makai two-acre ag lots. So those are all Ag zoning, Ag District Boundary, Ag community plan, it's only that we arrive at this mélange of different types of district boundary amendment, district zoning and land zoning that happens at the Plantation House going on down to the Olowalu Camp. So the vast majority of what would be parcel one which is that big parcel that is still owned by Olowalu Elua which I believe has connections will Mr. Martin. That would still be zoned Ag. The Apartment zoning happens in bits and pieces of this lot in particular and that's where it just gets complicated. So to tell you what's going on in Olowalu well at the moment you have the Haiku Makai. Those lots are sold or the Olowalu Makai, those lots of course been sold. We've got this lot which the gentlemen have. The two and three are State lot, Hawaii and No. 6 I believe is Mr. Riley's home and No. 1 is just held in Ag. I don't know what Mr. Martin has in plans for No. 1 or for No. I guess 10 that would be. So I don't know its future vision.

Mr. Robinson: Chair?

Chair Tsai: Yeah, Commissioner Robinson?

Mr. Robinson: So I guess where I'm...I have a question and like you said, we got a bunch of different types of zoning and how it was and would permit to do certain things but Mr. Martin's commercial use—

Mr. Wollenhaupt: The Plantation House.

Mr. Robinson: The Plantation House and the proposed use of this parcel how are the taxes gonna work? We have Conservation land, we have Ag land and then now we bring in the Commercial. Do you know how that works, or Director?

Mr. Wollenhaupt: Well, I do know that when the permits, when a permit is approved for a short-term rental we will send a notification to the Tax Department for the County. An then there's a tax adjustment specifically for short-term home rentals so their taxes will go up from that standpoint if they have—

Mr. Robinson: 365 regardless if they rent, yeah okay.

Mr. Wollenhaupt: And they also lose their homeowner's exemption if they have. I don't know if they're taking it now but they will lose that and their taxes on a yearly basis will go up then for the tax rate that the Council has provided for short-term home rental. In fact we've had a couple of People when they found that out they tried it for a couple years, and balance they then have said well, we wanna pull our short-term rental permit, we wanna go back to homeowner. For them it didn't work, but no the taxes will go up permanently. Should you approve this, they get their permit, taxes will go up, it will go up until they would want to pull their permit.

Mr. Robinson: And we assume that Mr. Martin, he's following those same tax rules, we assume?

Mr. Wollenhaupt: I assume that his tax is based upon his use but I don't know.

Mr. Robinson: Okay.

Chair Tsai: Thank you. So for Commissioner Hedani, I think I just found Exhibit 2 and 3 that just shows the shoreline setback on Exhibit 3 that kind of talks about it. Any other questions, Commission? Commissioner Robinson?

Mr. Robinson: This is for the applicant again please? Mr. Moore, you expressed that you want to supplement income so you can keep the ownership in local hands and you know help pay for the upkeep along the ocean, I understand that. It's how many rental nights do you think you need to accommodate that?

Mr. Moore: You know we're still in a point of figuring that out. We're sort of feeling like we could probably do depending on the price it looked like 40 to 50 percent, so half the time.

Mr. Robinson: You can do pretty well with 50 percent, yeah. And I mean, of course our Commission's concern is there's a lot of homes down there and of course the property value once you can turn it into a mini hotel of course the revenue generating, you know, it will be substantial and that's a concern for us. You know, a concern that we turn, you know, million-dollar homes into five-million dollar homes. So you know that's a lot of upkeep. Of if 180-days

is a pretty good piece of pie to upkeep the home, yeah. It's the American way, nothing wrong with it.

Mr. Moore: I'm not sure...I don't know what...I'm not sure what the question is.

Mr. Robinson: I just wanted to see is what you guys in your head about how often you're gonna try to rent that?

Mr. Moore: Yeah, we're hoping for 50 percent and that would sort of cover cost with the big mortgage and then if it was positive it would allow us to move onto other things.

Mr. Robinson: Have you folks ever thought about maybe do minimum stays instead of having two or three night, maybe a week stay type of thing? Is that something that you guys have considered?

Mr. Moore: Absolutely yeah.

Mr. Robinson: And the reason I'm saying that is you know is you're kind of the first one in that area and the precedent and you know things that we can you know in my mind and I'm not speaking for the other Commissioners, in my mind is if we have limitations, two-week stays or two weeks is people that are actually going to go there in the house, there's not gonna be a lot of turn and so it makes that whole coastline a—

Mr. Moore: We are definitely looking at minimum stays I believe. And also just to clarify, mini hotel, it would just be the house not individual rooms or anything.

Mr. Robinson: But you have two homes though right on that property? You have a guest house and a main house?

Mr. Moore: Right. So we're only looking at vacation rental for the property.

Mr. Robinson: It would be just one tenant per property not each home?

Mr. Moore: Yeah, yeah. For families, and you know, yeah not multiple people coming on different days. It's like arrive on one day and leave a week later for the whole house.

Mr. Robinson: Thank you. Thank you.

Chair Tsai: Any other questions from the Commission? Seeing none, can I get the recommendation from the Department please?

b) Action

Mr. Wollenhaupt: The recommendation of the Department is for approval of the Land Use Commission Special Permit subject to the six conditions that are presented in the green portion of the staff report. This property does seem to follow the recent discussions that have been

going on at the Council level about short-term home rentals and where they would like to see them and what they would like to see especially when there's I guess debate that's going forward about a possible Code amendment with prices of homes and durational aspects of living there and the price of homes we won't need to of course, get into that if it will be coming before this board on possible new Code amendments. But in looking at the balance of this home where it's located, what the applicants wish and their past, we would recommend approval. That the Commission will adopt the report and recommendation prepared by the Department for today's meeting as the finding of fact, conclusion of law and decision and order. If there's any questions I'll be happy to try to answer them.

Chair Tsai: Thank you Kurt. Can I have a motion? Commissioner Hedani?

Mr. Hedani: Kurt, can we add a Condition 7? That the applicant provide lateral beach access through its property to the adjoining properties on either side on the makai side along the oceanfront? You can word that whichever way you want that makes sense. My vision for Olowalu is that you could walk from one end to the other end of the makai side of Olowalu with a continuous oceanfront walkway that would enhance the values of not only this property but all the properties up and down that particular coastline and provide true lateral access for the public and it starts with one property and then it goes from there on all future applications that come before the Commission hopefully to establish eventually a continuous walkway.

Mr. Wollenhaupt: Well, I'd have the applicant speak to that see what they say. I'm just not sure about when it get to the Conservation zone how much grading, clearing, I'm not sure on the details of how that would need to be reviewed and who would need to be doing but we'd have to look into that. Clearly putting a concrete pathway is probably not something that...

Mr. Hedani: I'm not suggesting a concrete walkway, I'm just suggesting a designation for public access along the lateral...along the makai side of the property.

Mr. Wollenhaupt: Right.

Mr. Moore: As we mentioned before, Michael Moore again, the applicant, as we mentioned before no problem. It's I think Kurt's questions were valid in that what that is may be a question but if it's in terms of just allowing lateral access it's no problem it already is and we have no problem with it.

Chair Tsai: Yeah, Commissioner Robinson?

Mr. Robinson: Mr. Moore, I'd like to see if you'd be open to a Condition 8 which I think would make me more comfortable with this project is if you would do a minimum of a week stay at your property. I think that would show a great precedent for that whole coastline of people doing, I think it would help you out as well.

Mr. Moore: Absolutely no problem.

Chair Tsai: I think maybe Corp. Counsel can speak to this. I think that's a business decision. I don't think our...this is an application for a TVR. I don't think we can dictate what they stay, I mean how long they rent it to who they rent. I mean we can...I don't believe that...Director?

Mr. Spence: Commissioners I'm just...I would just be a little concerned that, I mean the Planning Commission, the authority is in land use regulation provided by various laws. Regulating the length of stay for an individual applicant, I'm not sure how that relates to land use decisions.

Mr. Robinson: So when we looking at an application we don't look at all the effects? We don't look at the effects of traffic, of different items? All we're only looking at is what the land use classification is? 'Cause it's already Ag without a ag plan, right? So what we're saying is minimum stay, so it's not a maximum stay, it's a minimum stay so where a person would have to rent it out for the week and there would only be one. And I understand you know this is new ground, so this is the question is what I'm proposing is that only one guest per week could stay there. They could stay there three days or they could stay there seven days but the amount of usage of that property would be limited to a minimum of once per week.

Mr. Spence: The way the Vacation Rental Home Permit or regulations already work is they're allowed to rent one party not multiple parties. That's just one item. So they already would be doing that. The conditions for...on particular permits they have to have...if we go back to where we mentioned in training long ago has to have a rational nexus to an impact. There has to be some connection between there's an impact of a particular project to a condition that's placed on that project. So if there is an identified impact as a result of staying three days or staying a week, you know, I think we could consider that, but otherwise it's just however they want to operate their business. We don't tell you know, a gas station—

Chair Tsai: How much to charge.

Mr. Spence: Or anything like that.

Mr. Wollenhaupt: But perhaps I can give you the history on this?

Mr. Robinson: Oh no. Thanks Kurt, I'm just trying to get the ...(inaudible)...

Mr. Wollenhaupt: Right.

Mr. Robinson: So a Special Use Permit that condition might be applicable but for a short-term vacation rental it's not? Is that what I'm hearing?

Mr. Spence: I don't understand.

Mr. Robinson: We have an item that's before us today with amount of events per week so that to me is the same thing as a limitation on their business. So Special Use Permits is treated differently than a short-term vacation rental I what I'm hearing from you.

Mr. Spence: No, whatever conditions...I don't want to get in discussion into other applications this morning. What I'm saying is if there's an impact due to some of the operations that these applicants want to do if there's some impact you can mitigate that through conditions. If there's a impact whether somebody's renting three days or a week we can regulate that but if there's no impact to that I think we're kinda going...we're getting into operation of somebody's business not land use and the impacts thereof.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Can't believe I'm about to do this. Move to approve as recommended with the addition of a condition that lateral access along shoreline be preserved.

Mr. Hudson: Second.

Chair Tsai: I have a motion by Commissioner Hedani, second by Commissioner Hudson with addition of a Condition 7, allowing lateral access on the ocean side. Any discussion on his motion? Let's call for a vote, all in favor...oh, Director would you repeat the motion please?

Mr. Spence: The motion is to approve as recommended by Staff with the additional condition to guarantee shoreline access or provide for shoreline access.

Mr. Hedani: Lateral shoreline access.

Mr. Spence: Lateral shoreline access.

Chair Tsai: Okay, all in favor raise your hand or say, "aye"?

Mr. Spence: That's five, that's six ayes.

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

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

**VOTED: To Approve the State Land Use Commission Special Permit as Recommended by the Department as amended to include an additional condition regarding lateral public access on the ocean side of the property.
(Assenting – W. Hedani, L. Hudson, K. Robinson, L. Carnicelli,
S. Duvauchelle, S. Castro)
(Excused – R. Higashi)**

Mr. Spence: Commissioners, we have an email before we break. We have an email from...well, from Carolyn Cortez one of the senior people in our office. If you move cones this morning in order to find a place to park, when you move out would you please replace those cones? Public Works is trying to do some striping.

Chair Tsai: So at this point, the Planning Commission is going to recess for lunch. We're gonna reconvene at 1 o'clock at Wailuku Community Center and we're gonna start with the next item on the list which is actually D-3. Thank you.

A recess was called at 12:00 p.m., and the meeting was reconvened at approximately 1:06 p.m. in the Wailuku Community Center, Wailuku, Hawaii.

Chair Tsai: Can everyone hear me? Aloha, welcome back. Maui Planning Commission is called back to order. Somebody left a sweater, yeah, so pick it up later or something. I don't think you need it right now. We're on Agenda Item D-3 right now. So Director?

Mr. Spence: Commissioners, Item D-3 is Mr. Ian Hollingsworth requesting a State Land Use Commission Special Use Permit for the Pauole Makai Short-Term Rental Home on 95 Awaiku Street and where is it, Launiupoko. I know I didn't pronounce that right. Kurt?

3. MR. IAN HOLLINGSWORTH requesting a State Land Use Commission Special Use Permit for the Pauole Makai STRH, a one dwelling Short-Term Rental Home located at 95 Awaiku Street, TMK: 4-7-009: 067 CPR 0002, Launiupoko, Lahaina, Island of Maui. (SUP2 2015/0013) (K. Wollenhaupt)

Mr. Kurt Wollenhaupt: Good afternoon, Members of the Maui Planning Commission and Members of the audience here. For today's next item Mr. Hollingsworth and his family are to the right of me and today's item is for a State Land Use Commission Special Permit to operate short-term rental home in the Agricultural District located at 95 Awaiku Street in the residential subdivision of Launiupoko.

Due to our being over here unfortunately we don't have a Power Point set up and the applicant had prepared all that so we'll be doing a bit more adlib than perhaps, but we'll try to use all the documents in the report in order to communicate effectively to the Commissioners about any question they may have.

They are indicating that they wish to operate a two-bedroom short-term rental home permit and this again has gone through the two-part short-term home rental permit process. I explained that to you this morning. The applicant sent notices of the application for a short-term home rental to all of the neighbors within 500 feet. There were no triggers. The triggers for a public hearing would have been a couple of them. One is that you would have had 30 percent of the neighbors object. There was one letter of protest. So nowhere near did 30 percent of the neighbors object. The second would have been had there had been two short-term rentals within 500 feet. However, the Commission has now in their recent legislation they now allow two short-term rentals within 500 feet to be approved without a public hearing. Before if there was one, the second one had to have a public hearing. But in this case, these people are the second, but according to the new rules they don't need a public hearing because they would be the second. So I'd just like to reiterate that if this were not in Ag these people would have had their short-term home rental permit already. So they didn't meet any of the triggers for a hearing for the short-term home rental permit part of this process.

So we now move into the State Land Use Commission Special Permit process because this particular property is located in the Ag. So we need to focus on what ag is going on there. One important thing, while this is zoned Ag and it has a District Boundary Amendment of Ag and it has a Community Plan Amendment Ag, this is actually in the Maui Island Plan in the Rural, the Rural Growth Boundary. That usually is noted as being a more dense, little bit different than an agricultural subdivision. So it's just something to consider that while it's zoned Ag, the intention in the Maui Island Plan is for a more dense subdivision. That's just by way of background.

The applicant does have an approved farm plan 2015/0044, it includes the farming area covering the lot. It was field verified by myself on June 13, 2016 and just to let you know they have variety of sweet potatoes, bananas, palms, citrus, egg laying hens and ducks. The photographs of the farm plan are located in the staff report and the applicant would be happy to explain any of them to you. But the Exhibit 6 does indicate that the farm plan has a recorded unilateral agreement and declaration for the construction of the farm dwelling. That being the case, just by way of history in the immediate area there was another short-term home rental permit. This is almost an identical application. The one that the Planning Commission approved before was for Ms. Helen Hunt. She's actually a nearby neighbor of this property actually adjoining. So the Commission did approve very similar almost identical sort of set up in the Hunt property. The applicant, Mr. Hollingsworth is here to answer any questions and we can go through detail in some of these exhibits but I do understand that you have lots of items today so if there's specific questions that the homeowner could answer they'll be happy to do and so and I'm happy to answer any other questions you may have. Thank you.

Chair Tsai: Thank you, Kurt.

a) Public Hearing

Chair Tsai: At this time I'm gonna open the floor up for public testimony regarding this action item. Does anyone wish to testify please come forward? Seeing none, public testimony is now closed. Going to open the floor up for questions from the Commissioners. And Commissioners, we have a comment or question please speak to the mic I was told that's the only way we can be heard and recorded. So we gotta share some mics here. Commissioner Hedani?

Mr. Hedani: Kurt, this is either for you or for the applicant. Traffic in West Maui is dysfunctional right now. Honoapiilani Highway regularly backs up to the point where it takes 45 minutes to get from Kaanapali to Lahaina in the afternoon if you leave...to the State DOT's credit they've actually synchronized 10 lights in Lahaina. The only two lights that are not synchronized are Hookiokio which ties in the bypass and Launiupoko which ties Kaiheleku which this subdivision is a part of. Is there any way that his particular applicant, almost all of the problem of traffic is tied to the signal at Launiupoko Park. Almost 100 percent of the problem is due to the signal at Launiupoko Park. Is the applicant prepared to work on any mitigation measures to the signal at Launiupoko Park in order to address the problem of traffic in West Maui?

Mr. Ian Hollingsworth: Aloha, Chair. My name is Ian Hollingsworth and yeah, traffic is a problem. I'd be happy to work with anybody and do anything that I could to see that there was a sensor or something on the light, a pedestrian bridge or something because the pedestrians crossing makes it challenging also. I do know that they're making a new road. It used to be the

firebreak road, but I know they're working on that now and I hear that the bypass is supposed to be done by 2018, that's kinda laughable, but that's what I hear. That's about all I know but I'm happy to sit in and speak my mind and be as helpful as I can.

Mr. Hedani: I realize it's difficult for one individual to address a situation that's as bad as it is right now. But when I talk to people like the State DOT they say, you know, we cannot let the residents up on the hill wait longer than five minutes before they get a green light. So one of the things that I think that is a solution is to adjust the timing of the signal from five minutes to seven minutes or ten minutes so that 60,000 vehicles that use Honoapiilani Highway don't have to stop 300 times a day at that particular light.

Mr. Hollingsworth: I agree. I just don't even know where to begin to get any of those actions moving.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: Thank you Chair. And Kurt this may be for you, so I'm just trying to look at the map here and is this a CPR'd lot? It is?

Mr. Wollenhaupt: That's correct. It does have a condominium provision so there's yes.

Mr. Carnicelli: Okay, and so is the application for the entire parcel or just you know, condominium A or condominium B?

Mr. Wollenhaupt: This would be for their own condominium. Again, in the new adjusted short-term home rental law it does provide that each of these people could have their own short-term home rental.

Mr. Carnicelli: Right.

Mr. Wollenhaupt: The other condominium owner is okay with this applicant applying for it.

Mr. Carnicelli: Okay, yeah, so you don't own both condominiums? Okay, so then my next question is in looking at the pictures here, and unfortunately yeah, we didn't get the projector version of it, it looks as though there's also an accessory dwelling or is that a garage or what is that second dwelling that I see?

Mr. Hollingsworth: Yes, I'm Ian Hollingsworth. And there is two buildings on the property. The other building is an accessory building. It's storage. I have a music studio in there. I have an art studio in there.

Mr. Carnicelli: Is there any pictures of the inside of that?

Mr. Hollingsworth: No.

Mr. Wollenhaupt: I think I know where you're going. I did go in there to confirm that it was not another living unit.

Mr. Carnicelli: Okay.

Mr. Wollenhaupt: So I saw the music studio, the drums, the office and I...that's part of our requirements from management, don't ever assume anything is what it necessarily says, go in and look. So I went in and looked.

Mr. Carnicelli: Thank you, Director. Yeah, 'cause as we all know Launiupoko is kind of infamous for things being what they're not. So okay, that's...thank you.

Chair Tsai: Any other questions from the Commission? Seeing none, can I get...Commissioner Robinson?

Mr. Robinson: Hi. Do you live at this residence now?

Mr. Hollingsworth: We just finished building a house down the street and we moved over there a few months ago.

Mr. Robinson: Same street, same neighborhood?

Mr. Hollingsworth: Pua Niu Street. Same neighborhood in Launiupoko. It's a little bit bigger for a family of five. We built this house in 2005 ourselves and it's really special to us and you know we just want to keep it forever.

Mr. Robinson: So you have a farm plan, so you're gonna rent this out and do the farm plan at the same time?

Mr. Hollingsworth: Oh yeah.

Mr. Robinson: You guys gonna go and feed the chickens every day and –

Mr. Hollingsworth: Yeah, we have communal farming too. Marah our office manager has a plot there and we let her farm. Some people can come and garden in our garden areas. It's really nice.

Mr. Robinson: So people who rent the home are gonna give access to people coming and going in the farm is that how you're gonna structure it?

Mr. Hollingsworth: Yeah. Yeah.

Chair Tsai: Seeing no other questions can I get a recommendation from the Department please?

b) Action

Mr. Wollenhaupt: The Maui Planning Department recommends to the Commission approval of the Land Use Commission Special Permit subject to the seven conditions importantly No. 7 that the farm plan will remain implemented throughout the duration of the State Land Use Commission Special Permit and evidence of implementation will be submitted as part of the request for time extension. Therefore the conclusion would be that the Commission will adopt today's report and recommendation prepared for the Department meeting as its findings of fact, conclusion of law and decision and order for this item for a State Land Use Commission Special Permit.

Chair Tsai: Thank you Kurt.

Mr. Carnicelli: So moved.

Chair Tsai: Moved by Commissioner Carnicelli, second by Commissioner Castro. Discussion on the motion? Commissioner Hedani?

Mr. Hedani: I think there's nothing wrong with the application. I think the applicant is appropriate in doing the necessary filings for it. My only hesitancy with the situation is that the signal at Launiupoko Park is going to be exacerbated by any hotel or transient type activity from the subdivision. It was originally intended as an agricultural subdivision and it is...I think it's inappropriate to call it an agricultural subdivision at this point. At some point in the future it should be classified which I think the Department is looking at. But anything that exacerbates traffic in West Maui from my perspective is something that I cannot support and so I'll be voting against the motion on this item.

Chair Tsai: Thank you, Commissioner Hedani. Director?

Mr. Spence: Just a comment on Commissioner Hedani's comments. One of the reasons Launiupoko is shown in the Maui Island Plan for...within the Rural Growth Boundary is that's the intent at some point to redistrict it to the Rural District. Not to allow more subdivision but just to call what is basically a rural living lifestyle as that.

The second thing on the light, I agree with you. It's extremely frustrating. My hope that...it's on a State road, my hope is now with Metropolitan Planning Organization or MPO that we and help direct the State to do something with...particularly with that light but other things as well that where the State would be spending their funds on. So that can certainly be on my list of things to discuss.

Chair Tsai: Thank you, Director. Commissioner Robinson?

Mr. Robinson: I don't, I don't like what's happening to Launiupoko and to ag. It's from the ag to condominimize and then now from condominimize to short-term rental. I applaud you for building your own house and you know want to get ahead, you know good for you. I just don't see us turning, you know mini hotels up in our ag. It's just...it's continuing. Laws have sort of been massaged to sort of let it happen but I don't think when they did this development that they

imagined lots being taken into two and then one of those becoming a little motel. That's just my feeling. Thank you.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: So I'm agreeing with basically everything's being said here. You know the application itself seems to be in order, you know, as I...I may not agree with all of the rules, the Maui laws, I may not necessarily like the fact that this is ag that's been condominiumized to then become a short-term rental but I can't really necessarily find a reason to say no. If I just don't like the law, I don't like the law, it doesn't mean that, you know, ...(inaudible)...it still complies with, and so I'll be voting in favor of it even though I may not necessarily, you know, like what's happening to Launiupoko. I agree with the Director, it probably needs to be rezoned as Rural. It doesn't increase the density to change it to Rural but at least we can kinda make it, you know, if it acts like a duck and walks like a duck we call it that and that's all I got to say. Thanks.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Since you're gonna take it up with the Metropolitan Planning Organization one other comment that I might offer on this particular situation is that probably with the best of intent the subdivision added a parking lot and a created a farmer's market for so called farmers within the subdivision to sell their products that have been open to park users at Launiupoko Park. With that best intent in mind, I think it's lead to the overutilization of Launiupoko Park. And the pedestrians that are crossing Honoapiilani Highway are the ones that are triggering that signal more so than the residents coming down the road from Kaiheleku. So my recommendation would be to remove the farmer's market lot and the additional parking that it creates for the park at that location.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: Since we're talking about the light 'cause I'm one of those people that pushes the button, I'm the one blocking your traffic and as much as I do get that it blocks traffic all the way the Honoapiilani, it's a seven-minute light. When you're standing there with your surfboard seven minutes is forever. So I'm not gonna say don't change the light, but just giving the other perspective of it is that that parking lot you know it's a well-used beach park especially if there's gonna be a bouncy castle and you know, one-year-old birthday party then it's gonna be even more jammed up. So the parking lot isn't just for the farmers market but for all the users of it too. So anyways, I'm just speaking to the light from the other perspective as well.

Chair Tsai: Okay, Director you want to repeat the motion or you have something to say?

Mr. Spence: I'll just assure the Commissioners I will...this is a State issue because it's a State intersection. I will bring it up with the MPO and we'll discuss it at our...maybe not our next meeting but perhaps the one after that.

Anyway, the motion is to approve as recommended by Staff.

Chair Tsai: Let's call for a vote. All in favor?

Mr. Spence: That's four ayes.

Chair Tsai: Opposed?

Mr. Spence: One, two opposed.

Chair Tsai: I guess I'm going to have to break the tie. I'm going to vote yes on this 'cause I feel like the applicant has done everything they can to abide by the laws currently available to them and I don't think they should be penalized for whatever lack is going on. So you got the vote. Congratulations. Approved.

Mr. Hollingsworth: Thank you very much. Anybody wants some eggs? We brought some eggs. Happy chickens.

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

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

Mr. Spence: So Commissioners, the next item, public hearing item on your agenda is for Legacy Assets LLC to obtain a State Land Use Commission Special Use Permit to operate a short-term rental home in the Ag District at North Lauhoe Place in Lahaina and our Staff Planner is Tara Furukawa.

- 4. MR. DENNIS SCHOBER dba LEGACY ASSETS LLC requesting a Land Use Commission Special Use Permit in order to operate the Pacific View Short-Term Rental Home located in the State Agriculture District at 78 N. Lauhoe Place, Makila Plantation Subdivision, TMK: 4-7-012: 013, Launiupoko, Lahaina, Island of Maui. (SUP2 2016/0004) (STWM T2016/0003) (T. Furukawa)**

Ms. Tara Furukawa: Good afternoon, Commissioners. This item is under your review because the applicant is requesting a Land Use Commission Special Permit for Dennis Schober who's doing business as Legacy Assets LLC. Schober wishes to operate a STRB consisting of two dwellings on approximately five acres of agricultural land in Launiupoko. One dwelling has four bedrooms, the other has two. At this point I would like to introduce the applicant's project consultant Debbie Mitchell who will present you with the scope and details of the proposed project. The agriculture manager, Eric Fitzgerald is here to answer any questions that you might have. As mentioned in his letter to you all that was emailed to you, the applicant Dennis Schober is unable to make it to the hearing today. He was diagnosed with stage 4 brain cancer

and is undergoing treatment with his wife by his side. His children are currently in college so they're unable to attend and because there's no one from the family, Jodi Vida is here to answer any questions about the family.

Ms. Debbie Mitchell: Thank you. Good afternoon Commissioners, Mr. Spence, Counselor. My name is Debbie Mitchell and I'm the consultant for the Schobers who are the owners of this property. It's in actually Makila Plantation Estates which is north of Launiupoko, south of Lahaina. We had a great presentation for you but unfortunately we'll have to just kinda go over it descriptively.

This is six-bedroom application. It is located on at 78 Lauhoe Place and it is approximately five-acre parcel. These are large parcels up here. They are single. They are not condominiumized. They are R-1 zoning...they're Agricultural zoned but they're single-family homes. There is a four-bedroom main home and a two-bedroom cottage and they incorporate a total of six bedrooms. I think from the handout that you had from Tara you can see the location in just straight up from Puamana Beach is where the actually the house is located. Although it does enter in down at the Launiupoko light. Again, the parcels are large, five acres or so and there is a working coconut farm, coconut palm farm at this plant...at this location.

The owners purchased the place in 2007. They are originally from Washington State and came over to Maui 29 years ago and fell in love with it and wanted to find their place. So they saved and saved and finally bought their place in 2007 and actually moved over, lived here for a couple of years, got all of the coconuts, they have over 400 coconut palms currently on property. And were for two years, their kids went to Maui Prep. They attended Kumulani Chapel. So they're very much involved in the Hawaii life. Unfortunately the downturn in 2009 forced them to go back to the mainland to deal with their business there. They made decorative resin panels for construction. It's a really neat process. Mr. Schober himself developed it, he invented it, and developed it. So they went back and then they came back again in 2011 and again, had to return home so their every intent is to come to Maui full-time. But now their kids are in school, they have three children. And so they are going to stay on the mainland until those kids have finished all their schooling. But it is their intent to retire here and by doing this Special Use Permit and short-term rental it will allow them to keep the house until they're able to come full-time.

Again, the house is considerably up the hill so there's adequate, more than adequate parking. There's at least six to eight parking spaces so street parking is not an issue with this nor is traffic. There are private roads so it's not something that the County has to maintain. These are private roads that are maintained by the association. So they are not...it's not a burden on the County that way. They again, I think you have some photographs in your handout that show the general layout, the bedrooms. It is a luxury home and I believe they paid \$5 million for it. So they have...they planted the coconut palms in 2007 and they're finally reaching the point where they're producing now so they have developed a relationship with a local landscape nursery company that are just being purchasing the coconuts from them and they intend that to continue the entire time, you know, if they have guests certainly the business of the farm will be continuing while the guests are there.

They also have planted a significant amount of naupaka and additionally on the south side they just planted some fruit trees. So it is a heavily involved agricultural continually working farm. They have an approved farm plan in place. It's been inspected and approved by ZAED, so that is continuing to go.

They are just asking that you consider...we did a mailing to everybody within 500 feet announcing our intention to apply and then also did the notification of the public hearing. We did not receive any protests and there are no others within 500 feet of the proposed rental. So this is a single site. It would be the first permitted within that 500 feet. So we're just asking you today for a Special Use Permit on this Ag land to allow them to make this application for the short-term rental and with the assurance that it would be a continually working farm that is their hope and as they retire here that is what they intend to continue to do. They also plan to sell the palm trees themselves so they have kind of a diverse, a plan that way. And certainly this brings agriculture to...it brings economic opportunity to the County, employment, property managers, landscapers, different people. It also brings revenues in General Excise Tax and Transient Accommodations Tax.

In speaking to Mr. Hedani's concerns I am certain that they would be most willing to work, do whatever work is necessary to work with anything to be done with the light. I, as their representative, would also be very happy to be a part of that as I know that's a continuing issue. I also live in the west side so I know that as well. So anyway we do have again...they wrote a letter to the Planning Commission explaining their regret at not being here but Mr. Schober is undergoing chemotherapy and radiation so not quite able to attend and his children are too young to come in his place and they were hoping you would understand that and Ms. Vida is here of course as their representative. So thank you very much for your consideration. We appreciate it.

Chair Tsai: Thank you.

a) Public Hearing

Chair Tsai: At this time we're gonna open the floor for public testimony. Anyone wish to testify on this agenda item please come forward. You have three minutes. Seeing none, public testimony is now closed. Questions from the Commission please? Commissioner Hedani?

Mr. Hedani: This is for the applicant's representative. How does the...how does one access the property?

Ms. Mitchell: The property is accessed at the light at Launiupoko and travels up the hill on the private...the roads that are...that travel to the house are privately owned roads by the association and maintained by the association. And there is a cul de sac which is North Lauhoe Place and there is a gated entrance and then the driveway up to the house.

Mr. Hedani: When you mentioned that the applicant would be willing to participate in any solutions for the light at Launiupoko one of the things that I think would help is to synchronization of the two lights between Launiupoko and Hookiokio.

Ms. Mitchell: Okay.

Mr. Hedani: The ten lights in Lahaina were synchronized I believe by Austin Tsutsumi at a cost of \$250,000. Is this something that they're prepared to participate in?

Ms. Mitchell: I am certain they would. I am their on-island representative and I am happy to offer my instances as soon as Mr. Schober is able to do so himself, I know he would be willing to do that. He's just right now it's not feasible for him given his physical condition. But certainly I would absolutely with fair direction be very happy to participate in that.

Mr. Hedani: Thank you.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: I have a concern for the applicant being his medical condition, are we even discussing this. I know he's ill and he's not able to be here and we're sort of counting on representations through you that he'll be able to fulfill. I think that's something that's hard to for somebody else to speak for somebody else. I'm just putting that out there.

Ms. Mitchell: Sure.

Mr. Robinson: I actually think a deferment you know for a period of time to hopefully see that he does get better and he able to maybe share with us some of the ideas in case we do have questions. That's just, that's just my kuleana. But I do have a question Director. I see six bedrooms is that now permissible with the new Code?

Mr. Spence: Thank you for the question. Up to six bedrooms would be normally, anything over that would require a conditional permit as well as special permit. Just commenting also, I don't know if the applicant has...I mean, a spouse and children and everything so normally I understand the concern for the health of the applicant, it could be...that any permit would also be held in the name of his wife or you know, trustee or whatever like that. It's not like if a permit was granted it would be into vacuum should something should happen to the applicant.

Mr. Robinson: I was under the understanding that all permits are untransferrable.

Mr. Spence: They are not transferrable. They are like...okay this is Legacy Assets LLC, the members of that LLC have to be natural persons. So it's whoever the members of that LLC they should be fine.

Mr. Robinson: But we don't know that right now or do we know that? I mean, do we know the makeup of the LLC? And Director, back to the six bedrooms is that in one structure or it can be allowed in multiple structures?

Mr. Spence: It's up to six bedroom in any combination of structures, I mean two homes 'cause it's ag land.

Mr. Robinson: Okay, thank you.

Ms. Mitchell: May I say? Just it is my understanding that the only case of transferrable permit is by will. That is the only instance. Permits are not transferrable except by will. It expressly calls that out in the checklist and in the instructions for applying for it. That is the only instance in which it is transferrable is by will and that is in the latest version of the ordinance as I understand it.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: Okay, so I'm gonna go down the same bunny trail that I did before. The ohana is that actually permitted as an ohana?

Ms. Mitchell: Yes.

Mr. Carnicelli: How many square feet is that?

Ms. Mitchell: About 600.

Mr. Carnicelli: Six hundred. So it's not the 1,000 square foot ohana?

Ms. Mitchell: No.

Mr. Carnicelli: But it's in the records as an ohana? So like we couldn't CPR this and then go build the ohana?

Ms. Mitchell: Not to my knowledge, no.

Mr. Carnicelli: Unless we tore this down?

Ms. Mitchell: Right, correct.

Mr. Carnicelli: Okay, so then I'm also looking at the plot map here and I'm noticing on the north side of the driveway there is nothing there.

Ms. Mitchell: Right.

Mr. Carnicelli: What are we gonna be doing with that portion of the...

Ms. Mitchell: It's the owner's intention to also develop that for agricultural product just Mr. Schober's illness has slowed their plans somewhat. That is not to be built upon. That is going to be either left undisturbed or developed as agricultural product.

Mr. Carnicelli: But it's not in the ag plan?

Ms. Mitchell: No it is not as accepted.

Mr. Carnicelli: Okay, thank you.

Chair Tsai: Thank you. Just a quick note, conversing with the Director, I just wanna make note that I don't think as a Commission we should make deferment based on certain situations that may not happen down the road. We're giving, granting permits based on current conditions and we can't control what happens tomorrow, the day after tomorrow and all that stuff, so I don't think we should defer pure based on that reason. We have other applicants that didn't show up either before. Any other comments? Commissioner Duvauchelle?

Ms. Duvauchelle: For Staff, so this permit would cover both structures?

Ms. Furukawa: Yes.

Ms. Duvauchelle: Has the owner ever taken into consideration to the take the ohana out as a long-term rental?

Ms. Mitchell: Debbie Mitchell. That hasn't been a part of our discussions yet.

Ms. Duvauchelle: Because it would kind of lend itself. It's perfectly situated and rentals are so badly needed. So if he would consider that I would support that.

Ms. Mitchell: Okay, I can go and make a phone call if that would be helpful.

Ms. Duvauchelle: Okay.

Ms. Mitchell: If you give me a moment I can try and contact him and...

Chair Tsai: Other questions? Wait for the answer I guess.

Ms. Mitchell: Debbie Mitchell. Yes, they would consider that.

Chair Tsai: Commissioner Duvauchelle do you want to make that as condition?

Ms. Duvauchelle: Yes, I will when we get there.

Chair Tsai: Okay. Any other? Commissioner Robinson?

Mr. Robinson: I'm not a big proponent on STRs in ag lots or any lots I should say for that matter but compromise to me is key in anything and I would support you know with getting a small rental and somebody has some place to live. I think that's what we're all about and you know that's the kind of cooperation from landowners that I think we're all looking for. Thanks.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: Yeah, I too think that's a wonderful suggestion and the irony is in Lahaina a two bedroom that probably rents for like \$6,000 a month or something crazy like that so, so it might actually be to his benefit to put that in long term. So yeah, I think that was a great suggestion.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Yes, in consideration of the change that's just been suggested I would be supportive of the application. I think you know, like I said in the earlier case, it's almost identical cases you know impacting traffic in West Maui but their consent to participate in looking into synchronization of the lights I think is a step in the right direction. And I think if the...I think it's unfair to saddle two people essentially that come before us with an application the entire cost of something like that, but I think the community association of Launiupoko for that entire Makila Subdivision should consider taking up the issue and jointly coming to some kind of a mitigation measure that they can implement whether it's, you know removing the signal and putting in storage lanes or refuge lanes or whatever or just synchronizing the lights so that when the bypass lights turn green nobody can move because Launiupoko is red which is happens today. But I think that would be a step in the right direction. And with that, if you could take that back to your community association I'd be supportive of this application as well.

Chair Tsai: Seeing no other comments from the Commission, can I have the Department's recommendation please?

b) Action

Ms. Furukawa: The application complies with the applicable standards for a State Land Use Commission Special Permit and the Department is recommending approval of the permit. The State Land Use Permit has seven standard conditions and two project specific conditions. The Department is recommending that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the August 23, 2016 meeting as its findings of fact, conclusions of law, and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chair Tsai: Commissioner Duvauchelle?

Ms. Duvauchelle: With the added condition that the ohana be removed as the short-term rental and be placed on a long-term rental market.

Chair Tsai: So we have a...we have a motion from Commissioner Duvauchelle with a condition for ohana as a long-term rental and we have a second from Commissioner Hedani. Discussion on the motion? Call for a vote. Director do you want to repeat the motion please?

Mr. Spence: The motion is to approve as recommended by Staff with the addition of a condition that the ohana be for long-term rental.

Chair Tsai: All in favor of the motion?

Mr. Spence: Six.

Chair Tsai: Six ayes, no opposition. Motion carries. Congratulations.

Ms. Mitchell: Thank you very much.

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

**VOTED: To Approve the State Land Use Commission Special Permit as Recommended by the Department as amended with the additional condition that the ohana unit be a long-term rental instead of a short-term rental.
(Assenting – S. Duvauchelle, W. Hedani, L. Hudson, K. Robinson,
L. Carnicelli, S. Castro)
(Excused – R. Higashi)**

Chair Tsai: We're gonna go back to public testimony after a five-minute recess.

A recess was called at 1:50 p.m., and the meeting was reconvened at 2:00 p.m.

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

- 1. MS. LEONA ROCHA WILSON requesting a State Land Use Commission Special and a Conditional Permit in order to operate the Lona Ridge Special Events Project for special events, photo shoots, filming, art shows, retreats, and workshops on property situated in the State Agricultural District at 588 Kulaiwi Drive, TMK: 3-5-002: 010, Wailuku, Island of Maui. (SUP2 2015/0007) (CP 2015/0003) (G. Flammer)**

The minutes to Item D-1 (MS. LEONA ROCHA WILSON) was transcribed by a court reporter and was approved separately by the Maui Planning Commission.

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

**VOTED: To Defer the Matter to a Future Commission Meeting Date Where All Parties will be Available.
(Assenting – L. Carnicelli, K. Robinson, L. Hudson, W. Hedani,
S. Duvauchelle, S. Castro)
(Excused – R. Higashi)**

E. COMMUNICATIONS

- 1. MR. HAROLD DAVIS submitting a Petition to Intervene dated July 25, 2016 on the following applications:**

MS. LEONA ROCHA WILSON requesting a State Land Use Commission Special and a Conditional Permit in order to operate the Lona Ridge Special Events Project for special events, photo shoots, filming, art shows, retreats, and workshops on property situated in the State Agricultural District at 588 Kulaiwi Drive, TMK: 3-5-002: 010, Wailuku, Island of Maui. (SUP2 2015/0007) (CP 2015/0003) (G. Flammer)

- a. WRIGHT & KIRSCHBRAUN, attorneys for LEONA ROCHA WILSON submitting a Memorandum in Opposition dated August 1, 2016 to HAROLD DAVIS' Petition to Intervene.**

Should the Commission grant the Petition to Intervene, then they may also take action on the following:

- a. Selection of the Hearings Body/Hearings Officer**
- b. Selection of the Mediator**

Should the Commission act to deny the intervention request, then they could act on the application requests.

Due to the fact that the Commission would be losing quorum because of the lateness of the hour and also the availability of the community center:

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

**VOTED: To Defer the Matter to a Future Commission Meeting Date Where All Parties will be Available.
(Assenting – L. Carnicelli, K. Robinson, L. Hudson, W. Hedani,
S. Duvauchelle, S. Castro)
(Excused – R. Higashi)**

Chair Tsai: And again, we appreciate everyone's time, all the commissioners staying late and this is the first time that we had to defer an item and as much as we all want to see this decision being made, we just can't do it obviously. So we're gonna go onto I guess, do we want to finish the rest of these? So we're gonna go through the rest of the items which is gonna wrap in a couple of minutes. So just to confirm, the public hearing on this item is closed, we are moving onto the petition to intervene which is the next one Communications Item. Yeah, I need a motion from the Commission.

Mr. Carnicelli: Motion to defer please.

Chair Tsai: Okay motion from Commissioner Carnicelli to defer.

Mr. Robinson: Second.

Chair Tsai: Second from Commissioner Robinson. All in favor of the motion? And I'm gonna

vote yes to defer.

Mr. Spence: Just for the clarity of the record. That is for Communication Item E-1 regarding the petition to intervene.

Chair Tsai: Correct. So based on the decision of E-1 we're gonna go back to D-1 and go from there, but public testimony is now closed for D-1 and we have the next item on the list is...for decision making part only. So we're just trying to wrap up here. We have F-1 which is acceptance—

Mr. Hal Davis: Clarification Mr. Chair? Will it be—

Ms. Takayama-Corden: Use the mic.

Chair Tsai: You have to use the mic.

Mr. Davis: Since I'm involved in these two, will I be consulted and make it into my schedule, not anyone else's convenience.

Mr. Spence: Right, that's what we reported that we wanna make it fair to all the parties and so everybody has a chance to make all of their arguments et cetera.

Mr. Davis: Thank you because I received my agenda this morning by certified mail at 7:00 a.m. for this morning. So I'd like to have a little bit more advanced notice than that.

Chair Tsai: And you will get more than three minutes Hal.

Mr. Davis: Thank you.

Chair Tsai: Okay, so we have F-1, Acceptance.

**F. ACCEPTANCE OF THE ACTION MINUTES OF THE AUGUST 10, 2016 MEETING
AND REGULAR MINUTES OF THE MARCH 8, 2016 MEETING**

Mr. Spence: Okay, Commissioners Item F on your agenda Acceptance of the Action Minutes of the August 10, 2016 meeting and the Regular Meeting of March 8, 2016.

Mr. Hedani: Move to approve.

Mr. Carnicelli: Second.

Chair Tsai: Moved by Commissioner Hedani, second by Commissioner Carnicelli. All in favor?

Commission Members: Aye.

Chair Tsai: Opposed. None. Carries.

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

**VOTED: To Accept the Action Minutes of the August 10, 2016 Meeting and Regular Minutes of the March 8, 2016 Meeting.
(Assenting – W. Hedani, L. Carnicelli, L. Hudson, K. Robinson,
S. Duvauchelle, S. Castro)
(Excused – R. Higashi)**

G. DIRECTOR'S REPORT

Mr. Spence: Okay, Item G, Director's Report.

1. Notification of the issuance of the following Special Management Area (SMA) Emergency Permit:

Approval Letter dated July 28, 2016 to MR. CHRIS CONGER of SEA ENGINEERING for an SMA Emergency Permit for shoreline erosion protection of approximately 200 ft. of shoreline adjacent to the Hyatt Regency Maui at 200 Nohea Kai Drive, TMK: 4-4-013: 008, Kaanapali, Lahaina, Island of Maui. (SM3 2016/0006) (SSA 2016/0046) (K. Scott)

Mr. Spence: The first item is I believe we have issued a...you have a letter in your packet. We have issued an SMA Emergency Permit to Mr. Chris Conger of Sea Engineering for the Hyatt Regency in Kaanapali and that's just for your information purposes.

- 2. SMA Minor Permit Report**
- 3. SMA Exemptions Report**

Mr. Spence: We've issued your SMA Minor and your SMA Exemptions Reports.

Mr. Hedani: Move to accept Items G-1 and G-2.

Mr. Carnicelli: Second.

Chair Tsai: Moved by Commissioner Carnicelli. All in favor?

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

**VOTED: To Accept SMA Minor and SMA Exemptions Reports.
(Assenting – W. Hedani, L. Carnicelli, L. Hudson, K. Robinson,
S. Duvauchelle, S. Castro)
(Excused – R. Higashi)**

- 4. Discussion of Future Maui Planning Commission Agendas**
 - a. September 13, 2016 meeting agenda items**

Mr. Spence: The next Planning Commission agenda on September 13th there are three public hearing items, two of them are Council Resolutions regarding...they're pretty much enforcement issues for short-term rentals and bed and breakfast. The third one is Mr. David A. Land requesting a B&B Permit in Maui Meadows. Unfinished Business is Mr. Marc Taron of Arquitectura LLC requesting an SMA Permit for the demolition and construction of 8,391 square foot single-family dwelling along with pool and related improvements in Lahaina. And then you will also have the approval of a written Decision and Order regarding the Association of Owners at Kihei Kai Nani Phase 1 and Victory Development.

Mr. Robinson: Chair, Chair?

Chair Tsai: Yes?

Mr. Robinson: I'd like to request an excused absence for our next meeting on September 13th.

Chair Tsai: Absence?

Mr. Robinson: For our next meeting on September 13th. I'll be out of town celebrating my 50th birthday.

Chair Tsai: Okay. I'm actually going to be out of town as well. I won't be. Sandra is gonna be doing the Chair so, Sandy said she will chair the meeting on the 13th.

Mr. Carnicelli: Chair do we need to actually officially defer the recognition of Jason Medeiros to the next...

Chair Tsai: Yeah, we have done that already.

Mr. Carnicelli: We have done that, okay.

Chair Tsai: Okay, anything else. Thank you all for staying late. Meeting adjourned.

H. NEXT REGULAR MEETING DATE: September 13, 2016

I. ADJOURNMENT

The meeting was adjourned at 4:53 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli
Stephen Castro
Sandy Duvauchelle, Vice-Chair
Wayne Hedani
Larry Hudson
Keaka Robinson
Max Tsai, Chair

Excused

Richard Higashi

Others

Will Spence, Director, Planning Department
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel
(9:00-9:50 and 10:50 to end of meeting)
Mike Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
(9:50-10:50)
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)