

1 COMMISSIONER MARDFIN: Thank you.

2 CHAIRMAN STARR: Okay. I'm going to ask Mr. Fasi  
3 to just explain the process and a bit of history, and then  
4 we will take testimony and come back with the department's  
5 comments and recommendations.

6 MR. FASI: In order to elaborate on Commissioner  
7 Mardfin's question, they would have had to have been in  
8 operation as a TVR prior to 1989. This property was  
9 purchased apparently by the Nelsons in 2002, and has  
10 operated as an unpermitted TVR since 2002. Apparently,  
11 according to this letter of testimony that was handed to the  
12 department this morning, he continues to operate in this  
13 capacity unpermitted, irrespective of the letter that he  
14 received from the department that he shall cease all  
15 operations of a TVR.

16 COMMISSIONER MARDFIN: When was he sent that  
17 letter?

18 MR. FASI: That letter was sent in approximately  
19 November or December of last year, January time. "As of  
20 January 1 you shall cease and desist."

21 The subject property is owned by the applicants.  
22 They are primarily residents of Oakland, California, so they  
23 do not reside at the property.

24 What you are looking at today is a purely  
25 commercial business operation on the shoreline in Ma'alaea.

1 It is an application for a conditional permit to allow a use  
2 that is inconsistent with many areas of the general plan,  
3 the county zoning code, as well as other policies and  
4 objectives.

5           There are five major themes in the general plan.  
6 Themes two, three and five are relevant to this application.  
7 Theme number two says, "Prepare a directed and managed  
8 growth plan." The general plan specifically states to  
9 Restrict the transient rental use of single-family housing  
10 in residential zones." Although this is zoned A-2,  
11 multi-family, that is still considered residential as far as  
12 planning purposes for the department.

13           The intent of the general plan is to prevent  
14 encroachment of transient visitor accommodations into the  
15 residential area of communities by restricting such use in  
16 the residential zoned districts. For planning purposes, as  
17 far as the department is concerned, A-2 is considered  
18 multi-family, which is also recognized as residential.

19           Theme number three of the general plan says to  
20 "Protect Maui County's shoreline and limit visitor industry  
21 growth." The property is directly on the shoreline.

22           "The intent of the above statement is inclusive of  
23 regulating and directing the visitor industry to certain  
24 specific areas that were determined to be more suitable for  
25 such activities." The intent is to limit visitor industry

1 growth to areas that are more suitable for this type of  
2 activity.

3           And theme number five, "Provide for needed  
4 resident housing." The applicant also has alternatives to  
5 this proposal. He could create a long-term rental out of  
6 this facility, he could sell it to a permanent resident.  
7 The department may consider a bed and breakfast operation if  
8 there are no objections from the community and any other  
9 mitigative factors were address add appropriately. That  
10 would need further review by the Planning Department.

11           Under the economic activity and visitor industry,  
12 one of the objectives is to --

13           CHAIRMAN STARR: Mr. Fasi, before we get into all  
14 the recommendations and comments, why don't we take public  
15 testimony and then move on to that.

16           MR. FASI: Thank you.

17           CHAIRMAN STARR: So just what's before us though  
18 is a recommendation of the Conditional Use Permit. Do I  
19 have that right?

20           MR. FASI: Yes, sir, you do, thank you.

21           CHAIRMAN STARR: So I'd like to move along to  
22 public testimony, and I see we do have signed up Colleen  
23 Cochlin. You're signed up first. Come forward and state  
24 your name for the record.

25           MS. COCHLIN: Hello. My name is Colleen Cochlin,

1 and thank you for welcoming me here. I live at 150 Hauoli  
2 Street, apartment number 501, and I am in support of this  
3 motion.

4 CHAIRMAN STARR: Okay, Members, any questions?

5 COMMISSIONER MARDFIN: In support of it. You  
6 mean in support of having him be able to do a TVR?

7 MS. COCHLIN: Yes.

8 Commissioner MARDFIN: Or in support of him not  
9 being able to do a TVR?

10 MS. COCHLIN: To be able to.

11 CHAIRMAN STARR: Okay, thank you very much. Jim  
12 Sanders. Come up, Jim. Good to see you here. And state  
13 your name for the record.

14 MR. SANDERS: Commissioners, Chairman Starr,  
15 thank you. I'm in support of this proposal of a TVR. And I  
16 live in Island Sands. Any question?

17 CHAIRMAN STARR: Members? Okay, thank you, Jim.  
18 Good to see you.

19 MR. SANDERS: Thank you.

20 CHAIRMAN STARR: Any other members? Please come  
21 forward and tell us who you are.

22 MS. FRIEDENBERG: My name is Linda Friedenberg and  
23 I live in Island Sands, and I can't believe I'm supporting  
24 this. However, I noticed that in a lot of the testimony  
25 they have lumped together the wedding functions with the one

1 TVR request, and so I am very specifically endorsing his  
2 request to rent on a short-term basis the one house. It's  
3 low density.

4 The point was brought up that this is a one at a  
5 time rental. On that street right now where we live I  
6 believe every single condominium, most of them built in the  
7 1970's, have short-term rental accommodations. And the  
8 greatest traffic problem right now is the county park at the  
9 end of the road.

10 His request to have apparently one party at a time  
11 rent his dwelling I believe would not impact the traffic  
12 that we're concerned about, and it would not bring a huge  
13 influx of people. The wedding business is a separate issue.

14 So I support his request even though he bought it  
15 in 2002 after all the other properties were grandfathered  
16 in. Any questions?

17 CHAIRMAN STARR: Thank you. Dr. Iaconetti?

18 COMMISSIONER IACONETTI: It is my understanding  
19 that the wedding business has not been approved by the  
20 Council yet, is that correct?

21 MS. FRIEDENBERG: I don't know, I'm not following  
22 that. I just learned today that they had separated the two  
23 issues.

24 CHAIRMAN STARR: We will get into that after  
25 testimony. We will hear the report on the other side of it.

1 MS. FRIEDENBERG: I believe that should be  
2 considered separately.

3 COMMISSIONER IACONETTI: Have there been weddings?

4 MS. FRIEDENBERG: Hard to tell.

5 Commissioner IACONETTI: You can't tell whether  
6 they have had weddings there?

7 MS. FRIEDENBERG: It's screened from the public  
8 street, so you would have to stand there and monitor what's  
9 going on, and I am not doing that.

10 COMMISSIONER IACONETTI: Thank you.

11 MS. FRIEDENBERG: Any other questions?

12 CHAIRMAN STARR: Thank you very much. Any other  
13 members of the public wishing to give testimony on this  
14 item?

15 Seeing none, public comment is closed. Mr. Fasi,  
16 if you could take it over, I'd like you to give a little  
17 more of the background on it. And give us a real clear  
18 explanation of the bifurcation and what stage the other  
19 portion of it is at, and then the recommendations and the  
20 basis for that.

21 MR. FASI: As this Planner understands, the  
22 application was bifurcated because of the unknown factor  
23 about legislation regarding TVR's, and the time factor  
24 involved and how long it would take. So it was decided by  
25 the planner that had the project to bifurcate this

1 application, and process the TVR separately from the wedding  
2 portion in order to get the TVR portion either approved or  
3 disapproved and bring it to some closure.

4           Apparently the wedding application is pending  
5 scheduling before the County Council. It has not been  
6 brought before the County Council yet. It has yet to be put  
7 on their agenda.

8           Also, indirectly related to this application, the  
9 applicant also has in two more applications for TVR's with  
10 the Planning Department. So a total of three TVR  
11 applications are being processed by the Planning Department  
12 by this applicant.

13           And the Planning Department would just like to  
14 bring to your attention that these are single-family  
15 residences that are being removed from the pool of possible  
16 houses and long-term rentals for Maui County.

17           Chapter 19.12, apartment district of the Maui  
18 County Code specifically says that buildings and structures  
19 within the apartment district shall be occupied on a  
20 long-term residential basis, on a long-term residential  
21 basis. On a long-term residential basis.

22           Section A says, except as provided in this  
23 section, timeshare units, timeshare plans, and transient  
24 rental vacations are prohibited. This is law in Maui County  
25 Code. The above quoted zoning ordinance specifically

1 prohibits TVR's outside of the hotel district. This  
2 district is zoned A-2, so it is specifically against and  
3 contrary to 19.37 of the Maui County Code.

4 As of June 20, 2008, and since January 11, 2005,  
5 the Planning Department as far as this plan knows, there has  
6 been one letter, and now that has been brought up in two  
7 letters in favor of the application. One is from an  
8 investment company in Lake Tahoe.

9 The department feels that after reviewing and  
10 analyzing this application, that it is too inconsistent with  
11 too many policies of the general plan, the county code, and  
12 community opposition from various long-term residents in the  
13 two adjoining apartments on either side of this property.  
14 And therefore, the department cannot support this  
15 application. That concludes the department's report.

16 CHAIRMAN STARR: Mr. Fasi, I have a question.  
17 There were some bills relating to bed and breakfasts, and  
18 one relating to TVR's that went before this body and are  
19 before Council that would allow for TVR's to exist in  
20 certain areas. If that bill were made into law by the  
21 Council, would this be in one of those areas that would then  
22 be allowable?

23 MR. FASI: It is my understanding that as far as  
24 the bill being proposed in its current form, that answer  
25 would be no, it would not. The TVR's would still be



1 restricted to the hotel resort areas.

2 CHAIRMAN STARR: Okay, Commissioner Guard.

3 COMMISSIONER GUARD: Wouldn't this still be  
4 considered a bed and breakfast based on the recommendations  
5 that they have a full-time caretaker on site, and only  
6 renting out one unit? That was kind of how we looked at the  
7 last one that came before us in Kula.

8 MR. FASI: What you approved in Kula was a TVR.  
9 This could be similar in context, but I think you have to  
10 keep in mind that this is shoreline property as opposed to  
11 the Kula property, and this is in direct conflict with the  
12 general plan policies and objectives.

13 CHAIRMAN STARR: Commissioner Guard, go ahead, and  
14 then Commissioner Hedani.

15 COMMISSIONER GUARD: I have some pretty good  
16 knowledge of this property. I was good friends, and  
17 actually one of the sons of the owner was my coach, and we  
18 used to go down there now and then after soccer and hang out  
19 down there. It's a great place, and I guess I'd prefer to  
20 see it being used by more people. I don't understand who  
21 would be able to really long-term rent a place like that.  
22 Some of the ones in Ma'alaea that have been long-term  
23 rentals kind of turn into flop houses anyway, because the  
24 remember is so expensive down there.

25 I had one question regarding the water use, that

1 they had mentioned they're using almost double the normal  
2 amount of water for a property that size, if that's come  
3 down as all as part of the wedding application.

4           It might be for Mich. But I'm trying to see who  
5 they think is going to benefit by keeping this a long-term  
6 rental. The people that sold it actually got the benefit of  
7 all buying their own houses out of this, so it actually  
8 created ownership opportunities for quite a few people out  
9 of the sale of this property.

10           CHAIRMAN STARR: Mr. Hirano?

11           MR. HIRANO: Thank you, Chair Starr. Just to  
12 respond to Commissioner Guard's comment about water use, I  
13 guess the water use on the property, I'm not sure if it's  
14 gone down recently, but it's the expense of lawns that are  
15 there that are well maintained that it was a high use of  
16 water, higher use of water. But just to maintain and keep  
17 the grounds up.

18           CHAIRMAN STARR: Commissioner Hedani.

19           COMMISSIONER HEDANI: Paul, I'm confused. The  
20 apartments that are surrounding this property are zoned  
21 apartment?

22           MR. FASI: That's correct.

23           COMMISSIONER HEDANI: And they allow transient  
24 vacation rentals?

25           MR. FASI: The transient vacation rental use was

1 prior to 1989. Some may have been and some may not. That  
2 would be a very hard thing to prove.

3 COMMISSIONER HEDANI: So whatever is there was  
4 grandfathered in based on a 1989 trigger for the zoning?

5 MR. FASI: I don't want to use the term  
6 grandfathered, but pre-existing.

7 COMMISSIONER HEDANI: I see.

8 CHAIRMAN STARR: Commissioner Mardfin, you're  
9 next.

10 COMMISSIONER MARDFIN: On page 10 of the report  
11 you mention that the department requested copies of the last  
12 two years of TAT filing, and then the thing we just got  
13 seemed to say that they don't have it.

14 MR. FASI: No, I corrected that this morning, and  
15 they actually have turned in not the complete filing, but  
16 the cover sheet to the TAT forms, and the department is  
17 satisfied in that respect.

18 COMMISSIONER MARDFIN: So they have been paying  
19 the TAT?

20 MR. FASI: I only requested for the last two  
21 years.

22 COMMISSIONER MARDFIN: For the past two years  
23 they have been paying?

24 MR. FASI: That is correct. I would like to bring  
25 to your attention, the last letter that was just handed to

1 you this morning brought up the issue of a cesspool on the  
2 property that is in very close proximity to the ocean.  
3 Should this application be approved, it should be a  
4 condition that that cesspool be switched to a septic tank  
5 system. If it continues to be used as a cesspool as it  
6 currently is in use according to this letter, that's  
7 something that needs to be addressed.

8 CHAIRMAN STARR: Okay, Commissioner Hedani.

9 COMMISSIONER HEDANI: Paul, since -- well, do we  
10 have information as to whether or not this property has been  
11 used as a transient vacation rental up to this point, as  
12 well as for a wedding business up to this point,  
13 irrespective of whatever regulations applied to it?

14 MR. FASI: I don't have any hard conclusive  
15 evidence from our zoning inspectors. We're basing this  
16 analysis based on what the applicant has provided to us and  
17 testimony from letters and documents that have been  
18 submitted to us.

19 COMMISSIONER HEDANI: So there were complaints  
20 that were filed according to the documents we received this  
21 morning.

22 MR. FASI: Yes, that's correct. In one of the  
23 exhibits there is a petition in there with about a half a  
24 dozen signatures, and they are against approving this  
25 application.

1           COMMISSIONER HEDANI: And there is no long-term  
2 resident in there?

3           MR. FASI: There is no long-term resident in  
4 there. Now, in relation to Commissioner Guard's suggestion  
5 that this was a TVR and an on-site manager in Kula, perhaps  
6 something similar could be hammered out here. But you have  
7 to be careful that there are so many inconsistencies with  
8 the general plan policies, Maui County zoning code, and  
9 community opposition.

10           As you recall, the TVR in Kula had community  
11 support. This is in contrast to that. You have maybe two  
12 or three letters in support, and basically you have a  
13 majority of the exhibits against, in opposition to this  
14 project. So it's a very different animal.

15           CHAIRMAN STARR: Mr. Hirano had something to  
16 add. I'll let him make a short comment.

17           MR. HIRANO: Thank you, Chair Starr, and thank you  
18 for the opportunity to just comment. The applicants, Don  
19 and Joy Nelson, had converted the cesspool into a septic  
20 tank and wastewater system, so that was done after the  
21 application was submitted. So it's been brought up to  
22 standard for the Department of Health.

23           I just as well found out from the property manager  
24 that since -- as I mentioned in my presentation, there was  
25 an old house on parcel 8 that was torn down, and that they

1 stopped watering that portion of the lawn. So water  
2 consumption I think has dropped dramatically from the time  
3 the application was made.

4 CHAIRMAN STARR: Okay, Commissioner Hedani.

5 COMMISSIONER HEDANI: Mich, to your information,  
6 is the property currently being used as a transient vacation  
7 rental and as a wedding business?

8 MR. HIRANO: No for a transient vacation rental.  
9 They stopped operating as of January 2008, as was required  
10 by the directive from the Department of Planning.

11 For wedding services I understand that they had  
12 negotiated to not take any more new reservations, but to  
13 allow the existing reservations at the time that they had  
14 the inspector on site, they were allowed to continue with  
15 the bookings that they had. That was my understanding.

16 CHAIRMAN STARR: Okay, Commissioner Guard, you're  
17 next.

18 COMMISSIONER GUARD: Thank you. The conditional  
19 permit is the first time normally, if it was a  
20 recommendation it would say we're recommending a permit of  
21 one year to the Council, is that right? So we don't really  
22 have any of that language.

23 I guess I'm considering that it would be a fairly  
24 conservative permit to recommend a one year use as a TVR if  
25 there was a lot of complaints from other people, while the

1 surrounding neighborhood has on-site reservation and  
2 property management companies.

3 I think most of the negative impact came from the  
4 wedding business, so I don't know if a condition would be  
5 allowed to say they wouldn't -- obviously to not do any more  
6 weddings on site as a condition for the one year TVR. If  
7 they're going to be able to have a caretaker on site I think  
8 that's a positive thing for the area.

9 CHAIRMAN STARR: Do you have any comments Mr.  
10 Fasi?

11 MR. FASI: Yes. With respect to Commissioner  
12 Guard, Chapter 19.12 says building instructors within the  
13 apartment district shall be occupied on a long-term  
14 residential basis. Now I understand the conditional permit  
15 process in order to basically, for lack of a better word,  
16 circumvent code, but certainly that should not be the intent  
17 here.

18 CHAIRMAN STARR: Commissioner Guard, one more.

19 COMMISSIONER GUARD: This may be a question for  
20 the Director. So all these people that were doing vacation  
21 rentals, they came to the Planning Department and they were  
22 recommended to go through this Conditional Use Permit  
23 process, correct? So I mean I'm wondering if we funnel them  
24 down this one, knowing it was a trap door, like a one way.  
25 Like we will get them stuck in the trap at the end of this

1 tunnel.

2 I mean that's why they were going through this  
3 Conditional Use Permit, I thought we were trying to get rid  
4 of that process to actually streamline TVR's, instead of  
5 just force them down a path that says no at the end of it.

6 DIRECTOR HUNT: We are not forcing anyone down any  
7 path. People have an opportunity to make an application for  
8 a use as they see fit. The Planning Department, based on  
9 existing law, has trouble with a pure TVR. And the reason  
10 we have trouble with that is the county code is not silent  
11 on a TVR, it specifically prohibits a TVR. The Council took  
12 action to prohibit TVR's.

13 When you read the conditional permit language, my  
14 interpretation of that language is it's for use that is not  
15 specifically permitted. So it is silent. When you look at  
16 our code as a whole, when you go into the business district,  
17 residential district, there's all these uses that are  
18 listed. So when you take a look at the conditional permit  
19 you can say well, if it's not specifically listed you can  
20 still consider it with a conditional permit process.

21 It's a real stretch for me intellectually and as a  
22 professional planner to say we can take that same process  
23 and actually allow a use that is specifically prohibited.  
24 Why do we prohibit it if we are then going to allow it  
25 through a conditional permit process?



1           Now, this whole TVR and B&B thing, there's a lot  
2 of grey area. At our meeting that we had I think it was a  
3 month ago or so we actually recommended approval of a TVR  
4 that had an on-site manager. We believe that we can support  
5 that because it is similar to a B&B, and so we're more  
6 comfortable with that. A pure TVR, we just can't get over  
7 that one because they're prohibited. I know it's a grey  
8 area and it causes confusion.

9           I would like to ask the applicant if the caretaker  
10 was part of the application or if they're willing to put it  
11 on as a condition or something like that, and perhaps the  
12 department could support that with the condition that there  
13 is a full-time caretaker on the site. Then it gets more  
14 into that similar use to a B&B where you have an on-site  
15 manager to talk about complaints or handle complaints.  
16 You're also providing for resident housing.

17           As long as I have got the microphone, the issue on  
18 the apartment zones is, again, the Council took affirmative  
19 action to prohibit TVR's in the apartment district. Because  
20 a number of them were operating prior to that, an action of  
21 that ordinance, they are considered as non-conforming uses.  
22 So they're legally allowed to operate, but the  
23 non-conforming use law is intended to phase those out.

24           If you don't continually operate those for a  
25 period of 12 years -- or let me phrase that differently. If

1 you fail to continually operate those for any 12 month  
2 period, then your nonconforming use is extinguished or it's  
3 no longer there. So the intent of those is actually through  
4 time they would be phased out. I think the answer to the  
5 caretaker question I would be interested in hearing.

6 CHAIRMAN STARR: Commissioner Hedani. I'm sorry,  
7 yes, you're right. Go ahead, Commissioner Hiranaga. Sorry  
8 about that.

9 COMMISSIONER HIRANAGA: Just to follow up on the  
10 discussion from the Director, specifically what is the  
11 difference between the TVR that was approved in Keokea and  
12 this one, because I seem to have more difficulty with the  
13 Keokea application than I do here. So if you could maybe  
14 summarize exactly the differences and why you felt the  
15 Keokea project should be approved or was approved, or  
16 recommended to be approved.

17 DIRECTOR HUNT: Recommended for approval. That  
18 project had an on-site manager full time, and that was part  
19 of the application. It was right up front, there wasn't any  
20 question about it. We didn't have to negotiate at the  
21 podium and say well, perhaps if we throw this in would you  
22 guys be willing to do this. They came right up front and  
23 said, "As part of our application." It was right there,  
24 there wasn't any confusion.

25 Again, we believe that if there's an on-site

1 manager there's a lot more community support for these,  
2 because there's someone to address complaints and it's  
3 providing for resident housing. So the Planning Department  
4 feels more comfortable supporting, as a compromise,  
5 supporting TVR's with an on-site manager. Technically  
6 they're still a TVR, but they're not what we call a pure TVR  
7 because there's an on-site manager.

8 COMMISSIONER HIRANAGA: So that's the primary  
9 determining factor?

10 DIRECTOR HUNT: I would say it's one. On the  
11 other one, the one in Kula, I don't believe there was any  
12 opposition from the neighbors at all. The Kula Community  
13 Association actually voted on it and recommended it.

14 COMMISSIONER HIRANAGA: Was there a conditional  
15 permit for one year also?

16 DIRECTOR HUNT: I believe it was initially for one  
17 year, and if they meet all their conditions we can then do  
18 it for five years.

19 COMMISSIONER HIRANAGA: Do they have to come back  
20 before us, or you can allow -- the Director has the  
21 discretion? It's the Council, I guess.

22 DIRECTOR HUNT: It would ultimately have to go to  
23 Council.

24 COMMISSIONER HIRANAGA: Thank you.

25 CHAIRMAN STARR: Okay, Commissioner Hedani.

1           COMMISSIONER HEDANI: Jeff, when did the Council  
2 take action to prohibit transient vacation rentals in the  
3 apartment district?

4           DIRECTOR HUNT: I believe it was in 1989  
5 originally.

6           COMMISSIONER HEDANI: 1989. So it's always been  
7 on the books since 1989?

8           DIRECTOR HUNT: Yes. And I'm not sure of the  
9 exact date, but approximately that time.

10          CHAIRMAN STARR: Commissioner Pawsat.

11          COMMISSIONER PAWSAT: First of all, I just want to  
12 say I'm going to recuse myself from this. I'm not directly  
13 involved with it, but my sister is in the vacation rental  
14 business, and I know Don Nelson was a client of hers. I  
15 don't know if this property was one or not.

16                 But I'm just confused about the on-site manager  
17 thing just as far as my questions, because in the letter  
18 Paul wrote to Mich he asked if there's a full-time property  
19 manager on the site and they say yes. But that's just not  
20 included in the proposal or something?

21          MR. FASI: That is correct, it's not included, but  
22 there is an on-site manager. If I can just get back to what  
23 the Director was saying regarding the County Code. And I'd  
24 just like to point out that in the code there is no stronger  
25 language than the word "prohibit." That is the strongest

1 language in the code, and when that word is used it is  
2 unequivocal and concise.

3 To get to Commissioner Hiranaga's concern  
4 regarding the Kula TVR, there's significant difference in  
5 this in that this is shoreline property. And theme number  
6 three of the general plan says to protect Maui County's  
7 shoreline and limit visitor industry growth to areas where  
8 it is better suited for this type of operation.

9 And clearly it is not the intent of the general  
10 plan to continue commercialization of the shoreline with  
11 this type of commercial business operation, especially in  
12 the A-2 zoned district.

13 CHAIRMAN STARR: Commissioner Mardfin.

14 COMMISSIONER MARDFIN: I wonder if Mich could come  
15 up. There's been the suggestion about on-site management.  
16 Can you address that?

17 MR. HIRANO: I'm glad you asked that question,  
18 Commissioner Mardfin. Yes, I've talked with the applicant  
19 representatives, and they will be amenable to that  
20 condition, that there will be an on-site manager. There is  
21 currently an on-site manager there who, you know, looks  
22 after the property, looks after that particular property.  
23 So that person will be the designated person, who has lived  
24 on the site for eight years.

25 CHAIRMAN STARR: Okay, Mr. Fasi, once again, as to

1 the recommendation and exactly what's before us.

2 COMMISSIONER HIRANAGA: I have a question.

3 CHAIRMAN STARR: Okay, Commissioner Hiranaga has  
4 another question before we do that.

5 COMMISSIONER HIRANAGA: The closest shoreline  
6 access is Haycraft Park, and I believe there's another  
7 shoreline access to the west near the Ma'alaea Banyon. Do  
8 you know the approximate distances of those two shoreline  
9 accesses from the property?

10 MR. FASI: I believe they are within the 1500 foot  
11 limitations. I believe that is the distance limitation.  
12 The shoreline access is adequate. I personally traveled  
13 that area to check out the shoreline access.

14 COMMISSIONER HIRANAGA: That was my only question,  
15 thank you.

16 CHAIRMAN STARR: Commissioner Mardfin.

17 COMMISSIONER MARDFIN: Paul, a lot of the letters  
18 in opposition to this were, in the application, were from  
19 the 2005 period, 2004, 2006 period. I can only see two  
20 things that were more recent. I guess a couple of people  
21 today testifying, I think there was one letter, and then  
22 this one you just passed out dated '08 in opposition. Is  
23 that sort of --

24 MR. FASI: That was up to date.

25 COMMISSIONER MARDFIN: Okay. So nobody has

1 contacted the people that were complaining before to find  
2 out if they still had objections to it?

3 MR. FASI: Well, prior to this hearing the  
4 applicant had to mail out a hearing notification to all  
5 residents within 500 feet of the location, so everyone is  
6 aware of it, or should have been. And therein the reason  
7 that we're getting these letters, you know, from Lake Tahoe.  
8 And I've received a couple of calls from the mainland that  
9 people were concerned about this. So the notification is  
10 adequate, and they have satisfied that requirement.

11 COMMISSIONER MARDFIN: I guess it sounds like the  
12 objections were connected more to the wedding operation than  
13 to the TVR, because it wasn't a TVR application three or  
14 four years ago when the letters, a lot of the letters of  
15 opposition were written.

16 And so we don't -- and one of our testifiers today  
17 mentioned she was specifically concerned, she was  
18 specifically testifying in favor as a TVR, and specifically  
19 not testifying in favor of it as a wedding operation. So I  
20 guess I'm wondering whether if it's a TVR if it --

21 MR. FASI: I don't think you can make that  
22 generalization, that since 2005 that all of the letters in  
23 opposition were only for the wedding business.

24 COMMISSIONER MARDFIN: I'm only saying that  
25 because they mentioned the wedding business in their letter.

1           CHAIRMAN STARR:   Commissioner Guard.

2           COMMISSIONER GUARD:   Yes, I guess we can move on.  
3 Even the one that came in today, he's only against it  
4 because he thinks it's a back door attempt to do the permit  
5 for the wedding chapel. I, for one, would prefer to see a  
6 quaint vacation rental with a nice open lawn, instead of  
7 being forced to sell it to have someone else try do a four  
8 unit condominium, multi-million dollar house site there, to  
9 avoid workforce housing and just to maximize the profit on  
10 the property.

11                   So it's only one year, and people in the past have  
12 said let's just move slowly and be conservative. I think  
13 this is a great opportunity to see how these guys can do in  
14 one year, to limit their wedding activity and provide jobs  
15 for transient vacation rental, whether it be cleaners,  
16 caretaker on site, landscaping.

17                   I would like to see the water use go down. I  
18 think there should be better storage of the community to try  
19 to protect our watersheds instead of creating a jungle down  
20 there, which it has become since the last person owned it  
21 that had to actually pay a water bill from Maui wages  
22 instead of NBA coaching wages, to try to use our resources a  
23 little better.

24                   But I guess we can read the recommendation and go  
25 from there. But I'm going to support a TVR in this



1 instance, when the whole neighborhood is currently vacation  
2 rentals.

3 CHAIRMAN STARR: Okay Mr. Fasi, your  
4 recommendation.

5 MR. FASI: Before I give the recommendation I just  
6 need to just address that a little bit further. The TVR's  
7 that are existing were most likely or very highly likely  
8 prior to 1989. By approving this proposal, you are creating  
9 a situation that is in direct conflict with the County  
10 Zoning Code, wherein it says it's specifically prohibited.  
11 It's a very strong statement.

12 COMMISSIONER GUARD: With the bed and breakfasts  
13 that we're talking about, the hybrid that hopefully will be  
14 taken care of within this year if the Council can get to it.  
15 And Director Hunt actually just said that the department  
16 would be more likely to support, and they've mentioned they  
17 have a full-time on-site caretaker, which would then become  
18 part of that hybrid bed and breakfast, TVR issue. I can  
19 support that.

20 If it was two units, TVR totally, that gets a  
21 little greedy, and that's where other people have been  
22 denied in the past. I think it's a good compromise that  
23 you're housing someone full time to take care of a beautiful  
24 property. At the same time of letting other visitors enjoy  
25 the property, maybe a group from Hawai'i, maybe my soccer

1 team has a reunion down there at the place we used to enjoy  
2 20 years ago. That would not be possible if it was a  
3 multi-million dollar long-term rental. Thank you.

4 CHAIRMAN STARR: Commissioner Hedani.

5 COMMISSIONER HEDANI: I guess I'm not sure if this  
6 question is for Paul or for the Director, but as of the  
7 current time, well, as of today -- this is a difficult one  
8 because it's so well maintained. I mean the property is so  
9 attractive, the landscaping is beautiful, the house is  
10 beautiful. Everything looks really spiffy about the  
11 property.

12 But from my perspective, if the property is zoned  
13 A-2 at this particular point in time, any future uses of  
14 that property should be confined to apartment uses that are  
15 long-term rentals.

16 DIRECTOR HUNT: That's what the code requires,  
17 yes.

18 COMMISSIONER HEDANI: And it's absolutely clear on  
19 that?

20 DIRECTOR HUNT: It's absolutely clear that that's  
21 what the intent of the A-2 zoning is. Again, our zoning  
22 ordinance does have a conditional permit process where you  
23 can find that a use is similar to those that are permitted,  
24 that it's not specifically listed as a permitted use, that  
25 the impacts from that use have not been considered in

1 advance.

2 COMMISSIONER HEDANI: So in this particular case,  
3 say if the owner wanted to come in with an apartment project  
4 within the A-2 zoning, he could develop a condominium on the  
5 project. Within the condominium documents he could specify  
6 that some of the units would be designated for short-term  
7 rental?

8 DIRECTOR HUNT: No, he couldn't.

9 COMMISSIONER HEDANI: It would have to be for  
10 long-term rental?

11 DIRECTOR HUNT: Correct. He could try through a  
12 conditional permit process or some other method, but the  
13 base zoning says it's for apartment, for long-term  
14 residential use.

15 COMMISSIONER HEDANI: Thank you.

16 CHAIRMAN STARR: Okay, Mr. Fasi, the  
17 recommendation.

18 MR. FASI: Thank you, Mr. Chair. The Maui  
19 Planning Department recommends that the Maui Planning  
20 Commission recommend denial of the Applicant's proposal to  
21 the Maui County Council based on the above Conclusions of  
22 Law and the department's report and recommendation.

23 In consideration of the foregoing, the department  
24 recommends that the Maui Planning Commission adopt the  
25 Planning Department's report and recommendation memorandum

1 prepared for today's meeting as its Findings of Fact,  
2 Conclusions of Law, and Decision and Order, and authorize  
3 the Planning Director to transmit said documents to the Maui  
4 County Council on behalf of the Planning Commission. Thank  
5 you.

6 CHAIRMAN STARR: Okay members, if anyone would  
7 like to make a motion, now would be a good time for that.

8 COMMISSIONER IACONETTI: I'll move to approve the  
9 recommendation from the Planning Department.

10 CHAIRMAN STARR: Is there a second?

11 COMMISSIONER MARDFIN: Second.

12 CHAIRMAN STARR: Okay, we have a motion made by  
13 Dr. Iaconetti, seconded by Commissioner Mardfin to --

14 COMMISSIONER IACONETTI: To approve the  
15 recommendation of the Planning Department.

16 CHAIRMAN STARR: To recommend the report of the  
17 Planning Department as, I guess the adoption of the report  
18 by the Planning Department by this Commission to recommend  
19 denial as per the conclusions of law.

20 COMMISSIONER IACONETTI: I'd prefer recommending  
21 the approval of the Planning Department's recommendation,  
22 rather than putting up a negative.

23 COMMISSIONER GUARD: It says denial. Just say  
24 what it is.

25 CHAIRMAN STARR: I'm happy to -- I don't want to

1 put words in your mouth, Doc. The motion is to recommend to  
2 Council the acceptance of the recommendation by the  
3 department, and that's been moved, and seconded by  
4 Commissioner Mardfin. Any discussion or amendments?  
5 Commissioner Guard.

6 COMMISSIONER GUARD: So the motion is to deny the  
7 Conditional Use Permit, is that correct, Doc? I just want  
8 to make sure.

9 COMMISSIONER IACONETTI: Yes.

10 COMMISSIONER GUARD: So we can not just dance  
11 around it.

12 COMMISSIONER IACONETTI: The motion is not a  
13 negative motion.

14 CHAIRMAN STARR: Okay, Commissioner Hiranaga.

15 COMMISSIONER HIRANAGA: At this point I will be  
16 voting against the motion on the floor. It's not a perfect  
17 application, but I think if the applicant was willing to  
18 provide some concessions I think there's justification for  
19 the granting of the Conditional Use Permit.

20 One of the conditions that I would propose is they  
21 cease all wedding activities upon the issuance of this  
22 Conditional Use Permit. That they -- and if they do have a  
23 wedding or similar function, that that permit would be  
24 revoked immediately. That they do provide an on-site  
25 full-time manager, and that they make sure that they have

1 paid their TAT and GET taxes from the time they took  
2 ownership of the property.

3           It appears to me that most of the letters in  
4 opposition are opposed to the wedding activities and related  
5 noise that it creates. Hauoli Street is basically full of  
6 apartments, and they all are involved in TVR activities.  
7 And it just doesn't seem to me like one house on this lot  
8 will be creating a unique situation that already exists on  
9 that street with all the existing condominiums.

10           I think it appears to me the major objection is  
11 the wedding or commercial activities that are beyond a  
12 transient vacation rental operation. So those are basically  
13 my comments. I see it as a low density operation in an  
14 apartment zoned area that's basically operating, as staff  
15 had mentioned, in a non-conforming use, which is TVR's.

16           The other alternative would be a higher density  
17 project, which would create more traffic, more parking  
18 issues. You know, when the surf does come up in Ma'alaea,  
19 which is fairly rare nowadays, it is very difficult to find  
20 parking on Hauoli Street, especially since they installed  
21 those or constructed those sidewalks along the makai side of  
22 the street. So a higher density use would only add to the  
23 off-street parking situation. So I will be voting against  
24 the motion on the floor.

25           CHAIRMAN STARR: I know that the suggested, the

1 suggested -- I think your recommendation about having  
2 conditions regarding the wedding business at this point is a  
3 hypothetical, because it's not being issued as an amendment.  
4 But still it is an interesting point. And I just wanted to  
5 ask Counsel whether that's something that even though it's a  
6 hypothetical at this point we could consider, because it has  
7 -- the wedding portion of it has been bifurcated. So could  
8 we condition stuff relating to the wedding side of it if we  
9 wanted to?

10 MR. GIROUX: It's a pretty tough question. The  
11 thing is that you're sending a recommendation to Council,  
12 and I'm sure the Planning Department will try to run these  
13 two permit applications hopefully, you know, simultaneously  
14 so they understand what are the conditions that they are  
15 going to be looking at.

16 So like you said, it's hypothetical because this  
17 recommendation right now is for denial of the permit, so it  
18 wouldn't run. If the motion was to allow the conditional  
19 permit for the transient vacation rental, I wouldn't see a  
20 problem of you putting that as a recommendation, because  
21 ultimately the Council would have to decide on the project  
22 as in total.

23 CHAIRMAN STARR: Commissioner Hiranaga.

24 COMMISSIONER HIRANAGA: Well, hypothetically, if  
25 we had a motion on the floor to grant the Conditional Use

1 Permit, the applicant could agree to withdraw their  
2 application before the Council for the Conditional Use  
3 Permit for a wedding.

4 COMMISSIONER IACONETTI: Point of order. We have  
5 a motion on the floor. Commissioner Hiranaga's suggesting  
6 an alternative motion.

7 COMMISSIONER HIRANAGA: No, I'm not, I'm saying  
8 why I am not voting for your motion. I am not proposing  
9 another motion. It's discussion on your motion.

10 CHAIRMAN STARR: I'm just trying to give us  
11 maximum leeway in discussing it, but it is a hypothetical,  
12 Doc.

13 COMMISSIONER IACONETTI: I have another question,  
14 though. I notice that the recommendation --

15 COMMISSIONER HIRANAGA: I have the floor,  
16 Mr. Chair.

17 CHAIRMAN STARR: Actually, Dr. Iaconetti has the  
18 floor.

19 COMMISSIONER IACONETTI: The recommendation which  
20 was apparently voted four for and four against the wedding  
21 thing was submitted to the County Council three years,  
22 three-and-a-half years ago. Does it ordinarily take that  
23 long for the County Council to make a determination of this  
24 sort?

25 CHAIRMAN STARR: Director?



1           DIRECTOR HUNT: I don't speak for the Council.  
2 It's not unusual for permits to not be acted on as quickly  
3 as some of us would like or think, due to other priorities  
4 or other reasons, I suppose.

5           COMMISSIONER IACONETTI: Well, the reason for the  
6 question obviously is if the TVR is granted, the next step  
7 is that the wedding situation will be granted too by the  
8 Council. And perhaps the Council has been waiting for our  
9 answer on whether or not the TVR is going to be granted in  
10 consideration of the wedding request. I think they're very  
11 definitely associated, I think that one is going to follow  
12 the other, and for that reason I made the motion.

13           CHAIRMAN STARR: Okay, Commissioner Hiranaga, did  
14 you want to add something?

15           COMMISSIONER HIRANAGA: Yes, I'd like to continue.  
16 I think the applicant has the right to withdraw their  
17 application for a Conditional Use Permit for a wedding  
18 because it has not been acted on by Council.

19           Am I correct, Corporation Counsel, they have the  
20 right to withdraw that application?

21           MR. GIROUX: Right. Any application for any type  
22 of land use can be -- whether it be a zoning or conditional  
23 permits, Special Use Permits can be withdrawn by the  
24 applicant at any time.

25           COMMISSIONER HIRANAGA: Right. So that's why I

1 was putting it out there. If they want my support they  
2 would withdraw that application.

3 CHAIRMAN STARR: You know, if it got to a point  
4 where there was such a motion, then at that point I would  
5 consider it in order to ask them.

6 COMMISSIONER HIRANAGA: I'm done.

7 CHAIRMAN STARR: Members, are you ready to vote on  
8 this? It looks like not. Commissioner Mardfin.

9 COMMISSIONER MARDFIN: I want to make a statement,  
10 but first I want to ask a question. This whole thing  
11 started with this TVR application in 2002. Any idea why  
12 it's taken, not the three years, but the six years to get to  
13 this stage?

14 MR. FASI: I was not the original planner on this  
15 project, but I'm assuming, based on what I've read in the  
16 application, that it was the Council's decision -- a  
17 decision by the applicant to hold off on processing this  
18 pending the ongoing legislation that is so unknown. It's an  
19 unknown factor.

20 COMMISSIONER MARDFIN: So they put in an  
21 application, then they just kind of decided to --

22 MR. FASI: Just to bifurcate this and move ahead  
23 separately.

24 COMMISSIONER MARDFIN: But they basically in  
25 their behavior said, "We put in our application in good

1 faith. We are not going to push it, nothing is going to  
2 happen, and we get to do TVR's for the next six years."

3 CHAIRMAN STARR: Our director has a comment.

4 DIRECTOR HUNT: I'm not sure if that's  
5 specifically the motivation in this application, but that is  
6 exactly what happened on a general basis. The previous  
7 administration said, "If you merely submit an application we  
8 will allow you to operate." At the same time they said, "If  
9 you request that we don't process your application, we  
10 won't."

11 So numerous people submitted applications and  
12 simultaneously said, "Now that I've got my application in,  
13 please don't process it. I just want to continue to  
14 operate." And we're having to clean up that mess now.

15 So many of these will be coming to you. We have  
16 got a backlog of approximately 60 or 70 of these. It's not  
17 our -- we didn't create the mess; we have got to clean up  
18 the mess.

19 CHAIRMAN STARR: Mr. Fasi.

20 MR. FASI: Let me just point out here something  
21 that hasn't been thrown in the discussion mix here, is that  
22 in regards the highest and best use of this piece of  
23 property in terms of the public, it would be for the County  
24 to purchase this piece of property and open it up for park  
25 use since it is shoreline property. That's something that

1 you could suggest as well.

2 CHAIRMAN STARR: Okay, Commissioner Hedani first,  
3 followed by Commissioner Guard.

4 COMMISSIONER HEDANI: In this particular case I  
5 guess I'm not, I haven't crossed the bridge with TVR's with  
6 an on-site manager being equivalent to a bed and breakfast.  
7 From my way of thinking, a bed and breakfast is owner  
8 occupied, and he can't replicate himself 12 times so that  
9 he's a bed and breakfast owner of 12 different units, and  
10 still serve waffles at each one every morning.

11 So in my head, a bed and breakfast and a TVR are  
12 two totally different things. And if the legislation that's  
13 applicable and if the zoning that's applicable for this  
14 particular site says A-2 long-term residential, then A-2  
15 long-term residential is what it should be. So I will be  
16 supporting this.

17 CHAIRMAN STARR: Commissioner Guard.

18 COMMISSIONER GUARD: I guess I had a question on  
19 if we're really truly denying this because of a fear of the  
20 wedding chapel business, that I'd be hopeful that we'd  
21 support some of the ideas that Commissioner Hiranaga brought  
22 up, instead of just voting in fear of the wedding business.

23 But I mean for a lot of my friends and family that  
24 kind of rely on having a job that's not either government  
25 supported or other avenues, I have quite a few friends that

1 have been affected by this industry and these  
2 recommendations on vacation rental shutdowns. So that being  
3 said, I'll be going with Commissioner Hiranaga's ideas and  
4 voting against this motion.

5 CHAIRMAN STARR: Okay, Commissioner Mardfin.  
6 Okay, Mr. Fasi.

7 MR. FASI: I would just like to clarify  
8 Commissioner Guard's statement of shutting down. The County  
9 is not shutting anyone down, we are enforcing the law based  
10 on the direction given to us by the County Council. The  
11 county and this administration is not in the business of  
12 shutting anyone out of business, we are merely enforcing the  
13 law given the direction by the County Council.

14 CHAIRMAN STARR: Commissioner Mardfin.

15 COMMISSIONER MARDFIN: I am going to vote in favor  
16 of the motion. I'm not conflating that with the wedding  
17 business, although I understand that could be a  
18 consideration. I'm assuming this is just a straight TVR  
19 application, Conditional Use Permit application.

20 To be honest, I'm not sure now consistent I'll be  
21 if this happens to a Hana property as opposed to a Ma'alaea  
22 property. I just don't know how I'd think about it. It  
23 might be different.

24 But I am going to vote in favor of this because  
25 I'm persuaded by the clear language of the laws passed by

1 the County Council. And I'm persuaded by Mr. Fasi's  
2 argument that it says basically prohibit. Not that it's an  
3 allowable thing maybe, or not mentioned maybe, but it was a  
4 clear indication that this was not to occur.

5 And I have to be honest, I'm not sure I agree with  
6 it. I'm not sure I would pass such a law in the first  
7 place. But I think we should try to follow the laws as they  
8 exist, absent extreme justification for not doing that. So  
9 I am going to vote in favor of the motion.

10 CHAIRMAN STARR: Okay, we need to vote.  
11 Commissioner Hiranaga.

12 COMMISSIONER HIRANAGA: Just some clarification on  
13 this 1989 determination to allow existing non-conforming  
14 uses of short-term rentals and apartment zoned complexes,  
15 which basically involves almost every condominium on South  
16 Kihei Road, Hauoli Road, Lower Honoapiilani Highway, and  
17 Honokowai, Napili.

18 The law was there, right, it was just an  
19 interpretation by either Corporation Counsel or the Mayor's  
20 office that hey, from this point on we are going to enforce  
21 the existing law, and if you are in violation of this  
22 existing law prior to 1989 we are going to classify you as a  
23 non-conforming use.

24 I just want confirmation from Corporation Counsel  
25 as to how that evolved, that cut-off, because all those

1 apartments on South Kihei Road are zoned apartment, those  
2 condominiums.

3 MR. GIROUX: Yes, I think Paul went over it.  
4 There was a change in the ordinance, and I believe Paul said  
5 it was in 1989 where the Council specifically inserted the  
6 language that said that, this prohibition language. Prior  
7 to that the apartment zones were allowed to have a type of  
8 TVR uses.

9 Now, as interpretation, you know, we are just  
10 looking at the common law and saying in the law of zoning  
11 when an administrative or when a legislative body does this  
12 type of activity it creates what's called a non-conforming  
13 use. Basically anything that was allowed prior to new  
14 legislation you can't just go in and wipe everybody out.  
15 You have to have a type of procedure that allows, and it's  
16 in the code, that allows for prior existing uses that  
17 weren't specifically prohibited, that are now prohibited, to  
18 continue to exist until they can be phased out in order to  
19 have uniformity within your zoning.

20 COMMISSIONER HIRANAGA: So there was actual  
21 legislation.

22 MR. GIROUX: Right, and I think Paul has it.

23 MR. FASI: That is correct. Chapter 19.12, the  
24 apartment district zoning wherein it says, "Building and  
25 structures within the apartment district shall be occupied

1 on a long-term residential basis." And I believe this is  
2 codified, and it says Ordinance 1797, and that was in 1989.  
3 So that was the purpose of addressing that particular issue.

4 COMMISSIONER HIRANAGA: Thank you. I have one  
5 final comment I guess for those of you not familiar with  
6 Hauoli Street. I'm not sure if there's seven or eight or  
7 nine complexes there. I mean it is not a residential area,  
8 it is -- I mean it is a residential area since it is  
9 condominiums, but basically it's being conducted in a resort  
10 fashion. I just don't see how this one house, the only  
11 remaining house that is not a condominium project would  
12 impact the neighborhood. So just that one final comment.

13 CHAIRMAN STARR: Commissioner Guard.

14 COMMISSIONER GUARD: Is that language prohibiting  
15 vacation rentals only in the A-2 district or is it also in  
16 residential? And I have a follow-up question.

17 DIRECTOR HUNT: The language prohibiting TVR's is  
18 across the board. It says TVR's are prohibited except in  
19 the following districts, and then it lists the hotel  
20 district.

21 COMMISSIONER GUARD: So I don't know if I should  
22 disclose, but I'm part of a group that we go to Moloka'i and  
23 also to Hana, that most people don't always stay in hotels.  
24 So I'm concerned for Commissioner Mardfin's friends and  
25 people that might be tied to the vacation rental industry



1 that we're going to be waffling on votes. It's not only  
2 this A-2 district.

3           So if I go and hopefully can finally find a place  
4 to possibly stay in Hana, like we used to to go visit one of  
5 my best friend's burials out there, we stayed on an  
6 oceanfront property next to their land where we were able to  
7 camp. I'm just fearful that that's illegal, and I won't be  
8 able to do that based on this voting.

9           CHAIRMAN STARR: Commissioner Mardfin.

10           COMMISSIONER MARDFIN: I have a question. I don't  
11 know if it's for Corp Counsel or the department. The  
12 Director mentioned that the grandfather, the unpermitted use  
13 is extinguished if it's not carried on for a one-year  
14 period. And my question is -- I understand that. So if for  
15 a one-year period they give a long-term rental or they don't  
16 operate it as a short-term rental then the claim to continue  
17 as an unpermitted use is basically extinguished.

18           What if the property sold, does that also  
19 extinguish the claim, or can it be sold and continue as an  
20 unpermitted use?

21           DIRECTOR HUNT: The ownership has no affect on it,  
22 it's the use that matters. To put the language more  
23 clearly, if you discontinue the non-conforming use for a  
24 period of one year, then it evaporates.

25           COMMISSIONER MARDFIN: I just wondered, it would

1 seem to make sense to have a change in ownership also  
2 extinguish that. So in a fast way to bring areas in  
3 conformance.

4 DIRECTOR HUNT: The law doesn't require or doesn't  
5 trigger a change in ownership.

6 CHAIRMAN STARR: Okay, are ready to vote members?  
7 It looks like we are. Okay, the motion is to take the  
8 recommendation of the department as our own and move it  
9 along to Council.

10 All in favor of the motion as stated please raise  
11 your hand.

12 (Commissioners Iaconetti, Mardfin, Hedani and  
13 Starr).

14 All those opposed.

15 (Commissioners Guard and Hiranaga)

16 (Commissioner Pawsat recused)

17 (Commissioners U'u and Domingo excused)

18 Let the record show that we have three in favor,  
19 we have -- I'm sorry, four in favor, three opposed, and one  
20 recused. Two opposed and one recused. Okay.

21 COMMISSIONER IACONETTI: Maybe if you take your  
22 shoes off you can count.

23 CHAIRMAN STARR: Okay, yes, I think I do need to  
24 use my toes for this. Okay, let me restate the count, which  
25 is four in favor, two opposed, one recused. Is that

1 correct? Okay, so the motion fails.

2 So we're back to square one here, and we're open  
3 to another motion. If anyone has another motion, now would  
4 be a good time to make it.

5 Okay, not seeing any motion being made at this  
6 time, and it does seem like the body is somewhat split,  
7 perhaps a course might be to pass it along with no  
8 recommendation. What if we don't -- I don't think not  
9 acting is a particularly good process. I would think that  
10 -- can we not act, Counsel, or do we need to act in some  
11 way? And if we don't act, I believe it comes back to us.  
12 Commissioner Guard.

13 COMMISSIONER GUARD: I can try to prepare a motion  
14 to recommend approval of a one year conditional permit based  
15 on a few of Commissioner Hiranaga's conditions that he had  
16 discussed that I thought would be agreeable to most, to a  
17 majority of the Commission.

18 CHAIRMAN STARR: If you wish.

19 COMMISSIONER GUARD: I just don't want -- I mean  
20 if it's going to be pro TVR or anti TVR, maybe it's just a  
21 useless issue. There's just some people that don't find a  
22 place for it. So if it's going to go with no  
23 recommendation, that's fine. I don't know if there's any  
24 movement here or not, but that's kind of every one of these  
25 issues is going to come up again. Whether it be Hana,

1 Moloka'i, my backyard, your backyard, some people like them,  
2 some people don't. So I don't want to waste their time if  
3 everyone is going to be in concrete shoes and not moving.

4 CHAIRMAN STARR: Commissioner Hedani.

5 COMMISSIONER HEDANI: I think we should defer on  
6 this particular motion, since we have two Commissioners that  
7 are absent today. If we have 60 or 70 applications that are  
8 similar to these, I think it's appropriate for all of the  
9 Commissioners to vote.

10 CHAIRMAN STARR: Commissioner Guard.

11 COMMISSIONER GUARD: That may be the best one as  
12 well. I think it's a good project. It's only a one year  
13 permit. Planner Fasi brought up some good ideas. If the  
14 county wants to buy it from them they have a year to try to  
15 find the money to do it, instead of these guys selling it to  
16 do an 80 unit high-rise, which maybe you're for that kind of  
17 stuff too, I don't know, or for a four unit multi-million  
18 dollar four-plex, but we never get to set ocean again.

19 I like big open lawns, and I think that's a nice  
20 part of old Hawai'i that we're missing, and here is someone  
21 trying to duplicate that, instead of cutting them up into  
22 these small shoe boxes that we're seeing pop up all over the  
23 coastline. It's a one year permit that we're talking about.  
24 It's as slow a move as we can make, and if there's a problem  
25 they can cancel it in that time period.

1           So again, I'll try to work a motion, but if  
2 everyone is pretty much not going to go with it then we  
3 should either defer it or send it on with no recommendation.

4           CHAIRMAN STARR: I'm happy to accept any motion at  
5 this point, whether to defer or as you please, but I do wish  
6 someone would make a motion. Commissioner Hedani.

7           COMMISSIONER HEDANI: Move to defer.

8           CHAIRMAN STARR: Is there a second?

9           COMMISSIONER MARDFIN: Second.

10          CHAIRMAN STARR: Okay, we have a motion to defer  
11 by Commissioner Hedani, seconded by Commissioner Mardfin,  
12 and the motion is to defer. Commissioner Hiranaga.

13          COMMISSIONER HIRANAGA: I will be voting against  
14 the motion to defer, because this is just a recommendation  
15 to Council, and if we're unable to make a determination they  
16 have access to the minutes and our comments. And rather  
17 than delay the process, I would like to see, prefer the  
18 process move forward.

19          CHAIRMAN STARR: Dr. Iaconetti?

20          COMMISSIONER IACONETTI: A comment. I have  
21 considerable difficulty in voting to break the law. That's  
22 what we'd be doing with a one year approval or with anything  
23 longer.

24          COMMISSIONER GUARD: Propaganda.

25          COMMISSIONER IACONETTI: Well, maybe it is, but it

1 is the written code, and to go against it we're breaking the  
2 law.

3 CHAIRMAN STARR: Commissioner Hiranaga.

4 COMMISSIONER HIRANAGA: Maybe Corporation Counsel  
5 could explain to us the purpose of a Conditional Use Permit  
6 and why we have such a process and such a permit.

7 MR. GIROUX: Well, I think, I really don't want to  
8 get in the middle of this one, but I'll just read from  
9 Chapter 19.40 where it talks about the intent of conditional  
10 permits. It says, "The intent of the conditional permit is  
11 to provide the opportunity to consider establishing uses not  
12 specifically permitted within a given use zone where the  
13 proposed use is similar, related, or compatible to those  
14 permitted uses which have some special impact or uniqueness  
15 such that its affect on the surrounding environment cannot  
16 be determined in advance of the use being proposed for a  
17 particular location."

18 That's the intent. If you look at 19.40.070 where  
19 it talks about the establishment and the process of running  
20 a Conditional Permit, it says, "Upon finding by the  
21 appropriate Planning Commission that reasons justifying  
22 granting of a Conditional Permit exists, and that the  
23 proposed use would not be significantly detrimental to the  
24 public interest, convenience and welfare, and will be in  
25 harmony with the area in which it is to be located, issuance

1 of a Conditional Permit may be recommended subject to such  
2 terms and conditions for such period of time as the facts  
3 may warrant."

4           So if you look at those two together, I think you  
5 can start to figure out what you're looking at as far as an  
6 application for a Conditional Permit. There's been a lot of  
7 comments about our Conditional Permit process as far as it  
8 creates opportunities for spot zoning, which would be  
9 illegal zoning in the sense that you're creating  
10 opportunities for uses which are not compatible.

11           But within the law itself it says that one of the  
12 criteria is that you're not supposed to -- you are supposed  
13 to find that the use is not against the public interest,  
14 convenience and welfare, and that's how you protect against  
15 spot zoning.

16           CHAIRMAN STARR: Mr. Fasi?

17           MR. FASI: In order to elaborate on that a little  
18 bit, 19.04.070 also says in B, "Should the Commission  
19 determine that the permit requested is for a use which is  
20 substantially different from those uses permitted in the use  
21 zone" -- which this is substantially -- "the Commission  
22 shall recommend denial of the request, and may instruct the  
23 Applicant to seek a change in zoning should the facts  
24 warrant such an application."

25           So this applicant also has the alternative to seek

1 a change in zoning. But as the Corporation Counsel just  
2 mentioned, that would be spot zoning, and that is something  
3 the department cannot support. But in B it says that the  
4 Commission shall recommend denial of the request if this use  
5 is substantially different, and it is a use substantially  
6 different from anything in that district.

7 CHAIRMAN STARR: Okay, Members, it does seem that  
8 we have, you know, different opinions on the Commission here  
9 on this, and there is a motion on the floor to defer. I  
10 would like to say that from a procedural standpoint I would  
11 prefer if we could not defer, but rather deal with it either  
12 be denial, approval, or passing it along without any  
13 recommendation, as the bifurcated first half of this was  
14 done, simply because we have a lot of items in backlog and  
15 there are going to be many, many, many, many more of these  
16 coming before us. And if we get into deferring them waiting  
17 until we have a full quorum to deal with them, we may find  
18 ourselves getting repeatedly stuck. But I am happy to do  
19 whatever the body wants with it. Commissioner Hedani.

20 COMMISSIONER HEDANI: I think we're wasting our  
21 time here basically, because I don't see -- from my  
22 perspective, it's clear from the standpoint of what is the  
23 law, what is at appropriate use. I disagree that the entire  
24 area is only transient vacation use. There are residents  
25 that live in that area, employees that live in that area



1 given the opportunity to have long-term rental.

2 And I think that Mrs. Hedani would be highly upset  
3 if I had to mortgage, re-mortgage my house for a third time  
4 in order to defend on a motion that goes against staff  
5 recommendation.

6 CHAIRMAN STARR: Okay, Commissioner Guard.

7 COMMISSIONER GUARD: I will be voting against the  
8 deferral, and after that I will try to make my motion. And  
9 if it goes forward with no recommendation, I just feel it  
10 would be better for me to have that in the minutes that I  
11 feel there is a way to make a one year permit acceptable to  
12 the community. And after that time if they don't follow the  
13 rules there's another opportunity for this, that I think it  
14 was Commissioner Hedani on another project saying that it's  
15 better to just move very slowly instead of just I guess  
16 outright denying these things.

17 I think a one year time period gives us some time  
18 to review it. Possibly there's new legislation that's done  
19 by then. And we will have I guess the Planning Department  
20 and the Council on the same page of how we move forward with  
21 vacation rentals.

22 CHAIRMAN STARR: Okay, can we take a --  
23 Commissioner Mardfin.

24 COMMISSIONER MARDFIN: Just real quick. I am  
25 going to vote in favor of the motion to defer because of the

1 two absences. I would hope that once we can get a full  
2 board, kind of get a sense of where we are on this thing, in  
3 the future it will be easier to proceed. I'm cognizant of  
4 the Chair's concern that we not get too backlogged.

5 And Commissioner Guard's arguments are quite  
6 strong, and I don't have a huge problem with them, but I  
7 think I would like to get the other two members to weigh in  
8 on this before we do something else.

9 CHAIRMAN STARR: Okay, are ready to vote on the  
10 motion to defer? The motion is to defer. All those in  
11 favor please signify by raising thy hand.

12 (Commissioners Hedani and Mardfin).

13 All those opposed please raise your hand.

14 (Commissioners Hiranaga, Guard, Iaconetti and  
15 Starr)

16 (Commissioner Pawsat recused)

17 (Commissioners U'u and Domingo excused)

18 Okay, so what we have is two in favor, four  
19 opposed. Did I get that right? And one recused. I didn't  
20 take my shoe off yet, Doc.

21 Anyway, the motion fails. And since there is  
22 another motion that will likely be made, I am going to call  
23 a very short recess, less than five minutes, for the call of  
24 the Chair, and give Commissioner Guard a chance to get that,  
25 work with Mr. Fasi and make sure that it's written down.

1 (Whereupon a brief recess was had)

2 CHAIRMAN STARR: Okay, our meeting is back in  
3 session. The matter before us is still the TVR Conditional  
4 Permit in Ma'alaea. The Chair is ready for another motion.  
5 I believe Commissioner Guard has a motion that he would like  
6 to make.

7 COMMISSIONER GUARD: Let me start by apologizing  
8 on the frustration level, because I'm just getting nervous  
9 that we're going to see this on 70 more of these, that we  
10 should either be able to say it's fairly easier. It's not  
11 going to happen.

12 With that, I'd like to make a motion to recommend  
13 approval of a one year Conditional Use Permit. I guess  
14 recommend approval to the Maui County Council for a  
15 transient vacation rental for one unit on the property.  
16 Would that be correct?

17 MR. GIROUX: Are you talking about rooms or are  
18 you talking about just the house?

19 COMMISSIONER GUARD: For the main home, for the  
20 main dwelling of the property.

21 DIRECTOR HUNT: I suggest one dwelling unit.

22 COMMISSIONER GUARD: One dwelling unit.

23 CHAIRMAN STARR: You are getting it down.

24 COMMISSIONER GUARD: Located at the subject TMK.  
25 The second dwelling unit would be available for a full-time

1 long-term caretaker. And that prior to approval at the  
2 Council we'd have proof of all payments of TAT and GET taxes  
3 current from the date of ownership by the Nelson Trust.

4 In addition, the applicant would limit their -- I  
5 guess the wedding chapel business on site, and best efforts  
6 would be made to minimize usage of potable county water.

7 MR. GIROUX: JB, you used the word "limit." Is  
8 that the word you want to use?

9 COMMISSIONER GUARD: Best efforts to minimize,  
10 limit.

11 MR. GIROUX: The wedding business. Are you  
12 talking you want that --

13 COMMISSIONER GUARD: I'm going to make it with  
14 limit. I find that a wedding business is also another big  
15 business that a lot of people in Hawai'i use. I don't agree  
16 with the 240 parties, but I don't think everyone should only  
17 be limited.

18 CHAIRMAN STARR: Before you speak in favor of it,  
19 is there a second to the motion? Okay, seeing none.

20 COMMISSIONER HIRANAGA: I just have a question.  
21 I'm not --

22 CHAIRMAN STARR: No questions. You're welcome to  
23 second it or not second it.

24 COMMISSIONER HIRANAGA: How about a procedural  
25 question?

1 CHAIRMAN STARR: Okay, go ahead. Use the mic.

2 COMMISSIONER HIRANAGA: I'm not fully in favor of  
3 the motion, but I guess I could make amendments I guess  
4 after it gets on the floor.

5 MR. GIROUX: You can second it and move for  
6 amendments.

7 COMMISSIONER HIRANAGA: I'll second it.

8 CHAIRMAN STARR: Okay, so we have a motion on the  
9 floor by Commissioner Guard, and seconded by Commissioner  
10 Hiranaga, and the motion states --

11 DIRECTOR HUNT: Recommend approval of the TVR for  
12 one year on the conditions that one dwelling unit on the  
13 property be used for the TVR. The second dwelling unit on  
14 the property be made available for a full-time caretaker.  
15 That the TAT taxes be paid from the date of ownership,  
16 current ownership. That the wedding business be limited,  
17 and that the usage of potable water be limited.

18 CHAIRMAN STARR: Okay, Mr. Fasi has a comment.

19 MR. FASI: I have a concern regarding the use of  
20 the word "limit." It's very vague. I would prefer to have  
21 a number and a time frame on that, X number of weddings per  
22 month.

23 CHAIRMAN STARR: I believe Commissioner Hiranaga  
24 may have an idea in this regard. Commissioner Hiranaga, do  
25 you have an amendment?

1           COMMISSIONER HIRANAGA:    Yes.  I'd like to offer  
2 an amendment to replace the word limit weddings to  
3 "prohibit" weddings or related commercial activities.  So in  
4 effect if you wanted to have a wedding with your immediate  
5 family or your cousin there that's fine, but if you are  
6 collecting money for a commercial function, that would be  
7 prohibited.

8           CHAIRMAN STARR:  Okay, we have an amendment.  Is  
9 there a second to this amendment?

10          COMMISSIONER GUARD:  Second.

11          CHAIRMAN STARR:  So we have an amendment made by  
12 Commissioner Hiranaga, seconded by Commissioner Guard and  
13 the amendment states --

14          DIRECTOR HUNT:  The wedding business shall be  
15 prohibited along with related commercial businesses.

16          COMMISSIONER HIRANAGA:  Activities, commercial  
17 activities.

18          CHAIRMAN STARR:  So restate it one more time.

19          DIRECTOR HUNT:  The wedding business shall be  
20 prohibited as well as related commercial activities.

21          CHAIRMAN STARR:  Okay.  Before we go into further  
22 discussion on it, I would like to hear whether this is, you  
23 know, this indeed is something we can do.  James?  And maybe  
24 we should also hear from the applicant, whether this is  
25 something that they would undertake.

1 MR. GIROUX: Again, this is a recommendation to  
2 the Council, so what they're asking is for your best  
3 expertise and advice. So you're taking your best shot at it  
4 with the collective experience you have. So whether or not  
5 the Council goes along with it is going to be their  
6 legislative choice.

7 CHAIRMAN STARR: Okay. Mr. Fasi, and also I'd  
8 like to hear from the applicant.

9 MR. FASI: I don't mean to split hairs, but you  
10 want to prohibit the wedding business and/or any commercial  
11 business, so are you prohibiting the TVR business?

12 COMMISSIONER HIRANAGA: Unless specifically  
13 allowed.

14 CHAIRMAN STARR: We still are a little vague, I  
15 guess. Commissioner Hiranaga, could I get you to slightly  
16 rephrase that to clear that one point, because that would be  
17 a business. What's the amendment?

18 DIRECTOR HUNT: Right now it says the wedding  
19 business would be prohibited, as well as related commercial  
20 activities. I would interpret those as related to the  
21 wedding business. You don't need to prohibit all commercial  
22 activities, the zoning ordinance already prohibits those,  
23 though you can get a Conditional Permit.

24 CHAIRMAN STARR: Let's here from the applicant on  
25 this. Mich?

1           MR. HIRANO: Thank you, Chair Starr, and thank you  
2 Commissioners. I appreciate the effort being made to try  
3 and find a way to support this application. I've spoken  
4 with the applicants, and they feel that it would -- their  
5 main interest I think is the wedding part of the  
6 application.

7           But if it was a condition that was tied to the  
8 TVR, I think that if they had to choose they would make the  
9 choice towards the wedding business. That's why it was  
10 bifurcated in the first place, because it seemed like there  
11 was more opportunity to provide processing of that  
12 application than the transient vacation one, because that  
13 was being held by the department for some time.

14           It wasn't that the applicant was sitting and not  
15 wanting to process it, it was a policy of the department.  
16 And then the department is now processing it. But the  
17 applicant feels that the wedding part of that Conditional  
18 Permit application is very important to them.

19           CHAIRMAN STARR: Okay, Members, your pleasure.  
20 Are we ready to call the question then? Are we ready to  
21 call the question on the amendment? Okay, Mich, come up.

22           MR. HIRANO: This is the amendment, so I think  
23 they can live with "limit" to some extent, but "prohibit" --

24           CHAIRMAN STARR: Okay, thanks. We are ready to  
25 call the question. Commissioner Guard.



1           COMMISSIONER GUARD:    As it is a recommendation to  
2 the Council, doesn't that give them some time prior to  
3 leaving the Commission and getting to the Council meeting to  
4 maybe come up with a better solution for both?  I mean the  
5 240 parties seemed a little strong for any property on Maui,  
6 besides the Grand Wailea, that can host three to four  
7 weddings a day.  That maybe the "limit" is better  
8 terminology, and then they can fine tune it prior to the  
9 Council meeting.

10           CHAIRMAN STARR:  Okay, Paul, go ahead.

11           MR. FASI:  Very briefly.  If I can put this into  
12 context, what this body is doing is making a recommendation  
13 on a Conditional Permit that is not even meeting the  
14 Conditional Permit requirements.  What you are recommending  
15 is a use that is supposed to be similar, related or  
16 compatible to those permitted uses already in the district.

17           This is clearly not a permitted use in the  
18 district, so what you are doing in effect is making a  
19 recommendation on a Conditional Permit for something that is  
20 not a permitted use, which is against the intent of the  
21 Conditional Permit under 19.40.010.

22           CHAIRMAN STARR:  Okay, we've heard that.  
23 Commissioner Guard.

24           COMMISSIONER GUARD:  Maybe to the Director.  Have  
25 any TVR's been approved?  I thought we had one in Pa'ia that

1 did, and I'm just concerned that those Council Members or  
2 other people are going to jail over this, and I want to make  
3 sure we are going to have people in the chambers. That's  
4 what I'm hearing, is we're breaking the law by approving  
5 this.

6           But I felt like in the past we've already had some  
7 TVR's go through and are following the rules in the ag  
8 district, as well as I believe there's one or two on Hana  
9 Highway. I mean can you clarify this so we don't keep  
10 hearing that it's against the law? And I mean they say  
11 "prohibit." Has it happened in the past and been approved  
12 by the Council?

13           CHAIRMAN STARR: I'd just like to chime in and  
14 state that as far as this body knows, there's no one  
15 imminently going to jail, nor has anyone been accused of  
16 having --

17           COMMISSIONER GUARD: Commissioner Hedani brought  
18 that up, that he doesn't want to mortgage his house because  
19 we get sued. And these have happened in the past, and I  
20 just want to be certain that that hasn't happened and that  
21 there are vacation rentals that are legal on Maui.

22           CHAIRMAN HEDANI: Okay, Director.

23           DIRECTOR HUNT: First let me caution everyone that  
24 this TVR issue is very volatile. It's a very emotional  
25 situation for our community. And I think we all need to

1 take a deep breath and just calm down, and let's try and  
2 deal with this in a rational manner.

3           There have been, to the best of my knowledge,  
4 there have been what I call a pure TVR. I believe they have  
5 been approved through the Conditional Permit process in the  
6 past.

7           From the best of my knowledge, the previous  
8 administration gave clear direction to the planning staff  
9 that they were to recommend approval of that, regardless.  
10 Our hands were tied. The current administration takes a  
11 different approach. The Mayor is not telling us what to  
12 recommend, she's letting us do our job.

13           When we read the ordinance, and we have read that  
14 and we have discussed it with you, that's our take on it.  
15 That's our interpretation. This board can have a different  
16 interpretation of it, and I respect that. But our  
17 interpretation is that there's something that's specifically  
18 prohibited, then it's difficult for us to intellectually  
19 then say we'll go ahead and allow it through a Conditional  
20 Permit process. I think that's stretching it. When you sit  
21 down and actually read the Conditional Permit process, I  
22 think that's really stretching the intent of the Conditional  
23 Use Permit.

24           In the spirit of compromise and trying to find  
25 some common ground on this situation, we recognize there's

1 economic arguments. We also recognize there's housing  
2 arguments on this issue. In the spirit of compromise we  
3 believe that because there are ordinances that allow for bed  
4 and breakfasts that have an on-site manager, we believe that  
5 with an on-site manager you can then allow a Conditional  
6 Permit.

7 A pure TVR, again, how can you do that when it's  
8 prohibited? Is there any scenario then where the county  
9 could absolutely prohibit something and say, "We're  
10 absolutely not going to do that," and then somebody goes,  
11 "Yeah, but I'm going to apply for a Conditional Permit for  
12 it." It doesn't make since, it's ludicrous. So that's our  
13 rationale. And again, we understand this is a very volatile  
14 situation.

15 CHAIRMAN STARR: Okay, Members, we've really been  
16 around on this. Commissioner Mardfin.

17 COMMISSIONER MARDFIN: I want to ask a question  
18 of the applicant, because I thought they said earlier today  
19 that they were only doing weddings that have already been  
20 pre-booked, and they're not taking any more booking and  
21 they're winding it down. And now I hear that they're  
22 planning to go full bore on this. Can you explain, please?

23 MR. HIRANO: Yes, I'll be happy to. My comment  
24 about the wedding business was in the context of the  
25 Conditional Permit application for a wedding, to carry out