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M I N U T E S
LAND USE COMMITTEE
Council of the County of Maui
Council Chamber
November 14, 2007

APPROVED:


Committee Chair

1 **CONVENE:** **1:36 p.m.**

2 **PRESENT:** Councilmember Michael J. Molina, Chair
 Councilmember Joseph Pontanilla, Vice-Chair
 3 (Leave 4:15 p.m.)
 Councilmember Michelle Anderson, Member (Leave
 4 4:42 p.m.)
 Councilmember Gladys C. Baisa, Member
 5 Councilmember G. Riki Hokama, Member (Arrive
 1:38 p.m.; Leave 4:42 p.m.)
 6 Councilmember Danny A. Mateo, Member
 Councilmember Bill Kauakea Medeiros, Member
 7 Councilmember Michael P. Victorino, Member

8 **EXCUSED:** Councilmember Jo Anne Johnson, Member

9 **STAFF:** Tammy M. Frias, Committee Secretary
 Carla M. Nakata, Legislative Attorney

10 **ADMIN.:** Colleen Suyama, Deputy Director, Department of
 11 Planning (Item Nos. 13 and 28)
 Joseph Alueta, Administrative Planning
 12 Officer, Department of Planning (Item No.
 28)
 13 Robyn Loudermilk, Planner, Department of
 Planning (Item No. 45)
 14 Joseph Krueger, Civil Engineer, Engineering
 Division, Department of Public Works
 15 Edward S. Kushi, Jr., Deputy Corporation
 Counsel, Department of the Corporation
 16 Counsel
 Mary Blaine Johnston, Deputy Corporation
 17 Counsel, Department of the Corporation
 Counsel (Item No. 28)
 18 Madelyn S. D'Enbeau, Deputy Corporation
 Counsel, Department of the Corporation
 19 Counsel (Item No. 28)

20 **OTHERS:** **Item No. 28:** Kathleen Gildred
 Ken Stover
 21 Karen Stover

22 **Item No. 13:** Helen M. Lu'uwai
 Christopher Hart, Chris Hart &
 23 Partners, Inc. (Applicant's
 Consultant)
 24 Brett Davis, Chris Hart &
 Partners, Inc. (Applicant's
 25 consultant)
 Glenn Kosaka, Esq. (Applicant's

1 attorney)
 2 Scott Nunokawa
 3 Momi Wheeler
 4 Rory Frampton
 5 Haunani Lemn
 6 Additional attendees (15)

Item No. 45: Samadhi Butterfly
 William Spence, The William
 Spence Company (Applicant's
 consultant)

PRESS: AKAKU--Maui County Community Television, Inc.

8

9 CHAIR MOLINA: ...(gavel)... Land Use Committee meeting for
 10 Wednesday, November 14th, 2007, is now in session.

11 For the record, we have in attendance Members Mateo,
 12 Anderson, Baisa, Medeiros, Pontanilla, and Victorino
 13 and Molina; excused, Members Johnson and Hokama.

14 From Committee Staff, we have Carla Nakata;
 15 and our Committee secretary, we have Tammy Frias.
 16 From the Corporation Counsel's Office, we have
 17 Mr. Junior Kushi. And from the Planning Department,
 18 we have Deputy Director Colleen Suyama and Senior
 19 Planner Joe Alueta. Good afternoon, Members.

20 COUNCIL MEMBERS: Good afternoon.

21 CHAIR MOLINA: Feels like we never left from last night.

22 This is our second home. And we have Member
 23 Anderson joining us for our proceedings today as
 24 well.

25 Did I mention you name -- your name earlier --

1 COUNCILMEMBER ANDERSON: Yeah.

2 CHAIR MOLINA: I'm sorry, I'm thinking of the other --
3 Member Johnson. Been a -- we had a late evening,
4 ladies and gentlemen, so please forgive the Chair.

5 We have several items on our agenda today,
6 LU-28, LU-13, LU-45. These are all Conditional Use
7 Permit requests. We're going to start off first
8 with Land Use Item 28; but before we do that, the
9 Chair will take public testimony. The Chair will be
10 entertaining public testimony for all three items.

11 Any objections as to how we proceed today,
12 Members?

13 COUNCIL MEMBERS: No objections.

14 CHAIR MOLINA: Okay, thank you. As ordered by the
15 Committee, we shall start first with Scott Nunokawa,
16 followed by Momi Wheeler.

17 And the Chair would like to remind those of
18 you who would like to testify today, you have
19 three minutes to testify with one minute to
20 conclude, and please state your name and any
21 organization that you may be representing.

22 . . . **BEGIN PUBLIC TESTIMONY.** . . .

23 CHAIR MOLINA: Afternoon.

24 MR. NUNOKAWA: Good afternoon, Chair Molina, Members of
25 Council. I'm here to testify on the Lu'uwai

1 application. I'm here to testify -- you know, I've
2 known the Lu'uwai ohana. I've had the privilege and
3 honor of knowing them most of my life. They are
4 many things; but at their core, they're Hawaiian.

5 And the Lu'uwais have been in Makena long
6 before Kihei, Wailea, Makena was -- brought, quote,
7 "economic prosperity" to South Maui. I can remember
8 just in my short lifetime a time where that ohana
9 was living by subsistence down in Makena.

10 The Lu'uwais have done their best to adjust to
11 a changing world. In fact, they've done very well
12 to adjust to the -- a changing world.

13 In this place, which is basically their
14 ancestral lands, and this is the area that continues
15 to bind this ohana together. This -- in spite of
16 the fact that there are many growing threats that
17 threaten to take this from them.

18 We talk about the importance of preserving
19 cultural resources. This ohana and their tie to the
20 land is a huge resource that just cannot be
21 overlooked.

22 Now, I might -- and this might sound strange,
23 given the application in front of you, and I think
24 that if you ask the ohana, all things equal, they
25 would rather have full use of their property but

1 economic issues, you know, real property tax issues,
2 etc., make that impossible.

3 So I think what they're asking here today is
4 take a look at it, this is the lesser of two evils.
5 It allows them to maintain their -- their -- their
6 property, it allows them to use their property more
7 than if they didn't have it at all.

8 I think we can all appreciate the concerns
9 with transient vacation rentals intermixing with
10 residential areas, but let's face it, this area is
11 not residential any more. It's part of Makena
12 Resort. The houses around it aren't really houses,
13 they're more vacation, second homes, etc.

14 I understand the issues, but I think that if
15 we look at the big, big issue, the big, big issue is
16 that we need to make sure that we're taking care of
17 our Hawaiian families, and this is a manner in which
18 we can do that, and I would beg you to please take
19 serious thought on this and to vote affirmative on
20 it. Thank you.

21 CHAIR MOLINA: Okay. Thank you, Mr. Nunokawa. Committee
22 Members, questions for the testifier? Seeing none,
23 thank you for your testimony on this item.

24 The Chair would also like to recognize
25 Chairman Hokama to our proceedings today.

1 Next to testify, we have Momi Wheeler, to be
2 followed by Rory Frampton.

3 MS. WHEELER: Aloha mai kakou. My name is Momi Wheeler. I
4 am testifying on behalf of Dr. Emmett Aluli. He's
5 a -- one of the founding Members of Protect
6 Kahoolawe Ohana.

7 Members of the County Council Land Use
8 Committee, aloha from Molokai and Kahoolawe. My
9 name is Noa Emmet Aluli, and I am a physician in
10 family practice on Molokai with the Molokai Family
11 Health Center and a medical director of the Molokai
12 General Hospital.

13 I am presenting this testimony on behalf of
14 the Protect Kahoolawe Ohana, for which I am a
15 founding member and serve as a spokesperson. We
16 wholeheartedly support and urge your approval of the
17 application of Helen and Paul Lu'uwai and Anela Rosa
18 for a District Boundary Amendment, Change in Zoning,
19 and Conditional Permit for the Lu'uwai Vacation
20 Rental and Special Events, Makena.

21 Along the lavishly overdeveloped coastline of
22 Makena, Maui, sits a relatively modest two-story
23 wooden home shaded by native kukui and coconut
24 trees. It sits on the ancestral lands of the
25 Lu'uwai ohana who own the home and are represented

1 in this application by Helen and Paul Lu'uwai and
2 Anela Rosa.

3 The Lu'uwais descend from the Kukahiko ohana
4 who were among the original Hawaiian families who
5 settled at Makena and fished around Kahoolawe. The
6 Kukahiko ohana are the primary stewards of the
7 Makena coastline and nearshore marine waters and
8 resources, including the Ala Loa.

9 The home is named Aloha O Makena and reflects
10 a generous spirit of aloha shared by the Lu'uwai
11 ohana with all who are welcomed into their home.

12 For the Protect Kahoolawe Ohana, Aloha O
13 Makena is a quiet and natural ocean site setting
14 that provides us a clear view of Kahoolawe. This
15 makes it an ideal site outside the island itself for
16 our ohana to meet in a retreat to share our vision
17 and plan future cultural and natural restoration
18 projects for the island.

19 In the past three years, our ohana have held
20 several weekend meetings in this wonderful Hawaiian
21 place to connect as an island-wide ohana and plan
22 our work projects for the year.

23 Once a month, our ohana launches our voyage to
24 the island of Kahoolawe from Makena Landing at dawn.
25 Our participants in these stewardship journeys

1 gather at Aloha O Makena the previous night for a
2 final safety briefing, culture orientation, a hearty
3 meal, and a good night's rest.

4 I want to emphasize the importance of allowing
5 the Lu'uwai ohana to rent out their home for the use
6 of visitor and kamaaina families and community
7 organizations. This will not only enable them to
8 generate the necessary resources to continue to own
9 their special Hawaiian ancestral lands left to them
10 by their kupuna, it will also enable them to provide
11 a valuable meeting place for the Maui Nui community,
12 such as they have for the Protect Kahoolawe Ohana.

13 Enabling the Lu'uwai ohana to hold on to their
14 ancestral oceanfront land yields a valuable service
15 to Maui County because they also help to monitor and
16 clean up the Makena Landing Park area --

17 MS. NAKATA: Three minutes.

18 MS. WHEELER: -- and provides stewardship of the nearshore
19 and coastal resources. Their knowledge of the
20 fishing grounds and resources of Makena and over
21 through Ahihi-Kinau to Keoneoio is unique. This
22 ancestral knowledge has been passed through the
23 generations and is being perpetuated in their
24 ancestral setting at Makena to their children and
25 grandchildren.

1 To better support and promote these activities
2 and services, I hope that the permit can be granted
3 for 20 years, rather than just 10 years.

4 There is a Hawaiian moolelo which informs us
5 about the traditional values and the nature of the
6 Makena families from whom the Lu'uwai ohana descend.
7 It describes how Pele, in a jealous rage,
8 transformed the moowahine Inaina and her parents,
9 Hele and Kali, into three hills which bear their
10 names.

11 Pele's brother, Kamohoalii, scolded her and
12 pronounced the Kanawai Inaina, a mandate for the
13 families of the area not to say or do unkind things
14 to others.

15 MS. NAKATA: Four minutes.

16 MS. WHEELER: The place name, Ku-Makena, means to stand
17 courageously, accepting the joys and sorrows of life
18 bravely, even while mourning or rejoicing.

19 This is the spirit of the Lu'uwai ohana and
20 their Aloha O Makena hale that your Committee and
21 the Maui County Council can help them perpetuate
22 through the granting of the requested District
23 Boundary Amendment, Change in Zoning, and
24 Conditional Permit. Mahalo nui loa.

25 CHAIR MOLINA: Okay. Thank you, Ms. Wheeler. Committee

1 Members, questions for the testifier? Seeing none,
2 mahalo for your testimony.

3 Next to testify, we have Rory Frampton, to be
4 followed by Haunani Lemn.

5 MR. FRAMPTON: Good afternoon, Councilors. I'm Rory
6 Frampton. I'm testifying in support of the Lu'uwai
7 application, and I'm speaking as an individual on my
8 own behalf.

9 I, too, like Scott Nunokawa, have been
10 fortunate to have spent a lot of time with the
11 Lu'uwais and -- and down at their house down at
12 Makena.

13 I'll keep my comments brief. I think I
14 just -- I -- I -- I would like to support the
15 request. I think the character of the area is a
16 consideration. I do think TVRs need to be looked at
17 on a case-by-case basis.

18 In this -- in this instance, the Lu'uwais have
19 done everything to bring their property into
20 compliance, including a very lengthy entitlement
21 process which are -- is basically cleaning up some
22 of the community plan and zoning inconsistencies
23 that have occurred for many years down there.

24 So I think the Council's affirmative action in
25 this case will -- is very critical to -- for the

1 Lu'uweis to keep the property in their family hands.
2 And I guess I just want to sum up by echoing the
3 comments of the previous testifier that requested an
4 extended length of time for the permit so they don't
5 have to come back in and keep having to go through
6 the government process. That's all.

7 CHAIR MOLINA: Okay. Thank you, Mr. Frampton. Committee
8 Members, questions for the testifier? Seeing none,
9 thank you for your testimony.

10 Next to testify, we have Haunani Lemn; and at
11 this point, Ms. Lemn is the last person to have
12 signed up. Committee Secretary, do we have any
13 additional sign-ups?

14 MS. FRIAS: No, Mr. Chair.

15 CHAIR MOLINA: Okay. And the rest of the Members in the
16 gallery, if you would like to testify after
17 Ms. Lemn, the Chair will offer you one last
18 opportunity.

19 Good afternoon, Ms. Lemn.

20 MS. LEMN: Good afternoon, Chairperson Molina and Committee
21 Members. I'm Haunani Lemn, and I'm appearing here
22 individually on my own behalf.

23 I wanted to communicate that I reiterate
24 everything that was said before. When I came to
25 Maui many years ago, the Lu'uwai family welcomed me,

1 a stranger into their ohana; and doing so, they also
2 took me to their ancestral home in Makena.

3 I think that that sense of belonging, that
4 sense of having that connection to someplace that
5 stretches back for your ancestors generates a sense
6 of belonging that if lost, I think would really
7 create a sense of displacement for them and for
8 many, many of the other people who -- as part of
9 their extended family who continue to return to
10 Makena and to that ancestral home.

11 I note that the transient vacation rental bill
12 and all the issues that come up is very complicated,
13 and I am not standing here saying that it should be
14 permitted everywhere, but this area I think everyone
15 is familiar with.

16 When Makena Prince Hotel moved in, really
17 changed the dynamics of Makena. It used to be the
18 end of the world. And when Makena Prince arrived, I
19 think the rest of the world discovered Makena and
20 realized what a beautiful and special place it is.

21 With having put in the bathroom facilities
22 there, it also welcomed a lot of tourist activities
23 that come to the area. On any given day you go down
24 there and you can see many, many tourist activities
25 of the various hotels from Wailea and Makena using

1 it as a launching place, scuba diving, as a place to
2 pick up the tourists; and as a consequence, that
3 really started to change the dynamic.

4 When I first came to Makena, the house on the
5 property was just what we would consider an average
6 local house. But if you look at the property now
7 from the ocean, you can see that it is really
8 dwarfed by all of the development that has occurred
9 in the past 18 years since I've moved to Maui.

10 The dwellings surrounding it is primarily
11 second homes for people, so it's not a kind of
12 residential area where people are living there on a
13 daily basis and raising their families. I think
14 that that's important to note in this situation.

15 I also want to communicate that as far as our
16 general plans are concerned, we continually note
17 that we want to encourage and support Hawaiian
18 culture; and by supporting this application, you do
19 so.

20 The Lu'uwai application has to do with a means
21 by which this Hawaiian family maintains their
22 property and their way of life.

23 They take their children down there, they
24 teach them kalua, they teach them the ways of the
25 ocean, they teach them fishing, they teach them crab

1 hunting and the luring of the -- the eel. These are
2 all things that are starting to become lost.

3 MS. NAKATA: Three minutes.

4 MS. LEMN: And I hope that by your support, it can be a way
5 for us to continue to support the Hawaiian culture
6 and Hawaiian families here. Thank you.

7 CHAIR MOLINA: Okay. Thank you, Ms. Lemn. Committee
8 Members, questions for the testifier? Seeing none,
9 thank you.

10 Is there anyone else in the gallery that would
11 like to testify before the Chair closes testimony on
12 all of our agenda items?

13 Okay, seeing no one approaching, Members, the
14 Chair will close public testimony for all three
15 agenda items. Any objections?

16 COUNCIL MEMBERS: No objections.

17 CHAIR MOLINA: Okay, so ordered by the Committee. Public
18 testimony is closed.

19 . . .END OF PUBLIC TESTIMONY. . .

20 **ITEM NO. 28: CONDITIONAL PERMIT FOR "HALE ALANA" VACATION**
21 **RENTAL (KIHEI) (C.C. No. 02-145)**

22 CHAIR MOLINA: We'll start first, Members, with Land Use
23 Item 28, which is a Conditional Use Permit request
24 for Hale Alana Vacation Rental in Kihei.

25 The Committee is in receipt of County

1 Communication No. 02-145, from the Planning
2 Director, transmitting a proposed bill to grant a
3 request from Kathleen Gildred and Teri Mister for a
4 one-year Conditional Permit to operate a transient
5 vacation rental business on approximately 27,225
6 square feet at 3378 Keha Drive in Kihei, Maui,
7 Hawaii.

8 The Committee is also in receipt of a
9 correspondence dated November 6th, 2007, from the
10 Corporation Counsel's office, transmitting a revised
11 proposed bill entitled "A BILL FOR AN ORDINANCE
12 GRANTING KATHLEEN GILDRED AND SEAN BRUNWIN A
13 CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION
14 RENTAL BUSINESS WITHIN THE COUNTY RURAL DISTRICT,
15 FOR PROPERTY SITUATED AT 3378 KEHA DRIVE, KIHEI,
16 MAUI, HAWAII."

17 The purpose of the revised proposed bill is to
18 grant the request for a Conditional Permit to
19 Kathleen Gildred, the property owner, and Sean
20 Brunwin, the new on -site manager, to operate a
21 transient vacation rental business on the subject
22 property.

23 And we have, in addition to our Planning
24 personnel standing by for questions, from the
25 Department of Public Works, Mr. Joe Krueger, and we

1 have individuals on-call from the Fire Department,
2 Captain Val Martin, as well as Mr. Alva Nakamura
3 from the Water Department, and also the civil
4 engineer from the Water Department, Mr. Miles
5 Fujinaka is also available.

6 And we have the applicant's representative,
7 Kathleen Gildred, who is also here to answer any of
8 your questions. Mr. Brunwin is not here today and
9 thus will be unavailable for questions.

10 And at this point, with the -- there is no
11 PowerPoint presentation for you at this time,
12 Members, so what we'll do, we'll ask the Planning
13 Department to give us an overview of the matter and
14 then I'll open the floor for questions, Members.

15 So, I guess, Mr. Alueta, you have the floor.

16 MR. ALUETA: Thank you, Mr. Chair. As indicated by you,
17 this is for a Conditional Permit, what we call
18 99002, for property in Maui Meadows. It is -- the
19 tax map key is 2-1-017, Parcel 40. It's
20 approximately a little over 27,000 square feet.

21 The first public hearing date was on
22 September 12th, 2000. They were -- the Project for
23 the Conditional Permit was originally transmitted to
24 the Council back in July 8th, 2002, so it's been a
25 little over five years since the -- it was been --

1 it has been transmitted.

2 There -- besides the changes with regards to
3 the on-site manager, there hasn't been any
4 substantial changes that the Department is aware of
5 with regards to the overall operation of the
6 Project.

7 The only thing that we will note is that since
8 the time of the original granting of the State Land
9 Use Special Use Permit, which was back in I believe
10 2000, it has since expired. The applicant was
11 unaware of this and was remiss in seeking a time
12 extension.

13 I have talked with her, and she has an
14 intention to once -- if -- if a Conditional Permit
15 is granted today, she will file for a new State
16 Special Use Permit to operate a transient vacation
17 rental within the State Rural District.

18 CHAIR MOLINA: Okay. Thank you, Mr. Alueta. Members,
19 before I open up the floor for questions, I'd like
20 to give the applicants an opportunity to give a
21 brief overview of the subject property. So is there
22 no objections?

23 COUNCIL MEMBERS: No objections.

24 CHAIR MOLINA: Okay. Mr. -- Mr. and Mrs. Stover and
25 Kathleen Gildred.

1 MS. GILDRED: Good afternoon, Chairman Molina and Council
2 Members. Aloha.

3 COUNCIL MEMBERS: Aloha.

4 MS. GILDRED: My name is Kathleen Gildred, and I am the
5 property owner of 3378 Keha Drive, a beautiful
6 property that I bought in 1994 because I loved Maui
7 so much. Ever since I first started coming here in
8 1977, I always felt that this was my home, and I
9 plan on retiring here, and I bought this home as my
10 home because I love it so much.

11 I realized early on that I couldn't live here
12 full-time because my work is on the mainland, and I
13 realized the only way that I could maintain my life
14 on the mainland and being here part-time was to have
15 the house as a part-time rental. That way, I'm able
16 to be here part-time, my family and friends are able
17 to be here part-time; and when I'm here, I'm able to
18 not only enjoy Maui, but to do the work that I've
19 done here over the many years that I've come here
20 towards sustainability on Maui.

21 Over the last 15 years, I wrote a report on
22 the sustainability on Maui. I made recommendations
23 that -- this is all in your -- in your literature,
24 by the way, so you don't need to be reading that
25 because you have all this, I'm just outlining what

1 it says.

2 I made recommendations on how the different
3 departments could become more sustainable. Many of
4 those recommendations were used, I was told, by the
5 Solid Waste Department and the Sustainability
6 Program of Maui Community College.

7 I also worked with farmers here to look at --
8 first of all, we outline -- we identified all the
9 farmers in the Hawaiian -- organic farmers in the
10 Hawaiian islands, we created farmer's markets,
11 brought HOFA, the Hawaiian Organic Farmers
12 Association to Maui, and I've worked with farmers on
13 the concept of how can we feed all the people on the
14 island with locally grown organic produce. And this
15 is a project that I want to continue working on, and
16 being here part-time allows me to do that.

17 What we want to explain to you today is why we
18 feel that granting Hale Alana a Conditional Use
19 Permit is really important for the local economy
20 because -- how -- how it -- how we're -- we're not
21 only good for the local economy, but we're also good
22 neighbors, and we're good citizens.

23 In terms of how we're good -- how Hale Alana
24 is good for the local economy, we have injected a
25 considerable amount of money into the local economy,

1 both in terms of our hired help and the increased
2 business in the community from our guests.

3 We have a team of 20 people working for us,
4 including two general managers, our on-site manager,
5 our in-house concierge, cleaning personnel,
6 gardeners, handymen, pool maintenance, and pest
7 control staff.

8 Since 1995, we have spent over \$50,000 for
9 cleaning personnel, a hundred thousand for
10 landscaping and maintenance, 10,000 for pest
11 control, 62,000 in house improvements, a hundred
12 thousand for pool construction, a hundred thousand
13 in local commissions and professional services.
14 This is all money that went into paying local
15 people, money that came into the local economy
16 because of the vacation rental that we need to
17 maintain at the standards required by the Visitor's
18 Bureau for -- for a vacation -- for a vacation
19 rental.

20 And the people -- the 500 or so groups who've
21 been here since '95, many of whom would not have
22 come to Maui if they could not stay in a private
23 home, have contributed to the economy by spending
24 maybe a thousand dollars a week in Maui. That would
25 be a total of \$500,000 all told, money that came

1 into Maui because of the fact that we have this
2 vacation rental.

3 So now Ken will continue -- no, Karen will
4 continue next about how we're good neighbors.

5 MS. STOVER: Aloha, Councilman Molina and Council Members.
6 Thank you so much for your time and attention today.

7 It is most unfortunate that our general -- our
8 property manager, Sean Brunwin, could not be with us
9 today. The reason was very simple. He had a
10 previous appointment that he could not change, and
11 Ken and I just got back from our first time off the
12 island in five years, and this issue came up while
13 we were away so we scurried back and put together as
14 much as we could to give you all today. So my
15 apology if it's -- it's not as full as it should be.

16 But Ken and I were the first managers on site
17 on the property for two years and then Teri Mister
18 was there for many years and then Sean Brunwin came
19 on board in 19 -- excuse me, in 2005.

20 He is generally on-site 24/7, since he is also
21 a computer consultant and an independent contractor
22 working out of the home. He maintains a permanent
23 presence on the property, taking notice of any
24 emergencies that may arise and reports issues such
25 as faulty sprinklers, pool pumps not working, and

1 that's just about all he's really had to deal with
2 because when our guests arrive, they sign an
3 agreement, saying that they will absolutely be
4 courteous and responsible on the property,
5 understanding that it is a quiet residential
6 neighborhood.

7 So consequently, Sean has had very little in
8 this regard that he has to do. And his compensation
9 for this responsibility as an on-site manager is a
10 reduction in his rent, which you could say makes
11 Hale Alana a contributor to affordable housing.

12 So the second reason for permitting Hale Alana
13 this permit would be that we are good neighbors.
14 You have letters from all of our surrounding
15 neighbors, all of them very positive.

16 They have been happy, there have been no
17 complaints; and in fact, there's a very interesting
18 one which you will read from Buck Joiner, saying
19 that before it was a vacation rental and Kathleen
20 bought it, it was an incredibly noisy house with
21 lots of parties all the time, so they were very
22 happy when we moved in. So it's only been a
23 positive impact since then.

24 We are in harmony with the character of the
25 neighborhood. We maintain positive personal

1 relationships with all our neighbors, and we firmly
2 believe in going out of our way to show aloha and
3 consideration for them in our actions and
4 communications.

5 Today, on a typical street in Maui Meadows,
6 you can find boat storage bases, dog care and
7 grooming center, a child care center, a trucking
8 company, an importer/exporter, an auto mechanic
9 working out of his garage, barking dogs, domestic
10 quarrels, residents having late-night parties,
11 houses having more than six cars or noisy
12 motorcycles. This is the part of the character of
13 Maui.

14 Maui Meadows, itself, is beautiful, spacious,
15 peaceful, lively, vibrant, and sometimes very noisy
16 and intrusive. This is life. And the neighbors in
17 Maui Meadows tolerate this level of activity because
18 we all love living there, and we all make the
19 neighborhood work.

20 It is our intention to be the quieter, more
21 considerate people with no impact on the
22 neighborhood compared to the current level of
23 activity so that we contribute to the peace, not the
24 noise.

25 We make certain our guests realize that they

1 are guests not only at Hale Alana but in the
2 neighborhood, and we ask them to act accordingly and
3 agree in writing. If they do not, they are asked to
4 leave with no refund. This has never happened so
5 far.

6 In terms of future adverse impact on Maui
7 Meadows, Hale Alana is virtually invisible with --
8 with the development of Wailea 670, to be almost
9 certain we would not even be the flea on the dog
10 next to the elephant that's about to enter the
11 stage.

12 Then number seven, we have invested in and
13 maintained a beautiful property which has greatly
14 appreciated the overall value of this neighborhood.

15 So again, we ask that you grant this permit.
16 We have had a wonderful, successful business and
17 relationship. Kathleen introduced my husband and I
18 in 1980, and here we are still together and happily
19 married and happily contributing to our beautiful
20 island of Maui. Mahalo for your time and
21 consideration. We thank you.

22 CHAIR MOLINA: Okay. Thank you, Ms. Stover. Committee
23 Members, Mr. Stover, you have additional comments?
24 The Chair allotted ten minutes so I'd ask you to be
25 real brief so we can continue.

1 MR. STOVER: All right. I'll try to be very brief here.

2 Good afternoon, Councilmen, Chairman Molina.

3 Our basic intention has always been to good --
4 be good citizens, and we've been -- tried to be
5 fully compliant with all the legal aspects of the
6 County and the State.

7 We've been operating a successful transient
8 vacation rental since 1995 with no negative impact
9 on the neighborhood and positive impact on the local
10 economy.

11 Two other TVRs have been approved in Maui
12 Meadows, Bob Babson and Rick Pounds, so there is
13 precedent in permitting TVRs in Maui Meadows.

14 Hale Alana has paid close to \$50,000 in GET
15 and TAT since 1995. We pay a higher property tax,
16 since this house is not the owner's primary
17 residence. We had complied with EPA requirements
18 and Hawaii Department of Health regulations. We
19 closed our cesspool and installed a septic tank and
20 leach field, a considerable expense.

21 We require all guests to sign a liability
22 waiver release and guidelines agreement, which Karen
23 had talked about, to protect the owner, management,
24 and the County of Maui against any liability claims
25 by guests in the event of illness, injury, or death,

1 and we also require, as part of this agreement, we
2 require the guests to be considerate and behave
3 accordingly with respect to our residential
4 neighborhood. They agree in writing that if they
5 violate this agreement, they will be asked to leave
6 with no refund.

7 We are also long-standing members of Hawaii
8 Visitors and Convention Bureau. We are Members of
9 the Maui Vacation Renters Association. And myself,
10 I am the board of the -- Board of Directors of Maui
11 Meadows Neighborhood Association, and we strive to
12 make Hale Alana as well sustainable and
13 environmentally safe. We use salt water sanitation
14 in our pool, solar heating, and green cleaning
15 products.

16 So we ask in good faith, Council Members, to
17 recognize our excellence in our contribution to the
18 local economy, our contribution to the neighborhood,
19 and our actions as good citizens. We ask you to
20 grant Hale Alana a Conditional Use Permit. This
21 will allow us to continue to successfully operate
22 and spread the message of aloha as we have for the
23 last 12 years.

24 We all agree that clearly recognizing and
25 justly regulating TVRs in Maui has not been an easy

1 task in this current political situation. The
2 granting of this permit will also be an important
3 step in showing that the permitting process can be
4 fair, equitable, and work for all parties involved.
5 Mahalo, and thank you for your consideration on this
6 matter.

7 CHAIR MOLINA: Okay. Thank you, Mr. Stover. Members,
8 we'll -- I'll go back to leaving the floor open for
9 questions from the Department, unless you have
10 questions for the applicant at this point. Member
11 Anderson?

12 COUNCILMEMBER ANDERSON: Thank you, Chairman. The question
13 would probably be for Mr. Stover, as you're the
14 manager, you and wife are the managers --

15 MR. STOVER: General managers, yes.

16 COUNCILMEMBER ANDERSON: Did you see the letter from the
17 neighbor dated November 9th, '07? Apparently,
18 they -- they have some problems with late-night
19 noise, and they --

20 MR. STOVER: I'm sure -- what --

21 COUNCILMEMBER ANDERSON: If you could --

22 MR. STOVER: What letter is that? Who is that from?

23 CHAIR MOLINA: Member Anderson, could I interject and let
24 the Members know? Members, the letter is near the
25 end of your binder on Item 28. That's the

1 November 13th that was received by the Committee,
2 and I guess there's a name down here.

3 It's listed as an addendum to Item Land Use
4 28. That's the reference point or the letter Member
5 Anderson makes references to.

6 COUNCILMEMBER ANDERSON: It seems like they've discussed
7 this with you because they recognize that you're the
8 site manager and that they're saying that now there
9 is -- an additional manager has been put into the
10 cottage.

11 Anyway, the -- the main crux of his complaint
12 is that vacationers come, and they go out on the
13 deck early in the morning, and maybe they're
14 shouting down to people that are in the cottage and
15 then they're there late at night with music late at
16 night. And he's asking for quiet times from 10:00
17 p.m. to 8:00 a.m.

18 Is that something that you guys could
19 institute to make sure that the neighbors aren't
20 being disturbed by loud music --

21 MR. STOVER: Sure. Could you just clarify what neighbor
22 this is? Because I -- I'm not --

23 COUNCILMEMBER ANDERSON: Joe [sic] Webster.

24 MR. STOVER: Joe [sic] Webster. I -- I don't even -- okay.
25 Sure. I mean, we can do whatever is required.

1 COUNCILMEMBER ANDERSON: And you didn't receive a copy of
2 this?

3 MR. STOVER: No, I'm sorry. That's why we're a little
4 confused.

5 COUNCILMEMBER ANDERSON: Yeah. Because he says he has --
6 he would be willing to withdraw his disapproval as a
7 neighbor under the following conditions and that one
8 is that you guys post up quiet times so that guests
9 are reminded that it's a residential neighborhood.

10 MR. STOVER: Oh, thank you.

11 COUNCILMEMBER ANDERSON: And that's basically it, that the
12 phone number of the site manager, and you folks --

13 MR. STOVER: You know, I've talked to -- oh, this is Jae
14 Webster. Oh, this is Jae Webster.

15 COUNCILMEMBER ANDERSON: Sorry.

16 MR. STOVER: Okay, now I understand. This is the -- the
17 lady next to us, I'm sorry.

18 MS. STOVER: She's talking about Sean's deck, the on-site
19 manager. His deck is -- is -- all right, so it's
20 his deck, not the guest's. Now we understand,
21 that --

22 CHAIR MOLINA: Ms. Stover, can you please talk -- speak
23 into the microphone if you --

24 MR. STOVER: Yes. Okay, we're -- we understand now. Yeah,
25 we can -- we can talk to Sean about that, certainly.

1 MS. STOVER: It's his deck.

2 MR. STOVER: It's his deck, right?

3 COUNCILMEMBER ANDERSON: Well, I don't know. I -- I just
4 understand that this neighbor has a problem with
5 loud noise and so I just want to bring that to your
6 attention so that you can make sure that it's dealt
7 with.

8 MR. STOVER: Than you.

9 COUNCILMEMBER ANDERSON: Okay, thank you. Thank you,
10 Chairman.

11 CHAIR MOLINA: Thank you, Member Anderson. Committee
12 Members, any other questions for the applicants?
13 Member Baisa?

14 COUNCILMEMBER BAISA: Good afternoon. And along the lines
15 of that same letter that had concerns and, you know,
16 this is really important to us.

17 You know, as you know, TVRs have been a big
18 subject in the last -- in most of this year since
19 I -- since I arrived. And one of the reasons why
20 it's caused so much angst in the community is this
21 type of complaint. And so when we have them, it's
22 really important that we try to figure out what the
23 problem is and see if we can fix it.

24 Another issue that he brings up or she or
25 whoever this is, I'm not really sure. Jae could be

1 male or female.

2 MS. STOVER: Female.

3 COUNCILMEMBER BAISA: Female, okay. Well, what she says is
4 that she has made attempts to contact someone in
5 charge and has had a very difficult time because she
6 doesn't have the contact numbers and in fact has
7 called your home and received the machine.

8 And so it's really important that you might
9 want to post somewhere contact numbers or a way to
10 find you in case your -- the neighbors want to
11 complain. Because if they do, it means a lot to
12 them to find somebody who says yeah, okay, we'll
13 take care of it. We'll call the -- you know, we'll
14 talk to the guests.

15 And I think that's all people are looking for.
16 And it's not just about you, but it's all the TVRs
17 that we hear about. It's the same kind of thing,
18 that people feel frustration.

19 And in your case, it's not too bad because
20 you're not that far away. But can you imagine when
21 the homeowner is in Japan or in the Philippines or
22 in God knows where, and the poor, frustrated
23 neighbor doesn't know who to talk to?

24 And so this -- this is why I wanted to -- to
25 call that to your attention; and if there's any way

1 you can handle that, I think it might take away a
2 lot of your frustration.

3 MS. STOVER: May I respond?

4 COUNCILMEMBER BAISA: Surely.

5 MS. STOVER: Jae is a friend. We actually helped her and
6 encouraged her to get that house. Kathleen has
7 stayed at her house many years ago.

8 Jae is getting old. She's getting old. And
9 Jae knows exactly. I -- I just see her all the
10 time. She's a part of my women's group so this is a
11 surprise to us, and we will absolutely find out what
12 is going on here because we had no idea.

13 MS. GILDRED: Did she ever tell you?

14 MS. STOVER: Never said a word. I see her all the time.

15 COUNCILMEMBER BAISA: She -- she mentions in her letter
16 that she is not a confrontive person and really
17 doesn't like to say anything and has thought about
18 saying it for, like, three years.

19 But she thought that when she read all this
20 stuff in The Maui News about TVRs closing down, that
21 it was over and was very surprised to see people
22 continuing to move in.

23 MS. STOVER: Mmm.

24 COUNCILMEMBER BAISA: So I think it's just a
25 misunderstanding --

1 MS. STOVER: Yes.

2 COUNCILMEMBER BAISA: -- but I think you need to have the
3 conversation with her.

4 MS. STOVER: I definitely look forward to the conversation
5 because she called me once and asked for advice on
6 opening a vacation rental at her home and would I be
7 interested in managing it, so this is interesting.
8 Thank you.

9 COUNCILMEMBER BAISA: You're welcome. We all have friends
10 that we've helped, and we've been bitten by them.
11 It's the way it goes.

12 CHAIR MOLINA: Okay. Members, any other questions for the
13 applicants? Member Anderson?

14 COUNCILMEMBER ANDERSON: Yeah. It's unfortunate this kind
15 of blind-sided them. She mentioned several times
16 that she has hesitated to speak out because the
17 people involved are all very nice people and that I
18 hate writing this, and I feel like I'm tattling on
19 my neighbors and friends, probably to become
20 ex-friends after this.

21 So, you know, it took a lot for her to write
22 this, and that means that her peaceful enjoyment has
23 been disturbed and so she felt compelled to do this.

24 So I'm bringing this up so that you can make
25 sure that -- you know, people come here to have a

1 good time. And when they're on vacation, you know,
2 there aren't many rules to follow on vacation. You
3 just, you know, go for broke.

4 And it's easy to forget that there are people
5 around you, especially when you're in a residential
6 neighborhood, that people are living a normal life,
7 they have to get up, maybe go to work and, you know,
8 they have their own schedule that they like to keep
9 and enjoy the quiet of their home.

10 So I think it's important to make you aware of
11 this and to make sure that there is a way you can
12 make certain that your guests are aware of it before
13 they come that you're coming to a residential area,
14 and there is a quiet time observed, okay? Thank
15 you.

16 CHAIR MOLINA: Okay. Thank you, Member Anderson.

17 Committee Members, any other questions for the
18 applicants before they're excused?

19 The Chair has just one question. What is the
20 maximum amount of people you have on the premises at
21 one time or that you allow for?

22 MS. STOVER: We have six in the house because normally,
23 it's mom and dad and anywhere up to four children.
24 It's always families, and then we have Sean on
25 the -- down at the other -- the ohana.

1 CHAIR MOLINA: Okay.

2 MS. STOVER: And part of what they write in -- what they
3 sign in that agreement is no one is allowed on the
4 property who has not signed the agreement and is
5 paying to be there.

6 And once we got a call from Sean. He said he
7 counted eight heads in the swimming pool, and he
8 said weren't there five people here? Because he
9 knows who's coming every week.

10 And I said yes. And I was up there in two
11 seconds, went down, confronted them. They were
12 there with a wedding party coming from another
13 hotel, and I told them this is unacceptable. You
14 really must get out of the pool. And that was the
15 end of the story.

16 CHAIR MOLINA: Okay, thank you. And one last question.
17 Being that you're in Maui Meadows and Maui Meadows
18 is a very vocal, very spirited community, any
19 comments from the Board with regards to the vacation
20 rental itself over the years?

21 I know you've been operating for a number of
22 years, but you've -- there's been no issues coming
23 from the association as well on this?

24 MS. STOVER: Well, Ken's on the Board, so he would know.

25 MR. STOVER: On the -- on the Board itself?

1 CHAIR MOLINA: Uh-huh.

2 MR. STOVER: No, a number of the -- the people on the Board
3 have done -- like Bob Babson was a member. He -- he
4 was -- and Rick Pounds, as a current member on the
5 Board, is a -- is running a TVR, so...

6 CHAIR MOLINA: Okay. So you have two, three people already
7 on the Board that have TVRs --

8 MR. STOVER: That's correct, yeah. Uh-huh.

9 CHAIR MOLINA: Okay. All right. Thank you very much.

10 MR. STOVER: Thank you.

11 MS. STOVER: Thank you.

12 CHAIR MOLINA: Okay. Members, the floor is open for
13 questions to the Planning Department and any other
14 resource personnel that we have, for example the
15 Fire Department or Mr. Nakamura from the Water
16 Department or Mr. Fujinaka.

17 Any questions at this time, Members? We'll
18 start with Member Baisa, followed by Member
19 Anderson.

20 COUNCILMEMBER BAISA: Probably a question for Planning.

21 Have there been any complaints filed about this TVR?

22 MR. ALUETA: I -- I -- I'm sorry, I didn't check on that.

23 I -- my -- I don't -- I wouldn't have gotten the
24 complaint directly. It would have gone to our
25 Zoning Administration Division, but I can follow up

1 on that.

2 COUNCILMEMBER BAISA: Thank you.

3 MR. ALUETA: But I -- I haven't heard anything.

4 COUNCILMEMBER BAISA: Thanks.

5 CHAIR MOLINA: Okay. Thank you, Member Baisa. Member
6 Anderson?

7 COUNCILMEMBER ANDERSON: Thank you. You know, in the
8 report we got from the Department of Planning, the
9 Planning Commission voted to grant approval, subject
10 to 13 conditions, and now we have the bill for an
11 ordinance with only six conditions. I'm wondering
12 if you could explain that. And I'm sorry that I
13 haven't gone through and...

14 MR. ALUETA: I believe the 13 conditions is for the State
15 Special Use Permit, and the -- the other conditions
16 are for the Conditional Permit.

17 COUNCILMEMBER ANDERSON: Oh, okay.

18 MR. ALUETA: I believe that the new ordinance also makes --
19 the proposed ordinance also makes reference back to
20 the State Special Use Permit as -- to be in
21 compliance with all of those conditions in addition
22 to those listed specifically for the Conditional
23 Permit.

24 COUNCILMEMBER ANDERSON: Okay. Thank you, Mr. Alueta. I
25 didn't notice that it was for the special -- State

1 Special Use Permit.

2 And then just one other question, Chair.

3 CHAIR MOLINA: Proceed.

4 COUNCILMEMBER ANDERSON: The Babson vacation rental across
5 the street, is that a one-year permit, or is it -- I
6 notice some of the -- you know, this one is for a
7 one-year, and I'm wondering why there's a
8 difference.

9 MS. SUYAMA: I could explain something. The Babsons
10 originally had a Conditional Permit and a State
11 Special Use Permit to operate a TVR; but since that
12 time, they have closed their operation.

13 They notified the Department that they're no
14 longer operating a TVR; and as such, we canceled
15 their permits.

16 COUNCILMEMBER ANDERSON: But did you know how long they got
17 a permit for? Was it a one-year condition --

18 MS. SUYAMA: It -- it normally was done as a one-year to
19 make sure that everyone is in compliance and then
20 during the renewal, the Council has renewed them
21 based upon usually on a three-year basis.

22 COUNCILMEMBER ANDERSON: After the first year?

23 MS. SUYAMA: After the first year, and that's to ensure
24 that compliance is met by the applicant to the
25 conditions of approval.

1 COUNCILMEMBER ANDERSON: Right. I just want to be
2 consistent because I know we've got another one here
3 that they want a ten-year Conditional Permit, so...

4 I -- I know that we've given longer permits;
5 but now that you mention it, I can't remember if it
6 was for a renewal or for an original. Is it
7 typical, then, that all first-time Conditional
8 Permits are for one year?

9 MS. SUYAMA: The Department's recommendation is usually
10 that it is for one year to make sure that there's
11 compliance to the conditions. However, there has
12 been times when the Commission, based upon the
13 testimony that comes or the -- or what they listen
14 to the applicant, that have changed that
15 recommendation and had recommended greater years,
16 not the initial one year. They've gone to where
17 they say we want to give them ten years or
18 five years as the initial.

19 COUNCILMEMBER ANDERSON: Based on testimony from people?

20 MS. SUYAMA: Well, usually it's based upon the applicant
21 themselves talking to the Commission at that time
22 and through the discussions, convincing the
23 Commission that a longer term should be granted.

24 But it's normally where the Commission is
25 making that recommendation and not the Department.

1 The Department's normal recommendation is just for
2 one year.

3 COUNCILMEMBER ANDERSON: Okay. Thank you, Ms. Suyama. And
4 then just one other question. You know the backlog
5 that we have. If they come in for a renewal after
6 the year's up and they can't get before the Council
7 in time to get the renewal before the one year
8 expires, then are they just granted extension,
9 extension, extension till we get to see them again?

10 MR. ALUETA: If I may, Mr. Chair?

11 CHAIR MOLINA: Mr. Alueta.

12 MR. ALUETA: Given the fact that they've been operating
13 without a permit for 12 years, granting them a
14 longer period wouldn't really do any harm. It's
15 entirely up to the -- to the Council, should you
16 grant them the permit.

17 And given the fact that they had -- their
18 State Special Use Permit has expired, they're going
19 to have to go back through that (inaudible) process
20 with the Planning Commission, and that could take at
21 -- at least a year, I would imagine, for her; maybe
22 less, given that this is a -- it would be a
23 rehashing of an existing permit.

24 COUNCILMEMBER ANDERSON: And how long was the State Special
25 Use Permit for?

1 MR. ALUETA: They were granted a two-year permit, initial
2 two-year permit.

3 COUNCILMEMBER ANDERSON: Two-year permit. Well, it would
4 certainly be common sense to have both permits for
5 the same term and kind of run the same time.

6 MR. ALUETA: That was the intention of the State Special
7 Use Permit. The -- the -- the way the State Special
8 Use Permit condition, if I may, I'm sorry,
9 Mr. Chair, was that the -- that the State Land Use
10 Commission Special Use Permit shall be valid until
11 September 30th, 2002, or until the termination date
12 established by the Conditional Permit, whichever is
13 later, and then subject to further extension. So
14 that --

15 COUNCILMEMBER ANDERSON: Oh, so then if they get granted
16 this Conditional Permit for one year, then they have
17 -- the Special Use Permit would be extended till the
18 end of that first year of this Conditional Permit,
19 based on what you just read?

20 MR. ALUETA: That is true. But the way I'm reading it
21 and in talking with my boss is that there was no
22 Conditional Permit granted prior to the 2002
23 expiration date; therefore --

24 COUNCILMEMBER ANDERSON: That's not really their fault.

25 MR. ALUETA: I -- I know, but that's how it was written --

1 I mean, unless I get a separate interpretation from
2 Corp. Counsel.

3 But the way we're reading it now is that
4 because they never got that Conditional Permit to
5 extend it beyond the -- the -- the date certain of
6 the 2002 permit, it -- it theoretically -- I mean,
7 the way we read it, the permit has expired.

8 COUNCILMEMBER ANDERSON: But they had applied.

9 MR. ALUETA: They had applied -- well, for the Conditional
10 Permit and the State Special Use Permit, but they
11 did not apply for a time extension on the State
12 Special Use Permit. That's where there was a
13 miscommunication that -- that I had gone over with
14 the -- the applicants so they're fully aware of it
15 now; but at the time, they were confused if they
16 actually had a permit, I guess you could say.

17 COUNCILMEMBER ANDERSON: Okay. Thank you, Chair.

18 CHAIR MOLINA: Thank you, Member Anderson. Committee
19 Members, any other questions for the Department?
20 Mr. Medeiros?

21 COUNCILMEMBER MEDEIROS: I'm not sure if Planning can
22 answer it because it's a letter from Department of
23 Public Works. And I was just wondering -- and it's
24 the letter dated August 3rd, 1999, from Public Works
25 to the Director of Planning at that time.

1 And I was wondering if the comments that
2 Public Works has in its letter, if those conditions
3 were corrected or mitigated?

4 And one was the drainage easement should be
5 restored to its original condition and any plants
6 that may cause waters to block the drainage should
7 be removed. This is -- I don't know how to describe
8 it, where it is in the -- it's Exhibit 9.

9 And, you know, having worked for Public Works
10 Highways for 25 years, I know of rainstorms which
11 are unusual in Kihei but they do occur, of
12 significant damage in that area because drainages
13 were blocked with landscaping.

14 So I was just wondering if these conditions
15 were corrected or mitigated. Have you found the
16 letter supporting -- August 3rd, 1999, Exhibit 9.

17 MR. ALUETA: Correct. If you look at Exhibit 9A --

18 COUNCILMEMBER MEDEIROS: 9A.

19 MR. ALUETA: Which is the next --

20 COUNCILMEMBER MEDEIROS: Okay.

21 MR. ALUETA: She -- she responded to the letter, as well as
22 there's a follow-up letter dated September 30th,
23 1999, saying we have reviewed the -- her letter, I
24 guess, and plot plan and her responses -- comments
25 went through for acceptable.

1 COUNCILMEMBER MEDEIROS: Okay. And this was -- this was to
2 Mr. Goode from Ms. Gildred, is that the letter
3 you're referring to, 9A?

4 MR. ALUETA: Correct, but that -- that -- yeah, but then if
5 you turn the page, there's another letter from David
6 Goode to -- back to Kathleen Gildred --

7 COUNCILMEMBER MEDEIROS: Uh-huh.

8 MR. ALUETA: -- accepting the -- her comments regarding one
9 through four.

10 COUNCILMEMBER MEDEIROS: Okay. So the applicant has met
11 the ADA requirements, which was identified in Item 4
12 of the August 3rd, 1999, letter?

13 MR. ALUETA: According to her letter, she indicated she
14 will comply. I -- I have not done a most recent
15 site visit to find out. It just says she will
16 comply.

17 Oh, I will -- I will defer that to the
18 applicant if she has gone through that. And during
19 the -- as I said, the -- the follow-up application
20 for a State Special Use Permit, we -- we would then
21 follow through with those conditions or at least do
22 another -- a revised site visit and see if the -- an
23 ADA, as well as the updated of that drainage because
24 that -- that would be important, as far as drainage
25 swales, as well as the variance, I mean, to confirm

1 that the rest of the -- the deck has been removed
2 back, as well as the other setback issues that were
3 identified in the original Public Works letter.

4 COUNCILMEMBER MEDEIROS: So to confirm compliance, the
5 Planning Department would do that and -- and not the
6 Department of Public Works, as far as the drainage?

7 MR. ALUETA: We would ask during a subsequent -- like I
8 say, during the subsequent review of the State
9 Special Use Permit, we would send these agency
10 comments back to Public Works to say this is what
11 you commented on --

12 COUNCILMEMBER MEDEIROS: Uh-huh.

13 MR. ALUETA: -- eight years ago, this is -- was their
14 response, and they would then -- I would assume at
15 that time that Public Works would then follow
16 through to see if they still have those same
17 concerns.

18 COUNCILMEMBER MEDEIROS: Okay. And my -- my final
19 question, and I think you answered some of it, is
20 the State Special Use Permit, which you indicated
21 has since expired, what's the relationship between
22 the State Special Use Permit and the Conditional
23 Permit? One depends on the other, or are they
24 independent of each other?

25 MR. ALUETA: They're independent, but they -- you need --

1 COUNCILMEMBER MEDEIROS: Both?

2 MR. ALUETA: As I say, you need two to tango, okay. You --

3 the -- the State Special Use Permit covers the --

4 the State Land Use designation of -- of Rural, and

5 the Conditional Permit or County Conditional Permit

6 is under 19.40, and that grants them -- I don't want

7 to say a variance, but grants them a Conditional

8 Permit to operate a TVR within the County Rural

9 District because there is the State zoning and as

10 well as the County zoning.

11 COUNCILMEMBER MEDEIROS: Uh-huh, uh-huh. So is --

12 MR. ALUETA: So one is for 205 --

13 COUNCILMEMBER MEDEIROS: Yeah.

14 MR. ALUETA: -- and one is for 19.

15 COUNCILMEMBER MEDEIROS: Yeah. Is -- is it my correct

16 understanding, then, that this application cannot be

17 -- move forward until the State Special Use Permit

18 is the current one?

19 MR. ALUETA: I -- I believe that you can go forward and act

20 on this Conditional Permit separate of the State

21 Special Use Permit.

22 COUNCILMEMBER MEDEIROS: Okay. Thank you, Planning

23 Department. Mahalo, Mr. Chairman.

24 CHAIR MOLINA: Thank you, Mr. Medeiros. Committee Members,

25 any other questions for the Department? Member

1 Baisa?

2 COUNCILMEMBER BAISA: Yeah. I think we're going to be
3 learning a lot more about this kind of situation in
4 the next few months so we might as well get started.

5 I'm not that familiar with the entire review
6 process or the permitting process, but I notice that
7 in this application, there was a request for an
8 insurance certificate and that it's included in the
9 binder.

10 I'm wondering also is there any requirement,
11 and do you do any kind of due diligence about
12 employment and any compliance with Hawaii employment
13 laws?

14 MR. ALUETA: No.

15 COUNCILMEMBER BAISA: The reason I'm concerned about this
16 is I -- we've heard a lot about people that are
17 employed and people who will not be employed and,
18 you know, the numbers are rather large.

19 And several things that I've heard, and I
20 heard it again today, was the use of the word
21 independent contractor. And, you know, I come from
22 a nonprofit background; and in our background, that
23 background, we've often gotten into trouble because
24 we misinterpret the use of independent contractor.

25 You know, that is a very difficult status to

1 obtain under employment law. There are many, many
2 tests that have to be met in order for anybody to be
3 considered an independent contractor.

4 And I think there may be a lot of
5 misunderstanding about, you know, we're just going
6 to have somebody clean the house, and we'll pay them
7 cash or pay them a check or whatever, and they'll be
8 an independent contractor. But unless that person
9 can meet a whole battery of tests, that person is
10 not an independent contractor but is indeed an
11 employee.

12 And so I'm really concerned about this because
13 I think it may involve many, many people, and I just
14 wondered, you know, if we look into that or we
15 don't. That's why I asked the question.

16 MR. ALUETA: It -- it's -- from the -- if I may, Mr. Chair.

17 CHAIR MOLINA: Go ahead, Mr. Alueta.

18 MR. ALUETA: It's a separate function from the Land -- Land
19 Use entitlement process. Whether or not how they do
20 or conduct their business as far as independent
21 contractors or employee, that's the -- the
22 applicant's own liability and hence, the -- the
23 liability insurance for us.

24 And we're struggling with that with the MRA,
25 as far as independent contractor, and we -- luckily,

1 we do have board members who are very familiar with
2 the whole terminology, as well as the pitfalls.

3 And so -- but from my understanding, I mean,
4 from what the permit process that you're going
5 through today, which is the Land Use entitlement for
6 the County Conditional Permit, it doesn't --
7 there -- I do not see a liability for the Council or
8 the County of Maui. It's specifically a liability
9 on the applicant with regards to how -- how she
10 conducts her business.

11 COUNCILMEMBER BAISA: And it's just not part of our
12 process, was my question?

13 MR. ALUETA: It is not. We -- I don't view it as part of
14 your review process to check that.

15 COUNCILMEMBER BAISA: Thank you very much. However, I
16 would like my previous question answered, if
17 possible. I know it probably can't be done now, but
18 at some point. That was the one about the
19 complaints, if there were any complaints.

20 MR. ALUETA: Okay.

21 COUNCILMEMBER BAISA: Formal complaints.

22 MR. ALUETA: Correct.

23 COUNCILMEMBER BAISA: We have lots of complaints, but did
24 anybody put it in writing? Thank you.

25 MR. ALUETA: All right.

1 CHAIR MOLINA: Okay. Thank you, Member Baisa. Committee
2 Members, any other questions before the Chair offers
3 a recommendation? Mr. Hokama?

4 COUNCILMEMBER HOKAMA: Chairman, thank you. In -- in
5 follow-up to my colleague from East Maui regarding
6 the Special Use Permit, it is our understanding that
7 you need two to legally operate.

8 So with one expiring, even if we grant a
9 Conditional Use Permit, legally, they still couldn't
10 operate till they secure a new Special Use Permit
11 from the State?

12 MR. ALUETA: Yes.

13 COUNCILMEMBER HOKAMA: Okay. The other thing was maybe for
14 Mr. Kushi, please, because we notice that under the
15 Special Use conditions, the State asked that it have
16 full compliance of the conditions. And under the
17 County's six recommended conditions of approval, the
18 proposed language to us is that they meet
19 substantial compliance.

20 So is there really a difference, Mr. Kushi, in
21 your opinion as our Corporation Counsel between
22 substantial and full, is it interchangeable, whereby
23 in this manner, it's the same thing, or do
24 you believe there's a legal difference that we
25 should at least be aware of?

1 CHAIR MOLINA: Mr. Kushi?

2 MR. KUSHI: Mr. Chair, Member Hokama, are you looking at
3 the bill before you?

4 COUNCILMEMBER HOKAMA: Okay. And the bill before us,
5 Mr. Kushi, yes, I believe that under the County's
6 ordinance or draft we list, I believe, what, six --
7 six proposed ordinance -- conditions of approval?

8 MR. KUSHI: Correct.

9 COUNCILMEMBER HOKAMA: And the last condition states that
10 the applicants -- or the representatives shall meet
11 the conditions and fulfill with substantial
12 compliance, I believe, is the phrase. Or -- yeah.

13 And under the State Special Use Permit, their
14 language is that it must have full compliance and so
15 I'm just trying to understand is there a difference
16 in -- from -- from the legal standpoint? And if
17 it's not, would you be able to opine that position
18 to this Committee this afternoon?

19 MS. NAKATA: Excuse me, Mr. Chair.

20 CHAIR MOLINA: Staff?

21 MS. NAKATA: Staff would just note that there is a revised
22 proposed bill in the Members' binders, and it's
23 under correspondence dated November 6th, 2007.

24 And in that revised version of the bill,
25 Condition No. 6 states that full compliance with the

1 conditions of the Land Use Commission Special Use
2 Permit shall be rendered.

3 COUNCILMEMBER HOKAMA: Chairman, thank -- thank you very
4 much, Ms. Nakata. And, okay, if you look at that
5 one, and -- and -- November 6th, right, Ms. Nakata,
6 you mentioned? So again, thank you.

7 Mr. Kushi, No. 6, you heard our -- our analyst
8 mention --

9 MR. KUSHI: Right.

10 COUNCILMEMBER HOKAMA: -- that for the State, it shall be
11 full compliance shall be rendered. Look above right
12 there at No. 5. And for the County's portion, we
13 just saying that it just needs to be in substantial
14 compliance.

15 I'm just wondering, again, my question, is
16 there a difference? If it is not, then let us be
17 clear this afternoon; and if there is a difference,
18 then the question would be why?

19 MR. KUSHI: Well, yeah, I'm -- Mr. Alueta would clarify,
20 but if you're -- you're referencing Condition No. 5,
21 is that correct?

22 COUNCILMEMBER HOKAMA: Yes. I'm just trying to understand
23 the difference of why we looking at treating a
24 conditional condition for this permit to just meet
25 substantial compliance and yet for the State, they

1 must be in full compliance?

2 MR. KUSHI: Okay. The -- the bill that I'm looking at is
3 the one that Staff recommended attached to the
4 transmittal from our office dated November 6th, '07,
5 and it's the bill, and it's -- it's -- it's
6 parentheses 2007. You've had previous bills before
7 you. But under Section 2, there's six conditions?

8 COUNCILMEMBER HOKAMA: Yes.

9 MR. KUSHI: And the first one, number 1 says full
10 compliance with all applicable government
11 requirements. Then you going on to number 6, page
12 2, it says full compliance with conditions of the
13 Land Use Commission Special Use Permit.

14 COUNCILMEMBER HOKAMA: Uh-huh.

15 MR. KUSHI: Then above that, you -- you reference the
16 number 5, that the applicant shall develop the
17 property in substantial compliance with the
18 representations made to the County Council. So --
19 is that your question?

20 COUNCILMEMBER HOKAMA: Is there a difference between those
21 terms or phrasing?

22 MR. KUSHI: I -- I would say in legal -- in legal nonsense
23 or legal sense, full compliance is full compliance.
24 Substantial compliance would be whatever they
25 represented to you in -- in -- in these documents.

1 Now, substantial compliance, you got to figure
2 what are you complying to, whether it's
3 representations or is it black and white the County
4 Code or the -- black and white, the terms of the
5 Special Use Permit itself. So I would say that
6 language in that sense --

7 COUNCILMEMBER HOKAMA: Uh-huh.

8 MR. KUSHI: -- referencing their representations is -- is
9 proper.

10 COUNCILMEMBER HOKAMA: Okay. Thank you very much for that
11 comment to the question.

12 Chairman, my only other comment would be -- on
13 this one at this time would be that I -- I believe
14 the Committee, in -- in consideration of some of the
15 testimony we received particularly in writing, I
16 would say that there would be no problem for us to
17 consider an additional condition that states that
18 they will be -- or they shall have a quiet period
19 from 10:00 p.m. to 8:00 a.m. every day of the week.
20 Thank you, Chairman.

21 CHAIR MOLINA: Okay. Thank you, Mr. Hokama, and that is
22 something the Chair would also ask for a
23 consideration of.

24 So, Mr. Kushi, just following up on Chairman
25 Hokama's question with regards to the difference

1 between full and substantial, basically, it's a case
2 of tomatoes or tomatoes. Same smell, basically,
3 right?

4 MR. KUSHI: Or apples and apples.

5 CHAIR MOLINA: Okay. All right. Thank you. Just trying
6 to get the semantics issue resolved with the --
7 those two terms.

8 MR. KUSHI: Mr. Chair?

9 CHAIR MOLINA: Yes, sir, Mr. Kushi.

10 MR. KUSHI: If I may. If -- if the Committee is
11 considering that last request for a quiet period or
12 whatever, I would suggest the Committee consult with
13 the applicant.

14 CHAIR MOLINA: Okay. Thank you very much, Mr. Kushi. All
15 right, very good, Committee Members. The Chair
16 would ask for a consideration of applying that
17 condition as well, a Condition 7, that the applicant
18 will post signs for quiet times between 10:00 p.m.
19 to 8:00 a.m. and I believe the applicant agreed to
20 it earlier, based on a question from Member
21 Anderson.

22 Members, are there any other considerations?
23 Member Anderson?

24 COUNCILMEMBER ANDERSON: I think the language needs to be a
25 little stronger.

1 CHAIR MOLINA: Okay.

2 COUNCILMEMBER ANDERSON: That the applicant and her
3 managers shall enforce the quiet time from 10:00
4 p.m. to -- was it 8:00 a.m. or 7:00 a.m.?

5 CHAIR MOLINA: 8:00 a.m., unless the Members would want --
6 want it a different time. Is 10:00 p.m. to 8:00
7 a.m. acceptable to the Committee?

8 COUNCILMEMBER ANDERSON: And if we could ask the applicant,
9 per Mr. Kushi's suggestion.

10 CHAIR MOLINA: Okay. Could I have Ms. Gildred or Mr. or
11 Mrs. Stover, if you could please come up. Could we
12 get your comments on the additional condition the
13 Committee is considering to enforce quiet times from
14 10:00 p.m. to 8:00 a.m.?

15 MS. GILDRED: We would be happy to do that. And we will
16 apologize to Jae Webster and ask her why she didn't
17 ask us, but we're happy to do that. Absolutely.

18 CHAIR MOLINA: Okay. Thank you. Member Anderson?

19 COUNCILMEMBER ANDERSON: What?

20 CHAIR MOLINA: You're -- you're fine?

21 COUNCILMEMBER ANDERSON: Yeah.

22 CHAIR MOLINA: Okay. I just thought you had a follow-up.
23 Okay, Members, we shall go ahead and put condition 7
24 in there to indicate quiet times from 10:00 p.m. to
25 8:00 a.m. with the managers and with the language

1 that was suggested.

2 Staff, can you go over the language that was
3 recommended by Member Anderson?

4 MS. NAKATA: That Kathleen Gildred and Sean Brunwin shall
5 post signs for an enforced quiet times at the
6 transient vacation rental between 10:00 p.m. and
7 8:00 a.m.

8 CHAIR MOLINA: Okay. All right, Members, do I have
9 consensus on applying the condition as language --
10 with the appropriate language?

11 COUNCILMEMBER BAISA: Yes.

12 CHAIR MOLINA: Thank you. Member Baisa?

13 COUNCILMEMBER BAISA: The only other issue that seems to be
14 of substance in this letter is the one about having
15 contact phone numbers available, posted and
16 available that will be answered all the time.

17 CHAIR MOLINA: Would you like to have that proposed as a
18 condition, Member Baisa?

19 COUNCILMEMBER BAISA: Yes, I would. I think it's
20 reasonable because I not only hear it here at this
21 case, but I have heard it throughout this entire TVR
22 discussion. We don't know who to call. We don't
23 know how to contact anyone.

24 CHAIR MOLINA: Okay --

25 COUNCILMEMBER BAISA: And --

1 CHAIR MOLINA: Go ahead, I'm sorry. If -- if you don't
2 mind, I'd like to call the applicant up --

3 COUNCILMEMBER BAISA: Yeah. And even if it is this
4 particular neighbor that has made the complaint at
5 this time, we don't know if there's anybody else, or
6 there may be, in the future, somebody who would want
7 to make a call. And granted the manager is there,
8 but he's not there all the time.

9 CHAIR MOLINA: Okay. Thank you. Mrs. Stover, can I get
10 your comments on the consideration that we have
11 before us, which is to -- I guess to list the phone
12 numbers of the manager in the event there could be a
13 complaint?

14 MS. STOVER: Yes. And the list of phone numbers you mean
15 on the -- on the application itself, is -- is that
16 what we're saying?

17 COUNCILMEMBER BAISA: No. In -- somewhere, where anybody
18 who would like to contact you because they're not
19 obeying quiet time or whatever, would be able to
20 call.

21 MS. STOVER: Okay. All -- all of our neighbors, we know
22 all of our neighbors. They have all of our numbers,
23 and --

24 COUNCILMEMBER BAISA: This particular lady says she doesn't
25 have one.

1 MS. STOVER: I know, which is interesting because again,
2 I'm the person who found all of her renters. I was
3 the person that -- that found her renters. She has
4 my phone number, and we have three phone numbers in
5 the phone book, so this is very confusing to us
6 right now.

7 Where -- we had our numbers posted in the
8 house. We have all of that. Where -- where would
9 you recommend that we put the phone number?

10 COUNCILMEMBER BAISA: I'm sorry. But, you know, if they're
11 posted in the unit, the person next door won't be
12 able to see them.

13 MS. STOVER: Right. So you mean on the front of the house?

14 COUNCILMEMBER BAISA: So there has to be someplace where --
15 a sign or something.

16 MS. STOVER: Okay --

17 COUNCILMEMBER BAISA: And I know there's sign ordinances so
18 we don't want to violate that either. We may need a
19 comment from Planning.

20 MS. STOVER: Okay. We'd be happy to do whatever we need to
21 do.

22 CHAIR MOLINA: Yeah. Mr. Alueta, can you comment?

23 MR. ALUETA: Thank -- thank you, Mr. Chair. In our
24 proposed legislation, we're looking at a one -- most
25 of the consensus by the Commission so far in the

1 proposed ordinance has been a one-by-one sign with
2 the permit number, as well as a phone number for
3 complaint -- for -- for emergency number.

4 COUNCILMEMBER BAISA: That might be a good solution.

5 MS. STOVER: Okay.

6 COUNCILMEMBER BAISA: Thank you.

7 MS. STOVER: All right, thank you.

8 COUNCILMEMBER BAISA: Thank you.

9 CHAIR MOLINA: All right. So, Members, the Chair is open
10 to accepting that as an additional condition to have
11 a phone number posted on the premises where anyone,
12 I guess, in the general public can see in the event
13 that there is a potential complaint.

14 Member Anderson, you had a question?

15 COUNCILMEMBER ANDERSON: No, thanks.

16 CHAIR MOLINA: Okay.

17 COUNCILMEMBER HOKAMA: Mr. Chairman?

18 CHAIR MOLINA: Mr. Hokama?

19 COUNCILMEMBER HOKAMA: Is it your understanding for -- to
20 assist the Committee that there is no on-street
21 parking allowed for this application?

22 CHAIR MOLINA: The Chair hadn't really considered that at
23 this time. Is that something the Committee would
24 like to consider as a condition? The Chair's open
25 to that.

1 Mr. Alueta, can you give us some additional
2 comment or clarification?

3 MR. ALUETA: I believe that the previous State Special Use
4 Permit, No. 10, was that parking shall be provided
5 on site in accordance with Chapter 19.36, Parking
6 and Loading Ordinance, Section 01036. So...

7 COUNCILMEMBER HOKAMA: So the State Special Use condition
8 is stating the County's Code?

9 MR. ALUETA: That is correct. As you know, under State
10 Special Use Permits, less than 15 acres fall within
11 the jurisdiction of the respective Planning
12 Commissions.

13 COUNCILMEMBER HOKAMA: No, I -- I appreciate that reminder,
14 Mr. Alueta. I just find it interesting the State --
15 I would like them to check their State statutes, and
16 -- and we'll take care of our ordinances.

17 Okay. So, again, as my question to Mr. -- our
18 Chairman this afternoon, the understanding is that,
19 then, there will be no on-street parking for this
20 use at this property site?

21 CHAIR MOLINA: Mr. Alueta?

22 MR. ALUETA: Yeah, on-street -- on-street parking is
23 prohibited.

24 COUNCILMEMBER HOKAMA: For the tenants or -- or the user,
25 the guests is not -- is not allowed?

1 MR. ALUETA: That -- that is correct. Current parking Code
2 would be if it was a B&B, it would be two for the
3 house and one for every guest room.

4 In this case, if it's just a pure TVR, which
5 it is, it would be -- I guess they would be assessed
6 that one per guest room.

7 COUNCILMEMBER HOKAMA: And all must be provided on
8 property?

9 MR. ALUETA: Yes. All -- the parking ordinance is specific
10 about being on -- on-site. They have a two-car
11 garage, I believe, and enough apron there as -- and
12 then I believe there's enough room for the -- my
13 last site visit, there was parking for the cottage
14 as well.

15 COUNCILMEMBER HOKAMA: Okay. Thank you very much,
16 Mr. Chairman.

17 CHAIR MOLINA: Thank you, Mr. Hokama. Mr. Alueta, so it's
18 assumed that if they do get this Conditional Use --
19 Use Permit approved, that no on-street parking will
20 be allowed, or do we -- so we don't need to put an
21 additional condition in that, or -- or is it just
22 assumed that if they get the permit approved here,
23 that we would --

24 MR. ALUETA: It's assumed that they have to comply with all
25 the County -- the existing County codes.

1 CHAIR MOLINA: Okay.

2 MR. ALUETA: And that the conditions that you're
3 establishing for the Conditional Permit are above
4 and beyond what is -- or in addition to what is
5 expected from the existing County Code.

6 CHAIR MOLINA: Okay. So if we were to put a condition
7 restricting off-street parking, it would be
8 repetitive, basically, then? Okay, thank you.

9 Member Anderson?

10 COUNCILMEMBER ANDERSON: Chair, I live in Maui Meadows, and
11 the -- there is a public easement fronting all
12 property in Maui Meadows that maybe someday will
13 become a sidewalk and curbs and gutters, but people
14 use that for parking all over Maui Meadows on
15 street. It's a public easement.

16 COUNCILMEMBER HOKAMA: Wasn't meant for business.

17 CHAIR MOLINA: Okay. Thank you, Member Anderson. All
18 right, Members, the Chair's ready to offer a
19 recommendation. Member Baisa?

20 COUNCILMEMBER BAISA: One more quick question.

21 CHAIR MOLINA: Okay.

22 COUNCILMEMBER BAISA: It concerns the one-year permit. The
23 one-year permit, the date that it would begin would
24 be the date of approval?

25 CHAIR MOLINA: Mr. Alueta?

1 MR. ALUETA: From the effective date of the ordinance.

2 COUNCILMEMBER BAISA: So assuming that if this were to pass
3 out, it goes to Council, it has a couple readings,
4 so it's another month so about Christmas time.

5 So this would mean that a year from now or
6 before that, this -- this application would come
7 back to us again for an extension of the permit?

8 CHAIR MOLINA: Mr. Alueta?

9 MR. ALUETA: Theoretically, yes.

10 COUNCILMEMBER BAISA: Theoretically?

11 MR. ALUETA: Well, yes, they would have to come back and --
12 and in -- you would -- they would have to start the
13 process all over again.

14 And again, I -- I -- it would be very
15 difficult for them to obtain a State Special Use
16 Permit within -- they could probably do it within
17 six months if she applied today or less, depending
18 on the workload for the State because of the --
19 because it has some past history.

20 But -- so they would theoretically be
21 operating legally for six months before the -- they
22 would have to come back in for some type of
23 Conditional Permit.

24 CHAIR MOLINA: To Member Baisa -- not to use the word
25 theoretically -- if the Committee would like to

1 consider a longer time period more so than a year,
2 that -- I believe Mr. Alueta touched on that
3 earlier, the Committee or Council has that option.

4 COUNCILMEMBER BAISA: Well, the reason I asked the question
5 is because it's a matter of what is practical. And
6 again, you know, for months now, we've been hearing
7 about permits and processes and how long it takes
8 and, you know, now we're becoming more and more
9 familiar with it, us freshman, because we're
10 actually sitting here and listening to these stories
11 about 12 years and 6 years and 2 years, and it kind
12 of makes me uncomfortable that to think that in less
13 than a year, this will have to come before us again.

14 And it's not the only one. I suspect that
15 there are many, many more in the wings. And I know
16 that in the meantime, we'll be working on a new TVR
17 ordinance. I don't know how that will -- how that's
18 going to interact with this and what we're doing
19 today.

20 But it hardly seems -- and, you know, I have
21 many concerns about -- and I was wishing that we had
22 the information about if there were other -- if
23 there were any complaints or a lot of complaints. I
24 would be more uncomfortable.

25 I don't have that information so I'm assuming,

1 and that's not a good thing to do because when we
2 assume, we know what we do. But, you know, I have
3 to not -- not have -- in the absence of better
4 information, my -- my head tells me that granting a
5 12-month permit may not be enough time to allow
6 either us or the applicant to do the right thing,
7 and I just want to offer that up.

8 CHAIR MOLINA: Okay. The Chair's open to other
9 considerations beyond a year, I presume.

10 Mr. Pontanilla, followed by Member Victorino.

11 VICE-CHAIR PONTANILLA: Thank you. This is for Mr. Alueta.
12 You mentioned earlier that their State Land Use
13 Permit has been expired, and they need to reapply.

14 My understanding is that you need the Special
15 Use Permit, as well as the Conditional Permit to run
16 a legitimate TVR.

17 So if it's going to take the applicant
18 six months just to get the Special Use Permit to run
19 along if we pass today the Conditional Permit, then
20 I -- I would think, you know, like Member Baisa,
21 maybe -- well, for me, that we should have this
22 permit run from the time that they get the Special
23 Use Permit to run with the TVRs along with that to
24 make this Conditional Permit basically the same time
25 frame.

1 In other words, three months, four months from
2 now, they get the Special Use Permit from the State
3 Land Use Commission. This Conditional Permit will
4 take effect upon the time of the approval.

5 CHAIR MOLINA: Mr. Alueta, any comments?

6 MR. ALUETA: I -- I believe you could word the condition
7 like that. You would still need a date certain and
8 then you would put -- or you'd use what the --
9 basically what the State Land Use Commission Special
10 Use Permit.

11 So you'd put that the Conditional Permit shall
12 be valid until whatever date you want or until the
13 termination date established by the State Special
14 Use Permit, whichever is later, subject to further
15 extensions by the County Council.

16 Okay, so you would -- and so you would just
17 reverse it. The only reason it's normally set up
18 the other way around is that you normally -- as --
19 as what they did, you apply for the two permits
20 concurrently and then because the State Special Use
21 Permit is at the Planning Commission level and then
22 the Council level, and that's the normal.

23 But in this case, because it got flipped
24 around because one expired, you can just flip the
25 condition around on the Conditional Permit side and

1 just say that subject -- you know, to -- for the --
2 as -- further extension as -- as established by the
3 State Special Use Permit.

4 VICE-CHAIR PONTANILLA: Thank you. Chairman, I -- for me,
5 I -- I think that's the route that I would like to
6 take. Thank you.

7 CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla.
8 Mr. Victorino?

9 COUNCILMEMBER VICTORINO: Mr. Alueta?

10 MR. ALUETA: Yes.

11 COUNCILMEMBER VICTORINO: I've been listening very intently
12 to what you said, and I have no problem with the
13 last part of your statement, but I'd like to go back
14 in the beginning just so that I'm clear.

15 First of all, these people been operating for
16 12 years, right?

17 MR. ALUETA: That's my understanding, yes.

18 COUNCILMEMBER VICTORINO: Okay. And you mentioned
19 something about for a long period of time, they did
20 not apply for any permit, other than the special --
21 the Land Use, right?

22 MR. ALUETA: No, they applied for both permits at the same
23 time.

24 COUNCILMEMBER VICTORINO: Twelve years ago? Cannot be.
25 Okay, so --

1 MR. ALUETA: 1999, they applied for both the State and the
2 Conditional Permit.

3 COUNCILMEMBER VICTORINO: So for -- for a while, they just
4 ran illegally, is -- is that the only word I can
5 think of.

6 MR. ALUETA: Yes.

7 COUNCILMEMBER VICTORINO: If you can think of another
8 word --

9 MR. ALUETA: Between '95 and '99.

10 COUNCILMEMBER VICTORINO: Okay, so four years.

11 MR. ALUETA: Or just about, yeah.

12 COUNCILMEMBER VICTORINO: Okay. And so with that and the
13 fact that this letter from the neighbor, whether
14 they were informed or not, sort of bothers me
15 already, you know, and I -- I'm not too comfortable
16 with this fact.

17 I have nothing against them, I think they're
18 nice people, but first of all, you know, you -- you
19 operate for a period of time illegally, then you
20 have a neighbor supposed to be, you know, very well
21 says that she didn't want to cause waves, but still
22 got enough courage to write a letter and bring out
23 certain issues, which they're willing to address.

24 So whether my colleagues, you know, want to go
25 long term or not, I'd still like to make it as

1 minimal as possible for two reasons. Number one, I
2 want to make sure that they comply with and -- and
3 the neighbors will not complain in the future; and
4 secondly, that -- that they show us that they're
5 going to do these things in -- in the proper manner,
6 in a business-like manner.

7 The letters say that and, you know, some of
8 the other things from other people say that, but
9 what I'm concerned is your neighbor says something,
10 and you didn't -- you weren't able to give us, like
11 Member Baisa brought up, other complaints, have
12 there been any other formal complaints. And, well,
13 we don't know, and I hate to find out two weeks, a
14 month, five months from now that there were others.

15 So I will go to the extent of what
16 Mr. Pontanilla and Member Baisa is suggesting,
17 although I don't like that. I don't like changing,
18 but that's fine. I'll give them that much time so
19 that they can comply and that they can show that
20 they're a good neighbor.

21 Because also Member Baisa mentioned about
22 working on the T VR rules. So I don't want to give
23 too many people too long so that when new rules come
24 up, then all of a sudden they're not going to
25 comply, or they got time to -- to wait to comply.

1 Because when we get new rules, one of the
2 things I've told to many people who have called me,
3 you better make sure that when the new rules come
4 out, you comply because there will be no second
5 chance on that because too many people have skated
6 the system, try to get around it.

7 Well, Mr. Alueta, and that's -- that's not
8 your fault because I think you guys try your best,
9 but we've been ambiguous and kind of not really with
10 any kind of real substantive rules. So I think if
11 we put out the rules, they got to obey.

12 So I'll go with that, and that's the farthest
13 I'll go with this whole -- with this whole matter.
14 Thank you, Mr. Alueta. Thank you, Chair.

15 CHAIR MOLINA: Thank you, Mr. Victorino. The Chair would
16 like to throw out as a compromise -- well, first of
17 all, I'm not going to look at, you know, providing a
18 ten-year permit or a five -- or even five years.
19 However, I think two years is a reasonable time.

20 I do realize one year would seem quite short
21 because basically, in -- in a year, they'd be back
22 here. So it does cost the applicants additional
23 money to come back here and time, of course; and as
24 we all know, the Land Use Committee is quite a very
25 busy Committee, so I would like to throw out

1 two years as a consideration or if the majority of
2 the body wants to go more, so be it.

3 Member Anderson?

4 COUNCILMEMBER ANDERSON: I -- I'm definitely for that, but
5 I think we need to time this, as Mr. Alueta was
6 suggesting, so that it's in concert with the Special
7 Use Permit.

8 And if he could maybe read that condition
9 again and maybe preface it with the applicant shall
10 immediately apply for renewal of the Special Use
11 Permit and then that way, we're in -- we're assured
12 that they will do that and then, Mr. Alueta, the
13 rest of the language that you just gave us?

14 MR. ALUETA: It would be that the -- I believe it would be
15 that the Conditional Permit shall be valid until and
16 whatever two-year period you give it or until the
17 termination date established by the State Special
18 Use Permit, whichever is later, subject to further
19 extensions by the Maui County Council upon a timely
20 request for an extension.

21 COUNCILMEMBER ANDERSON: Mr. Chair, I move to amend with
22 that condition.

23 CHAIR MOLINA: Okay. Is there a second?

24 MS. NAKATA: Mr. Chair, there's no main motion on the floor
25 pending.

1 CHAIR MOLINA: Okay. Well, would you like to just
2 incorporate that as a friendly amendment --

3 COUNCILMEMBER ANDERSON: Yes, please.

4 CHAIR MOLINA: -- instead? Maybe we could go -- Members,
5 any objections to incorporating that as a friendly
6 amendment, rather than a formal? Mr. Medeiros?

7 COUNCILMEMBER MEDEIROS: I -- I just wanted to give my
8 input on the -- the time that we're talking about.
9 Should I do it now, or should Member Anderson
10 complete?

11 CHAIR MOLINA: Specifically -- tell you what, Members, why
12 don't we do this. Why don't we take a recess, and
13 we can work out the specifics of the language and
14 then when we come back, we'll go from there and have
15 it introduced and then we'll take action on the
16 bill.

17 So, Members, the Chair's going to call for a
18 recess until 3:15. Meeting in recess. ...(gavel)...

19 **RECESS: 2:59 p.m.**

20 **RECONVENE: 3:17 p.m.**

21 CHAIR MOLINA: ...(gavel)... The Land Use Committee meeting
22 of November 14th, 2007, is now back in session.
23 Thank you for that break, Members. We are on Land
24 Use Item 28, which is a Conditional Permit request
25 for Hale Alana Vacation Rental.

1 And when we left off, we had the Senior
2 Planner, Mr. Alueta, offering the Committee a
3 recommendation for a condition related to the amount
4 of time for the permit.

5 Mr. Alueta, you have the floor.

6 MR. ALUETA: Thank you, Mr. Chair. I -- I did go over with
7 Carla Nakata, your -- your Staff, and she has the --
8 the exact language. We made some corrections to it.

9 And also, just if I may, fill in -- I did
10 check with our database system and our zoning
11 inspectors, and there has not been any complaints.

12 CHAIR MOLINA: Okay. Thank you. So Staff, can you go
13 ahead and read the condition as recommended by
14 Mr. Alueta?

15 MS. NAKATA: That Kathleen Gildred and Sean Brunwin shall
16 immediately apply for a new State Special Use
17 Permit. The Conditional Permit shall be valid for a
18 period of two years from the effective date of this
19 ordinance or until the termination date established
20 by the State Special Use Permit, whichever is later,
21 provided that an extension of this Conditional
22 Permit beyond this period may be granted pursuant to
23 Section 19.40.090, Maui County Code.

24 CHAIR MOLINA: Okay. Members, the condition has been read.
25 Any comments? Any objections? Member Baisa?

1 COUNCILMEMBER BAISA: This may sound nit-picky, but here we
2 go again with semantics. What is immediate? Is
3 that within a month, within a week, within 15 days?
4 I would be much more comfortable with that than
5 immediately.

6 CHAIR MOLINA: Okay. Mr. Alueta or Mr. Kushi, if you care
7 to comment on the definition as it relates to this
8 condition of the word immediate?

9 MR. ALUETA: I don't have any comments with regard to the
10 word immediate. I would just say that she -- it's
11 in her best interest to apply because the permit
12 will expire, if she doesn't have one, within that
13 two years.

14 Secondly, my understanding of the -- of our
15 enforcement procedures is that she will be --
16 because their State Special Use Permit did expire,
17 she will be notified that she needs to shut down by
18 January.

19 And until -- so she will have -- it will be in
20 her best interest to apply immediately and move
21 forward with the State Special Use Permit as soon as
22 possible so there will be, I guess you could say, an
23 economic incentive for her to get -- move forward
24 with her permit process.

25 CHAIR MOLINA: Member Baisa?

1 COUNCILMEMBER BAISA: Well, I don't want to belabor the
2 point, but I see your point. I -- I also have
3 concerns about immediate. I raised three children.
4 You will clean your room immediately. Uh-huh, sure.

5 CHAIR MOLINA: Okay. Thank you, Member Baisa. Members, if
6 there's any -- hang on. Mr. Madeo -- Mateo? All
7 these words and semantics getting the Chair all
8 confused here.

9 Mr. Mateo, you have the floor.

10 COUNCILMEMBER MATEO: Chairman, thank you very much. And
11 I -- I guess real briefly, I -- I don't have a
12 problem in supporting the recommendation.

13 My -- my only concern would be one of
14 consistency for -- for us at this point. Because as
15 Ms. Suyama had mentioned earlier, the Planning
16 Commission normally recommends one year. And the
17 one year comes with a caveat, and that caveat is to
18 be sure that they are compliant. And it gives us --
19 gives them the opportunity to become compliant with
20 law.

21 So I don't have a problem with the change, but
22 I'm kind of hoping that we are consistent enough
23 that if we're saying two years at this point and we
24 can justify the rationale for it, then when other
25 requests or applications come before us, that we

1 give it the similar considerations as well.

2 CHAIR MOLINA: Okay. Thank you, Mr. Mateo, and that's a
3 good issue to bring up. I think because of the
4 circumstances the applicant is in with regards to
5 the State Land Use permit as well, I think that's --
6 may have been the rationale for this consideration.

7 Mr. Pontanilla, you had your hand up?

8 VICE-CHAIR PONTANILLA: Yeah, just a point of information,
9 that we acted on one permit last week, and we went
10 along with the Planning Commission on their one-year
11 condition. Thank you.

12 CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. During
13 the break, the Chair had a chance to speak with
14 Chairman Hokama for a possible consideration.

15 Mr. Hokama, do you have something to offer the
16 Committee as a potential condition?

17 COUNCILMEMBER HOKAMA: Chairman, in -- in reviewing the
18 comments that I received on my on-street parking,
19 I'll approach it from the point that ignorance is
20 not bliss; therefore, I would ask that the Committee
21 place in its conditions no on-street parking will
22 be permitted.

23 CHAIR MOLINA: Okay. Members, any comments to the
24 consideration from Chairman Hokama that we add an
25 additional condition to emphasize no on-street

1 parking will be permitted? Member Baisa?

2 COUNCILMEMBER BAISA: I support the Chair's recommendation.

3 I own property in a very crowded neighborhood, and
4 the cars on the street are a real issue because if
5 they park on both sides, you can barely get through,
6 and it's a real safety issue.

7 And I believe that if we're going in the right
8 direction, we should require that cars not be on the
9 street.

10 CHAIR MOLINA: Okay. Thank you, Member Baisa. Any
11 additional comments? If the Chair sees there is
12 consensus for this condition, we'll -- Chair will
13 allow for it to be incorporated into the bill.
14 Seeing none, very good, Members.

15 Any other considerations before the Chair
16 makes a recommendation? Okay, the Chair's
17 recommendation is to --

18 MR. KUSHI: Mr. Chair?

19 CHAIR MOLINA: Sorry, Mr. Kushi?

20 MR. KUSHI: Chair, because this is a Conditional Permit
21 process, I would urge that you ask the applicants if
22 they would agree to these new conditions.

23 CHAIR MOLINA: Okay. I guess if we could -- maybe if we
24 could have one of you come up on record to give us
25 your thoughts on the additional condition placed by

1 Member Hokama, as well as the condition that was
2 suggested to us by Planner Joseph Alueta?

3 MS. GILDRED: Yes. I heard three additional conditions,
4 correct, that have been stated, and we can agree to
5 those conditions.

6 CHAIR MOLINA: Okay. So noted. Thank you. Mr. Medeiros,
7 you had a question?

8 COUNCILMEMBER MEDEIROS: No.

9 CHAIR MOLINA: Okay. Thank you very much. Very good. The
10 Chair will offer a recommendation, then, Members, if
11 there are no other considerations.

12 COUNCILMEMBER BAISA: Recommendation.

13 CHAIR MOLINA: Okay. The Chair will entertain a motion to
14 recommend passage of the revised bill entitled "A
15 Bill for an Ordinance to Amend the State Land Use
16 District Classification from Agricultural to Urban,
17 for Property Situated at Kaeo, Honuaula, Makena,
18 Maui, Hawaii."

19 VICE-CHAIR PONTANILLA: So moved.

20 COUNCILMEMBER MEDEIROS: Second.

21 CHAIR MOLINA: Okay. It's been moved by Member Pontanilla,
22 seconded by Member Medeiros.

23 COUNCILMEMBER HOKAMA: Chairman?

24 CHAIR MOLINA: Yes, Mr. Hokama?

25 COUNCILMEMBER HOKAMA: May I ask for a short recess to just

1 confer with you, please?

2 CHAIR MOLINA: Okay. Recess subject to the call of the
3 Chair. ...(gavel)...

4 **RECESS: 3:23 p.m.**

5 **RECONVENE: 3:25 p.m.**

6 CHAIR MOLINA: ...(gavel)... Thank you for that recess,
7 Members. The Land Use Committee meeting for
8 November 14th, 2007, is now back in session.

9 The Chair would like to restate the motion.
10 Apparently, there was a mixup with the documentation
11 that was given to the Chair. So let me restate the
12 motion for the record.

13 Staff, is it appropriate that we ask for a
14 withdrawal of the motion, or can the Chair just go
15 ahead and restate the motion?

16 MS. NAKATA: Chair, I think restating the motion is fine in
17 this instance.

18 CHAIR MOLINA: Okay. The Chair will restate the motion,
19 which is a bill and passage of the revised proposed
20 bill entitled "A BILL FOR AN ORDINANCE GRANTING
21 KATHLEEN GILDRED AND SEAN BRUNWIN A CONDITIONAL
22 PERMIT TO OPERATE A TRANSIENT VACATION RENTAL
23 BUSINESS WITHIN THE COUNTY RURAL DISTRICT, FOR
24 PROPERTY SITUATED AT 3378 KEHA DRIVE, KIHEI, MAUI,
25 HAWAII."

1 Okay. So the motion has already been made by
2 Member Pontanilla and seconded by, let's see,
3 Mr. Medeiros.

4 Okay. Staff, I want you, for the record, to
5 restate all the additional conditions that the
6 Committee considered before the Chair calls for the
7 vote and any additional discussion.

8 MS. NAKATA: Yes, Mr. Chair. Would -- would you like to
9 entertain each additional condition as a separate
10 vote, or you want them all read at once?

11 CHAIR MOLINA: We could have it all -- Members, any
12 objections to having it all read at once?

13 COUNCIL MEMBERS: No objections.

14 CHAIR MOLINA: Okay. Proceed, Staff.

15 MS. NAKATA: Condition -- new Condition No. 7, Kathleen
16 Gildred and Sean Brunwin shall post signs for and
17 enforce quiet times at the transient vacation rental
18 between 10:00 p.m. and 8:00 a.m.

19 Condition No. 8, that Kathleen Gildred and
20 Sean Brunwin shall post and maintain on the premises
21 a sign measuring 1 foot by 1 foot, noting the permit
22 number for the transient vacation rental and a phone
23 number for emergency purposes.

24 CHAIR MOLINA: Okay. Members --

25 MS. NAKATA: Condition No. --

1 CHAIR MOLINA: Go ahead.

2 MS. NAKATA: -- 2 the Committee wanted to amend to read as
3 follows. That Kathleen Gildred and Sean Brunwin
4 shall immediately apply for a new State Special Use
5 Permit.

6 The Conditional Permit shall be valid for a
7 period of two years from the effective date of this
8 ordinance or until the termination date established
9 by the State Special Use Permit, whichever is later,
10 provided that an extension of this Conditional
11 Permit beyond this period may be granted pursuant to
12 Section 19.40.090, Maui County Code.

13 New Condition No. 9, no on-street parking
14 shall be permitted.

15 CHAIR MOLINA: Okay, Members, there you have it. Any
16 discussion on the motion that's on the floor to
17 approve? Okay. With no --

18 MS. NAKATA: Mr. Chair, would that motion include the
19 filing of the communication?

20 CHAIR MOLINA: Yes, the Chair was about to add that. Okay,
21 it will include filing as well.

22 Members, ready for the vote?

23 COUNCILMEMBER ANDERSON: Yes.

24 CHAIR MOLINA: Okay. All those in favor, signify by saying
25 "aye."

1 COUNCIL MEMBERS: Aye.

2 CHAIR MOLINA: All those opposed?

3 COUNCILMEMBER HOKAMA: No.

4 COUNCILMEMBER VICTORINO: No.

5 **VOTE: AYES:** Councilmembers Anderson, Baisa, Mateo,
6 Medeiros, Vice-Chair Pontanilla, and
Chair Molina.

7 **NOES:** Councilmembers Hokama and Victorino.

8 **ABSTAIN:** None.

9 **ABSENT:** None.

10 **EXC.:** Councilmember Johnson.

11 **MOTION CARRIED.**

12 **ACTION:** Recommending **FIRST READING** of revised
13 proposed bill, and **FILING** of
communication.

14 CHAIR MOLINA: Okay. We have seven ayes, Members Molina,
15 Mateo, Anderson, Baisa, Medeiros, okay, and
16 Pontanilla -- make that six ayes; two noes, Members
17 Hokama and Victorino; and one excusal, Member
18 Johnson. The bill passes. Thank you very much,
19 Members.

20 **ITEM NO. 13: DISTRICT BOUNDARY AMENDMENT, CHANGE IN ZONING,**
21 **AND CONDITIONAL PERMIT FOR "LU'UWAI VACATION**
22 **RENTAL" AND SPECIAL EVENTS (MAKENA) (C.C. No.**
07-142)

23 CHAIR MOLINA: We will now move on to our next agenda item,
24 which is Land Use Item No. 13. Land Use item 13,
25 which is a District Boundary Amendment, Change in

1 Zoning, and Conditional Permit for the Lu'uwai
2 Vacation Rental and Special Events located in
3 Makena.

4 The Committee is in receipt of County
5 Communication No. 07-142 from the Planning Director,
6 transmitting proposed bills to grant a request from
7 Helen M. Lu'uwai for a District Boundary Amendment
8 from Rural District to Urban District, the
9 establishment of R-3 Residential District Zoning,
10 and a ten-year Conditional Permit to operate a
11 transient vacation rental and local special events
12 on approximately 14,600 square feet located at 5100
13 Makena Road, Makena, Maui.

14 A correspondence dated June 25th, 2007, was
15 received from the Planning Director, transmitting
16 the following, a revised proposed bill entitled "A
17 BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE
18 DISTRICT CLASSIFICATION FROM RURAL TO URBAN FOR
19 PROPERTY SITUATED AT PAPAANUI, HONUULA, MAKAWAO,
20 MAUI, HAWAII."

21 The purpose of the revised proposed bill is
22 to -- you know what, the Chair's going to call for a
23 recess to confer with Staff. ...(gavel)...

24 **RECESS: 3:30 p.m.**

25 **RECONVENE: 3:31 p.m.**

1 CHAIR MOLINA: ...(gavel)... The Land Use Committee meeting
2 for November 14th, 2007, is now back in session.

3 The Chair would like to continue with the
4 reading of the revised proposed bill, as recommended
5 from the Planning Director. A Bill for an Ordinance
6 to Amend the State Land Use District Classification
7 from Rural to Urban for Property Situated at
8 Papaanui, Honuaula, Makawao, Maui, Hawaii.

9 The purpose of the revised proposed bill is to
10 approve a District Boundary Amendment from Rural
11 District to Urban District for the subject property.

12 In addition, a revised proposed bill entitled
13 "A BILL FOR AN ORDINANCE TO ESTABLISH R-3
14 RESIDENTIAL DISTRICT ZONING FOR PROPERTY SITUATED AT
15 PAPAANUI, HONUULA, MAKAWAO, MAUI, HAWAII."

16 The purpose of the revised proposed bill is to
17 establish R-3 Residential District Zoning for the
18 subject property.

19 A correspondence dated October 23rd, 2007,
20 from the Corporation Counsel's office was also
21 received, transmitting a revised proposed bill
22 entitled "A BILL FOR AN ORDINANCE GRANTING A
23 CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION
24 RENTAL AND SPECIAL EVENTS WITHIN THE R-3 RESIDENTIAL
25 DISTRICT, FOR PROPERTY SITUATED AT PAPAANUI,

1 HONUULA, MAKAWAO, MAUI, HAWAII."

2 The purpose of the revised proposed bill is to
3 grant a ten-year Conditional Permit to Helen M.
4 Lu'uwai, Trustee of the Revocable Living Trust of
5 Helen M. Lu'uwai, dated December 11, 1989; Anela W.
6 Rosa, Successor Trustee of the Revocable Living
7 Trust of Beatrice H. Rosa, dated July 30th, 1992;
8 and Paul H. K. Lu'uwai to operate a transient
9 vacation rental and special events on the subject
10 property.

11 And, Members, we have as resource personnel,
12 we have again, as I mentioned earlier standing by
13 Mr. Krueger from the Public Works Department, also
14 Captain Martin from the Fire Department, and
15 Mr. Nakamura and Mr. Fujinaka from the Water
16 Department.

17 We have, as representatives of the applicants
18 also available, Mr. Chris Hart and Brett Davis from
19 Chris Hart & Partners, and Mrs. Lu'uwai is present,
20 also Mr. Glenn Kosaka, the family attorney.

21 Now, my understanding is we will be having a
22 PowerPoint presentation, and what we will do is
23 we'll go ahead, let's -- I want a brief overview
24 from the Planning Department and then we will go to
25 the PowerPoint presentation.

1 Any initial comments before we do the
2 PowerPoint presentation? Ms. Suyama?

3 MS. SUYAMA: The Maui Planning Commission reviewed this as
4 a public hearing on February 13th, 2007. They made
5 their recommendation that the -- both the State
6 District Boundary Amendment and Change in Zoning be
7 granted with no conditions, and the Commission also
8 recommended that the Conditional Permit be approved.

9 However, the conditions of the Special Use
10 Permit -- of the Conditional Permit differed from
11 the -- from the Maui Planning Department
12 recommendation.

13 First of all, condition -- proposed Condition
14 No. 2, in which the Department had recommended a
15 one-year Conditional Permit. The Commission, on the
16 other hand, recommended ten years as part of the --
17 of their recommendation.

18 The other thing is that on Condition No. 6,
19 when -- which states that the Conditional Permit
20 shall be limited to a transient vacation rental
21 within the existing dwelling and the use of the
22 dwelling and property for special group functions
23 held by Hawaii organizations, community groups, and
24 residents, the Commission deleted the limitations on
25 the maximum number of people that was recommended by

1 the Department for the group functions.

2 The other thing is there were some other
3 conditions that the Department had recommended. One
4 was that no alcohol shall be permitted on site for
5 the special group functions without the appropriate
6 permits from the Department of Liquor Control.

7 There was another condition that we had
8 recommended that the special group functions shall
9 be limited to once a month and shall not go beyond
10 10:00 p.m., and we also recommended a condition that
11 occupancy within the transient vacation rental shall
12 be limited to two persons per -- per bedroom. This
13 dwelling has four bedrooms so that would have been
14 eight people for the transient vacation rental.

15 We also, in terms of one of the conditions
16 that they did support, which was the smoke
17 detectors, our condition, we had a requirement that
18 a log be kept for -- on the monthly testing
19 maintained by the proprietor, and that provision was
20 deleted by the Commission.

21 There was also another condition that we had
22 recommended that no meals or food shall be provided
23 to guests at the transient vacation rental without
24 the prior approval of the State Department of
25 Health.

1 In essence, most of our conditions were
2 recommended by the Planning Commission, except for
3 those exceptions that I mentioned.

4 CHAIR MOLINA: Okay. Thank you, Madam Director. Members,
5 I'm going to ask you to hold off on your questions
6 until after the presentation.

7 So what we're going to do is we're going to
8 take a short recess so the applicant can set up
9 their presentation. Meeting in recess.
10 ...(gavel)...

11 **RECESS: 3:35 p.m.**

12 **RECONVENE: 3:37 p.m.**

13 CHAIR MOLINA: ...(gavel)... The Land Use Committee meeting
14 for November 14th, 2007, is now back in session.
15 We're about to view a PowerPoint presentation
16 presented by Chris Hart & Partners, related to the
17 Lu'uwai application.

18 Mr. Hart?

19 MR. HART: Thank you very much, Chairman Molina and Members
20 of the Land Use Committee. It gives us a great deal
21 of pleasure to be able to participate in this
22 Project and to present this PowerPoint.

23 Again, this is the Lu'uwai Vacation Rental.
24 The Project objectives, the State Land Use District
25 Boundary Amendment is an application to actually

1 change the current Land Use district from Rural to
2 Urban, and there's a Change in Zoning application to
3 change the current interim -- County Interim Zoning
4 to R-3 Residential District and then the Conditional
5 Use Permit in order to rent the existing residence
6 as a transient vacation rental. Okay. Go ahead.

7 The -- we've had the Maui Planning Commission
8 hearing, as Colleen Suyama indicated, February 13th,
9 2007, in which the Planning Commission recommended
10 approval for all of the applications.

11 The Planning Department transmittal of the
12 application to the County Council was April 24th,
13 2007. Our first meeting with the Land Use Committee
14 Chairman, Michael Molina, took place July 10th,
15 2007.

16 At his recommendation, we had a meeting with
17 the Makena Community Association, where we presented
18 the Project and received unanimous approval on
19 September 20th, 2007.

20 The Project location is in Makena. As you can
21 see, we have some -- more detail that we can show
22 you. This is Makena Landing. This is Honoiki Road,
23 this is Makena-Keoneoio Road. The Project site is
24 here.

25 The tax map key shows the parcel and Makena

1 Road and the ocean, our parcel. In the community
2 plan, you can just barely see it, it's proposed for
3 Single Family.

4 The zoning map, this is probably the original
5 zoning map from 1969, I'm not sure, but it shows the
6 parcel as actually being in the Apartment District.

7 And the -- because of the fact that the Land
8 Use classification is Rural, the zoning of A-2
9 Apartment is not appropriate for the site so the
10 Planning Department has a little sticker, as you can
11 see it here, over the map that shows the parcel as
12 Interim.

13 This is the State Land Use District Boundary
14 Map, which shows the parcel as Rural. It's in the
15 Rural District, and this is our Project site plan.
16 This would be Makena-Keoneoio Road, the access
17 driveway, the residence.

18 And one of the important aspects about this
19 property is that it's located on a lava flow so
20 there's no -- no sand beach in this location, very
21 stable shoreline. And I might add that all of the
22 work that has been done on the site -- we'll go
23 through some of the history -- has been permitted.

24 This is the transient vacation rental. As was
25 indicated, it's pretty much -- a pretty local home.

1 Basically, a four-bedroom residence with four --
2 four bathrooms. The total square footage is
3 2,404 square feet.

4 In 1947, there was a small fishing shack
5 constructed on the site. In the 1940s and '50s, the
6 concrete rubble masonry wall and concrete lanai were
7 constructed. And again, this is a lava flow and --
8 and a rocky shoreline.

9 In 1982, the storm destroyed the fishing shack
10 and then in 1986, the home was constructed. In
11 2002, there were some renovations, including the
12 driveway and retaining wall permit issued, and
13 construction followed.

14 The physical environment, the land area is
15 14,600 square feet, flood and tsunami hazard. The
16 subject property is designated as Flood Zone C along
17 a stable, natural lava rock shoreline with 10-foot
18 base flood elevation.

19 Flora and fauna, there are no rare or
20 endangered or threatened species of flora or fauna
21 on the property. The physical environment is
22 continued. The air quality, the proposed use as a
23 TVR is not anticipated to be detrimental to local
24 air quality.

25 Noise characteristic, the proposed use will be

1 respectful of normal, ambient noise levels for the
2 residential neighborhood.

3 Archaeological resources, since the site is
4 developed on an existing residence, it is unlikely
5 that the subject property contains archaeological
6 resources.

7 These are photographs of the site. This is
8 the actual -- looking easterly direction along
9 Makena Road from the Project site. This would
10 actually be the entrance.

11 Okay, and this is an entrance to the Project
12 site. This is looking westerly down Makena-Keoneoio
13 Road. This would be the entrance to the subject
14 property.

15 This gives you a sense of the character of the
16 adjacent properties. This is the Lu'uwai residence,
17 you can just see. These are quite large residences
18 that have been built adjacent on both sides.

19 This is on the south side. This is the -- the
20 Lu'uwai residence, and these are, as was indicated,
21 large residence -- residences that are -- are not
22 regularly lived in. They're absentee ownerships,
23 pretty much.

24 This is looking at the parking stalls on the
25 subject property. Each -- there are eight parking

1 stalls on the -- on the property, and each bedroom
2 has at least one parking stall provided. So there
3 are four bedrooms, four stalls for each bedroom, but
4 there are -- there is room on -- on site for eight
5 parking stalls.

6 This is a site photograph showing the lanai
7 built in the 1940s and '50s and, again, the
8 character of the -- of the shoreline.

9 And conclusion, the Project assessment has
10 been prepared in support of our applications for a
11 State Land Use District Boundary Amendment and
12 Change in Zoning and Conditional Use Permit in order
13 to rent an existing single-family beach home as a
14 transient vacation rental.

15 The proposed transient vacation rental is not
16 anticipated to have a significant impact upon the
17 physical environment or unreasonably burden public
18 infrastructure and services.

19 The proposed action is consistent with the
20 State Land Use laws, objectives, and policies for
21 Urban regions.

22 The proposed Change in Zoning from Interim to
23 R-3 Residential is consistent with the Kihei-Makena
24 Community Plan Land Use Map.

25 The proposed Conditional Use Permit for rental

1 of an existing single-family home as a transient
2 vacation rental and for occasional local group
3 functions is similar, related, or compatible to
4 those uses permitted within the given use zone.

5 Just my comment on that, Conditional Permit is
6 an important vehicle, I believe, in the context of
7 the neighbors that are on the north and the south
8 side, they have single-family residences. The
9 Lu'uwai residence is a residence.

10 The use that's going to be -- that's being
11 asked for is similar or related to uses that are
12 allowed in the Residential District.

13 The character of the residential neighborhood
14 is not going to change by virtue of the fact that
15 the residence can be rented out as a transient
16 vacation rental. So it's similar, related, or
17 compatible to those uses permitted within the given
18 use zone.

19 Thank you for your consideration. And just as
20 in parting, I would just like to say that this
21 particular situation really came about in the
22 context of one of the heirs actually deciding that
23 he wanted to sell his interest.

24 And as a result of his desire to sell, the
25 price -- the -- there was an appraisal done, and of

1 course the price became quite exorbitant. The
2 family had to make a decision about whether to try
3 and keep the property in the family or to basically
4 sell it.

5 And a decision was to keep the property in the
6 family, and of course the burden of the mortgage is
7 substantial, and the desire, therefore, to maximize
8 the opportunity for income from the property through
9 a transient vacation rental became an obvious avenue
10 for them to pursue.

11 So with that, we thank you for the
12 opportunity, and we're open to any questions.

13 CHAIR MOLINA: Okay. Thank you, Mr. Hart. Members, we're
14 going to take a recess to put the screen back up;
15 and from there, we will open the floor for questions
16 to -- towards the applicant. Meeting in recess.

17 ...(gavel)...

18 **RECESS: 3:46 p.m.**

19 **RECONVENE: 3:47 p.m.**

20 CHAIR MOLINA. ...(gavel)... The Land Use Committee meeting
21 for October -- excuse me, November 14th, 2007,
22 Wednesday, is now back in session. We are on Land
23 Use Item 13, which is a District Boundary Amendment,
24 Change in Zoning, and Conditional Permit for the
25 Lu'uwai Vacation Rental and Special Events over in

1 Makena.

2 Members, you heard the opening comments from
3 the Deputy Director of Planning, Ms. Suyama. Do we
4 have any questions? And also, the applicants'
5 representatives are also available for additional
6 questions from the Committee.

7 We'll start first with Member Hokama, followed
8 by Mr. Mateo.

9 COUNCILMEMBER HOKAMA: Chairman, thank you very much. I --
10 I'd like to start my questions this afternoon more
11 on the proposed ordinance for change of zoning,
12 please, Mr. Chairman.

13 CHAIR MOLINA: Okay. Proceed.

14 COUNCILMEMBER HOKAMA: Thank you. My -- my question,
15 and -- and we heard it from Mr. Hart in his
16 presentation, so -- and I'm happy Mr. Kushi is here
17 from Corporation Counsel, and we have the Deputy
18 Director of Planning.

19 Is that all it takes is a stick 'em by an
20 administrative personnel, and we change zoning from
21 one category to Interim?

22 Isn't that a legislative function, and
23 shouldn't Council have been informed that there may
24 be an error in zoning mapping; therefore, Council
25 should consider making another legislative decision

1 to rectify what either Planning Department or
2 Corporation Counsel has regarding legal issues of
3 the former designation?

4 CHAIR MOLINA: Mr. Kushi or Deputy Director Suyama?

5 MR. KUSHI: I'll let the Planning Department handle that
6 one.

7 MS. SUYAMA: What happened is that the Kihei-Makena zoning
8 map, which is identified -- which was approved in
9 1969, there were a lot of areas that were outside of
10 the Urban District that was identified on that
11 Kihei-Makena map as being some County zoning
12 district, whether it was R-1, A-2, A-1.

13 That map has never been corrected. So
14 basically, what we -- the position of the Department
15 is that those zoning districts were invalid because
16 the State Land Use law was in effect in 1969
17 already.

18 And based upon that, the County did not have
19 the right or the power, it was not given to them by
20 the State legislature to zone these areas, so that
21 invalidated those portions of the map. It didn't
22 invalidate the other portions of the map. So
23 technically, they never did have that zoning.

24 And the only way to rectify that mistake that
25 was done in 1969 is that you actually have to go

1 through the process of either the County rezoning
2 these areas or the applicant comes in individually
3 as a Change in Zoning and through that, through
4 ordinance, have those -- those properties rezoned.
5 So, you know, I mean, that is where the error
6 started, in the 1969 adoption of that map.

7 Unfortunately, the County has never taken the
8 initiative to actually go back and correct all these
9 areas. We've been doing it on a parcel-by-parcel
10 basis either by applicants coming in -- and there
11 has been some cases where it was initiated by the
12 County to get some of these properties redesignated.

13 But until that is finally done, there are a
14 number of properties that are improperly zoned on
15 that -- that land zoning map No. 5.

16 COUNCILMEMBER HOKAMA: Okay. I -- you know, and I
17 appreciate the -- the historic background, Deputy
18 Suyama. But didn't we -- or, you know, didn't the
19 County just go to -- to court and have a summary
20 judgment denied, whereby the judge agreed that by
21 stick 'em, you cannot change zoning?

22 MS. SUYAMA: That's correct, you cannot, by stick 'em,
23 change zoning. You have to go through the process
24 of going through the hearing and coming to the
25 Council and through an ordinance, establishing

1 zoning.

2 Until you do that, you really don't have
3 zoning. You may be in the Interim District, but --
4 which was, you know, done before that, before we had
5 zoning --

6 COUNCILMEMBER HOKAMA: Uh-huh.

7 MS. SUYAMA: -- maps.

8 COUNCILMEMBER HOKAMA: So your understanding, for our
9 Committee's purposes this afternoon, because we are
10 aware, when we sit as Budget Committee Members, we
11 go through a mass appraisal process, and we go
12 through zoning categories to arrive at an appraisal
13 figure.

14 So for almost 40 years, this property was
15 actually viewed as Interim -- or should have been
16 kept at Interim, and have we been appraising this
17 property correctly? What -- what do we go at,
18 existing use because the use has changed now?

19 MS. SUYAMA: I can't answer that question. I think you
20 need to talk to the Finance Department as to how the
21 property has been appraised and what method they
22 used to do that appraisal.

23 COUNCILMEMBER HOKAMA: Is that why in the draft ordinance
24 on -- on the zoning change there is no mention of
25 what we changing the zoning from?

1 It just says we are changing it to zoning
2 Residential 3, but we don't -- usually we say we
3 going from Ag to Improved Residential. We're going
4 from Agriculture, Open Space to Hotel, you know?

5 MS. SUYAMA: I believe we're saying that it's from Interim
6 District to R-3 Residential. Right. We're saying
7 it's from the Interim District to the R-3
8 Residential District. That is the zoning that we
9 are changing it from.

10 COUNCILMEMBER HOKAMA: Okay. And your basis of this
11 Interim designation is from a Corporation Counsel
12 opinion or a court ruling?

13 MS. SUYAMA: My --

14 COUNCILMEMBER HOKAMA: Or is it just an administrative
15 analysis and, therefore, you folks made it one
16 administrative decision?

17 MS. SUYAMA: No. My understanding is that before we had
18 zoning, zoning maps, there was an Interim District
19 zoning that was done that basically said for the
20 island of Maui, certain areas, until zoning maps can
21 be created, it is in the Interim District.

22 That enabling legislation has never changed;
23 so based upon that legislation that was done, our
24 position has always been until there's actually
25 zoning maps created, those areas that were never

1 mapped out were in the Interim District unless there
2 were some other kind of Council action that has been
3 taken.

4 There has been -- like when you approved the
5 Rural District, there were, you know, provisions
6 that automatically zoned certain properties that was
7 in the State Rural District and identified on the
8 community plan as Rural.

9 Same thing when the Park District was enacted.
10 The Park District ordinance was acted, there were
11 provisions that automatically zoned certain areas.
12 And based upon those, those areas were taken out of
13 Interim if -- you know, if there was no zoning map
14 and actually zoned for certain -- for a particular
15 County zoning district. Same thing with the
16 agriculture district.

17 But until some kind of action is taken, those
18 other areas that were never formally mapped or were
19 improperly mapped, the position of the Department is
20 that it is in the Interim District until some kind
21 of legislative action occurs at this level.

22 COUNCILMEMBER HOKAMA: Okay. And the Department's position
23 is we'll take no action until a rezoning application
24 comes forward. But that's not supported by
25 Corporation Counsel, is it? Or do you have written

1 support for that position?

2 MR. KUSHI: Well, Mr. Chair, Member Hokama, I -- I, in
3 essence, agree with what Planner -- or Deputy Suyama
4 has said. And that's my understanding as to what
5 the Department has been treating properties such as
6 this.

7 The alternatives would -- would be, again, do
8 a comprehensive zoning bill, which has not worked
9 out well in the past, or just do nothing and catch
10 them when they come in for a building permit or an
11 SMA or a subdivision because then the codes say they
12 must be consistent. And in this case, apparently,
13 this is what happened.

14 COUNCILMEMBER HOKAMA: Well, knowing our departments the
15 way I have gotten to know, I -- I would have assumed
16 that these people are -- have been assessed and
17 paying apartment property tax.

18 Because even till we were made aware of this
19 Interim designation, I went on the assumption it was
20 what it was zoned by an earlier sitting body, which
21 was apartment.

22 And again, we have had, in the past, many
23 Corporation Counsels who eventually, Chairman,
24 became very honorable circuit court judges in the
25 Second Circuit District.

1 So it's -- it's interesting to know that these
2 people who signed off on legislation reviewing our
3 laws we are now told that we have -- well, it
4 doesn't exist, according to a department, you know.
5 That disturbs me that we are not made aware to make
6 corrective decisions prior to entering these
7 situations, Chairman.

8 And, again, fairness on what we are, I am
9 assuming they have taxed or hopefully, as property
10 owners, were sharp enough to go and appeal their
11 property tax based on a different category and
12 different actual use, Chairman.

13 I -- I -- I'm done on this part. The one
14 thing that I would just ask, though, is that did the
15 Commission, under your Conditional Use Permit
16 recommendations, tell why they could not support the
17 Department's -- some of the conditions proposed by
18 the Department, particularly like the -- the
19 licensing to serve liquor?

20 I would assume that would just be a safety
21 precautionary measure against potential liability.
22 So why would we not support something like that?

23 CHAIR MOLINA: Deputy Director?

24 MS. SUYAMA: When this thing came before the Commission,
25 the Lu'uwais had Glenn Kosaka, who was -- who

1 advocated for them and, you know, his reasoning, and
2 the Commission sympathized with the Lu'uwai family.
3 And based upon that, they made their recommendation
4 that some of these conditions, you know, could be
5 deleted from our recommendation, as well as changing
6 the time, the length of the permit.

7 I believe it's in the -- in the record in
8 terms of the minutes that were issued as to why the
9 Commission supported it.

10 And in some cases, it was trying to support a
11 local family that was in this financial difficulty,
12 and there was sympathy on the Commission at that
13 time for the family and, therefore, they made some
14 of these corrections to our recommendation.

15 COUNCILMEMBER HOKAMA: I hope there is no misunderstanding,
16 whether it be with this application or the one
17 before us or the one that may come after, that
18 receiving a Conditional Permit, should that TVR
19 proposal your department working on moves forward,
20 gives automatic grandfathering because I would say
21 that would be a bad misunderstanding of -- of what
22 could -- could not happen -- may not happen, I
23 should say, especially if we pass that proposal
24 eliminating Conditional Use Permits as a -- as a --
25 as a process to go around the -- the intended law.

1 MS. SUYAMA: That's correct. There is no grandfathering
2 in. The Conditional Permit is a temporary approval
3 to -- for a certain use, but it -- that's why it's
4 always renewable.

5 At some point in time, if the law changes,
6 then they may not be subject to getting a -- you
7 know, a -- have the opportunity to continue the
8 Conditional Permit because that is one of our
9 proposals in the -- in -- in dealing with the
10 transient vacation rentals, as well as the Bed and
11 Breakfast is that eliminating the opportunity to use
12 the Conditional Permit process in which to establish
13 yourself.

14 And, you know, our proposal is basically
15 saying that we're mapping out where transient
16 vacation rentals should be permitted, and it's
17 basically in the resort communities, what was
18 considered the resort communities.

19 And if you're not within that mapped areas,
20 generally, you would not be allowed to operate a
21 transient vacation rental. That is our current
22 proposal.

23 However, because there is no transient
24 vacation rental ordinance -- bill right now and
25 there's no provisions that -- that prohibits

1 Conditional Permits, that avenue is still open to
2 the public. The Council needs to deal with it at
3 some point in time, which may change how we deal
4 with vacation rentals.

5 COUNCILMEMBER HOKAMA: Is that one of the reasons why this
6 specific application that the Chairman has listed
7 for us this afternoon is going this route?

8 Because, you know, especially after reading
9 the -- the ten-year length for a Conditional Permit
10 consideration, you know, why wouldn't we have asked
11 the -- the applicant? Why wouldn't you go for the
12 right zoning category, then?

13 And, again, in the past people tell me, well,
14 that's spot-zoning, Hokama. I would agree with you,
15 but aren't we spot-zoning by permit?

16 MS. SUYAMA: I -- I don't consider getting a Conditional
17 Permit spot-zoning. The -- in order for you -- for
18 them to operate or to get the appropriate zoning, it
19 would have to basically be a Hotel designation on a
20 community plan, which means that they would have to
21 have gone through a Community Plan Amendment and
22 justify a Hotel designation in an area that's
23 predominantly single-family residential.

24 The other thing is as part of that, you go
25 through the Chapter 343 process, then you go through

1 the State District Boundary Amendment and the Change
2 in Zoning; and at that point, you could establish
3 the use as a transient vacation rental.

4 However, it's important that if you're going
5 to go that route, that it's important that you, as
6 legislators, really agree that that's what you want
7 in terms of uses within the area and not an
8 exception.

9 The Conditional Permit is an exception to
10 zoning. And as a temporary, maybe at this point in
11 time, it's permissible; but at some point in time,
12 you may not want that to be a permitted use.

13 And through the Conditional Permit process,
14 you have the opportunity to, at some point in time,
15 say no; from this day forward, we don't want this
16 use because circumstances have changed within the
17 area and within the County.

18 COUNCILMEMBER HOKAMA: Thank you for that response, Deputy,
19 and -- and I appreciate your comment. And, you
20 know, again, you make good sense to me, but this is
21 asking for ten years of a Hotel type of use.

22 Chairman, thank you very much.

23 CHAIR MOLINA: Thank you, Mr. Hokama. Mr. Mateo?

24 COUNCILMEMBER MATEO: Chairman, thank you. I'll yield. My
25 questions had been answered. Thank you.

1 CHAIR MOLINA: Members, any other questions for the
2 Department? Member Anderson?

3 COUNCILMEMBER ANDERSON: Yes. In reading the minutes of
4 the Planning Commission meeting, the original
5 conditions that the Department had recommended --
6 and -- and I don't have the Department's
7 recommendations.

8 Did we get -- we didn't get your report. We
9 only got -- your report to the Planning Commission,
10 we didn't get. All we got was the report from the
11 Planning Commission, so we really have no listing
12 here of the original conditions that were requested.
13 So I'm just going by what I heard Ms. Suyama say and
14 what I'm getting from the minutes in the discussion.

15 It looks like Condition No. 7 had to do with
16 alcohol, and I guess that meant getting a liquor
17 license to serve alcohol.

18 And then Condition No. 17 had to do with
19 meals, which said that no meals or food should be
20 provided to guests at the transient vacation rental
21 without the prior approval of the State Department
22 of Health.

23 And the way it reads is that Mr. Kosaka,
24 Members of the Commission, were trying to delete
25 those recommendations, which obviously they ended up

1 doing. And in Mr. Kosaka's response in explanation,
2 he says that the applicant believes that in cases
3 where you need -- because of liquor control rules or
4 the State Department of Health rules, whoever uses
5 it for that purpose, are they going to sell alcohol
6 or they're going to sell food, have to get a permit
7 anyway. And to put it in this permit is
8 unnecessary, and I think it's too much.

9 So basically, what they were saying is the
10 recommended conditions were just restating what is
11 already required by the State.

12 And so I just want to be clear that just
13 because those conditions are no longer in this
14 request, that doesn't mean that this Council is
15 agreeing -- I'm looking on page 102, Members, of the
16 Maui Planning Commission minutes at the bottom.

17 That doesn't mean that -- I think this is a
18 question for Mr. Kushi. That doesn't mean that
19 we're making any kind of verification that they
20 don't need to get those permits if they're going to
21 be having those uses? Mr. Kushi?

22 CHAIR MOLINA: Mr. Kushi?

23 MR. KUSHI: Mr. Chair, Member Anderson, if I understand
24 your question, by not adopting the recommended
25 conditions from the Department about liquor and

1 food, you are not confirming a waiver of these rules
2 as they stand, exist today. It's almost like
3 putting a condition that, you know, I shall not
4 commit a crime.

5 COUNCILMEMBER ANDERSON: Or I shall, you know, follow all
6 State law.

7 MR. KUSHI: Well, I mean, the law is there already.

8 COUNCILMEMBER ANDERSON: Right.

9 MR. KUSHI: I mean, if they don't get a liquor license,
10 they --

11 COUNCILMEMBER ANDERSON: That's not our kuleana?

12 MR. KUSHI: Right. And -- and again, liquor license,
13 special event liquor licenses are only if you sell
14 liquor. There's nothing to prevent them from having
15 a special group function and not charge for liquor.

16 COUNCILMEMBER ANDERSON: Okay. Thank you. Thank you,
17 Chairman.

18 CHAIR MOLINA: Okay. Thank you, Member Anderson.
19 Committee Members, any other questions for the
20 Department?

21 The Chair has a request for Public Works.
22 Mr. Krueger, if you could come up. Thank you,
23 Mr. Krueger, for making yourself available this
24 afternoon. I know you're a very busy person.

25 My question to you relates to the road. Is

1 there a trigger that the applicant has to do
2 improvements for the road?

3 And I make note of that I guess in a letter
4 from Planning Director Hunt dated August 31st, 2007,
5 one of the questions was -- had to do with roadway
6 improvements. And it would seem to me that the
7 Planning Department is suggesting that the applicant
8 considers some type of improvements along the road,
9 the frontage of their property.

10 So is there a trigger or a requirement that
11 the applicant do these improvements from the
12 Department's perspective, anyway, Public Works?

13 MR. KRUEGER: There is no trigger or requirement.

14 CHAIR MOLINA: Okay. So they're not required, then, at
15 this point, even though it would seem to indicate
16 from the Planning Director that they may have to
17 consider some improvements if they -- this permit is
18 approved?

19 MR. KRUEGER: Correct.

20 CHAIR MOLINA: Okay. Thank you. Members, questions for
21 the Department, Public Works, on roads or drainage
22 or any other related matter? Chairman Hokama?

23 COUNCILMEMBER HOKAMA: Mr. Krueger, you know, we -- we're
24 aware, through comments from your Department and
25 from you in the past, that at -- you know, there's

1 certain improvements or subdivision requirements or
2 standards that will be met or road -- road
3 requirements be met, and I heard your response to
4 the Chairman's question.

5 But after a certain length of time, and like
6 for this application, you know, on the first pass
7 they want a ten-year Conditional Permit time period,
8 does the Department look at those type of length of
9 times regarding how you folks view certain
10 improvements, whether or not, hey, if they're going
11 to use a nonresidential use in this residential area
12 for ten years, it would make sense for the
13 Department to consider having the shoulders paved to
14 eliminate excessive wear if it's grass shoulders at
15 this time, impeding or changing of sheet flow and
16 drainage into our wastewater system?

17 Is there some of those things taken into
18 consideration regarding impacts regarding this type
19 of uses?

20 MR. KRUEGER: Going through our ordinance, I cannot find a
21 trigger that would require the owner to do any road
22 improvements.

23 COUNCILMEMBER HOKAMA: Uh-huh. But if the Department felt
24 that it would be prudent on our part to ask for
25 those improvements, would this be the appropriate

1 time?

2 MR. KRUEGER: Correct. We could recommend or request
3 certain improvements to be done.

4 COUNCILMEMBER HOKAMA: Uh-huh. Are you aware of any at
5 this time that you could share with the Committee
6 that would make this application even -- even better
7 from a -- excuse me, Chairman. My apologies,
8 Chairman -- since we are looking at a proposed
9 ten-year period of -- of this specific type of use?

10 MR. KRUEGER: At this particular site, I would -- I
11 wouldn't require any more road improvements.

12 COUNCILMEMBER HOKAMA: Okay. Or drainage, any drainage
13 issues, whether it be a full containment within --
14 on property or that type of nature, any -- any type
15 of concerns that we may -- might be -- need to be
16 made aware of?

17 MR. KRUEGER: Not at this time, no.

18 COUNCILMEMBER HOKAMA: Okay. Thank you, Mr. Krueger.
19 Chairman, thank you so much.

20 CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Committee
21 Members, any other questions for Public Works?
22 Okay, seeing none, thank you, Mr. Krueger.

23 I'd like to call upon maybe Mrs. Lu'uwai or
24 Mr. Hart for a question which relates to the events
25 on the property. My -- my question relates to

1 parking. How -- have you folks had any
2 parking-related issues?

3 MR. HART: I -- I would defer to Helen. As I said -- or
4 indicated in our presentation -- by the way, my name
5 is Chris Hart with Chris Hart & Partners. There are
6 eight -- there is room for eight stalls on property,
7 and there's basically, the way it's defined, is that
8 there are four stalls for -- set aside for each
9 bedroom, so there's one stall per bedroom.

10 And as far as events are concerned, I'll ask
11 Mrs. Lu'uwai to comment.

12 CHAIR MOLINA: Okay. Good afternoon, Mrs. Lu'uwai --

13 MS. LU'UWAI: Good afternoon --

14 CHAIR MOLINA: -- and thank you for making yourself --

15 MS. LU'UWAI: -- Chairman and Members. We've not had any
16 problems with any parking issues on the property.
17 The -- any groups that have used it have either been
18 bused in like the Protect Kahoolawe Ohana or people
19 have just parked on the property, but we've not had
20 any on-street parking problems.

21 CHAIR MOLINA: Okay. And you've made the property
22 available for, for example, Protect Kahoolawe Ohana
23 --

24 MS. LU'UWAI: Right, the PKO.

25 CHAIR MOLINA: -- and canoe clubs and other youth

1 activities.

2 MS. LU'UWAI: Canoe clubs, the high schools, and various
3 other cultural groups have used the property because
4 of its unique location.

5 CHAIR MOLINA: Okay. Should you get this permit approved,
6 is that something you will continue to offer to the
7 community as well?

8 MS. LU'UWAI: Oh, yes, most definitely.

9 CHAIR MOLINA: Okay. Thank you. Committee Members, any
10 questions for the applicant? Mr. Medeiros?

11 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I --
12 I -- I just would like to ask you, and I'm not sure
13 if you can answer it, but being that your property
14 will be used to accommodate group activities, what
15 kind of fire protection is there that is required by
16 the Fire Department for your building?

17 MS. LU'UWAI: My understanding is we have to have a very
18 specific fire extinguisher in the kitchen or within
19 I think it's 75 feet of the kitchen area and smoke
20 detectors in each room, each sleeping area, which is
21 also contained in the conditions that were approved
22 by the Planning Commission.

23 COUNCILMEMBER MEDEIROS: So the Fire Department actually
24 signed off --

25 MS. LU'UWAI: Yes.

1 COUNCILMEMBER MEDEIROS: -- that you've met all the Fire
2 Department --

3 MS. LU'UWAI: Uh-huh.

4 COUNCILMEMBER MEDEIROS: -- requirements?

5 MS. LU'UWAI: Right. The plan -- the Planning Department
6 had circulated our -- our information to all the
7 relevant departments, and they have responded
8 accordingly.

9 COUNCILMEMBER MEDEIROS: Okay. And, you know, I ask these
10 questions because -- because, you know, I was in the
11 Fire Department and it's an important issue for me,
12 safety, especially when you're accommodating
13 visitors and people using the property.

14 It's my understanding that this is a two-story
15 building?

16 MS. LU'UWAI: Yes.

17 COUNCILMEMBER MEDEIROS: And there are rooms in the second
18 story?

19 MS. LU'UWAI: Yes.

20 COUNCILMEMBER MEDEIROS: Did you have any requirements for
21 ADA compliance?

22 MS. LU'UWAI: No.

23 COUNCILMEMBER MEDEIROS: No, okay. As a transient vacation
24 rentals, there weren't any?

25 MS. LU'UWAI: No.

1 COUNCILMEMBER MEDEIROS: Thank you, Mr. Chairman. Thank
2 you, Mrs. Lu'uwai.

3 MS. LU'UWAI: You're welcome.

4 CHAIR MOLINA: Thank you, Mr. Medeiros. Committee Members,
5 any additional questions for the applicant as it
6 relates to the permit? Okay. Seeing none, thank
7 you.

8 MS. LU'UWAI: You're welcome.

9 CHAIR MOLINA: All righty. Committee Members, any other
10 conditions that you would like to consider? I
11 assume we're working off the bill that's attached to
12 the October 23rd, 2007, letter.

13 We have 14 conditions listed, and the
14 application is for a ten-year permit that was
15 recommended by the Planning Commission.

16 Any other considerations from the Committee
17 that the Chair can consider? Any need to hear from
18 the Water Department or Fire Department at this
19 point? Mr. Medeiros?

20 COUNCILMEMBER MEDEIROS: Do we have representatives from
21 those -- those two departments?

22 CHAIR MOLINA: We do have the -- these individuals on-call.

23 COUNCILMEMBER MEDEIROS: Oh, on -call.

24 CHAIR MOLINA: If it's something -- if there's a pressing
25 need, we can call them if you request.

1 COUNCILMEMBER MEDEIROS: Okay. Maybe if I could ask this,
2 Mr. Chairman, instead of, you know, making --
3 calling them and having them come up. Maybe I can
4 ask the Planning Department, Deputy Suyama?

5 In the application process, does your
6 Department receive the approvals or comments from
7 all the departments that the application is
8 circulated to?

9 CHAIR MOLINA: Director?

10 MS. SUYAMA: Yes, we do. And for your information, it was
11 circulated to the Water Department. And the only
12 significant comment that the Water Department had
13 was that they wanted the applicant to provide
14 domestic calculations to determine the meter
15 adequacy, as well as fire flow calculations for the
16 property.

17 And they also requested that if a backflow
18 preventer was not already installed, that they do
19 that. And the applicant indicated that they will
20 provide the requested information and improvements
21 to the Water Department.

22 COUNCILMEMBER MEDEIROS: And so the Water Department was
23 satisfied that the fire flow requirements of their
24 Department was met?

25 MS. SUYAMA: I don't know yet whether the applicant has

1 transmitted those calculations to the Water
2 Department.

3 COUNCILMEMBER MEDEIROS: I see. And the Fire Department
4 did sign off as meeting their requirements?

5 MS. SUYAMA: Well, the Fire Department also had comments.
6 And basically, their comments were that you meet --
7 the restrictions that -- that are placed are usually
8 the restrictions that are placed on all of your Bed
9 and Breakfast permits because it's in the Bed and
10 Breakfast ordinance about extinguishers and smoke
11 detectors, so that's where that recommendation -- or
12 that condition comes from; that for the transient
13 vacation rental where you have visitors, you know,
14 staying in these places, that you follow the same
15 criteria as the Bed and Breakfast operators.

16 COUNCILMEMBER MEDEIROS: Okay. You know, because we saw in
17 another application that the Fire Department signed
18 off, but the Water Department didn't sign off
19 because of the fire flow requirements.

20 And I would think that one would be having to
21 do with the other. If there wasn't enough -- enough
22 fire flow, then it seems that the Fire Department
23 would be concerned, but we don't have an answer from
24 the Water Department at this point?

25 MS. SUYAMA: I think you would have to get it from the

1 Water Department.

2 COUNCILMEMBER MEDEIROS: Okay. Thank you, Deputy Director
3 Suyama. Mahalo, Mr. Chairman.

4 CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Members,
5 any other questions for the Department before the
6 Chair -- well, the Chair has one question for the
7 applicant.

8 I guess maybe Mrs. Lu'uwai or Mr. Hart -- and
9 I -- I apologize. I should have asked this earlier.
10 It relates to your July 30th letter that you sent to
11 the Committee regarding a consideration for
12 Condition No. 3.

13 You're asking us to -- Members, if you look on
14 the back page, Condition 3, additional language to
15 be incorporated into that condition as it relates to
16 transferability.

17 I guess, Mr. Kosaka, can you further expound
18 on this consideration that you're asking the
19 Committee to incorporate into Condition 3?

20 MR. KOSAKA: Thank you, Mr. Chairman, and Members of the
21 Committee. I've been described as the family
22 attorney so I guess that's good enough right now.

23 With respect to Condition No. 3, you will note
24 that there are three owners, and two of the
25 one-third interests are in revocable trusts.

1 In one case, Mrs. Lu'uwai herself is the --
2 you know, the -- the trustee of her own trust; and
3 in the second one, her niece, Anela Rosa, has
4 already succeeded to her mother's position as
5 trustee of her trust as -- since her mother passed
6 away. The third owner, Paul Lu'uwai, might well
7 soon want to put his interest into a trust.

8 Now, in the same way as the transition was
9 required when Mrs. Beatrice Rosa passed away and her
10 daughter Anela, who is here, took over, if that is
11 considered a transfer requiring Council approval,
12 then the process becomes very cumbersome. And this
13 is only between a -- the revocable trust and -- and
14 the trustee.

15 And so the family requested that the -- the
16 provision be put in there to avoid the problem, in
17 other words to clarify specifically that even though
18 No. 3 says what it says, that if you added the
19 provision that was suggested, that any -- in any
20 transfer between the trust and the successor trustee
21 or the individual whose revocable trust it is, would
22 not be viewed as a transfer of the property, as such
23 requiring the family to come to -- before the
24 Council once again and cluttering up your agenda.

25 CHAIR MOLINA: Okay. Thank you, Mr. Kosaka. Committee

1 Members, any questions for Mr. Kosaka as it relates
2 to this incorporation of the additional language
3 into the condition?

4 And I'll just go ahead and read into the
5 record what the applicant wants added to Condition
6 3, is after the word ordinance, provided that the
7 transfers of ownership to and from an individual
8 owner's revocable living trust and the assumption of
9 a trustee's duty by a successor trustee, including
10 but not limited to exercising the rights established
11 under the permit granted by this ordinance, shall
12 not constitute and shall not be deemed a transfer
13 requiring Council approval.

14 Corporation Counsel, Mr. Kushi, any comments
15 to add?

16 MR. KUSHI: Mr. Chair, having reviewed this language and --
17 and -- and -- and briefly discussing it with the
18 family's attorney, I really don't have a problem
19 with it because it's -- it's -- my understanding is,
20 one, it's a revocable living trust, that's Helen's
21 one, which you can change tomorrow, but -- but there
22 are provisions.

23 The second one, on the Rosa one, I'm assuming
24 that the -- it's now becoming irrevocable because
25 the initial trustee grantor passed?

1 MR. KOSAKA: Correct.

2 MR. KUSHI: Okay. The problem I have is with the --
3 Mr. Paul -- Paul. What happens if he doesn't put
4 his property in -- his interest into trust?

5 CHAIR MOLINA: Mr. Kosaka?

6 MR. KUSHI: And what happens if he should sell his
7 interest?

8 MR. KOSAKA: Well, then -- then that would not be covered
9 under this provision.

10 MR. KUSHI: Okay.

11 MR. KOSAKA: This is only between a trustee and the trust
12 and the individual whose trust it is.

13 In other words, if Mr. Lu'uwai transferred it
14 to his revocable trust, it would not be a transfer;
15 but if he transferred it to me, then it would be.

16 MR. KUSHI: Correct. If that's the understanding, I have
17 no problems with it.

18 MR. KOSAKA: Yeah, it is. Thank you.

19 CHAIR MOLINA: Okay. Members, any questions for
20 Mr. Kosaka? If not, the Chair has no objections to
21 incorporating this into Condition 3. Do we have
22 consensus?

23 COUNCILMEMBER HOKAMA: Chairman, just a question, please --

24 CHAIR MOLINA: Chairman Hokama? Proceed.

25 COUNCILMEMBER HOKAMA: -- for Mr. Kushi. So the permit

1 that we are being asked to consider this afternoon,
2 Mr. Kushi, is that if we're granting it, we're
3 granting it to one individual and two trusts?

4 That's who we're granting this permit to?

5 MR. KUSHI: You're -- you're granting it to the landowners
6 of the property, which comprise of two trustees and
7 one individual who own the property.

8 COUNCILMEMBER HOKAMA: Okay. And Mr. Kosaka, it's
9 undivided interest -- equally undivided interest in
10 the property?

11 MR. KOSAKA: These are tenants in common, Mr. Hokama.

12 COUNCILMEMBER HOKAMA: Okay, okay. No, I -- I'm just
13 trying to, you know, see a potential situation where
14 it's going to be a headache for the family and for
15 us down the road if we don't think this through
16 well.

17 So -- so that's why I asked the question,
18 Chairman. Are we granting it to the trust that
19 they -- you have a trustee for? Legally, it doesn't
20 make a difference, right? Mrs. Lu'uwai is the
21 individual, but she's also the trustee of her own
22 trust, so --

23 MR. KOSAKA: Well, okay, in -- in a trust, the person who
24 creates the trust is called the settlor or grantor.
25 That's Mrs. Lu'uwai in her case. And she is also

1 the trustee of her trust.

2 In the case of the Rosa trust, Mrs. Beatrice
3 Rosa was the settlor; but since she passed away --
4 and then she was originally the -- the -- the first
5 trustee. But with her passing, her daughter Anela
6 has become the trustee while the settlor remains the
7 same, although she hasn't passed away.

8 COUNCILMEMBER HOKAMA: Okay. So in that case, the trust of
9 Mrs. Beatrice Rosa is the property owner yet, and
10 Anela Rosa is just a trustee of the trust?

11 MR. KOSAKA: Well, technically, Chairman Hokama, a trust
12 cannot own property.

13 COUNCILMEMBER HOKAMA: Right.

14 MR. KOSAKA: The only person who can own the property is
15 the trustee. So technically, Anela Rosa, as the
16 trustee, is now the owner of her mother's one-third
17 share, as is Mrs. Lu'uwai the owner of her one-third
18 share, the trust's one-third share.

19 COUNCILMEMBER HOKAMA: Okay. But you want us so that
20 should it be Glenn Kosaka, trustee of the -- of the
21 Helen Lu'uwai trust, you -- you want us to view that
22 as not something that requires a transfer?

23 MR. KOSAKA: Right, because the trust already exists. If
24 it comes like the Rosa trust, irrevocable at that
25 point if Mrs. Lu'uwai passed away and she made me

1 the trustee, and I would be bound by the provisions
2 of that trust.

3 COUNCILMEMBER HOKAMA: Right. But didn't you just tell us
4 that you the one that owns the property?

5 MR. KOSAKA: Technically, because the trust doesn't own it.
6 The trustee owns it for the trust. That's the --
7 the legalese part.

8 COUNCILMEMBER HOKAMA: And -- and I'm just trying to work
9 it through, Mr. Kosaka, so bear with me who just
10 knows law from the common man's point of view.
11 Because I'm trying to understand why that's not one
12 transfer. We're changing names. We're changing...

13 MR. KOSAKA: Well, but the interest is still the -- the
14 same. In this case, the trust --

15 COUNCILMEMBER HOKAMA: One-third undivided interest is the
16 same. Yeah, I would agree with you.

17 MR. KOSAKA: Right. Right.

18 COUNCILMEMBER HOKAMA: Right.

19 MR. KOSAKA: Right, and it's still the family. Like I
20 said, if she didn't make me trustee but she gave me
21 the property, now that's a different story.

22 COUNCILMEMBER HOKAMA: Okay. Well, I'll depend on
23 Mr. Kushi as our -- our attorney and that if he has
24 no objections, then I will go with the opinion of
25 our attorney, Mr. Chairman. Thank you.

1 CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Committee
2 Members, any other questions for Mr. Kosaka or for
3 Corporation Counsel as it relates to the
4 incorporation of the additional language for
5 Condition 3? Seeing none, thank you, Mr. Kosaka.

6 MR. KOSAKA: Thank you.

7 CHAIR MOLINA: Thank you. All right, Members, any other
8 considerations before the Chair offers a
9 recommendation?

10 COUNCILMEMBER HOKAMA: Chairman, I would just ask if you
11 would please consider going through the three
12 ordinances separately, please?

13 CHAIR MOLINA: Yeah. Chair will -- had that in mind to do
14 three separate motions for the three proposals.

15 Okay, with no other questions, the Chair will
16 offer a recommendation. The Chair will entertain a
17 motion to recommend passage of the revised proposed
18 bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE
19 STATE LAND USE DISTRICT CLASSIFICATION FROM RURAL TO
20 URBAN FOR PROPERTY SITUATED AT PAPAANUI, HONUAULA,
21 MAKAWAO, MAUI, HAWAII."

22 COUNCILMEMBER VICTORINO: So moved.

23 CHAIR MOLINA: Okay. It's been moved by Member Victorino.
24 Is there a second?

25 COUNCILMEMBER HOKAMA: Second.

1 CHAIR MOLINA: Seconded by Mr. Hokama. Any discussion?
2 Mr. Victorino, as the maker of the motion, any
3 discussion?

4 COUNCILMEMBER VICTORINO: No, I think all the questions
5 have been asked, and I'm satisfied and ready to move
6 on, sir.

7 CHAIR MOLINA: Okay. Thank you. Seeing no other
8 discussion, Chair will call for the vote. All those
9 in favor, signify by saying "aye."

10 COUNCIL MEMBERS: Aye.

11 CHAIR MOLINA: All those opposed?

12 **VOTE: AYES:** Councilmembers Anderson, Baisa, Hokama,
13 Mateo, Medeiros, Victorino, and Chair
Molina.

14 **NOES:** None.

15 **ABSTAIN:** None.

16 **ABSENT:** None.

17 **EXC.:** Councilmember Johnson and Vice-Chair
18 Pontanilla.

MOTION CARRIED.

19 **ACTION:** Recommending **FIRST READING** of revised
20 proposed bill (District Boundary
21 Amendment bill).

22 CHAIR MOLINA: Okay, thank you. The Chair will mark it
23 seven, zero with two excusals, Members Johnson and
24 Pontanilla.

25 All right. The Chair will now entertain a

1 motion to recommend passage of the revised proposed
2 bill entitled "A BILL FOR AN ORDINANCE TO ESTABLISH
3 R-3 RESIDENTIAL DISTRICT ZONING FOR PROPERTY
4 SITUATED AT PAPAANUI, HONUULA, MAKAWAO, MAUI,
5 HAWAII."

6 COUNCILMEMBER VICTORINO: So moved.

7 CHAIR MOLINA: Is there a second?

8 COUNCILMEMBER HOKAMA: Second.

9 CHAIR MOLINA: Okay, moved by Member Victorino, seconded by
10 Member Hokama. Any discussion? Mr. Hokama?

11 COUNCILMEMBER HOKAMA: Chairman, I -- I yield to
12 Mr. Victorino.

13 COUNCILMEMBER VICTORINO: No, go ahead. I yield to Council
14 Chair Hokama.

15 COUNCILMEMBER HOKAMA: Chairman, my only -- my only
16 reservations is my issue with this Interim
17 administrative designation.

18 I -- I think what we're trying to do is
19 proper. We're trying to put it in an appropriate
20 zoning category that list the permitted uses. And
21 again, we've heard what the community plan had
22 indicated from a regional planning standpoint so I
23 have -- I have support for the intent.

24 Again, my -- my issue, again, has been how
25 administratively we change zoning categories,

1 Chairman. Thank you.

2 CHAIR MOLINA: Okay. Thank you, Mr. Chairman. Any other
3 discussion as it relates to this bill? Okay, seeing
4 none, the Chair will call for the vote. All those
5 in favor signify by saying "aye."

6 COUNCIL MEMBERS: Aye.

7 CHAIR MOLINA: All those opposed?

8 **VOTE: AYES:** Councilmembers Anderson, Baisa, Hokama,
9 Mateo, Medeiros, Victorino, and Chair
Molina.

10 **NOES:** None.

11 **ABSTAIN:** None.

12 **ABSENT:** None.

13 **EXC.:** Councilmember Johnson and Vice-Chair
14 Pontanilla.

MOTION CARRIED.

15 **ACTION:** Recommending **FIRST READING** of revised
16 proposed bill (Change in Zoning bill).

17 CHAIR MOLINA: Okay. The Chair will mark it seven, zero
18 with two excusals, Members Johnson and Pontanilla.

19 Finally, Members, the Chair will entertain a
20 motion to recommend passage of the revised proposed
21 bill entitled "A BILL FOR AN ORDINANCE GRANTING A
22 CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION
23 RENTAL AND SPECIAL EVENTS WITHIN THE R-3 RESIDENTIAL
24 DISTRICT, FOR PROPERTY SITUATED AT PAPAANUI,
25 HONUULA, MAKAWAO, MAUI, HAWAII," and the filing of

1 the communication.

2 COUNCILMEMBER VICTORINO: So moved.

3 CHAIR MOLINA: Okay, it's been moved by Member Victorino.

4 Is there a second?

5 COUNCILMEMBER BAISA: Second.

6 CHAIR MOLINA: Seconded by Member Baisa? Okay, thank you.

7 Discussion, Mr. Victorino, as the maker of the
8 motion?

9 COUNCILMEMBER VICTORINO: Again, I think all the questions
10 have been answered, and I'm satisfied and ready to
11 vote on it. Thank you, Mr. Chair.

12 CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Any
13 additional discussion on the matter? Member Baisa?

14 COUNCILMEMBER BAISA: Approving a ten-year Conditional
15 Permit is a bit unusual, but I think this is an
16 unusual situation.

17 We have a facility that has been run very well
18 for a very long time, does a lot for our community,
19 and we have not received any testimony in opposition
20 that I'm aware of, certainly not today.

21 And the Planning Department has thoroughly
22 looked at this and has made its recommendation so
23 I'm comfortable in supporting it.

24 CHAIR MOLINA: Okay. Thank you, Member Baisa. Mr. Mateo?

25 COUNCILMEMBER MATEO: Chairman, thank you. I -- I -- I

1 feel I believe I have different concerns regarding
2 this particular item because the ten years worry me
3 because I think just a little while ago, you know,
4 I -- I referenced the term consistency.

5 And because TVRs are -- are issues that we are
6 dealing with and will continue to deal with, I'm
7 worried about -- worried about the setting of a
8 precedent, a precedent that I believe the Department
9 indicated their original request was one year, and
10 it was the Planning Commission that recommended the
11 ten years.

12 And I -- I -- I still stand on the -- on the
13 Department's premise that the shorter initial term
14 allows the applicant time to meet all compliances,
15 and it allows the Department the time to reaffirm
16 that all compliances had been met. And that is just
17 the first step.

18 So I have a little problem in looking at an
19 initial ten-year because it is -- it is unusual and
20 because there are additional TVRs coming down the
21 pike that we will be dealing with pretty soon, it --
22 it does provide me with a little concern.

23 So for my interest in consistency, I -- I'm
24 going to choke when I vote on this one. Thank you.

25 CHAIR MOLINA: Okay. All right, Members -- Members, you do

1 have the option of considering amending the time
2 period, ten years, one year, five years. We -- you
3 do have that prerogative. Member Hokama?

4 COUNCILMEMBER HOKAMA: Chairman, just one quick question
5 for our -- our resources, please --

6 CHAIR MOLINA: Proceed.

7 COUNCILMEMBER HOKAMA: -- regarding the motion. Thank you,
8 Chairman. You know, earlier I had talked to -- you
9 know, the Planning Deputy was kind enough to answer
10 my question regarding the Conditional Permit and
11 then the potential legislation that your
12 Department's working on, Deputy Suyama.

13 So my question is, should this pass the way
14 it's being proposed, ten years, and let's say in
15 two years, there is a TVR legislation that makes it
16 through the process, states that you cannot use
17 Conditional Use Permits as a vehicle to go around
18 the ordinance and so for us -- and there is no
19 grandfathering allowed in the legislation, what
20 would happen to this specific request today?

21 Does it continue to -- to work until the
22 ten years expires or because the new legislation has
23 passed and we do not allow grandfathering, that upon
24 the effective date of that new legislation, this
25 becomes null and void?

1 CHAIR MOLINA: Okay. Deputy Director?

2 MS. SUYAMA: My understanding, once you pass the ordinance
3 and it has a time limit, until the ten years has
4 expired, the permit is valid until that date.

5 COUNCILMEMBER HOKAMA: Okay. Corporation, now you agree
6 with that position Planning has taken?

7 MR. KUSHI: Yes, Member Hokama. I'm assuming that the
8 ordinance you're talking about is the upcoming or
9 pending or whenever TVR --

10 COUNCILMEMBER HOKAMA: A proposal.

11 MR. KUSHI: -- zoning -- zoning district? Okay. If you
12 should pass that, again, the general rule is all
13 ordinances do not have a retroactive effect unless
14 specifically stated in that bill.

15 COUNCILMEMBER HOKAMA: Right.

16 MR. KUSHI: And you better be sure that there's no vested
17 rights involved. That's the general statement.

18 That being said, if you pass that type of new
19 TVR ordinance, should also amend the Conditional Use
20 Permit ordinance to prevent a 1 -- 1 percent going
21 this way and 1 percent going the other way.

22 COUNCILMEMBER HOKAMA: But in regards to specifically just
23 this Lu'uwai application, the ten years will be --
24 is to be honored by the County because that was what
25 the legislative act was, it was to give them a

1 ten-year permitted use of the property under the
2 terms and the conditions set forth, that would still
3 be the rule of use on the property?

4 MR. KUSHI: Generally speaking, I would say yes. I cannot
5 really say yes for sure because there may be exigent
6 circumstances or emergency circumstances when you do
7 pass the TVR ordinance, which would justify you
8 taking away some vested rights, but be prepared to
9 pay for 'em. So I cannot say yes, for sure, but
10 it's still a legislative act.

11 COUNCILMEMBER HOKAMA: Uh-huh. Thank you, Mr. Kushi.
12 Chairman, thank you very much.

13 CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Okay,
14 Members, the consideration is still out there before
15 the Chair calls for the vote.

16 Any considerations to possibly amend the
17 duration of the permit from ten years to another
18 time period? Member Baisa?

19 COUNCILMEMBER BAISA: Well, at the risk of sounding
20 wishy-washy, when you listen to all of the reasons
21 why this could be a risky thing, you know, Members
22 might be thinking maybe half of that would be
23 better.

24 I'd like to have us discuss it a little bit
25 more. I'm sure it was discussed at length in the

1 Planning Commission, and maybe Ms. Suyama could tell
2 us more or less how they arrived at ten. I'd like
3 to know.

4 CHAIR MOLINA: Deputy Director?

5 MS. SUYAMA: The ten-year was suggested by the applicant,
6 and the Commission basically went along with it,
7 giving them a longer term.

8 You know, to be honest, I wasn't at the
9 meeting at that time. Somebody else took my place
10 and presented the application to the Commission.

11 All I know is that at the end of everything,
12 the Commission followed the recommendation of the
13 applicant's attorney, Mr. Kosaka. They felt that
14 legitimately, you know, that they could support that
15 position.

16 COUNCILMEMBER BAISA: Well, Chair, I can only tell you
17 this. Maybe we should vote on the motion the way it
18 is and either it will pass or fail. And if it
19 fails, then we have -- have to look at an
20 alternative.

21 CHAIR MOLINA: Okay. Mr. Kosaka, would you like to
22 elaborate a little bit more on the ten years that
23 you had expressed to the Planning Commission?

24 MR. KOSAKA: Well, this property was in a specific and
25 special place. I think there was an illusion to the

1 zoning by a Post-it situation.

2 And without going into too much technical
3 detail, the -- the status of the property and the
4 correct zoning, if you will, of the property, has
5 been uncertain for many years. And the Commission
6 felt that this was an unfair situation which the
7 applicant had to deal with.

8 In fact, the prior only felt -- prior owner
9 felt that the operation that he was involved in,
10 prior owner meaning one of the siblings who has --
11 whose interest has since been bought out, he assured
12 us at one time that it was properly permitted,
13 his -- his -- his operation, his -- his TVR -- well,
14 it might have been a Bed and Breakfast, I'm not sure
15 what he was talking about, but -- and he thought,
16 for one thing, that it -- the use predated the
17 ordinance and so there were some issues about that,
18 too.

19 And -- and so taking into consideration the --
20 the situation that the family found themselves in
21 and the -- and that it was not their fault that the
22 state of the law was so uncertain, number one, and
23 that the family has historically contributed a lot
24 towards the community, the Commission felt that the
25 ten years was justified in this case. Okay, that's

1 basically what the Deputy Director has indicated.

2 CHAIR MOLINA: Okay. Thank you, Mr. Kosaka. Committee
3 Members, any questions for Mr. Kosaka as it relates
4 to the justification for the ten-year duration of
5 the permit?

6 Okay, seeing none, before the Chair calls for
7 the vote, as it relates to Condition 3, we're going
8 to incorporate that. Any objections to
9 incorporating it as a friendly amendment, the
10 additional language that we had discussed, or is
11 there a need for a formal amendment?

12 I mean, I believe we can go either way.
13 Friendly amendment to incorporate the additional
14 language for Condition 3 related to the July 30th,
15 2007, letter? Any objections?

16 COUNCIL MEMBERS: No objections.

17 **COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: RH, JJ).**

18 CHAIR MOLINA: Okay. So ordered by the Committee. All
19 right, Members, hearing no other considerations, the
20 Chair will call for the vote on the bill. All those
21 in favor signify by saying "aye."

22 COUNCIL MEMBERS: Aye.

23 CHAIR MOLINA: All those opposed?

24 COUNCILMEMBER HOKAMA: No.

25 COUNCILMEMBER MATEO: No.

1 **VOTE: AYES:** Councilmembers Anderson, Baisa, Medeiros,
Victorino, and Chair Molina.

2 **NOES:** Councilmembers Hokama and Mateo.

3 **ABSTAIN:** None.

4 **ABSENT:** None.

5 **EXC.:** Councilmember Johnson and Vice-Chair
6 Pontanilla.

7 **MOTION CARRIED.**

8 **ACTION:** Recommending **FIRST READING** of revised
9 proposed bill (Conditional Permit bill),
and **FILING** of communication.

10 CHAIR MOLINA: Okay. We have two noes, Members Mateo and
11 Hokama; five ayes, Molina, Anderson, Baisa,
12 Medeiros, and Victorino. Okay, and two excusals,
13 Members Johnson and Pontanilla. The measure passes.
14 Very good.

15 Members, we shall take a recess, and we shall
16 come back at five minutes to 5:00. We have one more
17 item to address. Meeting in recess. ...(gavel)...

18 **RECESS:** 4:42 p.m.

19 **RECONVENE:** 4:55 p.m.

20 CHAIR MOLINA: ...(gavel)... The Land Use Committee meeting
21 for Wednesday, November 14th, 2007, is now back in
22 session.

23 **ITEM NO. 45: CONDITIONAL PERMIT OF "ALA AINA" VACATION**
24 **RENTAL (HANA) (C.C. No. 02-135)**

25 CHAIR MOLINA: Members, we have one last item to consider

1 for today, that is Land Use Item 45, which is a
2 Conditional Permit for Ala Aina Vacation Rental.

3 The Committee is in receipt of County
4 Communication No. 02-135, from the Planning
5 Director, transmitting a proposed bill entitled "A
6 BILL FOR AN ORDINANCE GRANTING SAMADHI BUTTERFLY A
7 CONDITIONAL PERMIT TO OPERATE A ONE-BEDROOM VACATION
8 RENTAL, KNOWN AS THE ALA AINA VACATION RENTAL,
9 WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR
10 PROPERTY SITUATED AT HCR 1, BOX 184A, HANA, MAUI,
11 HAWAII."

12 The purpose of the proposed bill is to grant a
13 request from Samadhi Butterfly for a one-year
14 Conditional Permit to operate a one-bedroom vacation
15 rental, known as the Ala Aina Vacation Rental, on
16 approximately 4.118 acres in the County Agricultural
17 District, situated at HCR 1, Box 184A, Hana, Maui,
18 Hawaii.

19 And the Committee may consider whether to
20 recommend passage of the proposed bill on first
21 reading with or without revisions, and the Committee
22 may also consider the filing of County Communication
23 No. 02-135.

24 And at this point, Members, I'm going to ask
25 -- we have Planner Robyn Loudermilk to give us just

1 a brief overview, and the application -- the
2 applicant has a short presentation to show us.

3 So Ms. Loudermilk, if you could give us a
4 brief overview.

5 MS. LOUDERMILK: Thank you, Chair. As indicated, the
6 applicant is before you today for a Conditional
7 Permit to operate the Ala Aina Ocean Vista, a
8 one-bedroom vacation rental within the agricultural
9 district.

10 The land uses of the property are the State
11 Land Use Agricultural District, community planned
12 agriculture, and zoning agriculture.

13 The public hearing for this item was heard by
14 the Hana Advisory Committee on January 10th, 2002.
15 At that public hearing, there were ten persons who
16 testified; four were in favor of the Project, four
17 had expressed concerns, and two spoke against the
18 Project.

19 The Hana Advisory Committee then recommended
20 to the Maui Planning Commission approval of the Land
21 Use Commission Special Use Permit and had no
22 recommendation to the Maui Planning Commission for
23 the Conditional Permit itself.

24 On March 25th, 2002, and on April 9th, 2002,
25 the Maui Planning Commission heard the item and the

1 recommendations from the Hana Advisory Committee.
2 At that meeting, the Maui Planning Commission had
3 testimonies from three people; two spoke in favor,
4 and one had concerns.

5 The recommendation from the Maui Planning
6 Commission was unanimous for approval of the
7 Conditional Permit, subject to conditions.

8 So that concludes the Department's summary.
9 Mr. Chair, if we can, Mr. Spence can go forward with
10 his presentation.

11 CHAIR MOLINA: Okay. Thank you, Ms. Loudermilk. Members,
12 I'm going to ask you to hold off on your questions.
13 And thank you to those of you who have decided to
14 hang on here. We're down to bare quorum, so please
15 try not to leave the room at any moment because it
16 could break quorum.

17 So with that being said, Members, I'm going to
18 call for a short recess to prepare the chambers for
19 the presentation from the applicant's
20 representative. Meeting in recess. ...(gavel)...

21 **RECESS: 5:00 p.m.**

22 **RECONVENE: 5:01 p.m.**

23 CHAIR MOLINA: ...(gavel)... The Land Use Committee meeting
24 for Wednesday, November 14th, 2007, is now back in
25 session.

1 We have a presentation to be given to us by
2 Mr. Will Spence related to Land Use Item 45, a
3 Conditional Permit request from Ala Aina Vacation
4 Rentals in Hana. Mr. Spence.

5 MR. SPENCE: Thank you, Mr. Chairman, Members of the
6 Committee. I am Will Spence. I'm helping Sam
7 Butterfly obtain her necessary permits to be able to
8 operate her one-bedroom vacation rental.

9 And just throughout this process, we've always
10 called it a Bed and Breakfast. Just for clarity, it
11 does not meet the strict intent of a Bed and
12 Breakfast because it's in the Ag District and other
13 conditions. So for the clarity of the Members, it
14 is a vacation rental.

15 Brief overview, the Department has already
16 gone through some of the things. It's on four
17 acres. There are two homes on the property. The
18 main house is 1308 square feet. That's where the
19 applicant's daughter lives on a full-time basis and
20 also has the single rental room.

21 The cottage is 384 square feet and is occupied
22 by the applicant. Only one room in the main house
23 is rented, and that's 320 square feet, and the
24 property, as all properties within Kipahulu, is on a
25 private water system.

1 A little bit of the time line -- and I won't
2 be redundant with the Planning Department. Back
3 when I was Planning Staff in late 2000, Sam
4 Butterfly came to me and asked how do I apply for
5 these permits? She actually had no idea that these
6 permits were even required.

7 And I asked her, so you know what you're
8 getting into? And she goes, well, it's the right
9 thing to do. So she really came forward voluntarily
10 to go through this process.

11 The rest of it, the -- the -- most of the rest
12 Planning has already stated, but I will say that she
13 has filed a compliance report and for renewal of her
14 Special Use Permit, and the Planning Department did
15 transmit it out at one time for -- for that renewal
16 process.

17 Location, this is the subject property here,
18 like I said, four acres out in Kipahulu. I put the
19 Community Center on there just because I figured
20 most of the Members are familiar where -- where this
21 is located.

22 This is Kaukauai Stream, so they're on the
23 Kaupo side of the Community Center. This is the
24 plot plan submitted by the applicant. They have a
25 lot of coconut trees, a lot of bananas that are

1 given away to the Kipahulu Community Association and
2 other -- other nonprofits, a number of mango trees,
3 other fruit trees located up here.

4 The main house is located here, the cottage is
5 very nearby, it's about 50 feet, and it's connected
6 by a -- by a trellis or walkway, however you would
7 like to -- to view that.

8 Property entrance. This is the driveway here
9 and, you know, grass grows very well out in Kipahulu
10 so it's -- it's not readily evident that it is
11 gravel. So it does -- it provides an all -- you
12 know, maybe not all-weather surface, but it provides
13 plenty of traction for people to get in and out.

14 A little bit of the grounds. This bunch of
15 banana trees extends way back on the property. We
16 have other fruit trees over here. The parking for
17 two cars, it's -- the visitors can use these.
18 Often, they like to park closer to the house.

19 Here's the cottage over here. Photo with the
20 house, this is the main dwelling. You'll see in a
21 second, this is the loft where daughter Mercury
22 lives. This is the primary -- this is the only
23 rental room. This is not an addition to the house.
24 This is -- was originally intended as the master
25 bedroom. The walkway, and this is the cottage where

1 the -- where the applicant lives.

2 Floor plan of the residence, cottage is very
3 small, 384 square feet. Floor plan of the -- of the
4 main residence, this is the location of that one
5 room where the rental takes place.

6 The loft here actually sits right above the
7 main part of the house in that location. Photo of
8 the cottage, it's a very small building. You can
9 also see the trellis walkway. You turn around, and
10 it leads right straight to the house.

11 Okay. Oops. The -- this is an interior of
12 the guest bedroom. This is one of the entrances.
13 You can see the fire extinguisher, exit signs. This
14 is a bathroom.

15 Looking at it from a different angle, the
16 bathroom over here, the other exit. Both of those
17 exits go immediately outdoors. That's pretty much
18 all the photos I took of the property.

19 I'll -- just emphasizing the -- the fire
20 safety. She does have the smoke detectors, and she
21 does have fire extinguishers in the room, as well as
22 notice of the -- the entrances and exits.

23 Discussion items for the -- for the Committee,
24 the Hana Community Plan, fire protection,
25 neighborhood support, and there are a couple of

1 changes to the application since first submitted.

2 Hana Community Plan, as you are aware, there
3 are a number of objectives and policies that deal
4 specifically with vacation rentals. They lean
5 heavily in the direction of being concerned that
6 they take away from local housing.

7 Without going through these individually, I
8 would just say that they -- in this particular case,
9 being able to rent one bedroom to visitors enables
10 the applicant to stay on the property.

11 Her sole other income is social security. Her
12 daughter has a disability after being in two auto
13 accidents and very difficult to work. And as you
14 know, there's not a lot of work in the Kipahulu area
15 anyway. So in this particular case, it does provide
16 affordable housing to a resident of the County.

17 There's one Land Use objective, discourage
18 transient vacation rentals outside the Hana Urban
19 area. To me, I read that, and I say discourage?
20 And I read it in the context of housing for Hana
21 residents, but that discourage does not say
22 prohibit. To me, that -- that means there can be
23 exceptions to this particular policy.

24 Fire protection, the -- as stated, like all
25 the properties in Kipahulu, the property is on a

1 private water system. When I was Staff, I talked to
2 the Fire Chief in Hana. He said it would -- it
3 would take about 45 minutes to get from Hana to --
4 to Kipahulu.

5 And at that point, they are not concerned with
6 saving the building. They're concerned -- their
7 only concern is -- one, is the -- the safety of the
8 people who are occupying the building, as well as
9 making sure it doesn't spread. So that's -- that's
10 their sum purpose in responding out to the Kipahulu
11 area.

12 There was also a condition on the Special Use
13 Permit that required a Hold Harmless Agreement with
14 the County for fire protection. That -- and that
15 was me, I'll admit, that I put that condition on
16 there. And that's been almost impossible to
17 fulfill.

18 The applicant tried to fulfill that, called
19 the Fire Department. They didn't know how to do
20 that and neither did Corporation Counsel, so Staff
21 will probably have additional comments on that.

22 Neighborhood support, we've received 23
23 letters of support from adjacent neighbors,
24 residents, members of the Kipahulu Community
25 Association, and these -- and in some cases, these

1 are people who originally spoke against it. Now
2 they -- after seeing it operate for a number of
3 years, they're in favor.

4 A petition with -- and there's a petition with
5 32 names. It's -- a couple of them are redundant
6 with the letters, but I haven't matched them up
7 exactly.

8 Changes since first applying. The -- when the
9 applicant first applied, there was a temporary TMK
10 number attached to a final subdivision and before a
11 permanent number was assigned to the property. That
12 has been assigned now.

13 The ownership has changed. Samadhi Butterfly
14 was the original owner. She put that into a trust.
15 That particular trust, which is in your package that
16 I provided for the Members, permits -- gives
17 authority to the trustee of Sam in order that she
18 can deal with real property in any way that a normal
19 person would. So that's -- I don't think that's
20 much of an issue.

21 She would like to add her daughter's name,
22 Mercury Bleu, to the permit. The reason being is
23 the applicant is now 70 years old, and she has to
24 start thinking about the future and her daughter's
25 well-being and, you know, what's going to happen

1 when she passes away, so that's the sole reason for
2 this. And that concludes the presentation. Thank
3 you, Members.

4 CHAIR MOLINA: Okay. Thank you, Mr. Spence. Members, we
5 will take a short recess to put the screen back up
6 and address Land Use Item 45 when we return from
7 recess. Meeting in recess. ...(gavel)...

8 **RECESS: 5:13 p.m.**

9 **RECONVENE: 5:15 p.m.**

10 CHAIR MOLINA: ...(gavel)... The Land Use Committee meeting
11 for Wednesday, November 14th, 2007, is now back in
12 session. It is 5:15, Members. We are on Land Use
13 Item 45, Conditional Permit for Ala Aina Vacation
14 Rentals out in Hana.

15 And earlier, you heard the comments from the
16 Planning Department, Planner Robyn Loudermilk, and
17 we have the applicant's representative available as
18 well for questions.

19 So at this point, Members, any questions for
20 Ms. Loudermilk from the Planning Department?
21 Mr. Medeiros?

22 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes, for
23 the Planning Department. The presentation mentioned
24 that the property is on a private water system.

25 Now, with that, is the applicant still have

1 the same requirements from the Fire Department and
2 Water Department, as far as fire flow?

3 MS. LOUDERMILK: They would have the same requirements from
4 the Fire Department for fire protection. As being a
5 private water system, it's not under the
6 jurisdiction of the Department of Water Supply so
7 they are not required to meet the Department of
8 Water Supply requirements.

9 COUNCILMEMBER MEDEIROS: So has the Fire Department signed
10 off as meeting their requirements for fire flow for
11 firefighting operations?

12 MS. LOUDERMILK: In talking with the Fire Department, they
13 do not require fire flow calculations per the same
14 way that the Department of Water Supply does.

15 In talk -- also for transient vacation rentals
16 or B&B in general, they have provided the Department
17 and the applicants with the list of measures to
18 incorporate into their residence to minimize any
19 damage, in this case the fire extinguisher, the
20 smoke detectors, the exit sign. The Department
21 would also recommend an evacuation plan be posted.

22 And in regarding the proposed Hold Harmless
23 Agreement, the Fire Department indicated that they
24 would not want to go into a Hold Harmless Agreement
25 and that should a time extension be granted for the

1 Special Use Permit, that that provision would be
2 deleted because they have other mechanisms in place
3 to ensure that the fire protection is being met.

4 COUNCILMEMBER MEDEIROS: The -- the Hold Harmless mention,
5 is that a condition recommended by the Planning
6 Commission?

7 MS. LOUDERMILK: It was a condition that was recommended by
8 the Department.

9 COUNCILMEMBER MEDEIROS: By the Department, okay. And it
10 is still part of this application?

11 MS. LOUDERMILK: It is -- as the proposed conditional
12 ordinance reads, it is not. It is specific to the
13 Land Use Commission Special Use Permit.

14 COUNCILMEMBER MEDEIROS: I see. Okay. Do we know that all
15 the structures on that property have been permitted
16 through the permit system through DSA, Planning
17 Department, and so forth?

18 MS. LOUDERMILK: Yes.

19 COUNCILMEMBER MEDEIROS: Okay. Now, the parking
20 requirement for TVR, it has to be on property?

21 MS. LOUDERMILK: Yes.

22 COUNCILMEMBER MEDEIROS: Does it have to be on a paved
23 area?

24 MS. LOUDERMILK: Not necessarily, no.

25 COUNCILMEMBER MEDEIROS: What does necessarily mean?

1 MS. LOUDERMILK: You can have gravel. It does not have to
2 be concrete or asphalt. You can have other
3 nonpervious materials.

4 COUNCILMEMBER MEDEIROS: Okay. And I don't know if you can
5 answer this next question, or I may have to ask the
6 applicant. Is the utility, electricity and
7 telephone available in the TVR room?

8 MS. LOUDERMILK: I would defer to the applicant on that.

9 COUNCILMEMBER MEDEIROS: Okay. Okay, the next ones I have
10 probably will -- I will have to ask the applicant.
11 Thank you very much.

12 MS. LOUDERMILK: You're welcome.

13 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair.

14 CHAIR MOLINA: Thank you, Mr. Medeiros. Committee Members,
15 questions for the Department? Mr. Mateo?

16 COUNCILMEMBER MATEO: Chairman, thank you. Ms. Loudermilk,
17 in the presentation that we just saw, relative to
18 the Hana Community Plan --

19 MS. LOUDERMILK: Yes.

20 COUNCILMEMBER MATEO: -- there was a reference to the word
21 discourage.

22 MS. LOUDERMILK: Yes.

23 COUNCILMEMBER MATEO: Personally, I take discourage as we
24 don't want it, keep it away, and all that kind of
25 stuff.

1 It was interpreted where it is not a
2 prohibition, but it does not preclude a TVR from
3 being created or established in the Hana -- outside
4 of the Hana town area.

5 Can you comment on the verbiage relative to
6 the Hana Community Plan?

7 MS. LOUDERMILK: Yes. The language that was part of the
8 presentation is -- has been interpreted by the
9 Department similar to as you have indicated, that it
10 does not outright prohibit and that the challenge
11 with all the community plans is that you have a
12 number of competing objectives and policies that
13 need to be weighed.

14 And in this particular instance, the
15 discussion at the Hana Advisory Committee, as well
16 as the Maui Planning Commission, included that, what
17 was the intent, how do we implement this.

18 And the Planning Department weighed a variety
19 of different languages and came to the conclusion
20 that discourage does not mean prohibit; that though
21 there are other objectives and policies that may
22 further define a preferred location or preferred
23 type of economic development, that the proposal was
24 overall consistent with the objectives and policies
25 of the Hana Community Plan, weighing it in this

1 particular case.

2 COUNCILMEMBER MATEO: Okay. And then -- then,

3 Ms. Loudermilk, can you tell me what the

4 Department's position is on TVRs on Ag lands?

5 MS. LOUDERMILK: At this point in time or when the public

6 hearing was conducted in 2002?

7 COUNCILMEMBER MATEO: If you are able to, tell us both.

8 MS. LOUDERMILK: In -- in 2002, the Department really had

9 no -- had no stated policy or preference in whether

10 applications or TVRs should be located on Ag lands

11 or not.

12 The -- if I recall, we were more concerned

13 that agriculture operations were first occurring on

14 the property; and should that be happening, then we

15 would consider whether a TVR could be compatible

16 with that use. That was back in 2002.

17 So there was no -- there was no set policy;

18 but informally when people came in, in the

19 agricultural district and they sat down with Staff,

20 such as myself, that those are the items that we

21 would look at. And if they met the criteria for

22 both the Conditional or the Special Use Permit, that

23 we would weigh it on a case-by-case basis and go

24 accordingly.

25 As of today, the focus of the Department is

1 enforcement regardless of the zoning district or the
2 State Land Use district, and that's, yeah, basically
3 across the board enforcement of the existing rules
4 and regulations.

5 In terms of -- of policy, I think -- I believe
6 it -- no, I know that it's still being developed
7 through the proposed ordinances for TVRs and Bed and
8 Breakfast. And the Department, in the end, may have
9 certain preferences that may include the land use --
10 the various land use designations or it may not.

11 But I'm not aware of something specific at
12 this point in time strictly with Ag. It's the use
13 itself across the various districts.

14 COUNCILMEMBER MATEO: Okay. Thank you, Ms. Loudermilk.
15 Chairman, I'll yield.

16 CHAIR MOLINA: Thank you, Mr. Mateo. Committee Members,
17 questions for the Department? Councilmember Baisa?

18 COUNCILMEMBER BAISA: Yes, Chair. I'm looking at the
19 planning -- Department of Planning report that came
20 back from the Planning Commission, and it's in 2002.

21 And it says, number five, on page 4 of the
22 report, that Samadhi Butterfly shall develop the
23 property in substantial compliance with the
24 representations made to the Maui County Council in
25 obtaining the Conditional Permit.

1 Has this been done?

2 CHAIR MOLINA: Ms. Loudermilk?

3 COUNCILMEMBER BAISA: I mean, what's been done? What are
4 we talking about when we say developing the
5 property?

6 MS. LOUDERMILK: That she is operating the property in this
7 case as represented to the Commission. So she is
8 using the one bedroom located in the structure
9 indicating where she said it would be operating.

10 COUNCILMEMBER BAISA: And in your opinion, she is in
11 compliance and has done what she said she was going
12 to do?

13 MS. LOUDERMILK: Yes.

14 COUNCILMEMBER BAISA: And along the lines of what we were
15 looking at earlier, we heard about a large number of
16 letters in support of the application, as well as a
17 petition.

18 Have there been any concerns, any complaints?

19 MS. LOUDERMILK: There have been no formal complaints filed
20 with the Department.

21 COUNCILMEMBER BAISA: Thank you. That's not stated so
22 that's very good to know.

23 And just another thing for my information I
24 wanted to know, Member Medeiros asked you the
25 question about paving and grass. Sometimes I hear

1 Planner Alueta talk about grasscrete. Is that what
2 he's talking about?

3 MS. LOUDERMILK: Grasscrete is one type of product that can
4 be used that is basically like a tick-tack-toe board
5 that's raised.

6 COUNCILMEMBER BAISA: Uh-huh.

7 MS. LOUDERMILK: So that's one product that can be used.

8 COUNCILMEMBER BAISA: So it's not really grass, it's like a
9 concrete --

10 MS. LOUDERMILK: It's concrete, but you can plug grass in
11 between. If you -- if you water enough, the grass
12 can grow.

13 COUNCILMEMBER BAISA: Ah. Because I often hear him say,
14 you know --

15 MS. LOUDERMILK: Yes.

16 COUNCILMEMBER BAISA: -- that grasscrete is acceptable --

17 MS. LOUDERMILK: Yeah, yeah.

18 COUNCILMEMBER BAISA: -- and I was wondering --

19 MS. LOUDERMILK: Yeah.

20 COUNCILMEMBER BAISA: -- exactly what he was talking about.
21 You know, we're getting educated as we go here.

22 MS. LOUDERMILK: Yeah.

23 COUNCILMEMBER BAISA: That's all the questions I have for
24 the Department. I have couple for the applicant.
25 Thank you.

1 CHAIR MOLINA: Okay. Thank you, Member Baisa. Members,
2 additional questions for the Department before I
3 call upon the applicant's representative? Seeing
4 none --

5 COUNCILMEMBER MEDEIROS: Excuse me, Mr. Chair.

6 CHAIR MOLINA: Oh, sorry. Mr. Medeiros? Go ahead.

7 COUNCILMEMBER MEDEIROS: Maybe just one more. And I'm not
8 sure if I asked it already.

9 Ms. Loudermilk, does the property operating as
10 a TVR have any ADA requirements?

11 MS. LOUDERMILK: For a one-bedroom, no.

12 COUNCILMEMBER MEDEIROS: If it's more than one bedroom,
13 then there's ADA requirements?

14 MS. LOUDERMILK: My understanding is that from information
15 provided to us -- what I mean us, the Planning
16 Department, as well as the Land Use Committee on
17 this issue, that there are certain triggers, and it
18 has to do with the number of rooms and other --
19 other factors that would trigger ADA compliance.

20 In this particular instance, the operation is
21 not required to be ADA complaint.

22 COUNCILMEMBER MEDEIROS: Okay. So who determines the ADA
23 requirements, the Planning or DSA or --

24 MS. LOUDERMILK: For the County of Maui, there is no
25 requirement in the Code. We have to defer to the

1 State law. And that has presented some challenges,
2 but it -- I believe it's on case-by-case basis that
3 the ADA implementation can occur, since there is
4 nothing in the County -- any portion of the County
5 Code that requires ADA.

6 So we do defer to the State law, and there is
7 an office associated with the Department of Health
8 that does provide guidance to us --

9 COUNCILMEMBER MEDEIROS: Okay.

10 MS. LOUDERMILK: -- in -- in design matters.

11 COUNCILMEMBER MEDEIROS: Thank you. Mahalo, Mr. Chairman.

12 CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Before I
13 call upon the applicant, is there a need to have
14 Mr. Krueger from Public Works for any questions from
15 the Members?

16 COUNCILMEMBER VICTORINO: No.

17 CHAIR MOLINA: Okay. Seeing none, Mr. Krueger, we'll
18 excuse you for today. Thank you for staying with
19 us.

20 Mr. Spence and Ms. Butterfly? I believe,
21 Member Medeiros, you had a question first for the
22 applicant to be followed by Member Baisa.

23 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Knowing
24 that there's soon to be a new ordinance on transient
25 vacation rentals and some of the considerations such

1 as when you're on Ag land, my understanding that
2 there's a percentage of that, that is in farming.

3 Is there any farming on this property?

4 MR. SPENCE: Not commercially. As I -- as I noted in the
5 presentation, there -- there are actually two fairly
6 large stands of bananas.

7 The applicant gives those away to, gosh,
8 everybody, including me. And they provide them to
9 the Kipahulu Community Association, who I believe
10 they -- they do some sales. They provide -- there
11 was a mention of a homeless shelter, so they --
12 those agricultural products are given away.

13 They also use the coconuts. The rest of the
14 fruit trees, there's (inaudible) cherry, star fruit,
15 some citrus. You know, they mostly use those for
16 themselves, but those are also given away when
17 there's abundance.

18 COUNCILMEMBER MEDEIROS: Okay. Yeah. My question is
19 connected to -- because there is discussions about
20 the new ordinance possibly having that kind of
21 requirement, including an amount of revenues derived
22 from any farming operations.

23 Are there any significant revenues from
24 farming operations?

25 MR. SPENCE: No, there are not.

1 COUNCILMEMBER MEDEIROS: There are not.

2 MR. SPENCE: They -- if -- if I could complete that. At
3 one time, they did try selling on a roadside stand,
4 and some people bought but then other people took
5 the money out of the can, you know, those kinds of
6 things, so...

7 COUNCILMEMBER MEDEIROS: Well, the -- the requirement is --
8 that they're talking about is \$35,000, and I don't
9 think you'll get that out of a can.

10 MR. SPENCE: Yes.

11 COUNCILMEMBER MEDEIROS: So thank you for your response on
12 that. So the owner and potential operator of this
13 TVR lives in one of the dwellings?

14 MR. SPENCE: Yes.

15 COUNCILMEMBER MEDEIROS: Okay. And on Ag property, being
16 that there's a second dwelling, that's considered --
17 I guess maybe you can help me out. What is it
18 called as a second dwelling on an Ag zone?

19 MS. LOUDERMILK: The -- the technical term with the passage
20 of the Ag zoning in 1999 are farm dwellings.

21 COUNCILMEMBER MEDEIROS: Right. Okay, thank you. Is that
22 a farm dwelling, the second --

23 MR. SPENCE: Yes, it's considered a farm dwelling.

24 COUNCILMEMBER MEDEIROS: So farm workers live in it?

25 MR. SPENCE: The -- the way -- and -- and perhaps Staff can

1 expound on this. The way that -- that 19.30.A reads
2 is that the -- there are two homes permitted.
3 There's no specific -- the implementation of the
4 farm plan and the requirements for farming was
5 implemented later.

6 The -- these homes were built right around
7 1999, 2000, something like that. At that time,
8 there was no requirement to have a farm plan and
9 show income or anything like that. So these are --
10 these are just existing dwellings from that.

11 COUNCILMEMBER MEDEIROS: Okay, thank you for that response.

12 So you -- you concur with the Planning Department
13 that there's no ADA requirements?

14 MR. SPENCE: Yes.

15 COUNCILMEMBER MEDEIROS: Okay, thank you. And the
16 utilities of electricity and telephone, is that
17 available to the potential users or guests of
18 that -- this TVR?

19 MR. SPENCE: Yes. The -- the house is a hundred percent
20 off the grid. I -- I have pictures. I didn't
21 include them for time.

22 There's a photovoltaic system, and it's --
23 it's quite sufficient. I'm a little surprised that
24 both Sam and her daughter Mercury both have
25 computers. All those operate very sufficiently.

1 You know, the lighting, etc., there's --
2 there's no lack of power. There are two phone lines
3 to the property, one within the cottage and one
4 within the main house, and as well as, you know, you
5 get cell phone reception. I call them regularly on
6 my cell phone.

7 COUNCILMEMBER MEDEIROS: Okay. So the property supplies
8 or -- or generates its own electricity?

9 MR. SPENCE: Yes, it does.

10 COUNCILMEMBER MEDEIROS: Okay. How long has the owner
11 owned and lived on this property?

12 MR. SPENCE: 1990 -- I think it's 1998, I believe, or '99.

13 COUNCILMEMBER MEDEIROS: Okay, thank you. And then -- oh,
14 my next question is it -- it sits on 4.118 acres, is
15 that correct?

16 MR. SPENCE: Yes, there -- and Staff and I had a little
17 discussion about that. Yes.

18 COUNCILMEMBER MEDEIROS: Okay, but approximately four
19 acres?

20 MR. SPENCE: Approximately four acres. That's correct.

21 COUNCILMEMBER MEDEIROS: What is the distance from the
22 potential -- or the applicant's TVR unit from
23 neighbors on all four sides?

24 What -- what are the distances to the -- those
25 properties? Well, those -- yeah, those properties?

1 MR. SPENCE: Several hundred feet.

2 COUNCILMEMBER MEDEIROS: On -- on every side?

3 MR. SPENCE: Yes.

4 COUNCILMEMBER MEDEIROS: Okay.

5 MR. SPENCE: On the -- I would say on the -- on the east
6 side, there's a gulch that separates the neighbors.
7 On -- to the -- on the mauka side, their house is --
8 their house is pretty close to the -- to the actual
9 property line, but there's a letter in your packet
10 that's -- that -- from the caretaker of that
11 property who specifically says we never hear
12 anything.

13 So that would -- that would actually be the
14 closest house. The rest are actually further away.

15 COUNCILMEMBER MEDEIROS: Okay.

16 MR. SPENCE: Several hundred, more than that.

17 COUNCILMEMBER MEDEIROS: And is the property -- are you --
18 where are you actually located? Who -- who's the
19 neighbors? Are you close to the Linds?

20 MR. SPENCE: The Linds live --

21 COUNCILMEMBER MEDEIROS: Tweety and John Lind's property?

22 MR. SPENCE: Yeah. The -- they live closer to Kaukauai
23 Stream, I believe. And there's a letter in your
24 packet in support from Tweety. So they're within,
25 what, half a mile.

1 COUNCILMEMBER MEDEIROS: Okay, that gives me a better idea
2 of where the property is.

3 And then finally, you talked about possibly
4 the property owner wanting to add her daughter to
5 the trust?

6 MR. SPENCE: That's -- well, to the -- to the permit
7 itself.

8 COUNCILMEMBER MEDEIROS: Oh, to the permit?

9 MR. SPENCE: Yes.

10 COUNCILMEMBER MEDEIROS: Okay. And -- but the property is
11 owned by a trust?

12 MR. SPENCE: That's correct. And the applicant is the
13 trustee.

14 COUNCILMEMBER MEDEIROS: Trustee, okay. And I'm not sure.
15 Let -- let me ask the Planning Department. Is this
16 permit, if it's approved, is it transferable or
17 nontransferable?

18 MS. LOUDERMILK: It would be nontransferable.

19 COUNCILMEMBER MEDEIROS: Okay, thank you. Okay, thank you
20 very much for your responses.

21 CHAIR MOLINA: Thank you, Mr. Medeiros. Oh, you know,
22 Ms. -- Ms. Butterfly, if you'd like to come up to
23 the microphone, you can -- you're welcomed to be on
24 the record to clarify any questions Mr. Medeiros may
25 have had.

1 MR. SPENCE: State your name for the record.

2 MS. BUTTERFLY: Oh. My name is Sam Butterfly, and I'm so
3 nervous that I made a mistake. I've been living
4 there 18 years instead of what I said.

5 COUNCILMEMBER MEDEIROS: Okay. Thank you, Ms. Butterfly,
6 for that information.

7 CHAIR MOLINA: Thank you, Mr. Medeiros. Member Baisa,
8 questions for the applicant?

9 COUNCILMEMBER BAISA: Well, it seems like Member Medeiros
10 and I are running down the same road here. We
11 pretty much looking at the same things, but I was
12 just curious.

13 Will, can you tell me why, being that, you
14 know, TVRs are so controversial and B&Bs are
15 perceived much better, are you going for a TVR, not
16 a B&B, when the owner essentially is there upstairs?

17 MR. SPENCE: Yes. The -- if I understand the question
18 correctly, first off, the applicant is willing to
19 move back into the main house; and therefore, you
20 could call it a B&B because that's one of the
21 requirements for a Bed and Breakfast.

22 COUNCILMEMBER BAISA: Okay.

23 MR. SPENCE: The second thing is, is right now, it's also
24 called a TVR because it's in the State Ag District.
25 The -- the legislation that the Planning Department

1 has proposed would permit Bed and Breakfast in the
2 Ag District.

3 COUNCILMEMBER BAISA: Uh-huh, uh-huh.

4 MR. SPENCE: So I think that it's kind of a two-tiered
5 thing. First, you know, you have the zoning issue.
6 Any -- any Bed and Breakfast or TVR in Ag District
7 is a TVR.

8 The second thing is, is that the strict
9 interpretation of the Bed and Breakfast ordinance,
10 the owner would live within the main residence where
11 the rental is taking place, and she is willing to
12 move back into the house.

13 COUNCILMEMBER BAISA: I see. And at the present time, the
14 daughter lives in -- upstairs, so that wouldn't
15 qualify?

16 MR. SPENCE: That's correct. Technically, it --
17 technically, yes, but they -- they operate the thing
18 so closely together it's one reason why they so
19 frequently refer to it as a Bed and Breakfast.

20 COUNCILMEMBER BAISA: I -- I hear this a lot in the
21 discussion of TVRs that people say, you know, we --
22 we use the word owner, and yet it may be a daughter
23 or a son who lives at home, and they're not really
24 legally an owner.

25 MR. SPENCE: That's correct.

1 COUNCILMEMBER BAISA: But they will be soon, hopefully, if
2 they're good kids.

3 MR. SPENCE: Her daughter's a pretty good kid.

4 COUNCILMEMBER BAISA: Yeah. The other item -- issue that I
5 wanted to just kick around with you is -- and
6 Mr. Medeiros already talked about it -- was the
7 issue of -- of income from this farm property.

8 We received a letter of concern about the
9 application from Warren Watanabe of the Farm Bureau.
10 And I understand Mr. Watanabe's concern. You know,
11 everybody's concerned about keeping Ag lands in Ag
12 --

13 MR. SPENCE: Uh-huh.

14 COUNCILMEMBER BAISA: -- and promoting agriculture. And so
15 I saw the beautiful pictures of the bananas and the
16 citrus fruit and all this stuff.

17 Maybe we got to get Sam selling some of it
18 because I -- I'm afraid that somewhere down the
19 road, there will be a requirement of some kind of
20 income.

21 MR. SPENCE: Uh-huh.

22 COUNCILMEMBER BAISA: And I'm -- I don't know if -- if it
23 might be a good idea now, maybe, to begin to
24 document just what is the value of all the stuff
25 that's given away.

1 MR. SPENCE: That's probably -- excuse me, that's probably
2 a good idea. The -- I mean, agriculture --
3 agriculture does not necessarily -- at least to me,
4 that it does not necessarily mean it has to retain a
5 profit on it.

6 A lot of people farm just because they like to
7 and, I mean, they -- I don't know how many hundreds
8 of pounds of bananas they give away, but they got a
9 lot.

10 COUNCILMEMBER BAISA: Yeah, I understand. I have a
11 husband/gardener/farmer who gives away everything
12 that he grows --

13 MR. SPENCE: Yeah.

14 COUNCILMEMBER BAISA: -- and refuses to sell anything
15 because he thinks it's bad luck. But if we were on
16 Ag land, I might be trying to get him to a market to
17 see what we could do with all the beautiful produce.

18 MR. SPENCE: Yeah.

19 COUNCILMEMBER BAISA: So I think it's something to think
20 about because I think that it's just a wise thing to
21 plan for. Thank you, Chair.

22 CHAIR MOLINA: Okay. Thank you, Member Baisa. Committee
23 Members, any other questions for the applicant?

24 The Chair has a question for Mr. Spence
25 relating to the time line. I guess the question is,

1 you know, the process first began -- well, at least
2 with the Hana Advisory Committee started in 2002.
3 And here we are, 2007, and it went through the
4 compliance report, Planning Commission granted a
5 Special Use Permit for one year.

6 Can you tell us how we got to this point
7 where, you know, here it is, it's 2007? I guess
8 anything before 2007 why, you know, it took this
9 amount of time?

10 MR. SPENCE: Well, I think that your predecessors as Chair
11 of this Committee just, you know, didn't act on a
12 lot of these things. You know, it certainly could
13 have been...

14 CHAIR MOLINA: Did -- did you make contact with the
15 Committee in the prior term to have this matter
16 addressed on this Committee?

17 MR. SPENCE: No, I did not. At that time, I was exiting
18 the Planning Department and starting my own
19 business.

20 CHAIR MOLINA: Okay. You were still -- but you were still
21 the applicant's representative at the time?

22 MR. SPENCE: Oh, now I am.

23 CHAIR MOLINA: Oh, okay. But at the time, you weren't --
24 were not?

25 MR. SPENCE: At the time, I was just Staff. I was actually

1 processing her permit and, you know, we got to know
2 each other and then since then, she needed help with
3 everything so I'm helping her.

4 CHAIR MOLINA: And you started your business and then she
5 became your client?

6 MR. SPENCE: Uh-huh.

7 CHAIR MOLINA: And this was in 2004, 2005?

8 MR. SPENCE: It was -- I left the Department in 2002.

9 CHAIR MOLINA: Two. Okay. Yeah, that's -- that's why.
10 And I looked at the -- the lapse of time, you know,
11 and so you mean there was no contact -- okay, you
12 left the Department in 2002; and when she became
13 your client, there was no contact with the Committee
14 --

15 MR. SPENCE: No.

16 CHAIR MOLINA: -- prior to 2007? Can I ask why?

17 MR. SPENCE: Part of it, one, as -- as said, you know, your
18 predecessors were not --

19 CHAIR MOLINA: Uh-huh.

20 MR. SPENCE: -- were not bringing agenda items up and so I
21 personally just didn't think to go contact them and
22 say, you know, can we do this.

23 A lot of it has been -- I don't know. It
24 just -- it just -- up until the whole thing with
25 the -- with the Planning Department proposing

1 legislation and everything, it just -- it has never
2 come up to the point of urgency.

3 CHAIR MOLINA: Uh-huh. Okay, until now maybe with the
4 proposed ordinance that's out there and being
5 considered?

6 MR. SPENCE: That's certainly one reason.

7 CHAIR MOLINA: Yeah. I hope you can understand our dilemma
8 right now as a Committee.

9 MR. SPENCE: Oh, yes.

10 CHAIR MOLINA: So -- you know, and we're here with bare
11 quorum today as well so I'm just, you know, looking
12 at the situation here.

13 And I know there's been some letters of --
14 well, as one of the letters mentioned by Member
15 Baisa about TVRs in an agriculture-zoned area, and
16 I've heard comments about the -- the farming, as far
17 as it not being any commercial farming. So it
18 just -- for me, it's just created some -- some more
19 questions in my mind for today, and I appreciate the
20 letters of support that you -- you did get.

21 Since the meeting with the Hana Advisory
22 Committee, have you met again with the Hana
23 Community since 2002?

24 I -- I know you've obviously gotten some
25 solicitation letters besides the Planning

1 Department, so have you made -- continue to network
2 with the Hana Advisory Committee or any other
3 organizations in the community to illicit support?

4 MR. SPENCE: Well, the -- the letters of support -- as you
5 know, Kipahulu is a very small community. Well,
6 specific to the Hana Advisory Committee, no, we have
7 not talked to them.

8 For the purposes of the -- talking with the
9 local community association, I would -- most of the
10 members -- or most of the people who wrote letters
11 of support are in the association.

12 So there certainly has been -- it's been
13 one-on-one communication but, you know, not as a
14 group.

15 CHAIR MOLINA: Uh-huh. Okay. And the people who had
16 expressed concerns with the proposal, have many of
17 them swung over to offer support now?

18 I mean, because there -- initially, there was
19 some opposition to it. Have you networked with
20 those people who were in opposition?

21 MS. BUTTERFLY: (Inaudible).

22 CHAIR MOLINA: Okay, please -- yeah, please -- please come
23 up, Ms. Butterfly.

24 MS. BUTTERFLY: Tweety -- Tweety Lind was in great -- she
25 was kind of in opposition, but she didn't say one

1 way or another. And then she got to know me, and --
2 and she's never heard anything negative about it,
3 and she came to see the property and all, and she
4 was very happy about it.

5 And as far as the other people who were
6 concerned, I never really knew who was opposed to
7 it, but I haven't talked to anybody in Kipahulu who
8 is opposed to my having a Bed and Breakfast.

9 Most of the people that I speak to are really
10 happy that I have a Bed and Breakfast because it
11 allows people to have a wonderful Hawaiian
12 experience that they wouldn't normally have, and
13 there's no place for people to stay in Kipahulu.
14 And they all have family and friends, and they want
15 them to stay close by so they're really happy.

16 And I don't know of anybody in Kipahulu who is
17 opposed to it. Other people have told me that
18 they're going to write a letter, and they didn't,
19 but -- in support of me.

20 And I wanted to let you know that I tried very
21 hard to sell my products. And I did sell my bananas
22 for a few years, and that stopped because they grew
23 their own bananas.

24 And I have tried to sell my fruit; and every
25 time I bring it in, they say we have enough. We

1 don't need any more and so I -- my fruit is so
2 beautiful, and we love it so my daughter and I, one
3 of our -- one of our favorite things to do is to
4 share our abundance with anybody who needs it or who
5 wants it and so that's what we do.

6 And I -- I do try to sell it all the time, but
7 nobody buys it so I -- I give it away, and I feel
8 like it's God's service.

9 CHAIR MOLINA: Uh-huh. Well, thank you. That's such a
10 noble gesture you have. Any consideration -- are
11 you currently operating -- it is classified as a TVR
12 --

13 MS. BUTTERFLY: I'm sorry?

14 CHAIR MOLINA: -- what your --

15 MS. BUTTERFLY: I'm a little hard of hearing.

16 CHAIR MOLINA: Oh, that's okay. You're -- you're currently
17 operating as a TVR or classified as that? Maybe --
18 I don't know if Mr. Spence wants to add some
19 additional commentary.

20 And I'm leading up to the issue of why TVR,
21 not, you know, stay -- or go into Bed and Breakfast?

22 MR. SPENCE: Well, technically, it is a TVR.

23 CHAIR MOLINA: Uh-huh.

24 MR. SPENCE: And if I can anticipate your question, the two
25 reasons why it's a TVR, one, the -- currently under

1 County Code, Bed and Breakfasts are -- you can only
2 get a Bed and Breakfast permit within the State
3 Urban District in R-1, R-2, R-3, or BC-T, or the
4 other business districts. The -- currently right
5 now, Rural, no; and agriculture, no.

6 The other reason is because Sam lives in the
7 cottage 50 feet away. You know, even though
8 mother/daughter operating the -- the -- the
9 business, it is considered a TVR for that reason.

10 CHAIR MOLINA: Because she's not living in -- in the main
11 house, I guess, if you will?

12 MR. SPENCE: Yes.

13 CHAIR MOLINA: As -- as required by Bed and Breakfast
14 ordinance?

15 MR. SPENCE: Yes. And -- but she -- as stated, she is
16 willing to move into the house so it could be called
17 -- you know, technically qualify as a Bed and
18 Breakfast.

19 CHAIR MOLINA: Okay. Thank you, Mr. Spence. Members, any
20 other additional questions for the applicant?
21 Mr. Medeiros?

22 COUNCILMEMBER MEDEIROS: More so for the Planning
23 Department, if you want to...

24 CHAIR MOLINA: Okay. Any other questions for the
25 applicant? Otherwise, I'll excuse Mr. Spence.

1 Okay. Thank you, Mr. Spence.

2 MR. SPENCE: Thank you.

3 CHAIR MOLINA: Mr. Medeiros, proceed.

4 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

5 Ms. Loudermilk, I -- I -- I'm looking at, in our
6 binders, the first documents, which -- June 6th,
7 2002, County Communication No. 02-135, which is at
8 the bottom?

9 MS. LOUDERMILK: Can you please repeat the date of the
10 letter?

11 COUNCILMEMBER MEDEIROS: June 6th, 2002, from the
12 Department of Planning. And in our binders, it's
13 the first documents under LU-45.

14 MS. LOUDERMILK: I'm at the document, thank you.

15 COUNCILMEMBER MEDEIROS: Okay. All right, thank you. So
16 this particular application requires a State Special
17 Use Permit?

18 MS. LOUDERMILK: Yes.

19 COUNCILMEMBER MEDEIROS: And -- and they have received
20 that?

21 MS. LOUDERMILK: Yes.

22 COUNCILMEMBER MEDEIROS: Okay. And then the conditions
23 that were placed in that document, the insurance and
24 the nontransferability of the permit and so forth
25 and that would be for one year, this is all still

1 current? This is still part of what we're looking
2 at?

3 MS. LOUDERMILK: That is my understanding of what that --
4 that information is part of the proposed bill.

5 COUNCILMEMBER MEDEIROS: Okay. So on page 2 of that
6 document, pretty much the first paragraph after the
7 remainder of the preceding sentence, the Commission
8 approved the Land Use Commission Special Permit with
9 conditions and voted to defer action on the
10 Conditional Permit until an inventory of vacation
11 rentals could be completed for the Hana area.

12 Now, was that done, the inventory?

13 MS. LOUDERMILK: No, that was not done.

14 COUNCILMEMBER MEDEIROS: So is this application contingent
15 on that?

16 MS. LOUDERMILK: No, I'd like -- if I may, can I continue
17 the -- the paragraph? It further clarifies what
18 occurred.

19 COUNCILMEMBER MEDEIROS: Okay.

20 MS. LOUDERMILK: After that initial vote to defer action
21 and the inventory, the Planning Commission was
22 advised by the Corporation Counsel that they could
23 not defer a recommendation for the Conditional
24 Permit, that there were statutory deadlines that had
25 to be met and that they would need to reconsider

1 that motion.

2 So on April 9th, 2002, at the second meeting,
3 the Commission reconsidered their action for the
4 deferral. At that meeting, they voted to recommend
5 approval of the Conditional Permit and, thus,
6 negating their earlier vote of deferral until an
7 inventory.

8 So based upon that second action, they also
9 authorized the Department to transmit the
10 information to the County Council for action on the
11 Conditional Permit.

12 COUNCILMEMBER MEDEIROS: So that consideration of an
13 inventory could not be included in -- in this -- in
14 the requirements?

15 MS. LOUDERMILK: I am not sure if it could not be required
16 or if the Commission chose not to include that
17 provision.

18 COUNCILMEMBER MEDEIROS: I see. Okay. Thank you,
19 Ms. Loudermilk. Mahalo, Mr. Chairman.

20 CHAIR MOLINA: Thank you, Mr. Medeiros. Committee Members,
21 any other questions or recommendations for the Chair
22 on this matter?

23 Seeing none, the Chair is going to call for a
24 brief recess to confer with Staff and the
25 Department; and after that, the Chair will throw out

1 a recommendation or some thoughts for you to
2 consider. Meeting in recess until 6:00 p.m.
3 ...(gavel)...

4 **RECESS: 5:55 p.m.**

5 **RECONVENE: 6:01 p.m.**

6 CHAIR MOLINA: ...(gavel)... The Land Use Committee meeting
7 of November 14th, 2007, will now be back in session.
8 Members, thank you for that break.

9 The Chair has conferred with Staff, as well as
10 the Department; and as I mentioned earlier, I -- I
11 feel like we're in some type of a quandary here.

12 First of all, we got bare quorum. I was
13 informed by Mr. Victorino that he will have to
14 leave, and -- which will break up our meeting.

15 And, you know, we heard a response from
16 Member -- to Member Mateo's question, as far as the
17 Administration's position on it. A prior
18 Administration really took no position on TVRs and
19 Ag land and now the current Administration is
20 looking at enforcing the law.

21 So that issue, for me, kind of remains
22 somewhat open. And the applicant, at the same time,
23 has considered moving into the main house if -- if
24 this were allowable to become a Bed and Breakfast,
25 but it has been brought to the Chair's understanding

1 that because of the applicant's current situation in
2 this particular district and the zoning, the
3 applicant, to my understanding, would not qualify
4 for a Bed and Breakfast permit.

5 And I think for me, there's still some pukas
6 left, some questions that I think need answered, so
7 the Chair's going to throw out a consideration of
8 deferring and looking at this matter at a later
9 point, unless the rest of the Members who are here
10 would like to take a vote on this issue.

11 The Chair is just, again, stating his concerns
12 with some things that still need to be addressed.
13 Can I get comment from the Planning Department,
14 Ms. Loudermilk?

15 MS. LOUDERMILK: Yeah. Chair, we would have -- we would
16 support any -- a deferral at this point in time.
17 And if any of those concerns regard departmental
18 matters or policy, we'll be glad to respond to
19 inquiries sent from the -- from Committee Staff to
20 the Department.

21 CHAIR MOLINA: Okay. Committee Members, any other
22 recommendations or suggestions to the Planning
23 Department?

24 Mr. Mateo? And your thoughts on the Chair's
25 comments?

1 COUNCILMEMBER MATEO: Chairman, thank you very much. I can
2 -- I can support the deferral.

3 I wanted to ask the Department, the
4 application we're viewing today, or reviewing today,
5 is really based on an application submitted in 2002.

6 And because that application was based then
7 when TVR issues was not relevant at that time, if
8 this -- if this application was approved today, then
9 she would have to -- the request was for one year --

10 MS. LOUDERMILK: Yes.

11 COUNCILMEMBER MATEO: -- the permit --

12 MS. LOUDERMILK: Yes.

13 COUNCILMEMBER MATEO: -- term anyhow.

14 MS. LOUDERMILK: Yes.

15 COUNCILMEMBER MATEO: So that means within a year, she
16 would have to come back and reapply and probably, or
17 most likely, face a whole new ordinance relative to
18 TVRs.

19 So because of the conditions that will be
20 added to the new TVR ordinance, you know, it becomes
21 real difficult for me, based on what I heard today
22 --

23 MS. LOUDERMILK: Yeah.

24 COUNCILMEMBER MATEO: -- to understand whether or not this
25 applicant will complete or fulfill the requirements

1 of what is being recommended. So the Department
2 will either have to work with her because she also
3 needs to be commended for being --

4 MS. LOUDERMILK: Yes.

5 COUNCILMEMBER MATEO: -- one that actually went through the
6 process and submitted an application.

7 MS. LOUDERMILK: Yes.

8 COUNCILMEMBER MATEO: You know, so the Department needs to
9 work closely with her representative and try to see
10 whatever resolve can be -- can come out of it.

11 MS. LOUDERMILK: We -- we -- and we will do that.

12 COUNCILMEMBER MATEO: Thank you. Thank you, Chair.

13 CHAIR MOLINA: Thank you. Member Baisa, followed by
14 Mr. Medeiros.

15 COUNCILMEMBER BAISA: Thank you, Chair. I'd just like to
16 say that I share Member Mateo's concern about the
17 length of time, but I also understand that, you
18 know -- understand the concerns.

19 So my request is that we try to make a
20 decision as quickly as we comfortably can --

21 MS. LOUDERMILK: Uh-huh.

22 COUNCILMEMBER BAISA: -- in fairness to everyone. Thank
23 you.

24 CHAIR MOLINA: Thank you, Member Baisa. Member Medeiros?

25 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. For the

1 Planning Department, Ms. Loudermilk, so is there a
2 deadline for this applicant to complete before the
3 end of the year or face having to reapply at the
4 beginning of next year or having to wait for the new
5 TVR ordinance?

6 Because it seems like I've been hearing that
7 those that are in the application process, like this
8 applicant, have been trying to get on the agenda so
9 that they would complete their process by the end of
10 the year.

11 So what is the Planning Department's -- is
12 there a deadline at the end of the year?

13 MS. LOUDERMILK: Yes, there is in -- as part of the
14 enforcement action from the Planning Department, we
15 have been advising applications that have been held
16 in abeyance, as well as applications that have been
17 going through the process, that should they not get
18 all their permits by December 31st, 2007, then they
19 would need to cease their operation until they get
20 the required permits.

21 So that has -- that is where the deadline
22 emerges for those who have filed their application
23 prior to February 12th of this year.

24 Samadhi would not have to reapply again;
25 however, she may have to -- she will -- she would be

1 required to cease operation for that period of time
2 until the -- the permits are -- are acted on; and
3 should they be acted on favorably, then she can
4 re-establish her use.

5 COUNCILMEMBER MEDEIROS: Okay. Thank you, Ms. Loudermilk.
6 Mr. Chairman, you know, I -- in -- in my review of
7 this application, and I share the concerns raised by
8 Member Mateo, but I can see this applicant as being
9 someone that has given it its best effort to comply
10 with the County's requirement.

11 And we can see from the letters of support
12 from the Kipahulu Community and the -- actually,
13 from the Hana Advisory Committee, their
14 recommendations and the Planning Commission's
15 recommendations supporting this application.

16 And I think this applicant has a great need,
17 in -- in my estimation, to be able to survive. And
18 being on a four-acre parcel far from neighbors, I
19 don't think there's a concern about their operation
20 having any kind of negative impact on the neighbors.

21 And the -- the other thing is I -- I think
22 with the recommendation of a one-year permit and
23 even if we decide to amend it to two years, I think
24 that -- that gives us a balance that they would have
25 to come back after the new TVR ordinance is

1 developed and -- and acted on.

2 So for me, you know, being from that district
3 and representing that district and seeing a letter
4 in the packet supporting this, and it comes from a
5 family that has lived in Kipahulu for many
6 generations, a local family, and they have been
7 really good stewards of the land in that area,
8 they're farmers, fishermen, and on their mother's
9 side, you know, they come from a pure Hawaiian
10 family, with their support of this application,
11 Mr. Chairman, I -- I would lend my support in trying
12 to complete this application before the end of the
13 year. And, you know, that's for your consideration.
14 Mahalo, Mr. Chairman.

15 CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. So --

16 COUNCILMEMBER VICTORINO: Chair?

17 CHAIR MOLINA: Mr. Victorino?

18 COUNCILMEMBER VICTORINO: Since I've sat here very quietly,
19 I'm just going to say it this way. I think these
20 people have done their due diligence.

21 I think, again, we penalize -- we've approved
22 others today and had questions about it. This one,
23 I think, just like I've read, gone through it, and
24 the family that have supported it, it happens to be
25 my wife's half-sister, and they -- if they say it's

1 good, then it's good.

2 My -- my feeling is I'd like to move to
3 approve this today so that these people can move on.
4 And -- for one year; and in one year, we're going to
5 be back here and hopefully have our new rules for
6 which they now can decide whether to continue or
7 not.

8 But to penalize them, to try to force them
9 back in here another time, which you and I both know
10 time is becoming the essence with all the other
11 things they're saying out there, laying out there
12 for us and all the other people.

13 So I hope my Members would consider the -- the
14 motion of approving this for the one year and that
15 we can at least let these people operate until we
16 get our rules together.

17 They've done their due diligence, we should
18 not penalize them, okay? So that's all I've got to
19 say, so you make the decision, Chair, but you've got
20 a few minutes, and I've got to go. Thank you.

21 CHAIR MOLINA: Okay. Thank you, Mr. Victorino. And, yes,
22 we did approve two prior permit applications today;
23 however, both did not go unanimously.

24 I believe you know -- you voted no on one and
25 then some of the other Members had expressed some --

1 and I remember Chair Hokama voted no on both of 'em
2 so, yes, they did pass, but they did not pass
3 unanimously.

4 So if we're talking about consistency here, I
5 think we -- you know, we got to make sure we stay
6 consistent. Member Baisa.

7 COUNCILMEMBER BAISA: Chair, I have a question because I --
8 I realize there's ambivalence here.

9 CHAIR MOLINA: Uh-huh.

10 COUNCILMEMBER BAISA: And, of course, you know, we all
11 would like to support the applicant. We understand
12 the sincerity and the attempt at, you know,
13 complying and -- and the probably lack of really bad
14 effects on people around them and all that kind of
15 stuff but, you know, if we have procedural concerns,
16 then that's another matter.

17 But what I wanted to ask is this. If we were
18 to take a vote --

19 CHAIR MOLINA: Uh-huh.

20 COUNCILMEMBER BAISA: -- and that vote were not unanimous
21 and then the -- the motion would fail, what is the
22 penalty of that? How does -- how does it work?

23 CHAIR MOLINA: If we took a vote now, let's say four voted
24 in favor, all it takes is one person to vote no,
25 that would result in an automatic deferral.

1 Am I correct, Staff?

2 COUNCILMEMBER BAISA: Automatic deferral who would have to
3 start all over, or what are the consequences?

4 CHAIR MOLINA: Well --

5 MS. NAKATA: Mr. Chair, if we did not have five Members
6 voting the same way, there would be no vote that
7 would carry.

8 The Chair could recommend deferral of the
9 application, unless there were any objections from
10 the other Members of the body.

11 COUNCILMEMBER BAISA: Okay. That's very clear.

12 CHAIR MOLINA: Yeah. It's always been practically
13 automatic where, you know -- just the formality
14 where even though you don't get the five votes,
15 however you did have a majority of Members, it's
16 just been presumed it's automatic, well, defer
17 because there's no movement. Mr. Medeiros?

18 COUNCILMEMBER MEDEIROS: Yeah, just so that I'm clear on
19 this, if we vote, it's not in the majority of five
20 and it's deferred, does that mean that we can act on
21 it at another time?

22 CHAIR MOLINA: Yeah. If it's at -- depending on what the
23 Chair has on his docket.

24 COUNCILMEMBER MEDEIROS: Right.

25 CHAIR MOLINA: As you know, Land Use is quite busy.

1 COUNCILMEMBER MEDEIROS: Uh-huh.

2 CHAIR MOLINA: I believe this would not preclude the
3 Committee from addressing it next year. That's why
4 I had offered the recommendation for a deferral to
5 look at it at a future time.

6 However, as Ms. Loudermilk had stressed that
7 the new law goes into effect, effective January 1st,
8 where technically the applicant has to shut down
9 until, I guess, the Conditional Use Permit could be
10 considered --

11 MS. LOUDERMILK: Well, just -- if I just may clarify that
12 as part of the enforcement action, the properties
13 that have met certain criteria, we're -- they're
14 allowed to continue to operate until December 31st
15 and then, yes, then they will have to shut down,
16 cease operations until they are given the required
17 approvals.

18 CHAIR MOLINA: Okay. Thank you. And, again, the Chair has
19 heard a recommendation for deferral from not only
20 myself but also Member Mateo has expressed some
21 concerns about moving on this as well unless, you
22 know, the majority wants to, you know, look at
23 another alternative.

24 But I think -- the Chair would feel --
25 personally feel more comfortable with deferral and

1 looking at this matter again in the future, rather
2 than just filing this and having the applicant go
3 through the whole, you know, procedure again or
4 application procedure.

5 So that is, again, the Chair leaves it as his
6 recommendation for deferral. So I know there may be
7 two objections, but we'll leave it as it may.

8 And I know Mr. Victorino has to leave now,
9 which will break up the meeting as it is, so that is
10 the Chair's recommendation, Members. So the Chair's
11 recommendation is a deferral of the item.

12 COUNCILMEMBER MATEO: So moved.

13 CHAIR MOLINA: Okay. Moved by Member Mateo. Is there a
14 need for a motion, Staff, because we have some
15 disagreement?

16 MS. NAKATA: Well, generally, we don't require a motion for
17 deferral unless there are objections. And in this
18 case, if there are objections, we should do it by
19 motion.

20 CHAIR MOLINA: Okay. Even though we wouldn't have, say,
21 for example, the five votes to approve a motion? I
22 mean, at this point. Anyway -- all right, is there
23 a second with the motion to defer --

24 COUNCILMEMBER MATEO: Chairman, may we have a two-minute
25 recess, please?

1 CHAIR MOLINA: Recess subject to the call of the Chair.

2 ... (gavel) ...

3 **RECESS: 6:16 p.m.**

4 **RECONVENE: 6:18 p.m.**

5 CHAIR MOLINA: ... (gavel) ... The Land Use Committee meeting
6 for November 14th, 2007, is now back in session.

7 The Chair threw out a recommendation for
8 deferral; however, there is another consideration on
9 the floor. Mr. Mateo or Member -- excuse me,
10 Mr. Medeiros?

11 COUNCILMEMBER MEDEIROS: Medeiros.

12 CHAIR MOLINA: I'm sorry. As the area representative,
13 Mr. Medeiros, what is your consideration?

14 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I -- I'd
15 like to move that we vote on -- on this at this
16 time.

17 CHAIR MOLINA: Okay, there's a motion to vote instead of a
18 deferral. Is there a second?

19 COUNCILMEMBER VICTORINO: Second.

20 CHAIR MOLINA: Okay, seconded by Mr. Victorino.
21 Mr. Medeiros, you have the floor.

22 COUNCILMEMBER MEDEIROS: Yes, and I -- I think I -- I said
23 the reasons and justification why I think we should
24 vote on it.

25 This applicant has been very cooperative in

1 trying to comply with the County's requirements, you
2 know, it's just her and her daughter. And living in
3 Kipahulu, there's not too much opportunities to be
4 in any kind of business or employment that would be
5 able to help her support the property that they're
6 on.

7 So that -- that would be the reasons why I
8 think we should take a vote on this. Thank you,
9 Mr. Chairman.

10 CHAIR MOLINA: Thank you, Mr. Medeiros. Members, comments?
11 Mr. Mateo?

12 COUNCILMEMBER MATEO: Chairman, thank you. And I will
13 reiterate my position again. I believe the -- the
14 applicant, very shortly -- this is a one-year permit
15 term or length. That means they going be here again
16 within one year, and there is a strong possibility
17 that they will be having to address or deal with a
18 much more rigid ordinance, and I am hoping that they
19 will be able to comply with it.

20 The fact that she had applied in 2002 and had
21 made the initial attempts, then my preference would
22 have been to defer the item. I will -- I will
23 support the recommendation of the district
24 representative who knows his community better than I
25 do, and I will in fact support the motion. Thank

1 you, Chair.

2 CHAIR MOLINA: Thank you, Mr. Mateo.

3 MS. NAKATA: Excuse me --

4 CHAIR MOLINA: Any other discussion? Staff?

5 MS. NAKATA: Excuse me, Mr. Chair. Yes, the motion was to

6 vote. Could Staff please clarify the motion is to

7 recommend passage of the bill?

8 CHAIR MOLINA: Recommend passage of the Conditional Use

9 Permit.

10 COUNCILMEMBER MEDEIROS: Yes.

11 CHAIR MOLINA: Am I correct, Mr. Medeiros?

12 COUNCILMEMBER MEDEIROS: You are correct, Mr. Chairman.

13 Thank you for that clarification, Staff.

14 COUNCILMEMBER VICTORINO: Mr. Chair?

15 CHAIR MOLINA: And Mr. Victorino?

16 COUNCILMEMBER VICTORINO: Well, the -- the bottom line is,

17 and -- and I -- I just want everybody to understand,

18 it's not just being tired. It's the fact that these

19 people have tried their best to comply.

20 And I understand new rules are coming and all

21 these other things are coming, but one year is

22 better than a month and a half. And that's what

23 you're looking at right now. And -- and whether

24 they get back on the docket between now and December

25 31st is a real question. And I think it's only

1 being fair. That's all I'm saying.

2 And hopefully in a year, they can comply
3 because if they can't at that point, then my
4 sympathy may not be the same way. They have their
5 opportunities to get it correct, and I hope they
6 take that -- Ms. Butterfly and the family takes that
7 to heart and complies with whatever rules.

8 But we've got to get our rules together, too,
9 so I think that's important. So thank you. And I
10 appreciate Member Mateo's understanding that -- I
11 feel one year is a little bit better than 45 days,
12 and that's what we're looking at right now. Thank
13 you, Mr. Chair.

14 CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Any other
15 comments before the Chair makes his comments?

16 MS. NAKATA: Mr. Chair?

17 CHAIR MOLINA: Staff?

18 MS. NAKATA: Excuse me, I recognize the Committee is short
19 on time before losing quorum, but there are a few
20 revisions that Staff would like to find out whether
21 they can be incorporated into the proposed bill.

22 CHAIR MOLINA: Staff, you want to go ahead and read those
23 revisions?

24 MS. NAKATA: Yes. Some of them are minor formatting type
25 revisions which the Committee may not feel the need

1 to go over, for instance to change at paragraph 3 of
2 Section 2, to add on the phrase, unless the Council
3 approves the transfer by ordinance.

4 So things like that, that the Department has
5 generally altered their format since this bill was
6 drafted since 2002, things like changing the year
7 from '02 and '07. Those are fairly nonsubstantive.

8 But the other revisions would be things that
9 were raised at the meeting today concerning updates
10 to the application, such as the fact that a new tax
11 map key number has been assigned to the property so
12 to replace that in the bill, to reference the fact
13 that the ownership of the property has changed. I
14 believe Corporation Counsel may have some language
15 on that with respect to the Samadhi Baron Butterfly
16 Living Trust.

17 And also to change the size of the parcel,
18 which we learned today would more accurately be
19 stated as approximately 4.000 acres, rather than
20 4.118.

21 And the final thing is to change the name of
22 the operation, which I believe is incomplete on the
23 bill, to read Ala Aina Ocean Vista Vacation Rental.

24 CHAIR MOLINA: Okay. Thank you, Staff. Members, we
25 shall -- if there's no objections, the Staff would

1 like to incorporate those changes into the bill,
2 which is -- we currently have a motion on. And the
3 Chair also will include the filing of the
4 communication as well. Any objections?

5 COUNCIL MEMBERS: No objections.

6 **COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: MA, RH, JJ,
7 JP).**

8 CHAIR MOLINA: Okay. Thank you very much, Members. The
9 Chair will support with reservations. Again, the
10 Chair had some issues that he would have liked to
11 have had clarified, and I understand the applicant's
12 situation.

13 Being that it's so, I guess we're -- fast
14 approaching the deadline of January 1st, and
15 apparently there might be a financial consideration
16 as well.

17 And as the Chair had asked earlier to the
18 applicant's representative, it's unfortunate that at
19 an earlier time period, if they had approached the
20 Land Use Committee then to push to have this matter
21 heard before the Land Use Committee, I think that
22 might have been helpful.

23 But be that as it may, it did not occur, and
24 that's why it sort of put this Committee in a bit of
25 a quandary here between a rock and a hard place to

1 make a decision instead of considering a deferral to
2 get some questions cleared up, but I guess that's
3 how it goes.

4 Chair will call for the vote. All those in
5 favor, signify by saying "aye."

6 COUNCIL MEMBERS: Aye.

7 CHAIR MOLINA: All those opposed?

8 **VOTE: AYES:** Councilmembers Baisa, Mateo, Medeiros,
9 Victorino, and Chair Molina.

10 **NOES:** None.

11 **ABSTAIN:** None.

12 **ABSENT:** None.

13 **EXC.:** Councilmembers Anderson, Hokama, Johnson,
14 and Vice-Chair Pontanilla.

15 **MOTION CARRIED.**

16 **ACTION:** Recommending FIRST READING of revised
17 proposed bill, and FILING of
18 communication.

19 CHAIR MOLINA: Okay, the Chair will mark it five, zero with
20 one person voting with reservations, Molina. And we
21 have four excusals, Members Anderson, Johnson,
22 Hokama, and Pontanilla. This matter will now go on
23 to the full Council.

24 Members, it is 6:25. I assume there are no
25 additional announcements? With that being said, we
26 have a Land Use meeting here today, November 14th,
27 that will be adjourned. ...(gavel)...

1 **ADJOURNED: 6:25 p.m.**

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C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF MAUI)

I, Wendy M. Watanabe, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 7th day of December, 2007, in Honolulu, Hawaii.

Wendy M. Watanabe
Wendy M. Watanabe, CSR, No. 401
Notary Public, State of Hawaii
My Commission Expires: 4/7/2010

