

1 We're going to recess for lunch until 1:00 PM.

2 The August 26th Planning Commission is on
3 recess. Thank you.

4 (Recess, 11:56 a.m. to 1:00 p.m.)

5 VICE-CHAIRMAN GUARD: Meeting of August 26,
6 Planning Commission is now back in session.

7 PLANNING DIRECTOR HUNT: Your next items involve
8 several vacation rentals.

9 And I was talking to James at lunch. And he
10 didn't understand the Department's position, so let me try
11 and reiterate it. Because if our legal counsel doesn't
12 understand it --

13 B&Bs, again, are somebody -- that is a situation
14 where the owner or lessee lives in the same house as the
15 unit that the rooms are being rented. Then on the other
16 side of the scale, we have what we call a pure TVR, where
17 there is no manager, no owner on-site at all. And then,
18 in between, we have what we call hybrids, where the owner
19 lives in the ohana and rents out the main house or manager
20 does or vice versa.

21 Our Code provides for B&Bs in some districts.
22 Therefore, the Department feels we can support those, even
23 through a Conditional Permit, in some districts, even
24 though it's not in the specific district listed.

25 Our Code, on the other hand, prohibits pure

1 TVRs, that's our interpretation, outside of Hotel
2 districts. So the Department, again, we cannot support a
3 pure TVR outside of a Hotel District.

4 With that overall framework, you then have to
5 start laying other zoning districts on there, including
6 agriculture. And then you have to account for the impacts
7 to agriculture.

8 What we did today is we tried to set up these
9 agenda items in a progression so that, first, we had a
10 B&B, and then you had what I would call more of a hybrid,
11 and then, finally, you have -- we have pure TVRs. And our
12 Department recommendations reflect that philosophy in our
13 interpretation of the Code that I just went through.

14 So I hope that at least makes it a little more
15 clear.

16 So your first agenda item of the afternoon
17 involves Jay Wisthoff and Kathy Wisthoff requesting a
18 State Land Use Commission Special Use Permit and a
19 Conditional Permit in order to operate a transient
20 vacation rental, Hoolio House, in the State Agricultural
21 District, at 138 Awaiku Street. The tax lot is 4-7-009,
22 Lot 58, in Launiupoko. The file numbers are SUP2
23 20030003, CP 20030003. And Joe Prutch is the planner
24 substituting for Jeffrey Dack.

25 No. I'm sorry. Jeffrey Dack is here.

1 Before we go into this one, I want to state on
2 the record that I live within the 500 feet of this house.
3 And my family was notified.

4 My wife did write a letter of support for this,
5 but I am here to assure you that I can be objective on
6 this. I have been objective up to this point, and I will
7 continue to be objective on this issue. But I just wanted
8 to get that out front so there's no suspicions.

9 With that, I will turn it over to Jeffrey Dack.

10 MR. DACK: Yes. As Director noted, both Joe
11 Prutch and I have been involved in this project. This
12 project was assigned to me, but Joe graciously wrote the
13 Staff Report to be able to move the project along while I
14 had some other time-sensitive obligations that didn't
15 permit me to move it along as quickly as he was able to.

16 So I will make the presentation, but we will
17 both be available for questions you might happen to have.

18 The application actually was for a Conditional
19 Use Permit and Land Use Commission Special Use Permit
20 filed in May of 2003. Since that time, the application
21 was held in abeyance pending Maui County Planning
22 Department review and direction on transient vacation
23 rentals and bed and breakfasts in the county.

24 The applicant had indicated that they did wish
25 to proceed ahead, but there were also some difficulty with

1 Staff transitions, some turnarounds, and things that also
2 contributed to the delay for its consideration.

3 The applicant is requesting, as a Conditional
4 Permit and -- excuse me -- State Special Use Permit for
5 the operation of a six-bedroom transient vacation rental
6 within a 4,845 square foot primary farm dwelling adjacent
7 to a 1,000 square foot secondary farm dwelling where the
8 full-time property managers reside. The property managers
9 are family of the applicants and part owners.

10 The property, which is approximately two acres,
11 is located at 138 Awaiku Street, in Lahaina, in
12 Launiupoko, with Maui Tax Map Key of 24-7-009:058.

13 The land use designations of the State Land Use
14 District, Community Plan and County zoning are all
15 agriculture. Surrounding uses are all farm dwellings on
16 two or thereabouts, approximate acre lots to the north,
17 east, south and west.

18 The subject parcel is a rectangular-shaped flag
19 lot located on the mauka side of Awaiku Street, and
20 furthest from the street.

21 From the front of the lot the site slopes
22 gradually upward from approximately 470 square feet --
23 square feet -- 470 feet to 520 feet in elevation.

24 The primary farm dwelling, Hoolio House, sits in
25 the center of the property. And the secondary farm

1 dwelling, the manager's quarters, sits at the southeast
2 corner of the property behind the Hoolio House.

3 The site is residential in nature. However,
4 soil and irrigation were brought in to create a
5 71-foot-deep orchard along the entire rear width of the
6 property. The orchard now produces bananas, papaya,
7 starfruit, lemon, lime, grapefruit, avocado and mangos.
8 Fruits are provided to the guests for breakfast.

9 The front portion of the lot is planned for a
10 future -- to be a future orchard planted with fruit trees,
11 local plants and flowers.

12 Parking for the guests and the on-site managers
13 is at the rear of the property between the Hoolio House
14 and the orchard.

15 At this point in the project, it's traditional
16 for the Staff to invite the applicant to make a
17 presentation. We don't have any powerpoints, but keeping
18 with that, that general flow, we will invite comments that
19 the applicant has to make their presentation on their
20 project. And then I would like to be able to return to
21 the podium for the Department's analysis.

22 Thank you.

23 VICE-CHAIRMAN GUARD: Does the applicant have a
24 presentation?

25 MR. WISTHOFF: Yeah. We didn't really prepare a

1 presenta -- my name is Jay Wisthoff, the applicant.

2 After watching Will's Powerpoint presentation, I
3 feel totally ill-prepared.

4 But we are just a small family-owned business.
5 My wife and daughter and son-in-law purchased the
6 property. It was already built. And we envisioned a
7 high-end accommodation available to visitors who didn't
8 want to stay at resort areas.

9 And we came in and met with Mike Foley, at that
10 time the planning director, before we even purchased the
11 property. And went through what the process was for
12 getting a permit and what type of things we should look
13 for. And we, basically, proceeded from there.

14 We met with Mike five times over the last five
15 years trying to get the application moved forward. And
16 here we are.

17 The application speaks for itself, but I am
18 prepared to answer any questions or go into any details as
19 they come up.

20 VICE-CHAIRMAN GUARD: Any questions?

21 I think most of us were probably ready for a
22 presentation, so this might take a while.

23 Commissioner Hedani.

24 COMMISSIONER HEDANI: James?

25 MR. WISTHOFF: Yes. Jim, yeah.

1 COMMISSIONER HEDANI: Jim, you folks own 84
2 percent interest in the property?

3 MR. WISTHOFF: We own -- well, we own 100
4 percent. My daughter and son-in-law are on the deed for
5 14 percent. And my wife and I own the 84 -- or 16 -- 86
6 and 14 -- we own the whole thing.

7 COMMISSIONER HEDANI: But you don't reside on
8 the property?

9 MR. WISTHOFF: No. We -- well, my son and
10 daughter-in-law -- or my daughter and son-in-law do reside
11 on the property, in the ohana. We lived in the main house
12 until a year and-a-half ago, when we bought another
13 property up the street.

14 COMMISSIONER HEDANI: I see. So you are in an
15 adjoin -- a nearby house?

16 MR. WISTHOFF: A nearby house, yes.

17 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

18 COMMISSIONER HIRANAGA: I, too, am disappointed
19 that there is no Powerpoint, there is no photos of the
20 property. You are applying for a Conditional Permit and
21 Special Use Permit. You realize that this is granted for
22 a use which is not normally allowed?

23 MR. WISTHOFF: Yes, I do.

24 COMMISSIONER HIRANAGA: And without additional
25 information, I am not prepared to vote on this matter.

1 MR. WISTHOFF: Well, we did -- we did provide
2 pictures with the application. And I assumed those would
3 be part of the package. No one told us that a Powerpoint
4 presentation was even possible at this meeting. We didn't
5 know about it until I saw Will Spence had one set up.

6 COMMISSIONER HIRANAGA: No pictures in our
7 Staff --

8 VICE-CHAIRMAN GUARD: Staff, did photos ever get
9 submitted, or site visits, anything to explain what we are
10 kind of looking at? I see a diagram of the house, that's
11 about it.

12 MR. WISTHOFF: I have a copy of the application
13 that we submitted with the color photographs, but I only
14 have one copy.

15 VICE-CHAIRMAN GUARD: Okay.

16 COMMISSIONER MARDFIN: Do you currently have a
17 homeowner's real property tax exemption?

18 MR. WISTHOFF: No, we don't. And we pay the
19 hotel rates on our real property taxes.

20 COMMISSIONER MARDFIN: So you have been using it
21 as a TVR?

22 MR. WISTHOFF: Yes, we have. And we were --

23 COMMISSIONER MARDFIN: How long have you done
24 that?

25 MR. WISTHOFF: For five years now.

1 And we were very up-front. We never tried to
2 hide anything from the Planning Department. We came in
3 and talked with Mike Foley and told him what our plan was.
4 And he told us, basically, we had two issues to deal with,
5 we had the agricultural issue and our neighbors. And he
6 said, if you don't have complaints from your neighbors and
7 you do use a substantial portion of your property for
8 agriculture, you shouldn't have any problem with the
9 permit process. But he did warn us it would take up to a
10 year. That was in May 2003.

11 And he understood that we were going to open
12 operations and begin. And he said unless there were
13 complaints, there would be no issues with the Planning
14 Department while the application was being processed.

15 COMMISSIONER MARDFIN: And that's why you also
16 went through with the orchard and put that fruit orchard
17 in?

18 MR. WISTHOFF: Yes.

19 COMMISSIONER MARDFIN: Thank you.

20 VICE-CHAIRMAN GUARD: Commissioner U'u.

21 COMMISSIONER U'U: As you know, Mike Foley is no
22 longer a part of this Department.

23 MR. WISTHOFF: Oh, I understand that, yes.
24 Yeah.

25 I mean, we are here now and -- and if we were

1 looking at this opportunity today, we would probably look
2 at it and say, no, this is too much risk.

3 In May 2003, when we first looked at the
4 property, we got all kinds of competing information or
5 conflicting information. One of the realtors told us that
6 as long as we didn't offer breakfast, we could open up and
7 we didn't need any permits.

8 And so with all this conflicting information,
9 that's what caused us to go in and meet with Mike Foley.
10 And we sat down and had very extensive meetings with him
11 and explained to him what we were going to do -- or what
12 we wanted to do and what -- how we would best proceed.
13 And at that time it didn't seem like the risk.

14 I mean, obviously, looking back now, in this
15 political climate, we wouldn't do the same thing. But in
16 May 2003, it seemed like a reasonable thing to do.

17 VICE-CHAIRMAN GUARD: So all of your -- on the
18 farm plan, it all shows proposed. All that is in place
19 now?

20 MR. WISTHOFF: The top half of the lot is in
21 place and producing.

22 VICE-CHAIRMAN GUARD: So over 50 percent of the
23 property is actually --

24 MR. WISTHOFF: Well, right now --

25 VICE-CHAIRMAN GUARD: -- in ag right now?

1 MR. WISTHOFF: It's actually 35 percent right
2 now. It will be over 50 percent when we develop the lower
3 lot.

4 And two reasons we haven't developed that.

5 One, organic orchard -- running an organic
6 orchard has some nuances that we needed to learn,
7 especially in the windy area that we are in. We had to
8 replace trees that were wind-burned and things like that.
9 So we've gotten to that point now.

10 And then the second thing, in the last couple
11 years, we have been holding off, waiting for this to
12 develop, waiting for our permit. Because it's going to
13 cost an additional \$50,000 to \$100,000 to develop that
14 lower lot. We're going to have to bring in additional
15 topsoil, and, also, build some type of retaining wall to
16 hold the orchard in. So --

17 VICE-CHAIRMAN GUARD: So for Planning, before
18 you get the second building, aren't you supposed to have
19 your farm in place?

20 MR. WISTHOFF: Well, not when we --

21 VICE-CHAIRMAN GUARD: I am asking the Director.

22 PLANNING DIRECTOR HUNT: There was a farm plan
23 requirement implemented in early, I believe, 2003, 2004.
24 I am not sure of the exact date. A number of the
25 dwellings or lots in Launiupoko weren't subject to that

1 farm plan requirement.

2 They would be now, you're correct.

3 VICE-CHAIRMAN GUARD: Okay. So as part of this
4 application, I would think coming into compliance would be
5 a necessity that should have been relayed to the applicant
6 early on?

7 PLANNING DIRECTOR HUNT: The Planning Department
8 isn't in the habit of going back on dwellings that have
9 already been approved and saying, well, you haven't
10 implemented your farm plan so now you need to.

11 And what's the recourse? That they take away
12 their farm dwelling or we take it away? There is just no
13 real fair enforcement.

14 As we're going into the future, yeah, we
15 certainly require this farm plan process. We just don't
16 go backwards.

17 MR. WISTHOFF: And we expect that as a condition
18 to our permit, also. And we are fully prepared to
19 implement that as soon as we get through the process.

20 VICE-CHAIRMAN GUARD: Okay. Thank you.
21 Commissioner Hedani.

22 COMMISSIONER HEDANI: This is a tough one.
23 You don't look like a farmer to me.

24 MR. WISTHOFF: Well, you haven't seen me in my
25 work clothes. I was a 30-year-old business owner and now

1 -- or a 30-year business owner. And now I am a farm
2 worker in Maui, basically.

3 COMMISSIONER HEDANI: Okay. This particular
4 subdivision was subdivided on the basis of an agricultural
5 subdivision. Can you explain to me why we should allow a
6 hotel use in an agricultural subdivision?

7 MR. WISTHOFF: Well, there's a couple issues.

8 One, I've talked to a number of people who are
9 -- have -- are familiar with the history of that area.
10 And the area where our lot is at has never been farmed in
11 an agricultural manner.

12 Below our lot was farmed by Maui Pine over many
13 years. But there was a -- there's a cutoff point at our
14 -- below our lot and up that was simply too rocky to farm.

15 We had to bring in over 40 truckloads of dirt to
16 do that one-third to half-acre orchard that we did put in.
17 Because it was -- you know, you're basically walking
18 through a moonscape when you go back there. It was giant
19 boulders stacked on top of each other. And so it required
20 a significant investment to do any farming at all, or any
21 agricultural at all.

22 And that lot, there's -- there's really no
23 conceivable way that you could farm that lot in a
24 profitable manner by itself. But by bringing in the bed
25 and breakfast, we're able to do both, a little bit of

1 farming and use it to feed our guests, and then, also, do
2 a little bit of agritourism. Because the guests are able
3 to go up into the orchard, they pick their own fruit.
4 We've got native plants planted around the -- around the
5 grounds that they are able to go and take pictures with.

6 And so it really is a win-win situation for the
7 property. It's the best use of that property, I believe.

8 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

9 COMMISSIONER MARDFIN: Mr. Wisthoff, in Exhibit
10 23, and your response, in 24, there is an issue about
11 water. Now, this is from Department of Health, dated
12 2003, their initial thing. And it says they are concerned
13 about potable and non-potable water being kept separate,
14 in item one. And item two, it says each lot is limited to
15 1,250 gallons of potable water per day. This could be a
16 concern as the potable water demand for the project could
17 be very high with two residents, ten guests, a swimming
18 pool, two fishponds. And then you wrote a response.

19 MR. WISTHOFF: Right. And, yes, the response
20 was there has never been any type of water restriction on
21 any of those lots. I talked to the homeowner's
22 association and the director of the water company, and
23 they said there was sufficient water, that they didn't see
24 -- foresee any future time when there would be water
25 restrictions on those lots.

1 COMMISSIONER MARDFIN: And there's a second well
2 bored online?

3 MR. WISTHOFF: Yes.

4 COMMISSIONER MARDFIN: When was that?

5 MR. WISTHOFF: It was sometime after -- or
6 before that letter was written. I am not sure of the
7 exact date. But when I called the water -- the water
8 company, they said that the second well was already online
9 and operating, which was in the valley -- the next valley
10 over, I think.

11 COMMISSIONER MARDFIN: So did the Department of
12 Health then say, okay, that's fine?

13 MR. WISTHOFF: They never responded to my
14 response. I -- I sent that response in and never heard
15 anything else back from them.

16 COMMISSIONER MARDFIN: The second -- if I may.

17 VICE-CHAIRMAN GUARD: Okay.

18 COMMISSIONER MARDFIN: Is a follow-up with
19 water. In OHA's letter of Exhibit 26, they talk about
20 CC&Rs and B&Bs, I don't want to deal with that, but I do
21 want to deal with they were concerned about a water
22 impact, on the effect on native water rights since water
23 for this project comes from Kauaula Stream and there are
24 kuleana taro farmers along the stream. And they are
25 concerned about water to the taro farmers.

1 MR. WISTHOFF: Yeah. That is the next valley
2 over from us. And I am not -- I am not sure of the issues
3 over there. I know that there are issues over there, but
4 I've never been involved with them.

5 COMMISSIONER MARDFIN: But your water source
6 doesn't detract from their --

7 MR. WISTHOFF: I don't believe so. Launiupoko
8 Valley is the one directly above us. And that is where
9 the water tank that feeds our particular project -- our
10 lot is at.

11 And then the next one over is the -- I don't
12 know how to pronounce it -- the Kauaula Valley, is the
13 next one farther north from us.

14 COMMISSIONER MARDFIN: Does the planner happen
15 to know anything about this water issue?

16 MR. DACK: Not -- not beyond what's stated in
17 the Staff Report.

18 COMMISSIONER MARDFIN: Okay. Thank you.

19 VICE-CHAIRMAN GUARD: Commissioner Iaconetti,
20 followed by Commissioner U'u.

21 COMMISSIONER IACONETTI: I need some
22 clarification here. The purpose of the application is for
23 a six-bedroom TVR. Yet, you are talking about a bed and
24 breakfast. Which is it?

25 MR. WISTHOFF: From our viewpoint, it's a bed

1 and breakfast. But, apparently, the only way to get a
2 permit is -- because it's on ag land, is to apply for a
3 TVR permit.

4 And maybe the Planning Director, again, can
5 answer that better than I can.

6 VICE-CHAIRMAN GUARD: Director.

7 PLANNING DIRECTOR HUNT: The strict definition
8 of a B&B in Maui County's Code is the owner or lessee
9 lives in the same house, not just on the same property.
10 So this, technically, isn't even a B&B.

11 Now, there was some talk this morning that the
12 Council is considering expanding that, but that's just a
13 consideration at this time. We have to go with what the
14 Code says today.

15 And the Code says that this isn't a B&B. It's
16 -- in our Code, if it's not an operation that meets the
17 strict definition of a B&B, then it's a TVR.

18 There's some similarities to a B&B. There's the
19 manager or the son and daughter on-site. And the
20 Department gave that consideration. And I explained our
21 philosophy on that earlier.

22 So I hope that helps clarify.

23 MR. DACK: Another aspect is for a strict -- to
24 meet the strict definition of a B&B, it has to be in
25 residentially-zoned land, or like country town businesses.

1 So on ag land, even if -- even in situations --
2 in this case you do have an owner that is on-site and one
3 offsite, it's kind of split ownership. But even if all
4 owners were on-site, this could not be a B&B currently
5 because it's in ag zoning.

6 COMMISSIONER IACONETTI: So then the purpose of
7 the application stating a TVR, is what we are looking at,
8 at this point --

9 VICE-CHAIRMAN GUARD: Correct.

10 COMMISSIONER IACONETTI: They are asking for a
11 Special Use Permit because it's on ag land. And you are
12 not supposed to have TVR on ag land.

13 PLANNING DIRECTOR HUNT: There's two issues, two
14 permits that you are dealing with.

15 One is the Conditional Permit. And as Mr. Dack
16 stated, because B&Bs are not allowed in the ag zone, you
17 need a Conditional Permit.

18 In addition to that, we -- the ag zone requires
19 a Special Use Permit for these types of uses for the
20 agricultural use. So you have to -- the Special Use
21 Permit is intended to protect the agricultural zone, the
22 interest of the ag land. The Conditional Permit is
23 intended to address the concerns with short-term rentals,
24 housing, neighborhood impacts, et cetera.

25 COMMISSIONER IACONETTI: But, again, you used

1 the term B&B and not TVR.

2 PLANNING DIRECTOR HUNT: I did?

3 COMMISSIONER IACONETTI: Yes.

4 PLANNING DIRECTOR HUNT: Well, I apologize if I
5 did.

6 It's common in a lot of jurisdictions just to
7 label a lot of these different uses as TVRs.

8 I tried to earlier explain, in our Code,
9 technically, this would not be a B&B.

10 COMMISSIONER IACONETTI: So it's a TVR?

11 PLANNING DIRECTOR HUNT: TVR, yes.

12 COMMISSIONER IACONETTI: And we're asking for a
13 Special Use Permit because it's on ag land?

14 PLANNING DIRECTOR HUNT: That's correct.

15 VICE-CHAIRMAN GUARD: Commissioner U'u.

16 COMMISSIONER U'U: Question. A lady testified
17 prior, I believe her name was Pam English --

18 MR. WISTHOFF: Correct.

19 COMMISSIONER U'U: -- that lives a few houses
20 down. She said the private water system is hooked up in
21 size for ag and residential, and not a small hotel. She
22 also stated it's a private roadway system. And if I not
23 mistaken, I could be wrong, she said they was going to
24 bring it up at a meeting.

25 VICE-CHAIRMAN GUARD: Homeowner's.

1 COMMISSIONER U'U: Homeowner's meeting --

2 MR. WISTHOFF: Yeah.

3 COMMISSIONER U'U: -- in the near future.

4 MR. WISTHOFF: I don't know about that. I wish
5 that she would have contacted us.

6 When we sent out the notice to all the
7 neighbors, we put in our -- we put in our email addresses
8 and our phone contact numbers. And we had several
9 neighbors call us with questions, and we resolved them.
10 And I think we could have resolved almost all her issues
11 if she had contacted us ahead of time.

12 But we have talked with the water company. And
13 there is no issue with water.

14 And I don't believe that we use significantly
15 more water than the house would use if it wasn't a B&B.
16 If it was just a large family living in the six bedrooms,
17 I don't believe --

18 COMMISSIONER U'U: How much bathrooms?

19 MR. WISTHOFF: Pardon?

20 COMMISSIONER U'U: How much restrooms you have?

21 MR. WISTHOFF: We have six baths, also.

22 VICE-CHAIRMAN GUARD: Commissioner Mardfin,
23 followed by Commissioner Iaconetti.

24 COMMISSIONER MARDFIN: I forgot what I was going
25 to ask. Sorry.

1 VICE-CHAIRMAN GUARD: Commissioner Iaconetti.

2 COMMISSIONER IACONETTI: I would appreciate it
3 if we would stop talking about a B&B, because it's not a
4 B&B. You just said it again.

5 MR. WISTHOFF: Well --

6 COMMISSIONER IACONETTI: It's a TVR.

7 MR. WISTHOFF: -- the name of our -- the name of
8 our operation is Hoolio House, a Maui -- a luxury Maui bed
9 and breakfast. And, you know, regardless of what you call
10 it for the permit process, I mean, it has a name.

11 COMMISSIONER IACONETTI: Well, it might have a
12 name --

13 COMMISSIONER U'U: It's illegal.

14 COMMISSIONER IACONETTI: -- but that is not what
15 it is.

16 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

17 COMMISSIONER HIRANAGA: Are all your structures
18 permitted and up to Code, County Code?

19 MR. WISTHOFF: Yes, they are.

20 COMMISSIONER HIRANAGA: Thank you.

21 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

22 COMMISSIONER MARDFIN: I remembered what I
23 wanted to ask. And I think it's to the Director.

24 Are TVRs explicitly prohibited on
25 agriculturally-zoned land?

1 PLANNING DIRECTOR HUNT: They are not explicitly
2 prohibited on agricultural land. They are prohibited
3 outside of Hotel districts, which would include
4 agricultural land, as well as all the other districts.

5 COMMISSIONER MARDFIN: Thank you.

6 VICE-CHAIRMAN GUARD: Yeah. I have a question
7 on the difference between this one and the last one, and
8 Maalaea, which was the same thing, they were going to have
9 an on-site caretaker and a vacation rental in one other
10 unit. But that one, the recommendation was all-out denial
11 and risk of jail time for approving it, from whether the
12 Director or Staff. So that confuses me.

13 And that is for the Director.

14 PLANNING DIRECTOR HUNT: The application you are
15 referring to in Maalaea did not include an on-site
16 manager. There was some talk about amending the
17 application to include that at the podium, but the
18 application itself was a pure TVR.

19 That was also in the Apartment District.

20 In this case it's more similar to the Star
21 Lookout, which we -- this body reviewed several months ago
22 in Kula, which had an on-site manager. And this body
23 found that that was -- that it was okay. You recommended
24 approval on that one.

25 And you are not forced to follow that, if you

1 believe that was a mistake or not. But given that
2 direction, and given the Department philosophy that these
3 are gray areas -- these are the ones that we really
4 struggle with as a department, to be honest with you. The
5 pure B&Bs we can support. The pure TVRs seem to us they
6 are prohibited. It's the gray ones that maybe are
7 fence-sitters.

8 If there's a lot of opposition, if there's
9 concerns, if there is illegal permits, if there is
10 problems with it, then we would say, well, that tells it
11 to the denial. If there's no problems with it and it
12 seems to be going along okay, there's some public benefits
13 perhaps.

14 In the Kula situation, there was a
15 recommendation from the Kula Association.

16 So these are these gray areas. These hybrids
17 are the ones that we really struggle with as a department.
18 And we just have to take them as a case-by-case basis at
19 this point.

20 If the Planning Commission starts to go down
21 another road, let us know. And we can -- we can follow
22 that direction.

23 VICE-CHAIRMAN GUARD: So no risk of jail time?

24 PLANNING DIRECTOR HUNT: That certainly wasn't a
25 Department threat.

1 VICE-CHAIRMAN GUARD: Okay.

2 MR. WISTHOFF: If I could --

3 VICE-CHAIRMAN GUARD: We can look at the
4 minutes.

5 MR. WISTHOFF: If I could address that, too.

6 VICE-CHAIRMAN GUARD: Well, this is from a
7 previous meeting.

8 Commissioner Hiranaga.

9 COMMISSIONER HIRANAGA: Question for Staff.
10 Are there any other permitted TVRs in the
11 500-foot radius?

12 MR. DACK: No, there are not.

13 COMMISSIONER HIRANAGA: And just to confirm the
14 Director's statement, granting a TVR permit in an Ag
15 District is not prohibited by state statute?

16 PLANNING DIRECTOR HUNT: That is our
17 interpretation.

18 We have also had some communications from the
19 Land Use Commission and the State Office of Planning which
20 supports that.

21 There is a request from the Maui Farm Bureau to
22 the State Attorney General's Office to make a official
23 determination on that. We haven't had any response from
24 the AG yet.

25 VICE-CHAIRMAN GUARD: Commissioner Hedani.

1 COMMISSIONER HEDANI: Jim, how many lots are in
2 the subdivision that you are in?

3 MR. WISTHOFF: I couldn't tell you. It's 100,
4 maybe.

5 COMMISSIONER HEDANI: 100?

6 MR. WISTHOFF: Yeah. It's a significant size.

7 COMMISSIONER HEDANI: Would you consider your
8 property typical of the lots that are in the subdivision?

9 MR. WISTHOFF: You mean in the size and the
10 nature of the lot or --

11 COMMISSIONER HEDANI: The size, the nature of
12 the lot, the soils, the topography.

13 MR. WISTHOFF: Similar to most of them, yes.
14 Many of them.

15 COMMISSIONER HEDANI: Do you know of any active
16 farms that are truly agricultural in nature that are
17 successful in the subdivision?

18 MR. WISTHOFF: No. I know of a couple people
19 that are doing a little bit of ag on the side. There's a
20 woman across the street from us that raises chickens. And
21 we buy -- in fact, we buy fresh eggs for our breakfast
22 from her, for hard-boiled eggs. So we buy from her.

23 But other than that, there -- when we moved in
24 there, there was virtually no ag going on in that
25 subdivision at all. And we really felt like we wanted to

1 be the exception and really make an effort of ag in that
2 area.

3 COMMISSIONER HEDANI: What would you value the
4 products that you produce of an agricultural nature?

5 MR. WISTHOFF: Probably in the \$1,000 to \$2,000
6 a month right now.

7 COMMISSIONER HEDANI: \$1,000 or \$2,000 per
8 month?

9 MR. WISTHOFF: Yeah. \$1,000 or 2,000 per month.

10 COMMISSIONER HEDANI: But that's not sold,
11 that's consumed?

12 MR. WISTHOFF: That's all consumed, right. And,
13 we -- you know, we bring pans of bananas to our Sunday
14 golf group and things like that right now.

15 We do have plans to contact one of the health
16 food stores and have them sell our excess produce when it
17 gets to that point where we have enough to make that
18 viable.

19 But right now, we're running an organic orchard
20 and we feel like there's a market for that if we get our
21 production up.

22 COMMISSIONER HEDANI: One last question.

23 The Council is kind of wrestling with the
24 problem of bed and breakfast on agricultural land.

25 MR. WISTHOFF: Yes.

1 COMMISSIONER HEDANI: TVR on agricultural land
2 goes kind of -- in my book, it goes one step further than
3 that, because it's one step further removed from on-site
4 management.

5 Is there something different about this
6 particular lot that would not set a precedent for the
7 other 100 lots in the subdivision to go TVR?

8 MR. WISTHOFF: Well, and that -- I think that's
9 -- you know, this whole issue is very confusing to me as
10 well as everyone else. And that's one of the reasons I
11 keep calling this a B&B. Because I've -- we've made an
12 effort to try to stay away from the entire TVR issue
13 because we do feel like there's some legitimate concerns
14 there.

15 But the thing that sets us apart is, one, our
16 on-site -- our daughter and son-in-law live on-site. When
17 we built -- we bought the main house already constructed
18 and we built the ohana. And we built the ohana with this
19 intention in mind. And it's -- from front door to front
20 door, it's about 75 steps. The phone system, the security
21 system are all tied into the ohana. So if guests have a
22 problem, they pick up the phone, dial zero, and it rings
23 in the ohana.

24 If there is a fire or security issue, the alarm
25 goes off in the ohana.

1 Our daughter and son-in-law and myself, we're
2 there probably 70 percent of the time, all the time. They
3 do breakfast in the morning and stay for two hours. We
4 have a housekeeper that comes in and works for five to six
5 hours in the middle of the day. My son-in-law and I do
6 all the farming and all the maintenance work around the
7 house. We are there every evening to turn the lights on
8 at dusk, and late at night we come in and turn them off.
9 So we are not -- it's not a situation where you're going
10 to have unsupervised parties or loud noise or disturbance
11 to the neighbors.

12 We've gone out of our way to be good neighbors.
13 You'll find that our three closest neighbors are
14 three of our letters of support. The three people --
15 three people -- one person above us and one on either side
16 of us. They are all very supportive of our efforts. And
17 we have been very good neighbors so far.

18 VICE-CHAIRMAN GUARD: I have a question on the
19 age of these photos. For having an orchard that is
20 actually producing \$1,000 to \$2,000 a month --

21 MR. WISTHOFF: Yeah. Those were --

22 VICE-CHAIRMAN GUARD: -- it looks fairly barren.

23 MR. WISTHOFF: Those were the original pictures
24 with the application.

25 VICE-CHAIRMAN GUARD: Okay. And can that be

1 verified by Staff?

2 MR. DACK: Staff has done a site visit. Yes,
3 they are producing. Those photographs are five years old
4 from the time of the original application.

5 MR. WISTHOFF: Yeah. These are more current
6 photographs of the orchard and --

7 VICE-CHAIRMAN GUARD: Thank you.

8 MR. WISTHOFF: -- the wall that --

9 VICE-CHAIRMAN GUARD: Thank you.

10 Commissioner U'u, followed by Commissioner
11 Mardfin.

12 COMMISSIONER U'U: In regards of Parks
13 Department, they are not in support of your application?

14 MR. WISTHOFF: I'm sorry. The Parks Department?

15 COMMISSIONER U'U: Yes.

16 MR. WISTHOFF: Yes.

17 COMMISSIONER U'U: You got any comments to the
18 Parks Department?

19 MR. WISTHOFF: Well, I responded to the Parks
20 Department when they sent that letter in 2003. They were
21 concerned that using property for bed and breakfast or
22 TVRs increased the use, the demand on the park system.

23 It's been our experience that our guests very
24 rarely use the park at the bottom of our hill, which is
25 Launiupoko Park. For the most part, our guests come in

1 for three to four-night stays, and they typically have
2 activities planned, and they head out, they go off and do
3 their snorkeling or other activities on the island. But I
4 -- I can't believe there is any more use on the park below
5 us than if a family of 12 lived in this six-bedroom house.
6 In fact, that would probably be more of a strain on the
7 parks because they would probably be down there on a daily
8 basis.

9 COMMISSIONER U'U: There's hardly any family of
10 12, I will be honest. Let's be real. Right?

11 MR. WISTHOFF: Well, I mean, I don't know what
12 else -- this property was already built --

13 COMMISSIONER U'U: (Inaudible.)

14 MR. WISTHOFF: Yeah, this property was already
15 built with six bedrooms when we bought it. I don't know
16 what else you would use it for, but --

17 COMMISSIONER U'U: Also, the Land Use
18 Commission, it says, "We further understand that the
19 applicants intend to live in one bedroom and offer the
20 remaining bedrooms with attached bathrooms as short-term
21 vacation rentals. No additional structures are proposed
22 on the subject parcel."

23 So reading that, when they got the application,
24 I guess, from you, there was just the main house?

25 MR. WISTHOFF: No. I think the -- well, the

1 ohana was built right after we bought the property. But
2 at that time we were living in the -- in one bedroom of
3 the six-bedroom house, my wife and I. And we have since
4 moved out.

5 COMMISSIONER U'U: But reading this, from the
6 Land Use, they are assuming that you are living in the
7 house and not in the cottage.

8 MR. WISTHOFF: Right. And at that time we were.
9 That was 2003, when --

10 COMMISSIONER U'U: So it's changed since then?

11 MR. WISTHOFF: -- that letter went out. Yeah.

12 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

13 COMMISSIONER MARDFIN: I notice he had the three
14 letters of support. Do any of them -- whenever there are
15 letters of support, I am always curious whether there's a
16 vested interest. Are they operating TVRs or B&Bs?

17 MR. WISTHOFF: No.

18 COMMISSIONER MARDFIN: So they have no incentive
19 to have approval for use?

20 MR. WISTHOFF: No. No. They are just -- you
21 know, they are just neighbors. I am not aware of
22 anything.

23 COMMISSIONER MARDFIN: Okay. Thank you.

24 VICE-CHAIRMAN GUARD: Commissioner U'u.

25 COMMISSIONER U'U: You bought another lot. Is

1 it within the 500-foot area --

2 MR. WISTHOFF: I'm sorry.

3 COMMISSIONER U'U: -- of this house? You live
4 up the street?

5 MR. WISTHOFF: It's just outside the 500-foot
6 area.

7 COMMISSIONER U'U: Do you plan on making that a
8 TVR eventually?

9 MR. WISTHOFF: No. We bought it, it's just an
10 ohana, just for my wife and I.

11 VICE-CHAIRMAN GUARD: Commissioner Iaconetti.

12 COMMISSIONER IACONETTI: Jim -- I guess I got
13 your name --

14 MR. WISTHOFF: Jay.

15 COMMISSIONER IACONETTI: Jay. I'm sorry. When
16 you originally purchased this property, did you do so
17 because it was ag land and you expected to use it as ag
18 land?

19 MR. WISTHOFF: Well, we purchased the property,
20 the house was already built. When we went into the open
21 house -- and in 2003, people really weren't talking much
22 about ag land, I've got to tell you. We went in and
23 looked at this house, we loved it. And we thought what
24 can we do so that our daughter and son-in-law can move
25 here and we can all be a family and make a living while

1 we're -- while we're living in Maui.

2 So we walked into this property, we loved it,
3 saw what can we do. That's when we went to the Planning
4 Department, we found out about the ag restrictions. And
5 we said, okay, we will do agricultural on the land, you
6 know, that sounds like something that we want to do.

7 So --

8 COMMISSIONER IACONETTI: May I ask?

9 VICE-CHAIRMAN GUARD: Yes.

10 COMMISSIONER IACONETTI: Could you remain on the
11 land and not have a TVR?

12 MR. WISTHOFF: No. It's -- the mortgage is
13 \$11,000 a month.

14 COMMISSIONER IACONETTI: It's necessary in order
15 for you to continue to residing on that property?

16 MR. WISTHOFF: Absolutely. Yeah, we would have
17 to sell the property.

18 COMMISSIONER IACONETTI: And when you purchased
19 it, you had TVR in mind?

20 MR. WISTHOFF: Yes. Yeah, absolutely.

21 COMMISSIONER IACONETTI: Even though it was
22 zoned agricultural?

23 MR. WISTHOFF: Yeah. And as I said, you know, a
24 lot of things have changed since then. But that -- back
25 then, we went in and we met with Mike Foley. And I felt

1 like we did everything we could to head in the right
2 direction.

3 And when we first met with Mike Foley, in March
4 of '03, we filed our application in May of '03, we didn't
5 purchase the property until August, and we didn't start
6 actually operating until November. And we fully believed
7 that, by then, we would be better than halfway on our way
8 to a permit. We thought we would be, you know, right
9 around the corner from a permit.

10 And that was the information we got from the
11 Planning Department. And, you know, here we are five
12 years later and we are not much farther along than we were
13 in November of 2003.

14 But we really did do this with good intentions.
15 We were very up front with the Planning Department about
16 what our plans were. And we really did believe that --
17 when we first started this process, in May, that we would
18 have a permit shortly after we eventually opened up in
19 November.

20 VICE-CHAIRMAN GUARD: Any other questions?
21 Commissioner Hiranaga.

22 COMMISSIONER HIRANAGA: It's not really a
23 question. It's sort of a statement. I am not sure if I
24 am supposed to wait until after public hearing.

25 VICE-CHAIRMAN GUARD: Ready for public hearing?

1 Any other questions, or would we like to open it
2 up?

3 Okay, Commissioner Hedani.

4 COMMISSIONER HEDANI: Mr. Wisthoff, what was the
5 purchase price of the property?

6 MR. WISTHOFF: \$1.9 million.

7 VICE-CHAIRMAN GUARD: Okay. Anything else or
8 can I open it up for public testimony at this time?

9 MR. DACK: Staff would like to have the
10 opportunity to complete our analysis before public
11 hearing, unless you want to do public hearing first.

12 VICE-CHAIRMAN GUARD: Okay.

13 MR. DACK: Either way.

14 VICE-CHAIRMAN GUARD: Do your analysis.

15 MR. DACK: Yeah, thank you.

16 This transition back and forth is a little
17 confusing. Sorry about that.

18 For the Staff's analysis, the project is in
19 conformance with the goals, objectives and policies of the
20 Hawaii State Plan. It is considered an unusual and
21 reasonable use for reasons -- Gremlins.

22 Okay.

23 As I indicated, the project is in conformance
24 with goals and objectives of the Hawaii State Plan.
25 It's considered to be an unusual reasonable use for

1 various reasons that are listed in the Staff Report,
2 beginning on page seven.

3 The soil type and the small two-acre lot size
4 of the property make the property marginally suitable
5 for agricultural purposes. The applicants made
6 agriculture an integral part of their operation in
7 recent years with approval of a farm plan, as was being
8 discussed, establishing approximately 50 percent of
9 their property use for fruit trees, tropical plants and
10 flowers.

11 Letters of support have been submitted as has
12 been indicated. Obviously, one has -- and until we
13 became aware of the one testifier to our opposition and
14 letter today, we've had -- were not aware of any issues
15 or conflicts with anyone in the neighborhood since the
16 house has been in operation as a temporary transient
17 vacation rental.

18 At this point I need to also add some
19 reference to Section 205-6(c) of the Hawaii Revised
20 Statutes relative to criteria for issuing a State Land
21 Use Commission Special Use Permit. Although not
22 explicitly listed in the Staff Report, pursuant to that
23 section, the Commission must find that the use would
24 promote the objectives and effectiveness of Chapter 205,
25 HRS.

1 The Department wishes to supplement the
2 written Staff Report with its findings supported by a
3 brief analysis as follows:

4 HRS 205 seeks to provide strict protections
5 for intensive agricultural use on land with an overall
6 master productivity rating of Class A or B.

7 The subject site has a low E rating, whereas
8 HRS 205 does not have an objective -- does not have an
9 objective of intensive agricultural use.

10 The partial use of this small site for the
11 proposed use as opposed to such use on a site with Class
12 A or B rating -- productivity rating promotes the
13 effectiveness and objectives of the chapter.

14 The action is in keeping with the Community
15 Plan and General Plan objectives and policies as listed
16 in the Staff Report.

17 I guess I should go on. I'm sorry.

18 The Maui County Zoning Ordinance of the -- or
19 the zoning designation for the property is Agricultural
20 District as codified in Chapter 19.30(a). TVR uses are
21 not listed as permitted and the -- further Section
22 19.38.60 doesn't list TVRs as special uses.

23 TVRs are not a permitted or special use per
24 Chapter 19.30(a), Agricultural District, however Chapter
25 19.40 does allow for possible TVR approvals if the use

1 can be found to be similar, related or compatible to
2 those permitted uses in the zone.

3 The proposed use is similar to a, pardon the
4 term, bed and breakfast in that there is an on-site
5 manager, there are no more than six rooms to rent and
6 breakfast is provided.

7 The applicant states various reasons
8 justifying the granting of the Conditional Permit as
9 listed in the Staff Report.

10 According to the Land Study Bureau's detailed
11 land classification, the property has an overall
12 productivity rating of E, as was mentioned, with
13 well-drained, non-stony soil located within a dry
14 climate that is not suitable for agricultural production
15 but is usable for grazing. On a 2.0-acre lot surrounded
16 by similarly-sized lots all with -- all with farm
17 dwellings, grazing does not seem to be a viable or
18 compatible use of the land.

19 The applicant has made a major investment to
20 bring in soil and irrigation in order to make the
21 property agriculturally viable. And the fruits they are
22 growing on-site are being used for guests' breakfast.

23 The U.S. Department of Agriculture Natural
24 Resources Conservation Service submitted a letter
25 stating that they had no comment on the subject

1 application.

2 No infrastructure improvements are proposed or
3 required.

4 The proposed project will generate two
5 full-time jobs in the form of a couple, the applicant's
6 daughter and son-in-law, as part owners, that manage and
7 maintain the Hoolio House and provide (inaudible) for
8 the residents, as indicated by testimony. Mr. and Mrs.
9 Wisthoff are also very active on the property, living
10 nearby.

11 It provides also various other employment for
12 cleaning -- those cleaning and maintaining the property.
13 The rental operation purchases supplies and services
14 from local area businesses in support of the rental
15 operation.

16 Additionally, the proposal will help support
17 Maui's economy by providing for alternate tourist
18 accommodations which some tourists desire.

19 The guests will patronize local businesses and
20 cultural events, thus contributing to Maui's overall
21 economy. Guest expenditures will further benefit Maui's
22 economy through secondary economic impacts as subsequent
23 spending.

24 On the other hand, the use of the primary farm
25 dwelling as a six-bedroom short-term rental removes a

1 long-term rental opportunity for Maui residents. The
2 primary farm dwelling could, alternatively, be used as a
3 long-term rental that would provide income for the
4 applicants, although not as much.

5 Housing is one of the most critical issues
6 facing Maui, with residents paying some of the highest
7 proportions of their income in the nation for housing
8 costs.

9 Many residents are leaving the county due to
10 the high cost of the housing, and many children who go
11 to the mainland for college do not return due to the
12 high cost of housing.

13 While the proposal will benefit the
14 applicants, it is an expense -- it is at the expense of
15 others looking for long-term rentals.

16 It is a delicate situation to rent out
17 potentially affordable long-term units to tourists in
18 the name of providing affordable housing to the on-site
19 managers.

20 In summary, the proposal is subject to
21 competing goals, providing for long-term housing versus
22 providing for economic benefits. The Planning
23 Department believes that given the on-site manager part
24 ownership, which is essentially resident housing, and
25 other factors, considering that the gray situation that

1 the Director spoke of, the proposal can be supported.

2 As of August 8th, the Department had received
3 four letters in support of the project, and no letters
4 in opposition. The fifth letter of support was received
5 on August 22nd, and was passed out to the Commissioners
6 this morning. And, of course, now you have further
7 testimony this morning.

8 That completes the Staff Report.

9 Any questions before you move on to public
10 hearing?

11 VICE-CHAIRMAN GUARD: Mr. Hiranaga.

12 COMMISSIONER HIRANAGA: Just clarification. You
13 said that land class is E?

14 MR. DACK: That's correct. For the -- yeah,
15 unsuitability.

16 COMMISSIONER HIRANAGA: For the 500-foot radius,
17 what percentage of the letters received were in
18 opposition, number of lots within the 500-foot radius? I
19 know it's an ag subdivision, so there's probably not a
20 whole -- there's only a few lots in that 500-foot radius.

21 MR. DACK: Yes. Thank you.

22 34 is the indication from Joe Prutch. Exhibit
23 34. Okay. Pardon me.

24 VICE-CHAIRMAN GUARD: They are all in support,
25 right, in the 500?

1 MR. DACK: All the -- all the letters that were
2 received prior to the ones submitted today were in support
3 of it. I can't tell you the total number of lots that are
4 within 500 feet immediately. My guess is -- my memory is
5 that's around 20 lots or so. So you would have one out of
6 20, thereabouts, being in opposition; the rest being in
7 favor, being favorable.

8 VICE-CHAIRMAN GUARD: Commissioner Hedani.

9 COMMISSIONER HEDANI: Jeff, if we were to
10 approve this particular application, would it set a
11 precedent for the other 100 lots in the subdivision to
12 replicate their success?

13 MR. DACK: I don't believe that it would.

14 As the Director indicated, all of the TVR
15 applications that are coming before the Department and the
16 Commission are being considered by the Department on a
17 case-by-case basis. So if you had a -- I would expect if
18 you had a similar set of factors anywhere on the island,
19 it would probably receive a similar kind of consideration.
20 So I don't think there's a geographic precedent that would
21 be set by any action by the Commission.

22 COMMISSIONER HEDANI: Let me ask the question in
23 a different way.

24 If the neighbors on either side of this
25 particular application decided that they wanted to

1 generate a half million dollars a year from TVR income to
2 their benefit, would there be anything that the Department
3 could do to stop them at that point?

4 MR. DACK: Well, it's -- the Department in this
5 case makes recommendations to the Planning Commission that
6 takes actions and makes further recommendations on to
7 Council.

8 And even if -- if we had a practically identical
9 project proposed nearby or next door, there would be one
10 additional factor that we would have to consider for that
11 one, in that one of our -- one of our concerns is we have
12 -- when we have more than one of these within a
13 500-square-foot -- 500 radius, so that would be a second
14 one in a small area. And that would -- that would be an
15 unfavorable factor. It would be more difficult to approve
16 another one or to recommend another one.

17 COMMISSIONER HEDANI: So the guys that get in
18 there first would get approval?

19 MR. DACK: They would be -- they would be --
20 more likely receive more favorable consideration because
21 they would be -- there would not be a cumulative impact
22 being -- resulting from just one. But, yes, if you had
23 more than one, you'll have more impacts and that would
24 become more likely to be a problem in the neighborhood.

25 COMMISSIONER HEDANI: Last question.

1 VICE-CHAIRMAN GUARD: Okay.

2 COMMISSIONER HEDANI: How many would be the
3 maximum number of hotels that you could have in the
4 subdivision on that basis?

5 MR. DACK: I don't know. Because I don't
6 remember -- I -- I would have to probably get a compass
7 out and figure out how many 500-foot radii you could put
8 in the subdivision. I don't know exactly how many lots
9 are in the subdivision. But, you know, if my memory
10 here -- rough memory is correct, we have about 20 lots
11 within this 500-foot radius, talking very general. I
12 heard there was approximately 200 -- 200 lots. Then,
13 conceivably, doing the very rough math, you could maybe
14 get ten or so in that area, that would all be at least --
15 at least five -- be able to be not within 500 feet of each
16 other. But that's -- that's just -- that's just a very
17 quick way of thinking about it.

18 I am sure we would have to get more
19 consideration because not only -- that's just -- that's
20 just looking at separation. But you would -- we would
21 begin to be more and more concerned about factors such as
22 additional traffic and demands on infrastructure and
23 services, the more that you would add into the
24 neighborhood.

25 It's kind of a theoretical question.

1 VICE-CHAIRMAN GUARD: Commissioner Iaconetti,
2 followed by Commissioner Mardfin.

3 COMMISSIONER IACONETTI: Prior to this area
4 being subdivided into multiple lots, how was it used and
5 by whom?

6 MR. DACK: I don't have the historical knowledge
7 to be able to answer that question.

8 COMMISSIONER IACONETTI: Didn't Pioneer Mill own
9 a lot of that land?

10 MR. DACK: I don't know.

11 COMMISSIONER HIRANAGA: I can answer.

12 VICE-CHAIRMAN GUARD: If you can answer it, then
13 Commissioner Mardfin can ask his question.

14 COMMISSIONER IACONETTI: I have a follow-up.

15 COMMISSIONER HIRANAGA: The lower portion was
16 used for sugarcane cultivation. It was owned by Pioneer
17 Mill, parent company Amfac.

18 The reason that parcel existed was, in the
19 1960s, Amfac subdivided that 400-plus acres in a proposed
20 golf course. But because there was no residential housing
21 proposed, they killed the project and never built the golf
22 course. That is why you have that 400-plus acre parcel in
23 the middle of this large 90 acres.

24 And they created that road that goes to
25 Launiupoko. So all of that was created, I think, in the

1 sixties or seventies.

2 COMMISSIONER IACONETTI: By Maui --

3 COMMISSIONER HIRANAGA: Amfac.

4 COMMISSIONER IACONETTI: By Amfac. But it was
5 ag at that time and they did have a product coming from
6 there?

7 COMMISSIONER HIRANAGA: A portion of it was in
8 ag, not the entire subdivision. Because as was stated,
9 the upper portion, I guess they felt, was not suitable for
10 sugarcane cultivation. So it wasn't the whole project.

11 MR. DACK: I would like to add to that.

12 Staff did have an opportunity to look at aerial
13 photographs from the time of the preparation of the Land
14 Study Bureau analysis, I think, in the 1960s, or
15 thereabouts. And it shows -- it doesn't show any
16 sugarcane occurring within the area of this subdivision.
17 It looks like it's brushland to a very large degree from
18 those approximately 40-year-old aerial photos.

19 Does that fit your memory?

20 Joe Prutch, yes.

21 MR. PRUTCH: Yes, that is what I remember from
22 the Land Study Bureau books. There was a line below where
23 it looked like the cane was growing. And then everything
24 above that line, which included the subdivision here,
25 looked fallow or looked brush, from what we can tell from

1 the aerial. But I think it's like 1964.

2 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

3 COMMISSIONER MARDFIN: I want to follow up a
4 little bit on what Commissioner Hedani suggested. The
5 suggestion was the first person with their foot in the
6 door gets the benefit, not open to other people.

7 Do you know in that area -- I think that was
8 me -- do you know in that area if there are any other of
9 the lots where they are doing similar sorts of -- similar
10 TVR/B&B or anything else?

11 MR. DACK: I am aware of two other applications
12 in that overall subdivision. There may be more, but I am
13 aware of two others. More in the southeastern portion of
14 the subdivision -- overall subdivision.

15 COMMISSIONER MARDFIN: Thank you.

16 VICE-CHAIRMAN GUARD: Any other questions?

17 Can we open it up for public testimony?

18 So for the future, some photos would probably
19 help out.

20 MR. DACK: We agree. Apologize for that.

21 VICE-CHAIRMAN GUARD: Any members of the public
22 wish to testify on this agenda item at this time?

23 State your name for the record.

24 MR. CROLEY: My name is Tom Croley, I am
25 testifying on my own behalf.

1 I was just listening to the testimony. I am
2 primarily here just to learn more about the process, but I
3 thought I had something that I could add to the
4 discussion. And that is that there have been three
5 transient vacation rentals approved on -- in ag lands that
6 would be similar to this particular situation, that have
7 been granted their Conditional Permits.

8 Also, the Department Staff Report made reference
9 to this use potentially taking away from the opportunity
10 for affordable housing. And I asked the Commission to
11 consider whether a property that sold five years ago for
12 \$1.9 million, a six-bedroom luxury home, would ever in any
13 way be affordable housing or whether there was ever any
14 potential for that to be affordable housing.

15 Thank you for your consideration.

16 VICE-CHAIRMAN GUARD: Any questions for the
17 testifier?

18 Seeing none, thank you.

19 Any other members of the public wish to testify?

20 He signed up earlier.

21 MR. HULTQUIST: Yes, I did sign up.

22 Kenny Hultquist. I live in Lahaina.

23 Well, I can't believe -- I don't believe there's
24 any issues that have all the components that this one has
25 in front of you guys.

1 Ag land. Actually, they used to grow sweet
2 potatoes on this land.

3 I went on a Sierra Club hike about 10 or 12
4 years. And there was a Hawaiian leader and Sierra Club
5 members, and took us all the way up to the top of the
6 valley. That supposedly was sacred sweet potato land that
7 they used to -- after they harvested the sweet potatoes,
8 they would rub the soft spot on the baby's head to keep
9 the spirit from escaping. That's what I was told.

10 Anyway, there was no water up there.

11 When you go way up in the top, there's a lake up
12 there and there's a stream with the little shrimps in it.

13 But it being ag land, and you got a B&B that
14 can't even be called a B&B, it's got to be called a TVR
15 because it's on ag land. And my opinion was that none of
16 these houses should have ever been built up there, anyway,
17 but the land was bought really cheap, when the sugarcane
18 mill closed down. And they started -- houses started
19 sprouting up there like mushrooms in a cellar. And they
20 still are to this day.

21 I don't know how many times I have had to stop
22 at the Launiupoko light. I am not real fond of that.

23 But, also, on the other hand, we have a really
24 nice clean-cut family over here with a baby and a
25 grandfather, and they are taking care of the property.

1 And as far as I know, there's the egg farm across the
2 street from these guys and there's somebody growing gourds
3 up there.

4 And I would say if there is 100 lots up there --
5 I think there's more than 100 homes up there, by the way.
6 I think there's more like 150, maybe 200, I don't know.
7 But maybe a dozen or so are doing anything ag up there.
8 These guys are probably doing the most ag out of anybody
9 up there.

10 And I remember a couple of months ago we were --
11 there was some other permitting thing we were talking
12 about up -- and you guys were discussing up there. And
13 Mr. Hedani said the only thing I can think that they are
14 growing up there is Escalades. I thought that was a
15 pretty -- sarcasm is a great tool. And I thought that was
16 pretty well said.

17 I think this one kind of cries out for
18 deferment. I don't see how -- it will set a precedent,
19 regardless of -- I heard that word thrown out a whole
20 bunch of times. It really will set a precedent.

21 There is hardly anybody doing any farming.

22 I think maybe one thing you might consider is
23 that if anybody is going to get a B&B or TVR, or whatever
24 it's going to end up being called, that they should have
25 to show that they are actually growing, has a farm or a

1 ranch or whatever happening there, and they are actually
2 making an income. And then maybe that would qualify them
3 to have a TVR.

4 Otherwise, it's going to be TVRs and B&Bs all
5 over the place up there. That's my opinion. I could be
6 wrong, but, anyways, that's --

7 VICE-CHAIRMAN GUARD: Thank you.

8 Commissioner Hiranaga.

9 COMMISSIONER HIRANAGA: I have a question.

10 You stated that sweet potato used to grow in the
11 valley or on that property?

12 MR. HULTQUIST: I think it was partly on the
13 property and maybe above.

14 COMMISSIONER HIRANAGA: I know there's a
15 reservoir up there.

16 MR. HULTQUIST: Yeah, there's a reservoir up
17 there. And there was a birthing heiau that they took us
18 to. It was really a --

19 COMMISSIONER HIRANAGA: So is the potatoes above
20 the reservoir? You're calling the reservoir a lake? Or
21 is there a real actual --

22 MR. HULTQUIST: Reservoir. Okay. It's not a
23 lake. It is a reservoir, yeah. There is some sort of
24 retaining wall, if I remember correctly. We were only
25 there for like a couple hours.

1 But directly south of that reservoir, and the
2 little stream that runs through there, was where we were
3 told that the sacred sweet potato field was.

4 COMMISSIONER HIRANAGA: Okay. Because none of
5 these lots are above the reservoir.

6 MR. HULTQUIST: No. I am aware of that. Yeah.
7 I -- I am not -- I don't know how big that sweet
8 potato area was. And I am sure there's a Hawaiian name
9 for those. And -- but, anyway, that's what we were told.
10 Whether that's true or not, I couldn't verify.

11 COMMISSIONER HIRANAGA: Okay. Thank you.

12 VICE-CHAIRMAN GUARD: Any other questions?

13 Commissioner Mardfin?

14 COMMISSIONER MARDFIN: Nothing. Okay.

15 VICE-CHAIRMAN GUARD: Okay. Thank you.

16 Any other members of the public wish to testify
17 at this time?

18 Come forward, state your name for the record.

19 MR. MARTIN: Hi. Good afternoon.

20 My name is Peter Martin.

21 I wasn't planning to testify, but I -- I -- in
22 the seventies, I came over. And I was a math and physics
23 teacher at Baldwin and Maui High. And we used to show --
24 this (inaudible) physics. I was much more of a math
25 teacher, but I kind of got thrown into physics at

1 teaching. And there was a wonderful movie called Frame of
2 Reference.

3 And it's just interesting -- and with all due
4 respect to the last testifier -- Mr. Hedani, when I drive
5 through Launiupoko -- let me see how I can say this -- I
6 don't see Escalades. I see babies, children.

7 Thank you.

8 VICE-CHAIRMAN GUARD: Thank you.

9 Commissioner Mardfin.

10 Oh, any other members of the public wish to
11 testify?

12 Seeing none, public testimony is now closed.

13 COMMISSIONER MARDFIN: Can I ask a quick
14 question?

15 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

16 COMMISSIONER MARDFIN: Is it my understanding
17 that we are approving a, if we do, Special Use
18 Permit/Conditional Permit that's for a limited period of
19 time, that has to be renewed periodically?

20 VICE-CHAIRMAN GUARD: Yes. I believe one of
21 them we're just recommending approval of the Conditional
22 Permit.

23 MR. DACK: That's correct. Yes, that's one of
24 the conditions.

25 To move on to the Recommendation Report, the

1 application complies with the applicable standards for a
2 Land Use Commission Special Use Permit and Conditional
3 Permit as indicated in the Recommendation memo.

4 The Department recommends that the last sentence
5 of Conclusions of Law for the Land Use Commission Special
6 Use Permit need to be amended. We had some typographical
7 errors. And there's some further information we would
8 like to add.

9 So, again, we would like to ask that last
10 sentence of the Land Use Commission Special Use Permit
11 Conclusions of Law be amended to read as follows: The
12 Maui County Planning Commission hereby determines the
13 transient vacation rental proposed at 138 Awaiku Street,
14 on Maui Tax Map Key Number 4-7-009-058, to be an unusual
15 and reasonable use within the Agricultural District, and
16 that the issuance of a Land Use Commission Special Use
17 Permit will promote the objectives and effectiveness of
18 Chapter 205, HRS.

19 The Maui Planning Department recommends that the
20 Planning Commission approve the Land Use Commission
21 Special Use Permit with conditions as fully listed in the
22 recommendation memo and very briefly cited orally now.

23 Condition One: That the permit may be valid
24 until August 31 of 2009.

25 Two: That the conditions be enforced pursuant

1 to Chapter 205-12, Sections 12 and 13 of HRS.

2 Three: That the permit be not transferable
3 without the prior written approval of the Maui Planning
4 Commission.

5 Four: That the permittee shall procure and
6 maintain the policy of comprehensive liability insurance,
7 minimum amount of \$1 million.

8 Five: That full compliance with all applicable
9 governmental requirements shall be rendered.

10 Six: The applicant shall submit five copies of
11 a compliance report.

12 Seven: That the applicant shall develop the
13 property in substantial compliance with the
14 representations made to the Commission.

15 Eight: The permit holder and any agreed person
16 may appeal to the Planning Commission any action taken by
17 the Planning Department on the subject permit no later
18 than 10 days from the date the Director's actions are part
19 of the Commission.

20 Those are the standard conditions for project
21 specific conditions.

22 VICE-CHAIRMAN GUARD: Nine through 15 are the
23 same ones as they are on the green sheet of paper?

24 MR. DACK: Yes.

25 Nine: All parking be on-site.

1 10: Applicant install fire extinguishers, smoke
2 detectors, post evacuation plans in each room.

3 11: Applicant contact Department of Finance,
4 Real Property Division to ensure the subject property is
5 not assessed as agricultural property.

6 12: The applicant not receive agricultural
7 rates on domestic water supply to the property.

8 13: The transient vacation rental be limited to
9 six guest rooms, occupancy limited to two persons per
10 room.

11 14: Proprietor to include permit numbers in all
12 advertising.

13 And, 15: No microwaves or cooking equipment be
14 permitted in the rooms.

15 In consideration of the foregoing, the Planning
16 Department recommends the Maui Planning Commission adopt
17 the Planning Department's Report and Recommendation
18 prepared for the August 26th meeting as the findings of
19 fact, conclusion of law, decision and order, and authorize
20 the Director of Planning to transmit said written decision
21 order on behalf of the Planning Commission.

22 Further, Maui Planning Department --

23 VICE-CHAIRMAN GUARD: I have a question --

24 MR. DACK: Yes.

25 VICE-CHAIRMAN GUARD: -- on this one, first. If

1 -- because they have to go through the Council
2 potentially, if the Conditional Permit is approved, should
3 the Land Use Commission Special Permit -- should that one
4 be from one year of date of the Conditional Permit?
5 Because if this one is approved until August 31st, 2009,
6 on Item One. Typically, other ones we've had that be in a
7 floating timeframe, correct?

8 MR. DACK: That would a very reasonable way to
9 get -- to avoid the problem.

10 VICE-CHAIRMAN GUARD: Because they are going to
11 have all of six months of it before they have to be back.

12 MR. DACK: Yes. That would -- in fact, Staff
13 would be happy to modify our recommendation to reflect
14 that.

15 VICE-CHAIRMAN GUARD: I think we can probably
16 all read the standard conditions on the Conditional
17 Permit, unless anyone has any objections to just reading
18 it. Okay.

19 Thank you, Jeff.

20 MR. DACK: Thank you.

21 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

22 COMMISSIONER HIRANAGA: Granting this State
23 Special Use Permit and Conditional Permit on ag land, to
24 me, is the most difficult and has the greatest tests that
25 need to be passed in order for it to be granted.

1 I voted against the application at Keokea
2 because there was -- although there was a property manager
3 that was hired, the owner lived out of state. This
4 applicant has family that lives on the property.

5 Land Class E. I visited this property over 10
6 years ago, and filled with rocks. I would challenge
7 anyone to try and operate a profitable agricultural
8 activity on this land.

9 I think in the photos, you've seen that the
10 applicant has brought in quite a bit of topsoil and has
11 been able to start an agricultural activity.

12 And so -- but, unfortunately, his presentation,
13 I thought, is lacking a lot of information. And I am not
14 sure why he was unaware of the common practice with
15 presentations to the Planning Commission.

16 Maybe the Staff should advise someone they deem
17 inexperienced in this process of what may be considered
18 minimum requirements for consideration by the Planning
19 Commission. He will be implementing his 50 percent farm
20 plan.

21 So at this point I would be making a motion to
22 defer, to give the applicant an opportunity to come up
23 with a more comprehensive presentation.

24 Because he showed us pictures from five years
25 ago, and then he showed us a couple handful of pictures

1 with some orchards. I think if he made a more
2 comprehensive presentation, he might have a better
3 opportunity to receive the approval.

4 I think, you know, pictures are worth 1,000
5 words. And if you show us your -- how your property looks
6 at this time, give us a better feel of the orchards, what
7 type -- I know you brought in a ton of soil because it was
8 probably full of rocks.

9 MR. WISTHOFF: Uh-huh.

10 COMMISSIONER HIRANAGA: But from my personal --
11 personally, I don't think the presentation was complete
12 enough for me to vote in favor of the application at this
13 time. So at some point I will be making a motion to
14 defer.

15 MR. WISTHOFF: I apologize, again, for the
16 presentation.

17 Everyone we've talked to at this point, our
18 understanding of the process was that the Planning
19 Department was going to present the case and then we were
20 supposed to be here to be available for questions and to
21 have all the information ready. So we were not prepared
22 at all to make a presentation. We certainly would like
23 to.

24 VICE-CHAIRMAN GUARD: Let's limit the debate
25 here.

1 You can finish up, Commissioner Hiranaga.

2 MR. WISTHOFF: I'm sorry.

3 COMMISSIONER HIRANAGA: It's unfortunate that
4 you're unfamiliar with the process. You don't do
5 channel-surfing on Akaku, I guess, late at night to see
6 what is happening here. But, anyway, those are my
7 comments.

8 VICE-CHAIRMAN GUARD: Thank you.

9 Commissioner U'u.

10 COMMISSIONER U'U: I will second the deferral.

11 COMMISSIONER HIRANAGA: I haven't made a motion,
12 but I will make a motion to defer.

13 COMMISSIONER U'U: I will second the deferral,
14 but, actually, I was looking at a denial. I understand
15 it's not profitable from a farming standpoint, but that
16 doesn't give it a right to make it a hotel. This is ag
17 land. I don't mind people living on ag and farming on ag,
18 but it doesn't give you the right to make a small hotel.

19 Land Use Commission had -- hadn't commented on
20 that, and they had different information given to them
21 saying that the property manager or someone will be living
22 in the same house. The Parks are not for and, also, OHA.

23 So I don't know at what point does the Planning
24 Department give the recommendation of passing when these
25 other agencies are not even for it?

1 I am just curious as to how it operates,
2 especially this.

3 How that comes by? And we get a recommendation
4 from Staff saying to approve? I don't get it.

5 VICE-CHAIRMAN GUARD: Director, comments.

6 PLANNING DIRECTOR HUNT: Again, we think the ag
7 zone and these gray areas, these hybrid ones, are a real
8 struggle. We will be honest with you. They are
9 fence-sitters.

10 Given the past vote on the one up in Kula, the
11 Star Lookout, where the land was similar, poor rocky land.
12 They didn't even have a family member on-site. That was
13 just a manager. And the manager was a respected person in
14 the community, he's a good guy and everything, but from
15 our perspective, this property, the property owners'
16 family is on-site. So a big factor to us in this one was
17 that fact, that there was family ownership on-site.

18 Also, again, the rocky soils. They actually
19 brought soil on.

20 I think it's important we preserve ag land, but
21 is it preserving ag land when you bring the soil onto the
22 property?

23 I mean, you could preserve a parking lot and
24 call it ag land if you are bringing soil onto the parking
25 lot.

1 So those were factors in our favor.

2 We do struggle with these.

3 If this Commission does approve this one, please
4 give us your thoughts and your criteria on how we cannot
5 open the floodgates to every one of these.

6 What -- what is distinct on this one?

7 And we've tried to find those distinctions. If
8 you don't agree with that, we understand. But if you do
9 go down the road and approve it, look at those
10 distinctions, because we can't just allow these on our ag
11 land all over the place.

12 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

13 COMMISSIONER HIRANAGA: Yeah. If this motion is
14 -- if this application is deferred, I would suggest in
15 your presentation that you show other vacant lots in the
16 subdivision which have not improved so that the
17 Commissioners can see what the current land conditions
18 are, without irrigation, without improvements. Because
19 not everyone is as familiar with the property as I am. So
20 that's all part of your presentation, to persuade the
21 Commissioners to vote for your application.

22 I think you need to update your pictures and
23 maybe update some of the correspondence in the Staff
24 Report, you know.

25 So those are my comments.

1 VICE-CHAIRMAN GUARD: Commissioner Mardfin.

2 COMMISSIONER MARDFIN: I would like to say that
3 I -- I am tempted to vote against the motion to defer
4 because I am ready to approve. I agree that he didn't do
5 a Powerpoint presentation, but I don't think we should be
6 held captive to any applicant having to have hired
7 planners to do their work. I mean, I was impressed by the
8 person himself coming forward and speaking for what they
9 want to do. I kind of like that. I think you shouldn't
10 have to hire any of the number of people to come in here
11 to be hired guns.

12 But it sounds like there might not be enough
13 support to -- for passage today. Although, I would be
14 happy to go that direction.

15 With regard to the Director's consideration, I
16 agree that some of the things that are making me lean
17 toward approval is the fact that there's a person on-site
18 that's a member of the family, and that the land is
19 essentially unsuitable for agriculture.

20 But if -- if there aren't enough votes for
21 approval, I guess I will have to go -- I may have to go
22 with the deferral.

23 VICE-CHAIRMAN GUARD: Thank you.

24 The other issue is that one would be approval.
25 And if -- for Commissioner Hiranaga's sake, if it was an

1 issue of having a better presentation by the time it went
2 to Council, that would be an option as well, which I would
3 definitely recommend if it gets that far. If you are
4 content with the photos you've seen.

5 The biggest issue, for I think a few of us, is
6 probably the OHA letters and the Parks and not really
7 trying to work it out. But in their discussion, it talks
8 about the individual's rights to challenge, I guess, what
9 is available. So for the future, that may not always be
10 the best way to work things out.

11 Commissioner Iaconetti, followed by Commissioner
12 Hiranaga.

13 COMMISSIONER IACONETTI: I will probably vote in
14 favor of the motion. Although, I agree with Bruce,
15 Commissioner U'u, that I was ready to deny this for the
16 reasons he mentioned. And -- but I suppose it will be
17 fairer to give the applicant another opportunity.

18 And I will go ahead and vote in favor of Kent's
19 motion to defer.

20 VICE-CHAIRMAN GUARD: Commissioner Hiranaga.

21 COMMISSIONER HIRANAGA: The reason I offered the
22 motion to defer was because I was not ready to vote in
23 favor of the application.

24 If I inferred that he needed to hire
25 professional consultants, I apologize.

1 In no way am I inferring that you need to hire a
2 professional consultant. Because other applicants have
3 represented themselves and have provided a complete
4 presentation.

5 I felt that -- well, actually, there was no
6 presentation. So I think he needs to spend his personal
7 time, if he believes he's capable, in preparing a complete
8 presentation for the Commission. And if he doesn't, then
9 I think he is hurting himself.

10 VICE-CHAIRMAN GUARD: Any other comments?

11 The floor is open for a motion.

12 PLANNING DIRECTOR HUNT: There was a motion.

13 VICE-CHAIRMAN GUARD: There was a motion? I
14 thought he was --

15 COMMISSIONER HIRANAGA: I threw it out there.
16 Sorry.

17 COMMISSIONER DOMINGO: And he seconded it.

18 VICE-CHAIRMAN GUARD: Perfect. My apologies.

19 Any more discussion or ready to vote on the
20 motion to defer?

21 Okay. Call for the question.

22 All those in favor to defer the agenda item?

23 You want to go to a date certain?

24 Well, do we need to see if it gets through
25 first?

1 MR. GIROUX: I would like, if you were going to
2 defer, to do it to a date certain. Because I believe that
3 if you do it to a date uncertain, there's -- it's going to
4 raise a lot of notice issues.

5 So if the Staff could help us out with some kind
6 of timing or calendar or something so that it would be on
7 the calendar.

8 COMMISSIONER HIRANAGA: Also, you may want to
9 consult with the applicant as to when he would be ready to
10 come back, to return.

11 MR. DACK: The applicant would request October
12 14th.

13 VICE-CHAIRMAN GUARD: Is the maker of the motion
14 okay with that, deferring to a date certain?

15 COMMISSIONER HIRANAGA: Do I need to amend my
16 motion or --

17 VICE-CHAIRMAN GUARD: How do you want to handle
18 that, Corp Counsel?

19 MR. GIROUX: Is that --

20 COMMISSIONER HIRANAGA: That's it.

21 VICE-CHAIRMAN GUARD: Is that enough timeframe
22 to look at the rest of the schedules, Director? We'll
23 just go with that.

24 PLANNING DIRECTOR HUNT: We can go with October
25 14th.